

Before the
Federal Communications Commission
Washington D.C. 20554

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

GN Docket No. 14-28

Comments of National Arts and Cultural Organizations, Including:

Alternate ROOTS
Americans for the Arts
American Community Television
American Composers Forum
Association of American Arts Presenters
Chamber Music America
Chorus America
Dance/USA
Fractured Atlas
Future of Music Coalition
Independent Film & Television Alliance
League of American Orchestras
National Alliance for Media Arts and Culture
National Alliance for Musical Theatre
National Performance Network
Network of Ensemble Theaters
New Music USA
OPERA America
Performing Arts Alliance
Sundance Institute
Theater Communications Group
Writers Guild of America West

July 15, 2014

I. INTRODUCTION

In a relatively short period of time, broadband Internet service has inspired tremendous innovation, which has in turn enabled individual artists and arts organizations to reach new audiences, cultivate patrons and supporters, collaborate with peers, stimulate local economies and enrich cultural and civic discourse.

Demand for broadband has helped to encourage the development of the Internet, yet the true engine of growth has been its open architecture, which provides a platform for free expression and entrepreneurship regardless of a user's economic clout or political orientation. Artists from all backgrounds and disciplines are able to take part in this dynamic—from musicians to filmmakers to TV and film writers to publishers to performing arts institutions and beyond. In an era of consolidated corporate media, it is crucial that our creative communities are not disadvantaged as we advance and promote the diversity of expression that comprises American culture.

The groups behind these comments believe strongly that the Federal Communications Commission must safeguard an open and accessible Internet for many reasons, including our sector's ability to inspire new generations of cultural ambassadors, creators and innovators using the most important communications platform in history.

Consumers have already demonstrated demand for an array of legal, licensed content by purchasing expensive broadband access via wireline subscriptions and mobile data plans. Users must be able to access the lawful platforms of their choosing and experience the

unfettered delivery of a diverse range of content, including that offered by members of the groups represented in these comments.

There is a growing consensus within America's creative communities that an open and accessible Internet is crucial to a vibrant and diverse cultural ecosystem. Though each organization listed has a unique approach to doing business and advancing culture in the 21st century, we all believe in an ability to compete on a level online playing field based on the merits of our creative expression, goods and services. We support a legitimate digital marketplace that rewards creators and offers audiences new ways to engage with art. We feel strongly that the FCC must do everything in its power to prevent paid prioritization and a "fast lane" Internet for only the best-funded enterprises. The work of our members has both cultural value and economic value. Any rules to emerge from this process must take into account the millions of Americans whose contributions to our society give practical meaning to concepts such as "innovation," "ingenuity" and "entrepreneurship."

II. CREATORS, ACCESS AND INNOVATION

A. Intellectual property and the open Internet

Although the Internet has brought challenges for individual creators and arts organizations—from protecting intellectual property to adapting business models to meet new realities—broadband access has also expanded our reach and created new

opportunities. We are encouraged that the previous Open Internet Order made a clear distinction between lawful sites and services, as artists depend in part upon their copyrights and intellectual property as a source of revenue. We expect that any new net neutrality rules will contain similar provisions, giving rightsholders and Internet Service Providers reasonable latitude to protect intellectual property online.

The open Internet is part of the solution in growing the legitimate digital marketplace. All of today's licensed, lawful applications and services are a direct result of the ability to innovate without having to negotiate terms with a telecommunications or cable provider whose interests aren't inherently aligned with creators or the public. It is the small-to-medium enterprises (SMEs)s—including those in the cultural sector—who are in the best position to utilize new innovations and experiment with Internet-engendered technologies to go about their business. Without an easy way to participate in emerging innovations, creators and cultural organizations will be unable to adopt potentially rewarding tools into their existing business models. There is also the public good to consider: many of the organizations signing these comments are already using open tech platforms to facilitate long-distance arts education, leadership trainings, live performances and more. We are also participants in platforms that allow our goods and services to be directly purchased by patrons and fans. New modes and models for digital commerce are appearing every day—the open Internet drives these developments, and represents a meaningful way for us to participate in the digital-era economy. The emergence of a tiered Internet would deprive individual artists and arts organizations of the ability to benefit from online innovations while frustrating the growth of the legitimate digital marketplace.

B. The economy, the arts and the open Internet

The open Internet allows the arts and cultural sector to more efficiently contribute to the local and national economy. On a neutral 'net, anyone with a robust broadband or mobile connection can reach users, promote their work and sell creative products and services without having to ask permission or pay a toll to an ISP. This dynamic is what allows so many in our creative communities to express ourselves, build businesses and advance American culture. Without rules of the road preventing ISPs from enacting a “pay-to-play” Internet, today and tomorrow’s creators and innovators would be at a tremendous disadvantage.

