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

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

Joint Comments of the National Association of State Utility Consumer Advocates and the Connecticut Office of State Broadband within the Connecticut Office of Consumer Counsel

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EXECUTIVE SUMMARY

The Connecticut Office of State Broadband (CT OSB) and the National Association of State Utility Consumer Advocates (NASUCA, collectively State Consumer Advocates) support the Federal Communications Commission's (FCC or Commission) proposed classification of broadband internet access service (BIAS) as subject to oversight and regulation as telecommunications service under Title II the Communications Act of 1934, as amended. The State Consumer Advocates agree with the Notice of Proposed Rulemaking's (NPRM) assessment of the Commission's authority and the public necessity that supports classification of BIAS as telecommunications service. NASUCA supported the FCC's earlier classification of BIAS as Title II services.[1] As the NPRM notes, consumers, businesses, and communities rely upon BIAS services as critical to how they communicate on a daily basis.

While the State Consumer Advocates support the NPRM's broad goals, the FCC should assure that states, including state regulatory commissions and NASUCA members have latitude to advance state interests such as public safety and continuity of service and consumer protection for telecommunications services and providers, including BIAS services.

[1] *See* Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-108, NASUCA Comments (filed July 17, 2017). The July 2017 NASUCA Comments supported continued classification of BIAS as Title II telecommunications services, contrary to then pending FCC NPRM which resulted in the 2017 Restoring Internet Freedom Order.
NASUCA has encouraged the FCC over many years to recognize broadband internet access as essential services that should be widely available and affordable, subject to Title II. *See* In the Matter of Preserving the Open Internet, GN Docket No. 09-191, WC Docket No. 07-52, NASUCA Comments (filed Jan. 14, 2010); In the Matter of The D.C. Circuit Court of Appeal Decision in Verizon v. FCC, and What Actions the Commission Should Take, Consistent with its Authority under Section 706 and all other Available Sources of Commission authority, in Light of the Court's Decision, GN Docket No. 14-28, NASUCA Comments (filed Mar. 21, 2014), at pp. 21-22; In the Matter of Protecting and Promoting the Open Internet, GN Docket No 14-28, GN Docket No. 10-127, NASUCA Comments (filed July 15, 2014), NASUCA Reply Comments (filed Sept. 15, 2014).

STATE CONSUMER ADVOCATES WRITTEN COMMENTS

I. Introduction

These comments of the State Consumer Advocates are presented jointly by the CT OSB and NASUCA.

The CT OSB is established by statute within the Connecticut of Office of Consumer Counsel,[2] which is an independent agency that serves as the advocate for consumer interests in all matters involving traditional utilities, electric suppliers, cable television companies, and telecommunications providers, and by statute is authorized to appear and participate in any federal or state regulatory or judicial proceedings in which the interests of Connecticut consumers may be involved or in matters involving the services rendered by these entities may be involved.[3] The CT OSB is statutorily charged with "work[ing] to facilitate the availability of broadband access to every state citizen and to increase access to and the adoption of ultra-high-speed gigabit capable broadband networks."

The National Association of State Utility Consumer Advocates (NASUCA) is an association of 61 consumer advocates in 45 states and the District of Columbia, Barbados, Puerto Rico, and Jamaica. NASUCA's members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts.[4] NASUCA and its members have represented the interests of utility consumers and the public before the FCC extensively over the years to advance universal service and other goals of the Communications Act, as amended. This includes NASUCA's support for the FCC's earlier

[2] Conn. Gen. Stat. § 16-2a(c).

[3] Conn. Gen. Stat. § 16-2a(a).

[4] NASUCA's full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues. *See* https://www.nasuca.org/about-us/

classification of BIAS as Title II telecommunications service, consistent with NASUCA resolutions.[5]

Both the CT OSB and NASUCA present a "boots on the ground" states' perspective in submitting comments to the Notice of Proposed Rulemaking, *In the Matter of Safeguarding and Securing the Open Network*, WC Docket No. 23-320 (NPRM). These joint Comments seek to enlighten the Commission of our experiences, concerns and recommendations as advocates for the rights and interests of consumers of communications services.

II. The State Consumer Advocates Support the Proposed Reclassification of Broadband Internet Access Service as Title II Service.

