

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Safeguarding and Securing the Open Internet*, WC Docket No 23-320, Notice of Proposed Rulemaking (October 19, 2023).

Now, more than ever, the internet must remain free and open.

In my years as a Commissioner, I've learned that there is simply no way to overstate broadband's impact on the lives of individual Americans. Take, for example, "Queen Bea," as she is known at the Yesler Terrace public housing facility in Seattle, Washington. Talk about a mega-watt smile. Queen Bea experienced homelessness for a number of years. She was able to find housing just as the pandemic started, and critically just as she became ill and lost some of her mobility. She took advantage of that time to go back to school, having previously stopped her formal education in the 8th grade. With a broadband connection, she literally and figuratively "zoomed" through her education and training, and learned how to use a computer and applications like Excel. When we met, she proudly told me that she has become an educator herself in the community—training others on how to utilize and upgrade their computer skills because she wanted to help others learn as well. She told me "it was a blessing to have the internet." Amen to that.

Or consider Ms. Ana, the leader of the Bethel Native Corporation. She graciously welcomed me into her home in Bethel, Alaska this past summer with a bowl of moose chili. There are no major roads to Bethel; if you want to leave town or visit, you do it by boat or plane. As we ate, Ms. Ana told me about the exciting vision of tomorrow: new fiber deployments that would enable her community of 6,000—and the residents of even smaller villages along the Kuskokwim River—to secure the necessities of modern life without having to leave the place they call home. Employment through remote work. Healthcare through telehealth visits. Better education for their kids.

And let me tell you about Ms. Eleanor, a senior living in Boston's Roxbury neighborhood. She would visit the Grove Hall library to use the computer, until she ultimately got online herself through the library's "Tech Goes Home" program, which helps residents purchase affordable laptops and broadband. With a twinkle in her eye, Ms. Eleanor told me she loves to learn new line dances online and that the internet helps her stay active.

These are stories I've heard. People I know. From the single-story pueblos of New Mexico to the skyscrapers in New York; family farmers to small business owners; the youngest learner to the eldest senior—no one should tell these Americans how they can and can't use the internet. And no one should be able to leverage or exploit the connection they cherish. Each in their own special way shared with me how essential their connection to the internet is. And I'm here today to tell them—I've got your back.

And some today may want to talk about the proper regulatory framework. One of the reasons I firmly support today's *Notice* is because it proposes to return us to our roots—a framework that has governed the internet's growth going back to 1998, through Republican and Democratic Administrations alike, when the Commission first classified DSL broadband as a common-carrier service¹ and went on to adopt principles to ensure broadband networks are widely deployed, open, affordable, and accessible to all consumers.²

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011, paras.36-37 (1998).

² *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket 02-33, Policy Statement, 20 FCC Rcd 14986 (2005). The 2015 *Open Internet Order* adopted those principles into rules. See *Protecting and Promoting the Open Internet*, WC Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5603, para. 4 (2015) (*2015 Open Internet Order*), pet. for review denied, U.S. (continued....)

It's a framework that puts users in charge of what they do online—and not the companies they pay for a connection.

It's a framework that protects consumers in their use of an essential service—instead of simply trusting ISPs to do the right thing.

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And it's a framework that recognizes network security is national security—instead of hoping for the best in a world where so many wish us harm. Congress created the Commission, in part, “for the purpose of the national defense.”³ In today’s world, that mission is more important than ever. Wars in Ukraine and the Middle East include significant cyber components⁴ and every minute, bad actors—at times backed by nation states, including Russia and China—probe our broadband networks for weakness and launch potentially crippling cyberattacks. ISPs are working hard to protect their networks, and we are working with them on that urgent goal. But we can’t afford to rely on self-regulation alone. Not when our national security is at stake. Our nation’s networks are simply too vital.

Reclassification would place the Commission on firm footing to protect Americans and partner even more effectively with our sister national security agencies on the same goal. Those partners have already asked the FCC to examine all solutions and authority to help secure our networks.⁵ And gaps in our authority have already manifested and hindered our ability to defend against known threats.

Here’s one example. We rightfully (and unanimously) revoked the international section 214 authorizations of certain Chinese providers following recommendations from the Executive Branch. However, because of the repeal of the 2015 open internet rules, those revocations only prohibited those specific Chinese providers from offering common-carrier service. Our national security action did not touch their BIAS offerings, meaning that providers already identified as posing an unacceptable national security and law enforcement risk may be operating BIAS networks in the United States without recourse. Whether or not they offer BIAS, they could be interconnecting with networks and gaining access to important internet points-of-presence and data centers. This is part of a larger problem—which is why I continue to call for a closer look at the threats that adversarial providers pose to our data and data centers. The rules proposed in the *Notice* can better equip us with the tools we need to protect Americans against these risks.

It’s not just national security that would benefit. More and more, BIAS offerings form an integral part of public safety communications. As an example, I’m reminded of my time visiting a large Public Safety Answering Point in Las Vegas. Packed in the PSAP were dedicated 911 communications technicians who spend their shifts answering calls non-stop and saving people’s lives. One thing was obvious – many of those in need rely on broadband to call for help. This is even more profound for individuals with disabilities who use broadband to call 911 for help through VRS and other apps. At the same time, public safety entities often rely on public broadband to share data with emergency responders

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Telecom Ass’n v. FCC, 825 F.3d 674 (D.C. Cir. 2016), *reh’g denied*, 855 F.3d 381 (D.C. Cir. 2017) (*USTA*), *cert. denied*, 139 S. Ct. 453 (2018).

