



August 20, 2018

The Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Simons,

Thank you for inviting public comment on competition and consumer protection issues in communication, information, and media technology networks. I am submitting these comments on behalf of the Writers Guild of America West (WGAW), a labor organization representing more than 10,000 professional writers of motion pictures, television, radio, and Internet programming, including news and documentaries. Our members and the members of our affiliate, Writers Guild of America East (jointly, "WGA") create nearly all of the scripted entertainment viewed in theaters and on television today as well as most of the original scripted series now offered by online video distributors ("OVDs") such as Netflix, Hulu, Amazon, Crackle, and more.

As broadband Internet becomes the central technology for distributing and consuming news and entertainment, reasonably priced, high quality broadband service and a free and open Internet are essential to the health of democracy, the economy, and the livelihoods and creative freedom of WGAW members. However, evidence indicates a lack of meaningful competition and resultant harm to Internet and video consumers.

During a recent California Public Utilities Commission investigation into the state of broadband competition, WGAW examined high-speed¹ wired broadband availability data for the state, finding that 69% of California's population lived in census blocks served by only one provider of high-speed wired broadband.² As the FCC has observed, most high-capacity broadband activities, such as streaming video, still occur on wired broadband because of mobile data costs and reliability issues, meaning that wireless broadband does not provide a competitive substitute.³ Limited investment in overbuilding due to significant costs and barriers to entry

¹ Using the Federal Communications Commission's definition of high-speed broadband as 25 Mbps downstream and 3 Mbps upstream or higher.

² Writers Guild of America West, *Testimony Submitted as Supplemental Information Request Response in the Matter of the Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions Raised in the Limited Rehearing of Decision 08-09-042*, Public Utilities Commission of the State of California (November 5, 2015); Data source is FCC Form 477 data as of June 30, 2015, which contains broadband availability information by U.S. census block. This analysis likely overstates broadband availability as a broadband provider may not offer service to all of the residents or any given census block.

³ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, 2018 Broadband Deployment Report*, GN Docket No. 17-199, ¶ 15 (2018); *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 Improvement Act, 2016 Broadband Progress Report*, GN Docket No. 15-191, ¶ 2 (2016).

means that the lack of competition is unlikely to change substantially. Even the expansion of Google Fiber has stalled out, despite the vast resources of its parent company. As industry analyst Craig Moffett testified before Congress, “The returns to be had from overbuilding—that is, being the second or third broadband provider in a given market—are generally poor... Stated simply, it means that market forces are unlikely to yield a competitive broadband market.”⁴

The lack of competition leaves Internet service providers free to raise prices and interfere with content without fear of customer defections. After Charter Communications acquired Time Warner Cable and Bright House Networks, the new company immediately increased prices in the double or triple digit percentages for its acquired customers.⁵ Consumers with no alternatives for high-speed Internet access likewise cannot opt out of service that throttles or discriminates against unaffiliated online video services, degrades the customer experience to leverage interconnection fees from edge providers,⁶ or steers customers to affiliated online or traditional video services through data caps. According to an analysis by the Institute for Local Self Reliance, 40% of Americans in census blocks served by only one high-speed broadband provider, and 33% of Americans in census blocks served by two high-speed broadband providers, must purchase service from a company with a record of violating net neutrality.⁷

As a result, Americans are deeply dissatisfied with the broadband marketplace. Cable and Internet service providers rank lowest among the 46 industries covered by the American Customer Satisfaction Index (ACSI), and customer satisfaction deteriorated year over year.⁸ According to the ACSI’s 2018 Telecommunications Report, “Customers are unhappy with the high price of poor service, but many households have limited alternatives.”⁹

The failures of the market for high-speed broadband access are typical of infrastructure markets due to the high cost of entry. Regulatory oversight is warranted where markets systematically

⁴ Craig Moffett. *Testimony on Promoting Broadband Infrastructure Investment*. Committee on Energy and Commerce, US House of Representatives (July 22, 2015). Available at:

<https://docs.house.gov/meetings/IF/IF16/20150722/103745/HHRG-114-IF16-Wstate-MoffettC-20150722.pdf>.

