

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Data Caps in Consumer Broadband Plans*, WC Docket No. 23-199, Notice of Inquiry (October 15, 2024).

In its decision to reinstate utility-style, Title II controls on the Internet, the FCC promised to forbear from all forms of price controls—namely, both *ex ante* and *ex post* rate regulation. The first crack in this commitment emerged immediately when the agency allowed New York’s price control law to move forward without the Commission stating the obvious—New York’s law is plainly preempted by the Communications Act and FCC precedent.

And with today’s Notice of Inquiry, the FCC itself starts down the path of directly regulating rates. It does so by seeking comment on controlling the price of broadband capacity (“data caps”). Prohibiting customers from choosing to purchase plans with data caps—which are more affordable than unlimited ones—necessarily regulates the service rates they are paying for.

Today’s NOI is legally infirm, too, for want of statutory authority. Indeed, the Sixth Circuit has stayed the FCC’s Title II decision, which is based on the same claims of authority that the FCC invokes today.

At bottom, then, I dissent from today’s NOI because I cannot support the Biden-Harris Administration’s inexorable march towards rate regulation and because the FCC plainly does not have the legal authority to do so.