

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

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Restoring

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GN Docket No. 17-108

Internet Freedom

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Comments of

American Association of Law Libraries

American Library Association

Chief Officers of State Library Agencies

Executive Summary

America's libraries—120,000 strong—depend upon an open internet to carry out their missions and to serve their communities. Without strong rules protecting the open internet and ensuring transparency of commercial ISPs' network management practices and commercial terms—as outlined in the the FCC's 2015 Open Internet Order—the modern library and its functions are imperiled. Our organizations are greatly concerned that if the 2015 Order is vacated or its rules are substantially altered, commercial ISPs then have the financial incentive and the opportunity to block, degrade or prioritize access to internet-based applications, services and content. These practices, if permitted, would have severe adverse impacts on online education, research, learning and free speech.

The current NPRM's direct attacks on the established open internet rules and the legal foundation for the rules threaten the fundamental principles of a free and open internet.

In these comments, we outline the ways libraries use and depend on broadband to serve their communities. We describe how proposed changes to or eliminations of sections of the 2015 Order would have serious consequences for libraries, for access to information, and for the FCC's mission of improving access to the benefits of broadband. And we do not agree with the NPRM's reading of the history of U.S. communications law and past efforts to protect the open internet. We do not see any reason for the FCC to return to this issue now. We thus support the FCC's 2015 Open Internet Order and urge the FCC to refrain from any changes.

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I. Introduction

The American Association of Law Libraries (AALL), the American Library Association (ALA), and the Chief Officers of State Library Agencies (COSLA) submit these comments in response to the Notice of Proposed Rulemaking (NPRM) in this proceeding² to protect and promote the open internet.³ Our nation's 120,000 libraries are leaders in creating, fostering, using, extending and maximizing the potential of the internet for research, education, economic opportunity and the public good generally. Libraries⁴ depend upon an open, affordable internet to fulfill their missions and serve their diverse communities.

The library community is deeply concerned that broadband internet access service providers, as defined by the Federal Communications Commission (FCC) in the 2015 Open Internet Order (2015 Order)⁵ and hereafter referred to as "commercial ISPs," have financial incentives to interfere with the openness of the internet in ways that are likely to be harmful to people who use the internet content and services provided by libraries. Preserving the unimpeded flow of information over the public internet and ensuring equitable access for all people and institutions is critical to our nation's social, cultural, educational and economic well-being.

In July 2014 the ALA and other library and educational organizations filed comments in

¹ The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5,000 members nationwide. AALL's mission is to promote and enhance the value of law libraries to the legal and public communities, to foster the profession of law librarianship, and to provide leadership in the field of legal information and information policy.; The American Library Association The American Library Association (ALA) is a nonprofit organization based in the United States that promotes libraries and library education internationally. It is the oldest and largest library association in the world. The Chief Officers of State Library Agencies (COSLA) is an independent organization of the chief officers of state and territorial agencies designated as the state library administrative agency and responsible for statewide library development.

² FCC 17-108, released May 23, 2017.

³ Many of the signatories to these comments representing libraries--along with organizations representing higher education institutions--published Net Neutrality Principles for Protecting and Promoting the Open Internet on March 30, 2017 (attached as Appendix A). We recommended the Commission endorse these principles and maintain the approach adopted in the FCC's 2015 Open Internet Order. These comments offer more detailed suggestions regarding some of the specific questions raised in the NPRM.

⁴ While our comments reflect the views of libraries of all types, we note that higher education institutions, governmental organizations, K-12 education, community-based organizations and other similar organizations whose missions are to serve the public interest need an open internet as well.

⁵ *In the Matter of Protecting and Promoting the Open Internet*, Report and Order, FCC 15-24 (2015), p.10

response to the FCC's *Notice on Protecting and Promoting the Open Internet* (GN Docket No. 14-28). In our comments we advocated for more forceful action by the Commission to ensure an open and "neutral" internet. Thus we support the FCC's 2015 Order and find that it has served the interests of internet users, broadband providers, libraries, and higher education. More generally, the FCC's adoption of these "net neutrality" regulations ensures that the internet remains open to free speech, research, education, innovation and continues to provide equal access for everyone. Commercial ISPs should operate their networks in a fair manner without interfering with the services, applications or content of internet communications that are transmitted over the networks they often control. Internet users often assume (and may take for granted) that the internet is inherently an open and unbiased platform, but absent a law or regulation like the 2015 Order, nothing requires commercial ISPs to be neutral. Without "net neutrality" regulations, such providers could act as gatekeepers—giving enhanced or favorable transmission to some internet traffic, blocking access to certain web sites or applications, or otherwise discriminating against certain internet services, applications or content for their own commercial reasons, or for any reason at all.

In February 2015, after a rulemaking process that generated the greatest number of public comments in the agency's history, the FCC approved an Order that gave internet users the strongest net neutrality protections to date. In June 2016, a federal appeals court affirmed the 2015 Order, ruling that the agency has the proper authority to issue such rules, that it followed proper procedures, and that the "net neutrality" rules are permitted under the Communications Act and Telecommunications Act. Therefore, no changes to the current rules are necessary. Moreover, the current NPRM's direct attacks on the established open internet rules and the legal foundation for those rules threaten the fundamental principles of a free and open internet.

Our organizations strongly urge the FCC to maintain the enforceable rules from the 2015 Order. Our comments proceed as follows:

First, these comments will explain why protecting and promoting an open internet is so vitally important to the mission of all libraries and to the people and the communities that these institutions serve. Second, these comments will discuss why there is no reason to

revisit the 2015 rules. Third, these comments will discuss some of the specific proposals raised in the NPRM and will explain why these proposals would not promote an open internet for entities that serve the public interest, such as libraries. Fourth, these comments will discuss how these proposals would hurt other stated goals of the FCC, specifically closing the “digital divide” and expanding access to broadband for all people in the United States.

II. First: Libraries depend on the open internet, or net neutrality, to carry out their mission and ensure the protection of freedom of speech, educational achievement and economic growth.

The NPRM asks how consumers are using internet services today.⁶ In short, high-capacity broadband is the key infrastructure that libraries and many other institutions need to carry out their public interest missions. Furthermore, these institutions rely on open, unfettered internet access both to retrieve and contribute content on the World Wide Web. In fact, over the past fifteen years the public interest mission of libraries has become highly intertwined with the internet and internet access has long passed the time in which it was an “add-on” —it is now mission critical. And the democratic nature of the internet as a neutral platform for carrying information and research to the general public is strongly aligned with the public interest mission of libraries to provide access to diverse information and research.

Unfortunately, the NPRM does not give sufficient recognition to the value of the internet for education, learning, research and other services in the public interest. While the NPRM mentions the importance of the internet for innovation and commerce, the educational and public interest benefits of an open internet are just as important.

This section of the comments provides an overview of the internet-based services and content that libraries provide to their communities and explains why the FCC should incorporate our institutions’ perspective into its review of open internet rules.

