

**REMARKS OF FCC COMMISSIONER AJIT PAI
ON “REFORMING COMMUNICATIONS POLICY IN THE DIGITAL AGE:
A VIEW FROM THE FCC”**

WASHINGTON, DC

JUNE 25, 2014

Thank you for giving me this opportunity to address the Free State Foundation. It is an honor as well as a challenge to follow Senator Thune’s keynote address. As you’ve just heard, Senator Thune is a leading voice for policies to promote investment and innovation. He is also a fierce advocate for rural America. We should all be thankful that he plays a leadership role in the Senate.

It’s also a bit of a challenge to speak about reforming communications policy in the digital age at an event Randy May has put together. After all, he has literally written the book on free-market communications reform—and I’ve got a signed copy in my office! So Randy, I want to apologize in advance if a few of the ideas I offer today sound, well, familiar.

I’ve been asked to give a view from the FCC. But I’d like to start somewhere far away from Washington, DC. I can already hear the groans, but fear not—this won’t be another story about growing up in southeast Kansas.

It’s the story of Chelsea Pickner. She started and owns Chelsea’s Boutique—a brick-and-mortar shop in Sioux Falls, South Dakota. Not long ago, Chelsea was a young woman with a worldly eye for fashion but a vision of selling primarily to women in South Dakota.

But her work really took off once she started a website and began marketing her products on Facebook and other social media. Today, Chelsea has shipped her work to all 50 states. She can find suppliers anywhere in the world. She’s created new jobs in Sioux Falls. In short, she is a classic American success story. Last month, Senator Thune and I visited Chelsea’s Boutique. We saw firsthand how the Internet can empower an entrepreneur to innovate and enable a small business to operate anywhere in America.

In a way, what’s most remarkable about Chelsea’s story is how common it has become. Social media is the new face of marketing; writing code is the new opportunity for fame. About 460 apps are submitted to Apple’s App Store every day—that’s more than 80,000 new apps in just the last six months. Every day, we hear stories about start-ups trying to solve problems in novel ways. For instance, a couple of weeks ago, the FCC gave an award to Easy Chirp, which created a free web app that makes it easy to communicate on Twitter and optimizes the online experience for those with disabilities.

In short, the Internet has levelled the playing field so that consumers can access the best products for the cheapest price, and anyone who wants to compete for their business can do so quickly and easily. To borrow from Adam Thierer, from whom you will hear later this morning, broadband has made it easier for entrepreneurs to innovate without first asking the government’s permission.

What makes all this digital innovation possible? Broadband infrastructure—and a lot of it. Since the Telecommunications Act of 1996, telephone companies, cable operators, and wireless providers have invested more than \$1.2 trillion to deploy broadband to the American public, with more than \$68 billion invested in 2012 alone. For those keeping score, that’s one trillion dollars more than the Universal Service Fund has ever distributed, and about \$60 billion more than it distributed this past year.

It should be no surprise, then, that broadband is available to most Americans. For example, in 2012, wireless broadband was available to 99.8 percent of Americans and fixed broadband available to 96 percent of Americans. And Americans are subscribing. In fact, the number of broadband connections (129 million) has now exceeded the number of households in the United States for the first time ever.

The credit for our country's successful fixed and mobile broadband markets goes to a twenty-year-old bipartisan consensus that the Internet thrives under minimal regulation. That consensus began with the Clinton Administration's decision in the early 1990s to privatize the Internet. It continued with Congress's statement in the Telecommunications Act of 1996 that the Internet should remain unfettered by state or federal regulation. Then came the Clinton FCC's *Stevens Report* in 1998, which determined that Internet access services were information services. Finally, the Bush FCC applied that decision to the varying technologies used to access the Internet. At each stage, policymakers realized that a light-touch regulatory environment was necessary to promote investment and maximize the deployment of next-generation infrastructure.

I don't mean to suggest that our nation's broadband policy has been perfect. It hasn't. There's certainly more we should be doing to clear out the regulatory underbrush that deters infrastructure investment and broadband deployment. But when it comes to our fundamental choice of a regulatory model, the United States has gotten it right.

Of course, there are those who disagree, and their voices have become louder of late. Many are now claiming that the only way to protect the Internet from ruin is to reclassify broadband as a Title II service. In other words, they want to end the minimal regulatory environment for broadband and replace it with rules based on 19th century railroad regulation.

This makes no sense. The common-carriage rules of Title II were designed to control one company that had a monopoly on long-distance telephone service, not the 1,712 companies that now compete to provide broadband service to the American consumer.

