

**REMARKS OF FCC CHAIRMAN AJIT PAI
AT THE NEWSEUM**

“THE FUTURE OF INTERNET FREEDOM”

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For almost five years, I’ve had the privilege of serving on the Federal Communications Commission. During that time, I’ve had the chance to travel all across our country and speak with Americans from all walks of life. And when it comes to high-speed Internet access, or broadband, I’ve found that there is far more that unites us than divides us.

Whether I am in Red America, Purple America, or Blue America, whether I am above the Arctic Circle or in the bayous of Louisiana, people tell me that they want fast, affordable, and reliable Internet access. They say that they want the benefits that come from competition. And they tell me that they want to access the content and use the applications, services, and devices of their choice.

The question that we at the FCC must answer is what policies will give the American people what they want.

That question has been the subject of a fierce public debate. This afternoon, a new chapter of that debate will begin. But before looking to the future, I’d like to briefly review how we got to where we are today.

The Internet is the greatest free-market success story in history. And this is in large part due to a landmark decision made by President Clinton and a Republican Congress in the Telecommunications Act of 1996. In that legislation, they decided on a bipartisan basis that it was the policy of the United States “to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation.”

For almost two decades, the FCC respected that policy. It adopted a light-touch regulatory framework, one explicitly approved by the U.S. Supreme Court, which enabled the Internet to grow and evolve beyond almost anyone’s expectations. Under this framework, a free and open Internet flourished. Under this framework, America’s Internet economy produced the world’s most successful online companies: Google, Facebook, and Netflix, just to name a few. Under this framework, the private sector invested about \$1.5 trillion to build the networks that gave people high-speed access to the Internet. And under this framework, consumers benefited from unparalleled innovation.

But two years ago, the federal government’s approach suddenly changed. The FCC, on a party-line vote, decided to impose a set of heavy-handed regulations upon the Internet. It decided to slap an old regulatory framework called “Title II”—originally designed in the 1930s for the Ma Bell telephone monopoly—upon thousands of Internet service providers, big and small. It decided to put the federal government at the center of the Internet.

Why? Unfortunately, the answer has nothing to do with the law or the facts. Nothing about the Internet was broken in 2015. Nothing about the law had changed. And there wasn’t a rash of Internet service providers blocking customers from accessing the content, applications, or services of their choice.

No, it was all about politics. Days after a disappointing 2014 midterm election, and in order to energize a dispirited base, the White House released an extraordinary YouTube video instructing the FCC to implement Title II regulations. This was a transparent attempt to compromise the agency’s independence. And it worked.

Notwithstanding the revisionist history offered by some, the FCC was not moving towards Title II regulation before the White House announcement. No, it was dragged kicking and screaming onto that path.

And what was the problem that Title II was supposed to address? We were warned that without it, the Internet would suddenly devolve into a digital dystopia of fast lanes and slow lanes.

Strangely, the case for Title II was a fact-free zone. As Internet entrepreneur Mark Cuban said near the end of 2014, “If it ain’t broke, don’t fix it. [The D.C. Circuit’s 2014 decision] has created an opportunity for the FCC to introduce more rule-making. They shouldn’t. Things have worked well. There is no better platform in the world to start a new business than the Internet in the United States.”

Did these fast lanes and slow lanes exist? No. The truth of the matter is that we decided to abandon successful policies solely because of hypothetical harms and hysterical prophecies of doom. It’s almost as if the special interests pushing Title II weren’t trying to solve a real problem but instead looking for an excuse to achieve their longstanding goal of forcing the Internet under the federal government’s control. More on that later.

Two years ago, I warned that we were making a serious mistake. Most importantly, I said that Title II regulation would reduce investment in broadband infrastructure. It’s basic economics: The more heavily you regulate something, the less of it you’re likely to get.

Now, when you talk about less infrastructure investment, many people’s eyes glaze over. But it’s important to explain in plain terms what the consequences are. Reduced investment means fewer Americans will have high-speed Internet access. It means fewer American will have jobs. And it means less competition for consumers.