The State Consumer Advocates support returning BIAS to its classification as a telecommunications service[6] under Title II of the Communications Act of 1934 as amended (the Act), for the reasons set forth in Paragraphs 16-84 of the NPRM. As State Consumer Advocates, however, we have experienced or witnessed four additional significant reasons that support restoring Title II classification to BIAS.

First, the 2017 reclassification of BIAS to an Information Service, for purposes of State oversight, banished an essential communications service into a "regulatory black hole" that might be - but might not be – subject to state limitations with respect to exercise of police power regulation of use of public rights-of-way, consumer protection, network reliability and restoration requirements, cybersecurity and data privacy coordination with other utilities under the guidance of state utility commissions,[7] and reasonable consumer protection measures. As explained later in these Joint Comments, many utility commissions refused to process consumer complaints on telecommunications, cable and internet service (non-rate) issues, even though

[5] *See, e.g.,* W.C. 17-108, Comments of the National Association of State Utility Advocates (July 17, 2017) NASUCA Comments WC Dkt. 17-108 July 17 2017 and Reply Comments of the National Association of State Utility Advocates (Aug. 16, 2017) NASUCA Reply Comments WC 17-108 August 16, 2017.

[6] 47 U.S.C. §§ 153(50), (53).

[7] In Connecticut, cable companies which are the dominant BIAS providers refused to participate in a joint effort with the Connecticut Public Utilities Regulatory Authority, the successor agency to the Department of Public Utility Control, in developing a Connecticut Cybersecurity Action Plan with other traditional utilities.

those services were provided through facilities located in public rights-of-way with State authorization.[8]

Second, the classification of BIAS as a telecommunications service will let State utility commissions ensure that infrastructure in the public streets and highways of the United States is done safely, efficiently and in coordination with other utilities and communications providers attaching to utility poles and installing facilities in underground conduits. BIAS providers will receive the same rights as other authorized telecommunications services providers with respect to constructing and operating in the public rights-of-way, under the protection of 47 U.S.C. § 253.

Third, the classification of BIAS as a telecommunications service will enable States to develop a superior collaborative approach among providers of essential services. This will undoubtedly fortify the ability of federal and state agencies to better protect privacy and data security, as described in the NPRM. For example, when the Connecticut Public Utilities Regulatory Authority ("PURA") undertook the development of its Connecticut Public Utilities Cybersecurity Action Plan during the 2014-16 period,

> [t]he majority of telecommunications companies responding to the draft of this report expressed the view that the proposed meetings and guidelines for information reporting would, in fact, be compulsory and comprise a mandate, which they consider to be in conflict with federal policy preference for voluntary mechanisms. While it has been PURA's goal that all public utilities and telecommunications service providers operating in Connecticut participate in the state's cybersecurity oversight program, most telecommunications companies to date have refused to join the effort. PURA will move forward with companies in the three sectors that have chosen to cooperate, and hopes to create both constructive processes and public confidence that will eventually include the telecommunications companies doing business in Connecticut.[9]

The dexterity of communications providers in evading reasonable State oversight then and now, unfortunately, can be attributed largely to the FCC's actions and inactions. As recognized by the

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[8] The Connecticut Public Utilities Regulatory Authority states on its complaint page that it does not have any regulatory authority over "Anything to do with the Internet or computer services," notwithstanding that it certifies BIAS providers to construct and operate facilities in the public rights of way for the sole purpose providing BIAS (although the certification is technically approved as a "certified telecommunications services" provider).

[9] Docket No. 14-05-12, Public Utilities Regulatory Authority, *Connecticut Public Utilities Cybersecurity Action Plan* (April 6, 2016) at 2. *See* https://portal.ct.gov/-/media/DAS/BEST/Security-Services/Connecticut-Public-Utilities-Cybersecurity-Action-Plan-April-6-2016.pdf

NPRM, BIAS is now even more clearly a dominant communications service.[10] The Commission is duty-bound to ensure that providers of the service are responsive, not just to federal agencies, but also to State agencies that authorize them to occupy and use public streets and highways with facilities and equipment that provide BIAS service to consumers and businesses.

