

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
)
Preserving the Open Internet) GN Docket No. 09-191
)
Broadband Industry Practices)

**Comments of
Future of Music Coalition**

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I. INTRODUCTION

The internet has ushered in an era of expanded connectivity and access to information for Americans of all backgrounds, including musicians. The increased availability of and demand for broadband has inspired rapid growth of the worldwide web and its accompanying innovations. As technologies engendered by broadband continue to evolve and mature, there is tremendous opportunity for creative entrepreneurs — including musicians — to participate in the expressive and economic rewards of the Information Age. To fully enjoy these benefits, however, it is essential that the internet’s underlying structures remain open to all users.

In these comments, Future of Music Coalition (FMC) will again make the case that the open internet is crucial to musicians, and that prioritization of content based on business arrangements between Internet Service Providers and large corporations would negatively impact the ability of independent creators to compete in a legitimate digital music marketplace. Musician perspectives on technology and business are hardly monolithic, yet FMC has observed tremendous support in the artist community for preserving open internet structures and expanding broadband to more American communities. Without action from the FCC, both outcomes are in doubt. Musicians of all backgrounds require a level online playing field that lets them compete alongside the biggest companies while providing fans with access to a broad array of high-quality, lawful content. The FCC should move forward with its proceeding to ensure that this marketplace can benefit from clear rules of the road and growth inspired by continued innovation.

II. MUSICIANS SUPPORT NET NEUTRALITY

Early in the decade, the internet's open structures encouraged innovation and rewarded new experiments in creativity and entrepreneurship. In a relatively short time frame, there was the emergence of multiple platforms for the lawful discovery of music, from download stores like iTunes, CD Baby and eMusic to "on-demand" streaming services like Rhapsody, to webcasters like Pandora and Last.fm, to tour-oriented sites like Jambase and media outlets like Pitchfork and NewMusicBox. Suddenly, listeners had access to music and information about not just the limited acts served by commercial terrestrial radio, but also niche music from bluegrass to zydeco to classical to avant-garde jazz.

A diverse community of artists and independent labels has recognized that open internet structures are critical piece to the development of a legitimate music marketplace that compensates creators and rewards fans with access to a robust array of lawful content. Thousands of musicians of at all stages of their careers have demonstrated their support of net neutrality through FMC's Rock the Net campaign, which includes founding artists such as R.E.M., Pearl Jam, OK Go, Preservation Hall Jazz Band, Kronos Quartet and thousands more. Many of these artists — as well as a diverse assortment of other musicians and creators — filed comments in this very docket, each supporting the establishment of clear and enforceable rules to preserve the open internet.

Preserving open internet structures and expanding broadband to more American

communities will ultimately fortify the legitimate digital marketplace, as more consumers discover fully-licensed services that provide lawful access to a broad array of high-quality content, regardless of how or where this content is consumed. As mobile broadband becomes the dominant form of access, it is imperative that creative entrepreneurs and other innovators retain the ability to access and utilize this platform for America's broader cultural and economic good.

III. MANAGED SERVICES

Much has been made recently about so-called "managed services," which would allow prioritization of content in certain instances. FMC has no objection to the general concept, provided that such arrangements are a) transparent, and b) do not favor one type of content over another based on business agreements between gatekeepers. The internet owes its phenomenal growth to the ability for anyone to use its open platforms to innovate and inspire. Future growth is likewise dependent on policies that will determine who has access to this crucial technology and under what conditions. We recognize that end-user experience may entail treating certain types of traffic differently based on the particular nature of said data, such as is the case with VOIP protocol or transmissions pertaining to public safety or security. Yet we are firmly opposed to allowing ISPs to pick favorites with regard to creative expression, innovation or commerce.

Musicians are not just America's creative ambassadors; they are also agents of innovation and entrepreneurship. It is vital that they are afforded the same opportunities online as anyone else.

