

**REMARKS OF MATTHEW BERRY,
CHIEF OF STAFF TO FCC COMMISSIONER AJIT PAI,
AT THE MICHIGAN ASSOCIATION OF BROADCASTERS
ADVOCACY CONFERENCE**

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While I've travelled to many places during my time at the FCC, this trip is special. I grew up in the Wolverine State, and although I return regularly to see family, this is my first visit to Michigan on official business. And it couldn't come at a better time. It's great to leave Washington, DC during the dog days of August and be with you in Michigan's northern Lower Peninsula.

I was raised in Oakland County and most summers, my family would pack up the car and come "Up North" for a week. Whether we were staying in Glen Arbor, Kalkaska, or Harbor Springs, we always had a great time. I still have fond recollections of climbing the Sleeping Bear Dunes along the shores of Lake Michigan, playing miniature golf outside of Traverse City, and eating fresh perch in area restaurants. Sometimes, people back in Washington react skeptically when I tell them that Northern Michigan is one of our nation's best summer vacation spots. But up here, the State of Michigan's motto rings especially true: "If you seek a pleasant peninsula, look about you."

It's also a privilege to have the opportunity to speak with Michigan broadcasters. Before coming here, I had the chance to peruse the list of those who are in the Michigan Broadcasting Hall of Fame. It brought back a flood of memories. I remember listening as a child to Ernie Harwell calling Tigers games during the team's 1984 championship season, and George Blaha announcing Pistons games during the "Bad Boys" era. I recall watching Mort Crim, Bill Bonds, Diana Lewis, and Robbie Timmons deliver the news. I remember Sonny Elliott and Jerry Hodak giving weather forecasts. I remember listening to radio legends J.P. McCarthy and Dick Purtan. And I have a distinct memory of being in my childhood bedroom listening to one of tonight's inductees, Frank Beckmann, hosting a sports-talk show called Sportswrap.

Why, you might ask, do these memories matter? To begin with, they mean that my parents probably let me watch too much television and listen to too much radio when I was growing up. But more seriously, they speak to the strong and enduring connection between broadcasters and their audience. Each night, for example, my parents watch the same 11:00 newscast in their suburban Detroit home. It doesn't matter what else is going on. Whenever I'm visiting and the clock strikes 11, it's time to watch the local news. And don't even think about suggesting that they watch a different local newscast! That would be like shifting their hockey allegiance from the Red Wings to the Maple Leafs.

Indeed, as broadcasters, you are connected to your communities in a way that few others are. People turn to you when tragedy strikes. They turn to you to celebrate a local sports team's championship. And for many, a favorite television or radio personality is like an old friend to whom they can turn for comfort when life gets tough.

In our nation's capital, where I work, the phrase "public interest" is thrown around a lot. But to broadcasters, serving the public interest isn't empty rhetoric or a self-aggrandizing political slogan. It is what you do, in ways large and small, to make your communities better places to live. From giving people the information they need to stay safe during a weather emergency, to raising money for the local food bank or helping to find a missing child, you play a vital role in your local communities each and every day.

That, among other reasons, is why the FCC shouldn't be your enemy. Our mission shouldn't be to saddle you with onerous and outdated regulatory burdens. Our goal shouldn't be to interfere with new

business arrangements that allow you to compete in an increasingly crowded media marketplace. And our role shouldn't be to lecture you on how you should change your business model.

But in speaking with broadcasters from around the country, I've heard the same things over and over again. Many feel that the FCC doesn't care about the future of the broadcasting industry. Others believe that the Commission is actively trying to undermine that future. And still others, when speaking about the FCC, use language that, if said on the air between 6:00 AM and 10:00 PM, could trigger an indecency fine.

I understand that frustration. These days, the FCC is taking an approach to broadcasting that is rather curious. In areas where broadcasters support loosening regulatory requirements, the Commission opposes doing so. But in areas where broadcasters oppose relaxing regulation, the Commission supports it. Taken as a whole, the FCC's actions don't appear to reflect a consistent regulatory philosophy.

