

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF VIMEO, LLC**

Vimeo, LLC (“Vimeo”) respectfully submits the following comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) May 15, 2014 Notice of Proposed Rulemaking (“NPRM” or “Notice”), GN Docket No. 14-28, in the above-captioned proceeding.

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July 15, 2014

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## COMMENTS OF VIMEO, LLC

### I. Executive Summary

Vimeo, operator the *Vimeo*® video sharing and hosting service (<http://vimeo.com>), calls on the Commission to support “network neutrality”—the idea that Internet traffic should be delivered to the consumer without discrimination by the networks that carry it. Network neutrality has served the public interest well, particularly in the case of Internet video. It has enabled the development of innovative services like Vimeo’s, which allow creators to share their videos with the entire world—and even make money from doing so. This has been a boon for both creators, including independent filmmakers, and audiences.

The Commission’s proposed rules threaten to stifle that innovation and creative expression by allowing broadband providers to discriminate against content and services that their customers want by relegating them to a “slow” lane or by charging companies like Vimeo fees to deliver content through a “fast” lane. We think a two-tiered Internet will harm innovation, competition, free expression, and ultimately, infrastructure deployment. We therefore urge the Commission to adopt rules prohibiting broadband providers—both fixed and mobile—from discriminating against lawful content within their networks. To facilitate these rules, we recommend that the Commission reclassify broadband as a Title II telecommunications service—just like dial-up Internet services.

## **II. Vimeo**

Vimeo provides consumers with tools to upload, share, and watch videos and to communicate with others through a variety of Internet-connected devices. It is, therefore, an “edge provider” for the Commission’s purposes. Founded in 2004, Vimeo operates one of the world’s largest creative networks: It has 26 million registered users and reaches a global audience of more than 170 million unique viewers per month. Vimeo’s mission is to empower and inspire people to create, share, and discover original videos.

Anyone may join Vimeo and upload videos for free. Presently, Vimeo’s users upload 500 hours of video every hour. The videos hosted by Vimeo are

diverse: They include personal home videos, animation, documentaries, and narrative films uploaded by consumers, amateur and professional filmmakers, artists, entertainment companies, nonprofits, educational institutions, religious organizations, politicians, and assorted businesses with video hosting needs. Anyone with Internet access can watch those videos (subject to the uploaders' privacy settings) through the Vimeo website (or Vimeo's mobile or connected TV applications) or through "embeds" of the Vimeo player on third party websites and applications. In June, Vimeo's video play volume topped one billion.

We believe that Vimeo occupies a unique position in the video market in that it draws and makes available high-quality independent content that might not otherwise be found through traditional media (such as closed television networks and theaters) or even other Internet-based video services.<sup>1</sup> We believe that our platform draws such unique content for a variety of reasons. For one, Vimeo does not serve advertising within its video player: Viewers watching Vimeo-hosted videos will not see pre-roll, overlay, or other interrupting advertisements.

Vimeo is monetized primarily through the sale of its Plus (<http://vimeo.com/plus/>) and PRO (<http://vimeo.com/pro>) subscriptions, which offer creators tools and features not available to basic (free) members. One such

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<sup>1</sup> As of June 2014, Vimeo is a top ten U.S. online video platform with monthly 31,151,000 unique viewers ("UVs"); the top five platforms were: Google (including YouTube) (153,328,000 UVs), Facebook (91,477,000 UVs), AOL (67,024,000 UVs), and VEVO (41,689,000). *Source:* ComScore (June 2014).

tool is Vimeo On Demand (<http://vimeo.com/ondemand>), a platform that allows independent filmmakers to sell their films to consumers worldwide through the Vimeo website or through their own or third party websites.<sup>2</sup> Since launching in March 2013, Vimeo On Demand’s library has grown to 11,000 titles spanning numerous genres. Through these tools, Vimeo empowers independent video creators to share their works, without commercial interruption, and enables them to earn revenue from those works.

Because video hosting and sharing is a high-bandwidth business, Vimeo—and the creators it serves—will be particularly affected by the Commission’s proposed rulemaking on broadband access.

### **III. Allowing Broadband Providers to Charge for Priority Access Would Negatively Impact Internet Video Content and Services.**

Vimeo agrees that there is urgent need for rules governing how broadband providers handle traffic that their customers have requested in the wake of *Verizon v. FCC*.<sup>3</sup> We support the Commission’s continued ban on broadband providers blocking lawful content and its expansion of broadband providers’ transparency obligations. We disagree, however, with the Commission’s decision to abandon its prior rule prohibiting broadband providers from discriminating against traffic

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<sup>2</sup> Vimeo on Demand requires a Vimeo PRO account. Creators may set prices, geography, distribution method (streaming or downloading), and other options; Vimeo charges a 10% fee after payment processing fees, and gives the remaining 90% to the creator.

