

# United States Senate

WASHINGTON, DC 20510-2309

May 21, 2014

Brian Roberts  
Chief Executive Officer  
Comcast Corporation  
One Comcast Center  
Philadelphia, PA 19103

Dear Mr. Roberts,

I noted with interest Comcast's recent advertisements arguing that its acquisition of Time Warner Cable (TWC) would benefit net neutrality. I believe that net neutrality is the free speech issue of our time, and I will continue to advocate for a truly open Internet. That is why I recently asked Comcast's Executive Vice President (EVP) whether Comcast would continue to abide by its existing net neutrality obligations in the future, regardless of intervening actions by the Federal Communications Commission (FCC) or the courts. Because I did not receive a direct response to my question, I am writing to seek clarification of Comcast's position.

**Net Neutrality & Comcast's Existing Legal Obligations.** Net neutrality prevents Internet service providers (ISPs) like Comcast from picking-and-choosing whose Internet traffic will reach consumers. It is a fundamental aspect of the Internet's basic architecture, and it has allowed the Internet to become the platform for innovation and connectivity that it is today. Simply put, net neutrality maintains the Internet as a level playing field on which everyone can participate equally, regardless of one's wealth or corporate status.

When Comcast acquired NBCUniversal in 2011, the FCC cited "concerns that Comcast, in its capacity as a provider of Internet access services, will have an increased incentive to degrade the delivery of, or block entirely, traffic from websites of other content providers or [online video distributors], or speed up access to their own content and aggregation websites." The FCC concluded that Comcast's acquisition of NBCUniversal "will increase Comcast's incentive to discriminate against unaffiliated content and distributors in its exercise of control over consumers' broadband connections." In other words, the FCC concluded that Comcast's acquisition of NBCUniversal posed a threat to net neutrality.

To address these concerns, the FCC adopted a net neutrality condition that, among other things, prohibited Comcast from discriminating among or blocking Internet traffic on its networks. Specifically, the FCC required Comcast to abide by the terms of the FCC's 2010 Open Internet Order, regardless of any subsequent litigation or court action with respect to that Order. Thus, Comcast's net neutrality obligation has remained in effect despite the D.C. Circuit Court of Appeals' decision to strike down industry-wide net neutrality rules earlier this year.

**Comcast's Public Relations Campaign.** Comcast has been touting the Comcast-NBCUniversal net neutrality condition in advertisements that it has been running to promote its proposed acquisition of TWC. Comcast's argument to the public is that Comcast's acquisition of TWC will be good for net neutrality because it will extend "full net neutrality rules" into TWC's footprint.

For example, in a full page advertisement that has run in some newspapers, Comcast has written that "Comcast is the only Internet service provider in America legally bound by full Net Neutrality rules, ensuring an open Internet and protecting customers," and that "[t]he transaction with Time Warner Cable will bring Net Neutrality protection to millions of new customers across the country." Comcast also has run video advertisements which say that the proposed acquisition will "make life online better for more people . . . by extending net neutrality protection to more Americans."

Similarly, on the day that Comcast announced its proposed acquisition of TWC, it issued a statement saying that "[t]he FCC's Open Internet protections will be extended to millions of additional broadband customers, irrespective of whether the FCC reestablishes such protections for other industry participants." Comcast went on to say that "the new company's broadband customers will enjoy the protections of the no blocking and nondiscrimination rules that were put in place by the FCC, notwithstanding the action by the DC Circuit Court of Appeals vacating those rules."

**Unanswered Questions.** Comcast's public messaging does not tell the entire story, however. The Comcast-NBCUniversal conditions expire in January 2018, raising serious questions as to what will happen to the Internet after that time. I am concerned that Comcast's proposed acquisition of TWC is a threat to net neutrality and the open Internet. If Comcast were permitted to acquire TWC, it would make the nation's biggest ISP even bigger, raising a serious risk that Comcast could act as a gatekeeper of Internet traffic on its networks. The existence of "full net neutrality rules" is absolutely necessary, though likely not sufficient, to mitigate that risk.

It is little wonder, then, that one of the first questions Comcast was asked after announcing its proposed acquisition was whether it would commit to abide by the Comcast-NBCUniversal net neutrality conditions beyond 2018. During a February 13 conference call, a reporter asked your EVP, "why not extend the commitment to the Open Internet Rules beyond 2018?" Your EVP refused to make that commitment, instead indicating that Comcast's obligations beyond 2018 were conditional upon actions taken by the FCC:

I think the elegance of what we've proposed is the right answer, which is that we fully expect that the Chairman of the FCC is going to engage and take, and engage and create a program that he is comfortable with for the open Internet through the 706 authority that was outlined for the FCC by the D.C. Circuit. And by the time, by 2018, when this commitment runs out, I have no doubt there will be an industry-wide open Internet, you know open Internet protection scheme that is in place that will apply to us and the Time Warner Cable subs.

