

Closing Statement of FCC Commissioner Mignon L. Clyburn
Washington, DC
June 6, 2018

I want to begin by thanking President Barack Obama for nominating me, in 2009, to become a member of the Federal Communications Commission. Although humbled by the honor, I had no idea, then, how much this agency would mean to me.

I am very grateful to all my direct staff, from advisors and assistants to interns, for their tireless dedication, and I want to thank everyone who organized and participated in my farewell ceremony. I was honored that my current colleagues offered their well wishes and that so many former Commissioners and Chairmen were able to attend. I will cherish that day for the rest of my life. I want to thank all the career employees at the agency for their service to this country. Serving on the FCC was the most incredible job I have ever had, and the agency is one of the most consequential in the world. There is hardly anything that happens in this country without the presence of a copper wire, fiber-optic cable, or radio waves transmission. What we do touches the lives of every American, whether they know it or not, and the policies we adopt impact the entire globe.

In the remainder of this statement, allow me the opportunity to highlight a number of consequential decisions.

Decisions I was honored to make, or influence, in order to safeguard consumers and competition

- *Title II classification of broadband providers and the enactment of strong open internet rules in 2015*

It is no secret that, not only have I long supported a light-touch, Title II approach to broadband internet access service, but I have consistently fought for mobile parity. Whether a consumer uses a fixed or mobile broadband connection, they deserve a free and open internet. I was elated when that approach was adopted in 2015 and even happier to see it upheld by the D.C. Circuit. The application of time-tested common carriage principles to broadband internet access service providers through Title II of the Communications Act prevented various forms of discrimination online and provided a clear foundation for bringing the FCC's universal service programs into the broadband era.

- *Enhancing access to affordable communications services*

Historically, a Lifeline phone was the backstop connection for millions of low-income households, but we have also made strides in bringing affordable broadband connectivity through merger commitments and updates to the Lifeline program. These critical programs have made a real difference for millions of families struggling to get by and have provided them with a means to improve their outlook.

- *Inmate calling reform*

One of the greatest injustices in the communications market I have ever witnessed is the egregious scheme to charge inmates and their families excessive rates to keep in touch. I am proud to have helped shed light on these practices and am hopeful that the more we reveal about these unreasonable rates and their adverse impacts on families, the more everyone will realize, from providers to consumers, that comprehensive reforms on the federal, state, and local levels are necessary.

- *Enhancing wireless competition through interoperability*

Recognizing the urgent need to restore interoperability to the lower 700 megahertz (MHz) band, while Chairwoman, I convened a group of the nation's wireless providers – both large and small, back in 2013. The goal was to ensure that consumers could use the mobile device of their choice with their service provider. Ultimately, a voluntary industry solution was reached, which resolved the lack of interoperability in this part of the band, and avoided the need for a lengthy rulemaking process. Because

of this effort, we have witnessed an explosive growth of devices that are compatible with the 700 MHz A block spectrum, and consumers in rural communities have more robust options.

- *Encouraging small businesses to enter the commercial wireless industry*

I pushed for several reforms of the Commission's competitive bidding rules, such as the repeal of the Attributable Material Relationship (AMR) rule. The AMR rule required every small business to attribute the gross revenues of another entity if that small business planned to apply for designated entity (DE) benefits and entered into an arrangement with that entity to lease, wholesale, or resell more than 25 percent of the capacity of any one of its licenses to that entity. The AMR Rule also penalized a DE for raising funds for its own spectrum-based communications business by temporarily leasing to another company more than 25 percent of any of its licenses even if those licenses were not acquired with DE bidding credits and the lessee had no influence. This rule had been adversely impacting the ability of small businesses to enter the commercial wireless industry. In addition to repealing the AMR, we reformed our competitive bidding rules to provide DEs with the flexibility they need to effectively participate in a wireless marketplace that has changed through increased consolidation. We tightened up our unjust enrichment rules to ensure that only the entities Congress intended to assist will receive the benefits of designated entity status. And, for the first time ever, we developed a bidding credit for rural service providers to help deploy wireless service in persistent poverty counties.

- *Allocating more licensed and unlicensed spectrum to fuel wireless competition*

Since 2010, when I voted to approve final rules for TV White Spaces, I have been a strong supporter of the Commission allocating sufficient amounts of unlicensed spectrum so that companies can find low-cost solutions for providing wireless connectivity in underserved communities. I also pushed for licensed spectrum auction rules in the H-Block, AWS-3, and Incentive Auctions that would promote competition in the commercial wireless industry and dissemination of licenses among a wide variety of applicants, including small businesses and rural telephone companies.

