

**OPENING REMARKS OF FCC COMMISSIONER AJIT PAI
AT THE PHOENIX CENTER FOR ADVANCED LEGAL &
ECONOMIC PUBLIC POLICY STUDIES
2012 ANNUAL U.S. TELECOMS SYMPOSIUM**

WASHINGTON, DC

DECEMBER 6, 2012

Larry, thank you for that kind introduction as well as for inviting me to speak at this morning's symposium. Under your leadership, the Phoenix Center has established itself as a leading voice in the national dialogue about telecommunications policy. When I think of the Phoenix Center, one thing comes to mind: rigorous economic analysis. Your research is not driven by the political trends of the moment. Nor do you succumb to the temptation, all too common in Washington, to engage in over-the-top rhetoric. Instead, your approach is more akin to that of Dragnet's Jack Webb, who would famously ask for "just the facts, ma'am." This strategy doesn't necessarily make you popular all of the time. But it does something far more important: It makes you credible.

Turning to the topic of this morning's symposium, our panelists will be addressing the impact of the 2012 elections on telecommunications policy. Now, I am not a political analyst, so I will generally refrain from commenting on November's election results. I do, however, have two brief pieces of breaking news to share with you. First, the results are finally in: In a nailbiter, Mitt Romney carried my home state of Kansas by twenty-two points, and even got 692,576 more votes than Roseanne Barr. And second, I want to put an end to the speculation that has swirled in the trade press, not to mention the worry that has roiled the markets, by informing you that I am not under consideration to be the next Chairman of the FCC.

On a more serious note, I would like to spend a few minutes this morning previewing the year ahead in broadband policy. I believe that 2013 will be a watershed year. And the most important action probably will not occur either at the FCC or on Capitol Hill. Instead, it will take place in the federal courthouse about a mile away on Constitution Avenue. At some point next year, the D.C. Circuit likely will decide the fate of the Commission's 2010 net neutrality order. Whatever the court's decision, the consequences are likely to be profound.

Should the D.C. Circuit uphold the FCC's order, I would expect to see revitalized efforts to expand the Commission's regulation of the Internet. In particular, I would not be surprised if the FCC looked into whether we should stiffen our oversight of the network management practices of wireless broadband providers and whether we should begin to regulate usage-based pricing. With a court victory under the Commission's belt, I believe that the net neutrality order would be the first step, not the last, on our regulatory path.

I expect that a court victory also would result in more calls to enforce the FCC's net neutrality rules. To date, we've received few complaints that these rules have been violated, and we've done little with any that have been filed. But if the regulations are upheld, the agency could well receive more complaints alleging violations and it could spring into action adjudicating them. Uncertainty over how the FCC would resolve these complaints could persist for some time.

Now let's look at the opposite (and perhaps more likely) scenario. What would happen if the D.C. Circuit decides that the FCC lacked the authority to adopt the net neutrality order? The big question confronting the Commission would be this: whether to abandon the drive to regulate network management practices or instead to sidestep the court's decision by reclassifying broadband as a Title II service.

For what it's worth, I have already made my view on this matter clear. Under no circumstance will I support Title II reclassification. I am convinced that grafting creaky, burdensome common carrier regulations onto the Internet would dramatically slow broadband deployment, reduce infrastructure investment, frustrate innovation, hamper job creation, and diminish economic growth.

This should not be a partisan issue. Back in 2010, 74 Democrats in the House of Representatives signed a letter informing the FCC that they too opposed Title II reclassification. This suggests to me that any initiative to reclassify broadband service next year or beyond will engender opposition from Democrats and Republicans alike.

Aside from figuring out how to respond to the D.C. Circuit's decision, we at the FCC will have a very full plate in 2013 when it comes to broadband policy. I believe that the greatest challenge that the Commission must face head-on in 2013 is one that has not been on our radar for very long. We have to establish a modern regulatory framework to expedite what some have referred to as the Internet transformation and our transition to an all-IP world.

As you may know, I have called for the FCC to establish an IP Transition Task Force to help us address this challenge in a comprehensive manner rather than handling issues on a piecemeal basis as they happen to pop up. I still support this proposal. And I continue to believe that the Task Force should solicit input from the public and develop proposals for hastening the IP transition and incentivizing investment in next-generation networks.

For it's not as if this issue will fade into the background. Since I first called for the creation of the Task Force almost five months ago, two petitions have been filed with the Commission asking us to launch a broad proceeding to address the IP transition. These parties don't necessarily agree on the precise rules we should adopt for the coming all-IP world. But they do understand that the time has come to begin the rulemaking process and tackle this fundamental issue.

I agree. We should launch this proceeding immediately. We should approach this issue with open minds and a willingness to hear from all sides. And we should be mindful of certain core principles, such as the need to preserve the vital consumer protections that are still likely to be needed in an all-IP world. For example, when consumers dial 911, they need to reach emergency personnel. It should not matter whether they are using the PSTN, a VoIP application, or a wireless phone.

At the same time, we have to construct a forward-looking deregulatory framework. That means repealing the obsolete legacy regulations designed for copper-wire networks operated by monopoly providers. These rules no longer make sense in a competitive, all-IP world. We should scour the Code of Federal Regulations to track down and remove all the tariffs, the arcane cost studies, and the hidden subsidies that distort competition for the benefit of companies, not consumers. While these rules remain on the books, extending them to IP may just be too tempting.

A good sign of where the Commission is heading on these issues will come during the first half of the year when we rule on USTelecom's pending forbearance petition. If granted, this petition would relieve incumbent carriers of many outdated regulations. To give just one example, ILECs currently have to file periodic reports—including sworn affidavits!—showing that their narrowband enhanced services are in compliance with equal access obligations, including details on interfaces for third parties and the unbundling of basic services. These reports are unnecessary, onerous, and arcane all at once. Equipment manufacturers no longer have any reason to design their equipment to meet these artificial and inefficient requirements. And the FCC itself has acknowledged their obsolescence, stating that it “does not rely on any of these submissions in the course of its decision making.”

If we are not willing to get rid of such outdated regulations now, that would be an ominous sign for the future. But imagine, on the other hand, what we could accomplish if we swept away this regulatory underbrush. We would send a positive signal to the marketplace that the FCC is serious about establishing a modern, deregulatory framework for the IP world. And the marketplace would respond to that signal in a positive way—by innovating and investing, to the ultimate benefit of American consumers.

In conclusion, as we enter 2013, we are quickly approaching a fork in the road when it comes to broadband policy. One path will lead to the creation of a 21st century framework for the all-IP world. The other path looks back to the 20th century model of monopoly utility regulation. Hopefully, to paraphrase Robert Frost, we will choose the road that thus far has been less traveled by, for that will make all the difference.

So there is much for this morning's panelists to discuss and many issues for the Phoenix Center's scholars to analyze. I look forward to getting your input as we confront the challenges that lie ahead and wish you all the best for what I'm sure will be a successful symposium.