

## ***Center for Creative Voices in Media***

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Executive Director

October 24, 2006

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Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: AT&T Inc. and BellSouth Corporation Applications for Approval of  
Transfer of Control, WC Docket No. 06-74

Dear Ms. Dortch:

Please accept this letter and its attachments as the comments of the Center for Creative Voices in Media for filing in the above-referenced proceeding. Creative Voices is a nonpartisan nonprofit 501(c)(3) group dedicated to preserving free speech, free expression, and independent and diverse creative voices in our nation's media. Members of the Board of Advisors of Creative Voices include Warren Beatty, Peggy Charren, Blake Edwards, Sissy Spacek, Steven Bochco, and other Oscar, Emmy, Peabody, Tony, and other award-winning creative artists.

Creative Voices is a member of the It's Our Net Coalition, and we strongly support their comments filed in this proceeding. However, we are also filing a brief additional comment to stress the unique and vital importance to creative media artists of enforceable net neutrality provisions. We urge the Commission to attach such provisions to the above transaction in accordance with the comments of the It's Our Net Coalition.

Writers, directors, producers, performers, musicians, and other talented professionals in the literary and entertainment arts give life to our nation's popular and literary arts -- educating the public, enriching the culture, and helping safeguard our democracy. From the most prominent well-established independent television or film producer to the kid with nothing but a video camera, a computer, and a dream, creative media artists increasingly utilize the broadband Internet to avoid the chokehold that broadcasters and cable operators have over distribution to the audience. But their ability to utilize the broadband Internet for distribution is threatened by media concentration, and the chokehold that the phone and cable companies have over access to the broadband network.

What is at stake here is nothing less than the future of the Internet, and whether the future Internet will be open or closed to independent and diverse voices and viewpoints. Not just creative voices – all voices. Will consumers retain the freedom to access any website, as they could when government policies were in place that ensured nondiscriminatory access, or will they be restricted to visiting sites approved by – or in business with – the “gatekeeper” that provides high speed Internet access? As creative media artists, we’ve seen this closed business model now being proposed for the Internet take over both broadcast television and cable television. Been there, done that, and seen that it is extremely harmful to diversity, creativity, and free expression. Let’s keep the Internet a real “level playing field.”

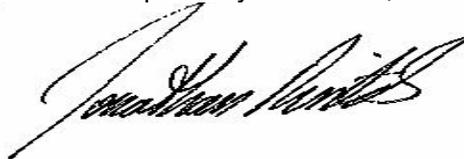
The market power of the proposed combined company over Internet content and services, along with recent regulatory and legislative developments, requires that the Commission attach substantial and enforceable conditions to its approval of the transaction to ensure that the Internet remains that real “level playing field.” The companies’ offer to abide by the FCC’s Broadband Policy Statement for a period of 30 months is not merely insufficient; it thumbs its nose at the American public and this Commission. By definition, approval of this transaction cannot be in the “public interest” if the combined company retains the right to ignore and violate after just 30 months the public interest in net neutrality, as expressed in the Commission’s Policy Statement.

To better inform the Commission about the unique and vital importance to creative media artists of enforceable net neutrality provisions, we attach our article *The Future Internet: Open or Closed?* which appeared in the July 2006 issue of *The Independent*, the journal of the Association for Independent and Video Filmmakers (AIVF). Prior versions of this article have appeared in the *Journal* of the Caucus for Television Producers, Writers, & Directors in April 2005, and *Produced By*, the journal of the Producers Guild of America in August 2005 – a clear indication of creative media artists’ extreme concern about net neutrality.

We also attach a letter from Vin Di Bona, Chairman of the Caucus for Television Producers, Writers, & Directors, to FCC Commissioner Michael J. Copps dated February 27, 2006 eloquently expressing that prestigious organization’s strong support for net neutrality protections on the broadband Internet.

We look forward to participating in this proceeding. If you have any questions, please do not hesitate to contact us.

