

**REMARKS OF FCC COMMISSIONER AJIT PAI
AT THE INTERNATIONAL INSTITUTE OF COMMUNICATIONS
TELECOMMUNICATIONS AND MEDIA FORUM**

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I want to thank the International Institute of Communications for organizing today's forum. The IIC affords regulators around the world an opportunity to exchange ideas and discuss current trends in the communications sector. However separated by distance or language we may be, the IIC serves an important function by bringing us together.

It is fitting too that this event focuses on markets in Latin America, since some have nicknamed Miami the "Capital of Latin America." (Luckily for me, it is also the home of excellent *fritas*, *pastelitos de guayaba*, and *caipirinhas*, but that's something I'll have to explore after this conference with any of you who are interested.)

In all seriousness, today's topic—spurring broadband investment and deployment—is critical. That's because broadband means opportunities for innovation, job creation, and economic growth. I've personally spoken with numerous entrepreneurs in the United States who've told me that without the Internet, they'd have no business. Just yesterday, at Venture Hive, a startup hub for tech innovators here in Miami, I met the founder of Waleteros, a company that targets the millions of Hispanics in the U.S. who don't have bank accounts, and thus feel they have no choice but to rely on expensive check-cashing outlets. Waleteros developed an app that enables a customer to take a picture of a check with his cellphone and have the money deposited onto a prepaid MasterCard within minutes. For all this to work, wireless broadband connectivity is essential.

I've seen this abroad as well. For example, last year in Cartagena, Colombia, I met with a group of startup companies at ViveLabs. One young entrepreneur was using GPS and cellular technologies to track fishermen and help them bring their products to market quickly and efficiently. Another was building a mobile app that helped delivery companies keep track of their shipments. Yet another was creating an app that would allow people to easily access the menus of nearby restaurants.

Each of these businesses was different, but the lesson was the same: Broadband is both a liberator and an equalizer. Whether in Brasilia or Brampton, broadband gives every person with an idea and passion the chance to succeed and pursue their dreams.

There are thousands of stories like these across the Americas. And the key to ensuring that there are many more is broadband infrastructure—and lots of it. Demand for faster, better, and less expensive broadband is only increasing.

This is especially true in Latin America. By 2018, for example, Latin America is expected to see Internet traffic grow over 200% compared to 2013 levels. Mobile data traffic in the region will increase at an even faster clip, growing tenfold over the five-year period ending in 2019.

To meet this surging demand, the private sector will have to take the risks to invest in and deploy broadband networks. And for the private sector to do this, regulators must adopt policies that welcome that investment and minimize the costs of deployment.

For years, the United States did exactly that. Most importantly, we removed regulatory barriers to infrastructure investment and created a free market for spectrum. Those policies—not government regulation—led to massive investments in networks and brought about the broadband revolution we've seen here.

Unfortunately, however, the Federal Communications Commission has recently put our success at risk. There's been a dramatic shift towards heavy-handed regulation of the Internet—one that has created tremendous uncertainty and is already resulting in broadband providers cutting back on investments.

I. Promoting Investment and Deployment

But before discussing that recent shift in policy, I'd like to describe our nation's longstanding commitment to light-touch regulation. This produced unparalleled innovation throughout our entire Internet ecosystem, from the core of our networks to providers at the edge.

Removing Barriers to Infrastructure Investment.—Until this year, the core of the U.S. government's strategy for promoting broadband deployment was removing regulatory barriers to infrastructure investment. I'd like to highlight two examples in particular.

First, in the 1990s, American policymakers forged a historic political consensus that the Internet should remain unfettered by government regulation. Instead of micromanaging broadband networks, the U.S. government back then—including the Federal Communications Commission for almost two decades thereafter—focused its efforts on maximizing incentives for the private sector to deploy broadband. Instead of telling broadband operators where to invest, how much to invest, what technologies to use, or how to run their networks, we let market forces guide these decisions. Regulators made a conscious choice not to apply to the Internet the outdated regulations crafted for telephone monopolies. After all, rules designed to regulate a monopoly will inevitably push the market toward a monopoly. Instead, our policy was a modern, deregulatory one that gave the private sector flexibility to innovate.

Second, we embraced convergence and took steps to encourage it. This led to facilities-based providers from previously distinct niches entering the broadband market and competing against each other. How did we do this? We removed regulatory barriers when we found them. For example, we made it easier for cable television providers to get into the voice business by preventing states from regulating Voice over Internet Protocol as they did traditional telephone service. On the video front, the FCC stopped local governments from unreasonably refusing to award competitors, such as telephone companies, video franchises. Many state governments helped as well by adopting statewide video franchising laws, which made it easier for new players to enter the market. And for wireless, we created a “shot clock” that streamlined the approval process for constructing towers, adding antennas, and deploying other physical infrastructure so that mobile companies could bring 4G LTE broadband to the public. The shot clock says that municipalities have 90 days to act on applications to add an antenna to a site and 150 days to act on other siting requests.

