Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28
	)	
	)	
	)	

COMMENTS OF THE INDEPENDENT FILM & TELEVISION ALLIANCE

The Independent Film & Television Alliance respectfully submits the following comments in response to the Federal Communications Commission's May 15, 2014 Notice of Proposed Rulemaking in the above-referenced proceeding.

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TABLE OF CONTENTS

PAGE

I. INTRODUCTION

The Independent Film & Television Alliance ("IFTA") is the trade association for the independent film and television industry worldwide. IFTA represents more than 145 Member Companies from 21 countries, consisting of the world's foremost independent production and distribution companies, sales agents, television companies and financial institutions engaged in film finance.[1] Collectively, IFTA Members produce over 400 feature films and countless hours of programming annually with U.S. sales revenues of approximately $2.16 billion.[2] IFTA also produces the American Film Market, the largest motion picture trade event in the world, at which over $800 million in license fees are negotiated annually.

During the last twelve years, independent production companies have produced the vast majority of all U.S. feature films.[3] For more than 30 years, IFTA Members have produced, distributed and financed many of the world's most prominent and critically acclaimed films, 21 of which have won the Academy Award® for "Best Picture," including *12 Years a Slave*, *The Artist*, *The King's Speech*, *The Hurt Locker*, *Slumdog Millionaire*, *No Country for Old Men*, *Crash*, *Million Dollar Baby*, *Lord of the Rings: The Return of the King*, *Dances with Wolves*, and *Gandhi*.

Independent film and television production depends upon the ability to secure financing on a picture-by-picture or program-by-program basis and on the ability to provide collateral for such financing through pre-production distribution agreements. In most circumstances, no independent film production can proceed unless and until commercial distribution is secured. Only a *permanently* open Internet will ensure that independent content producers, as well as independent online video distributors, can compete fairly with other content producers and distributors, especially those affiliated with broadband providers. This can only occur if broadband providers are required by regulation to refrain from discriminatory or commercially unreasonable practices.

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[1] IFTA defines "independent" producers and distributors as those companies and individuals apart from the major studios that assume the majority (more than 50%) of the financial risk for production of a film or television program and control its exploitation in the majority of the world. A list of IFTA Members can be found at www.ifta-online.org.

[2] 2013 U.S. sales revenue based upon linear regression analysis, *IFTA Membership Sales Survey results 2001 - 2012*.

[3] *See* Appendix A: *U.S. Production 2002 – 2013: Independent v. Major*.

In 2010, IFTA filed comments in response to the FCC's Open Internet Notice of Proposed Rulemaking[4] as well as the FCC's Notice of Further Inquiry in the same proceeding.[5] In those comments, IFTA outlined its concerns that the patterns of vertical integration in traditional media would be replicated in the emerging online marketplace unless regulatory action was taken. In the four years since, the consolidation of the marketplace with large conglomerates owning or controlling broadband networks, along with television networks and channels, production units, and content suppliers, has only expanded. The Comcast-NBCUniversal merger accelerated the consolidation trend,[6] and recently proposed mergers (*e.g.*, Comcast with Time Warner Cable[7] and AT&T with DirecTV[8]) would continue the consolidation and expand the ability and incentives for broadband Internet providers to engage in preferential treatment of affiliated services and content. This will shut out or restrict consumer access to independently supplied content and place independently owned online video distribution services and content at a severe disadvantage.

The principles of transparency, no-blocking and non-discrimination are critical in preventing broadband providers from disadvantaging lawful independent content by favoring of self-owned or affiliated content, services and applications. Any such conduct should be prohibited. Moreover, any individualized arrangements for priority treatment between broadband providers and third-parties should be prohibited since these arrangements are likely to prevent new innovative services from even entering into competition with existing offerings.

The proposed FCC review procedures for such arrangements (both through complaint processes and other forms of dispute resolution[9] or via an advance factor-based review of potentially discriminatory arrangements),[10] cannot provide effective protections. The information necessary to assess how such arrangements would affect

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[4] IFTA Comments to *Preserving the Open Internet Broadband Industry Practices*, Notice of Proposed Rulemaking, FCC 09-93, GN Docket No. 09-191, WC Docket No. 07-52 (filed Jan. 4, 2010), *currently available at* http://www.ifta-online.org/sites/default/files/IFTA%20Comments%20January%2014,%202010%20-%20FINAL.pdf.

[5] IFTA Comments to *Further Inquiry into Two Underdeveloped Issues in the Open Internet Proceeding*, Notice of Proposed Rulemaking, GN Docket No. 09-191, WC Docket No. 07-52 (filed Oct. 12, 2010), *available at* http://apps.fcc.gov/ecfs/document/view?id=7020916598.

[6] See Appendix B: *Media Consolidation in the U.S.: Listing of Conglomerates' Holdings*.

[7] See Appendix C: *Comcast-Time Warner Cable Proposed Merger Consolidation.*

[8] See Appendix D: *AT&T-DirecTV Proposed Merger Consolidation.*

[9] *Protecting and Promoting the Open Internet*, FCC Notice of Proposed Rulemaking, FCC 14-61, GN Docket No. 14-28, Para. 172-176 (adopted May 15, 2014) ("*NPRM*").

[10] *NPRM* Para. 122-136.

other customers and consumers and what barriers may be created for yet-to-be-launched, innovative applications is uniquely in the hands of the broadband providers themselves. Those most likely to be harmed – entrepreneurs new to the marketplace, small ventures and consumers – are the least likely to be able to pursue a remedy through these regulatory processes. If these arrangements are allowed, the full and rapid development of a vibrant online marketplace will be restricted to the public's detriment.

