

**Senate Judiciary Committee Hearing On
Why Net Neutrality Matters: Protecting Consumers and Competition Through Meaningful Open
Internet Rules
September 17, 2014
Questions for the Record from Senator Patrick Leahy**

Question for Brad Burnham

1. Some witnesses at the hearing challenged whether, in a paid prioritization world, broadband providers would have an incentive to discriminate against particular content providers or websites. Do you share this view, particularly with respect to vertically integrated broadband providers?

Broadband providers are for profit corporations with a duty to maximize profits on behalf of shareholders. The profit maximizing move is to leverage their powerful market position to collect fast lane tolls and access fees from applications providers, while at the same time discriminating against competitive consumer services to privilege their own offerings. So, even in a paid prioritization world broadband access providers have an incentive to discriminate against competitive content or applications.

If the witnesses are arguing broadband access providers have no incentive to discriminate against competitive content and applications because they can make more money charging fast lane tolls and access fees, this is only true because there is so little competition for their network services they they can charge what they like for the fast lane and for access to their subscribers.

In a competitive market, it would be disastrous for a broadband provider to focus on fast lane tolls and access fees. There is little innovation or differentiation in those services. That business would quickly be commoditized and afford only the thinnest margins.

So the witnesses making the argument that broadband providers would have no incentive to discriminate in a world where they can collect fast lane tolls and access fees cannot have it both ways. If broadband access providers face real competition for their network services, they absolutely have an incentive to vertically integrate into consumer services and to favor their services over those of their competitors. If they have a natural monopoly in their network, then yes, they can make more money if they drop their consumer services and just collect monopoly rents for use of the fast lane and access to subscribers. But to make that argument is to admit that broadband access providers have monopoly power in their network.

So no, I do not agree with the witnesses who argue that in a paid prioritization world broadband access providers have no incentive to discriminate against content or applications. To the contrary, the profit maximizing move is to charge high fast lane tolls and access fees **and** to discriminate against competitive applications and content.