

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
Safeguarding and Securing the Open Internet) WC Docket No. 23-320
)
)

COMMENTS OF THE NATIONAL HISPANIC MEDIA COALITION

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I. INTRODUCTION

The National Hispanic Media Coalition (“NHMC”) applauds the Federal Communications Commission (“FCC” or “the Commission”) for its initiative regarding the reclassification of Broadband Internet Access Service (“BIAS”) as a telecommunications service.¹ As an established civil rights organization with a focus on empowering the Latinx community in the United States, NHMC recognizes this moment as a critical juncture for advancing digital equity and ensuring robust consumer protections. Our advocacy is rooted in the belief that access to high-speed internet is not a luxury, but a fundamental right that is pivotal for the participation of all communities—particularly those traditionally marginalized in today’s digitally driven society.

In an era where digital connectivity is synonymous with opportunity, the absence of reliable, high-speed internet continues to disproportionately disenfranchise communities of color, rural populations, and Tribal lands. The Latinx community, constituting a significant portion of the U.S. demographic, is particularly susceptible to the pitfalls of digital inequity. The COVID-19 pandemic has further underscored the urgency of this issue, revealing stark disparities in internet access that hinder the ability of our communities to engage in essential activities like remote learning, telehealth, and digital commerce.

NHMC, through its advocacy and policy work, has consistently highlighted the necessity of digital inclusivity. We firmly believe in the principle that high-speed internet connectivity is a right, not a privilege. In this spirit, we present our viewpoints and recommendations to the FCC, emphasizing the transformative potential of classifying BIAS as a telecommunications service.

¹ Federal Communications Commission, *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, Notice of Proposed Rulemaking (FCC 23-83, rel. Oct. 2023) (“*Safeguarding and Securing the Open Internet NPRM*”).

As we delve into this issue, our focus remains steadfast on the overarching goal: to bridge the digital divide and champion the cause of digital equity, ensuring that the Latinx community, all communities of color, and marginalized communities everywhere receive equitable access to the tools and resources necessary to thrive in the digital age.

II. CLASSIFYING BROADBAND INTERNET ACCESS SERVICE AS A TELECOMMUNICATIONS SERVICE WILL LEAD TO POSITIVE IMPACTS FOR MARGINALIZED COMMUNITIES

NHMC emphasizes the paramount importance of digital connectivity and inclusivity for marginalized communities, particularly within the Latinx demographic. The FCC ultimately has greater ability to protect the interests of communities when BIAS is classified as a telecommunications service. The FCC asked for comment on the benefits and burdens of classifying Broadband Internet Access Service as a telecommunications service.² NHMC believes that if utilized appropriately, the benefits of such classification can lead to an equitable digital society that prioritizes the rights of consumers.

A. Digital Equity and Universal Access to High Speed Internet is Achievable Through the Classification of BIAS as a Telecommunications Service

For communities of color, especially in underserved and rural areas, broadband is a necessity for full participation in today's digital society. Digital literacy and Internet connectivity have been called the “super social determinants of health” because they address all other social determinants of health.³ Digital literacy and access, including skills, connectivity, devices, training and technical support, relate to all other domains of social determinants of health. Digital literacy and access are necessary in order to improve overall outlooks on economic sustainability,

² *Safeguarding and Securing the Open Internet NPRM* at ¶ 16.

³ Cynthia J. Sieck, *et. al*, *Digital Inclusion as a Social Determinant of Health*, *NPJ Digit Med* 4:52 (published Mar. 17, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7969595/>.

education, food access, neighborhood environments, community engagement, and the healthcare system.⁴

The classification of BIAS as a telecommunications service is instrumental in achieving digital equity and accessibility. Equal access to affordable and reliable high-speed internet fosters a more inclusive digital society. It enables individuals from diverse backgrounds to engage with digital technologies on an equal footing, helping to break down barriers to information and resources that have historically marginalized communities of color. By utilizing Title II authority, the FCC can ensure that high-speed internet is accessible in all areas and help create a more equitable digital landscape where every individual, regardless of their background, has the opportunity to thrive in a digitally connected world. The Commission is unable to ensure the public interest is met and the digital divide is closed without exercising authority pursuant to Title II with BIAS as a telecommunications service.

