

**REMARKS OF FCC CHAIRMAN AJIT PAI
TO THE AMERICAN ENTERPRISE INSTITUTE**

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Hello, everybody! This is my last event before my last weekend as FCC Chairman. Although lately, Fridays remind me of the famous line by the Dowager Countess, “What is a week-end?” I’ll bet you weren’t expecting a Downton Abbey reference out of the gate. I’m just trying to keep people on their toes until the very end.

Thank you to AEI for hosting this event. And more generally, thank you for your advocacy for free markets, expanded opportunity, and human dignity. Special thanks to our moderator, AEI’s Jeff Eisenach. I’ve appreciated his work and benefited from his wisdom, especially over the past four years.

AEI has billed my remarks as, “Tough Choices: The Decisions that Reshaped U.S. Communications Policy.” This captures the essence of the job. When you’re Chairman of the FCC, you’re constantly faced with tough decisions. Such as: Do I leak something to Axios . . . or do I leak it to Politico?

In all seriousness, some decisions are definitely tougher than others, and I had to make my fair share of hard choices. Today, I’d like to walk you through four of the most challenging calls I had to make over the past four years.

The details and circumstances of these episodes vary, but I think it’s important to say up front that the underlying principle guiding my decisions never changed. I said repeatedly that every decision I would make at the FCC would be an independent one, based on the facts and the law. Nothing more. Nothing less. In my view, that must be the lodestar for any FCC leader. And that is exactly what I did. Looking at the results, I believe that this approach served me, the Commission, and the country well.

Let’s start with the third rail of telecom policy: net neutrality. Hard to believe, but this issue has been on the Commission’s agenda since way back in 2004, when Chairman Michael Powell laid out his four principles for Internet Freedom. This debate eventually shifted from non-binding principles to whether or not the FCC should adopt enforceable rules to prevent Internet service providers from blocking or favoring Internet traffic. And then it shifted to a debate about whether they should be regulated under Title II of the Communications Act, a far-reaching framework developed in the 1930s for the Ma Bell monopoly.

Fast forward to 2017. When I ascended to the top job at the Commission, broadband providers were subject to utility-style regulations from the 1930s. These rules had been affirmed by the U.S. Court of Appeals for the D.C. Circuit. Net neutrality advocates approached the issue with a religious fervor, and the press corps covering the issue was broadly sympathetic to their position. To be sure, some reporters would claim in private conversations that it was really their editors who were responsible for the slanted coverage, but the end result was the same. Throw in a closely divided Congress, and it was clear that there was no real political upside for me to re-open this fight. When you also consider that this debate had already dragged on for more than a decade, generating more heat than light, it was even more obvious that I could save myself a lot of headaches if I just left this alone and moved on.

But there was one really big problem. Remember how I said every decision I made would be based on the facts and the law? In the case of Internet regulation, the facts were bad. Investment in high-speed networks had declined for two straight years for the first time outside of a recession in the Internet era. Considering ISPs weren’t blocking or discriminating against traffic to begin with—that there was no market failure before the rules—these were costs without benefits. So I decided to re-visit these rules.

In April 2017, I announced my intention to scrap these heavy-handed, Depression-era Internet regulations and to restore the bipartisan, light-touch framework that governed the Internet from the 1990s until 2015. I knew this would set off a firestorm. But I was willing and prepared to take the heat.

Right on cue, the usual suspects attacked this as one of the worst things to ever happen. Topping the charts of criticisms was that oldie-but-goodie, “This is the end of the Internet as we know it.” Another one from the Senate Democrats was that, “you’ll get the Internet one word at a time.” A popular tweet suggested that you’d have to pay \$14.99 each month to post on Twitter. And I was particularly bemused by a quickly debunked graphic promoted by a Democratic congressman. It suggested that America’s Internet offerings would soon look like Portugal’s. Setting aside the odd choice of trying to scare Americans with the bugaboo of Portugal, that country inconveniently had the utility-style regulation that he and other partisans championed.

This hyperbole cheapens debate and is the last resort of ideologues. And it would be bad enough as it were. Unfortunately, things quickly headed in a much uglier direction. Egged on by John Oliver and coordinated Beltway lobbyist campaigns to, quote, “save the Internet,” a significant number of Americans got whipped into a frenzy over this issue. And some wound up taking things too far—way too far.

Those of us who supported that *Order* received death threats. For good measure, so did my children (indeed, for the rest of kindergarten, my son couldn’t take the school bus—and he never quite understood why). Our personal information was leaked online. We were harassed at our homes. I had to spend thousands of dollars out of my own pocket on a home security system. My personal email account was hacked. We got many unmarked packages with no return address at the door. Our relatives were harangued with profane voicemails. Topping it off: When we voted to restore Internet freedom in December 2017, we had to adjourn the meeting to address a bomb threat.

