

Media Contact:

Adam Cassady, (202) 418-2332

Adam.cassady@fcc.gov

For Immediate Release**Simington Comments on Competition Executive Order**

WASHINGTON, DC, JULY 9, 2021—Today, Commissioner Nathan Simington attended the signing of President Biden’s Executive Order entitled “Promoting Competition in the American Economy.” Commissioner Simington said:

“I was honored to be invited to the White House today where President Biden announced his Executive Order on Promoting Competition in the American Economy.

I look forward to working with the Acting Chairwoman and my fellow Commissioners to continue the Commission tradition of competent, independent, and nonpartisan examination of issues that come before the agency under its Congressional and public interest mandates. I am also eager to be a part of the whole-of-government effort to increase competition, promote innovation, and speed economic growth. Meeting these goals is, and will continue to be, ‘job one’ at the Commission, and I pledge my full efforts to continue the tradition of crafting communications policies that serve the public interest.

Net neutrality and the monopoly-era Title II law have long been inappropriately conflated. In other countries with net neutrality laws, net neutrality principles are specified in legislation, not imported from regulatory regimes for telephone monopolies. In light of recent jurisprudence, I believe that the President’s vision for net neutrality would be better accomplished by a bipartisan effort in Congress. A federal net neutrality law would prevent the proliferation of incompatible state-level compliance regimes. It would also protect against the risks of court challenges to the forbearance regime widely accepted by net neutrality proponents as necessary for the 2015 Open Internet Order. Advocates of net neutrality should welcome such an action by Congress, not least because it would end the ongoing regulatory instability regarding the classification of broadband internet access and thereby continue to support the extensive private investments in network infrastructure that we have seen under the prior administration and upon which future high-quality internet service depends. Furthermore, a federal net neutrality law would be an opportunity for Congress to protect speech rights that would not be protected merely by reclassifying broadband internet access under Title II.

American networks performed extremely well during the pandemic. Speeds continued to increase by multiples; private investment stood at over \$80 billion annually; and connectivity increased. This record of success should not be undermined by fears of price regulation, mandatory network element unbundling, or the overhang of a hazy general conduct standard. Each of these would discount the returns to network investment, thereby disincentivizing investment outside of the most profitable areas, and potentially leading to a future broadband crisis requiring further government intervention. Furthermore, focusing exclusively on consumer-facing broadband providers makes less sense with each passing year as intermediary network architecture becomes ever more important—and, under Title II, its providers would be empowered to pass their costs down to consumers, creating the appearance of price gouging by consumer-facing companies when the real costs lie upstream.

If the Commission decides, even so, to adopt the President's recommendation of reclassifying broadband internet access as a Title II service, this raises a further question. The 2015 Open Internet Order's logic applies not merely to last-mile household providers, but to every company that does business online. Currently, the Commission's jurisdiction may not extend to every such company; but, if we are to accept that consumer welfare requires subjecting broadband internet access to Title II, we cannot avoid the question of whether it requires extending Title II to many other companies as well. This would be an epochal realignment in corporate regulation, and its consequences would be hard to predict, but the potential for disruption, waste, and chilling effects is difficult to overstate.

Especially considering the above concerns, I am heartened by the President's vociferous commitment to capitalism and competition in service of consumer welfare and innovation, and I am confident that this Executive Order will be thoughtfully implemented with due consideration of costs, risks, and harms balanced against vital consumer interests. I look forward to working with my colleagues on the Commission and my counterparts in the Executive Branch to realize a bipartisan vision of openness, competition, and consumer choice consistent with the principles of internet freedom adopted under Chairman Powell and supported by every Chair since.

I want to say a special thank you to the President for the invitation to be present for this important announcement."

###

Office of Commissioner Nathan Simington: (202) 418-2300
www.fcc.gov/about/leadership/nathan-simington