

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)	
)	
Inquiry Concerning the Deployment of Advanced)	GN Docket No. 12-228
Telecommunications Capability to All Americans)	
in a Reasonable and Timely Fashion, and Possible)	
Steps to Accelerate Such Deployment Pursuant to)	
Section 706 of the Telecommunications Act of)	
1996, as Amended by the Broadband Data)	
Improvement Act)	

COMMENTS OF THE WRITERS GUILD OF AMERICA, WEST, INC.

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September 20, 2012

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Introduction

Writers Guild of America, West, Inc. (WGAW) is pleased to submit the following comments in response to the Federal Communications Commission's (FCC) August 21, 2012 Notice of Inquiry (NOI), GN Docket No. 12-228, regarding the "Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act."

WGAW is a labor organization representing more than 8,000 professional writers working in film, television and new media, including news and documentaries. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, "WGA"). Increasingly, original video programming written by WGA members is available through services such as Hulu, YouTube and Netflix, delivered to consumers over the Internet.

Broadband Internet access is critical to democratic discourse, creative expression, enhancing marketplace competition and economic growth. For the media industry, the deployment of advanced telecommunications capability to all Americans is essential to the reintroduction of competition in the video programming and distribution market. Currently, a small number of vertically integrated media companies produce a majority of the original content viewed by Americans on the major broadcast and cable networks. These are the same companies that own the broadcast networks and the most widely distributed and watched cable channels. Compounding this concentration in production and exhibition is a consolidated market of multichannel video programming distributors (MVPDs) where the four largest providers control

68 percent of the market.¹ The Internet has emerged as the viable alternative for diverse and independent video programming with original programming across a growing number of online sites and services. Online video represents one of the few forms of competition to the current oligopoly in the video programming and distribution market. The Internet's unlimited capacity provides ample space for diverse content not available on traditional media platforms. For writers, the stories they have been unable to tell now have an outlet.

The Commission must act to both protect and promote the Internet as a video distribution platform. In this filing, the WGAW offers comments on defining advanced telecommunications capabilities to promote the development of a competitive Internet platform. We urge the Commission to adopt speed and data capacity thresholds that allow consumers and content creators to realize the benefits offered by broadband Internet.

Advanced Telecommunications Capability Requires Increased Broadband Internet Speeds

Section 706 of the Telecommunications Act of 1996 defines "advanced telecommunications capability" as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology." Just as the FCC's former benchmark of 200 kilobits per second (kbps) for broadband speed was overtaken by rapid changes in technology, the current benchmark of 4Mbps/1 Mbps must be updated to reflect the development of advanced Internet services including high-definition (HD) video. When the Commission adopted its current 4Mbps/1 Mbps benchmark in 2010, it found that such speeds "adequately met

¹ National Cable & Telecommunications Association, "Top 25 Multichannel Video Programming Distributors as of Dec. 2011," available at <http://www.ncta.com/Stats/TopMSOs.aspx>. SNL Kagan, "U.S. Multichannel Industry Benchmarks," <http://www.snl.com>.

consumers' need for video over broadband at that time.”² Since 2010, adoption of Internet-connected devices such as tablets has increased online video consumption. According to Nielsen, in the first quarter of 2012, 163 million Americans watched video over the Internet each month.³ Nielsen also found that the time spent watching online video increased by 80 percent between 2008 and 2011.⁴ The use of online video is one of the most bandwidth intensive Internet applications. As the Commission has noted, high-definition video can require speeds of 5-12 megabits per second (Mbps).⁵ Currently, Netflix streams HD video at about 2.3 gigabytes per hour or 5 Mbps.⁶ However, the requirements of an average American household with 2.6 occupants⁷ are even higher given the desire to watch multiple videos or use applications such as video conferencing at the same time. Therefore, a higher benchmark, such as 15 Mbps, is needed to reflect access to the “high-quality voice, data, graphics, and video telecommunications” services that section 706 focuses on.

Another reason to increase the benchmark is that U.S. Internet speeds have fallen behind those of other nations. The U.S. ranked 12th in average connection speed during the first quarter of 2012 with 6.7 Mbps.⁸ The top three countries, South Korea, Japan and Hong Kong, averaged speeds of 15.7, 10.9 and 9.3 Mbps, respectively. For the U.S. to remain globally competitive in the digital age, the developers of future innovative applications will need access to world-class networks.

² Ninth Broadband Progress Notice of Inquiry, *Inquire Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 12-228, August 21, 2012, p. 6.

³ The Nielsen Company. “The Cross-Platform Report, Quarter 1, 2012-US”, p.6.

⁴ The Nielsen Company. “The Cross-Platform Report, Quarter 3, 2011-US”, p.4.

⁵ FCC. *Ninth Broadband Progress Notice of Inquiry*, p.7.

⁶ Netflix. “Manage Bandwidth Usage.” Available at <http://support.netflix.com/en/node/87#gsc.tab=0>. Accessed September 13, 2012.

⁷ U.S. Census Bureau. “2010 American Community Survey 1-Year Estimates – Households and Families.” ID S1101. Available through <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>

⁸ Akamai Technologies. *The State of the Internet – 1st Quarter, 2012 Report*, p. 13.

Capacity is an Integral Requirement for Advanced Telecommunications Capability

Sufficient data capacity, the amount of data sent and received in a given month, is necessary to enable “users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.” The WGAW commends the FCC for recognizing that advanced telecommunications capability requires more than just minimum speed thresholds, noting that capacity also affects “what consumers can do with their broadband service.”⁹ As such, it is necessary for the Commission to incorporate capacity requirements because the deployment of advanced telecommunications capability will be limited if consumers are not provided with enough data to use high-quality services offered over broadband. In addition, to make broadband video a viable competitor to traditional MVPD distribution of video, consumers must have data capacity that enables substitution. Further, adopting capacity thresholds has become increasingly important because of ISP implementation and discriminatory use of data caps, a practice which undermines broadband growth.

