

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
CONCURRING**

Re: *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided via Fiber to the Premises; Consumer Protection in the Broadband Era, Report and Order and Notice of Proposed Rulemaking (CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket No. 04-242)*

My goal as a Commissioner has always been to advance the public interest as far as I can with the tools at my disposal at the time. I objected strenuously to our original reclassification of cable modem and our tentative reclassification of wireline broadband. But the Supreme Court has fundamentally changed the legal landscape. I personally find the jurisprudence of Justice Scalia far more persuasive than that of the Court majority, and I agree wholeheartedly with Justice Scalia's observation that the previous Commission chose to achieve its objectives "through an implausible reading of the statute, and has thus exceeded the authority given it by Congress."

But neither Justice Scalia's opinion nor my personal reading will guide the Commission's approach going forward. The handwriting is on the wall. DSL *will* be reclassified, either now or soon from now, whether I agree or not. This is not a situation of my making or my preference, and I believe that it does not inure to the benefit of this institution or to consumers across the land. But when fundamental responsibilities like homeland security, universal service, disabilities access, enterprise competition, and Internet discrimination protections are on the chopping block, I feel compelled to work hard and be creative to advance the public interest rather than throwing up my hands. I therefore will concur in this proceeding to protect our ability to meet these core responsibilities.

As we enter the world of Title I today, we all know what the FCC's goals must be. Among other things, we must continue to protect homeland security. We must meet our universal service responsibilities. We must maintain disabilities access. We must protect fledgling competition. And we must state clearly that innovators, technology companies, and consumers will not face unfair discrimination on the Internet by network providers.

Our ability to advance these critical goals should progress as we advance to broadband. They should not shrink as we fiddle with legalisms and parse definitions. This item is not an exercise in hair-splitting about telecommunications services and information services. It is about how promote the deployment of advanced communications while still staying true to our core values. Nonetheless, in recent years this Commission has irresponsibly reclassified services without addressing the larger implications of its decisions.

Today we begin to face up to this shortfall. The Order is far from ideal. But our actions today are infinitely better than they otherwise might have been because of the intensive discussions we have had among the Commissioners. We have avoided the unacceptable scenario of reclassifying DSL and then punting all of the critical responsibilities listed above to some uncertain future deliberation. I could not have been party to that approach. But in the end, we moved away from that and made progress on numerous important statutory obligations:

- *Homeland Security:* We ensure that law enforcement officials will have the tools that they need to protect our country through the Communications Assistance for Law Enforcement Act and the National Security Emergency Preparedness Telecommunications Service Priority System.
- *Universal Service:* In addition, we ensure the stability of the universal service contribution base until the Commission agrees on a path forward. Universal service is critical to the Nation and critical to Congress. It is one of the pillars upon which the Communications Act is built, and I would never be party to this agency abandoning this program and the millions of Americans who depend on it. Absent the *Brand X* decision, we would have more with which to work, but in order to shield the program in this specific item we put in place a nine-month stay on any changes to DSL universal service responsibilities, unless the full Commission agrees on a new system before that time. If we do not do so within nine months the Order states that: “the Commission will take *whatever action is necessary* to preserve existing funding levels, *including extending the period discussed above or expanding the contribution base*” (emphasis added). That is a firm and strong commitment from the Chairman and Commissioners that at the end of this period the program will be protected. We do not often commit to “take whatever action is necessary” and the promise that we will even expand the base if needed is a major achievement. I will continue to fight to keep rural America connected.
- *Disabilities:* But we had to protect more than homeland security and universal service. We had to craft protections for Americans with disabilities. I know this much: The disabilities communities did not fight for so many years to obtain “functional equivalency” and equal access to technology only to have their hard-won victories stolen by some regulatory sleight of hand. So I fought to ensure that the item guarantees accessible technologies for the 54 million Americans with disabilities.

- *Competition*: We also take significant action to protect competition. We ensure access to facilities and interconnection so that small and medium businesses can continue to enjoy the lower prices and increased choices that competition brings.
- *Internet Openness*: And critically, for the first time ever, the Commission has adopted a policy statement with principles that will guide our effort to preserve and promote the openness that makes the Internet so great.

I am especially pleased at my colleagues' adoption of this Statement of Policy on Internet openness. This is something I have been advocating for nearly two years. This Statement lays out a path forward under which the Commission will protect network neutrality so that the Internet remains a vibrant, open place where new technologies, business innovation and competition can flourish. We need a watchful eye to ensure that network providers do not become Internet gatekeepers, with the ability to dictate who can use the Internet and for what purpose. Consumers do not want to be told that they cannot use their DSL line for VoIP, for streaming video, to access a particular news website, or to play on a particular company's game machine. While I would have preferred a rule that we could use to bring enforcement action, this is a critical step. And with violations of our policy, I will take the next step and push for Commission action. A line has been drawn in the sand. I am particularly appreciative of the Chairman's support of this item.

I also want to note that the Supreme Court's *Brand X* decision makes it clear that the Commission's ancillary authority can accommodate our work on homeland security, universal service, disabilities access, competition, and Internet discrimination protections—and more. But we have a ways to go. Today, in addition to our Order, we release a Notice of Proposed Rulemaking on consumer protection in the broadband age. I would have much preferred positive action on this now, but we at least put these issues squarely on the table and now we have a proceeding to deal with them. I believe that a combination of a strong record, good wide stakeholder input and Commission sensitivity to the priority Congress places on consumer issues can preserve such protections as privacy, truth-in-billing, and other safeguards for the communications tools our citizens rely upon no matter how they may be classified. Hard-won consumer protections must never be allowed to erode simply because we change the classification of the tools people rely upon to communicate with one another. So I think we come out here with a framework for consumer protection in a digital world—a framework accommodating and encouraging the expertise and authority that reside in our state public service commission counterparts. I look forward to the record that develops and to working with my colleagues and all stakeholders so that we can move ahead without further delay.

Let me sum up by reminding the Commission that we are saying today that we take the dramatic step of reclassifying DSL in order to spur broadband deployment and to help consumers. I want us to test that proposition a year from now. If by next year consumers have more broadband options, lower prices, higher speeds and better services, maybe this proposition holds true. If our broadband take-rate reverses course and the United States begins to climb up the ladder of broadband penetration rather than falling further behind so many other nations, then we'll have something to crow about. If we get

no complaints about higher bills, loss of privacy and diminished access for the disability communities, we can take a bow. And critically, if we make progress on public safety and homeland security, we can be proud of our actions. So I hope next year the Commission will put its money where its mouth is and check to see if its theory yields real world results for American consumers. And if it doesn't achieve these results, I hope we'll admit it. I plan to keep tabs.

In closing, I want to thank Chairman Martin for not only permitting, but encouraging, open and genuine Commission dialogue on these difficult issues. I want to thank him, and Commissioners Adelstein and Abernathy, for their contributions to making this a better item. The Bureau toiled mightily with this proceeding and we are indebted to their diligence, hard work and creative thought all along the way. Our personal staffs performed with distinction. And I would be both ungrateful and remiss if I did not recognize the extraordinary—indeed, often heroic—exertions of my Legal Advisor Jessica Rosenworcel for helping *all* of us navigate these perilous waters and arrive at somewhat more tranquil shores.