

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Restoring
Internet Freedom

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GN Docket No. 17-108

**Reply Comments of
American Library Association**

August 30, 2017

Introduction

The American Library Association (ALA) submits these reply comments in response to initial comments filed in the above-referenced docket.

I. The Commission Must Take Special Heed of the Importance of An Open Internet for Education, Research and Learning.

ALA continues to support the adoption of strong, enforceable net neutrality rules and the retention of the 2015 Open Internet Order (2015 Order). To this end, several library and higher education organizations jointly released a set of “Net Neutrality Principles”¹ on March 30 of this year that should be the foundation of the FCC’s decision in this proceeding. We also filed initial comments in this proceeding outlining concerns 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 selected internet-based applications, services and content. These practices, if permitted, would have severe adverse impacts on online education, research, learning and free speech. We are not aware of any commenters who disagreed with the importance of an open Internet for education, research, and learning. And in fact, a number of commenters: the AARP², mayors³, school systems⁴, members of the public, individual library professionals, state⁵ and local⁶ library associations, and a consortium of higher

¹ Organizations representing libraries and higher education institutions published Net Neutrality Principles for Protecting and Promoting the Open Internet on March 30, 2017 (included as an Appendix in our initial comments). We recommended the Commission endorse these principles and maintain the approach adopted in the FCC’s 2015 Open Internet Order. <https://www.fcc.gov/ecfs/filing/10717218515721>

² See Reply Comments of AARP at p. 16

³ See Comments of Mayor Edwin Lee, a letter from 62 U.S. mayors in support of maintaining and enforcing the 2015 Open Internet Order (“For these and many other reasons, repealing these crucial protections will prove disruptive for our residents, our families, our small businesses, and countless others including nonprofits, schools, and libraries.”)

⁴ See Comments of Miami-Dade County Public Schools at p. 6

⁵ See Comments of the Texas Library Association at p. 1 (“The Texas Library Association’s (TLA) almost 7,000 members join the American Association of Law Libraries, the American Library Association, and the Chief Officers of State Library Agencies in support of the 2015 Open Internet Order which ensures commercial ISPs’ network management practices and commercial terms are transparent.”); Comments of Patricia A. Tumulty, Executive Director, New Jersey Library Association (“The New Jersey Library Association is concerned that changes to existing net neutrality rules will create a tiered version of the internet in which libraries and other noncommercial enterprises are limited to the internet’s “slow lanes” while high-definition movies and corporate content obtain preferential treatment.”); Comments of New Hampshire Library Association (“The New Hampshire Library Association firmly believes that preserving an open Internet is essential to our

education commenters⁷ specifically recognized the importance of an open internet for libraries.

At the same time, the NPRM itself does not consider the library issues specifically. For example, the term “libraries” is not included except in a reference to the statute, nor are the terms “learning” or “education” or “research.”⁸ As stated in our initial comments, 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 and any network neutrality policy must orient itself to protect these cherished public values and advance these national purposes.

II. **Overview of these Reply Comments.**

Rather than restating our initial comments, we will spend most of our efforts in these comments further explaining the specific harms that libraries and communities would face absent strong, enforceable net neutrality protections. To do so, we will specifically reference comments of library professionals and library agencies already filed in this docket that refer to how libraries and their patrons use and view internet service. In addition, we will address claims of some other commenters regarding the regulatory history and treatment of Broadband Internet Access Service (BIAS).

A. 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.

As we made clear in our initial comments, over the past 15 years, the public interest

nation's freedom of speech, educational achievement, and economic growth.” “The New Hampshire Library Association supports the filing by the American Library Association.”)

⁶ See Comments of Metropolitan Libraries of Ohio (<https://www.fcc.gov/ecfs/filing/10815918526127>)

⁷ See Comments of American Association of Community Colleges, American Association of State Colleges and Universities, American Council on Education, Association of American Universities, Association of Public and Land-grant Universities, Association of Research Libraries, EDUCAUSE, National Association of College and University Business Officers and the National Association of Independent Colleges

⁸ We note, however, that Commissioner Clyburn references the importance of libraries as a place to access the internet in her dissent to the Notice of Proposed Rulemaking in the matter of “Restoring Internet Freedom” on p. 62.

mission of libraries has become highly intertwined with the internet and internet access has become mission critical. Libraries increasingly operate as both consumers of internet services and edge providers of internet-based content and services. Libraries are also key physical internet access points in their communities and library staff ensure that our users are able to access the internet to create and distribute their own digital content and applications. Many commenters with ties to the library community made clear that fulfilling these activities and the role of libraries in America's communities depends on open and unfettered access to the internet, protected by the 2015 Order.