<sup>3</sup> 740 F.3d 623 (D.C. Cir. 2014) (striking down 2010 Open Internet Order’s no-blocking and no-discrimination rules, but for different reasons).

within their networks in favor of a new rule that permits them to charge edge providers for priority access subject only to a “commercially unreasonable” standard.

We believe that this change represents a policy mistake. As we explain below, allowing broadband providers to discriminate against Internet traffic threatens to stifle creative expression, competition, innovation, and investment in both Internet services and infrastructure.

**A. Network Neutrality Has Helped Video Platforms Like Vimeo Flourish.**

The Internet has transformed the way we create, distribute, and watch video. Consumers have never had more choices when it comes to watching videos: From the comfort of their own homes, they can watch videos from a variety of service providers on their PCs, connected TVs, tablets, and smartphones. At the same time, it has never been easier to create and publish videos. Anyone with a smartphone or digital video camera can shoot a video and share it for free with friends, family, or the entire world through video-sharing platforms like Vimeo. Platforms like Vimeo have thus allowed millions of people to harness the rich medium of video for personal, creative, political, and professional expression.<sup>4</sup> And the demand for video by consumers continues to increase: Within four years,

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<sup>4</sup> See Marvin Ammori, *The “New” New York Times: Free Speech Lawyering in the Age of Google and Twitter*, 127 HARV. L. REV. 2259, 2268 (2014) (arguing that today, digital platforms, not newspapers, are the “main mediums for speech”).

Internet video is expected to account for 84% of all U.S. Internet traffic, up from today's figure of 78%.<sup>5</sup>

Rules barring technical discrimination and fee-based discrimination have served the public interest well, particularly in the case of Internet video.<sup>6</sup> As the Commission recognizes, “streaming video applications and independent sources of video content have spurred end-user demand, which, in turn, has led to network investments and increased broadband development.”<sup>7</sup> On the other hand, broadband providers' short-term incentives to maximize profits threaten to break this “virtuous circle,” to everyone's detriment.<sup>8</sup> This is why the Commission adopted the no-discrimination rule in 2010.<sup>9</sup>

Vimeo is an example of a video service that has flourished due to network neutrality. *First*, network neutrality has helped keep bandwidth costs down.

Vimeo's success as a video platform depends on its ability to deliver a high-quality

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<sup>5</sup> See Amy Schatz, “Cat Videos, Binge TV Watching Will Account for 84 Percent of Internet Traffic, Cisco Says,” <re/code>, (June 10, 2014), <http://recode.net/2014/06/10/cat-videos-binge-tv-watching-to-account-for-84-of-internet-traffic-cisco-says/>.

<sup>6</sup> While there is no enforceable regulation currently mandating this rule, it is the status quo. See Open Internet NPRM ¶¶ 36-37 (no evidence that broadband providers have been charging for priority access to date).

<sup>7</sup> Open Internet NPRM ¶ 26; see also *Verizon*, 740 F.3d at 644, 646 (Commission's assessment of Internet ecosystem was reasonable and grounded in substantial evidence as well as “common sense and economic reality”).

<sup>8</sup> See Open Internet NPRM ¶¶ 26, 43; see also *Verizon*, 740 F.3d at 646.

<sup>9</sup> See Preserving the Open Internet, Report & Order, 25 FCC Rcd. 17905, 17910-911 ¶ 14 (2010).

viewing experience to its users. Without an enjoyable viewing experience, users would not upload videos or pay for the creator tools that Vimeo offers. Hosting and sharing millions of videos—particularly those in high definition (“HD”)—is a costly proposition. As a result, Vimeo’s largest variable costs are the costs of third party cloud-based storage and content delivery network (“CDN”) services. These costs will likely increase if the Commission allows broadband providers to charge for priority access.<sup>10</sup> Indeed, Vimeo faces a potential double penalty because it not only facilitates video plays, but also video uploads.<sup>11</sup>

*Second*, and equally important, network neutrality makes bandwidth costs predictable. This allows Vimeo to operate its business and make capital investments. If broadband providers can impose arbitrary rates, it will be difficult to predict future costs and undertake expensive research and development.<sup>12</sup> For example, a platform like Vimeo might one day wish to build its own CDN

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<sup>10</sup> Since we lack transparency on what agreements CDNs have entered into with broadband providers, if any, we provide no comment on what fees, if any, CDNs already might pay broadband providers for delivery to or through their networks.