So what happened after the Commission adopted Title II? Sure enough, infrastructure investment declined. Among our nation’s 12 largest Internet service providers, domestic broadband capital expenditures decreased by 5.6% percent, or \$3.6 billion, between 2014 and 2016, the first two years of the Title II era. This decline is extremely unusual. It is the first time that such investment has declined outside of a recession in the Internet era.

And the impact hasn’t been limited to big ISPs. Smaller, competitive providers have also been hit. For example, one small Arkansas ISP called Aristotle told Congress last year: “Before the [*Title II Order*] was adopted, it was our intention to triple our customer base” and “cover a three-county area. However, we have pulled back on those plans, scaling back our deployment to three, smaller communities that abut our existing network.”

Other small providers followed suit. KWISP Internet, which serves 475 customers in rural northern Illinois, delayed its plans to upgrade its network and increase consumers’ speeds from 3 Mbps to 20 Mbps. Wisper ISP, a provider that serves 8,000 customers around St. Louis, Missouri, also cut back its investments, resulting in slower speeds.

And just this week, 22 small ISPs, each of which has about 1,000 broadband customers or fewer, told the FCC that the *Title II Order* had “affected [their] ability to obtain financing.” They said it had “slowed, if not halted, the development and deployment of innovative new offerings which would benefit our customers.” And they said Title II hung “like a black cloud” over their businesses.

Our nation’s smallest providers simply do not have the means or the margins to withstand the Title II regulatory onslaught. And remember—these are the kinds of small companies who are critical to meeting consumers’ hope for a more competitive broadband marketplace and closing the digital divide.

None of this should have come as a surprise. After all, we were warned back in 1998 that if the agency “suddenly subject[ed] some or all information service providers to telephone regulation, it seriously would chill the growth and development of advanced services.” And just who issued that

warning? Senators Ron Wyden and John Kerry, among others. And that's why we heard in 1999 that it "is not good for America" to "just pick up this whole morass of [telephone] regulation and dump it wholesale on the [Internet] pipe." Who said that? President Clinton's FCC Chairman, Bill Kennard. And in more recent years, we were told that the *Title II Order* itself was an "economics-free zone," and that much of the agency's economic analysis was "wrong, unsupported, or irrelevant." And who told us that? The FCC's own chief economist at the time!

According to one estimate by the nonprofit Free State Foundation, Title II has already cost our country \$5.1 billion in broadband capital investment. And given the multiplier effect from such spending, that means Title II has already cost our nation approximately 75,000 to 100,000 jobs.

Who has been most harmed by Title II? When businesses cut back on capital expenditures, the areas that provide the most marginal returns on investment are the first to go. And in the case of broadband, that means low-income rural and urban neighborhoods. As a result, Title II has kept countless consumers from getting better Internet access or getting access, period. It is widening the digital divide in our country and accentuating the practice of digital redlining—of fencing off lower-income neighborhoods on the map and saying, "It's not worth the time and money to deploy there."

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That's where we are today. Where do we go from here?

From a political standpoint, there is no question that the easiest path would be to do nothing: Leave Title II alone and move on to other issues. But I didn't pursue a career in public service in order to mark time or hold titles. I did it in order to help better the lives of my fellow Americans, like those I grew up with in rural Kansas.

So when we are saddled with FCC rules that will deny many Americans high-speed Internet access and jobs, doing nothing is nothing doing. Going forward, we cannot stick with regulations from the Great Depression meant to micromanage Ma Bell. Instead, we need rules that focus on growth and infrastructure investment, rules that expand high-speed Internet access everywhere and give Americans more online choice, faster speeds, and more innovation.

And we are going to deliver.

Earlier today, I shared with my fellow Commissioners a proposal to reverse the mistake of Title II and return to the light-touch regulatory framework that served our nation so well during the Clinton Administration, the Bush Administration, and the first six years of the Obama Administration.

The document that we will be voting on at the Commission's May meeting is called a Notice of Proposed Rulemaking. If it is adopted, the FCC will seek public input on this proposal. In other words, this will be the beginning of the discussion, not the end.

