

Communications Daily

FCC Members Continue Bickering

Net Neutrality Protests Reflect Political Shift, Activists Say; Experts Doubt Much Will Change

TOP NEWS | 11 Dec 2017 | Ref: 1712080016

Protests highlight growing resistance to FCC Chairman Ajit Pai's plan to undo net neutrality regulation and Communications Act Title II broadband classification, said organizers of 700 demonstrations they say were held across the country Thursday. Attendees said much the same thing. But the protests won't change any votes at the FCC's decisive Thursday meeting, it's widely believed. Self-identified Republicans, independents and Democrats were among protesters, they said on the sidelines.

The gatherings show "there's massive political will and opposition to the rollback," said David Segal, Demand Progress executive director, who said protesters targeted lawmakers' home-district offices, particularly Republican senators. "This is unprecedented on an issue like this," said Free Press CEO Craig Aaron, noting 16,000 "RSVPs" for the events in all states. "Net neutrality is becoming a third-rail political issue" that will become a "campaign issue," he said. Both were at a protest outside the chairman's dinner, which the agency's two Democratic members also attended.

At the dinner, Pai poked fun at claims he's cozy with ISPs like Verizon that back a Title I approach (see 1712080063). Friday, he said small wireless ISPs also back a Title I tack, but Commissioner Jessica Rosenworcel continued raising process concerns. She and Commissioner Mignon Clyburn spoke to the approximately 50-100 protesters outside the Washington Hilton Hotel where the annual FCBA event was held as "net neutrality rules" and other slogans were projected on a building across Connecticut Ave. NW. Also Friday, the New York attorney general's office said the FCC is obstructing law enforcement by refusing to cooperate in the state's probe of allegedly fake net-neutrality comments (see 1712080043).

"We're putting a human face on this fight," Aaron told us. "It shows just how passionate people have become about this issue, just how upset they are." That's why "the FCC got millions and millions of comments" and why there had been "almost a million calls to Congress" recently, he said. Some lawmakers report "they got 4,000 calls for net neutrality and zero for Ajit Pai," he said. "Their phones are ringing off the hook because people are so mad that these fundamental protections ... are being ripped away." Net neutrality has been an issue "around the edges" among activists, he said. "It is squarely moving into being one that people are ... looking to their representatives and the people appointed to represent them and saying, 'What the hell are you doing?'"

There's "cross-partisan" concern, as a "substantial portion of people who voted for" President Donald Trump "are on our side," said Segal. He cited online comments among Breitbart readers and others.

Chairman's Dinner

The protesters outside the FCBA event said they plan to start demonstrating Wednesday outside the FCC, before Thursday's commissioners' meeting. Rosenworcel and Clyburn tweeted (see here and here) photos of themselves speaking to the Washington protesters. "Making a ruckus to #savenetneutrality," Rosenworcel said.

"We are on the right side of history!" Clyburn told the crowd, yelling into a bullhorn also used by Public Knowledge Senior Vice President Harold Feld to express his opinion of the draft order rolling back Title II classification. "This order sucks!" Feld yelled.

"Attention Corrupt Pigs: The Internet is not yours to sell," read one sign waving above the crowd. Shouting their support for Pai Twitter adversary Alyssa Milano (see 1711280024) and getting honked at by passing cars, the crowd appeared to be mainly under 30, and all those we interviewed said they lived in the Washington area. Most also said this was their first street protest.

The protest was largely confined to a street corner and part of the lawn outside the Hilton, and an officer from the Washington Metropolitan Police Department's Special Operations Unit watching told us the crowd hadn't been unruly. An MPD spokesman confirmed Friday the event didn't result in any arrests.

Protestor Kyle Jordan, who said he's an 18-year-old student from Prince George's County, Maryland, said cable companies shouldn't have control over the internet, and it should be "protected." Ebony Slaughter-Johnson, a 23-year-old freelance writer, said she was protesting because democracies need net neutrality.

Many were pessimistic their efforts would influence the FCC to halt the upcoming vote but said demonstrating could help raise awareness that could lead to lawmakers reversing the vote. "I don't want to wake up Dec. 15 thinking there was something else I could have done," said Roland Follot, a 57-year-old health inspector from Silver Spring, Maryland. Follot said he had made numerous calls to his representatives and the FCC on the issue and also supported the 2015 Title II order. Several others declined to provide their full names, though they showed tech awareness, including one saying he plans to start a YouTube channel.

Two protesters stood by themselves near another entrance to the Hilton, holding signs protesting Sinclair's buying Tribune. One we spoke with wouldn't give his name.

Philadelphia Gathering

“The internet is a public utility,” proclaimed one homemade sign at a Philadelphia protest Thursday, and a printed banner urged Sen. Pat Toomey, R-Pa., to oppose the Pai plan. Protesters gathered peacefully in front a Verizon Wireless store on Market Street near Jefferson Station, with police occasionally reminding them to keep part of the sidewalk clear for passersby. Chants included: “Whose net? Our net!”; “LOL, OMG, we want net neutrality!”; “Pai, Pai, you can’t hide, we can see your Verizon side!”; and “Hey, hey! Ho, ho! Ajit Pai has got to go!”

