

Testimony of FCC Commissioner Mignon L. Clyburn
Before the
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Committee on Energy & Commerce
Subcommittee on Communications & Technology
Oversight and Reauthorization of the Federal Communications Commission
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Chairman Blackburn, Ranking Member Doyle, Members of the Subcommittee, good morning and thank you for the opportunity to again appear before you to share my priorities for advancing competition, strengthening viewpoint diversity, and ensuring that consumers are always put first.

Last week, I had the privilege of traveling to Marietta, Ohio. There I heard countless stories of individuals, businesses and local government leaders who, but for no other reason than their geographic location and maybe a slight income gap, find themselves on the wrong side of the digital and opportunities divide. Catherine told me that she had “better internet and cell phone service in rural Kenya in 2007-08 than in Meigs County, Ohio in 2017.” Tina shared how she has lost \$300-\$500 in the past month from her art business due to connectivity challenges. But Pat summed it up best by describing internet and cell phone coverage as “vital public utilities” that rural America needs to “support ourselves, compete in world markets, and not become a burden on others.” The stories and interests of last week’s presenters who represented more than 16 counties in the Appalachian region of Ohio, West Virginia and even Kentucky varied, but the unifying theme I heard is that too many families in rural America and even many urban communities are suffering from poor to no connectivity and substandard service that, to add insult to injury, is simply unaffordable.

While an eternal optimist, even I walked away from that conference and town hall meeting deeply disturbed by how much each of us has let those communities down. Fourteen year old Herron should not have to grow old waiting for affordable, reliable broadband service to reach her family’s farm. If we commit to putting her interests and the interests of her neighbors and local small businesses first, then we will be able to truly say that we have served her best.

Allow me to use the remainder of my testimony to further explain how.

Preserving a Free and Open Internet and the Implications of Undoing Title II

Among my top priorities is preserving the Commission’s 2015 open internet rules. For the past several months, I have witnessed the nation’s expert agency gloss over Title I, Section 1 of the very Act that Congress created some 83 years ago. Without discrimination, the FCC’s mandated goal is to make available, so far as possible, adequate facilities at reasonable charges for wire and radio communications. Craig from California said it well when he described to me a world without net neutrality, as one where his provider “could easily throttle my Netflix or Hulu subscriptions to force me into one of their cable TV packages that have Netflix or Hulu, or force me into a more expensive internet plan that I can’t afford.” He went on to describe the next internet package as being “nearly four times the price of my current internet plan.” And just what

is this administration's response to Craig and the more than 10 million others who have filed their views with the Commission? To propose the dismantling of the bright-line rules of the road we adopted in 2015, and were upheld by the D.C. Circuit last year.

But if we were to allow ourselves to get beyond the political, corporate, and philosophical posturing, what is clear is that the basic tenets on which we should all agree are the things that truly matter: no blocking, paid prioritization, or throttling. The broader implications of undoing our classification of broadband as a Title II service are what we need to be discussing. Take for example consumer privacy. Section 222 of the Communications Act is the FCC's privacy statute. We adopted rules of the road for broadband privacy last October and they were stripped away earlier this year with the passage of the Congressional Review Act (CRA) resolution of disapproval which means today, there are no comprehensive rules on the books protecting broadband consumer privacy for Americans. And in a world without Title II, not only will the FCC be forever barred from addressing consumer privacy in a broadband world, it is unclear that any agency will ever hold that authority.

Similarly, when it comes to our efforts to expand the deployment of broadband, including in rural America, section 254 of the Communications Act broadly gives us the authority and duty to ensure universal service. But, the bulk of the mandate and duty applies to Title II telecommunications services. Taking away Title II for broadband undercuts our ability to ensure universal service for broadband by taking away our clearest source of authority to make sure all Americans are connected.

Undoing our classification of broadband as a Title II service also harms the FCC's ability to enable competition. There is specific authority in sections 224 and 253 of the Communications Act that allows the FCC to enable competitive access to monopoly infrastructure, and to remove other barriers to competition. Without Title II, it will be far more difficult for the Commission to enact policies to enable competition.

Lifeline Modernization

Second, I have been a tireless defender of the FCC's Lifeline program and the need for affordable connectivity for all Americans. I strongly support efforts to expand broadband access and streamline infrastructure deployment, but if the result is connectivity that much of the community cannot afford, then we have not accomplished our mission nor satisfied our statutory obligation under the Communications Act.

The reality is that an \$80-\$100 broadband bill is out of reach for too many Americans. Given the extraordinary economic benefits of broadband, including the ability to run a business, find a job, advance one's education, access telehealth services, or even simply pay your bills, we must strive to make connectivity more affordable, not less.

I have always been clear in my intent to aggressively root out waste, fraud, and abuse, whether it is in the Lifeline program or any of our other universal service programs. In recent years, the Commission has taken numerous steps to achieve this goal with respect to Lifeline,

including setting up a national eligibility verifier, adopting a periodic recertification requirement and ensuring that people who are signed up are actually using their service.

