

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Restoring Internet Freedom ) WC Docket No. 17-108

**Friends of Community Media Reply Comment  
in Opposition to Restoring Internet Freedom NPRM**

**What is FCM**

Friends of Community Media (“FCM”) is a 501(c)(3) nonprofit organization set up to preserve and foster citizen participation in the media.<sup>1</sup> Based in Kansas City, Missouri, with members from both Kansas and Missouri, FCM works to help preserve existing community media, make existing media responsive to the public, be a media watchdog, publish new forms of citizen-based media, create public service programming, train citizens in media literacy, and encourage media outlets to meet moral and legal civic obligations.

FCM has sponsored the Grassroots Radio Conference, Progressive Media Awards, supported with a week of media awareness activities called Media4Us, conducted Communiversity classes, supported local community media and participated in media awareness activities.

Friends of Community Media was created in 2007 as the merger of Friends of Community Radio and Citizens for Media Reform. Friends of Community Radio was founded in 2001 to help and protect community radio station KKFI in Kansas City retain its original purpose, and return proper administration to the station. That goal had been achieved by 2007 before the merger with Citizens for Media Reform.

FCM asks the Commission not to adopt the proposed rules in the “Restoring Internet Freedom” Notice of Proposed Rulemaking (“NPRM”).<sup>2</sup> Beyond our July 17, 2017, filing,<sup>3</sup> we wish here to add comments following the "4 steps to writing an impactful net neutrality comment" recommended by Gigi Sohn, a top counselor to former-FCC Chairman Tom Wheeler.<sup>4</sup>

This is followed by an Appendix raising questions about the credibility of the claims in this NPRM that the 2015 *Title II Order* caused major Broadband Internet Access Service (BIAS) providers to reduce their CapEx investments in new infrastructure. In brief, this supports the assertion of Ernesto Falcon, Legislative Council for the Electronic Frontier Foundation, that no

<sup>1</sup> Friends of Community Media website: <http://www.ourfcm.org> .

<sup>2</sup> WC Docket No. 17-108.

<sup>3</sup> “Friends of Community Media Comment in Opposition to Restoring Internet Freedom NPRM”, July 17, 2017, <https://ecfsapi.fcc.gov/file/10718681816260/FCC%2017-60A1.pdf>, last visited 2017-08-16.

<sup>4</sup> Gigi Sohn (June 15, 2017) “4 steps to writing an impactful net neutrality comment (which you should do)”, *Mashable*, retrieved 2017-07-27.

credible evidence exists to support these claims: In an interview on July 15, he said that publicly traded Internet access provider had made such claims in their filings with the Securities and Exchange Commission (SEC), which is the only place with credible penalties for misleading statements. There they said that everything was fine, business was good, and they did not mention the 2015 *Title II Order*. Such claims seem only to have been made by (a) people paid by major Internet access providers in places where there are no credible penalties for deception, and (b) people who repeat these misleading assertions.<sup>5</sup>

## **1. How has the *Title II Order* affected FCM and how do we believe reclassification would likely impact us?**

The 2015 *Title II Order* allows anyone to compete in the marketplace of ideas based solely on the quality of their presentation. NPRM 17-108 would effectively restrict access to the marketplace of ideas to organizations that (a) can afford to pay whatever the Broadband Internet Access Service (BIAS) providers choose to charge, (b) disseminate only the information the BIAS providers choose to allow, (c) connect only with websites the BIAS providers secretly decide to allow, and (d) accept distortion of content, secret redirections and suppression of encryption the BIAS providers in their sole discretion decide. These are all blatant abuses of customers. No user wants or expects to be abused like that.

All these abuses occurred prior to the *Title II Order*,<sup>6</sup> which was adopted by the FCC after being told repeatedly by the courts between 2008 and 2014 that lesser actions were not legal. This is well documented elsewhere, and contradicts the FCC's claim that the 2015 *Title II Order* was "abrupt".<sup>7</sup>

Moreover, it's clear that these abuses can NOT be effectively regulated by the Federal Trade Commission (FTC) nor the antitrust division of the Department of Justice, as suggested by the NPRM.<sup>8</sup>

All these actions are direct attacks on the FCM mission to preserve and foster citizen participation in the media, mentioned above. These are only the abuses that were documented. It would be naive to assume that these were the only abuses of customers by BIAS providers.

