



November 1, 2017

Congresswoman Maria Cantwell
915 Second Avenue, Suite 3206
Seattle, WA 98174

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THE ALLIANCE
for Equal Justice
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Dear Senator Cantwell:

The Washington State Access to Justice Board (“ATJ Board”) holds the strong conviction that access to the Internet is *essential* for meaningful access to justice. On behalf of the ATJ Board, I am writing to express our support of maintaining the existing Federal Communication Commission’s (FCC) Title II Order classifying broadband internet access services as telecommunication services and expanding broadband access under the Lifeline Program and other Universal Service Fund programs.

We request that you and other members of Congress urge the FCC to reconsider the Restoring Internet Freedom Notice of Proposed Rulemaking (17-108) (“NPRM”) in order to ensure that access to a free and open Internet is preserved in the interest of justice.

The ATJ Board’s mission is to ensure access to justice and the delivery of justice to all. But the gap between Washingtonians’ needs - especially those with low or no income and/or disabilities - and the legal resources available to them, or the judicial system itself, cannot be bridged without accessible and useful technology. Using online platforms and web content to educate, inform, and facilitate individuals’ resolution of their legal issues, our legal community is making strides to ensure that every Washingtonian can receive the legal help and the judicial availability and quality they need. This mission cannot be served, however, if our best tool for outreach and information—the Internet—loses its openness and accessibility and usability. See the ATJ Board’s attached response to the FCC’s NPRM submitted in August 2017.¹

For these reasons, we respectfully request that you urge the FCC to reconsider the NPRM and maintain the existing Title II Order classifying broadband internet access services as telecommunication services and allowing the expansion of broadband access under the Lifeline Program and other Universal Service Fund program.

¹ The comment and this letter have been prepared by and are submitted exclusively on behalf of the Access to Justice Board. It does not represent the position of the Washington State Bar Association.

We have gathered some stories from judges, lawyers and legal workers from around the state who have shared with us how the FCC's NPRM would affect access to justice. These stories reflect the individuals' own experiences and concerns and do not reflect the view of their respective organizations.

- “Without an open and neutral Internet, I would be negatively impacted because I would lose the ability to communicate at all with some of my clients, especially because I practice in a rural community. I need the internet to call, text message and e-mail clients and to receive communications from them. Some clients use either e-mail or text messaging as their sole method of communication with me. I e-mail client's links to washingtonlawhelp.org publications, to help them resolve legal issues.” – Lisa Waldvogel, Attorney, Northwest Justice Project
- “In our system, all of the records upon which an individual could base an appeal are in electronic format accessible through the internet. We also keep our appeals file in an electronic form. Many of our constituents end up without easy or regular access to mail. Without access to the internet, our stakeholders would be severely impacted in their ability to enforce their rights and remain informed.” – Judge Laura Bradley, Board of Industrial Insurance Appeals
- “I assist the public with finding online resources to help them access legal help; I use the internet when volunteering at free legal clinics for low income people; and I heavily rely on the internet for my own practice in researching and communicating every day.” – C.S.A., Private Attorney and Pro Bono Volunteer
- “We use the Internet in all aspects of our legal aid work. We use it for research, for filing court documents and checking the status of our cases, and for communicating with our clients via Skype or email. Our case management program is Internet-based, so we rely on it to track our cases and keep notes. We have a website that offers scores of self-help and educational materials, which allows clients to access legal help even if we are unable to provide them with representation. ” – Matt Brady, Attorney, Northwest Justice Project
- “Without an open and neutral Internet, I would be negatively impacted because the ability to easily and quickly search for affordable services would be reduced. In addition, I am connected to a community that routinely needs easy access to legal resources. Without an open and neutral internet accessing online content becomes an additional barrier especially for those communities for whom internet access is already a challenge.” – Joy Williams, Diversity and Public Service Manager, Washington Bar Association

- “Electronic filing is mandatory in the Pierce County Superior Court. Being able to view cases and court documents online helps me to better advise clients how to proceed. It allows me to respond to urgent client questions even when I'm at home or on the road. The Washington Law Help website is a gem that we attorneys at Northwest Justice Project spend a lot of time and effort maintaining. It not only serves as the best and only legal guidance many low-income people will receive, but it is also available to people of means, helping EVERYONE better understands Washington law and the legal system.” – Jennifer Ammons, Attorney with Northwest Justice Project
- ‘Without an open and neutral Internet, public defenders and poor people accused of crimes or who face a loss of their children or liberty will not have the economic means to pay for higher access charges which will exacerbate the imbalance of access to justice for lower income people and their communities.’ – Christie Hedman, Executive Director, Washington Defender Association

These stories are just the tip of the iceberg of not only how many lawyers, judges and legal workers will be impacted but how many clients, litigants and communities will be negatively impacted if the FCC's NRPM is enacted. We urge you to take any action to protect our communities' access to justice.

