



January 17, 2024

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
45 L Street NE
Washington, DC 20554

Re:

Safeguarding and Securing the Open Internet – Notice of Proposed Rulemaking – WC
Docket No. 23-320

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS

Dear Secretary Dortch:

The National Association of Telecommunications Officers and Advisors (“NATOA”) hereby files these Reply Comments in response to the Federal Communication Commission’s (Commission) Notice of Proposed Rulemaking in Safeguarding and Securing the Open Internet – Notice of Proposed Rulemaking – WC Docket No. 23-320.¹

Introduction

NATOA files these comments to express our support for the proposed reclassification of BIAS services under Title II, but to highlight our concerns with the potential preemption issues facing local government as a result of the reclassification of BIAS. NATOA would remind the Commission of the following principles that should guide federal communications policies that directly impact local governments and communities:

¹ NATOA is the national association that represents the broadband and telecommunications needs and interests of local governments, and those who advise local governments. NATOA’s membership includes local government officials and staff members from across the nation whose responsibility is to advise and implement telecommunications policy and the provision of such services for the nation’s local governments. These responsibilities range from cable franchising, rights-of-way management and government access programming to information technologies and Institutional Network (I-Net) planning and management.

- Principle 1— Respect Local Government as Partners in Achieving Digital Equity
- Principle 2— Support Localism and Diversity of Voices
- Principle 3— Restore and Protect Local Rights-of-Way, Zoning and Siting Authority
- Principle 4— Elevate the Public Interest.”²

NATOA encourages the Commission to refrain from broad preemption. Rather, the Commission should resolve any potential preemption issues arising from reclassification on an incremental or case-by-case basis.

NATOA files to associate itself with the Comments of the National League of Cities³ (NLC) and the Communications Workers of America,⁴ both of which support the Commission’s proposal to reclassify broadband Internet access service (BIAS) as a telecommunications service under Title II of the Communications Act of 1934.

The NLC speaks on behalf of the 19,000 cities, towns and villages it represents and NATOA shares many of these same communities. NATOA agrees with NLC that “compliance with the following principles by all network owners and internet service providers, regardless of technology:

- Internet users and creators of services should have unrestricted access to and use of their choice of lawful Internet content, applications, and services;
- Internet users are entitled to connect their choice of legal devices to the network;
- Internet service providers should not engage in prioritization or throttling of content unrelated to public safety needs; and
- While network owners define the cost and technical limits of their service, consumers must receive meaningful information regarding their service plans, including but not limited to information about anticipated upload and download speeds.
- Each of these principles should apply regardless of an Internet user’s income, race, geographic location, or disability.⁵

² NATOA Federal Communications Policy: The Critical Role of Local Communities, 2021, Attachment #2

³ Comments of the National League of Cities, Safeguarding and Securing the Open Internet – Notice of Proposed Rulemaking – WC Docket No. 23-320, Dec. 14, 2023.

<https://www.fcc.gov/ecfs/document/1215761504735/1>

⁴ Comments of the Communications Workers of America, Safeguarding and Securing the Open Internet – Notice of Proposed Rulemaking – WC Docket No. 23-320, Dec. 14, 2023.

<https://www.fcc.gov/ecfs/document/12142384527320/1>

⁵ Comments of the National League of Cities, Safeguarding and Securing the Open Internet – Notice of Proposed Rulemaking – WC Docket No. 23-320, Dec. 14, 2023.

NATOA welcomes the comments of the Communications Workers of America (CWA) which note that the “Commission should not shut out the important work of states and localities in ensuring that BIAS consumers are protected in areas where they have historic expertise and jurisdiction. The Commission should adopt net neutrality rules that are a nationwide floor, not a ceiling, and proceed incrementally addressing only those state or local legal requirements when it is not possible for BIAS providers to comply with both federal and state and local requirements.”⁶

Long Held Position

NATOA is grateful to the Commission for issuing this NPRM. We attach the National Association of Telecommunications Officers and Advisors Broadband Principles, which were adopted by the NATOA Board of Directors in 2008 and advocate for open networks, network neutrality and non-discriminatory interconnection. More importantly, these principles underscore NATOA’s belief that “local governments must be recognized as key partners to industry, states and federal government in broadband development.”⁷