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<sup>5</sup> Spencer Graves interview with Falcon in "\$15 minimum wage on Aug. 8 ballot in KCMO plus Trump's attack on net neutrality", July 25, 2017, *Radio Active Magazine*, KKF1.org, <http://www.kkfi.org/program-episodes/15-minimum-wage-aug-8-ballot-kcmo-plus-trumps-attack-net-neutrality/>, last visited 2017-08-12.

<sup>6</sup> Joint Comments of Internet Engineers, ..., on the FCC's Notice of Proposed Rulemaking ... 17-108, filed 2017-07-17 by the Electronic Frontier Foundation, [www.fcc.gov/ecfs/filing/1071761547058](http://www.fcc.gov/ecfs/filing/1071761547058), last visited 2017-08-12.

<sup>7</sup> We summarized this in our own July 17, 2017, filing, cited above.

<sup>8</sup> "Comments of the Electronic Frontier Foundation on Notice of Proposed Rulemaking" 17-108, filed 2017-07-17 by the Electronic Frontier Foundation, <https://www.fcc.gov/ecfs/filing/10717276427999>, last visited 2017-08-12.

All these abuses are inappropriate. There should be credible penalties for violations, and the courts found that the *Title II Order* was the only remedy the FCC pursued that was legal.

Perhaps the most serious are altering content, especially stripping encryption, and redirecting unwary Internet users: These actions make users vulnerable to identity theft that could further lead to substantial loss of financial assets and who-knows-what else. It could in some cases be difficult for individual victims to notice the loss of retirement savings, for example, that they may not check regularly. If they noticed the problem, it could be hard to prove that they did not voluntarily transfer their assets, unless so many people were victimized they could collectively call attention to the crime and get official support to investigate it.

We believe NPRM 17-108 is also a challenge to the First Amendment to the U.S. Constitution, because it would be a governmental action that would increase the cost of reaching an audience -- as well as attacking the FCM mission to preserve and foster citizen participation in the media, mentioned above.

Abuses like redirecting customer requests for a web site and stripping encryption could make it easier for an administration in Washington to deny people of, e.g., the right to use standard commercial travel on the basis of officially protected political activity. This is NOT a crazy hypothetical. In 'November 2002 *Salon* reported that the G. W. Bush administration's anti-terrorist No-Fly program seemed "to be netting mostly priests, elderly nuns, Green Party campaign operatives, left-wing journalists, right-wing activists and people affiliated with Arab or Arab-American groups." Art dealer Doug Stuber, who ran Ralph Nader's Green Party presidential campaign in North Carolina in 2000, was prevented from flying to Europe on business in October 2002.<sup>9</sup>

## **2. What does FCM believe we are buying when we purchase broadband Internet access**

FCM believes that people who purchase broadband Internet access believe that they are purchasing *access* to the Internet at the high speeds that are currently standard and expected. We believe that the people and organizations we support want and need to be able share the information they generate and access the information provided by others on an equal basis. If the present 2015 *Title II Order* is overturned, it will be difficult and in many cases practically impossible for individuals and small organizations to negotiate reasonable rates with BIAS providers for delivering their content at the standard high speeds that Internet users now expect.

We think it is self-evident that the mainstream media organizations in the U.S. today do NOT want competition from the cacophony of voices currently available on the Internet. This is a direct threat to the First Amendment, because freedom of speech means nothing unless it's the freedom to say things that are not popular with people in power. Mainstream media everywhere must of necessity flinch before disseminating information that might offend anyone with

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<sup>9</sup> Lindorff, Dave (November 15, 2002). "Grounded: A federal agency confirms that it maintains an air-travel blacklist of 1,000 people". *Salon*. [http://www.salon.com/2002/11/15/no\\_fly/](http://www.salon.com/2002/11/15/no_fly/), last visited 2017-08-12. See also Wikipedia, "No Fly List", [https://en.wikipedia.org/wiki/No\\_Fly\\_List](https://en.wikipedia.org/wiki/No_Fly_List)

substantive control over their funding and governance, like, e.g., major advertisers in the U.S. Democracy cannot function to benefit all if dissent is stifled.

In particular, we, and the individuals and organizations we support, do NOT want to buy *information* from a BIAS provider: The information we want and need is provided by the individuals and groups that most concern us. We do NOT want BIAS providers blocking, throttling, altering (including stripping encryption), or redirecting our efforts to access the Internet.