Now, some have called on the FCC to reverse Title II immediately, through what is known as a Declaratory Ruling. But I don't believe that is the right path forward. This decision should be made through an open and transparent process in which every American can share his or her views.

So what are the basic elements of this Notice of Proposed Rulemaking?

First, we are proposing to return the classification of broadband service from a Title II telecommunications service to a Title I information service—that is, light-touch regulation drawn from the Clinton Administration. As I mentioned earlier, this Title I classification was expressly upheld by the Supreme Court in 2005, and it's more consistent with the facts and the law.

Second, we are proposing to eliminate the so-called Internet conduct standard. This 2015 rule gives the FCC a roving mandate to micromanage the Internet. Immediately following the FCC's vote adopting the *Title II Order*, my predecessor was asked what the Internet conduct standard meant. His

answer was that “we don’t really know” what it means and that “we don’t know where things go next.” I’ve never heard a better definition of regulatory uncertainty.

Later, of course, we saw where things were headed, and it wasn’t good for consumers. The FCC used the Internet conduct standard to launch a wide-ranging investigation of free-data programs. Under these programs, wireless companies offer their customers the ability to stream music, video, and the like free from any data limits. They are very popular among consumers, particularly lower-income Americans. But no—the prior FCC had met the enemy, and it was consumers getting something for free from their wireless providers. Following the presidential election, we terminated this investigation before the FCC was able to take any formal action. But we shouldn’t leave the Internet conduct standard on the books for a future Commission to make mischief.

And third, we are seeking comment on how we should approach the so-called bright-line rules adopted in 2015.

But you won’t just have to take my word about what is in the Notice of Proposed Rulemaking. I will be publicly releasing the entire text of the document tomorrow afternoon. This too will be completely unlike what happened in 2015. Two years ago, the FCC hid the *Title II Order* from the American people until after it had been adopted. Only a favored few were given special access to it and were able to make major changes to it. The FCC had to pass the 313-page *Order* before the public was allowed to see what was in it. This time will be different. You may agree or disagree with the proposal, but you’ll be able to see exactly what it is.

Now that I’ve outlined the process and substance surrounding the proposal, let’s address the most critical issue: What are the benefits? Why is this proposal good for the American people?

First, it will bring high-speed Internet access to more Americans. Without the overhang of heavy-handed regulation, companies will spend more building next-generation networks. As those networks expand, many more Americans, especially low-income rural and urban Americans, will get high-speed Internet access for the first time. And more Americans generally will benefit from faster and better broadband.

Second, it will create jobs. More Americans will go to work building these networks. These are good-paying jobs, laying fiber, digging trenches, and connecting equipment to utility poles. And established businesses and startup entrepreneurs alike will take advantage of the networks that they build to create even more jobs.

Third, it will boost competition. Title II was designed for a monopoly. And a regulatory framework designed for a monopoly will tend to move the marketplace towards monopoly. It should therefore come as no surprise that we have seen greater consolidation during the Title II era. Heavy-handed regulations are especially tough on new entrants and small businesses that don’t have the armies of lawyers and compliance officers that large, well-established companies do. So if we want to encourage smaller competitors to enter into the broadband marketplace or expand, we must end Title II.

Fourth, this proposal is the best path toward protecting Americans’ online privacy. Privacy is a topic that has received a lot of attention lately. I understand that many disagreed with Congress’ decision to stop the FCC’s flawed privacy rules from going into effect later this year. But wherever you stand, one thing is indisputable: Congress was maintaining the status quo that the FCC put in place when it imposed Title II. That FCC decision actually stripped the Federal Trade Commission of its authority to regulate broadband providers’ privacy and data security practices. That’s because the FTC cannot regulate common carriers—which the prior FCC suddenly deemed broadband providers to be. This decision was a mistake.

Repealing Title II will simply restore the FTC’s authority to police broadband providers’ privacy practices. That means the nation’s most expert and experienced privacy regulator will once again be a

cop on the beat protecting Americans' online privacy. In short, we will return to the tried-and-true approach that protected our digital privacy effectively before 2015.

