

**STATEMENT OF
COMMISSIONER AJIT PAI
APPROVING IN PART AND DISSENTING IN PART**

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Connect America Fund*, WC Docket No. 10-90.

It's an iron law of economics: You can't spend a dollar twice. That means every dollar spent complying with outdated, legacy regulations or maintaining creaky, aging networks is a dollar that can't be spent deploying next-generation infrastructure, like ultrafast fiber. New technologies, faster broadband, greater deployment—that's what consumers want, and that's what we should be aiming to deliver.

And so, since my first days in this office, I have called on the FCC to remove regulatory barriers to infrastructure investment.¹ Again² and again³ and again⁴ and again⁵ and again⁶ and again⁷ I have pressed the agency to eliminate unnecessary regulations, streamline compliance, and excise obligations that don't benefit consumers and only create additional paperwork for accountants and auditors.

Today, we start to grant some of that relief. For example, we eliminate the long-defunct *Comparably Efficient Interconnection* requirements and adopt a streamlined process for the elimination of the *Open Network Architecture* requirements. We end the long-distance equal-access and dialing-parity rules, which have allowed hucksters to scam small businesses and the elderly for years.⁸ And we end the so-called checklist obligations of section 271 that let regulatory arbitrageurs resell the services of others at regulated prices, reducing the total investment in communications infrastructure.

Perhaps most importantly, we embrace the importance of next-generation technologies like fiber by ending the requirement that incumbents unbundle a 64 kbps channel when they retire copper. A channel that small provides a tiny fraction of the capacity of what the FCC now calls broadband (0.25%),

¹ See Remarks of FCC Commissioner Ajit Pai at Carnegie Mellon University, "Unlocking Investment and Innovation in the Digital Age: The Path to a 21st Century FCC," at 6 (July 18, 2012), <http://bit.ly/1NrmYsb>.

² Remarks of FCC Commissioner Ajit Pai at the Hudson Institute, "Two Paths to the Internet Protocol Transition" (Mar. 7, 2013), <http://bit.ly/1UEDYxT>.

³ *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations et al.*, WC Docket Nos. 12-61, 10-132, 09-206, 08-225, 08-190, 07-273, 07-204, 07-139, 07-21, 05-342, CC Docket Nos. 02-39, 00-175, 95-20, 98-10, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7752-53 (2013) (Statement of Commissioner Ajit Pai, Approving in Part and Concurring in Part).

⁴ *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, Notice of Proposed Rulemaking, 29 FCC Rcd 10638, 10658 (2014) (Statement of Commissioner Ajit Pai).

⁵ Remarks of FCC Commissioner Ajit Pai at Techfreedom's Forum on the 100th Anniversary of the Kingsbury Commitment (Dec. 19, 2013), <http://bit.ly/1k4MuJa>.

⁶ Remarks of FCC Commissioner Ajit Pai before the Internet Innovation Alliance, "The IP Transition: Great Expectations or Bleak House?" (July 24, 2014), <http://bit.ly/1QPgx4v>.

⁷ Remarks of FCC Commissioner Ajit Pai on Receiving the 2015 Jerry B. Duvall Public Service Award at the Phoenix Center 2015 Annual U.S. Telecoms Symposium (Dec. 1, 2015), <http://bit.ly/1RU3Nul>.

⁸ *GPSPS, Inc.*, File No.: EB-TCD-14-00016988, NAL/Acct. No.: 201532170011, FRN: 0022128334, Forfeiture Order, 30 FCC Rcd 7814, 7817 (2015) (Statement of Commissioner Ajit Pai).

and it's rarely used in practice. In fact, the chief proponent of keeping the requirement admits having never ordered such a channel. And the obligation puts incumbents to a Hobson's Choice: either they retire the copper and buy expensive equipment to unbundle a channel that no one will ever use, or they maintain the copper even if no one's using it. By getting rid of this silly rule, capital once wasted on regulatory compliance will now be freed up for more fiber deployment.