And beyond the sloganeering, there are any number of complicated questions to which I have yet to hear an answer. How much would consumers' broadband prices go up to pay for the universal service charges all carriers must contribute? Why should we apply anti-consumer rules like tariffing to the broadband world? How would the Part 36 separations process apply to apportion the various components of the network between the several states and the FCC for regulatory purposes? And why should we open the door to actual access charges, imposed on edge providers, content delivery networks, and transit operators without their consent?

To be fair, some concede that not every provision in Title II should be imported into the broadband world. And they claim to have a simple solution: forbearance. I welcome these parties' newfound respect for the Commission's forbearance authority. But I doubt that forbearance is the easy answer some desire. And I fear that Title II supporters' enthusiasm for it will prove to be short-lived. I hope two examples illustrate why.

First, consider the FCC's resolution of a petition for forbearance filed by USTelecom—The Broadband Association. It took the Commission thirteen months to grant relief on a seventy-seven year old requirement (first imposed by the FCC's Telegraph Division) involving telegraph carriers' delayed or undelivered messages and money orders. And it took that long, even though FCC staff had repeatedly recommended the rule's deletion—without any opposition—since the Clinton Administration.

Second, consider the FCC's resolution of a forbearance petition in the *Qwest-Phoenix Order*. Qwest faced direct competition from cable operators and over-the-top VoIP providers, along with wireless substitution. But the FCC refused to grant Qwest any regulatory relief. In the *Qwest-Phoenix Order*, the Commission dramatically raised the bar for regulatory relief. It essentially presumed that relief should be denied. And it imposed onerous (perhaps impossible) evidentiary burdens on petitioners to prove otherwise in each particular geographic area where they request relief.

This means that uncertainty will hang over the marketplace for a long time. How many years would it take us to decide which parts of Title II merit forbearance? How many provisions must we even examine? When we still haven't collected data in the special access proceeding, about a year-and-a-half after authorizing that collection, how could we possibly expect to timely gather data to handle the wider

broadband market? And in a rapidly changing industry, how enduring would a particular FCC snapshot of the marketplace, upon which critical investment decisions would rely, really be?

But aside from the mechanics of implementing Title II, we need to ask a more basic question. Where would Title II regulation lead? One good indication is to compare the results produced by the American regulatory model to those of a more intrusive regulatory model: Europe's. Rather than taking a light-touch regulatory approach to broadband, the European model treats broadband as a public utility, imposes telephone-style regulation, and purports to focus on promoting service-based (rather than facilities-based) competition.

The results of the public-utility model speak for themselves. Eighty-two percent of Americans (and 48 percent of rural Americans) have access to 25 Mbps broadband speeds. In Europe, those figures are only 54 percent and 12 percent, respectively. And these figures aren't skewed by less developed countries; in France, the figures are 24 percent and 1 percent, respectively. Similarly, American broadband companies are investing more than twice as much as their European counterparts (\$562 per household v. \$244), and deploying fiber-to-the-premises about twice as often (23 percent v. 12 percent). Small wonder, then, that the European Commission *itself* has said that "Europe is losing the global race to build fast fixed broadband connections."¹

And when it comes to mobile broadband, too, America is the undisputed leader. The OECD reports that we have more than twice as many mobile broadband subscribers than any other country in the world. Our wireless providers have been aggressively building out their networks and upgrading capacity to meet consumer demand. The fastest mobile broadband technology in wide deployment, 4G LTE, now covers 86 percent of Americans; in Europe, that number is only 27 percent.

And what about innovation at the edge of the network? The United States is once again the unrivaled champion. What's the most popular social networking site in North America, South America, Europe, Africa, and Australia? Facebook. And what's the most popular search engine on each of these continents? Google. Other examples abound, but suffice it to say that I haven't heard from anyone who would want to trade our high-tech industry for Europe's.

So why would we ever want to abandon our regulatory model for Europe's? We know what the results would be. Less infrastructure investment, slower broadband deployment, and less innovation. To me, the lessons are simple: Markets work. Incentives work. Antitrust works. If you want a booming communications marketplace, trust entrepreneurs to innovate without permission. If you want world-class broadband infrastructure, give American companies a reason to invest in their networks.

Unfortunately, I don't believe that opponents of Title II regulation have been doing a good job getting our message out. If that doesn't change, I'm very worried about the future of America's digital economy.

Talking to each other inside the Beltway isn't going to get the job done. Title II advocates have been taking their case directly to the American people. And while I certainly don't agree with their message, they have framed it in a way that is resonating with many Americans.

We must do the same. As Vince Lombardi said, the best defense is a good offense. Let's engage the public and present a message that will connect with Americans who don't work in telecom policy. Here's just one small example.