### **3. What choices does FCM have for broadband Internet access.**

FCM, and the people and organizations that most concern us, have limited choices for BIAS -- only what the few telecoms offering such service in a given local area choose to provide. In a major metropolitan area like Kansas City, one might think we are fortunate to have more than one potential provider of BIAS. However, those providers are major corporations, who, from what we see, seem to compete primarily on control of the media and the political process, as documented, e.g., by Crawford.<sup>10</sup>

*Broadband Now* claims that, “Kansas City is one of the more competitive markets when it comes to broadband coverage in the U.S. AT&T Internet, Google Fiber, and Time Warner Cable [TWC, now called Spectrum] all offer wired service to large areas of the city”<sup>11</sup>, providing 75, 1,000 and 300 mbps fastest speed, respectively. These three providers offer service to between 94.4 and 98.2 percent of KC, MO. Other providers reach at most 6.5 percent of the city.

However, TWC (now Spectrum) has many outages. One of the authors of these comments recorded 27 outages in TWC long enough to disrupt work in the 55 days between June 12 and August 6, 2017.<sup>12</sup> (No comparable data exists on the other local providers.)

### **4. What role does FCM believe the FCC should have in overseeing the market for broadband Internet access.**

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<sup>10</sup> Crawford begins her 2013 *Captive Audience* by describing how Comcast convinced the U.S. government to allow it to merge with NBC Universal. She claims that the U.S. led the world in Internet adoption in 2000 but had lost this leadership in part through approving mergers and acquisitions like this to the detriment of the economy as a whole. Susan P. Crawford, 2013, *Captive Audience* (Yale, p. 1ff).

<sup>11</sup> Broadband Now, “Internet Service Providers in Kansas City, Missouri”, <https://broadbandnow.com/Missouri/Kansas-City>, last visited 2017-08-16.

<sup>12</sup> These came as a result of a moderately extensive effort to isolate the source of these problems involving numerous calls to tech support and multiple changes of hardware. They are consistent with a January 10, 2017, list of “America’s Most Hated Companies” that ranked Comcast the worst, but noted that, “In J.D. Power’s rating of major wireline services, only Time Warner Cable -- recently subsumed by Charter -- received a worse score in overall satisfaction.” DISH Network, Sprint, and Charter were rated 8, 10 and 12. This article began, “When Time Warner Cable merged with Charter Communications earlier this year and the new public-facing operation rebranded, changing its name to Spectrum, it was likely for good reason. For many Americans, each name had come to be associated with poor customer service.” Michael B. Sauter and Samuel Stebbins, Jan. 10, 2017, “America’s Most Hated Companies”, 24/7 Wall St., <https://finance.yahoo.com/news/america-most-hated-companies-110032495.html>, last visited 2017-08-16.

FCM believes the FCC should establish and enforce interoperability standards, like the U.S. government did in 1968 when it forced AT&T to accept non-Bell equipment to hook to their network. This included the “Carterfone” decision that allowed other devices to be connected to the AT&T network, as long as they did not harm the system.<sup>13</sup> It also allowed competition in long distance, beginning with MCI,<sup>14</sup> as long as they complied with appropriate interoperability standards.

More challenges to AT&T’s monopoly status ultimately led to the breakup of AT&T, officially mandated in 1982:<sup>15</sup> This injected competition into the telecommunications market and contributed to the rapid growth of the Internet that contributed to the dominant position of the U.S. in Internet deployment in 2000. Subsequent decisions by the U.S. federal government to allow mergers and acquisition have since largely destroyed that competition to please major campaign contributors, especially those contributors who also have substantial control over the mainstream media.<sup>16</sup>

The mainstream media, like other commercial organizations, rarely bite the hands that feed them. Major advertisers would consider “unfriendly” information disseminated by a media organization that helped the public understand the issues at stake when those major advertisers wanted governmental approval for a merger or acquisition -- or anything else from government. The commercial media are not in the business of biting the hands that feed them. The public suffers as a result.<sup>17</sup>

The 2015 *Title II Order*, if retained, would make it easier for entrepreneurs to develop improved noncommercial media that threatens to take some of the audience of the mainstream commercial media by offering them better information than they can get for the same effort today. “*Joint Comments of Internet Engineers, Pioneers, and Technologists on the Technical Flaws*” in this NPRM on “Restoring Internet Freedom” claim that “if the FCC decides to move forward with some of the proposals in the NPRM then the result will have a disastrous effect on

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<sup>13</sup> FCC Carterfone decision, 13 F.C.C.2d 420 (1968), <http://myweb.uiowa.edu/johnson/FCCOps/1968/13F2-420.html>; see also Wikipedia, “Carterphone”, last visited 2017-08-30.

