Twitter Thread by Matt Wood



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Typically during an #FCCLive @FCC open meeting like today's 10:30, especially one with #NetNeutrality & #TitleII on tap, I tweet (a lot) to debunk the nonsense put out there by @AjitPaiFCC, @BrendanCarrFCC, and their enablers. But today let's take a different approach.

For today's remand order vote, with the Pai FCC botching the DC Circuit's mandate to look at how the repeal and reclassification decisions also harm public safety, broadband competition, and #Lifeline support for broadband, I decided to pre-but as much as I could. #FCCLive

Let's see how quickly my talking points bingo card fills up once the meeting starts at 10:30. But at very least I'll have succeeded in filling up Pai and Carr's mentions and the #FCCLive hashtag. (It's the little things that keep us going this week.) https://t.co/RULZHN6in5

The mega-thread that follows is long, but I wanted to draw on all of the great work @FreePress has done over the past week, year, and really more than a decade now, debunking the deregulatory fantasy figures put out by Pai and people like him. #FCCLive

So watch this space later for @freepress's final press statement by @danaflo on today's all-but-certain outcome. In the meantime, let's explore why Pai's predetermined outcome is outrageous, amidst all of the other outrages we can see right now. #FCCLive

Sometimes it’s hard to focus on internet and media policy issues during tumultuous times, but understanding them isn’t just our job at @FreePress, it’s essential for understanding how and why this dysfunctional, hate-filled administration came into and kept power. #FCCLive

Nearly 80 million people are unconnected to adequate, essential broadband in a pandemic & economic downturn. Trump’s unwillingness to take that crisis seriously is unsurprising, considering that low-wealth communities and people of color are hardest hit by it. #digitaldivide

So even with the focus rightly on the election and the Supreme Court, during a new COVID surge and continued trauma from natural disasters and police violence, we’re watching today as the Trump FCC continues giving away its power to get and keep people connected.

It’s no accident that wildly unpopular FCC Chairman @AjitPaiFCC is doing his best to do his worst right now, sneaking in as many more bad decisions as he can before the year ends, and before a potential administration change strips him of his chairmanship & majority at the FCC.

When not engaging in embarrassing hypocrisy about his newfound readiness to “regulate the internet” under #Section230, all to defend Trump’s disinformation, Pai is busy repeating the mistakes & lies behind his #NetNeutrality repeal and #TitleII abdication. https://t.co/CFZ8sl5qMV

We filed this letter at the FCC last week, following up on comments we filed in the Spring (and dozens of earlier filings, sprinkled throughout this thread too) detailing Pai’s mistakes, misstatements and misleading claims. #NetNeutrality #DigitalDivide https://t.co/hWOtIY6SmK

Here’s the what, why, who and how of today’s bad decision, as the FCC refuses to revisit its repeal of the Obama-era FCC’s strong #NetNeutrality rules, or fix Pai’s wrongful rejection of #TitleII legal authority Congress gave the agency to protect broadband users. #FCCLive

A federal court upheld the FCC’s egregiously misnamed Restoring Internet Freedom Order last year, but the judges said that the results-oriented Republican majority at the agency had “drifted far beyond the statutory design” of the laws Congress wrote for it. #NetNeutrality

In fact, while the court said it had to follow Supreme Court guidance giving the FCC some deference to interpret these statutes, even the judges who voted to uphold the FCC’s decision called it “unhinged from the realities of modern broadband service.” https://t.co/z6FcyU299C

That kind of faint praise was the high point for the FCC. The court upheld parts of the decision despite these flaws, but rejected outright the FCC’s claim to preempt all state and federal laws designed to fill the vacuum created by the #NetNeutrality repeal.

The appellate court also found that Pai had utterly failed to explain or even explore other impacts of the #NetNeutrality repeal & the decision to classify broadband as an “information service” rather than a #TitleII telecommunications service more fully subject to FCC oversight.

The court zeroed in on the impacts of repeal and reclassification on three crucial areas: public safety, competitive broadband providers’ ability to deploy their networks, and the use of “Lifeline” program low-income support funding for broadband. #digitaldivide

Given a chance for a do-over on these topics the Pai FCC decided instead to shrug its shoulders & repeat its mistakes, with a series of staggeringly wrong conclusions as indefensible in terms of their public policy impacts as they are in terms of their analytical justification.

The order the FCC votes on today defies the court’s instruction to take a more serious look at these three topics, and essentially says that the reasons found wanting in the original repeal were good enough all along. #FCCLive

Worse yet, the FCC's fallback for its brilliant "told you so" defense is that any harms to public safety, competition, and Lifeline are worth it on balance – just collateral damage to achieve the supposed tremendous investment and innovation benefits unleashed by Pai's repeal.

