



**Before the
Federal Communications Commission
Washington, DC 20554**

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

**COMMENTS OF
THE WASHINGTON STATE ACCESS TO JUSTICE BOARD**

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, and submits these comments to express its 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. In consideration of that support, the ATJ Board offers the following¹ in response to the FCC’s Restoring Internet Freedom Notice of Proposed Rulemaking (17-108) (“NPRM”), and urges the FCC to reconsider the NPRM in order to ensure that access to a free and open Internet is preserved in the interest of justice.

Interest of the Commenter

In the mid-1990s, the Washington State Bar Association (WSBA)’s State Board of Governors identified a growing need to coordinate and improve access to justice efforts in

¹ This comment has been prepared by and is submitted exclusively on behalf of the Access to Justice Board. It does not represent the position of the 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>

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SUBMITTED BY: Washington State Access to Justice Board

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