

**REMARKS OF FCC CHAIRMAN AJIT PAI
AT THE FEDERALIST SOCIETY “COVID-19 AND THE LAW” CONFERENCE**

JUNE 11, 2020

Thank you to the Federalist Society for inviting me to be a part of this event.

It's a shame that we couldn't meet in person. If it's any consolation, you're paying a lot less for online learning than the incoming class of Harvard Law School students. And I suppose getting together virtually makes it easier for you to conceal the identities of the shadowy cabal that is taking over our nation's judiciary.

One thing I've learned from doing three months of webinars is that telling jokes can be awkward when the audience members are on mute. So I'm going to dispense with any further attempts at comedy and get straight to the topic at hand.

The event's organizers have pulled together six panels of scholars and experts to discuss the legal and public policy questions raised by the coronavirus pandemic. I don't pretend that I can match the intellectual firepower of my fellow participants. But I do bring a unique perspective to this discussion. That's because I've had to manage a federal agency during what I sincerely hope is a once-in-a-lifetime pandemic. That means I've had to confront and answer some of these urgent questions the government has faced on the fly.

So I thought that I'd spend my time this morning talking about how the FCC has responded to COVID-19 and some of the lessons we've learned.

At the FCC, we began updating our pandemic plan and taking appropriate precautions early this year as COVID-19 started spreading throughout the world and into the United States. But like most of America, the situation became more salient at the Commission on March 11. That was the day the WHO officially declared the coronavirus to be a global pandemic, the President delivered an Oval Office address on the crisis, and then, essentially as the President was talking, we learned that Tom Hanks had the coronavirus and the NBA was shutting down because a Utah Jazz player was infected.

My most immediate concern was with the health and safety of the FCC's staff. That's why, the very next morning, I directed all FCC staff who could telework to begin working from home, a full week before California became the first state in our nation to issue a stay-at-home order.

We were also thinking about what we could do to help the American people. With limited time to address a fast-moving situation, we needed to make quick judgments about the most important national objectives where the FCC could make a difference.

Looking at the landscape in early March, a few things became clear. First, social distancing was going to force huge segments of our economy and much of our daily lives to move online, making it more important than ever that Americans have Internet access. And second, stay-at-home orders would create massive temporary job losses and furloughs, putting millions of Americans at risk of missing bill payments and having their Internet and telephone services cut off.

As a result, we decided that our top priority would be to make sure that as many Americans as possible would have access to communications services during this difficult time and that no American would have their Internet and voice services cut off because of the disruptions caused by the COVID-19 pandemic.

The question then became, “How best can we achieve these goals?” I noticed that the panel preceding my remarks was called *Government vs. Private Decisionmaking*. This tension gets at the big challenge the Commission faced. We are pursuing goals on behalf of the public. But our broadband networks, by and large, are owned and operated by the private sector. In times of crisis, I understand how

some might be tempted to look for any lever they can find to force private companies to carry out the government's goals. But in the end, guided by history, the law, and basic principles of economics, the Commission decided to put its trust in markets before mandates.

So, in mid-March, we called on broadband and telephone service providers to take what we call our Keep Americans Connected Pledge. The pledge has three core commitments. First, no consumer would lose service due to an inability to pay a bill because of the disruptions associated with the pandemic. Second, no one would be charged late fees because of the pandemic. And third, Wi-Fi hotspots would be opened up to anyone who needed them.

The response was overwhelmingly positive. More than 750 broadband and phone providers signed the pledge, including all of the nation's largest service providers and many of the smallest.

The initial pledge was set to expire after 60 days—in mid-May. But we recognized that consumers' needs would persist beyond that deadline. And so we asked companies to extend their commitment to June 30. And even more companies, nearly 800, extended the pledge.

By working with industry, we were able to make progress much more quickly than had we tried to pursue command-and-control regulation. For example, within 48 hours of proposing the pledge, all of the nation's largest broadband providers had signed on.

We also urged providers to go above and beyond the Keep Americans Connected Pledge, to do whatever they could to help Americans stay connected and expand connectivity. And many have. They've upgraded speeds at no charge. They've expanded low-cost programs. They've offered free service to low-income families and students. They've donated connectivity to healthcare workers and facilities. And much more.

Some might wonder: Why are these private companies acting in the public interest? I think the biggest factor is that these decisions are made by people. And in trying times, most people want to do the right thing, not just for their company, but for their fellow citizens and for their country.

