

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Safeguarding and Securing) WC Docket No. 23-320
the Open Internet)
)

COMMENTS OF THE AMERICAN LIBRARY ASSOCIATION

December 14, 2023

EXECUTIVE SUMMARY

The American Library Association (ALA) appreciates the opportunity to respond to the Federal Communications Commission (FCC) Notice for Proposed Rulemaking for Safeguarding and Securing the Open Internet.

ALA is the foremost national organization providing resources to inspire library and information professionals to transform their communities through essential programs and services. For more than 140 years, ALA has been the trusted voice and advocate for our nation’s 123,000 academic, public, school, government, and special libraries. ALA has consistently advocated that the FCC has the necessary authority to implement needed protections and that Title II reclassification would place public broadband internet access service (BIAS) on an equal regulatory footing with other communications services.¹ We continue to hold this position and agree with the Commission that BIAS has only become more essential in recent years.

Libraries have long been *the* community anchor institution supporting equitable access to information. Historically, this has been in support of print resources but over the past two decades this has increasingly meant support for broadband-enabled services, too. Libraries

¹ For more than 15 years, ALA has actively advocated to protect the open internet on its own and in partnership with others. The advocacy work has included coalition letters, amicus briefs, FCC filing comments, ex parte meetings, articles in the press, opinion pieces and more. A history of ALA’s correspondences and filings can be found online at “Public Policy & Advocacy Correspondence & Filings Archive: Network Neutrality.” (June 2007 to Present), <https://www.ala.org/advocacy/correspondence-archive#Net%20Neutrality>.

support individuals as they apply digital tools and services to achieve important goals for themselves, their communities, and the nation.

Our nation's libraries are leaders in creating, fostering, using, extending, and maximizing the potential of the internet for research, education, and the public good. Libraries depend upon an open internet to fulfill their missions and serve their communities. As such, ALA is extremely concerned that there is currently a void in policies to protect the openness of the internet. BIAS providers who offer services to the public currently have the opportunity and financial incentive to block, degrade or discriminate against certain content, services, and applications. We support strong, enforceable policies and rules to safeguard and secure an open internet for everyone.

In short, high-capacity broadband is vital infrastructure that libraries and many other community anchor institutions need to carry out their public interest missions. Furthermore, these institutions rely on open, unfettered internet access both to retrieve and to contribute content on the wide variety of content platforms available on the internet. In fact, over the past twenty 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 mission critical. The democratic nature of the internet as a neutral platform for carrying information and research to the general public and supporting online collaboration and participation is strongly aligned with libraries' commitment to provide access to and enable engagement with diverse information, digital content, and research.

We are encouraged by the Commission's recognition of the value of an open internet for work, health, education, community, and everyday life. We support the Commission's actions to enact protections to safeguard and secure the open internet.

In these comments we:

- Illustrate the importance of an open internet to libraries and innovative ways in which libraries are leveraging BIAS to serve and connect the nation's communities.
- Affirm that the rules should be technology-neutral, including reclassifying mobile BIAS as a commercial mobile service.
- Illustrate why paid prioritization, blocking, and throttling should be prohibited by the Commission.
- Reaffirm that intellectual freedom and free expression are as fundamental to the internet as the First Amendment is to American democracy.
- Affirm that open internet rules should apply to public broadband providers and not to private networks or end users.
- Outline how the Commission has the authority to address conduct that undermines an open internet.
- Assert that the FCC should restore its authority to create and enforce rules to protect consumer privacy and increase transparency.

Libraries Depend on the Open Internet to Carry Out Their Mission

The NPRM asks how consumers' usage and views of BIAS have changed since 2018, when Title II classification was reversed, and particularly since the onset of the pandemic in 2020.² Put simply, we will document how the internet is mission critical for America's libraries and the communities we serve. The democratic nature of the internet as a neutral platform for carrying information, services, programs, and research to the general public also is strongly aligned with the public interest mission of libraries to provide access to diverse information and research.³

Public, college and university, and K12 school libraries utilize broadband to provide technology-enabled programs and services to their communities and campuses.

The Public Library Association's "2020 Public Library Technology Survey" highlights how many public library services and programs rely on the internet to support their communities. Almost half of the libraries surveyed provided streaming public programs (e.g. with remote speakers and live audience in the library or speakers and audience both remote) and over 42% offered "online discussion forums (e.g. book discussion or community issues forum)."⁴ "More than four in five city libraries and more than two in three suburban libraries offered online discussion programs and live-streamed public programs."⁵

Academic libraries also increased online instruction during the pandemic. Before COVID-19, librarians primarily provided instruction entirely or mostly in person (79%), with another 20% offering it as a mix of online, in-person, and hybrid.⁶ The 2021 survey by "ACRL Academic Library Trends and Statistics Survey" illustrates how academic libraries made the shift during COVID-19 "with "entirely/mostly online" as the most prevalent instruction mode (56%), followed by a "mix of online, in person and hybrid" at 36% and "entirely/mostly in person" at 8%."⁷ Those surveyed also said that "as they look to the future, the same percentage (79%) anticipate offering instruction or other group presentations via "mix of online, in person and hybrid," signaling a significant shift for these activities.⁸

During the pandemic, telehealth became a new service area that public and academic libraries began to support. In 2020, 4.5% of the public libraries surveyed offered telehealth sessions.

