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Local Officials Worry About BDAC Composition

Local authorities feel underrepresented on the FCC Broadband Deployment Advisory Committee and fear they won’t be able to support industry-dominated BDAC’s recommendations, local officials said
in interviews this week. “The deck is stacked and it’s not in local government’s favor,” said local government attorney Ken Fellman, a member of the FCC Intergovernmental Advisory Committee (IAC), which represents local, state and tribal interests but has no members on BDAC. Industry disagreed the BDAC is balanced against local voices.

FCC Chairman Ajit Pai chose 29 names from more than 380 applications to sit on the BDAC, with another 58 selected for its working groups, the agency said in April (see 1704060038). The only local official on the full BDAC is Sam Liccardo, mayor of San Jose, California. Local officials in BDAC working groups are New York City Chief Technology Officer Miguel Gamino; Larry Hanson, city manager of Valdosta, Georgia; Mayor Daniel Friesen of Buhler, Kansas; and Kevin Pagan, city attorney of McAllen, Texas. A local government representative has also been selected for the Federal Siting working group, the FCC said. The National League of Cities (NLC) in meetings last month with FCC staff, Pai and Commissioner Mignon Clyburn raised concerns about the number and diversity of local officials on the BDAC (see 1705220025). Later, at the Wireless Infrastructure Association meeting, Clyburn said the FCC should address the cities’ concerns (see 1705240007).

Cities fear BDAC may produce recommendations written for industry without a better balance of local and industry representatives, said Angelina Panettieri, NLC principal associate for technology and communications. NLC supports the local members appointed to BDAC, but Liccardo shouldn’t be the only local elected official on a “group that’s intended to come up with model code for state and local governments,” she said: Additional local officials were appointed to BDAC working groups, “but they’re not members of the full BDAC, and even then, they’re still vastly outnumbered by members of the industry.” In meetings at the FCC, Pai and Clyburn seemed receptive to NLC’s concerns, but they didn’t commit to anything and commissioners referred to adding more local members to working groups, Panettieri said. “I get the sense that they do feel they have done their job and their due diligence.”

NATOA was “taken aback” by the dearth of local representatives, Executive Director Steve Traylor said. There’s not much direct zoning experience among those selected, he added. “I’m not slamming anybody
that’s been appointed.” Localities may question why they should adopt whatever model ordinances are produced, Traylor said. “It puts us in a hard position of endorsing anything that comes out of that group.”

‘Not Balanced’

“It’s not balanced by any stretch of the imagination,” Fellman said. “If one of the main goals is to draft model code provisions that would presumably be OK for every jurisdiction in the country, then it’s hard to understand how it could have been structured this way and thought to be acceptable to the local government community.” Local officials should comprise at least half of the group and represent a spectrum of communities: big, small, rural and urban, he said. New York City’s Gamino, one local official on a BDAC working group, knows a lot about how local governments use technology, but represents “a really large city” that’s not representative of many communities, he said.

“That local government has an issue with the composition of the BDAC should be read by the FCC as a reflection of how serious local government takes the BDAC effort and how locals welcome efforts to find marketplace solutions and terms,” said Best Best local government attorney Gerard Lederer. “While the FCC has chosen some of local government’s best and strongest advocates for the BDAC, and for that we congratulate the commission, there are not enough of them. The most articulate and persuasive of advocates cannot overcome a 20-1 ratio.”

Local governments were concerned after the FCC decided last week to consolidate filing deadlines on a wireless NPRM and notice of inquiry with that for the wireline inquiry (see 1705260058), Lederer said. “That works just fine if you’re in industry and you’ve got separate units,” Lederer said. “It’s the same city attorney who is going to have file both comments and it’s the same federal policy person who is going to have to file both.” Industry groups asked for the consolidation and it was granted a day later, he noted. Local groups now are seeking more time on the wireline proceeding (see 1706010035).

“The Broadband Deployment Advisory Committee is a good idea,” a NARUC spokeswoman emailed. “Composition of any advisory body will necessarily impact its recommendations. It seems likely the BDAC could provide better/more balanced recommendations if more infrastructure owners, as well as local and state government entities, are involved in the discussions.”

Industry’s Take

Industry officials disagreed with criticism.

“BDAC and IAC aim “to develop long-term guidelines that will benefit communities of all sizes,” said Jonathan Adelstein, president of the Wireless Infrastructure Association. “WIA has always worked and will continue to work closely with the FCC and with national and regional organizations that represent local governments, both inside and outside of the BDAC, which is an excellent mechanism for building consensus.”

