

Threats to the Open Internet are Widespread

The U.S. has seen numerous instances of phone and cable companies violating the fundamental tenets of the open Internet through blocking, degrading and otherwise limiting the functionality of Internet products and services. Claims that open Internet rules are a “solution in search of a problem” are misguided and uninformed. Further, Internet service providers (ISPs) themselves don’t hide that they view opportunities to prioritize, block, and degrade web traffic as a lucrative potential revenue stream.

During Verizon’s lawsuit against the FCC’s previous open Internet rules, the company’s lawyer repeatedly asserted that Verizon wanted to violate the 2010 rules, stating “I’m authorized to state from my client today that but for these rules we would be exploring those types of arrangements.” Indeed, the court’s decision explicitly noted Verizon’s eagerness to institute business practices that would run afoul of the rules.¹

In fact, the ISPs were so impatient that while the FCC’s previous rules were still in place, the largest phone and cable companies, representing nearly 70 percent of all U.S. broadband subscribers, found a loophole degrading wide swaths of the Internet for over a year while demanding payment from the largest networks in the world.² These networks reach well over half of the *world’s* IP addresses, and the resulting degradation caused connectivity issues for those attempting to connect to services like e-health, long distance education, telework and streaming audio and video, among many others.

These recent examples of open Internet violations should come as no surprise given the previous record of interference by telephone and cable companies:

- For years, Comcast interfered with popular, lawful background peer-to-peer technologies, until it was caught and sanctioned for its behavior.³ To test customer claims that Comcast was blocking file-sharing traffic, an Associated Press reporter attempted to download the King James

1 Verizon v. FCC, 740 F.3d 623, 646 (D.C. Cir. 2014) (citing Transcript of Oral Argument at 31, Verizon, 740 F.3d 623, Nos. 11-1355, 11-1356 (D.C. Cir. 2014)).

2 See e.g., Comments of Cogent Communications Group, Inc., GN Docket No. 14-28, at 6-9 (July 15, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521507567>; Jon Brodtkin, Why YouTube buffers: The secret deals that make—and break—online video, Ars Technica, July 28, 2013, <http://arstechnica.com/information-technology/2013/07/why-youtube-buffers-the-secret-deals-that-make-and-break-online-video/1/>; Om Malik and Stacey Higginbotham, Having problems with your Netflix? You can blame Verizon, GigaOM, June 17, 2013, <https://gigaom.com/2013/06/17/having-problems-with-your-netflix-you-can-blame-verizon/>.

3 See FCC File No. EB-08-IH-1518, Letter from Kathryn A. Zachem, Vice President, Regulatory Affairs, Comcast Corporation to Marlene H. Dorch, Secretary, Federal Communications Commission, Attachment A, at 5-11 (Sept. 19, 2008).



Bible, which is not protected by copyright, using a legal file-sharing program. The test confirmed that Comcast was blocking lawful file sharing programs.⁴

- For two years, Comcast has prioritized its own video service on the Microsoft Xbox and TiVo platforms over other video services like Netflix and Hulu.⁵
- AT&T contracted with Apple to limit Skype on the iPhone for years.⁶ AT&T also crippled Apple FaceTime on its network when that video calling app first became available for mobile users.⁷
- Dominant wireless carriers block Google's mobile payments option to prevent competition to their co-created alternative,⁸ while AT&T and Apple blocked customers from using Google Voice.⁹
- The FCC required Verizon to pay \$1.25 million for preventing customers from downloading tethering apps that turn a smartphone into a WiFi hotspot for laptops and tablets in order to force customers to pay \$20 for this functionality.¹⁰
- A small telephone ISP called Madison River blocked Vonage, a company providing a competing online telephone service.¹¹

4 Comcast Blocks Bible From Being Uploaded, Associated Press, Oct. 22, 2007, <http://www.foxnews.com/story/2007/10/22/comcast-blocks-bible-from-being-uploaded/>.

5 T.C. Sottek, Is Comcast prioritizing its Xfinity app over competitors like Netflix?, The Verge, May 15, 2012, <http://www.theverge.com/2012/5/15/3021839/comcast-throttling-net-neutrality-xfinity-netflix-xbox>.

6 Amy Schatz, In Reversal, AT&T Will Allow Skype, Similar Services on iPhone Network, Wall St. J., Oct. 7, 2009, available at <http://online.wsj.com/articles/SB125486091615268647>.

