

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

Reply Comments of

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 COLLEGE & RESEARCH LIBRARIES
ASSOCIATION OF PUBLIC AND LAND-GRANT UNIVERSITIES
ASSOCIATION OF RESEARCH LIBRARIES
CHIEF OFFICERS OF STATE LIBRARY AGENCIES
COUNCIL OF INDEPENDENT COLLEGES
MODERN LANGUAGE
AND THE
NATIONAL ASSOCIATION OF INDEPENDENT COLLEGES & UNIVERSITIES

September 15, 2014

I. Introduction

The American Association of Community Colleges (AACC), the American Association of State Colleges and Universities (AASCU), the American Council on Education (ACE), American Library Association (ALA), the Association of American Universities (AAU), the Association of College & Research Libraries (ACRL), the Association of Public and

Land-grant Universities (APLU), the Association of Research Libraries (ARL), the Chief Officers of State Library Agencies (COSLA), the Council of Independent Colleges (CIC), EDUCAUSE, the Modern Language Association (MLA) and the National Association of Independent Colleges & Universities (NAICU)¹ welcome the opportunity to submit these reply comments in response to the Notice of Proposed Rulemaking (NPRM) in this proceeding² to protect and promote the open Internet.

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

Our nation’s libraries and institutions of higher education are leaders in creating, fostering, using, extending and maximizing the potential of the Internet for research, education and the public good. As we stated in our initial comments, libraries and institutions of higher education depend upon an open Internet to fulfill their missions and serve their communities.

The D.C. Circuit Court of Appeals decision in *Verizon v. FCC*³ that vacated the no-discrimination and no-blocking rules (the “behavioral” rules) causes us great concern. Broadband providers that serve the general public (which we refer to herein as “public broadband Internet access providers”, or “PBIAPs”) currently have the financial incentive and the opportunity to sell higher priority access to certain content providers and discriminate against other providers who do not have the resources to pay for enhanced access. If public broadband providers are allowed to prioritize or degrade certain Internet traffic, or discriminate in favor of or against certain content or applications, the future of the Internet as a platform for education, research, learning, innovation and free speech will be put in jeopardy.

Our organizations continue to support the adoption of strong, enforceable net neutrality rules. To this end, several library and higher education organizations jointly released a set of “Net Neutrality Principles” on July 10 of this year that we suggest should be the foundation of the FCC’s decision in this proceeding.⁴ We also filed initial comments in this proceeding suggesting several strategies that the Commission could use to protect

¹ Brief descriptions of each of these organizations were provided in Appendix B of our initial comments in this proceeding.

² FCC 14-61, released May 15, 2014.

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

⁴ See Appendix A of our initial comments in this proceeding.

and promote an open Internet. We believe adoption of these principles and strategies will go a long way toward preserving the openness of the Internet for education, research and learning.

We are not aware of any commenters who disagreed with the importance of an open Internet for education, research, and learning. In fact, the New America Foundation specifically recognized the importance of an open Internet for schools, libraries and other public institutions.⁵

At the same time, few commenters called attention to these needs, and the NPRM does not focus on these issues as much as it could. As an example, we note that the opening paragraph of the NPRM released on May 15, 2014, does not use any of the words “education,” “research” or “learning.”⁶ As another example, we also noted in our initial comments, the proposed ombudsman should be explicitly chartered to look out for the interests of libraries and higher education in addition to small businesses and innovators. Recognizing the important public interest in education, research and learning throughout the FCC’s final order will help the Commission orient its net neutrality policy in a way that recognizes these cherished public interest values.

B. Overview of these Reply Comments.

Rather than re-stating our initial comments, we will spend most of our effort in these reply comments further clarifying some of the concepts that we believe will help the Commission develop a net neutrality regime that is both principled and flexible.

We begin by noting that the *Verizon* court found that the PBIAPs’ service to edge providers constituted a service separate and distinct from the service PBIAPs provide to

⁵ See Comments of New America Foundation, p. 7 (“Finally, the open Internet is necessary for schools, libraries, and other public institutions – which play an increasingly important role in bridging the digital divide in the United States – to continue to serve as 21st century hubs of connectivity.”).

⁶ The opening two sentences of the NPRM say “The Internet is America’s most important platform for economic growth, innovation, competition, free expression, and broadband investment and deployment. As a ‘general purpose technology,’ the Internet has been, and remains to date, the preeminent 21st century engine for innovation and the economic and social benefits that follow.” The words “research and learning” could be easily added into the first sentence, and the word “educational” could be added into the second sentence after “economic”.

consumers.⁷ Thus, to preserve the openness of the Internet, the FCC must develop behavioral rules governing “consumer access” and behavioral rules governing “edge provider access.”