Scott Thompson, lawyer at Davis Wright who represents industry, doesn’t agree with the complaints. “If you look at the BDAC makeup, first of all, it’s not very big to begin with and it’s actually quite diverse,” he said. “It’s not at all industry dominated. ... There are really diverse interests that are represented. You’ve got tribes. You’ve got the LGBT community. You’ve got local government folks.”

The subject is likely to arise at next Thursday’s IAC meeting, local officials said. The IAC asked Pai to include one of its local, state and tribal members on BDAC, but got no response, said Fellman. “I’m
hoping we’ll get a chance to talk to him about it next week.” IAC members aren’t happy that they’re not represented on the BDAC, said Panettieri. The IAC wrote a report last year on wireless siting issues, but it never came up at the first BDAC meeting, she said. An IAC member should be on BDAC, Traylor said. It’s not clear now whether they will be working in concert or at odds, he said.

Meanwhile, the NLC has its own working group working on a model local code for wireless infrastructure issues, Panettieri said. It will produce a “municipal action guide,” possibly this July, to help local officials understand and better negotiate with industry on wireless infrastructure siting, she said. The local group is gathering input from industry officials, she said. But the NLC official stressed, “It’s not intended to supplant what the BDAC is doing.” — Adam Bender and Howard Buskirk

Public safety items will dominate the FCC’s June 22 meeting. Commissioners tentatively will vote on a special emergency alert system code for imminent threats against law enforcement and changes to caller ID rules to allow those receiving threatening calls and law enforcement to get identification information quickly. Such items focus on “help[ing] law enforcement and first responders,” Chairman Ajit Pai blogged Thursday.

Commissioners will consider a notice of inquiry seeking comment on ways to improve competitive broadband access in multi-tenant buildings; a payphone item that would waive certain auditing and reporting duties this year while the commission considers eliminating the requirements; and new procedures for cable company annual notifications to subscribers. FCC members will vote on an order granting U.S. market access to OneWeb’s proposed non-geostationary satellite orbit (NGSO) constellation. That 2016 application, involving 720 satellites in low earth orbit, also set off a processing round for additional NGSO-like constellations (see 1611160010).

Pai also proposed rules for states to opt out of FirstNet. States have the option to build their own public safety radio networks, but only if the FCC first determines the state’s proposed network will be interoperable with FirstNet. The number of states that will sign on to FirstNet has emerged as a major question as a team led by AT&T gets ready to start construction of the nationwide network for first responders (see 1705190025). The FCC sought comment last year. Pai said the agency is “committed to working with FirstNet and all state and local partners to make sure that first responders have the tools they need to communicate seamlessly with each other during emergencies.”

Under the draft report and order, states would have 240 days from their opt-out notification date to put together an alternative plan. The draft notes APCO insists opting out is a “false choice” and AT&T argues that an alternative plan would be difficult and costly. But the document says states should have a real choice. “While we acknowledge that the statutory process may be exacting, we also believe that Congress intended to establish a process that affords states a meaningful opportunity to ‘develop and complete requests for proposals,’ as well as to prepare and file the required opt-out plan with the Commission,” the draft said. “States are entitled to make a deliberate, informed choice to opt-out of the network, so long as the statutory requirements are met.”
Redl’s NTIA Ascent Could Become Legislative Asset on Spectrum, Lawmakers Say

FCC Shift to Regulations.gov Could Fix Agency’s Cyberattack Vulnerabilities, Experts Say

Internet Association Disputes Claims of Broadband ISP Investment Drop Under Title II

State Regulators Face Scrutiny After Nebraska Absolves State Official Consulting for Telcos

FCC Weighing ATSC 3.0 Comments, Could Consider Phased Approach

Beware Tragedy of Anti-Commons in Spectrum Policy, Hazlett Says

Questions on ATSC 3.0 Transition Dominate House Hearing on Emergency Alerts

Straight Path Buy Puts Verizon on Path to 5G, CFO Says

Most of 23-Standard ATSC 3.0 Suite Finished or Near Completion, Conference Told

Other Important Developments
Dave’s breadth and depth of knowledge in the telecom space is unparalleled,” said Robert McDowell, former FCC commissioner now at Cooley and Mobile Future. “He has impressed everyone on both sides of the aisle, as well as across industry segments and public interest groups. … He will have strong bipartisan support.”

