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The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510-6275

Dear Chairman Specter:

Thank you for providing me with the opportunity to testify on behalf of Comcast Corporation at the Senate Judiciary Committee's June 14, 2006 hearing, "Reconsidering Our Communications Laws: Ensuring Competition and Innovation." It was a privilege to share with you and the other Members of the Committee Comcast's experiences in the broadband marketplace and our concerns about so-called "net neutrality" legislation, more accurately characterized as the proposal by some to regulate the Internet.

I welcome the opportunity to respond to the follow-up questions that you and other Members asked of me and my fellow panelists. Attached are my responses to the post-hearing questions. Please do not hesitate to contact me if you or other Members of the Committee have any further questions.

Sincerely,

David L. Cohen
Executive Vice President

DLC:jlp

Enclosure

"Reconsidering Our Communications Laws:
Ensuring Competition and Innovation" --
Responses of David L. Cohen, Comcast Corporation, to
Questions from Members of the Senate Judiciary Committee

Question from Senator Specter:

Do you believe that case-by-case adjudication of competitive issues that arise in the market for broadband Internet service would be adequate? What if Congress provided the FTC and DOJ with guidelines for applying the antitrust laws in this market? If Congress were to provide such standards, what would they consist of?

As I stated in my June 14, 2006 testimony before the Committee, the primary assurance that consumers will be well served by their Internet service providers comes from the operation of market forces. Internet services, including Internet access services, are intensely competitive, and growing more so every day. The rigors of competition compel Internet service providers to structure their businesses in ways that please demanding customers -- or suffer the consequences.

Beyond the protections of the marketplace, I believe that any concerns about potential anticompetitive harms are adequately addressed through case-by-case adjudication under existing law. Adjudication of disputes on a case-by-case basis allows appropriate government agencies to base their decisions on the facts of a particular dispute -- including the business practice at issue, existing and potential competitors, entry barriers, the likelihood of a chilling effect on investment and innovation, and so on -- in determining whether there has been an abuse of market power that has harmed consumers and requires a remedy beyond that which the marketplace itself provides. Conduct that violates the antitrust laws can be addressed today on a case-by-case basis by the Federal Trade Commission ("FTC") and the Department of Justice ("DOJ").

Because authority already exists for disputes to be handled on a case-by-case basis, I see no need for Congress to provide the FTC and DOJ new guidelines for applying the antitrust laws in the broadband marketplace. Well-established antitrust principles and guidelines have proven sufficient to address a wide variety of allegations, across a broad range of marketplace settings. Any new guidelines intended to apply expressly to the Internet necessarily would be predicated on hypothetical facts and circumstances as opposed to real-world experience. And they could not possibly take account of -- and might well hinder or distort -- the rapid pace of technological change. The risks of attempting to craft new, specific standards outweigh any benefits that might be realized.

Question #1 from Senator Feingold:

You have taken a position against net neutrality, at least partly on the grounds that you need to collect funds from Internet content providers to pay for further roll-out of Internet and video service. Yet at the same time you have opposed build-out requirements as part of the national video franchise proposed in the House. How is this consistent? There isn't a requirement that the money from content providers be reinvested in underserved areas, is there?

The positions described in this question were taken by telephone companies, not cable companies. In contrast to the organizations represented by Mr. McCormick of US Telecom, Comcast has *not* asserted that we must be able "to collect funds from Internet content providers to pay for further roll-out of Internet and video services." Nor have we opposed build-out requirements for cable services. Still, a couple of points are worth emphasizing.

First, regarding video services, build-out requirements have been commonplace in the cable business for many years. Congress requires that local franchising authorities ensure that cable franchisees do not deny access to cable service to any group of potential subscribers on the basis of the income of the residents in any particular area. Congress also requires that franchises allow cable operators a reasonable period of time to become capable of providing service to all households in the franchise area. We comply with these laws today, as we have for decades, and we see no reason why telephone companies that wish to become cable companies (a right they have had under existing law for more than a decade) cannot do the same.

Second, regarding business arrangements between content providers and Internet access providers, the main point I would make is that the marketplace should be permitted to evolve. We built out our broadband network with private risk capital and we are still recouping that investment. Our broadband business today consists of delivering a premium Internet experience to our customers. We firmly intend to continue to do that in the future. At the same time, as broadband access, content, applications, and services continue to evolve, we cannot predict with any confidence which future business models will be best suited to delivering the services that consumers want, at prices they are willing to pay. If there is one thing that is clear about the Internet, it is that change is constant and businesses must adapt their models, often with unaccustomed speed, to the new environment or become obsolete. I would strongly recommend that Congress not attempt to determine, in advance, what network capabilities should be delivered or how they should be paid for.

Question #2 from Senator Feingold:

You have urged us not to act until there are widespread abuses of your duopoly power – essentially taking the position that net neutrality is premature. Yet we have a long history of putting conditions on mergers to preemptively prevent possible anti-competitive practices. Why shouldn't we follow the model we have set for mergers and place limits where the situation would be clearly susceptible to anti-competitive actions?

