

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matters of)
)
The Open Internet Remand and) GN Docket No. 09-191
) GN Docket No. 14-28
Preserving an Open Internet)

**Comments of
Future of Music Coalition**

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I. INTRODUCTION

Over the past decade, technological innovations made possible by broadband Internet service have transformed the marketplace for ideas, information and creative expression. The demand for broadband has played a major part in the rapid growth of the Internet, and its fundamentally open structures have in turn spurred engagement on a truly global scale. The cultural sector is a clear beneficiary of this dynamic; therefore, the interests of creators—including musicians and composers—must not be overlooked in ongoing conversations about how the Federal Communications Commission can best safeguard an open and accessible Internet.

As the FCC explores its options to issue rules that will withstand legal scrutiny, it would also do well to consider the long-term ramifications of further consolidation in the broadband sector. The proposed merger of Comcast and Time Warner Cable sets a troubling precedent in terms of how much power an ISP can have over Internet access and how—or whether—content reaches end users. It is encouraging that Comcast has noted that it intends to honor the net neutrality provisions from the previous NBC-Universal merger agreements, but barring actionable policy at the FCC, there is little guarantee that this commitment will endure past the time outlined in the consent decree. Furthermore, it is clear that Comcast and other ISPs would prefer to charge content providers a fee for prioritized content delivery to consumers. Comcast's private agreement with Netflix to share interconnection may not have run afoul of the recently overturned Open Internet Order, but it is nonetheless troubling and hints at a future where the Internet becomes a pay-to-play environment where only those with the deepest

pockets can guarantee delivery of their content to users who have already demonstrated their demand for such content by a) purchasing expensive broadband access from an ISP; b) accessing legitimate, licensed online services; c) paying an additional subscriber fee to a service with an expectation of unfettered delivery.

In these comments, Future of Music Coalition (FMC) will describe why an open and accessible Internet is crucial to musicians and creators, particularly independents. Though each musician has a unique perspective, these comments reflect a growing consensus among creators that open internet structures and expanded broadband options will encourage the continued development of a legitimate digital marketplace that rewards creators and audiences and allows for a diversity of creative expression and entrepreneurial activity.

II. AN OPEN INTERNET IS ESSENTIAL TO CREATORS

By now, there is little debate about the disruptive effect the Internet has had on the traditional music industries. Many large corporations with tremendous influence over how music reaches listeners found themselves ill-equipped to respond to the challenges of the Internet and the technologies it engendered. Future of Music Coalition is sensitive to these circumstances, as are the thousands of musicians, composers and independent labels with whom we regularly engage. As far back as the early 2000s, however, we have made the observation that the innovations borne of an open and accessible Internet would ultimately power the music industry of the future. This future has, to a large extent, arrived. Today, music fans enjoy an incredible array of fully licensed content online.

From iTunes and Amazon MP3 to streaming services like Spotify, Beats Music and Pandora, there now exist a myriad of ways for artists to reach audiences and fans to lawfully discover and access music. None of this would have been possible without an open Internet. And it's not just big tech companies blazing the trail—many smaller platforms, such as Bandcamp, DistroKid, Topspin, Audiam and countless others have arisen, offering individual artists an impressive set of options with regard to how they engage with audiences and facilitate commerce. These are the very services that would be disadvantaged in an environment where ISPs have free reign to pick winners and losers among content providers and innovators. Artists may find themselves locked into potentially disadvantageous economic structures due to ISPs favoring sites and services with entirely different business interests than those of creators; innovators with artist-friendly platforms may never get off the ground due to bandwidth restrictions or economic barriers to entry.

Such an outcome would not only be damaging for the free market, but would also constrict noncommercial activity on the web. In promoting a diversity of voices across media, the FCC should take into account the incredible range of expression and innovation that an open Internet engenders, not all of it for-profit or intended to operate at a mass scale.

In the various proceedings leading up to the promulgation of the Open Internet Order, Future of Music Coalition engaged with thousands of musicians and independent labels, including R.E.M., Pearl Jam, OK Go, The Decemberists, Kronos Quartet, Death Cab for

Cutie, Preservation Hall Jazz Band, Dead Prez, Boots Riley of the Coup, and many, many more. The American Federation of Musicians—one of the oldest musician unions in the country—also endorsed basic rules of the road for ISPs. Many of these groups and individuals filed comments in the original docket and were pleased that the Commission rose to the challenge of preserving an open and accessible Internet. FMC and our friends were likewise encouraged that the FCC Order made clear that network neutrality only applies to *lawful* services and content. Some felt that the Order did not go far enough to preserve a level playing field in the mobile space, but overall our community was glad to see the Commission establish a baseline policy to ensure that all Internet users—including creators—can continue to benefit from access and innovation online.

These good feelings have somewhat dissipated in the wake of the recent court decision invalidating the FCC's authority to issue and enforce its Order. The music and creative communities are not inclined to give up, however, and look forward to the opportunity to assist the FCC in taking whatever steps necessary to preserve an open and accessible Internet. As with many issues, there are varied perspectives on how to accomplish this, but the fundamental need remains the same: musicians, composers and other creative entrepreneurs depend on a non-discriminatory Internet where a great song, idea or innovation has an opportunity to positively impact the world.

III. NEXT STEPS FOR NET NEUTRALITY

Future of Music Coalition has largely taken an open-minded position with regard to how the FCC can issue and enforce rules to preserve a level online playing field. We believe

that it may be ultimately necessary for Congress to clarify the Commission’s authority, but we recognize the difficulty of enacting legislation, especially within an appropriate timeframe. Waiting for Congress to act would give ISPs have tremendous leeway to shape the future of both wireline and wireless Internet service to first and foremost serve their agenda—one which may not be in line with the public interest or that of a competitive marketplace.

To no small extent, the situation in which the FCC finds itself is of its own making. In the early 2000s, the Commission chose to reclassify broadband Internet as an “information service” rather than a “telecommunications service.” This move, upheld in a Supreme Court decision from 2005, created a grey area in terms of how the FCC approached broadband regulation. Without engaging in philosophical a fusillade about the historic efficacy of common carrier regulation, it seems clear that the most legally sound means through which to promulgate net neutrality rules would be under a Title II framework. Whether Section 706 provides such certainty is an open question, and we look forward to the Commission’s rationale for this approach should it decide to move in that direction. In the meantime, we applaud Chairman Wheeler’s decision to leave reclassification on the table. If indeed “promoting competition in the telecommunications market” becomes the basis for promulgating new rules, we would also hope that such “promoting” also extends to the Commission’s scrutiny of the proposed Comcast-Time Warner merger.

IV. CONCLUSION

The Internet has given all users a license to create and innovate, which has resulted in a global exchange of ideas and information while creating new opportunities for commerce. For musicians and other creators, the open Internet means access to potential audiences no longer limited by geographical distance or the whims of gatekeepers. It also establishes an opportunity to experiment with business models outside of industry structures that may not be economically viable for artists, independent labels and innovators operating at a more modest scale.

The existing docket makes clear that the creative sector depends on a level online playing field and that the public benefits from a diversity of creative expression and viewpoints, as well as the many innovations made possible by an open Internet. We are happy to reaffirm all of this in the hopes that the Commission pursues the most unassailable means with which to preserve an open Internet. In doing so, the FCC lays cornerstone for a legitimate digital marketplace built on competition, access and innovation. We urge the Commission to take swift action to ensure these important protections and thank you for the opportunity to once again weigh in on this crucial matter.