⁶ See NPRM, para. 28 (“We seek comment on how consumers are using broadband Internet access service today.”)

A. America’s libraries collect, create, provide access to and disseminate essential information to the public over the internet.

In principle, the library community strongly values and supports the open internet as a cornerstone for preserving our democracy and enhancing freedom of speech in the information age. In practice, the library community needs an open, accessible internet for “nuts and bolts” services – including access to digital collections, e-government services and legal information, distance learning, telemedicine and many other essential community services. Libraries not only offer passive access to internet content, but library professionals themselves are continuously developing new digital content, e-learning services and other teaching tools that depend on unfettered access to the internet. Library staff also ensure our users are able to access the internet and create and distribute their own digital content and applications.

Libraries have been among the most innovative internet users and generators of online content. Virtually every library across the country now provides broadband services at no charge to its patrons, and 98 percent of public libraries provide wireless (Wi-Fi) access as well.⁷ According to a 2016 survey by the Pew Research Center, 29 percent of library-using Americans 16 and older said they had gone to libraries to use computers, the internet, or a public Wi-Fi network.⁸ (That amounts to 23 percent of all Americans ages 16 and above.)⁹ Library patrons regularly use their library’s internet access to take advantage of educational services, remote medical services, job-training courses, distance learning classes, access to e-government services, computer and technology training and more. ⁰

Specifically, the role of libraries’ broadband connections in helping people access government services cannot be overstated. The E-Government Act of 2002

⁷ Larra Clark & Karen Archer Perry, “After access: Libraries and Digital Empowerment,” (Dec 2015), [http://www.ala.org/advocacy/sites/ala.org/advocacy/files/content/ALA%20DI%20After%20Access final 1 2%2017%2015.pdf](http://www.ala.org/advocacy/sites/ala.org/advocacy/files/content/ALA%20DI%20After%20Access%20final%202017%2015.pdf) (last visited Jul 15, 2017).

⁸ John B. Horrigan, “Libraries 2016,” PEW RESEARCH CENTER: INTERNET, SCIENCE & TECH (2016), <http://www.pewinternet.org/2016/09/09/2016/Libraries-2016/> (last visited Jul 15, 2017).

⁹ Ibid

¹⁰ Ibid

mandated that federal agencies cut back many traditional programs for the public and, in their place, offer government services in digital form. This model has been replicated in states and localities across the country. This process allows agencies to cut staffing and office infrastructure costs. It often places the burden on people, however, to find the means of accessing new electronic e-government services. For people in need of government assistance, this change in the means of service provision by public sector agencies is resulting in the use of local public libraries as de facto e-government service centers. Public law libraries provide unbiased access to legal information for members of the public, the courts, the bar, self-represented litigants, and small business owners; much of which is available online. The library provides the means (computers with internet access) necessary to view and interact with electronic government services, especially for persons who do not have adequate (or any) broadband access at home.

Furthermore, librarians specialize in collecting and hosting robust databases of information, digitizing unique community artifacts and records, engaging community conversations through social media, recording and sharing oral histories, developing innovative media and preserving the free flow of information and research over the public internet for all people. Over 90 percent of public libraries offer their patrons access to commercial reference and periodical databases from thousands of sources. ²

Below are some specific examples of projects and services that highlight our institutions' value in providing access to information and the importance of the open internet in disseminating such information:

- The National Library of Medicine (NLM), the world's largest medical library, provides a vast amount of information-based services, ranging from video tutorials

¹¹ Dharma Dailey, Amelia Bryne, Alison Powell, Joe Karaganis and Jaewon Chung et al., *Broadband Adoption in Low-Income Communities*, SOCIAL SCIENCE RESEARCH COUNCIL (2010) at p. 8. ("Government agencies, school systems, and large employers increasingly privilege web-based access to many basic services, including job and benefits applications. Because many of the constituents for these services have limited Internet access and/or limited Internet proficiency, these measures often shift human and technical support costs onto libraries and other community organizations that do provide access, in-person help, and training.")

¹² Larra Clark & Karen Archer Perry, "After Access: Libraries and Digital Empowerment"

to downloads of large genomic datasets. ³ NLM provides valuable information and data to the public amounting to trillions of bytes each day disseminated to millions of users. Without rules to protect the open internet, NLM's ability to provide fair access to everyone to this important information would be jeopardized.

- The University of Kansas Libraries have created and host online resources to help high school students with college readiness, ⁴ created the University's first open textbook, ⁵ conducts digital publishing to expand the reach of scholarship ⁶ and houses extensive special collections, many of which are digitized. Among the resources the Libraries make available online are the archives of former U.S. Senator Robert Dole. ⁷

- The Maryland State Law Library's People's Law Library, an award-winning legal information and self-help website, provides self-represented litigants information about the law, including summaries of the law, links to primary and secondary legal sources and referrals for legal services. ⁸

- Tennessee's Oak Ridge Public Library hosts the Center for Oak Ridge Oral History, which showcases the recollections of residents and those involved in the Manhattan Project, the World War II effort to build the world's first atomic bomb. The interviews are all online, with over 150 video interviews now available and a waiting list of other participants. ⁹

¹³ National Library of Medicine - National Institutes of Health, U.S. NATIONAL LIBRARY OF MEDICINE, <https://www.nlm.nih.gov/> (last visited Jul 15, 2017).

¹⁴ "Community Engagement," UNIVERSITY OF KANSAS LIBRARIES, <https://lib.ku.edu/services/community-engagement> (last visited Jul 15, 2017).

¹⁵ "Open Textbook," UNIVERSITY OF KANSAS LIBRARIES, <https://lib.ku.edu/news/2017/open-textbook> (last visited Jul 15, 2017).

¹⁶ "Publish and Share," UNIVERSITY OF KANSAS LIBRARIES, <https://lib.ku.edu/services/publish-and-share> (last visited Jul 15, 2017).

¹⁷ Robert Dole Archives, UNIVERSITY OF KANSAS LIBRARIES, <https://luna.ku.edu/luna/servlet/kuluna01kui~9~9> (last visited Jul 15, 2017).

¹⁸ The Maryland People's Law Library, THE MARYLAND PEOPLE'S LAW LIBRARY, <https://www.peoples-law.org/> (last visited Jul 15, 2017).

¹⁹ Center for Oak Ridge Oral History, ORPL DIGITAL COLLECTIONS, <http://cdm16107.contentdm.oclc.org/cdm/landingpage/collection/p15388coll1> (last visited Jul 16, 2017).

- Hot Springs Library in South Dakota is using broadband access to provide new services to users to meet their changing needs, including public Wi-Fi, a makerspace to experience technology and coding classes for teens in the community.²⁰

- Columbia University created the 9/11 Oral History Project, focusing on the aftermath of the destruction of the World Trade Center. The Project includes over 900 recorded hours on digital media.²¹ More than half of the Columbia collection is open and available to the public, and the entire archive will eventually be available for study and research. This content is currently used in New York K-12 public schools.

