

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

Re: *Safeguarding and Securing the Open Internet*, WC Docket No 23-320, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration.

Today, we take the important and necessary step to give control of the Internet to those who deserve it:

**Consumers.**

That is what this item is really about. Some, no doubt today, will claim that it is all a scheme for government control of the Internet. But let's be real. It is about ensuring that each and every American can use their broadband subscription to access the legal content of their choosing. It is about empowering consumers to control how they experience the Internet while ensuring that their provider isn't impeding, blocking, favoring, or prioritizing certain content. It is about ensuring that broadband, the foundation for so many interactions every day, has real oversight.

I'll say it again: today's item puts consumers in the driver's seat. Not ISPs, not middle men who can throw money around – consumers. Too often the rhetoric around controversial proceedings is focused on extreme examples and worst case scenarios. In zooming in that way, we overlook the individuals our decisions are designed to impact. Not me. Today, of all days, I think about people like Ron, a senior and a veteran. He uses his broadband connection to contact the VA to set appointments and check the status of his medications. As a volunteer with American Legion, he shares his experience with post-traumatic stress disorder with fellow veterans. Broadband gives him the opportunity to share his story with others near and far. It gives him the power to choose how to connect, and with whom.

Or consider Ms. Ana, the leader of the Bethel Native Corporation. She graciously welcomed me into her home in Bethel, Alaska last summer with a bowl of moose chili. There are no major roads to Bethel; if you want to leave town or visit, you do it by boat or plane. As we ate, Ms. Ana told me about the exciting vision of tomorrow: new fiber deployments that would enable her community of 6,000—and the residents of even smaller villages along the Kuskokwim River—to secure the necessities of modern life without having to leave the place they call home. Employment through remote work. Healthcare through telehealth visits. Better education for their kids. Benefits of a free and open Internet.

Or, Paul, who says broadband access is “like air.” He uses his broadband connection to stay in contact with long-separated relatives in Greece. He told me they cry every time they see him. Now that's a powerful connection.

It is inherent in our shared humanity – the need to connect. The ability to facilitate those connections is one of the reasons I'm proud to serve as a Federal Communications Commission Commissioner. But more importantly, it guides our action here today. Empowering consumers. Setting the proper guardrails for providers. Recognizing that network security is national security. And securing our networks so that they can meet the moment when public safety requires.

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I'd like to highlight the issue of national security. Broadband is in our homes and offices, powering our devices, and supporting our infrastructure. Its security is paramount. Today's effort clarifies our authority to help make sure that our broadband networks are safe in light of constant attacks against them. More fundamentally, it ensures that there is oversight over broadband for the first time in years.

The Commission has long played a role in protecting communications networks in the United States, going back far before the creation of the Internet. On that point, there is little debate. This began with the adoption of the Communications Act of 1934, wherein Congress recognized the importance of

securing our communications networks and explicitly created the FCC as the expert agency on communications, as well as to further the “national defense.”<sup>1</sup>

Those who argue that the Commission has no role in national security overlook the substantial efforts the Commission undertakes every day.<sup>2</sup> We regulate foreign ownership of our service providers, we prohibit those who pose a threat to the United States from accessing our databases and resources, such as numbering resources, and we help secure the actual physical infrastructure that makes this all possible. So, I continue to struggle to understand those who applaud our efforts to protect the United States and its people from threats, but who balk at the Commission doing the same for our communications networks.

The threats against our networks are real. The FCC has authority and investigatory tools that are unique among our federal government. The Executive Branch explicitly recognizes and supports the unique role the Commission plays in ensuring our national security as it relates to broadband within the whole-of-government approach, asserting that “[r]eclassifying BIAS is necessary to ensure that the Commission has the authority it needs to advance national security objectives,”<sup>3</sup> and that reclassification will enable the Commission to better “protect our networks from malicious actors . . . [by] leverag[ing] the appropriate tools at its disposal, including the relevant Title II provisions.”<sup>4</sup>

Simply put, without Title II, many of the safeguards necessary to protect the networks of our future will be out of reach. Across the nation, numerous ISPs and network operators are working hard to protect Americans against the onslaught of daily attacks against their networks. As I’ve emphasized, we rightfully (and unanimously) revoked the international section 214 authorizations of certain Chinese providers following recommendations from the Executive Branch. However, because of the repeal of the 2015 open Internet rules, those revocations only prohibited those specific Chinese providers from offering common carrier service. Our national security action did not touch their BIAS offerings, meaning that providers already identified as posing an unacceptable national security and law enforcement risk could still operate BIAS networks in the United States without recourse. Today’s item remedies that mistake. As I predicted, even after we revoked China Telecom’s international section 214 authority years ago, they continued to operate in the United States. Their website currently shows that the company operates 26 Points of Presence in the United States, and offers colocation, broadband, IP transit, and data center services. They are interconnecting with other networks and have access to important Points of Presence and data centers. This is part of a larger problem—and I renew my call for a closer look at the threats that adversarial providers pose to our data and data centers. Only through reclassification can we truly secure our networks from entities that pose very real threats to our national security.

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A few additional highlights. I want to thank the Chairwoman for working with me to further improve this Order. I’d like to highlight three points. First, the Order makes clear that this item is not an effort to regulate rates. I repeat: I do not support rate regulation. Some have gone so far as to argue that any program or effort to ensure that ISPs provide affordable broadband constitutes rate regulation. I strongly and fundamentally disagree. The Affordable Connectivity Program is not a rate regulation program. Nor are similar efforts to ensure that broadband is within the reach of low-income households.