But I also think that the market creates powerful incentives for companies to do the right thing. If your company doesn't step up for you, or even worse, engages in bad behavior, consumers will be much more likely to turn to the competition in the weeks, months, and years ahead.

At the FCC, we've been working to make it easier to do the right thing. The Commission doesn't just want to *encourage* private industry to better serve the public, we want to free them to expand and enhance their networks. That's why we've moved aggressively to cut through red tape that often prevents or delays innovative solutions to consumers' problems.

Case in point. At the onset of the pandemic, several wireless providers came to the Commission seeking access to additional spectrum to meet the increased demand for mobile broadband. In a matter of days—not weeks or months—we granted temporary authority to wireless carriers to use additional airwaves. And in April, average mobile broadband speeds in the United States went up, not down, even with increases in traffic. Indeed, an independent report suggested that this additional spectrum has helped one provider double the speeds for its 4G service in certain areas of the country.

Similarly, we examined the FCC's programs to connect schools, rural health care providers, low-income households, and individuals who are deaf, hard of hearing, or have a speech disability. We then relaxed rules to help extend service to more people during this pandemic.

But for all our actions over the past three months to boost the performance and availability of broadband connectivity, there's a strong case that the ones that most helped us weather this pandemic happened long before anybody had ever heard of COVID-19.

With so many people teleworking and going to school online, not to mention gaming and binge-watching, our networks have been tested like never before. It was not a given that they would be up to the challenge. I am pleased to report that our networks in the United States are handling this surge in demand very well, especially when compared to some networks in Europe and elsewhere.

One reason our networks have been able to handle the traffic increase is that we've seen significant investments and improvements in our broadband infrastructure in recent years. In 2018 and then again in 2019, the United States set records for annual fiber deployment. The number of wireless small cell installations has skyrocketed. And we've seen network investment hit levels that our nation hadn't seen for over a decade.

These investments and improvements didn't happen by chance. In December 2017, the FCC overturned the previous Administration's decision to heavily regulate the Internet like a slow-moving utility under rules developed in the 1930s. In the *Restoring Internet Freedom Order*, we replaced those rules with a consistent, light-touch regulatory approach that protects the free and open Internet and encourages infrastructure investment. Our actions were based on a simple principle: The Internet should be run by engineers, entrepreneurs, and technologists, not lawyers, bureaucrats, and politicians.

Of course, that's not all we've done to remove regulatory barriers to broadband buildout. When I became Chairman, FCC regulations made it too hard for carriers to transition from the copper networks of the past to the fiber networks of tomorrow. So we've updated those rules to help companies focus on fiber deployment.

The Commission also deregulated the \$45 billion market for business data services, which are high-volume network connections used by companies, non-profits, and government institutions for things like ATM withdrawals and credit card transactions. Reflecting substantial and growing competition in this market, we relaxed unnecessary command-and-control regulations to create greater incentives to invest in next-generation networks, while protecting small businesses and consumers in areas where competition is lacking.

We heard hysterical predictions at the time that some of these policies would herald the end of the Internet as we know it, that Internet access would decrease, and that the Internet would slow down—that you'd get it one word at a time. Two years ago today, our new rules became effective—and those predictions have proven as false today as they were foolish then.

After seeing broadband investment decline in 2015 and 2016—the first time that had happened outside of a recession in the Internet era—American consumers benefited from increased investment in wired and wireless networks. Average fixed broadband speeds increased by more than 80%. The number of Americans without access to 25/3 Mbps fixed broadband declined by 30% from 2016 to 2018, and the number of Americans without access to 250/20 Mbps fixed broadband plummeted by 75%.

All of that infrastructure deployment over the past three years has been critical to keeping our country running during the pandemic. Indeed, while the European Union—which imposed strict Internet regulations a few years ago—proactively called on video streaming platforms, like Netflix and YouTube, to throttle their traffic during the pandemic to reduce stress on broadband networks, I'm pleased to report that didn't happen in the United States. Indeed, I didn't think for even a moment that we would need to take that step. Not only is it unnecessary given the strength of our networks, but the American people want and deserve to stream Super Bowl LIV, *Tiger King*, and *The Last Dance* in high-definition.

Another lesson I've learned from doing three months of webinars is that you can only keep an online audience engaged for so long. So I'm going to wrap things up now. Thank you again to the Federalist Society for hosting this forum and allowing me to participate. I hope that all of you stay safe and healthy during these unprecedented times.