

**STATEMENT OF FCC COMMISSIONER AJIT PAI
BEFORE THE SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL
GOVERNMENT OF THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS**

“BUDGET HEARING—FEDERAL COMMUNICATIONS COMMISSION”

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Chairman Crenshaw, Ranking Member Serrano, and Members of the Subcommittee, it is a privilege to appear before you today. Thank you for inviting me to testify on the Federal Communications Commission’s budget request for Fiscal Year 2016.

Prior to becoming a Commissioner, I had the privilege of serving on the agency’s staff. Every member of my Office has also previously been a Commission staffer. And I have friends who currently work in the Commission’s Bureaus and Offices. There will probably be disagreement over some of the issues that we will discuss today. But I hope that we will be able to agree on one thing: The FCC’s staff is filled with talented individuals who are dedicated to serving the American people.

Although all Commissioners are asked to vote on a budget proposed by the Chairman that is delivered to the Office of Management and Budget, I have never been asked to participate in the development of the agency’s budget request. And after reviewing this proposal, I am unable to support it. To be clear, this Subcommittee should give the FCC the resources necessary to carry out its core responsibilities. We tackle a wide variety of tasks assigned by Congress, from freeing up more spectrum for mobile broadband to protecting public safety.

But in its request, the FCC asks for a 17% increase in its overall budget authority. In all, the Commission is requesting a baseline budget of \$413 million. That is dramatically higher than it has been at watershed moments in the agency’s history. For instance, the agency’s baseline budget, after adjusting for inflation, was \$277 million (or 33% less than this budget request) when it faced the monumental task of implementing the numerous requirements in the Telecommunications Act of 1996.

At a time when domestic discretionary spending is generally scheduled to remain flat under the current budget caps, I do not believe that this request is fiscally responsible. And at a time when so many Americans in this country are struggling to make ends meet in this stagnant economy, federal agencies should be looking for ways to tighten their belts.

For these reasons, I would like to offer three specific suggestions as the Subcommittee crafts the FCC’s Fiscal Year 2016 budget.

1. Do Not Transfer \$25 Million from the Universal Service Fund

I do not favor transferring \$25 million from the Universal Service Fund (USF) to the Commission to fund the FCC’s work on universal service issues. Put simply, this is a stealth tax increase on the American people. The money that goes into the USF comes out of the pockets of consumers when they pay their telephone bills each month. And this proposal would require those consumers to pay an additional \$25 million into the USF. That amount, moreover, would be in addition to the \$1.5 billion per year tax increase that the Commission adopted last December to fund additional E-Rate spending, which will go into effect later this year. Under this Administration, the universal service contribution rate has already jumped over 83%, from 9.5% to 17.4%. Congress should not take action to push it even higher.

Furthermore, this \$25 million transfer from the USF masks the amount of the spending increase contained in this budget request. At first glance, it would appear that the Commission is seeking to boost its base budget from \$339.8 million to \$388 million. The new base budget, however, is actually \$413 million. That is because the additional \$25 million from the Universal Service Fund would be used to pay for activities that last year were funded out of our \$339.8 million general appropriation.

2. Target Budget Authority for Moving or Reorganizing FCC Headquarters

I do not believe that funds for moving the FCC's headquarters or reorganizing how we use our existing facilities (known internally as "restacking") should be included within the FCC's general budget authority. Instead, I believe that Congress should provide us with specific budget authority for this purpose.

With our lease expiring in a couple of years, the FCC will need to spend money either to move our headquarters to a new location or to reorganize our existing facility so that we use substantially less space. I am not in a position to vouch for the specific amount requested for moving or reorganizing contained in the FCC's budget request. But I do agree that over the long term, either moving or reorganizing is likely to produce meaningful cost savings.

The funds that we spend on that effort will be a substantial, one-time expense. I therefore believe that it makes sense for Congress to provide us with specific budget authority for this purpose. If these funds are included within our general appropriation amount, it will give many a misleading picture of the Commission's base budget and make it harder to reduce that budget when there is no longer the need to spend money on moving expenses. Moreover, the money Congress allocates for moving expenses must be spent for that purpose and that purpose only. It should not be used to subsidize other agency activities.

3. Do Not Fund Implementation and Enforcement of Internet Regulation

Congress should forbid the Commission from using any appropriated funds to implement or enforce the plan the FCC just adopted to regulate the Internet. Not only is this plan bad policy; absent outside intervention, the Commission will expend substantial resources implementing and enforcing regulations that are wasteful, unnecessary, and affirmatively detrimental to the American public.

