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For Immediate Release**SIMINGTON STATEMENT ON TITLE II NPRM**

WASHINGTON, D.C., SEPTEMBER 27, 2023 – FCC Commissioner Simington issued the following statement regarding the recently circulated NPRM seeking to reclassify broadband as a Title II service:

Net neutrality has become an obsession. Big Tech-funded hysteria turned this weedy competition law debate into a cause célèbre and the FCC’s best known policy issue. In their original push, net neutrality activists portrayed it as the free speech battle of our time, as the only way to prevent greedy ISPs from making deals in smoke-filled rooms to censor the internet. Of course, it was never really about free speech for Big Tech companies. To them, Title II net neutrality was about making sure that they, and only they, were allowed to reap the massive profits of the internet ecosystem, an ecosystem that could not exist without the hundreds of billions of dollars invested in deploying broadband over the decades. Unhappy with merely monopolizing various sectors of the internet economy, the Big Tech giants needed to make sure that no one above or below them in the supply chain could earn a fair share of those massive profits. That meant getting the FCC to take all leverage and ability to innovate away from the ISPs, just like it meant anticompetitive practices in other areas, like illegally colluding to keep employee salaries low.

How exactly does net neutrality help protect Big Tech monopoly profits? First, it prevents last-mile ISPs from being able to charge large originators of traffic, like streaming platforms, any transit fees, the desirability of which is a question of pure economics, not free speech. Second, it makes any attempt by ISPs to use their immense infrastructure to provide enhanced services, like edge computing that could compete with Big Tech cloud services, legally suspect and therefore less likely to be undertaken. And third, Title II casts a long shadow on ISPs, with the ever-present possibility of rate regulation stifling investment and innovation, eliminating ISPs as players who can compete for a bigger share of the digital economy. Free speech was just the public front for what was really a campaign of industrial warfare.

But by the time the Commission considered Chairman Pai’s Restoring Internet Freedom Order, Big Tech had a problem. Neither they, nor the far-left activists they funded, could barely even pretend to care about purported ISP censorship of free speech anymore. In fact, those companies and activists are now among the most notorious practitioners of censorship and opponents of free speech. Professor Tim Wu, who coined “net neutrality,” now argues that the First Amendment is obsolete. Every Big Tech social media platform has an army of partisan censors. And the advocacy groups they fund are funded precisely in order to lobby Big Tech to censor further.

With free speech on the back burner, astroturfed Title II net neutrality activism then took a turn for the absurd. Activists insisted that ISPs would slice and dice the internet into plans resembling cable packages. A widely shared mock-up predicted an ISP offering access only to social media in a base plan but charging more to unlock higher-brow websites like Wikipedia and NPR. And just in case that wasn’t

scary enough, we were told that repealing net neutrality would cause people to literally die. Net neutrality, it turned out, was the only thing that stood between us and doomsday. This hysteria, encouraged by Big Tech-funded activists, ultimately culminated in stalking and harassment of Commissioners and bomb threats against the FCC headquarters.

It has now been nearly six years since we repealed the net neutrality rules, and as far as I know, no one has died yet, nor have any other of the solemnly predicted catastrophes come to pass. But what has happened is a dramatic and alarming increase in political censorship—not by ISPs, who have been conspicuous so far in their neutrality—but by social media platforms. The leaders of Big Tech companies have anointed themselves the arbiters of which ideas are allowed to be expressed and which are not. These companies are, without a doubt, the biggest threat against freedom of speech that our country has faced in decades. I'm not surprised that some of my colleagues, moved by the hyperbole of previous net neutrality debates, feel that they have no choice but to reimpose Title II net neutrality rules, but I am disappointed that they have shown no interest whatsoever in bringing some of those same net neutrality principles to Big Tech platforms, whose control of internet infrastructure and the digital economy is in fact much greater than that of ISPs and who have a much greater demonstrated willingness to abuse it.

None of which is to say that the now-sidelined free speech concerns about ISPs are baseless. ISPs in other Western countries do now engage in censorship and, given the ubiquity of such bad behavior in other segments of the digital ecosystem, it is possible that ISPs in the US would have already gone down that path but for fear of provoking the FCC to reimpose net neutrality rules. A minimal regulation or law preventing ISPs from engaging in censorship, whether promulgated by the FCC or by Congress, is worth considering.

What would it look like to apply net neutrality principles to both ISPs and Big Tech alike? There are lot of questions, such as whether Title II is the appropriate vehicle for one or both or neither, and whether Congressional action would be preferable. But what I would like to see, through whatever approach is best, is light-touch rules that prevent any dominant corporation, whether ISP or Big Tech, from abusing its market position to engage either in censorship or in anticompetitive practices.

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