

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
Broadband Industry Practices)	WC Docket No. 07-52
)	
Further Inquiry Into Two)	DA 10-1667
Under-Developed Issues in the)	
Open Internet Proceeding)	

COMMENTS OF THE WRITERS GUILD OF AMERICA, WEST, INC.

David J. Young
Executive Director
Writers Guild of America, West
7000 West Third Street
Los Angeles, CA 90048
(323) 782-4689

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Introduction

The Writers Guild of America, West (WGAW) is pleased to submit the following comments in response to the Federal Communications Commission's (FCC) September 1, 2010 Public Notice, DA 10-1667, seeking additional comment on open Internet protections in relation to specialized services and wireless Internet access services.

WGAW is a labor organization representing more than 8,000 professional writers working in film, television and new media. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East.

Throughout this proceeding, WGAW has stated its strong support for the codification of rules preserving net neutrality and ensuring Internet users have the freedom to access the lawful content, services, and applications of their choice, without discrimination by Internet service providers (ISPs).¹ The WGAW continues to support this position and believes achieving meaningful net neutrality standards for the Internet must address anticompetitive attempts to limit such standards. Some of the key elements of the Verizon – Google proposal on net neutrality, including exemption of specialized services and wireless Internet access from net neutrality provisions, could seriously diminish the creative and economic potential of an open Internet. We take this opportunity to address concerns with the impact these net neutrality exemptions could have on an open Internet.

¹ See Reply Comments of the Writers Guild of America, West, In the Matter of a National Broadband Plan For Our Future, GN Docket No. 09-51 and Reply Comments of the Writers Guild of America, West, In the Matter of Preserving the Open Internet Broadband Industry Practices, GN Docket No. 09-191, WC Docket No. 07-52.

Specialized Services Must Not Be Used to Circumvent Net Neutrality or Foreclose Competitive Opportunities

Since its inception, the Internet has transformed the way consumers access and interact with news, information, and entertainment content. Of particular importance to members of the WGAW is the rapid evolution of the Internet as a video distribution platform. In a few short years, watching video over the Internet has shifted from a novel idea to a mainstream habit. Consumers can watch television shows and feature films as well as original Internet video content on hundreds, if not thousands, of Web sites. In addition, the development of Internet-connected set-top boxes like Apple TV, Netflix's Roku box, Microsoft Xbox and Sony Playstation allow consumers to watch Internet video content on a television set. While none of this activity currently rivals the size of the market for traditional television content, the expansion of distribution opportunities is positive for content creators and the growth of viewing options is a boon to consumers. For content creators, an open Internet offers low barriers to entry and the ability to distribute creative works directly to consumers, bypassing the media conglomerates that decide what stories are told in television and film. Consumers are on the receiving end of this abundance of new, diverse content made possible by an open Internet. Further, unfiltered access to diverse news and opinions, made possibly by net neutrality, strengthens the democratic discourse of our nation.

It is evident that a vibrant and competitive online content distribution market is developing. It is not an accident that all of these developments have occurred during a period of *de facto* net neutrality. The WGAW is concerned that current proposals which create exemptions to an open Internet, through specialized services or novel business arrangements, are motivated by the

desire of traditional media and cable companies to thwart the development of meaningful competition.

In a previous filing the WGAW stated its concern regarding a Motion Picture Association of America (MPAA) proposal to “make clear that content owners will have the flexibility to enter into innovative business arrangements with broadband providers.”² We noted that while it is unclear what kind of “innovative” arrangements the MPAA is talking about, we are concerned that, under the guise of providing high quality of service to consumers, the dominant media companies seek regulatory permission to create a preferential lane for Internet traffic. Such a proposal could amount to a blanket dispensation from net neutrality rules. We strongly believe if the FCC enacts net neutrality rules for broadband Internet access services but allows ISPs to designate content and services they choose as specialized services, companies such as those represented by the MPAA may use this designation as a means of circumventing net neutrality rules and gaining preferential treatment. The media companies represented by the MPAA currently control the traditional entertainment markets of film and television and seek to achieve a similar level of control of entertainment on this new platform. By leveraging existing relationships with multichannel video programming distributors (MVDPs), which also offer Internet services to consumers, these companies could use the designation of specialized services to gain control of Internet content distribution. Traditional media companies and MVPDs with cable and Internet access businesses have both the means and the incentive to use specialized services to advance their business interests, at the expense of competition.