II. BACKGROUND

IFTA's approach to the issues before the Commission and our response to the regulatory solutions proposed in the Commission's May 15, 2014 Notice of Proposed Rulemaking ("NPRM") are based on the history of the video marketplace in the U.S. and on the evolution of the online marketplace for video programming that has taken place in the past four years. Over the past 20 years, access to traditional distribution platforms has narrowed as regulatory restraints against vertical integration between program producers and broadcast and cable networks have been eased or have disappeared altogether. In the past few years, opportunities to generate financial returns on multi-million dollar investments in independent productions have been developed principally from "video on demand" ("VOD") services. VOD may be defined generally to include the right to offer programs on demand to consumers/purchasers for a one-off transaction fee or on a subscription basis. VOD is distributed on broadband networks through services offered by the broadband providers themselves (e.g., Time Warner On Demand) as well as by edge providers such as Netflix that rely upon the broadband networks for access to customers.

VOD offered via broadband and streamed to the consumer has been an increasing revenue source for independent producers. However, that market is dominated by programming owned by or affiliated with the vertically-integrated large media conglomerates. Notwithstanding claims to the contrary, the major VOD systems (including Comcast XFINITY, et al.) do *not* dedicate *unlimited* capacity to VOD offerings. They offer consumers only a small number of titles at any given time and retain titles on its servers for only a few months. Moreover, the program "slots" that do exist are allocated routinely to films and programs that have had significant prior exposure in the cinemas or on prominent television channels – traditional platforms that independents already find difficult to access.

Further, while independents routinely produce and license programs on a picture-by-picture basis, the major VOD services refuse to accept programs on this basis. The major services (especially those offered by the broadband providers themselves) fill their slots through reliance on affiliated entities[11] or by acquiring packages of multiple titles through third-party aggregators. These third-party aggregators select and bundle content and re-license to the online distribution services, thus allowing the services to avoid the transactional costs of program acquisition, intake and accounting. These aggregators act as "middlemen," selecting only a very small number of titles for re-license to the VOD platforms and taking a significant portion of the producers' share of any revenue generated for performing the function. Some third-party aggregators are even controlled by or affiliated with the broadband providers, such as the co-ownership of iN DEMAND (one of the largest aggregators of content in the world),[12] which is jointly owned by Comcast and Time Warner Cable along with Cox Communications and TWC spin-off Bright House Networks.[13]

Increasingly, independents must look for opportunities through smaller video services that cultivate specific communities of interest as audiences. These services are themselves limited in capacity and vulnerable to any disadvantageous terms dictated by the broadband providers. As the market currently stands, conglomerates possess disproportionate market leverage and quasi-monopolistic power to control the means and conditions under which independent content gets to the consumer. These broadband providers cannot be relied upon to self-police and to unilaterally determine their compliance with open Internet principles.

It is in this environment that we seek strong regulation by the Commission to ensure a *permanently* open Internet for content providers and distributors who must rely on broadband providers to reach the public. It is a market that requires regulation to prevent and prohibit broadband providers from reflexively engaging in inherently discriminatory and commercially unreasonable practices.

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[11] For example, Comcast's ownership of content provider NBCUniversal, which owns edge provider Hulu, and Comcast's *exclusive* licensing deal with major studio 21st Century Fox Inc. for broadcast and cable shows to appear on Comcast's XFINITY on-demand service. Shalini Ramachandran, The Wall Street Journal, *Cable Fights to Feed 'Binge' TV Viewers* (Sept. 20, 2013) *available at* http://online.wsj.com/news/articles/SB10001424127887324807704579083170996190590.

[12] *See* "About iN DEMAND" at http://www.indemand.com/about/.

[13] *See* "About iN DEMAND – Ownership" at http://www.indemand.com/business/business-overview/about/ownership.php.

III. THE MARKETPLACE REQUIRES *PERMANENT* OPEN INTERNET ACCESS ASSURED BY REGULATION

The Commission seeks comments on the potential for, and development of, new business arrangements between broadband providers and edge providers and on whether some types of arrangements (or aspects of such arrangements) raise greater concerns about Internet openness than others.[14] In order to promote innovation, economic growth and competition in an increasingly digital marketplace, the Commission must adopt rules that adhere to the open Internet principles of transparency, no-blocking and non-discrimination. Additionally, IFTA urges the prohibition of any type of "priority" arrangements (either for the "on ramp" or in the "last mile" connections to the public). Such arrangements slant the playing field in favor of the broadband provider and should be prohibited outright under the Commission's new open Internet rules.

A. Broadband Providers Have the Incentive and Ability to Limit the Open Internet

The Commission asks for comment on changes in the marketplace since the 2010 *Open Internet Order* was adopted and how such changes have affected broadband providers' incentives and economic ability to engage in practices that would limit Internet openness.[15] Examination of the lack of competition in the broadband network industry in terms of both broadband providers and their VOD offerings shows that in the absence of a clear regulatory framework, and in the face of increasing consolidation and partnerships amongst broadband providers and major studio content providers, [16] the Internet and opportunities to distribute lawful content to the public will not remain "open." In the absence of strong deterrents and consequences for discrimination, independent producers and the public foresee an Internet that, like television and cable before it, reflects only the business and profit interests of the large broadband providers rather than the public's interest in diverse programming and independents' interest in opportunities to compete for U.S. audiences.

