

Statement of FCC Commissioner Mignon L. Clyburn
Senate Committee on Commerce, Science, and Transportation
Oversight of the Federal Communications Commission
March 8, 2017

Chairman Thune, Ranking Member Nelson and Members of the Committee, good morning. It is an honor to once again appear before you to share my priorities for putting #ConsumersFirst. For me, this includes taking the steps necessary to enable robust competition, affordable connectivity, reliable service, no surprise billing and an open Internet for all.

Not only do I believe the FCC has the legal responsibility under the Communications Act to put consumers first, it has a moral responsibility. By this I mean we have an obligation to look out for our nation's most vulnerable populations: school children seeking to complete their homework after the dismissal bell rings; families trying to communicate affordably with incarcerated loved ones; or those living at or below the poverty line who desire an affordable broadband option so they can apply for jobs, start a business or access telehealth services.

In pursuit of these goals, last October, our office hosted a solutions-focused policy forum known as #Solutions2020. The half-day event, held on the campus of Georgetown University Law Center was a resounding success with more than 100 attendees and countless more tuning in online for the live stream. Following the event, in December, we released a draft call to action plan, which presented a comprehensive framework and approach to communications policies that will allow for robust, affordable connectivity for all Americans within the next four years.

As a result of public comments from more than two dozen organizations, we expect to release a final action plan later this month on FCC.gov and I remain hopeful that we can work on a bipartisan basis to achieve these basic goals by the end of the decade.

During my more than seven years as an FCC Commissioner, I have made it my focus to be an advocate for those whose voices far too often go unheard. Consistent with this approach, I would like to share several issue areas I intend to prioritize this year.

Preserving a Free and Open Internet

When we talk about the principles underpinning an open Internet, a larger question must be asked. Will there be a cop on the beat in a broadband world? The FCC supports broadband networks with universal service dollars, adjudicates disputes between broadband providers and is paving the way for the transition from a voice world to a broadband world.

I believe that the FCC must continue in its present role as protector of consumers and enabler of competition in the broadband ecosystem. If not the FCC, who will consumers turn to when their broadband provider throttles their favorite website? And what if there is a billing dispute? Poor service? Privacy concerns? These questions underlie the many reasons why I strongly supported the Commission's 2015 Open Internet Order and continue to believe it provides the best legal framework to protect consumers, innovators and entrepreneurs.

Protecting Consumer Privacy

Ninety-one percent of Americans feel they have lost control of their information online, according to one report. This is why I supported the Commission's actions, consistent with the FTC's privacy framework, to empower consumers to make informed choices about their personal information, and give broadband providers the flexibility to comply with the rules in a manner that works for their company.

I was deeply disappointed by the Chairman's decision to effectively gut one of those rules last week. The outcome of the decision is not relief from purported regulatory burdens. In fact, the providers who sought the stay of the privacy rules used the very text of the FCC's rule as the basis for their voluntary code of conduct. The real effect here is a lack of recourse for consumers when their personal information is compromised.

USF Modernization

Our Universal Service program is a four-legged stool, with four different programs that address four distinct goals working in concert to close the digital divide. Without Lifeline, for example, millions of Americans would be unable to afford the cost of voice service. And thankfully last year, the FCC modernized the Lifeline program for the 21st century, to not only support broadband service but further combat fraud by beginning a process to fully take user verification out of the hands of service providers. We also expanded the program, allowing recipients of the Veterans Pension Benefit, among other programs, to access Lifeline service.

But USF modernization cannot stop there. It means reforming our rural healthcare program so that the skilled nursing facilities that Congress explicitly included in the program, are not kept out by the current cap on funding. It also means reforming the contribution system, which is increasingly becoming a heavy tax on seniors, who can ill-afford to shoulder the burden of nationwide broadband deployment.

Inmate Calling Reform

The inmate calling regime is the greatest and most distressing form of injustice I have witnessed in my 18 years as an industry regulator. This past December, I embarked on a 24 day campaign to bring awareness to the benefits of inmate calling reform. The campaign also highlighted some of the egregious practices that keep the generational cycle of incarceration intact, break up families and marriages, and impose financial burdens on families that are least able to afford it.

I applaud the leadership of Senators Booker and Duckworth, both of whom introduced legislation in the previous Congress to address inmate calling and video visitation issues. I look forward to working with all interested offices to tackle these important issues during the 115th Congress.