<sup>14</sup> Cantelon, Philip L. (1993) *The History of MCI: 1968–1988, The Early Years* \*Dallas: Heritage Press. LCC HE8864.M375C36 1993). See also Wikipedia, “MCI Communications”, last visited 2017-08-30.

<sup>15</sup> “The End of AT&T”. *Celnet*. Celnet. From archive: <https://web.archive.org/web/20141006093659/http://www.celnet.org.uk/telecos/AT%26T-Bell-4.php>, last visited 2017-08-13. See also, Wikipedia, “Breakup of the Bell System”, [https://en.wikipedia.org/wiki/Breakup\\_of\\_the\\_Bell\\_System](https://en.wikipedia.org/wiki/Breakup_of_the_Bell_System)

<sup>16</sup> Susan P. Crawford (2013) *Captive Audience: The Telecom Industry and Monopoly Power in the New Gilded Age* (Yale U. Pr.). See also Wikipedia, “Captive Audience”, last visited 2017-08-30.

<sup>17</sup> Spencer Graves, “EffectiveDefense.org Comment in Opposition to Restoring Internet Freedom NPRM”, filed with the FCC, July 17, 2017.

<https://ecfsapi.fcc.gov/file/10717083022106/EfDef-comments-FCC%2017-60A1-2017-07-17.pdf> last visited 2017-08-13. See also, Wikiversity, “Winning the War on Terror”, [https://en.wikiversity.org/wiki/Winning\\_the\\_War\\_on\\_Terror](https://en.wikiversity.org/wiki/Winning_the_War_on_Terror)

the Internet ecosystem as a whole.<sup>18</sup> This follows, because blocking, throttling, altering and redirecting Internet traffic make it practically impossible for engineers with new Internet start-ups to know what code is running on their end user's browsers: They know what they send, but that can be altered en route.

Moreover, the industry is more concentrated today than prior to the 205 *Title II Order*.

### **Appendix. Questionable foundations for NPRM 17-108**

NPRM 17-108 was justified by claims that are contradicted by most of the available evidence. The supporters of NPRM 17-108 claim that in 2015 BIAS providers reduced by almost a billion dollars their CapEx investments in infrastructure for their BIAS offerings in response to the *Title II Order*, and this decline poses a major threat to the future of BIAS in the U.S.

As illustrated in the accompanying figure, this annual change is smaller (in absolute value) than 75 percent of the annual changes in this historical period. This fact seems to support the claim by the *New York Times*, that the "F.C.C. Invokes Internet Freedom While Trying to Kill It": The *NYT* said that this NPRM was justified by "cherry-picking data to make [Chairman Pai's] case."<sup>19</sup>

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<sup>18</sup> Joint Comments of Internet Engineers, ..., on the FCC's Notice of Proposed Rulemaking ... 17-108, filed 2017-07-17 by the Electronic Frontier Foundation, [www.fcc.gov/ecfs/filing/1071761547058](http://www.fcc.gov/ecfs/filing/1071761547058), last visited 2017-08-12.

<sup>19</sup> New York Times Editorial Board, "F.C.C. Invokes Internet Freedom While Trying to Kill It", April 29, 2017, *New York Times*, <https://www.nytimes.com/2017/04/29/opinion/sunday/fcc-invokes-internet-freedom-while-trying-to-kill-it.html>, last visited 2017-08-12.

