

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52

COMMENTS OF THE AMERICAN LIBRARY ASSOCIATION

The American Library Association (ALA), the voice of America's libraries, is the oldest and largest library association in the world. Its approximately 65,000 members are primarily librarians but also trustees, publishers and other library supporters. The association represents all types of libraries; its mission is to promote the highest quality library and information services and public access to information. Access to an open Internet—not subject to content discrimination—is essential to accomplishing this mission.

Open access to the Internet enables lifelong learning, maintaining a skilled workforce, advancing economic development, and offering a venue for the open exchange of ideas, thoughts and opinions. Our libraries are natural and obvious institutions to provide this access. Over 99% of the nation's public libraries provide access to the Internet for their staff and users.¹ Library users have benefited enormously from an open Internet, free of discriminatory practices that could stifle the free and open exchange of information and ideas. There are a host of factors that affect a library's ability to provide acceptable Internet service, including having a sufficient number of workstations and adequate bandwidth. But other factors are of equal importance, including ensuring that library users have access to the legal content of their choice and that such access is not blocked or inhibited by any provider of networked services or any third party.

The American Library Association filed previous comments with the Commission on docket 07-52, *Broadband Industry Practices*.² In light of the current Notice of Proposed Rulemaking on this docket issued on October 22, 2009, we believe that the statements made in our previous

¹ Davis, D. et al. (2009). *Libraries Connect Communities 3: Public Library Funding & Technology Access Study*. Chicago: American Library Association. Available: http://www.ala.org/ala/research/initiatives/plftas/2008_2009/index.cfm.

² See ALA Comments in the Matter of Broadband Industry Practices. WC Docket 07-52. Filed June 15, 2007. (http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519529250). See also Comment on Petition for Declaratory Ruling Regarding Internet Management Policies. WC Docket 07-52. Filed February 13, 2008. (<http://fjallfoss.fcc.gov/ecfs/document/view?id=6519841088>).

filings are still very relevant. We encourage the Commission to review these previous comments.

Comments on the Executive Summary

The current notice includes several salient points in its Executive Summary. We have commented on the points we think are most relevant to the library community.

1) The FCC proposes to codify the four Principles the Commission articulated in its 2005 *Internet Policy Statement*.

The ALA supports this proposal. The association believes that codifying these Principles will give them added weight and demonstrate to all parties—Internet broadband providers, content providers, and information consumers—that the Commission is serious about maintaining an open Internet, free of content discrimination.

2) The FCC proposes to codify a fifth principle that will require broadband Internet access service providers to treat lawful content, applications, and services in a nondiscriminatory manner.

The ALA supports this proposal. The association's filing of June 15, 2007, supported the concepts behind the Commission's Policy Statement released in September 2005.³ However, as our filing stated, "ALA supports the FCC's *Policy Statement* on broadband Internet access Principles, but believes *there is a need to add language related to nondiscrimination.*" (Emphasis added.) We are pleased that the Commission has now taken the initiative to propose a fifth principle of nondiscrimination. Such a principle is essential to helping ensure equal access to content and preserving the open nature of the Internet. With the ever closer relationship between service providers and content, we think there are (unfortunately) many opportunities for service providers to abuse their gatekeeper status by picking and choosing what content they might privilege with faster access. The association is concerned that if providers prioritize their own content or content from affiliated providers that other providers will have their content relegated to an Internet slow lane. Such action is opposed by ALA. Libraries, as well as museums, historical societies and other non-profit institutions provide vitally important cultural heritage resources on the web. If the Internet degrades into a "pay to play" environment these institutions will be seriously disadvantaged because they will almost certainly lack the ability to pay whatever the providers will charge.⁴ (The cable TV industry offers a telling example of the "pay to play" environment where some cable companies do not offer their customers access to certain content because the company has not successfully negotiated financial compensation with the content provider.) Of all the important issues addressed in this NPRM we believe the issue of codifying a fifth principle of nondiscrimination is the most important.

³ Appropriate Framework for Broadband Access to the Internet over Wireline Facilities. *Policy Statement*. CC Docket No. 02-33. Released September 2005. (http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-151A1.pdf).

⁴ ALA's June 15, 2007 filing, page 3.

3) The FCC proposes to codify a sixth principle that will require broadband Internet access service providers to disclose such information concerning network management and other practices.

The ALA supports this proposal. The library community (and consumers) must have clear and complete information on providers' network management and other practices. Such information is essential if libraries are to make an informed choice among competing providers. In addition, libraries want to know what actions providers take to help ensure network integrity and quality and to ensure network security to protect staff and patrons against unauthorized or surreptitious access to legally protected library data (e.g., circulation records) or other personally identifiable information. While the library is ultimately responsible for its own network security, broadband Internet service providers offer the first line of defense against hackers, denial of service attacks and other threats. Stopping such intrusions and attacks at the network provider's level makes the library's task of ensuring its own network security somewhat easier.