The advantage to the broadband provider is clearly to protect its commercial interests in its content offerings and those that benefit the conglomerates' other media holdings. <u>Collectively, the top 4 broadband networks – Comcast (24.6%), ATT (19.5%), Verizon (10.7%), and Time Warner Cable (13.8%) – comprise nearly 69%</u>

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[14] *NPRM* Para. 38.
[15] *NPRM* Para. 39-40.
[16] See Appendix E: *Examples of Commonly Owned or Affiliated Broadband Providers and Content Providers*.

of the U.S. broadband market with over 57 million subscribers. For most U.S. consumers, broadband network competition is narrowly limited to a single cable company and a single wireline telephony company. Further, wireless and satellite broadband services are generally slower and may be more expensive or otherwise disadvantaged and therefore not an equivalent competitive alternative for the consumer. This is reflected in the respective market shares.

The same four broadband network providers also account for the top four slots of the Multi-channel Video Programming Distributor ("MVPD") market share.[17] As outlined in Appendix B (*Media Consolidation in the U.S.*), these broadband providers have built-in relationships and commercial interests with content suppliers, television and cable channels and networks, leaving little room for independent content for consumers. Independent producers are rightly concerned that the entire playing field is already heavily tilted in favor of the broadband providers, their video programming services and affiliated content.

These conglomerates increasingly are acquiring a flow of content for their distribution platforms through merger, acquisition or exclusive partnerships (or "output deals") with other media conglomerates. The 2010 Comcast-NBCUniversal merger illustrates that the future for large broadband providers may be in the content they are able to secure and control and the ability to leverage the value of that content across multiple platforms (including broadcast, cable and the Internet itself).[18] These conglomerates have strong incentive to act as "gatekeepers" and to discriminate against other content either *overtly* through priority arrangements if allowed, or *covertly* under the guise of "network management" by according preferential carriage to their own video program services.

The Commission (and the Department of Justice) are addressing the question of whether or not to approve the Comcast-Time Warner Cable and AT&T-DirecTV mergers. In this proceeding, the Commission must take into account the virtual inevitability that broadband providers will seek to acquire and then to control the flow of content

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[17] See Appendix F: *Top 4 Broadband Provider Market Share Analysis: Broadband Share / Multi-Channel Video Programming Distributor Share.*

[18] *See Comcast-NBC deal shows future is in content: Comcast tries to future-proof with control of NBC Universal Movies and TV Programming, available at*
http://finance.yahoo.com/news/ComcastNBC-deal-shows-future-apf-1002116126.html.

and must take action to protect the public from practices that bolster the broadband provider's video program service or goals at the expense of the public and other existing or future competitors. The Commission has asked for comment on whether it should engage in a market power analysis with respect to broadband providers.[19] IFTA strongly urges the Commission to quantify and measure in a transparent manner the power that broadband providers have in the marketplace as a basis for appropriate regulation to protect effective competition. However, that issue and process do not alter in any way the need for the actions we recommend in this current proceeding.

B. Individualized Arrangements for Priority Treatment Should Be Prohibited Outright

The Commission's proposed open Internet rules would tolerate broadband providers offering higher quality of services to those service providers who are willing to pay more, resulting in other competitors receiving slower or less flexible transport options, provided those preferential arrangements are "reasonable." In the context of video programming, this is unacceptable. High-quality service is essential to the delivery of video programming on the Internet, and inadequate service is very perceptible to consumers. The marketplace that exists today already is significantly biased in favor of online services owned by vertically-integrated broadband providers and the content supplied to those services by affiliated entities. A regulatory structure that would permit further cost burdens to be imposed on independent video services and edge providers under any condition will ultimately defeat new and innovative services at their inception. Because these newer edge services are increasingly the lifeline for independently produced content, it is virtually inevitable that consumers will lose access to that diverse programming and its much broader range of ideas, contrary to the public interest standard that guides the Commission. Thus, we urge the Commission to *prohibit outright* any such priority arrangements in any form by broadband providers.

The Commission suggests the adoption a rebuttable presumption that a broadband provider's exclusive (or effectively exclusive) arrangement prioritizing service to an affiliate would be commercially unreasonable.[20] IFTA does *not* support a rebuttable presumption and urges a bright-line prohibition of priority arrangements. The

[19] *NPRM* Para. 49.
[20] *NPRM* Para. 126-127.

promulgation of a rebuttable presumption will only impose delay, cost and uncertainty on all parties, rendering it a poor alternative to outright prohibition.

Foreshadowing what could become a widespread practice and a very uneven playing field, Netflix recently agreed to pay Comcast to ensure faster and more reliable access to Comcast's subscribers.[21] Similarly, backbone provider Level 3 has also agreed to pay for faster on-ramping to Comcast's servers.[22] These "paid peering" arrangements are specifically excluded by the scope of this NPRM,[23] but clearly demonstrate the incentive and ability of broadband providers to favor their own commercial interests or use their control to discriminate, block or exact additional revenue from would-be content competitors. Despite being an outspoken proponent of net neutrality and opponent of such tolls, Netflix has said that it would continue paying broadband providers to guarantee a good experience for its customers.[24] Currently, Netflix is negotiating with both Verizon and AT&T[25] because Netflix's streaming speeds have also suffered recently with these broadband providers.[26] In June 2014 alone, Netflix's average prime time streaming speed in the U.S. dropped 17% on Verizon FiOS, 13% on Verizon DSL, 12% on AT&T U-verse, and 10% on AT&T DSL.[27]

IV. THE PRINCIPLES OF TRANSPARENCY (DISCLOSURE), NO-BLOCKING AND NON-DISCRIMINATION ARE ESSENTIAL FOR EFFECTIVE REGULATION

The Commission's current proposal, as in 2010, would continue to allow broadband providers the flexibility to engage in "reasonable network management." The Commission must again be extremely careful that reasonable network management cannot be used to compromise the principles of transparency, no-blocking and non-

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[21] Timothy B. Lee, *Comcast's deal with Netflix makes network neutrality obsolete*, The Washington Post (February 23, 2014) *available at* http://www.washingtonpost.com/blogs/the-switch/wp/2014/02/23/comcasts-deal-with-netflix-makes-network-neutrality-obsolete/.

