BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of: Restoring Internet Freedom	WC Docket No. 17-108

COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION

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I. INTRODUCTION

The California Public Utilities Commission (California or CPUC) submits these comments in response to the Federal Communications Commission's (Commission or FCC) Notice of Proposed Rulemaking (*NPRM*), in which the FCC proposes, among other things, to reverse its 2015 decision to classify Broadband Internet Access Service (BIAS) as a telecommunications service, reinstate the private mobile service classification of mobile BIAS, and eliminate a "catch-all" general conduct standard intended to prevent providers from economic and technical practices that may harm end users and edge providers.[1] The *NPRM* also questions the continuing need for a set of regulations intended to ensure that the Internet remains "open", that is, free of discrimination against or blocking of content (aka the "Open Internet Rules"). Alternatively, it asks whether the Open Internet Rules should be modified to align with the proposed reclassification of BIAS as an information service. The *NPRM* further seeks comment on how reclassification of BIAS to an information service would affect other communications regulatory structures.

The CPUC provides these comments regarding the impact the FCC's proposals would have on the ability of the CPUC and the FCC to perform their central functions, including consequences for the federal Lifeline program, BIAS providers' access to utility poles, consumer privacy rights, and access to the Internet by persons with disabilities. The CPUC urges the FCC to act in a manner that preserves states' ability to

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[1] *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking (rel. May 23, 2017) (*NPRM*).

maximize the privacy rights of their citizens and establish pole attachment access for BIAS providers on a non-discriminatory basis, as well as promote competition and advance universal service.

As a preliminary observation, the CPUC further notes that the FCC has been down this road before in the recent past. Over a multi-year period beginning in 2008, the Commission made two previous runs at developing clear and binding rules governing conduct by providers of BIAS and both times, the Court of Appeals for the District of Columbia Circuit thwarted those efforts. The FCC's third effort to adopt such standards, in the *2015 Open Internet Order,* met with success and established the rules at issue here, which the D.C. Circuit upheld.[2]

The CPUC is mindful of widespread support for rules governing an Open Internet, as was demonstrated through submission of four million public comments in 2014 and 2015. California has followed closely the FCC's efforts to establish Open Internet rules, and participated in several of the previous dockets. In striking down the 2010 Open Internet Rules[3], the D.C. Circuit made clear that the pathway to success for the FCC was Title II of the 1934 Communications Act, and a determination that BIAS is a common carrier service, as defined in federal law. There, the Court said,

> [t]hus, we must determine whether the requirements imposed by the *Open Internet Order* subject broadband providers to common carrier treatment. If they do, then given the manner in which the Commission has chosen to classify broadband providers, the regulations cannot stand … We have little

[2] *USTA v. FCC*, 825 F.3d 674 (D.C. Cir. 2016).

[3] *In the Matter of Protecting the Open Internet, et al.*, GN Docket 09-191, Report and Order, 25 FCC Rcd 17905 (rel. Dec. 23, 2010) (*2010 Open Internet Order*).

> hesitation in concluding that the anti-discrimination obligation imposed on fixed broadband providers has 'relegated [those providers], pro tanto, to common carrier status.'[4]

In light of that history, the CPUC comments here on the impact the *NPRM*'s proposal would have on protecting and promoting an open Internet. The CPUC supports retaining the strong, non-discriminatory Open Internet Rules the FCC adopted in its *2015 Open Internet Order*.[5] These "bright-line" rules, including No Blocking, No Throttling, and No Paid-Prioritization, as well as the enhanced transparency rule and General Conduct rule, are necessary to protect an open Internet and prevent practices that harm consumers and edge providers. As discussed further below, however, given the D.C. Circuit's decision in *Verizon v. FCC*, quoted above, it would seem the current Open Internet Rules can remain viable only if the FCC retains the "telecommunications services" classification for BIAS, providing Title II as a legal foundation for the rules. The FCC's proposal to reverse course and reclassify BIAS as an information service would undermine the very legal authority for the rules that the D.C. Circuit has upheld, and would instead, rely on a legal basis the same court rejected.

Silence on other issues raised in the *NPRM* should not be construed as agreement or disagreement. The CPUC reserves the right to comment further in the reply round.

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[4] *Verizon v. FCC, et al.,* 740 F.3d 623, 650, 655 (D.C. Cir. 2014) (*Verizon*).

[5] *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (rel. Mar. 12, 2015) (*2015 Open Internet Order*) (referred to as the "Title II Order" in the *NPRM*).

II. DISCUSSION

A. Impact of Proposed Information Services Classification for BIAS on California Programs and Other Communications Regulatory Structures

In the *NPRM*, the FCC proposes to reverse its 2015 decision to classify fixed BIAS as a telecommunications service, and reverse its decision to classify mobile BIAS as a commercial mobile service, thus bringing both fixed and mobile BIAS under Title I of the Communications Act. The *NPRM* seeks comment on how the reclassification of BIAS as an "information service" would affect other areas of communications regulation, such as privacy, support for low-income individuals, and broadband deployment.[6] The CPUC has identified several areas which would be affected by the FCC's proposal, as discussed further below.

1. Impact of Proposed Reclassification on Pole Attachment Rights and Safety Enforcement

The FCC currently extends attachment rights to mass market BIAS providers using Section 224 of the 1996 Telecommunications Act[7], which is under Title II. The *NPRM* asks how the FCC should take into account the impact of its proposed reclassification of BIAS as an information service with respect to pole attachments and the FCC's inquiries with respect to preemption under Section 253 of the Act.[8]

States have independent and primary authority, under both energy and telecommunications law, which is to say under both the Federal Energy Regulatory

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[6] *NPRM*, at ¶¶ 63-69.

[7] 47 U.S.C. § 224. Statutory references are to the 1996 Telecommunications Act, unless otherwise noted.

[8] *NPRM*, at ¶ 69.

Commission (FERC) and FCC regulatory regimes, to ensure the safety of the energy and communications infrastructure.[9] The CPUC and California utilities have an obligation under state law to protect the safety and health of the public.[10] Protection of public safety is a core exercise of a state's police powers, and the CPUC has exercised its jurisdiction to ensure the safety of all poles and conduit in California by promulgating rules related to overhead electric and communications facilities (General Order 95) as well as underground electric and communications facilities (General Order 128).[11] The FCC cannot diminish this state police power to protect public safety and welfare, notwithstanding whether it reclassifies BIAS, or otherwise attempts to preempt state action regarding utility poles.