If you have any questions, need more information or wish to discuss these issues further, please do not hesitate to contact the Access to Justice Manager, Diana Singleton, at dianas@wsba.org. Thank you for your consideration of our concerns.

Very truly yours,

Geoffrey Revelle

encl: ATJ Board's Comments to the FCC's NPRM submitted in August 2017

cc: Paula Littlewood, Washington State Bar Association

Washington State²—the WSBA’s task force found that access to justice was the number one issue facing the state bar, and that the public, the courts and judges, and lawyers have a vested interest in a functioning and effective justice system that is increasingly available to and delivers meaningful justice to all, especially those encountering barriers.³ As a result, after careful consideration, the ATJ Board was established by order of the Washington State Supreme Court.

Based on the Court’s recognition that access to the civil justice system is a fundamental right for all, the ATJ Board has since worked, and continues to work, to achieve equal and meaningful access for those facing economic and other significant barriers, and is charged with planning for the statewide delivery of civil legal aid services.⁴ Its Plan for the Delivery of Civil Legal Aid to Low Income People in Washington State is the blueprint for this work,⁵ and in 2004—after a broad and inclusive two-year effort—the ATJ Board recognized the necessity for technology to have a major and appropriate role in bridging the access to justice gap for all. As a result, the ATJ Board developed, and the Washington State Supreme Court adopted by court

² Washington State Bar Association. n.d. *History of the Access to Justice Board*. Accessed August 4, 2017. <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/ATJ-Board-History>

³ Access to Justice Task Force. 1992-1993. *WSBA Report*. [http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/ATJ%20Board/Access%20to%20Justice%20Task%20Force%20Report%20\(1994\).ashx](http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/ATJ%20Board/Access%20to%20Justice%20Task%20Force%20Report%20(1994).ashx).

⁴ Washington State Access to Justice Board. <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board>.

⁵ See Access to Justice Board. 2018-2020 update. "Plan for the Delivery of Civil Legal Aid to Low Income People in Washington State." http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/ATJ%20Board/Home%20Page%20News/ATJ%20State%20Plan%20Final.ashx.

order, a set of fundamental principles called the Access to Justice Technology Principles,⁶ summarized as follows:

- I. **Requirement of Access to Justice.** Use of technology must promote, and not reduce, equal access.
- II. **Technology and Just Results.** The justice system must use technology to achieve the objective of a just result achieved through a just process and reject, minimize, or modify any use that impairs achieving it.
- III. **Openness and Privacy.** Technology in the justice system should be designed and used to meet the dual responsibilities of being open to the public and protecting personal privacy.
- IV. **Assuring a Neutral Form.** The justice system must ensure the existence of neutral, accessible and transparent forums which are compatible with new technologies, and discourage and reduce the demand for the use of those which are not.
- V. **Maximizing Public Awareness and Use.** The justice system should promote public knowledge and understanding of the tools afforded by technology to access justice.
- VI. **Best Practices.** Those governed by the principles must use ‘best practices’ to guide their use of technology.

These principles remain relevant to discussions of the access to justice gap.

Comments

1. There is an Access to Justice Gap, and the Internet is an Essential Part of the Solution

As the FCC articulated so well in the NPRM, after the Telecommunications Act of 1996 was passed, the Internet underwent extraordinary growth, and “business developed in ways that

⁶ For the full principles and comments, see ATJ Web. *Read the Principles*, <http://www.atjweb.org/read-the-principles/>

the policy makers could not have fathomed even a decade ago.”⁷ Broadband Internet access is now a basic necessity in a modern democracy such as ours—“[h]igh-speed Internet access, or broadband, is critical to economic opportunity, job creation, education, and civic engagement.”⁸ In fact, in many cases, access to high-speed Internet is required to apply for a job or to obtain housing. It has also increasingly become clear that high speed internet is essential to meaningful access to and delivery of justice to ALL, as well as more efficient and economical service by the courts and other parts of the justice and legal system.

