

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Restoring Internet Freedom*, WC Docket No. 17-108; *Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287; *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42.

Almost three years ago, the Federal Communications Commission adopted the *Restoring Internet Freedom Order*. At that meeting on December 14, 2017, we were forced to take an unanticipated recess because of a bomb threat. And that wasn't the only threat of violence we had to deal with. Those of us who supported that *Order* received death threats. For good measure, so did my children. Our personal information was leaked all over the Internet. We were harassed at our homes. Our relatives were harangued at three in the morning with expletives and profane voicemails. In my case, plenty of nasty, racist invective came my way. My personal email account was hacked. To say the least, it wasn't an easy time.

All of this happened because opponents of the *Restoring Internet Freedom Order* waged one of the most dishonest scare campaigns I've ever seen. Bernie Sanders proclaimed, "This is the end of the internet as we know it." CNN dutifully echoed the message with the headline: "End of the Internet as we know it" on the front page of its website. The Senate Democratic caucus warned: "you'll get the internet one word at a time." The ACLU ominously predicted that "before we know it, a flood will have washed away the free and open internet we all rely on." Planned Parenthood asserted that our decision would temper, if not terminate, the "ability of Planned Parenthood patients to access care, including filling out birth control prescriptions and making appointments online." A Silicon Valley congressman posted the easily-debunked proposition that our Internet economy would look like Portugal's (which, inconveniently, had already adopted utility-style Internet regulations). A Minnesota congressman, now the attorney general of that state, said that our decision imperiled "racial justice." One self-described "award-winning business columnist" claimed "[y]our internet bill is about to soar." Good-faith experts on the nuances of telecom regulation from places like Hollywood, the tech press, Washington activist groups, and Twitter told the American people that they would have to pay extra to reach certain websites, that they would have to pay a fee each time they posted on social media, that they would be blocked from accessing their favorite websites, and more. Much, much more.

Fortunately, the fibs, fables, and farrago of fabrications didn't carry the day. Instead, Commissioner O'Rielly, Commissioner Carr, and I focused on the facts and the law. And we did the right thing.

Our decision has been increasingly vindicated over time. The Internet economy in the United States is stronger than ever. For example, since we adopted the *Restoring Internet Freedom Order*, average fixed broadband download speeds in the United States have more than doubled, according to Ookla. In 2018, we set an annual record for fiber deployment in the United States. And then we broke that record in 2019. In 2018 and 2019, we added over 72,000 new wireless cell sites in the United States, ten times more than the deployments from 2013, 2014, 2015, and 2016 combined. From 2015 to 2020, real prices for broadband decreased by about a third.¹ Our infrastructure has been strong enough to withstand the big increase and time- and geographically-shifted usage patterns caused by the pandemic.

¹ George S. Ford, *Are Broadband Prices Declining? A Look at the FCC's Price Survey Data* (Oct. 26, 2020), <https://www.phoenix-center.org/perspectives/Perspective20-07Final.pdf> ("The Menko BPI Study used these data to compare broadband prices between 2015 and 2020, reporting large price decreases in real prices between 28.1% and for the fastest speed tiers by 43.9%. . . . My findings are comparable to the Menko BPI Study even though the methods materially differ. Between 2015 and 2020, for example, I find that the average decline in prices is about 36% when using a Fisher-ideal price index. Broadband prices across a wide range of speeds have fallen over time, and the price reductions are, in most cases, sizable.").

Indeed, our broadband speeds have gone up, not down, during the pandemic.² And we haven't had to go hat in hand to Netflix, YouTube, and other Internet content companies and beg them to slow down or throttle content—which is exactly what Europe, which has embraced utility-style regulation, has had to do.³ (European customers have made clear how they feel about paying for HD video and getting SD instead—it isn't pretty.⁴)

And most of all, the Internet has remained free and open. The American people can still access their favorite websites. They don't pay extra to avoid the slow lane. And they don't have to pay a fee each time they tweet. (To be sure, a newspaper founded by Alexander Hamilton over 200 years ago—*The New York Post*—has now been blocked from tweeting. But that's because of the unilateral decision of a company that ironically supported so-called “net neutrality,” and now no progressive politician or regulator will mention it, much less criticize it. So much for a principled stand for an open Internet.)