The digital divide, which refers to the gap between those who have easy access to the internet and those who do not, disproportionately affects communities of color, particularly in underserved and rural areas. Due to systemic inequities in education and employment, Black and Latinx households have lower average incomes than white households, meaning that a broadband subscription — at an average rate of \$68 per month — may simply be unaffordable.⁵ Closing the digital divide is important to ensure that all members of society have improved access to a digitally inclusive society with online educational resources, telehealth services, and

⁴ *Id.*

⁵ Brandeis Marshall & Kate Ruane, *How Broadband Access Advances Systemic Inequality*, ACLU (Apr. 28, 2021), <https://www.aclu.org/news/privacy-technology/how-broadband-access-hinders-systemic-equality-and-deepens-the-digital-divide>.

digital platforms that are essential for everyday life.⁶ The classification of BIAS as a telecommunications service is a significant step for our country towards bridging this divide.

The classification of BIAS as a telecommunications service can catalyze the nondiscriminatory deployment of necessary infrastructure in underserved areas.⁷ Historically, communities of color and rural regions have endured gaps in broadband coverage and accessibility due to structural barriers and perceived lower profitability, which continue today. Black households are 50 percent more likely than White households to live in areas with limited broadband service, and new customers in urban areas face systemic barriers like credit checks and cash deposit requirements.⁸ Furthermore, broadband deployment in rural areas is viewed less favorably due to a perceived lack of profitability, which leads to rural residents being less likely to subscribe to broadband service.⁹

Compounding many of the problems caused by a lack of regulation in the BIAS market is the industry's lack of competition. As detailed by the FCC in its 2022 Communications Marketplace Report, some consumers simply have little or no choice of reliable broadband providers: 30.5% of U.S. households have only one choice for fixed broadband at the 100/20 Mbps speed tier, and 41% of US households have one choice at the 940/500 Mbps speed tier.¹⁰

⁶ See, Yosselin Turcios, *Digital Access: A Super Determinant of Health*, Substance Abuse and Mental Health Services Administration (Mar. 22, 2023), <https://www.samhsa.gov/blog/digital-access-super-determinant-health#4>. See also, Adie Tomer, et al, *Digital Prosperity: How Broadband Can Deliver Health And Equity To All Communities*, Brookings, at p. 3-5 (Feb. 2020), https://www.brookings.edu/wp-content/uploads/2020/02/20200227_BrookingsMetro_Digital-Prosperity-Report-final.pdf.

⁷ 47 U.S.C. §224(f)(1).

⁸ See Michael Chui, et al, *There's a Big Market to be Unearthed if Companies Meet the Real Needs of Black Consumers*, McKinsey & Co. (Aug. 6, 2021), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/a-300-billion-dollar-opportunity-serving-the-emerging-black-american-consumer>.

⁹ See Anna Read & Kelly Wert, *Broadband Access Still a Challenge in Rural Affordable Housing*, Pew (Dec. 8, 2022), <https://www.pewtrusts.org/en/research-and-analysis/articles/2022/12/08/broadband-access-still-a-challenge-in-rural-affordable-housing>.

¹⁰ Federal Communications Commission, *Communications Marketplace Report*, GN Docket No. 22-203, 2022 Communications Marketplace Report, p. 43 at ¶ 57 (FCC 22-103, rel. Dec. 30, 2022), <https://docs.fcc.gov/public/attachments/FCC-22-103A1.pdf>.

5.4% of U.S. households have zero choices for fixed broadband at the 100/20 Mbps speed tier, and 54.9% of U.S. households have zero choices at the 940/500 Mbps speed tier.¹¹ These numbers underscore a deficit in accessibility and competition.

By reclassifying BIAS as a telecommunications service, the FCC can implement better policies that incentivize the efficient and equitable deployment of modern communications networks to underserved areas. This would yield greater access to reliable high-speed internet and also encourage competition among providers, potentially improving service quality and innovation while reducing consumer costs, particularly for low-income communities.¹²

The deployment of BIAS in underserved areas is a foundation for community development and empowerment.¹³ With better access to broadband, schools in rural and underserved areas can provide students with the same quality of digital education as those in more affluent regions. Local businesses owned by people of color can connect to global markets, creating economic opportunities and jobs. In this way, expanding broadband infrastructure, accessibility, and service will be a catalyst for broad and sustained community development.

B. Classification of BIAS as a Telecommunications Service can Lead to a Regulatory Environment that Promotes Competition and Innovation while Protecting Consumers.

While NHMC advocates for the classification of BIAS as a telecommunications service, we also recognize potential burdens and concerns that must be addressed. A key challenge in the reclassification of broadband is to ensure that consumer interests are protected without placing undue strain on service providers or inadvertently causing price increases for consumers.