<sup>11</sup> While much web video traffic runs downstream (*i.e.*, video plays), Vimeo users create upstream traffic when they upload videos. We think this actually helps the Internet traffic ecosystem by providing broadband providers with outbound traffic to offset inbound traffic, which in turn helps them negotiate payment-free peering agreements with other networks. Yet, if broadband providers can charge arbitrary tolls for any traffic passing through their networks, Vimeo is unlikely to be credited for this.

<sup>12</sup> See Barbara van Schewick, *Network Neutrality and Quality of Service: What a Non-Discrimination Rule Should Look Like*, 67 STAN. L. REV. (forthcoming 2015), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2459568](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2459568) at p. 50 (arguing that case-by-case approach to discriminatory practices reduces likelihood of investment by edge providers in the first place).

infrastructure.<sup>13</sup> But the prospect of uncertain broadband provider fees would make it difficult to even undertake a cost/benefit analysis.<sup>14</sup>

When Vimeo began as a project by a few employees at a startup ten years ago, it did not have to worry about negotiating with broadband providers or paying them arbitrary tolls on video uploads and plays.<sup>15</sup> This freedom has allowed Vimeo to permit its users to upload videos without length restrictions; to become the first video sharing platform to allow users to upload full HD videos (in October 2007); and to provide a film sales platform (*i.e.*, Vimeo on Demand, launched March 2013) that returns the bulk of the revenue to the creator. Network neutrality has helped make each of these innovations possible.

**B. Broadband Providers Would Have Little Incentive to Ensure a Level of “Robust” Access for Non-Priority Video Traffic.**

Allowing broadband providers to offer “priority lane” access will mean a slower, and therefore less enjoyable, viewing experience for content in the “regular lane.” The Commission states that its no-blocking rule “will ensure that all users

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<sup>13</sup> So long as Vimeo uses a third party CDN, it has limited options for increasing delivery speed. It cannot, for example, enter into peering agreements directly. And while it may be feasible for some edge providers to increase delivery speeds by caching content closer to end users, that option is not cost-effective for an edge provider that hosts a video library of Vimeo’s size.

<sup>14</sup> The Commission’s proposed rules will likely increase edge providers’ dependence on third party CDNs. As a result, entities engaged in CDN should be considered to have similar (though not identical) interests as edge providers. *See* Open Internet NPRM ¶ 76 (requesting comment on CDN interests).

<sup>15</sup> Vimeo was founded in 2004 by two employees of Connected Ventures, LLC (operator of CollegeHumor.com) and publicly launched in early 2005. IAC/InterActiveCorp acquired Connected Ventures, which owed the assets comprising Vimeo, at the end of 2006.

have access to [a minimum level of] Internet experience that is sufficiently robust, fast, and effectively usable.”<sup>16</sup> We are not so sanguine. If broadband providers can make marginal revenue from priority access fees, they will have little incentive to maintain a high-quality “standard lane” experience for edge providers unwilling or unable to pay. They need not take actions to impede the “standard” experience; they can achieve the same result by failing to improve it as traffic grows.<sup>17</sup>

We do not believe that the Commission’s proposed methods for defining a “minimum level of access” sufficiently address the scope of the problem. *First*, it is difficult to fix quantitative performance standards for video delivery.<sup>18</sup> As video quality improves, through higher resolutions and increased frame rates, video plays demand larger amounts of bandwidth. Thus, defining standards in terms of gigabit delivery speed aren’t workable. And while minimum standards might be informed by factors like video loading and buffering times, consumer expectations are subject to change: What might be considered acceptable now may be considered slow six months from now.<sup>19</sup>

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<sup>16</sup> Open Internet NPRM ¶ 98.

<sup>17</sup> See Michael Mooney, “Chicken: A Game Played as a Child and by some ISPs with the Internet,” Level 3 blog (Mar. 18, 2014), <http://blog.level3.com/global-connectivity/chicken-game-played-child-isps-internet/>.

<sup>18</sup> See Open Internet NPRM ¶ 103.

<sup>19</sup> See Part II.C, *supra*.