Expanding Broadband Infrastructure Deployment

In January, Chairman Pai announced the establishment of the Broadband Deployment Advisory Committee. I applaud him for focusing on bridging the deployment gap and share the vision of ubiquitous broadband for all Americans. Accordingly, I have supported the agency's continued focus on targeted spending of universal service dollars to deploy broadband, in the hope that the Congressional directive in Section 1 of the Communications Act will be realized sooner rather than later.

Additionally, I remain supportive of legislative efforts to streamline the deployment of broadband. Among other actions, I am hopeful this Committee will consider the passage of the *Broadband Conduit Deployment Act*; reform of pole attachments; and the advancement of public-private, public-public, and private-private partnerships to assist with all aspects of the infrastructure puzzle and aggregate the demand for services where the economic case for build out is weak.

Improving Broadband Data

One area in which I believe we can all agree is the need for better broadband data. Nowhere is this clearer than in our recent efforts on the Mobility Fund, where the lack of good data could mean it will take longer to deliver on the program's stated goal of bringing connectivity to unserved communities. With improved data, we could better target our infrastructure efforts and improve the accuracy of our National Broadband Map.

Additionally, it should be noted that the market has undergone significant consolidation since 2013, including transactions involving Charter and Time Warner Cable; Verizon and XO Communications; Windstream and Earthlink; as well as Centurylink and Level 3. Across multiple proceedings, industry has suggested updates to the Form 477 process. I agree that it is time to collect better data, and I look forward to working with my colleagues to make this a reality.

Process Reform

In the first weeks of this new Administration, Chairman Pai has outlined a series of process reforms, many of which have been discussed by this Committee over the past several years. I would like to focus on one of these reforms that the Chairman has implemented at my suggestion: the provision of a public fact sheet for each of the Commission's meeting items. The reality is that most consumers do not have time to read through Commission items that can reach over 300 pages. This simple step will enhance transparency and make it easier for the public to engage and understand the actions being taken by our agency.

Unfortunately, some practices that have been the subject of past Committee inquiries about the use of delegated authority continue to concern me. In fact, just in the past month I have seen an FCC Office issue an Order inconsistent with its delegated authority, seen delegated authority used to resolve new and novel issues, and experienced delegated authority used as a weapon to force a rapid Commission vote on an issue of great significance.

Digital Inclusion for the Modern Era

Among the six pillars I outlined in our draft call to action plan was the need to promote a more diverse media landscape. While there has been much discussion about the elimination of the Commission's ownership rules, I believe the conversation must start by asking how we move the inclusion and opportunity needle for those seeking to fulfill the dream of owning and operating broadcast properties.

To this end, I support reinstating an FCC Tax Certificate Program; working with the broadcast industry to start a pilot incubator program to aid new entrants or disadvantaged businesses; and increasing diversity both in front of and behind the camera.

I also believe we must do more to enhance the voices of independent and diverse programmers outside the broadcast space. The Notice of Proposed Rulemaking (NPRM) on Independent Programming adopted by the Commission in September would achieve this goal by targeting two of the worst offending practices facing many independent video programmers: "unconditional" most favored nation (MFN) clauses and unreasonable alternative distribution method (ADM) provisions. I look forward to working with Chairman Pai to move to an Order that ensures independent and diverse voices have a place in a vibrant media landscape.

Expanding Deployment of Mobile Broadband

The next generation of wireless connectivity, or 5G, promises to fundamentally change the way we live, interact and engage with our communities. 5G technology promises to deliver speeds of up to 10 gigabits per second with lower latency and greater capacity. This improved connectivity has the ability to redefine the industry across many different sectors including healthcare, transportation, energy, agriculture and public safety. In order to reap the benefits of 5G services, however, we need to not only have adequate spectrum, but the necessary infrastructure, such as small cells and distributed antenna systems (DAS), to deploy that spectrum.

Last year, the FCC commenced a proceeding to seek public input on actions the Commission can take to expedite deployment of the infrastructure needed for next generation wireless services. We recognized the need for efficient and streamlined processing of siting applications as well as localities' interests in preserving the aesthetics of their communities and ensuring the safety of their citizens. Indeed, as I have said before, approving applications to site antennas and other infrastructure are difficult policy challenges for local governments. These challenges are even more acute in a 4G and 5G world, where the volume of siting applications has increased substantially. I am committed to engaging with stakeholders on this issue and examining the record developed through this proceeding.