B. Internet access in libraries is tied to the economic, physical and social health of communities.

Commenters from across the country made this connection clear. Community members relied on the internet access and services of libraries to complete their educations, find jobs, search for health information, access government services and more⁹:

- The Texas Library Association notes that, "Texas libraries rely on high capacity broadband infrastructure and an open internet to provide access to digital collections, e-government services, distance learning, telemedicine, job training, professional development, and more to millions of students, entrepreneurs, executives, job seekers and members of the public. Libraries are a vital link to online information without which Texans cannot be competitive in education, workforce, and economic development."

- A commenter from Dover, Wyoming notes that library internet access is especially critical in communities like hers that were hit hard by the recession. Patrons in

⁹ See Comments of Diane R. Jennings (<https://www.fcc.gov/ecfs/filing/105292267816347>); Comments of Judith Felsten (<https://www.fcc.gov/ecfs/filing/10511269777940>); Comments of Nancy Curdts (<https://www.fcc.gov/ecfs/filing/10804947029226>); Comments of Mary Ann Abner (<https://www.fcc.gov/ecfs/filing/10510369129999>); Comments of Darcy Nebergall (<https://www.fcc.gov/ecfs/filing/1060958899577>).

Dover use computers to complete GED programs or distance education programs to earn their advanced degrees, and they have numerous patrons like the one who uses the library's computers every day for the past month as he looks to start his own small business.¹⁰

- A librarian in Baltimore, Maryland who specializes in helping entrepreneurs commented: "Limiting access to the internet would limit users' options, ideas, and creativity and their entrepreneurial future. That limits America's future disruptive enterprises."¹¹

C. Libraries bring the benefits of the internet to segments of the population that may not be well-served by the commercial sector. Those benefits would be lost should Internet Service Providers (ISPs) be able to pick winners and losers on the internet.

A consistent theme in comments filed by those connected to the library community is that 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.¹² And many libraries throughout the U.S. noted their computers and internet access were in heavy use -- often by people without access to broadband at home.¹³

¹⁰ See Comments of Catherine Wimberley (<https://www.fcc.gov/ecfs/filing/10712584303904>)

¹¹ See Comments of Denise Davis (<https://www.fcc.gov/ecfs/filing/10801026080870>)

¹² See, e.g. Comments of April Lammers (<https://www.fcc.gov/ecfs/filing/1071256505877>); Comments of Rose Simpson (<https://www.fcc.gov/ecfs/filing/10713088029169>); Comments of Hampton M. Auld (<https://www.fcc.gov/ecfs/filing/10725511629951>); Comments of Ashley Wilsey (<https://www.fcc.gov/ecfs/filing/10718285101783>); Comments of Lawral Wornek (<https://www.fcc.gov/ecfs/filing/10718893318501>); Comments of Taira Meadowcroft (<https://www.fcc.gov/ecfs/filing/107141410304300>); Comments of Lynne Coles (<https://www.fcc.gov/ecfs/filing/10718201086473>); Comments of Kevin Coleman (<https://www.fcc.gov/ecfs/filing/10714182640916>); Comments of Athena Hoepfner (<https://www.fcc.gov/ecfs/filing/10712252137619>); Comments of Patricia A. Tumulty, Executive Director, New Jersey Library Association (<https://www.fcc.gov/ecfs/filing/10712294980813>); Comments of Leslie Spring (<https://www.fcc.gov/ecfs/filing/1060999005732>).

¹³ In Worthington, Ohio, the library system serves thousands of patrons every month that rely on public computers and wireless access. In May 2017, the system provided over 18,000 wireless sessions on their network and over 11,000 people used public computers. See Comments of Susan Allen (<https://www.fcc.gov/ecfs/filing/10609810528306>). A county library system employee in White Bear Lake,

We note that many commenters in favor of retaining the 2015 Order cited that significantly altering or doing away with the current rules would further exacerbate the digital divide.¹⁴

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

Commenters from the library community repeatedly touched on a point we made in our initial comments: 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.

