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A Reflection on Commissioner Pai, Chairman Pai, and Public Service

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[TOTM: The following is part of a digital symposium by TOTM guests and authors on the legal and regulatory issues that arose during Ajit Pai's tenure as chairman of the Federal Communications Commission. The entire series of posts is available [here](#).

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Much of this symposium celebrates Ajit's contributions as chairman of the Federal Communications Commission and his accomplishments and leadership in that role. And rightly so. But *Commissioner* Pai, not just *Chairman* Pai, should also be recognized.

I first met Ajit when we were both minority commissioners at our respective agencies: the FCC and Federal Trade Commission. Ajit had started several months before I was confirmed. I watched his performance in the minority with great admiration. He reached new heights when he shifted from minority commissioner to chairman, and the accolades he will receive for that work are quite appropriate. But I want to touch on his time as a minority commissioner at the FCC and how that should inform the retrospective of his tenure.

Let me not bury the lead: Ajit Pai has been, in my view, the most successful, impactful minority commissioner in the history of the modern regulatory state. And it is that success that has led him to become the most successful and impactful chairman, too.

I must admit all of this success makes me insanely jealous. My tenure as a minority commissioner ran in parallel with Ajit. We joked together about our fierce duel to be the reigning king of regulatory dissents. We worked together fighting against [net neutrality](#). We compared notes on dissenting statements and opinions. I tried to win our friendly competition. I tried pretty hard. And I lost; worse than I care to admit. But we had fun. And I very much admired the combination of analytical rigor, clarity of exposition, and intellectual honesty in his work. Anyway, the jealousy would be all too much if he weren't also a remarkable person and friend.

The life of a minority commissioner can be a frustrating one. Like Sisyphus, the minority commissioner often wakes up each day to roll the regulatory (well, in this case, deregulatory) boulder up the hill, only to watch it roll down. And then do it again. And again. At times, it is an exhausting series of jousting matches with the windmills of

Washington bureaucracy. It is not often that a minority commissioner has as much success as Commissioner Pai did: dissenting opinions ultimately vindicated by judicial review; substantive victories on critical policy issues; paving the way for institutional and procedural reforms.

It is one thing to write a raging dissent about how the majority has lost all principles. Fire and brimstone come cheap when there aren't too many consequences to what you have to say. Measure a man after he has been granted power and a chance to use it, and only then will you have a true test of character. Ajit passes that test like few in government ever have.

This is part of what makes Ajit Pai so impressive. I have seen his work firsthand. The multitude of successes Ajit achieved as Chairman Pai were predictable, precisely because *Commissioner* Pai told the world exactly where he stood on important telecommunications policy issues, the reasons why he stood there, and then, well, he did what he said he would. The Pai regime was much more like a Le'Veon Bell run, between the tackles, than a no-look pass from Patrick Mahomes to Tyreek Hill. Commissioner Pai shared his playbook with the world; he told us exactly where he was going to run the ball. And then Chairman Pai did exactly that. And neither bureaucratic red tape nor political pressure—or even physical threat—could stop him.

Here is a small sampling of his contributions, many of them building on groundwork he laid in the minority:

Focus on Economic Analysis

One of Chairman Pai's most important contributions to the FCC is his work to systematically incorporate economic analysis into FCC decision-making. The triumph of this effort was [establishing the Office of Economic Analysis](#) (OEA) in 2018. The OEA focus on conducting economic analyses of the costs, benefits, and economic impacts of the commission's proposed rules will be a critical part of agency decision-making from here on out. This act alone would form a legacy any agency head could easily rest their laurels on. The OEA's work will shape the agency for decades and ensure that agency decisions are made with the oversight economics provides.

This is a hard thing to do; just hiring economists is not enough. [Structure matters](#). How economists get information to decision-makers determines if it will be taken seriously. To this end, Ajit has taken all the lessons from what has made the economists at the FTC so successful—and the lessons from the structural failures at other agencies—and applied them at the FCC.

