

**Written Testimony of  
Casey Rae  
VP for Policy and Education  
Future of Music Coalition**

**In the  
“Why Net Neutrality Matters: Protecting  
Consumers and Competition Through Meaningful  
Open Internet Rules”  
Hearing**

**Senate Judiciary Committee**

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Future of Music Coalition (FMC) is pleased to submit the following written testimony for the record in this important hearing on preserving an open Internet. FMC is a nonprofit organization founded in 2000 by musicians, composers, independent label owners, technologists and artist advocates. Our goal is a diverse musical culture where artists flourish, are compensated fairly for their work, and where fans can find the music they want.

For the past fourteen years, FMC and our artist allies have made a consistent case for accessible communications networks that allow for creative expression, innovation and entrepreneurship. In fact, we have been involved in conversations about net neutrality since before the term was coined. Preserving an open Internet is vitally important to our organization and to the musicians and composers with whom we work. Musicians intuitively understand the dangers of pay-to-play environments, because they have experienced the negative impacts of corporate consolidation in radio and the structural payola it helped engender. This is why thousands of musicians and independent labels are already on record in various FCC proceedings to make the case for clear rules of the road to prohibit Internet Service Providers from picking winners and losers online based on their business—or even political—preferences.

Musicians across genres have consistently gone to bat for net neutrality at concerts, before Congressional committees and in letters and filings. Those in favor of preserving an open Internet include R.E.M., Erin McKeown, OK Go, Kronos Quartet, Pearl Jam, tUnE-yArDs, Nicole Atkins, Preservation Hall Jazz Band, Boots Riley of The Coup, and

thousands more across the country. All of these creators support a legitimate digital marketplace where a great song, idea or innovation has a chance to find an audience.

By now, it should be obvious that musicians and other creators use the Internet in practically every aspect of their lives and careers—from connecting with fans to booking tours, to selling music and merchandise to collaborating with other artists. Musicians who were around before broadband remember how difficult it was to accomplish simple things like letting people know where and when you were performing, to say nothing of the limitations of physical distribution. By contrast, an artist today can publish their music globally with a tap of a screen or a click of a mouse. Creators of every conceivable background and discipline are able to engage with audiences on their own terms without having to ask permission. This is a powerful thing.

While it is clear that the Internet has created challenges for musicians and other creators, there is no denying that digital technology has made many things easier for countless artists who otherwise would have faced tremendous barriers to entering the marketplace.

Much has been made about the current economic conditions for musicians and composers online. It is certainly the case that artists continue to grapple with many of the changes brought on by technological evolution, but it is also true that any possible solutions to these difficulties are more likely to come from an open, accessible Internet rather than a closed system that serves a privileged few. Artists simply want the opportunity for their

creative expression to compete its own merits, and not have their success be pre-determined by a handful of powerful ISPs.

Currently, the music community is experiencing yet another shift, from downloads to streaming. Musicians and composers are not a monolithic group, and there are differences of opinion about which models are appropriate. This is as it should be: the music industry was never one single way of doing business, but rather a diverse array of approaches based on the individual goals of participants. This diversity is to be celebrated, particularly when it comes to emerging technologies. For example, it's not uncommon these days to hear from a musician that thinks Spotify is not a sustainable model for artists. Perhaps this musician prefers Bandcamp, which allows pricing flexibility and greater opportunities to directly engage with listeners. What happens if an ISP decides that Spotify can pay more and blocks or otherwise interferes with traffic from the smaller platform? What if an ISP charges overages for data on a certain application, but exempts traffic from its preferred partners? Musicians have been down this road before with commercial radio ownership consolidation and institutional payola. A pay-to-play Internet would be devastating to small-to-medium sized enterprises in both the music and technology sectors. And it would be bad for fans that deserve the opportunity to patronize the lawful platforms of their choosing—particularly those that provide better economic returns to creators and allow for new ways for artists to take charge of their lives and careers.

Telecommunications and cable companies have an important role to play in a functional 21st century media ecosystem. There is nothing inherently wrong with their desire to operate profitable businesses, but they must not be allowed to do so at the expense of those who depend on open networks to express themselves creatively and pursue their own entrepreneurial goals. It is important to remember that creative expression—including a diverse array of lawful, licensed music—is a chief reason people go online. Musicians and other artists are entirely aware that part of what has driven the expansion of broadband is their creativity and the innovations that enable them to reach fans.

