

**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”

MARCH 15, 2016

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 2017.

Last year, I offered three specific suggestions to this Subcommittee regarding the Commission’s budget request for Fiscal Year 2016. I am pleased that Congress and the Subcommittee took these recommendations into account.

First, Congress provided specific budget authority for moving the FCC’s headquarters or reorganizing how we use our existing facilities (known internally as “restacking”). Moving or reorganizing is likely to produce meaningful cost savings over the long term, but this will require a substantial, one-time expense. I therefore thought that it made sense for Congress to provide us with specific budget authority for that purpose. If these funds had been included within our general appropriation amount, as the Commission had requested, it would have given many a misleading picture of the Commission’s base budget and made it harder to reduce that budget when there was no longer the need to spend money on moving expenses.

I therefore applaud the Commission for requesting specific budget authority for FY 2017 instead of general budget authority for the second (and hopefully final) tranche of moving or restacking funds. In my view, this is a fiscally responsible proposal, and I urge this Subcommittee to approve it.

Second, Congress and the Subcommittee rejected the Commission’s request to transfer \$25 million from the Universal Service Fund (USF) to the Commission. I opposed the transfer request, among other reasons, because it would have imposed a stealth tax increase on the American people.

I am disappointed that the Commission is yet again seeking to siphon money from the USF to fund the FCC’s work, and I urge this Subcommittee to again reject this proposal. To be sure, the Commission this year is requesting a smaller transfer of \$9.5 million. But the reasons for opposing *any* diversion of USF funds to the Commission are just as compelling now as they were one year ago. I agree with Chairman Greg Walden of the Subcommittee on Communications and Technology of the House Energy and Commerce Committee that transferring USF funds to the FCC is a “disturbing proposal.” And Chairman John Thune of the Senate Commerce Committee has said that it would set “a dangerous precedent.” The Commission’s authorizers are right: USF funds should be spent across our country closing the digital divide, not at the FCC’s headquarters here in Washington, DC.

Third, the Subcommittee forbade the Commission from using any appropriated funds to implement or enforce the FCC’s new Internet regulations. Specifically, the Subcommittee prohibited the FCC from implementing or enforcing these Internet regulations until the court challenge to them had been resolved. And the Subcommittee specifically prohibited the FCC from regulating broadband rates. I was disappointed that neither of these provisions made it into the appropriations bill that was ultimately passed by Congress.

The Subcommittee should take another bite at this apple. There is no legitimate reason to oppose blocking the FCC from engaging in broadband rate regulation. Supporters of the FCC’s Internet regulations have repeatedly disclaimed any interest in regulating broadband rates. President Obama himself told the FCC to “forbear[] from rate regulation.” And Chairman Wheeler told your counterparts

in the Senate last year: “If Congress was to come along and say that’s off the table for the next Commission, too, I have no difficulty with it.”

It is therefore perplexing that the FCC and the Administration lobbied so hard last year to kill this Subcommittee’s attempt to take broadband rate regulation off the table. Indeed, my understanding from multiple sources is that the FCC and the Administration turned down a deal that would have provided millions of dollars in additional funding to the Commission in exchange for a provision prohibiting broadband rate regulation.

All of this raises serious concerns about the Commission’s real intentions. Because when it comes to the topic of Internet regulation, we know from past experience that the previously unthinkable can become quite real the moment political pressure is applied. A less-intrusive regulatory approach can give way to heavy-handed, utility-style regulation. A wireless service plan like T-Mobile’s Binge On can be “highly innovative and highly competitive” one month and be the subject of an FCC investigation the next. Because the past is proving too often to be prologue, Congress should not trust the Commission’s claim that it won’t regulate broadband rates. The only way to ensure that this does not happen is for Congress to take a Reagan-inspired approach: “trust, but codify.”

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As you begin drafting our appropriations bill for Fiscal Year 2017, I want to draw the Subcommittee’s attention to three additional concerns: the looming broadband tax, the proposed increase in auction spending, and the FCC’s oversized media shop.

One, I urge this Subcommittee to prevent the FCC from using any appropriated funds to impose a broadband tax. Without congressional action, this tax may hit consumers in FY 2017—hard.

Some brief background. Every American with a phone bill pays a “universal service fee”—that is, a tax on voice service. That tax is collected by every telecommunications carrier, and the money ultimately is spent by the government on things like the so-called E-Rate and Lifeline programs. By reclassifying Internet service providers as “telecommunications carriers” last year, the FCC explicitly opened the door to the imposition of a universal service tax on Internet access.

At the time, the FCC observed that it had already asked the Federal-State Joint Board on Universal Service to report by April 2015 whether and how the Commission should impose a broadband tax, and it noted that a “short extension” might be needed in light of reclassification. One long year later, we still have no clarity. To be sure, we do know that the federal government and others are eager to dip into consumers’ wallets. For the FCC has already decided to boost E-Rate spending by \$1.5 billion per year (conveniently, right after the November 2014 elections). And it will soon dramatically increase the size of the Lifeline program by expanding it to subsidize broadband (the Chairman’s proposal forecasts spending more taxpayer funds on Lifeline than has ever been spent before).

