

**REMARKS OF FCC CHAIRMAN AJIT PAI
TO THE FREE STATE FOUNDATION**

JANUARY 8, 2021

Good morning, everybody. It's great to be with you. Thanks to Randy May and everybody at the Free State Foundation for hosting me. More important, thanks to Randy and everybody at Free State for your work over the years. From your steadfast advocacy for a market-based regulatory framework to your thoughtful proposals for FCC process reform, you've helped build an intellectual foundation for important changes to what we do and how we do it.

As for me? Well, I'm now in the home stretch, with just days remaining in my tenure.

Over the next couple of weeks, we'll surely see stories assessing my time in the FCC's top job, because, well, Comm Daily and TR Daily have to write *something*. So it would certainly make sense for me to use today's platform to detail all the ways that we have cleared out the FCC's regulatory underbrush since I spoke to Free State one month before taking this position. But I'd like to go in a less obvious direction. Instead, I'd like to lay out my theory for good governance and how the reforms we've made since January 2017 have fundamentally transformed the agency's operations for the better.

Before I get into the details, let me offer a comment. It's easy to lob complaints about government from a comfortable perch on the outside. Talking heads, Twitter "experts," and others spend plenty of time doing just that. But improving how government operates—enacting meaningful change—requires you to be in the arena and to put in the work. I've done that. I spent the better part of a decade as a staffer and then as a Commissioner at the FCC. I spent a lot of time thinking about what I could and would do if I had the chance to help make the FCC more effective. Along the way, I've picked up a few lessons about what I believe to be the keys to effective governance. When I was appointed to lead the FCC—the greatest honor of my professional life—I was determined to apply that accumulated wisdom to run the agency. Four years later, I believe the record demonstrates that we've made historic and positive changes—changes that should endure long after I'm gone.

What are these pillars of good governance?

The first is transparency. When it comes to running a government agency, greater transparency means greater accountability for decisionmakers, which elevates the caliber of the work. At the same time, it can increase public trust, which is a critical ingredient for effective government. Apologies for repeating an overused adage, but I truly believe that sunlight is the best disinfectant.

For many years, the FCC didn't work that way. In fact, when it came to handling its most important business, the FCC's longstanding policy was to keep the American people in the dark.

As you know, the FCC conducts its highest-profile work at the monthly meetings it's required to hold at least one a month. And for decades, at least three weeks prior to each meeting, my predecessors would circulate their proposals or orders to the other Commissioners' offices—and only to them. The text wasn't available to the American public until after the final vote. In other words, we were doing the people's business, but the people weren't allowed to see what we were doing until the business was over.

This never made sense to me. When I was in the Office of General Counsel, I would sometimes find myself working through a tricky issue on an item. And it was tricky enough that I'd hear someone say, "well, we don't need to resolve this now; let's just get it circulated to the other Commissioners and we can fix it later," during the three-week period before the vote.

Later, as a Commissioner, I criticized this process for years because it kept the public in the dark. I was offered a smorgasbord of excuses why it couldn't be done: It was unlawful under the Administrative Procedure Act; it was unwise for this or that reason; or just—no.

But less than two weeks after becoming Chairman, I made it happen. I announced that the Commission would test releasing draft items to the public three weeks before they are voted on at the Commission’s monthly open meetings. To show my commitment to this transparency pilot, I personally handed out some of the first so-called “public drafts” to reporters when we announced the change. Soon after, we made that change permanent. And we never looked back. To me, it was clear that releasing these documents—rather than keeping them behind closed doors until after our vote—would increase the public’s understanding of our decision-making process and would result in final rules that better serve the public interest. And more generally, you shouldn’t have to show up to the FCC or hire a lawyer and lobbyist with FCC connections to know what we’re doing. Whether you’re in DC or Des Moines, you should have equal insight into our work.

