

REPLY COMMENT

I. Introduction

We submit this Reply Comment because independent narrative and documentary filmmaking is an invaluable part of our nation's culture,¹ and the Open Internet is critical to its future. As independent narrative and documentary filmmakers, we have intimate knowledge of how the Open Internet affects our community, and it is our duty to inform the Commission of these effects and to rebut the arguments made by certain commenters.

We remain deeply concerned that the Commission's proposed rules will allow broadband Internet access providers to implement a "paid prioritization" scheme. Paid prioritization will put the independent filmmaking community, including the edge providers that help us fund, produce, market, and distribute our films, in a uniquely perilous position. Broadband providers cannot be permitted to stifle competition in the edge provider market through paid prioritization schemes. Instead, the Commission must implement robust no-blocking, nondiscrimination, and transparency rules.

The independent film community provides a powerful voice to underrepresented and marginalized communities and stories, and its rapid growth online is one of the most significant cultural advancements of the last decade. Unfortunately, each phase of film production, from funding to distribution, will become more expensive if edge providers must pay for "fast lane" access. In this Reply Comment, we explain the harms that paid prioritization will create throughout the entire filmmaking process.

Broadband Internet access providers such as Verizon claim that paid prioritization could lead to lower prices for consumers;² these providers, however, have no incentive to lower prices because they primarily operate in uncompetitive markets.³ In addition, their arguments against the proposed rules ignore the significant barrier to entry that "fast lane" fees will impose on emerging businesses catering to niche markets such as independent filmmakers.⁴

For these reasons, we urge the Commission to reclassify broadband Internet access service as a telecommunications service; create more robust transparency regulations;

¹ Comment of International Documentary Assn., et al., *In re Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28 (July 15, 2014) [hereinafter 2014 IDA Comment].

² Comments of Verizon and Verizon Wireless, *In re Matter of Framework for Broadband Internet Service*, GN Docket No 10-127, at 30-31 (July 15, 2014) available at http://publicpolicy.verizon.com/assets/images/content/07_15_14_Verizon_Verizon_Wireless_Open_Internet_Remand_Comments.pdf [hereinafter Comments of Verizon] (claiming that "many such arrangements could reduce consumer costs, whether through tiered pricing, . . . two sided market arrangements or other sophisticated approaches to pricing.").

³ Tom Wheeler, Chairman, Fed. Comm'n Comm'n, *The Facts and Future of Broadband Competition* 4 (Sept. 4, 2014) available at <http://www.fcc.gov/document/chairman-remarks-facts-and-future-broadband-competition>.

⁴ See *infra* pp. 7-10.

reexamine the distinction between fixed and mobile broadband Internet access; and conduct further research on the lack of competition in the fixed broadband Internet market. If the Commission fails to take appropriate action immediately, we risk great harm to an increasingly vital cultural and economic resource.

II. The Open Internet Is Important Throughout the Entire Filmmaking Process

With this Reply Comment, we seek to inform the Commission about the integral role the Open Internet plays in the filmmaking process. As we discussed in our initial Comment,⁵ paid prioritization will fundamentally change independent filmmaking because it will create a permanent structural disadvantage in the marketplace for independent film. Moreover, paid prioritization will affect far more than the distribution and consumption of independent film—it will hurt funding, production, and marketing as well. The result would be substantial harm to one of America’s most important platforms for new ideas, stories, and experiences.

a. Funding

Paid prioritization will hurt independent narrative and documentary filmmakers by creating an uneven playing field and increasing fundraising costs throughout the filmmaking process. Filmmaking requires more than just talent, skill, and a great idea—it requires funding. In today’s filmmaking ecosystem, funding comes from a variety of sources, including equity investors and popular crowdfunding websites like Kickstarter⁶ and Indiegogo⁷ that depend on streaming video and cannot afford to pay for a “fast lane.” Fundraising for independent film is notoriously difficult, even with crowdfunding and other advances;⁸ paid prioritization will exacerbate this struggle by making films even more expensive to create. Higher costs will lead to lower profits and will discourage investors, meaning that films that otherwise would have reached their financing requirements will instead fail to launch.

Paid prioritization will also make fundraising more difficult by increasing the costs of crowdfunding websites, which provide an important source for funding. Crowdfunding platforms such as Kickstarter and Indiegogo receive hundreds of thousands of visitors each day looking for opportunities to donate to independent narrative and documentary

⁵ 2014 IDA Comment, *supra* note 1.