The nature of the PBIAP’s relationship with the “consumer” is somewhat different from its relationship with “edge providers.” The PBIAP usually has a direct billing relationship with the consumer and provides a particular level of service purchased by that consumer. The “edge provider” side may be quite different. The PBIAP might, for instance, connect generally to an Internet peering point or backbone and may not have a direct relationship with any particular edge provider. In other cases, the PBIAP may have a specific contractual relationship with certain edge providers, or it may have a contractual relationship with another transmission provider (a transit provider, for instance) used by a particular edge provider or providers. As a result, the rules established to govern the “consumer access” side may take on a somewhat different form than the rules governing “edge provider access,” even though the Commission must set policies governing both relationships in order to protect an open Internet.⁸

Our views about Title II and Section 706 are set forth in our initial comments in this proceeding. We are focusing our discussion in these reply comments on how the Commission might effectively utilize its Section 706 authority. In particular, these reply comments will

- a. provide additional examples of the importance of an open Internet for education, research and learning.
- b. regarding “consumer access,” clarify our proposal to establish a no-blocking policy under section 706 that requires the PBIAP, once it has chosen to provide Internet access to a consumer, to fulfill the consumer’s decision to access whatever applications, services or web sites the consumer chooses; and

⁷ The *Verizon* court stated as follows: “Because broadband providers furnish a service to edge providers, thus undoubtedly functioning as edge providers’ ‘carriers,’ the obligations that the Commission imposes on broadband providers may well constitute common carriage *per se* regardless of whether edge providers are broadband providers’ principal customers.” Slip op. p. 51.

⁸ We note that libraries and higher education, as well as many others, both consume and produce information and thus are both consumers and edge providers. Nonetheless, we understand that the Commission must adapt its rules to the *Verizon* court’s interpretation and suggest rules governing each set of relationships – to both consumers and to edge providers.

- c. regarding “edge provider access,” elaborate upon our proposal that the Commission should adopt an “Internet reasonable” standard (rather than a “commercially reasonable” standard) under Section 706;
- d. reiterate that the scope of the proposed rules should not be expanded to end user networks or private networks such as campus or library networks that do not serve the general public, including private networks that serve campuses or libraries.

II. Education, Research and Learning Deserve to be Given a High Priority in the Commission’s Open Internet Policies Because of Their Foundational Significance in the Initial Creation of the Internet and Because of Their Vitally Important Public Interest Benefits.

A. The Internet Was Created by University Researchers for the Benefit of Research and Education.

In our initial comments, we noted that the Internet was initially created in university laboratories as an open platform to promote research and education. An article written by several of the founders of the Internet supports this view. According to this article, the Internet architecture was created as an open platform for any application. Further, the Acceptable Use Policy of the original NSFNet was restricted to “research and education,” and the key NSF report in 1988 that led to the creation of the Internet was called “Toward a National Research Network.”⁹

This report was critical to the development of the High-Performance Computing Act of 1991.¹⁰ This legislation, often known as the “Gore Act,” supported the creation of a National Research and Education Network (NREN) initiative that became one of the major vehicles for the spread of the Internet beyond the field of computer science to the general public. That legislation specifically noted the importance of a national research

⁹ “A Brief History of the Internet,” by Barry M. Leiner, Vinton G. Cerf, David D. Clark, Robert E. Kahn, Leonard Kleinrock, Daniel C. Lynch, Jon Postel, Larry G. Roberts, and Stephen Wolff, available at <http://www.internetsociety.org/internet/what-internet/history-internet/brief-history-internet>.

¹⁰ Public Law No. 102-194.

and education network, and specifically recognized libraries and educational institutions:

*(b) ACCESS- Federal agencies and departments shall work with private network service providers, State and local agencies, **libraries, educational institutions** and organizations, and others, as appropriate, in order to ensure that the **researchers, educators, and students** have access, as appropriate, to the Network. The Network is to provide users with appropriate access to high-performance computing systems, electronic information resources, other **research facilities, and libraries**. The Network shall provide access, to the extent practicable, to electronic information resources maintained by **libraries, research facilities, publishers, and affiliated organizations**. (emphasis added)*

We urge the Commission to continue this history and tradition of the Internet as a platform for education, research and learning in its open Internet policies.

B. Preserving an Open Internet is Fundamentally Important to the Future of Education, Research and Learning in Libraries and Higher Education.