NATOA developed and adopted these Broadband Principles following the submission of comments filed by NATOA, the National Association of Counties and the National League of Cities in response to the Notice of Inquiry In the Matter of Broadband Industry Practices in 2007. Within those comments, NATOA noted NATOA’s Board does not believe that a “communications provider should be allowed to favor one content provider, service or product over another. All persons purchasing specific communications services or products from a communications provider should receive access without any form of discrimination by the communications provider.”⁸

NATOA and NLC have jointly advocated for such a position for more than 15 years. NATOA joined NLC in filing comments in 2014 in response to the FCC’s NPRM Protecting and Promoting

<https://www.fcc.gov/ecfs/document/1215761504735/1>

⁶ Comments of the Communications Workers of America, Safeguarding and Securing the Open Internet – Notice of Proposed Rulemaking – WC Docket No. 23-320, Dec. 14, 2023.

<https://www.fcc.gov/ecfs/document/12142384527320/1>

⁷ Comments of the National Association of Telecommunications Officers and Advisors on Preserving the Open Internet, GN Docket No. 09-191, Broadband Industry Practices, WC Docket No. 07-52, Jan. 14, 2010

<https://www.fcc.gov/ecfs/document/6015523772/1>

⁸ The National Association of Telecommunications Officers and Advisors, the National Association of Counties, and the National League of Cities Comments in the Matter of Broadband Industry Practices, WC Docket No. 07-52. Released April 16, 2007.

<https://www.fcc.gov/ecfs/document/5514681160/1>

the Open Internet. NLC and NATOA have a firm belief that “the Open Internet has empowered citizens and local communities by increasing civic participation, facilitating learning, and strengthening neighborhood businesses. With the availability of the Internet, city and state governments can live stream council meetings for public viewing, publish text of resolutions and other official documents, and communicate with their constituents directly online. Students can communicate with their teachers and with one another and can access immense databases of information from home, schools, libraries, and even neighborhood coffee shops. Through the Internet, small businesses and entrepreneurs can advertise and sell their products and services online and compete with much larger businesses on a level playing field.”⁹

NATOA echoes the caution expressed by NLC that the reclassification of broadband internet access service (BIAS) as a telecommunications service must not preempt local governments’ ability to exercise its authority to manage the use of our local public rights-of-way by overseeing the safety, placement, construction modification of BIAS providers’ facilities and to receive reasonable compensation from BIAS providers for that use.

Additional Concerns

NATOA calls on the FCC to re-visit and overturn its 2018 Small Cell preemption order and, until then, forbear the application of Sections 253 and 332(c) regarding state and local authority over communications networks to reclassified BIAS services.

Section 253(c) of the Communications Act protects local governments’ authority to manage and receive fair and reasonable compensation for BIAS providers’ use of local rights-of-the-way. And Section 332(c)(7)(A) of the Act protects local governments’ authority to regulate the placement, construction and modification of BIAS providers’ wireless facilities, consistent with Section 332(c)(7)(B). As such, these Sections protect local governments’ authority to manage use of our public local rights-of-the-way.

Cities, towns and counties are working in partnership with the Commission and look forward to continuing to do so as broadband buildouts commence across the country funded by the Broadband Equity, Access, and Deployment (BEAD) Program’s \$42.45 billion to expand high-speed internet access by funding planning, infrastructure deployment and adoption programs in all 50 states and four territories. This unique opportunity through the Infrastructure Investment and Jobs Act (IIJA) to extend broadband ubiquitously across the country can be

⁹ Comments of the National League of Cities and the National Association of Telecommunications Officers and Advisors In the Matter of Protecting and Promoting the Open Internet, GN 14-28, July 11, 2014.

<https://www.fcc.gov/ecfs/document/6017880923/1>

achieve more effectively by working collaboratively with local governments, the level of government closest to the residents we all serve.

NATOA urges the Commission to forbear the application of Sections 253 and 332(c) to reclassify BIAS services at this time to ensure Internet Openness; Safeguard National Security and Preserve Public Safety; Protect Consumers' Privacy and Data Security; Support Access to Broadband Internet Access Service (BIAS); and Access for Persons with Disabilities.