The CPUC also exercises jurisdiction over electric distribution facilities, and has authority to oversee reliability of those facilities, including utility poles. California additionally possesses authority delegated by FERC and implemented by the North American Electric Reliability Corporation (NERC), which cannot be diminished by FCC action.

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[9] The Energy Policy Act of 2005 provides that it shall not "be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard." 16 U.S.C. § 824o(i)(3). California has opted, under the 1996 Telecommunications Act, to regulate pole and conduit attachment pursuant to state law. 47 U.S.C. § 224(c); *see also* 47 U.S.C. § 253(b) (authority reserved in the states to "protect the public safety and welfare"). Likewise, the Cable Communications Policy Act of 1984 grants states jurisdiction over cable service in safety matters. 47 U.S.C. § 556 (a); *see also* Cal. Pub. Util. Code § 768.5 (CPUC authority to regulate cable companies with respect to the safe operation, maintenance, and construction of their facilities).

[10] *See, e.g.*, Cal. Pub. Util. Code § 451.

[11] Available at http://www.cpuc.ca.gov/generalorders/.

Unauthorized, and sometimes hazardous, attachments to poles are a regular occurrence, and in a state like California with some 4.2 million poles, effective policing of pole attachments is a constant challenge. Our concern here is that, notwithstanding these well-established principles, carriers, unintentionally or otherwise, might use a reclassification of BIAS to ignore, avoid, deny or undercut this safety authority. For example, if BIAS were reclassified as an information service, BIAS providers may assert that they are not subject to California's safety regulations. The CPUC urges the FCC to avoid the implication that their actions might in any way change states' ability to regulate pole safety.

Further, if the FCC reclassifies BIAS back to an information service, BIAS providers (at least those that provide solely broadband service) will not have the statutory *right*, under federal law, to nondiscriminatory, just and reasonable access to the poles and conduit that cable providers and telecommunications carriers enjoy. BIAS providers must receive nondiscriminatory access to utility support structures, including poles and conduits, at just and reasonable rates, terms and conditions. Last year, the CPUC conducted a comprehensive review of the California telecommunications market, and analyzed the state of competition in various state sub-markets.[12] The CPUC found that competitive bottlenecks and barriers to entry in the telecommunications network limit new network entrants and may raise prices for some telecommunications services above

[12] *See*, In the Matter of State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions Raised in the Limited Rehearing of Decision 08-09-042, Investigation (I. 15-11-007) [Decision (D.) 16-12-025] 2016 Cal. PUC LEXIS 683 (issued Dec. 8, 2016).

efficiently competitive levels.[13] One particular bottleneck is access to utility poles, where the CPUC found that its safety mandate intersects, and must be reconciled with, its goal of a competitive market.[14] All forms of telecommunications, including broadband, require access to poles and conduits. Access to poles, conduits, and rights-of-way controlled by incumbent local exchange carriers and other entities may affect cost, feasibility, and timing of constructing and offering broadband services.[15]

In this *NPRM*, the FCC does not propose new rules regarding pole attachment rights nor regarding access to any other utility support structures. Thus it is not clear from the *NPRM* how the FCC would extend pole attachment rights currently provided for under Section 224 while operating in a Title I environment. Section 224 provides that a "utility shall provide a cable television system *or any telecommunications carrier* with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it" (emphasis added); *see also* 47 U.S.C. § 153(51) ("[t]he term 'telecommunications carrier' means any provider of telecommunications services"). Given the FCC's finding that BIAS is a telecommunications service, BIAS providers are "telecommunications carriers" and, as such, have a right to attach to poles and utilize conduit under Section 224 of the Act. While the FCC forbore from many of the common carrier provisions of Title II, it specifically did *not* forebear from the pole attachment provisions of Section 224.[16]

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[13] CPUC D.16-12-025, slip op. at p. 189, Finding of Fact No. 24.

[14] *Id.*, slip op. at p. 3.

[15] *Id.*, slip op. at p. 85.

[16] *2015 Open Internet Order*, at ¶¶ 56, 456, 478-485.

If the FCC reclassifies BIAS back to an information service, BIAS providers (at least those that provide solely broadband service) will not have the statutory *right* to nondiscriminatory access to poles and conduit at just and reasonable rates, terms, and conditions that cable providers and telecommunications carriers enjoy. Given that the FCC remains bound by the statutory language in Section 224 that restricts pole attachments to cable providers and Title II "telecommunications carriers", the FCC would have difficulty guaranteeing this right if it decides to reclassify BIAS service as a Title I information service.

Further, reclassifying BIAS back to Title I could affect the CPUC's ability to provide nondiscriminatory access to poles to BIAS providers. As noted above, the CPUC has elected to administer the federal pole attachment statute,[17] and intends to play an important role in promoting competition by acting to guarantee non-discriminatory access to essential parts of the network, including poles, conduits, and rights-of-way. The CPUC recently opened a comprehensive proceeding on right-of-way access, including the implementation of nondiscriminatory pole attachment rights for BIAS providers pursuant to the CPUC's reverse preemption.[18] The CPUC is aware of existing BIAS providers in California that may only attach under commercial agreements to the extent that pole owners will allow them to, with such attachments priced well above the cost-

[17] *See*, *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, et al*., CPUC Rulemaking (R.) 95-04-043, Investigation (I.) 95-04-044, 1998 Cal. PUC LEXIS 879; 82 CPUC 2d 510 (1998).

[18] *Order Instituting Investigation into the Creation of a Statewide Database or Census of Utility Poles and Conduit in California and Order Instituting Rulemaking Regarding Access by Competitive Communications Providers to California Utility Poles and Conduit Consistent with the Commission's Safety Regulation*, CPUC I.17-06-027, R.17-06-028, adopted June 29, 2017.

based rates available to cable television corporations and telecommunications carriers (including CMRS providers) that have access rights under state and federal law. The CPUC intends to craft a non-discriminatory regime that ensures that all telecommunications providers, including BIAS providers, have nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by utilities under Section 224.[19]

In its pole proceeding, the CPUC seeks to address matters of safety as well as competition. The CPUC is aware of a number of instances where overloaded poles and/or insufficiently maintained attachments have caused fires and other accidents, resulting in millions of dollars of property damage and human dislocation, and in multiple cases directly or indirectly causing fatalities. Our awareness of these safety issues has increased at the same time that advanced telecommunications technologies have driven demand for access to poles and conduit to unprecedented levels. Because safety often hinges on a greater awareness of conditions in the field, the CPUC has initiated a pole data management system to help us understand the deployed infrastructure and the problems it presents.

