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For Immediate Release

STATEMENT OF COMMISSIONER AJIT PAI
On the FCC's Ostrich-like Approach to Competition in the Wireless Market

WASHINGTON, December 23, 2015.—Bedrock principles of good government require that we make fact-based decisions that reflect marketplace realities. But doing so on a consistent basis has not been the hallmark of FCC decision-making in recent years. Here's just one example:

In Market A, 35% of households have access to four or more providers, 99% have access to three or more, and the number of subscribers are decreasing.

In Market B, 91.7% of consumers have access to four or more providers, 97.2% have access to three or more, and the number of subscribers are increasing.

Consistent with an objective analysis of the facts, the FCC determined just six months ago that there is effective competition in Market A.¹ Contrary to the evidence and common sense, the Wireless Telecommunications Bureau decides today that it can make no such determination about Market B.

What could possibly justify these markedly different conclusions? Is it because Market A involves video (cable, satellite, and other programming distributors), while Market B involves wireless? That alone shouldn't make any difference.

The bottom line: this FCC will *never* find that there is effective competition in the wireless market, regardless of what the facts show. That's because doing so would undermine the agency's goal of expanding its authority to manipulate the wireless market—a goal it can't accomplish if it deems that market healthy.

The FCC wasn't always an administrative ostrich. When the agency looked at 2007 and 2008 data, it concluded that there was effective competition in the wireless market.² How has the market changed since then? If you look at the facts, it's gotten *more* competitive. The percentage of consumers that can choose from four or more facilities-based providers has gone up (from 90.5% to 91.7%). The percentage that can choose from three or more has also increased (from 95.5% to 97.2%). Prices have fallen. Average revenues are down. Data usage is up. The number of MVNOs has increased. And consumers continue to benefit from new and innovative service plans and offerings. Indeed, none of the nation's four largest providers has maintained the same rank in the market as measured by number of connections. Put simply, there's nothing in the evidence that says the market is no longer competitive.

¹ See *Amendment to the Commission's Rules Concerning Effective Competition*, MB Docket No. 15-53, Report and Order, FCC 15-2 (2015); see also *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16, Sixteenth Report, FCC 15-41 (2015).

² *In the Matter of Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 08-27, Thirteenth Report, 24 FCC Rcd 6185 (Wir. Tel. Bur. 2009).

International comparisons also show that competition in the U.S. market is thriving. Of the 34 OECD countries, only two (Poland and Israel) have less market concentration than the U.S. as measured by the Herfindahl-Hirschman Index. Even in each of those cases, the difference is miniscule. About half of OECD countries have only three providers; the U.S. has around 160 facilities-based providers. Small wonder, then, that the U.S. is leading the world in wireless capital investments, with carriers here spending twice as much per subscriber as their counterparts in Europe. Indeed, in 2013 the two largest U.S. wireless companies invested more in network infrastructure than all 58 European wireless providers *combined!* All of this investment means that 99.6% of the U.S. population now has access to LTE mobile broadband, the fastest technology in deployment. That figure is only 63% in Europe.

Finally, today's decision once again confirms that bad process leads to bad results. Prior to 2013, the FCC issued 16 wireless competition reports. In every case except one (the one being a report issued during a transition between administrations), each Commissioner was given an opportunity to weigh in and vote on the report. Even if Commissioners didn't always agree on the merits, almost as a rule they had a chance to participate in the process.

But now, the rule has become the exception. The old adage "one man, one vote" has been given an entirely new meaning. My involvement in this report was limited to receiving a Christmas-week, after-dark email attaching it. Even though Commissioner O'Rielly and I requested that all Commissioners be allowed to vote on the report, the Chairman's Office denied our request and directed the Bureau to release it over our objections.

I believe the agency's work product improves when every Commissioner has the opportunity to provide their input. Short-circuiting that process serves no interest other than allowing the agency to jam through yet another facts-optional, politically-motivated decision. Today's action underscores yet again the need for Congress to continue to oversee and act now to reform this agency's operations.

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