

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
)
Protecting and Promoting)
)
the Open Internet)

GN Docket No. 14-28

**Reply Comments of
Future of Music Coalition**

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I. INTRODUCTION

This is a crucial moment for creators and the Internet. From musicians to composers to filmmakers to performers and authors, artists of all disciplines recognize the importance of an open Internet to reach audiences, engage in commerce, collaborate with other creators and contribute to our collective culture. Musicians in particular understand the dangers of pay-to-play schemes, as they have seen how consolidation in corporate radio station ownership has eliminated opportunities for even the most talented and popular artists to be heard on the commercial airwaves. As thousands of independent artists and labels have told the FCC going back to 2007, the Internet must not become an environment where companies with deep pockets receive premium access to users while smaller artists and entrepreneurs are disadvantaged. As Future of Music Coalition (FMC) and our artist allies have pointed numerous times in this docket and elsewhere, the FCC's proposed rules are insufficient to prevent a tiered Internet that favors large corporations over creators and everyday users. We once again urge the Commission to move to reclassify broadband Internet service under a Title II common carrier framework in order to allow creative expression and innovation to thrive for generations to come.

Future of Music Coalition (FMC) has examined many of the comments filed in this proceeding, including those of Internet Service Providers (ISPs) and mobile network operators. Nothing in the ISP arguments in any way convinces us that broadband Internet service should not exist under a common carrier framework. The following comments focus on the major telecommunications and cable companies' arguments in order to point

out persistent fallacies and demonstrate why the FCC must reclassify broadband Internet service under Title II of the Telecommunications Act.

II. RESPONSE TO SPECIFIC CABLE AND TELECOM ARGUMENTS

While it is not possible for us to comment on every position advanced by network operators, we are obliged to counter specific points made by a handful of powerful incumbent cable and telecommunications companies. The following are our perspectives—informed by close working relationships with musicians and other creators—as corresponds to specific ISP arguments.

A. Comcast

Comcast claims to support the FCC's 2010 Open Internet Order, which probably isn't difficult, given that the courts have rejected the majority of its provisions with the exception of the transparency rule. While it is true that Comcast agreed to honor the Order as part of the conditions applied to its acquisition of NBC-Universal, those restrictions are themselves subject to expiry in 2018. At that point, barring a meaningful way for the FCC to prevent Comcast from indulging in discrimination against competitors, the cable behemoth will be in a position to exercise its duopoly and monopsony leverage in a way that cripples smaller players and forces creators to acquiesce to Comcast's economic terms as a condition of entering the marketplace.

Furthermore, the idea that Comcast values transparency is absurd to anyone who has

attempted to discern one of their billing statements or tried to get a straight answer about advertised versus actual broadband speeds. Absent meaningful *ex-ante* protections, competitors, content creators and the public will simply have to trust that Comcast is providing the FCC with the full set of information with regard to its network management practices. As the Commission should be aware, Comcast already has a particularly troubling history in this area.

Comcast also suggests that a no-blocking rule should be set for a minimum access level that allows for individualized negotiation. One imagines that such a “best effort” protocol would be an invite for Comcast to use its tremendous leverage to reshape access in favor of its own products and services. This is not consistent with their claim of supporting an open network based on access and innovation.

Comcast welcomes the proposed “commercial reasonableness” standard, as this is exactly the kind of loophole the company is adept at exploiting. Given that Comcast and its armies of lawyers and lobbyists are in an excellent position to help define “reasonableness,” it is obvious that the cable/content giant would enjoy incredible latitude under such provisions. A presumption against paid prioritization, after all, is not the same thing as a prohibition against pay-to-play. Comcast knows this very well, as do creators who have been systematically and perpetually disadvantaged by such arrangements.

Comcast is also eager to expand the definitions of “specialized services” to the extent that

practically any of the company's offerings could be considered as such under the proposed rules. This is the slipperiest of slopes and could lead to situations where Comcast favors its own copycat technologies (think video conferencing or subscription entertainment) over existing applications, regardless of demand for competing platforms. It must be noted that creators are beneficiaries of innovations made possible by an open Internet, as are millions of everyday Americans. The creative sector would like to see more useful products and services come to the market without arbitrary limits placed on their viability. Innovative models are especially important to independent creators, who are too often disadvantaged by the integration of content and delivery by consolidating corporations. Without narrow and clear definitions of "specialized services," development would slow and artists and the public would be deprived of potentially rewarding technologies.