The proposal to reclassify BIAS to Title I without a successful alternative for pole attachment rights under federal law could delay or harm BIAS deployment and that, in turn, could negatively affect competition in California and throughout the nation. Section 224 of the Communications Act reserves to both the FCC and to the states, where the

[19] In comments submitted in two other FCC dockets (WC Docket No. 17-84 and WT Docket No. 17-79) on June 15, 2017, the CPUC apprised the FCC of this CPUC proceeding.

state has “reverse pre-empted” the FCC, authority grounded in Title II of the Act over access to poles and rights-of-way. Given the language in Section 224, it is difficult to see how the FCC can assure nondiscriminatory access to poles if it reclassifies BIAS as an information service under Title I of the Act.

2. Impact of Proposed Reclassification on the Federal Lifeline Program

The *NPRM* seeks comment on a proposal to maintain support for BIAS in the federal Lifeline program after reclassification, while also expanding federal Lifeline subsidies to support broadband infrastructure deployment:

> We propose to maintain support for broadband in the Lifeline program after reclassification. In the Universal Service Transformation Order, the Commission recognized that “[s]ection 254 grants the Commission the authority to support not only voice telephony service but also the facilities over which it is offered” and “allows us to... require carriers receiving federal universal service support to invest in modern broadband-capable networks.” Accordingly, as the Commission did in the Universal Service Transformation Order, we propose requiring Lifeline carriers to use Lifeline support “for the provision, maintenance, and upgrading” of broadband services and facilities capable of providing supported services. We seek comment on this proposal. We also seek comment on any rule changes necessary to effectuate this change in our underlying authority to support broadband for low income individuals and families.[20]

[20] *NPRM*, at ¶ 68.

a) The FCC Should Include Broadband Internet Access Services in the Federal Lifeline Program and Require Federal Lifeline Providers to Offer Voice Telephony Services

The CPUC supports the FCC's proposal to maintain support for BIAS in the federal Lifeline program. Broadband is a necessity in this day and age and it is critical for low-income households to have access to BIAS to meaningfully participate in our society. There still exists a significant difference between the percentage of all households (76.7%) with high-speed Internet service compared to low-income households.[21] Close to 60% of low-income households with incomes of less than or equal to 135% of the Federal Poverty Guideline (FPG) had access to high-speed Internet service.[22]

Including BIAS as a federal Lifeline supported component of universal service would also expand the California LifeLine Program's service offerings. The California LifeLine Program subsidizes voice telephony service, but allows California LifeLine service providers to add other services, such as BIAS, and features to its service offerings on a voluntary basis. Prior to April 2016, when the FCC officially added and adopted minimum service standards for BIAS in the federal Lifeline program[23], the majority

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[21] *See* 2016 Universal Service Monitoring Report, CC Docket No. 96-45, et al., Tables 6.9 and 6.12 at pp. 54, 57, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf.

[22] *See* 2016 Universal Service Monitoring Report, Table 6.12 at p. 57. Approximately 70% of low-income households with incomes greater than 135% of the FPG, but less than or equal to 200% of the FPG had access to high-speed Internet service.

[23] *See In the Matter of Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42, 09-0197, and 10-90, Third Report and Order, and Order on Reconsideration, FCC 16-38, (rel. April 27, 2016) (*2016 Lifeline Order*).

(61%)[24] of California LifeLine participants were already benefitting from bundled (i.e., telephone, text messaging, and broadband services) service offerings. By the end of May 2017, that figure had grown to 66%.[25] The percentage of households in California with high-speed Internet service increased from 80.0% to 81.3% between 2014 and 2015.[26] Nonetheless, both state and federal Lifeline programs can do more to ensure affordable access to BIAS.

The CPUC continues to oppose shifting federal Lifeline funding now allocated for voice telephony service to subsidizing BIAS, or allowing federal Lifeline providers to offer "BIAS-only" service. The CPUC maintains its previous recommendation for the FCC to continue to require federal Lifeline providers to offer voice telephony service. As the chart below demonstrates, nationwide, the number and percentage of households subscribing to voice telephone services continues to increase.[27] Telephone service subscribership increased by about 13% between 2006 and 2016. This data demonstrates a continuing need for federal Lifeline subsidies for voice telephony service.

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[24] *See* California LifeLine Participation Counts for 2015, available at http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Consumer_Programs/California_LifeLine_Program/2014XeroxLifeLineSubscriberCounts20141815.xls. Data as of the end of March 2016. Volume excludes Telscape Communications, Inc. (now called truConnect Communications, Inc.) because it does not offer broadband service to California LifeLine participants.

[25] *See* California LifeLine Participation Counts for 2017, available at http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Communications/ServiceProviderInfo/CDLifeLineNumbering/2017%20XeroxSubscriberCountsasof%20060617.xls.

[26] *See* 2016 Universal Service Monitoring Report, Table 6.10 at p. 55.

[27] *See* 2016 Universal Service Monitoring Report, Table 6.1 at p. 47.

Telephone Service Subscribership		
	Number of Households (millions)	Percentage of Households
November 2006	108.8	93.4
July 2011	114.1	95.6
July 2012	117.0	96.1
July 2013	118.3	96.1
July 2014	119.0	96.0
July 2015	121.7	96.3
July 2016	123.3	97.1

b) Common Carrier Classification of BIAS Provides the Appropriate Legal Authority to Include BIAS in the Federal Lifeline Program

The FCC added BIAS into the federal Lifeline program after it reclassified BIAS as a telecommunications service in 2015. Given that Section 254(c) defines universal service as an evolving level of "telecommunications services", the FCC may not have the legal authority to adopt minimum service standards for BIAS unless it is classified as a telecommunications service. Based on the existing federal Lifeline rules, the FCC will stop subsidizing voice telephony service beginning on December 1, 2021, but will be subsidizing BIAS, which may or may not include voice telephony service.[28] This state of uncertainty could jeopardize the delivery of subsidized service through the federal Lifeline program. The CPUC continues to support including BIAS in the federal Lifeline program, and notes that the current common carrier classification of BIAS provides appropriate legal authority to do so.

