

**REMARKS OF FCC COMMISSIONER AJIT PAI
AT THE AMERICAN ENTERPRISE INSTITUTE'S ROUNDTABLE DISCUSSION ON
DECLINE IN INVESTMENT FOLLOWING THE FCC'S TITLE II ORDER**

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When I first saw Hal Singer's research revealing the decline in U.S. broadband providers' capital expenditures, a statement by John Adams came to mind: Facts are stubborn things.

And here are some of the stubborn facts that Hal uncovered. Capital expenditures by major wireline broadband providers plunged 12% in the first half of 2015 compared to the first half of 2014. The decline among all major providers was 8%. This decrease represents billions of dollars in lost investment and tens of thousands of lost jobs. And it is quite atypical. Only twice before have broadband service providers' capital expenditures fallen on a year-over-year basis: following the dot.com bust in 2001 and the Great Recession in 2008.

What's responsible for the recent drop in infrastructure investment? There's no disruption in the overall economy to blame. Instead, it's the FCC's decision to capitulate to the President's demands and impose Title II public utility regulation upon the Internet that is playing a large role.

Numerous broadband providers told the FCC earlier this year under penalty of perjury that Title II regulation was leading them to cut back on infrastructure investment and broadband deployment. One of them was KWISP Internet, a provider serving 475 customers in rural Illinois. KWISP told the Commission that, because of the Title II decision, it was delaying network improvements that would have upgraded customers from 3 Mbps to 20 Mbps service, new tower construction that would have brought service to unserved areas, and capacity upgrades that would have reduced congestion for existing customers.

Another was Wisper ISP, Inc., which serves about 8,000 customers around St. Louis. It reported that the FCC's decision to impose public utility regulation had caused it to put on hold its plans to triple the number of new base stations it would deploy each month so that it could provide broadband to customers in new areas. These are just two examples of a wider phenomenon. In conversations with our office, major broadband providers have confirmed that Title II regulation is having an adverse impact on their network investments.

None of this should come as any surprise. Europe went down the road of public utility regulation far before the United States. And what were the results? Before the FCC's decision to abandon our nation's successful bipartisan consensus of taking a deregulatory approach to the Internet, wireline ISPs in the United States were investing more than twice as much as their European counterparts (\$562 per household versus \$244). The gap was almost as wide among mobile operators (\$110 per person versus \$55). That's why when I was in London earlier this year, I heard general astonishment that the United States was moving in the direction of the failed European model of Internet regulation.

In my statement dissenting from the Commission's Title II decision, I warned that "[b]roadband networks don't have to be built. Capital doesn't have to be invested here. Risks don't have to be taken. The more difficult the FCC makes the business case for deployment—and micromanaging everything from interconnection to service plans makes it difficult indeed—the less likely it is that broadband providers big and small will connect Americans with digital opportunities." And that I fear is what we are now witnessing.

When the FCC makes it less attractive for broadband providers to invest in networks serving the American people, they will find other places to put their money. For example, one major broadband provider that cut back on capital investments by 29 percent in the first half of 2015 announced this summer that it would be spending an additional \$3 billion to build out its network in Mexico.

And another major broadband provider spent \$4.4 billion earlier this year to buy AOL. When that announcement was made, one left-wing, pro-Title II group protested the acquisition: It said: “For the price it’s paying for AOL, Verizon could deploy its FiOS broadband service across the rest of its service area, bringing much-needed services and competition to communities like Baltimore, Boston and Buffalo. Instead, the company is spending a fortune to wade into the advertising and content-production markets.”

If nothing else, I give that group credit for having chutzpah. It takes a certain degree of shamelessness to help put in place an onerous regulatory regime that discourages infrastructure investment and then complain when broadband providers choose to invest resources in edge providers rather than networks.

Now, I’ll concede that the FCC’s Title II decision probably isn’t the only regulatory factor behind the recent drop in broadband providers’ capital expenditures. After all, there have recently been problematic decisions other than Title II. In particular, the FCC has done a lot over the past year-and-a-half to slow down the IP Transition. The agency has made it harder for carriers to leave behind the copper networks of yesterday and focus on building next-generation networks. These regulatory roadblocks are bad for consumers, bad for infrastructure investment, and bad for our nation’s economic competitiveness.

A friend and former Chief of Staff to a Democratic Commissioner wrote earlier this month that “a disquieting anti-business bias has become manifest” at the FCC and that the Commission is acting in a manner that is “antithetical to the needs, interests and well-being of the telecommunications, media and technology sector.” I share his concern. And I worry that a wave of meddlesome and heavy-handed FCC intervention into the marketplace, of which Title II is just one crest, is impeding investment and innovation.

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During the debate over imposing public utility regulation upon broadband providers, supporters of President Obama’s plan repeatedly claimed that Title II regulation wouldn’t harm infrastructure investment. And I have no doubt that they desperately hoped for their forecast to come true. But as John Adams warned over two centuries ago, “whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.”

Here, the facts and evidence strongly indicate that the FCC’s decision to impose public utility regulation upon the Internet is slowing infrastructure investment and broadband deployment. To many, this does not come as a surprise. We said as much then and we say so now. But it is nonetheless a disappointment for all Americans who want faster Internet speeds, more competition, and more digital innovation. And it is another reason why the United States should abandon this politically-driven scheme and return to the bipartisan consensus that helped make our Internet economy the envy of the world.