

## **SUMMARY OF COMMISSIONER AJIT PAI'S REMARKS ON THE FCC'S ENFORCEMENT PROCESS**

On December 3, 2015, FCC Commissioner Ajit Pai delivered a speech at the PLI/FCBA 33rd Annual Institute on Telecommunications Policy & Regulation. During this address, he outlined the problems plaguing the FCC's enforcement process and offered solutions for getting it back on track.

### Summary of Challenges

- Instead of applying the law to the facts, the Commission's enforcement process is focused on issuing headline-grabbing fines regardless of the law. This has led to a dramatic increase in the number of party-line votes on enforcement matters. In fact, there have been significantly more party-line enforcement votes in the past 14 months than in the prior 43 years.
- The FCC's current enforcement process sets the wrong priorities and is less productive than it used to be. The Commission is issuing fewer Notices of Apparent Liability (NALs) and forfeiture orders than it had previously. It is neglecting the enforcement of important rules, such as the Commission's do-not call regulations.
- The Enforcement Bureau is no longer accountable to FCC Commissioners. Commissioners are denied even basic information about what the Bureau is doing, and important enforcement decisions are made without the approval of (or even in consultation with) Commissioners.

### Summary of Solutions

- The FCC should renew its commitment to a bipartisan and responsible enforcement process.
- Congressional oversight, such as the House Energy and Commerce Committee's recent inquiry to the Government Accountability Office, can help fix what has gone wrong.
- The Commissioners should vote on large consent decrees.
  - If a consent decree involves a monetary payment of more than \$100,000 for common carriers or \$25,000 for any other entity, Commissioners should have to approve it.
  - This is the same rule the FCC already has for NALs and forfeiture orders.
- The FCC should speed up its resolution of enforcement cases by setting a meaningful deadline for final action. Specifically, we should require any forfeiture order to be issued within one year of the issuance of an NAL. If no such forfeiture order is adopted within this timeframe, that NAL would be automatically nullified.
- The FCC's enforcement process should be more transparent.
  - If a Commissioner wants information from the Enforcement Bureau, he or she should be able to get it. The Bureau is not an independent agency within an independent agency.
  - The enforcement process needs to be more transparent to the public. For example, on the FCC's website, the Enforcement Bureau should give the public a simple way to understand and track the progress of any case involving an NAL. It should list whether the FCC has followed up on that NAL with a forfeiture order, and if so, whether that forfeiture has been collected.