

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

In the Matter of)	
)	
Protecting the Privacy of Customers of Broadband and Other Telecommunications Services)	WC Docket No. 16-106
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**REPLY COMMENTS OF COMMON SENSE KIDS ACTION, STATE
EDUCATIONAL TECHNOLOGY DIRECTORS ASSOCIATION (SETDA), and
TEACH PLUS**

Common Sense Kids Action, SETDA, and Teach Plus represent schools, libraries, and the many community members they serve—including countless children. We are pleased to submit these reply comments in response to the Notice of Proposed Rulemaking In the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services by the Federal Communications Commission (the “Commission” or “FCC”). We support the Commission’s efforts to enhance privacy on broadband networks.

As the Commission knows, the internet is an increasingly essential part of daily life for all Americans, including for students and adults who do not have broadband access at home and rely upon access elsewhere.¹ Millions of students, teachers, families, and community residents of all ages and backgrounds utilize commercial broadband networks from schools and libraries every day. Libraries and schools also supplement home broadband access in an increasingly mobile and technology-enriched digital age.

These users deserve the same privacy protections available to residential and other customers, and, indeed, the unique circumstances governing their access, consent, and the customer relationship demonstrate the need for special protections. The Commission should: (1) make it explicit in its Order that schools and libraries, and their users, are covered, and (2) enact specific safeguards to ensure that personal information collected on these networks is not used for any purposes other than those needed for service without an individual’s consent. This includes prohibiting any pay-for-privacy schemes in the school and library context.

To begin, the FCC’s Order should explicitly cover schools, libraries, and their users.

¹ See March 8, 2016 Letter to Chairman Wheeler from American Library Association, Common Sense Kids Action, and State Educational Technology Directors Association (SETDA), https://d2e111jq13me73.cloudfront.net/sites/default/files/uploads/online_privacy_letters.pdf.

Privacy protections should not only extend to “customers,” in this case the schools and libraries, but to the millions of children, women, and men who regularly access the internet through schools and libraries. In the past, the FCC has recognized the importance of promoting broadband at schools and libraries, and a key aspect of this includes respecting school and library broadband users’ privacy.²

Further, the Order should take into account the unique circumstances governing access at schools and libraries, and provide protections accordingly. Certain aspects of the school and library user broadband experience make strong privacy rules particularly important. First, those who use broadband at schools or libraries have no choice in the selection of the broadband provider. (And nearly all students have no choice as to whether or not to use broadband in the first place; it is required as part of their education.) Second, school and library broadband users are unable to adopt additional personal security procedures within a complex public access environment. Third, particularly in schools, the information shared and exposed on broadband networks is often educational information, and more specifically children’s educational information. Both educational information and children’s information are categories of data that have been recognized as sensitive in their own right. The sensitivity of children’s information is widely acknowledged, including by otherwise-opposing parties in this rulemaking.³ Educational records, about children, teens, or even adults, have also been recognized as sensitive and deserving of special protections.⁴ Educational information can lead to inferences—algorithmic or human—about abilities and intelligence. Furthermore, inaccurate records can compound significant problems for individuals.⁵ Given all of these factors, special rules are merited. Moreover, because schools and libraries typically receive access through one customer point—the school or library—specific rules applicable to the school and library context are practically feasible.

Consistent with the FCC’s apparent proposal, that schools and libraries are the customers, each school or library customer should have one set of universal rules for all users. This will be easier for providers than having different rules for each user; moreover, the vast

² See, e.g., Annual Performance Report, 2015 WL 10059227 (Jan. 1 2015) (stating that FCC goal is to maximize availability of broadband to community anchor institutions); Broadband Progress Report, 2015 WL 9942032 (Jan. 28 2015) (stating that 41 percent of schools have not yet met the FCC’s goals for broadband, showing that broadband is not being deployed to all Americans in a reasonable and timely fashion); see also May 27, 2016 Comments of Common Sense Kids Action In the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services WC Docket 16-106 (“Broadband Privacy Proceeding”), 11-13.