[22] Jon Brodkin, *Level 3 and Cogent ask FCC for protection against ISP "tolls"*, Ars Technica (March 21, 2014) *available at* http://arstechnica.com/business/2014/03/level-3-and-cogent-ask-fcc-for-protection-against-isp-tolls/.

[23] *NPRM* Para. 59.

[24] Jon Brodkin, *Netflix says it will pay "tolls" to more ISPs, not just Comcast*, Ars Technica (March 20, 2014) *available at* http://arstechnica.com/tech-policy/2014/03/netflix-says-it-will-pay-tolls-to-more-isps-not-just-comcast/.

[25] Jon Brodkin, *Verizon CEO confident about getting payments from Netflix, too*, Ars Technica (February 24, 2014) *available at* http://arstechnica.com/business/2014/02/verizon-ceo-confident-about-getting-payments-from-netflix-too/.

[26] Max Ehrenfreund, *This hilarious graph of Netflix speeds shows the importance of net neutrality*, Washington Post (April 25, 2014) *available at* http://knowmore.washingtonpost.com/2014/04/25/this-hilarious-graph-of-netflix-speeds-shows-the-importance-of-net-neutrality/.

[27] *Netflix ISP Speed Index*, Netflix Blog (July 14, 2014) *available at* http://ispspeedindex.netflix.com/.

discrimination. The Commission should consider any agreement or practice that grants more favorable terms, carriage or treatment to an affiliated service or entity (including, on the wireless side, practices such as waiving data caps only for affiliated services) as *unreasonable* network management and accordingly *prohibit* any such practice.

Transparency Rule (Disclosure). The Commission seeks general comment on how well the Commission's existing transparency rule[28] is working, while tentatively concluding that it should enhance the transparency rule[29] to improve its effectiveness for end users, edge providers, the Internet community, and the Commission.[30] To the extent that broadband providers engage in network management, it is essential that they be required to disclose in sufficient detail the nature and purpose of such techniques. Where network management practices affect in any way the free flow of traffic of lawful content and applications, the practices must be clearly and publicly detailed. The Commission must ensure that all practices are narrowly designed to address a technical and not a competitive need and nothing more. In particular, broadband providers must be required to disclose any network management practices that affect a broadband provider's (or an affiliate's) own product or service offerings. [31]

IFTA believes that enhanced transparency is necessary and the guiding principle must be to require that broadband providers fully disclose the details of any practice or arrangement that is intended to or could be expected to impede the delivery of or access to any lawful content or applications or that is known to confer an advantage (whether financial or in terms of quality of service) to any affiliated service or application. Subscribers must also be provided with sufficient details to understand all of the terms of the service they are purchasing and the nature of any practice that may impede or limit their access to the network or services. Other stakeholders –

[28] The existing transparency rule provides: "A person engaged in the provision of broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings." *Open Internet Order*, 25 FCC Rcd at 17937, Para. 54.

[29] In the 2010 *Open Internet Order*, the Commission noted that a key objective of the transparency rule is to enable the Commission to collect information necessary to assess, report, and enforce the open Internet rules. *The Commission now seeks* comment on how it can best design a process for enforcing the transparency rule that provides certainty, flexibility, and access for all affected parties. For instance, should the Commission establish and make public a list of those broadband providers that block or otherwise limit certain types of traffic? Should the Commission collect and publish information on priority arrangements? *NPRM* Para. 87-88.

[30] *NPRM* Para. 66-67.

[31] In the 2010 *Open Internet Order*, the Commission noted that a key objective of the transparency rule is to enable the Commission to collect information necessary to assess, report, and enforce the open Internet rules. *The Commission now seeks* comment on how it can best design a process for enforcing the transparency rule that provides certainty, flexibility, and access for all affected parties. For instance, should the Commission establish and make public a list of those broadband providers that block or otherwise limit certain types of traffic? Should the Commission collect and publish information on priority arrangements? *NPRM* Para. 87-88.

edge providers, content delivery networks and backbone providers – must be able to easily access the details needed to structure their own offerings to work effectively with and on the network. Finally, the Commission must require regular detailed reporting by the broadband providers of any material changes to existing network architecture, of network management practices and of the nature and history of any complaints regarding violations of these open Internet rules and regulations.

In its Comments filed in this matter, Cogent Communications suggests "that any effort to enhance the transparency rule must focus on requiring broadband providers to provide *more detailed, timely and accessible disclosures* that are useful to *all persons* involved in the operation or use of the Internet—*not just the customers of last-mile broadband providers*. Moreover, disclosures of the type will facilitate the Commission's enforcement efforts by providing a detailed body of data from which it can determine if a broadband provider is engaging in practices that impede the reasonable and timely deployment of broadband service to all Americans."[32] IFTA strongly supports this position.

