



NEWS

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See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

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STATEMENT OF FCC COMMISSIONER AJIT PAI ON NETFLIX'S CONDUCT WITH RESPECT TO OPEN VIDEO STANDARDS

Late last year, I was surprised to hear allegations that Netflix had taken actions to undermine the development of open standards for streaming video.¹ I asked Netflix to respond to these allegations, with a specific focus on whether the company had changed its streaming protocols where open caching was used in a way that impeded open caching software from correctly identifying and caching Netflix traffic.

Netflix responded to my inquiry both in writing and in person.² These discussions were initially quite productive. Through our exchanges, I learned that Netflix began encrypting URLs at some point in 2014. Moreover, the company indicated that it was contemplating making additional changes in the near future to its encryption practices. Netflix did not deny that these actions could impede the operation of open caching software, but contended that its motive was to protect its customers' privacy, not to undermine open video standards.

In order to test the validity of this assertion, I then asked Netflix to respond to the allegation that it had rolled out its new encryption protocols by first targeting those ISPs that had installed open caching appliances. The company assured me that this was not true and agreed to submit information after our meeting that would disprove this charge.

One month later, that commitment remains unfulfilled. When my office reached out to Netflix for the information (in particular, which ISPs were targeted on which dates), the company refused to turn it over. I am disappointed and perplexed by this decision. If Netflix did not target those ISPs using open caching, why would it withhold information that would disprove this allegation? I hope that the company will reconsider its position and supply the facts that would resolve this matter once and for all.

To be clear, I do not favor additional FCC regulation in this area. However, if a company asks the FCC to impose public utility-style regulation on every broadband provider in the country in the name of preserving the open Internet but then selectively targets open video standards to secure a competitive advantage over its rivals, it should be called to account.

¹ Letter from Ajit Pai, Commissioner, FCC, to Reed Hastings, Chief Executive Officer, Netflix, Inc. (Dec. 2, 2014), <http://go.usa.gov/zFHx>.

² See Letter from Christopher Libertelli, Vice President | Global Public Policy, Netflix Inc., to the Honorable Ajit Pai, Commissioner, FCC (Dec. 11, 2014), <http://go.usa.gov/zF6z>.