

**Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee
On Letters to Internet Service Providers on Paid Prioritization Agreements
December 12, 2014**

The principle of “net neutrality” to protect an open Internet has found its way into the public consciousness like few other regulatory issues that I have seen in my time in the Senate. Over 3.5 million Americans have submitted comments to the Federal Communications Commission (FCC) during its consideration of replacement net neutrality rules this year. The reason for this record-setting level of public engagement is simple: the net neutrality debate is fundamentally about how we want the Internet to operate. Millions of Americans have made their voices heard because they want an open and free Internet that works for everyone, not simply those with deep pockets. I could not agree more.

An Internet that is split into the “haves” and “have-nots” is unacceptable. That is why the FCC should enact clear and enforceable rules to prevent “paid prioritization” agreements that would allow some content providers to out-bid smaller competitors to gain fast-lane service to customers online. At the same time, the country’s leading broadband providers should unequivocally commit that they will not engage in this type of detrimental deal. We 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.

In October, I wrote to the major Internet service providers (ISPs) – Comcast, Time Warner Cable, Charter, Verizon, and AT&T – asking them to make exactly that commitment. They all maintained that they do not currently plan to engage in paid prioritization; an assertion I welcome. What they did not do was answer my call for a firm commitment that they will never engage in that behavior in the absence of clear rules prohibiting such deals.

This is disappointing. As Comcast noted in its letter, voluntary commitments from individual companies would not serve as a substitute for rules applicable to all broadband providers. Such pledges would, however, send a strong signal to the American people that broadband providers share their commitment to an open and equal Internet. It is unfortunate that these companies were unwilling to make that commitment—presumably because they know that if fast lanes are allowed in the future, market forces may drive them and other ISPs to consider such deals to maximize profits at the expense of competition online. This “race-to-the-bottom” scenario is exactly why we need clear rules in place prohibiting such agreements. I appreciate that Comcast went further than the other ISPs by expressing support for my legislation with Representative Doris Matsui of California, which would require the FCC to ban paid prioritization agreements so that all ISPs are subject to such a rule.

The concern over a pay-to-play Internet that advantages the largest corporations over smaller players is very real. I was disappointed that some Internet service providers in their responses brushed aside these concerns dismissively. It is not “demagoguery,” as Verizon suggested in its response, when small business owners like Cabot Orton of the Vermont Country Store say that they simply want to see an Internet that continues to treat all businesses equally. It is not a “phantasm” when independent content creators like actress Ruth Livier acknowledge that they

would not have been able to start their websites if they had to pay for priority access to reach viewers online, or compete against players who did. These are real concerns, shared by millions of Americans. Their voices should not be casually and callously dismissed because they cannot afford to pay lobbyists to advocate on their behalf at the FCC.

The FCC is continuing its important work to craft new open Internet rules. For months, I have been clear that I will not support any rules that do not ban Internet fast lanes. I have spent much of this year listening to Vermonters and others to hear firsthand about how a pay-to-play world would harm the Internet ecosystem.

The responses to my letter highlight one element that unites all of those involved in the net neutrality debate—the need for certainty. Broadband providers understandably want to know the rules by which their actions will be governed, and consumers want certainty that their Internet service will continue to provide them unfettered access to lawful content online. Recently, some broadband providers like AT&T have threatened to stop investing in further innovation and deployment of broadband in the name of uncertainty. Of course, they could decide to provide certainty on issues like paid prioritization at any time regardless of the FCC's actions, by making the pledge to consumers I have called on them to make.

I will continue my call for broadband providers to listen to their customers and pledge to never engage in paid prioritization. While they did not do so in response to my letters, it is never too late for them to make that commitment to the American people.

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