In Commissioner Pai's office, however, we have a different approach. We believe that the FCC should seek to create a regulatory environment that allows the broadcasting industry to thrive and enables you to do what you do best. That means we should modernize our rules to update or eliminate regulations that no longer make sense. It means we should promote regulatory parity between broadcasting and other industries. And it means that issues of concern to broadcasters shouldn't be ignored.

To be sure, that doesn't mean that our office and broadcasters always will be in harmony. During his tenure at the FCC, Commissioner Pai has cast some votes with which broadcasters have disagreed. Our office believes that the invisible hand of the free market is generally a better guarantor of consumer welfare than the clumsy fist of government. On the whole, our preference is for less regulation. That means we will agree with you on a lot of issues and disagree with you on some others. And where we agree, Commissioner Pai has demonstrated that he is willing to take a leadership role, pushing for action on matters you care about.

For example, in 2012, Commissioner Pai called for the FCC to launch an AM Radio Revitalization Initiative. Why? It had been over two decades since the FCC had last comprehensively reviewed its AM radio rules, and the band's difficulties had substantially increased since the early 1990s. Every day, for example, it seems harder to get a good AM signal, and we see the impact in the marketplace. AM listenership is down, and advertising revenue along with it. Today, the AM band accounts for less than twenty percent of terrestrial radio listening in the United States. For instance, in each of Michigan's two largest markets, Detroit and Grand Rapids, only one of the ten stations with the highest ratings last month can be found on the AM dial.

But AM radio is worth saving. AM broadcasters provide critical news and information to their listeners. The only 24-hour news station in the Detroit market, for instance, is an AM station. AM radio also promotes localism. If you want to listen to the local high-school football game or church service, the place to turn is generally the AM dial. And it promotes diversity in ways that other forms of broadcast media do not. Most of the nation's minority-owned radio stations are on the AM band, and a wide variety of foreign-language programming can be found there as well. And if anyone doubts the importance of AM radio to Michiganders, consider this. On fall Saturday afternoons, most Michigan radio stations that carry University of Michigan Wolverine football games are located on the AM dial. And I would add, with Jim Harbaugh at the helm, I have little doubt that those listening this season will have more to cheer about than they did last fall.

Thankfully, Commissioner Pai's call for AM revitalization struck a chord across the country. It even made it to the front page of *The New York Times*. And working together on a bipartisan basis under the leadership of then-Acting Chairwoman Clyburn, the FCC launched an AM Radio Revitalization Initiative in 2013.

Our strategy was twofold. First, we proposed implementing reforms to give short-term relief to AM broadcasters. We proposed a series of regulatory changes, such as eliminating the ratchet rule, to

help AM broadcasters address technical challenges and make it easier for AM stations to improve their facilities. And we also proposed opening a window for AM broadcasters to obtain FM translators. We know from experience that FM translators can deliver immediate and tangible help to AM broadcasters. Just ask WYGR in the Grand Rapids area. An FM translator allowed WYGR, a daytime-only AM station, to reach its predominantly African-American audience 24 hours a day. Or ask WKLA in Ludington. Thanks to an FM translator, WKLA can be heard throughout a much wider area than before. For example, its broadcasts of Manistee High School Chippewas football and basketball games can now actually be heard in the City of Manistee.

To be sure, translators aren't a panacea. But they can serve as a bridge to the future as we work on long-term fixes for the AM band. Unfortunately, we've heard from many AM broadcasters across the country who want an FM translator but can't get one. That's why we need to make it easier for AM broadcasters to obtain FM translators.

Second, we asked for ideas on solving the band's long-term challenges. For example, does all-digital transmission represent the future of AM radio? NAB has been conducting all-digital AM tests, and we have been following the results closely. Should we move to synchronous AM transmission systems? Essentially, that would involve improving AM signal quality through the use of small cells. Should we end nighttime skywave protection for Class A stations to enable other stations to provide better service at night? I don't know the answers to these questions, but they are ones worth exploring.

