

April 17, 2024

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ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Notice of *Ex Parte* Meeting, Safeguarding and Securing the Open Internet, Docket No. 23-320

Dear Ms. Dortch:

On April 15, I met by video conference with Justin Faulb, Chief of Staff and Legal Advisor for Wireline and National Security for Commissioner Starks, regarding the proceeding referenced above. I participated in the meeting in my personal capacity.

In the meeting, we discussed the draft order's approach to evaluating speeding up apps or classes of apps under the no-throttling rule.

My presentation covered the content of my recent blog post "Harmful 5G fast lanes are coming. The FCC needs to stop them."¹ The blog post is attached to this filing.

As I explained in the meeting, for speeding up and other forms of preferential treatment, the draft order turns the brightline no-throttling rule into a new, vague case-by-case standard.

This opens the door to ISPs' creating fast lanes for select apps or kinds of apps, as long as the application provider does not charge for it. There is no way to predict which kinds of fast lanes the FCC might ultimately find to violate the no-throttling rule. This gives ISPs cover to flood the market with various fast-lane offerings, arguing that their version does not violate the no-throttling rule and daring the FCC to enforce its rule.

This is a real problem. Mobile ISPs have been testing 5G fast lanes for specific apps or kinds of apps. These kinds of ISP-controlled fast lanes violate core net neutrality

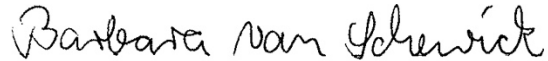
¹ van Schewick, 2024, Harmful 5G fast lanes are coming. The FCC has to stop them, Stanford Law School Center for Internet and Society Blog, <https://cyberlaw.stanford.edu/blog/2024/04/harmful-5g-fast-lanes-are-coming-fcc-needs-stop-them>.

principles and would limit user choice, distort competition, hamper startups, and help cement platform dominance.

I urged the Commission to clarify, in the text of the final Open Internet Order, that the no-throttling rule also prohibits ISPs from speeding up apps or classes of apps.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Barbara van Schewick". The script is cursive and fluid.

Barbara van Schewick

M. Elizabeth Magill Professor of Law and Professor, by Courtesy, of Electrical Engineering

Director, Stanford Law School Center for Internet and Society

Attachment:

van Schewick, 2024, Harmful 5G fast lanes are coming. The FCC has to stop them (Blog Post)

cc:

Ramesh Nagarajan