Now in any debate, there are at least two sides. So I'd like to briefly address the main argument that you will hear from Title II supporters. Throughout the discussion that is to come, you will hear from the other side that Title II regulation is the only way to preserve a free and open Internet. This is a lie. They will repeat it over and over again, but it's just not true. And you don't have to be a regulator or a lawyer to figure that out. You just need to have a memory. For decades before 2015, *we had a free and open Internet*. Indeed, the free and open Internet developed and flourished under light-touch regulation. We were not living in some digital dystopia before the partisan imposition of a massive plan hatched in Washington saved all of us.

The next thing you'll hear is that Title II is necessary to protect free speech. That's right: some will argue that government control is the key to the ability to speak your mind on the Internet. Most Americans should recognize this absurdity for what it is. For government regulation is no friend to free speech, but its enemy. After all, the First Amendment doesn't give the government power to regulate. It denies the government that power. And anyone who thinks otherwise should remember the wise words of President Gerald Ford: "A government big enough to give you everything you want is a government big enough to take from you everything you have."

And it's no different when it comes to the Internet. Consider, for example, the leading special interest in favor of Title II: a spectacularly misnamed Beltway lobbying group called Free Press. Its co-founder and current board member makes no effort to hide the group's true agenda. While he says "we're not at th[e] point yet" where we can "completely eliminate the telephone and cable companies," he admits that "the ultimate goal is to get rid of the media capitalists in the phone and cable companies and to divest them from control." And who would assume control of the Internet? The government, of course. The overall goal is to "remove brick by brick the capitalist system itself, rebuilding the entire society on socialist principles."

And what would the government do once it is in control? Certainly not protect free speech as we know it here in the United States. For example, he has said that "[w]e need to do whatever we can to limit capitalist propaganda, regulate it, minimize it, and perhaps even eliminate it." And this "Free Press" founder takes his inspiration from Venezuela. No, really! Back in 2007, he said that "aggressive unqualified political dissent is alive and well in the Venezuelan mainstream media, in a manner few other democratic nations have ever known, including our own." And he and another co-founder of this special interest argued during the Obama Administration that "[o]nly government can implement policies and subsidies to provide an institutional framework for quality journalism."

To be sure, it is tempting to dismiss these statements as isolated rants. But unfortunately, it is all too typical of a larger movement in our country today that is fundamentally hostile to free speech. We see it in efforts to banish those who express unpopular views online. We see it when speakers are barred from college campuses, violently of late. We see it when university bureaucrats use Orwellian phrases like wanting "to continue empowering a culture of controversy prevention." And we see it when members of the Federal Election Commission seek to restrict political speech and regulate online platforms like the Drudge Report.

And where do the people who are driving this closing of the American mind stand on greater government regulation of the Internet? They don't just favor it; they strongly demand it. They raise money off of it. And we are somehow supposed to believe that their true motive is to protect free speech on the Internet? Please.

So the choice in front of us could not be clearer.

Do we want the government to control the Internet? Or do we want to embrace the light-touch approach established by President Clinton and a Republican Congress in 1996 and repeatedly reaffirmed by Democratic and Republican FCCs alike?

Do we want to discourage the private sector from investing more in building and expanding networks? Or do we want to encourage more investment in online infrastructure and enable more Americans to have digital opportunity?

Do we want to have fewer Americans employed? Or do we want to put more Americans to work building next-generation networks?

Do we want rules that encourage broadband monopolies? Or do we want rules that promote competition and more options for consumers?

And do we want Americans' broadband privacy to be protected by an uncertain legal regime? Or do we want to empower the FTC to protect Americans' privacy consistently and comprehensively?

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When the FCC rammed through the *Title II Order* two years ago, I expressed hope that we would look back at that vote "as an aberration, a temporary deviation from the bipartisan path that ha[d] served us so well." And I voiced my confidence that the *Title II Order's* days were already numbered.

At the FCC's next meeting on May 18, we will take a significant step towards making that prediction a reality. And later this year, I am confident that we will finish the job. Make no mistake about it: this is a fight that we intend to wage and it is a fight that we are going to win.