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January 4, 2015

Ms. Marlene Dortch
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

ELECTRONICALLY FILED

RE: Protecting and Promoting the Open Internet, GN Docket No. 14-28.

Dear Ms. Dortch,

I read with great interest the comment submitted by Joseph C. Cavender (Level3) on November 25, 2015 and also the response submitted by Steven F. Morris (NCTA) on December 21, 2015. Level 3 is essentially proposing BIAS providers should disclose performance metrics at interconnection points so that BIAS consumers can review information regarding the performance they can expect when accessing resources on other networks.

The NCTA response to the Commission against the Level3 proposal is misguided. If BIAS providers have nothing to hide by disclosing these measurements to their consumers then I don't understand why they are opposed to it. And if the numbers are truly great then they would likely already be publishing them voluntarily.

NCTA essentially says that the numbers would be misleading because it takes two networks to make an interconnection point and congestion in that circuit is not necessarily their fault. While that may be partially true when looking at only one single interconnection, it would be relatively easy identify the problem network by simply reviewing all the measurements.

As you may know, last year we filed an unsuccessful informal net neutrality complaint (Ticket #356684) against Time Warner Cable (TWC) for what essentially are violations of the bright line rules through interconnection policy. I believe that case is a good public demonstration why the proposal by Level3 is long overdue.

Our experience is that some BIAS providers are using congestion at interconnection points and selective application of interconnection policy to help them extort the edge into unnecessarily purchasing “transit”. It is the only way many edge providers can provide BIAS consumers with the content they are requesting and in quality of service they expect from their paid service level. This is a loophole in the open internet order and it is presently causing great harm to the Virtuous cycle.

It is no mistake that US BIAS providers do not seem to have any public IX points listed in peeringdb, while European providers can’t stop adding them. US BIAS providers have a financial incentive to require private peering – at the expense of BIAS consumers quality of service - and concealing congestion data over all Interconnection points is paramount to protecting the status quo. It is also a large reason why the broadband performance for European consumers is so much better than that of US BIAS consumers.

The Level3 proposal will either expose real problems that need to be addressed or it will support responsible BIAS providers with evidence of good behavior. I see nothing wrong with either.

Sincerely,

Barry Bahrami

Barry Bahrami
Chief Executive Officer