Unless Congress acts, the money to fund all of this spending will come from a broadband tax. The only question is when. Thus far, all we’ve been told is that no decision on broadband taxes will be made until after the D.C. Circuit decides whether the FCC’s regulations are legal. But given that the FCC hasn’t refused to generally delay enforcing utility-style regulation until after the legal challenge is resolved (and strongly opposed this Subcommittee’s effort to bring about that result last year), one might reasonably suspect that the decision is conveniently being put off until after the November elections. After all, making people pay more to access the Internet isn’t going to be popular.

Congress should not let the FCC impose a broadband tax in the stealthy darkness of the next Washington winter. Earlier this year, on a bipartisan basis, Congress overwhelmingly passed the Permanent Internet Tax Freedom Act, which made permanent the ban on state and local taxation of Internet access. Having thus protected consumers’ pockets, it would be quite unfortunate if Congress allowed the FCC to pick them with a nationwide broadband tax.

Two, I am skeptical of the Commission's proposal to raise spending on the spectrum auctions program to \$124 million. The \$117 million being spent this year is a record, and it's easy to understand why the auctions program is funded at that level. After all, this fiscal year we are holding the world's first incentive auction for spectrum, an enormously complicated endeavor requiring plenty of resources. And included in that budget was \$7.2 million targeted for the Commission's move.

Fiscal Year 2017 should be quite different. The incentive auction will likely be over, and there is no comparable spectrum auction on the horizon for that fiscal year. Even the FY 2017 request for the Commission's move is less—\$4.4 million lower, to be precise. And yet, rather than a substantial decrease, the request for auction spending in FY 2017 is \$7 million *higher*. It's difficult to understand why.

Let's look, for example, at one of the specific spending increases proposed for the auctions program. The Commission is requesting \$3.58 million and three additional FTEs to implement the Spectrum Pipeline Act of 2015. Why can't this work be handled by current FCC employees and the existing budget? Many FCC staffers have been working on issues related to the forward side of the incentive auction. During the next fiscal year, when the forward auction work will be completed, I'm confident that we could easily reassign three of them to help implement the Spectrum Pipeline Act of 2015.

I would also urge this Subcommittee to examine closely whether reductions can be made from last year's spending. Are there expenses that have been or will be incurred during this fiscal year because of the incentive auction that will not be repeated during Fiscal Year 2017? Can we devote fewer staff resources to the auction program if no major auction will be held? And if the answer to one or both of these questions is yes, shouldn't the amount of funds provided by Congress for the spectrum auctions program be adjusted accordingly?

Three, I also recommend that this Subcommittee examine carefully the budget request for the FCC's Office of Media Relations. For Fiscal Year 2017, the FCC requests 15 FTEs for the Office of Media Relations. By comparison, in its budget request for the next fiscal year, the Federal Trade Commission only requests 10 FTE for its Office of Public Affairs, which handles that agency's relations with the media. Why should the FCC's media relations office be 50% larger than the FTC's? The FTC's mission is just as critical and arguably broader, considering it applies consumer protection and competition rules to virtually all non-common carriers. Given that this Subcommittee has jurisdiction over both the FCC and FTC, it is well-positioned to look into this matter.

From my perspective, I have witnessed a disturbing mission creep within the FCC over the last couple of years when it comes to media relations. Specifically, Commission staffers are being directed to conduct what are most appropriately described as propaganda efforts. Non-public information is often shared with the press while my office is left in the dark. Resources are poured into controlling press cycles, creating pithy Twitter hashtags, and garnering positive headlines for the Chairman's Office rather than working inside the building to reach consensus. In some cases, the agency's media blitz appears designed to exert pressure on other Commissioners, both Democrats and Republicans, to vote for the Chairman's proposals. This, in my view, is inappropriate. Career staffers should not be conducting media campaigns designed to influence the votes of FCC Commissioners. Indeed, until Commissioners vote on a proposal by the Chairman, the Commission as a whole has no position on that proposal. Yet the Chairman's Office's hope—usually required—is for the press to run headlines “The FCC is about to [insert policy prescription du jour].”

What makes the matter worse is that these media campaigns are often conducted on background so Commissioners and the public have no idea who is waging them. Indeed, the trade publication *Communications Daily* reported last December that “the FCC stands out for its extensive use of events where officials speak on behalf of the agency to groups of reporters but the officials can't be identified by name or quoted verbatim.” The publication further reported that “[m]any PR experts said they couldn't

recall any agency other than the FCC that holds news events that aren't on the record so routinely on matters unrelated to national security.”

One example of what has gone wrong occurred just last week when the Chairman circulated his proposal to expand the Lifeline program. My office did not learn about this proposal from the Chairman's Office. We didn't learn about it from the relevant FCC Bureau or anyone else at the Commission. Instead, we first found out about it from an article in *The New York Times*. That's right. The Chairman's proposal was shared with *The New York Times* before it was shared with FCC Commissioners—or at least with the minority Commissioners. Moreover, following publication of *The New York Times* article, FCC officials held a call with a large group of reporters to promote the Lifeline proposal *before* giving Commissioners a copy of the plan. Conduct like this does not reflect respect for the role played by other Commissioners at the FCC and should stop immediately.

If the FCC's Office of Media Relations has the time and resources to engage in activities that are more appropriate for a partisan political campaign than the rulemaking process conducted by a multi-member administrative agency, then I suspect that it is too large and its budget should be cut substantially.

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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.