Now, as with virtually everything we’ve done over the past four years, some in the Beltway complained. One partisan critic predicted that we wouldn’t be able to get anything done, boasting that “they’ll never be able to get to a decision without having APA problems.” Yet we were by far the most productive FCC in recent history, averaging about 6 items per meeting—more than double the recent average—and we substantially prevailed in court on pretty much every case of significance.

Another former FCC official complained that by making things public, “the chairman’s negotiating position looks like a final position which undercuts negotiating ability.” Yet it didn’t look like that at all. In fact, not only were we more productive, we were also able to get impressive results in terms of bipartisan consensus, flexibly accommodating Commissioners’ asks while advancing an aggressive, forward-thinking agenda. Moreover, because those on the outside were able to provide input on specific text, we’ve been able to fix mistakes and make improvements during the three weeks before the meeting that wouldn’t have been made before, except by expending the resources to go through the lengthy reconsideration process.

Yet another partisan opposed our transparency initiative because “every last special interest is gonna be in there lobbying.” Even one of my predecessors offered the same knee-jerk opposition, bizarrely saying that “[i]f you put something out ahead of time, we all know who has the inside track. It’s the big companies, lobbyists, law firms.” Yet by making the drafts public, we *democratized* access, wiping out the advantage that Washington insiders previously had and exercised.

Today, I doubt that even one person of good faith would make any of these arguments. Transparency has fostered more productive engagement with stakeholders and the public. Rather than wasting everyone’s time with countless kabuki meetings—stakeholders gingerly suggesting what was rumored to be in an item, FCC officials hinting, but not too strongly, at the answer—people can now read the actual item for themselves and engage far more productively and efficiently with Commission staff. Obviously, future leadership will have to decide whether to preserve this process reform. My two cents: good luck making the case for a return to secrecy.

Also on the transparency front, and at the suggestion of my friend and former colleague Acting Chairwoman Clyburn, we prefaced each released draft with a one-page, consumer-friendly fact sheet. A succinct and hopefully more-understandable summary of each item further made our work transparent.

And we also launched an online transparency dashboard to offer the public more information on the agency’s work—something I first proposed as Commissioner in 2013. This new resource helps consumers access reports and graphics on FCC workloads, pending actions, and other accountability matrices, and more easily obtain Freedom of Information Act materials.

The second major pillar of good governance that we’ve established is the embrace of economics and data analysis. When I began my Chairmanship, there were a number of challenges we faced in this regard. First, economists weren’t systematically incorporated into policy work at the FCC. Instead, their expertise was applied inconsistently and in an ad hoc fashion, often late in the process. Second, our

economists worked in siloes. Third, cost-benefit analysis was largely ignored. And fourth, we weren't collecting the best data or making the best use of that data.

In April 2017, I proposed a solution to address these challenges: the creation of what would become the Office of Economics and Analytics. Instead of economists, data experts, and others being sprinkled throughout the agency, we would centralize their function and give them a seat at the decision-making table. We made that reform happen in January 2018. I would like to thank Wayne Leighton, Jay Schwarz, and the team of FCC staffers who produced the report that paved the way for what is now known as OEA. I would also like to thank the team in the Office of Managing Director that did the nuts-and-bolts work that brought us from concept to concrete. And I would like to thank the leadership of OEA, especially Chief Giulia McHenry, for getting the office off to such a strong start.

What a positive impact OEA has made! It's changed our culture for the better. For one thing, economists now feel free to lend their expertise more openly and proactively. And economists are now writing and publishing white papers again, giving us a roadmap for future policy initiatives. One FCC economist has been quoted as saying, "My job used to be to support the policy decisions made in the chairman's office. Now I'm much freer to speak my own mind." As three of the FCC's former chief economists wrote recently, "[t]his economist's outlook is not atypical; it comports with our general impression of staff sentiment over our collective tenures at the agency."