4) The FCC proposes to make clear that the Principles would be subject to reasonable network management.

The ALA supports this proposal. The need for any service provider to practice reasonable network management makes sense, as long as it is not used as an excuse to violate the nondiscrimination principle. We are obviously concerned that any "reasonable" management not transform itself into discriminatory practices, but codifying and enforcing a strong principle on network management and a principle on nondiscrimination will help guard against this issue. We also do not see a conflict between reasonable network management and the principle of nondiscrimination. As the association referenced in our June 2007 filing:⁵

Some broadband transmission providers claim they need to practice packet discrimination to better manage their segment of the network. [I]t must be noted that the Internet functioned very well for many years during which the providers of its underlying telecommunications network were subject to the Commission's common carrier regulations (Title II). We do not recall hearing arguments then that the regulatory environment was in some fashion inhibiting proper network management.

We note that the Commission made this same observation too.⁶ We also find that between the release of the *Internet Policy Statement* in September 2005 and April 2009, the percentage of home broadband users increased from about 37% to 63%.⁷ We offer this as evidence that the Principles in the Policy Statement did not stifle broadband growth and we do not think that the codification of the Principles will do so either. In fact, it can be argued that the Internet Policy Statement helped fuel the increase in broadband adoption rates (which provides greater revenue to broadband providers), as consumers felt more confident that the Internet would remain open.

⁵ ALA's June 15, 2007 filing, page 3.

⁶ NPRM, paragraph 48, p. 20.

⁷ Horrigan, J. (2009). *Home Broadband Adoption 2009*. Washington, DC: Pew Internet & American Life Project. Available: <http://pewinternet.org/Reports/2009/10-Home-Broadband-Adoption-2009.aspx>

5) The FCC seeks comment on a category of “managed” or “specialized” services, how to define such services, and what Principles or rules, if any, should apply to them.

Historically, the management of end user applications (e.g., Web browser) and the transport of requisite packets used by such applications have taken place at the edges of the network. That is, the end user—including libraries—are in control. We believe it is essential that the management of even time or latency sensitive applications be retained by the end users on the edge of the network.

Comments on Other Sections of the NPRM

The Commission rightly recognizes that the Principles do not apply to end users or organizations that provide their patrons or customers with access to the Internet.⁸ The NPRM lists “coffee shops, waiting rooms, or rest areas” as the types of entities that would not be governed by the Net Neutrality Principles. ALA submits that public libraries, which are by definition, open to the general public, are virtually identical to these entities and also should not be governed by these Principles. ALA respectfully requests that public libraries be specifically identified in its rules as an example of the type of organization to which the Principles do not apply.

The Commission also seeks guidance on how to make clear who or what entities are covered, or not covered, by its Principles. We think the network diagram on page 42 of the NPRM can offer guidance here. The organization that carries content (e.g., transports packets) over the circuit between the public Internet and the end user is subject to the Principles.

We are concerned about the reference made in paragraph 101 of the NPRM to extending the Principles to cover content or application providers that are not Internet service providers.⁹ While reference to “content providers” is incorporated into the fourth principle, we think that a straight-forward reading of the fourth principle is to protect such content from discrimination by Internet service providers. Extending the principle to cover content providers would be an inconceivable intrusion upon libraries and all Internet users.¹⁰

Paragraph 112 of the NPRM seeks comment on prohibiting prioritized service by allowing network providers to charge content and application providers for such prioritized service. The association believes that such a prohibition is essential to maintaining an open and fair playing field for all content and application providers. We believe that allowing such charges for prioritized service will have a disastrous impact on the development of new content and applications. Allowing this will give tremendous advantage to those entities with deep financial pockets. Furthermore, it will stifle the development of new and innovative services and applications by individuals or groups that lack such financial strength. As we stated above, we believe that prohibiting prioritization is a critical part of the fifth principle of nondiscrimination.

⁸ NPRM, paragraph 55, p. 23.

⁹ NPRM, paragraph 101, p. 40.

¹⁰ We would be remiss if we did not note that suggesting content providers be covered by the fourth Principle was from AT&T and this appears to be part of the company’s ongoing dispute with Google.

Conclusion

The conclusion we made in our comments filed in June 2007 still resonates and it is repeated here.

The American Library Association supports common sense action by the Commission that preserves open, nondiscriminatory access to the Internet for both creators and providers of content. Libraries, and indeed all consumers, need to be assured that they will be able to access legitimate Internet content, or use Internet services or applications without fear or concerns that such access or use will be blocked or degraded by any entity with the means and control to do so.

Thank you for listening to our concerns.

Respectfully Submitted,

Emily Sheketoff
Executive Director
ALA Washington Office