Respectfully submitted,



Jonathan Rintels  
Executive Director

Attachments

## The Future Internet: Open or Closed?

By Jonathan Rintels, Executive Director, Center for Creative Voices in Media, member WGA, west since 1982. Website: [www.creativevoices.us](http://www.creativevoices.us).

From *The Independent*, July 2006. Published by the Association for Independent and Video Filmmakers (AIVF).

*“There are a handful of executives out there who are the gatekeepers of what gets made and seen -- or not. So we just decided to do it ourselves. You've already got the largest distribution network in the world already on your desktop, and the end-user experience is getting better every day.”*

-- Daniel Myrick, director and co-creator of “The Blair Witch Project” and “The Strand,” a dramatic series available only on the Internet

*“How do you think they're going to get to customers? Through a broadband pipe. Cable companies have them. We have them. Now what they would like to do is use my pipes free, but I ain't going to let them...”*

-- Ed Whitacre, CEO of AT&T:

*“This Internet may be dying.”*

-- FCC Commissioner Michael J. Copps

As many have said, there's only one thing harder than making an independent film – and that's distributing an independent film. Without an expensive studio sales, distribution, and marketing apparatus at their disposal, indie filmmakers have long dreamed of avoiding the high cost and creative compromises that can be the Faustian bargain of a distribution deal. How many indies have prayed for someone to invent a way for independent filmmakers to reach their audience directly without the dreaded middleman?

Many independent filmmakers see the evolving broadband Internet -- high-speed, low-cost, and utterly pervasive -- as the answer to those prayers. No more clueless, tasteless, penny-pinching suits mucking up my film! No more exorbitant distribution costs, gatekeepers, and bottlenecks! No more warping my work to sell popcorn!

Unfortunately, that hoped-for broadband Internet distribution Nirvana may never come to pass as a result of the Supreme Court's June 2005 decision in the *Brand X* case, and the regulatory and legislative activity it has spawned. Despite its generic and underwhelming name, *Brand X*, according to Andrew Jay Schwartzman of the Media Access Project, a public interest law firm specializing in media issues, "will, quite literally, determine the future of the Internet as we know it." It is nothing less than the opening shot in what promises to be an ongoing war between media goliaths and independent entrepreneurs, including creative media artists, over control of the future Internet. What's at stake after *Brand X* is whether consumers will retain the freedom they have today to access any website, or whether he/she will be restricted to visiting sites approved by – or in business with -- the cable or telephone company providing his/her broadband Internet access.

The outcome of this battle is especially important to creative artists. Thanks to iTunes, BitTorrent, improvements in streaming media, higher broadband penetration and speeds, and other factors, television, films, and music already are rapidly converging with and becoming "Internet." As broadband speeds accelerate, so will this trend, as even

media conglomerates worried about piracy grow more comfortable by the day using the Web to distribute their content.

Daniel Myrick, co-director and co-writer of 1999's micro-budget horror hit *The Blair Witch Project*, exemplifies the convergence of television and Internet with his recent project, *The Strand: Venice CA*, a digitally filmed episodic ensemble drama. Each "webisode" of *The Strand* can be viewed online in streaming video, downloaded for later viewing, or purchased on a DVD. The writing, directing, acting, music, production values are all professional quality, done on location on a total budget for the first several episodes of \$75,000, which vividly illustrates digital media's potential to shrink both production and distribution costs.

Says Myrick, "There are a handful of executives out there who are the gatekeepers of what gets made and seen -- or not. So we just decided to do it ourselves. You've already got the largest distribution network in the world already on your desktop, and the end-user experience is getting better every day.... For me as a creative, the webisodic format allows me to do so much exploration of characters and story without constraints on language or topic. Unlike a Fox show that needs 3 million viewers a week or it's canceled, I only need a fraction of that and I can be filming forever. At Sundance, we were the only ones out there not looking for distribution."

Has Myrick found that distribution Nirvana that independent filmmakers can use to bypass costly distribution gatekeepers?