¹¹ *Id.*

¹² FCC Broadband Deployment Advisory Council, *Increasing Broadband Investment in Low-Income Communities Working Group*, at p. 26 (Dec. 2020), <https://www.fcc.gov/sites/default/files/bdac-low-income-communities-approved-rec-12172020.pdf>.

¹³ John Horrigan & Jorge Reina Schement, *Broadband as Civic Infrastructure: Community Empowerment, Equity, and a Digital New Deal*, German Marshall Fund (Mar. 23, 2021), <https://www.gmfus.org/news/broadband-civic-infrastructure-community-empowerment-equity-and-digital-new-deal>.

Regulations intended to protect consumers, such as those ensuring service quality or accessibility, must be carefully crafted to avoid imposing excessive costs on providers. These costs could, in turn, be passed on to consumers, negating the very benefits the regulations seek to provide. The goal should be to create a regulatory environment that promotes healthy competition and innovation while ensuring that consumers are not burdened with high costs or substandard service. This might involve targeted regulations that address specific market failures or abuses, rather than broad, one-size-fits-all rules. It could also mean providing incentives or support for providers to reach underserved areas or offer more affordable services.

The telecommunications sector is characterized by rapid technological change, which presents a unique challenge for regulatory frameworks. Regulations crafted today might become obsolete or counterproductive in just a few years as new technologies and business models emerge. Therefore, it is crucial that any new regulations introduced in the context of BIAS reclassification are designed to be agile and adaptable. This agility can be achieved through regular reviews and updates of regulatory policies, consultation with industry experts and stakeholders, and flexible regulatory mechanisms that can be adjusted as needed. It is also important to foster an ongoing dialogue between regulators, service providers, community groups, and other stakeholders to ensure that regulations reflect the realities of the market and the needs of consumers. By creating a regulatory framework that is both robust and adaptable, we can ensure that it continues to serve the public interest in a rapidly changing digital landscape.

III. IN ORDER TO ADEQUATELY PROTECT CONSUMERS—PARTICULARLY CONSUMERS OF COLOR—THE COMMISSION MUST ADOPT THE THREE BRIGHT LINE RULES AND A GENERAL CONDUCT STANDARD FOR PROVIDERS TO ADHERE TO

The National Hispanic Media Coalition supports the three bright-line rules proposed by the Commission’s NPRM: no blocking, no throttling, and no paid prioritization.¹⁴ In fact, NHMC has supported the three bright line rules since before they were proposed as rules and were still considered principles. Over twenty years ago, NHMC began urging the Commission to codify specific rules and principles to ensure that our communities were safe online, and that internet service providers did not have overarching power to dictate how we accessed or used the open internet.¹⁵ Our comments today are echoing the same plea on behalf of the Latine community in the United States yet again. The three bright line rules were adopted in the *2015 Open Internet Order*, and were widely thought of and supported as the strongest protection for internet users in the history of the web. NHMC was and remains a vigorous supporter of those three bright line rules, largely because we have seen first-hand the need for specific protections.

Those in opposition to these rules claim that they are “unnecessary to protect consumers.” However, the most readily available data tells a different story. In 2017, NHMC filed a Freedom of Information Act Request (“FOIA Request”) requesting consumer complaints under the 2015 Open Internet Order, with responses from the ombudsperson and carriers, to shed light on the critical value of the Net Neutrality protections that the FCC is working to dismantle.¹⁶ After a long battle with the Trump-era FCC, more than 47,000 consumer complaints were released to NHMC, with over 68,000 pages of consumer complaint documents alone.¹⁷ In fact, at the time

¹⁴ *Safeguarding and Securing the Open Internet NPRM* at ¶ 149.

¹⁵ *See generally* Comments of the National Hispanic Media Coalition, GN Docket No. 09-191, WC Docket No. 07-52 (2010).

¹⁶ Documents Revealed By NHMC’s FOIA Request Show the Importance of the 2015 Open Internet Order and the Need for Strong Net Neutrality Regulations, <https://www.nhmc.org/foia-release/> (last visited Dec. 14, 2023) (“NHMC FOIA Site”).