Additionally, the creation of OEA has formalized cost-benefit analysis as a key driver of decision-making at the FCC. This is a critical and positive change. My one-time administrative law professor, Cass Sunstein, also happened to craft the Office of Management and Budget's guidelines on this topic when he led the Obama Administration's Office of Information and Regulatory Affairs. He once wrote, "It is not possible to do evidence-based, data-driven regulation without assessing both costs and benefits, and without being as quantitative as possible." He posited that it is the duty of regulators to "obtain a careful and objective analysis of the anticipated and actual effects of regulations, whether positive or negative. We need to look at evidence and data. We need careful assessments before rules are issued, and we need continuing scrutiny afterwards." Inspiring words that I took to heart in this job.

That's because when I arrived at the Commission, the FCC performed cost-benefit analysis of proposed rules occasionally, not systematically. Seldom did it consider the distributional impact of these costs and benefits. Too often, we failed to ask questions, such as "are the costs of this new rule simply too high to be borne by small firms that lack an army of attorneys and accountants to help with regulatory compliance?" In other cases, we didn't fully examine how our rules would impact competition or innovation in a market.

OEA has changed that—in a big way. This office combined economists and other data professionals from around the Commission to provide economic analysis, manage the Commission's data resources, and conduct longer-term research. It has given economists early input into the decision-making process. It ensures better management of data, reports, and analyses. Most importantly, it has helped to ensure that cost-benefit analyses are now a forethought and not an afterthought in the Commission's decision-making. These cost-benefit analyses have already had a real and meaningful impact on important Commission rulemakings, from securing the communications supply chain to modernizing the 5.9 GHz band to designating 9-8-8 as the national suicide prevention hotline.

We've also placed a priority within OEA on the collection and analysis of data. For instance, one area where the Commission's data has been lacking for too long has been our broadband mapping. The Commission's most fundamental job is to make sure that every American has access to high-speed Internet service, but the reality is that our current maps don't give us the specificity and accuracy we need to know exactly where broadband is and isn't available. That's why I established the Digital Opportunity Data Collection, which is aimed at fixing these mapping and data problems. And I am pleased that at the end of last year, Congress gave us the funds that we need to implement it. The Commission also proposed the maximum fine possible against an ISP for apparently reporting inaccurate information that

significantly inflated its broadband subscription numbers, failing to file required deployment data, making false statements to Commission investigators, and failing to respond to other inquiries.

The third and most important pillar of good governance has been maximizing the effectiveness of the FCC's greatest asset—its people.

If you follow anything I've said over the past four years on this subject, you know that I love the FCC's staff. I was a staffer myself for several years. I know how much they care, how hard they work, how good they are. And I've been blessed to work alongside some of the best during my chairmanship. To get the most out of our in-house talent, one key decision I made early on was to empower our career staff. Historically, Chairmen have brought in outsiders to head our bureaus and offices. But I made a conscious effort to primarily elevate career staff into these roles. It has been a huge plus for the agency to have people in these positions who not only have technical expertise but also know their co-workers well and have a nuanced understanding of how the agency operates. I think it's also been good for morale when people see their respected peers—people who have developed expertise and leadership skills over a number of years—get the opportunity to move up and run their bureaus.

I would add that I strongly believe that it is a fatal mistake for conservative leaders in government to view career staff as the enemy. For one thing, I've found that they faithfully work to advance *any* leader's policy views, even if they may disagree with them. For another, if you want to accomplish things and advance your agenda, you should exercise the type of leadership that makes them your allies. And finally, they are good people who love their country, and it's just the right thing to do to treat your fellow Americans with respect.

Speaking of that, I've made it a point to recognize our fantastic staff every chance I get. At our monthly meetings, I've acknowledged every person who had a hand in crafting every item we vote on. I also continued a trend I started as a Commissioner—to recognize long-term employees when they retire or leave the agency. Now, I'm not trying to suggest that this is a major reform or anything; in many ways, it's just good manners. But I find it remarkable that many FCC employees devote so many years of their lives—20, 30, 40, sometimes more—to the agency. That deserves to be publicly saluted. And if you do so consistently and make it clear that celebrating their dedication is a priority, I believe it makes clear to our team that we value them.