Moving forward, we have a choice to make as a Commission. Will we be short-sighted and weaken a program designed to assist our nation's most vulnerable or will we commit to constructively address and fix any remaining issues so that this agency is actually upholding its Congressional mandate to make available "[q]uality services . . . at just, reasonable, and affordable rates"? As it stands right now, no new Lifeline providers can get into the program, providers are laying off employees and cutting off customers, the FCC is currently prohibiting states from approving new Lifeline broadband applications, and the agency has simultaneously announced its intention not to approve any new or pending applications itself. This has triggered a breeding ground full of business uncertainty, less marketplace competition, fewer consumer choices and mountains of disincentives for innovation which is hurting those most in need. In short, we have turned our backs on the nation's most vulnerable. However, it is not too late to get back on course. Let us show just how committed we are to strengthening a program designed to connect those who cannot afford a dial tone or broadband service, as we meet our obligation to institute strong accountability measures.

Inmate Calling Reform

Third, I remain committed to delivering just and reasonable rates for the 2.7 million children who have been hampered in their quest to communicate with an incarcerated parent. The Commission's caps on inmate calling rates reforms would have provided relief to millions of friends and families from egregious ancillary fees and charges. This order was intended to improve connectivity, which is pivotal to reducing recidivism and overall criminal justice reform.

But the market failure for inmate calling services and video visitation remains unaddressed. The D.C. Circuit's decision last month was no doubt deeply disappointing, but I take a little comfort, that the court gave us a blueprint for moving forward on interstate rates, site commissions, and ancillary fees. I am thankful for the leadership of Congressman Bobby Rush and others on this Subcommittee who for years have fought for real reform. Rest assured, I will continue fighting to ensure that inmates and their loved ones do not have to pay several thousand percent of what a non-incarcerated person pays to stay in touch.

Promoting Viewpoint Diversity

Fourth, I am a strong believer in the need for greater viewpoint diversity across our public airwaves. Yet, the Commission has taken several highly concerning steps this year to derail that goal including reinstating the UHF discount. The FCC adopted the UHF discount in 1985 to address the competitive disadvantages facing UHF stations, including being technically inferior, producing weaker over-the-air signals, reaching smaller audiences, and costing more to build and operate compared to VHF stations. Today, thanks to the digital television transition, the technical shortcomings of UHF signals no longer exist. But by reinstating and maintaining this loophole, the Commission has signaled its willingness to allow a single broadcast station

group to reach nearly 80% of U.S. households in a way that is non-transparent to the public, and enables a nearly doubling of the ownership threshold set by Congress in 2004.

Related to this action, I must highlight the troubling lack of transparency involving the recently approved Sinclair-Bonten Media deal. By not giving an advance heads-up before the Media Bureau's approval or the courtesy of letting my office know the transaction was approved after the fact, Chairman Pai reneged on his commitment "to be more transparent than previous Chairs." While it is true that this transaction was unopposed, its relationship to a related merger pending before the Commission as well as the D.C. Circuit's UHF discount case, meant that it rose to a level of public interest that warranted greater transparency. Simply put, I should not have to learn of the Commission's approval of a noteworthy transaction through the news media and I hope that this does not become the norm.

Connect2Health

Finally, I would like to share some news about the Commission's work around broadband-enabled healthcare. Last month, the Commission's Connect2Health Task Force released an update of our popular broadband health mapping tool. In addition to learning that over 36 million Americans live in counties with what can best be described as "double burdens" of need – high numbers of those with chronic disease who also lack adequate broadband connectivity – we have a better picture of the specific U.S. counties with the greatest needs.

Specifically, our data shows that there are 214 counties (175 of which are majority rural) where broadband access is below 50% and diabetes and obesity rates are above the national average. Among the critical needs counties are four in my home state of South Carolina, four in Tennessee, four in North Carolina, five in Michigan, five in Missouri, and 16 in Texas. Equipped with this data and working with our federal partners at the Department of Health and Human Services (HHS) and the Department of Veterans Affairs (VA), we will be better positioned to target those double burden counties.

Related to this effort, in April, the Commission adopted a Public Notice (PN) seeking comment and data on actions to speed up the adoption and accessibility of broadband-enabled healthcare solutions. There have been more than 90 filings in response to the PN and with the comment period now closed, I am hopeful that the staff will be in a position to make recommendations on next steps the Commission could take by the Fall.

Conclusion

Given the FCC majority's focus on improving agency process and enhancing transparency, I will redouble my efforts when it comes to remaining hopeful. I always stand ready to work with my colleagues, this Subcommittee, state and local partners and business leaders to advance policies that put #ConsumersFirst and ensure that our communications landscape remains the envy of the world.

Thank you again for allowing me to share my priorities and concerns with you this morning. I look forward to answering any questions you may have.