

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

Re: *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106; *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket 96-115

Today nearly everything we do crosses the internet, from paying bills to seeking employment or researching a medical condition. Given the amount of personal data shared online, consumers are understandably concerned about their privacy. This is reflected in research showing that over 90 percent of consumers feel like they have lost control of their information online. That is why it is so important to have safeguards that govern all aspects of online privacy. Sadly, we continue to give broadband providers a hall pass today, even as we see 20 states step up and try to fill the void left by Congressional action and the FCC's refusal to reestablish robust privacy rules.

To be clear, I concur with giving guidance in the context of voice phone service. In an era where the FCC is taking a weed-whacker to rules to the detriment of regulatory certainty, it is some comfort to see the majority putting legacy rules back on the books that will at least provide some safeguards for voice customers. Reinstating the admittedly imperfect legacy voice rules, achieves that goal to some extent.

But I must disagree both with the simplistic treatment of the Congressional Review Act (CRA) found in this item, and more significantly, leaving out any requirements for broadband providers. I believe the better course would have been to close out the existing proceeding (or initiate a new proceeding) to come up with another holistic approach to voice and broadband.

First, it seems facile and bull-headed to move forward with an Order without seeking comment on how the CRA impacts this proceeding. This is the first time this legislative tool has ever been used on a set of FCC rules. In other novel contexts, the Commission has sought comment on how best to proceed. Even though the majority made clear they intend to move forward with Title II repeal, they still sought comment on the legal issue of how to classify broadband internet access service. Here, not only do we not seek comment, but in the first time the CRA is applied to FCC rules, we respond with "ministerial" changes to the Code of Federal Regulations.

Important and nuanced legal questions remain unanswered. Are aspects of the legacy voice rules substantially similar to the harmonized rules the Commission adopted last year? Does the CRA work to undo the modified adopted rule but leave in place the extinguishing of the original rule? We do not grapple with any of these fundamental interpretational issues.

Second, and more importantly, this Order shows that the majority is committed to reversing Title II for broadband and that they are willing to leave broadband consumers without privacy protections while this work is ongoing. There is a theory that we could actually move to adopt broadband privacy rules on the open notice from 2015. We should be using this item to adopt rules, or at a minimum seek comment on how to move forward with broadband privacy. Even if we did not adopt rules, we could adopt enforcement guidance or a policy statement using the voluntary code of conduct on which broadband providers seeking reconsideration were willing to agree. But no, the Commission is not even doing that. We now simply have the bare text of section 222 for broadband, and decade-old rules for legacy voice.

Just what does this all mean? For businesses: regulatory uncertainty regarding the enforcement of section 222. Broadband providers thought the bare text of section 222 was sufficiently uncertain to seek a stay of the *2015 Open Internet Order* two years ago. For consumers: they are almost wholly without recourse if a provider decides to not to adequately inform them, consult them before selling their data, or fail to protect data that they do have. The only real recourse for them will be individual forced arbitration before an entity of their service provider's choosing . . . the very antithesis of putting #ConsumersFirst.

For all of the stated reasons, I vote to concur in part and dissent in part.