Griffin, Circuit Judge: ...

Today we consider the latest FCC order, issued in 2024, which resurrected the FCC's heavy-handed regulatory regime. Under the present Safeguarding and Securing the Open Internet Order, Broadband Internet Service Providers are again deemed to offer a "telecommunications service" under Title II and therefore must abide by net-neutrality principles. ...

Using the traditional tools of statutory construction, we hold that Broadband Internet Service Providers offer only an "information service" under 47 U.S.C. § 153(24), and therefore, the FCC lacks the statutory authority to impose its desired net-neutrality policies through the "telecommunications service" provision of the Communications Act, id. § 153(51). Nor does the Act permit the FCC to classify mobile broadband—a subset of broadband Internet services—as a "commercial mobile service" under Title III of the Act (and then similarly impose net-neutrality restrictions on those services). *Id.* § 332(c)(1)(A). We therefore grant the petitions for review and set aside the FCC's Safeguarding Order. ...

II. ...

A. ...

3.

a.

We now turn to the merits, which the parties have argued here in exemplary fashion. But the key flaw in the FCC's arguments throughout is that the FCC elides the phrase "offering of a capability" as used in § 153(24). That phrase makes plain that a provider need not itself generate, process, retrieve, or otherwise manipulate information in order to provide an "information service" as defined in § 153(24). Instead, a provider need only offer the "capability" of manipulating information (in the ways recited in that subsection) to offer an "information service" under § 153(24). Even under the FCC's narrower interpretation of "capability," Broadband Internet Access Providers allow users, at minimum, to "retrieve" information stored elsewhere. And we think it equally plain, for the reasons recited below, that Broadband Internet Service Providers offer at least that capability.

Start with "offering" as used in § 153(24). "It is common usage to describe what a company 'offers' to a consumer as what the consumer perceives to be the integrated finished product." *Brand X,* 545 U.S. at 990. As for "capability," contemporaneous dictionaries are the best place to start. And they define "capability" as "having traits conducive to or features permitting," *Merriam-Webster's Collegiate Dictionary* 168 (10th ed. 1997), the "power or ability in general" and "the quality of being susceptible of," *A Dictionary of Modern Legal Usage* 129 (2d ed. 1995), or "having the ability or capacity for," *Random House Unabridged Dictionary* 308 (2d ed. 1993); see also *Spectrum Five LLC v. FCC*, 758 F.3d 254, 261 (D.C. Cir. 2014) (defining "capability" as "power or ability").

In the view of the current Commission, Broadband Internet Service Providers offer a telecommunications service that merely connects consumers to edge providers (like Netflix, Amazon, Facebook, and Google). *Safeguarding Order*, 89 Fed. Reg. at 45425, ¶ 99 ("[C]onsumers today perceive [Broadband Internet Service Providers to offer] ... a telecommunications service that is primarily a transmission conduit used as a means to send and receive information to and from

third-party services."). In essence, the FCC contends that edge providers offer an "information service" but that Broadband Internet Service Providers do not.

Everyone agrees with the Commission's classification of edge providers as offering an information service. Those providers indisputably "'generate' and 'make available' information to others through email and blogs; 'acquire' and 'retrieve' information from sources such as websites, online streaming services, and file sharing tools; 'store' information in the cloud; 'transform' and 'process' information through image and document manipulation tools, online gaming, cloud computing, and machine learning capabilities; 'utilize' information by interacting with stored data; and publish information on social media sites." *Id.* at 45426, ¶ 105.

Yet, by connecting consumers to edge providers' information, Broadband Internet Service Providers plainly provide a user with the "capability" to, at minimum, "retrieve" third-party content. 47 U.S.C. § 153(24). That is, they offer a "feature permitting[]" consumers to stream videos stored on Netflix's servers, the "ability" to purchase gifts from information stored on Amazon's servers, the "capacity" to view posts stored on Facebook's servers', and the "power" to conduct a search using Google's servers. By utilizing high-speed Internet offered by Broadband Internet Service Providers, consumers are capable of obtaining edge providers' information. In our view, then, the Safeguarding Order reads out the key phrase—"offering of a capability"—that precedes the gerunds ("generating," "acquiring," "storing," "transforming," "processing," "retrieving," "utilizing," and "making available information") set forth in § 153(24).

While the statute's language spells trouble for the Government's position, a wider look at the statute's structure gives us even more reason for pause. Specifically, Congress emphasized the importance of deregulating the "Internet and other interactive computer systems," finding in the Telecommunications Act of 1996 that "[t]he Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation." 47 U.S.C. § 230(a)(4). Thus, the policy of the United States is "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." *Id.* § 230(b)(2). It would be strange for Congress to enact this policy while, in the same bill, shackling Internet access providers with onerous Title II regulation.

Further, Congress defined "interactive computer service" as an "information service ... that provides access to the Internet," *id.* § 230(f)(2), and specified that "[n]othing in th[at] section shall be construed to treat interactive computer services as common carriers or telecommunications carriers," id. § 223(e)(6). True, as the FCC points out, the definition of "interactive computer service" applies to that term as it is "used in" § 230 itself. *Id.* § 230(f). But that means the definition of "interactive computer service" as a whole is limited to § 230—not that the meaning of every word or phrase within that definition likewise has a meaning peculiar to that subsection. (In that case, § 230 itself would have to define every word used within it.) And the usage of the term "information service" in § 230(f)(2) takes for granted that "information service" includes Internet providers. We see no reason why that usage should be understood as peculiar to § 230—any more than its usage of, say, "transmit" or "receive" is. Id. § 230(f)(4)(C). The Act's structure thus favors petitioners' position, not the FCC's. ...

b.

In the face of the statutory text, context, and history, the FCC largely resists our reading of what "offering of a capability" means because of how that reading would

affect telephone services—the paradigmatic example of telecommunications service. If Broadband Internet Service Providers fall within "information services" given their facilitation of access to third-party content, the argument goes, so too would telephone services. It is true, in one sense, that a telephone user retrieves information from a third-party in a phone conversation with a friend or customer-service agent. But that is not the sense meant by the statute.

The existence of a fact or a thought in one's mind is not "information" like 0s and 1s used by computers. The former implies knowledge qua knowledge, while the latter is knowledge reduced to a tangible medium. Consider the acts of speaking and writing. Speaking reduces a thought to sound, and writing reduces a thought to text. Both sound and text can be stored: a cassette tape for audio information, a journal for written information, or a computer for both. But during a phone call, one creates audio information by speaking, which the telephone service transmits to an interlocutor, who responds in turn. Crucially, the telephone service merely transmits that which a speaker creates; it does not access information. …

B.

Finally, we turn to the Safeguarding Order's related provisions concerning mobile broadband. Because users can access broadband Internet when using mobile devices connected to cellular networks like 5G, separate from wired (or Wi-Fi) connections, the Safeguarding Order similarly imposes net-neutrality policies on those so-called "mobile broadband services" through the Act's "commercial mobile service" provision. 47 U.S.C. § 332(c)(1)(A). Although comparable, our conclusion that Broadband Internet Service Providers offer only an "information service" under § 153(24) does not govern our resolution of this related issue, for we deal here with separate statutory provisions that do not automatically operate in tandem. As explained below, the plain text of the statute forecloses the FCC's position on mobile broadband as well. ….

III.

For these reasons, we grant the petitions for review and set aside the FCC's Safeguarding Order.