

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
)
Framework for Broadband Internet Service)

GN Docket No. 10-127

**Comments of
Future of Music Coalition**

I. Introduction

Future of Music Coalition (FMC) submits these comments to the Federal Communications Commission's review of its current legal framework for broadband internet service. FMC is a not-for-profit education, research and advocacy organization for musicians, motivated by ongoing collaboration between members of the music, technology, public policy and intellectual property law communities. FMC seeks to educate the media, policymakers, and the public about music and technology issues, while also bringing together diverse voices in the pursuit of solutions to specific challenges. FMC also aims to identify and promote innovative business models that will help musicians and the public derive benefits from new technologies.

FMC has a long history of supporting open internet structures and the level playing field they inspire. For the past ten years, our position has been clearly articulated in FCC dockets, media statements and the Rock the Net campaign for musicians. Demand for broadband internet has exploded in the past decade, spurring technological innovation and in some instances, but not all, a necessary expansion of infrastructure. The emergence of these new technologies has also broadened the market for digital content, particularly streaming audio and video. Innovations made possible by the open internet such as social networking tools, blogging platforms and digital music services allow musicians to engage with fans directly and reach worldwide audiences. Today's artists depend on the web to manage practically every aspect of their careers. Continued innovation and growth is dependent on whether or not the internet remains an open platform. It's clear that musicians — particularly independents — have benefited from the current structure of the web, which is why FMC believes that the internet remain a level playing field where artists can compete in a legitimate digital music marketplace.

In April 2010, FMC submitted reply comments in the FCC's Notice of Proposed Rulemaking on Preserving an Open Internet; GN Docket No. 09-191. These comments summarized the views of

musicians who value the open internet and see it as being crucial to their ability to maintain their careers, cultivate audiences, sell wares and collaborate with other artists.

FMC supports the Commission's goals of establishing clear and enforceable net neutrality rules, and understands that updating its legal framework for broadband and clarifying its authority may be necessary. Certainly, the April 2010 decision in *Comcast v. FCC* undermined the FCC's ability to enforce basic nondiscrimination principles under its previous legal assumptions. Delaying action in crafting net neutrality rules is not a suitable option. FMC, like many others in the creative space, is concerned that without clarity in the broadband marketplace, telecommunications and cable companies will be emboldened to maximize revenue by the favoring content of their business partners while discriminating against competitors or independent voices. It would be an unwelcome development for musicians and other small business entrepreneurs if the internet becomes a proprietary network with the ISPs acting as gatekeepers to the fast lanes.

II. FMC's record on broadband classification

As early as 2005, FMC expressed concern about the FCC's decision to reclassify broadband cable modem service as an information service, rather than a telecommunications service as it had previously been classified. Of primary concern was the impact this ruling would have on the Commission's ability to preserve those dynamics that helped drive internet's tremendous growth to begin with. Following the Supreme Court's *NCTA v. Brand X* decision, which struck down the lower court's ruling and allowed the FCC's reclassification to stand, FMC issued a statement saying that the decision would likely result in greater ISP control over both applications and content on their networks. Furthermore, we expressed skepticism that moving internet service out of its original Title II home and into a regulatory grey zone would somehow result in greater marketplace competition for broadband. As we examine the high-speed internet landscape today, it is clear that many consumers lack choice in providers. Without the ability to set goals and guidelines, the FCC is powerless to address not only this issue, but also that of preserving the internet's open structures for generations to come.

To illustrate the connection to musicians, FMC has drawn parallels between rampant consolidation in radio station ownership — which has all but prevented independent and local artists from reaching listeners — and the danger of allowing ISPs to act as gatekeepers. The comparison isn't perfectly accurate — broadcast is, after all, a scarce resource. The internet, by contrast, has seemingly infinite connections and global reach. Yet if lawful web activity were artificially constricted, it would be orders of magnitude worse. Musicians would be negatively affected, as would America's global standing as a cultural and economic trailblazer.

It is crucial that the FCC is able to implement policies that will serve the public, protect consumers and allow for continued innovation online. The authority to do so can come from either statutory clarification or the FCC's reassertion of a regulatory framework that was central to the web's growth and development. The Commission's goals are hardly controversial (or at least they shouldn't be): to keep the internet open to all users and bring broadband service to underserved American communities. Yet there is intense pressure to abandon aspects of

proposed policy (or to give it up altogether) as a means of dispelling discord. The internet, however, is too important to walk away from. FMC, along with countless musicians and other creators, stand behind the Commission's efforts to achieve these worthy — and necessary — policies.

