

**REMARKS OF FCC CHAIRMAN AJIT PAI  
TO THE MEDIA INSTITUTE**

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Good afternoon! Before we go any further, I have some breaking news to share. Pfizer has just announced a major breakthrough on a new coronavirus therapeutic. They've created a miracle elixir that cures all: convalescent plasma from Dick Wiley. One dose and you are forever young and healthy. (The FCBA's Chairman's Dinner may have been cancelled this year, but the decades-long streak of Dick Wiley jokes in December remains unbroken.)

Thank you, Chairman Wiley, for joining me for this event. And thanks to the Media Institute for welcoming me and organizing today's virtual luncheon. The last time I delivered a speech to the Media Institute was in 2017. As you may recall, I warned about the ways social media was increasingly poisoning the public discourse and driving Americans apart. Glad we got that fixed. But more seriously, the Media Institute has been an invaluable voice for free expression and a vibrant communications marketplace for a long, long time. Thank you for your leadership and for giving me this platform today.

In a way, it's fitting that my last address as FCC Chairman focusing on media issues would be online. That's because the underlying premise of my remarks today is that content is moving online and the government needs to keep pace. This accelerating shift toward Internet-based platforms is transforming the media marketplace, and the regulatory framework must change accordingly.

Since 2014, the number of streaming video services available in the United States has more than doubled. Today, nearly 300 options are available to U.S. consumers. Over the past 13 months alone, we've seen the launch of major new services like Disney+, Apple TV+, HBO Max, Peacock, and a revamped CBS All Access. Early indications are that the big winners in the streaming wars are consumers, who are signing up for these new services by the millions. Disney+ viewers celebrated the Fourth of July with a viewing of "Hamilton," and in the midst of Season 2 of "The Mandalorian," Disney has learned that "this is the way," with a recent announcement that the service already has 86 million subscribers. Subscribers to HBO Max can view the network's award-winning programming like "Succession" and "Curb Your Enthusiasm." And starting with the new Wonder Woman movie this Christmas, they'll also be able to watch Warner Bros. studio's major motion picture releases the same day they open in theaters.

On top of all that, established over-the-top players like Netflix are still churning out shows that dominate the cultural zeitgeist like "Tiger King" and "The Queen's Gambit." (One can only hope that there's a purple documentary in the works on Prince.)

But it's not just bespoke content that occupies the Internet. Even things we used to watch on live television have migrated online. An anecdote, and one I do think reflects the data: A major sports executive told me recently that virtually nobody under the age of 30 watches his sport on traditional broadcast or cable networks. It's all online. And moreover, both players and fans are creating brands and interacting online, forming an entire new ecosystem of commerce and engagement.

The bottom line: The days of Must-See TV are giving way to Must-Watch Internet.

To be sure, the typical American still watches roughly four hours of live TV a day. But that consumer spends even more time looking at a smartphone. Compare that to 2017, when smartphone use only accounted for half as much time as live-TV consumption.

The marketplace has changed dramatically in recent years. And the FCC under my leadership has committed itself to reforming our regulations to match. I'm proud to say that, over the past four years, the Commission has made historic strides toward this goal.

Keeping pace with market realities starts with recognizing that change is constant in this sector and that the government will never be as nimble as private companies when it comes to making course corrections. That is why a core part of our media agenda has been freeing broadcasters to use new technologies and innovate just like anyone else.

One of our leading efforts to promote broadcast innovation was the authorization of ATSC 3.0, the next-generation broadcast television standard. ATSC 3.0 marries the advantages of broadcasting with the capabilities of the Internet and opens the door to a substantially improved, free, over-the-air television broadcast service. It not only enables 4K television over broadcast TV, it makes possible new “Broadcast Internet” features like distance learning, telehealth, advanced emergency alerting, hyperlocal news, and the provision of ongoing software and cybersecurity updates to smart cars and “Internet of Things” devices. As an added bonus, it could promote fiercer competition in the video marketplace.