Fourth and most significantly, based on the experiences at the State levels, returning the classification of BIAS to a telecommunications service under Title II of the Act enables the FCC and State utility commissions, when appropriate, to ensure that the providers follow federal laws and State laws that are intended to ensure that facilities in the public rights-of-way are operated and maintained to provide safe and reliable service and abide by reasonable consumer protection measures. As former FCC Chair Tom Wheeler recently wrote about this proceeding,

> The issue isn't "net neutrality." The issue isn't even about an "open internet." The issue that is once again before the FCC is whether those that run the most powerful and pervasive platform in the history of the planet will be accountable for behaving in a "just and reasonable" manner.
>
> It is the *conduct* of the ISPs that is in question here. Because telephone companies were Title II common carriers, their behavior had to be just and reasonable. Those companies prospered under such responsibilities; as they have morphed into wired and wireless ISPs, there is no reasonable argument why they, as well as their new competitors from the cable companies, should not continue to have public interest obligations.[11]

In establishing national ground rules, the Commission's final order should acknowledge and confirm that States need to retain, based on the circumstances in their respective jurisdictions, an essential role in the broadband ecosystem. A concern of the State Consumer Advocates is that while the NPRM seeks to provide straightforward, clear rules to prevent BIAS providers from engaging in practices harmful to consumers, competition, and public safety through a uniform, national approach, the Commission should refrain from taking "the state cops off the beat". In

[10] *See generally* NPRM at ¶¶17-19. "Not unlike other essential utilities, such as electric and water, BIAS connections have proved essential to every aspect of our daily lives, from work, education and healthcare, to commerce, community and free expression." NPRM at ¶17 (footnote omitted).

[11] Brookings, Tom Wheeler, *Don't be fooled: Net neutrality is about more than just blocking and throttling* (Oct. 30, 2023) (emphasis in original) *See* https://www.brookings.edu/articles/dont-be-fooled-net-neutrality-is-about-more-than-just-blocking-and-throttling/

other words, States should not be precluded from enforcing those rules and state-specific rules designed to address state or local circumstances that may not have national consequences.

In sum, the State Consumer Advocates fully support the return of BIAS to classification as a telecommunications service under Title II of the Act. Given that the fixed BIAS, wireline telecommunications service and cable service all have essentially the same or very similar distribution networks, and that BIAS service also provides cable/video and voice/telecommunications services, there is no other option available to ensure that consumers of BIAS, as an essential service, have protections and recourse against unreasonable and unfair treatment.

III. Forbearance must not be used to establish a blanket preemption over essential State interests.

Congress has expressly reserved state authority to protect the interests of the public with regard to telecommunications services. 47 U.S.C. § 253(b) provides that

"[n]othing in this section shall affect the ability of a State to impose on a competitively neutral basis. . . requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the right of consumers."[12]

In Paragraphs 94-96 of the NPRM, the Commission seeks comment on how best to exercise its preemption authority once BIAS is returned to classification as Title II service. In doing so, the NPRM asserts that it has remedied the infirmities that led the D.C. Circuit to vacate its "sweeping Preemption Directive," and asks how it can now use its authority to "guard against state and local requirements that. . . can lead to a regulatory patchwork" or "those that we may affirmatively choose to reject."[13] The NPRM inquires whether it should go so far as to adopt broad preemption, or proceed more incrementally by "addressing in this proceeding those state or local requirements squarely raised in the record, and otherwise deferring to future case-by-case adjudications of preemption?"[14]

[12] Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S. Code § 253(b).

[13] NPRM at ¶ 93.

[14] NPRM ¶ at 95.

The State Consumer Advocates agree with the National Association of Regulatory Utility Commissioners (NARUC) that none of the preemption theories presented in the NPRM eliminate the express authority reserved for states in 47 U.S.C. § 253(b).[15] Further, insofar as states use their existing enforcement mechanisms pursuant to state laws, the Commission has no reason to preempt states because that would effectively take state cops off the beat.[16] The Commission cannot casually brush aside state authority under 47 U.S.C. § 253(b) or statutory authority conferred by state legislatures.

A. Public Safety, Network Resiliency, and Reliability

The State Consumer Advocates agree with the Commission's tentative conclusions that reclassifying BIAS as a telecommunications service would enable the Commission to advance public safety initiatives.[17] BIAS is crucial to the work of public safety officials and occupies a critical role in connecting the public with first responders to obtain vital information during emergencies like storms, floods, and wildfires, and to obtain essential resources and information necessary for public health and safety.