State and local governments can deliver responsive consumer protections, public safety, access for all, and siting supervision of providers' physical facilities because local governments are adept at resolving the discrete issues that arise from local conditions and circumstances. As such, in any Preemption of State and Local Regulation of Broadband Service by the Commission, we urge the Commission to "proceed more incrementally, such as by only addressing in this proceeding those state or local legal requirements squarely raised in the record, and otherwise deferring to future case-by-case adjudications of preemption." Further, we believe this approach acknowledges the roles of state and local government in regulating provider services and facilities.

Similarly, Congress preserved states' powers to impose "requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers."¹⁰

Conclusion

In closing, we share **NATOA's Communications Policy Principles** developed in the midst of COVID to address the development of Federal Communications Policy in 2021, the 25th anniversary of the Telecommunications Act, and to address the Critical Role of Local Communities. The NATOA principles note that "One of the primary objectives for communications policymakers, at all levels of government, is ensuring that everyone has access to vital communications services and the opportunity to benefit from advances in communications technology.

"Local governments, as the governments closest to our constituents, are in the best position to understand where and why public and private sector efforts to achieve this goal have fallen short. We manage vital public assets, including public rights-of-way, on which communications providers rely to deploy their networks. In short, local governments are essential partners in

¹⁰ 47 U.S.C. § 253(b); see also *Merck Sharp & Dohme Corp. v. Albrecht*, 139 S. Ct. 1668, 1677 (2019).

the common goal of deploying robust communications infrastructure and making affordable and quality communications services available to everyone.

“Federal communications policies should recognize and reflect local governments’ role in the effort to achieve digital equity and should incentivize innovative deployment models, including novel partnerships—policies that cannot coexist with current policies that sharply curtail local authority.”¹¹

We encourage the Commission to refrain from broad preemption but rather, the Commission should seek to resolve any potential preemption issues arising from reclassification only on an incremental, case-by-case basis.

Thank you for your consideration of these Reply Comments. We look forward to partnering with the FCC to further policies to make sure that the internet is not only open, but fast and fair, safe and secure.

If you have any questions about these comments, please contact me.

Sincerely,



Mike Lynch
Legislative & Regulatory Affairs Director
National Association of Telecommunications Officers and Advisors (NATOA)
3213 Duke Street, #695
Alexandria, VA 22314
(703) 519-8035
MLynch@natoa.org

ATT: #1. NATOA’s 2008 Broadband Principles
#2. NATOA’s 2021 Federal Communications Policy: The Critical Role of Local Communities

¹¹ NATOA Federal Communications Policy: The Critical Role of Local Communities, 2021, Attachment #2



Introduction to NATOA's Broadband Principles

For centuries, the United States has been a world leader in economic development and social initiatives. From the 19th century railroad systems and the early 20th century electric and telephone networks' expansion, to the post-World War II highway system and airport construction, investments in physical infrastructure have been instrumental in supporting social and economic progress.

Today, the United States is at a critical juncture. Economic and social development increasingly depend on advanced communications infrastructure. However, there is no strategy in place for widespread deployment of next-generation broadband networks. Our failure to take immediate action threatens to relegate our country to second-class status in the broadband age.

The future of broadband is about more than viewing television, surfing the Web and making phone calls. It is about new forms of communication and mass collaboration through the virtually unlimited potential for sharing information, storage capacity, processing power and software made possible through high-capacity bandwidth connections. This collaboration will generate new ideas, accelerate economic development and lead to opportunities for wealth creation, social development and personal expression.

While other industrialized nations have developed strategies for next-generation broadband infrastructure, the United States still lacks a national broadband strategy. The lack of a proactive strategy has effectively ceded control of our broadband destiny solely to the private market without sufficient regard for the public interest or the unique needs of local communities. This approach has not resulted in the investment needed and has failed to realize the many positive externalities created by next-generation broadband networks. The effects of this failure are clearly manifest: fading international rankings for broadband penetration; relatively low bandwidth at high costs; throttling of peer-to-peer communications; and little competition among service providers. Moreover, the future contours of broadband in the U.S. are being defined by a small number of private entities.