Together, these decisions accelerated the deployment of high-speed broadband. That's because companies allowed to use their networks to offer additional products have a greater incentive to expand and upgrade those networks. And this gives consumers enormous benefits in the forms of more choice and better services.

Creating a Free Market for Spectrum.—Shifting away from physical infrastructure, I would like to turn to spectrum, the invisible infrastructure that is critical to the success of wireless broadband. Over the years, our spectrum policies have enabled this country to become the world's leader in mobile broadband.

First, we adopted what we call a flexible use policy. Instead of deciding that a particular spectrum band can only be used with a specific type of wireless technology, we left that choice to the private sector, which has a much better sense of consumer demand. This has enabled networks to evolve with technology without the need for government sign-off at each step.

Second, the U.S. pioneered the use of competitive auctions to distribute spectrum licenses. This market mechanism helps ensure that spectrum is put to its highest value use. And it's one that has

generated significant revenues for the U.S. Treasury along the way. FCC auctions of commercial wireless spectrum have raised over \$91 billion.

Our experience with auctions, which now spans about two decades, offers valuable insights. For example, auctions are more successful when they are kept simple, transparent, technically sound, and market-driven. That means setting clear rules in advance and sticking with them. That means not placing onerous conditions on particular spectrum. That means not limiting eligibility or restricting participation. And that means offering, whenever possible, paired spectrum that is internationally harmonized for mobile use. These are the best ways to promote network construction, to raise money, and to ensure consumers experience the benefits of innovative new services. In short, the government should establish a level playing field when it comes to auction rules rather than trying to micromanage who wins and who loses.

Third, the U.S. has encouraged a robust secondary market in spectrum. The FCC aims to review transactions that would result in the transfer of spectrum from one company to another within 180 days. And smaller transactions are generally processed more quickly than that. This is a good thing. By providing procedural certainty, the FCC has enabled spectrum to flow more freely to its highest value use.

We have found that these secondary market policies have encouraged the efficient use of spectrum and reduced transaction costs. Indeed, there have been thousands of secondary-market transactions involving mobile broadband licenses over the past several years.

II. The Broadband Market in the United States

Collectively, these policies—removing regulatory barriers to infrastructure investment and creating a free market for spectrum—have driven massive investments into the U.S. broadband market.

In fact, the private sector spent \$1.3 trillion over the past 15 years to deploy broadband infrastructure in the U.S. That is money that went into laying fiber, upgrading cable systems, launching satellites, building towers, and deploying spectrum.

A few international comparisons help put these expenditures in context. In 2013, for example, the wireless sector invested over 40% more in the U.S. than it did in all of Latin America. U.S. wireless providers have also invested twice as much per person as counterparts in Europe (\$110 per person compared to \$55). And the story is the same on the wireline side, with U.S. providers investing more than twice those in Europe (\$562 per household versus \$244).

Who reaped the rewards of all this investment? U.S. consumers. When it comes to wireless, 97% of Americans have access to three or more providers. 4G LTE covers 86% of Americans. Today there are more wireless connections than there are people in the United States. And when it comes to wireline, the percentage of Americans with broadband at home has increased more than tenfold over the past fifteen years while prices have dropped precipitously. Fiber deployments have quadrupled over the last decade, including serious competitive threats like Google Fiber. All told, there are 4,462 Internet service providers in this country.

Once again, international comparisons are instructive. When it comes to mobile broadband, 30% of U.S. consumers subscribe to 4G LTE, while that figure is only 1% in Latin America and 10% in Europe. Average mobile speeds in the U.S. are about 50% faster than those in Latin America and 30% faster than they are in Western Europe. Turning to wired broadband, 82% of Americans and 48% of rural Americans have access to 25 Mbps broadband speeds, but those figures are only 54% and 12% in Europe. And in the U.S., broadband providers deploy fiber to the premises about twice as often as they do in Europe (23% versus 12%).

What is more, facilities-based, intermodal competition in the U.S. is thriving. Almost every segment of the communications industry has been competing to offer newer, faster, and better broadband service. The era of convergence has proven once and for all that the broadband market is not a natural

monopoly. It is not a space where only one company or one type of facilities-based provider can succeed. Far from it. In the U.S., telephone, cable, mobile, satellite, fixed wireless, and other Internet service providers compete vigorously against each other. Consumers, online entrepreneurs, and many others are better for it.

III. A Risky Reversal of Course

Unfortunately, the U.S. government is now putting our success at risk. First and foremost is the FCC's recent net neutrality decision—a decision to apply last century's public-utility laws to today's broadband providers, a decision to regulate everything from the last mile of the network to interconnection near the Internet's core.

I disagreed with the FCC's decision to reverse our longstanding, successful, and light-touch approach to Internet regulation for several reasons.¹ The most important is that it will reduce consumer welfare: It will lead to less investment, less competition, slower speeds, and higher prices.

Remember: Broadband networks don't have to be built. Capital doesn't have to be invested. Risks don't have to be taken. The more difficult regulators make the business case for deployment, the less likely it is that broadband providers big and small will invest the billions of dollars needed to connect consumers with online opportunities.