[28] There is an exception to this rule, which is the situation whereby there is only one Eligible Telecommunications Carrier (ETC) in a census block.

c) The FCC Should First Clarify and Provide Details of its Proposal to Use the Low-Income Support to Deploy Broadband Infrastructure and Then Seek Comments

The *NPRM* also proposes to use federal Lifeline subsidies to support broadband infrastructure deployment. Since its inception in 1985, the federal Lifeline program has provided a discount on telecommunications services for qualified low-income households.[29] Currently, the federal Lifeline subsidy only supports the federal Lifeline "service"; support is not used for providing, maintaining, or upgrading of facilities capable of providing the federal Lifeline supported services.

The *NPRM* does not provide concrete details for its proposal to subsidize broadband infrastructure, which raises several questions in terms of its impact on universal service in general, and on California. Absent clarification from the FCC, the *NPRM* leaves stakeholders uncertain of what the FCC's proposal actually entails. Here are some examples of questions that arise from the proposal's lack of clarity and details:

1. Will (and to what extent will) the proposal shift the low-income universal service program away from low-income households by eliminating the discounts to federal Lifeline participants and instead subsidizing corporations? Will (and to what extent will) the proposal shift low-income universal service funds towards people living in rural areas be they low-income or not? Will this proposal place the financial burden on the low-income households nationwide who have the least financial capacity to pay? How will low-income households avoid paying the universal service charge if the federal Lifeline program no longer directly benefits them? Does the FCC have an estimate in terms of the revenue increase (or decrease) resulting from its proposal?
2. Will the definition of a low-income household differ based on whether the household is located in a rural or urban area?

[29] 2016 Universal Service Monitoring Report, at p. 22.

3. Will only facilities-based providers receive the federal Low-Income Support? If yes, will current federal Lifeline participants of resellers be able to transfer their discounts to another provider?
4. How will the FCC apportion the federal Lifeline support between services and facilities?
5. What will happen to wireless resellers that do not own their own facilities?
6. Will the focus of the federal Low-Income Support only be for rural areas or federally recognized Tribal lands? If not, how will the FCC apportion the federal Lifeline support between urban and rural areas?
7. Will the current participants of the wireless resellers or those living in urban areas still be able to afford communication services without the federal Lifeline discount? Would any of them go without communications services altogether? Does the FCC have any data in terms of potential impact of its proposal on current participants?
8. For consumers living in unserved areas for broadband service, what percentage and volume of them (by state) currently qualifies for the federal Lifeline program? What do they currently pay for communications services? Are any of them receiving the federal Lifeline discounts? Does the FCC have any data in terms of affordability of communications services and eligibility for the federal Lifeline program for this type of consumer?
9. How would this proposal affect the other universal service programs?
10. Would increasing the funds for High-Cost Support (while avoiding decreasing the Low-Income Support) be possible as an alternative?
11. Will there be any requirements, standards, and conditions for receiving federal Low-Income Support for infrastructure deployment?
12. How will the FCC enforce and audit these requirements, standards, and conditions? Will there be performance standards or progress reports for the facilities-based providers receive the federal Low-Income Support for infrastructure deployment?
13. How will the FCC measure the effectiveness of diverting the federal Low-Income Support for infrastructure deployment? What will success of the federal Lifeline program look like if this proposal was adopted?
14. Once the broadband infrastructure is deployed in an area, can the federal Low-Income Support be used for lowering service rates or for a reseller to offer discounted broadband services?

15. Will the FCC reconsider or rescind any of the rules that it established in FCC 16-38 in furtherance of this proposal?

The CPUC encourages the FCC to clarify and provide substantive details of its proposal to use the Low-Income Support to deploy broadband infrastructure in order to enable stakeholders to provide the FCC with meaningful comments. The FCC should refrain from making a major policy changes to the federal Lifeline program in this *NPRM*, and instead issue a different notice of proposed rulemaking in the Lifeline and Link Up Reform and Modernization Docket to provide the clarity needed to evaluate this proposal. The FCC should consider hosting workshops and public participation hearings to facilitate an open, inclusive, and transparent process for developing federal Lifeline program rules.

d) Areas of Concern if the FCC Intends to Only Use the Low-Income Support to Deploy Broadband Infrastructure or to Limit Federal Lifeline Subsidies to Rural Areas

Despite the vague proposal to use federal Lifeline subsidies to support broadband infrastructure deployment, California here identifies three main areas of concern if the FCC intends to only use (or use a major portion of) the Low-Income Support to deploy broadband infrastructure or to limit the federal Lifeline broadband subsidies to rural areas. If this is the FCC's intention, then such a major policy shift could have dramatic consequences.

(1) Participation in the Federal and California LifeLine Programs Could Substantially Decline

First, the CPUC is concerned that the FCC's proposal could significantly decrease federal Lifeline and California LifeLine program participation. As of the first quarter of 2017, California continued to have the largest percentage (about 17%) of the federal Lifeline participants in the nation.[30] According to the FCC's 2016 Universal Service Monitoring Report, about 68% (8.57 million) of the federal Lifeline participants received the discounted services from non-facilities based providers (also known as resellers).[31] Non-facilities based wireless service providers receive most of the federal Lifeline and California LifeLine funds. By the end of 2015, 70% of the California LifeLine participants had discounted wireless services[32]; by 2016 the percentage increased to 76% of the 2.16 million California LifeLine participants.[33] The CPUC launched California LifeLine wireless telephone services in mid-March 2014. It took just one month thereafter to reverse the trend of 81 consecutive month-to-month decreases in program participation. By May 2015, participation in the California LifeLine Program more than

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[30] *See*, Universal Service Admin. Co. (USAC) Lifeline Subscribers by State or Jurisdiction, available at http://www.usac.org/about/tools/fcc/filings/2017/Q3/LI08%20Lifeline%20Subscribers%20by%20State%20or%20Jurisdiction%20-%20January%202017%20through%20March%202017.xlsx.

[31] *See*, 2016 Universal Service Monitoring Report, Table 2.8 at p. 30.

[32] *See*, California LifeLine Participation Counts for 2015, available at http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Consumer_Programs/California_LifeLine_Program/2014XeroxLifeLineSubscriberCounts20141815.xls.