B. T-Mobile

In its comments, the so-called "uncarrier" T-Mobile reveals itself as having a great deal in common with other large ISPs. T-Mobile claims that competition drives openness, and that mobile does not require any neutrality rules. Apparently, T-Mobile actually believes that the current wireless marketplace is competitive, a claim we find stunningly tone-deaf coming from a company that was nearly purchased by AT&T, an outcome that would have left just two companies in control of almost 80 percent of the wireless marketplace. T-Mobile also trots out the tired argument that "reasonable network management" would be hindered by rules, a claim that flies in the face of years of successful operations by phone companies under a common carrier framework. T-Mobile even suggests that a

transparency rule is going too far, which takes the “just trust us” argument to entirely new levels of absurdity. T-Mobile’s rejection of a no-blocking rule is similarly risible, unless you believe that your mobile data company should be in charge of what lawful content you are allowed to access on the network. FMC and its artist allies are under no such delusions.

C. Verizon/Verizon Wireless

And now we come to the company that other ISPs must feel no small annoyance towards, given that Verizon’s court challenge successfully overturned (most of) the FCC’s 2010 Order, thereby establishing the conditions under which the FCC has now received the most public comments in any docket in history—99 percent of which demand the reclassification of broadband Internet service as a Title II common carrier. A whole lot of golf games just got a lot more awkward.

Like Comcast, Verizon/Verizon Wireless claims to be supportive of an open Internet, yet is compelled to articulate dozens of reasons why basic rules preserving openness are counter to its corporate interests. The company predictably suggests that rules under Title II would create a disincentive to investment in the network, but Verizon—like Comcast—already lacks such incentive, as its shareholders likely would prefer more cost-effective paths to profit, including consumer data caps and rent-seeking from content providers. All of this makes perfect sense from a business perspective, but it has very little to do with maintaining an open and accessible network powered by innovation. The FCC should treat skeptically any and all claims by Verizon/Verizon Wireless regarding

investment and development of the network.

Verizon/Verizon Wireless claims that broadband providers have a “strong history” of technological innovations that benefit consumers. While we recognize that fiber is a valuable utility, it is abundantly clear that those outside of the telecommunications and cable duopoly have spearheaded the vast majority of online innovation and continue to do so. Likewise, one might describe LTE as a significant innovation. Still, for most creators and consumers, it is what made possible by spectrum-based data delivery that is of real value: the applications, products and services that are have become the *raison d'être* of our interconnected age. Verizon/Verizon Wireless is entitled to taking some credit for these developments, but must not be allowed to do so at the expense of ongoing innovation.

A company that has spent a tremendous amount of its own capital to overturn rules to preserve the Internet for access and innovation should not be considered a reliable narrator when it comes to investment or demand for a competitive and open network.

D. AT&T

AT&T's comments can be distilled to “nothing bad is happening, so there's no need for rules to prevent bad things from happening.” Yet this is the company that was found to have interfered with an exclusive live webcast of the 2007 Lollapalooza concert, in which Pearl Jam frontman Eddie Vedder's improvised criticisms of then-president George W.

Bush were muted for viewers watching online. It is precisely this type of overreach that open Internet rules are meant to discourage.

Like Comcast, AT&T invokes the transparency rule as the only regulation necessary, likely as a way of making its other arguments sound more reasonable. We recognize such logic as nothing more than a cynical ploy to cast the company in a favorable light with regard to regulation that is in the public interest. We are not fooled.

Many of AT&T's positions echo those of its peers, but we find notable the company's claim that reclassification would somehow inspire other countries to enact similar policies. Ignoring for the moment that "other countries" have already adopted net neutrality rules that can be seen as far more robust than the FCC's 2010 Order, there is the fact that common carrier is a concept that has informed communications policy for nearly a hundred years—a particularly lucrative century for AT&T.

It appears that AT&T is nervous that court challenges to reclassification would not prove successful. While some would suggest that lawsuits are inevitable, there is but one real test that the FCC must pass, and that is justifying its decision to reclassify. Given that the Supreme Court has already validated a previous decision to do so, there is likely no universe in which the government could fail in its argument to prove that a move to Title II is not "arbitrary and capricious." To the contrary, a return to the prior designation is sober and informed, as the past decade has proven that users subscribe to broadband service to access the Internet, not to purchase a suite of bundled "information services"

from an ISP. Should the FCC do the right thing and pursue reclassification, we hope that AT&T will recognize that litigation is ill-considered and destined to be unfruitful.

III. CREATORS AND THE PUBLIC SUPPORT RECLASSIFICATION

The message from Americans—including creators—should be clear: we want nothing less than full protections under a common carrier framework.

A diverse community of artists and independent labels has already recognized that an open Internet is crucial to the development of a legitimate, digital marketplace. This is why thousands of musicians of at all stages of their career have demonstrated their support of net neutrality. It is why more than two-dozen of the most prominent arts and cultural organizations in all 50 states have gone on record in this docket in favor of the strongest rules possible. It's why independent labels large and small have consistently weighed in on this issue for nearly a decade. It's why more than 3 million have overwhelmingly urged the FCC to reclassify broadband Internet service as a common carrier. It is now up to the political leadership of the FCC to do what it must to preserve the Internet as a place of creativity and innovation for generations to come. The moment is now. The answer is reclassification under Title II of the Act.

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