For the reasons outlined by Mr. McCormick and me at the hearing, we do not believe it is accurate to depict the broadband access marketplace as a duopoly. Although cable operators and telephone companies are the most prominent broadband providers at this time (largely as a result of having created residential broadband services only within the past decade), their behavior in the marketplace is intensely rivalrous and, if anything, is growing more so as more broadband technologies are emerging. The classic risks of anticompetitive abuse have not materialized in the Internet market.

"Market power" means that providers can raise prices and restrict output. This is the exact opposite of what is happening in broadband. Here, tens of millions of Americans are using services that were scarcely imagined when Congress passed the Telecommunications Act of 1996. Over the past several years, the telephone companies have aggressively cut their prices for their high-speed Internet services, and we have improved our quality and quadrupled our transmission speeds without raising prices. Such dynamism and rivalry are consistent with competition, not the lack thereof. This is in large part because the marketplace is still evolving rapidly, and (as my testimony discussed in detail) numerous alternative technologies like third-generation wireless, WiMax, satellite broadband, and broadband over powerlines are being developed and deployed. So the Internet market is intensively competitive today and highly contestable moving forward.

Nor do I think that experience with the use of merger conditions justifies the adoption of any "network neutrality" rules at this time. Where merger conditions have been imposed by antitrust authorities or the FCC, they have been based on a fact-specific, on-the-record, case-by-case assessment of the relevant marketplace participants and dynamics.

In stark contrast, proponents of network neutrality regulation propose that conditions be placed on an entire marketplace, spanning several industries, and hundreds of competitors, all based on *conjecture* about how the marketplace *may* develop. This would be a significant departure from the merger model -- one that is not justified by any real evidence of problems that require corrective action.

Finally, I would emphasize (as I discuss above) that existing antitrust laws provide sufficient protection for consumers and competition. In the unlikely event that broadband access providers suddenly begin engaging in anticompetitive conduct that violates the antitrust laws, the DOJ and FTC already have authority to respond.

Question #3 from Senator Feingold:

I understand that some high speed Internet providers are now offering consumers tiered options for higher than normal access speeds at a premium price. These are often marketed to users who use data intensive applications such as on-line interactive games and streaming video. One of your arguments against net neutrality is that you need to be able to charge these high usage application providers. Aren't you arguing that you should be paid twice for the same premium content?

Comcast does not currently charge application providers for the demands that they place on our network. At present, our business model looks to end-users to pay for the services they obtain from us, at which point they are free to use our broadband service as they see fit with only such minimal limitations as are necessary to protect other users and the network. Depending on the service offerings available in particular regions, we may offer subscribers tiers of service to meet their bandwidth needs.

That said, Congress should not lock in today's business models. We cannot foresee what broadband content, applications, and services will become available in the future. Nor can we foresee what costs will be associated with new technologies or how those costs can most appropriately be recouped. Google and eBay have developed services that benefit (and obtain revenue from) sellers as well as buyers, so it seems peculiar and hypocritical for them to propose that others be permitted to serve only buyers and not sellers.

Our main plea to Congress is that the marketplace be permitted to continue to evolve, without premature government interference. Unnecessary regulation of the Internet would inevitably obstruct Comcast and other broadband providers from reacting to the realities of the marketplace of the future and being able to deliver the services that consumers will demand.

Question #1 from Senator Kohl:

Opponents of net neutrality legislation often claim net neutrality is not a problem right now that we need to worry about, arguing that legislative proposals to mandate net neutrality is a "solution in search of a problem." However, there have been many public statements by telecom executives that they plan to reach deals to give preferential treatment to internet content providers. Yet, last December, the Washington Post reported that the Chief Technology Officer for BellSouth stated that BellSouth should be allowed to strike deals to give certain web sites priority in reaching computer users. Likewise, Ed Whitacre, CEO of AT&T told Business Week that he would seek to have internet sites who use his "pipes," "pay for the portion they're using."

(a) Does Comcast agree with positions taken by these telecom executives?

These statements were made by AT&T and BellSouth, not Comcast, and do not accurately reflect our current business arrangements.

We do believe that the government should refrain from interfering in the marketplace in a way that prevents experimentation with business models. It is worth noting that at least some of these models enhance the delivery of online content without even involving broadband service providers. For example, a number of providers of Internet content today, such as newspaper companies and streaming video providers, arrange with third-party providers like Akamai to have their content "cached" so that it loads faster when an Internet user requests it. There does not seem to be any rational reason for prohibiting a broadband service provider from experimenting with a business model that would provide the same or a similar capability.

(b) Has Comcast reached deals with internet content providers to give them preferential treatment, or are you in negotiations to reach any such deals? If so, please provide examples. If not, can you tell us that you have no plans to do so in the foreseeable future?