While the history of the Internet is a useful guide, the future is perhaps even more important. Higher education and libraries depend on an open Internet for a wide variety of services, as demonstrated by the following:

- Higher education and libraries are increasingly relying on access to and storage of information remotely. Most institutions and libraries subscribe to online resources (full text journal and newspaper articles, legal, health, employment, and learning information) that can only be accessed via a robust and consistent Internet connection.
- More and more libraries are also becoming centers where people complete online education courses that relate either to increasing job experience or getting degrees. Most of these online education platforms are media rich and require access to robust connectivity.
- Many libraries, including the State Library of Pennsylvania, have a partnership with the Internet Archive to digitize and make accessible hundreds of volumes of books and pamphlets from their rare collection. All of the digitized versions are stored in San Francisco and are accessed remotely.
- The Digital Public Library of America (DPLA) has developed a portal that delivers millions of materials found in American archives, libraries, museums,

and cultural heritage institutions to students, teachers, scholars, and the public. The portal provides innovative ways to search and scan through its unified collection of distributed resources, including a dynamic map, a timeline that allows users to browse by year or decade, and an online library that provides access to applications and tools created by external developers using DPLA's open data.¹¹

- Many colleges and universities have implemented or are evaluating transitions to cloud-based productivity application suites (e.g., Google Apps for Education, Microsoft 365) to support faculty and student access to email, word processing, and related applications. Likewise, a number of institutions have adopted or are considering cloud-based administrative and learning management systems that will allow them to run their operations and support learning via the Web while reducing the cost of implementing, managing, and maintaining such systems.

All these services depend on robust and open networks. If content and other edge providers are required to pay extra fees to guarantee service performance, these costs will be passed on to libraries and higher education, putting even more strain on their restricted budgets.

III. In Developing its “Consumer Access” Rules, the Commission Should Require Broadband Providers, as a Term and Condition of Providing Broadband Service, to Fulfill the Consumer’s Choice of Edge Provider.

The *Verizon* court overturned the no-blocking policy, agreeing with Verizon’s argument that the no-blocking policy is equivalent to a “duty to serve” all edge providers. To replace the former “no-blocking” policy, the Commission can accomplish much of the same result in a legally sustainable manner by developing a “consumer access” policy that focuses on carrying out the will of the consumer. Rather than imposing an absolute requirement on all broadband providers to connect all consumers with any edge provider, the Commission can instead require that, once a broadband provider chooses to offer broadband Internet access service, the broadband provider must fulfill the consumer’s decision to interact with the edge provider of his or her choice. In other

¹¹ See <http://cyber.law.harvard.edu/node/8282>.

words, we recognize that the FCC cannot, under 706, obligate the broadband provider to serve every consumer. But, once the broadband provider signs up a customer and provides Internet access service to that consumer, the FCC can regulate the terms and conditions of that service and can obligate the broadband provider to fulfill each consumer's request to obtain access to whatever legal edge provider that the customer seeks.

We realize that the *Verizon* court suggested a different approach to the no-blocking issue. The court suggested that a revised "no-blocking" policy "might" survive in the future if the FCC includes a specific minimum level of service and also allows the broadband provider to negotiate higher levels of service with certain edge providers. The *Verizon* court suggested this approach might provide broadband providers with enough flexibility to avoid the rule becoming the equivalent of a common carrier "duty to serve" obligation.

The court's suggestion, however, is *dicta* and does not bind the FCC to choose that particular path. In our view, there are many practical problems with defining a minimum level of service, and allowing unlimited negotiations above that minimum level of service would not, in our view, be in the best interests of the Internet as a whole.

As we stated in our initial comments, the Commission can establish a revised "no-blocking" rule that is likely to satisfy the court by inserting the end user's perspective into the "no-blocking" rule, so that it would read as follows:

*A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not block **an end user from accessing** lawful content, applications, services, or non-harmful devices, subject to reasonable network management.*

IV. The Commission Should Adopt an "Internet Reasonable" Standard to Govern the Relationship between Broadband Providers and Edge Providers.

A. The *Verizon* Decision Does Not Require the Commission to Adopt a "Commercially Reasonable" Standard Under Section 706.