The Network of the National Library of Medicine (NNLM) has launched a national initiative "to promote technology and digital equity, digital literacy, and telehealth through long-term

² NPRM WC Docket No 23-320 (2)

³ *ibid.*

⁴ <https://www.ala.org/pla/sites/ala.org.pla/files/content/data/PLA-2020-Technology-Survey-Summary-Report.pdf>

⁵ *ibid.*

⁶ Taylor, Laura Rose. "2021 ACRL Academic Library Trends and Statistics Survey," *College & Research Libraries News*. Volume 84, No. 4 (2023),

<https://crln.acrl.org/index.php/crlnews/article/view/25850/33784#:~:text=Academic%20libraries%20reported%20a%20shift,in%20person%E2%80%9D%20at%208%25>

⁷ *ibid.*

⁸ *ibid.*

partnerships and collaborations that will bring access to online health information to communities across the United States.”

The NNLM Telehealth Interest Group was launched in 2021 to address digital inequities uncovered during the pandemic and to “to support library and other health information workers in understanding the potential role of their organizations in the broader digital health landscape.”⁹ The Interest Group “launched a free, national online course called *Telehealth 101: What Libraries Need to Know*,¹⁰ which highlights libraries across the nation that support telehealth in the community, including Pottsboro Area Library,¹¹ Delaware Libraries #GetConnectedDE initiative,¹² and Telehealth in Libraries led by the Idaho Commission for Libraries,¹³ to name a few. We expect this list to grow substantially over the coming years.

Like public and academic libraries, school libraries supported their students online using a variety of tools and services when many schools closed their physical locations during the pandemic. In the “Second Snapshot of School Librarian Roles during School Closures,” the results “capture the school librarian’s role during this time and impact of closures on learners, educators, and parents/caregivers/guardians.”¹⁴ The survey was conducted in the spring of 2020 and represents 1,087 schools. School librarians supported students in a variety of ways including:¹⁵

- 94% expanded online resources available to students (curating and promoting).
- 70% provided virtual reading development (including book clubs, read-alouds, storytimes, book talks, etc.).
- 43% provided online classes and distance learning.

School librarians also offered support to educators and administration to assist them in adapting to the online environment including¹⁶:

- Approximately 80% expanded online resources, including expansion of resources and materials on school website(s).
- 77% helped facilitate virtual meetings, collaborative events and professional development.

⁹ Morris, iz. “Libraries Address the Digital Divide with Telehealth,” Public Libraries Online. August 31, 2023, <https://publiclibrariesonline.org/2023/08/libraries-address-the-digital-divide-with-telehealth/>

¹⁰ ibid

¹¹ Pottsboro Area Library. “Health,” <https://pottsborolibrary.com/health/>.

¹² Delaware Libraries. “How May We Help You #GetConnectedDE?,” <https://getconnected.delawarelibraries.org/>.

¹³ Idaho Commission for Libraries. “Telehealth in Libraries,” <https://libraries.idaho.gov/telehealth/>.

¹⁴ American Association of School Librarians. “Second Snapshot of School Librarian Roles during School Closures.” KnowledgeQuest. (May 5, 2020), <https://knowledgequest.aasl.org/second-snapshot-of-school-librarian-roles-during-school-closures/>

¹⁵ ibid

¹⁶ ibid

- Almost 72% provided technology support (setting up and using online resources/tools, tutorials, etc.).

School librarians continue to use technology to engage students and help teachers integrate technology to support and advance the curriculum. *School Library Journal* conducted a “School Technology Survey”¹⁷ earlier this year. The results include 595 U.S. respondents. Survey highlights include:

- Over half of librarians say they are responsible for technology usage inside the library, and for most (75%), this is written into their job description.
- 47% of the middle school and high school librarians said they collaborate with teachers to create tech-integrated lessons and assessments.
- More than 36% report that teachers/students come to the library to learn new technologies.

COVID-19 and Connecting Communities to the Internet

At the start of the COVID-19 pandemic, a majority of libraries were temporarily forced to close their buildings to the public.¹⁸ Acutely aware of their role in providing essential internet connectivity to jobseekers, students, parents, older Americans, veterans, small business owners, people experiencing homelessness, and many more, the nation’s libraries quickly pivoted to continue to offer public internet access and other services while adhering to public health guidelines. Library staff knew if they did not step up that many in their community would not have reliable access to the internet or any access at all.

To address this issue, they circulated hotspots, extended Wi-Fi access beyond the library walls, brought internet access to the community through bookmobiles, and set-up fixed and mobile internet towers to bring the internet to parking lots, parks, and community buildings throughout the community.

- Through a broadband mapping project, the city of Shreveport, Louisiana, was able to identify communities that were digital deserts, many of which had library branches within the community. The library and city partnered to bridge this digital divide. Cellular towers were mounted on the roof of four Shreve Memorial Library branches. The towers provide free Wi-Fi to homes and businesses within range that have a valid library card.