The Infrastructure Investment and Jobs Act (IIJA) states "Congress finds… [a]ccess to affordable, *reliable*, high-speed broadband is essential to full participation in modern life…."[18] As an essential service, it is imperative that broadband infrastructure and connectivity must be sufficiently reliable to assure that the communities, households, businesses, anchor institutions, and public safety providers have connectivity that is robust, continuous, and reliable. NASUCA resolutions spanning more than a decade have emphasized the need for federal and state

[15] Generally, the State Consumer Advocates consider the provisions of 47 U.S.C. § 253 to be mandatory in nature and not subject to forbearance by the Commission. The "safe harbor" provision of 47 U.S.C. § 253(b) concerning the ability to assess fees and collect taxes, on a competitively neutral and nondiscriminatory basis, from companies providing BIAS and other services is of critical importance to state governments.

[16] National Association of Regulatory Utility Commissioners, Notice of Oral Ex Parte S filed in the proceedings captioned: In the Matter of Petition of MidContinent Communications for Declaratory Ruling Concerning Qualifications for obtaining Local Interconnection Under Section 251(a) of the Communications Act, WC Docket No. 22-277; and In the Matter of Safeguarding and securing the Open Internet, WC Docket No. 23-320, October 27, 2023, p. 6.

[17] NPRM at ¶¶ 33-38.

[18] IIJA, div. F, tit. I, § 60101. (Emphasis supplied).

regulations and policies to ensure the reliability of wireline, wireless, and broadband networks and services.[19]

The importance of ensuring broadband reliability has been brought into sharp relief by the COVID-19 pandemic, and the consequent reliance on broadband for education, employment, and conduct of business in public and private institutions.[20] Moreover, numerous disasters have impacted telecommunications infrastructure in virtually every corner of the nation. The destructive derecho windstorms that tore through Washington, D.C. area several years ago, the devastation of Hurricane Sandy and other storms, and fires that have destroyed swaths of California and other states are events that inflicted significant damage to infrastructure critical to communications and broadband connectivity. Damage to middle-mile and other facilities due to human error, accidents, or maintenance issues also disrupts connectivity often creating widespread consequences.[21]

Federal, state, and local governments all serve crucial roles in ensuring, supporting, and facilitating reliable, affordable BIAS, including during emergencies. States, and in particular state regulators, are required by statute to ensure that telecommunications providers offer safe, reliable service adequate to promote public health and safety.[22] States need the ability to take steps they deem necessary to ensure that essential telecommunications services, including BIAS, are reliable and of good quality. This includes ensuring, to the best of their ability, that networks are reliable and able to support emergency communications at all times. Because every state has unique circumstances that affect public safety and communications reliability issues, and each disaster is unique, states should have the ability to adopt measures they deem necessary to ensure

[19] *See, e.g.,* NASUCA Resolution 2019-01, Urging States to Enact Protections for Residential Electric, Gas, Water, Sewer, and Telecommunications Services Customers in the Event of Major Disasters, Natural or Otherwise; Resolution 2013-02, Calling for the Development of National and State Policies to Ensure Reliable Wireline and Wireless Communications During a Power Outage; Resolution 2009-05, Development of National Policies that Encourage Deployment of Affordable Broadband; Resolution 2008-01, Support Enactment of Federal Legislation to Establish a National Broadband Policy; Resolution 2007-11, Resolution 2006-06, Equitable Deployment of High Quality Advanced Telecommunications Services.

[20] NPRM at ¶17

[21] *See* NASUCA Resolution 2014-06, Reasonable Rates for Telephone and Broadband Services (reference to damage to 400 feet of AT&T fiber in Mendocino, CA which resulted in a 45-hour outage).