At least 250 people attended the Philadelphia protest, with people coming in and out throughout the more than one-hour-long event, estimated organizer and Media Mobilizing Project Policy Director Hannah Sassaman, who also has worked for low-power FM backer Prometheus Radio Project. About 200 people RSVP’d for the 5 p.m. protest and another that occurred earlier, she said in an interview. It’s a “truly organic resistance,” with participants from both political parties because the Pai proposal is “corporate,” not partisan, she said. Sassaman is asking protesters to contact Toomey and other Congress members, and organizers are arranging a bus from Philadelphia to Washington to protest at the FCC meeting, she said.

“We’re out here, and we’re trying, and we can’t give up,” said protester Matt Evert, a 27-year-old plumber from New Jersey who said he’s a registered Republican. Saying he heard about the protest on reddit, Evert said he doesn’t “trust Verizon or Comcast or Time Warner [Cable] to decide what information I can get” and “would much prefer if the internet was regulated.” Pai says market forces are enough, “but I only have one internet service provider,” the Philadelphia protester said. Describing himself as a federalist, Evert said he doesn’t like how Pai’s plan pre-empts states from making their own net neutrality laws.

The internet “is going to get a lot slower for people who don’t have a lot of money,” if the FCC adopts the Pai plan, said Mark Peterson, a 66-year-old retired engineer who said he’s a Democrat. He said he regularly gets involved with social movements, mostly on environmental issues, and heard about the gathering online. Peterson’s wife, a 62-year-old nurse who said she’s a registered Republican but described herself as independent and didn’t want to be named, warned “it will be like a monopoly.” Peterson said it’s “really not a Democratic or Republican issue” because many people of both parties can’t afford to pay more for priority internet access.

“I love the internet, dawg,” said protester Zachary Phillips, 22-year-old CEO of Loddg, a startup software company in Philadelphia that helps college students find affordable housing. An independent not registered with a party, Phillips said his app depends on an open internet, and net neutrality affects everyone. Demand Progress contacted Phillips about the meet-up, but no one paid him to come, he said. The protest was at a

Verizon store because Pai as a private-sector lawyer represented the carrier, he said. Phillips said he doesn't typically participate in such events but saw this as "such a troubling issue" and "had to make a stand."

Efforts Futile?

Aaron acknowledged Pai is "digging in his heels" and appears to be going ahead with his plan, but he said opponents will continue to agitate for net neutrality "on all fronts" -- in court, Congress and elsewhere: "One negative vote by Ajit Pai's FCC isn't going to change that. My prediction is it's only going to make people madder and louder."

Aaron and Segal criticized racially tinged or abusive tactics targeting Pai and his family. "We obviously condemn anything being said to Ajit Pai that's racist, that's about his family," he said: "I don't know who those people are. None of them have anything to do with the organizing we're doing, the movement we're building." Segal said, "We condemn anything that's racist or otherwise bigoted," and "people shouldn't be harassing children."

University of Michigan assistant professor-organizational studies and political science Michael Heaney said popular will can influence decisions, with studies showing even the number of amicus curiae briefs on one side of a case can influence Supreme Court decisions. But institutions are more responsive to protests if the institution is an elected one and when the protests come from both sides of the political spectrum. Such protests usually aren't even aimed at changing the mind of a particular decisionmaker, said Washington University Law professor of law Greg Magarian. Thursday's protests were targeting not so much Pai and the FCC but elevating the issue to public prominence and agitating or coalescing public opinion around net neutrality, with longer-term goals in mind, Magarian said.

"It's like running an insurgent candidate you know is going to lose," said Magarian. University of California-Irvine sociology professor David Meyer said it's "very hard to influence appointed officials on a distinct decision." But a successful protest would mean raising public awareness, recruiting elected officials, influencing subsequent political campaigns and generating additional media coverage, he said.

Arguments to FCC

Title II fans and others made final arguments to the FCC against the plan to scrap net neutrality regulation or certain provisions, as lobbying restrictions took effect Thursday (see 1712070069).

Rep. Anna Eshoo, D-Calif., and five other House Democrats from Northern California urged Pai to remove net neutrality from the agenda for the commission's Thursday

meeting and “abandon your ongoing attempts to repeal” the rules. “Your proposal, if passed, unravels” certainty in the telecom and technology sectors, Eshoo and the other Democrats said in a letter to Pai released Friday: It “eliminates the FCC’s authority to act as the cop on the beat to protect consumers in a proactive, flexible manner” and instead entrusts the FTC with that responsibility. “We are perplexed by your insistence on moving full speed ahead” given opposition from 58 mayors and multiple state government officials (see 1711210041 and 1712070069), the lawmakers said: Only major ISPs “are actually pleased by your proposal” because they “stand to gain from a policy that will allow them to police themselves.” But smaller ISPs also back it. House Commerce Committee ranking member Frank Pallone, D-NJ., also attacked the proposal, in a Thursday opinion piece on Newark, N.J.’s, The Star-Ledger website.