I don’t say these things seeking anybody’s pity. I say these things to point out that things got out of hand. And this was a foreseeable outcome of the over-the-top rhetoric and reckless tactics used by so-called public interest groups and their political allies.

But they also should have been able to foresee how I would respond. I didn’t back down. The FCC adopted the *Restoring Internet Freedom Order*. And I’m glad we did, because the results have been enormously positive for the American people.

We’ve cut the number of Americans without access to broadband by more than 46%. Average download speeds for fixed broadband and mobile broadband in the United States have more than doubled since we adopted the Order. In 2018 and then again in 2019, the United States set records for annual fiber deployment, and we’ve seen network investment hit levels that our nation hadn’t seen for over a decade. And in those two years, we added over 72,000 wireless cell sites in the United States, after adding fewer than 7,000 between 2013 and 2016.

During the pandemic, our networks have held up extremely well. Not only have they handled the surge in Internet traffic, but average speeds have actually gone *up* over the past ten months. And unlike in the European Union—which includes Portugal!—American regulators haven’t had to go hat in hand to companies like Netflix asking them to throttle video.

And compared to 2015, today’s average U.S. consumer is paying 28% *less* for broadband in real terms while getting faster service.

Most important, the Internet is stronger than ever. And it’s remained free and open (at least when it comes to ISPs; it’s a different story when it comes to the tech giants who supported net neutrality rules that, of course, didn’t adhere to them).

Was repealing the FCC’s net neutrality rules in the face of tremendous pressure easy? No. Was it worth it? Yes indeed. Because it was the right thing to do.

Obviously, this first decision was controversial with those on the political left. But just for the record, I'm an equal opportunity offender.

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On the evening of July 24, 2018, my phone started blowing up, more so than usual. I was preparing for a congressional oversight hearing the next day and wasn't sure what was going on. Lo and behold, I was on the receiving end of a tweet from @realDonaldTrump. To quote the President: "So sad and unfair that the FCC wouldn't approve the Sinclair Broadcast merger with Tribune." And then he closed with "Disgraceful!" for good measure.

This was, you might say, unusual commentary from a chief executive about an independent agency. How did we get there?

In May 2017, Sinclair Broadcast Group announced an agreement to buy Tribune Media and its 42 local TV stations for \$3.9 billion. The deal would have given Sinclair control of 215 stations, serving 108 markets. With this expansion, Sinclair's stations would reach nearly 72% of U.S. TV households, nearly twice the reach of their most significant broadcast competitors.

When this merger was announced, I wasn't predisposed against it. The fact that a broadcaster would be able to reach almost three-quarters of U.S. TV households didn't bother me. As I've said in the past, we don't have special rules limiting how many Americans an Internet platform can reach, or how many viewers a streaming service can have, or how many viewers a cable network can reach. Yet we still have 1975-vintage media ownership restrictions for broadcasters—and only broadcasters. That doesn't make any sense.

And if Sinclair and Tribune had merged, the combined average viewership of their nightly newscasts would have been 2.2 million viewers. That is sixth-tenths of one percent of the entire country. Google and Facebook—each of which are estimated to have over 200 million users in the United States—must have been shaking in their boots.

It's also important to note that much of the criticism of the merger was less about the idea of a broadcaster expanding its reach to 72% of the country, and more about the fact that the broadcaster was Sinclair. Sinclair is widely perceived to be a right-leaning broadcaster. And the perception is probably accurate, just as it is probably accurate to say that many of our nation's broadcast networks lean to the left. But the last time I checked, the First Amendment still applies to broadcasters, which means Sinclair's perceived political views and the content of its newscasts should be entirely irrelevant to the FCC's decision-making process.

Here's where the plot thickens.

As the merger review process unfolded, serious questions came to light about whether Sinclair was willing to take the steps necessary to bring the proposed transaction into compliance with our national ownership rule. To be sure, as a matter of first principles, I'm not necessarily a big fan of the fact that the FCC has a national ownership rule. But so long as it's on the books, it must be obeyed.

Specifically, the evidence suggested that certain station divestitures that had been proposed to the FCC to ostensibly bring Sinclair into compliance with the national ownership rule would have allowed Sinclair to still control those stations in practice, even if not in name. This would have been against the law. As the merger review process dragged on for months, Sinclair was still not taking the steps necessary to address the concerns identified by our Media Bureau. And as revealed through later litigation, the Justice Department shared some of our frustrations with Sinclair's approach.