Some commenters mistakenly believe that Section 706 requires the use of the "commercially reasonable" standard. This is not the case. The *Verizon* court upheld the Commission's Section 706 authority based on the words of the statutory language and the legislative history of Section 706, not based on the "commercially reasonable"

standard. While the D.C. Circuit court upheld the Commission's use of the "commercially reasonable" standard in another case (*Cellco*), the "commercially reasonable standard" is not in the statutory language and was not relied upon by the *Verizon* court in upholding the FCC's 706 authority. In fact, the *Verizon* court does not include a single mention of the "commercially reasonable" standard or the *Cellco* case in its discussion of whether or not section 706 conveys regulatory authority. As a result, the Commission is free to adopt a different standard under its section 706 authority.

B. Many Commenters Agree that the "Commercially Reasonable" Standard Would Not Protect and Promote an Open Internet.

Our initial comments described a number of problems with the Commission's proposed "commercially reasonable" standard. In our view, the words "commercially reasonable" could be interpreted so as to allow contracting parties to determine what is in their commercial best interests, rather than what is in the best interests of the Internet ecosystem as a whole.

Several commenters also identify significant problems with the "commercially reasonable" standard and demonstrate that it would be ineffective in preserving an open Internet. The opponents of the commercially reasonable standard include the Center for Democracy & Technology, Free Press, Public Knowledge, the New America Foundation, the Internet Association, the Communications and Computer Industry Association (CCIA), and many others.

The thoughtful comments from the Center for Democracy & Technology notes that the commercially reasonable standard "is not a good fit for the policy aims of this proceeding." It continues as follows:

Moreover, while broadband providers are commercial entities with commercial purposes, many of the parties seeking to route traffic to broadband subscribers are not. The Internet features no shortage of noncommercial speakers and noncommercial speech. Unlike data roaming, Internet openness involves many relationships that are not business-to-business and serves many purposes that are noncommercial.

A standard devised to assess the reasonableness of a direct contractual agreement between two commercial parties is therefore ill-suited to assessing whether and how the practices of broadband providers may affect Internet openness. Indeed, using the same standard for these two disparate contexts could lead to problems in the future:

Precedents developed in one context may flesh out the meaning or interpretation of the standard in ways that are inapplicable to the other context.

A better approach would be to articulate a new standard that is tailored to the particular aims of this proceeding. Picking a shorthand label or catchphrase for such a standard is less important than articulating its content, but CDT would suggest that a standard might require practices to be “consistent with Internet openness” or prohibit practices that would tend to “undermine Internet openness.

C. An “Internet Reasonable” Analysis Would Provide Greater Assurance that the Internet Would Remain Open.

We believe that the Commission should consider adopting a stronger standard under its Section 706 authority that focuses on preserving the culture and tradition of the Internet as an open platform. A standard based on what is “Internet reasonable” would allow the Commission to consider the merits of each action based on its impact on the Internet ecosystem, rather than solely the commercial interests of the contracting parties. It further allows the FCC to take a more comprehensive look at several public interest factors, including the vital areas of public interest that higher education and libraries serve, and that the Internet was originally designed to support – education, research and learning.

Libraries, higher education, innovators and consumers increasingly operate as both consumers and edge providers, and an “Internet reasonable” approach could apply to both sides of the market. It would allow the Commission to preserve the traditional and practical ability of broadband Internet access subscribers to access and use the lawful Internet content, applications, services, and devices of their choice without interference from their provider of broadband Internet access services. It would also allow providers of online content, services, equipment and applications 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.

Furthermore, a clearly articulated standard that is focused on preserving the existing Internet would set expectations and provide guidance to the market, but would avoid

hard and fast rules that might be too rigid for a rapidly changing broadband ecosystem. The Commission could consider and adjudicate complaints case-by-case to determine whether or not they are consistent with openness standard. Broadband providers would have adequate notice of the rule in advance, and would still have the opportunity to make their case that its proposed practice would be in the public interest. Thus, the rules would remain flexible enough to 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.

Of course, in defining this standard, the Commission must abide by the limitations of the *Verizon* decision. The Commission cannot craft policies under Section 706 that “treat” ISPs as traditional common carriers.¹² Some commenters believe that the Commission’s 706 authority must be extremely limited and would give the Commission virtually no enforcement authority to keep the Internet open. This would take the *Verizon* court’s decision too far. The Commission must have some authority to constrain some PBIAP behavior to give meaning to the court’s clear decision that the FCC does have regulatory authority under Section 706.