Comcast does not currently have, nor is it currently negotiating, any contracts that would provide "preferential treatment" to any Internet content providers that a Comcast high-speed Internet customer might wish to access. We have repeatedly committed to our customers that we will not deny, delay, or degrade their ability to access any lawful Internet content. We will not deviate from this commitment. Further, we have no plans to offer "preferential treatment" to any Internet content providers. Although we have been contacted by various providers of Internet content, applications, and services who have proposed ways in which we might partner with them to offer our customers a "differentiated experience" (and, ironically, some of these ideas have been brought to us by businesses whose Washington representatives champion "network neutrality"), we have not entered into negotiations on these topics, let alone made a deal.

Just the same, we do not believe that Congress should foreclose any such arrangements for the future. As my testimony and answers above indicate, the broadband marketplace is extremely fast-paced and dynamic (and likely to see growth in broadband providers who will want to differentiate themselves from one another), new ideas are constantly being developed for ways to enhance the user experience, and much more harm than good will result if Congress artificially limits how we or others in this marketplace structure our businesses.

(c) Has Comcast ever taken any actions to discourage video programming networks from streaming their channels on the Internet or from offering their programming over the Internet? And, if so, why have you done so?

Comcast has not taken any actions, either technically or operationally, to discourage video programming networks from streaming their channels over the Internet or from offering their programming over the Internet. In fact, our view is that the emergence of greater video choices over the Internet has made our high-speed Internet service more valuable to our customers. Our own portal, Comcast.net, offers video selections that in turn lead users to access additional video from third-party websites, a development that we have no desire to hinder.

As you know, we not only provide Internet services but also cable services. As a cable operator, we pay monthly per subscriber fees that total billions of dollars a year to acquire the rights to distribute certain video programming networks to our cable customers, and we have made it clear to our contractual partners that we are not willing to pay them substantial sums for cable distribution rights to programming that they choose to give away for free on the Internet. Thus, in limited cases and depending on the terms of the specific contracts, in consideration for fees, cable operators and video programming networks mutually agree to limit the distribution of video content over the Internet. But that does not prevent these networks from creating other programming that they may choose to make available on the Internet. Our broadband customers can readily access that content and any other available Internet video. (Internet video is growing astronomically. Just a single site, youtube.com, is reportedly adding about 60,000 videos *daily*.)

For the record, when we first introduced cable Internet service, it was provided by a company named @Home. At that time, @Home's customer contracts limited the use of streaming video to 10 minutes because the effects of streaming video on a shared broadband service and other customers were not yet known. This contractual limit was subsequently eliminated *without having ever been enforced.*

Question #2 from Senator Kohl:

Do you believe that strengthened antitrust enforcement is appropriate to address problems that those concerned about net neutrality have identified?

I do not perceive a need for strengthened antitrust enforcement in this area because I believe that the marketplace is functioning in a manner that is producing abundant consumer benefits, while predictions of anticipated harms continue to be hypothetical. That said, I believe that existing antitrust laws are sufficient to address any anticompetitive harms that may emerge and that those laws should remain in effect and should be enforced as necessary in response to marketplace developments. Importantly, antitrust and consumer protection laws -- unlike most "network neutrality" proposals -- do -- and should continue to -- apply to Google, Microsoft, Yahoo, and eBay, just as they apply to Comcast, Time Warner, AT&T, and Verizon.

Question #3 from Senator Kohl:

Would you have any objections to the repeal of the common carrier exemption from FTC jurisdiction as it relates to telecommunications? If so, please explain the reasons why.

Comcast has limited common carrier offerings and thus I am reluctant to take a definitive position without considering all of the ramifications of such a change in the law. We do, I believe, conduct all our lines of business in a manner that is consistent with the laws enforced by the FTC. My one area of initial concern is that Congress probably should avoid having any given line of business supervised by two different federal agencies operating under two different legal standards, but in so stating I do not mean to be understood as expressing a preference for the FCC or the FTC.

Question #4 from Senator Kohl:

The Cable Act of 1992 requires that programming owned by cable companies be made available to all competitors on the same terms, but it contains an important exception. This requirement only applies to programming delivered by satellite. But some programming -- especially local news and sports -- is delivered by other means, and is exempt from this program access law.

Do technological changes make it more likely that more programming can be carried terrestrially? Does doing so make sense for cable companies such as Comcast, so that you do not have to make the programming in which you have an ownership interest available to competitors? Does Comcast have any plans to deliver more programming terrestrially so that it does not have to be made available to your competitors?

Although some parties have predicted repeatedly, for several years now, that cable programming would "migrate" from satellite to terrestrial delivery, no such migration has occurred. We do not believe that technological changes have altered the economics in a way that makes terrestrial delivery more likely. I know for certain that Comcast has not "migrated" any such programming. Also, with a single exception with which you are familiar, each of the networks in which we have an ownership interest (including several that have launched within the last few years) is delivered by satellite, and we have no plans to shift those networks to terrestrial delivery or to take advantage of the terrestrial exemption.