Heavy-handed regulation does not come cheap. The FCC has already wasted millions of dollars developing these regulations, and we are on course to waste millions more each year on this unprecedented governmental power-grab. The implementation and enforcement of these new rules will not only impose significant burdens on the nation's 4,462 Internet service providers and harms to American consumers (more to come on the latter); they will also consume substantial FCC resources. Three specific examples from the FCC's *Order* illustrate this point. They involve the so-called "Internet Conduct" standard; the Enforcement Bureau advisory opinion process; and the appointment of an "Ombudsperson."

"Internet Conduct" Standard.—The *Order* creates a never-before-seen Internet Conduct standard, which empowers the Commission to police a provider's offering of broadband Internet access service specifically insofar as it might "unreasonably interfere with or unreasonably disadvantage" end users or edge providers. The *Order* does not clarify what that standard entails. FCC leadership has admitted that "we don't really know" what it means and that "we don't know where things go next." We cannot expect providers or consumers to understand a standard that we do not understand ourselves, and I fear that the Commission will be inundated by complaints under this expansive and fuzzy rule. Indeed, the *Order* does not just allow parties to file formal and informal complaints; it also explicitly authorizes the Enforcement Bureau to initiate investigations on its own. Enforcement of this rule will eat up substantial resources, both wasting money and diverting funds away from the Commission's core responsibilities.

Advisory Opinions.—The *Order* establishes a system by which entities may seek advisory opinions from the FCC's Enforcement Bureau. Especially given the breadth and vagueness of many of the new regulations, I expect that many will seek clarification and counsel from the Bureau. How does the Bureau expect to respond to this wave of requests? By drafting advisory opinions, which will necessarily entail careful consideration of individualized facts and circumstances. This will inevitably be a resource-intensive effort. The Bureau must process each request, review the facts behind each filing, formulate a decision, and then draft an opinion which will be subject to layers of review and editing.

Given that the Bureau does not have specialized expertise in this area, it will likely rely heavily upon other Bureaus—especially those that helped craft the *Order*. (It bears noting that these decisions will *not* be made by the Commissioners but by the Enforcement Bureau, at the Chairman’s direction; the *Order* leaves unclear whether the Commissioners will have any input during the deliberative process or even access to the advisory opinions after the fact.)

This is a costly endeavor for the agency, one that will end the permissionless innovation that has spurred the Internet’s explosive growth up until today. Internet service providers are always innovating—whether it’s improving their networks or offering novel service plans. A provider seeking to bring a new advancement online now faces a choice. If it chooses not to run the gauntlet of the new advisory opinion process, it may be subject to citations, monetary forfeitures and refunds, cease and desist orders, revocations, and referrals for criminal prosecution if the Enforcement Bureau decides it doesn’t like the practice. If, on the other hand, it seeks the Enforcement Bureau’s permission first, it’s not going to be in a much better spot. The Bureau might veto the proposed business practice. Even if it blesses the offering, the *Order* makes clear that the Commission could nonetheless ultimately penalize the provider—even if the provider deployed its service consistent with the Bureau’s guidance. That’s a lose-lose proposition for companies and consumers.

Ombudsperson.—The *Order* also provides for the appointment of an “Ombudsperson.” Among other things, the *Order* states that the Ombudsperson could analyze complaints and, more broadly, market conditions and summarize them in reports to the Commission. The Ombudsperson could also investigate matters and refer them to the Enforcement Bureau for potential further investigation along with assisting outside parties who wish to file complaints. The Ombudsperson obviously must be compensated. And given his or her wide range of responsibilities, I would not be surprised if the Ombudsperson ends up hiring additional staff to help with his or her duties, thus costing even more money.

All of this additional spending to regulate the Internet is not only wasteful, it is counterproductive. The Commission’s decision last month to apply Title II to the Internet overturned a 20-year bipartisan consensus in favor of a free and open Internet. It was a consensus that a Republican Congress and a Democratic President enshrined in the Telecommunications Act of 1996 with the principle that the Internet should be a “vibrant and competitive free market . . . unfettered by Federal or State regulation.” It was a consensus that every FCC Chairman—Republican and Democrat—had dutifully implemented for almost twenty years. And it was a consensus that led to a thriving, competitive Internet economy and more than a trillion dollars of investment in the broadband Internet marketplace—investments that have given Americans better access to faster Internet than our European allies, and mobile broadband speeds that are the envy of the world.