The question is, what boundaries over PBIAP behavior can the FCC set that are less restrictive than common carriage but are still strong enough to protect the openness of the Internet and give meaning to the FCC’s 706 authority? While there is no precise definition of what it means to “treat” a provider as a common carrier, and even the *Verizon* court admitted that this is a “gray area,” there are two traditional indicia of common carriage – a duty to serve and a duty not to discriminate.¹³

¹² The Telecommunications Act of 1996 says that “[a] telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services.” 47 U.S.C. § 153(51). In other words, until the FCC rules that broadband internet access is a telecommunications service, the FCC cannot “treat” broadband providers as common carriers.

¹³ These general characteristics of common carriage are loosely derived from the following sources: “The Impending Doom of Common Carriage,” by Eli Noam, March 15, 1994, (“[common carriage] intended to guarantee that no customer seeking service upon reasonable demand, willing and able to pay the established price, however set, would be denied lawful use of the service or would otherwise be discriminated against.”)(available at <http://www.columbia.edu/dlc/wp/citi/citinoam11.html>); “The Rise of Shadow Common

The *Verizon* court viewed the 2010 *Open Internet* rules as incorporating both of these traditional common carrier duties. The court found that the FCC had attempted to use the exact same “unreasonable discrimination” standard that lies in Title II. It also found that the FCC imposed a mandate on broadband providers to provide carriage to every edge provider for free (the equivalent of a “duty to serve”). Finally, it noted that the FCC’s rule left little “flexibility” for broadband providers to engage in “individual negotiations”, which could be understood as the converse of the duties to serve and not to discriminate.

In our view, this analysis means that, as long as the FCC avoids imposing these two duties on broadband providers, and as long as it permits some flexibility for broadband providers to engage in individual negotiations, the Commission’s approach should avoid a finding that it is imposing “common carriage” obligations on PBIAPs.¹⁴ We also note that, as long as the Commission has reasonable grounds for regulating the broadband provider in a manner that does not impose duties to serve or not to discriminate, the FCC will be entitled to *Chevron* deference on judicial review.¹⁵

This analysis further suggests that, while the Commission cannot impose duties to serve or not to discriminate, it can impose conditions on the provision of broadband Internet access service that the PBIAP has already chosen to offer. In other words, once a PBIAP has voluntarily chosen to provide Internet access service (not because of a duty to serve but because of its own choice to do so), the Commission can regulate the terms and conditions of that offering under Section 706. The Commission can thus adopt a clear

Carriers,” Professor Barbara Cherry, Sept. 24, 2011, (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1995162.) (“the duties of common carriers are *tort obligations* to serve upon reasonable request without unreasonable discrimination at just and reasonable prices and performed with adequate care”); (grouping Title II’s responsibilities into four duties: “entry restrictions and the duty to serve, the obligation to charge rates that are nondiscriminatory, the obligation to charge rates that are just and reasonable, and structural separation.”)

¹⁴ “Thus, ‘common carriage is not all or nothing—there is a gray area in which although a given regulation might be applied to common carriers, the obligations imposed are not common carriage *per se*.’ *Id.* In this ‘space between *per se* common carriage and *per se* private carriage,’ we continued, ‘the Commission’s determination that a regulation does or does not confer common carrier status warrants deference.’” *Verizon* slip op. p. 50.

¹⁵ *Id.*

policy that bars PBIAPs from prioritizing, manipulating, distorting or degrading edge provider traffic as one of the terms and conditions providing service. Such a requirement is not a “duty to serve” because the condition only becomes activated after a PBIAP voluntarily chooses to provide service. Such a policy does not impose a “non-discrimination” obligation because it would not require that the PBIAP treat every edge provider equally.¹⁶ The PBIAP would still have the flexibility to negotiate over other aspects of the PBIAP-edge provider relationship. For instance, as AT&T suggests, the PBIAP would be able to host edge provider content or provide transit services.¹⁷

The Commission, under our proposal, would consider each action under a broader “Internet reasonable” framework. This framework would allow the Commission to assess whether a proposed PBIAP practice would be consistent with the existing openness of the Internet, would result in paid prioritization or degradation or other activities that would violate the principle of Internet openness. Once the PBIAP chooses to provide service, it would be lawful for the FCC to make these decisions on how the service is being provided (i.e. as a term or condition of that service offering). The FCC can also make clear ahead of time to the broadband market that any effort to prioritize, manipulate, distort or degrade edge provider traffic would not satisfy the “Internet reasonable” standard.