Since 2004, “consumers and edge providers have relied on some form of FCC-enforced open internet protections to ensure” ISPs don’t “discriminate, manipulate, or alter traffic going over their networks,” said New America’s Open Technology Institute in one of four filings (others here, here, here) posted Friday in docket 17-108. “This ensures a proper marketplace on the internet without undue influence from infrastructure providers. The proposed order, which would repeal open internet protections and abdicate meaningful FCC oversight of the ISP market, would upset these reliance interests and trigger an enhanced explanation required by *FCC v. Fox*,” a Supreme Court ruling. Public Knowledge made four criticisms, including that the draft fails to explain why investment is more relevant than speed and deployment increases, and also doesn’t evaluate the traffic disruption caused by a “peering dispute” between Netflix and large ISPs in 2013-2014. On a procedural matter, the National Hispanic Media Coalition filed “to correct the record” on FCC “refusal to upload” documents it “provided via hand-delivered USB flash drives into the Electronic Comment Filing System.”

Rather than protecting broadband customers, the draft “greatly hampers” federal consumer protections by allowing a variety of behaviors banned under the 2015 order, including blocking and throttling while also limiting federal mechanisms for oversight, said the National League of Cities and U.S. Conference of Mayors in a docket 17-108 filing posted Friday. They worried FTC enforcement “will effectively be nonexistent” due to the 9th Circuit decision and that voluntary ISP commitments could change at any time. They expressed concern about the draft order starting “broad unnecessary preemption” of local authority over ISPs. Communications Workers of America in a filing posted Friday urged a delay on the vote to allow drafting of open internet rules that promote “job-creating investment in broadband networks.” The “trust me” rules regime that the draft order would put in place “is not enough,” CWA said, saying data shows the 15 largest broadband providers increased capital investments since the 2015 rules.

CenturyLink urged the FCC to not jettison internet interconnection authority. The agency "should not relinquish authority over Internet traffic exchange arrangements, sometimes called interconnection or peering agreements," said a filing posted Friday in docket 17-108 on meetings with aides to every commissioner except Pai. "Should the Commission adopt an Order reclassifying broadband internet access service as a Title I information service and assert Title I jurisdiction over internet traffic, the Commission should also clearly state that it can and will be available to resolve significant issues related to the associated policies and rules that give rise to such Title I jurisdiction." CenturyLink said "the exchange of Internet traffic should occur through commercial negotiation. Such negotiation seldom succeeds in a vacuum, however, so it is important for the Commission to serve as a backstop."

Net Neutrality Notebook

A series of FCC phone calls Thursday with small ISPs around the country involved how much Title II regulation of broadband had hurt their businesses by slowing investment and creating regulatory uncertainty, Pai said Friday. Pai said Invisimax CEO Dave Giles indicated he had to "spend more on attorneys and consultants instead of consumers over the last two years," and Amplex Internet Mark Radabaugh indicated the internet conduct standard was also necessitating legal spending, while a Title II rollback would harm consumers. Invisimax and Amplex didn't comment.

During those small-ISP calls, Pai said, one "constant theme" was "how Title II had slowed investment and injected regulatory uncertainty into their business plans." Such "heavy-handed regulation is making it harder for smaller providers to close the digital divide in rural America," the chief said. "We will unleash providers to do what they do best: serve their communities and provide broadband access." The Wireless ISP Association said Thursday Pai had "reached out" that day "to have conversations with several operators of small, fixed-wireless" ISPs. The group said the three members with whom Pai spoke "expressed support for his efforts."

Several groups signed a letter asking Pai to cancel Thursday's vote, signer Free Press said Friday. With the open internet "our main conduit for expression and information," a Title II rollback "could change all that" by ISPs having the ability to disfavor some speakers over others, they said. They said ISPs, prioritizing shareholder returns over public service, can't be relied on or expected "to behave." Among other signers: the American Civil Liberties Union, Association for Alternative Newsmedia, Fairness & Accuracy in Reporting, Freedom of the Press Foundation, Local Independent Online News Publishers, National Hispanic Media Coalition, Native Public Media, New Media Rights, Online News Association, Reporters Without Borders, Society for Professional Journalists, Student Press Law Center, Sunlight Foundation, Wikimedia Foundation, and writers guilds of America East and West.

Eliminating the existing rule could exempt ISPs from FCC and FTC oversight, amid unresolved issues coming from the 9th U.S. Circuit Court of Appeals' 2016 decision in the FTC's data-throttling complaint against AT&T Mobility (see 1608290032), former FCC Chairman Tom Wheeler, who's now a Brookings Institute Center for Technology Innovation visiting fellow, blogged Friday. Even with the 9th Circuit agreeing to rehear the case, which found the FTC has no authority over any activity of a company also engaged in common-carrier activities, "doubts remain over the authority of the FTC -- authority on which the FCC's decision to vacate its regulatory responsibility rests," Wheeler said.

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