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<sup>1</sup> 47 U.S.C. § 151 (explaining that among the reasons Congress created the Commission was “for the purpose of the national defense”).

<sup>2</sup> As the National Telecommunications and Information Administration (NTIA) highlighted, “the Commission has encountered challenges that have hampered its ability to fully protect the public from serious national security threats.” *See* Ex Parte Comments of National Telecommunications and Information Administration, WC Docket No. 23-320, NTIA *Ex Parte* at 6 (filed Mar. 20, 2024).

<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Id.*

I would be remiss if I did not take this moment to say that we need to find a permanent funding mechanism for ACP. The time to act is now. I continue to push for the ACP Extension Act, and remain open to other solutions that create a permanent funding mechanism for the 48 million households that struggle to subscribe to broadband due to the issue of affordability.

Second, I am glad the item clarifies that our efforts to properly target nefarious actors within our domestic broadband networks will not have negative unintended consequences for global data flows and international interconnection agreements.

Last, I appreciate working with the Chairwoman's efforts to clarify our throttling rule to ensure that we avoid loopholes in our net neutrality framework.

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Now, I previously committed to taking a close look at the record in light of developments in administrative law. Doing so has left me even more convinced that Congress empowered us to proceed. Title II opponents continue to cling to the *2017 Order*'s view that virtually any service that connects users to information amounts to a Title I service. This "utterly capacious"<sup>5</sup> interpretation would read "via telecommunications" right out of the Act's definition of an "information service."<sup>6</sup> Taken to its logical conclusion, it also would lead to the deregulation of basically every communication service, including traditional voice telephony, undoing Congress's will in enacting Title II.<sup>7</sup> But in case you missed it, the Supreme Court has otherwise cautioned agencies against adopting expansive, unbounded definitions that would effect a regulatory sea change from the status quo.<sup>8</sup> The Court's admonition also applies to interpretations that would have a deregulatory result.<sup>9</sup>

To avoid the problem, Title II opponents continue to talk about DNS and caching as justification for their assertion that broadband is an information service. That view has become at best obsolete if it hasn't exited the realm of reason entirely. Just ask consumers what they think they're buying from their ISP. Is it really just an address book? Or is it a pipeline to the services they want to access online?

Ironically, Title II opponents believe Congress could not have acted with the clarity required under the major questions doctrine because the term "telecommunications service" is ambiguous under *Brand X*. This analysis just doesn't hold up. Whether or not that term is ambiguous, our authority to apply it to services like broadband is clear as day—and that's what matters here.<sup>10</sup> More importantly, before a court even reaches that issue, it would need to conclude that "this is a major questions case."<sup>11</sup> Yet major questions review is reserved for only "extraordinary cases"<sup>12</sup>—and this one doesn't come close. There's no "unheralded power" that we're purporting to discover in the annals of an old, dusty statute<sup>13</sup>—we've been classifying communications services one way or the other for decades, and the

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<sup>5</sup> *Mozilla Corp. v. FCC*, 940 F.3d 1, 93 (D.C. Cir. 2019) (Millet, J., concurring) (*Mozilla*).

<sup>6</sup> 47 U.S.C. § 153(24).

<sup>7</sup> *Mozilla*, 940 F.3d at 93-95 (Millet, J., concurring).

<sup>8</sup> See *Biden v. Nebraska*, 143 S. Ct. 2355 (2023); *West Virginia v. EPA*, 597 U.S. 697 (2022).

<sup>9</sup> See *MCI v. AT&T*, 512 U.S. 218 (1994) (finding that the Commission went too far in detariffing nondominant carriers); *West Virginia*, 597 U.S. at 723 (likening the challenged rule to the unlawful detariffing in *MCI*); *Biden*, 143 S. Ct. at 2382 (same).

<sup>10</sup> *U.S. Telecom Ass'n v. FCC*, 855 F.3d 381, 383 (Srinivasan, J., concurring in denial of rehearing) (*USTA II*).

<sup>11</sup> *West Virginia*, 597 U.S. at 721-722.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 724; *Utility Air v. EPA*, 573 U.S. 302, 324 (2014).

1996 Act expressly codified our ability to continue that practice.<sup>14</sup> With respect to the classification of this service in particular, years of litigation, up to and including Supreme Court review, has resulted in multiple court decisions recognizing our authority.<sup>15</sup> And with respect to open internet requirements in particular, network neutrality became FCC policy almost 20 years ago, under a Republican administration,<sup>16</sup> and the exact framework we adopt today has already been road-tested on appeal.<sup>17</sup> No matter how you look at it, this just isn't a case of an agency pushing the limits.

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I'm thankful that broadband is no longer without oversight. Consumers will benefit in the end. This proceeding is a monumental undertaking and I thank the many members of the Commission that dedicated their nights and weekends to this item. I strongly approve.

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<sup>14</sup> See *National Cable & Telecommunications Ass'n et al. v. Brand X Internet Services*, 545 U.S. 967, 975-978, 981-982 (2005).

<sup>15</sup> *Id.*; *U.S. Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016) (*USTA I*); *USTA II*, 855 F.3d at 383.

<sup>16</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket 02-33, Policy Statement, 20 FCC Rcd 14986 (2005); *Madison River Communications, LLC and Affiliated Companies*, File No. EB-05-IH0110, Order, 20 FCC Rcd 4295, 4297, para. 5 (EB 2005).

<sup>17</sup> See *USTA I*, 825 F.3d at 674, *reh'g denied*, 855 F.3d at 381, *cert. denied*, 139 S. Ct. at 453.