Of course, this review wasn't happening in a vacuum. No one from the White House ever weighed in with the FCC before I announced my decision in any form or fashion. But I certainly was aware that rejecting the merger might not be viewed favorably in certain circles.

Conversely, some on the left just *knew* that I would give the merger a green light from the start. In fact, the day it was announced, former FCC Acting Chairman Michael Copps said, with classy understatement, that I was “foaming at the mouth to rubber stamp” the deal. And the House Energy and Commerce Committee Democratic leadership badgered the FCC Inspector General into commencing an investigation into my conduct, based on the conspiracy theory of “a three way quid-pro-quo involving Sinclair, the Trump Administration, and Ajit Pai.” (By the way, the Inspector General ultimately found absolutely “no evidence of impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality”—not that the partisans who instigated the bogus investigation and then shamefully leaked it cared.) I recount this to say that I’d already taken hits from the left on this matter.

Given all this, it would have been very, very easy for us politically to overlook concerns raised by the transaction and Sinclair’s response to those concerns. Why block the deal and invite a new round of criticism from the other direction, including by potentially provoking the person with the world’s loudest megaphone? Looking at this issue through the lens of personal convenience, the choice was easy and clear. But it was also wrong.

As I committed to doing ten years ago when I was nominated by President Obama to be a Commissioner, I followed the facts and applied the law. We did that, and unanimously designated the Sinclair/Tribune transaction for a hearing to resolve the disputed issues, effectively killing the deal. Next thing I know, I’m taking hits from the President on Twitter and dealing with the accompanying consequences.

Was this experience pleasant? No. But I’d do it all over again. And I would note that you don’t demonstrate the FCC’s independence by *saying* you’re independent. You do it by *acting* independently. That’s why, the next morning at the congressional hearing, I opened by saying, “the decisions I’ve made haven’t always been easy. But so long as I have the privilege of serving as Chairman of the FCC, I’m going to find the facts, follow the law, and call ‘em like I see ‘em.” And indeed, later in 2018, the President said he didn’t like my decision, “not even a little bit, but he’s independent.” Exactly right. This decision may have won me few friends, but I’m proud I lived up to my oath and preserved the agency’s independence.

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In terms of powerful opponents in Washington, it’s hard to top the President. But let me tell you what it’s like to go toe-to-toe with the Pentagon.

When I was nominated to the Commission back in 2011, Senator Grassley put a hold on my nomination. The hold had nothing to do with me personally. My nomination just got tangled up with Chairman Grassley’s investigation into the FCC’s handling of a company I’d never heard of named LightSquared, which had business before the Commission. This was the first time I’d come across the company, but it wouldn’t be the last.

LightSquared would eventually change its name to Ligado Networks. And many of the same questions Senator Grassley was asking in 2011 were still before the Commission when I became Chairman in 2017.

Before going any further on Ligado, you need to understand some important context. Nearly everyone agrees that we need to free up more spectrum for wireless innovation. But on any given band you examine, you will always find somebody—a federal agency or private company or both—objecting to repurposing the particular band under discussion. That’s certainly been true in the case of Ligado.

Ligado has held licenses in the so-called L-band for decades. For 17 years, Ligado and its previous iterations had been haggling with the Commission over proposed deployments that would make more efficient use of this spectrum. Most recently, in 2015, Ligado asked the FCC for permission to use

its spectrum to deploy a low-power terrestrial nationwide network primarily to support connectivity for industrial Internet of Things and 5G applications.

Here's the issue. Next to one part of the L-band is spectrum used for Global Positioning System (or GPS) services. The Department of Defense is tasked with overseeing GPS operations for military and civilian purposes in the U.S. DoD and other federal users, as well as commercial interests such as land surveyors and even cell phones, rely upon GPS service. Collectively, these parties objected to Ligado's 2015 application and its amended 2018 application, asserting that Ligado's service could potentially disrupt military operations, in addition to billions of other GPS-reliant devices and systems.

This is where things had been stuck. These parties raised essentially the same objections for more than a decade. These objections had been echoed over the years by other executive branch agencies as well as certain quarters on Capitol Hill. Indeed, the most recent complaints were backed by the Departments of Transportation and Homeland Security as well as key members of the Senate and House Armed Services committees.

I've often said that the most powerful factor in government is regulatory inertia. Now you see why. This issue has been sitting around for 17 years because the FCC has long found it much easier to kick the can down the road than to confront this high-powered opposition. Aside from the White House, no one in Washington is more powerful than DoD. And no argument is more effective at shutting down debate than claims that what you're proposing could undermine national security.