AM revitalization is a cause with widespread support. Our 2013 Notice of Proposed Rulemaking passed with a unanimous vote. The record contains nearly unanimous support for all of our proposals from broadcasters, large and small, as well as civil rights groups who understand the importance of AM radio for minority communities.

Progress in this proceeding has been slower than many would have liked. But luckily, I have some good news to report. Just last week, the Chairman's office circulated an item addressing AM revitalization for a Commission vote, and our office is in the midst of reviewing that item carefully.

So if broadcasters care about the future of the AM band, now is the critical time for you to make your voice heard at the FCC. If you have an idea for ameliorating the AM band's technical challenges, now is the time to weigh in. And if you have a long-term solution for securing AM radio's future, now is the time to share it.

Time is not on the side of the grand old band so it is critical that the FCC gets it right in the item that is currently in front of us. Because if we don't, who knows when we will have another chance. Our office therefore looks forward to working with broadcasters across the country in the days and weeks ahead to make this item as good as it can be.

Speaking of good news, an item also circulated last week to modernize the FCC's contest rules. The FCC currently requires broadcasters to disclose the material terms of any contest through periodic over-the-air announcements. The regulation was adopted in 1976, four years before I won my first radio contest. By triumphing in sports trivia, I won two tickets as an eight-year-old to see a college basketball game between the University of Detroit Titans and the Lafayette College Leopards. Almost thirty-five years later, I have a distinct recollection of calling into the Detroit sports-talk show and winning the contest, but no memory whatsoever of the game, although according to the Internet Detroit beat Lafayette 67-61 two days after Christmas 1980.

Given the state of technology in the 1970s, the FCC's contest rule made sense at the time. Listeners couldn't look up contest rules on the Internet (and neither could precocious eight-year-old boys search for the answers to trivia questions there). But the rule should now reflect the digital world in which we live. That's why Commissioner Pai, in the summer of 2013, proposed that the FCC give broadcasters the option of disclosing the material terms of contests on a publicly accessible website. This would allow interested listeners to review the contest rules at their convenience and ease the burden

imposed on broadcasters. The Commission last year sought comment on that proposal, and there is no opposition to it in the record. All of those providing feedback agreed that we should update the rule.

At the Commission, we face many difficult and complicated issues. The contest rule isn't one of them, and I am therefore optimistic that the FCC will act within the next month to bring broadcasters some common-sense regulatory relief.

Speaking of difficult and complicated issues, the FCC has been spending a lot of time on a matter that is of tremendous importance to the television broadcasters in the audience: the incentive auction. Earlier this month, the FCC adopted a set of procedures for the incentive auction and made critical decisions regarding the post-auction 600 MHz band plan.

The decisions made by the FCC have been criticized by virtually all stakeholders. Now, when you've made everyone unhappy, one of two things is probably true. I suppose it is possible that you've wisely promulgated a Solomonic compromise. But it's more likely that you've made a mess of things. And unfortunately, in this instance, the latter is true.

To be clear, I don't know whether the incentive auction will be a success. It might be. It might not be. But I do know that the FCC is poised to dump serious post-auction difficulties into the laps of broadcasters, wireless carriers, and future Commissions. For example, the FCC is poised to place too many broadcasters in the wireless portion of the 600 MHz band. Indeed, under the procedures adopted by the FCC, broadcast stations, after the auction, will be sprinkled like fairy dust throughout the wireless portion of the 600 MHz band. That isn't good for broadcasters or wireless carriers. Why? It will lead to permanent inter-service interference and put the long-term health of the 600 MHz band at serious risk.

The Commission's decision was a short-sighted, irresponsible attempt to put a bandage on flawed auction rules and patch together an auction that it can trumpet as a success. Along those lines, it's worth remembering that the National Broadband Plan called for the incentive auction to generate 120 MHz of spectrum for mobile broadband. But now, we're hearing folks trying to manage expectations down to a much lower figure.