Structural independence looks like “involving economists on cross-functional teams at the outset and allowing the economics division to make its own, independent recommendations to decision-makers.”^[1] And it is necessary for economics to be taken seriously within an agency structure. Ajit has assured that FCC decision-making will benefit from economic analysis for years to come.

Narrowing the Digital Divide

Chairman Pai made helping the disadvantaged get connected to the internet and narrowing the digital divide the top priorities during his tenure. And Commissioner Pai was fighting for this long before the pandemic started.

As businesses, schools, work, and even health care have moved online, the need to get Americans connected with high-speed broadband has never been greater. Under Pai's leadership, the FCC has removed bureaucratic barriers^[2] and provided billions in funding^[3] to facilitate rural broadband buildout. We are talking about connections to some 700,000 rural homes and businesses in 45 states, many of whom are gaining access to high-speed internet for the first time.

Ajit has also made sure to keep an eye out for the little guy, and communities that have been historically left behind. Tribal communities,^[4] particularly in the rural West, have been a keen focus of his, as he knows all-too-well the difficulties and increased costs associated with servicing those lands. He established programs to rebuild and expand networks in the Virgin Islands and Puerto Rico^[5] in an effort to bring the islands to parity with citizens living on the mainland.

You need not take my word for it; he really does talk about this all the time. As he said in a [speech at the National Tribal Broadband Summit](#): "Since my first day in this job, I've said that closing the digital divide was my top priority. And as this audience knows all too well, nowhere is that divide more pronounced than on Tribal lands." That work is not done; it is beyond any one person. But Ajit should be recognized for his work bridging the divide and laying the foundation for future gains.

And again, this work started as minority commissioner. Before he was chairman, Pai proposed projects for rural broadband development; he frequently toured underserved states and communities; and he proposed legislation to offer the 21st century promise to economically depressed areas of the country. Looking at Chairman Pai is only half the picture.

Keeping Americans Connected

One would not think that the head of the Federal *Communications* Commission would be a leader on important health-care issues, but Ajit has made a real difference here too. One of his major initiatives has been the development of telemedicine solutions to expand access to care in critical communities.

Beyond encouraging buildout of networks in less-connected areas, Pai's FCC has also worked to allocate funding for health-care providers and educational institutions who were navigating the transition to remote services. He ensured that health-care providers' telecommunications and information services were funded. He worked with the U.S. Department of Education to direct funds for education stabilization and allowed schools to

purchase additional bandwidth. And he granted temporary additional spectrum usage to broadband providers to meet the increased demand upon our nation's networks. Oh, and his Keep Americans Connected Pledge gathered commitment from more than 800 companies to ensure that Americans would not lose their connectivity due to pandemic-related circumstances. As if the list were not long enough, Congress' January coronavirus relief package will ensure that these and other programs, like Rip and Replace, will remain funded for the foreseeable future.

I might sound like I am beating a dead horse here, but the seeds of this, too, were laid in his work in the minority. Here he is describing his work in a [2015 interview](#), as a minority commissioner:

My own father is a physician in rural Kansas, and I remember him heading out in his car to visit the small towns that lay 40 miles or more from home. When he was there, he could provide care for people who would otherwise never see a specialist at all. I sometimes wonder, back in the 1970s and 1980s, how much easier it would have been on patients, and him, if broadband had been available so he could provide healthcare online.

Agency Transparency and Democratization

Many minority commissioners like to harp on agency transparency. Some take a different view when they are in charge. But Ajit made good on his complaints about agency transparency when he became Chairman Pai. He did this through circulating draft items well in advance of monthly open meetings, giving people the opportunity to know what the agency was voting on.

You used to need a direct connection with the FCC to even be aware of what orders were being discussed—the worst of the D.C. swamp—but now anyone can read about the working items, in clear language.