This would seem to be a no-brainer, but believe it or not, some brainy people said no. They warned about lost signals and having to buy new equipment—something that doesn’t seem to trouble them when it comes to, say, 5G or the iPhone 12. But my view is that the FCC should encourage innovation, not invent reasons to say no. So we fought and we succeeded in authorizing ATSC 3.0 on a voluntary, market-driven basis. In recent months, the rollout of Next-Gen TV has started to gain real momentum. Television stations in 21 U.S. markets are now broadcasting in ATSC 3.0. And there are now 20 television models available with built-in tuners capable of receiving ATSC 3.0 signals, with more set to hit the shelves in 2021. I look forward to seeing the consumer benefits from this new technology in the time to come.

More recently, we took a similar step to give AM radio operators more freedom to innovate. AM radio stations were previously authorized to operate with either analog signals or hybrid signals, which combine analog and digital signals. But locking AM operators into older technologies has led to poor signal quality and listener experience. So this past October, the Commission voted to give AM broadcasters the choice to convert to all-digital operations.

Making the transition to all-digital service presents an important opportunity to preserve the AM service for future listeners. All-digital signals offer better audio quality, with greater coverage, than existing AM stations—whether analog or hybrid. Again, AM operators will decide for themselves if the transition is right for them and their listeners. We’ve already seen evidence that an AM station—WFMD, in Frederick, Maryland—enjoyed a big bump in ratings after going all-digital, using special temporary authority. So there’s reason for optimism about digital AM’s potential to help struggling stations become competitive players in the market.

I should note that this AM reform isn’t a one-off. The revitalization of the AM radio service has long been a passion of mine. And the FCC has taken many steps to help AM broadcasters confront the economic and technical challenges they face. Perhaps the most important is our translator program, part of our AM Radio Revitalization Initiative. Over 2,800 AM broadcasters have been able to obtain authorizations to build FM translators, and 2,100 are already licensed and on the air. Many AM broadcasters have told me that their FM translators have given their stations a new lease on life.

Matching the FCC’s rules to the times means not just promoting innovation, but also getting rid of outdated regulations. That we’ve done—and how.

One of my first acts as Chairman was to launch a review of the Commission’s media rules in order to revise or repeal those that were unnecessary or unduly burdensome. We called it our *Modernization of Media Regulation Initiative*. Four years later, the Commission has adopted 26 orders eliminating or modifying regulations that apply to broadcasters and cable operators.

Some decisions were easy because the rules were so dusty. For example, we scrapped one rule regarding the use of common antenna sites that was adopted in 1945, back when there was a freeze on broadcast station construction in order to conserve equipment and material needed for World War II.

Other reforms did away with rules that delivered no real benefits. For example, we eased our so-called leased access rules, which mandate that cable operators set aside channel capacity for independent video programmers, to reflect significant changes to the video marketplace since the Commission initially adopted these rules. It doesn't make sense for the government to essentially mandate wholesale video access in an age when there are YouTube stars, Twitch streamers—basically, sentient beings with an Internet connection—distributing content to a global audience.

Then, there's a whole bucket of reforms that you could call our "save the trees" initiative. We eliminated multiple rules requiring businesses to maintain or submit to the FCC hard copies of information that is readily accessible online. As much as we may love the Code of Federal Regulations, forcing broadcasters to keep paper volumes at their stations is absurd.

No one of these proceedings amounts to a big deal on its own. But collectively, they make a real difference. Consider our modernization initiative as Andy Dufresne's rock hammer in "The Shawshank Redemption." Slowly but surely, we chipped away. All that work eventually adds up and you feel like you've been set free. I tried to avoid any obvious spoilers there, but you've had 26 years to watch the movie.

We also picked some fruit higher on the tree with respect to our *Media Modernization* initiatives. For example, thanks to the leadership of Commissioner O'Rielly, we updated our rules for children's programming. Many of these so-called KidVid rules pre-dated the commercial Internet. Reform was necessary partly because most kids these days, including mine, rely first and foremost on the massive amount of educational programming that's available online—content that was unimaginable when the rules were written. Our reforms give broadcasters more flexibility in satisfying their obligations under the Children's Television Act, while also ensuring that consumers who rely on over-the-air television can access educational programming.

