

March 30, 2017

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

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

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

Dear Chairman Pai, Commissioner Clyburn and Commissioner O’Rielly

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

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

In February 2015, after a rulemaking process that generated the greatest number of public comments in the agency’s history, the Federal Communications Commission (FCC) approved an Order that gave Internet users the strongest net neutrality protections to date. In June 2016, a federal appeals court affirmed the FCC’s Order, ruling that the agency has the proper authority to issue such rules, that it followed proper procedures, and that the “net neutrality” rules are permitted under the Communications Act and Telecommunications Act.

¹ In the Matter of Protecting and Promoting the Open Internet, Report and Order, FCC 15-24 (2015), p.10

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

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

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

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

To be clear, we do not object to end users paying for higher-capacity connections to the Internet; once connected, however, users should not have to pay additional fees to receive prioritized transmission, and their Internet messages or services should not be blocked or degraded. Such discrimination or degradation could jeopardize education, research, learning, and the unimpeded flow of information.

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

Sincerely,

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

Library and Higher Education Net Neutrality Principles

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

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

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

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

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

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

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

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

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

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

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