¹⁷ School Library Journal. “School Technology Survey: U.S. School Libraries 2023.” *School Library Journal*. <https://s3.amazonaws.com/ImageCloud/Research/2023/School+Technology+report+2023.pdf>

¹⁸ In May 2020, 62% of library buildings were fully closed to the public; 26% were offering curbside service; 11% had other limitations on access but not fully closed (e.g., by appointment or limited number of people allowed in the building at a given time); and 1% were fully open. American Library Association (2020a). “Libraries Respond: COVID-19 Survey,” May 12-18, 2020. Available at: http://www.ilovelibraries.org/sites/default/files/PLA-MAY-2020-COVID-19-SurveyResults_PDF-Summary-web.pdf

Using the card, residents can come to the library to check out a device that allows them to connect to the network.¹⁹

- During the pandemic, Orange County Public Libraries (California) piloted the Wi-Fi on Wheels service to help bridge the digital divide in under-connected communities. The vehicle can connect 150 users within a 300-yard radius. The pilot is now a regular service of the library.²⁰
- Bethlehem Public Library in Delmar, NY, offers free Wi-Fi available 24 hours a day, seven days in various locations throughout the community, including the library's parking lot, Town Hall parking lot, a playground, parks, and the community pool.²¹
- During the pandemic, Boone County Public Library (Kentucky) partnered with the City of Florence to create a Wide-Area Mesh Network to get Wi-Fi to households in the community that do not have an internet connection. During the first stage of the project, the library extended the building Wi-Fi in a circle that was 1,000 feet in diameter. During the second phase, the library shared its broadband signal with community partners, allowing the library to extend its connection into the community. During the second phase, the library shared its broadband signal with community partners, allowing the library to extend its connection into the community.

Libraries supported those who did not have internet access, as well as those whose home internet access was not robust enough to support the increased demand households required when parents started working from home and children attended school from their bedrooms. Households quickly discovered that the internet connection they had pre-pandemic was not always sufficient for a family sharing a single, limited home internet connection.

Even without the pandemic, libraries of all types have noticed changing trends in patron's usage of the internet since 2018.

PLA's "2020 Public Library Technology Survey"²² provides insight into how public library internet usage and support has changed:

- Almost one-third (32.6%) of public libraries offer internet hotspots for check out.
- Less than half of public libraries (43.7%) increased their bandwidth in the last two years, and more than one-third (34.6%) are unable to improve bandwidth because faster speeds are not available from their provider. Limiting factors that constrain libraries' ability to improve broadband connectivity include limited speeds available in the area (43.2% of town/rural libraries report this as a factor) and cost (reported by 34% of libraries overall).

¹⁹ City of Shreveport. "Universal Digital Access," <https://www.shreveportla.gov/3030/Universal-Digital-Access>

²⁰ Orange County Public Libraries. "WOW: Wi-Fi on Wheels," <https://ocpl.org/news/wifi-wheels>

²¹ Bethlehem Public Library. "Wi-Fi Out and About," <https://www.bethlehempubliclibrary.org/services/wifi-out-and-about/>

²² <https://www.ala.org/pla/sites/ala.org/pla/files/content/data/PLA-2020-Technology-Survey-Summary-Report.pdf>

- One in four town/rural libraries report that broadband limitations in speed or costs impede their offerings of digital content.
- More than 90% of the libraries circulate ebooks and e-audiobooks
- More than half of all libraries also provide access to online job and employment resources (63.5%), online health resources (60.7%) and online language learning (53.1%). Streaming and other downloadable media (e.g., video, music, and magazines) are available at 49.1% of all libraries.

Collection usage has also changed. In the Institute of Museum and Library Services' brief "Access to Public Library Services and Materials During the first Nine Months of the COVID-19 Pandemic" data showed "two-thirds of libraries added or increased access to electronic materials in response to the pandemic." Libraries also saw an increase in the median electronic circulation per person during this time with cities and suburbs experiencing 31% and 34% increases, respectively.²³

Overall while public libraries have seen a decline in physical collection use, "total library collection use reached a record high of 2.98 billion in 2019, growing 15.96% since 2013. This is due to the 153.16% growth in digital collection use from 302 million in 2013 to 1.15 billion in 2019."²⁴

Libraries Are at the Forefront of Internet Innovation

Libraries have been leaders in developing innovative uses of internet bandwidth and new learning methodologies since the internet was open to public access in 1994. Libraries have been avid internet users and generators of online content. Virtually every library across the country now provides broadband services to its patrons at no charge, and 98% of public libraries provide wireless (Wi-Fi) access, as well.

Library patrons are constantly using the internet to take advantage of educational services, telehealth, job-training courses, distance learning classes, access to e-government services, computer and technology training, and more. Furthermore, librarians specialize in collecting and hosting robust databases of information, digitizing unique community artifacts and records, engaging community conversations through social media, developing innovative media, and preserving the free flow of information and research over the public internet for all people.

²³ Institute of Museum and Library Services. "Access to Public Library Services and Materials During the First Nine Months of the COVID-19 Pandemic." May 2023, https://www.ims.gov/sites/default/files/2023-05/pls_fy20_research_brief.pdf.

