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DISSENTING STATEMENT OF COMMISSIONER MIGNON L. CLYBURN

Re: *Protecting and Promoting the Open Internet*, GN Docket No. 14-28

In an ongoing quest to dismantle basic consumer protections for broadband services, the majority has decided to exempt billion dollar public companies from being transparent with consumers. This represents yet another in a series of steps being taken to jettison pro-consumer initiatives, and we should not stand silent as consumer protections “go gentle into that good night.”

If you have not picked up on it already, I must respectfully dissent from today’s Order.

From the very beginning of the Open Internet proceeding, I have been consistent in my commitment to ensuring that our nation’s smallest broadband service providers are not unduly burdened by the enhancements to our transparency rule. Indeed, I championed an exemption from the enhanced transparency rule, included in the Commission’s *2015 Open Internet Order*. And two months ago, I voted to protect small providers with 100,000 or fewer subscribers, when the small provider exemption was on the precipice of lapsing.

But in late January, the newly constituted Commission proposed a vastly different Order than what had been on circulation for several months.

In the interest of finding common ground I made multiple attempts at compromise, as late as yesterday afternoon. But I could not compromise on having consumers clearly know the price they pay for service, what below-the-line fees are charged, and what data allowances apply to their broadband service.

We have been criticized in the past for not basing our decisions on facts. Well, if that were true, then little has changed. While my colleagues describe this Order as a reflection of Congressional intent, one of the *Small Business Broadband Deployment Act*’s original co-sponsors, Rep. Dave Loebsack, described the bill as giving “the FCC . . . flexibility to find a more tailored solution that best balances the needs of consumers, with the needs of small businesses.” Despite this statement, the Order we adopt today contains no analysis, no tailored solution, and in fact, does not even mention the American consumer at all.

If we were to actually conduct an analysis, we would find the claims of burdensome regulation lacking. Our original exemption was based on our actions in the rural call completion context, and the instant Order cites with approval comments that seem to suggest the transparency rule is stupendously more burdensome than our rural call completion requirements. So let us compare the two proceedings.

In assessing the burden of complying with our rural call completion information collection, the Office of Management and Budget (OMB) determined that compliance would take each long-distance provider *64 hours, annually*. There, the Commission exempted providers with 100,000 or fewer subscriber lines. On the other hand, the OMB determined that compliance

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with the enhancements to the transparency rule would take each broadband provider *6.8 hours annually*. Yet, we are minutes away from exempting providers with 250,000 connections—including billion dollar public companies—while claiming that the rules are burdensome regulation, of small Internet Service Providers.

In other words, the Order doubles down here, by allowing the biggest broadband providers in the country, to exempt their subsidiaries that have under 250,000 connections. You see, many of the nation's largest broadband providers are actually holding companies, comprised of many smaller operating companies. So what today's Order does, is exempt these companies' affiliates that have under 250,000 connections by declining to aggregate the connection count at the holding company level.

And if all of that were not enough, the Order runs roughshod over past precedent, with no discussion as to why the Commission is changing its mind. Twice, the Commission found 100,000 connections to be the right number, but today you will not find any rational discussion as to why this cutoff has been revisited. Burdens that the Commission **discounted** in the past are now given credence without evaluating why prior decisions are being jettisoned. And, most importantly, there is absolutely no evaluation of the impact the exemption will have on consumers.

There is also a bigger issue at play, because the enhanced transparency rules are just one aspect of the landmark Open Internet rules adopted by the Commission in 2015. These rules were adopted to prevent broadband providers from blocking, throttling, favoring or discriminating against traffic, or extracting tolls from any user, for any reason, or for no reason at all. And at a time when the majority on this Commission is talking about gutting these broader rules, I cannot in good conscience support this vastly increased exemption without knowing what core protections will remain in place for consumers and small businesses in the years to come.

As I close, my single request today is a simple one: that this Commission, and these Internet Service Providers put #ConsumersFirst. If you and your companies have the resources, then do the right thing, be transparent with consumers about what prices you charge, what fees you assess, what data caps you impose, and your network performance practices. Your customers, I am confident, will thank you.

While I cannot support the item, I must acknowledge and thank the diligent staff of the Consumer and Governmental Affairs Bureau for their years of toil on this issue. You worked with me when I first requested this exemption years ago, and have been nothing but professional and helpful ever since.