

**APPROVING IN PART, CONCURRING IN PART
STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*,
WC Docket No. 07-52.

A few weeks ago, I discussed the importance of collaboration in tackling the important, yet difficult policy issues before us today. I want to thank the thousands of stakeholders who engaged with us over the past 16 months in crafting a framework that gives both broadband providers and consumers clear guidance about what provider behavior is and is not acceptable. It was a result of all of your engagement—from the filings you made to the many meetings we had—that we have been able to get to this point today. Your dedication to the process and that of those whom you represent should be commended.

Of course, as we all know, compromises typically must be made as many different interests collaborate on critical and significant issues. As a result of such compromise, it is often the case that one cannot be completely satisfied with the result. Nonetheless, it is my belief that we have made real progress in this proceeding, and through this Order, we are ensuring that the Internet will remain open for the benefit of many consumers. After all, *they* are the ultimate beneficiaries of an open Internet.

Left to my own devices, there are several issues I would have tackled differently. As such, I am approving in part and concurring in part to today's Order. While I appreciate the Chairman's recognition of some of my concerns, and the adjustments made in the Order to allay those concerns, there are several areas in the Order I would have strengthened so that more consumers would benefit from the protections we are adopting.

First, I would have extended all of the fixed rules to mobile, so that those consumers who heavily or exclusively rely upon mobile broadband would be fully protected. There is evidence in our record that some communities, namely African American and Hispanic, use and rely upon mobile Internet access much more than other socio-economic groups. While this Order does not go as far as I would like in protecting mobile consumers, I am pleased that it is quite clear that we are not pre-approving any actions by mobile providers that would violate the fixed rules and the general principles of Internet openness. Moreover, the Order provides for the ongoing monitoring of the mobile broadband marketplace, including the Commission's intention to create an Open Internet Advisory Committee. That body's specific mission will be to assess and report to the Commission new developments and concerns in the mobile broadband industry. I expect that the Committee will closely observe the effects disparate rules for fixed and mobile providers will have on consumers who have chosen to cut the broadband cord and the effects on intermodal competition. To that end, the Commission will stand ready to protect mobile consumers from any actions by providers that are inconsistent with an open Internet.

Second, I would have prohibited pay for priority arrangements altogether. The Order stresses the various harmful effects of these arrangements, including the serious threat to innovation on the Internet. I believe that prohibiting such arrangements would be more appropriate based on the evidence before us. Nevertheless, should providers enter such arrangements, and they are subsequently challenged at the Commission, providers will have to demonstrate that the pay for priority arrangement is not harmful and is consistent with the public interest.

Third, an open Internet should be available to *all* end users—residential, enterprise, for-profit, or not. This Order goes a long way toward protecting an open Internet for residents, small businesses, schools, libraries, patrons of coffee shops, bookstores, and the like, but I worry that those who may not fit

into these categories will have to negotiate for access to the open Internet, and they may be denied such access. We should carefully monitor whether an open Internet truly is available to *all* end users and correct course, if needed. I also hope that the aforementioned Open Internet Advisory Committee can track any harmful effects for those end users who do not currently qualify for the protections adopted today and recommend Commission action as necessary.

Finally, earlier this year I stated my preference for the Commission's legal authority over broadband Internet access service. While the route taken here is not the one I originally preferred, I believe that it is appropriate for the Commission to act to protect an open Internet. I know there will be many lawyers studying the legal authority cited in this Order in the weeks, months and perhaps years ahead, and judicial review ultimately will determine the fate of this Order. I sincerely hope that the Commission's authority to protect consumers' access to an open Internet is upheld.

Today, the Internet is as critical to the nation for communicating as our legacy telephone, broadcast, and mobile phone systems. As described more fully in the Order, without an open Internet, consumers will have fewer choices and opportunities, which has the potential to impact many aspects of their lives—their ability to obtain an education, telecommute, look for a job, search information online, shop, make investment decisions, communicate with friends, family and colleagues, obtain news, and I could go on and on. Accordingly, I believe that it is necessary and appropriate that broadband providers operate pursuant to a legal and policy framework that ensures the Internet remains open under the Commission's watchful eye.