Yet again, the politics told me to back off. What did the facts and the law say?

I asked our Office of Engineering and Technology study this, and study this, and study it some more. They considered Ligado's abandonment of terrestrial operations in 10 megahertz of its licensed spectrum, creating a 23-megahertz guard band between its operations and the portion of the L-band where GPS operates. They examined Ligado's consensual 99% reduction in base station power levels—meaning they would emit at the same power level as a light bulb. They reviewed independent studies showing a lack of harmful interference to GPS. They noted that the analysis submitted by DoD didn't measure whether Ligado's operations would actually disrupt GPS operations. And they kept coming back with the same answer: On the merits, we should grant Ligado's amended application with appropriate conditions. But my advisors were just as certain that DoD hated Ligado's proposal, and that Ligado's opponents would make my life miserable for the foreseeable future if the FCC granted it.

True to form, I chose to side with the facts and the engineering. And the FCC granted the application. Unanimously. And far from rubber-stamping Ligado's application, we imposed serious conditions to go above and beyond in ensuring that we protected adjacent-band operations from harmful interference.

Even still, the Department of Defense, other Cabinet departments, the Senate Armed Services Committee, and industries from aviation to agriculture continued to cry foul (though I certainly appreciated the support of the Secretary of State and Attorney General). A sinister picture was painted of a rogue agency making a decision that came out of the blue. But the record shows that we gave the executive branch agencies plenty of notice. We let the Pentagon have a draft of our order six months in advance. We repeatedly extended deadlines for them to offer input. We gave them every opportunity to work with us, and we incorporated some of their feedback. In the end, I know that the FCC's unanimous decision was the right decision. And more fundamentally, this matter reveals a basic truth: Once the FCC discerns the technical truth, it must then be willing to act even if it upsets powerful opponents. Otherwise, America will never lead when it comes to wireless innovation.

Now, even after we made our decision, the work wasn't done. That's because opponents attempted to nullify our decision with poison-pill language in the National Defense Authorization Act. Now, I can't say that I agree with the Ligado-related provisions that ended up in the NDAA because I don't. But I do appreciate that Congress agreed that the relevant standard is whether Ligado's operations

will cause *harmful* interference rather than the flawed standard backed by DoD. And I am glad Congress ended up rejecting the more extreme language sought by our critics.

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Shifting gears, although staying with spectrum policy: It may be recency bias, but I suppose my favorite hard choice at the moment is the last. And there are over 80 billion reasons why.

Bidding for 280 megahertz of prime, mid-band spectrum in the FCC's C-band auction just concluded, garnering a record-breaking \$80.916 billion in gross proceeds. By comparison, the previous record for gross bidding in an FCC auction was about \$45 billion.

So how did we pull this off?

The C-band is a 500 megahertz swath of spectrum from 3.7 GHz to 4.2 GHz. It's mostly used by fixed-satellite companies to beam content to video and audio broadcasters, cable systems, and other content distributors. The C-band presented an enormous opportunity for 5G given its combination of good coverage and capacity. Also, thanks to technological advancements, satellite companies didn't need the entire C-band to provide the same services they are providing today.

The first key decision I had to make on the C-band was how to make it available for 5G. Should we hold a public auction to repurpose this spectrum for flexible use? Or should we allow a private sale, in which the satellite companies operating in the band would sell rights to a portion of the C-band to an interested party or parties?

There were powerful factions on both sides of the issue. And we gave serious consideration to both options. There were some potential advantages to the private sale approach. But ultimately, after months of back-and-forth with stakeholders, we had serious concerns about the plans that were submitted for the private sale and whether it would be run competently. In contrast, the FCC had a quarter-century track record of performing successful and transparent spectrum auctions. We also knew that a public auction was squarely within the Commission's legal authority. And it is important to remember that satellite companies didn't have the rights for terrestrial use of this spectrum. So we would have ended up granting them those rights for the sole purpose of having those companies sell them—a prospect with which I wasn't entirely comfortable.

Even though many "experts" claimed that we favored a private sale, we never took a public position on the issue—until November 2019, when I announced that the Commission would conduct a public auction. This decision was not based on politics, but what I thought was the right answer for the American people.

Our next big decision was how much spectrum should be made available for flexible use. Incumbent operators initially argued that we should only clear 100 megahertz of spectrum to protect programming delivery. Others, like T-Mobile, Qualcomm, and U.S. Cellular, argued that all 500 megahertz should be made available for flexible use. After a careful review of the record, we chose a balanced approach, clearing the lower 300 megahertz of the C-band and make 280 megahertz available for flexible use along with a 20-megahertz guard band. This was a large amount of spectrum for 5G, and enough spectrum to ensure continued C-band delivery of satellite programming services.