⁶ *Discover Projects—Film & Video*, KICKSTARTER, https://www.kickstarter.com/discover/categories/film%20&%20video?ref=home_featured (last visited Sept. 15, 2014).

⁷ *Explore Film Campaigns*, INDIEGOGO, https://www.indiegogo.com/explore?filter_category=Film (last visited Sept. 15, 2014).

⁸ Adrienne Jeffries, *Indie No-Go: Only One in Ten Projects Gets Fully Funded on Kickstarter’s Biggest Rival*, THE VERGE (Aug. 7, 2013), <http://www.theverge.com/2013/8/7/4594824/less-than-10-percent-of-projects-on-indiegogo-get-fully-funded> (“[O]nly 9.3 percent [of Indiegogo projects] raised 100 percent of their goals or higher.”).

filmmakers.⁹ Kickstarter, for instance, has successfully funded over 39,000 film and video projects by collecting over 2.6 million pledges totaling \$236.95 million.¹⁰ Critically, users of these services use high-bandwidth streaming video, hosted by the site, to make their pitches—a feature that the crowdfunding sites themselves fear will require “fast lane” access in order to remain competitive.¹¹ To cover increased costs in a world of paid prioritization, crowdfunding sites will have to raise their rates. This will force filmmakers who cannot afford the rate increases to use slower sites or forego crowd-sourced fundraising altogether, putting them at a competitive disadvantage and preventing the launch of countless culturally, socially, and politically important films.

b. Production

Paid prioritization will increase the cost of high-bandwidth services that have become essential throughout the production phase of a film, including cloud-based data transfer and storage services and audio/video conferencing. If that happens, the resulting increase in costs will make independent film production significantly more difficult.

Independent filmmakers rely heavily upon high-bandwidth services during production to transfer files around the world. For example, an independent filmmaker in Texas may hire a music composer in New York and an editor in Los Angeles. Video footage, sound recordings, and musical scores need to flow between these parties in order to make a film. Cloud-based services like Dropbox offer affordable central repositories for filmmaking teams to store files.¹² Rather than shipping hard drives through the mail and waiting for days, an independent filmmaker in Texas can immediately access a music composition uploaded in New York. The result is that independent filmmakers can collaborate more freely and produce films more affordably than ever before.

We are deeply concerned that paid prioritization will roll back these gains, because in order to store and transfer very large video files, edge providers like Dropbox will need “fast lane” access. Currently, uncompressed high definition video files require up to 7.3 GB of disk space per minute of footage, meaning that filmmakers routinely must send

⁹ See *Kickstarter.com Website Traffic and Information*, TRAFFIC ESTIMATOR, <http://www.trafficestimate.com/kickstarter.com> (last visited Sept. 15, 2014); *Indiegogo.com Website Traffic and Information*, TRAFFIC ESTIMATOR, <http://www.trafficestimate.com/indiegogo.com> (last visited Sept. 15, 2014).

¹⁰ *Kickstarter stats*, KICKSTARTER, <https://www.kickstarter.com/help/stats?ref=category> (last visited Sept. 15, 2014); *Discover Projects—Film & Video*, KICKSTARTER, https://www.kickstarter.com/discover/categories/film%20&%20video?ref=home_featured (last visited Sept. 15, 2014).

¹¹ See, e.g., Comments of Kickstarter, Inc., *In re Matter of Open Internet Remand*, GN Docket No. 14-28, July 10, 2014, at 4 (“If Kickstarter were left in the slow lane, users of our site would be directly impacted.”).

¹² DROPBOX (Sept. 15, 2014), <http://www.dropbox.com>.

over a terabyte of data to their partners and collaborators.¹³As the independent filmmaking community continues to adopt higher quality video as its standard—4K ultra high definition video, for example, requires four times as much bandwidth as current “full” HDTV¹⁴—our need for high-bandwidth data transfer is sure to increase dramatically. Under paid prioritization, greater use of bandwidth will become more expensive, forcing filmmakers to pay edge providers more for essential services.

