

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
DISSENTING**

Re: *Restoring Internet Freedom*, WC Docket No. 17-108; *Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287; *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42.

I support net neutrality. I believe the Federal Communications Commission got it wrong when three years ago it gave the green light to our nation's broadband providers to block websites, throttle services, and censor online content. I believe this decision put the agency on the wrong side of the public, the wrong side of history, and the wrong side of the law.

When we went down this road three years ago—over my dissent—86% of the American public disagreed with the FCC's decision. They found it crazy that a handful of unelected officials in Washington could limit where we go and what we do online. They found it bananas that the FCC—the agency charged with overseeing communications in this country—would somehow insist that it shouldn't have oversight responsibility for broadband. They found it absurd that the agency would abandon the net neutrality principles that made our internet the envy of the world.

What the public understood—and the FCC did not—is that this openness is revolutionary. It means you can go where you want and do what you want online without your broadband provider getting in the way or making choices for you. It means every one of us can create without permission, build community beyond geography, organize without physical constraints, consume content we want when and where we want it, and share ideas not just around the corner but across the globe. I believe it is essential that we honor this history and sustain this openness in the future—and that is why I support net neutrality.

Today we had the opportunity for a do-over. A court sent the mess this agency made with net neutrality back to the FCC. It told us that our decision was wrong for public safety, wrong for broadband infrastructure, and wrong for low-income households. It told us try again. But this order on remand makes apparent this agency is not interested in getting it right. Instead, it doubles down, rather than recognizing the realities of the world around us.

We are in a pandemic. It has filled our hospitals, crashed our economy, and emptied our schools. So much of daily life has been upended, but the one thing that this moment has proven with certainty is how necessary it is to be online. This is true for work, for education, for healthcare, and more. This pandemic has demonstrated that access to broadband is no longer nice-to-have, it is need-to-have for everyone, everywhere.

We need a 100% policy. We need 100% of us connected to broadband. Just like with electricity. Just like with water. That's because no individual, no household, and no community will have a fair shot at digital age success without it.

We're not there yet. Far from it. *The rollback of net neutrality did not get us any closer to broadband for all, despite the lofty promises made by the FCC.* You see it in the reports of the digitally disconnected all around the country. We have adults sitting in cars in parking lots just to catch Wi-Fi to go online for work. We have kids lingering outside of fast food restaurants with laptops just to get a wireless signal so they can go to online class. We have cities and towns fearful that they will not survive this crisis without new efforts to extend broadband to their residents and businesses. And much like the effects of the virus itself, those who are struggling are disproportionately from groups that for too long have suffered systemic discrimination.

Again, we need 100% of us connected to broadband—and we need that access to be open. Today this agency will tell you that openness and net neutrality is not necessary. But know this: broadband providers have the technical ability and business incentive to discriminate and manipulate your internet

traffic—and this agency has blessed their ability to do so. And when they do, you'll be stuck. Because FCC data show that our broadband markets are not competitive. Most households in this country have no choice of broadband provider. So if your broadband provider is blocking websites, you have no alternatives. The FCC will say head to the Federal Trade Commission. But the FTC is not the expert agency for communications. The FCC will say head to state consumer protection authorities. But remember this Administration is suing states that tried to fill in the net neutrality and broadband void created when the FCC stepped out.

The decision before us today was an opportunity to step back in. It was an opportunity to rethink this agency's rollback of net neutrality from top to bottom and front to back. I regret that it is not. Instead, it is a set of three cobbled-together arguments designed to tell the court to go away, the public that we are not interested in their opinion, and history that we lack the humility to admit our mistake.

First, the court told the FCC that it failed to address the harm done to public safety by the rollback of net neutrality.

The very first sentence of the Communications Act tasks the FCC with “promoting safety of life and property.” In other words, public safety is fundamental to our mission. But the agency disregards it here and sidesteps the concerns of the court by insisting that removing net neutrality increases network investment, which will accrue to the benefit of public safety. The evidence for this is less than clear. But more importantly, it doesn't adequately explain why this is the case when lives are on the line. Nor does it detail in any meaningful way how first responders will manage when emergency communications are throttled or blocked. This concern is not just theoretical. Among those opposing the FCC's rollback of net neutrality are firefighters who found their service throttled when they were responding to a raging blaze. But here their fears are given short shrift. The agency simply concludes that the elimination of net neutrality is worth the risk, even when lives are at stake. This is irresponsible.

Second, the court told the FCC that it failed to address the harm done to broadband infrastructure by the rollback of net neutrality.

Section 224 of the Communications Act gives cable and phone companies rights to attach their facilities to utility poles when they deploy service. But when the FCC took away net neutrality it meant new broadband providers were no longer subject to this section of the law. In other words, the agency eliminated an essential way to ensure broadband providers have rights when it comes to one of the most-costly aspects of deployment—pole attachments. Now the FCC tries to explain this isn't a big deal. But it is. Broadband is the infrastructure of the future. If we want to reach 100% of us—and we should—removing tools that help is a bad idea. But this decision concludes it's a price worth paying for the rollback this agency wants.

Third, the court told the FCC that it failed to address the harm done to broadband in low-income households by the rollback of net neutrality.

Section 254 of the Communications Act details the FCC's universal service programs, including Lifeline. Lifeline is the only FCC program designed to help low-income Americans afford the cost of communications. So when the FCC's net neutrality decision undermined the basis for supporting broadband through the Lifeline program it was natural for the court to call foul. In response, the agency just dodges. It ignores the fact that in Section 254 universal service is defined as an evolving level of telecommunications service and it offers a hodgepodge of citations to claim that its decision did not destabilize the Lifeline program. But it did. Because there is no question the program is on less firm legal ground than it was before—and that's a shame. The future of communications is broadband, and this program should reflect that. Modernizing it is how we reach 100% of us, but this decision puts that at risk.

That brings us to Section 230 of the Communications Act. It has been in the news lately as we all grapple with the frustrations of social media. Three years ago, the FCC insisted that Section 230's references to a competitive, free market for the internet compelled this agency to rollback net neutrality. It was bunk at the time. But now the agency's approach to Section 230 is even more confounding.

Because following a push from the Administration, the FCC has reversed course. It now insists that this provision of the law compels the agency to regulate certain speech online. In the end, it's not just the hypocrisy that disappoints, or the intellectual contortions required to make sense of this. It's the dishonesty. It can't be that the FCC points to Section 230 to disavow authority over broadband but then uses the same law to insist it can turn around and serve as the President's speech police.

What a mess. All of this is not good for consumers, for businesses, for anyone who connects and creates online.

I dissent because it doesn't have to be this way. We can have an FCC that is responsive to consumers. We can have an FCC that accepts nothing less than connecting 100% of us to broadband so everyone, everywhere has a fair shot in the digital age. We can have an FCC that restores net neutrality, rather than doubles down on reasons to take it away. I still believe these things are possible. I still have faith that as a Nation, we can make them happen. We can revisit these matters anew. So let's not stop here or now. Let's persist. Let's fight. Let's make it happen. I believe we can and I believe we should because the future depends on it.