Today, it is patently obvious to all but the most devoted members of the net-neutrality cult that the case against the *Restoring Internet Freedom Order* was a sham. And that's why things have been so different as we approach this vote than they were back in 2017. Opponents of the *Restoring Internet Freedom Order* have lost their credibility. Just do a Twitter search (if they allow you to do so without paying) on the subject.⁵ The market for shameless demagoguery has dried up. The ruckus is over.

² See USTelecom Reply at 4 (citing Tyler Coper, *Internet Performance Around the World Amid COVID-19*, BroadbandNow (May 6, 2020), <https://broadbandnow.com/report/international-internet-performance>).

³ See Hadas Gold, *Netflix and YouTube are slowing down in Europe to keep the internet from breaking* (Mar. 20, 2020), <https://www.cnn.com/2020/03/19/tech/netflix-internet-overload-eu/index.html> (describing that entertainment providers in Europe have been forced to degrade quality to reduce strain on internet infrastructure).

⁴ Todd Spangler, *Netflix Is Still Degrading HD Video Quality Across Europe, Angering Some Users* (May 13, 2020), <https://variety.com/2020/digital/news/netflix-degrading-hd-video-quality-europe-bit-rates-1234605316/>.

⁵ See, e.g. <https://twitter.com/mindyexcuses/status/1314997634512363520> (Oct. 10, 2020) (“I was wrong. I was strongly against repealing it at the time. I simply didn't know enough and didn't have the same beliefs that I had now, but the end-of-the-world predictions that I believed then have proven to be laughably false.”); <https://twitter.com/JustJahansTake/status/1316168247708975104> (Oct. 13, 2020) (“Okay so I was (and still am) super pro net neutrality (as I understand it) but is it just me because I don't know exactly what's changed since the FCC and Ajit Pai did their thing in 2018.”); <https://twitter.com/GodEmperorKek/status/1305003602537254912> (Sept. 13, 2020) (“[T]he NN fervor is important to discuss post-mortem because *nothing bad happened* despite the entire internet (liberals) predicting the end times. People are so sure of things they really shouldn't be, and for no particular logical reason beyond repeated banalities”); <https://twitter.com/GodEmperorKek/status/1305004033783062528> (Sept. 13, 2020) (“Go on big subreddits on Reddit; 97k upvotes for posts in nearly every one of them from 2017 where they act like the end is near, claiming that Ajit Pai is destroying the internet and that immediately after NN removal you'll have to pay for access to individual sites. Didn't happen.”); <https://twitter.com/ambientman/status/1303103780523847685> (Sept. 7, 2020) (thread) (@ambientman: “Y'all remember the net neutrality s***?” @cinnamoncircles: “what ever happened to that? did it just disappear or something?” @ambientman: “i have. no f***ing clue”); <https://twitter.com/notnamgi/status/1302768956248338432> (Sept. 6, 2020) (thread) (@notnamgi: “what ever happened with the net neutrality issue lmao” @besosjjk: “i remember thinking my life was gonna be ruined bc the internet was gonna not be free anymore” @notnamgi: “LMAOO no cuz I truly never understood what the issue was I just believed what ever ppl on the internet said and everyone made it seem like a big issue but out of nowhere everyone just stopped talking about it?”); <https://twitter.com/transsapphix/status/1301156007574265856> (Sept. 2, 2020) (“What even happened with that whole net neutrality thing like I remember people saying it was the end of the world and then the thing passed and literally nothing has happened.”); <https://twitter.com/LupinLear/status/1300469564396896259> (Aug. 31, 2020) (“Remember when he removed net neutrality, everyone was scared that it would ruin the internet, then nothing happened?”); https://twitter.com/Bad_Bitch_Lexi/status/1300499672243503104 (Aug. 31, 2020) (“remember when we were scared of like net neutrality and thought the Internet was disappearing and then literally nothing happened”).

None of this, of course, should be a surprise. After all, the free and open Internet developed and flourished under a light-touch regulatory framework that started in the Clinton Administration and served us well for two decades, including the first six years of the Obama Administration. So when we returned to that framework in 2017 and abandoned the prior FCC's misguided 2015 decision to subject the Internet to heavy-handed regulation under rules designed for the Ma Bell telephone monopoly, there was no reason for any knowledgeable person acting in good faith to think that the parade of horrors promised by opponents would come to pass.