³ 47 U.S.C. § 151.

⁴ See e.g., *Cyber Operations during the Russo-Ukrainian War*, Center for Strategic and International Studies, July 13, 2023, <https://www.csis.org/analysis/cyber-operations-during-russo-ukrainian-war>; Sam Sabin, *Hackers Make Their Mark in Israel-Hamas Conflict*, AXIOS, Oct. 10, 2023, <https://www.faxios.com/2023/10/10/hackers-ddos-israel-hamas-conflict>.

⁵ See e.g., Reply Comments, Jen Easterly, Director, Cybersecurity and Infrastructure Security Agency at 6 (PS Docket 22-90), filed June 28, 2022 (recommending the FCC review all options and look beyond the status quo to further BGP’s security and that the FCC work with its partners to examine all potential solutions and what authorities it can bring to bear to mitigate this critical risk).

and communicate in real time. The Commission must be able to protect consumers and public safety professionals in their use of these services. The rules proposed in the *Notice* would help us to do just that.

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Some have questioned our authority to act even though the D.C. Circuit upheld the exact rules we propose to reinstate. They predict that the Supreme Court will no longer defer to reasonable interpretations of agency statutes and that the loss of deference spells the loss of a free and open internet. Staying within our statutory bounds is extremely important to me, and I'm going to take a close look at the record on this question. But there's a long history here.

Over the more than 20 years of courts reviewing this exact question, every single judge to take a position on the correct classification of broadband has concluded that it very obviously is a common-carrier service. Three Supreme Court justices explicitly stated the answer was "perfectly clear."⁶ How many judges have ever said that broadband plainly is not a common-carrier service? That answer is perfectly clear, too. It's zero. Not a single one.

There's more. Over those 20 years, the Supreme Court also said that Congress very obviously gave us the authority to decide the question of what counts as a telecommunications service.⁷ It did so even after it decided a trilogy of cases viewed as the genesis of what we now call the major questions doctrine.⁸ Evidently, calling a telecommunications service, "telecommunications service," as we've done for years, isn't packing a mountain into a statutory molehill.⁹ Even if it somehow were, shoehorning broadband into the definition of an "information service" surely would be much more of one.¹⁰

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We need to remember that, as we adopt this *Notice*, we are not reinventing the wheel. The 2015 *Open Internet Order* adopted rules designed to protect an open internet by prohibiting conduct that we should agree are harmful. Don't block legal content, don't throttle legal content, don't engage in paid prioritization. Don't make it harder for the internet to drive competition, create new ideas, and spur new

⁶ See *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 1014 (2005) (*Brand X*). (Scalia, J., dissenting) ("[I]t remains perfectly clear that someone who sells cable-modem service is 'offering' telecommunications"); *id.* at 1005 (Justices Souter and Ginsburg joining as to that part of the dissent). A fourth justice said the question could go either way—but called the case for classifying broadband as an "information service" only "just barely" reasonable. *Id.* at 1003 (Breyer, J., concurring). See also *Brand X Internet Servs. v. FCC*, 345 F.3d 1120 (9th Cir. 2003) (Thomas, J., concurring) (concluding that "the 1996 Telecommunications Act compels the conclusion that cable modem contains a telecommunications service component"); *Mozilla v. FCC*, 940 F.3d 1, 90 (D.C. Cir. 2019) (*Mozilla*) (Millett, J., concurring) ("[T]he roles of DNS and caching themselves have changed dramatically since *Brand X* was decided. And they have done so in ways that strongly favor classifying broadband as a telecommunications service, as Justice Scalia had originally advocated.") (citing *Brand X*, 545 U.S. at 1012–1014 (Scalia, J., dissenting)).

⁷ *Brand X*, 545 U.S. at 981–982 (finding "no difficulty" leaving classification to the FCC's discretion and explaining that "no one questions that" broadband classification lies "within the Commission's jurisdiction").

⁸ See *MCI v. AT&T*, 512 U. S. 218, 231 (1994); *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000). See also *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022) (discussing these cases).

⁹ See *USTA*, 855 F.3d at 383 ("Assuming the existence of the [major questions] doctrine . . . , and assuming further that the rule in this case qualifies as a major one so as to bring the doctrine into play, the question posed by the doctrine is whether the FCC has clear congressional authorization to issue the rule. The answer is yes.") (Srinivasan, J., joined by Tatel, J., concurring in denial of rehearing *en banc*).

¹⁰ *Mozilla*, 940 F.3d at 93 (Millett, J., concurring) (calling the Commission's 2018 definition of "information services," "novel and utterly capacious").

technologies. More fundamentally, don't make broadband the only essential service in America without real oversight. Certainly not when our security and public safety are at stake.

I look forward to reviewing the record, and thank the Chairwoman for supporting my edits to the item, including those to further support how important this proceeding is to our national security. I thank the many at the Commission who have worked on this issue for their dedicated work.