

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

Re: *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106.

Why has this Commission, received more than a quarter of a million filings, of which the vast majority show support for the adoption of strong privacy rules? Because consumers care deeply about their privacy—and so should we.

Ninety-one percent of Americans believe, consumers have lost control of how their personal information is collected, and used by companies. That's ninety-one percent. With news seemingly breaking every week, about a cyberattack, massive data breaches, and companies collecting and selling customer data to government agencies, that number should come as no surprise to anyone.

So when faced with the question, of should I support requiring companies to give consumers more notice, more choice, and more transparency, you hear no double speak from me. Simply put, additional consent here means, that consumers will have more of a say, in how their personal information is used—and I for one, think that is a good thing.

Today, we substantially adopt the FTC's framework on privacy, with some tweaks to account for the current era, and unique position broadband providers occupy in our everyday lives. Where we deviate, we do so with the protection of consumers in mind. This *Order*, I am proud to say, adopts strong privacy protections, and provides robust choice for those who consent to the use, or sharing of their information, as a means of receiving new products, more targeted advertising, or other innovative offerings made possible by big data.

I am grateful to the Chairman and Commissioner Rosenworcel, who agreed to many of my edits. In particular, this item incorporates my suggestions to account for people with disabilities and strengthens protections for protected classes under our national civil rights laws. It also toughens our pay-for-privacy safeguards, and improves the abilities of businesses to contract for their own privacy protections.

But what it does not do, is address the issue of mandatory arbitration, an issue I outlined in my remarks at the #Solutions2020 Forum last week. Mandatory arbitration, put simply, forces consumers with grievances against a company, out of the court system, and into a private dispute resolution system. In other words, their options are limited.

In an op-ed appearing in TIME earlier this week, Senator Franken and I described in detail, why mandatory arbitration is a consumer un-friendly practice.

For those who take exception, I must remind them that in this privacy proceeding, we did provide notice, we developed a record, and had an opportunity to give relief to millions of consumers nationwide, including the 99.9% of mobile wireless customers, who are forced to give up their day in court when they sign up for connectivity. In a rulemaking about transparent notice and choice to consumers for their privacy, I believe it is a natural fit to ensure transparent notice and choice, in the context of dispute resolution.

Public justice systems, discipline private conduct. But private justice systems are “an oxymoron,” according to one appeals court judge, and he is not alone in that thought. The Consumer Financial Protection Bureau, has found that limiting forced arbitration clauses, have a powerful deterrent effect, resulting in companies changing business practices in more consumer-friendly ways. An inscrutable, unfairly levied below-the-line fee on a bill, may be disputed by a thousand consumers, but a provider can collect that fee from a million customers who may never notice that line item as they pay their monthly bill.

Without the watchful eye of the court system, a company can limit its losses to those thousand who do take notice, while keeping the proceeds from the millions who did not. And as one arbitrator put it, “why would an arbitrator cater to a person they will never see again,” over a corporation who is repeatedly footing the bill?

Several agencies have stepped up and declared these provisions unlawful in other contexts, and yes, I am disappointed that we did not join this vanguard, in ensuring that consumers are not unwittingly giving up their day in court, when they sign up for communications services. And because of this, I respectfully concur in part. Nevertheless, I am heartened, Mr. Chairman, that we are committed to addressing this issue, in a separate proceeding, with a firm timeline.

To the Wireline Competition Bureau and Office of General Counsel staff, who have wrestled through these difficult issues for years, and somewhat frenetically over the past few days, I thank you. You have further empowered the American consumer through this item, and for that, and more, I am grateful.