These moves toward a more transparent, accessible FCC dispel the impression that the agency is run by Washington insiders who are disconnected from the average person. The meetings may well be dry and technical—they really are—but Chairman Pai's statements are not only good-natured and humorous, but informative and substantive. The public has been well-served by his efforts here.

Incentivizing Innovation and Next-Generation Technologies

Chairman Pai will be remembered for his encouragement of innovation. Under his chairmanship, the FCC [discontinued rules](#) that unnecessarily required carriers to maintain costly older, lower-speed networks and legacy voice services. It streamlined the discontinuance process for lower-speed services if the carrier is already providing higher-speed service or if no customers are using the service. It also okayed streamlined notice

following *force majeure* events like hurricanes to encourage investment and deployment of newer, faster infrastructure and services following destruction of networks. The FCC also approved requests by companies to provide high-speed broadband through [non-geostationary orbit satellite](#) constellations and created a [streamlined licensing](#) process for small satellites to encourage faster deployment.

This is what happens when you get a tech nerd at the head of an agency he loves and cares for. A serious commitment to good policy with an eye toward the future.

Restoring Internet Freedom

This is a pretty sensitive one for me. You hear less about it now, other than some murmurs from the Biden administration about changing it, but the debate over net neutrality got nasty and apocalyptic.

It was everywhere; people saying Chairman Pai would end the internet as we know it. The whole web blacked out for a day in protest. People mocked up memes showing a 25 cent-per-Google-search charge. And as a result of this over-the-top rhetoric, my friend, and his family, received [death threats](#).

That is truly beyond the pale. One could not blame anyone for leaving public service in such an environment. I cannot begin to imagine what I would have done in Ajit's place. But Ajit took the threats on his life with grace and dignity, never lost his sense of humor, and continued to serve the public dutifully with remarkable courage. I think that says a lot about him. And the American public is lucky to have benefited from his leadership.

Now, for the policy stuff. Though it should go without saying, the [light-touch framework](#) Chairman Pai returned us to—as opposed to the public utility one—will ensure that the United States maintains its leading position on technological innovation in 5G networks and services. The fact that we have endured COVID—and the massive strain on the internet it has caused—with little to no noticeable impact on internet services is all the evidence you need he made the right choice. Ajit has rightfully earned the title of the [“5G Chairman.”](#)

Conclusion

I cannot give Ajit all the praise he *truly* deserves without sounding sycophantic, or bribed. There are any number of windows into his character, but one rises above the rest for me. And I wanted to take the extra time to thank Ajit for it.

Every year, without question, no matter what was going on—even as chairman—Ajit would come to my classes and talk to my students. At length. In detail. And about any subject they wished. He stayed until he answered all of their questions. If I didn't politely shove him out of the class to let him go do his real job, I'm sure he would have stayed until the last student left. And if you know anything about how to judge a person's character, that will tell you all

you need to know.

Congratulations, Chairman Pai.

^[1] Jerry Ellig & Catherine Konieczny, [*The Organization of Economists in Regulatory Agencies: Does Structure Matter?*](#)

^[2] *Rural Digital Opportunity Fund*, Fed. Commc'ns Comm'n, <https://www.fcc.gov/auction/904>.

^[3] Press Release, *Connect America Fund Auction to Expand Broadband to Over 700,000 Rural Homes and Businesses: Auction Allocates \$1.488 Billion to Close the Digital Divide*, Fed. Commc'ns Comm'n, <https://docs.fcc.gov/public/attachments/DOC-353840A1.pdf>.

^[4] Press Release, *FCC Provides Relief for Carriers Serving Tribal Lands*, Fed. Commc'ns Comm'n, <https://www.fcc.gov/document/fcc-provides-relief-carriers-serving-tribal-lands>.

^[5] Press Release, *FCC Approves \$950 Million to Harden, Improve, and Expand Broadband Networks in Puerto Rico and U.S. Virgin Islands*, Fed. Commc'ns Comm'n, <https://docs.fcc.gov/public/attachments/DOC-359891A1.pdf>.

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