[22] *See, e.g.,* California Public Utilities Code Sec. 451, and Ohio Revised Code Sec. 4927.0.

reliable service, including stricter measures than those established by the Commission as necessary to protect the health and safety of the public.[23]

For example, following the loss of communications during wildfires and power shutoffs, California relied on its state police powers to adopt "laws, rules and processes to prevent or mitigate future occurrences of network outages, among other problems."[24] The California legislature took into account the impact of a lack of "real-time and sufficiently detailed information about communications network outages,"[25] as support for a new California law that requires providers of 9-1-1 service, including 9-1-1 provided using IP communication, to provide near real-time reports of major telecommunications outage reports to the California Office of Emergency Services. This California community isolation outage reporting requirement is California Government Code Section 53122.[26] The California public safety statute ties in with the state's definition of "telecommunications service" in the California Public Utility Code.[27] California legislative hearings and California Public Utilities Commission evidentiary records provided support for this particular state action to address state public safety and continuity of communications concerns, reflective of today's communications networks and resources.

The states and the FCC share a common goal of ensuring network reliability and service quality. The State Consumer Advocates urge the FCC to not preempt the ability of states to address police power concerns, such as in the context of public safety, network reliability, and continuity of today's integrated communications systems.

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[23] In the Matter of Resilient Networks, PS Docket Nos. 21-346, et al., Reply Comments of the National Association of State Utility Consumer Advocates, January 14, 2022, at 14.

[24] In the Matter of Resilient Networks, PS Docket No. 21-346, et al, Comments of the California Public Utilities Commission, December 16, 2021, at 14-18.

[25] In the Matter of Resilient Networks, PS Docket Nos. 21-346, et al., Reply Comments of the National Association of State Utility Consumer Advocates, January 14, 2022, at 7-10.

[26] *See* California Government Code § 53122.

[27] *See* California Public Utilities Code § 2892.1.

B. Broadband Mapping and Other Reporting:

Many states, including Connecticut and others represented by NASUCA members, have established by state law or policy their own broadband mapping program,[28] with updates required from BIAS providers.[29] Those state broadband maps are integral for state planning, economic development, digital adoption evaluation, and other digital literacy programs, thus filling roles that exceed broadband deployment funding under the Broadband Equity, Affordability and Deployment (BEAD) program.[30] Further, many NASUCA member states require a) quality of service reporting to ensure that consumer needs are being met and b) annual reports that are typically more general in nature. None of these mapping programs or reporting requirements present a barrier to entry or an undue burden on providers. Accordingly, the State Consumer Advocates request that the Commission should ensure that states are not preempted by the final rules in this proceeding for mapping and other reporting.

C. Recognizing The Role of States in Consumer Complaint Resolution

The FCC should not preempt states that want to resolve consumer complaints related to the standards set forth in the NPRM. A state is more physically accessible to its own residents than the FCC in Washington D.C. In some states,[31] a consumer can visit a state agency with their bill and file a complaint in-person. Consumers with disabilities may prefer the option of an in-person visit. This closer proximity also allows states to track consumer complaint trends and get ahead of any developing service issues in their localities.

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[28] The Pennsylvania Public Utility Commission and Penn State Extension developed a map to assist potential bidders for the RDOF auction. *See* https://extension.psu.edu/pennsylvania-broadband-map. The Pennsylvania Broadband Development Authority's map combines FCC "broadband availability" data with economic, workforce, and similar data. *See* https://dced.pa.gov/programs-funding/broadband-in-pennsylvania/broadband-service-map/.

[29] Conn. Gen. Stat. §§ 16-330b (Broadband Internet Access Map) and 16-330c (biannual report to Governor on availability and universal access goal, adoption rates, the price and nonprice barriers to broadband adoption and digital equity, with recommendations to overcome any such barriers, including, but not limited to, addressing issues of digital literacy and affordability).

[30]The GAO report from 2021 listed four sources that can enhance broadband mapping, all of which are collected by states and not (generally) reported to the federal government. *See* https://www.gao.gov/blog/challenges-mapping-digital-divide

[31] *See* Rhode Island's Public Utilities Commission and Division of Public Utilities and Carriers takes walk-in complaints: https://ripuc.ri.gov/sites/g/files/xkgbur841/files/consumerinfo/CONSUMERCOMPLAINTS_FAQ.pdf as does Massachusetts' Department of Telecommunications and Cable by appointment: https://licensing.reg.state.ma.us/pubLic/oca-support/mg-dtc-complaint-form.asp

Also, a state is more readily available to its residents than the FCC. A state complaint resolution center's jurisdiction for fielding and resolving complaints is limited to consumers living within their borders. A federal agency is responsible for responding to the consumers of the entire nation. Because states serve less people, a state entity should be able to more quickly respond to the complaints of their own residents than the FCC.