Enter the cable and telephone companies that provide the high speed broadband Internet pipes necessary for viewing video on the Web. In a highly controversial ruling upheld by the Supreme Court last year in *Brand X*, the Federal Communications Commission (FCC) decided cable companies were exempt from “common carrier” regulation. The FCC then extended that exemption to telephone companies’ DSL and fiber broadband service.

What does this regulatory mumbo-jumbo mean? Just this: that the cable and telephone companies that provide broadband Internet service are free to control whatever content over their wires before it reaches their customer. They can discriminate among websites, or block websites entirely. They can degrade one website’s video stream in favor of another that pays them a fee for carriage. They can offer only a “proprietary” Internet of favored websites. If a customer types in a website he wants to visit, these broadband gatekeepers have the power to divert him to another website, presumably one that pays them a fee for diverting the customer. Put simply, under *Brand X*, control over Net surfing passes from the customer to the cable and telephone company that provides that customer’s broadband access to the Internet.

The power to discriminate and block is the power to control the Internet. It will change the Internet as we know it. And will these companies use – and abuse -- this power? Consider the remarks of Ed Whitacre, CEO of AT&T: *“How do you think they're going to get to customers? Through a broadband pipe. Cable companies have them. We have them. Now what they would like to do is use my pipes free, but I ain't going to let them...”*

In a competitive marketplace, Mr. Whitacre's determination to control and extract tolls from the content that flows over his company's broadband pipes wouldn't matter so much, because his customers could choose to go elsewhere. But according to the FCC's July 2005 report on High Speed Internet Access, in December 2004 approximately 94 percent of Americans subscribing to high speed Internet access received it from either their local cable or a telephone company. Today's reality is that for many consumers who want broadband, the marketplace is not competitive.

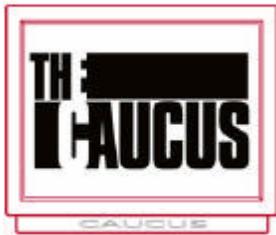
The implications of *Brand X* can hardly be overstated. FCC Commissioner Michael J. Copps observes, *“This Internet may be dying. It may be dying because entrenched interests are positioning themselves to control the Internet's choke-points and they are lobbying the FCC to aid and abet them... Let this vision prevail and the winners will be entrenched interests with far greater power than they have today to design and control the Internet of the future.”*

Recently, the FCC issued a “Policy Statement” expressing a preference for “Net Neutrality” – open, “neutral” broadband networks that give consumers the freedom to surf anywhere on the Internet. But many criticize the Statement as unenforceable and full of loopholes that would not prevent cable or phone companies from exercising gatekeeper power over the Internet.

Meanwhile, cable and telco-supported legislation working its way through both the House and Senate would emasculate these already insufficient FCC Net Neutrality provisions. Many advocates, including the Center for Creative Voices in Media, are calling on both the FCC and Congress to guarantee the right of Americans to access the entire Internet over broadband.

Instead of the broadband Internet being independent filmmakers’ answered prayer to the difficulties of distribution, as so many like Dan Myrick dreamed, *Brand X* may simply mean they have a new Internet distribution partner: their friendly neighborhood cable and telephone companies. While the distribution middleman may be wearing a different suit, he may be more powerful than ever.

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## *For Television Producers, Writers & Directors*

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February 27, 2006

The Honorable Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington DC 20554

Dear Commissioner Copps,

The Caucus for Television Producers, Writers & Directors respectfully asks that you join us in support of "Net Neutrality" - the principle that Internet users should be able to access any web content or use any applications they choose, without restrictions or limitations imposed by an Internet service provider, to preserve the free, open and nondiscriminatory Internet of today.

You may be wondering why a group of independent producers, writers and directors would take a position on this issue instead of spending our time just writing and producing stories. However, if you take a moment to read the story of what has happened in network television over the last decade, you will find the answer.