Independent filmmakers also rely heavily upon audio/video conferencing services such as Skype to communicate with videographers, interviewees, editors, sound and music technicians, and investors.¹⁵ Audio/video conferencing applications require fast, uninterrupted Internet access.¹⁶ These edge providers, just like crowdfunding sites, will need to pass the additional cost of “fast lane” access on to their consumers in order to remain competitive in the market.¹⁷ Once again, this cost shift will hurt independent filmmakers, who can least afford it.

c. Marketing

Paid prioritization will also increase the costs of a marketing an independent film. To market a film, filmmakers must reach out to interested parties, network with relevant interest groups, and advertise on the Internet. Unlike the edge providers used in fundraising and production, the edge providers independent filmmakers use for marketing their films, such as Facebook and Twitter, make money by charging fees to advertisers rather than users.¹⁸ Paid prioritization will cause independent filmmakers to pay more for advertising and other forms of online marketing.

¹³ APPLE, INC., FINAL CUT PRO 7 USER MANUAL 223 (2010) *available at* [https://documentation.apple.com/en/finalcutpro/usermanual/Final%20Cut%20Pro%207%20User%20Manual%20\(en\).pdf](https://documentation.apple.com/en/finalcutpro/usermanual/Final%20Cut%20Pro%207%20User%20Manual%20(en).pdf). A 90-minute film would require 657 GB of disk space. Considering that a large amount of the raw footage never makes it to the final cut, filmmakers require terabytes of disk space during the production process.

¹⁴ *Matthew Goldman, Realizing the future of true 4K UHD TV- Ericsson*, ERICSSON (Jan. 21, 2014), <http://www.ericsson.com/televisionary/blog/realizing-future-true-4k-uhdtv-ericsson/>.

¹⁵ *See Gloria Benjamin, How You Can Use Skype to Help Build Your Film Career*, SKYPE PLAY BLOG (December 10, 2013), <http://blogs.skype.com/2013/12/10/how-you-can-use-skype-to-help-build-your-film-career/> (“Whatever phase of production you might be in on a film project, whether it’s a short film or a feature, Skype is a fantastic tool that allows people to collaborate and create some wonderful cinematic moments.”).

¹⁶ *See BRIAN WILLIAMSON ET AL., THE OPEN INTERNET- A PLATFORM FOR GROWTH* (2011) *available at* http://skypeblogs.files.wordpress.com/2011/10/plum_october2011_the_open_internet_-_a_platform_for_growth.pdf.

¹⁷ *See id.*

¹⁸ *E.g., Frequently Asked Questions*, FACEBOOK, <https://www.facebook.com/advertising/faq> (last visited Sept. 15, 2014) (“The cost of your ads on Facebook is up to you. You can choose between a daily or lifetime budget, as well as a cost per thousand impressions bid (CPM) or cost per click bid (CPC). You’ll only pay for the clicks or impressions you receive, up to the amount you set for your budget.”).

d. Distribution

Independent narrative and documentary filmmakers depend on the Open Internet most at the distribution stage. The Open Internet has democratized media distribution and serves as a unique forum for unfiltered ideas accessible to all. With an Open Internet, independent narrative and documentary filmmakers can distribute their films online, secure in the knowledge that online content will compete on a level playing field. As such, it is critically important to the future of independent film.

The Open Internet has fostered a competitive market for independent film distribution by keeping barriers to entry low. Audiences have access to independent films and documentaries on many mainstream platforms, such as YouTube, iTunes, Vimeo, Netflix, and Amazon Instant Video, as well as newer, smaller ones, such as VHX, Fandor, and FilmBuff.¹⁹ In particular, low barriers to entry inherent in an Open Internet allow small edge providers like VHX, Fandor, and FilmBuff not only to enter the market but to thrive. For example, since its founding in 2011, VHX found a market niche and now offers over 2,400 films to nearly 1 million customers, and has earned \$3.8 million in gross revenue.²⁰ In short, competition in this market keeps prices affordable to a wide range of filmmakers, grows the demand for future independent narrative and documentary films, and moves the independent filmmaking community forward through innovation.