Yet that's exactly what the FCC's net neutrality regulations do. They give the FCC power to micromanage virtually every aspect of how broadband providers offer service and manage their networks.

Uncertainty is the enemy of investment and deployment. And the rules have injected tremendous uncertainty into the U.S. market. Take the so-called "Internet conduct standard" as an example. It gives the FCC power to review businesses models and prohibit pricing plans that benefit consumers. Everything from zero rating to usage-based pricing might be on the chopping block. And "might" is the key. The vaguely worded standard gives the FCC a lot of discretion. In fact, the FCC itself has conceded that when it comes to what business practices the Internet conduct standard could regulate, "we don't really know."²

Another example of uncertainty stemming from the net neutrality order is the "guidance" from the FCC's Enforcement Bureau just last week about the order's new privacy requirements. The guidance says "the Enforcement Bureau intends to focus on whether broadband providers are taking reasonable, good-faith steps to comply with [the law], rather than focusing on technical details."³ And "the Enforcement Bureau intends that broadband providers should employ effective privacy protections in line with their privacy policies and core tenets of basic privacy protections."⁴ What does this mean? What exactly do broadband providers have to do to comply with the law? I am an FCC Commissioner and a lawyer, and I have no idea. Your guess is as good as mine. This "guidance" casts far more shade than sunlight.

¹ See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24 (rel. Mar. 12, 2015) (Dissenting Statement of Commissioner Ajit Pai), https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A5.pdf.

² February 2015 Open Meeting Press Conference of Chairman Tom Wheeler (Feb. 26, 2015), available at <http://www.fcc.gov/events/open-commission-meeting-february-2015> (165:30-166:51).

³ *Enforcement Bureau Guidance: Broadband Providers Should Take Reasonable, Good Faith Steps to Protect Consumer Privacy*, DA 15-603, FCC Enforcement Advisory (May 20, 2015), http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0520/DA-15-603A1.pdf.

⁴ *Id.*

That's not the certainty investors need when deciding whether to risk massive amounts of capital in a market. That's not what entrepreneurs look for when deciding whether to innovate. I heard this firsthand when I visited London last month to speak at another IIC event. International investors told me that the regulatory attitude in Washington had made them rethink their strategies and look elsewhere for growth. They thought China, Latin America, and Europe offered better opportunities for investment because none of them were facing the same regulatory headwinds as the U.S.

And complying with these new regulations won't come cheap. There are many broadband providers in the U.S. that simply do not have the means or the margins to bear the increased costs that come with net neutrality regulation.

You don't need to take my word for it. After the FCC's decision, many smaller broadband providers stated under penalty of perjury that they are already cutting back on broadband investments because of the FCC's net neutrality regulations.⁵ For instance, one small wireless ISP that serves rural customers has said that as a result of the FCC's net neutrality decision, it plans to delay network upgrades that would have upgraded its customers' service from 3 Mbps to 20 Mbps, new tower construction that would have brought service to unserved areas, and capacity upgrades that would reduce congestion for existing customers. The company worries that it may even be forced to "close the business."

This and many more examples all point to the same conclusion. The FCC's decision to adopt net neutrality regulation is resulting in less investment and reduced deployment. It will inevitably lead to fewer competitors in the broadband market.

And it was a completely unnecessary decision. We often forget that within a generation—a blink of history's eye—the Internet has fundamentally transformed how people in the United States (and around the globe) think, speak, watch, listen, learn, read, do business; in short, how they *live*. Given how quickly and deeply it has progressed, I believe that the Internet is the greatest example of free-market innovation in history. It has lifted quality of life, spirits, incomes, and horizons for people from every background. And it simply wasn't broken, as even the FCC conceded.

This is why I have called net neutrality a solution that won't work to a problem that doesn't exist. And this is why, in my view, the FCC's regulations are not a model for the future. They are a relic of the past.

Consumers and markets around the world need providers to invest countless dollars, euros, pesos, reals, guaraní, Nuevo Sols, even bolívares in broadband networks. The regulatory approach that works, the approach that led to the highest levels of private sector investment in the world, is the one the FCC pursued for the last 15 years—limited regulation that promotes infrastructure deployment and fosters a free market for spectrum, each of which creates competition. And competition, not preemptive regulation, is the best guarantor of consumer welfare. Markets have delivered far greater benefits to consumers than heavy-handed regulation ever has.

Recent events notwithstanding, I am hopeful that, in time, the U.S. will one day appreciate once again that it is the private sector, not the government, that creates digital opportunities here and throughout the world.

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Thank you again to the IIC for convening this forum. I look forward to hearing from the other participants about the vibrant and emerging communications markets in Latin America.

⁵ Statement of FCC Commissioner Ajit Pai on New Evidence That President Obama's Plan To Regulate The Internet Harms Small Businesses and Rural Broadband Deployment (May 7, 2015), http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0507/DOC-333383A1.pdf.