*Second*, measuring minimum performance in terms of a broadband provider’s “best efforts” or an “objective, evolving reasonable person standard” will complicate enforcement.<sup>20</sup> These types of inquiries may require expert evidence and/or consumer surveys. As a result, filing a regulatory complaint would be a time and resource intensive affair that would provide little certainty of outcome. This process is not well suited to an industry that is characterized by constant, rapid, and unpredictable changes in user behavior. What is more, connectivity issues at the broadband level may not always be transparent to an edge provider. Issues that remain undetected and unresolved even for relatively short periods of time can have profound and irreversible impacts on an edge provider’s user base and market share.

**C. Priority Access Lanes Would Reshape Consumer Expectations for Video Delivery.**

A more fundamental problem with the Commission’s proposal is that granting some edge providers “priority access” will reshape consumers’ expectations when it comes to video delivery. Internet users are, by and large, an impatient group and nowhere is their patience more tested than in the case of video. A 2011 study by researchers at the University of Massachusetts found that:

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<sup>20</sup> *See id.* ¶¶ 102, 104. Of the two, the “best efforts” standard is worse since edge providers will likely lack information as to the broadband provider’s traffic demands and infrastructure.

- A rebuffering rate of 1% (*i.e.*, a video pauses for 1 out of every 100 seconds) results in 5% less video watched overall.
- There is a “2-second rule” for video watching: People are willing to wait 2 seconds for a video to load, but the rate of abandonment increases significantly thereafter if the video doesn’t load.
- Viewer patience is influenced by the expectation of speed from the viewing platform and the perceived value of the content.
- Bad viewing experiences lead not just to abandonment of a particular video, but also to a lower rate of watching *other* videos: Users who experienced a “failed visit” were 2.3% less likely to watch another video in a given week.<sup>21</sup>

Vimeo’s experience supports these findings. If anything, consumers have grown even more demanding in the past three years.

These findings have significant implications for a two-tiered Internet. Merely having a “fast lane” for paid traffic will alter consumers’ perception of the standard for speed. When consumers become accustomed to receiving video at a certain delivery rate, that rate will become the *de facto* standard and everything else will be perceived as substandard. Consumers are unlikely to know (or care) about why a particular video takes two seconds to load or is constantly rebuffering, and will abandon those edge providers that they perceive as providing a slower, and thus less enjoyable, experience.

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<sup>21</sup> See S. Shunmuga Krishnan and Ramesh K. Sitaraman, *Video Stream Quality Impacts Viewer Behavior: Inferring Causality using Quasi-Experimental Designs*, Proceedings of the ACM Internet Measurement Conference (IMC), Boston, MA (Nov. 2012), [http://people.cs.umass.edu/~ramesh/Site/PUBLICATIONS\\_files/imc208-krishnan.pdf](http://people.cs.umass.edu/~ramesh/Site/PUBLICATIONS_files/imc208-krishnan.pdf) at pp. 3-4.

**D. Priority Access Lanes Would Disadvantage User-Generated Video and Independent Filmmakers.**

A two-tiered Internet would privilege certain types of content over others. For example, edge providers that provide studio content (*e.g.*, content originating from major motion picture companies and broadcasters) are better positioned to pay “fast lane” rates. Because of the existing demand for this content, providers may be able to pass increased delivery costs onto consumers in the form of higher transaction prices and subscription fees.

Not all video content, however, can support higher user fees (or indeed, any user fees). Videos that are made for personal and non-commercial purposes are a prime example. This type of content cannot generally be sold. In a two-tiered world, this type of content will generally be relegated to the “slow lane,” thus diminishing its potential audience and thereby distorting the marketplace of ideas. Some platforms may be able to offset higher delivery costs by serving in-video advertisements, but platforms that do not serve in-video ads, like Vimeo, might not be able to do so. Thus, the proposed rules will have a disproportionate impact on innovative business models like Vimeo’s, which play an important role in disseminating expression.

By the same token, the proposed rules will hurt independent filmmakers, who have often struggled to break even. The cost of distribution is a well-known problem: The traditional business model involves filmmakers sacrificing a large

percentage of the film's potential take in exchange for limited distribution—often a short theatrical run in a few large cities.<sup>22</sup> Platforms like Vimeo On Demand allow filmmakers to bypass traditional distribution methods and make their film widely available while still retaining the lion's share of the film's receipts.

