ORAL STATEMENT OF
CHAIRMAN AJIT PAI

Re: *Restoring Internet Freedom*, WC Docket No. 17-108.

For nearly two decades, the Internet flourished under a bipartisan, light-touch regulatory framework. In the span of recent memory, the Internet went from a university research project to an essential tool for participating in the modern world.

This success wasn't an accident. In 1996, President Clinton signed the Telecommunications Act of 1996 and established a national policy "to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation."[1] In 1998, Senators Ron Wyden and John Kerry, among others, said that if the FCC "suddenly subject[ed] some or all information service providers to telephone regulation, it seriously would chill the growth and development of advanced services."[2] The next year, Democratic FCC Chairman Bill Kennard said 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."[3] This wasn't controversial. It was the consensus.

And so it would remain for almost two decades. Under this light-touch approach, the private sector invested in networks to the tune of $1.5 trillion. Internet speeds accelerated from kilobits to gigabits per second. Mobile connectivity expanded from 1G to 2G to 3G to 4G. And an entire Internet economy sprung up to develop applications riding on those networks. Online companies like Google, Facebook, Netflix, and Amazon grew from scratch to become global powerhouses. In sum, we had a free and open Internet—one in which consumers reaped immense benefits.

The Internet wasn't broken in 2015. We were not living in a digital dystopia. Nonetheless, the FCC that year succumbed to pressure from the White House and changed course. Even though the FCC couldn't find any evidence of market failure, it turned its back on almost two decades of success. It imposed upon all Internet service providers (ISPs), big and small, the heavy-handed regulatory framework designed during the Roosevelt Administration to micromanage the AT&T telephone monopoly. These utility-style regulations, known as "Title II," were and are like the proverbial sledgehammer being wielded against the flea—except that here, there was no flea.

As a result of these rules, small ISPs faced new regulatory burdens associated with common carrier compliance. Innovative providers hoping to offer their customers new, even free services had to fear a Washington bureaucracy that might disapprove and take enforcement action against them. With the possibility of broadband rate regulation looming on the horizon, companies investing in next-generation networks hesitated to build or expand networks, unsure of whether the government would let them compete in the free market.

Today, we propose to repeal utility-style regulation of the Internet. We propose to return to the Clinton-era light-touch framework that has proven to be successful. And we propose to put technologists and engineers, rather than lawyers and accountants, at the center of the online world.

The evidence so far strongly suggests that this is the right way to go.

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

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[1] 47 U.S.C § 230(b)(2).

[2] Letter from Senators John Ashcroft, Wendell Ford, John Kerry, Spencer Abraham, and Ron Wyden to the Honorable William E. Kennard, Chairman, FCC, at 1 (Mar. 23, 1998), *available at* http://bit.ly/2qAlmqL.

[3] Remarks of William E. Kennard, Chairman, FCC at the National Association of Telecommunications Officers and Advisors (Sept. 17, 1999), *available at* http://bit.ly/2rsoswL.

Title II era.[4] This decline is extremely unusual. It is the first time that such investment has declined outside of a recession in the Internet era. To be sure, a study released by a pro-Title II special interest this week claimed that there had been no such decline. But that report makes basic mistakes, like counting network investment in Mexico as network investment in the United States.

The investment pullback is affecting smaller providers too. We've received letters from dozens of small ISPs explaining how Title II hurts. Seventy fixed wireless Internet service providers say "[o]ur challenges are exacerbated by the *Title II Order* . . . which has significantly increased compliance burdens and regulatory risk through heavy-handed regulation that is rife with uncertainty."[5] Seven smaller mobile wireless providers tell us that "[t]he uncertainty surrounding the Title II regulatory framework for wireless broadband services hinders our ability to meet our customer[s]' needs, burdens our companies with unnecessary and costly obligations and inhibits our ability to build and operate networks in rural America."[6] Twenty-two of the nation's smallest ISPs report that they have "slowed, if not halted, the development and deployment of innovative new offerings."[7] Thirty-two rural ISPs point to "the bureaucratic straightjacket of outdated regulations known as Title II" as a barrier to the vigorous investment they want to pursue.[8] And 19 non-profit municipal ISPs—that is, government-owned broadband providers, often championed by Title II advocates—observe that "[f]or the past two years, the substantial costs of the 2015 decision have harmed our businesses."[9]

Consider for a minute why these statements are important. These are 150 small ISPs, most of which Americans have not heard of. These are the very companies that are critical to injecting competition into the broadband marketplace. These are the very companies that are critical to closing the digital divide by building out in lower-income rural and urban areas—areas that too often don't see investment or are the first to see investment dry up. And again, these are the very companies that are telling us that Title II makes it harder to connect Americans with digital opportunity. It puts consumers last, not first, to push these companies out of the marketplace and stifle competition.