The truth is this: The Internet is the greatest example of free-market innovation in history. The Internet empowers Americans to speak, to post, to rally, to learn, to listen, to watch, and to connect in ways our forefathers never could have imagined. The Internet is a powerful force for freedom, at home and abroad. America’s Internet economy is the envy of the world.

In short, the Internet is not broken. And it didn’t need the FCC to fix it.

But last month, the FCC decided to try to fix it anyway. It reclassified broadband Internet access service as a Title II telecommunications service. It seized unilateral authority to regulate Internet conduct, to direct where Internet service providers put their investments, and to determine what service plans will be available to the American public. This was a radical departure from the bipartisan, market-oriented policies that have served us so well for the last two decades.

With the Title II decision, the FCC voted to give itself the power to micromanage virtually every aspect of how the Internet works. The FCC can now regulate broadband Internet rates and outlaw pro-consumer service plans. As the Electronic Frontier Foundation (EFF) wrote us, the FCC has given itself “an awful lot of discretion, potentially giving an unfair advantage to parties with insider influence,” which

is “hardly the narrow, light-touch approach we need to protect the open Internet.” Or as EFF’s cofounder wrote after the decision, “Title II is for setting up monopolies, not tearing them apart. We need competition, not regulation. We need engineers not lawyers.”

And that’s precisely the problem. When I talk to people outside the Beltway, what they want isn’t more regulation. It’s more broadband deployment and more competition. But this “solution” takes us in precisely the opposite direction. It will result in less competition and a slower lane for all. Monopoly rules from a monopoly era will move us toward a slow-moving monopoly.

For regulating the Internet under Title II is sure to reduce competition and drive smaller competitors out of the business. That’s what our nation’s scrappiest Internet service providers told us. That’s what we heard from 142 wireless ISPs who’ve deployed broadband service using unlicensed spectrum, without a dime from the taxpayer. That’s what we heard from 24 of the nation’s smallest ISPs, each with fewer than 1,000 residential customers. That’s what we heard from 43 municipal broadband providers—including Cedar Falls Utilities, which President Obama promoted during a personal visit in January. And that’s what we heard from the National Black Chamber of Commerce, the National Gay & Lesbian Chamber of Commerce, the U.S. Hispanic Chamber of Commerce, and the U.S. Pan Asian American Chamber of Commerce. The small upstarts that give millions of Americans a choice for broadband—often their *only* choice—will be squeezed, and perhaps squashed, by these heavy-handed regulations. Indeed, neither small nor big providers will bring Americans online if it’s economically irrational for them to do so. As a result, Title II’s utility-style regulation will simply broaden the digital divide.

The FCC’s Title II decision is a raw deal for consumers in other ways, too. For one thing, their broadband bills will go up. The plan explicitly opens the door to billions of dollars in new taxes on broadband. One estimate puts the total at \$11 billion a year—with \$4 billion a year on top of that if the Internet Tax Freedom Act isn’t extended (or better yet, made permanent).

For another thing, their broadband speeds will be slower. The higher costs and regulatory uncertainty of utility-style regulation have stymied Europe’s broadband deployment, and America will follow suit. Just look at the data. Today, 82% of Americans, and 48% of rural Americans, have access to 25 Mbps broadband speeds. In Europe, those figures are only 54% and 12% respectively. In the U.S., average mobile broadband speeds are 30% faster than they are in Western Europe. And broadband providers in the U.S. are investing more than twice as much per person and per household as their European counterparts. Their model has not succeeded, as even leading European regulators and legislators concede. We shouldn’t have made the same mistake.

In sum, at a time when the FCC is struggling to fulfill many of its core responsibilities under the Communications Act, it is irresponsible for the Commission to spend millions of dollars to regulate the Internet. This Subcommittee is well aware that budgets are finite. Funds spent on regulating the Internet are funds that can’t be spent on critical priorities. So instead of trying to fix something that isn’t broken, let’s use our limited budget to fix something that *is* broken, such as the Commission’s information technology systems or its widely panned, user-unfriendly website.

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Chairman Crenshaw, Ranking Member Serrano, and Members of the Subcommittee, thank you once again for holding this hearing and allowing me the opportunity to speak. I look forward to answering your questions, listening to your views, and working with you and your staffs in the days ahead.