This abdication of authority over the nation's essential broadband telecommunications networks would be wrong under any circumstances. It lands especially poorly during a pandemic that has highlighted the searing importance of universal, affordable and open internet connectivity.

That backdrop is essential to understanding the depth of the failing in the Commission's throwing up its hands here, all in favor of magical claims about broadband investment and performance improvements that are either false or falsely credited to the #NetNeutrality repeal.

Why is @AjitPaiFCC doing all of this again? Because he's staked his entire tenure on the lie that #TitleII hurt investment and his repeal helped investment. #NetNeutrality #FCCLive

Aggregate broadband investment increased under #TitleII, and has been in decline since its repeal. Unlike today's order, @freepress doesn't claim the regulatory change caused the investment changes. But unless you cherry-pick the data, the facts are clear. https://t.co/26brYV0ROc

In fact, we've repeatedly stated that aggregate industry capital investment figures are pretty meaningless, as is pretending they are due to a single regulatory classification. But this is the metric @AjitPaiFCC chose, and if he wants to use it he has a lot of explaining to do.

Investment is down significantly at many large ISPs. The aggregate is down nearly 5 percent from the last year Title II was in effect. On an inflation-adjusted basis, investment in every year of Pai's tenure is below what it was in 2015, when the Open Internet rules were adopted.

And this is all silly, considering that not only do individual ISPs invest more some years when they are upgrading, then less the next year when they finish those upgrades. They also tell investors, on penalty of jail time for lying, exactly what they plan to invest and why.

As we detailed in 2017, no cable or phone company told investors they had scaled back because of Title II. Just the opposite. They were either silent on it, or else told Wall Street the #TitleII classification decision had no impact on their expenditures. https://t.co/EvY0tWtRUZ

These facts fly in the face of ISPs' frequent lobbying laments, but track perfectly with ISPs' legally-binding statements to investors, which repeatedly admit that the Commission's classification decisions are not a factor in these firms' investment decisions. #NetNeutrality

More of the big, publicly-traded ISPs increased their spending with #TitleII in place than the relatively few that scaled back. And those that did scale back did so not because of FCC rule changes, but because they were in a lull in their natural upgrade cycles.

It wouldn't be #NetNeutrality investment debunker if I didn't cite our favorite quote from AT&T, which told the FCC: "Capital expenditures tend to be 'lumpy'" and – get this, Chairman Pai – "Minor variations from year to year ...should not be surprising." https://t.co/Fnx3RCjFuR

So that's the real reason ISPs shift slightly over time. More of them were investing in new technologies in 2015 & 2016. Some of those have ramped down for now. Investment levels stay steady & accumulate over time, but they cycle up and down along that trajectory. #NetNeutrality

That's why Comcast investment was up 23% in the Wheeler FCC era, but *down* 14% in 2019 when compared to 2016. Charter's 2019 investments were down 10 percent from 2016. CenturyLink's were down 21%. We haven't heard @AjitPaiFCC bragging about any of that. #NetNeutrality #FCCLive

Like Comcast and Charter, AT&T invested less in 2019 than it did in 2016 – when #TitleII was still in place, and the chances of a Trump win and Pai repeal seemed remote at best. AT&T's 2019 capital expenditures were 17 percent below its 2016 level. But why is AT&T so "lumpy"?

It was actually a dip in AT&T spending in 2015 in the first place that helped to fuel Pai's lies about #TitleII supposedly depressing investment. AT&T spent less in 2015 than it had in the two years prior, and the company is big enough that its drop impacted the aggregate.

But this was hardly AT&T scaling back in terror over #TitleII. As we copiously documented, AT&T bragged to investors about finishing a "monster" upgrade ahead of schedule in 2014, then bragged about saving a bunch of money from the upgraded technology. https://t.co/4DCz2s12mv

The transcript from former AT&T CEO Randall Stephenson shows him crowing to Wall Street about how AT&T's spectrum holdings saved it money, and how fiber, ethernet and then-new 4G wireless technologies were all 30 or 40 percent cheaper to operate. https://t.co/uxUqjD2xsz

Only inside the beltway, and for politicians like @AjitPaiFCC, could anyone dream of calling it a bad thing when a company provides better service while saving itself money. But that's what Pai's ideology demanded, facts be damned. #NetNeutrality #FCCLive

Before he left the top spot at AT&T, Stephenson had started to change his tune – but only by complaining in far more vague (and less legally enforceable) lobbying and press pitches about how deregulation and Trump's tax cuts would spur investment. Is that what happened?