7 See Cecelia Kang, AT&T lifts FaceTime restrictions on Apple iPhones, Wash. Post, Nov. 8, 2012, available at http://www.washingtonpost.com/blogs/post-tech/post/atandt-lifts-facetime-restrictions-on-apple-iphones/2012/11/08/cbec36de-29de-11e2-b4e0-346287b7e56c_blog.html ("AT&T...will allow subscribers to access FaceTime on Apple devices, reversing a controversial policy to block the app for certain data plan customers.").

8 Scott Moritz, Verizon Wireless Blocks Rival Google Wallet, Citing Security, Bloomberg, Dec. 8, 2011, <http://www.businessweek.com/news/2011-12-08/verizon-wireless-blocks-rival-google-wallet-citing-security.html>.

9 See Jason Kincaid, Apple Is Growing Rotten To The Core: Official Google Voice App Blocked From App Store, Tech Crunch, July 27, 2009, <http://techcrunch.com/2009/07/27/apple-is-growing-rotten-to-the-core-and-its-likely-atts-fault/> (explaining AT&T's likely role in rejecting Google Voice from the Apple App Store because "Google Voice scares the carriers. It allows users to send free SMS messages and get cheap long-distance over Google Voice's lines.").

10 Brian X. Chen, F.C.C. Forces Verizon to Allow Android Tethering Apps, N.Y. Times, July 31, 2012, available at http://bits.blogs.nytimes.com/2012/07/31/fcc-verizon-tethering/?_php=true&_type=blogs&_r=0.

11 Jonathan Kim, Phone Company Settles in Blocking of Internet Calls, Wash. Post, Mar. 4, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/03/25/AR2005032501328.html>.



International examples of open Internet violations:

In other markets across the globe, widespread discrimination has occurred in the absence of open Internet rules.

- In Europe, ISPs have degraded or blocked the use of numerous online services, affecting at least 1 in 5 users.¹²
- In Asia, several governments have blocked over the top messaging apps like WhatsApp and Skype because the apps threaten the traditional revenue streams of government-owned telecom incumbents.¹³
- In Vietnam, following in the footsteps of the government's blocking of Facebook due to organizing protests against communism,¹⁴ mobile operators created "technical problems" to reduce the performance of over the top messaging apps like Skype and WhatsApp.¹⁵
- In Canada, rather than seeking a judicial injunction, a telephone ISP used its control of the wires to block a website supporting unionized employees during a strike by the union against the ISP.¹⁶

12 See Body of European Regulators for Electronic Communications, A View of Traffic Management and Other Practices Resulting in Restrictions to the open Internet in Europe 8 (2012), available at http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Traffic%20Management%20Investigation%20BEREC_2.pdf (finding that at least twenty percent of Internet subscribers are affected by blocking and/or throttling of peer-to-peer traffic on both fixed and mobile networks, and blocking of Voice over IP traffic, mostly on mobile networks).

13 See e.g., Vivian Salama, Saudi Arabia: The Internet's Enemy Cracks Down on Skype, Whatsapp, and Viber, *The Daily Beast*, Mar. 29, 2013, <http://www.thedailybeast.com/articles/2013/03/29/saudi-arabia-the-internet-s-enemy-cracks-down-on-skype-whatsapp-and-viber.html>; Uzbek government blocks voice services of Skype, WhatsApp, Telegram, Viber, Mail.Ru Agent, *AKIpress*, Oct. 17, 2014, <http://technews.tmcnet.com/news/2014/10/17/8072780.htm>. Other nations have considered banning WhatsApp and other applications that compete with services offered by incumbent telecommunications firms. See Vietnam Examines Policy on Chat Apps, Ban Possible, *Reuters*, Aug. 20, 2013, <http://www.voanews.com/content/reu-vietnam-chat-apps-media-viber-whatsapp/1733710.html>.

14 Dana Liebelson, MAP: Here Are the Countries That Block Facebook, Twitter, and YouTube, *Mother Jones*, March 28, 2014, <http://www.motherjones.com/politics/2014/03/turkey-facebook-youtube-twitter-blocked>.

15 See K. Chi, "Mobile Operators accused of blocking OTT services," *VietNamNet Bridge*, Nov. 13, 2013, <http://english.vietnamnet.vn/fms/science-it/89071/mobile-network-operators-accused-of-blocking-ott-services.html>.

16 Telus cuts subscriber access to pro-union website, *CBC News*, July 24, 2005, <http://www.cbc.ca/news/canada/telus-cuts-subscriber-access-to-pro-union-website-1.531166>.