[33] *See*, California LifeLine Participation Counts for 2016, available at http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Consumer_Programs/California_LifeLine_Program/2016%20XeroxSubscriberCountsasof%20010517.xls.

doubled. As evident in California and in the rest of the nation, wireless resellers have eagerly marketed to low-income households to enroll them into state and federal low-income programs.

Further, California's population predominantly resides in urban areas, while less than 6% of California's population resides in rural counties.[34] The California LifeLine Program's eligibility criteria are the same throughout California irrespective of whether the participant lives in an urban or rural area. For example, the California LifeLine Program will consider a California LifeLine participant who is on CalFresh (California's Supplemental Nutrition Assistance Program for low-income people) and is currently living in a rural area as a low-income person even if that same person subsequently moves to an urban area two months later. If the FCC's proposal is intended to limit Low-Income Support to rural areas only, this may result in a significant decrease in program participation.

(2) The FCC's Proposal Could Negatively Impact Low-income Households' Ability to Afford Communications Services

Second, if low-income households no longer directly receive the support from the universal service program, then they will be subject to the universal service surcharges and full retail rates. Program participants are exempt from paying the universal service surcharges.

[34] Data derived from 2010 Decenial Census - U.S. Census Bureau and household data from California Department of Finance Demographic Estimates 2017.

Additionally, all California LifeLine wireless telephone service providers offer unlimited minutes and text messages for free to California LifeLine participants. Losing access to this service offering would require a low-income household to purchase wireless telephone services at full retail rates, which, at a minimum, could cost $11 per month[35] and from $20 to $25 for wireline flat-rate local telephone service.[36] California LifeLine wireline discounted rates range from about $6 to $7.[37]

(3) The Proposal raises concerns about the viability of federal Universal Service Fund programs

(a) Risk the program will be underfunded

Finally, the CPUC has concerns about the continued viability of the federal Universal Service Fund programs, which are supported by contributions from "*every telecommunications carrier* that provides *interstate telecommunications*… [and] any other provider of interstate telecommunications…if the public interest so requires."[38] The CPUC continues to be concerned about the inequity in the contribution base and the potential inadequate funding for universal service. The CPUC maintains its previous recommendations that universal service funds be spent prudently and for the FCC to ensure that ratepayers are not unduly burdened in supporting these programs. The FCC

[35] *See* Compare Cell Phones, Cell Phone Plans & Cell Phone Carriers - WhistleOut and select BYO, no data, unlimited minutes, and unlimited messages (last visited July 7, 2017).

[36] *See* CPUC Summary of Uniform Regulatory Framework (URF) Carrier Residential Service Rate Changes, available at http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Service_Provider_Information/Video_Franchising/URF%20Carrier%20Reported%20Rates%20Jan%202016.pdf.

[37] *Id.*

[38] 47 U.S.C. § 254(d) (emphasis added).

should immediately resolve the contribution issue for BIAS as part of the Universal Service Fund programs. It is unclear how customers of voice telephony services can be equitably required to support a service which itself is immune from the surcharge – either at the state or federal levels. Section 254(b) states that "all providers of telecommunications service should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service."[39] Since the FCC intends for the Universal Service Fund programs to support BIAS, providers of both voice telephony services and BIAS should be required to contribute to the Universal Service Fund. It would be inequitable for customers of voice telephone services to subsidize a service that does not contribute to the Universal Service Fund. To do otherwise would make BIAS a universal service without making its support a universal obligation.

(b) Potential impact on other Universal Service Programs

Aside from the federal Lifeline program (Low-Income Support), the FCC oversees three other main federal universal service programs (High-Cost Support, Schools & Libraries, and Rural Health Care). The High-Cost Support already provides funds for infrastructure deployment. According to the FCC's 2016 Universal Service Monitoring Report, the FCC used about $4.5 billion (comprising 54% of the total universal service payments) of the universal service funds for High-Cost Support.[40] In contrast, the FCC paid about $1.5 billion (comprising 18% of the total universal service payments) for

[39] 47 U.S.C. § 254(b)(1)(4).

[40] *See* 2016 Universal Service Monitoring Report, Table 1.10 at p. 19.

Low-Income Support for a quarterly average of approximately 12.6 million federal Lifeline participants nationwide.[41] About $223 million of the $1.5 billion for Low-Income Support subsidized the federal Lifeline participants in California.[42]

As of December 31, 2015, all California households lacked reliable access to mobile broadband at 25/3 Mbps.[43] Moreover, 63% of rural California households lacked access to wireline broadband at 25/3 Mbps, in contrast to 3% of urban California households.[44] Overall, the FCC found that 10% of the national population (34 million Americans) lacked access to fixed broadband services at 25/3 Mbps.[45]

Despite tens of billions of universal service dollars spent in several years (and other sources[46] of ratepayer dollars) for infrastructure deployment, the FCC continues to find that deployment of broadband networks is not occurring in a reasonable and timely basis.[47] The CPUC questions how many more billions of ratepayer dollars would be needed to achieve the desired level of infrastructure. Low-Income Support should not be

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[41] *See* USAC 2015 Annual Report, http://www.usac.org/_res/documents/about/pdf/annual-reports/usac-annual-report-2015.pdf.

[42] *See* 2016 Universal Service Monitoring Report, Table 1.9 at p. 19.

[43] *See* California Advanced Services Fund Annual Report for January 2016-December 2016, at pp. 43-44, available at ftp://ftp.cpuc.ca.gov/Telco/CASF/Reports%20and%20Audits/CASF%202016%20Annual%20Report.pdf.

[44] *Id.*

[45] *See In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 15-191, 2016 Broadband Progress Report, FCC 16-6, at ¶¶ 79, 86, 88 (rel. Jan. 29, 2016) (2016 Broadband Progress Report), available at https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2016-broadband-progress-report. *See also*, https://apps.fcc.gov/edocs_public/attachmatch/DOC-337471A1.pdf, at p. 1.

[46] *See, e.g.*, list of Telecommunications Loan and Grant Programs offered at https://www.rd.usda.gov/programs-services/all-programs/telecom-programs (last visited July 7, 2017).

