

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
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Promoting and Protecting the Open Internet)
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GN Docket No. 14-28

Comments of Musicians, Composers and Authors:

Nicole Atkins (musician, songwriter)
Laura Ballance, bass player/ song writer for Superchunk, label owner, Merge Records
Charles Bissell, The Wrens
Rebecca Gates, musician/composer/producer
Merrill Garbus, tUnE-yArDs
Jim James, My Morning Jacket
Cheston Knapp, writer/editor
Erin McKeown
Sean Meadows, Everlasting the Way
Brett Lyman, co-owner of M'lady's Records, Machu Picchu Records, and musician
(Chain & the Gang, Hive Dwellers)
Neal Morgan, drummer/arranger
Thao Nguyen, Thao and the Get Down Stay Down
OK Go
Alec Ounsworth, Clap Your Hands Say Yeah
Jeff Parker, (guitarist/composer/jazz musician/member of Tortoise)
Tony Perez, Editor, Tin House Books
Martín Perna (Antibalas, Daptone Super Soul Revue)
Nate Query, bassist, The Decemberists, Black Prairie
R.E.M.
John Strohm, musician and attorney
Laura Veirs, singer-songwriter
Michael Wells, Dir. of Ops & Digital Light @ In The Attic Records, bassist for The
Walkabouts

July 15, 2014

I. ARTISTS MAKE THE INTERNET INCREDIBLE

We file these comments as musicians, songwriters, entrepreneurs, rabble-rousers, advocates, innovators, Internet users and members of the public. Each of us uses the Internet in practically every aspect of our lives and careers, from connecting with fans to booking tours, to selling music and merchandise to collaborating with other artists. Those of us who remember the small army of personnel it took in the old days to do even a couple of the things listed above are grateful for the innovations that have come from an open Internet.

You have probably heard the stories about how the Internet has impacted the music community, and not always for the better. It is true that we're still grappling with many of these changes, but it's also true that any solutions to the problems faced by creators are more likely to come from an open, accessible Internet than they are from a cable or telecommunications company playing favorites with content. We know that creativity isn't a meritocracy—in fact, we artists tend to think our stuff is the best. Which is why we want it to compete on its own merits, rather than be subject to the whims of a handful of powerful ISPs.

Creative expression—including a diverse array of lawful, licensed music—is part of why people go online. As artists, we embrace this, because we understand how difficult it has historically been for even the most talented musicians and songwriters to reach potential audiences. We've also seen what it looks like when barriers are erected by just a handful of powerful media companies that prevent a lot of great music from being heard. As

artists, we know that part of what has driven the expansion of broadband is our creativity. We believe that our work must be valued in a way that is commensurate with demand; there is a lot of work yet to be done to ensure that creators are treated fairly in the digital age. Yet we also believe that we disadvantage upcoming generations of artists and fans if we allow Internet Service Providers to pick winners and losers online based on business—or even political—preferences.

II. THE NEW PAYOLA

Once upon a time, radio was the only game in town when it came to new audiences encountering your music. Limitations around broadcast spectrum availability, geographic reach and hours in a day made getting airplay incredibly competitive. Nevertheless, over several decades, many talented musicians and songwriters were able to find fans through this medium. Then a bill was passed in Congress—the Telecommunications Act of 1996—that resulted in unprecedented consolidation in radio station ownership.

Practically overnight, we went from a vibrant and diverse commercial radio marketplace operated by real music people to a homogenized national jukebox owned by massive corporations and backed by global financial institutions. What at the time seemed like a great move for these companies turned out to be a recipe for disaster for musicians and fans (and ultimately, not such a great move for those companies). A system of structural payola emerged because of the narrowed points of access, with the outcome that radio airplay no longer had anything to do with talent, or even demand—it was now a closed system of economic and other enticements.

We music people know payola when we see it. And what we see in Chairman Wheeler's proposal doesn't give us any confidence that we won't end up with an Internet where pay-by-play rules the day. We've heard this song before, and we're frankly pretty tired of it.

III. YOU CAN FIX THIS, FCC

Thousands of us have already told the FCC that losing an open Internet would be disastrous to the music community, and we suppose there's no harm in telling you again. But this time, we really hope you'll listen. We may not be telecom lawyers, but we get this issue pretty clearly. You have the legal authority to prevent discrimination and paid prioritization online. You only need to exercise it. While we appreciate the thoughtfulness with which you have approached the current proposal, and your seeming receptivity to feedback, we are still unconvinced that the plan you've advanced is sufficient to protect creators, entrepreneurs and innovators. Worse, it seems that the current plan would leave so many backdoors to payola as to be practically meaningless, if enforceable at all. You can and must do better.

Whatever rule you arrive at has to be enforceable. We take Chairman Wheeler at his word that he'll be very aggressive about how the FCC will apply the "commercial reasonableness" standard. But what about future Chairpersons? And 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 actions? Real net neutrality rules would let the ISPs know up front what is

and isn't permissible. Us artists and advocates shouldn't have to be on defense when we're already so busy creating music and trying to make the world a better place. We want encourage the FCC to adopt rules that preserve a level playing field and that will last. We've heard that reclassification to Title II of the Telecommunications Act is the best way to do this, and we're inclined to agree. So what's stopping you? Politics? You want to impress those cool telecom lobbyists? We know what it's like to be pressured to conform, but sometimes you have to call your own tune. This is one of those times.

IV. YOUR CHANCE TO GET IT RIGHT

As much as we love the opportunity to tell the government what to do, it really cuts into our real work, which is making great music and getting it out there into the world. Many of us have already urged the FCC to fix a problem that to a large extent it caused back when the Commission decided to classify broadband Internet as an "information service" instead of a "telecommunications service." You can fix this. We know you can. And we're hoping that you do, because we don't want to have to be back here in some future docket making the same case. Frankly, we have better things to do, and we're sure you do, too. So we urge you to adopt the strongest and most enforceable rules possible so that us musicians and songwriters can keep on doing what we do best, and so that future generations of creators can benefit from access and innovation.

Sincerely,

Nicole Atkins (musician, songwriter)
Laura Ballance, bass player/ song writer for Superchunk, label owner, Merge Records
Charles Bissell, The Wrens

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Merrill Garbus, tUnE-yArDs
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