The result, as we discuss in our earlier comment in this proceeding, has been the dawn of a “golden age” for independent narrative and documentary filmmaking.²¹ As but one example, documentaries have grown from less than 2% of the total film market in 2001 to 18% in 2012,²² in major part due to the rise of digital distribution platforms. Viewers now have greater access to independent films; underrepresented communities can have their stories told and can access films and stories that relate to them. This transformation toward widespread access, massively diverse content, innovation, and new viewing habits has far-reaching implications for American culture. If the Commission does not act to ensure an Open Internet, paid prioritization could devastate the market for independent film and substantially reduce its cultural impact. The Commission should do whatever is

¹⁹ YOUTUBE, www.youtube.com (last visited Sept. 15, 2014); VIMEO, <http://www.vimeo.com> (last visited Sept. 15, 2014); NETFLIX, <http://www.netflix.com> (last visited Sept. 15, 2014); *Amazon Instant Video*, AMAZON, <http://www.amazon.com/instant-video/b?node=2858778011> (last visited Sept. 15, 2014); VHX, <http://www.vhx.tv> (last visited Sept. 15, 2014); FANDOR, <http://www.fandor.com> (last visited Sept. 15, 2014); FILMBUFF, <http://www.filmbuff.com> (last visited Sept. 15, 2014).

²⁰ *Stats*, VHX, <https://www.vhx.tv/stats> (last visited Sept. 15, 2014).

²¹ 2014 IDA Comment, *supra* note 1; *see also* Comments of International Documentary Assn., et al., *In re Matter of Preserving the Open Internet Broadband Industry Practices*, GN Docket No. 09-191 (April 26, 2010) available at

<http://www.documentary.org/images/news/2010OpenInternetReplyCommentofDoc&Indep.FilmmakersGN-09-191.pdf>.

²² *See, e.g.*, Alex C., *Living in the Long Tail: On the State of Documentary Film*, HARMONY INSTITUTE (Jul. 5, 2012), <http://harmony-institute.org/therippleeffect/2012/07/05/living-in-the-long-tail-on-the-state-of-documentary-film/>.

necessary to preserve independent narrative and documentary films and the cultural benefits they provide.

III. To Protect and Promote the Open Internet, the Commission Must Reclassify, Ensure Transparency, and Reconsider the Regulatory Distinction Between Fixed and Mobile Broadband

A threat to the Open Internet is a threat to independent narrative and documentary filmmakers along with consumers, edge providers, artists, content developers, and countless others. The Commission must take the necessary steps to ensure any Open Internet policy it implements is both legally sound and effective.

To enact a meaningful Open Internet policy, the Commission must reclassify broadband Internet access service as a telecommunications service subject to Title II of the Telecommunications Act. The D.C. Circuit has made clear that the Commission must reclassify if it wishes to enact meaningful rules preventing blocking and discrimination²³—both of which are essential to a truly Open Internet. The Commission must also ensure that any Open Internet policy it produces contains robust and effective transparency rules. While accessible disclosures from broadband providers about their business practices are relevant and useful to all Internet users, they are particularly important to independent filmmakers, whose livelihood often depends on robust streaming services and the ability to transfer large amounts of data across the Internet. In addition, the Commission should eliminate the regulatory distinction between fixed and mobile broadband Internet access; while mobile broadband is sometimes a complementary service to fixed broadband, maintaining a regulatory distinction between the two services may create serious problems for the nation's widening digital divide.²⁴ Finally, the Commission must conduct more research on the questions at issue in this proceeding.

a. The Commission Must Reclassify Broadband Internet Access Service as a Telecommunications Service Subject to Title II

In order to protect and promote the Open Internet and the many benefits it provides to independent filmmakers, the Commission must reclassify broadband internet access service as a telecommunications service. The recent *Comcast* and *Verizon* decisions have essentially mandated reclassification by severely limiting the Commission's authority to enact no blocking and nondiscrimination rules under Section 706 and other sources of

²³ See *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014); *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).

²⁴ See Kathryn Zickuhr & Aaron Smith, *Home Broadband 2013*, PEW RESEARCH INTERNET PROJECT (August 26, 2013) <http://www.pewinternet.org/2013/08/26/home-broadband-2013/> (finding that low income households are less likely to have access to home broadband).

ancillary authority.²⁵ The Commission’s attempt to adhere to the *Verizon* ruling by curtailing its no blocking and nondiscrimination rules is untenable; paid prioritization is simply antithetical to the idea of an Open Internet. If the Commission is to take a firm stand against paid prioritization—and it must, in order to prevent grave harm to the nation’s independent narrative and documentary filmmaking community—then it must look beyond the confines of Section 706²⁶ and reclassify.