No Blocking Rule. The Commission proposes to re-adopt the text of the no-blocking rule that the Commission adopted in 2010, with a clarification that it does not preclude broadband providers from negotiating individualized, differentiated arrangements with similarly situated edge providers (subject to the separate commercial reasonableness rule or its equivalent), and the Commission also seeks comment on whether it should adopt a rule that prohibits broadband providers from entering into priority agreements with edge providers.[33] The Commission reiterates and seeks comment on the tentative conclusion that under its proposed open Internet rules such individualized arrangements for priority treatment would be subject to scrutiny under the proposed commercial reasonableness rule and prohibited under that rule if they harm Internet openness.[34] To ensure an open Internet, IFTA supports the re-adoption of a stand-alone no-blocking rule. Further, the Commission should not permit priority arrangements subject to a proposed commercial reasonableness standard, but rather should

[32] *Preserving the Open Internet: On Remand from the United States Court of Appeals for the District of Columbia Circuit*, Comments of Cogent Communications Group, Inc., FCC 14-61, GN Docket No. 14-28, at 7-8 (March 21, 2014) [emphasis added].

[33] *NPRM* Para. 95.

[34] *NPRM* Para. 101.

prohibit outright any agreement or practice that grants more favorable terms, carriage or treatment (including, on wireless services, waiving data caps only for owned or affiliated services).

Non-Discrimination Rule. IFTA believes that there should also be a non-discrimination rule to prevent broadbroad providers from engaging in self-interested network management. While the current NPRM does not tentatively include non-discrimination as a separate rule (subject to reasonable network management), IFTA believes a non-discrimination rule is also necessary to prevent broadband providers from engaging in preferential treatment of affiliated services and content.

V. MOBILE SERVICES

The Commission also seeks comment on whether the proposed open Internet rules should continue to distinguish between fixed and mobile broadband.[35] Wireless broadband networks have become increasingly important to the distribution of content and broadband Internet access. IFTA recognizes the particulars involved in the application of open Internet principles to different platforms and the underlying technological variations, but the standard for how both fixed and wireless broadband network providers deliver third-party applications, services and content to consumers should not differ. The same rules that apply to fixed broadband should apply to mobile broadband.

VI. ENFORCEMENT

As the Commission itself has noted, enforcement of the proposed open Internet rules is potentially difficult. The parties affected by a violation of such rules are unlikely to have the technical knowledge or resources to fully diagnose why their broadband network has failed to deliver high-quality or fast service. Few consumers, edge providers or content delivery networks will have the financial resources to pursue a full complaint to conclusion at the Commission (especially if the network failure has defeated their business). The Commission's *Data Roaming Order* procedure – which relates solely to entities aware of and seeking to conclude commercial arrangements –

[35] *NPRM* Para. 62.

does not provide an appropriate precedent. This inability to craft an effective enforcement system calls even more strongly for the adoption of policies that are easy to understand by all stakeholders and easy to police.

VII. REGULATORY FRAMEWORK

IFTA takes no position at this time on whether broadband network services should be reclassified under Titles II of the Communications Act of 1934 as amended. However, the Commission must take the most effective actions available to it to ensure that the regulations it adopts guarantee that the open Internet is protected, are sustainable and provide certainty to the public.

VIII. CONCLUSION

The open Internet is vital to America's future economic well-being, cultural growth and social enrichment. IFTA and its Members strongly believe that the Commission should adopt transparency, no-blocking and non-discrimination rules and prohibit outright any broadband provider from engaging in any and all priority arrangements in order to preserve and promote a *permanently* open Internet.

Respectfully submitted,

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Appendix A

U.S. Production 2002 - 2013: Independent v. Major

Year	Independent Productions	Indie / Major Co-prod	Major Studio Production	Intl Co Production	Total
2002	377 74%	14 3%	105 21%	12 2%	**508** **100%**
2003	251 66%	12 3%	104 27%	13 3%	**380** **100%**
2004	434 77%	50 9%	63 11%	16 3%	**563** **100%**
2005	435 74%	33 6%	91 16%	25 4%	**584** **100%**
2006	393 78%	22 4%	78 15%	11 2%	**504** **100%**
2007	477 77%	24 4%	103 17%	18 3%	**622** **100%**
2008	321 76%	21 5%	77 18%	5 1%	**424** **100%**
2009	251 68%	13 4%	75 20%	32 9%	**371** **100%**
2010	422 75%	33 6%	105 19%	1 0%	**561** **100%**
2011	480 75%	9 1%	87 14%	60 9%	**636** **100%**
2012	393 62%	17 3%	83 13%	14 2%	**507** **80%**
2013 - not verified	335 53%	6 1%	77 12%	4 1%	**422** **66%**
12 Year Average	415 75%	23 4%	95 17%	19 3%	**553** **100%**

** Source: IFTA analysis of production listings published in The Hollywood Reporter & Daily Variety (2002 - 2008) and Baseline & IMDB Pro (2009- 2013).*

Appendix B

Media Consolidation in the U.S.: Listing of Conglomerates' Holdings

Sources: Columbia Journal Review website (http://www.cjr.org/resources), Company Websites

AT&T

Television

-U-Verse TV

-proposed merger with DirecTV

Internet

Internet Service Provider (ISP)

-AT&T U-Verse

VOD

-U-Verse On Demand

Telephone Communications

Landline Phone Service

-U-Verse Voice

-Southwestern Bell

-Bell South

Mobile Phone Service

-AT&T 4G LTE

-Cricket Wireless

Cablevision Systems Corp.