NATOA is increasingly concerned that the communities we represent are losing their competitive advantage to communities in Europe and Asia due to the lack of federal and state broadband leadership. This inaction will likely harm the competitive status of local communities with respect to education, healthcare, economic development, standard of living, and the level and quality of civic discourse. Inaction will adversely affect local governments' ability to provide public safety or to create a more sustainable environment for the future.

Local governments have always played an essential role in ensuring that the benefits of communications infrastructure would be available in communities across the United States. Localities will, by necessity and by choice, be part of the solution to our national broadband deficit. To that end, NATOA has adopted its Broadband Principles.



BROADBAND PRINCIPLES

The National Association of Telecommunications Officers and Advisors (NATOA) supports the development of a National Broadband Strategy consistent with the following principles.

1. NATOA calls for the immediate nationwide deployment of advanced broadband networks.

The United States faces a broadband crisis. Broadband network infrastructure is critical to economic growth. New and emerging applications and services demand more bandwidth than can be delivered by most current domestic networks. The gap between the United States and other industrialized nations is growing wider. Our country is becoming a digital also-ran with serious adverse consequences to our economic competitiveness and quality of life.

The United States has a proud history of deploying electric, telephone and transportation infrastructure to all parts of the country. Now we are challenged again. We are behind and the buildout of advanced broadband networks will take time. We must act now!

2. True broadband requires high capacity bandwidth in both directions.

To grow and enhance economic opportunity, local communities must have access to interactive, open, broadband networks with sufficient capacity to meet the increasing information, communications and entertainment needs of their residents, businesses, institutions and local governments. US competitors in Europe and Asia are building broadband networks that can provide bandwidth of 100 Mbps to 1 Gbps to each premise. Those networks serve as platforms for continuing innovation and allow the delivery of new services and applications that will transform these nations' economies and enhance the quality of life. To remain globally competitive, networks in this country should meet or exceed those standards and be designed so that capacity can be expanded by replacing electronics without having to rebuild the networks.

It is important for America's networks to offer symmetrical, high capacity bandwidth in both directions, as with many of the new networks in Europe and Asia. Ample upstream bandwidth empowers network users to become creators and distributors of content and applications, as well as recipients of services. NATOA believes that the success of Web sites featuring user-provided content, as well as the successes of traditional educational, government and public access television, demonstrate that people can and will become content creators if they are afforded the tools to do so.

3. Fiber to the premises is the preferred broadband option.

Broadband networks use several wire-based and wireless technologies, including: copper and other metal wires; coaxial cable, multimode fiber optics; single-mode fiber optics;

microwaves; Wi-Fi; and WiMax. The transmission bandwidth and reliability characteristics and capabilities of each technology vary based upon many factors, including: the specific technology; the transmission distance and the connecting and terminal equipment being used. Currently, single-mode fiber optic networks are capable of transmitting the most bandwidth with the highest reliability. They show the best potential to handle increasing future demands for higher speeds and greater quantities of information.

NATOA recognizes that it will not be economically feasible to bring fiber optics to all communities in the near term. Where fiber connection is not practical, other technologies, such as high capacity coaxial cable or wireless, may be viable if they achieve the bandwidth levels described above. In the long run however, the goal should be to make fiber to the premises universally available.

Wireless networks are an important part of the broadband picture. Wireless allows mobility, and offers a competitive choice for Internet access with quick and relatively low cost deployment. Wireless will not be a substitute for an all fiber network but will play a complementary role.

4. High capacity broadband connectivity must be affordable and widely accessible.

An informed citizenry requires knowledge and opportunities for expression. NATOA believes that everyone should be able to access the information and services that high capacity broadband networks will provide. Without reasonable prices and equitable access many of our citizens will not be active participants in the broadband age. Our residents and our society will benefit from wide availability, since the communicative power of the network increases exponentially as more network endpoints are created. High capacity broadband networks can bring to bear the collective ingenuity and enterprise of our citizens to find solutions to the many problems confronting us. NATOA believes that everyone should have access to high capacity networks at reasonable prices.

