

July 29, 2013

Tracy Bridgham
Special Counsel
Market Disputes Resolution Division, Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: File No. EB-13-MDIC-0009
(Informal Complaint – Douglas McClendon)**

Dear Ms. Bridgham:

This letter serves as the response of Google Fiber Inc. (“Google Fiber”) to the informal complaint filed by Douglas McClendon (File No. EB-13-MDIC-0009). As described in the Commission’s Official Notice of Informal Complaint dated June 24, 2013 (“Notice of Complaint”), Mr. McClendon alleges that Google Fiber’s policy of prohibiting use of its fixed broadband Internet service to host a computer server violates the Open Internet Order¹ and 47 C.F.R. §§ 8.1-11.² Mr. McClendon, however, is not affected by the network management policy at issue and, in any event, the policy is fully consistent with the Open Internet Order and Rules.

I. Google Fiber’s Server Policy

Google Fiber is a facilities-based Internet and video service provider, currently serving customers in portions of Kansas City, Kansas, and Kansas City, Missouri. Google Fiber’s offerings include Gigabit Internet service and high-definition multichannel video, as well as Internet service providing 5 mbps downloads with no monthly charge.³

Upon signing up for Google Fiber service, a customer agrees to be bound by Google Fiber Terms of Service (“ToS”).⁴ The ToS include a provision, “Using Google Fiber Services,” which reads, in part:

¹ *Preserving the Open Internet Broadband Industry Practices*, Report and Order, GN Docket No. 09-191, WC Docket No. 07-52, 25 FCC Rcd 17905 (2010) (“Open Internet Order”).

² See Notice of Complaint at 1.

³ See www.fiber.google.com.

⁴ See <https://fiber.google.com/legal/terms.html>.

You agree not to misuse the Services. This includes but is not limited to using the Services for purposes that are illegal, are improper, infringe the rights of others, or adversely impact others' enjoyment of the Services. A list of examples of prohibited activities appears [here](#).

The word “here” is hyperlinked to a Google support webpage entitled, “Using Google Fiber properly.”⁵ Among the guidance provided on that page, in turn, is the following:

Your Google Fiber account is for your use and the reasonable use of your guests. Unless you have a written agreement with Google Fiber permitting you do so, you should not host any type of server using your Google Fiber connection, use your Google Fiber account to provide a large number of people with Internet access, or use your Google Fiber account to provide commercial services to third parties (including, but not limited to, selling Internet access to third parties).⁶

The ToS containing this server policy also are available online through the Network Management Guide for Google Fiber Internet Services.⁷

II. The Server Policy Does Not Affect Mr. McClendon

Mr. McClendon asserts that Google Fiber’s server policy violates the Open Internet Order and the Commission’s corresponding rules under 47 C.F.R. §§ 8.1-11 (“Open Internet Rules”). Mr. McClendon explains that he seeks to have the “‘no server hosting of any kind allowed’ clause removed from Google Fiber’s . . . terms of service.”⁸

Under Section 8.14(a)(2) of the Open Internet Rules, a complainant must “state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest.”⁹ Mr. McClendon, however, fails to make clear that he is not (and could not yet become) a Google Fiber customer. He has merely signed up to receive

⁵ <https://support.google.com/fiber/answer/2659981?hl=en&topic=2440874&ctx=topic#>.

⁶ *See id.*

⁷ <https://fiber.google.com/legal/network.html>. The policy does not prevent legal, non-commercial use of applications such as multi-player gaming, video-conferencing, and home security.

⁸ Complaint of Douglas McClendon (Oct. 24, 2012) at 27 (“Complaint”).

⁹ 47 C.F.R. § 8.14(a)(2). *See also Paging Systems, Inc., Assignor and American Telecasting of Oklahoma, Inc., Assignee; Application for Assignment of Broadband Radio Service Station WHT743, Wichita, Kansas*, Memorandum Opinion and Order, File No. 0002647326, 22 FCC Rcd 1294, para. 10 (2007) (dismissing petition “consider[ed] . . . as an informal complaint” for lack of a “*prima facie* showing” of the “requisite standing”).

service at an address in Kansas City, Kansas, that Google does not yet serve.¹⁰ What's more, the Notice of Complaint indicates that Mr. McClendon resides in Lawrence, Kansas¹¹ – a city that Google Fiber does not serve at all. Mr. McClendon only hints at these facts, observing that “TimeWarner” is his “current broadband service.”¹²

Furthermore, Mr. McClendon's request that the Commission modify Google Fiber's ToS is based on his desire to host a server for use in his business.¹³ Google Fiber does not currently support business use of its service.¹⁴ Google Fiber is a residential offering only. In other words, Mr. McClendon could not connect his contemplated business server to the Google Fiber network even if he were a Google Fiber customer, and even if the Commission granted the relief he seeks with respect to the Google Fiber residential service.

For all these reasons, Mr. McClendon's complaint should be dismissed for failure to demonstrate a need for the relief requested.

¹⁰ In order to obtain service within a city where Google Fiber is offered, potential customers are encouraged to “pre-register” for service. Once a defined community within a Google Fiber city, known as a “Fiberhood,” has reached a specified number of pre-registrations, Google Fiber commits to constructing connections to that qualified Fiberhood. Interested customers can then enroll for service in a qualified Fiberhood – as Mr. McClendon did – at which point those customers agree to be bound by terms including the ToS. Enrolled customers receive service after construction in their Fiberhood.

¹¹ See Notice of Complaint at 1.

¹² See Complaint at 23; see also *id.* at 15.