Stephenson said "Take regulation down, you get investment up," and "Lower taxes drives more investment [and] hiring" of "jobs wearing hard hats." But we see just the opposite at AT&T, in bad news not just for Pai's tale but for taxpayers and workers too. https://t.co/b8V3uZRxgR

Per @jbrodkin at @arstechnica, AT&T promised to create 7,000 jobs in exchange for tax cuts but slashed 23,000 instead. AT&T kept cutting jobs and cutting spending in 2018 and 2019, its regulatory breaks and tax breaks in hand, and it hasn't looked back. https://t.co/lRYoOFGoap

As Brodkin also reports, even before continuing to “rationalize” jobs (that’s corporate-speak for firing people) during the pandemic, AT&T was slashing billions in investment, and only planning to continue these investment cuts in 2020. https://t.co/0dLwdhpgcx

So with a wallet fattened by Trump tax breaks and bolstered by Pai doing their bidding, AT&T is still cutting investment and jobs (as other other major wireless companies downsize too) by closing stores and replacing people with drones and chatbots.

But as @iainwmorris noted some people at AT&T still do well. New CEO John Stankey “collected $22.5 million in total compensation last year,” the CFO’s haul grew to $16.7 million, and before stepping down Stephenson enjoyed a 10% increase up to $32 million. https://t.co/a68WE78Lbu

That’s a lot of investment detail before getting back to the remand order, but it’s all part of an essential fact-check on this FCC’s often-repeated claim that Title II hurt investment, and somehow the repeal order healed that hurt. Because none of it is true.

The meeting has started, and we're hearing from @mikeofcc already about how the #NetNeutrality repeal led to other benefits too. But his and Pai’s other boasts on broadband metrics and markets improving are unjustified too.

The other broadband performance improvements Pai tries to take credit for are either not real, not his doing, or not that impressive.

For example, there have been more fiber deployments in the past few years of course, but fiber deployment under Pai is exactly what we’d expect based solely on the deployment trends from the prior eight years accelerating at the predicted rate. #NetNeutrality #TitleII #FCCLive

92 percent of these Pai-era fiber deployments came from projects announced during 2015-2016, and AT&T’s DirecTV merger buildout commitment (that Pai opposed) accounted for two-thirds of all new household fiber deployments during his tenure. #FCCLive

(@BrendanCarrFCC sounds as bored by the tired talking points he's repeating as we all are by him. His phony chuckles play even less well on zoom than they do in the room.)

And AT&T’s fiber deployments all but ceased upon completion of these Obama-era commitments. Increases in availability of very-high speed cable broadband services were likewise planned, publicly announced, or begun before Pai’s reign as Chairman ever began. #FCCLive

And whatever Carr's lies, as another Free Press filing last month at the FCC shows, Pai’s chairmanship has also seen the cable industry increase its share of the home internet market to 68 percent - with home internet and wireless prices rising again. https://t.co/26brYV0ROc

Pai and Carr Pai even brag about growth in average broadband speeds, but using the same speed-test data they do we see that this growth is S L O W E R in the Trump era than it was in the last three-plus years of the Obama FCC.

So that’s the list of achievements that make the whole #NetNeutrality repeal worth it, in Pai’s mind. Those are the "benefits" today’s order sets against the loss of FCC authority and certainty for public safety applications, #Lifeline, and competitive broadband-only providers.

What is the Pai FCC willing to trade away for this underwhelming list of on-trend (or even worsening) broadband investment and improvement? Far too much. #FCCLive #DigitalDivide #NetNeutrality #Lifeline

Today’s @FCC order holds to the conclusion that tossing away better legal authority in #TitleII for these issues on remand is all justified by the supposed investment gains, even as the FCC acknowledges that its investment claims are subject to “dispute.” #FCCLive #NetNeutrality

More accurate than disputed would be debunked, both when @AjitPaiFCC made these claims in 2017 and for the years since. There are now three years of contrary evidence after the initial #NetNeutrality repeal, all showing broadband investment has not in fact gone up as a result.

Yet the FCC majority bizarrely insists assessing the truth of its own investment assertions is “outside the scope” of the remand, all while using these same assertions and its own now-stale predictive judgment to justify its abdication on public safety, competition and #Lifeline.