Accessibility and availability are the bedrock of good governance. Upon these foundations, the public's trust in their government is built. This trust has the potential to build relationships, both between consumers and their state authority and also between state authorities and service providers. Consumers, both residential and business, need recourse when they have issues with their providers and states are well-positioned to offer recourse in a timely and meaningful manner. When handling repeat complaints from the same geographical area and about the same providers, state staff develop the expertise to help guide consumers through the complaint process. Repeated complaint resolutions between state staff and local service provider contacts help to build norms and standardize processes for complaint resolution which can be used for the benefit of consumers.

Allowing states that choose to take consumer complaints the opportunity to do so fosters the ability for states to facilitate resolution between consumers and service providers in a prompt and meaningful way. This type of joint jurisdiction is well documented. An excellent example of the FCC allowing states to share joint jurisdiction over complaint subject matter is slamming complaints. The FCC explains on its website[32] that consumers living in certain states can contact the FCC with slamming complaints, and lists the states that have decided to handle complaints of this nature themselves, as shown in the figure below:

Filing a slamming complaint

If you live in Alaska, Arizona, Delaware, Florida, Georgia, Hawaii, Illinois, Missouri, New Mexico, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, Wisconsin or the Virgin Islands, you can file a slamming complaint with the FCC.

We ask that you include a copy of any telephone bill you are complaining about. Please indicate on the copy of the bill the name of the slamming telephone company and the disputed charges.

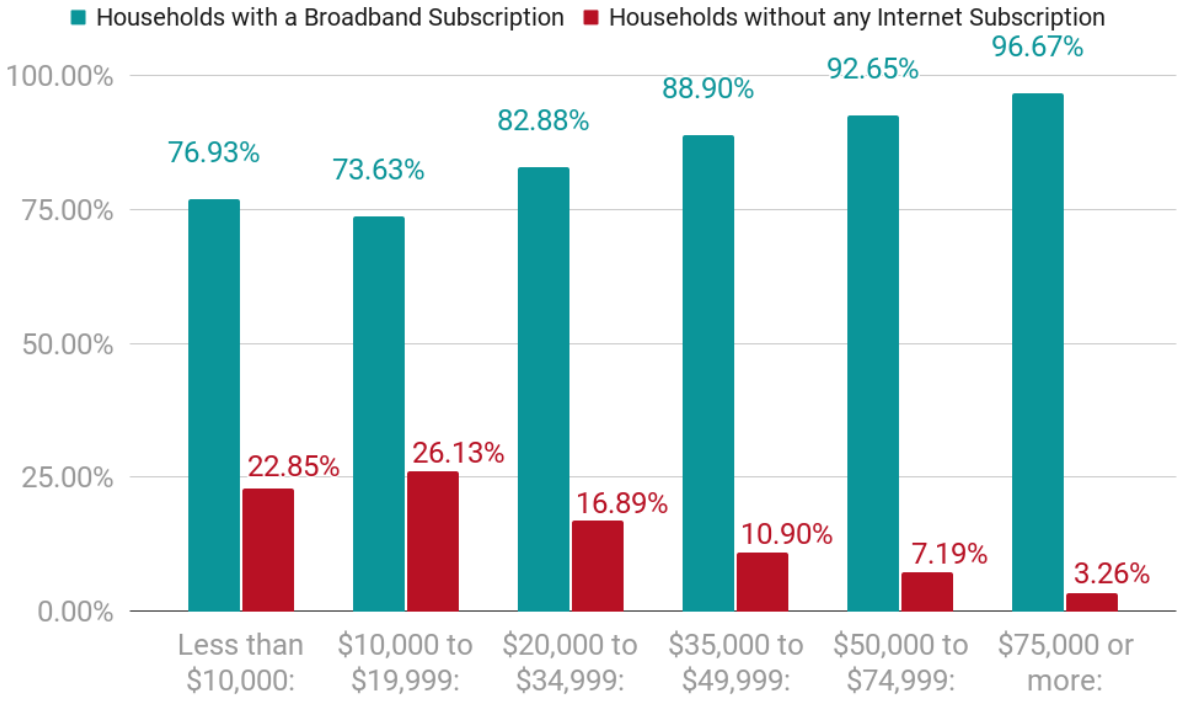
Public service commissions in all other states, the District of Columbia and Puerto Rico process slamming complaints arising within those jurisdictions. If you live in a state or territory that processes slamming complaints, check the website of your public service commission for information on filing a complaint.