[47] *See*, 2016 Broadband Progress Report, at ¶ 119.

sacrificed to essentially augment the High-Cost Support, and we should not risk the use of universal service dollars to pay for other federal debts. Perhaps, out-of-the box thinking and partnerships will get us "there" instead.[48]

3. Effect of Proposed Reclassification on Privacy Rights

In the *2015 Open Internet Order*, the FCC did not forbear from Section 222 of the Act, which imposes a duty on every telecommunications carrier to protect the confidentiality of its customers' private information, and imposes restrictions on carriers' ability to use, disclose, or permit access to customers' proprietary network information without their consent. The FCC found that this section remains necessary to protect consumers, and concerns about the privacy of personal information may restrain consumers from making full use of BIAS and the Internet, thus lowering adoption and decreasing consumer demand.[49]

In October, 2016, the FCC adopted consumer privacy rules for customers of telecommunications services, including broadband.[50] In that order, the FCC announced its intent to continue to preempt state privacy laws, including data security and data breach laws, *only to the extent that they are inconsistent* with any rules adopted by the FCC. The FCC specifically noted that, "[t]his limited application of our preemption

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[48] *See* https://www.cnet.com/news/pbs-is-made-possible-by-carriers-like-t-mobile/; *see also*, https://www.bloomberg.com/news/articles/2017-07-11/microsoft-pushes-fast-internet-for-u-s-heartland-to-bridge-broadband-gap.

[49] *2015 Open Internet Order*, at ¶¶ 462-464.

[50] *In the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, Report and Order, 31 FCC Rcd 13911 (rel. Nov. 2, 2016) (*2016 Privacy Order*).

authority is consistent with our precedent in this area and with our long appreciation for the valuable role the states play in protecting consumer privacy."

Before the rules could take effect, on April 4, 2017, President Donald Trump signed a congressional resolution under the Congressional Review Act that rescinded the FCC's privacy rules.[51] Subsequently, several states initiated efforts to protect the privacy of broadband customers in their states. On June 19, 2017, California Assemblyman Ed Chau introduced Assembly Bill (A.B.) 375 to require Internet service providers to get permission from consumers before using, disclosing, selling, or allowing access to customer information.[52]

Notwithstanding the repeal of the FCC's privacy rules, the CPUC is concerned that reclassifying BIAS back to an information service would remove the application of Section 222 privacy protections to BIAS service, and may be problematic to California and other states' attempts to introduce broadband privacy rules. And while the CPUC appreciates that reclassification of BIAS as an information service would make some of the providers subject to Federal Trade Commission privacy rules again, the FTC's legal framework does not require affirmative opt-in consent in order for companies to collect browsing history and application usage. A provider would only have to let a customer opt-out — something that consumers rarely do and which companies routinely make it

[51] On June 29, 2017, the FCC reinstated its pre-*2016 Privacy Order* rules that applied to wireless and wireline telephone carriers.

[52] Available at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB375.

hard to do. Additionally, while the FCC's rules would have protected consumers before they were harmed, the FTC can act only *after* harm has already occurred.

The CPUC supports strong preventative measures to protect consumers' privacy rights, and opposes any action that may hinder states' efforts to implement their own strong privacy protections for their citizens. As the FCC recognized in its *2016 Privacy Order*, states are "'active participants in ensuring that [their] citizens have robust privacy protections' and it is critical that they continue that work."[53] The FCC should not take any action that may preclude state authorities from developing privacy standards based upon independent state law.

4. Effect of Proposed Reclassification on Access to the Internet by Persons With Disabilities

In the *2015 Open Internet Order*, the FCC did not forbear from Sections 225, 255, and 251(a)(2), enabling individuals with disabilities to realize the benefits of Internet service by preventing barriers to access. These sections mandate the availability of interstate and intrastate Telecommunications Relay Services to the extent possible and in the most efficient manner to individuals in the United States who are deaf, hard-of-hearing, deaf-blind, and who have speech disabilities, and require telecommunications service providers and equipment manufacturers to make their services and equipment accessible to individuals with disabilities, unless not readily achievable. People who are blind, hard of hearing, deaf-blind, and who have speech disabilities increasingly rely upon Internet-based video communications, both to communicate directly (point-to-

[53] *2016 Privacy Order*, at ¶ 324, citing Letter from Kathleen McGee, Chief, Bureau of Internet and Technology, New York Attorney General, to Chairman Tom Wheeler, FCC, WC Docket No. 16-106 at 4 (filed June 30, 2016).

point) with other persons who are deaf or hard of hearing who use sign language and through video relay service.

Section 225 maintains the FCC's ability to ensure that individuals who are deaf, hard-of-hearing, deaf-blind, and who have speech disabilities can engage in service that is functionally equivalent to the ability of a hearing individuals who do not have speech disabilities to use voice communication services. The CPUC recently received a letter from the California Telecommunications Access for the Deaf and Disabled Administrative Committee (TADDAC) dated July 14, 2017, asserting that the FCC's proposed change would adversely impact TADDAC's mission to provide functionally equivalent telecommunication services to vulnerable customers, including disabled individuals and senior citizens. TADDAC also asserts that the proposed change would violate the Americans with Disabilities Act, as for example, in rural areas lacking sufficient access to BIAS there is no substitute or functional equivalent for copper wires which carry 911, closed captioning and TTY services. A copy of the letter is attached hereto.

In the *2015 Open Internet Order*, the FCC acknowledged that a variety of accessibility requirements already apply in the context of broadband Internet access service, including under the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA).[54] However, as the FCC noted, the requirements of

[54] *See*, *2015 Open Internet Order*, at ¶ 473, citing Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (codified in various sections of 47 USC) (CVAA), *amended by* Pub. L. No. 111-265, 124 Stat. 2795 (2010).

Sections 255 and 251(a)(2) of the 1996 Telecommunications Act, and the FCC's implementing rules, are incremental to the requirements of the CVAA:

> We are persuaded by the record of concerns about accessibility in the context of broadband Internet access service that we should not rest solely on the protections of the CVAA, however. Thus, for example, outside the self-described scope of the CVAA, providers of broadband Internet access services must ensure that network services and equipment do not impair or impede accessibility pursuant to the sections 255/251(a)(2) framework. In particular, we find that these provisions and regulations are necessary for the protection of consumers and forbearance would not be in the public interest.[55]

The CPUC supports retaining the protections for persons with disabilities embodied in Sections 225, 255, and 251(a)(2), enabling individuals with disabilities to realize the benefits of Internet service by preventing barriers to access. The FCC's proposal to reverse the *2015 Open Internet Order's* common carrier classification for BIAS would remove BIAS providers from obligations specific to Sections 225, 255, and 251(a)(2), potentially impairing the rights and abilities of persons with disabilities to access the Internet. The CPUC urges the FCC to retain these protections and ensure BIAS providers carry out their statutory obligations under the Act with regard to providing service to persons with disabilities.