Many parties have come forth on both sides of the issue of reclassification. Yet where proponents have provided detailed reasoning supporting their stance,²⁷ opponents of reclassification, primarily large broadband providers like Comcast and Verizon, have done little more than make unsubstantiated claims and empty promises. Even in the wake of Verizon’s successful challenge to the Commission’s Section 706 authority,²⁸ providers like Comcast now assure the Commission that Section 706 provides “ample authority” to “protect the open Internet”²⁹ without any explanation as to why or how.

Other provider assurances ring hollow in light of provider behavior. For example, Verizon assures the Commission that “companies such as Verizon have no incentive to abridge customers’ Internet freedoms or assign anyone to a slow lane.”³⁰ Yet Verizon has successfully extracted payment from Netflix in order to provide faster Netflix service to Verizon customers (though Verizon has failed to deliver reliably better service).³¹ By providing faster service to Netflix in exchange for payment, Verizon may have essentially placed comparable video services in a “slow lane” despite claiming it has no incentive to do so. It is not difficult to see how this behavior will spread to other edge providers that transmit large amounts of data, whether through video distribution or in other areas. As each edge provider must bend to the demands of large broadband providers, so too must the independent filmmaking community.³² The Commission must reject this hollow rhetoric and look instead to the substantive arguments in favor of stronger Open Internet policies.³³

²⁵ See *Comcast*, 600 F.3d 642; See also *Verizon*, 740 F.3d at 655.

²⁶ See *id.*

²⁷ See Comments of Public Knowledge, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, at 60-79 (filed July 15, 2014); Comments of Free Press, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, at 26-54 (filed July 17, 2014); Comments of New Media Rights, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, at 13-24 (filed July 15, 2014).

²⁸ *Verizon*, 740 F.3d 623.

²⁹ Comments of Comcast Corp., *In re Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28 at 66 (July 15, 2014).

³⁰ Comments of Verizon, *supra* note 2, at 6.

³¹ See Jon Brodtkin, *Netflix got worse on Verizon even after Netflix agreed to pay Verizon*, ARS TECHNICA (Jun. 9, 2014), <http://arstechnica.com/business/2014/06/netflix-got-worse-on-verizon-even-after-netflix-agreed-to-pay-verizon/>.

³² See *supra* pp. 3-6.

³³ See *infra* pp. 9-10.

Broadband providers like Verizon also claim that paid prioritization arrangements “could reduce consumer costs,”³⁴ but that argument ignores the fact that the extra cost for “fast lane” service will pose a significant barrier to entry for emerging edge providers. If start-up edge providers have to pay extra just for the chance to compete with entrenched businesses paying for “fast lane” service, many innovative start-ups will never get off the ground. Those few that are able to pay the initial cost up front will face a longer road to profitability, hurting the chances of survival for any start-up that seeks to provide web-based services catering to a niche market like independent narrative and documentary film.

Some commenters have also argued that lower prices for Internet access for end-users will offset the cost shift due to paid prioritization, resulting in higher speeds for certain services at no extra cost to consumers.³⁵ But this argument overlooks the severe lack of competition in the fixed broadband Internet access market.³⁶ Broadband providers have no incentive to reduce prices for end users even if they simultaneously charge edge providers for “fast lane” service. In a well-functioning market, a broadband provider’s primary incentive for reducing price is to compete with other providers offering the same service. Because most broadband customers face severely limited choices for fixed broadband Internet access,³⁷ this incentive simply does not exist. With paid prioritization, edge providers and consumers alike will only see increased costs with no decrease in basic Internet access fees to offset them.

Proponents of stronger Open Internet policies have provided ample reasons why reclassification is proper. For example, as our discussion of the filmmaking process makes clear,³⁸ paid prioritization—which the Commission itself cannot fully prevent without reclassification³⁹—either provides a crushing competitive disadvantage or significantly increases barriers to entry for new edge providers by forcing them to pay for a “fast lane.” This will have a severe impact on the ‘virtuous cycle’ that has spurred the rapid growth of the Internet economy and allowed niche market edge providers to thrive, as that cycle depends in large part on low barriers to entry.

Further, today’s broadband Internet access services do not fit the statutory definition of “information service.” “Internet access,” as it is offered by broadband providers, is bundled with services like domain name system (“DNS”) services, dynamic host configuration protocol (“DHCP”) functionality, and other similar services; but such services fall within the management exception embodied within the definition of an “information service.”⁴⁰ Because these services are necessary for routing and managing

³⁴ Comments of Verizon, *supra* note 2, at 30-31.