The Vimeo on Demand service gives all independent video producers a better chance to earn a return on their investment—or to invest more money in production or advertising to draw larger audiences. It also gives consumers an opportunity to discover and watch video content that they otherwise might not have been able to access. Yet if Vimeo's delivery costs were to increase significantly, it might have to pass along the increased delivery costs to video creators, who are unlikely to be able to absorb such costs by charging higher fees to their audience. This will further distort the marketplace in favor of studio content and will reduce the incentive to create independent film and video.

**E. Broadband Providers Would Favor their Own or Affiliated Video Content over Third Party Video Content.**

A number of large broadband providers do not merely provide broadband service, but also supply video content through on-demand services. They therefore compete with edge providers like Vimeo (though with different video content).

Left unregulated, these broadband providers would naturally distribute their

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<sup>22</sup> See Alyssa Rosenberg, "What net neutrality means for independent film," WASH. POST (May 2, 2014), <http://www.washingtonpost.com/news/act-four/wp/2014/05/02/what-net-neutrality-means-for-independent-film/>.

content through the fastest means possible.<sup>23</sup> At the same time, they will be incentivized to raise the price for the same level of access to the point where edge providers cannot compete effectively. These actions will give broadband providers an unfair competitive advantage over companies like Vimeo.<sup>24</sup> And since the video content distributed by broadband providers is most likely to be licensed studio content (as opposed to user-generated video or independent film), it will further distort the marketplace for video content.

The Commission has acknowledged that it is problematic for companies to control both the conduit and content delivered through it. In approving the Comcast-NBC Universal merger, the Commission adopted the commitment of the combined entity to “not prioritize affiliated content over unaffiliated Internet content.”<sup>25</sup> Yet, in its proposed rulemaking, the Commission merely suggests “a rebuttable presumption that a broadband provider’s exclusive (or effectively exclusive) arrangement prioritizing service to an affiliate would be commercially

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<sup>23</sup> See, e.g., *United States v. Comcast*, Proposed Final Judgment and Competitive Impact Statement, 76 Fed. Reg. 5440, 5456 (2011) (“Comcast would have the ability, for instance, to give priority to non-OVD traffic on its network, thus adversely affecting the quality of OVD services that compete with Comcast’s own [video] or OVD services. Comcast also would be able to favor its own services by not subjecting them to the network management practices imposed on other services.”).

<sup>24</sup> Even without priority access, these providers have significant advantages. For example, they can cache their content closer to end users to increase speed.

<sup>25</sup> Open Internet NPRM ¶ 14.

unreasonable.”<sup>26</sup> This does not resolve the magnitude of the problem. We think the only way to avoid this type of conflict is a bright-line rule that prohibits broadband providers from privileging any content, whether affiliated or not.

#### **IV. The Commission Should Reclassify Broadband Providers as Title II Telecommunications Services and Readopt the No-discrimination Rule.**

Vimeo does not believe that the problems highlighted above will be adequately addressed by the rules proposed by the Commission. We recognize that the Commission’s proposed rules reflect the scope of the Commission’s authority as outlined in *Verizon v. FCC*, which held that broadband providers could not be subjected to *de facto* common carrier regulation under Title I of the Communications Act. The solution, however, is not to continue to regulate broadband providers as “information services” under Title I, but to reclassify them as telecommunications services under Title II and adopt a rule prohibiting fee-based discrimination and technical discrimination.<sup>27</sup>

Broadband networks provide the infrastructure that carries traffic between consumers and edge providers and therefore qualify as Title II telecommunications services.<sup>28</sup> The service provided by a broadband provider is in fact no different in

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<sup>26</sup> Open Internet NPRM ¶ 126.

<sup>27</sup> See Open Internet NPRM ¶¶ 4 (stating that Commission will “seriously consider the use of Title II of the Communications Act as the basis for authority”) & 148-55 (requesting comments regarding reclassification).

<sup>28</sup> 47 U.S.C. § 153(53) (defining “telecommunications service” as “the offering of telecommunications for a fee directly to the public . . . regardless of the facilities used”).

character than that provided by dial-up Internet service—which has been subject to Title II at the inception of the Internet.<sup>29</sup> Moreover, as the D.C. Circuit concluded, “broadband providers furnish a service to edge providers, thus undoubtedly functioning as edge providers’ ‘carriers.’”<sup>30</sup>