²⁴ Rizzo, Nicholas "State of US Public Libraries – More popular & digital than ever," February 17, 2022, <https://wordrated.com/state-of-us-public-libraries/#:~:text=In%202019%2C%20the%20average%20collection,during%20that%20same%20time%20period.>

Below are some specific examples of projects and services that highlight our libraries' 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 biomedical library, produces electronic information resources on a "wide range of topics that are searched billions of times each year by millions of people around the globe. It also supports and conducts research, development, and training in biomedical informatics and health information technology. In addition, the Library coordinates an 8,000+ member [Network of the National Library of Medicine](#) that promotes and provides access to health information in communities across the United States."²⁵
- California Institute of Technology (Caltech) Library hosts [CaltechDATA](#), which is a data storage, preservation, and sharing service. It hosts over 20,000 records containing datasets and software for a wide variety of disciplines.²⁶ CaltechData is an important component of the data research infrastructure and helps campus research labs and centers manage and publish their research data.
- Asotin County Library District (Washington) launched an Open Data project through support from a grant from the Institute of Museum and Library Services (IMLS). The data portal includes data about the county, including information from the local health department, permits issued by city and county governments, environment measurements, library data, and more. The repository strengthens community engagement by providing easy access to important information about the community and increasing government transparency and accountability.²⁷
- New York Public Library's [Digital Collections](#) has digitized and described over 922,495 items and growing, 293,709 of which are in the public domain. The collection is representative of the diversity of their vast collections—from books to videos, maps to manuscripts, illustrations to photos, and more.²⁸ In addition, a significant portion of the library's digitized collections are available as machine-readable data through an API that researchers can search, crawl and compute.²⁹
- School librarians utilize the school's web-based learning management system (LMS) to engage students with reading and writing during the school year and the summer. For example, Mayde Creek High School in Houston, Texas, posts video recordings of library staff reading snippets from short stories and asking learners to answer different prompts

²⁵ National Library of Medicine. "About the National Library of Medicine Digital Collections," <https://www.nlm.nih.gov/about/index.html>

²⁶ Caltech Library. "Research Data Support." <https://library.caltech.edu/publish/data#:~:text=The%20CaltechDATA%20repository%20offers%20standard,or%20read%20the%20CaltechDATA%20FAQ.>

²⁷ Asotin County Library. "Asotin County Open Data," <https://asotincountylibrary.org/opendata/>

²⁸ New York Public Library. "About NYPL Digital Collections," https://digitalcollections.nypl.org/about#nypl_harmful_content_statement

²⁹ The New York Public Library. "Digital Collections API," <https://api.repo.nypl.org/>

using the LMS. The activity engages students with the material and encourages students to participate in online learning with their fellow students. Librarians also host creative writing workshops using author talks they find online and posing questions to the students using the LMS. Students are encouraged to share writing samples, record themselves reading their assignments, and discuss each other's work.³⁰

- The West Maple Elementary School Library in Bloomfield Hills, Michigan, uses virtual reality (VR) to explore distant planets for a unit on space to trekking around the Arctic for a study of biomes.³¹
- The School Library System of the Genesee Valley BOCES, New York, hosts the Digies annual digital media festival. The tagline of the festival is “Where Technology and Art Collide.” It encourages students to be active creators using digital media. The work can be created by an individual, group or class during school or as part of after-school learning.³²
- Georgia’s Clayton County Library System (CCLS) piloted a trades skills training “that enables patrons to use VR headsets to simulate hands-on experiences in various trades including plumbing, commercial and residential HVAC, and even solar panel installation.”³³ The simulations replicate real-world facility, HVAC, and electrical issues commonly encountered by trades workers. The modules are realistic and walk users step by step through assessing the problem, identifying tools needed, and finally, presenting the workflow for fixing the issue, allowing patrons to get hands-on training.³⁴

For all of these reasons and examples, libraries of all types serving communities and campuses across the nation depend on a free and open internet to fulfill their mission, ensure free expression, and provide equitable service for all people and institutions. Ensuring the unimpeded flow of information over the public internet is critical to our nation’s social, cultural educational and economic well-being.³⁵ To help ensure that this open, unimpeded access can continue, ALA offers several specific policy recommendations follow.

³⁰ Fitzpatrick, Jessica. “Virtual Programming Ideas for Summer Programming,” KnowledgeQuest: Journal of the American Association of School Librarians. June, 23, 2023, <https://knowledgequest.aasl.org/virtual-programming-ideas-for-summer-programming/>

³¹ Bauld, Andrew. “From Job Exploration to Geography, AR and VR Lift Student Learning,” School Library Journal, October 25, 2023, <https://www.slj.com/story/schoollibraries/From-Job-Exploration-to-Geography-AR-and-VR-Lift-Student-Learning>

³² The School Library System of the Genesee Valley BOCES. “The Digies,” <https://www.digies.org/home>

³³ Shoenberger, Elisa, “VR Job Training Launched at Clayton County Library System.” Library Journal. March 21, 2022, <https://www.libraryjournal.com/story/vr-job-training-launched-at-clayton-county-library-system>

³⁴ Gooch-Voyd, Marquita. “Library offers free trades skills training,” Georgia Public Library Services News, <https://georgialibraries.org/skills-training/>

³⁵ Comments of American Association of Law Libraries, American Library Association, and Chief Officers of State Library Agencies. “In the Matter of Restoring Internet Freedom.” GN docket No. 17-108 (July 17, 2017), p. 2, <https://www.ala.org/advocacy/sites/ala.org/advocacy/files/content/telecom/netneutrality/AALL%20ALA%20ACRL%20COSLA%20Comments%20July%202017.pdf>.