Last week, T-Mobile announced its Music Freedom program. It will let customers use all of the most popular music streaming services, including Pandora, Rhapsody, iHeartRadio, iTunes Radio,

¹ European Commission Memo 13/756, "Regulatory mess hurting broadband investment: consumers and businesses stuck in slow lane" (Aug. 30, 2013), *available at* http://europa.eu/rapid/press-release_MEMO-13-756_en.htm.

Slacker, and Spotify, on an unlimited basis without data charges. Customers will also be able to vote online to add additional services to the program.

T-Mobile's plan probably sounded like sweet music to millions of Americans who avoid streaming their favorite songs for fear of using up all of their monthly data. After all, streaming 30 minutes a day of music can consume about 900 megabytes of data per month, according to T-Mobile's own usage calculator—nearly half the allotment of a typical data plan. But T-Mobile's announcement hit a false note for one group of people: Title II advocates.

Now, I've often said that net neutrality is a solution in search of a problem. But it appears that net neutrality supporters have finally found an actual "problem" that they believe needs to be solved: free music. Fevered commentary suggests that T-Mobile's plan "could kill wireless net neutrality"² and is "the most insidious type of net neutrality violation."³

Those of us who support light-touch regulation of the Internet should engage in this debate and take our case to the American people. Should a carrier like T-Mobile be able to respond to consumer demand by offering free music to its customers? We say yes, but those who support Title II regulation say no. Is it good for competition when a carrier like T-Mobile is able to differentiate itself from its competitors and offer innovative service plans? Again, we say yes, but those who support Title II regulation say no.

This is just one small example of a larger point. Competition, not preemptive regulation, is the best guarantor of consumer welfare. The convention of pitting the market against the consumer is as lazy as it is inaccurate. Markets have delivered far greater benefits to consumers than heavy-handed regulation ever has.

And here's another point. Some have asked us to embrace Title II regulation because they are worried that otherwise, the Internet will fundamentally change. This view is curious, to say the least. We must fundamentally change how the Internet is regulated in order to preserve the status quo? It seems to me that if we don't want the Internet to fundamentally change, then we shouldn't fundamentally change our regulatory model!

One other thing. If we are going to fundamentally change the way that we regulate the Internet, that decision should be made by the people's elected representatives, not five unelected members of the FCC standing on uncertain legal terrain. The U.S. House of Representatives' Energy and Commerce Committee has launched a multi-year effort to update the Communications Act. I applaud this effort, and I hope that it will remove regulatory barriers to infrastructure investment and broadband deployment rather than increasing government regulation of the Internet.

But whether this debate takes place before the Congress or the FCC, we shouldn't let net neutrality supporters dominate the debate with their parade of hypothetical horrors. We need to iterate and reiterate the consequences of embracing Title II. And make no mistake: There will be consequences. There is no free lunch here.

Don't take it from me. Listen to Marc Andreessen—creator of the first widely-used web browser, founder of Netscape, Silicon Valley venture capitalist, and hardly a defender of Internet service providers. He recently observed:

[A] pure net neutrality view is difficult to sustain if you also want to have continued investment in broadband networks. If you're a large telco right now, you spend on the

² Aaron Sankin, "How T-Mobile's unlimited music streaming could kill wireless net neutrality," *TheDailyDot* (June 21, 2014), available at <http://www.dailydot.com/politics/t-mobile-net-neutrality-music-freedom/>.

³ Jared Newman, "T-Mobile's Unlimited Music Streaming Is the Worst for Net Neutrality," *Time* (June 19, 2014), available at <http://time.com/2901142/t-mobile-unlimited-music-net-neutrality/>.

order of \$20 billion a year on [capital expenditures]. You need to know how you're going to get a return on that investment. If you have these pure net neutrality rules . . . you're not ever going to get a return on continued network investment—which means you'll stop investing in the network.⁴

That—not a wireless company letting subscribers listen to songs for free—is what would devastate the Internet revolution.

That outcome wouldn't be good for Chelsea Pickner in Sioux Falls, South Dakota or millions of Americans like her. Those are the people to whom we need to be speaking: the Americans who rely on high-speed broadband to make a living, educate their kids, or see a doctor. If we make a compelling case to them, I believe that we can preserve the regulatory model that has made the United States the envy of the world when it comes to broadband investment and innovation.

⁴ Brian Fung, "Marc Andreessen: In 20 years, we'll talk about Bitcoin like we talk about the Internet today," *The Washington Post* (May 21, 2014), available at <http://www.washingtonpost.com/blogs/the-switch/wp/2014/05/21/marc-andreessen-in-20-years-well-talk-about-bitcoin-like-we-talk-about-the-internet-today/>.