

**REMARKS OF CHAIRMAN AJIT PAI
ON RESTORING INTERNET FREEDOM**

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The Internet is the greatest free-market innovation in history. It's allowed us to live, play, work, learn, and speak in ways that were inconceivable a generation ago. But it didn't have to be that way. Its success is due in part to regulatory restraint. Democrats and Republicans decided in the 1990s that this new digital world wouldn't be centrally planned like a slow-moving utility. Instead, they chose Internet freedom. The results speak for themselves.

Now, much has been said and written over the course of the last week about the plan to restore Internet freedom. But much of the discussion has brought more heat than light. So this afternoon, I'd like to cut through the hysteria and hot air and speak with you in plain terms about the plan. First, I'll explain what it will do. Second, I'll discuss why I'm advancing it. And third, I'll respond to the main criticisms that have been leveled against it.

First: what will the plan do? When you cut through the legal terms and technical jargon, it's very simple. The plan to restore Internet freedom will bring back the same legal framework that was governing the Internet three years ago today and that has governed the Internet for most of its existence. Let me repeat this point. The plan will bring back the same framework that governed the Internet for most of its existence.

If you've been reading some of the media coverage about the plan, this might be news to you. After all, returning to the legal framework for Internet regulation that was in place three years ago today doesn't sound like "destroying the Internet" or "ending the Internet as we know it." And it certainly isn't good clickbait. But facts are stubborn things.

And here are some of those facts. Until 2015, the FCC treated high-speed Internet access as a lightly-regulated "information service" under Title I of the Communications Act. A few years ago, the Obama Administration instructed the FCC to change course. And it did, on a party-line vote in 2015; it classified Internet access as a heavily-regulated "telecommunications service" under Title II of the Communications Act. If the plan is adopted on December 14, we'll simply reverse the FCC's 2015 decision and go back to the pre-2015 Title I framework.

Now, I'm sure some of you out there are still thinking that there must be more to it than this. And I'll confess that once the plan to restore Internet freedom is adopted, one thing will be different compared to three years ago. Consumers will be empowered by getting more information from Internet service providers (ISPs). My ISP transparency rule will be stronger than it was in 2014.

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That's the "what." Next: why? Why am I proposing to return to the pre-2015 regulatory framework? The most important reason is that it was an overwhelming success.

Think back to what the Internet looked like in 1996. E-mail was still the killer app. AOL was the most visited website. The top 20 sites included the homepages for four universities (Carnegie Mellon, Illinois, Michigan, and MIT). Forget about YouTube; just downloading a static webpage took 30 seconds, and you paid by the hour for access. And being online also tied up your phone line.

So how did we get from there to here?

As I said at the outset, a huge part of the answer is the Telecommunications Act of 1996. As part of this landmark law, President Clinton and a Republican Congress agreed that it would be 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.” They deliberately rejected thinking of the Internet as Ma Bell, or a water company, or a subway system.

Encouraged by light-touch regulation, the private sector invested over \$1.5 trillion to build out wired and wireless networks throughout the United States. 28.8k modems eventually gave way to gigabit fiber connections. U.S. innovators and entrepreneurs used this open platform to start companies that have become global giants. (Indeed, the five biggest companies in America today by market capitalization are Internet companies.) America’s Internet economy became the envy of the world, and the fact that the largest technology companies of the digital economy are homegrown has given us a key competitive advantage.

But then, in early 2015, the FCC chose a decidedly different course for the Internet. At the urging of the Obama Administration, the FCC scrapped the tried-and-true, light touch regulation of the Internet and replaced it with heavy-handed micromanagement.

It did this despite the fact that the Internet wasn’t broken in 2015. There was no market failure that justified the regulatory sledgehammer of Title II. But no matter; 21st century networks would now be regulated under creaky rules that were the hot new thing back in the 1930s, during the Roosevelt Administration.