- Hosted by the Purdue Libraries, the Purdue University Research Repository (PURR)²² is one of the leading institutional data repositories in the world. PURR provides an online, collaborative working space and data-sharing platform to support the data management needs of Purdue researchers and their collaborators. PURR allows researchers to collaborate on research and publish datasets online. Sharing the data enables other scholars to reuse and cite those data as well as to reproduce research.

- After receiving over 2,500 boxes of records and documents and 12,000 promotional photographs from the New York World's Fair of 1939 and 1940, the New York Public Library (NYPL) digitized the content and makes it available online.²³ It provided the material in a free app that was later named one of Apple's "Top Education Apps" of 2011 and is used in New York K-12 public schools.

- The Mississippi College of Law Library hosts the Mississippi Legislative History

²⁰ John Taylor, "Library Week offers a chance to highlight Hot Springs Library," Hot Springs Star (April 18, 2017), http://rapidcityjournal.com/news/local/communities/hot-springs/library-week-offers-a-chance-to-highlight-hot-springs-library/article_cd640f64-238a-11e7-ba0a-872cc309797e.html (last visited Jul 15, 2017).

²¹ "September 11, 2001 Oral History Projects," COLUMBIA UNIVERSITY LIBRARIES, <http://library.columbia.edu/locations/ccoh/digital/9-11.html> (last visited Jul 16, 2017).

²² Purdue University Research Repository, PURR - HOME, <http://purr.purdue.edu/> (last visited Jul 16, 2017).

²³ New York World's Fair 1939-1940 records, NYPL DIGITAL COLLECTIONS, <https://digitalcollections.nypl.org/collections/new-york-worlds-fair-1939-1940-records#/?tab=navigation> (last visited Jul 16, 2017).

Project, a free, searchable video archive of legislative debate in the state of Mississippi.²⁴ The library offers the only online video archive of debate in the Mississippi House of Representatives and the Mississippi Senate.

- Working closely with university faculty, the University of Texas - San Antonio Libraries curate and host open educational resources, teaching and learning materials available at no cost to students and accessible on mobile devices. This initiative supports the University's push to improve graduation rates, which suffer in part because students cannot afford textbooks associated with courses.²⁵

- The Auraria Library in Denver, Colo. is the only tri-institutional academic library in the nation, serving the students, faculty, and staff of three leading urban institutions: University of Colorado Denver; Metropolitan State University of Denver; and Community College of Denver. The Auraria Library Digital Collections (ALDC) serves as the holistic digital repository for the three schools that make up Auraria Campus and contains dozens of collections and thousands of items including: The Latinos & Hispanics in Colorado Collection, a photographic array of the lives of Colorado's many Latino and Hispanic citizens throughout the previous century;²⁶ and The Camp Amache Collections representing several personal perspectives on the Granada War Relocation Center, Colorado's sole Japanese-American incarceration camp.²⁷

- The Ann Arbor (Mich.) District Library has produced and shared close to 150 podcasts featuring interviews from a local historian discussing the Underground Railroad, to a fifth-grader talking about library programs for kids her age, to Top Chef Steph. The library also hosts the Ann Arbor Film Festival Archive, among dozens of local history digital collections.²⁸

²⁴ Legislative History Project, MISSISSIPPI COLLEGE OF LAW <http://law.mc.edu/legislature/> (last visited Jul 16, 2017).

²⁵ "Retention Impact," USTA LIBRARIES – THE UNIVERSITY OF TEXAS AT SAN ANTONIO, <https://lib.utsa.edu/services/faculty/oer/retention-impact> (last visited Jul 16, 2017).

²⁶ "Latinos and Hispanics in Colorado Photograph Collection," AURARIA LIBRARY, <http://digital.auraria.edu/lhc> (last visited Jul 16, 2017).

²⁷ "Camp Amache Collections," AURARIA LIBRARY, <http://digital.auraria.edu/amache> (last visited Jul 16, 2017).

²⁸ Ann Arbor District Library Home Page, ANN ARBOR DISTRICT LIBRARY, <http://www.aadl.org/> (last visited Jul 16, 2017).

- The West Virginia University Libraries are home to the West Virginia and Regional History Center, whose mission is to acquire, provide access to, and preserve information resources in all formats which elucidate the history and culture of West Virginia and the central Appalachian region. Among its digitized collections is the International Association for Identification,²⁹ the most comprehensive forensics information resource in existence. The Libraries also run a project focused on challenges faced by the student veteran community which includes a mobile website specific to the academic and personal needs of veteran students and a research boot camp library instruction program tailored to the needs of student veterans.

- The Iowa City Public Library encourages interest and awareness of local musicians with a digital collection of more than 100 albums by artists playing everything from electronica to children's music.³⁰ The collection includes out-of-print music and live shows.

- The University of Nevada - Reno's DeLaMare Science and Engineering Library University of Nevada, Reno offers scholarly resources, creative learning spaces, cutting-edge technology, and world-class service to nurture the production of new knowledge. For example, they have an extensive technology lending program,³¹ provide "making" resources (such as 3D printer, laser and vinyl cutting),³² and a dynamic media lab that allows students, staff, faculty, and the public at large to create simulations, video and audio and more for class or personal projects.³³

B. Libraries bring the benefits of the internet to segments of the population that may not be served by the commercial sector. Those benefits would be lost

²⁹ John Cuthbert, *Desperately Seeking Sherlock Holmes! The IAI Collection*, 21, WEST VIRGINIA AND REGIONAL HISTORY COLLECTION (2005), <https://wvrhc.lib.wvu.edu/news/newsletter/2005-2014/v21n1.pdf> (last visited Jul 16, 2017).

³⁰ "Local Music Project," IOWA CITY PUBLIC LIBRARY, <http://music.icpl.org/> (last visited Jul 16, 2017).

³¹ "Library Guides: Equipment Checkout: DeLaMare Technology Lending," LIBRARIES AT UNIVERSITY OF NEVADA, RENO, <https://guides.library.unr.edu/equipment-checkout/delamare> (last visited Jul 16, 2017).

³² "Library Guides: Making Resources: DeLaMare Technology Lending," LIBRARIES AT UNIVERSITY OF NEVADA, RENO, <https://guides.library.unr.edu/making-resources> (last visited Jul 16, 2017).

³³ @One Digital Media Technology - University Libraries, LIBRARIES AT UNIVERSITY OF NEVADA, RENO, <https://library.unr.edu/ADMT> (last visited Jul 16, 2017).

should ISPs be able to pick winners and losers on the internet.