Rules Should Be Technology Neutral

ALA endorses the Commission's proposal to reestablish the framework it adopted in 2015 to classify BIAS as a telecommunications service. We also endorse reclassifying mobile broadband internet access service as a commercial service.

Consumers and edge providers use fixed and mobile services interchangeably whenever possible, often switching from one device to another to surf the web, send and receive email, post to social media accounts like Instagram, X (formerly Twitter), and Facebook, use applications, download e-books and e-audiobooks, complete and submit homework, view lectures, listen to podcasts, watch movies, and much more.

It also is important to note that not all users have fixed internet access at home. As a 2021 report by the Pew Research Center notes there “has been a steady decline of those who use smartphones as their primary means of online access at home in recent years. Today, 15% of American adults are “smartphone-only” internet users – meaning they own a smartphone, but do not have traditional home broadband service.”³⁶ These users should not be further disadvantaged just because they can access only one type of broadband access.

In addition, the proliferation of 5G mobile networks makes it increasingly easy to upload and download data using mobile devices. Students, library patrons, job seekers, staff, faculty, and researchers are increasingly dependent on using mobile devices. Mobile services will continue to grow as more spectrum is made available for commercial mobile services through the Commission’s auctions. Broadband internet policies should be independent of the connection technology (wired, wireless, satellite, fiber-optic, etc.) and open internet rules should apply no matter which technology is used to access the internet.

As noted by the Commission since the pandemic, “BIAS has become even more essential to consumers for work, health, education, community, and everyday life.”³⁷ Because of the internet’s importance to the daily lives of all Americans, it is essential that the Commission protect and safeguard this vital service through a national “light touch” regulatory approach.

The Commission Should Prohibit Paid Prioritization, Blocking, and Throttling

ALA strongly endorses the Commission’s proposal to “reinstate rules that prohibit internet service providers (ISPs) from blocking or throttling the information transmitted over their

³⁶ Pew Research Center. " Mobile Fact Sheet," April 7, 2021, <https://www.pewresearch.org/internet/fact-sheet/mobile/#:~:text=Today%2C%2015%25%20of%20American%20adults,have%20traditional%20home%20broadband%20service>.

³⁷ NPRM WC Docket No 23-320 (1).

networks or engaging in paid or affiliated prioritization arrangements. In a 2017 joint filing with American Association of Law Libraries and the Chief Officers of State Library Agencies, ALA opposed rolling back these protections, because it “threatens the fundamental principle of a free and open internet.”³⁸

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.”³⁹ As stated in a 2017 filing, 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 neutrality allows people to bypass traditional media gatekeepers and tell their own stories online.”⁴⁰

With the loss of open internet protections, BIAS providers can decide which viewpoints and sources of information may receive preferential treatment. This is not aligned with American values nor with the professional values and public mission of America’s librarians.⁴¹

The Commission must set “basic conduct rules to prevent specific practices harmful to an open internet—blocking, throttling, and paid prioritization—as well as a strong standard of conduct designed to prevent deployment of new practices that would harm internet openness, and enhancements to the existing transparency rule.”⁴²

Internet access *is* essential service, “critical to accessing healthcare, education, work, commerce, and civic engagement.”⁴³ To access these critical services online consumers are dependent on affordable, reliable, high-speed internet access that is open. Therefore, the Commission must set and enforce rules that eliminate behaviors that can hinder consumers ability to access the internet.”⁴⁴

³⁸ Comments of American Association of Law Libraries, American Library Association, and Chief Officers of State Library Agencies. “In the Matter of Restoring Internet Freedom.” GN docket No. 17-108 (July 17, 2017), p. 1, <https://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/telecom/netneutrality/AALL%20ALA%20ACRL%20COSLA%20Comments%20July%202017.pdf>.

³⁹ ALA. “ALA Bill of Rights,” <https://www.ala.org/advocacy/intfreedom/librarybill>

⁴⁰ Comments of American Association of Law Libraries, American Library Association, and Chief Officers of State Library Agencies. “In the Matter of Restoring Internet Freedom.” GN docket No. 17-108 (July 17, 2017), p. 14, <https://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/telecom/netneutrality/AALL%20ALA%20ACRL%20COSLA%20Comments%20July%202017.pdf>.

⁴¹ ALA. “ALA Bill of Rights,” <https://www.ala.org/advocacy/intfreedom/librarybill>

⁴² NPRM WC Docket No 23-320 (100).

⁴³ NPRM WC Docket No 23-320 (102)

⁴⁴ NPRM WC Docket No 23-320 (101).

(a) No Paid Prioritization

We are especially concerned that public BIAS providers now have the opportunity and financial incentive to provide favorable internet service to certain edge providers or customers, thereby disadvantaging non-profit or public interest entities such as libraries and other public institutions that often operate under very tight budgets. For instance, public broadband providers could sell faster or prioritized transmission to certain entities (“paid prioritization”).