The results have been bad for consumers. The first negative consumer impact is less infrastructure investment. The top complaint consumers have about the Internet is not and has never been that their ISP is doing things like blocking content; it’s that they don’t have enough access and competition. Ironically, Title II has made that concern even worse by reducing investment in building and maintaining high-speed networks. In the two years of the Title II era, broadband network investment declined by \$3.6 billion—or more than 5%. Notably, this is the first time that such investment has declined outside of a recession in the Internet era.

When there’s less investment, that means fewer next-generation networks are built. That means fewer jobs for Americans building those networks. And that means more Americans are left on the wrong side on the digital divide.

The impact has been particularly serious for smaller Internet service providers. They don’t have the time, money, or lawyers to navigate a thicket of complex rules. I have personally visited some of them, from Spencer Municipal Utilities in Spencer, Iowa to Wave Wireless in Parsons, Kansas. So it’s no surprise that the Wireless Internet Service Providers Association, which represents small fixed wireless companies that typically operate in rural America, surveyed its members and found that over 80% “incurred additional expense in complying with the Title II rules, had delayed or reduced network expansion, had delayed or reduced services and had allocated budget to comply with the rules.” Other small companies, too, have told the FCC that these regulations have forced them to cancel, delay, or curtail fiber network upgrades. And nearly two dozen small providers submitted a letter saying the FCC’s heavy-handed rules “affect our ability to find financing.”

That’s what makes Title II regulations so misplaced. However well intentioned, they’re hurting the very small providers and new entrants that are best positioned to bring additional competition into the marketplace. As I warned before the FCC went down this road in 2015, a regulatory structure designed for a monopoly will inevitably move the market in the direction of a monopoly.

Turning away from investment, the second negative consumer impact from the FCC’s heavy-handed regulations has been less innovation. We shifted from a wildly successful framework of permission-less innovation to a mother-may-I approach that has had a chilling effect. One major company, for instance, reported that it put on hold a project to build out its out-of-home Wi-Fi network due to uncertainty about the FCC’s regulatory stance. A coalition of 19 municipal Internet service providers—that is, city-owned nonprofits—have told the FCC that they “often delay or hold off from

rolling out a new feature or service because [they] cannot afford to deal with a potential complaint and enforcement action.” Ask yourself: How is this good for consumers?

Much of the problem stems from the vague Internet conduct standard that the Commission adopted in 2015—a standard that I’m proposing to repeal. Under this standard, the FCC didn’t say specifically what conduct was prohibited. Instead, it gave itself a roving mandate to second-guess new service offerings, new features, and new business models. Understandably, businesses asked for clarity on how this standard would be applied. My predecessor’s answer, and I quote: “We don’t know, we’ll have to see where things go.” That’s the very definition of regulatory uncertainty.

Well, where *did* things go? It’s telling that the Commission’s first target under the Internet conduct standard was consumer-friendly free-data plans. Wireless companies are offering customers the option of enjoying services like streaming video or music exempt from any data limits. These plans have proven quite popular, especially among lower-income Americans. Yet the FCC had met the enemy, and it was free data. It started a lengthy investigation of free-data plans and would have cracked down on them had the presidential election turned out differently.

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So that’s what I’m proposing to do and why I’m proposing to do it. Next, I’d like to take on the main criticisms I’ve heard directed against the plan and separate fact from fiction—one claim at a time. And given that some of the more eye-catching critiques have come from Hollywood celebrities, whose large online followings give them out-sized influence in shaping the public debate, I thought I’d directly respond to some of their assertions.

Perhaps the most common criticism is that ending Title II utility-style regulation will mean the end of the Internet as we know it. Or, as Kumail Nanjiani, a star of HBO’s *Silicon Valley* put it, “We will never go back to a free Internet.”

But here’s the simple truth: We had a free and open Internet for two decades before 2015, and we’ll have a free and open Internet going forward.