Once upon a time there was a vital, independent creative community thriving because our creative ideas and the guarantees of authorship were protected by government regulation from the total control of media companies. This was the case for years, and during this time span independents produced most of the best shows in the history of television. That was until, through tremendous pressure from network lobbyists, the FCC overturned two critical media rules in 1993 and the Telecommunications Act of 1996 was signed by President Clinton. Despite their initial claims to the contrary, networks immediately began merging with studios and cable companies allied with internet service providers, giving these new media conglomerates unprecedented power and control of access to the national audience. The American model of a free and open television industry changed drastically and, as a result, vital independent, entrepreneurial companies were wiped out in the process.

Absent regulatory oversight, self-dealing replaced unfettered competition and ultimately stifled creativity and crushed entrepreneurial innovation and spirit in the television industry. The Caucus believes that if the large telecom and cable giants are allowed to have their way, the free and open Internet of today will suffer the same fate,

and as we move closer to Internet delivery of TV programming, this would surely destroy the promise of a resurrection of independent creators via this new medium. Like the networks that monopolize the television industry, the telecom and cable giants also seek to control both the content and delivery of the content to the public. If this happens, the Internet will no longer be the "new frontier" and way for America's next generation of story tellers to access the audiences they hope to reach. Only stories created or owned by the corporations who control the Internet will make it through to the consumers who, although paying more, will no longer have the freedom and choice enjoyed on the Internet today.

Those representing telephone and cable companies promise that they would never - *ever* - interfere with the public's ability to access any lawful information on the Internet. This is déjà vu of the promises we heard made by the television network executives and studio heads before the laws were changed and the mergers began, not to mention the fact that, already, these companies are "interfering". Just one example is that Patrick Pfeffer, chief network architect for Detecon, was quoted as saying, "You see Comcast in Philadelphia locking out the competition by not allowing them to re-transmit the local sports programs." And this is only the tip of the ice-berg.

Without the principles of Net Neutrality firmly imbedded as law, the continued existence of a free and open Internet is in grave danger. That is because in 2002 the FCC upended the forty year commitment to open access and nondiscrimination that made it possible for "innovation without permission" and the development of the World Wide Web, Yahoo, Google and Amazon. Companies that built and maintained the Internet pipes have been regulated like telephone companies, and they are not permitted to discriminate among content providers or Internet applications. Now that these rules have been established, the door is open for telecom and cable giants to utilize most of the bandwidth for their own content, charge other content providers a premium for quality access to their consumers (or, in our case, audience) and leave little space for independents and startup companies. The only companies that could afford to buy premium access would be those who have already succeeded and the next generation of Yahoos and Googles would be barred from even entering the marketplace along with those independent creative voices already barred from network television.

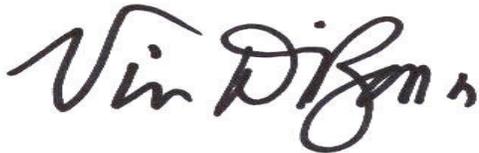
As Vonage head Jeffrey Citron put it, "At the root, the network neutrality debate is about who will control innovation and competition on the Internet." Citron added, "Imagine if the electric company could dictate which television or toaster you could plug into the wall.... What would happen tomorrow if one of the network operators decided to block Google, Vonage, Yahoo or Amazon? What would be the legal recourse? There is nothing in the statute or regulation today that protects consumers or Internet application providers from potential network discrimination."

Letting the marketplace develop without government regulation and trusting that the telecom and cable companies won't block access to content over the public Internet would be a naïve and dangerous scenario.

Commissioner Michael J. Copps  
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The genius of the Internet is its promise of freedom and unlimited accessibility. As independent content providers and entrepreneurs we urge you to keep the Internet free and open. But, also as consumers and, finally, as citizens of this great nation, we say keep the Internet free and open to protect our last truly diverse and democratic medium.

Sincerely yours,



Vin Di Bona,  
Chair of The Caucus for Television Producers, Writers & Directors



Gary Grossman  
Chair of the Governmental Affairs Committee

VDB/GG/psr