Some ISP commenters maintained, as in the NPRM, that consumers (including enterprise-level consumers like libraries) view and use broadband internet access as an information service because it has the “capability” to perform functions associated with an information service.¹⁵ But it is clear from the comments of the library community that libraries as enterprise consumers understand broadband internet access to be just that: access to internet (i.e., cloud based) servers their patrons choose to use to upload and download information. This, as several other commenters note, is a clear understanding of broadband internet access as a telecommunications service.¹⁶

This understanding is underscored by the fact that many libraries are concerned about their costs of operation which will likely rise considerably if libraries or vendors of databases will need to pay for their content to be made available on the

Minnesota reported “every computer in our system is used daily... and there is always a line of people waiting.” See also, Comments of Bonnie Bassett (<https://www.fcc.gov/ecfs/filing/10718168469561>).

¹⁴ See Comments of the Open Technology Institute at New America, Comments of Public Knowledge, Comments of Common Cause.

¹⁵ See Comments of Centurylink at 15-29; Comments of Charter at 13-16; Comments of Cox at 9-13; Comments of AT&T at 61-64.

¹⁶ See Comments of Public Knowledge at 15.

same terms as other “fast laned” content.¹⁷

E. Libraries are also edge providers, offering their own content and services over the internet.

In our initial comments, we noted and provided examples of where libraries serve as creators and providers of content and information, often serving as “edge providers.” Other commenters provided further examples in the course of registering concerns about what doing away with strong, enforceable net neutrality protections might mean, including library-hosted open access content and resources¹⁸, digital archives of art¹⁹, softwares and scripts²⁰, and online reference services via chat or video.²¹ Because of this role libraries play, we agree with the comments of the Software & Information Industry Association that “there is the distinct risk that broadband providers may limit capacity in order to charge higher prices, creating an inefficient market with unnaturally high prices to content, application, and other service providers.”²² And on this point we note that we agree with several of the ISP commenters who make the point that net neutrality rules

¹⁷ See, e.g. Comments of Charles Diede (<https://www.fcc.gov/ecfs/filing/106132440124449>); Comments of PJ Bentley (<https://www.fcc.gov/ecfs/filing/105092671329706>); Comments of Angela Hurley (<https://www.fcc.gov/ecfs/filing/105180027215857>); Members of the library community were concerned also about the “trickle down” impact of rising costs to users of limited means. See, e.g. Comments of Brian Boling (<https://www.fcc.gov/ecfs/filing/10609304128320>); Comments of Michelle Doshi (<https://www.fcc.gov/ecfs/filing/1080787990470>); Comments of Geralyn Warfield (<https://www.fcc.gov/ecfs/filing/1080386432059>); Comments of Jennie Stoltz (<https://www.fcc.gov/ecfs/filing/10524045785913>); Comments of Lois Wagenseil (<https://www.fcc.gov/ecfs/filing/106120229428095>); Comments of Darla Wegener (<https://www.fcc.gov/ecfs/filing/1061294479425>).

¹⁸ See Comments of Sarah Schmidt (<https://www.fcc.gov/ecfs/filing/10512421126030>); Comments of R. Medina (<https://www.fcc.gov/ecfs/filing/10713971417718>); Comments of Anita O'Brien (<https://www.fcc.gov/ecfs/filing/10523006751918>); Comments of Arden Kirkland (<https://www.fcc.gov/ecfs/filing/10518032867113>).

¹⁹ See Comments of William Landis (<https://www.fcc.gov/ecfs/filing/1051241837803>)

²⁰ See Comments of Sasha Renninger (<https://www.fcc.gov/ecfs/filing/1061491768101>)

²¹ See Comments of Billy Angus (<https://www.fcc.gov/ecfs/filing/1051820514493>); Comments of Jonathan Boyne (<https://www.fcc.gov/ecfs/filing/10518183012424>).

²² See Reply Comments of the Software and Information Industry Association at 5; (https://ecfsapi.fcc.gov/file/108102140622901/SIIA-FCC%20Restoring%20Internet%20Freedom_10Aug2017.pdf)

should be “future proof” and support innovation.²³

F. The comments of several ISPs and their trade organizations, like the NPRM, misrepresent the regulatory history of commercial broadband internet access services.

