

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Protecting and Promoting the Open Internet*, GN Docket No. 14-28.

Following years of vigorous debate, the United States adopted the Bill of Rights in 1791. The Framers recognized that basic freedoms, as enshrined in the first ten amendments to the Constitution, were fundamental to a free and open democratic society.

James Madison gave life to the First Amendment in a scant 45 words, which are fundamental to the spirit of this great nation. Almost two centuries later, Justice William Brennan would write in the historic 1964 *New York Times v. Sullivan* decision that “debate on public issues. . . [should be] . . . uninhibited, robust and wide-open.”¹ I believe President Madison and Justice Brennan would be particularly proud of the rigorous, robust, and unfettered debate that has led us to this historic moment. . . . And what a moment it is.

I believe the Framers would be pleased to see these principles embodied in a platform that has become such an important part of our lives. I also believe that they never envisioned a government that would include the input and leadership of women, people of color, and immigrants, or that there would be such an open process that would enable more than four million citizens to have a direct conversation with their government. They would be extremely amazed, I venture to say, because even we are amazed.

So here we are, 224 years later, at a pivotal fork in the road, poised to preserve those very same virtues of a democratic society – free speech, freedom of religion, a free press, freedom of assembly and a functioning free market.

As we look around the world we see foreign governments blocking access to websites including social media -- in sum, curtailing free speech. There are countries where it is routine for governments, not the consumer, to determine the type of websites and content that can be accessed by its citizens. I am proud to be able to say that we are not among them.

Absent the rules we adopt today, however, any Internet Service Provider (ISP) has the liberty to do just that. They would be free to block, throttle, favor or discriminate against traffic or extract tolls from any user for any reason or for no reason at all.

This is more than a theoretical exercise. Providers here in the United States have, in fact, blocked applications on mobile devices, which not only hampers free expression but also restricts competition and innovation by allowing companies, not the consumer, to pick winners and losers.

As many of you know, this is not my first Open Internet rodeo. While I did vote to approve the 2010 rules, it was no secret that I [preferred](#) a different path than the one the Commission ultimately adopted. Specifically, I preferred: (1) Title II with forbearance, (2) mobile parity, (3) a ban on paid prioritization, and (4) preventing the specialized services exemption from becoming a loophole.

So, I am sincerely grateful to the Chairman for his willingness to work with my office to better ensure that this Order strikes the right balance and is positioned to provide us with strong, legally sustainable rules. This is our third bite at the apple and we must get it right.

Today, we are here to answer a few simple questions:

¹ *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

- Who determines how you use the Internet?
- Who decides what content you can view and when?
- Should there be a single Internet or fast lanes and slow lanes?
- Should Internet service providers be left free to slow down or throttle certain applications or content as they see fit?
- Should your access to the Internet on your mobile device have the same protections as your fixed device at home?

These questions, for me, get to the essence of the Open Internet debate: How do we continue to ensure that consumers have the tools they need to decide based on their own user experience. The consumer ... not me, not the government and not the industry, but you, the consumer, makes these decisions.

Keeping in touch with your loved one overseas; interacting with your health care provider, even if you are miles away from the closest medical facility; enrolling in courses online to improve your educational, professional or entrepreneurial potential without worrying whether the university paid for a fast lane to ensure that the lecture won't buffer for hours because the quality has been degraded or throttled; not wondering if that business affiliated with your Internet Service Provider is getting preferential treatment over that start up you worked so hard to establish.

We are here so that teachers don't have to give a second thought about assigning homework that can only be researched online because they are sure that their students are free to access any lawful website, and that such websites won't load at dial-up speed. And, today, we are answering the calls of more than four million commenters who raised their voices and made a difference through civic, and sometimes not so civil, discourse.

We are here to ensure that every American has the ability to communicate by their preferred means over their chosen platform, because as one of our greatest civil rights pioneers, Representative John Lewis, said so eloquently: "If we had the Internet during the movement, we could have done more, much more, to bring people together from all around the country, to organize and work together, to build the beloved community. That is why it is so important for us to protect the Internet. Every voice matters and we cannot let the interests of profit silence the voices of those pursuing human dignity."

We are here to ensure that there is only one Internet where all applications, new products, ideas and points of view, have an equal chance of being seen and heard. We are here because we want to enable those with deep pockets, as well as those with empty pockets, the same opportunities to succeed.

There are many aspects of this item that I am particularly pleased to support. And, while time and stamina prohibit me from naming them all, I do want to highlight a few.

Mobile Parity. Users of mobile devices should not be relegated to a second class Internet. We know that many low-income Americans rely heavily on their mobile device and, for some, that mobile device is their only access to the Internet. They need and deserve a robust experience on par with their wired peers. So again, I thank the Chairman for ensuring equality and erasing the mobile versus fixed distinction.