An open internet is especially important for libraries to serve the needs of the most vulnerable segments of our population, including those in rural areas, unemployed and low-income consumers, elderly and disabled persons. Public libraries specialize in providing internet access to *all* people, especially the roughly one-third of people who do not have broadband access at home.³⁴ As mentioned above, the general public depends upon the availability of open, affordable internet access from their local libraries to fully participate online. The nation as a whole benefits when libraries and their patrons have access to open, high-speed, online information and services. Two-thirds of public libraries report they would like to increase their broadband speeds, largely driven by community demand for high-speed wired and Wi-Fi internet access and the services enabled by this library broadband infrastructure.

According to Pew, library users who take advantage of libraries' computers and internet connections are more likely to be young, black, female and have lower incomes. Specifically, compared with the 29 percent of all library users who use computers at the library: 45 percent of library users between the ages of 16 and 29 used computers (the internet or the library's Wi-Fi), 42 percent of black library users used libraries' computers and internet connections and 35 percent of those whose annual household incomes are \$30,000 or less used these resources.³⁵ Similarly, public libraries are the most common public Wi-Fi access point for African Americans and Latinos—with roughly one-third of these communities using public library Wi-Fi.³⁶

C. Libraries are consumers—as institutions—of unfettered internet access to support their patrons.

³⁴ John B. Horrigan & Maeve Duggan, "Home Broadband 2015," PEW RESEARCH CENTER: INTERNET, SCIENCE & TECH (2015), <http://www.pewinternet.org/2015/12/21/2015/Home-Broadband-2015/> (last visited Jul 16, 2017).

³⁵ John Horrigan, *Libraries 2016*

³⁶ John Horrigan & Jason Llorenz, *Communities and Wi-Fi* (2015), <http://wififorward.org/wp-content/uploads/2017/06/Communities-and-Wi-Fi-Survey-January-2015.pdf> (last visited Jul 16, 2017).

Many libraries look largely to commercial ISPs to purchase access to the internet so their patrons can access all the internet offers at the fastest speeds possible. As the ALA has noted in its comments to the FCC on E-rate: "Access to high-capacity, scalable broadband at affordable recurring rates to the building remains the number one telecommunications problem libraries confront in being able to provide 21st Century services to the communities they serve."³⁷ Creating internet "fast lanes" will only exacerbate the affordability issue.

The modernization of the E-rate program has been a boon to public libraries and the communities they serve. Libraries have an historic opportunity to boost the broadband capacity needed to launch and sustain technology-rich programs and resources in our increasingly dynamic, multi-user and multipurpose spaces. From high-definition videoconferencing to telehealth to personalized cloud services, slow broadband connections (or otherwise degraded transmission of digital content) must not be allowed to limit our ability to serve our communities -- a fact which the FCC has supported in its actions by emphasizing affordable broadband and setting robust library bandwidth benchmarks. We are concerned that doing away with strong, enforceable net neutrality protections may imperil that progress by making robust and affordable broadband even more difficult to attain.

For example, will state libraries or other consortia managing the E-rate application process for their libraries be in the position of having to educate libraries why one library can afford a "fast lane" to certain resources and why another cannot? How will administrators evaluate applications under the "lowest corresponding price" regulation when bids are for different kinds or bundles of services? Will libraries be required to consider the affiliated (and therefore likely prioritized) content available through a commercial ISP when selecting their broadband provider(s)? And will they be forced to pay multiple ISPs for service to enable public access to affiliated content that may be blocked or degraded by one ISP but available from

³⁷ Comments of the American Library Association in the Matter of *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184 (filed Sept 15, 2014) <https://ecfsapi.fcc.gov/file/7522678477.pdf> (last visited Jul 16, 2017).

another? How will libraries educate their public internet users to these choices and limitations related to prioritized content—both in terms of patrons’ access and their ability to contribute their own cultural and commercial products to other internet users? How transparent will ISP practices be to libraries and the campuses, communities and individuals we serve?

III. Second: No changes to the FCC’s 2015 Open Internet Order are necessary. The rules adopted in the Order are critical to preserving the open internet and allowing libraries to achieve their missions.

The FCC’s 2015 reclassification of broadband internet access service providers as Title II common carriers in the 2015 Order is the right reading of the law, and it’s also key to maintaining effective and enforceable open internet protections. The courts have said this must be a basis for strong open internet rules. We do not see any reason for the FCC to return to this issue now.

Without strong rules protecting the open internet and ensuring transparency of commercial ISPs’ network management practices and commercial terms—like those outlined in the FCC’s 2015 Open Internet Order—libraries cannot fulfill their missions and serve their patrons. This section relates to specific questions in the NPRM³⁸ relating to the necessity of the “bright line” and transparency rules in the 2015 Order.

A. Libraries and the people we serve would be seriously disadvantaged by the NPRM’s proposal to eliminate the rules banning blocking traffic.

Intellectual freedom and free expression are as fundamental to the internet as the First Amendment is to American democracy. It’s also a core value for America’s librarians articulated in the American Library Association’s Library Bill of Rights initially adopted in 1939. Intellectual freedom is the “right of all peoples to seek and receive information from all points of view without restriction.” The internet connects people of diverse geographical, political or ideological origins, greatly enhancing everyone’s ability to share and to inform both themselves and others. Net

³⁸ NPRM paras. 76-90

neutrality allows people to bypass traditional media gatekeepers and tell their own stories online.

With a loss of an open internet will ISPs decide which viewpoints and sources of information are “acceptable”? This is not aligned with American values nor with the professional values and public mission of America’s librarians.³⁹

Commercial ISPs should not be permitted to block or impede (i.e., throttle) access to legal web sites, resources, applications or internet-based services. In our view, the FCC must maintain the no-blocking rule, which is clear to commercial ISPs, consumers and edge providers and which has a firm basis in legal authority.

B. Libraries would be seriously disadvantaged if the rule banning degrading of legal traffic were eliminated.

Just like outright blocking of content, slowing down a customer’s access to a particular website or service would gravely inhibit that person’s access to the content of their own choosing.

Subtle differences in internet speed can make a great difference in how a user receives and uses information. Even slight slowdowns will have an impact on internet users and can potentially limit access to library-generated and -brokered digital content and services, as well as content created by the students, researchers, entrepreneurs, lawyers and creators in our diverse communities and campuses.

C. “Paid prioritization” is inherently unfair and particularly harmful to institutions like libraries that do not have the resources to pay additional fees to transmit or enable access to content they generate and host.

³⁹ The Library Bill of Rights is the American Library Association's statement expressing the rights of library users to intellectual freedom and the expectations the association places on libraries to support those rights. Article I states: “Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.”

Paid prioritization inevitably favors those who have the resources to pay for expedited transmission and disadvantages those entities—such as libraries and other community anchors—whose missions and resource constraints preclude them from paying additional fees.

Most universities and colleges do not have deep financial pockets to pay ISPs for faster access to reach off-campus students, researchers, and faculty, compared to large corporations or for-profit institutions. This hurts educational institutions' ability to support research collaboration and off-campus access to remote digital learning, digitized collections, and essential open educational resources.