It is imperative to properly classify broadband given the vital role it plays. Today, broadband access is a service that is at least as essential (if not more so) than landline telephone service. Nearly three-quarters of U.S. households have broadband Internet access, the majority of which is provided by cable providers.<sup>31</sup> Yet, broadband providers may not be subject to competitive forces that might allow consumers to rein in their conduct. As the Commission recognizes, there is “evidence of limited choice between [fixed] broadband providers in many areas of the country.”<sup>32</sup> Approximately 70% of fixed broadband access is provided by one of five companies.<sup>33</sup> There are many geographic markets with only one or two broadband service providers.<sup>34</sup> And when there is some choice, the inconvenience

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<sup>29</sup> See *Nat’l Cable & Telecomm. Assn. v. Brand X Internet Servs.*, 545 U.S. 967, 1014 (2005) (Scalia, J., dissenting) (“After all is said and done, after all the regulatory cant has been translated, and the smoke of agency expertise blown away, it remains perfectly clear that someone who sells cable-modem service is ‘offering’ telecommunications.”).

<sup>30</sup> *Verizon*, 740 F.3d at 653.

<sup>31</sup> IHS Technology, “Broadband Internet Penetration Deepens in US; Cable is King” (Dec. 9, 2013), <https://technology.ihs.com/468148/broadband-internet-penetration-deepens-in-us-cable-is-king>.

<sup>32</sup> Open Internet NPRM ¶ 48.

<sup>33</sup> See IHS Technology, *supra* note 31.

<sup>34</sup> See Open Internet NPRM ¶ 42.

of switching providers tends to lock consumers in. In light of these economic realities, the Commission has a vital role to play in ensuring that broadband providers serve as honest brokers with respect to the traffic they ferry between their customers and edge providers.

Further, we do not believe that the Commission should distinguish between mobile and fixed broadband services for the purpose of adopting rules concerning transparency, blocking, technical discrimination, or access fees.<sup>35</sup> Consumers are increasingly using mobile networks to access the Internet. Any inherent limitation in mobile broadband bandwidth is already addressed by the Commission's proposed rules allowing providers to engage in "reasonable network management practices."

Finally, we note that the Commission need not subject broadband providers to the full panoply of Title II regulations.<sup>36</sup> We propose only to limit broadband providers' ability to block and discriminate against lawful traffic to preserve the status quo.

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<sup>35</sup> See Open Internet NPRM ¶ 62 (requesting comments on treatment of mobile broadband).

<sup>36</sup> *Computer & Comm. Industry Assn. v. FCC*, 693 F.2d 198, 212 (D.C. Cir. 1982) (Commission has discretionary authority to forbear from full regulation of Title II services).

**V. In addition to Regulating Traffic within Broadband Networks, the Commission Should Adopt Network Neutrality Rules for Traffic Entering Broadband Networks.**

The Commission has indicated that it plans to investigate of how broadband providers connect to the Internet through agreements concerning “peering” and “interconnection.”<sup>37</sup> We believe that these issues should be tackled as part of the current rulemaking so that it covers the delivery of traffic from the time it is sent from edge providers (or their CDNs) to the time it is received by consumers (or vice versa). Ultimately, the consumers and edge providers care about quality of service. A broadband provider’s arrangements as to traffic entering its network (*e.g.*, through peering or interconnection) can be as significant as its decisions about traffic that is within its network (*e.g.*, through discrimination or blocking within the “last mile”). Actions and agreements impacting or impeding traffic delivery—whether in a “last mile” network or on its edge—should be regulated to ensure that all traffic is delivered on a neutral basis.<sup>38</sup>

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<sup>37</sup> See Statement of Chairman Tom Wheeler, GN Docket No. 14-28; *see also* Statement by FCC Chairman Tom Wheeler on Broadband Consumers and Internet Congestion (rel. June 13, 2014), <http://www.fcc.gov/document/chairman-statement-broadband-consumers-and-internet-congestion>.

<sup>38</sup> We believe that rules barring discrimination are needed for all links in the chain of delivery from edge provider to consumer. At a minimum, rules governing this flow traffic should preclude the prioritization of affiliated content and to the extent fees are permitted at any point, require most-favored nations (“MFN”) clauses, prohibit exclusivity and refusals to deal, and subject all arrangements to review without presumptions of validity.

## **VI. Conclusion**

For the reasons set forth above, Vimeo supports the Commission's proposed no-blocking and transparency rules and respectfully recommends that the Commission reclassify broadband providers as Title II telecommunications providers and adopt rules prohibiting the discrimination of lawful Internet traffic by broadband providers.

We thank the Commission for the opportunity to comment on this important matter.

Dated: July 15, 2014

Respectfully submitted,

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