Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of the Open Internet Order Remand	)	GN Docket No. 14-28
	)	

Comments of the Writers Guild of America, East, AFL-CIO

The Writers Guild of America, East, AFL-CIO (the "WGAE") submits these comments in response to the notice dated February 19, 2014 regarding the guidance of the United States Court of Appeals for the District of Columbia Circuit in the *Verizon v. FCC* case.

The WGAE represents thousands of members who write for film, television, radio, and digital media. Our members work for the major television and radio networks and stations and for public television, where they write, produce, edit, and create graphics for news and public affairs programs. Their material is broadcast over the airwaves, distributed on cable television, and posted on the Internet.

In his February 19, 2014 Statement, Chairman Wheeler noted that he would ask the Commission to consider steps to fulfill the "no blocking" goal and to fulfill the goals of the non-discrimination rule. These might be thought of as points along a continuum, efforts to ensure that content creators have access to the public without interference from powerful gatekeepers, whether direct technical interference or indirect economic interference through higher prices to stream certain content at reasonable speeds. We agree these are the essential elements of an open, innovative Internet.

The Internet and other digital media offer an unprecedented opportunity for creators to reach audiences and for people to watch and read what they want, when they want. This is profoundly different from the current media environment, in which a relative handful of multinational conglomerates decide what gets distributed to the public on television and in the movie theaters. Permitting broadband

providers to discriminate amongst content, to decide which programs get priority distribution, would transform the open architecture of the internet into a slightly upgraded version of today's television and film industry. We believe the public and the economy benefit from an Internet that offers a greater variety of options than what is currently available on television and radio and in movie theaters. Digital technology presents a vast range of possibilities to content creators and consumers alike, and it would be a tragedy to squeeze all of that into a narrow commercial band.

The no-blocking and non-discrimination principles are essential to maintaining the Internet as a place of innovation and access, a system that offers the American people a greater variety of options and information than are available off-line, and we encourage the Commission to apply and enforce them. It is important to note that, although the D.C. Circuit questioned the jurisdictional path the Commission took in issuing the Open Internet Order, it squarely approved the foundations of the Commission's no-blocking and non-discrimination principles. "To begin with," the Court wrote, "the Commission has more than adequately supported and explained its conclusion that edge-provider innovation leads to the expansion and improvement of the broadband infrastructure." The Court upheld the Commission's findings about the dangers posed by broadband providers which function as gatekeepers with the power and incentive to restrict access to certain content. The Court agreed that "broadband providers have the technical and economic ability to impose such restrictions . . . In fact, there appears little dispute that broadband providers have the technological ability to distinguish between and discriminate against certain types of Internet traffic."

Thus the Commission's task is not to reconceive the principles and policies set forth in the Open Internet Order, but to reapply them. These principles have become even more essential as the business of creating and distributing content on-line has continued to develop since 2010.

In the years since the Order was promulgated, distinctions between content providers and content distributors have continued to blur. The most obvious example is Comcast/NBCU, a giant entity which

owns production studios; broadcast and cable television networks; and an enormous system of wires which distribute signals to tens of millions of homes – both "cable television" signals and streams of Internet data (including streamed programs initially made for television or for movie theaters, and programs made for all-digital enterprises like Netflix, whose original series are in some respects indistinguishable from traditional television).

Moreover, Americans increasingly get all of their information and entertainment from a unified system of cables and cords which are controlled by a relative handful of gatekeepers[1]. In most markets there are only two such gatekeepers – the cable company and a telecommunications company, each of which offer a communications package that includes cable TV, broadband, and telephone. (In many markets, there is only the cable company.) These gatekeepers in turn have tremendous incentives to discriminate between content, to steer audiences to content the gatekeepers produce (as with Comcast/NBCU) or to content which is more profitable to carry because the producers or licensees have deeper pockets and can pay for the advantage. The D.C. Circuit acknowledged the particular risks to openness and innovation posed by integrated entities like Comcast/NBCU and other media giants because of their clear incentive to favor their own content; the Court approved the Commission's observation "that broadband providers – often the same entities that furnish end users with telephone and television services – 'have incentives to interfere with the operation of third-party Internet-based services that compete with the providers' revenue-generating . . . pay-television services'." This is not the open, innovative Internet the American public needs and wants.

As Chairman Wheeler's Fact Sheet on Internet Growth and Investment indicates, Americans spend 70% more hours watching video over the Internet than they did in June 2010, and revenues from online video services grew from $1.86 billion to $5.12 billion from 2010 to 2012. The convergence of broadband with other forms of content distribution is the new world the Commission must address by

[1] Even the number of gatekeepers is poised to shrink, as Comcast/NBCU proposes to take over Time Warner Cable and expand into a number of the biggest urban markets, thereby increasing its leverage by a significant amount.

deepening its commitment to the no-blocking and non-discrimination principles. The stakes have never been higher, and the time to protect the open framework of the Internet is now.