Library sites—key portals for those looking for diverse resources and unbiased knowledge—and library users could be among the first victims of intentional slow downs. A world in which libraries and other noncommercial enterprises are limited to the internet's "slow lanes" while HD movies can obtain preferential treatment undermines a central priority for a democratic society—the necessity of all citizens to inform themselves and each other just as much as the major commercial and media interests can inform them.

People who come to the library because they cannot afford broadband access at home should not have their choices in accessing online information shaped by who has paid the libraries' commercial ISP the most, rather than the information of their choosing and the quality of the content offered.

Finally, as alluded to above, as end users of broadband services, will libraries now be expected to buy "bundles" of new services to ensure all the necessary information and resources are available to our users? This presents a new set of complexities—and potentially funding strain—on institutions already dealing with shrinking budgets and growing roles in helping people successfully navigate complex online information.

D. Elimination of all transparency rules, including the enhanced transparency rules, would leave consumers, whether individuals or institutions like

libraries, completely in the dark about the nature of the services they purchase.

The NPRM asks whether transparency rules “remain necessary in today’s competitive broadband marketplace.”⁴⁰ Transparency of commercial ISPs’ network management practices, performance, and commercial terms of service is essential to making informed choices (where a choice is available at all) in selecting and holding ISPs accountable for services—both for residential consumers and institutions like libraries. Many of our institutions have made this clear in network neutrality principles released in 2014 and most recently, in March 2017: “Commercial ISPs should disclose network management practices publicly and in a manner that 1) allows users as well as content, application, and service providers to make informed choices, and 2) allows policy-makers to determine whether the practices are consistent with network neutrality principles.”⁴¹ Furthermore, complying with such a rule would not require disclosure of essential proprietary information or information that jeopardizes network security.

E. Net neutrality has been longstanding U.S. policy, and the need for clear and consistent rules governing fixed and mobile broadband access is growing, not lessening.

The NPRM misreads the history of U.S. communications law and efforts to protect the open internet by contending the 2015 Open Internet Order are based on novel principles of the Obama Administration and previous FCC leadership.⁴² In a series of decisions through the FCC’s *Computer Inquiries* proceedings, the FCC drew a clear distinction between the internet access network and the services that use it. The FCC ruled that services offering transmission capability over a communications path should be considered basic services and subject to common-carriage rules under Title II of the Communications Act. Congress codified this distinction between the network and the content on it when it updated Title II with the Telecommunications

⁴⁰ NPRM at para. 89

⁴¹ See Appendix A

⁴² NPRM at para. 6

Act of 1996. A decision by the Bush Administration's FCC Chairman Powell to reclassify broadband internet access as a Title I "information service" blurred the long-held distinction between the network itself and the content and services that flow over it. This ultimately paved the way for cable companies to begin experimenting with blocking and throttling of websites and online content.

This led to a series of court decisions that struck down open internet principles for lack of authority: principles from 2005 were struck down in 2010, and the 2010 FCC's principles met the same fate.

At the same time, the markets for fixed and mobile broadband have made rules more necessary. There has been a wave of consolidation over the past few years, as commercial ISPs purchased huge content and media companies. Being able to prioritize their own affiliated content over anything else available online would allow ISPs to reap huge dividends at internet users' expense, and so the incentives are greater for these companies to do so. It is clear the rules are becoming more necessary, not less.

The NPRM also asks whether net neutrality rules should apply to mobile service.⁴³ Mobile broadband markets have matured to the point where examples of potential violations of open internet principles abound: ISPs have been caught blocking competitors' applications like Google Wallet⁴⁴ in favor of their own mobile-payment services. Other ISPs have blocked video chat services and apps.⁴⁵ Rumored mergers and increasing consolidation in the mobile industry indicate this behavior may become more pronounced, not less. The ALA and allies in the library and higher education communities have consistently advocated for network neutrality

⁴³ NPRM at para. 94

⁴⁴ David Goldman, "Verizon blocks Google Wallet," CNN Money (Dec 6, 2011), http://money.cnn.com/2011/12/06/technology/verizon_blocks_google_wallet/ (last accessed Jul 16, 2017)

⁴⁵ AT&T's blocking of FaceTime on its mobile network in 2012 was mentioned by the FCC in the 2015 Open Internet Order as one piece of evidence in favor of strict net neutrality rules. See also, Salvador Rodriguez, "AT&T opens up FaceTime to all — except customers on unlimited plan," LA Times (Jan 17, 2013), <http://articles.latimes.com/2013/jan/17/business/la-fi-tn-att-facetime-unlimited-tiered-data-20130117> (last accessed Jul 16, 2017)

protections to apply to both fixed and mobile broadband.⁴⁶

IV. Third: The NPRM’s proposal to reclassify broadband internet access service as an “information service” would undermine FCC authority over broadband, just as broadband has become one of the most important infrastructure priorities of the 21st Century.

The proposal to classify broadband internet access service (BIAS) as an information service would severely limit the FCC’s ability to promote broadband deployment and use, just as broadband has become one of the most important infrastructure priorities. In 2009, Congress vested the FCC with the responsibility to create the National Broadband Plan and that plan calls upon the FCC to take a variety of steps to promote a ubiquitous, affordable, high-speed broadband network available to all Americans. Reclassifying broadband as an “information service” rather than a common carrier “telecommunications service” significantly weakens the FCC’s authority to implement that plan.

Furthermore, eliminating Title II common carrier classification of broadband services makes it extremely difficult for the FCC to accomplish the goals set forth in Title I of the Communications Act – to promote universal broadband connectivity for all Americans. Section 1 of the Communications Act (47 U.S.C. 151) states in full:

For the purpose of regulating interstate and foreign commerce in communication by wire

⁴⁶ See Comments of the American Association of State Colleges and Universities, American Council on Education, American Library Association, Association of American Universities, Association of College & Research Libraries, Association of Public and Land-grant Universities, Association of Research Libraries, Chief Officers of State Library Agencies, Council of Independent Colleges, EDUCAUSE and Modern Language Association in the Matter of *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, (filed July 18, 2014), http://www.ala.org/offices/sites/ala.org.offices/files/content/oitp/publications/officialfilings/library-highered_nn_comments_july_2014.pdf (last visited Jul 16, 2017); see also Letter from the American Association of Community Colleges, American Association of State Colleges and Universities, American Council on Education, American Library Association, Association of American Universities, Association of Public and Land-grant Universities, Association of Research Libraries, Chief Officers of State Library Agencies, EDUCAUSE, Modern Language Association and National Association of Independent Colleges and Universities to the FCC in support of Net Neutrality Principles (filed Jul 10, 2014) <http://www.districtdispatch.org/wp-content/uploads/2014/07/HigherEd-Libraries-NN-Press-Release-and-Principles-Final1.pdf> (last visited Jul 16, 2017); see also Ex Parte Presentation of the American Library Association, Association of Research Libraries and EDUCAUSE, GN Docket 09-191, WC Docket No. 07-52 (filed Dec 13, 2010) <https://ecfsapi.fcc.gov/file/7020923490.pdf> (last visited Jul 16, 2017).