AMC Networks *(Formerly Rainbow Media Holdings LLC.)*

Cable Television

Multi-Service Operator (MSO)

- IO

Cable Channels

- American Movie Channel (AMC)*
- IFC*
- The Sundance Channel *(purchased from NBC 5/7/08)**
- Women's Entertainment (WEtv)*

Internet

Internet Service Provider (ISP)

- Optimum Online

Comcast / NBC Universal

Production Entities:

- Focus Features
- Universal Studios

Broadcast Television

- NBC TV Network
- Telemundo

Cable Television

Multi-Service Operator (MSO)

- Comcast

Cable Channels

- Bravo*
- Chiller
- Cloo *(Formerly Sleuth)*
- CNBC
- E! Entertainment
- Exercise TV
- FEARnet *(w / Lionsgate & Sony)*
- G4
- Golf Channel
- MSNBC
- Oxygen*
- PBS Kids Sprout *(Partial with PBS)*
- Style Network
- SyFy Channel*
- The Weather Channel
- TV One
- USA Network*
- Versus

Internet

Internet Service Provider (ISP)

- Comcast

Internet Programming Sites

- NBC.com
- On Demand Online
- USA Network Online

VOD

- Hulu.com 32% *(owned by several companies, Fox , NBC, ABC)*
- iN DEMAND (*partial w/ Cox, Time Warner Cable and Bright House)*
- XFINITY

DirecTV *(former subsidiary of Liberty Media now standalone)*

Broadcast Satellite Service Provider

- DirecTV *(possible acquisition by AT&T as of 2014)*

VOD

- DirecTV On Demand

Hearst Corp.

Cable Television Channels

- A&E *(partial w/ Disney)**
- Biography Channel *(partial Disney)*
- ESPN *(partial w / Disney)*
- The History Channel *(partial w/ Disney)**
- Lifetime Network *(partial w/ Disney)**
- Lifetime Movie Network *(partial w/ Disney)*
- Lifetime Real Women *(partial w/ Disney)*

**** Major fiction programming cable channel***

Appendix B

Media Consolidation in the U.S.: Listing of Conglomerates' Holdings

Sources: Columbia Journal Review website (http://www.cjr.org/resources), Company Websites

National Amusements

CBS

Broadcast Television
- CBS TV Network
- CW Network *(partial w/ Warner Bros.)*

Cable Television Channels
- FLIX*
- Showtime*
  - Showtime
  - Showtime 2
  - Showtime Showcase
  - Showtime Beyond
  - Showtime Extreme
  - Showtime Family Zone
  - Showtime Next
  - Showtime Women
- The Movie Channel*

Internet Programming
- CBS.com
- CW Video

Viacom / Paramount

Production Entities:

Paramount Studios
- Paramount Vantage

Cable Channels
- BET*
- Comedy Central*
- CMT
- LOGO
- MTV
- mtvU
- Nickelodeon
- Nick@Nite
- Palladia
- Spike*
- TV Land
- VH1

Internet
- BET.com
- ComedyCentral.com
- Spike.com

VOD
- Epix *(partial with MGM and Lionsgate)*

News Corp (FOX)

Production Entities:
- 21st Century Fox
- *Fox Searchlight*

Broadcast Television
- Fox Broadcasting
- MyNetworkTV *(syndication service)*

Cable Television Channels
- Big Ten Network
- Fox Movie Channel*
- Fox News Channel
- Fox Sports Net
- FX*
- National Geographic Channel *(partial w/ NGTF)*
- SPEED Channel
- FUEL

Internet Programming Services
- MySpace
- FOX.com

VOD
- Hulu.com *(owned by several companies, Fox , NBC, ABC)*

Starz Inc. *(former subsidiary of Liberty Media now standalone company)*

Cable Television Channels
- Encore* (owned by Starz Inc.)
  - Encore Action
  - Encore Drama
  - Encore Love
  - Encore Mystery
  - Encore Wam
  - Encore Western
- MOVIEplex (owned by Starz Inc.)
  - INDIEplex
  - RETROplex
- Starz* (now owned by Starz Inc.)
  - Starz Cinema
  - Starz Comedy
  - Starz Edge
  - Starz InBlack
  - Starz Kids & Family
  - Starz OnDemand

**** Major fiction programming cable channel***

Appendix B

Media Consolidation in the U.S.: Listing of Conglomerates' Holdings

Sources: Columbia Journal Review website (http://www.cjr.org/resources), Company Websites

The Walt Disney Company

Production Entities:
- Marvel Entertainment
- Pixar Animation Studios
- Walt Disney Pictures
- Touchstone Pictures

Broadcast Television
- ABC TV

Cable Television Channels
- ABC Family Channel*
- A&E *(partial w/ Hearst)**
- Biography Channel *(partial w/ Hearst)*
- Disney Channel*
- ESPN *(partial w / Hearst)*
- The History Channel* *(partial w/ Hearst)*
- Lifetime Network* *(partial w/ Hearst)*
- Lifetime Movie Network *(partial w/ Hearst)*
- Lifetime Real Women *(partial w/ Hearst)*
- SOAPnet
- Disney XD (*fka Toon Disney)*

Internet Programming Services
- ABC.com
- Disney Online
- ABCFamily.com

VOD
- Hulu.com *(owned by Fox , NBC, ABC)*
-

Time Warner (Warner Bros.)

