

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Protecting and Promoting the Open Internet*, GN Docket No. 14-28.

When my mother calls, with public policy concerns, I know there is a problem.

In my 16 years as a public servant, Emily Clyburn has never called me about a substantive issue under consideration. Not during my time serving on the South Carolina Public Service Commission. Not during my tenure here as a Commissioner nor as Acting Chairwoman. Never. But all of that changed on Monday, April 28th.

Please indulge me for a moment. My mother is a very organized, intuitive and intelligent woman. She was a medical librarian and earned a master's degree while she raised three girls. She is smart, thoughtful and engaged. She is a natural researcher. So when **she** picked up the phone to call me about this issue, I knew for sure something was just not right.

She gave voice to three basic questions which, and as of today's date, her message remains on my telephone and in personal memory banks: (1) "what is this net neutrality issue?" (2) "can providers do what they want to do?" and (3) "did it already pass?"

So, like any good daughter with an independent streak, I will directly answer my mother's questions in my own time and in my own way. But her inquiry truly echoes the calls, emails and letters I have received from thousands of consumers, investors, startups, healthcare providers, educators and others across the country who are equally concerned and confused. All of this demonstrates, (no pun intended) how fundamental the Internet has become for all of us.

So, why are we here, and exactly what is net neutrality or Open Internet? First, let me start from a place where I believe most of us can agree that a free and open exchange of ideas is critical to a democratic society. Consumers with the ability to visit whatever website and access any lawful content of their choice, interact with their government, apply for a job, even monitor their household devices. Educators have the capacity to leverage the best digital learning tools for their students. Healthcare providers treating their patients with the latest technologies – all of this occurring without those services or content being discriminated against or blocked.

All content, all "bits," being treated equally. Small startups on a shoestring budget with novel ideas have the ability to reach millions of people and compete on equal footing with those established players and their considerable budgets. Innovation abounds with new applications, technologies and services.

At its core, an open Internet means that **consumers**, not a company, not the government, determine winners and losers. It is the free market at its best. All of this, however, does not nor will it ever, occur organically. Without rules governing a free and open Internet it is possible that companies – fixed and wireless broadband providers – could independently determine whether they want to discriminate or block content, pick favorites, charge higher fees or distort the market.

I have been listening to concerns not just from my mother, but from thousands of consumers and interested parties. Startups that fear, they "won't even get a chance to succeed," if access to consumers is controlled by corporations, rather than a competitive level playing field. Investors who say they will be reticent to commit money to new companies because they are concerned that their new service will not be able to reach consumers in the marketplace because of high costs or differential treatment.

Educators, even where there is a high capacity connection at the school, feel that their students may not be able to take advantage of the best in digital learning if the quality of the content is poor. Healthcare professionals worrying that the images they need to view will load too slowly and that patients will be unable to benefit from the latest technologies and specialized care made possible through remote monitoring. And, I am hearing from everyday people, who say that we need to maintain the openness of the Internet and that this openness enables today's discourse to be viewed by thousands, and offers them the ability to interact directly with policy makers and engage in robust exchanges like we are experiencing today.

In fact, let me say how impressed I was when I spoke with some of you on Maine Street earlier this week. You came to Washington from North Carolina, New York, Pennsylvania, and Virginia at your own expense to affirm just how important this issue is to you. You made it clear that the Internet is a great equalizer in our society and that average consumers should have the same access to the Internet as those with deep pockets.

There are dozens of examples across the globe where we have seen firsthand the dangers to society when people are not allowed to choose. Governments blocking access to content and stifling free speech and public discourse.

Countries, including some in Europe, where providers have congested or degraded content, and apps are being blocked from certain mobile devices. Hints of problems have occurred even here at home, particularly with regard to apps on mobile devices, even though providers in the United State, have been subject to net neutrality principles and rules with the threat of enforcement for over a decade.

So, to Mom and to all of you, this is an issue about promoting our democratic values of free speech, competition, economic growth, and civic engagement.

The second she posed was, can providers just do what they want? The short answer, is yes. As of January we have no rules to prevent discrimination or blocking.