and radio so as to make available, so far as possible, **to all the people of the United States, without discrimination** on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with **adequate facilities at reasonable charges**, for the purpose of the **national defense**, for the purpose of **promoting safety of life and property** through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by **centralizing authority** heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the “Federal Communications Commission,” which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

The NPRM’s proposal to deregulate BIAS providers calls into question whether the FCC will be fulfilling its core mission as set forth by Congress in Section 1. In 1934 and again in 1996, Congress directed the FCC to ensure that broadband “communication”⁴⁷ is made available to all Americans, to prevent discrimination, to ensure adequate facilities at reasonable charges, to promote national defense and the safety of life and property, and to centralize authority in a single federal agency.

While Title I sets out the Commission’s general goals and mission, Section 1 does not confer regulatory authority. The *Comcast* court found that Section 1 was a broad policy statement but not a grant of authority to act.⁴⁸ Thus, the Commission must look elsewhere in the Communications Act to justify regulatory oversight over broadband networks and service. Most of the tools to reach those goals are set forth in Title II (for common carriers). Without Title II, the Commission’s authority to ensure universal service, to prevent discrimination, to ensure deployment and reasonable charges, etc., are limited.

In *Verizon*, the D.C. Circuit Court of Appeals found that Section 706 granted the FCC limited authority to regulate broadband internet access service.⁴⁹ But, in doing so, the *Verizon* court placed significant constraints on the scope of that authority. The court ruled that, if BIAS

⁴⁷ While there is debate about whether broadband is a form of “telecommunications service”, there is no question that broadband is a type of “communication” that is covered by Section 1.

⁴⁸ *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010) (“*Comcast*”)

⁴⁹ *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014) (“*Verizon*”)

providers are classified as “information service” providers, then the FCC may not regulate them as if they are common carriers.⁵⁰ For instance, the *Verizon* court was clear that the Commission could not impose a “non-discrimination” standard on providers of information services, and it said that any regulation must permit BIAS providers to engage in “individualized bargaining.” Obligations similar to other provisions of Title II, such as ensuring that broadband rates are “just and reasonable”, and requiring the deployment of broadband networks to high-cost areas, are likely to be off limits. The scope of the FCC’s authority over broadband under Section 706 is thus curtailed and uncertain.⁵

It is also worth noting that, by treating BIAS as “information services”, the Commission would decentralize and fracture the responsibility to oversee broadband services, directly contradicting Congress’ express directive in Section 1 to “centralize” authority. The NPRM itself notes that a purported benefit of its proposal is to allow the Federal Trade Commission (FTC) to have authority over BIAS concerning privacy and other matters.⁵² It also suggests that antitrust rules would be available to police anti-competitive behavior.⁵³ Involving multiple government agencies with different roles over the broadband market makes it more difficult for the U.S. to enforce a consistent *national* broadband policy. Furthermore, the Department of Justice and the FTC traditionally focus on antitrust law and marketing, which makes it difficult for Internet users and edge providers to pursue complaints about other harms, such as discrimination and price gouging.

Notwithstanding its conclusory finding that broadband should be an information service, the Commission asks whether it should adopt bans on blocking, throttling or paid prioritization. Significantly, the Commission does not suggest under what authority it could impose such requirements, and the Commission would be hard-pressed to enforce these policies in a Title II-less regime.

⁵⁰ *Verizon*, 740 F.3d, at 650, 653. The *Verizon* court’s ruling puts even more constraints on the Commission’s authority than in the past, because the *Verizon* court also held that the definition of BIAS includes not just the “last mile” connection to the consumer but also the service provided to edge customers.

⁵¹ See NPRM, para. 101. Amazingly, the NPRM proposes even to abolish even this limited 706 authority. The NPRM suggests that the language of Section 706 “appears more naturally read as hortatory, particularly given the lack of any express grant of rulemaking authority, authority to prescribe or proscribe the conduct of any party, or to enforce compliance.”

⁵² See NPRM, paras 67 and 108.

⁵³ See NPRM, para. 84.

The implications of the Commission’s decision not to assert authority over broadband providers could be significant. For instance, reclassifying BIAS as an information service raises questions about the Commission’s ability to incorporate broadband into the universal service regime set forth in Section 254 of Title II. Much of the language in Section 254 is focused on providing support for “telecommunications services”. The Commission has been able to include subsidies for rural broadband into the Connect America Fund by finding that broadband services ride on the same networks that are used to carry “telecommunications services.” But as broadband service replaces legacy telecommunications services, new legal challenges to the Commission’s efforts to include broadband in the USF regime could arise, especially if there are no underlying “telecommunications services” in a particular market.

The NPRM glides past this potential tragedy by suggesting that broadband could still be included in the Lifeline program by subsidizing the “facilities” used to provide Lifeline service.⁵⁴ There are a number of problems with this approach. First, it appears to suggest that only “facilities-based” providers would be eligible for Lifeline subsidies, which would exclude thousands of resellers from participating in the Lifeline program. Second, it suggests that Lifeline subsidies would only be provided to carriers that provide broadband and voice over the same facilities. But the whole point of the latest Lifeline proceeding was to provide support for broadband as a stand-alone service (not paired with voice) because of the concern that voice services are disappearing from the marketplace. Third, the purpose of the Lifeline program is to provide subsidies to make service affordable for low-income consumers, not to subsidize the deployment, maintenance and upgrade of network facilities. By focusing on subsidizing the network rather than the low-income consumer, the Lifeline program would lose touch with its basic purpose of providing affordable broadband service to *all* Americans.