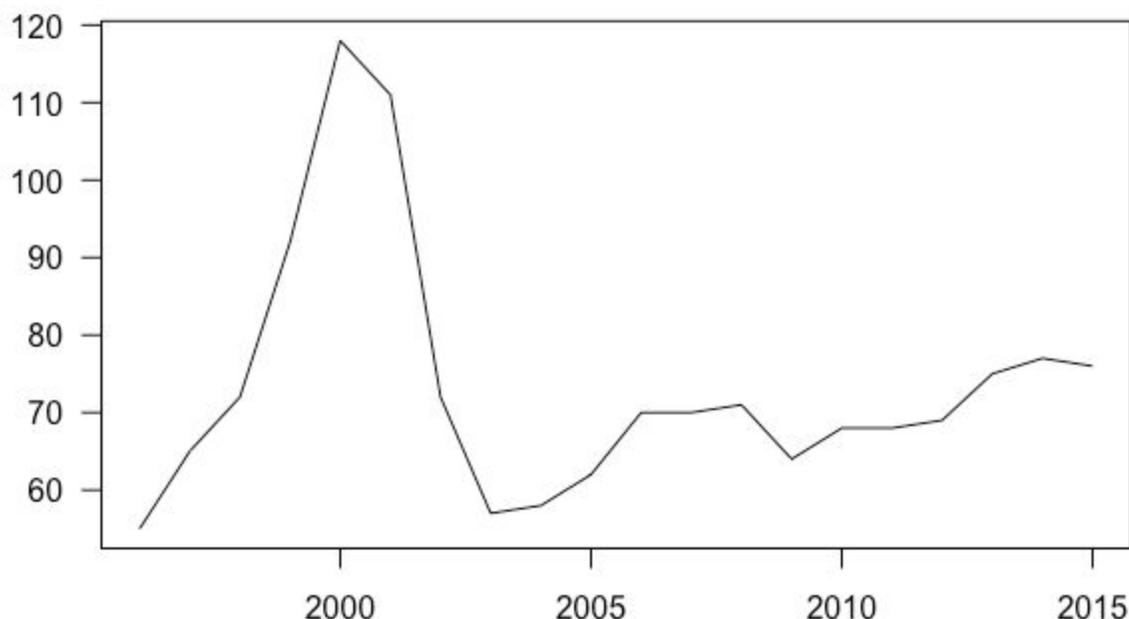


Figure 1. U.S. Historical Broadband Provider CapEx, 1996-2015 (\$ billions)<sup>20</sup>

Ernesto Falcon, Legislative Council for the Electronic Frontier Foundation, said that the publicly traded telecoms do NOT claim adverse effects from the *Title II Order* in the only place where there are any credible penalties for making false and misleading statements, namely in their public filings with the Securities and Exchange Commission (SEC): In those SEC filings, the telecoms have claimed that everything is fine. They only make such claims where there are no credible penalties for making misleading statements.<sup>21</sup>

Falcon’s point is reinforced by an analysis of 26 different financial measures that could reflect the impact on the industry of the *Title II Order* by Derek Turner of Free Press.<sup>22</sup> Twenty-one of Turner’s data sets came from SEC filings. Three were based on the U.S. Census Bureau’s Annual Capital Expenditure Survey. Two came from SNL Kagan. None of the tables were accompanied by statistical tests, but two showed statistically significant positive results following the *Title II Order*: His Figures 5 and 6 showed different revenue numbers for 18 and

<sup>20</sup> U.S. Historical Broadband Provider CapEx, 1996-2015 (\$ billions), <https://www.ustelecom.org/broadband-industry/broadband-industry-stats/investment> last visited 2017-08-13. Also Footnote 3, pg. 2, FCC WC Docket No. 17-108.

<sup>21</sup> Spencer Graves interview with Falcon in “\$15 minimum wage on Aug. 8 ballot in KCMO plus Trump’s attack on net neutrality”, July 25, 2017, *Radio Active Magazine*, KKFI.org, <http://www.kkfi.org/program-episodes/15-minimum-wage-aug-8-ballot-kcmo-plus-trumps-attack-net-neutrality/>, last visited 2017-08-12.

<sup>22</sup> S. Derek Turner, *It’s Working: How the Internet Access and Online Video Markets Are Thriving in the Title II Era*, May 2017, Free Press, <https://www.freepress.net/sites/default/files/resources/internet-access-and-online-video-markets-are-thriving-in-title-ii-era.pdf>, last visited 2017-08-12.

17 different companies, respectively, and all were positive, averaging 12% and 4.6% annualized growth rate in 2015 and 2016 over 2013 and 2014. The annualized percentage change in the other Figures / Tables ranged from -12% to +40%. The mean and median over the 24 tables for which it seemed reasonable to extract a typical (e.g., mean or median) annualized percentage change were 8.1% and 5.2%, respectively. The typical percentage change was negative for only five of the 24 tables. See the Turner and the table below for details.