Even if a library had the financial resources to pay for prioritized access, this would not be in the public interest of taxpayers supporting public K-12 school libraries, public libraries, or state universities, among other public entities. “These institutions and the communities they serve should never find their internet traffic relegated to chokepoints (the “slow lane”) while prioritized traffic zips through to its destination. Paid prioritization inevitably favors those who have the resources to pay for expedited transmission and disadvantages those entities – such as libraries – whose missions and resource constraints preclude them from paying these additional fees.”⁴⁵

Libraries across the nation, of all types, are experiencing budget cuts that further illustrate the constraints facing our public institutions. Examples include:

- The Brooklyn Public Library, Queens Public Library, and The New York Public Library (New York) recently announced that as a result of mid-year budget cuts, they are eliminating seven-day service across the city, including ending Sunday service at a majority of locations. They are also reducing spending on library materials, programming, and building maintenance and repairs.⁴⁶
- West Virginia University Libraries recently announced it will be reducing spending on collections by 8%, personnel expenses have been reduced by 7%, and general operating expenses have been reduced by 30% for fiscal year 2024. These reductions are impacting the extent to which they can provide classroom, research, and administrative support for the faculty, staff and students.⁴⁷

⁴⁵ Comments of the American Association of State Colleges and Universities et al. “In the Matter of Protecting and Promoting the Open Internet.” GN Docket No. 14-28 (July 18, 2014), p. 12, https://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/advleg/pp/pub/file/library-highered_nn_comments_july_2014.pdf

⁴⁶ New York Public Library. “Service Impacts: City Budget Cuts.” November 16, 2023, <https://www.nypl.org/about/service-impacts>

⁴⁷ West Virginia University Libraries. “WVUL Collections Decisions Summary & FAQ: FY24 Overview,” <https://library.wvu.edu/collections/faq>

- The University of California Berkeley Library is experiencing budget reductions that will lead to the closing of three campus libraries in the next two years.⁴⁸ It has already cut \$850,000 from the collections budget, with more cuts planned over the next year.⁴⁹
- Community college libraries are also experiencing budget cuts. Linn-Benton Community College, in Oregon, once had a department with three full-time, two part-time, and a manager. As of this year, only one of the positions remains due to reduced budgets.⁵⁰
- The Washington State Library announced this fall that it was cutting hours, reducing some services, and will not fill several vacant positions due to a declining budget.⁵¹
- Due to \$1,388,000 budgetary reduction, the Ellensburg School District (Washington) had to make multiple cuts, including eliminating the certified librarian.⁵²

“Further, it is likely that those who are able to pay for preferential treatment will pass along their costs to their consumers and/or subscribers. In some cases, libraries and other public institutions may be among these subscribers who would then be forced to pay more for services they may broker on behalf of their patrons.”⁵³ Public libraries, for instance, subscribe to digital media services such as Hoopla, OverDrive, Kanopy, to provide access to video, audiobooks, e-books, and e-magazine titles. Academic libraries subscribe to research databases and collections from vendors like ProQuest and Wiley Online Library to support research and learning. School libraries, provide access to e-books through services like Sora and Capstone Interactive, and research databases like Gale in Context, Follet Destiny and Britannica School to engage students in reading and learning and to help teachers connect literacy and research material with the curriculum.

“Finally, prioritizing some traffic over others would undermine one of the internet's fundamental underlying principles – network operators are expected to use "best efforts" to deliver information to the end user. And from a broader perspective, traffic prioritization creates artificial motivations and constraints on the use of the internet, damaging the web of

⁴⁸ Markovich, Ally. “UC Berkeley will close 3 libraries amid shrinking budget.” Berkeleyside. March 3, 2023, <https://www.berkeleyside.org/2023/03/03/cal-berkeley-library-closures-anthropology-physics-mathematics>

⁴⁹ University of California Berkely Library. “Scholarly Resources: 2022-24 Budget Reduction.” <https://guides.lib.berkeley.edu/scholarly-resources/FY2022-24phase2>

⁵⁰ Escudero, Shayla.” LBCC: College library with few librarians after cuts.” Albany Democrat-Herald. Last updated October 27, 2023, https://democratherald.com/news/local/education/lbcc-college-library-with-few-librarians-after-cuts/article_2f091696-0c79-11ee-9361-7f17bfd84533.html

⁵¹ Cornfield, Jerry. “Washington State Library cuts hours and leaves jobs unfilled as its budget takes a hit.” Yakima Herald-Republic. October 4, 2023, https://www.yakimaherald.com/news/northwest/washington-state-library-cuts-hours-and-leaves-jobs-unfilled-as-its-budget-takes-a-hit/article_fe67f9e8-62d2-11ee-aea6-0fdce7e710e1.html

⁵² Belcher, Jack. “Ellensburg School District officials stand by decision to cut librarians.” Daily Record. June 24, 2022, https://www.dailyrecordnews.com/news/ellensburg-school-district-officials-stand-by-decision-to-cut-librarians/article_65722b72-2da7-597b-b619-b702317e2e48.html

⁵³ Comments of the American Association of State Colleges and Universities et al. “In the Matter of Protecting and Promoting the Open Internet.” GN Docket No. 14-28 (July 18, 2014), p. 12, https://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/advleg/pp/pub/file/library-highered_nn_comments_july_2014.pdf

relationships and interactions that define the value of the internet for both end users and edge providers.”⁵⁴

(b) No Blocking

The FCC must establish a no-blocking rule that is clear to public broadband internet access providers, consumers, and edge providers and that has a firm basis in legal authority. It is a bedrock principle of internet openness that broadband providers should not be permitted to block consumers’ access to lawful websites, applications, or services. We support the FCC’s effort to re-instate the rules adopted in the 2015 Open Internet Order to prohibit ISPs from blocking internet content, applications, services, or non-harmful devices.