We also closed the spigot that allowed local franchising authorities to excessively tax and regulate cable operators. Since 1984, there's been a statutory cap of 5% on franchise fees that can be imposed on cable operators. And federal law has also limited how broadly a local franchising authority can regulate a cable operator. But for too long, local governments have been evading the law. They imposed excessive fees, extracted in-kind contributions, and imposed regulations on non-cable services that deterred investment in and deployment of next-generation networks. So we took the radical step of . . . simply making clear what the law said. Here too, as you might expect, we heard the usual opposition—regardless of the law, cities had a financial interest in keeping their fingers in the pie. But all court rulings to date have been in our favor. Indeed, the U.S. Court of Appeals for the Sixth Circuit flatly rejected a demand to enjoin our decision, stating that the opponents "in essence . . . have asked us to enjoin what appears to be a correct interpretation of a federal statute." If we win out, as I expect, a law adopted more than 30 years ago will help expedite the construction of next-generation networks for years hence.

Of course, you can't talk about outdated rules that no longer make sense in today's marketplace without talking about the FCC's media ownership rules.

Before I get into the long-standing debate about those rules, I think it's important to state up front that there is broad agreement about the need to promote media diversity. That's why I moved quickly to re-charter the FCC's Advisory Committee on Diversity and Digital Empowerment, which had gone dormant under the prior Administration. Over the past three-and-a-half years, the Advisory Committee's leaders have been working to develop real-world solutions to challenges like access to capital for minority- and women-owned businesses in the broadcast industry.

The FCC majority also voted to create a broadcaster incubator program. To encourage the entry of new and diverse voices into the business, this program would pair small, aspiring broadcast station

owners with established broadcasters that would help with training, finances, mentoring, and industry connections.

Unfortunately, this incubator program has been blocked in court—which brings me back to our media ownership rules.

The FCC is required, by law, to review and update our media ownership rules every four years. But despite this Congressional mandate, these regulations have remained stuck in the past. Broadcasters have been forced to play by rules largely written at the dawn of cable TV, before the commercial Internet, and well before smartphones and social media.

I was determined not to shirk this responsibility. So back in 2017, the FCC adopted reasonable reforms to bring our regulations more in line with the marketplace.

For one, we eliminated the newspaper-broadcast cross-ownership ban. This 1975 rule was based on the idea that a company could dominate a media market by owning a television station and a newspaper or a radio station and a newspaper. Whatever the merits in 1975, maintaining this rule in 2020 is utter nonsense. Local newspapers are in crisis, with many closing over the past few years. TV and radio stations are facing more competition than ever before from countless national and local websites, podcasts, cable news channels, and social media outlets. Defenders of this rule claim to support localism. But in reality, they're driving newspapers and broadcasting into the ground by closing the door on pro-competitive combinations that could strengthen local voices.

In addition to the newspaper-broadcast cross-ownership ban, we also eased the local television ownership rule. Here, we got rid of the so-called "eight-voices" test, which says that no company is allowed to own two television stations in a market unless there are at least eight independently-owned commercial television stations in that market. This test was the ultimate in arbitrary decision-making. A preemptive decree that there must be at least eight competitors for a market to be competitive has no basis in economics whatsoever and is unheard of in any other industry. We sought to allow efficient combinations that can help television stations thrive.

And as I mentioned, as part of our 2017 media ownership reforms, the Commission adopted the aforementioned incubator program to expand ownership diversity.

These decisions were obvious. They were needed. They were completely consistent with Congress's command that we repeal or modify any such rules that are no longer in the public interest as a result of competition. Yet once again, they were blocked by the same divided panel on the U.S. Court of Appeals for the Third Circuit that has commandeered media ownership policy for 17 years. Collectively, this panel's decisions have frozen in place decades-old ownership restrictions that are absurdities in the digital age.