Production Entities:
- Warner Bros. Pictures
- New Line Pictures

Broadcast Television
- The CW (*with CBS)*

Cable Television

Cable Channels
- HBO*
  - HBO
  - HBO 2
  - HBO Comedy
  - HBO Family
  - HBO Latino
  - HBO Signature
  - HBO Zone
  - HBO On Demand

- Cinemax*
  - Cinemax
  - MoreMax
  - ActionMax
  - ThrillerMax
  - OuterMax
  - Wmax
  - 5StarMax
- Cartoon Network*
- Boomerang
- CNN
- TBS*
- TNT*
- Turner Classic Movies (TCM)*

Multi Service Operator

- *None (Time Warner Cable spun from TW in March 09)*

Internet

Internet Service Provider (ISP)

- None - AOL *(spun from TW in Dec 09)*

Internet Programming Sites
- CW Video
- TBS.com
- TNT.tv

Time Warner Cable

Multi-service Operator (MSO)

Internet Service Provider (ISP)

-Time Warner Cable Internet *(fka Roadrunner)*

VOD

-iN DEMAND*(partial with Cox,Comcast &Bright House)*

Verizon

Internet

Internet Service Provider (ISP)

-Verizon FiOS

Telephone Communications

Landline Phone Service

-FiOS Voice

Mobile Phone Service

-Verizon 4G LTE

Television

-FiOS TV

**** Major fiction programming cable channel***

Appendix C

Comcast-Time Warner Cable
Proposed Merger Consolidation

Comcast Pre-Merger Assets	TWC Pre-Merger Assets	After Merger Assets
Broadband Service *20.66 Million subscribers 24.43% of market	**Broadband Service** *11.6 Million Subscribers 13.76% of market	**Broadband Service** *32.26 Million subscribers 38.2% of Market
Digital Cable Service *21.69 Million subscribers 22.9% of market	**Digital Cable Service** *11.39 million subscribers 12% of market	**Digital Cable Service** *33.08 million subscribers 35% of market
Digital Phone Service *10.73 Million phone lines	**Digital Phone Service** *4.80 Million phone lines	**Digital Phone Service** *15.53 Million phone lines
iN Demand VOD Service 53.9%**	**iN Demand VOD Service** 23.9%***	**iN Demand VOD Service** 77.8% (estimated)
Comcast Channels Golf Channel FEARnet *(w/ Lionsgate & SPE)* Versus G4 Style Network E! Entertainment Comcast Sportsnet MLB Network *(minority stake)* PBS Kids Sprout (*w/ PBS, Sesame Workshop & HiT Ent)* TV One **NBC Universal Channels** NBC CNBC (50%) MSNBC Bravo Telemundo USA Syfy Universal HD The Weather Channel Hulu (32%) Mun2 Sleuth Oxygen **Non US Channels** 13th Street SyFy Channel Movies24 divaTV Steel Studio Universal		**All Channels Listed as Comcast Pre-Merger Assets:** ***Comcast*** ***NBC Universal*** ***Non US***

** Leichtman Research Group (figures as of Year-End 2013)*
*** Estimate based on figure in SEC Annual Report filed 2/25/2011*
**** SEC Annual Report filed 2/18/2014*

Appendix D

AT&T-DirecTV
Proposed Merger Consolidation

AT&T Assets	DirecTV Assets	After Proposed Merger
U-Verse IPTV Service: *5.46 Million subscribers 5.8% of the MVPD market	**DirecTV Satellite TV Service** *20.25 Million subscribers 21.4% of the MVPD market	**U-Verse / DirecTV Services:** *25.71 Million subscribers 27.18% of the MPVD market
Channels Available ABC, AMC, A&E, BBC America, BET, Bravo, CW, Comedy Central, Chiller, Cloo, CNN, CNBC, Carton Network, CMT, Cinemax, Disney, E!, Encore, FOX, FNC, FX, Fuse, HBO, HGTV, IFC, Lifetime, LOGO, The Movie Channel, MTV, MSNBC, NBC, Nickelodeon, OWN, Oxygen, PBS, Showtime, Starz, Sundance TV, Spike TV, Syfy, TNT, TBS, TV One, TruTV, TLC, TCM, USA, VH1, WGN, WeTV	**Channels Available** ABC, AMC, A&E, BBC America, BET, Bravo, Comedy Central, Chiller, Cloo, CNN, CNBC, Carton Network, CMT, Cinemax, Disney, E!, Encore, FOX, FNC, FX, Fuse, HBO, HGTV, IFC, Lifetime, LOGO, The Movie Channel, MTV, MSNBC, NBC, Nickelodeon, OWN, Oxygen, PBS, Showtime, Starz, Sundance TV, Spike TV, Syfy, TNT, TBS, TV One, TruTV, TLC, TCM, USA,VH1, WGN, WeTV	**Channels Available** ABC, AMC, A&E, BBC America, BET, Bravo, CW, Comedy Central, Chiller, Cloo, CNN, CNBC, Carton Network, CMT, Cinemax, Disney, E!, Encore, FOX, FNC, FX, Fuse, HBO, HGTV, IFC, Lifetime, LOGO, The Movie Channel, MTV, MSNBC, NBC, Nickelodeon, OWN, Oxygen, PBS, Showtime, Starz, Sundance TV, Spike TV, Syfy, TNT, TBS, TV One, TruTV, TLC, TCM, USA,VH1, WGN, WeTV
Broadband Service *16.42 Million subscribers 19.47% of the market		**Broadband Service** *16.42 Million Subscribers 19.47% of the market
Residential Phone *16.25 Million subscribers		**Residential Phone** *16.25 Million Subscribers
VOD U-Verse On Demand	**VOD** DIRECTV On Demand	**VOD** U-Verse On Demand DIRECTV On Demand

** Leitchman Research Group, figures as of end of 2013*

Appendix E

Examples of Commonly Owned or Affiliated Broadband Providers and Content Providers