The legal reasoning used to support the NPRM’s proposal to reclassify broadband suffers

⁵⁴ See NPRM, para. 68 (“We propose to maintain support for broadband in the Lifeline program after reclassification. In the *Universal Service Transformation Order*, the Commission recognized that ‘[s]ection 254 grants the Commission the authority to support not only voice telephony service but also the facilities over which it is offered’ and ‘allows us to . . . require carriers receiving federal universal service support to invest in modern broadband-capable networks.’ Accordingly, as the Commission did in the *Universal Service Transformation Order*, we propose requiring Lifeline carriers to use Lifeline support ‘for the provision, maintenance, and upgrading’ of broadband services and facilities capable of providing supported services.”)

from several other flaws, as follows:

- The NPRM states that, in 2015, the Commission “decided to apply utility-style regulation to the internet. This decision represented a massive and unprecedented shift in favor of government control of the internet.”⁵⁵ In fact, in 2015, the FCC chose to regulate internet *access*, not the internet itself. This difference is fundamentally important.
- It is also worth noting that there is not one form of “utility-style regulation” that is set in stone. Congress gave the FCC significantly more flexibility in how it implements Title II in the 1996 Telecommunications Act. The Title II regime today is very different from the regime created by Congress in 1934.
- The NPRM states that “internet service providers have pulled back on plans to deploy new and upgraded infrastructure and services to consumers. This is particularly true of the smallest internet service providers that serve consumers in rural, low-income, and other underserved communities.”⁵⁶ This paragraph contains no citations to support this asserted pull-back of investment. In fact, many of the smallest ISPs are rural local telephone companies that are regulated as Title II common carriers.
- The NPRM states that the 2015 decision “weakened Americans’ online privacy by stripping the Federal Trade Commission—the nation’s premier consumer protection agency—of its jurisdiction over ISPs’ privacy and data security practices.”⁵⁷ In fact, the 2015 decision strengthened consumers’ privacy protections because it restored the FCC’s authority over privacy under Section 222. The FCC’s privacy protections were much stronger than the FTC’s privacy rules (until Congress overturned the FCC’s privacy protections through the Congressional Review Act).
- The NPRM states that its desire is to “restore the market-based policies necessary to preserve the future of Internet Freedom.”⁵⁸ In fact, the “market” will NOT preserve internet freedom – just the opposite. The ISPs have “market” incentives to discriminate in favor of

⁵⁵ NPRM at para. 3

⁵⁶ NPRM at para. 4

⁵⁷ Ibid

⁵⁸ NPRM at para. 5

those with the deepest pockets, not to keep internet access fairly open to all. As discussed above, the wave of mergers and consolidation amongst fixed and mobile broadband providers with content companies adds more pressure on these firms to prioritize and favor their own content over competitors'. The FCC's own data show that at least 58 percent of households have zero or one provider offering 25 Mbps/3Mbps level of service. As the FCC's report notes, the actual number of households with zero or one provider is likely even higher than 58 percent.⁵⁹

- The NPRM claims that broadband internet access service fits within the definition of an "information service" because BIAS offers "its users the 'capability' to perform each and every one of the functions listed in the definition—and accordingly appears to be an information service by definition."⁶⁰ The definitions of "information service" and "telecommunications service" are not clear-cut and are overlapping. BIAS also fits the definition of a "telecommunications service" because BIAS includes the transmission of information of the user's choosing. The statutory definitions of "information services" and "telecommunications service" do not dictate a result one way or the other, and the FCC has discretion to identify the service as one or the other.

- The NPRM states that Section 231 supports the view that broadband is not a "telecommunications service" because it expressly states that "internet access service" does not include telecommunications services.⁶ In fact, section 231 proves just the opposite. Section 231 separately defines the "internet" and "internet access service", recognizing they are two different activities. Persons that provide "internet access service" are automatically exempt from liability for providing harmful material to minors; whereas internet content providers are only shielded from liability if they use credit cards or other technology to screen out minors. This demonstrates Congress' recognition that "internet access" providers are involved in the passive transmission of information (common carriers), while providers of internet services are responsible for content.

⁵⁹ See, "Internet Access Services: Status as of June 30, 2016," published by the FCC's Wireline Competition Bureau, (April 2017), Figure 4, at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0503/DOC-344499A1.pdf. ("Internet Access Services: 2016")

⁶⁰ NPRM at para. 27

⁶¹ NPRM at para. 32

- The NPRM avers that Congress passed section 230 to protect the internet from regulation. Section 230 says it is the policy of the United States “to preserve the vibrant and competitive free market that presently exists for the internet and other interactive computer services, unfettered by Federal or State regulation.”⁶² The NPRM is correct that this policy protects the internet from regulation, but does it does not protect “internet access” from regulation.

- The NPRM states that “[a] recent study indicates that capital expenditure from the nation’s twelve largest internet service providers has fallen by \$3.6 billion, a 5.6% decline relative to 2014 levels. Another study indicated that between 2011 and 2015, the threat of reclassification reduced telecommunications investment by about 20–30%, or about \$30–40 billion annually.”⁶³ Thus, by the FCC’s own admission, investment declined more prior to the FCC’s Title II decision than afterwards.

- The NPRM states that “[w]e believe that the [previous] Commission’s predictions and expectations regarding broadband investment and the nature and effects of reclassification on the operation of the marketplace were mistaken and have not been borne out by subsequent events. Moreover, we believe that a restoration of the information service classification for broadband internet access service is likely to increase infrastructure investment. In such a case, principles of administrative law give us more than ample latitude to revisit our approach.”⁶⁴ Here, the FCC is announcing its view before it has even gathered and analyzed the evidence in the comments to be submitted in this proceeding. It appears to be basing its view on only two studies of investment, which do not support the Commission’s conclusion. This appears to be a prima facie case of “arbitrary and capricious” activity by a rulemaking agency that is unlikely to survive judicial review.

V. Conclusion

In conclusion, libraries are greatly concerned that if the 2015 Open internet Order is

⁶² Ibid

⁶³ NPRM at para. 45

⁶⁴ NPRM at para. 53

vacated or its rules are substantially altered, that commercial ISPs then have the financial incentive and the opportunity to block, degrade or prioritize access to internet-based applications, services and content. These practices, if permitted, would have severe adverse impacts on online education, economic opportunity, research, learning and free speech in communities across the country.

Respectfully submitted,

Emily Feltren
Director of Government Relations
American Association of Law Libraries

Ellen Satterwhite
Policy Fellow, American Library Association
(Vice President, Glen Echo Group)

Timothy Cherubini
Executive Director
Chief Officers of State Library Agencies

Larra Clark
Deputy Director, American Library Association
Office for Information Technology Policy

Kara Malenfant
Senior Strategist for Special Initiatives
Association of College & Research Libraries,
A division of the American Library Association

Alan S. Inouye,
Director of Public Policy
American Library Association

Appendix A

Letter to Commissioners Pai, Clyburn and O’Rielly From Higher Education, Library Groups Outlining Principles for Preserving the Open Internet

March 31, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

The Honorable Mignon Clyburn
Commissioner
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

The Honorable Michael O’Rielly
Commissioner
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Dear Chairman Pai, Commissioner Clyburn and Commissioner O’Rielly:

The organizations below firmly believe that preserving an open Internet is essential to our nation's freedom of speech, educational achievement, and economic growth. The Internet now serves as a primary, open platform for information exchange, intellectual discourse, civic engagement, creativity, research, innovation, teaching, and learning. As you review the Open Internet Order adopted in February 2015, we urge you to endorse the principles attached to this letter and maintain the approach adopted in that Order to preserve the openness of the Internet.