- *Circulated proposal to eliminate Sports Blackout Rule*

As Acting Chairwoman, I proposed to eliminate the Sports Blackout rule, a four-decade old practice that allowed the NFL to not carry games in a team's home market, if the seats had not sold out within 72 hours of kickoff. With the help of Chairman Wheeler, we carried this proposal to the finish line, and that rule is no more.

- *Formation of the Connect2Health Task Force*

In 2014, at my urging, the Commission launched a Connect2Health Task Force as a way to examine the intersection of broadband connectivity, advanced technology, and health. In 2016, we announced a broadband health mapping tool, which looks at the relationship between connectivity and health down to the county level. Now, we can more clearly identify current issues, develop future solutions to address connectivity gaps, and promote positive health outcomes that are unique and tailor-made to each community.

- *Modernizing AM Radio*

In October of 2017, the Commission took the first steps in nearly three decades, to revitalize AM radio stations. Thanks to the FCC's actions, over 900 applications have now been filed to relocate FM translators for AM rebroadcast use, nearly 90 percent of which have been granted by the agency's Media Bureau.

- *Infrastructure siting*

Approving applications to site antennas and other infrastructure are difficult policy challenges for local governments but we can successfully overcome these challenges if all stakeholders collaborate. In 2014, I was particularly pleased to bring industry stakeholders to the table to make a number of

commitments that could help resource constrained municipalities transition to streamlined rules the Commission adopted in order to bring connectivity to those areas in need.

- *Enhancing access to diverse and independent programming*

I urged the Commission, in February 2016, to launch a fact-finding effort, aimed at examining obstacles that may be preventing greater access by consumers to independent and diverse programmers. In September 2016, the Commission adopted a Notice of Proposed Rulemaking that appropriately targets two of the worst offending practices: “unconditional” most favored nation (MFN), and unreasonable alternative distribution method (ADM) provisions.

- *Supporting landmark broadband consumer privacy protections*

In October 2016, the Commission carried over some existing statutory privacy requirements from telephone to broadband providers. Specifically, the rules implemented the privacy requirements of Section 222 of the Communications Act for broadband ISPs, giving broadband customers tools to make informed decisions about how their information is used and shared by their ISPs and established a framework of customer consent required for ISPs to use and share their customers’ personal information. Unfortunately, these rules were repealed by Congress through the Congressional Review Act.

- *Championed the collection of better media ownership data to support policies to promote media diversity*

For years, I have pushed for data and research needed to support legally sustainable regulatory policies that would encourage and promote ownership diversity and inclusion in the media space. As Acting Chairwoman, I released a groundbreaking research proposal for public comment and was subsequently misrepresented and demonized. I continue to believe that studies and reports that would enable this agency to fulfil its fundamental obligation: to promote a diversity of voices and localism in broadcasting. Unfortunately, the Commission’s multiple defeats in court on this issue back me up.

Decisions I wish came out differently

I also voiced my objections against some of the current majority’s actions to undo the progress we have made previously. These FCC decisions include:

- *Repeal of the Commission’s 2015 Open Internet Order.*

In 2016, the U.S. Court of Appeals for the D.C. Circuit upheld our 2015 light touch rules. Nonetheless, the current majority ignored the D.C. Circuit’s analysis and used a flawed statutory interpretation to give broadband internet service providers (ISPs) the power to block, throttle, and degrade content consumers prefer and stifle innovation. Although that repeal was no doubt popular among ISPs, it unleashed a populist movement that, to date, have resulted in: The U.S. Senate passing a Congressional Review Act to return to the 2015 rules; nine enacting legislation or adopting executive orders to provide net neutrality protections, and attorneys general in 22 states and the District of Columbia joining together to overturn the 2017 Destroying Internet Freedom Order.

- *Repeal of rules limiting media consolidation*

In 2017, using a dubious process and over my dissent, the Commission majority voted to eliminate or weaken a number of the Commission’s media ownership rules and make it easier for a single entity to own multiple media outlets in the same local market. The Commission also made it easier for “covert consolidation” through the use of opaque contractual agreements between stations.

