

**DISSENTING STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84

We must not lose sight, in the midst of our high-profile debate today around media ownership, Next Gen TV and the Lifeline program, that many of the most fundamental protections the FCC put in place in recent years for consumers of legacy voice service, are moments away from being dumped in the trash heap of regulatory history. All of this is being done under the guise of advancing infrastructure. Here I am talking about how our technology transitions protections, are evaporating under the majority's #CarriersFirst agenda.

Over the past several years, the FCC has balanced a tension between two, sometimes competing goals: minimizing the burden on industry when it seeks to transition from one technology to another, and protecting consumers as they move from being offered a service that they know and understand, to one that may not be quite as familiar. In that vein, the Commission previously adopted a variety of rules regarding network changes, copper retirement, and service discontinuances. I stated back then that I believed we struck the appropriate #ConsumersFirst balance. But today, that balance has been upset.

Back in 2015, I reflected on the comparison between these technology transitions and the digital television (DTV) transition. Apparently, that reflection is still relevant, since at least one party to this proceeding continued to analogize it to this. What was striking to me then, and now, is the difference between these two transitions when it comes to ensuring that consumers understand, and are prepared for, the technology transition. With the DTV transition, billions of dollars were spent on multimedia consumer education, as well as significant staff outreach and a subsidy for converter boxes. Everyone knew that that the DTV transition was coming, and all this work was done for the 16-19 million households that did not subscribe to paid TV.

Contrast that with the 49 million households and businesses that still use a legacy landline today. There is no significant consumer outreach campaign planned and no subsidized converter for equipment that may no longer work. It now is beginning to show. Consumers are fearful of these changes and have commented to that effect in the record. As I mentioned in my statement when we started this proceeding, I have not heard from a single consumer that has asked for their landline to be taken away more quickly. And just how do we follow that up today? By rolling back protections we put in place to ease the transition for consumers and competitors.

Procedurally, the item tries to have its cake and eat it too. It talks about hundreds of millions of dollars in impact from rolling back these vital consumer protections. Yet it conducts no formal cost-benefit analysis, something that the majority has said should be required for rules, and especially those rules with significant impact. Here, the item claims to have a significant impact, but where is the supportive cost-benefit analysis?

Substantively, the item is highly problematic for all the reasons I have articulated previously, but there is more. Consumers need notice and help understanding changes to their service, and a cop on the beat when something goes wrong. This item would actually shorten or eliminate relevant notice periods, and would ensure that the FCC is nowhere to be found when something goes wrong with a consumer's alarm system, a business's emergency elevator call button, or other service reliant on legacy infrastructure.

In the interest of time and ink, I will only mention a few issues here.

This item enables carriers to stop maintaining their copper infrastructure without notice to customers. As the misplaced reasoning in this item goes, carriers have an incentive to maintain their copper, else they will lose customers. But the incentives are actually reversed much of the time.

Commenters cited for this proposition have a much more lucrative wireless service that they offer as a costlier substitute, if copper is degraded. And that is just what is happening in the field. I heard just last week about a customer whose fixed broadband speeds were so frustratingly slow that she spent hundreds of dollars a month on a mobile hotspot just to stay connected. This item will countenance more of that, saddling consumers with increased voice and broadband costs, and allowing providers to effectively retire their copper without notice.

This item radically reduces notice periods for a variety of scenarios, making it harder for consumers, states, government agencies, and competitive carriers to understand and react to changes in the network. Indeed, the item outright ignores input from our sister agency, the NTIA, when it pleads with the Commission to retain requirements that carriers provide notice to, and work with government customers.

Several years back, when we interpreted section 214 of the Communications Act to include the functionality provided to the consumer, rather than simply what the carrier said it was offering, I voted to side with consumers and innovators. To understand why this revised definition is anti-consumer and anti-innovation, consider the Carterfone, a radio invented in the 1960's to help ranchers answer the phone when they were not inside their residence. AT&T defined its service, at the time, to include equipment, and its contracts and tariffs prohibited end users from attaching any equipment not provided by AT&T to any facilities furnished by AT&T. It took Mr. Carter years of wrangling with the telephone company to allow his device on the network. Allowing "service" to be defined by the carrier risks these sorts of issues all over again.

It is true that we should not keep an entire copper network alive for two fax machines, but at the same time it is dangerous precedent to cede to a carrier the definition of the service. Imagine a tariff that excluded calls to high-cost rural areas, or one that only permitted use of the carrier's alarm service and disallowed others. And, if a group of consumers are using their legacy line solely for their alarm service, and the carrier disables that functionality, has not service been discontinued for that community? I believe so.

If this #CarriersFirst item were not bad enough, it is slanted towards the largest incumbents. With all of the discussion around creating reciprocal system of access to infrastructure, I thought it would make sense to revisit our decision that prohibited competitors from accessing incumbents' conduit, a decision from which I dissented years ago. Sadly, like the rest of my requests, this too was denied.

And if you agree that the Order and Declaratory Ruling are bad, the Further Notice will make your head explode. I will simply note that the majority of items the Commission seeks further comment on are items on an ILEC wish list. The Further Notice seeks comment to adopt an end-run around our adequate substitute test from the *2016 Tech Transitions Order*, by seeking comment on whether a single interconnected VoIP service (without any service quality or other requirements) should enable streamlined discontinuance of legacy voice service. It also seeks comment on whether we should streamline discontinuances for higher-speed data services. Finally, it asks whether we can help states and localities recover better from disasters by preempting their regulations, as if natural disasters somehow rendered states and localities unable to figure out what was best for their communities.

If I have left you with any doubt on where I stand on this item, let me be clear. I respectfully dissent.

Nonetheless, I thank the Bureaus for their work on this item. These are difficult issues, and you have spent long hours addressing them. My hope is that we can come to consensus on these important issues sometime in the near future.