³ Many commentators who oppose the FCC’s general framework have acknowledged that children’s information is sensitive and/or that it merits opt-in protection. See, e.g., Comments in Broadband Privacy Proceeding filed by Federal Trade Commissioner Maureen Ohlhausen, Hughes Network Systems, ICLE, Internet Commerce Coalition, NCTA, SIAA, T-Mobile, USTA, Verizon, Larry Tribe, Association of National Advertisers, Century Link, Comcast, Consumer Electronics Association, and CTIA. Other experts, like the Federal Trade Commission Staff, have also reiterated the importance of opt-in consent for children’s information.

⁴ See, e.g., Paul Ohm, *Sensitive Information*, 88 S. Cal. L. Rev. 1125, 1157-58 (2014-2015) (noting that children’s information has traditionally been regarded as sensitive); Family Educational and Privacy Rights Act, 20 U.S.C. § 1232(g); Student Online Personal Information Protection Act (SOPIPA), Cal. Bus. & Prof. Code § 22584.

⁵ See Ohm, *supra* n.4, at 1157, 1164, 1170

majority of school users—children—should not be selecting privacy options on their own.

And, given the unique vulnerability of users and the sensitivity of the information shared on these networks, the universal rules should be robust. It is important to ensure that personal information collected on these networks is not used for any purposes other than those needed for service without an individual’s consent. Given the inability of individuals to consent or not consent within a set of universal rules, there should be no sharing or non-service related use of any information collected from school and library users. Providers, knowing they are overwhelmingly dealing with children and sensitive educational information, should only use the information they receive to provide the necessary services. They should not use information collected from school and library networks to provide targeted advertisements. And schools and libraries should not have the option to “opt in” on behalf of all of their users, to the extent they are even otherwise legally able to do so.⁶ Broadband providers, by only using personal information they collect in schools and libraries to provide broadband services, would be following the same standards as educational technology companies, who in many instances—such as in California—can only use the personal information they collect for educational purposes.⁷

Relatedly, to the extent the FCC approves pay-for-privacy options, such offerings should not be allowed in the school and library context. The FCC has previously recognized the unique situation of schools and libraries in its 2015 Open Internet Order, noting that paid priority agreements can be a particular threat to noncommercial end users, including schools and libraries, “who would be less able to pay for priority service.”⁸ The same is true with pay for privacy protections. These institutions are often cash-strapped, and it would be inappropriate for them to be put in a situation where they feel they must bargain away users’ privacy in exchange for cheaper service. Given that E-Rate recipients must use price as the primary factor when considering bids, weighted more heavily than any other factor,⁹ a cheap price in exchange for giving up privacy protections is an unfair inducement. Rather, schools and libraries, and the families and individuals who rely on them, should feel confident that the personal information shared over these networks is not being used by broadband providers for any purposes other than providing them services.

The importance of having a strong baseline rule in place is highlighted by Comments

⁶ For example, a school likely has no authority to opt-in to a provider using a child’s information for non-educational purposes in the first place, unless it receives separate consent from a parent. Under the Children’s Online Privacy Protection Act, which governs many online companies’ ability to collect and disclose children’s information, schools can consent to operators’ collection of children’s information in place of parents, but “the school’s ability to consent for the parent is limited to the educational context.” (COPPA FAQ M.1, at <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions#Schools>). It is unclear why a broadband provider would be treated differently.

⁷ See, e.g., SOPIPA, Cal. Bus. & Prof. Code § 22584.

⁸ See *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5621, para. 68 (2015).

⁹ Schools and Libraries (E-Rate): Selecting Service Provider, Universal Service Administrative Company, <http://www.usac.org/sl/applicants/step02/>.

filed by broadband providers like Verizon, who asks that the FCC give “E-Rate customers (like schools and libraries)” the “flexibility to negotiate customer-specific terms for the handling of their own customer information.”¹⁰ The rules proposed would not prohibit negotiating stronger privacy protections, or negotiating terms in general. But they would ensure that certain baselines are followed, and that E-Rate customers are not pressured into negotiating away the privacy of their (otherwise voiceless) users.

Schools, libraries, and the millions who rely on them for broadband access deserve privacy rules that respect and protect them. We look forward to working with the Commission on this important issue.

Respectfully submitted,

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¹⁰ May 27, 2016 Comments of Verizon in Broadband Privacy Proceeding, 63.