[32] *See* https://www.fcc.gov/slamming

Given this successful precedent, the FCC should forebear from preempting states, some of whom may otherwise elect to participate in the complaint resolution process, from assisting consumers in resolving service issues between consumers and providers.

D. Affordability Measures:

The State Consumer Advocates recognize that household income remains a sound predictor of digital adoption, with higher income levels showing the highest level of BIAS subscription rates, according to the latest edition of the American Community Survey.[33]



National Digital Inclusion Alliance Blog: *What the 2022 American Community Survey Tells Us About Digital Equity* (Nov. 29, 2023).

Through the enactment of the bipartisan IIJA, Congress indicated a strong concern about affordability of BIAS as an essential service. This was reflected in IIJA's BEAD program, Affordable Connectivity Program (ACP), and Digital Equity Act. With future funding of the ACP

[33] *See* National Digital Inclusion Alliance Blog: *What the 2022 American Community Survey Tells Us About Digital Equity* (Nov. 29, 2023) https://www.digitalinclusion.org/blog/2023/11/29/what-the-2022-american-community-survey-tells-us-about-digital-equity/

in doubt at this time, the ability of states to implement affordability programs for an essential communications services should not be preempted by the Commission, even if that state program involves requiring providers to offer low-income service tiers pursuant to state determined universal service goals. In sum, there is nothing wrong with a state mandating a program that the providers were already doing in order to get and keep low-income households connected. The State Consumer Advocates urge the FCC to not engage in preemption that would compromise the ability of states to advance state universal service and state digital equity goals.

IV. Conclusion.

The State Consumer Advocates support the NPRM's proposed return to the classification of BIAS as telecommunications service subject to Title II of the Act, buttressed with the proposed provider conduct rules. To decline to do so would otherwise minimize, if not eliminate, any reasonable oversight that the Commission or the states would have over providers of a service that reaches virtually all residents and businesses in the United States. Such a result would unleash – more so than exists today – a Wild West full of unrestrained providers without any Sheriff or Deputy left to ensure some semblance of law and order on our public streets and highways.

Classifying BIAS as a telecommunications service will let state utility commissions ensure that infrastructure in the public streets and highways of the United States is done safely, efficiently and in coordination with other utilities and communications providers. This will also allow the FCC and state utility commissions, when appropriate, to ensure that the providers follow federal laws and state laws that are intended to ensure that facilities in the public rights-of-way are operated and maintained to provide safe and reliable service and abide by reasonable consumer protection measures. The classification of BIAS as a telecommunications service will enable states to develop a more collaborative approach among providers of essential services.

Forbearance must not be used to establish a blanket preemption over essential state interests. None of the preemption theories presented in the NPRM eliminate the express authority reserved for states in 47 U.S.C. § 253(b).

Federal, state, and local governments all serve crucial roles in ensuring, supporting, and facilitating reliable, affordable BIAS, including during emergencies. Because every state has unique circumstances that affect public safety and communications reliability issues, and each

disaster is unique, states should have the ability to adopt measures they deem necessary to ensure reliable service, including stricter measures than those established by the Commission as necessary to protect the health and safety of the public.[34]

The FCC should ensure that states are not preempted by the final rules in this proceeding for mapping and other reporting because those state broadband maps are integral for state planning, economic development, digital adoption evaluation, and other digital literacy programs.

The FCC should not preempt states from assisting consumers in resolving service issues between consumers and providers. States can provide local access to a process to resolve issues between customers and providers.

The ability of states to implement affordability programs for essential services should not be preempted by the Commission, even if that state program involves requiring providers to offer low-income service tiers, as many providers already offered previously.

Respectfully submitted,

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[34] In the Matter of Resilient Networks, In the Matter of Resilient Networks, PS Docket No. 21-346; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, PS Docket No. 15-80; and New Part 4 of the Commission's Rules concerning Disruptions to Communications, Reply Comments of the National Association of State Utility Consumer Advocates, January 14, 2022, at 14.

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