III. Building the future

The *Comcast v. FCC* decision confirmed an outcome that FMC had predicted back in 2005. As the law stands today, it is unclear whether the FCC has the authority to prevent broadband providers from discriminating against lawful internet traffic. Also in jeopardy are National Broadband Plan proposals to bring affordable broadband service more Americans.

Profit-generating avenues that sustain independent artists are in jeopardy if the FCC does not enforce the most fundamental consumer protection principles in the broadband arena. Without policy safeguards, the telecommunications giants will have enormous power to decide the winners and losers in the cultural sector and entertainment industries.

Nondiscrimination policies and broadband accessibility are vital to a healthy music ecosystem and the ongoing cultivation of a legitimate digital music marketplace. As articulated in our reply comments under GN Docket No. 09-191, FMC sees innovation inspired by the open internet as key to establishing business models that adequately compensate artists while offering a wider variety of music than any other platform in history. We recognize and understand artists' concerns about protecting their intellectual property online, but do not believe that the proposed net neutrality rules would prevent the exploration of legal or technological remedies to unlawful content distribution. It is of paramount importance that musicians have the assurance that their own content and services will not be unfairly discriminated against or subject to ISP monetization schemes that favor only the best-funded enterprises.

Basic nondiscrimination rules will allow for the robust array of lawful musical content, which benefits American culture and allows niche and independent artists to participate in the economic and participatory rewards of the digital era. If the Commission does not take steps to assert its authority to establish these sound and consequential provisions, it will abdicate its role as a guardian of innovation and free expression. As the FCC undertakes this proceeding to craft a clear legal framework for broadband, we can say unequivocally that a sustainable 21st century music ecosystem depends on the policy of nondiscrimination and the core principles of the National Broadband Plan.

Early in the decade, the internet's open structures encouraged innovation and rewarded new experiments in creativity and entrepreneurship. In the span of a few short years, we saw the emergence of multiple platforms for the lawful discovery of music, from download stores like iTunes, CD Baby and eMusic to "on-demand" streaming services like Rhapsody, to webcasters like Pandora and Last.fm, to tour-oriented sites like Jambase and media outlets like Pitchfork and NewMusicBox. Suddenly, listeners had access to music and information about not just the limited acts served by commercial terrestrial radio, but also niche and traditional American music forms.

Thousands of musicians from a diverse range of genres and backgrounds have come forward in support of an open internet, including R.E.M., Kronos Quartet, Erin McKeown, OK Go, stic.man of Dead Prez, Preservation Hall Jazz Band, Vijay Iyer, Franz Nicolay of The Hold Steady, Pearl Jam, Death Cab for Cutie and more. Independent labels, including those represented by the American Association of Independent Music (A2IM) have also gone on record for net neutrality.

All of these musicians and labels understand the importance of preserving open internet structures. Those at earlier career stages have even more reason to be invested, as they're the ones who will be helping to build a new music industry. To do so, they need access to broadband and a level online playing field. Without these crucial resources, structures that reward both creators and fans are less likely to emerge. Nothing less than the future of music is at stake, and policymakers would do well to consider the perspectives of these enterprising stakeholders.

IV. Beyond neutrality

FMC also recognizes that the *Comcast* decision also impacts the FCC's ability to implement the National Broadband Plan, particularly in modernizing the Universal Service Fund to support expanded access. Increased broadband adoption in combination with open internet provisions will allow musicians and music entrepreneurs — regardless of their geographic location — to reach new audiences, grow their brands, cultivate their fan bases and sell their products.

Preserving open internet structures and expanding broadband to more American communities will ultimately fortify the legitimate digital music marketplace, as more consumers discover robust, legal and licensed services that provide lawful access to a broad array of high-quality content. Musicians and other creators have a crucial role to play in making this vision a reality, as do technology innovators and policymakers.

With basic nondiscrimination principles in place, the FCC and its private and public partners can concentrate more fully on bringing what broadband — no longer a luxury, but a central utility — to underserved communities across the country. This work is crucial not only to musicians, but to America's economic, civic and cultural fortitude.

V. Conclusion

The FCC has the responsibility to address the recent *Comcast* decision to ensure affordable broadband is made available to all Americans and to protect consumers from unfair or unreasonable conduct by broadband providers. Through the sound application of statutory authority, the Commission can safeguard the internet and its generative innovations for the users of tomorrow — musicians and other creators among them.

We applaud the FCC for undertaking this proceeding, and for soliciting public comment. FMC hopes that the Commission will consider the views of musicians as it establishes the necessary and appropriate frameworks to nurture and protect the most important communications platform of our time.

Respectfully Submitted,

Michael Bracy

Policy Director

Future of Music Coalition