³⁵ See generally Declaration of Andres V. Lerner, *Competition in Broadband and “Internet Openness”* ¶ 19 (July 15, 2014).

³⁶ Tom Wheeler, *supra* note 3, at 4.

³⁷ *Id.*

³⁸ See *supra* pp. 3-7.

³⁹ See *Verizon*, 740 F.3d 623.

⁴⁰ An “information service” “does not include any use of any such capability [to generate, acquire, store, transform, etc. information] for the management, control, or operation of a telecommunications system or

the underlying telecommunications service inherent in an Internet access offering, the Commission must treat them as part of a singular telecommunications service.⁴¹

Finally, reclassification of broadband Internet access as a telecommunications service will provide definitional clarity and legal certainty. By reclassifying broadband internet access services as telecommunications services, the Commission can provide clarity to the distinction between information services provided by edge providers like Netflix and Vimeo and telecommunications services provided by broadband Internet access providers like Comcast and Verizon. Reclassification will also provide a reliable and understandable legal framework as opposed to what is essentially an ad hoc regulatory regime created through Section 706.

Section 706 is an ineffective means of securing the Open Internet. To enact a meaningful policy that will protect the independent filmmaking community and the public from the calamitous harm of paid prioritization, the Commission must reclassify.

b. The Commission Should Insure Robust Transparency for Consumers, Edge Providers, and Content Creators

While reclassification will provide the Commission with the authority to enact sufficiently strong transparency rules, we are encouraged that the Commission is committed to improving its transparency requirements regardless of whether it pursues reclassification.⁴² The creation of effective transparency rules will be essential to any Open Internet policy the Commission enacts, and should remain a high priority for the Commission regardless of the debate over reclassification.

While the Commission's suggestions regarding transparency are heartening,⁴³ we have concerns regarding the current lack of transparency both in broadband provider disclosures and in the information the Commission makes available to the public.⁴⁴ We hope the Commission uses this proceeding as an opportunity to reexamine how it can better publicly share appropriate provider disclosures and other data to which the Commission alone is privy. As we stated in our initial Comment, information provided to the public must be robust, accessible, and understandable not only to edge providers but to consumers and creators as well.⁴⁵ While information on broadband provider practices is helpful to the general public, it is of equal if not greater value to independent filmmakers, whose livelihood depends in great part on reliable Internet access. We hope

the management of a telecommunications service.” Telecommunications Act of 1996, 47 U.S.C. § 153(24) (2012).

⁴¹ *Id.*

⁴² Notice of Proposed Rulemaking in the Matter of Protecting & Promoting the Open Internet, 29 F.C.C.R. 5561 (proposed May 14, 2014) [hereinafter NPRM].

⁴³ *Id.*

⁴⁴ See also Comments of New Media Rights, *supra* note 27.

⁴⁵ 2014 IDA Comment, *supra* note 1.

that the Commission will make a sufficient amount of relevant information on broadband provider practices accessible to consumers, edge providers, and content creators alike. After all, “sunlight. . . is the best of disinfectants.”⁴⁶

c. The Commission Must Eliminate the Regulatory Distinction Between Fixed and Mobile Broadband Internet Access

The Commission must end the regulatory distinction between mobile and fixed broadband Internet access service embodied in the current proposed rules.⁴⁷ While this distinction may have been grounded in concerns regarding the state of the mobile broadband industry in 2010, those concerns no longer have merit. The Commission should heed the words of proponents of Open Internet regulations⁴⁸ and Comcast⁴⁹ and reexamine the facts supporting this distinction.

We are especially concerned that limiting the extent to which Open Internet rules apply to mobile broadband providers allows providers to maintain too much control over the quality and kind of content consumers can access. This presents the real danger of creating a second class of Internet access service for those who can only access the Internet through mobile broadband. These individuals are often underrepresented individuals in low income or minority groups who are already on the wrong side of the digital divide⁵⁰ and are most in need of the Commission’s attention and support. They stand to gain the most from the great educational value and platform for speech that independent film provides. In light of these issues, the Commission should no longer distinguish between mobile and fixed broadband Internet access in its Open Internet policy.

d. The Commission Must Conduct More Research on the Questions at Issue in This Proceeding

As a final matter, we urge the Commission to conduct additional research on the issues involved in this proceeding, especially competition in the broadband market. As an example of the dearth of information on key questions at issue here, we note that broadband providers have pointed to data in Commission reports as evidence of increased competition⁵¹—even though those reports explicitly state that the purpose of that data is

⁴⁶ NPRM, *supra* note 42, at ¶ 66 (quoting LOUIS D. BRANDEIS, *OTHER PEOPLE’S MONEY AND HOW THE BANKERS USE IT* (National Home Library Foundation ed. 1933) *available at* <http://www.louisville.edu/library/collections/brandeis/node/196>.

