NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
***See MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).**

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LEGAL SUMMARY OF FCC COMMISSIONER AJIT PAI'S STATEMENT DISSENTING FROM THE FCC'S DECISION TO ADOPT PRESIDENT OBAMA'S PLAN TO REGULATE THE INTERNET

- **In adopting President Obama's plan to regulate the Internet, the FCC violated the procedural requirements of the Administrative Procedure Act (APA).**
  - **The FCC never proposed the rules being adopted, violating the APA's notice-and-comment requirement**. In last year's *Notice*, the FCC proposed rules under section 706 of the Telecommunications Act. Every single proposal and every single tentative conclusion in last year's *Notice* was tailored to avoid reclassifying broadband as a Title II service. Yet that's exactly what the FCC does in this *Order*.
  - **No one could have anticipated the number or nature of the hoops the *Order* would jump through to reclassify broadband.** Nor could anyone have anticipated the *Order*'s 49 separate forbearance decisions; its decision to subject interconnection to Title II as a "component" of broadband Internet access service; its decision to amend agency rules regarding mobile broadband; or its adoption of an omnivorous "Internet conduct" standard, the scope of which remains uncertain.
  - **The FCC cannot rely on President Obama's YouTube directive to the agency cure these deficiencies**. The President's video was not approved by FCC commissioners, published in the Federal Register, or subject to public comment.
- **President Obama's plan to regulate the Internet also violates the Communications Act.**
  - **Neither the text of the Act nor FCC precedent allows the agency to reclassify broadband Internet access service as a Title II telecommunications service**. In 1996, President Clinton and Congress decided that "any" service that "provides access to the Internet" would be an information service. In turn, the FCC has *never* classified an Internet Service Provider as a telecommunications carrier. Instead, the FCC has determined each and every time since the Clinton Administration's *Stevens Report* that Internet access always involves more than mere transmission—and thus is an information service.
  - **Section 332 of the Communications Act independently bars the FCC from reclassifying mobile broadband Internet access service as a Title II telecommunications service**.
  - **The text, structure, and Congressional intent all make clear that section 706 of the Telecommunications Act does not give the FCC any independent authority**.
  - **The *Order* invents an entirely new method of forbearance analysis that doesn't adhere to the forbearance criteria in the Act or the FCC's precedents**.