5. High capacity broadband requires open access networks.

Fiber optic networks continue to demonstrate economies of scale. This characteristic gives the owner of the fiber platform an unbeatable advantage over other service providers. It is expensive – perhaps prohibitively so - to build multiple fiber networks in one community. Thus the owner of the first and therefore dominant network can set unfair terms and prices for others to use it. On the other hand, multiple service providers who can compete over a common platform will fuel innovation in broadband services, which will benefit local communities and society. Thus structural or regulatory measures must be employed to protect the right to non-discriminatory access to networks for all competing service providers and to forestall unfair business practices by network owners. NATOA recognizes that private developers of new fiber networks must be able to seek a realistic return on investment. This is consistent, however, with providing access on non-discriminatory terms.

6. Network neutrality is vital to the future of the Internet.

It is vital to the future of the Internet that network owners not discriminate in terms of content transport or unnecessarily interfere in communications between end points on the network. Where packet prioritization is necessary network owners must provide similar treatment to all providers of like services. NATOA believes that everyone must have the unbridged freedom to create, post or access any lawful content and services and to attach any devices to the network as long as they do not impair network performance. Many current network traffic management strategies are a function of scarce bandwidth capacity and should not be necessary with high-capacity networks.

7. All networks and users have the right and obligation to non –discriminatory interconnection.

Broadband communications at the local access level can be fast and economical. However, data packets that leave the local access network and traverse the public Internet will flow only as fast as the slowest connections between end points. To facilitate reliable, high-bandwidth, symmetrical, peer-to-peer communications between our communities and to promote the expansion of open access networks, NATOA supports the direct linkage of local broadband fiber network peering points through the use of long haul fiber. All local broadband networks must have the right and obligation to non-discriminatory interconnection with other broadband networks using common, interoperable standards and protocols.

8. Local governments must be involved to ensure that local needs and interests are met.

The desired development of high capacity broadband networks and broadband services will require extensive collaboration among all parties: local communities, regions, state governments, national government, the private sector, interest groups and others. While the U.S. has plenty of broadband capacity in the “long haul” routes, fiber connections rarely reach homes and small businesses. Local governments are central players in ensuring that this “last mile” fiber connection to homes and businesses is achieved. Local elected officials are well positioned to evaluate the infrastructure and economic development tools needed to sustain viability, encourage growth and ensure that the unique needs and specific interests of local communities are addressed. NATOA believes local governments must be recognized as key partners to industry and the states and federal government in broadband development.

9. Local governments must be allowed to build and operate broadband networks.

Local geographic communities share common interests and offer the best opportunity for acceptance and growth of high capacity broadband. The right of local governments to build and operate broadband networks must not be infringed. Public agencies and community-based non-government agencies also need to have equal opportunity to participate through

meaningful investments in communications infrastructure. Communities must have the freedom to meet their unique communications needs. NATOA believes that local governments and the communities they serve must be able to preserve the policy option to own and operate public broadband networks. Any existing prohibitions on local government communications initiatives must be abolished.

10. A variety of options must be considered to cover deployment costs.

It is not yet clear which methods of funding deployment are best. Different methods may be preferable in different communities. For example, networks may be financed by private investment, by government investment, by public-private partnerships, by tax incentives, or by other means. None of these approaches should be prohibited by law or burdened by special restrictions (such as laws that forbid cross-subsidy by governments but allow it for private entities).



Federal Communications Policy: The Critical Role of Local Communities

One of the primary objectives for communications policymakers, at all levels of government, is ensuring that everyone has access to vital communications services and the opportunity to benefit from advances in communications technology. Local governments, being closest to our constituents, are in the best position to understand where and why public and private sector efforts to achieve this goal have fallen short. We also manage vital public assets, including public rights-of-way, on which communications providers rely to deploy their networks. In short, local governments are essential partners in the common goal of deploying robust communications infrastructure and making affordable and quality communications services available to everyone.

Yet the nation's communications policies have sidelined local governments. We are labeled barriers to deployment while private industry is granted unprecedented access and ability to dictate when and how they will use public assets with little or no obligation to serve the best interests of the public.