Open Internet Rules Apply to Public Broadband Providers; Not to Private Networks or End Users.

ALA supports the Commission’s proposal that “to the extent coffee shops, bookstores, airlines, private end-user networks such as libraries and universities, and other businesses acquire broadband internet access service from an ISP to enable patrons to access the internet from their respective establishments, provision of such service by the premise operator would not itself be considered BIAS unless it was offered to patrons as a retail mass-market service.”⁵⁵

Almost all libraries offer Wi-Fi connections to their patrons, and these end-user Wi-Fi services should not be regulated as if they were public broadband providers. Also, many colleges and universities have their own private end-user networks (both on- and off-campus) that are not available to the general public.

Competition Alone is Not Adequate to Serve Public Interest

In many locations, the BIAS market is not competitive, which leaves millions of consumers with only one or maybe two choices. As stated in the NPRM “the Commission’s 2022 Communications Marketplace Report found that, as of 2021, approximately 36 percent of households lack a competitive option for fixed broadband at speeds of 100/20 Mbps and that 70 percent of households in rural areas lack such an option.”⁵⁶ This statistic illustrates that many communities do not have a competitive BIAS marketplace. Due to the lack of competition, BIAS providers are free to adopt the policies that they wish, regardless of the public interest. If a

⁵⁴ Comments of the American Association of State Colleges and Universities et al. “In the Matter of Protecting and Promoting the Open Internet.” GN Docket No. 14-28 (July 18, 2014), p. 18, https://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/advleg/pp/pub/file/library-highered_nn_comments_july_2014.pdf

⁵⁵ NPRM WC Docket No 23-320 (113).

⁵⁶ NPRM WC Docket No 23-320 (113).

provider throttles, blocks or prioritizes content, customers are then stuck. Even public libraries note this lack of competition affecting their BIAS choices.

One argument being raised is that BIAS providers are not currently impeding free expression online. First, with no centralized oversight it is hard to gather data that would prove or disprove this statement. Second, the “2018 decision to reverse the Federal Communications Commission's earlier net neutrality rule was being challenged in court until 2020, by which point several states had set up or had in motion their own net neutrality regulations in the absence of a federal one.”⁵⁷ Just because there is not an abundance of examples of ISPs blocking, throttling and prioritizing traffic does not mean that it did not happen or will not happen in the future. Customers should be protected, and those rules should be codified and enforced.

The Commission Has the Authority to Address Conduct That Undermines an Open Internet

We concur with the NPRM statement that as the expert agency on communications, the Commission is best positioned to safeguard internet openness.⁵⁸ Re-classification of public broadband internet access service as a Title II “common carrier” service would allow the FCC to craft a set of policies and procedures that effectively ensures the broader public interest goals of an open internet are met, while providing the FCC with the flexibility to adapt and tailor its regulations to fit the market. Treating providers of broadband services offered to the general public as Title II common carriers will provide valuable certainty to the marketplace and will place public broadband internet access service on an equal regulatory footing with other communications services. Re-classifying public broadband internet access service is a legally sustainable approach⁵⁹ that would ensure that relevant providers will not be able to engage in “unreasonable discrimination” against or in favor of any particular content, application or service.

While Title II re-classification has the benefits noted above, in the alternative, we urge the FCC to craft legally sustainable rules to protect and promote internet openness using the Section 706 authority that was upheld by the U.S. Court of Appeals in the Verizon decision. The U.S. Court of Appeals provided some specific guidance as to how to structure open internet rules under section 706 that could be legally sustainable.

A clearly articulated and strong public interest standard under Section 706 that is focused on preserving the existing internet would set expectations and provide guidance to the market. The Commission could consider and adjudicate complaints case-by-case to determine whether or not they are consistent with the openness standard. BIAS providers would have adequate

⁵⁷ Lee, David, Net Neutrality Is Still Needed Despite its Quiet Hiatus,” Bloomberg. October 4, 2023, <https://www.bloomberg.com/opinion/articles/2023-10-04/net-neutrality-is-still-needed-despite-its-quiet-hiatus>

⁵⁸ NPRM WC Docket No 23-320 (125).

⁵⁹ National Cable & Telecommunications Association et al. v. Brand X Internet Services et al., 545 U.S. 967 (2005).

notice of the rule in advance but would still have the opportunity to make their case that the public would benefit from its proposed practice. Thus, the rules could adapt to changes in the broadband marketplace, while still allowing the Commission to proscribe specific behavior (such as paid prioritization or intentional degradation) that would violate the principles of internet openness.