² See Comments of The Motion Picture Association of America, In the Matter of a Framework for Broadband Internet Services, GN Docket No. 10-127, p. 6.

The WGAW has commented extensively on what an open Internet means for content creators. Through deregulation and vertical integration over the past several decades, our nation's traditional news and entertainment sources have become consolidated into the hands of a few companies, effectively eliminating independent voices from mainstream media. The Internet represents the opportunity to reintroduce independent voices *and* increase competition in content production and distribution. Without gatekeepers such as broadcast and cable networks, which overwhelmingly air content produced by vertically integrated studios, content creators can use an open Internet to reach consumers directly. The ability to invoke the designation of a specialized service may prevent society from realizing the full potential an open Internet offers for the growth of independent and diverse news, information and entertainment.

To prevent any abuse of market power, the FCC must carefully weigh the costs and benefits of allowing ISPs to offer specialized services. We believe the Commission should limit the development of specialized services, with special attention on proposals seeking to transition services currently offered through broadband Internet access. Further, we believe if an ISP intends to designate some service it offers, such as online video, as a specialized service, the ISP should be required to treat all other online video services similarly. Such a rule would preserve a competitive market for services. We support robust development of policy approaches addressing concerns of abuse of specialized services. Of the suggested approaches, we believe non-exclusivity in specialized services and limits on specialized service offerings will be the most effective in protecting competition. We agree with Commission suggestions to require the disclosure of information regarding specialized service offerings and prohibition of marketing specialized services as broadband Internet access. These requirements would further protect consumers from abuse.

Net Neutrality Rules Must Apply to Wireless Internet Access

The open Internet principles, as proposed by this Commission, must be applied to both wireline and wireless Internet access. The WGAW agrees with the comments filed by the Open Internet Coalition regarding application of net neutrality rules to wireless.³ The FCC should establish a regulatory framework that is consistent across platforms offering similar services. While wireless carriers may face capacity constraints that differ from wireline providers, the application of a reasonable network management standard will give providers the flexibility to address these differences. To prevent anticompetitive behavior, it is imperative the Commission requires wireless providers to operate under a nondiscrimination standard when engaging in network management. The FCC should not authorize the creation of a second class of Internet access, where consumers are not guaranteed the right to access the lawful content, services and applications of their choice.

Recent developments in the wireless market highlight the critical importance of application of net neutrality standards across all Internet access platforms. Since the introduction of the iPhone in 2007, Internet-connected wireless devices have transformed the mobile phone market. With this year's debut of the iPad and announcements by Research In Motion, Samsung, Toshiba and Dell to offer similar tablet PCs, the device offerings of both Internet access platforms are converging, providing further evidence of the need for a consistent regulatory approach. Apple's iPad is the fastest selling electronic device ever, with 3.27 million units sold in the second quarter of 2010 alone.⁴ These new product offerings are rapidly transforming the notion of mobile devices and altering the way many consumers access the Internet. Devices such

³ See Comments of the Open Internet Coalition, In the Matter of Preserving the Open Internet, Broadband Industry Practices, GN Docket No. 09-191, WC Docket No. 07-52, January 14, 2010, p 36-39.

⁴Slattery, Brennon, "iPads, Tablets Cannibalizing Laptop, Netbook Sales," *PC World*, October 6, 2010. http://www.pcworld.com/article/207078/ipad_tablets_cannibalizing_laptop_netbook_sales.html?tk=hp_new.

as the iPad can connect to the Internet through broadband or wireless Internet access services. Consumers should be guaranteed equal access to content regardless of how they choose to connect to the Internet.

Conclusion

Protecting an open Internet is vital to the health of our society and the FCC's mandate to protect the public interest should guide the agency in preserving net neutrality. The WGAW unequivocally supports the six principles outlined in the FCC's Notice of Proposed Rulemaking (NPRM), Preserving the Open Internet, GN Docket No. 09-191, guaranteeing Internet users the freedom to access the lawful content, services and applications of their choice, without discrimination by ISPs. We believe the application of these rules will allow content creators and consumers to realize the creative and economic benefit of a competitive market. The FCC must extend these rules to wireless Internet access services as well. Such action will benefit consumers and the equal treatment of platforms will increase competition in the provision of Internet access. To ensure the effectiveness of net neutrality rules, the FCC must carefully monitor the development of specialized services to prevent the creation of a preferential lane of Internet traffic.