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May 13, 2014

**Ex Parte**

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

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

Dear Ms. Dortch:

On May 12, 2014, I, on behalf of Level 3 Communications, LLC (“Level 3”), spoke by telephone with Daniel Alvarez, Legal Advisor to Chairman Wheeler, regarding the above-captioned matter. The discussion was consistent with Level 3’s previous advocacy.<sup>1</sup> In particular, I emphasized the following points.

Chairman Wheeler has recently and forcefully declared that he “will not allow some companies to force Internet users into a slow lane so that others with special privileges can have superior service.”<sup>2</sup> Yet, as Level 3 has previously observed, that is precisely what is happening today—and what has been happening in some cases for years now.<sup>3</sup> That is because some of the biggest consumer broadband ISPs have allowed the interconnections between their networks and backbone providers like Level 3 to congest, causing packets to be dropped and harming their own users’ Internet experience. This is, in fact, one way in which some ISPs have created the

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<sup>1</sup> See Comments of Level 3, GN Docket No. 14-28, et al. (filed Mar. 21, 2014) (Level 3 Comments); Letter from Joseph C. Cavender, Level 3, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28, et al. (filed Feb. 21, 2014); Letter from Joseph C. Cavender, Level 3, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28, et al. (filed Apr. 24, 2014) (Level 3 April 24, 2014 Ex Parte); Letter from Joseph C. Cavender, Level 3, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28, et al. (filed May 5).

<sup>2</sup> See Letter from Tom Wheeler, Chairman, FCC, to Alan B. Davidson, Open Technology Institute, and Julie Samuels, Engine Advocacy (May 9, 2014).

<sup>3</sup> See, e.g., Level 3 April 24, 2014 Ex Parte; Michael Mooney, *Chicken*, available at <http://blog.level3.com/global-connectivity/chicken-game-played-child-isps-internet> (visited May 13, 2014) (noting that “none of this is new”).

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very “slow lane” that Chairman Wheeler has decried.<sup>4</sup> And what is more, these large ISPs already in fact *do* offer those with “special privileges ... superior service”—those who are willing to pay the ISPs’ arbitrary tolls find that interconnection capacity can readily be made available.

Notably, however, the “superior service” that these ISPs offer in exchange for these tolls is not some sort of advanced technology that improves the Internet experience. Instead, the tolls that these ISPs seek from providers like Level 3 are charges imposed simply to make available adequate interconnection capacity to support common, everyday Internet content (including streaming video), which the ISPs have offered to make available to their customers, and which those customers have then requested.

Level 3 urges the Commission to not simply reinstate its previous rules. Doing so would do nothing to prevent the harms to the open Internet that Level 3 has observed—harms that have already affected millions of American consumers and that continue today. To ensure that its rules actually achieve their goal, the Commission must also prohibit ISPs from imposing access tolls for the privilege of reaching the ISPs’ end users. It is time for the Commission to protect the Internet.

Please do not hesitate to contact me if you should have any questions.

Sincerely,

/s/ Joseph C. Cavender  
Joseph C. Cavender

cc: Daniel Alvarez

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<sup>4</sup> As a technical matter, the harm to Internet traffic traversing a congested link results from packets being dropped or buffered. That, however, is an even more pernicious activity than simply reducing speeds, because packet loss can harm the consumer’s experience no matter how little “speed” the consumer actually requires. For example, a VoIP call may only require a small fraction of a user’s total bandwidth, but packet loss at the point of interconnection can still make it impossible to complete the call.