

Web delivery firm Level 3 says Comcast violating Net neutrality by charging fee for data

Level 3 Communications Inc., an Internet backbone company that supports Netflix Inc.'s increasingly popular movie streaming service, complained Monday that cable giant Comcast Corp. is charging it an unfair fee for the right to send data to its subscribers.

Comcast replied it is being swamped by a flood of data and needs to be paid.

Level 3 said it agreed to pay under protest, but that the fee violates the principles of an "open Internet."

It also goes against the U.S. Federal Communications Commission's proposed rules preventing broadband Internet providers from favouring certain types of traffic, it said.

"Comcast is effectively putting up a toll booth at the borders of its broadband Internet access network, enabling it to unilaterally decide how much to charge for content," said Level 3's chief legal officer, Thomas Stortz, in a statement.

Comcast called Level 3's position "duplicitous" and said a previous deal for the companies to handle traffic for each other had become unbalanced in Level 3's favour.

The spat reflects the complicated commercial relationships of the Internet, where it's not always clear who should be paying whom.

Level 3's main business is carrying Internet traffic across the United States, charging Internet service providers like Comcast fees to connect to websites and other ISPs.

However, it is moving into the business of distributing Internet content such as movies for companies including Netflix. Under that business model, it is acting like a content-delivery network, which usually pays ISPs for fast access to their networks.

Level 3, which is based in Broomfield, Colo., is now pushing to Comcast five times the traffic that goes the other way.

"When one provider exploits this type of relationship by pushing the burden of massive traffic growth onto the other provider and its customers, we believe this is not fair," Comcast's senior vice-president Joe Waz said in a statement.

The dispute comes at a sensitive time for Comcast Corp., which is trying to get

regulatory clearance to buy majority control of NBC Universal from General Electric Co. for cash and assets worth \$13.75 billion.

The government is examining the deal, especially around concerns that the largest U.S. cable TV provider could wield undue power in the distribution of online video once it takes control.

Level 3 said Comcast made a take-it-or-leave-it demand last week and it only agreed to the terms under protest to prevent consumer disruptions. Comcast said it is meeting with Level 3 later this week to discuss a new solution.

The fight is related to a heated policy dispute in Washington over proposed rules governing Internet traffic.

FCC Chairman Julius Genachowski has been pushing to adopt so-called "network neutrality" rules for more than a year, arguing that they are necessary to prevent phone and cable giants from using their broadband monopolies to become online gatekeepers.

Public interest groups were quick to jump on Level 3's complaint Monday to argue that premium services should not be allowed.

"Comcast's request of payment in exchange for content transmission is yet another example of why citizens need strong, effective network neutrality rules that include a ban on such 'paid prioritization' practices," Andrew Jay Schwartzman, senior vice-president of Media Access Project, said in a statement.

The FCC had no comment.

It's not the first time Comcast, which is based in Philadelphia, has been accused of unfairly regulating Web traffic.

In 2008, the FCC ordered the cable giant to stop slowing and blocking its subscribers from accessing an online file-sharing service called BitTorrent, which lets people swap movies and other big files over the Internet.

For Netflix, the dustup could affect its popular video-streaming offering, to which it is pushing customers to save on the cost of sending rental DVDs in the mail.

Netflix declined to comment.

Starting next year, Level 3 will become Netflix's primary network for piping Internet video, although Netflix also will continue to rely on systems run by Limelight Networks Inc. and Akamai Technologies Inc.

If Level 3 is forced to pay more to send movies to homes that rely on Comcast for Internet service, it eventually could try to pass on the costs to Netflix and its subscribers.

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Published on Electronic Component News (<http://www.ecnmag.com>)

As more of its 17 million subscribers embrace Internet streaming, Netflix's service has emerged as the biggest source of Internet traffic in the U.S. during peak evening periods, according to a recent study by Sandvine Inc.

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AP Business Writers Michael Liedtke in San Francisco and Peter Svensson in New York contributed to this report.

Source URL (retrieved on 04/18/2015 - 3:35am):

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