In addition to proposing to reverse the Title II classification, we are also proposing to eliminate the so-called "Internet conduct standard." This standard gives the FCC a roving mandate to review business models and prohibit service plans that benefit consumers. With this expansive authority, the FCC could investigate any provider for offering the public virtually any service that the agency might find problematic.[10] And that's in fact what the FCC did. Within months of conferring this new authority upon itself, the FCC met the enemy: consumer-friendly free data programs offered by several companies. Despite the then-leadership of the agency having deemed some of these programs "highly innovative and

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[4] *See* Hal Singer, 2016 Broadband Capex Survey: Tracking Investment in the Title II Era, *available at* http://bit.ly/2reYks0.

[5] Letter from Mark Radabaugh, President, Amplex, to Ajit Pai, Chairman, FCC, WC Docket No. 17-108, at 1 (May 9, 2017).

[6] Letter from Ron Smith et al., President and CEO, Bluegrass Cellular, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-108 (May 11, 2017).

[7] Letter from Herb Longware, President, Cable Communications of Willsboro, Inc. et al. to Ajit Pai, Chairman, FCC, WC Docket No. 14-28, WC Docket No. 16-106, at 2 (Apr. 25, 2017).

[8] Letter from Robert Hunt et al., Chairman, USTelecom, to Ajit Pai, Chairman, FCC, WC Docket No. 17-108, at 1–2 (May 4, 2017).

[9] Letter from William Bottiggi, General Manager, BELD Broadband et al. to Ajit Pai, Chairman, FCC, WC Docket No. 17-108, at 1–2 (May 11, 2017).

[10] To be sure, the *Title II Order* did allow a company to seek an "advisory opinion" as to the propriety of a particular business practice or service. 47 CFR § 8.18. However, seeking the government's blessing in advance is precisely the opposite of permission-less innovation.

competitive," the FCC began investigating them. Preventing consumers from getting something for free doesn't benefit consumers.

Additionally, this authority lets bureaucrats question whether literally every network management decision is "reasonable."[11] This is especially unwise when it comes to the networks of the future. Consider 5G, for instance—the next generation of wireless service. *The Economist* recently explained what this technology will require: "slic[ing] the network into multiple 'logical' networks, each optimised for a different user's needs."[12] Having to hire lawyers to make sure your engineers don't run afoul of the FCC while pulling that off sounds like a recipe for disaster. That helps explain why Marc Andreessen, the creator of the Netscape browser and a prominent Silicon Valley venture capitalist, has said: "If you have these pure net neutrality rules . . . you're not ever going to get a return on continued network investment—which means you'll stop investing in the network."[13]

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Today's *Notice* is the start of a new chapter in the public discussion about how we can best maintain a free and open Internet while making sure that ISPs have strong incentives to bring next-generation networks and services to all Americans.

To reiterate, this is the beginning of the process, not the end. The FCC is simply seeking comment on these proposals. We also ask questions about the existing bright-line rules. Over the next 90 days, the American public will then have a chance to share its views on them. And in the time to come, the FCC will follow the facts and the law where they take us.

Additionally, there are a few things that are different from the last time around.

First, we are proceeding in a far more transparent way than the FCC did in 2015. Back then, it pushed through the 317-page *Title II Order* before anyone outside this building was allowed to see it. The draft document I proposed to my colleagues has been available to the public online for three weeks. Indeed, the public has already submitted over one million comments on that draft. And I will go one step further and publicly commit to this: On my watch, any order we may adopt in this proceeding will also be made widely available well before a vote is called. You may agree or disagree with what the FCC is doing, but you have been and will be able to see what it is we're doing and why.

Second, we aim to conduct a credible cost-benefit analysis of our policy decisions. This simply wasn't done back in 2015. Indeed, the economic analysis in the *Title II Order* was called "wrong, unsupported, and irrelevant"—by the FCC's own chief economist at the time. This time, as we make our decisions, we will have our expert staff carefully review the evidence on investment and other variables. We will rely not on hyperbolic statements about "the end of the Internet as we know it" and 140-character commentary, but on the data.

Finally, I'd like to thank the staff of the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Office of General Counsel for their work on this document: Nathan Eagan, Kristine Fargotstein, David Horowitz, Madeleine Findley, Dan Kahn, Melissa Kirkel, Doug Klein, Marcus Maher, Rick Mallen, Kris Monteith, Linda Oliver, Bill Richardson, Suzanne Tetreault, and Ryan Yates. I am deeply grateful to you for your hard work on this important issue.

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[11] 47 CFR § 8.11.

[12] Makeover for Mobile Phones, *The Economist* (Apr. 20, 2017).

[13] Brian Fung, "Marc Andreessen: In 20 years, we'll talk about Bitcoin like we talk about the Internet today," The Washington Post (May 21, 2014), *available at* http://wapo.st/2rsb5w2.