

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
June 14, 2006

Statement Of Senator Patrick Leahy,
Ranking Member, Judiciary Committee
Hearing On
"Reconsidering Our Communications Laws:
Ensuring Competition and Innovation"
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Mr. Chairman, I was one of only five Senators to vote against the 1996 Telecom Act.

Back then, I argued that the Act's promise of promoting competition and increasing innovation was a false promise. I argued that the Act would allow the local regional bells to easily reunite with unregulated local monopoly powers.

I pointed out that rural consumers would be worse off, that cable and phone rates would increase, and that mergers would reduce competition. Unfortunately, I was right.

We must not make the same mistakes again.

Today, many Americans have no choice whatsoever in broadband service, while others have only two options.

The Internet is the ultimate marketplace of ideas. Everyone has equal access; every voice can speak, and be heard. It's a place where a better idea, a better service or a better application can succeed on its merits - not because it has a special financial relationship with one or two broadband providers.

I have been enthusiastic about the Internet and its potential to make our lives better in so many realms. The Internet has opened windows to the world in one-room schoolhouses in Vermont, and new doors of knowledge and opportunity to children from Africa to Indonesia.

I have worked from the start of the Internet age to keep the government's hands off the Internet. The Internet was largely conceived in the United States, and when the U.S. Government seeks to regulate the Internet in any way, the world closely watches.

That gives us a special obligation to act with care and with as much foresight as we can muster when the Internet is involved.

We have arrived at another juncture in which Congress faces decisions on the Internet's future. The "triple play" of being able to offer video TV and movies, telephone, and Internet service raises the risk that telephone or cable companies will "bundle" all three services together and not allow each service to compete on its own merits.

It is more important than ever that the Congress focus on the best interests of consumers.

This Committee must help ensure that the Internet's marketplace of ideas and commerce remains effective and vibrant.

The resolution of the issues raised today will determine who is in control of electronic access to our homes and small businesses: Will consumers be in control, or will a very few large corporations control that information link?

This is not a hypothetical problem. Corporations have legal duties to shareholders. If they can maximize shareholder return, even if it means fewer choices for consumers, they will.

The Supreme Court's Brand X decision effectively permits broadband service providers to discriminate against competing content, applications and other service providers. One executive, the head of AT&T, has made it clear he will exercise control over that so-called "last mile" into each home.

The discrimination may take many forms, including slower exchange of traffic from disfavored content providers, direct blocking of lawful websites, and added fees for access.

This would represent a dramatic shift in the policy that has propelled the success of the Internet.

It is both enlightening and, from a consumer perspective, frightening to review the assertions of a White Paper issued by Cisco Systems. This White Paper made clear that Cisco is poised to offer companies such as Verizon, AT&T, ComCast, TimeWarner and others the ability "in real time" to know: "the identity and profile of the individual subscriber;" "what the subscriber is doing;" "where the subscriber resides;" and their "service level," either fast or slow. Cisco can also give these giants the technology to "limit unprofitable peer-to-peer" communications.

So why wouldn't Congress just vote to keep those pipelines into homes and small businesses open?

The reason is simple: The major telecom and cable providers are threatening to refuse to invest in improvements or expansions unless they can reap big profits by charging rates based on how the Internet is used.

I strongly believe they will make those investments anyway. Certainly Verizon will make those investments, according to Vice Chairman Larry Babbio. He has said that Verizon is in the midst of spending billions of dollars on upgrades, with its posted revenue of \$68 billion just last year alone. He said that Verizon has the goal of bringing fiber to "every home it serves." Not to the last mile, "not to the curb, but to the home." It is fortunate for them that the costs of investing in fiber have been reduced by a factor of 10 over the last several years.

Verizon and AT&T certainly have some money to reinvest - they have each paid about \$13 billion in dividends 2003 through 2005 and bought back hundreds of millions' worth of their stock. I would like to put in the record financial data on those firms.

I applaud the telephone companies for their interest in entering the video market, but the opportunity comes with an obligation. We cannot allow competitors in this highly concentrated market to compete only for affluent, urban residents. Competition should benefit everyone.

Mr. Chairman, a number of issues raised in Chairman Stevens' bill are squarely within the jurisdiction of this Committee. Chairman Sensenbrenner ran into a similar situation in the other body.

I look forward to working with the members of this Committee to put forward a strong bill along the lines of Chairman Sensenbrenner's effort to protect consumers, competition, and the Internet, and I look forward to hearing from our witnesses today as our work goes forward.

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