So, as, I mean let's remember where this condition came from. The condition came because of the threat of litigation. If there had not been [the] threat of litigation, the concern on the part of the FCC that maybe this rule would get struck down, that condition wouldn't have been in the transaction. So, once the Commission goes through a procedure, a proceeding, puts in a, puts a lawful condition in place, under the terms of, of the D.C. Circuit decision, then, then once that happens I'm not sure what the need is for a special condition that applies only to Comcast, including Time Warner Cable subscribers.

Then again, on April 9, during the Senate Judiciary Committee's hearing on the Comcast-TWC deal, your EVP was asked this: "You have also said that you will apply the FCC's open Internet rules to Time Warner Cable until 2018. Will you do it beyond 2018?" Your EVP again explained that Comcast's commitment to net neutrality depended on subsequent FCC actions:

I think the answer to that is that we will be doing it beyond 2018 because Chairman Wheeler and the FCC have already started a proceeding to put in place industry-wide open Internet protections. And I cannot imagine that the Commission is not going to have those rules in place well before 2018.

These responses do not address a variety of possible circumstances that could exist when the Comcast-NBCUniversal conditions expire. For example, it may be the case that the FCC has failed to implement new neutrality rules at that point. It also could be the case that the FCC has issued such rules, but a court has struck them down, as happened in 2010 and again earlier this year. Finally, it could be the case that the FCC has implemented something less than the "full net neutrality rules" that Comcast now touts in its public messaging campaign. Unfortunately, it appears that this is a real possibility, as FCC Chairman Wheeler has proposed a new set of rules that would allow pay-to-play arrangements, which are antithetical to net neutrality and threaten to destroy the open nature of the Internet.

Therefore, I submitted to your EVP the following question for the record following the Judiciary Committee's April 9 hearing:

Comcast's net neutrality obligations expire in January 2018. Will you commit to abide by those obligations – including the anti-blocking and anti-discrimination requirements – beyond that date *regardless of whether the Federal Communications Commission (FCC) has implemented new net neutrality rules at that time?* (Emphasis added.)

His answer, reprinted in its entirety here, was not responsive to my question:

As part of the NBCUniversal transaction, and after Verizon challenged the FCC's Open Internet rules but before the case had

been briefed, Comcast agreed to be bound by the rules until 2018 even if they were modified by the courts. The purpose was to give the FCC sufficient time, if necessary, to adopt a legally enforceable, industry-wide approach to net neutrality. We are the only ISP in the country that is currently legally bound by the “no blocking” and non-discrimination rules. These assurances will be extended to millions of additional TWC customers as a result of this transaction.

The FCC is working on new industry-wide rules based on the D.C. Circuit’s recent ruling. On April 24, 2014, FCC Chairman Wheeler announced his plan to circulate proposed new rules with the goal of adopting them by the end of this year. [Citation omitted.] We are therefore confident that the FCC will have adopted (and, if necessary, defended) a new, industry-wide approach before 2018.

As you can see, this response does not address the central issue: it does not say whether Comcast will abide by the terms of the Comcast-NBCUniversal net neutrality condition beyond 2018, regardless of intervening actions by the FCC and the courts.

If Comcast’s proposed acquisition of TWC were approved, nearly forty percent of the nation’s broadband subscribers would be under Comcast’s thumb. To address concerns about such extensive concentration of power, Comcast has made net neutrality a central issue in its affirmative case for the Comcast-TWC deal. As such, it should explain fully its intentions with respect to net neutrality, not just for the period that runs from now until 2018 – during which time Comcast is legally required to comply with the Comcast-NBCUniversal conditions anyway – but also for the future. Comcast cannot be permitted to continue telling only part of the story.

I therefore write to ask again: Will Comcast commit to abide by its existing net neutrality obligations – including the anti-blocking and anti-discrimination requirements – beyond January 2018 regardless of whether the FCC has implemented new and binding industry-wide net neutrality rules at that time?

I appreciate your attention to this matter. Please submit your response to my General Counsel, Joshua Riley, at [joshua\\_riley@judiciary-dem.senate.gov](mailto:joshua_riley@judiciary-dem.senate.gov), no later than June 6.

Sincerely,



Al Franken  
United States Senator