Now comes the hardest, and I think most consequential, decision.

As part of our study of this spectrum, we repeatedly heard from wireless carriers about the importance of opening up a large amount of spectrum in the C-band. But they consistently stressed that it was equally important that this spectrum be available quickly. This was in the national interest, as well: A key part of the FCC's 5G FAST plan was to make mid-band spectrum available for 5G, well, fast. To move quickly, we were going to have to give incumbent satellite companies a reason to move quickly too. Clearing the bottom 300 megahertz of the C-band was and is going to be a complicated task. And I

thought that it was critical to align the satellite operators' incentive structure with our need for speed rather than having them drag their feet every step of the way.

So I proposed giving satellite operators the opportunity to receive accelerated relocation payments of \$9.7 billion if they met our accelerated clearing milestones. Did I mention these satellite companies are foreign-owned? That's right. I proposed offering billions of dollars of payments to "foreign satellite companies" to clear this spectrum quickly. Even though those payments would be made by those wireless companies winning licenses in the C-band auction, I knew that opponents would characterize these payments as coming from American taxpayers. It would be hard to come up with a plan that could be so easily painted in a negative light, aside for maybe giving \$10 billion in bearer bonds from the U.S. Treasury to Hans Gruber from *Die Hard*. But our economic analysis said this was the right play, so we pressed on.

As expected, we got slammed for an alleged corporate giveaway. "The FCC is sending billions of your taxpayer dollars to Luxembourg!" was low-hanging fruit, I suppose. And no less than the chairman of our Senate appropriations subcommittee said that he wouldn't take me with him to buy a car "because he'd pay full sticker price and then try to give the salesman a bonus."

Thank goodness, we ignored the soundbites and moved forward because the C-band auction has vindicated each one of our decisions. It's gone better than anybody expected. And it's proved the critics wrong.

I already mentioned that this auction generated more than \$80 billion in bids, nearly doubling the previous record for spectrum auction gross revenues. But perhaps more important, we expect that 5G services will be deployed with this spectrum two to four years faster than we might otherwise have expected without these accelerated relocation payments. In the race for global leadership in 5G innovation, four years is the difference between being a leader or a laggard.

I think an analogy that most people can understand and appreciate would be selling a house. We put in some money up front to make the property as attractive as possible to potential buyers, and this resulted in an \$80 billion-plus multiple offer situation. If we hadn't put in place a policy like accelerated relocation payments to give wireless companies confidence that satellite operators would clear this spectrum quickly, we would not have raised this much money through the auction. All in all, not a bad return on the investment.

Yet another benefit of making these accelerated relocation payments in order to clear the satellite operators early is that it dramatically decreased the chances that our plan would be overturned in court. Sure, we might have prevailed in litigation without the payments; I thought that we would have had strong arguments. But we substantially reduced our litigation risk by bringing on board with our plan the satellite operators who were using the C-band to provide service to customers in the United States. To be sure, there were a lot of naysayers who opposed us every step of the way, raising every legal objection conceivable as to why we couldn't do this. They were just wrong. We've won across the board in court. Indeed, confronting these objections, the D.C. Circuit said flatly, in perhaps our most memorable win in court over the past four years: "We disagree with all of this."

There was one last choice on C-band worth mentioning, but honestly, this one was pretty easy. When I proposed my plan in early 2020, some argued that the FCC should do—nothing. Instead, we should wait for Congress to legislate on the C-band. Thank goodness we said no to that, because Congress has passed—nothing. Had we waited then, we'd still be waiting now, thinking happy thoughts but getting nothing done. We'd be stuck in the starting blocks, and other countries could have seized the mantle of leadership in 5G. And I'm sorry, but if you are engaged in any complicated endeavor that many describe as a race, and somebody suggests waiting for Congress to take action—in an election year—to quote the President-elect, come on, man! That's a bunch of malarkey. The race goes to the swift, not to the timid.

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Net neutrality. Sinclair. Ligado. C-band. Four different stories, with many different twists and turns. But in an important way, these are the same story—the story of this FCC over the past four years. Time and again, we faced with a hard choice. Time and again, we made our decision based on the facts and the law. Time and again, we relied on our excellent career staff to guide us. Time and again, we defended the agency’s independence. Time and again, we did what was right. And time and again, we delivered for the American people.

To quote from President Reagan’s farewell address, “We weren’t just marking time. We made a difference. . . . All in all, not bad. Not bad at all.”