This proceeding notwithstanding, I believe the Commission has a unique role to play in facilitating discussions and dialogue between industry and local communities about the benefits and challenges of small cell deployment. My discussions with representatives from municipalities makes clear that a tailored educational campaign would be well received and

highly effective in surmounting the challenges posed by infrastructure siting for next generation 5G services.

Connect2Health

As my staff and I visited many of your offices during recent weeks, we heard a common refrain when it comes to the importance of broadband-enabled healthcare, particularly in rural communities. With estimates suggesting that the United States will have a shortage of up to 90,000 physicians by 2025, we have an opportunity through the use of technology to improve the quality of healthcare and reduce costs. This is an issue I am personally passionate about and I believe it should continue to be a priority for the Commission.

One year ago, Chairman Wheeler circulated to his fellow Commissioners, a Public Notice that posed a series of questions about the intersection of broadband and health. While the notice failed to gain the necessary votes last year, I am grateful that this item remains on circulation. I look forward to working with the Chairman and Commissioner O’Rielly to see it adopted in the near future.

Public Safety

As reflected by the draft Next Generation 911 legislation that Ranking Member Nelson and Senator Klobuchar unveiled last week, and the Commission’s actions over the years, there is a sustained commitment to promoting the deployment of NG 911 networks. The benefits of NG 911 are well documented: IP-based technology is more resilient and reliable than the legacy circuit switched system and will provide public safety professionals better tools to analyze and respond effectively to emergencies.

While there has been a great deal of focus on how to help state and local public safety answering points (PSAPs) make the transition to NG 911, surprisingly, there has been no similar focus on Federal PSAPs. In fact, we do not even know how many Federal agencies run PSAPs or how many Federal PSAPs there are. But I am happy to report that the DHS Emergency Communications Preparedness Center (ECPC)’s Federal 911 Focus Group is working to change this.

The ECPC, the federal interagency focal point for interoperable and operable communications coordination, is comprised of 14 federal agencies, including DHS, DOD and the FCC. The 911 Focus Group is currently surveying Federal agencies to develop a comprehensive inventory of all Federal PSAPs.

Preliminary findings highlight that many Federal PSAPs actually lag behind their state and local counterparts. Many of the PSAPs on military bases that we know about are using old technology, have limited capability to locate 911 callers on the base and do not support text-to-911. Indeed, they have not even begun to plan for the transition to NG 911.

The keys to addressing this glaring problem are: awareness, coordination and integration. First, we need to make supporting the transition to NG 911 a priority across all Federal agencies

that have PSAPs or support 911 operations. Second, Federal 911 and NG 911 efforts and budgets need to be coordinated across agencies so that efficiencies and economies of scale can be identified, as opposed to each individual agency operating in a silo. Finally, Federal agencies should coordinate and partner with their state and local 911 counterparts in the areas they serve. In those states that have already launched NG 911 initiatives, Federal agencies should be committing resources to the initiative rather than playing catch-up. And in states that have not yet started the NG 911 transition or are in the planning stages, Federal agencies should be proactive in the planning process.

Enhancing Consumer Protection

In a Consumer Reports survey last year of more than 172,000 subscribers, only about one-third of those surveyed said they are “very or completely satisfied” with their home internet, pay TV or telephone service. As a Commissioner at the agency responsible for overseeing the communications sector, this is highly alarming.

Last Fall, the FCC’s Consumer Advisory Committee “No Surprises Task Force” came up with a series of recommendations to improve transparency and disclosure of “below the line” fees, so that when consumers sign up for service, either online or in-store, they will not have to wait for their first bill to learn what their service truly costs. Implementing these recommendations would be a huge win for consumers and an opportunity for providers to show how committed they are to putting consumers first.

Finally, to address the practice of mandatory arbitration, Senator Franken and I authored a joint op-ed this past October. Simply put, we believe you should not have to give up your day in court when you sign up for telecommunications services. Whether it is by legislation or regulation, I believe this consumer-unfriendly practice should be eliminated.

Conclusion

Once again, Chairman Thune, Ranking Member Nelson and Members of the Committee, I want to thank you for the opportunity to present my testimony today and look forward to answering any questions you may have. By working collaboratively, we can ensure that our communications sector remains the envy of the world.