



April 23, 2014

The Honorable Al Franken
United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510-2309

Dear Senator Franken:

Thank you for your letter. Netflix shares your concerns about the power of a merged Comcast/Time Warner Cable and is committed to sharing facts with policymakers to increase their understanding of this issue. Netflix has seen firsthand how Comcast can leverage its existing market power to extract arbitrary tolls to reach consumers, particularly from Internet video companies like Netflix that pose a competitive threat to Comcast's own video services.

Below are Netflix's answers to the questions posed in your letter. We are also taking this opportunity to correct statements regarding our agreement with Comcast and the way the transit market currently functions made by Comcast Senior Vice President David Cohen during the Senate Judiciary Committee's recent hearing.

1) Will Comcast's acquisition of Time Warner Cable increase Comcast's ability to extract payments from non-affiliated entities as a condition of access to Comcast's broadband Internet consumers. If so, please explain how and why, noting also any consequences for consumers.

Yes.

Comcast is limiting the capacity of connections between its network and other networks, unless the network agrees to pay Comcast for access. This congestion causes delays when traffic enters Comcast's network through the settlement-free connections. Consumers experience these delays as slow page loads, poor streaming quality, and frequent streaming pauses.

Few Americans have a meaningful choice in broadband service providers: Comcast subscribers are largely stuck with Comcast. And the only way for content providers to reach the millions of broadband subscribers currently controlled by Comcast is to go through Comcast. By degrading consumers' experience, Comcast can demand that content providers pay them a toll to avoid

congestion and reach their captive subscribers. If content providers cannot effectively reach Comcast subscribers, they cannot compete. So they have little alternative for an uncongested connection unless they agree to Comcast's terms.

If the Comcast and Time Warner Cable merger is approved, the combined company will represent 40 percent of wired broadband subscribers,¹ including those in 19 of the top metropolitan areas, with many of those homes having Comcast as the only option for truly high-speed broadband (>10Mbps). As DSL fades in favor of cable Internet, Comcast could control high-speed broadband to the majority of American homes. Comcast is already dominant enough to be able to capture unprecedented fees from transit providers and services such as Netflix. The combined company would possess even more anti-competitive leverage to charge arbitrary interconnection tolls for access to their customers.

2) Do you agree with Comcast's testimony describing interconnection arrangements generally and Comcast's new interconnection arrangement with Netflix in particular? If not, please explain.

No.

During the Senate Judiciary hearing on the proposed merger, Mr. Cohen said that it was "Netflix's desire to pay us directly and cut out a middleman." That is not an accurate description. Netflix agreed to paid peering with Comcast to reverse an unacceptable decline in our members' video experience. Netflix developed an entire CDN architecture, called "Open Connect" based on settlement-free peering. This no-fee interconnection norm avoids the gamesmanship and blackouts that plague cable carriage and retransmission-consent negotiations in the traditional video space. Indeed, Netflix is directly interconnected with ISPs all over the U.S. and internationally without any exchange of payment from either side. Our agreement with Comcast is the first time that Netflix was forced to pay an ISP for what amounts to access to their subscribers.

In a subsequent statement, Comcast said "[i]f Netflix did not like the terms of our agreement, or if they do not like the terms Comcast provides at any time in the future, Netflix can work with any of the multiplicity of partners that connect with Comcast.... Transit is a highly competitive marketplace and Netflix and other Internet content providers have many choices."

The fatal flaw in this assertion is that the number of transit providers or pathways into Comcast's network is irrelevant to this issue. Every transit provider must ultimately negotiate with Comcast

¹ Comcast-Time Warner Merger Application, *Israel Declaration* at 32. Consumers do not view mobile broadband as a substitute for a wired broadband connection, particularly for data-rich media like streaming video because of reliability issues and data caps.

for a connection to Comcast's network and Comcast controls the terms of that access. Simply put, there is still one and only one way to reach Comcast's subscribers: through Comcast.

Prior to our agreement to interconnect directly with Comcast, Netflix purchased all available transit capacity into Comcast's networks from multiple transit providers. Every single one of those transit links to Comcast was congested (even though the transit providers requested extra capacity), resulting in poor video quality for our members. Until Netflix agreed to pay Comcast, the more that Comcast subscribers requested Netflix content, the more congested these connections became, and the more that their Netflix video quality suffered. That is where Comcast is able to leverage its market power most effectively. It can restrict transit capacity into its network to force content providers into paying for uncongested interconnection.

It is inaccurate for Comcast to suggest that by paying Comcast directly, Netflix is simply swapping out payment for services that it used to pay transit providers to perform. For a content company such as Netflix, paying an ISP like Comcast for interconnection is not the same as paying for transit service. Transit providers are paid by companies like Netflix because they carry Internet traffic over great distances and provide connections to all of the networks that comprise the global Internet.

Comcast does not connect Netflix to other networks. Comcast does not carry Netflix traffic over long distances. Netflix connects to Comcast in locations all over the US, and has offered to connect in as many locations as Comcast desires. Netflix is itself bearing the costs and performing the transport function for which it used to pay transit providers. It is Netflix that incurs the cost of moving Netflix content long distances, closer to the consumer, not Comcast.

3) Comcast argues that it operates in a highly competitive marketplace in which consumers have ample choices for high speed Internet service and therefore will not tolerate slow streaming speeds or artificially high costs. What do you make of that argument?

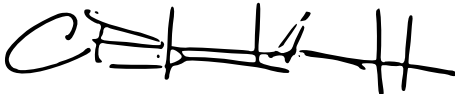
Few Americans have a meaningful choice in broadband Internet access service provider. According to the FCC, about 70 percent of U.S. households have at best two options for 6 Mbps or greater broadband Internet access, which is the floor for data-rich applications like streaming video. As stated above, consumers do not view mobile broadband as a wireline broadband substitute for applications like streaming video because of low data caps and reliability issues. Couple all of this with the high costs of switching from one provider to another, and most consumers feel that they have to take whatever their ISP offers.

To conclude, Netflix is committed to providing our users with great video quality whenever they chose to watch Netflix. Unfortunately, Comcast appears willing to sacrifice the quality of its own subscribers' broadband experience to extract fees from the content providers that Comcast's own subscribers are paying Comcast to access. The fact that Netflix paid to protect our

consumers is evidence of Comcast's power. Acquiring Time Warner Cable will only increase this leverage.

The proposed merger will result in online video content providers paying higher prices for access to Comcast customers or delivering poorer service to customers who depend on Comcast for broadband access. Ultimately, competition and consumers will suffer. That is why Netflix opposes the merger.

Respectfully,

A handwritten signature in black ink, appearing to read 'C. Libertelli', with a stylized flourish at the end.

Christopher Libertelli
Vice President | Global Public Policy
Netflix, Inc.