



John M. Ryan
Executive Vice President &
Chief Legal Officer

TEL: (720) 888-6150
FAX: (720) 888-5127
John.ryan@level3.com

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Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Preserving the Open Internet*, GN Docket No. 09-191

Dear Chairman Genachowski:

By letter dated February 14, AT&T and the NCTA requested that the Commission “clarify” that the Open Internet Order does not apply to Internet “backbone services” and, more specifically, does not apply to the issues implicated in the Level 3/Comcast dispute. While we respect AT&T and the NCTA, we believe that their analysis is flawed, and therefore their conclusions are incorrect.

By issuing the Open Internet Order, the Commission recognized that Internet service providers have the means, motive and opportunity to discriminate against online content which competes with their own offerings. In the Order, the Commission prohibited ISPs from charging content owners and their carriers for delivering content to the ISP’s customers.

This was sensible. Unlike Internet *backbone* services, which are highly competitive and do not need regulation, ISPs tend to have monopolies on both sides of the equation. On one side, most residential customers have only one or two ways to access high-speed broadband (often only through their cable TV provider). On the other side, content owners have no way to deliver content requested by a consumer other than through the consumer’s ISP. Recognizing this bottleneck and lack of competition, the Commission prohibited ISPs from blocking or placing discriminatory charges on the delivery of content that goes through the ISP to its customers.

The request by AT&T and the NCTA that the Commission “clarify” that the Open Internet Order does not apply to “backbone services” provided by the ISP would quickly render the Order meaningless. The following example demonstrates this point:

If a Dallas ISP has a local customer who requests online content, say a movie, from Level 3, Level 3 could deliver the movie to the ISP at a location in Dallas for transmittal to the customer. In this situation, it is clear that the Open Internet Order prohibits the Dallas ISP from charging for access to the local customer. However, if the Dallas ISP refuses to accept the online content in Dallas, but rather requires Level 3 to deliver the movie to nearby Fort Worth, then, by AT&T’s and the NCTA’s reasoning, the Dallas ISP is providing a “backbone service” and can charge whatever amount the Dallas ISP chooses.

The flaw in AT&T’s and the NCTA’s logic is clear. All parties and the Commission seem to agree that a robust, competitive market for Internet *backbone* services exists, with little need for regulation. However, no competitive market exists when a dominant ISP uses an artificial bundling of local Internet access and a contrived “backbone” service as a ruse to evade the clear intent of the Open Internet Order and extract a toll for delivery of content to the ISP’s customers. The Commission can be sure that if AT&T’s and the NCTA’s interpretation of the Open Internet Order were to prevail, it would not take long for ISPs to use this scheme to get around the Order by simply moving their tollbooths some distance away from their customers and begin claiming that they are providing “backbone” services. This they cannot be allowed to do.

Sincerely yours,



Executive Vice President
& Chief Legal Officer

cc: Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker