

**REMARKS OF FCC COMMISSIONER AJIT PAI
TO THE NATIONAL RELIGIOUS BROADCASTERS' PRESIDENT'S COUNCIL**

WASHINGTON, DC

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In verse 3:17 of his second letter to the Corinthians, Paul wrote: “where the Spirit of the Lord is, there is liberty.” So it should come as no surprise that religious broadcasters have long been at the forefront of the fight for freedom. In particular, you understand the vital link between the free exercise of religion and free speech and have been vocal advocates for each of these First Amendment liberties.

Religious broadcasters helped lead the effort to relegate the Fairness Doctrine to the ash heap of history. And during my time at the Commission, I have appreciated the fellowship of the National Religious Broadcasters as we have worked together to protect freedom. In some of these battles, such as the effort to kill the FCC’s so-called “newsroom study,” we have been successful. In others, like the fight against heavy-handed government regulation of the Internet, there is still work to be done. But so long as I have the privilege of serving in this office, you have my commitment that I will continue to do everything I can to safeguard the rule of law.

As I’ve traveled across the country meeting with broadcasters, I’ve noticed a phenomenon I thought that the NRB would find interesting. More commercial broadcasters are becoming people of faith. I asked an industry official what was behind this trend, and he told me that the answer was simple. After having tried all other options, broadcasters have concluded that prayer was their only hope of being treated fairly by the FCC.

But on a more serious note, these are trying times for broadcasters at the Commission. I hear the complaints privately from broadcasters of all stripes: commercial, public, and religious. They believe that the current FCC just doesn’t value the service that broadcasters provide to their communities. They don’t feel that the Commission has an open mind when it hears broadcasters’ arguments. And when I see some of the proposals that come across my desk, I do sometimes find myself wondering: Is this all a test by the FCC to see if broadcasters have the patience of Job?

Many of the concerns I’ve heard involve the upcoming broadcast incentive auction. And I have made no secret of my disagreement with a number of the decisions made by the Commission in that proceeding. But rather than spend time this morning crying over spilt milk, I would like to discuss with you an unresolved issue related to the incentive auction. It is critically important to all broadcasters, including religious broadcasters.

Since the beginning of the incentive auction proceeding, the NRB has emphasized the importance of keeping low-power television stations on the air following the auction. I share your concern. Low-power stations provide Americans with a wide variety of valuable programming, including religious content.

Now, unlike many in Washington, DC, I’m not going to sugarcoat the truth. Given the way that Congress drafted the incentive auction legislation, some low-power stations will not be able to stay on the air after the auction. There just won’t be enough spectrum available to find a home for all of them. And the law simply doesn’t allow the FCC to do much about it.

But the FCC can avoid making matters worse than they need to be. This is where I fear the Commission is about to make a serious mistake. Specifically, the Commission has proposed, after the auction, to reserve a vacant channel in every market for unlicensed white-space devices in the repacked UHF television band. And it has proposed to reserve *two* vacant channels in markets where a television station is placed in the duplex gap.

I strongly oppose any attempt to prioritize unlicensed white space devices over low-power stations (and all other television stations) in the television band. Why? It's simple. It will force more low-power stations off the air—stations that could have thrived in the repacked television band but instead have to go dark to make way for unlicensed devices. Call me old-fashioned, but I believe that when it comes to broadcast television spectrum, broadcasters should have priority. But sadly, the Commission no longer appears to believe this.

To be clear, I am a strong advocate for making more spectrum available for unlicensed devices. But if low-power stations are not allowed to continue operating in the UHF band, they will go out of business. That's just not the case for unlicensed devices. To the contrary, there are other spectrum bands where such devices can currently operate as well as spectrum bands that we can and should make available for new unlicensed use. For example, since October 2012, I've been calling on the FCC to make 195 MHz of new spectrum available for unlicensed use in the 5 GHz band. This amount dwarfs the 6 or 12 MHz in the television band that's at issue in the vacant channel proceeding. And how much of that 195 MHz has the FCC opened for unlicensed use? None.

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Shifting gears, I would like to address another timely topic: AM radio revitalization. Three years ago, I proposed that the FCC launch an initiative to revitalize the AM band. The response to that idea was remarkable. Broadcasters, civil rights organizations, Democrats, Republicans, and Americans across the country jointly called on the FCC to take action. I even met someone once who exclaimed "Oh yeah, you're the AM radio guy!"

The public reaction spoke volumes about the enduring value of AM broadcasters. AM radio is synonymous with localism. AM stations often provide local content that can't be found anywhere else. The grand old band is also our country's most diverse communications service. Most minority-owned radio stations can be found on the AM dial, as can a wide variety of foreign-language programming. And, of course, many religious broadcasters also use the AM band.

But AM broadcasters face serious challenges. Every day, it seems harder to get a quality AM signal. And these technical difficulties have had a dramatic impact on the marketplace. AM listenership has been steadily declining, and advertising revenues for commercial AM broadcasters have followed suit.

So, in October 2013, the Commission unanimously began its first comprehensive review of its AM radio rules in over two decades. We proposed a number of reforms to improve the quality of AM signals and ease burdens on AM broadcasters. And we asked stakeholders to share other ideas for revitalizing AM radio. The feedback on our proposals was overwhelmingly positive. The vast majority of commenters endorsed the specific ideas teed up by the Commission, and many provided worthwhile ideas of their own.

Now, as many news outlets have reported, the moment of decision has arrived. An order addressing AM radio is in front of the Commissioners. After reviewing the draft, I have good news and bad news to report.

Since I am speaking in front of an organization whose members are dedicated to spreading the Good News, I'll start with the positive. The order would reform many of our technical rules to make it easier for AM broadcasters to improve their signal quality, to give AM broadcasters more flexibility with respect to site location, and to allow AM broadcasters to cut their operating costs.

I have supported these rule changes for the last two years, and they received nearly universal support from commenters. So naturally, I'm glad that they are moving forward.

But there's also some bad news. One critical proposal that the Commission advanced two years ago was the establishment of an exclusive window in which AM stations could apply for FM translators.

Of course, FM translators are not the panacea for the technical problems plaguing the AM band. But an FM translator can serve as a vital bridge to the future for some AM broadcasters as we work on fixing the AM band's long-term problems—work that won't be finished overnight.

I've heard the same story time and time again from AM broadcasters. An FM translator has boosted a struggling AM station, growing the station's audience and advertising revenue. The impact is particularly significant at night, when many AM stations have to substantially reduce their power or go off the air altogether.

But I've also heard another story time and time again from AM broadcasters. A struggling AM station wants to obtain an FM translator but can't find one. And that's because there just aren't enough of them to go around.

The FCC's proposal to establish a one-time exclusive window for AM stations to obtain a single FM translator has received nearly unanimous support. The idea has been endorsed by, among many others, the NRB (for which I thank you), the National Association of Broadcasters, the Multicultural Media, Telecom and Internet Council, the CEOs of 50 minority-owned AM radio licensees who collectively own 140 stations, and a dozen members of the Congressional Black Caucus.

As far as I can tell, the idea only has one vocal opponent in this country. Unfortunately for fans of AM revitalization, that opponent heads our agency. The Chairman's stated reason for opposing this initiative is that "it's not the general policy of this agency to give away free spectrum." There are a number of problems with this explanation.

To begin with, an FM translator window doesn't involve giving away free spectrum. As we do in many other contexts, the FCC would hold an auction and award the translator to the highest bidder whenever mutually exclusive applications are filed. Moreover, any AM broadcaster obtaining an FM translator would have to pay an annual regulatory fee to keep it on the air.

Additionally, as one veteran attorney in the communications bar recently explained, "An AM-only window for FM translators is no more a give-away of free spectrum than is any other translator filing window." Today, for example, thousands of FM translators are on the air that were obtained during the FCC's 2003 FM translator window. And since these translator applications were not mutually exclusive with any others, they were not obtained through an auction.

It is worth noting, moreover, that AM stations were not able to apply for translators during the 2003 window. At that time, those translators could only be used to retransmit FM stations. So to the extent there are those who didn't object to the 2003 window but now oppose holding a new window for AM broadcasters, their problem certainly isn't with translator windows or giving away free spectrum. Rather, their problem seems to be with AM broadcasters.