The COVID-19 pandemic has provided a long overdue wakeup call that these policies have not worked. Nothing illustrates this more than the failure to reach those who still lack access to quality, affordable broadband that, now more than ever, is essential for full participation in every aspect of our lives and our communities. Twenty-five years after the Telecom Act, the pandemic has highlighted our country's failure to provide broadband to our most vulnerable urban and rural citizens.

The pandemic has also shown that local governments remain the most effective level of government in responding to community needs. Local governments have been vital in ensuring that, throughout the pandemic, residents have the best possible access to schools, housing, food, healthcare, transportation, economic opportunities, water and sewer services, refuse collection and other essential services, including broadband. Local governments in turn rely on broadband to deliver services to residents, promote civic engagement and create economic opportunities, all of which are integral in local efforts to address racial and economic inequities.

Federal communications policies should recognize and reflect local governments' role in the effort to achieve digital equity and should incentivize innovative deployment models, including novel partnerships—policies that cannot coexist with current policies that sharply curtail local authority. To that end, NATOA has identified key principles that should guide federal communications policies that directly impact local governments and communities.

Principle 1— Respect Local Government as Partners in Achieving Digital Equity

Closing the digital divide, which must include fostering digital equity and inclusion, is one of the keys to addressing the most pressing issues we face as a nation, from economic and racial injustice to the COVID-19 pandemic. Policies to address digital equity, like all communications policies, implicate intensely local interests in deciding how best to address community needs, ensure public safety and order competing demands on public resources and assets. Policymakers should respect local governments' essential role in addressing these interests and expanding availability and adoption of broadband and other communications services. Limiting local authority to address local communications needs—portraying local governments as impediments rather than partners—undermines the prospects for developing innovative solutions to difficult issues and hinders efforts to achieve digital equity.

Principle 2— Support Localism and Diversity of Voices

The tradition of community media has helped ensure a rich and diverse media landscape in which individuals and small groups can communicate effectively and take part in the national, regional and local debates that shape the character of our communities and our nation—principles echoed by Congress in the Cable Act. The ongoing value of community media has been in full view during the COVID-19 pandemic. Community media stood out as a reliable source for accurate, up-to-date information, particularly in the many communities across the country that no longer have other outlets for truly local news and information. During the pandemic, community media, especially government media, became the foundation for the emergency adoption of remote public meetings with expanded opportunities for interactive civic engagement. The Cable Act, from its inception, has been viewed by all stakeholders as affirming the value of community media, a communications outlet that is vital to the continuing health of our communities and our democracy. Federal communications policies should reflect this long-standing support for and protection of community media.

Principle 3— Restore and Protect Local Rights-of-Way, Zoning and Siting Authority

Sound communications policy must recognize and support local governments' authority to manage the public rights-of-way and other public property. This includes maintaining zoning and related land use authority. The public rights-of-way are narrow ribbons of real estate in which many companies across many industries install their facilities. Only local governments can balance the many competing interests in a manner that protects public safety and maintains critical services, including communications services. Federal policies should, consistent with our dual-federalist system, reflect the fact that local elected officials are held accountable for upholding this distinctly local obligation, and as such we are experts in finding the right balance that enables timely deployment of infrastructure while respecting the unique character and interests of our communities. Communications providers should not be exempt from local regulations that protect public safety, property, community character and economic development to which other industries must adhere, including paying reasonable compensation for the use of public property.

Principle 4— Elevate the Public Interest

A touchstone of communications policy is protecting the public interest. Efforts to facilitate deployment will always fall short if the public interest does not weigh heavily in the balance of competing interests inherent in communications policy considerations. That deployment is occurring says nothing about whether any resulting services meet consumers' needs, are affordable or are available to all residents of a community. Effective consumer protection standards with reasonable, accessible recourse must be available. Public safety implications must be appropriately addressed at every step of policymaking to avoid potentially irreversible harm from unintended effects. The COVID-19 pandemic demonstrated that the public interest in providing residents with access to education, employment, healthcare and other government services depends on access to robust digital communications. Current policies that fail to adequately address the public interest, including public safety, should be revisited, and future policymaking should directly address the public interest implications of any new initiatives.

NATOA is eager to work with all stakeholders to advance communications policies that ensure deployment of robust and affordable communications services to all Americans, with local governments as steadfast partners in this essential endeavor.