In today's music business, there is tremendous concern about investment in the creation of art versus the return on said investment. The collapse of the major label-dominated structures has created uncertainty around the establishment of sustainable business models that allow musicians to grow and develop. Yet there is reason to be encouraged by the transformation of the industry. There are many examples of artists who use technology to attract not only audiences, but also investment. Bands such as OK Go have leveraged their phenomenal online popularity into funding for their music and videos. Arcade Fire has become a global phenomenon with scant commercial radio play, and recently broadcast a concert from Madison Square Garden that attracted millions of viewers on YouTube. Artists such as Erin McKeown perform house concerts via webcast and take the show on the road, selling "virtual seats" to viewers at home via her website.

We have every reason to believe that the internet will continue to bring innovations that musicians can use to make connections with fans and further their careers. Yet if these innovations are only available for a select few, creators and the public will ultimately suffer. Without a clear definition of "managed services," or if such services are so broad as to render nondiscrimination principles irrelevant, audiences and dollars may migrate to a "separate pipe" where premium or novel delivery arrangements are available only to the biggest players. A lack of investment and innovation on the so-called "public internet"

could mean that services that could help repair a battered industry may never come into existence.

As we have stated in previous filings in this docket, FMC firmly believes in protecting the rights of creators and copyright owners in the digital realm. Yet we do not presume that the FCC's proposed rules will in any way hinder efforts to do so. We are encouraged that this rulemaking only applies to the free flow of *lawful* content and online, which means that the private market — and ISPs — are given the latitude to explore methods to combat the illegal distribution of unauthorized content, so long as these methods do not block, hinder, delay or disturb the transfer of legitimate content.

IV. NONDISCRIMINATION AND MOBILE BROADBAND

It is encouraging that there is growing consensus around establishing basic nondiscrimination principles on the wireline internet among policymakers, public interest advocates, innovators, entrepreneurs and creators. For all of the reasons we've thus far articulated, the concept of a level technological playing field is crucial to the continued growth and participatory power of the web. It seems logical, then, that this principle be extended to the mobile realm, particularly as new devices and technologies come into existence that will allow for even greater connectivity and innovation.

FMC recognizes that mobile data access is different than wireline broadband delivery. There are legitimate questions about spectrum availability and making sure that the incredible demand for mobile broadband can be met, not only in our present, but also in

the future. We are encouraged by current efforts to examine America's spectrum resources and make smart decisions about allocation in order to unleash next-generation technologies that could make more efficient use of spectrum and therefore expand opportunities in the mobile marketplace for both licensed and unlicensed use.

As music and other forms of content are increasingly accessed on mobile devices, it is important to recognize the contributions of independent creators to the current digital marketplace. Smartphones and tablet devices are fast becoming primary access points, and musicians — particularly independent artists — must enjoy the same access to audiences as they do through wireline technologies. Currently, even unaffiliated musicians can be heard via mobile applications such as MOG, Rhapsody, Napster and others. If these platforms were somehow forced to only allow content from large corporate providers due to anticompetitive or discriminatory practices by providers, it could foreclose an entire sector (which comprises some 30 percent of domestic music released) from a still-developing marketplace. Therefore, FMC suggests that basic principles to preserve open access be extended to the mobile space.

V. CONCLUSION

The FCC has the responsibility to enact policies that ensure the internet remains a powerful engine for innovation, free expression and economic growth. In establishing clear and enforceable net neutrality rules, the Commission will safeguard the internet and its generative innovations for the users of tomorrow — musicians and other artists among

them.

As we articulated in these as well as previous comments, musicians are among those who benefit most from the open structures of the web. While the creative community should remain open to new techniques for protecting intellectual property online, there must be an equal commitment to preserving those attributes that have made the internet the most significant communications platform in human history. Culture and democracy depend on the exchange of ideas, and innovation and commerce likewise benefit.

We thank the FCC for the opportunity to offer our perspectives to this important matter. FMC hopes that the Commission will consider the views of musicians as it establishes formal rules to preserve internet access across platforms.