- *Reinstatement of the UHF Discount.*

Although this rule is technologically obsolete, the majority FCC voted to reinstate it and thereby enable a single broadcast station group to opaquely reach more than 70 percent of television households.

- *Launched review of the National TV Ownership Cap.*

The majority launched this unfortunate proceeding that threatens to strip the principles of localism and diversity from broadcasting. This initiative flies in the face of a 2004 law, passed by Congress and signed by President George W. Bush, prohibiting a single broadcaster, through its ownership of multiple local stations, from reaching more than 39 percent of U.S. television households.

- *Deregulation of the Business Data Services market*

Thanks to the use of faulty data and a lackadaisical market analysis, this action opens the door to immediate price hikes for small business broadband service in rural areas and hundreds of communities across the country. Cash strapped hospitals, schools, libraries, and police departments will pay even more for vital connectivity, and soon we will see pressure on our Rural Healthcare and E-Rate fund budgets, resulting in less bandwidth for our schools, libraries, and rural healthcare institution.

- *Proposed “reforms” in the Lifeline program that jeopardizes our efforts at ubiquitous and affordable services across the country.*

The proposal to limit Lifeline subsidies to only consumers receiving service from facilities based service providers, would be devastating for our nation’s most economically vulnerable. Wireless resellers provide service to 70 percent of citizens who are eligible for the monthly Lifeline subsidy so, if the FCC majority’s proposed rule and other “reforms” go into effect, some eight million households who rely on wireless resellers today, whose low rates, together with the \$9.25 subsidy, is the only way those families can afford wireless services, could be left without service.

- *Adopted a mobile competition report using flawed and truncated analysis which erroneously concluded that the market for commercial mobile wireless services was effectively competitive.*

Instead of detailed analyses on the costs of backhaul, the availability of data roaming agreements, and other key factors that determine barriers to entering the wireless services market, which the six previous competition reports had done, this Twentieth Mobile Competition Report takes a decidedly myopic view of the ecosystem, and focuses only on “competition in the provision of mobile wireless services.”

- *Eliminated the main studio rule that has ensured those entrusted with use of the public airwaves have a local presence in their community.*

By eliminating the main studio rule in its entirety for all broadcast stations—regardless of size or location—the FCC signals that it no longer believes that those awarded a license to use the public airwaves should have a local presence in their community. It paves the way for broadcast station groups, large and small, to terminate studio staff and abandon the communities they are obligated to serve.

- *Other actions that do not put consumers first.*

Unfortunately, I can cite a number of additional actions that are not in the best interest of consumers or safeguard competition that have been established since the current administration took office: eliminating rules that required broadband providers be transparent with their consumers about things like data caps on their broadband connection; staying the FCC’s rule requiring voice and broadband providers to take reasonable measures to secure the data that they gather from their customers; refusing to review an \$85 billion transaction that has significant implications on the communications sector; refusing to make any attempts to address and fix longstanding inmate calling services issues; revoking the designation of nine entities approved to provide Lifeline broadband service—the first time the FCC has ever revoked licenses or authorizations without cause. None of these actions put consumers or competition first.

My hope going forward

If the Commission returns to basics and lives up to its “prime directive” consumers will, once again, be put first. I sincerely believe that Congress did a great job when it laid out its vision for the agency from the

very beginning of the 1934 Communications Act through its revisions to date. It charged the FCC with making “available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”

This novel idea, that the Federal Communications Commission is empowered to make sure that all people in the United States have access to affordable, world-class communications services, is one that is timeless and is at the heart of the Commission’s goals to provide “universal service” across this country.

Like you, I know the power of this agency. I have witnessed for nearly nine years how much it can do. This is a consequential agency that has the ability, or dare I say the mandate, to take on, head first, those challenges that impact every single part of the U.S. economy. On my trips around the country, I saw where the policies we put in place are making a real difference in peoples’ lives and what is clear is this: that this agency can either be an enabler of opportunities or it can stifle opportunities. I have seen firsthand where our policies have done much good, but I have also witnessed where inaction or bad decisions have created undue hardship.

Fulfilling these obligations requires the Commission to strike a sometimes difficult-to-achieve balance between making sure that consumers are protected and trying not to get in the way of market-driven innovation—but at the end of the day, the public interest must be served. That is non-negotiable.

Thank you all for the opportunity to serve for nearly nine amazing years.

Godspeed.