This FCC relies in almost every particular on a calculus that prioritizes these disputed investment claims over every other concern raised by public interest commenters, public safety officials, and even the court itself. #FCCLive #NetNeutrality

Perhaps if the Commission had found some actual legal or evidentiary support for its conclusions, then the correction of its faulty investment claims would not be needed on remand – but it did not, and they are. #FCCLive

Among its many missteps, this Commission admits it would trade away a program that provides critical life-and-death support for poor people trying to afford a broadband connection, all to further its baseless fabrications on how deregulation dictates investment. #FCCLive

These kinds of grave errors are a mishandling of the court’s remand and an abandonment of the FCC’s public interest obligations to promote competition, public safety, and universal service. #DigitalDivide

Given not just the chance at but the responsibility for a re-do, the FCC still rejects the public safety arguments raised by emergency responders and public safety officials, instead prioritizing the plainly less-expert analysis of internet service providers.

Pai pins all hopes for resolution of any public safety harms on transparency and public relations pressure to make internet providers behave better. This is as ridiculous as it sounds for these widely-hated, highly profitable companies subject to so little competition.

First responders themselves are better-placed than we are to explain the harms stemming from the FCC’s cavalier approach. Yet from a legal standpoint, the Commission cannot satisfy the remand by merely doubling-down on its original arguments already rejected by the court.

Pai and his GOP colleagues want to rely solely on evidence-free speculation and self-serving industry comments about the improved broadband deployment and performance allegedly (but not actually) attributable to the repeal.

Unlike the phone and cable incumbents, some ISPs might offer broadband over a network that doesn't also offer legacy telephone or pay-TV service. But they'd need the right to build their networks in rights-of-way often controlled by the same incumbents. #FCCLive #NetNeutrality

The court directed the FCC to "grapple with the lapse in legal safeguards" from reclassification, and specifically the elimination (in Section 224 of the Communications Acts) of rights for broadband providers that don't offer a legacy telephone or cable TV service. #FCCLive

Yet the FCC refuses to grapple at all and simply taps out of the ring. Today's order gives up, and admits the court was right about this loss of safeguards for competitive providers' deployment plans. So much for this FCC's supposed pro-deployment stance. #DigitalDivide

Perhaps the most glib and condescending conclusion here, in an order rife with them, is the FCC's smug proclamation that the loss of protections is actually good for competitive providers facing bottlenecks and stalling by the incumbents.

That's because, in the absence of applicable law, broadband-only providers "have the regulatory flexibility to enter into innovative and solution-oriented pole attachment agreements with pole owners." Yes, the draft order really said that. #FCCLive

It may be easy for the FCC to conclude stripping away parties' rights and legal recourse is good, but notably the competitive providers who've lost these rights tend to take a different view than the Commission that took them away. #FCCLive #NetNeutrality #Lifeline

Unfortunately, the Commission's gambling with other people's rights doesn't stop with this surrender on competition, and extends to its proposed #Lifeline decision as well. #DigitalDivide

The FCC's order maintains the same backwards legal framework for #Lifeline too. Providing legacy voice service is the only way a provider can assure Lifeline support for broadband. And that amounts to an outright attack on a modernized Lifeline program.

Even if the FCC's legal reasoning for Title I classification were sound, and its arguments about the investment benefits from that classification were true, the choice to exclude broadband-only providers would be a significant drawback.

Yet that's the choice this FCC makes. It sticks with wrongly labeling broadband something other than a "telecommunications service" eligible for support. So Lifeline subscribers can only get standalone broadband if the carrier providing it provides telephone service too. #FCCLive

Pai's order gleefully ties broadband support to any still-eligible carriers' continuance of legacy voice and other older services that the FCC now disfavors for #Lifeline. This type of convoluted nonsense is as ridiculous as it sounds, and it is completely unnecessary too.

This classification choice is designed solely to avoid supposed broadband investment harms that simply do not exist at all, much less result from a straightforward #TitleII statutory interpretation properly treating broadband as an essential telecommunications service.

In 2016, the FCC sought to increase competition by expanding the number of eligible Lifeline providers and services by directly supporting broadband and inviting broadband-only providers into the program.

But Pai's landing on a legal theory that locks any such broadband-only providers out of the Lifeline program severely limits its potential for expansion, competition, and modernization.

And the legal Jenga tower this Commission has constructed to continue offering Lifeline support for broadband service (for now) while explicitly removing broadband as a supported service simply is not workable.

To predicate the support of a consumer subsidy on infrastructure support perverts the purpose of the #Lifeline program, and whatever excuses the FCC can concoct it misses the point that tying broadband support to voice is wrong and counter-productive

The universal service statute makes plain that Congress anticipated a need to support a world beyond voice service, where multiple facilities such as cable and wireless infrastructure would compete to carry an "evolving level" of communications services.

What Congress didn't anticipate was an FCC like this one, intent on playing word games that would shackle a modernized broadband subsidy to support for voice services that the FCC has decided to transition away from supporting at all.