That's not to say I agree with every decision made here. We could have and should have gone farther in ditching outdated dictates. For example, I cannot support the decision to retain section 272(e)(3)'s long-distance imputation requirement.⁹ That arcane accounting rule requires companies to train specialized accountants—the costs of which are ultimately borne by consumers—even though there is no corresponding public benefit.¹⁰ The FCC itself targeted that provision as ripe for forbearance just last year.¹¹ Our own staff cannot articulate any current use of that rule. Yet we retain it just because it may have once had value. That's arbitrary and capricious.

Nor can I support the unfunded mandate the *Order* adopts for price cap carriers in remote areas.¹² With respect to these costly-to-serve areas, the Communications Act imposes telephone-service obligations on incumbent local exchange carriers. Those carriers often lack the legal means to recover all the associated costs from their customers.¹³ To make up that difference, the Communications Act directs the Commission to offer those carriers "sufficient" universal service support.¹⁴ This raises the question: In this case, what is "sufficient"? The Commission's own model estimates that it should cost price cap carriers more than \$1,488,789,806 each year to serve these remote areas and that the total expected revenue for voice and broadband service in such areas is only \$393,562,260.¹⁵ That leaves price cap carriers short \$1.095 billion a year, or with less than one-third the revenues they need to cover the cost of service in remote areas.¹⁶ This mismatch makes obvious that the support isn't "sufficient" under the

⁹ See *Order* at paras. 40–45.

¹⁰ See Letter from Maggie McCreedy, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 2 (Dec. 10, 2015).

¹¹ *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, Notice of Proposed Rulemaking, 29 FCC Rcd 10638, 10650, para. 43 (2014).

¹² See *Order* at paras. 101–57.

¹³ Communications Act § 254(b)(3) ("[R]ates [must be] reasonably comparable to rates charged for similar services in urban areas.").

¹⁴ Communications Act § 254(b)(5).

¹⁵ There are 624,702 extremely high-cost locations where the monthly cost of service exceeds \$198.60. The high-cost threshold, i.e., where the expected cost of service exceed the expected revenues, is \$52.50. See *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 3905, 3905, n.1 (Wireline Comp. Bur. 2015); *Connect America Cost Model Final Results: Offer by Carrier and State*, <http://fcc.us/1IBO4qW> (Apr. 29, 2015).

¹⁶ Although the *Order* downplays this estimate by noting that the model estimates the costs of deploying a fiber-based, broadband network, *Order* at note 365, the model's "IP fiber network would be the appropriate choice for a wireline network even if there were no service obligation to extend broadband." See *Connect America Fund, High-Cost Universal Service Support*, WC 10-90, 05-337, Report and Order, 28 FCC Rcd 5301, 5316, para. 33 (Wireline Comp. Bur. 2013). Essentially, in other words, where there's going to be voice, there's going to be fiber. Indeed, the actual voice-only copper networks deployed in remote areas likely requires an order of magnitude more support than our model estimates. That's because the costs of a copper network are higher, see *id.* at 5315, para. 33 ("Network construction costs are essentially the same whether a carrier is deploying copper or fiber, but fiber networks result in significant savings in outside plant operating costs over time."), and the revenues associated with a voice-only network are fewer (just \$33.24 per location, calculated by applying the model's methodology to the voice benchmark, see *Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice*

Act.¹⁷ And it's the kind of arbitrary and capricious Washington demand that makes Americans cynical about government.

For these reasons, I respectfully approve in part and dissent in part.

and Broadband Services and Posting of Survey Data and Explanatory Notes, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 3687 (Wireline Comp. Bur. 2015)).

¹⁷ The Order responds that carriers “remain eligible to receive high-cost support” even where their actual support amount is zero. *Order* at para. 141. But the *Order* literally has no explanation why that meets the statute’s command. And offering an opportunity for case-by-case review, *id.* at note 440, is no response. The problem isn’t the details, whether the FCC has allocated the right amount for any particular remote area. The problem is systemic: The support offered (none in the areas where USTelecom has sought forbearance) has no rational connection to the unrecoverable costs of the obligations imposed.