The work of artists must be valued in a way that is commensurate with demand; there is still a great deal to be done to ensure that creators are treated fairly in the digital age. But policymakers would do upcoming generations of artists a disservice should they allow ISPs to dictate economic terms for creators for sole the purpose of expanding their own bottom lines. Without meaningful rules to prevent discrimination and anticompetitive behavior, this is exactly what will occur.

For several iterations of this debate, Future of Music Coalition and our friends in the broader cultural sector have been content with making the case for basic rules of the road to preserve access and innovation online. Having closely examined the FCC's currently proposed rules, however, we feel strongly that the best course of action is for the Commission to reclassify broadband Internet service as a common carrier under Title II of the Telecommunications Act. In addition to the thousands of artists and independent labels in the official record, more than two-dozen prominent arts and cultural

organizations in all 50 states have also urged the FCC to adopt the strongest rules possible. They join more than 3 million Americans from all walks of life calling overwhelmingly for reclassification. At this point, it is hard to ignore the evidence: the FCC has received the most public comments in any docket in history—99 percent of which demand the placement of broadband Internet service under Title II.

Nothing in the ISP arguments in any way convinces us that broadband Internet service should not exist under a common carrier framework. The giant telecommunications and cable companies would probably like to think that musicians and other creators aren't sophisticated enough to understand what they're trying to do, which is no less than establish a pay-to-play Internet where only the biggest companies can thrive. But artists and the vast majority of Americans know that you can't have a free market without the ability to compete. The FCC must take the necessary steps to ensure that creativity and entrepreneurship can continue to flourish online. And this means reclassification.

The main barrier appears to be political will. This is where Congress can help. Access and innovation are not bipartisan concerns; we have seen members of this very committee tweeting during the State of the Union address. Where do you think Twitter came from? The answer is an open Internet where one can build and promote the next amazing innovation without having to ask permission or pay a toll to an ISP. Whether it's outreach to constituents or delivering an amazing song, the ability to utilize the most important communications platform in history without the interference of gatekeepers should be of utmost importance to each of you. Common carrier is not some left-field

concept. It is a bedrock principle that has informed communications policy for nearly a hundred years—a particularly lucrative century for incumbent companies such as AT&T that built durable empires under its consumer-friendly provisions.

Some would raise the specter of lawsuits to discourage the FCC from doing what it should to protect the interests of entrepreneurs and the public. It is important to understand that there is but one 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, the government will likely persevere in its argument that a move to Title II is not “arbitrary and capricious.” Actually, a return to the prior designation is sober and informed, as the past decade has proven that users subscribe to broadband service in order to access the Internet, not to purchase a suite of bundled “information services” from an ISP. Upon reclassification, we hope that the ISPs will recognize that litigation is ill-considered and destined to fail.

The FCC has the legal authority to prevent discrimination and paid prioritization online; it only needs to exercise this authority. We are unconvinced, however, that its current proposal under Section 706 is the way in which to do so.

Meaningful rules must be enforceable. We take Chairman Wheeler at his word that he will be aggressive in the application of a “commercial reasonableness” standard under 706. But can the same be said for future leadership? What guarantee do we have that an after-the-fact approach to enforcement will prevent the ISPs from taking advantage

anywhere they can and then deploying their armies of lawyers and lobbyists to justify their mischief? Clear net neutrality rules under Title II will let the ISPs know up front what is and isn't permissible. This is the regulatory structure that the FCC must put forward in its rulemaking, one that is already endorsed by more than three million Americans who have filed comments with the Commission.

Congress must be willing to show support to the FCC as it establishes clear rules of the road to preserve access and innovation for generations to come. When you do, rest assured that Future of Music Coalition and our peers and allies across the creative sector will have your back. Thank you for the opportunity to share our perspectives as you consider these important matters.

Casey Rae  
Future of Music Coalition  
1615 L ST NW, Suite 520  
[www.futureofmusic.org](http://www.futureofmusic.org)