

Net Neutrality Hearing

The Installation and Use of Filtering Software on Public Networks Contradicts U.S. Policy

Testimony Draft

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In my time today I'd like to discuss two reasons why I think Comcast's practices raise concerns should be stopped by the FCC.

1. Filtration Contradicts U.S. Internet policy

U.S. federal policy has long favored a free press and an open society. The U.S. has made many efforts to export that model, particularly during the Cold War, with projects like "Voice of America" and others. By extension, since the 1990s, many different parts of the U.S. government have taken the open internet as an important part of national policy. In our foreign relations, the State Department and the USTR, at ICANN meetings, the WTO and other places, push other nations to keep their networks free and open. Congress, and especially the recently departed Tom Lantos, has been very critical of companies doing business in countries like China that filter and close the internet. The FCC has done what it can to keep the internet open, with its resolutions and enforcement actions.

In short, the U.S. Government has spent some of the last two decades extolling and trying to export the model of an open internet around the world, as a part of a free society. That's why the FCC must be particularly vigilant about domestic efforts to close the internet here in the United States. For Comcast is installing and using a sophisticated infrastructure of filtering and control – a system no different than the technologies of censorship used in other countries. That's why its usage warrants attention.

In this hearing Comcast defends its filtering and suppression of a single application, Bittorrent. But it seems obvious that if the FCC lets this stand, the practice will extend to other internet usages that the carriers, for whatever reason, don't happen to like. Comcast has already, on other occasions, filtered and blocked other applications by mistake. If it gains the FCC's permission to block Bittorrent, you can bet that Bittorrent will be the tip of the iceberg.

None of this is to say that there is no such thing as “reasonable network management,” and I think we’ll here a lot about that today. But Comcast’s methods aren’t even in the same league. This is not the blind adjustment of traffic flows to try and balance competing needs. What Comcast is doing is choosing one use of the Internet and banning it. That’s a form of censorship and filtering rather than management, and that’s why it demands FCC attention.

Comcast, unlike foreign regimes, mainly uses its technology for commercial advantage as opposed to political advantage. But these technologies can easily be put to different purposes – creating a regime of private censorship. And once blocking and filtering becomes routine, a government so inclined could quietly begin to use the kind of controls Comcast is creating to impose its will on the populace.

I don’t mean to sound alarmist. But big things have small beginnings, and the FCC should take this opportunity to stand up for the long standing federal policy of keeping the internet open.

2. Application Discrimination Threatens Economic Growth

The Internet economy grows by a constant cycle of birth and death. A decade ago, there was no Facebook, Wikipedia, blogs, Youtube, and Google was just getting started. Since that time, many firms, once even dominant firms, have faded and died. This process is what makes the Internet sector so vibrant and contributes substantially to the economic growth of the United States.

Application-discrimination, as we see here practiced by Comcast, is a threat to economic growth. What Comcast is doing is choosing a single model of using the network, and deciding that it has no future. Whether Bittorrent actually is a good business for the future I cannot say. But I can say that consumers ought be making that decision, not Comcast.

The danger to the economy is real. If carriers can doom a business model by rejecting it off the network, that model never gets a chance to prove itself in the market. Even the likelihood of getting stopped on the network is enough to deter investment and venture funding.

Comcast may respond that not discriminating against applications is expensive; it must forgo possible side-charges, and may force it to invest faster carriage. Even if that is true, if a discriminatory internet takes even, say, 0.1% off of the growth of the national economy, the tradeoff is clear.

All this shows that, over the last decade, the FCC's responsibilities have grown. In the new economy, so much is relying on the carriers that their decisions now have serious consequences for the whole economy. If cable, as a TV carrier, chooses one show over another, that's one thing (though of course even that process is overseen by the FCC). But when the carriers choose entire industries and businesses over another, the consequences are even greater. That's why the basic neutrality of the network has so much to do with the continued economic growth of the United States.