

STATEMENT OF COMMISSIONER AJIT PAI

Re: *Amendment to the Commission's Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, MB Docket No. 15-53.

A bedrock principle of good government is that regulations should reflect the marketplace to which they apply. Accordingly, throughout my tenure at the Commission, I've emphasized the importance of updating our rules to reflect the modern video marketplace.¹ This Report and Order does precisely that.

More than twenty years ago, the FCC adopted a presumption that cable operators were not subject to effective competition. This meant that local franchising authorities could regulate the rates charged by an incumbent cable operator for basic-tier service unless the operator overcame the presumption by demonstrating that it was in fact subject to effective competition.

This approach made sense in 1993. At the time, consumers had no meaningful choice when it came to multichannel video programming distributors (MVPDs). Incumbent cable operators held a 95% share of video subscribers, and in the vast majority of the country, Americans had only one MVPD option. Thus, the FCC's presumption that there was no effective competition accurately reflected then-prevailing market conditions.

Over the past two decades, however, the industry has changed dramatically. New entrants have made major competitive splashes into the MVPD market—satellite providers and telephone companies are the most notable examples. At the end of 2013, satellite providers held 33.9% of the market, while telephone companies held 11.2%. A granular market analysis reveals that competing MVPDs currently have more than 15% penetration in each and every one of the 210 Designated Market Areas in the United States. Moreover, approximately 99.7% of homes in the United States have access to at least three competing video providers, and nearly 35% have access to at least four providers. These market developments have literally and figuratively changed the picture for millions of American consumers.

Given this profound transformation, we can't keep living in the past.² I therefore support our decision to adopt a presumption that there is effective competition among competing providers. This presumption far more accurately reflects the current state of the video marketplace than did its predecessor.

I hope in the months to come we will continue to modernize our media rules. Whether we are regulating MVPDs, broadcasters, or other media entities like newspapers, our rules should reflect the competitive and technological conditions of today, not those of twenty or forty years ago.

¹ See, e.g., Remarks of Commissioner Ajit Pai at the Media Institute Luncheon, "The Video Marketplace and the Internet Transformation," at 2 (Feb. 7, 2013), available at <http://go.usa.gov/3XVZF>; *2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, MB Docket Nos. 14-50, 09-182, 07-294, 04-256, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4587 (2014) (Dissenting Statement of Commissioner Ajit Pai), available at <http://go.usa.gov/3XyVh>.

² See Eric the Clown, *Seinfeld*, Season 5, Episode 20 (May 6, 1994) ("You're living in the past, man! You're hung up on some clown from the '60s, man!"), available at <https://www.youtube.com/watch?v=esJ17MZoVww>.