In Washington State, technological innovation is a core element of our history and our progress today. But at the same time as we are building upon this new tech economy, there is an ever-widening gap between those in our community who are most vulnerable, and the legal aid and resources that are there to help. In fact, a recent study published by the Washington Supreme Court’s Task Force on Civil Equal Justice Funding found that 76 percent of low-income respondents did not seek or were not able to obtain help for a legal issue.⁹ The report found that most of these instances were attributed to the individual *not even realizing* the problems they were experiencing had a legal dimension. While resources and funding for greater legal services will always be an issue, the report tells us that there is something else missing—access to information. And there is no greater tool for information sharing than the Internet.

⁷ Federal Communications Commission. *Notice of Proposed Rulemaking, WC Docket No. 17-108*, May 23, 2017. https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-60A1_Rcd.pdf

⁸ Federal Communications Commission. n.d. Bridging The Digital Divide For All Americans . <https://www.fcc.gov/about-fcc/fcc-initiatives/bridging-digital-divide-all-americans>.

⁹ See Washington State Supreme Court. *Civil Legal Needs Study Update*. October 14, 2015. http://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf -

2. *Legal Aid in Washington Relies Upon Internet Access*

In our state, there are a variety of legal resources available to individuals navigating the legal system, but for some, barriers such as inflexible work schedules, lack of transportation, and childcare obligations, disability, and age can prevent those individuals from identifying and accessing legal aid through traditional means, such as a walk-in legal clinic. Before the existence of open access to reliable, consistent, and uninterrupted Internet, the story often ended there. But now, there are significant legal resources available 24 hours a day.

For example, someone who wishes to expunge a juvenile record can learn how to do so online. Northwest Justice Project, a publicly funded legal aid program, has a video detailing how expungement works and the courts provide all the forms online.¹⁰ This saves the user transaction costs, allows her or him to enter the workforce more easily, and avoids unnecessary travel to attend court—which can sometimes be in another county from where the individual resides. At the Northwest Justice Project, potential clients may not be able to call the hotline during business hours, but an online intake is available to clients 24 hours a day, seven days a week—ensuring they are able to start the process at their first opportunity.

These kinds of essential legal resources are moving online and into video formats that require broadband access to utilize them. The juvenile court expungement video from Northwest Justice Project is just one of 60-plus videos available in Spanish, English, and American Sign Language. Topics of these videos include: explaining renters' rights, debt collection defense, foreclosure mediation, driver's license reinstatement, and language access. These videos provide

¹⁰ Washington Law Help. Video - Juvenile Record Sealing in Washington State
<https://www.washingtonlawhelp.org//resource/video-juvenile-record-sealing-in-washington-s>

clients with basic how-to and other essential information on addressing their legal issues in a practical format that breaks down language-access barriers, including lack of literacy itself as well as physical disabilities. Northwest Justice Project also hosts a traditional website with over 1,000 legal resources and 800,000 visitors per year. Many of these resources are PDFs or other documents that can be accessed much more easily, readily and functionally on broadband.

Similarly, someone who needs to obtain a domestic violence protection order can learn how to do so online. The courts also provide all the forms online, and many county courts allow domestic violence protection order petitions to be filed online. This reduces the time and associated costs associated with filing a protection order, and allows petitioners to quickly obtain the temporary protection they need before appearing before the court for the final protection order.

These online resources also reduce errors on petitions and streamline the process for the courts, ultimately decreasing costs and affording greater protection to families in Washington State. Furthermore, many legal aid programs as well as county courts offer online self-help videos and tools to help address procedural questions that unrepresented litigants encounter, such as how to perfect personal service, how to obtain a fee waiver, how to conduct oneself during a hearing, and how to request an interpreter for court proceedings. Such online tools remove procedural barriers that can prevent a case from moving forward, allow low-income unrepresented litigants to overcome financial barriers and file their civil case, and ensure that unrepresented litigants appear before the courts empowered with the information needed to effectively conduct their hearing and overcome language barriers.

Moreover, broadband access is also becoming essential for access to court records. Increasingly, service itself can be provided with use of the Internet within and throughout the justice system, including the courts. Not only is availability substantially improved; economic savings to both participants and the system is becoming significant. The Access to Justice Board has established best practices for electronic court records access,¹¹ and as a result Washington State and several counties within the state are implementing electronic access to court records and dockets. The potential time and money that will be saved by the judicial system itself as well as lawyers, clients—especially low-income clients—and other public and private agencies is extremely significant. Worst of all, those without the ability to get broadband access online are left out.