In years past, the federal government didn't seek U.S. Supreme Court review of these backward-looking Third Circuit decisions. But I was determined that this time would be different. Absent U.S. Supreme Court intervention, it was obvious that the same divided Third Circuit panel would try to set policy and ignore the law for many more years. In a major breakthrough, the U.S. Supreme Court agreed to hear the case. I hope it will affirm the FCC's common-sense reforms and finally let us bring our rules into the 21<sup>st</sup> century. I'm glad that on January 19, 2021, my last full day as Chairman of the FCC, the federal government will be fighting to make sure our media ownership rules can match today's realities—a cause I've championed over my eight years at the Commission.

But regardless of what the Supreme Court decides, there will be more work to be done to keep our media regulations up to date with the fast-changing media landscape.

That work will have to be done by those who take the baton. As you know, I will no longer be leading the agency after January 20. But I do want to offer some thoughts on where the federal government should go from here.

In my view, we need a fundamental, intellectually honest re-assessment of what the media marketplace looks like now, where it's going, and what this means for consumers.

I've already talked about the explosion of online video content. But this tide certainly does not lift all the boats.

Since 2017, more than 150 million connected TV devices have been sold in the United States, and 80% of U.S. households can now watch programming from the Internet on their TV. Over this same four-year period, major cable and satellite providers have lost approximately 13 million video subscribers. The long-predicted prophecy about cord-cutting is being realized, and the trend is accelerating. U.S. newspapers have shed more than half their newsroom employees since 2008.

If you really want to understand the shifting power dynamics in media, follow the money—and the advertising dollars in particular. From 2010 to 2019, total advertising revenue for all media increased from \$209 billion to \$270 billion, so the pie has steadily expanded at a 3% annual clip. The big winner is online and mobile media, which has gone from \$26 billion in annual ad revenue to \$114 billion. Revenue for broadcast TV stations, broadcast TV networks, and radio stations have all essentially held steady in terms of nominal dollars, but with an expanding pie and inflation, standing still means you're falling behind. The big loser has been daily newspapers, whose annual ad revenue has collapsed from \$23 billion to \$9 billion, a 62% drop.

To think about these numbers differently: In 2010, newspapers, broadcast TV stations, broadcast TV networks, cable TV, and digital platforms each controlled between 8.6% and 13.3% of the market for ad dollars, so these five sectors were all roughly on par with one another. In 2019, ad revenue for digital platforms was 38% more than the other four *combined*.

The gap between the haves and have nots is even more stark than these statistics would suggest. When we talk about digital ad dollars, we are primarily talking about Google and Facebook, who dominate the market. In 2020, for example, Google and Facebook are *each* expected to bring in more ad revenue than every TV and radio station in the U.S. combined.

For further perspective, look at how the markets assess these companies. Nexstar is the largest broadcast television station group in the country. Its market capitalization is about \$4.6 billion. The number one subscription streaming service, Netflix, is worth about \$218 billion. The market capitalization for the largest cable company, Comcast, is about \$230 billion. And the value of Alphabet, Google's parent company, is about \$1.2 trillion—equivalent to the GDP of Finland, Colombia, Chile, the Czech Republic, and New Zealand combined.

And yet, Nexstar is subject to far more regulation to guard against its supposed market power than companies worth 50 or even 250 times its size. This is due partly to regulatory inertia—the most powerful force in government—and partly to willful blindness about today's marketplace. But the regulations need to shift, and regulators need to see.

How? Well, Congress has an important role to play. One statutory change that could have a meaningful impact would be for Congress to expand the FCC's forbearance authority. The law currently allows the FCC to “forbear from applying any regulation or provision of the [Communications] Act to a telecommunications carrier or telecommunications service, or a class of telecommunications carriers or services.” Over the years, the FCC has exercised this power to remove outdated regulatory burdens from telecommunications carriers. This, in turn, has encouraged infrastructure investment and broadband deployment. The video industry is undergoing just as profound a transformation. It only makes sense for the FCC to be able to take the same steps with respect to obsolete laws and regulations aimed at video providers, including cable operators, broadcasters, and satellite companies.