Some commenters claim that efforts to protect net neutrality only arose with the Obama Administration and previous FCC leadership.²⁴ As we noted in our initial comments, these assertions, like the NPRM, misrepresent the history of U.S. communications law and efforts to protect the open internet.²⁵

As we noted in our initial comments, net neutrality has been longstanding U.S. policy, and the need for clear and consistent rules governing fixed and mobile broadband access is increasing, not decreasing. There are myriad reasons for this, but we note specifically that strong network neutrality rules protect First Amendment interests.²⁶ The internet is the dominant communications and expressive platform of our day and its influence is only growing.²⁷ As a conduit for free speech, broadband internet access services must be free from gatekeeper control.

Specifically, we draw the Commission’s attention to a series of decisions through the FCC’s *Computer Inquiries* proceedings, where 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

²³ See, e.g. Comments of Verizon at p. 3 (“Critically, those rules need to be sufficiently flexible and future-proof to ensure they don’t restrict future developments as technology and services evolve.”)

²⁴ See Comments of AT&T at p. 14

²⁵ See Comments of the American Library Association, the American Association of Law Libraries and COSLA at pp. 17-18

²⁶ Libraries, whose public missions dictate they uphold intellectual freedom and provide free and unfettered access to information, have long advocated for robust First Amendment rights. In our view, libraries are uniquely positioned to advocate for non-commercial speakers, both institutions and patrons who access the internet at our libraries.

²⁷ See Comments of ACLU at pp. 4-6

Communications Act. Congress codified this distinction between the network and the content on it when it updated Title II with the Telecommunications 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.

G. The comments of several ISPs and their trade organizations, like the NPRM, misrepresent the technical functioning of the internet.

Many of the major ISPs claim that reclassifying broadband internet access services as information, or Title I, services is consistent with the text of the 1996 Telecommunications Act and Congressional intent. They argue that internet service providers offer the "capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications," thus meeting the definition of an "information service." This is, as described by former FCC Chief Technology Officer Jon Peha, based on an erroneous understanding of how the internet works.²⁸

²⁸ See Comments of Dr. Jon Peha at 2: "Mere Internet access does not provide any of the functions listed above. The "capability" to perform functions associated with an information service are offered by content providers and application service providers, and in most cases Internet users do not get these capabilities from Internet service providers. Consider the case of a consumer "reading a newspaper's website" using a residential broadband Internet access service. The reader typically uses a computer in her home, which was not provided by her ISP and is not operated by her ISP. The consumer's computer exchanges information in the form of IP packets with another computer that is operated by the newspaper (or perhaps a hosting service acting as a paid agent of the newspaper). It is the computer belonging to the newspaper or its agent that stores news articles, retrieves news articles upon demand, and make news articles available, so the newspaper's service meets the definition of information service. All the Internet service provider does in this case is to provide an IP Packet Transfer[.]"

We agree with Dr. Peha, that Congress has defined “telecommunications service,” and the FCC does not have authority to alter or ignore the definition established by law. IP Packet Transfer is the core of internet access service today, which transfers information without change of form or content.²⁹ As Dr. Peha notes, “IP Packet Transfer fits the legal definition of telecommunications service, and does not fit the legal definition of information service, as the FCC found in 2015.”³⁰

He goes on, “To conclude that BIAS providers are information service providers, the FCC consistently gives BIAS providers credit for services offered by others.”³¹ Further, Dr. Peha correctly notes that “most of the assertions in the NPRM made to argue that a BIAS is an information service are at least as applicable to today’s telephone network, much of which is now IP-based.” A decision, in 2017, to treat a BIAS is an information service while a telephone service is a telecommunications service “would be a textbook example of being arbitrary and capricious.”³²

H. Conclusion

In conclusion, libraries remain greatly concerned that if the 2015 Open Internet Order is vacated or its rules are substantially altered, that commercial ISPs then have the financial incentive and the opportunity to engage in practices that will harm libraries and their users. These practices, if permitted, will have severe adverse impacts on online education, economic opportunity, research, learning and free speech in communities across the country.

Respectfully submitted,

²⁹See Comments of Dr. Jon Peha at 2
(https://ecfsapi.fcc.gov/file/107171842218389/Peha_reclassifying_Internet_2017.pdf)

³⁰ See Comments of Dr. Jon Peha at 2

³¹ See Comments of Dr. Jon Peha at 2

³² See Comments of Dr. Jon Peha at 2

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