

June 30, 2014

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

*Re: Protecting and Promoting the Open Internet, GN Docket No. 14-28, Amendment of the Commission's Rules Related to Retransmission Consent, MB Docket No. 10-71; Applications of Comcast Corp. and Time Warner Cable Inc. For Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-57*

Dear Ms. Dortch:

On May 30, 2014, Professor Robert Frieden made a presentation summarizing the main points of an academic paper at the Experts' Workshop on The Future of Broadband Regulation co-hosted by the FCC and the Institute for Information Policy at the Pennsylvania State University. The paper was entitled *Net Bias and the Treatment of "Mission Critical" Bits*. Professor Frieden submitted an *ex parte* filing into the above-captioned dockets on June 6, 2014. The discussant for the paper was Prof. Matthew Hindman of George Washington University; there was also some spontaneous discussion from Mr. Ryland Sherman, a graduate student at Indiana University. The purpose of the present filing is to place the comments of Prof. Hindman and Mr. Sherman into the record.

The following employees of the Commission attended all, or part of the Workshop:

Allison Baker, Office of Strategic Planning (OSP); Time Brennan, Chief Economist (also OSP); Amanda Burkett, OSP; Ellen Burton, Wireline Competition Bureau (WCB); Robert Cannon, OSP; Jonathan Chambers, Chief, OSP; Caitlin Cronin, Office of General Counsel; Soumitra Das, WCB; Jack Erb, OSP; Chris Heitzig, OSP; Sherille Ismail, OSP; Walt Johnston, Office of Engineering and Technology (OET); Padma Krishnaswamy, OET; William Layton, WCB; Wayne Leighton, Wireline Telecommunications Bureau (WTB); Jonathan Levy, Deputy Chief Economist (also OSP); Omar Nayeem, OSP; Eric Ralph, Chief Economist, WCB; Jon Sallet, General Counsel; Paroma Sanyal, WTB; Henning Schulzrinne, Chief Technologist (also OSP); Susan Singer, Chief

Economist, WTB; Gigi Sohn, Office of the Chairman; Tom Spavins, Enforcement Bureau; Walt Strack, Chief Economist, International Bureau (IB); Matt Warner, WCB; Rodger Woock, WCB; and Irene Wu, IB.

The purpose of the workshop was to promote analysis on the future of broadband regulation through a series of academic presentations and discussions between scholars and Commission staff.

As detailed in his own *ex parte* presentation, Prof. Frieden assesses whether and how Internet Service Providers (“ISPs”) can satisfy consumers’ interest in their operation as open and nondiscriminatory conduits, while also ensuring the timely and high quality transmission of video content. He provides a legal analysis confirming that ISPs can provide higher quality of service to promote the likelihood for speedy delivery of video content bitstreams without degradation caused by congestion and other factors.

Prof. Hindman’s remarks are attached to this letter. Mr. Sherman’s comments are directed to the portion of the Frieden presentation which addresses the question of whether the retransmission consent negotiation process between television broadcast licensees and cable television operators provides a useful model for analyzing the appropriate level of regulatory oversight of negotiations between content providers and Internet Service Providers. In particular, Mr. Sherman comments on instances in which broadcasters have, during retransmission consent disputes, blocked pay television subscriber access to the broadcasters’ content online.

Specifically, Mr. Sherman notes the following:

Viacom has in fact cut online video service during the licensing fee negotiations with several of the MVPDs. I became aware of it when they cut Daily Show’s online offerings during summer/early fall of 2012, when the blackout reached me as a Comcast internet service customer. I thought the negotiations were with Time Warner Cable, but the press reported DirecTV, which better explains a potential nationwide blackout. The Daily Show mocked the situation: <http://thedailyshow.cc.com/videos/li3ubo/tv-banned>

Fox’s situation is a little different. They give earlier access to Fox content through Hulu only to the subscribers of MVPDs who have reached an agreement with them or potentially to Hulu Plus subscribers. Fox’s Policy Statement: [www.fox.com/watchnewepisodes](http://www.fox.com/watchnewepisodes) Hulu’s Policy Explanation: <http://www.hulu.com/support/article/20362238#1>

Additionally, some of the cable networks with their own online video portals have only licensed their authentication service to a smaller subset of MVPDs, suggesting that they may also include the verification opportunity as one of the extra terms with MVPDs during the licensing negotiation process. With nearly all subscribers in the US having potential access to the HBO-Go portal through their MVPD subscriptions, the decisions of the MVPDs and other cable networks do not depend on whether the MVPD is equipped to link up its subscriber database, since they’re nearly all linked up to HBO’s site.

I found that FCC Chairman Tom Wheeler seems to have recently mentioned the idea of strategic blackouts to the House Communications and Technology Subcommittee. <http://www.tvnewscheck.com/article/76465/wheeler-concerned-over-online-blackouts>

The summary of Mr. Sherman's points is based on contemporaneous notes taken by FCC staff and a follow-up email from Mr. Sherman.

Respectfully submitted,

Jonathan D. Levy

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