Protect Consumer Privacy and Data

ALA agrees with the Commission that “ISPs are situated to collect vast swaths of information about their customers, including personal information, financial information, and information regarding subscriber online activity... and that consumers currently may not fully comprehend—and therefore may not be able to meaningfully consent to—ISPs' collection, processing, and disclosure of customer information, including potentially through the use of artificial intelligence models.”⁶⁰ In addition, due to the lack of competition, even if consumers understand the extent to which their ISP collects their personal data, they most likely do not have the option to switch to an ISP that aligns with their privacy and data security goals.

Again, access to the internet is mission-critical to our daily lives. Consumers should not have to forgo their rights to privacy and data security in order to go about their daily lives. The Commission must return BIAS to its telecommunications service classification to restore its authority to create and enforce rules to protect consumer privacy and punish entities that violate said rules. There should also be a simple way for consumers to report complaints to the FCC regarding inappropriate gathering, storing, and/or sharing of personal data.

The process to file complaints should use simple language, avoid jargon whenever possible, and provide prompts to aid the user as they submit their complaint. Not all individuals will have access to the internet to submit complaints, so there will need to be non-web-based options.⁶¹ In addition, individuals with low digital skills or disabilities, for example, should have alternative pathways to submit a complaint that does not involve using a website.⁶²

This consumer complaint data should be another data point the FCC uses to ensure BIAS providers comply with open internet protections.

⁶⁰ NPRM WC Docket No 23-320 (27)

⁶¹ Comments of the American Library Association. “In the Matter of Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination.” WC Docket No. 22-69. Page 9, <https://www.fcc.gov/ecfs/document/10221012023614/1>.

⁶² *ibid* page 8.

Increase Transparency to Improve Decision Making and Compliance

An open internet requires that it be available and reliable. Still, end users, edge providers, and the broader internet community do not have easy access to the information they need to track and assess the reliability and robustness of their internet service.

Reclassifying broadband as a “telecommunications service” under Title II of the Communications Act will give the FCC the “authority it needs to create and enforce robust standards, ensuring that broadband providers reliably deliver the service they promise and promptly restore service after disruptions.”⁶³ It also ensures that end users can access the information they need to make informed decisions when selecting a broadband provider and the data they need to seek recourse from providers if they do not receive the BIAS they contracted for.

It is also essential that the FCC be able to gather the data needed so it can ensure that consumers are receiving the internet services they have been promised. While ALA supports the FCC’s creation of Broadband Consumer Labels, which the majority of providers must begin to display in 2024, we also believe additional information is required for consumers and the FCC to monitor BIAS, including:

- Frequency and duration of network outages.
- Downstream speed, upstream speed, latency, and packet loss in both normal and poor performance times.⁶⁴
- Broadband service providers should be required to deposit detailed plan information in a standardized computer-readable form in a publicly accessible database to enable third parties to generate customized labels for consumers and offer comparison shopping tools, quality of experience or suitability ratings, and other value-added services.⁶⁵
- Standards should be set for measuring metrics so information can be easily compared and storing the data in a machine-readable format so that third-party tools can extract information.

Universal Service

ALA agrees with the Commission that “BIAS as a telecommunications service will strengthen our policy initiatives to support the availability and affordability of BIAS through USF programs.” Through the USF, the national government has made significant investments to ensure that BIAS

⁶³ Public Knowledge. “How Title II Supports Internet Reliability, Quality and Resilience for All.” October 2023, <https://publicknowledge.org/policy/how-title-ii-supports-internet-reliability-quality-and-resilience-for-all-one-pager/>

⁶⁴ Cranor, Lorrie Faith et al. “Making Broadband Internet Labels Useful and Usable: Preliminary Report on Consumer-Driven Broadband Label Design.” October 24, 2022, <https://cups.cs.cmu.edu/broadband/CyLabBroadbandReport24Oct22.pdf>

⁶⁵ *ibid.*

networks reach all consumers. BIAS is an essential service and, therefore, should be protected. Reclassifying BIAS will enable the Commission to protect these investments on an ongoing basis by ensuring that these connections benefit users and prohibit practices that cause unreasonable interference or unreasonable disadvantage to consumers or edge providers.

Conclusion

We believe that Title II and Section 706 both provide legal authority for the Commission to adopt strong open internet protections that respect judicial precedent and are flexible enough to accommodate the dynamic nature of the broadband marketplace. Classifying public broadband internet access service as a Title II “common carrier” service would ensure the broader public interest goals of an open internet are met, while providing the FCC with the flexibility to adapt and tailor its regulations to fit the market. Treating broadband internet access service as common carriage is a legally sustainable approach that would ensure that providers will not be able to block internet traffic or engage in unreasonable discrimination against or in favor of any particular content, application, or service.

The FCC should use its legal authority to adopt enforceable policies to ensure that the internet remains open and available for community anchor institutions like libraries and all members of the general public on equitable terms and conditions, without paid prioritization and without degradation of service to anyone. Libraries, educational institutions, innovators, and consumers increasingly operate as both consumers and edge providers, and the Commission’s rules must protect both “sides” of the internet access market. The Commission must preserve the traditional and practical ability of subscribers to access and use the lawful internet content, applications, services, and devices of their choice without interference from their BIAS provider. The Commission must also ensure that providers of online content, services, equipment and applications are able to make their services and devices available to interested internet users everywhere without having to negotiate for or obtain any kind of permission or agreement from broadband internet access providers.