

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
DISSENTING**

Re: *Encouraging the Provision of New Technologies and Services to the Public*, GN Docket No. 18-22

Today's rulemaking proposes something seductively simple: this agency will make a decision about any new technology and service within a year. But appearances can be deceiving. While preaching the value of speedy decision-making, it sets up a structure to do just the opposite. It inserts the Federal Communications Commission into the introduction of any new technology or service in the economy in a way that will increase bureaucracy and decrease innovation.

This proposal is brazen in its disregard for mistakes of the past, negligent in its failure to acknowledge opportunities for abuse, and bungles the nature of true innovation.

First, past is prologue. Section 7 of the Communications Act directs the agency to determine if new technologies or services are in the public interest within one year. But nowhere in this rulemaking will you find a thoughtful effort to define this phrase. In the absence of discussion here, we can look to history.

In 1991, the FCC adopted a Pioneer's Preference Program. This program offered preferential licensing treatment for entities making significant contributions to new spectrum technologies or services. It has an eerie similarity to the terminology and process proposed today. Were we to study this history, we would recognize that this program was a failure. The agency's inability to determine what was in fact a new technology or service led to the collapse of the Pioneer's Preference. The FCC was flooded with more than 140 applications for this preference and then tied up for years in litigation with those entities who were denied. In one case, a court ordered the FCC to designate a spurned applicant as a pioneer, prompting a settlement of \$125 million in the form of an auction bidding credit. The agency couldn't end this program fast enough—in fact, it was terminated well before the last of the court cases wrapped up.

So we've trod this path before. We should have learned a lesson. The FCC is poorly equipped to identify whether a proposed technology or service is in fact, new. That's what makes the lack of any meaningful guidance in this rulemaking troubling. Apparently, our standard is like Potter Stewart's famed obscenity test. What is a new technology or service? I guess we'll know it when we see it.

Second, the proposal put forth is ripe for abuse. Section 7 requires anyone who opposes a new technology or service to demonstrate that any petition associated with it is at odds with the public interest. History, however, demonstrates that there are those who will feel challenged by progress. Incumbents today are vulnerable to upstarts tomorrow. The rules proposed here—under the guise of spurring innovation—will give anyone threatened by change the ability to oppose what is novel and the right to stonewall progress. Look for mention in this rulemaking of the incentives to abuse our process and hold innovation hostage in our bureaucracy and you won't find it. But they're there.

Third, genius takes time. New forms of communication can raise novel questions. They rarely fit into existing regulatory paradigms. They often raise issues of classification and pose interference challenges.

So it was with white spaces, ultrawideband technologies, real-time text, vehicular radars, signal boosters, digital television, location information for emergency calling, millimeter wave broadband services, and Wi-Fi devices. They're all new and important forces in communications. But not one of

them was wrapped up neatly in a single year. Regulatory inertia did not hold them back. The push and pull of testing, assessing, recalibrating, coordinating, and reworking made them possible. This iterative process is what real innovation looks like—and it is what today's rulemaking fundamentally gets wrong.

I dissent.