D. The Commission Can Establish Presumptions Against Certain Practices and Place the Burden on the Broadband Provider.

Another way to address the *Verizon* court’s view that PBIAPs need a certain amount of flexibility, the Commission can establish presumptions against certain activity rather

¹⁶ To be sure, the *Verizon* court cited with approval the Commission’s data roaming decision in *Cellco* because it allowed the wireless companies flexibility and “individualized negotiation.” This does not, however, mean that the FCC must allow flexibility and “individual negotiations” over every aspect of the PBIAP-edge provider relationship. As AT&T points out in its comments, the Commission could allow PBIAPs to negotiate with edge providers over transit, the location of caching and pricing.

¹⁷ See AT&T comments, p. 35. See also, AT&T’s presentation called “The Internet Interconnection Ecosystem,” which explains three different modes of interconnection (Peering, Transit and On-Net Transit). PBIAPs could still have the freedom to engage in negotiations over these other network elements while adhering to a policy that bans paid prioritization. Ex parte Presentation in Docket 14-28, June 28, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521745104>.

than an outright ban on certain activity. Establishing a clear presumption against paid prioritization, for instance would send the correct signals to the marketplace that such activity is strongly discouraged, while still allowing a PBIAP the opportunity to convince the Commission that its proposed activity should nevertheless be in the best interests of the Internet ecosystem and should be permitted.

If such presumptions are not articulated in advance, there is a risk that the FCC's decisions could be issued on an *ad hoc* basis, creating uncertainty and leaving the marketplace at risk of lacking any indication of how the Commission will rule on any particular complaint.

On the other hand, establishing presumptions against certain activity can be a useful mechanism to frame the adjudication process and by placing the burden on a PBIAP to overcome the presumption. Establishing presumptions for or against certain activities – such as “paid prioritization” – can provide guidance to the market while also leaving flexibility to accommodate new technologies and marketplace changes. The Commission can evaluate complaints on a case-by-case basis, and even if a particular activity violates a presumption on its face, the broadband provider will still the opportunity to overcome the presumption by providing sufficient evidence that the action being proposed is “Internet reasonable.”

Such presumptions can help to promote investment in the network because they set the boundaries of acceptable/unacceptable behavior. At the same time, presumptions allow some degree of flexibility for the Commission to adapt its regulatory decisions to the marketplace.

V. There is No Reason to Expand the Scope of the Commission's Open Internet Policies to Private Networks.

We are not aware of any commenter in this proceeding who argues that the Commission should expand the scope of its rules to include private networks. Private networks do not offer service to the general public and thus should not be subject to the same rules as those networks whose purpose is to serve the general public. Almost all libraries offer Wi-Fi connections to their patrons, and many colleges and universities

have their own private end-user networks (both on-campus and off-campus¹⁸) that are not available to the general public. We simply ask the Commission to make sure that these library and higher education private, end-user networks fall within the “coffee shop” exception and are outside the scope of these proposed policies.

VI. Conclusion

We appreciate the challenge that the Commission faces in crafting these new policies in the wake of the *Verizon* court’s decision. There is perhaps no issue facing the Commission that is as important as the future of the Internet. Crafting the right policies requires an understanding of the significant role that Internet access plays across a wide spectrum of interested parties—including libraries, colleges and universities.

Education, research and learning are critically important values that deserve to be placed high on the Commission’s agenda in this proceeding. We have offered several suggestions – such as a no-blocking policy based on the consumer’s choice, the “Internet reasonable” standard, and an ombudsman that is authorized to protect libraries and higher education – that are legally sustainable and enforceable. We urge the Commission to move swiftly to protect, promote and preserve an open Internet for the 21st century.

Respectfully Submitted,

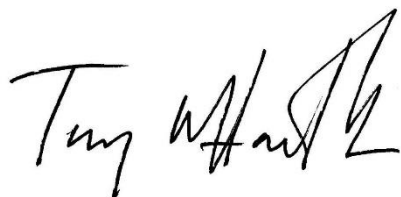


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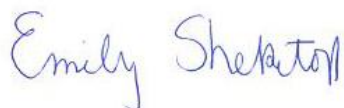
¹⁸ Some colleges maintain several different campuses and maintain private networks connecting these campuses. These networks are analogous to intra-corporate networks that connect branch offices of a multi-location business. Such networks serve the internal communications and broadband needs of their owners and should not be subject to these rules.



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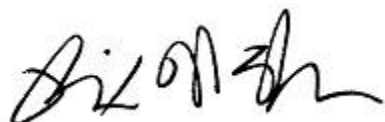
Peter McPherson, President
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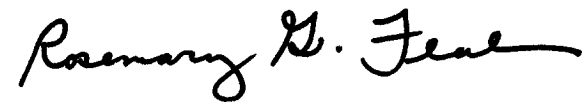
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