

**Remarks of FCC Commissioner Mignon L. Clyburn
Sixth Annual Rebele First Amendment Fellowship Symposium
Stanford University
April 1, 2015**

Good afternoon. I want to thank Chair Hamilton, and those responsible for today's event, for so graciously inviting me to join you this year.

I spent 14 years running a small weekly newspaper in Charleston, South Carolina. With that background, and my subsequent role as a communications regulator, the importance of free speech truly resonates with me.

I would like to focus this afternoon's remarks on the FCC's recent Open Internet decision, not only because it is the FCC hot topic of the day, and one I am sure this audience is most interested in, but also because it is directly relevant to this year's symposium. For the reasons I will discuss, I strongly believe this decision will promote free expression as well as diversity and innovation on the Internet.

**BACKGROUND: HOW WE GOT WHERE WE ARE, AND WHAT WE DID
MOST RECENTLY**

I'll begin by explaining what we mean when we say an "Open Internet," how the FCC's recent decision promotes the goals of an Open Internet, and what our latest decision actually does and does not do.

The idea of an Open Internet refers to the FCC's longstanding commitment to protect and promote a platform that nurtures freedom of speech and expression, supports innovation and commerce, and creates incentives for investment.

When discussing this topic, it is important to keep the FCC's recent actions in perspective. The decision we reached a few weeks ago was just the latest chapter in a long history of efforts to preserve an Open Internet. While our most recent decision has been labeled as "unprecedented," the FCC has had Open Internet policies in place for more than a decade.

Remember in 2004, former FCC Chairman Michael Powell announced his vision that broadband consumers should be entitled to certain "Internet freedoms." One year later, the FCC unanimously approved the *Internet Policy Statement*, which laid out four guiding principles designed to encourage broadband deployment and to "preserve and promote the open and interconnected nature, of the Internet." These principles sought to ensure that consumers had the right to access and use the lawful online content, applications, and devices of their choice, and to do so in a competitive Internet ecosystem. From 2005 to 2011, the FCC incorporated the principles in the *Internet Policy Statement* into a number of decisions, including as conditions on several merger approvals. In 2008, the FCC found that Comcast had violated the *Internet Policy Statement* by blocking so-called peer-to-peer connections.

While the FCC has long been working to preserve Internet freedoms, we have hit some legal roadblocks. In 2010, an appellate court found that the FCC lacked authority to hold Comcast accountable for violations of the *Internet Policy Statement*. In response, the FCC adopted new Open Internet rules later that year and codified policy principles contained in the

Internet Policy Statement. That Order adopted three clear rules of the road: (1) no blocking; (2) no unreasonable discrimination; and (3) transparency. The no-blocking rule and no-unreasonable discrimination rules prevented broadband service providers from deliberately interfering with consumers’ access to lawful content, applications, and services. The transparency rule promoted informed consumer choice by requiring Internet service providers to disclose certain information. Although I was concerned that we should have relied on stronger legal authority for these rules, I strongly supported the decision, and the goals it sought to achieve.

Then, in 2014, a court of appeals struck down the 2010 rules, with the exception of the transparency rule. Although the court agreed with the policy objectives underlying the rules, they disagreed with the legal authority we used. The decision the FCC made a few weeks ago was in response to the latest rejection from the courts. We adopted bright line rules to ensure that Americans reap the economic, social, and civic benefits of an Open Internet today and into the future. Specifically:

- We readopted the “**no blocking**” rule, which means that broadband providers may not block access to legal content, applications, services, or non-harmful devices.
- We adopted a **ban on “throttling,”** so that broadband providers may not block or impair a website or application because it competes against their service.
- We also ruled that there may be **no paid prioritization**. Broadband providers may not favor some lawful Internet traffic over other lawful traffic in exchange for money or consideration of any kind—in other words, no “fast lanes.”
- We put in place a **general conduct rule**, which states that broadband providers may not unreasonably interfere or disadvantage the ability of consumers to reach websites of their choice. The notion of this type of “general conduct standard” is not new, and in fact, is similar to the ban on unreasonable discrimination the FCC adopted in 2010. This rule is designed to ensure that we have the tools to address future conduct. Because the Internet is always growing and changing, there must be a known standard by which to address concerns that arise with new practices.
- Finally, we enhanced the **transparency requirements** that remained in place from the FCC’s 2010 Open Internet rules.
- The new rules reflect **mobile parity**. For the first time, our rules will apply in same way to fixed and mobile Internet service providers. This part of the decision was important to me, because I believe that users of mobile devices should be subject to the same protections as other users. We know that the majority of 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, and they should not be relegated to a “second-class” Internet.

It bears emphasis that these rules apply only to broadband Internet service providers, or ISPs, as the providers of broadband services. They do *not* apply to websites, applications, or others who rely on ISPs to reach the content or consumers of their choice. The rules ensure that consumers decide which websites are accessed, not the ISPs.