I'm also proud, incidentally, of the work we've done during the pandemic to make sure that our team is safe. Ask any staffer at the FCC, and I believe that they'll tell you that they appreciate FCC leadership having their back. We were one of the first agencies to shift to a work-from-home environment—a step which at the time generated some disapproval from others in the federal government. We've made a number of administrative changes to accommodate employees with childcare challenges or other issues. And our chief of staff, Matthew Berry, has done an incredible job keeping employees posted by sending detailed updates to all employees on a regular basis. Our staff has been there for us over the past four years, and we wanted to make it clear that we would be there for them.

By the way, one challenge with promoting more effective governance is that it can be hard to tell if your efforts are paying dividends. But one measure is for it to be stress-tested by an unforeseen event. Obviously, the coronavirus pandemic has offered such a test like nothing before it. Almost overnight, the Commission was expected to do all of its work remotely. At the same time, that workload increased significantly. It seemed like every other day, we were granting temporary authority to another mobile broadband or fixed wireless company to use additional spectrum to meet the increased demand for connectivity. We also made changes to our programs to connect schools, low-income households, and individuals who are deaf or have a speech disability, and relaxed rules to help extend service to more people during this pandemic. All the while, the Commission's regular work continued unabated.

I'm particularly proud of our work to stand up a new telehealth program in record time. As part of the CARES Act, Congress appropriated \$200 million for the FCC to support health care providers' use

of telehealth services during this national emergency. Just days after the President signed the CARES Act into law on March 27, the FCC established the program. By April 13, the FCC had already begun accepting applications. We evaluated and approved applications on a rolling basis, and by July 8 we had committed all \$200 million. In the end, we approved 539 funding applications from 47 states plus Washington, D.C. and Guam. Recipients ranged from community health centers to mental health clinics to non-profit hospital systems in both rural and urban areas of the country.

All of this was only possible because of an agency-wide effort. We were able to process those applications in short order because we pulled together a substantial number of staff from across the agency. Similarly, staff from different offices came together to process the applications for the first-ever auction of mid-band spectrum for 5G, which was a big success despite all the disruptions. And to process applications for the Rural Digital Opportunity Fund. Throughout a time with so much uncertainty, one constant I could count on is that the FCC staff were always willing to take on new tasks in order to get the work of the agency done in a timely manner. And they did so without complaint. In 2020, the FCC was tested like never before, and our remarkable team answered the call every time.

That's a testament to our current staff. But we're also focused on bringing in new talent. For example, we launched a new Honors Engineer Program to recruit current students and recent engineering school graduates to the FCC. Many of the issues before the Commission are technically complex. Our new honors program opens up a pipeline to bring the best engineering talent to the Commission—a vital need given how many issues require technical expertise.

I also partnered with Commissioner Starks to create the Early Career Staff Diversity Initiative. Starting this month, the FCC is providing a select number of paid internships to law, graduate, or undergraduate students each semester and summer. These internships should create opportunities for students who may otherwise be financially unable to participate in unpaid internships at the FCC. To increase the diversity of our job applicant pool, especially for our Honors Attorney and Engineer Programs, we are also investing additional resources to recruit students from Historically Black Colleges and Universities, Hispanic Serving Institutions, Tribal Colleges and Universities, and other Minority Serving Institutions. I'm proud of this effort to ensure a more diverse workforce, just as we've made great strides to promote a more diverse marketplace.

In closing, let me just say this. Leading the FCC over the past four years has been the greatest honor of my professional life. And it's not because of the title, or the office, or any other accoutrements. It's because we've been able to deliver incredible results for the American people. And in doing so—indeed, in order to do so—we made fundamental changes to how the FCC operates. We made the agency more transparent. We cemented the importance of good economic analysis. And we put our people first. Thanks to these key reforms, I would like to think I'm leaving the agency better off than when I arrived. And if I'm right, this kid from Kansas will take it.