No Blocking, No Throttling, No Paid Prioritization. The item contains strong, clear rules to ensure that all content, all applications and all bits are treated equally. These are all essential to the free market and this is pro-competitive.

No Loopholes. We must also ensure that companies are not able to take actions that circumvent or undermine the Open Internet rules, whether through exemptions in the definition or at the point of interconnection. And despite a flurry of press reports earlier this week, I would never advocate for any policy that undermines FCC oversight or enforcement of any open Internet protections including interconnection. I'm pleased that the Order commits to monitor Internet traffic exchange arrangements, and enables the FCC to intervene, if appropriate.

Promoting Affordable Access. I have also been vocal about my call to modernize the Lifeline program, which has been stuck in an MC Hammer, parachute-pants time warp since 1985. The Order enables the FCC to support broadband as a separate service, which will truly help low-income communities break out of digital darkness.

In the seemingly endless meetings with stakeholders, my office has heard concerns from many sides. To some, the item does not go far enough, others want a ban on "access fees," and there are those who advocate a ban on zero rating, and others, who feel that it goes too far, whether on the scope of forbearance or the focus on interconnection.

We worked closely with the Chairman's office to strike an appropriate balance and yes, it is true, that significant changes were made at the request of my office, including the elimination of the sender-side classification. I firmly believe these edits have strengthened this item. Reports that this weakens our legal authority over interconnection are completely inaccurate.

But it should come as no surprise that, with any item in excess of 300 pages, there are a few issues I would have decided differently.

First, I would have preferred to readopt the unreasonable discrimination and reasonable network management rules from 2010.

Second, I think we should tread lightly when it comes to preempting the states' ability to adopt and implement their own universal service funds. Not doing so could put a strain on the tremendous federal-state partnership that I have worked so hard to create, and state universal service funds are completely distinct from any federal program.

Finally, I have been struck by how much rhetoric in this proceeding is completely divorced from reality. While as a rule, I generally refrain from responding, in this case, I must address concerns about rate regulation.

Many of you know that reforming the inmate calling service regime has been a priority for me. Despite clear legal authority, the FCC dragged its feet for over a decade, while families, friends, lawyers, and clergy, paid egregiously high and patently unlawful fees to make a simple phone call to and from inmate facilities.

I bring this up today because the inmate calling proceeding represents a prime example of how the FCC resisted rate regulation for years, even where consumers were subjected to blatantly unreasonable charges by providers with a clear monopoly, where severe costs to society were evident, and where there was a clear case of market failure. So, for those in a panic about rate regulation, there are millions who can testify to how high the bar is when it comes to the FCC intervening on rates and charges.

And I repeat this challenge to anyone willing to accept it: Highlight examples, where the FCC has ruled that a rate is unreasonable in a context other than inmate calling or a tariff investigation over the last decade. To date, no one has come forth with any examples, and that in and of itself is telling.

And, lest we forget, over 700 small broadband providers in rural America offer broadband Internet access pursuant to the full panoply of Title II regulation. They contribute to universal service and, amazingly, the sky has not fallen and things are okay. Indeed, such carriers advocated that the Open Internet proceeding not change their status and require a lighter touch Title II.² Their retail broadband Internet access rates are not regulated, and I am unaware of any stream of class action lawsuits. Even so, the item does assert primary jurisdiction to reduce such concerns.

Mr. Chairman, today I support this item because I believe it provides the strong protections we need and balances the concerns raised by stakeholders, large and small.

The Order we are poised to adopt is not the product of some artificial life force. A dedicated team from the Wireline Competition and Wireless Telecommunications Bureaus and Office of General Counsel worked extremely hard on this significant item. There are too many people to thank, but I would be remiss if I didn't mention Jonathan Sallet, Stephanie Weiner, Matt DelNero, Claude Aiken, Marcus Maher, Roger Sherman, Jim Schlichting, Joel Taubenblatt, and Michael Janson. And, of course, I must thank my legal advisors, Louis Peraertz and Rebekah Goodheart for their hard work and dedication. Last, but not least, I want to thank you, the American people – more than four million strong, for your role in framing this historic Order. Today, we better enable millions to tell their stories, reach their potential and realize their American ideals.

² See Letter from Michael R. Romano, Senior Vice President Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28; CC Docket No. 96-45; WC Docket No. 06-122, at 2 (Feb. 13, 2015) (“NTCA and NECA urged the Commission to ensure that small rural telcos such as those within their respective memberships can continue to avail themselves of the option to tariff broadband-capable transmission services that underpin retail broadband Internet access services.”).