There is a clear economic imperative to getting the policy right when it comes to broadband access and openness. The organizations behind these comments represent a cross-section of this sector, and are employers, producers, consumers and cultural and economic ambassadors for their cities and regions. According to Americans for the Arts’ study *Arts & Economic Prosperity IV*¹, the creative industries were responsible for \$135.2 billion of economic activity in 2010—this despite a lagging economy and recovering jobs market. Nonprofit arts and culture organizations alone drove an estimated \$61.1 billion into the national economy that same year. A more recent Americans for the Arts study, *Creative Industries: Business & Employment in the*

¹ “Arts and Economic Prosperity IV.” *AmericansfortheArts.org*. Americans for the Arts, n.d. Web. 16 June 2014.

*Arts*² offers localized data in all 50 states that quantitatively demonstrates the tremendous economic impact the creative sector has on local and national economies.

It is fair to say that part of this success story comes from the creative sector's ability to utilize the Internet and its innovations in the ways that make the most sense for our diverse business models and disciplines. If a few powerful ISPs are allowed to dictate which innovations reach the marketplace or to deprioritize our content in favor of corporate partners, our contribution to local and national economies would be stymied. At a time when nonprofits and small businesses are scrapping for any advantage they can get, it makes zero sense for policymakers to disadvantage key drivers of growth and revitalization. Rather, policymakers should do everything to encourage and stimulate development in local communities where arts and culture can make a real difference. Supporting localism is a longstanding goal of the Commission; doing so requires not only the availability of high-quality, affordable broadband service, but also open platforms upon which we are free to innovate and inspire.

C. The open Internet and the arts benefit society

Though the arts and cultural sector has a strong economic case, we also enrich society through our artistic expression. The impact of our contributions in this regard is hard to quantify, but it fundamentally underscores the importance of preserving an open Internet in which creators of all disciplines are able to reach audiences with a minimum of interference. Presently, just a handful of ISPs control access to end users, and there is a

² "Creative Industries: Business & Employment in the Arts." *AmericansfortheArts.org*. Americans for the Arts, n.d. Web. 18 June 2014.

very real danger that these corporations will seek to garner even greater profits by charging content providers for premium delivery of our sites and services. The telecommunications and cable companies often point out that such strategies are necessary to their ongoing investment in infrastructure, but that is a red herring. It is much easier—and cheaper—to *not* update networks, charging consumers data overages while rent-seeking from content providers and innovators. A proper incentive to build out—especially in a world where some “specialized services” are permitted—would come from the ISP conducting market research to determine demand, then deploying the infrastructure to support it. Yet this is not the preferred approach of the incumbent ISPs. Instead, they want to create a more cable-like environment online, with enhanced capacity reserved for preferred business partners only. The very real danger is that such arrangements will come at the expense of the Internet the rest of us use every day.

D. Innovation and the arts and cultural community

As previously noted, the open Internet has inspired innovations that artists and arts organizations use to 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 marketplace, 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. As a field, the arts and cultural communities must retain the ability to utilize new innovations and adapt them to our highly individual missions and business models. The FCC should adopt the strongest rules possible to support this dynamic. We believe that any proposal that allows for paid prioritization is unacceptable, and urge the Commission to adopt rules that eliminate any and all such possibilities.

III. RULEMAKING AND AUTHORITY

It may be ultimately necessary for Congress to resolve persistent issues around FCC broadband competition, though we feel strongly that the FCC has the authority to preserve the open Internet; the clearest path seems to be through reclassification. The Commission must not wait for Congress to act; it must craft rules that will withstand legal challenges and the political tides. Delay only gives the telecom and cable companies an opportunity to determine how we connect and under what conditions. The FCC should devise a rule that applies to mobile, given that a growing percentage of our audiences and patrons engage with our offerings via smartphones and tablets. From education to fundraising to the promotion of new and exciting art, our sector requires nothing less than fully accessible communications platforms.

Any rule that the Commission adopts must be enforceable. We are encouraged that Chairman Wheeler has modified the original proposal to reflect a presumption of “unreasonableness” with regard to paid prioritization under the “commercial reasonableness” standard. However, we are skeptical that this scrutiny will be as diligently applied under future leadership. An *ex-post* approach to regulation is also troubling, given that it places the burden of pointing out mischief on communities with less legal or technical capacity than, say, Comcast, Verizon or AT&T. More preferable would be a rule in which ISPs understood up-front what is and isn’t permissible, and which would prevent already overburdened defenders from having to anticipate and identify potentially uncompetitive behavior. The current proposal, under Section 706 does not seem sufficient to accomplish the goals of preventing telecommunications and cable companies from picking winners and losers online. We strongly encourage the FCC to adopt rules which preserve a level playing field and that will not be easily eroded by the influence by a few powerful companies.

IV. CONCLUSION

The open Internet allows artists of every background and discipline to participate in America’s cultural conversation, while bringing important creative expression to the public. We thank the FCC for the opportunity to weigh in on these important issues, and look forward to a rulemaking that will preserve the Internet as a place where art, civic dialogue and commerce can flourish.