



April 29, 2014

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Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: WC Docket No. 13-184, GN Docket No. 14-28, GN Docket No. 09-191, GN Docket No. 10-127

Notice of *Ex Parte*

Dear Ms. Dortch:

On Friday April 25, 2014 Amina Fazlullah, Director of Policy for the Benton Foundation, spoke via phone with Priscilla Delgado Argeris, Legal Advisor to Commissioner Jessica Rosenworcel. Ms. Fazlullah discussed the Benton Foundation's interest in incentivizing consortium applications, increasing pricing transparency, allowing for longer periods of E-rate support, clarifying the rules around the use of fiber, and including the use of limited pilots. Ms. Fazlullah also expressed interest and concern about the proposed Network Neutrality rules.

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Below is a recent EdWeek article discussing the Benton Foundation's concerns with the proposed Network Neutrality rules with respect to education technology and the ConnectED goals.

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Schools Could Be on Internet 'Slow Track' Under Proposed FCC Rules

[http://blogs.edweek.org/edweek/marketplacek12/2014/04/schools\\_could\\_be\\_on\\_internet\\_slow\\_track\\_under\\_proposed\\_fcc\\_rules.html?cmp=ENL-EU-NEWS3](http://blogs.edweek.org/edweek/marketplacek12/2014/04/schools_could_be_on_internet_slow_track_under_proposed_fcc_rules.html?cmp=ENL-EU-NEWS3)

Questions arose today about whether schools will have to stand in line for acceptable speeds of Internet access under proposed new rules floated by the chairman of the Federal Communications Commission.

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FCC commissioners received the rules Thursday, in advance of a May 15 vote. As written, the proposed rules would impact "net neutrality," which refers to the open and free flow of content on the internet, regardless of where it originates. The new rules would leave an opening for broadband internet providers like Verizon Communications, Comcast Corp., and Time Warner Cable, to give preferential treatment to content providers that pay for the privilege of higher priority service, as the Wall Street Journal reported on Wednesday.

Creating a "fast lane" online is seen as a plus for large companies like Apple, Netflix, Google, and YouTube, which could enter into agreements to get speedier service for the content they deliver. The FCC would rule on whether each of these arrangements between an Internet service provider and a content company is "commercially reasonable," using a series of questions to test whether such an agreement meets their standards.

For schools, the issue is more problematic. Unless educational services are offered preferential treatment by providers, "schools could find themselves even further challenged to make use of digital learning tools and services," Douglas Levin, executive director of the State Educational Technology Directors Association, wrote in an email.

The proposed rules could impact ed-tech companies, too. Larger ones might be well-positioned to pay for fast-lane service, while smaller ones and start-ups could find themselves at a competitive disadvantage, said Amina Fazlullah, policy director of the Benton Foundation, a Washington-based organization that works to ensure that media and telecommunications serve the public interest.

"Any net neutrality proposal must ensure the same quality access to online educational content as to entertainment and other commercial offerings," Fazlullah wrote in an email. "We need to ensure that the Internet remains a medium for opportunity not just an opportunity for Internet providers to increase profits."

The net neutrality issue became high-profile after the U.S. Court of Appeals for the District of Columbia issued a ruling in January that has been interpreted as giving commercial Internet providers significantly more power to block content or set conditions on its delivery before it reaches customers, including schools.

The case was brought by Verizon in a challenge to the FCC's "open Internet" policies that promote the concept of net neutrality. The FCC policy was designed to ensure that broadband providers didn't restrict or discriminate against lawful content, applications, and services delivered online, and that those providers disclose how they are managing their networks. Critics of net neutrality have maintained that it stifles innovation by keeping providers from targeting specific online content for streamlined delivery, which they say could ultimately benefit consumers.

The court's decision left a regulatory gap, one that FCC Chairman Tom Wheeler is hoping to address by the end of the year with some version of the proposed rules, which, if approved by the commission, will be posted for public comment and possibly revised. In an FCC blog post, Wheeler wrote that misinformation had circulated about the rules. Behavior found to be "harmful to consumers or competition by limiting the openness of the Internet will not be permitted," he wrote.

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Levin pointed out that, in the marketplace, there are rules—and then there is practice. "If providers are able to prioritize traffic, it means that other traffic can be deprioritized on networks. As a public service and a public good, education shouldn't be held hostage to paying more money for scarce broadband so that entertainment providers get preferential treatment because they can afford to pay for it," he wrote in an email.

Levin considered it ironic that the FCC would even consider a decision "with such sweeping potential negative impact on schools," at the same time it is working on restructuring the E-rate. Established in 1996, the E-rate program allows schools and libraries to buy telecommunications services at discounted prices. It has been inadequate to keep up with technological advances as schools seek to upgrade to modern broadband systems. Restructuring the E-rate could involve devoting more money for internal Web connections within schools and potentially using demonstration projects to encourage innovation in the \$2 billion-plus program. In fact, a public comment period on the E-rate restructuring, which has received its own share of criticism, closed on April 21.

This latest development on net neutrality "is stunning and absolutely counter to the President's own ConnectED goals," Levin wrote, referring to the program President Obama announced last June with the goal of giving 99 percent of the nation's schools access to high-speed broadband and wireless Internet within five years. He finds it "inconsistent" of the FCC to advance this idea, which he maintains could make Internet service less affordable for schools, while "with the other hand, working to expand access to schools via E-rate," he wrote. "The net effect is that E-rate reforms ... could be muted in their impact instead of accelerated."

While disturbed by the FCC's recent move, Levin struck a note of optimism: "We look forward to working with the FCC and others to ensure that online educational tools and services aren't relegated to the internet's slow lane," Levin said.

In accordance with Section 1.1206(b) of the Commission's rules, this letter is being filed with your office.

If you have any further questions, please contact me at

Respectfully submitted,

/s/ Amina Fazlullah

Director of Policy

BENTON FOUNDATION

Cc: Lisa Hone, Chairman Wheeler, Commissioners Mignon Clyburn, Jessica Rosensworcel, Ajit Pai,  
Michael O'Rielly

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