In addition to adopting new rules in our latest decision, we also reclassified broadband Internet access service as a “telecommunication service.” This has been a hot-button topic in the media, and is often couched in headlines stating that the FCC has made the Internet into a “public utility.” But what does it mean? Previously, broadband Internet access services were labeled as “information services” under our rules. The decision to reclassify broadband services as “telecommunications services” was basically a factual one. Broadband Internet access service is a means of transmission for consumers to access content, applications, and services of their choosing. Reclassification also enables us to adopt stronger Open Internet rules than we were able to in the past. But the idea of classifying broadband service as a telecommunications service is not a new one. This is something the FCC has considered for a number of years, and an approach that I have consistently supported since 2010.

AN OPEN INTERNET AND FREE EXPRESSION

So, how will the FCC’s decision impact what we can say, and how we say it? In my opinion, the framework in the Open Internet Order will ensure that the Internet continues to embody the values at the very core of the First Amendment.

As most of you in this audience surely know, the United States adopted the Bill of Rights in 1791. The Framers recognized that basic freedoms, 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 central 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

The Internet embodies the rigorous, robust, and unfettered debate that President Madison and Justice Brennan idealized. It has transformed the ability of all of us — from well-established news organizations, to independent bloggers, to entrepreneurial content creators, to ordinary citizens across the country — to make our thoughts and opinions known to the world.

One example from my own experience that illustrates the transformative power of the Internet was the public input the FCC received as we were considering reforms to our Open Internet rules. As we do whenever we consider new rules at the FCC, we invited the public to comment. And because of both the importance of the subject matter and the ease of providing input via the Internet, people responded in unprecedented numbers.

Nearly four million Americans, from all perspectives and walks of life, exercised their right to comment on our proposed rules. This marked the first time that many had participated in a government proceeding, and the first time that the FCC had the opportunity to listen to and

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

consider so many opinions. The ability of these individuals to have a direct conversation with their government highlights not only the importance of a free and Open Internet, but also the power such openness has to encourage civic engagement.

As one of our greatest civil rights pioneers, Representative John Lewis of Georgia, stated 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.”

I also believe our rules will help ensure that the Internet remains the greatest equalizer of our time. It does not matter who you are, how much money you have, or where you are from — gender, sex, and demographics do not determine if that new app will be successful or not. It has broken down traditional barriers, allowing good ideas to compete on equal terms with deep pockets. It allows consumers to determine which ideas become successful.

A story of a woman I met recently has underscored the importance of the Internet and the power of a good idea. Some of you may have heard me refer to a young African American writer named Issa Rae. Ms. Rae came to my office before we made our latest decision to share her story on how an open and free Internet has changed her life. You see, she had an idea for a new television series, but was repeatedly told no by the usual gatekeepers because, they concluded, there was no audience interested in her content. But she knew she had a great idea, persevered, produced her own content, posted it on YouTube, and millions of viewers later, proved them wrong. Today, she is developing her own pilot for HBO.

Some of the fiercest critics of the Open Internet decision say the Internet “is not broken” and, therefore, we did not need to “fix it.” The premise of these arguments is shaky at best. The openness, innovation, and investment we have seen in this country did not happen organically. The truth, for those willing to admit it, is that our policies have been key enablers for the incredibly vibrant and accessible Internet ecosystem we are so fortunate to have today. And what is obvious, yet too seldom said, is that the very same policies and rules that have been in place for nearly a decade are directly responsible for the current environment we enjoy, have proven their effectiveness, and have struck the right balance.

To those who say we should just leave the Internet alone, I issue a word of caution. The environment we enjoy today is not absolute, and should never be taken for granted. Just take a casual look around the world. We are witnessing governments blocking access to websites, including social media. Remember last year, when Turkey blocked Twitter and other social media? There are reports that the government of Egypt has considered building a system to spy on Facebook, Twitter, and WhatsApp, among others. And in China, where 20 percent of current Internet users live, the government employs an estimated two million censors to police the

Internet and its users.² In these and many other countries around the globe, it is routine for governments to determine the type of websites and content that can be accessed by its citizens.

I am proud to say that the United States is not among them. But absent clear and concrete Open Internet rules, any Internet Service Provider would possess the power to limit free expression. Without the rules we voted to put in place, any ISP 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 problem. 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 the companies that control the pipelines and airwaves, not the content creator or consumer, to pick winners and losers.

To me, the very essence, of the Open Internet debate is this: How do we ensure that there continues to be only one Internet, where all applications, new products, ideas and diverse points of view have the same chance of being seen and heard? This question was my compass as I was evaluating our latest decision, and I believe the outcome will advance this fundamental goal.

Thank you again for inviting me to speak at this event. It has been my pleasure to appear before you.

² See “*The Anti-Information Age, How governments are reinventing censorship in the 21st century*,” Moises Naim and Phillip Bennett, *The Atlantic* (Feb. 16, 2015).