Finally, recognizing the impact that technology solutions can bring to legal aid organizations and providers like Northwest Justice Project, ATJ Tech Fellows, a non-profit organization based in Seattle, established a national fellowship program to train law students around the country on technology and design concepts, and then pair those students with a legal aid organization to implement new technology solutions.¹² In its inaugural summer, nine fellows participated to create chat bots, document automation, and online legal resources.

¹¹ Access to Justice Board.

http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/ATJ%20Board/Providing%20Access%20to%20Court%20Information%20in%20Electronic%20Form%20Best%20Practices%20%20Best%20Practices%20Final.ashx

¹² "Fellowship Overview," Access to Justice Technology Fellows Program. Accessed August 11, 2017. https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-60A1_Rcd.pdf

With organizations like these, Washington State is innovating legal service delivery. But all this online content and these web-based solutions are meaningless if the client on the other end does not have access to an open, reliable internet source.

3. *The Effect of the NPRM on Open Broadband Access*

The NPRM as proposed will critically undercut the ATJ Board's ability to promote and deliver access to justice by eliminating broadband access with the Lifeline program. Previously, the ATJ Board expressed support of expanding Lifeline to include broadband services,¹³ given that many of those most in need of online legal resources depend on this program. Under the FCC's Title II Order classifying broadband internet access services as telecommunication services, the Lifeline program was expanded to include broadband access, along with other critical programs.¹⁴ It's been referred to as Net Neutrality. Now, just over a year later, the FCC's NPRM threatens to reverse this critical and historic decision to bridge the digital divide.

Furthermore, the NPRM will threaten access to justice and online legal aid delivery and a more efficient justice system by opening the door for throttling by internet service providers (ISP) of non-ISP content.¹⁵ Such practices are what prompted the FCC to issue the Title II Order

¹³ Washington State Bar Association. *Comments of the Washington State Access to Justice Board* (Sep. 25, 2015), http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/ATJ%20Board/Home%20Page%20News/20150925FCC%20Broadband%20Lifeline%20Comments%20of%20the%20WA%20Access%20to%20Justice%20Board.ashx

¹⁴ Order approving *In re Lifeline and Link Up Reform and Modernization* Proposed Rule Changes (adopted Mar. 31, 2016) (WC 11-42, 09-197, 10-90), https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-38A1.pdf.

¹⁵ New York Times. *The 'Fix' for Net Neutrality That Consumers Don't Need* (Apr 28, 2017)

https://www.nytimes.com/2017/04/28/opinion/the-fix-for-net-neutrality-that-consumers-dont-need.html?_r=0

originally.¹⁶ If the existing regulations were to be eliminated, many legal aid organizations such as the Northwest Justice Project - as well as the entire justice system - would be greatly affected. With limited resources, they just cannot provide what they should and what they want to the detriment of Washington State's judicial and legal system (our "justice" system) and our most vulnerable populations.

Conclusion

The ATJ Board's mission is to ensure Access to Justice and the delivery of justice to all. But the gap between Washingtonians' needs - especially those with low income, or disabilities - and the legal resources available to them, or the judicial system itself, cannot be bridged without accessible and useful technology. Using online platforms and web content to educate, inform, and facilitate individuals' resolution of their legal issues, our legal community is making strides to ensure that every Washingtonian can receive the legal help and the judicial availability and quality they need. This mission cannot be served, however, if our best tool for outreach and information—the Internet—loses its openness and accessibility and usability.

For these reasons, we respectfully urge the FCC to reconsider the NPRM and maintain the existing Title II Order classifying broadband internet access services as telecommunication services and allowing the expansion of broadband access under the Lifeline Program and other Universal Service Fund program.

¹⁶The Community Technology Advisory Board. *Community Technology Advisory Board Statement to the FCC Regarding Its Restoring Internet Freedom Proposal* (July 2017) <http://ctab.seattle.gov/wp-content/uploads/2017/07/CTAB-FCC-Comment-FINAL.pdf>

DATED: August 17, 2017

SUBMITTED BY: Washington State Access to Justice Board

In addition to the Washington State Access to Justice Board, this comment is fully supported by:

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