Many critics don’t seem to understand that we are moving from heavy-handed regulation to light-touch regulation, not a completely hands-off approach. We aren’t giving anybody a free pass. We are simply shifting from one-size-fits-all pre-emptive regulation to targeted enforcement based on actual market failure or anticompetitive conduct.

For example, the plan would restore the authority of the Federal Trade Commission, America’s premier consumer protection agency, to police the practices of Internet service providers. And if companies engage in unfair, deceptive, or anticompetitive practices, the Federal Trade Commission would be able to take action. This framework for protecting a free and open Internet worked well in the past, and it will work well again. Chairman Ohlhausen will soon offer further details.

The plan would also empower the Federal Trade Commission to once again police broadband providers’ privacy and data security practices. In 2015, we stripped the Federal Trade Commission of that authority. But the plan would put the nation’s most experienced privacy cop back on the beat. That should be a welcome development for every American who cares about his or her privacy.

Another concern I’ve heard is that the plan will harm rural and low-income Americans. Cher, for example, has tweeted that the Internet “Will Include LESS AMERICANS NOT MORE” if my proposal is adopted. But the opposite is true. The digital divide is all too real. Too many rural and low-income Americans are still unable to get high-speed Internet access. But heavy-handed Title II regulations just make the problem worse! They reduce investment in broadband networks, especially in rural and low-income areas. By turning back time, so to speak, and returning Internet regulation to the pre-2015 era, we will expand broadband networks and bring high-speed Internet access to more Americans, not fewer.

Then there is this critique that offered by Mark Ruffalo: “Taking away #NetNeutrality is the Authoritarian dream. Consolidating information in the hands of a few controlled by a few. Dangerous territory.” I will confess when I saw this tweet I was tempted to just say “Hulk . . . wrong” and move on. But I’ve seen similar points made elsewhere, including in one e-mail asking: “Do you really want to be the man who was responsible for making America another North Korea?”

These comments are absurd. Getting rid of government authority over the Internet is the exact *opposite* of authoritarianism. Government control is the defining feature of authoritarians, including the one in North Korea.

Another common criticism is that after the plan is adopted, the Internet will become like cable television, and Americans will have to pay more to reach certain groups of websites. George Takei of *Star Trek* fame recently tweeted an article claiming that this was happening in Portugal, which doesn’t have net neutrality, and that this would happen in the United States if the plan were adopted.

There are a few problems with this. For one thing, the Obama Administration itself made clear that curated Internet packages are lawful in the United States under the Commission’s 2015 rules. That’s right: the conduct described in a graphic that is currently being spread around the Internet is currently allowed under the previous Administration’s Title II rules. So, for example, if broadband providers want to offer a \$10 a month package where you could only access a few websites like Twitter and Facebook, they can do that *today*. Indeed, the D.C. Circuit Court of Appeals recently pointed out that net neutrality rules don’t prohibit these curated offerings.

So the complaint by Mr. Takei and others doesn’t hold water. They’re arguing that if the plan is adopted, Internet service providers would suddenly start doing something that net-neutrality rules already allow them to do. But the reason that Internet service providers aren’t offering such packages now, and likely won’t offer such packages in the future, is that American consumers by and large don’t want them.

Additionally, as several fact-checkers have pointed out, as part of the European Union, Portugal *does* have net neutrality regulations! Moreover, the graphic relates to supplemental data plans featuring specific apps that customers could get from one provider, beyond the various unrestricted base plans that provider offered. As one report put it, this example “is pointing to an example that has nothing to do with net neutrality.”

Shifting gears, Alyssa Milano tweeted, “We’ve faced a lot of issues threatening our democracy in the last year. But, honestly, the FCC and @AjitPaiFCC’s dismantling of #NetNeutrality is one the biggest.” I’m threatening our democracy? Really? I’d like to see the evidence that America’s democratic institutions were threatened by a Title I framework, as opposed to a Title II framework, during the Clinton Administration, the Bush Administration, and the first six years of the Obama Administration. Don’t hold your breath—there is none. If this were *Who’s the Boss?*, this would be an opportunity for Tony Danza to dish out some wisdom about the consequences of making things up.