Additionally, I was a bit stunned to hear the Chairman's reasoning for opposing an FM translator window. Because, if we are going to talk about giving away spectrum, let's look at other policies that the FCC has recently pursued. In 2013, for example, the Commission opened a window for new low-power FM applicants. That window came about through a unanimous vote of the FCC. I was certainly proud to support it, and Chairman Wheeler has written favorably about the window, saying that it "promises new, hyperlocal services in major metropolitan areas for the first time." But let's not kid ourselves. If you think that an FM translator window for AM stations is a giveaway of free spectrum, it is an even more apt description of the LPFM window.

And then, of course, there is the spectrum set-aside in the broadcast incentive auction. During that auction, the FCC is poised to give away discounted spectrum to corporate giants worth many billions of dollars. And that, according to FCC leadership, is a "groundbreaking" subsidy that should be celebrated. But allowing a struggling minority-owned AM broadcaster to apply for a single FM translator? Why, that just can't be tolerated.

Luckily, the FCC is not a sole proprietorship. The votes of three Commissioners can carry the day. And in just the last week, three Commissioners have spoken favorably of the FM translator window proposal. Commissioner O’Rielly endorsed it in his remarks at the NAB Radio Show. Last Thursday, Commissioner Clyburn issued a statement calling it “sound policy.” And I think you know where I stand. So it should be easy to get the FM translator window into the AM revitalization item, right?

Wrong. As of this morning, we remain one vote short. In her statement, Commissioner Clyburn expressed concern that the FM translator window could not be opened until after the incentive auction. She endorsed a proposal to first give AM stations a period of time in 2016 to purchase FM translators and move them up to 250 miles. I have long supported providing more flexibility for AM stations to move FM translators. For example, I supported the Tell City waiver request, which would have done precisely that, but was rejected by the Media Bureau during Chairman Wheeler’s tenure.

I have studied Commissioner Clyburn’s statement carefully, and I am always willing to go the extra mile to find common ground with my colleagues. So today, in the spirit of accommodation, I am amending my proposed edits to the draft AM radio order to reflect Commissioner Clyburn’s position.

Specifically, under this new proposal, the Media Bureau would be instructed to implement the 250-mile waiver process in 2016 precisely as Commissioner Clyburn set forth in her statement. The Media Bureau would also be instructed to implement in 2017, following the incentive auction and the 250-mile window, the FM translator window for AM stations that Commissioner Clyburn has rightfully called “sound policy.”

To be clear, this is not my first choice. I do not accept, for example, that it would be impossible to open the FM translator window until after the incentive auction. Indeed, I find it strange to be told, on one hand, by the Chairman’s Office that we can’t have an FM translator window because it involves the giveaway of free spectrum, and on the other hand, to be told by the Media Bureau that we can’t conduct the FM translator window until 2017 because our auction personnel are too busy with other matters. Taken together, these arguments don’t appear to reflect principled opposition to holding an FM translator window.

But I am willing to do whatever I can to reach a compromise in this proceeding that will help struggling AM broadcasters. I hope that this finally brings us to consensus, and toward action. For as is stated in James 2:14, “What good is it, my brothers and sisters, if someone claims to have faith but has no deeds?”

Now, if Commissioners are not willing to vote in accordance with their publicly stated position on an issue, then there is nothing more to be done. It will be obvious that something else is driving the FCC’s decision—something entirely unrelated to AM radio.

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I would like to close, as I did two years ago when I spoke to the NRB’s Board of Directors, with a Bible verse that reflects the approach I’ve tried to take during my time of the FCC. Proverbs 12:15 says: “The way of fools seems right to them, but the wise listen to advice.” I’ve tried my best to listen to the counsel of others. I’m sure I fail from time to time, but I promise you it’s not for lack of commitment to this principle. So please don’t hesitate to reach out to me if you have ideas for what the Commission should be (or should not be) doing. I always enjoy hearing from your organization and look forward to continuing to work with you in the future.