Many of the nation’s largest Internet service providers (ISPs), including Comcast and AT&T, have instituted monthly data caps for broadband Internet customers. These two providers alone account for 42 percent of high speed Internet subscriptions, meaning that a large portion of U.S households are already subject to a cap on their Internet use.¹⁰ Until recently, both Comcast and AT&T placed 250 GB monthly limits on their subscribers’ Internet use. Comcast has since rescinded that cap but is experimenting with a 300 GB allowance with the option to buy additional data. These caps limit the amount of online video that can be streamed to a household and prevent Online Video Distributors (OVDs) from replacing the traditional video services that

⁹ Ninth Broadband Progress Notice of Inquiry, *Inquire Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 12-228, August 21, 2012, p. 5.

¹⁰ “2012 Q2 High Speed Data Subscribers,” SNL Kagan, accessed September 19 2012.

MVPDs offer. Although the companies claim that data caps are necessary to reduce congestion on their networks, Comcast itself has admitted that monthly caps have nothing to do with any potential congestion. As it stated in a letter to the Commission, “That [250 GB monthly] cap does not address the issue of network congestion, which results from traffic levels that vary from minute to minute.”¹¹ Furthermore, one of the few analyses of real world Internet traffic found that congestion only occurs at specific times and data caps punish users who do not contribute to congestion.¹² Data caps appear to be an attempt by incumbent video programming distributors to limit potential competition from broadband video. Comcast’s decision to discriminate against third party broadband video services in application of its data caps provides important evidence of anticompetitive behavior. Earlier this year, Comcast launched Xfinity Streampix to compete with on-demand streaming services like Netflix. Comcast decided that when accessed over the Microsoft Xbox, Streampix would be exempt from its own data caps while competing OVD services would count against the cap. According to Comcast, the service is not subject to the Open Internet Rules because it does not travel over the public Internet but over a private network. Nonetheless, testing by network engineers suggests that Xfinity traffic to the Xbox is not traveling over a private network; however, it is being prioritized over competing video traffic.¹³ It is clear that data caps will allow MVPDs to discriminate against Internet delivered video, undermining competition in the video marketplace.

While very few consumers currently reach or exceed these limits, data caps may deter adoption of broadband services, as consumers limit Internet use to avoid additional charges. Data

¹¹ *Re: In the Matter of Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications*, File No. EB-08-IH-1518. September 19, 2008.

¹² Felten, Benoît. “Do data caps punish the wrong users?” Fiberevolution.com, November 28, 2011, <http://www.fiberevolution.com/2011/11/do-data-caps-punish-the-wrong-users.html>.

¹³ Dugan, Andrew. “An IP Engineer and Consumer View of Xfinity Traffic Prioritization.” Level 3 Communications Blog, May 17, 2012. Available at <http://blog.level3.com/2012/05/17/an-ip-engineer-and-consumer-view-of-xfinity-traffic-prioritization/>.

caps are already having a detrimental effect on the development of new online offerings. Sony has placed development of an OVD service on hold because of Comcast's current discriminatory application of data caps.¹⁴ Because data cap policies discourage both the development and use of high-quality services delivered over the Internet, they undermine the Commission's broadband goals. As such, it is critical for the Commission to incorporate data capacity thresholds into the definition of advanced telecommunications. The Commission's capacity threshold should ensure that consumers are able to use high-quality Internet services and enable real competition between broadband and traditional video services. Therefore, capacity thresholds should allow consumers to substitute broadband video for traditional video. In 2011, the average American watched 153 hours of television per month. With an average household size of 2.6 occupants, data capacity should allow for 400 hours of video consumption, as well as other Internet uses such as email, web browsing and cloud services like automated data backup.¹⁵ Estimating an hour of HD video to consume 3GB of data, a monthly data capacity threshold of at least 800 GB of data is necessary for broadband to compete with traditional video.¹⁶ It is necessary the Commission adopt such a standard to ensure the deployment of advanced telecommunications and to prevent incumbent video distributors from instituting policies that limit the growth of broadband.

We urge the Commission to require ISPs provide information on current data cap practices and evaluate the data capacity made available to consumers on a GB per dollar basis to determine if caps and overage fees are being used to discourage broadband use. Such behavior

¹⁴ Timothy B. Lee, "Sony: Internet video service on hold due to Comcast data cap," *Ars Technica*, May 2, 2012, <http://arstechnica.com/tech-policy/2012/05/sony-warns-comcast-cap-will-hamper-video-competition/>.

¹⁵ Brian Stelter, "Nielsen Reports a Decline in Television Viewing," *The New York Times*, May 3, 2012, <http://mediadecoder.blogs.nytimes.com/2012/05/03/nielsen-reports-a-decline-in-television-viewing/>.

¹⁶ Jessica Dolcourt, "Caution: Streaming video will chew through you 4G iPad data," *Cnet*, March 13, 2012, http://news.cnet.com/8301-13579_3-57396311-37/caution-streaming-video-will-chew-through-your-4g-ipad-data/.

contradicts the goals of the Telecommunications Act and it is essential that the FCC use its regulatory oversight to promote competition and diversity.

Conclusion

The Internet is a fast-growing distribution platform. While market developments are integral to the Internet's growth, the Commission has found that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion. The Commission has a vital role to play in ensuring all Americans have access to broadband Internet. How the Commission defines advanced telecommunications capability can promote the deployment and access of such services. We urge the Commission to increase speed thresholds and introduce data capacity thresholds that enable consumers to take advantage of the breadth of high-quality services offered online. Such standards will help ensure the continued growth of this vital platform.