## Before The Federal Communications Commission

In the Matter of	)	
	)	WC Docket No. 17-108
Restoring Internet Freedom	)	

The Writers Guild of America, East, AFL-CIO, submits these comments in connection with the above-captioned Notice of Proposed Rulemaking. The WGAE's members write, edit, and produce the television programs, feature films, and digital content that entertains and informs America - from dramas to comedies to public interest programs to news and more.

Our members know first-hand how the Internet has transformed the way content is created and distributed, the way people find and watch and read stories and programs and films. There is nothing more vital to American culture and American democracy than the preservation of a free, open Internet in which powerful gatekeepers are precluded from favoring or disfavoring content to further their own economic interests, to advance or thwart a political ideology, or for any other reason.

We applauded the Federal Communications Commission in 2009 when it adopted net neutrality principles to protect the interests of the American people – and of content-creators like our members. These principles were confirmed in the "Title II Order" which the Commission appears poised to discard in favor of a completely undefined "light-touch regulatory framework". The absence of any actual regulations in this framework demonstrates that the FCC will be asked to hand the Internet over, lock stock and barrel, to the multi-billion dollar corporations that are eager to transform it into a system of high-profit, low-transparency fast and slow lanes. The Internet would be left to the devices of a few enormously powerful and lucrative private interests.

The Internet is the modern town square, the place people exchange ideas and experiences and build a democratic community. But it exists entirely on private property, and if the Federal Communications Commission does not act decisively to protect everyone's inalienable right to access that town square, democracy itself will suffer grievously. In its Notice of Proposed Rulemaking, the Commission asks whether the essential rules necessary to preserve a free and open Internet - bans on discrimination, throttling, blocking, and paid prioritization, plus basic transparency provisions - can remain fully in place if the Commission abandons its power to adopt and enforce those rules pursuant to Title II of the Communications Act. The United States Court of Appeals for the District of Columbia has answered that question, twice: The authority to protect the Internet flows precisely from Title II, and the DC Circuit has expressly upheld the Title II Order which the Commission is now proposing to abandon.

To justify scrapping the net neutrality rules properly adopted under Title II, the Notice of Proposed Rulemaking posits a mythic Golden Era in which innovation and many other wonderful things were permitted to thrive – an era ostensibly brought to a screeching halt by the adoption of the Title II Order in 2015. Leaving aside the awkward fact that it is impossible to make such a sweeping judgment of the effect of the Title II Order in such a short period of time, this re-imagining of the pre-2015 era ignores the inconvenient truth that the Commission's net neutrality rules were in effect for years before that. The FCC skirmished in court with the giant telecommunications companies for years before the DC Circuit upheld its authority under Title II, but during that period all of the major actors took the cautious and prudent path of *obeying net neutrality rules*. Indeed, net neutrality was such the order of the day that Comcast and NBC Universal agreed to incorporate them into their merger agreement<sup>1</sup>.

In any event, it is rather odd to square the NPM's revisionist history with our actual experience. Throughout the years in which net neutrality was the *de facto* regulatory framework, innovation has in fact flourished. This is precisely when high-speed Internet connections (which permit streaming of high-quality video programming written by WGAE members) expanded most dramatically, when tens of millions of Americans transformed their interactions with one another through social media, when mobile devices became vastly more powerful and prevalent. In other words, the most profound innovations in Internet history were made possible precisely because of net neutrality, not despite it.

If anything, our concern is that these rapid, useful developments have made it imperative to strengthen the net neutrality rules, to enhance their application and enforcement. This period of enormous growth and innovation has enabled a few high-tech companies to grow to enormous size and power. Comcast controls a huge portion of the cable market and it owns one of the biggest content production entities in the nation – NBU Universal. Telecom giant AT&T owns DirecTV and Yahoo. Companies like Facebook, Amazon, and Apple control hundreds of billions of dollars of market share and have more than enough market power to expand their dominance should the Commission drop its commitment to maintaining and enforcing non-discrimination rules – including rules against paid prioritization.

The NPR suggests that paid prioritization might actually be a good thing. This is true: paid prioritization would be a very good thing for giant technology companies that have the market power to extract rent because of their dominance – in the case of ISPs, rent for access to the pipelines they control; in the case of content aggregators and distributers, rent for access to the content they control.

Paid prioritization might be economically rational for the giant technology companies. For example, Netflix' willingness to pay Comcast/NBCU a huge fee to ensure swift and smooth streaming is economically rational for both entities (and therefore commercially reasonable); Netflix' product is made substantially more attractive to customers as a result,

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<sup>&</sup>lt;sup>1</sup> We note that the Commission adopted its order requiring the companies to adhere to strict net neutrality principles in January 2011, further undermining the notion that these rules arose for the first time with the Title II Order in 2015.

and Comcast/NBCU gains enhanced revenues. Unfortunately, this also means that customers face upward price pressure and content creators who do not pay for this prioritization have a substantially more difficult time attracting viewers.

The distribution market in most areas is controlled by a monopoly or duopoly. In many parts of the country there is only one ISP – the cable company. In some areas, there are two – the cable company and the telecom. In a perfectly competitive marketplace squeezing access to the Internet pipes into Americans' homes through paid prioritization or otherwise would be very difficult to accomplish. Content creators and distributors could do business with any number of ISPs, as could edge providers and consumers. We are unaware of any economic theory in which a market is considered competitive if there is only one supplier, or at best two.

Let us underscore what is at stake. As the Internet has developed in recent years, all data reaches consumers through a single pipe. Email, social media, television, feature films after their theatrical releases, made-for-digital programs, news in text form and in video form, land-line telephony. Permitting powerful gatekeepers to control and prioritize what flows through this single pipe, at what rate and quality, has an enormous effect on what Americans watch and read and learn and write and communicate. Equal and open access is essential. Eliminating the Title II order will deprive the American people of precisely that equal and open access.

We urge the Commission to maintain – indeed, to strengthen – the Title II Order.