The Commission also made a critical error when it decided to place broadcasters in the duplex gap. An amazingly diverse coalition of broadcasters, wireless carriers, and unlicensed advocates came together to oppose that idea. And while the Commission voted along party lines, this wasn't a partisan issue. For example, Democratic Senators Blumenthal, Booker, Leahy, Schumer, and Wyden, not to mention New York City Mayor Bill de Blasio, expressed serious concern to the Commission about placing television stations in the duplex gap. But, as in so many other areas, the Commission just didn't listen. So what will be the result? Television stations in the duplex gap will cause interference to wireless downlink spectrum, and there will be no spectrum allocated in many markets for the exclusive use of wireless microphones.

The Commission has also put at risk the long-term future of the broadcast television band. It was bad enough earlier this year when the FCC proposed to set aside one vacant channel after the auction in the downsized broadcast television band for unlicensed white-space devices. But earlier this month, the Commission tentatively concluded that it would reserve two vacant channels in the repacked UHF broadcast television band for unlicensed white-space devices in those markets where broadcast television stations are placed in the duplex gap.

What will this mean for broadcasters? Full-power television stations will have fewer opportunities to improve their facilities following the incentive auction. And more low-power TV stations and TV translators that provide valuable service across the county will go off the air.

Our office's position is simple. When it comes to the broadcast television band, broadcasters should have priority. But unfortunately, the Commission's majority no longer believes that. They want

to give unlicensed devices priority over broadcast television licensees in the broadcast television band. Indeed, at the rate we're going, we might need to refer to that spectrum as the white spaces band.

Shifting away from the incentive auction, I'd like to touch briefly on the topic of media ownership. Even though Congress requires the FCC to review our ownership regulations every four years, it has been over seven-and-a-half years since we completed our last media ownership review, and it looks like it won't be until next year before we finish the review that began in 2010. This is unacceptable. Instead of thumbing our nose at Congress, we should comply with the law. And instead of maintaining ownership regulations that reflect the media marketplace as it existed decades ago, we should modernize our rules to keep up with the times. In particular, it is long past time that we eliminate the FCC's newspaper-broadcast cross-ownership rule, which is a relic from another era. Indeed, at the rate things are going, I'm not sure which will last longer: print newspapers or the newspaper-broadcast cross-ownership rule.

Speaking of media ownership, the FCC took action last year to prohibit joint sales agreements (JSAs) among television stations in all but the largest markets. Under current law, most joint sales agreements will have to be unwound by the end of 2016. Commissioner Pai strongly disagreed with this decision. The efficiencies created by JSAs have enabled many television stations to survive, particularly in smaller markets, and have promoted the Commission's interest in localism and diversity.

Consider one example right here in Michigan. In 2013, African-American entrepreneur Armstrong Williams was able to enter the broadcasting business by purchasing WEYI in Flint and entering into a JSA with WSMH. Williams told the Commission that without a JSA, "he would not have been able to fulfill his lifelong dream of being a television owner." Among other things, he stated that his JSA "helped insure essential access to capital, financing, and successful station operation experience." Over the last couple of years, WEYI has thrived. For example, it was the first television station in Michigan to earn the StormReady certification from the National Weather Service.

Unfortunately, the Commission ignored this and similar evidence from all around the country in its decision last year. But thankfully, there is some good news to report. While the FCC struck against JSAs in a partisan manner, the backlash in Congress has been bipartisan. Recently, the Senate Commerce Committee passed bipartisan legislation to safeguard current JSAs. And similar bipartisan legislation was recently introduced in the House of Representatives. Moreover, this summer the House Appropriations Committee passed a rider to stop the Commission's assault on JSAs. The 38-11 vote was overwhelming and bipartisan. So the JSA fight is far from over, the momentum is on our side, and when all is said and done, I am optimistic that we will prevail.

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These are just a few of the issues of concern to broadcasters that are on the FCC's plate. And as we move forward with these and other matters, please don't hesitate to contact our office and share your suggestions. We have found that there is no substitute for direct dialogue with those who are required to comply with the FCC's rules on a daily basis. Our door is always open to you.

Thank you for inviting me to speak with you this afternoon and thank you for everything you do for the people of Michigan. To quote from the University of Michigan's fight song, you are some of the state's "leaders and best."