⁵ Rick Moriarty, *Price-shocked Spectrum cable customers react, ready to cut cord: 'I'm really upset'*, Syracuse.com (May 22, 2017),

https://www.syracuse.com/news/index.ssf/2017/05/higher_prices_prompting_some_spectrum_cable_tv_customers_to_cut_the_cable.html; Linnea Zielinski, *Here's how to get your old rate back if Spectrum jacks up your internet bill*, Metro (May 11, 2017), <https://www.metro.us/news/local-news/new-york/negotiate-time-warner-cable-spectrum-internet-rate>; *Brindisi calls for investigations into Spectrum cable TV, internet price hikes*, The Rome Sentinel (Apr. 26, 2018), <http://romesentinel.com/county/brindisi-calls-for-investigations-into-spectrum-cable-tv-internet-price-hikes/QBqrdz!5O6Mnw5Mp8vfbvnxr84SVw/>; John Matarese, *How to lower that soaring Spectrum cable bill*, WCPO Cincinnati (Mar. 15, 2018), <https://www.wcpo.com/money/consumer/dont-waste-your-money/how-to-lower-that-soaring-spectrum-cable-bill>; Danielle Serino, *Spectrum customers get big surprises in their monthly bills*, WKYC 3 (May 17, 2018), <https://www.wkyc.com/article/tech/spectrum-customers-get-big-surprises-in-their-monthly-bills/552799867>; Andrew Hyman, *Price hike in Spectrum Cable bills can leave customers stunned*, Erie News Now (May 18, 2018), <http://www.erienewsnow.com/story/38228295/price-hike-in-spectrum-cable-bills-can-leave-customers-stunned>; Jackie Callaway, *Spectrum raising rates on almost everyone; in some cases customers say they are shocked*, ABC Action News (Mar. 9, 2017), <https://www.abcactionnews.com/money/consumer/taking-action-for-you/spectrum-raising-rates-on-almost-everyone-in-some-cases-customers-say-they-are-shocked>; John Cheves, *'What the hell?': TV screens go dark as Spectrum cuts channels, raises prices*, Lexington Herald Leader (May 1, 2017), <https://www.kentucky.com/news/politics-government/article147369744.html>.

⁶ Open Technology Institute. *Beyond Frustrated: The Sweeping Consumer Harms as a Result of ISP Disputes* (Nov. 12, 2014), <https://www.newamerica.org/oti/policy-papers/beyond-frustrated-the-sweeping-consumer-harms-as-a-result-of-isp-disputes/>.

⁷ Christopher Mitchell, *Repealing Net Neutrality Puts 177 Million Americans at Risk*, Institute for Local Self-Reliance (Dec. 11, 2017), <https://ilsr.org/repealing-net-neutrality-puts-177-million-americans-at-risk/>.

⁸ American Customer Satisfaction Index. *ACSI Telecommunications Report 2018* (May 22, 2018), <http://marketing.theacsi.org/acton/attachment/5132/f-0060/1/-/-/-/ACSI%20Telecommunications%20Report%202018.pdf>.

⁹ *Ibid.* at 8.

fail to serve the interests of consumers. We encourage vigorous oversight of the broadband access market and prohibitions on anticompetitive practices by Internet service providers that favor their own affiliated online and traditional video services over unaffiliated video services. Enforcement is welcome, although an ex post facto case-by-case approach will not provide adequate deterrence. Addressing market failures and consumer abuses ultimately requires the reclassification of broadband as a Title II common carrier.

We thank you again for the opportunity to participate in these hearings.

Sincerely,

Garrett Andrew Schneider, PhD
Senior Research and Policy Analyst
Writers Guild of America West