This is actually a significant change because the FCC has had policies in place dating back to 2004, when the Commission under former Chairman, and my friend Michael Powell, unanimously adopted four principles of an open Internet in the Internet Policy Statement. These principles became the rules of the road with the potential for enforcement. Then, in 2010, the Commission formally adopted rules to promote an open Internet by preventing blocking, and unreasonable discrimination.

When the Commission approved these rules, I explained why I would have done some things differently. For instance, I would have applied the same rules to both fixed and mobile broadband; prohibited paid priority agreements; limited any exceptions to the rule; and I am on record as preferring a different legal structure. The 2010 rules reflect a compromise... yes, Mom, I do compromise at times. But in January 2014, the D.C. Circuit disagreed with our legal framework ... so here we are, again.

And I say again, that the court decision means that today we have no unreasonable discrimination or no blocking rules on the books. Nothing prevents providers from acting in small ways that largely may go undetected. And, nothing prevents them from acting in larger ways to discriminate against or even block certain content. To be fair, providers have stated that they intend, for the time being, not to do so and have publicly committed to retain their current policies of openness. But, for me, the issue comes down to whether broadband providers should have the ability to determine, on their own, whether the Internet is free and open OR whether we should have basic and clear rules of the road in place to ensure that this occurs as we have had for the last decade.

And, this may be surprising to some but I have chosen to view the court decision in a positive light for it has given us a unique opportunity to take a fresh look and evaluate our policy in light of the

developments that have occurred in the market over the last four years, including the increased use of WiFi, deployment of LTE, faster speeds and connections to homes, schools, libraries, and the increased use of broadband on mobile devices, to name a few. The remand enables us to issue this clarion call to the public where they can once again help us answer that most important question of how to protect and maintain a free and open Internet. That ability officially begins for everyone today.

The third question, and, judging by the headlines and subsequent reactions, my Mother is in good company here, was “has, it, passed?” No, it has not, but let me explain. Some press accounts have reported that the Chairman’s initial proposal is what we are voting on, and have conflated proposed rules with, final rules. Neither is accurate.

For those who practice in this space, I ask that you bear with me for a moment. When the Chairman circulates an item, it is indeed a reflection of his vision. My office then evaluates the proposal, listens to any concerns voiced by interested parties, including consumers, then considers whether we have concerns and, if so, what changes we want to request so that we could move to a position of support.

This item was no different. It is true. I too had significant concerns about the initial proposal but after interactions among the staff, my office, and the Chairman’s office, this item has changed considerably over the last few weeks and I greatly appreciate the Chairman incorporating my many requests to do so. Though I still may have preferred to make portions of the draft more neutral, what we are voting on today asks about a number of alternatives, which will allow for a well-rounded record to develop, on how best to protect the public interest.

Second, today, we are voting only on proposed rules – not final rules. Again, this item is an official call inviting interested parties to comment, to discuss the pros and cons of various approaches, and to have a robust dialogue about the best path forward. When the Chairman hits the gavel after votes are cast on this item this morning, it will signal the start of 120 unique days of opportunity each of you has in shaping and influencing the direction of one of the world’s most incredible platforms. The feedback up until now has been nothing short of astounding but the real call to action begins after this vote is taken. Comments are due on July 15th, and there is ample time to evaluate any of the proposals and provide meaningful feedback.

You have spoken and I am listening. Your power will never be underestimated, and I sincerely hope that your passion continues. As I said to those I met with outside of FCC headquarters, this is your opportunity to formally make your point on the record. You have the ear of the entire FCC. The eyes of the world are on all of us. Use your voice and this platform to continue to be heard.

I will do all that I can independently, and with the Chairman, to identify ways to encourage a more interactive dialogue with all stakeholders whether through town halls, workshops, webinars, or social media because I know with a robust record this Commission will be able move quickly and get to the finish line with the adoption of permanent rules that provide certainty, and which are clear and enforceable.

So, mom, I hope that answers most of your questions and I sincerely hope that you won’t feel compelled to ask me any more significant policy questions for another 16 years.

In all seriousness, I want to thank the dedicated staff from the Office of General Counsel, including Jonathan Sallet and Stephanie Weiner, as well as the Wireline Competition and Wireless Telecommunications Bureaus, for their work on this significant item. And I want to especially thank my Wireline Legal Advisor, Rebekah Goodheart, for her expert work on this item.