Statement of Commissioner Mignon L. Clyburn

Re: *Special Access*

While special access may not be that sexy topic everyone is tweeting about or some popular new mobile application downloaded by millions, it is indeed important to every single consumer. When they use that ATM machine, swipe their credit card at the gas pump, or access those new, fun mobile apps on their smart phone, chances are those services are being delivered because of the connections that special access provide. These connections ensure a level of quality and speed that millions of businesses rely on every day to serve consumers in many sectors of our economy.

Some argue that special access uses the technology of the past; therefore, we should not waste our time discussing it, much less fixing a system that we know is broken. Others say that, until you know what to replace your current pricing flexibility rules with, you should leave this imperfect system in place. I don't agree with either of these views. First, the evidence we have collected to date demonstrates that our pricing flexibility rules aren't working. Knowing this, it would be irresponsible and inconsistent with our obligations under one of our governing statutes, the APA, for us to continue to allow them to operate. While we don't have a permanent replacement for the pricing flexibility framework ready for implementation at this time, carriers will have the opportunity to make individual demonstrations for pricing flexibility under the widely accepted market power analysis we use for our forbearance decisions and merger analysis, just like the Department of Justice and the Federal Trade Commission do in their review of proposed mergers. Moreover, our staff is in the process of preparing a mandatory data request that we expect will result in additional and necessary information that will assist us in our reform efforts, including implementing a new, proper framework for pricing flexibility petitions.

As for the claims that there is no harm to leaving a broken system in place, the evidence in this Order demonstrates otherwise. Price cap regulation is designed to ensure that rates are just and reasonable. Flexibility from that regulation (*i.e.*, deregulation) should only occur where there are disciplinary forces of effective competition so that rates continue to be just and reasonable. This applies to both flavors of deregulation under the current pricing flexibility rules. Those that obtain Phase I flexibility (which allows carriers to offer lower rates than their tariffs on an individualized basis), have the capability to not just lower their prices, but they can do so by targeting potential competitors, further entrenching their own market positions. For those that obtain Phase II flexibility, they have the capability to unilaterally increase prices in those areas that do not have effective competition. As discussed in this Order, there is significant evidence that competition for special access services has not materialized throughout the areas granted flexibility. Given the ongoing demand for special access services and the fact that it's consumers who are ultimately paying those higher prices, I fully support the suspension of our pricing flexibility rules and our ongoing review of the prices, terms and conditions.

This agency has devoted significant resources to reform the Universal Service Fund over the last two and a half years—which is an approximately $9 billion a year system. Estimates of the special access market are anywhere between $12-18 billion annually. Given its size and importance in delivering services to consumers and the fact that this proceeding has been outstanding for seven years, I support the efforts that are being made to adopt a data collection order within 60 days and the completion of our fact finding and decision-making in this proceeding next year. I want to thank the Chairman for devoting staff resources towards these goals and adding specificity of our timeline for completion of this proceeding in the Order, including a specific timeframe for the mandatory data request.