B. The CPUC Supports the 2015 Open Internet Rules

Though the *NPRM* does not propose vacating the "bright line" rules or the transparency rule, it does question whether such rules are necessary to protect and maintain Internet freedom. The CPUC strongly supports the existing Open Internet

[55] *Id.*, at ¶ 474.

Rules, and urges the FCC to retain the rules.[56] One of the major goals of Congress in enacting the Telecommunications Act of 1996 (Act) was to open local telecommunications service markets to competition. In the *2015 Open Internet Order*, the FCC found that an open Internet promotes innovation, free expression, infrastructure deployment, as well as competition.[57] The FCC also found support for the proposition that the Internet's openness continues to enable a "virtuous [cycle] of innovation in which new uses of the network—including new content, applications, services, and devices—lead to increased end-user demand for broadband, which drives network improvements, which in turn lead to further innovative network uses."[58]

The CPUC agrees. As the CPUC previously noted in comments to the FCC, broadband transmission facilities present the most likely bottlenecks that could be used to effectively limit consumer choice among content, applications, services, and devices.[59] In addition, a free and open Internet is critical to areas such as energy, education, medicine, and public safety. Given the importance of an open Internet in our society, strong non-discriminatory net neutrality rules are necessary to ensure consumers can enjoy unfettered access to the Internet.

As the FCC found in its *2015 Open Internet Order*, BIAS providers have the incentive and the tools to deceive customers, degrade content, or disfavor content they do

[56] The FCC hints at potential modifications to the rules, but offers no concrete proposals for California to address.

[57] *2015 Open Internet Order*, at ¶ 76.

[58] *2015 Open Internet Order*, at ¶¶ 76-102.

[59] Reply Comments of the CPUC, at p. 5, *In the Matter of Preserving the Open Internet, et al.*, GN Docket No. 09-191, WC Docket No. 07-52, Notice of Proposed Rulemaking (filed April 26, 2010).

not like.[60] The Open Internet Rules are grounded on the principle that no actor – government or private –should interfere with the full, lawful use of the Internet. The FCC found that blocking, throttling, and paid prioritization practices invariably harm the open Internet, and accordingly banned them. The FCC also established the General Conduct standard, the purpose of which is to allow the FCC to prevent practices that violate the no-unreasonable interference/disadvantage standard.

CPUC supports retaining the current Open Internet Rules adopted in the *2015 Open Internet Order*, including the General Conduct standard.[61] These rules were adopted only two years ago; not enough time has passed to conclude that they are not working as intended and it is unclear what has changed since the FCC adopted these rules in 2015 that would support a conclusion that the rules are no longer needed or require modification. The *NPRM* expresses support for the notion that consumers should have access to the content, applications, and devices of their choosing as well as meaningful information about their service, all without deterring the investment and innovation that has allowed the Internet to flourish. It does not, however, explain how these goals could be achieved without the Open Internet Rules in place. Moreover, as the *2015 Open*

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[60] *See e.g.*, *2015 Open Internet Order*, at ¶¶ 75, 78-101.

[61] The General Conduct rule is a necessary tool to prevent practices that may harm the Open Internet. The NPRM claims that the standard is "vague"; however, the *2015 Open Internet Order* provides ample discussion on the purpose of the rule –to prevent the exercise of gatekeeper power through a variety of economic and technical means that may harm end users and edge providers –and sets out numerous factors regarding application of the rule, such that carriers can reasonably discern whether certain practices would violate the rule. As the D.C. Circuit Court stated in upholding the rule, "[g]iven that 'we can never expect mathematical certainty from our language,' those sorts of descriptions suffice to provide fair warning as to the type of conduct prohibited by the General Conduct Rule." *USTA v. FCC*, 825 F.3d 674, at 737, citing *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972).

Internet Order discusses, the absence of strong anti-discriminatory rules could undermine critical infrastructure and public safety.[62] For example, without non-discriminatory rules, providers of emergency services or public safety agencies might have to pay extra for their traffic to have priority. If states, cities, and counties were required to pay for priority access, their ability to provide comprehensive, timely information to the public in a crisis could be profoundly impaired.[63]

Eliminating the rules or modifying them to limit review of discriminatory conduct to after-the-fact complaints creates additional risk: the FCC could well become mired in fact-finding unique to every case, with heavily litigated outcomes as was seen with review of interconnection agreements carriers negotiated pursuant to Sections 251 and 252 of the 1996 Telecommunications Act. Eliminating the rules or lowering the bar against discriminatory conduct could inject uncertainty in the market and create unequal bargaining power between parties. For these reasons, the CPUC urges the FCC to retain the Open Internet Rules in their entirety, without modification.

1. The FCC's Reliance on Title II is on Firm Legal Ground

If the FCC wishes to retain the current Open Internet Rules, as the *NPRM* indicates, and not run afoul of the D.C. Circuit's *Verizon* holding, the Commission has no alternative but to retain the current telecommunications service classification for retail BIAS and commercial mobile service classification for mobile BIAS. Reversing these

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[62] *See, e.g.*, *2015 Open Internet Order*, at ¶¶ 114, 126, 150.

[63] *See*, *2015 Open Internet Order*, at ¶ 126, noting commenters' concerns about paid prioritization and citing to an *ex parte* letter from then-CPUC Commissioner Catherine Sandoval, "asserting that paid prioritization undermines public safety and universal service…."

classifications to information service and private mobile service status, respectively, would undermine legal support for the rules. In the *Verizon* case, the D.C. Circuit Court of Appeals determined that the anti-discrimination and anti-blocking rules constituted *per se* common carrier obligations. However, because the FCC had classified broadband transport and access service as an "information service," the Court said, the Commission could not impose *per se* common carrier obligations on those providers.[64] Because broadband Internet access service was not classified as a "telecommunications service", the Court struck down most of the FCC's rules, keeping intact only the rule pertaining to carrier transparency.