⁴⁷ NPRM, *supra* note 42, at app. A.

⁴⁸ Comments of Public Knowledge, *supra* note 27; Comments of New Media Rights, *supra* note 27.

⁴⁹ Comments of Comcast, *supra* note 29, at 40-41.

⁵⁰ Zickuhr & Smith, *supra* note 24.

⁵¹ Comments of Verizon, *supra* note 2, Declaration of Lerner, *supra* note 35, at ¶ 29 (citing FCC Indus. Analysis & Tech. Div., Wireline Competition Bur., *Internet Access Services: Status as of June 30, 2013* at 9 *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0625/DOC-327829A1.pdf

not to illustrate levels of competition.⁵² In fact, commenters alone cannot create the kind of robust factual record necessary to navigate the complex issues at hand. The Commission itself should therefore take immediate steps to build a more complete factual record.

In the meantime, the Commission cannot leave the door open to harmful practices like paid prioritization. In light of recent broadband provider behavior⁵³ and the reality of extremely high barriers to entry into the broadband Internet access market,⁵⁴ there is little question that this market presents a strong case for immediate oversight.⁵⁵ The Commission therefore must do what is necessary to protect and promote the Open Internet, including reclassification of broadband Internet access as a telecommunications service subject to Title II.

IV. Conclusion

Independent narrative and documentary filmmaking is an essential part of American culture, and its social and political importance has never been greater. The independent film community is deeply concerned that the proposed rules will severely harm independent filmmaking by undermining the Open Internet. Accordingly, we respectfully request that the Commission reject paid prioritization by taking the measures we discuss above.

[hereinafter FCC 2013 Analysis]); Comments of AT&T Servs. Inc., *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, at 18 n.53 (filed July 15, 2014) (citing FCC Indus. Analysis & Tech. Div., Wireline Competition Bur., *Internet Access Services: Status as of December 31, 2012*, at 9 (Dec. 2013) [hereinafter FCC 2012 Analysis]); Comments of Comcast, *supra* note 29, at 9 (citing FCC 2013 Analysis, *supra*, at 9).

⁵² FCC 2013 Analysis, *supra* note 51, at 9; FCC 2012 Analysis, *supra* note 51, at 9.

⁵³ See Jerry Bellinson, *Most Americans Oppose Comcast Merger with Time Warner Cable*, CONSUMER REPORTS (June 19, 2014), <http://www.consumerreports.org/cro/news/2014/06/most-americans-oppose-comcast-merger-with-time-warner-cable/index.htm>; *Congratulations to Comcast, Your 2014 Worst Company in America!*, CONSUMERIST (April 8, 2014), <http://consumerist.com/2014/04/08/congratulations-to-comcast-your-2014-worst-company-in-america/>; Jordan Weissman, *Listen as Desperate Comcast Rep Refuses to Cancel a Customer's Service*, SLATE (July 15, 2014), http://www.slate.com/blogs/moneybox/2014/07/15/comcast_rep_refuses_to_cancel_service_listen_to_the_customer_service_call.html.

⁵⁴ Tim Wu & Christopher Yoo, *Keeping the Internet Neutral?: Timothy Wu and Christopher Yoo Debate*, 59 *Federal Communications Law Journal* 575, 585 (2007) *available at* <http://ssrn.com/abstract=953989>.

⁵⁵ *Id.* at 581 (“[E]conomic growth is driven by market entry, and . . . government can play an important role in controlling barriers to market entry that incumbents might impose.”).

APPENDIX A

ABOUT THE COMMENTERS

The International Documentary Association (IDA) is a non-profit 501(c)(3) organization that promotes nonfiction filmmaking, and is dedicated to increasing public awareness for the documentary genre. At IDA, we believe that documentary storytelling expands our understanding of shared human experience, fostering an informed, compassionate, and connected world, and we exist to serve the needs of those who create this art form. Our major program areas are: Advocacy, Filmmaker Services, Education, and Public Programs and Events. IDA also has a long history of protecting documentary filmmaking as a vital art form, and we continue to seek ways to ensure that the artists, activists and journalists who make documentaries receive the resources that they deserve. For over 30 years, IDA has worked to support the documentary art form.