The higher education and library communities are deeply concerned that broadband internet access service providers, as defined by the FCC in the 2015 Order¹ and hereafter referred to as “commercial ISPs,” have financial incentives to interfere with the openness of the Internet in ways that could be harmful to the Internet content and services provided by libraries and educational institutions. Preserving the unimpeded flow of information over the public Internet and ensuring equitable access for all people is critical to our nation’s social, cultural, educational, and economic well-being.

In February 2015, after a rulemaking process that generated the greatest number of public comments in the agency’s history, the Federal Communications Commission (FCC) approved an Order that gave Internet users the strongest net neutrality protections to date. In June 2016, a federal appeals court affirmed the FCC’s Order, ruling that the agency has the proper authority to

issue such rules, that it followed proper procedures, and that the “net neutrality” rules are permitted under the Communications Act and Telecommunications Act.

We support the FCC’s February 2015 Order and believe that it has served the interests of consumers, broadband providers, libraries, and higher education. More generally, the FCC’s adoption of these “net neutrality” policies ensures that the Internet remains open to free speech, research, education, and innovation. We believe that commercial ISPs should operate their networks in a neutral manner without interfering with the transmission, services, applications, or content of Internet communications. Internet users often assume (and may take for granted) that the Internet is inherently an open and unbiased platform, but absent a law or regulation like the FCC’s rule, nothing requires commercial ISPs to be neutral. Without “net neutrality” policies, such providers could act as gatekeepers—they could give enhanced or favorable transmission to some Internet traffic, block access to certain web sites or applications, or otherwise discriminate against certain Internet services for their own commercial reasons, or for any reason at all.

We are especially concerned that, absent strong “net neutrality” protections, commercial ISPs have financial incentives to provide prioritized Internet service to certain commercial Internet companies or customers, thereby disadvantaging nonprofit or public entities such as colleges, universities, and libraries. For instance, such providers could sell faster or prioritized transmission to certain entities (“paid prioritization”) or could degrade Internet applications that compete with the commercial providers’ own services. Libraries and higher education institutions that cannot afford to pay extra fees could be relegated to the “slow lane” on the Internet.

Specifically, the loss of “net neutrality” protections would most threaten the high bandwidth applications and services that enable real-time collaboration, content creation, sharing, and learning by education and other community institutions, including libraries. By and large, such institutions cannot afford to pay for prioritized access. Those who can, like entertainment providers, will have their uses of the Internet prioritized ahead of education, access to information, and other public interests, with significant, negative consequences. For example, if students and library patrons cannot use online educational resources effectively, which would likely result if commercial content is prioritized ahead of non-commercial uses, they may abandon those resources, regardless of the ultimate impact on their learning. After colleges, universities, and libraries pay to create content and pay to connect that content to the Internet, they should not have to pay yet again to prioritize access to those resources.

So a non-neutral net, in which commercial providers can pay for enhanced transmission that libraries and higher education cannot afford, endangers our institutions’ ability to meet our educational mission.

To be clear, we do not object to end users paying for higher-capacity connections to the Internet; once connected, however, users should not have to pay additional fees to receive prioritized transmission, and their Internet messages or services should not be blocked or degraded. Such

discrimination or degradation could jeopardize education, research, learning, and the unimpeded flow of information.

For these reasons, we believe that there must be continued, enforceable policies to protect the openness of the Internet. Our organizations have joined together again to reaffirm the key principles attached to this document that we believe policymakers at the FCC, in Congress, and in the Executive Branch should adopt and implement to preserve an open Internet. We urge you to support these policies.

Sincerely,

American Association of Community Colleges (AACC)
American Association of State Colleges and Universities (AASCU)
American Council on Education (ACE)
American Library Association (ALA)
Association of College & Research Libraries (ACRL)
Association of Public and Land-grant Universities (APLU)
Association of Research Libraries (ARL)
Chief Officers of State Library Agencies (COSLA)
EDUCAUSE
Modern Language Association (MLA)
Sacramento Public Library

Library and Higher Education Net Neutrality Principles

Ensure Neutrality on All Public Networks: Neutrality is an essential characteristic of broadband Internet access services provided to the general public. These neutrality principles must apply to all commercial ISPs, regardless of underlying transmission technology (e.g., wireline or wireless) and regardless of local market conditions.

Prohibit Blocking: Commercial ISPs should not be permitted to block access to legal web sites, resources, applications, or Internet-based services.

Protect Against Unreasonable Discrimination: Every person in the United States should be able to access legal content, applications, and services over the Internet, without unreasonable discrimination by commercial ISPs. This will ensure that such providers do not give favorable transmission to their affiliated content providers or discriminate against particular Internet services based on the identity of the user, the content of the information, or the type of service being provided. "Unreasonable discrimination" is the standard in Title II of the Communications Act; the FCC has generally applied this standard to ensure that commercial ISPs do not treat similar customers in significantly different ways.

Prohibit Paid Prioritization: Commercial ISPs should not be permitted to sell prioritized transmission to certain content, applications, and service providers over other Internet traffic sharing the same network facilities. Prioritizing certain Internet traffic inherently disadvantages other content, applications, and service providers—including those from higher education and libraries that serve vital public interests.

Prevent Degradation: Commercial ISPs should not be permitted to degrade the transmission of Internet content, applications, or service providers, either intentionally or by failing to invest in adequate broadband capacity to accommodate reasonable traffic growth.

Enable Reasonable Network Management: Commercial ISPs should be able to engage in reasonable network management to address issues such as congestion, viruses, and spam as long as such actions are consistent with these principles. Policies and procedures should ensure that legal network traffic is managed in a content-neutral manner.

Provide Transparency: Commercial ISPs should disclose network management practices publicly and in a manner that 1) allows users as well as content, application, and service providers to make informed choices, and 2) allows policy-makers to determine whether the practices are consistent with these network neutrality principles. This rule does not require disclosure of essential proprietary information or information that jeopardizes network security.

Continue Capacity-Based Pricing of Broadband Internet Access Connections: Commercial ISPs may continue to charge consumers and content, application, and service providers for their broadband connections to the Internet, and may receive greater compensation for greater capacity chosen by the consumer or content, application, and service provider.

Adopt Enforceable Policies: Policies and rules to enforce these principles should be clearly stated and transparent. Any commercial ISP that is found to have violated these policies or rules should be subject to penalties, after being adjudicated on a case-by-case basis.

Accommodate Public Safety: Reasonable accommodations to these principles can be made based on evidence that such accommodations are necessary for public safety, health, law enforcement, national security, or emergency situations.

Maintain the Status Quo on Private Networks: Consistent with the FCC's long-standing principles and practices, and the 2015 Order, the Commission should decline to apply the Open Internet rules to premises operators, such as coffee shops and bookstores, and private end-user networks, such as those of libraries and universities. As the FCC has historically found, end users should be free to decide how they use the broadband services they obtain from network operators and commercial ISPs.

¶ In the Matter of Protecting and Promoting the Open Internet, Report and Order, FCC 15-24 (2015), p.10