Additionally, I believe the time has come for Congress to consider broader reforms, starting with a top-to-bottom re-write of the Cable Act. This law was enacted in 1992 for an analog world of

monopoly cable operators, based on the assumption of never-ending cable domination. Today, we live in a world where subscriptions to online video distributors are soaring, cable subscriptions are falling, and streaming accounts for a quarter of all TV viewing. And there's no reason to think this trend toward streaming is going to stop any time soon. If anything, it seems likely to accelerate. Given that the dramatic erosion in the factual underpinnings of the law, a Cable Act update is desperately needed.

I also believe that the federal government needs to fundamentally rethink the very concept of media ownership regulation. It is bizarre to think that an administrative agency should pre-emptively determine for all time the structure of any marketplace or the geographic limits for a competitor, especially when it comes to a market as dynamic as media. That's especially so when the competition authorities at the U.S. Department of Justice and Federal Trade Commission can address—and have addressed—anticompetitive conduct, transactions, and the like.

This state of affairs is an anomaly. We don't have special rules about how many social media outlets you can own. We don't have special rules for how many streaming services you can own. We don't have special rules limiting how many Americans your Internet platform can reach. Indeed, our so-called media ownership rules don't contain ownership rules for much of the media, and in particular those parts of the media that are growing fast. For some reason, the only ones we have are for broadcasters.

On its face, that doesn't make any sense. It makes even less when you consider market share for broadcasters is shrinking as they get squeezed by increased competition. Imagine if you were asked to come up with a new media regulation regime from scratch. What would be your reaction if somebody suggested, "you shouldn't have any rules for the majority of things that people watch and listen to and read, but let's create a strict ownership cap for broadcast stations and broadcast stations only"? You would never single out broadcasters like that, but that's exactly what the FCC's rules currently do.

The problem is a fundamental refusal to grapple with today's marketplace: what the service market is, who the competitors are, and the like. When assessing competition, some in Washington are so obsessed with the numerator, so to speak—the size of a particular company, for instance—that they've completely ignored the explosion of the denominator—the full range of alternatives in media today, many of which didn't exist a few years ago.

When determining a particular company's market share, a candid assessment of the denominator should include far more than just broadcast networks or cable channels. From any perspective (economic, legal, or policy), it should include *any* kinds of media consumption that consumers consider to be substitutes. That could be TV. It could be radio. It could be cable. It could be streaming. It could be social media. It could be gaming. It could be still something else. The touchstone of that denominator should be "what content do people choose today?", not "what content did people choose in 1975 or 1992, and how can we artificially constrict our inquiry today to match that?" Had the Third Circuit not blocked our 2017 reforms and had we thus had been able to complete the FCC's 2018 quadrennial review of our media ownership rules under my tenure as Chairman, these are issues that I was looking forward to tackling head on.

When you ask the intellectually honest questions, the answers raise serious doubts about whether the FCC should have media ownership regulations at all. Again, it's hard to think of other sectors of the economy where the government pre-emptively decrees market structure. What would the American public say if Congress passed a law providing that only 39% of Americans should be allowed to do a Google search? Or one putting specific restrictions on the number of subscribers Netflix can have? Most would think legislators should be accompanied not by counsel but by a psychologist. If general competition law is good enough for other sectors of our economy, why not the broadcast industry?

Suffice it to say I'm skeptical of pre-emptive ownership limits in the media marketplace. But I'm a big believer in time limits for online remarks, and I'm coming up on my allotted 25 minutes. So while there are many other things I could talk about, like our new audio description rules and the incentive

auction “repack” where we successfully changed the channel and/or location for approximately 1,000 full-power television broadcasters, I’m going to wrap things up.

But there is one more point I’d like to make, and it’s probably the most important one I’ll make today. For the past 25 minutes, I’ve been talking about all these things the FCC has done over the past four years to match the Commission’s rules with today’s landscape. None of this progress would have been possible without the remarkable work of the FCC staff. I especially want to thank the members of the Commission’s Media Bureau, led by our superb Chief Michelle Carey. They represent the best of public service, and it has been my honor to join them on this journey over the past four years. We scored many victories together over the past four years on behalf of American consumers and innovators. Here’s hoping for one final win—this one at the Supreme Court!