Film Independent is a non-profit arts organization and our mission is to champion the cause of Independent film and support a community of artists who embody diversity, innovation and a uniqueness of vision. We help independent filmmakers tell their stories, build an audience for their projects and diversify the voices in the film industry, supporting filmmakers at every experience level with a community in which their works can be appreciated and sustained. With over 200 annual screenings and events, Film Independent provides access to a network of like-minded artists who are driving creativity in the film industry. Our free Filmmaker Labs for selected writers, directors, producers and documentary filmmakers and year-round educational programs serve as a bridge from film school to the real world of filmmaking – one with no defined career ladder. Project Involve is Film Independent’s signature program dedicated to fostering the careers of talented emerging filmmakers from communities traditionally underrepresented in the film industry. We also produce the weekly Film Independent at LACMA film series, the Los Angeles Film Festival in June and the annual awards programs for the finest independent films of the year—the Film Independent Spirit Awards.

The National Alliance for Media Arts and Culture (“NAMAC”) consists of 225 organizations that serve over 335,000 artists and media professionals nationwide. Members include community-based media production centers and facilities, university based programs, museums, media presenters and exhibitors, film festivals, distributors, film archives, youth media programs, community access television, and digital arts and online groups. NAMAC’s mission is to foster and fortify the culture and business of the independent media arts. NAMAC believes that all Americans deserve access to create, participate in, and experience art. NAMAC co-authored the Documentary Filmmakers’ Statement of Best Practices in Fair Use and has long been an advocate for orphan works reform.

The Independent Filmmaker Project (IFP) champions the future of storytelling by connecting artists with essential resources at all stages of development and distribution.

The organization fosters a vibrant and sustainable independent storytelling community through its year-round programs, which include Independent Film Week, *Filmmaker Magazine*, the Gotham Independent Film Awards and the Made in NY Media Center by IFP, a new incubator space developed with the Mayor's Office of Media and Entertainment. IFP represents a growing network of 10,000 storytellers around the world, and plays a key role in developing 350 new feature and documentary works each year. During its 35-year history, IFP has supported over 8,000 projects and offered resources to more than 20,000 filmmakers, including Debra Granik, Miranda July, Michael Moore, Dee Rees, and Benh Zeitlin. More info at www.ifp.org.

In 1966, **Kartemquin Educational Films** began making documentaries that examine and critique society through the stories of real people. Their documentaries, such as *The Interrupters*, *Hoop Dreams* and *The New Americans*, are among the most acclaimed of all time, leaving a lasting impact on millions of viewers. In 2014 they are having their busiest year ever, with multiple film releases and television broadcasts including *The Trials of Muhammad Ali*, *The Homestretch*, *American Arab*, *Almost There*, and *Life Itself*, about the film critic Roger Ebert, among others. Kartemquin Films is a home for independent media makers who seek to create social change through film. With a noted tradition of nurturing emerging talent and acting as a leading voice for independent media, Kartemquin is building on almost 50 years of being Chicago's documentary powerhouse. Kartemquin is a 501(c) 3 non-profit organization.

Women In Film (WIF) recognizes the importance of developing pathways and opportunities to encourage current and future generations of women to explore and pursue careers in all fields of the entertainment industry. WIF actively supports women in the entertainment industry in four key ways: (1) assists independent filmmakers who have demonstrated advanced and innovative skills; (2) funds programs which provide scholarships and internships; (3) contributes financially and creatively to the production of PSAs which spotlight issues important to women and (4) creates events and seminars which are educational and creatively enlightening.

Women in Film & Video (WIFV) of Washington, DC is dedicated to advancing the professional development and achievement for women working in all areas of film, television, video, multimedia and related disciplines. WIFV supports women in the industry by promoting equal opportunities, encouraging professional development, serving as an information network, and educating the public about women's creative and technical achievements. WIFV, a 501(c)(3) non-profit community benefit organization founded in 1979, is the premier professional resource for people who want successful media careers in the DC-metro region. Our resources, connections and advocates support a vibrant, creative media community.

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teaches about the fields in which she works, including documentary production, communication campaigns in the non-profit sector, and media and social change.