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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

October 20, 2014

Mr. David L. Cohen
Executive Vice President
Comcast Corporation
One Comcast Center
Philadelphia, PA 19103

Dear Mr. Cohen:

Over the past few months, more than 3.7 million Americans filed comments with the Federal Communications Commission (FCC) on its proposed rules to protect an open Internet. The record number of comments reflects the critical importance of this issue to consumers and businesses. I agree with the overwhelming majority of commenters that have called on the FCC to enact meaningful rules that will protect consumers and preserve competition online.

One area of particular concern to me, as to millions of others, is the risk of paid prioritization agreements through which websites could be charged for priority access over the Internet. These types of arrangements pose a significant threat of dividing the Internet into those who can afford to compete and those who cannot. Small business owners that rely on the Internet to reach customers, independent content producers who rely on new platforms to gain an audience, and start-up ventures of all sizes have loudly and validly expressed concern that paid prioritization would change the Internet as we know it. Allowing the Internet to become a two-tiered system of “haves” and “have-nots,” controlled by a small number of corporate gatekeepers, would destroy everything that has made it one of the greatest innovations in human history.

In a May blog post, you wrote that Comcast does not intend to enter into paid prioritization agreements. I welcome that assertion, but I remain gravely concerned that if such agreements are permitted, market incentives may drive Comcast and other Internet Service Providers (ISPs) to change that position in the future. In a world of increasing broadband consolidation, Internet customers and Internet content providers face fewer options than ever to gain access online. A network that discriminates cannot be checked by market forces when customers and content providers have few—if any—viable alternatives to choose from.

If the Internet is to remain an open, accessible platform for the free flow of ideas, we need strong rules of the road in place to guarantee those protections. That is why I have introduced legislation with Congresswoman Doris Matsui that would ban paid prioritization arrangements, and have urged the FCC to enact meaningful net neutrality rules to preserve the Internet we know today. Knowing that one-off cases under our antitrust laws would simply offer an ad-hoc, after-the-fact solution, available only to those with the deep pockets to afford litigation, we need to restore baseline rules of non-discrimination through clear action by the FCC.

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We also need meaningful pledges from our Nation's broadband providers that they share the American public's commitment to an Internet that remains open and equally accessible to all. As a condition of the Comcast-NBC Universal merger, Comcast is bound to the net neutrality principles embodied in the FCC's Open Internet Order through the end of 2018. Those rules should be viewed as a minimum level of protection to promote competition online, and Comcast's commitment to those principles should extend well beyond the imminent cut-off date of 2018.

As the antitrust regulators continue to evaluate Comcast's proposed transaction with Time Warner Cable, and regardless of whether it is approved, I ask Comcast to pledge that it will not engage in paid prioritization. I also ask that Comcast pledge not to engage in any activity that prioritizes affiliated content or services over unaffiliated content or services, helping to ensure that vertical integration does not threaten competition online.

Making these pledges will go a long way to ensuring that the Internet as we know it will remain open, vibrant, and competitive. I look forward to your swift response.

Sincerely,

A handwritten signature in black ink that reads "Patrick Leahy". The signature is written in a cursive, flowing style.

PATRICK LEAHY
Chairman