

Communications Daily

'Pinnacle Moment'

Net Neutrality Backlash Seen Raising Troubling Issues for FCC

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Industry observers disagree whether the FCC's Dec. 14 vote undoing the 2015 net neutrality rules will have long-term negative effects on how the public views FCC. The net neutrality order sparked a huge backlash, including protests outside the FCC as the vote was underway. On social media, tweets by Chairman Ajit Pai are being attacked, even if they have nothing to do with net neutrality. An innocuous tweet Wednesday on FCC approval of a power at a distance wireless charging device brought a torrent of abuse, some of it obscene. "Please Resign. Just resign. You are not helping the American people," one person said. The FCC didn't comment.

"This was a pinnacle moment in terms of the public spotlight that was shone on the commission, and it is defining the current commission," said former White House policy adviser Jim Kohlenberger. "Just as it has brought the commission into sharper focus with the public, it is in turn likely to invite the public to bring a sharper focus onto future commission actions. This added attention and scrutiny may not change the ability of the chairman to win a 3-2 vote, but it may impact the court of public opinion, which is always critical for achieving and validating success."

Free State Foundation President Randolph May, a strong opponent of the 2015 rules and the decision to reclassify broadband as a Title II service, said the current level of rancor is troubling. "I'm worried the overheated rhetoric in reaction to the commission's vote could undermine the ability of the agency to function as it was intended to function," said May, a former FCC associate general counsel: "The politicization of the net neutrality issue, and especially the ginned-up controversy about the comment process ... harms the agency."

Worse are the personal attacks on Pai, May said. "All of this agitation certainly can have the effect of undermining the institutional integrity of the FCC, which is based on the notion that the agency's decisions should be based on its legal, economic, and technological expertise, rather than merely counting comments or taking polls," he said. All of the commission members need to urge people to "tone down the rhetoric," he said.

"The decline in the quality of public discussion about the FCC is troubling, but it is not the result of the agency's decision making," said Mark Jamison, University of Florida professor and a member of the Trump FCC transition landing team. The transparency

the FCC offered as it developed the order was “unprecedented and is in stark contrast with how the previous administration kept information bottled up,” he said. “And its new decision is well supported in academic literature.” Jamison said part of the problem is that too many pundits, including academics, framed the issue as good versus evil. “This feeds a rancorous public discourse that has resulted in threats to agency leadership and their families,” he said. “There is no substantive basis for the drama.”

“The FCC has a lot of problems in the wake of the order, including public relations ones,” said Matt Wood, Free Press policy director. “It matters in the sense that an agency mandated to serve the public interest should certainly care what the public thinks.”

There has probably never been a time when more people knew the name of the FCC chair, said Washington University professor of law Greg Magarian, predicting the public will now pay more attention to what the regulator does and its relationship with telecom companies. “Independent agencies like the FCC tend to be technocratic,” he said. “They use their subject matter expertise to handle complicated, often arcane problems without too much public attention. They’re also prone, like all administrative agencies, to have a comfortable relationship, arguably too comfortable, with the industries they regulate.” The “notoriety” will “complicate both of those facets of the FCC’s operations,” he said.

Throughout its history the FCC has had to make controversial decisions, said Michael Heaney, University of Michigan assistant professor-organizational studies and political science. But the reaction to the net neutrality vote is part of larger reaction against what some on the left see as a “consistent and strong tilt toward large corporations,” he said. “That’s a big part of what’s going on here. It’s not just that people are upset about this specific policy, but rather that this policy is an exemplar of what people see as broader problem in society.”

Some said changing net neutrality rules won’t mean any change for consumers, Heaney said. “That to me seems like a pure lie.” But he also said no one knows for sure how the decision will change the market. “This decision could turn out to be a great decision. This decision could turn out to be a terrible decision,” he said. “We don’t know what’s going to happen.”

The “gyrations” over the 2015 and 2017 orders show the FCC is “incapable of resolving a political dispute like net neutrality,” said economist Hal Singer. “The issue should be removed from the FCC’s portfolio (e.g., assigned to an apolitical Net Tribunal) or Congress should give the FCC clear authority and instructions on how to police net neutrality abuses. Either way, the onus is on Congress to resolve this dispute.”

written by Howard Buskirk

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