Nor should there have been much doubt about the legal soundness of our decision. Last year, the U.S. Court of Appeals for the District of Columbia Circuit upheld the key decisions that we made in the *Restoring Internet Freedom Order*.⁶ It upheld our decision to reclassify broadband Internet access service as an information service regulated under Title I of the Communications Act instead of a telecommunications service regulated under Title II. It affirmed our decision to eliminate the conduct rules adopted by prior Commission in 2015. And it affirmed our enhanced transparency rule, which ensures that Internet service providers disclose to consumers and innovators alike their network management practices.

The D.C. Circuit did ask us to consider three narrow issues on remand: namely, any effects the *Restoring Internet Freedom Order* might have on public safety, pole attachment regulation, and the Lifeline program. And in today's Order, we consider these three issues in depth and conclude that none of them counsel against reversing the decisions that we made 1,048 days ago.

First, our decision is consistent with our mission to promote public safety. The Commission has always taken this mission seriously, as demonstrated by our recent actions on issues from improving the accuracy of wireless location information transmitted with 911 calls to enhancing the geotargeting of wireless emergency alerts. And there is no evidence that the *Restoring Internet Freedom Order* has harmed public safety.

Indeed, by employing a light-touch, market-driven approach to regulation, broadband providers are better able to build stronger and more resilient networks that enhance public safety. This year, for example, one might say that the COVID-19 pandemic put networks in the United States to the ultimate stress test. And our networks passed that test with flying colors. Broadband speeds actually increased and we didn't have to slow down or throttle traffic, unlike our European counterparts.

Additionally, public safety organizations aren't harmed by the *Restoring Internet Freedom Order* for the same reason that consumers aren't harmed. The transparency rules we adopted require disclosure of any blocking, throttling, or affiliate or paid prioritization, and we empowered the Federal Trade Commission—an agency dedicated to consumer protection—to ensure that Internet service providers behave consistently with their disclosures. To date, we haven't seen any of these practices in the marketplace. And that isn't surprising. Broadband providers have strong business incentives to ensure that public safety communications are not negatively impacted, just as they have strong business incentives not to implement practices that negatively impact consumers.

Second, the *Restoring Internet Freedom Order* has had a negligible effect on our authority to regulate pole attachments under section 224 of the Communications Act. That's because the overwhelming majority of Internet service providers commingle telecommunications or cable services with broadband service, minimizing any impact resulting from loss of section 224 attachment rights. Indeed, one study estimates that at least 96% of the broadband market is served by companies that commingle either telecommunications or cable services with broadband service.⁷ Moreover, the Commission's pole attachment jurisdiction does not extend to 24 states and the District of Columbia,

⁶ *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019).

⁷ *Top Broadband Providers Surpass 100 Million Subscribers* (Nov. 12, 2019), <https://www.leichtmanresearch.com/top-broadband-providers-surpass-100-million-subscribers/>.

which have reverse-preempted us (that is, they've displaced us with their own assertion of regulatory power), as well as poles owned by municipalities, electric cooperatives, railroads, and the federal or state governments—further lessening any impact. Therefore, we conclude that the positive impact on broadband deployment from the light-touch regulatory approach taken in the *Restoring Internet Freedom Order* far outweighs any minimal negative impact on deployment that could result from the minimal change to our authority to regulate pole attachments under section 224. And most broadband-only providers themselves agree with that view.

Third, the *Restoring Internet Freedom Order* does not undermine our statutory authority to include broadband in the Lifeline program. We have ample authority under section 254(e) to provide Lifeline support for broadband services furnished by eligible telecommunications carriers (or ETCs). Indeed, it is worth noting that broadband Internet access service was classified as a Title I information service, not a Title II telecommunications service, when the FCC first used the Lifeline program in 2012 to fund broadband service when we launched the Lifeline Broadband Pilot Program. Under the Communications Act, it is the “common-carrier status” of the *provider*, not the *service*, that governs whether the provider is eligible to receive Lifeline support for services provided over its network. Thus, if a common carrier offers voice service and qualifies as an ETC, the Lifeline program can support affordable broadband Internet access service.

For all of these reasons, we stand by and reaffirm the decision that we made in December 2017, a decision that the passage of time has proven correct. Because of the *Restoring Internet Freedom Order*, more Americans have access to broadband. Broadband networks are stronger and faster. And the Internet is free and open. And so to paraphrase Margaret Thatcher—no stranger to making tough decisions—now is not the time for turning.

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