¹³ See Form 2000F listing “Company Name” as “Sonic Dawg Corp.” FCC Form 2000F instructs consumers to enter a company name “*only if you are filing this complaint on behalf of a company or organization.*” (Emphasis added.) See also Complaint, Endnotes/References at n. 48-49 (reflecting email exchanges Mr. McClendon had regarding “potential investors” and his “biz prop” [business proposition]); *id.* at n. 60 (noting email from Mr. McClendon to Vint Cerf of Google stating, “This matter of my lifelong dream of just running a simple . . . server . . . at my own home, along with some possibility that it might be able to turn into a living . . . is of paramount importance to me.”).

¹⁴ Google Fiber intends to provide a business offering in the future, but has not done so to date. See, e.g., <https://fiber.google.com/help/> (“Does Google Fiber have a business product?”).

III. Google Fiber's Server Policy Complies with the Open Internet Order and Rules

Should the Commission nevertheless consider the merits of Mr. McClendon's complaint, Google Fiber's server policy is an aspect of "reasonable network management" that the Open Internet Order and Rules specifically permit.

Mr. McClendon appears to allege that Google Fiber's server policy violates the prohibitions against "blocking" and/or "unreasonable discrimination."¹⁵ The Order, however, provides an exception in both instances for "reasonable network management."¹⁶ As the Order explains, "[a] network management practice is reasonable if it is appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service."¹⁷

Google Fiber's server policy is prototypical "reasonable network management," with no discriminatory impact on any content, application, or service provider. The server policy has been established to account for the congestion management and network security needs of Google Fiber's network architecture, particularly given that Google Fiber does not impose data caps on its users.

The server policy leaves customers great freedom to use their Google Fiber Internet service to access the content, applications, and services of their choice. As Google Fiber's Network Management Guide explains,

(1) Google Fiber does not prevent or impede the use of any other product or service that its subscribers choose to access over their Google Fiber Internet service as long as the use of that product or service does not violate the service terms and conditions;

(2) Google Fiber uses industry standard tools and generally accepted best practices and policies to prevent subscribers and other Internet users from experiencing the negative effects of Internet threats such as viruses, spam, denial of service attacks, and other unwanted or harmful online content and activities; . . . [and]

(3) Google Fiber's subscriber's may attach any device of their choice to the Google Fiber Internet service that is compatible with the Google Fiber network . . .

¹⁵ See Complaint at 32, App. B (citing Open Internet Order at para. 1).

¹⁶ See Open Internet Order at paras. 63, 68. See also 47 C.F.R. §§ 8.5(a), 8.7.

¹⁷ Open Internet Order at para. 82; see also 47 C.F.R. § 8.11(d).

., does not violate the Google Fiber Terms of Service, and does not cause harm to the network, other users, or the provision of Internet access service.¹⁸

Finally, Google Fiber’s server policy is consistent with policies of many major providers in the industry, including the following:

Provider	Server Policy
AT&T <i>Network Security</i>	Example of network security violation: “With respect to Dial-up accounts ... using your account for the purpose of operating a server of any type.”
Charter Communications <i>Section 1: Use</i>	“Customer will not use, or allow others to use, Customer's home computer as a web server, FTP server, file server or game server or to run any other server applications or to provide network or host services to others via Charter’s network.”
Comcast Xfinity <i>Section 1: Prohibited Uses and Activities; Technical Restrictions</i>	Prohibited activities include using Xfinity Internet service to “use or run dedicated, stand-alone equipment or servers from the Premises that provide network content or any other services to anyone outside of your Premises local area network (‘Premises LAN’), also commonly referred to as public services or servers. Examples of prohibited equipment and servers include, but are not limited to, email, web hosting, file sharing, and proxy services and servers.”
Cox Communications <i>Section 5: Servers</i>	“You may not operate, or allow others to operate, servers of any type or any other device, equipment, and/or software providing server-like functionality in connection with [Cox High Speed Internet SM service], unless expressly authorized by Cox.”
Verizon Online <i>Section 4.3: Authorized User, Account Use, and Responsibilities; Restrictions on Use</i>	“You also may not ... use the Service to host any type of server.”

¹⁸ <https://fiber.google.com/legal/network.html>.

Google Fiber Inc. Response
File No. EB-13-MDIC-0009
July 29, 2013
Page 6 of 6

Indeed, server guidelines like Google Fiber's were specifically discussed in the record of the Commission's Open Internet proceeding,¹⁹ but the Commission did not restrict them in its Order.

* * *

Should you have any questions, please contact the undersigned at 202.346.1347 or darahfranklin@google.com.

Respectfully submitted,

A handwritten signature in blue ink that reads "Darah Smith Franklin". The signature is written in a cursive style and is positioned above a horizontal line.

Darah Smith Franklin
Counsel to Google Fiber Inc.

cc: Douglas McClendon

¹⁹ See, e.g., Comments of Free Press, *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, at 23 (Oct. 12, 2010) (“The threat that wireless networks may develop into fundamental non-neutral platforms is real. For example, the terms imposed by most major wireless carriers purport to prohibit the use of . . . server or host applications[.]”). See also Comments of New America Foundation, Columbia Telecommunications Corporation, Consumers Union, Media Access Project, and Public Knowledge, GN Docket No. 09-191, WC Docket No. 07-52, at 2 (Jan. 14, 2010).

Certificate of Service

I, Sybil Anne Strimbu, state that copies of the foregoing response of Google Fiber Inc. were sent via U.S. and electronic mail this day, July 29, 2013, to the following:

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