

**CONCURRING STATEMENT OF  
COMMISSIONER AJIT PAI**

Re: *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Service*, MB Docket No. 14-261.

The video marketplace is changing, and changing fast. Internet-based video distribution—a flickering hope at the dawn of the Internet age—is a real and growing phenomenon. New entrants are cutting new paths, while established competitors are feeling pressure to adapt their business models. More than ever before, consumers are in the driver’s seat when it comes to video content.

In evolving markets like these, the government should be hesitant to extend the outdated regulations and classifications of old. It’s for this reason that I can’t vote to approve this Notice of Proposed Rulemaking. In my view, the Commission’s fundamental proposal—that certain Internet-based distributors of video programming should be regulated as multichannel video programming distributors (MVPDs), a mouthful of a term older than Internet video itself—is premature. And the legal analysis contained in the Notice is heavily slanted to support that result.

To be sure, this proposal is being packaged as a way to increase video competition. But given the dramatic, organic explosion in online video content over the last few years, I have my doubts as to whether additional regulation in this space is necessary. Indeed, I fear that it could impede continued innovation. I am also worried that this proposal will pave the way for more comprehensive regulation of Internet-based services.

Nonetheless, I am voting to concur for two reasons. First, I agree that it is time for the Commission to resolve the question of whether Internet-based distributors of video programming can be MVPDs, an issue that has been pending at the Commission for over four years. And second, the Notice has improved significantly since it was first circulated, as a result of changes that Commissioner O’Rielly, Commissioner Rosenworcel, and I suggested.

Among other things, the Notice now tentatively concludes that programmers’ websites should be shielded from additional regulation. It also tentatively concludes that there should be regulatory parity between cable operators offering video programming over the Internet and other entities doing the same. Additionally, it asks in a more forthright manner about the interplay between the Commission’s regulatory decisions and decisions that will need to be made independently by the U.S. Copyright Office. In particular, if the Commission were to decide that Internet-based distributors of video programming are MVPDs, subjecting broadcasters to the obligation to negotiate in good faith with them regarding retransmission consent, what would it mean in practice if the Copyright Office maintained its position that such Internet-based distributors do not qualify for the compulsory license? Would that be a workable regulatory scheme? While I had hoped to get public input on other questions as well,<sup>1</sup> doing so with respect to the issues mentioned above is significant.

I look forward to reviewing the record compiled in response to this Notice and to working collaboratively with my colleagues to create a regulatory framework that preserves for many years more what millions of consumers view as a golden age of video.

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<sup>1</sup> For example, we should have asked whether the Commission’s proposal could require us to regulate Internet pornography. This is obviously an uncomfortable question, but it won’t vanish through omission.