Broadband Provider	Online Service	Content for Service
Comcast	XFINTIY	**Channels:** NBC, Showtime, Starz, Movieplex, HBO, Encore, Cinemax, A&E, ABC, AMC, BET, BBC America, Bravo, Cartoon Network, CW, Disney, E! Entertainment, Fox, Food Network, Hallmark Channel, IFC, MTV, Nickelodeon, Oxygen, OWN, Sundance, Spike TV, SPEED, Syfy, TBS, TCM, Telemundo, TLC, TNT, Tru TV, USA, Vh1, WeTV, WGN American
Time Warner Cable	On Demand	**Channels:** A&E, ABC, AMC, BBC America, BET, CBS, CMT, Comedy Central, Disney Channel, E! Entertainment, FOX, FX, IFC TV, Lifetime, Logo, MTV, NBC, Nickelodeon, OWN, Oxygen, Syfy, TBS, Telemundo, TNT, TLC, TruTV, TV One, USA, VH1, WEtv
Verizon	FiOS	**Channels:** ABC, NBC, CBS, Fox, PBS, CW, Nickelodeon, A&E, USA, TBS, HGTV, Disney, Syfy, Comedy Central, Travel Channel, FX, OWN, BBC, Cinemax, HBO, Showtime, Starz, The Movie Channel, Encore, Flix, IFC and Sundance.
Cox	on DEMAND	**Channels:** HBO, Showtime, Starz, Cinemax, Disney, A&E, ABC, Bravo, Cartoon Network, Fox, Lifetime, NBC, Oxygen, Syfy, TBS, USA, TruTV,
Charter	Charter on Demand	**Channels:** A&E, ABC, AMC, BET, Bravo, Cartoon Network, CMT, CNN, Comedy Central, Disney, FLIX, Fuse, FX, HBO, HGTV, IFC, Indie & Int'l Films, Lifetime, MTV, NBC, Nickelodeon, Oxygen, SoapNet, SPEED, Syfy, TBS, TLC, TNT, truTV, UFC, USA,WVH1
Optimum Online (Cablevision Systems)	Optimum TV to GO	**Channels:** ABC, Disney, HBO, Showtime, Starz, Nickelodeon, Cartoon Network, Encore, A&E, AMC, BET, Bravo, CMT, Comedy Central, E! Entertainment, Esquire, Fox, FX, Hallmark, IFC, Lifetime, LOGO, MTV, Oxygen, Spike, Sundance TV, Syfy, TBS, TMC, TNT, TruTV, USA, VH1, WEtv
AT&T	U-verse	**Channels:** Cartoon Network, CNN, Disney, HBO, Encore, Cinemax, Encore, Nickelodeon, Showtime, Starz, The Movie Channel, TBS, TNT, ABC, A&E, AMC, BET, Bravo, CMT, Comedy Central, E! Entertainment, Esquire, Fox, FX, Hallmark, IFC, Lifetime, LOGO, MTV, Oxygen, Spike, Sundance TV, Syfy, TBS, TMC, TruTV, USA, VH1
America Online	AOL On	AOL Original Series (short episodes)
CenturyLink	Prism On Demand	**Channels:** ABC, AMC, Bravo, Cartoon Network, Cloo, CNBC, Comedy Central, E! Entertainment, Fox, FX, Fuel TV, HBO, IFC, NBC, Oxygen, PBS, Showtime, SPEED, Starz, Sundance Channel, Syfy, TBS, TCM, CW, TLC, TNT, TruTV, USA
MSN (Microsoft)	Xbox LIVE	Netflix, HBO Go, Hulu Plus, YouTube, Amazon Instant Video

Appendix F

Top 4 Broadband Provider Market Share Analysis:
Broadband Share / Multi-Channel Video Programming Distributor Share

Top Four Broadband Providers Market Share

	2009*		2013**		Chg 2009 - 2013	
	Subscribers (M)	*% Total*	*Subscribers (M)*	*% Total*	*Subscribers (M)*	*%*
Comcast	15.7	19.3%	20.7	24.6%	5.0	31.8%
ATT	17.1	21.1%	16.4	19.5%	-0.7	-4.1%
Verizon	9.2	11.3%	9.0	10.7%	-0.2	-2.2%
Time Warner Cable	8.8	10.8%	11.6	13.8%	2.8	31.8%
Four Company Total	50.8	62.6%	57.7	68.4%	6.9	13.6%
All Other	30.4	37.4%	26.6	31.6%	-3.8	-12.5%
Total U.S.	81.2	100.0%	84.3	100.0%	3.1	3.8%

Top Four Broadband Providers MVPD Market Share

	2010***		2013**		Chg 2010 - 2013	
	Subscribers (M)	*% Total*	*Subscribers (M)*	*% Total*	*Subscribers (M)*	*%*
Comcast	22.8	22.8%	21.7	22.9%	-1.1	-4.8%
ATT	3	3.0%	5.5	5.8%	2.5	83.3%
Verizon	3.5	3.5%	5.3	5.6%	1.8	51.4%
Time Warner Cable	12.4	12.4%	11.4	12.1%	-1.0	-8.1%
Four Company Total	41.7	41.7%	43.9	46.4%	2.2	5.3%
DirectTV	19.2	19.2%	20.3	21.5%	1.1	5.7%
4 Co. & DirectTV Total	60.9	60.8%	64.2	67.9%	3.3	5.4%
All Other	39.2	39.2%	30.4	32.1%	-8.8	-22.4%
Total U.S.	100.1	100.0%	94.6	100.0%	-6.6	-6.6%

Source: IFTA analysis of data from the sources listed immediately below:

** Comcast Corporate Overview 9/09; Verizon 3rd Qt. 209 New; ATT 2009 Corporate Profile; OECD Dataset 6/09*

***Leichtman Research Group, "Research Notes", 4Qt. 2013*

**** NCTA website sourcing: Company websites, filings, etc.; SNL Kagan, Special Report, U.S. Multichannel Subscriber Update & Geographic Analysis, June 2011*