Harvard Law Professor Crawford insists this is the same argument used by electric power utilities roughly 100 years ago. Electric power lobbying at that time blocked the deployment of electric power in most rural areas until the Franklin Roosevelt (FDR) administration decided it was an essential need, not a luxury, and the federal government should help provide financing:<sup>23</sup> Electricity -- and the resulting improvements in productivity -- came to most rural homes and small businesses in America only after the market power of the established electric power companies was limited by the FDR administration.

**Table 1. Summary of Tables / Figures in Turner’s “It’s Working”**

	<b>Figure</b>	<b>source</b>	<b>start</b>	<b>end</b>	<b>% annu al chg</b>	<b>Statist- ically signif- icant</b>
1	Capital Expenditures by Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	5.30%	no
2	Capital Expenditures by All U.S. Telecommunications Firms (U.S. Census Bureau Annual Capital Expenditures Survey, 2008–2015)	U.S. Census Bureau Annual Capital Expenditures Survey	2008	2015	0.64%	no
3	Cable ISP Network Investment, Publicly Reported and Estimated Totals (2013–2016)	Company SEC filings	2013	2016	21.82 %	?

<sup>23</sup> “Susan P. Crawford: The case for publicly owned Internet service”, *The Cap Times*, Feb. 12, 2012, [http://host.madison.com/ct/news/opinion/column/susan-p-crawford-the-case-for-publicly-owned-internet-service/article\\_5fadd22c-58d1-11e1-8a67-0019bb2963f4.html](http://host.madison.com/ct/news/opinion/column/susan-p-crawford-the-case-for-publicly-owned-internet-service/article_5fadd22c-58d1-11e1-8a67-0019bb2963f4.html)”.

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4	Total Revenues at Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	5.12%	no
5	Residential High-Speed Internet Access Revenues at Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	11.94 %	YES
6	Calculated Average Monthly High-Speed Data Revenue per Subscriber at Publicly Traded Wireline Broadband Providers (2013–2016)	Company SEC filings	2013	2016	4.59%	YES
7	Reported Average Monthly Revenues per User at Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	2.40%	no
8	High-Speed Internet and Wireless Subscriptions at Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	5.90%	no
9	Pay-TV Subscribers at Publicly U.S. Companies (2013–2016)	Company SEC filings	2013	2016	-0.70 %	no
10	Capital Expenditures by Telecom-Adjacent U.S. Firms	U.S. Census Bureau Annual Capital Expenditures Survey	2008	2015	4.20%	no
11	Broadband–Only U.S. Households (2013–2016)	SNL Kagan and Nielsen estimates	2013-03-01	2017-03-01	17.13 %	no

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12	Netflix Content, Capital and Technology Development Investment; Subscribers (2011–2016)	Company SEC filings	2011	2016	29.80 %	no
13	Amazon Programming, Capital and Technology Investment; AWS Revenues (2013–2016)	Company SEC filings	2013	2016	40.12 %	no
14	Hulu Programming Costs, Revenues, and Paid-Subscribers (2013–2016)	SNL Kagan	2013	2016	21.90 %	no
A1	Operating Cash Flow at Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	2.66%	no
A2	Operating Income at Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	8.72%	no
A3	EBITDA at Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	7.80%	no
A4	Return on Invested Capital at Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	-0.20 %	no
A5	Value of Stock Repurchases at Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	-11.79 %	no
A6	Dividends Paid at Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	7.71%	no
A7	Earnings per Share at Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	-	no

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A8	Capital Intensity at Publicly Traded Broadband Providers (2013–2016)	Company SEC filings	2013	2016	-0.35 %	no
A9	AT&T and Verizon Wireless Profits and Revenues (2011–2016)	Company SEC filings	2011	2016	0.55%	no
A10	AT&T Capital Expenditures Post-DTV Acquisition	Company SEC filings	2015Q3	2017Q1	10.60 %	no
A11	AT&T Capital Expenditures and Capital Intensity (12-Month Trailing, 2008–Q1 2017)	Company SEC filings	2008F Q1	2016F Q4	?	no
A12	U.S. Census Bureau – Telecommunications Industry Capital Expenditures, Revenues and Capital Intensities (2008–2015)	U.S. Census Bureau Annual Capital Expenditures Survey	2008	2015	-1.36 %	no