This reminds me of another point, one that’s been brought home to me the past few days. This debate needs, our *culture* needs, a more informed discussion about public policy. We need quality information, not hysteria, because hysteria takes us to unpleasant, if not dangerous places. We can disagree on policy. But we shouldn’t demonize, especially when all of us share the same goal of a free and open Internet.

Anyway, the criticism of this plan comes from more than just Hollywood. I’m also well aware that some in Silicon Valley have criticized it. Twitter, for example, has said that it strongly opposes it and “will continue to fight for an open Internet, which is indispensable to free expression, consumer choice, and innovation.”

Now look: I love Twitter, and I use it all the time. But let’s not kid ourselves; when it comes to an open Internet, Twitter is part of the problem. The company has a viewpoint and uses that viewpoint to

discriminate. As just one of many examples, two months ago, Twitter blocked Representative Marsha Blackburn from advertising her Senate campaign launch video because it featured a pro-life message. Before that, during the so-called Day of Action, Twitter warned users that a link to a statement by one company on the topic of Internet regulation “may be unsafe.” And to say the least, the company appears to have a double standard when it comes to suspending or de-verifying conservative users’ accounts as opposed to those of liberal users. This conduct is many things, but it isn’t fighting for an open Internet.

And unfortunately, Twitter isn’t an outlier. Indeed, despite all the talk about the fear that broadband providers *could* decide what Internet content consumers can see, recent experience shows that so-called edge providers *are in fact* deciding what content they see. These providers routinely block or discriminate against content they don’t like.

The examples from the past year alone are legion. App stores barring the doors to apps from even cigar aficionados because they are perceived to promote tobacco use. Streaming services restricting videos from the likes of conservative commentator Dennis Prager on subjects he considers “important to understanding American values.” Algorithms that decide what content you see (or don’t), but aren’t disclosed themselves. Online platforms secretly editing certain users’ comments. And of course, American companies caving to repressive foreign governments’ demands to block certain speech—conduct that would be repugnant to free expression if it occurred within our borders.

In this way, edge providers are a much bigger actual threat to an open Internet than broadband providers, especially when it comes to discrimination on the basis of viewpoint. That might explain why the CEO of a company called Cloudflare recently questioned whether “is it the right place for tech companies to be regulating the Internet.” He didn’t offer a solution, but remarked that “what I know is not the right answer is that a cabal of ten tech executives with names like Matthew, Mark, Jack, . . . Jeff are the ones choosing what content goes online and what content doesn’t go online.”

Nonetheless, these companies want to place much tougher regulations on broadband providers than they are willing to have placed upon themselves. So let’s be clear. They might cloak their advocacy in the public interest, but the real interest of these Internet giants is in using the regulatory process to cement their dominance in the Internet economy.

And here’s the thing: I don’t blame them for trying. But the government shouldn’t aid and abet this effort. We have no business picking winners and losers in the marketplace. A level playing field, not regulatory arbitrage, is what best serves consumers and competition.

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To wrap up, I’d like to quote from an article in *The New York Times*: “Some experts say the government’s planned withdrawal from Internet management . . . is the best way to bring marketplace efficiencies to the increasingly commercial global network. But pessimists worry that this critical part of the emerging electronic web could become a patchwork of private roads.”

This passage was written way back in 1994 about the decision to privatize the Internet. History has proven that policymakers made the right decision then. And that they made the right decision in 1996, when they applied a light-touch regulatory framework to the Internet.

So when you get past the wild accusations, fearmongering, and hysteria, here’s the boring bottom line: the plan to restore Internet freedom would return us to the light touch, market-based approach under which the Internet thrived. And that’s why I am asking my colleagues to vote for it on December 14.