Given the D.C. Circuit's *Verizon* decision, for the current Open Internet Rules to remain viable, the FCC must retain the "telecommunications services" classification for BIAS, providing a common carrier foundation for these common carrier rules, as the Court held. Although the *NPRM* asks whether there are other sources of independent legal authority that might be used to support the Open Internet Rules, neither the *NPRM* nor any party to the FCC's previous proceedings has yet advanced any credible legal theories using the FCC's Title I authority that would survive judicial scrutiny.[65]

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[64] *Verizon*, 740 F.3d at 637, 649-650.

[65] The *NPRM* also asks whether Section 230 gives the FCC the authority to retain any rules that were adopted in the *2015 Open Internet Order*. Even if the FCC could rely on Section 230(b) as a delegation of authority, rather than a statement of policy –a questionable proposition as a reviewing court may not grant deference to the FCC's proposed reinterpretation given the language of the statute– reliance solely on Section 230(b) while reclassifying BIAS to an information service presents the same problem the FCC had when it attempted to rely on Section 706 and the information service classification. The issue for the D.C. Circuit, as noted above, was not that the FCC lacked authority under the Act to regulate broadband service, but rather that the FCC had curtailed its options by classifying the services as an "information service." The FCC cannot impose common carrier obligations, such as the anti-blocking and anti-discrimination rules, upon BIAS providers absent a telecommunications service classification.

Legal support for the Open Internet Rules aside, an FCC decision to reverse its 2015 decision and reclassify the broadband pipe back to an information service is not without its own risks, both in the courts and in the marketplace. The *2015 Open Internet Order* is very thorough, well-supported, and well-reasoned, and the FCC may have difficulty explaining its change in policy shift, undertaken when the rules have been in effect such a short time. To the extent alleged declining investment is the impetus for the FCC to reverse its 2015 decision, CPUC Staff has found no obvious trend regarding broadband investment in California. The CPUC also notes conflicting analyses by respectable economists both as to whether there has been any significant impact on broadband investment and whether such impact is attributable to Title II treatment of BIAS. Further, in the *2015 Open Internet Order*, the FCC found that prior versions of the economic studies cited in this NPRM contained several substantial analytical flaws, calling their conclusions into question.

The CPUC appreciates the FCC's efforts to balance the need to maintain Internet openness with the investment necessary to expand the availability and adoption of broadband service across the nation. At the very least, however, the CPUC believes it may be too soon to make determinations regarding investment, or to attribute any purported decline solely to the Title II classification of BIAS. At a minimum, the FCC should wait to develop a sufficient record in order to evaluate the full effects of Title II on investment.

2. The FCC Should Retain Section 706 as Additional Legal Support for the Open Internet Rules

In addition to Title II, the *2015 Open Internet Order* relied on Section 706 of the Telecommunications Act to establish no-blocking and no-unreasonable-discrimination rules as well as the transparency rule. The current *NPRM* asks whether the FCC should reverse its finding that Section 706 constitutes a delegation of regulatory authority (and instead interpret that section as hortatory).

The FCC should retain Section 706 of the Act as additional legal authority supporting the Open Internet Rules, and should not reverse its finding that Section 706 constitutes a delegation of regulatory authority. Section 706 reads in relevant part as follows:

> The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.[66]

The *Verizon* Court found that Section 706 furnished the FCC with the requisite affirmative authority to adopt the regulations, vesting both the FCC and the states with expansive authority to "promote competition in the local telecommunications market"

[66] 47 U.S.C. § 1302(a).

and to “remove barriers to infrastructure investment.”[67] It ultimately found that the FCC had “reasonably interpreted Section 706 to empower it to promulgate rules governing broadband providers’ treatment of Internet traffic.”[68] Reinterpreting Section 706 would remove a tool for the FCC as well as state commissions to track and encourage the deployment of advanced telecommunications, including broadband. This could complicate, among other items, state commission review of applications for mergers, acquisitions, and license transfers involving telecommunications service providers with BIAS affiliates. There is no obvious basis for curtailing this source of authority underpinning the Open Internet Rules, and the CPUC urges the FCC to retain its current interpretation of Section 706 as a delegation of regulatory authority and additional support for the rules.

III. CONCLUSION

The CPUC strongly supports the non-discriminatory rules adopted in the *2015 Open Internet Order*, and opposes efforts, however well-intended, that could jeopardize those rules, or otherwise limit the FCC’s authority to ensure an open Internet. Additionally, the CPUC is concerned that FCC’s proposals would constrain the ability of the CPUC and the FCC to perform their central functions, including promoting competition by ensuring BIAS providers’ access to utility poles, assistance to low-income individual through the Lifeline program, protecting of consumers’ privacy rights, and ensuring access to the Internet for persons with disabilities. In order to provide strong

[67] *Verizon*, 740 F.3d at 638.

[68] *Verizon*, 740 F.3d at 628. *See also, USTA v. FCC*, 825 F.3d 674, 733-734 (2016) (upholding the FCC’s *2015 Open Internet Order*).

legal authority for the existing Open Internet Rules, the FCC's only legal recourse is to retain a Title II classification for fixed and mobile BIAS. We urge the FCC to take these concerns into consideration and we thank the Commission for the opportunity to comment on this matter.

Respectfully submitted,

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Tommy Leung, Committee Chair

July 14, 2017

Mr. Jonathan Lakritz
Communications Division
California Public Utilities Commission
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San Francisco, CA 94102

Re: FCC's Notice of Proposed Rulemaking to undo the 2015 Decision to Regulate Internet Services from Common Carrier to Information Services

Dear Jonathan,

At the last meeting on June 23rd, the Telecommunications Access for the Deaf and Disabled Administrative Committee (TADDAC) voted to submit the following Comments regarding the FCC's notice of proposed rulemaking to undo the 2015 decision to regulate internet providers as utilities.

1) The proposed change would adversely impact TADDAC's mission to provide functionally equivalent telecommunication services to vulnerable customers, including disabled individuals and senior citizens.

2) In so doing, the proposed change would violate the ADA. For example, in rural areas lacking sufficient access to BIAS, there is no substitute or functional equivalent for copper wires which carry 911, closed captioning and TTY services.

Sincerely,

Tommy Leung

Tommy Leung
Chair
Telecommunications Access for the Deaf and Disabled Administrative Committee

cc: Alan Solomon, Barry Saudan, Helen Mickiewicz, Reina Vazquez