

**PRESS STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices, WC Docket No. 07-52

Would you be OK with the post office opening your mail, deciding they didn't want to bother delivering it, and hiding that fact by sending it back to you stamped "address unknown – return to sender"? Or if they opened letters mailed to you, decided that because the mail truck is full sometimes, letters to you could wait, and then hid both that they read your letters and delayed them?

Unfortunately, that is exactly what Comcast was doing with their subscribers' Internet traffic.

Last year, some broadband subscribers complained to the FCC that Comcast was blocking and delaying their Internet traffic. Our investigation, and the findings of several widely respected engineers, confirmed the complaints. Comcast was delaying subscribers' downloads and blocking their uploads. It was doing so 24/7, regardless of the amount of congestion on the network or how small the file might be. Even worse, Comcast was hiding that fact by making effected users think there was a problem with their Internet connection or the application.

Today, the Commission tells Comcast to stop, and to disclose to its subscribers how it is going to manage traffic on a going forward basis. We therefore take another important step to ensure that all consumers have unfettered access to the Internet.

Over the past decade, the Internet has had a powerful impact on the economy and on the lives of American citizens. Thanks in large part to the deregulatory approach the Commission has employed, we have witnessed the fruits of increased innovation, entrepreneurship, and competition that the Internet has helped deliver. As policymakers, we have a duty to preserve and promote the vibrant and open character of the Internet while maintaining infrastructure companies' incentive to invest in providing faster broadband to more people.

The framework we adopt today will enable us to achieve this balance, and will send a message to the industry that bad actors will be punished.

We begin by affirming that the Commission can and will enforce the Internet Principles. This should come as no surprise. Three years ago the Commission declared that it would not hesitate to act if faced with evidence that a provider was violating the principles. Last year the current Commission unanimously reiterated that we have "the ability to adopt and enforce the net neutrality principles ... announced in the Internet Policy Statement." In fact, we've said this several times, including specifically telling

Comcast in the 2006 *Adelphia* Order that the Commission would act on any complaints that it received about blocking or degrading Internet content:

“If in the future evidence arises that any company is willfully blocking or degrading Internet content, affected parties may file a complaint with the Commission.”

In conducting such an analysis, we consider a variety of factors. The Commission considers whether the network management practice is intended to distinguish between legal and illegal activity. The Commission’s network principles only recognize and protect user’s access to legal content. The sharing of illegal content, such as child pornography or content that does not have the appropriate copyright, is not protected by our principles. Similarly, applications that are intended to harm the network are not protected.

The Commission also considers whether the network service provider adequately disclosed its network management practices. A hallmark of whether something is reasonable is whether an operator is willing to disclose fully and exactly what they are doing. Consumers need proper disclosure so that they can make informed decisions when purchasing broadband service.

Finally, if legal content is arbitrarily degraded or blocked, and the defense is “network management,” the broadband operator must show that its network management practice is reasonable. We will look at whether it furthers an important interest and is carefully tailored to serve that interest. Also, the practice should be disclosed to consumers so that they can make informed decisions when purchasing broadband service.

Applying this framework, we find that it was unreasonable for Comcast to discriminate against particular Internet applications, including BitTorrent.

While Comcast claimed its intent was to manage congestion, the evidence told a different story:

- Contrary to Comcast’s claims, they blocked customers who were using very little bandwidth simply because they were using a disfavored application;
- Contrary to Comcast’s claims, they did not affect customers using an extraordinary amount of bandwidth even during periods of peak network congestion as long as he wasn’t using a disfavored application;
- Contrary to Comcast’s claims, they delayed and blocked customers using a disfavored application even when there was no network congestion;
- Contrary to Comcast’s claims, the activity extended to regions much larger than where it claimed congestion occurred.

In short, they were not simply managing their network; they had arbitrarily picked an application and blocked their subscribers' access to it.

Comcast's lack of disclosure about its network management practices compounded the harm. Customers that experience unexpected problems with their connections may blame the connection or application. This is particularly troubling when the application is used to provide services that compete with the broadband operator's own services. Indeed, when faced with a similar situation with Internet telephony, we took quick action to stop a telecommunications carrier from blocking competitive VOIP providers.

Consumers demand, and deserve, better.

Our action today is not about regulating the Internet. Indeed, I have consistently opposed calls for legislation or rules to impose network neutrality. Like many other policy makers and members of Congress, I have said such legislation or rules are unnecessary, because the Commission already has the tools it needs to punish a bad actor. Adopting broad regulations in this area could have unintended consequences that could stifle technological innovation. By acting on the complaints that we receive, we are able to deal with actual problems and avoid creating others.

That is what we do today. The specific practice Comcast was engaging in has been roundly criticized and not defended by a single other broadband provider. If we aren't going to stop a company that is looking inside its subscribers' communications (reading the "packets" they send), blocking that communication when it uses a particular application regardless of whether there is congestion on the network, hiding what it is doing by making consumers think the problem is their own, and lying about it to the public, what would we stop? Failure to act here would have reasonably led to the conclusion that new legislation and rules are necessary.

We do not address pricing, unbundling, or other economic regulation.

We do not tell providers how to manage their networks. They might choose, for instance, to prioritize voice-over-IP calls. In analyzing whether Comcast violated federal policy when it blocked access to certain applications, we conduct a fact-specific inquiry into whether the management practice they used was reasonable. Based on many reasons, including the arbitrary nature of the blocking, the lack of relation to times of congestion or size of files, and the manner in which they hid their conduct from their subscribers, we conclude it was not.

We do not limit providers' efforts to stop congestion. We do say providers should disclose what they are doing to consumers.

We make clear that network operators can block any illegal content or applications that are intended to harm the network. The Order makes clear, for instance,

that providers can block child pornography or pirated video and music. Indeed, blocking illegal content could go a long way to reducing bandwidth congestion.

While concluding that the conduct at issue violates our policy was an obvious step, our action today is nevertheless critically important.

I am pleased that Comcast has reached some marketplace agreements and has committed to implement a new “protocol-agnostic” management technique by the end of the year. And I note that we have decided not to issue a fine. But contrary to some claims, these actions did not obviate the need for us to act today.

First, we need to establish the important precedent that we will stop the bad actors. We also establish a clear framework for how we will conduct our fact-intensive inquiries if situations arise in the future.

Second, we need to protect consumers’ access. While Comcast has said it would stop the arbitrary blocking, consumers deserve to know that the commitment is backed up by legal enforcement.

Third, particularly given the obfuscation Comcast engaged in to date, it is important that we require Comcast to respond to many still-unanswered questions:

- What exactly do they mean by a “protocol agnostic” management technique?
- Will there be bandwidth limits?
- If so, what will they be?
- Will they be hourly? Monthly?
- How will consumers know if they are close to a limit?
- If a consumers exceeds a limit, is his traffic slowed? Is it terminated? Is his service turned off?

The Commission needs to understand the answers. Perhaps more importantly, Comcasts’ subscribers deserve to know the answers.

By applying the framework we adopt today, the Commission will remain vigilant in protecting consumers’ access to content on the Internet. Subscribers should be able to go where they want, when they want, and generally use the Internet in any legal means. When providers engage in practices truly designed to manage congestion, not cripple a potential competitive threat, they should not be afraid to disclose their practices to consumers.