To direct broadband subsidies to users through the #Lifeline program, which aims to make critical communications services more affordable for low-income households, the Commission cannot rely on a legal fiction. #FCCLive

Making broadband support the centerpiece of modernized #Lifeline requires including broadband internet access as a supported service under Section 254(c) of the Communications Act, and that requires correctly reclassifying broadband as a #TitleII telecom service.

The mess that results from taking a contrary tack is unconscionable. Today's order openly admits that if its legal contortions fail to convince the courts, this @FCC would rather see broadband removed from the #Lifeline program entirely than consider properly reclassifying.

These are not the words of an agency that believes it has found a workable legal framework to support critical modernization of a universal service program, but one trying to cover its tracks and retcon its justifications for scrapping the legal authority Congress gave it.

There is no reason for the FCC to back itself into this corner. It could have (and did, for two years under #TitleII) pursuing light-touch regulation not by misclassification but under the law in Title II and the Section 10 forbearance it offers. #NetNeutrality

Instead, by cynically defining away its authority in an effort to gift internet service providers with supposed “regulatory relief,” the FCC has boxed itself into a position where it is *prohibiting* not promoting competition in the #Lifeline program from innovative providers.

Worse, this FCC is shrugging its shoulders at the possibility of cutting broadband support entirely while miring #Lifeline in the past instead of modernizing it. #TitleII #FCCLive

This flagrant indifference fits with this Commission’s history of attacks on the #Lifeline program; and during a global pandemic when families are more reliant on broadband connectivity than ever, this is even more despicably cruel. #FCCLive

More than 77 million people in the U.S. lack adequate home broadband. Economic and racial gaps in broadband persist. Study after study indicates that a layered #digitaldivide is primarily driven by the lack of affordable broadband services. #NetNeutrality https://t.co/26brYV0ROc

Only 48% of low-income households have a fixed broadband connection. 13 million Black people, 18 million Latinx people, and 13 million Native Americans lack the adequate home connectivity they need to fully participate in today’s economy and education systems. #DigitalDivide

Yet this FCC majority openly admits it would rather completely eliminate #Lifeline for broadband than simply reconsider its suspect classification decision stripping broadband of its classification as a #TitleII telecommunications service. #FCCLive

In a world and especially a week when nothing coming out of Washington and this White House should shock anyone, this is yet another example of a Trump appointee putting ideology ahead of sound process, policy impacts, and the law he should be following. #FCCLive #NetNeutrality

That's all I have, but @AjitPaiFCC goes next in the speaking order before they vote. He's got nothing left to say though. We've heard it all before. And @JRosenworcel and @GeoffreyStarks brilliant dissenting statements dismantled Pai on all these points and more. #FCCLive

Well, Pai did surprise me after all. But now that he's moved past the disgusting personal attacks (and tried to justify his #Section230 hypocrisy by conflating broadband networks with websites like Twitter), he's repeating the same lies on speeds and deployment. #FCCLive

In light of all the lies Pai has spewed on broadband investment, please let "the market for baseless demagoguery" be among the last words he utters as Chairman - celebrating his "successes" while a quarter of the country is disconnected. #DigitalDivide

Is it really possible that Pai doesn't know the difference between Twitter and a broadband provider? Twitter is a website, free to curate content (even if that means trying to stamp out lies from Pai's boss President Trump). #Section230 #FCCLive

So when a website chooses whether to publish or host a particular piece of content, that is their right as what the Communications Act calls an "information service" - which Pai's #NetNeutrality repeal said the FCC had no authority to regulate. #Section230 https://t.co/CFZ8sl5qMV

Funny how once Trump told Pai to change his tune, and essentially fired @mikeofcc as a commissioner at a supposed independent agency, Pai suddenly was in favor of regulating the internet after all. #Section230

But Pai's close, when he's not busy comparing himself to Margaret Thatcher, says more people are connected today BECAUSE OF his repeal. And that's simply not true, no matter how often Pai repeats the lies and boasts. #NetNeutrality #FCCLive #TitleII #DigitalDivide #Lifeline

Here's @freepress statement from @dana_flo opposing the FCC's shameless, reckless victory lap while tens of millions fight to stay connected with no real help from this agency charged with helping them do just that. #NetNeutrality #DigitalDivide #FCCLive https://t.co/wDoeIMfj1b

I need to turn to some other topics now. You may have heard, @AjitPaiFCC needs help from @SenateGOP to dismantle #Section230and regulate websites' speech. But I'll be back later to highlight more of @JRosenworcel and @GeoffreyStarks brilliance (and Pai's nonsense). #NetNeutrality