¹⁷ *Id.*

of the 2017 repeal of the *2015 Open Internet Order*, the Trump FCC insisted there was “virtually no quantifiable evidence of consumer harm.”¹⁸ Thus, despite the severe disregard for over 47,000+ complaints that were filed from when the *2015 Open Internet Order* was put into effect to when it was repealed,¹⁹ there is hard evidence that violations of the bright line rules were absolutely happening, and explicit rules to enforce against those violations was necessary. In NHMC’s opinion, there is a very high likelihood that those violations continue on undetected through the present day, as there is no longer somewhere for consumers to report their net neutrality harms. As we’ve experienced in the years since 2017, and as former Commissioner Mignon Clyburn aptly expressed in her dissent to the 2017 repeal, consumers have had “to live with whatever their broadband provider decides to enable them to access.”²⁰

A. There Is No Evidence That the 2015 Open Internet Order Stifled Broadband Innovation or Investment.

NHMC agrees with the Commission’s statement that it does not “anticipate that the open Internet rules we propose today will have a harmful effect on investment.”²¹ At the time of the Trump-era FCC’s repeal of the 2015 Open Internet Order, many in opposition to the rules claimed they had a stifling effect on the market, creating a chilling effect for internet service providers to innovate and invest in building new, stronger networks. Yet, as the Commission reiterates in its NPRM, “[Internet Service Provider] investment was not inhibited from 2005

¹⁸ Comments of Voices for Internet Freedom Coalition, et al., WC Docket No. 17-108 (July 19, 2017) (citing *Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking, FCC 17-60 (May 23, 2017)) (“Voices 2017 Comments”).

¹⁹ *Id.* at 38 (“Yet, since the 2015 Open Internet Order went into effect on June 12, 2015, the Commission has received approximately 47,279 open Internet informal complaints.”); *Restoring Internet Freedom*, WC Docket 17-108, Order (WCB) (Jul. 17, 2017); Letter from Nancy Stevenson, Deputy Chief, Consumer & Governmental Affairs Bureau, to Carmen Scurato, Director of Policy & Legal Affairs, National Hispanic Media Coalition (Jun. 20, 2017) (on file in FOIA Nos. 2017-565, 2017-577, 2017-638 & 2017-639).

²⁰ *Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking, FCC 17-60 (May 23, 2017), Dissenting Statement of Commissioner Clyburn at 76 (“2017 NPRM”).

²¹ *Safeguarding and Securing the Open Internet NPRM* at ¶ 150.

through 2016, when the Commission consistently sought to impose and enforce open Internet standards.”²²

Not only did the numbers not support a repeal of the *2015 Open Internet Order* in 2017, they also now suggest that the absence of the rules does not work to encourage investment in broadband build out. In 2020, the country learned very quickly about the impact of the digital divide, and even the clear disparities that currently keep certain folks disconnected from broadband due to discriminatory practices. The pandemic and its aftermath has underscored the need for equitable access to broadband. This is why Congress invested over \$40 billion to bolster the ability for internet service providers to create the necessary infrastructure to get every person in America connected to the internet. Should the absence of net neutrality had encouraged investment in broadband, would our government have had to make this historic investment?

Finally, the purpose of the Federal Communications Commission is to promote universal service of communications and telecommunications services to everyone in the United States. It is not to ensure the most favorable conditions for internet service providers to maximize their bottom lines. NHMC agrees with the Commission that “to the extent that our decision might in some cases reduce providers’ investment incentives, we believe any such effects are far outweighed by positive effects on innovation and investment in other areas of the ecosystem.”²³

IV. CONCLUSION

NHMC supports the FCC’s proposed rule to reclassify BIAS as a telecommunications service. The reclassification of BIAS as a telecommunications service is a step towards a digital future that is accessible, equitable, and beneficial for all, particularly for communities in underserved areas. This reclassification represents a pivotal move towards creating a more

²² *Id.*

²³ *Id.* (citing *2015 Open Internet Order*, 30 FCC Red at 5791, ¶ 410).

inclusive, equitable digital landscape for all, especially marginalized communities. Classifying BIAS as a telecommunications service can catalyze digital equity, greater consumer protections, and universal access to reliable high-speed internet.

As we navigate a world increasingly reliant on digital connectivity, it is crucial that regulations evolve to reflect the changing landscape and protect the interests of all users, especially those who have been historically marginalized. The three bright-line rules along with a general conduct standard for providers are safeguards to protect consumers, particularly consumers of color, from discriminatory practices and to ensure fair and equitable access to the internet. “Most importantly, we must prioritize consumers. We must pay attention to communities who have been historically left on the wrong side of the digital divide. While we all risk to lose out by not taking action to ensure that we have proper guardrails in place, it is historically underserved communities who risk to lose the most.²⁴”

NHMC appreciates the opportunity to submit comments. We strongly encourage the FCC to consider our recommendations and points to adopt a framework that ensures a fair, inclusive, and prosperous digital future for all.

²⁴ *Safeguarding and Securing the Open Internet NPRM* (Statement of Commissioner Anna M. Gomez).