Redl “knows well the challenges of wireless broadband deployment in rural America,” said Caressa Bennett, counsel to the Rural Wireless Association. “He has extensive knowledge regarding wireless, spectrum, and connectivity matters and is uniquely suited to lead NTIA as issues surrounding public/private spectrum use and new spectrum opportunities continue to be tremendously important to both the government and wireless industry.” Angela Giancarlo of Mayer Brown called Redl “an outstanding pick.”

Redl “has demonstrated a thoughtful, reasoned approach to policymaking,” said John Gasparini, policy fellow at Public Knowledge. “We look forward to working with him on spectrum policy matters, as consumers and the world express an ever-increasing demand for wireless connectivity.”

**FCC Shift to Regulations.gov Could Fix Agency’s Cyberattack Vulnerabilities, Experts Say**

FCC Electronic Comment Filing System woes that the agency says stem from a distributed denial-of-service attack point to necessary overhauls to the comment system, including more capacity, more protections and potentially a move to Regulations.gov, experts tell us. Such a move isn’t likely in the foreseeable future. The FCC should release data on the ECFS issues it experienced earlier this month to definitively prove they were caused by DDoS attacks, experts said. The FCC says multiple DDoS incidents came amid an onslaught of comments on FCC Chairman Ajit Pai’s proposed revised net neutrality rules (see 1705080042, 1705090063 and 1705100062).

Four top House Commerce Committee Democrats urged their Republican counterparts Wednesday night “to hold a hearing to examine the recent failure” of the agency’s site “to handle the high volume of comments” on net neutrality proceeding. “We have serious concerns that the FCC’s website failures deprive members of the public of opportunities to make their voices heard on net neutrality,” committee ranking member Frank Pallone, D-N.J., Oversight and Investigations Subcommittee ranking member Diana DeGette, D-Colo., Communications Subcommittee ranking member Mike Doyle, D-Pa., and Rep. Yvette Clarke, D-N.Y., wrote their colleagues. An FCC spokesman declined to comment.

Comedian John Oliver’s HBO segment earlier this month on net neutrality led to loads of traffic hitting the application programming interface, which was impossible to block because the traffic wasn’t coming from the dark web but from major commercial cloud hosting companies, an FCC representative said: “Unless someone actually intrudes” into FCC IT, “we really can’t block you, because it may be that you wrote really bad code.” The agency began slowing down the number of such mass comments that can be received at any one time. A new tech fix was made last week after “very massive queries” on ECFS’ RSS feeds “were making it very slow for everybody else,” the rep said.

Cyberincidents are becoming an increasingly attractive means of targeting government websites because they can be a “silencing tool,” so “it wouldn’t be out of left field for DDoS to actually be the culprit,”
said Corero Network Security Vice President Stephanie Weagle. The incident that the FCC has described bears the hallmarks of a “layer 7” DDoS attack, in which the intrusion is executed via overuse of a website function, but such an attack is difficult to verify because it’s “indistinguishable” from high volumes of benign use, said NimbusDDoS CEO Andrew Shoemaker.

A DDoS attack is typically “noisy and loud,” but “none of the sensors around the internet that we use to detect this stuff” have signaled one, said Fidelis Cybersecurity Threat Intelligence Manager John Bambenek. “It’s theoretically possible that we’re just not seeing it, but why would somebody use such a novel form of undetectable attack on the FCC?” Rendition InfoSec CEO Jake Williams noted a lack of chatter via the dark web or elsewhere, including commands to botnets. The entities that carry out DDoS attacks “brag about this stuff,” he said: “It’s an advertisement for them.”

High volumes of traffic the FCC detected as targeting the net neutrality proceeding could be an attack incident but could just as easily be an instance of ECFS “resource exhaustion” since both would have the same net effect, Bambenek said. What typically distinguishes a DDoS attack from resource exhaustion is the intent of the users whose traffic has affected the system, Shoemaker said. “A legitimate DDoS attack involves a bad actor who intends to flood the network.” A confluence of mass numbers of commenters influenced by Oliver and Reddit doesn’t indicate nefarious intent without proof, Shoemaker said.

**FCC Outlier**

The FCC is an outlier among most agencies by having its own regulatory proceeding website instead of doing work through the Federal Register and Regulations.gov, like most agencies, we were told.

Its IT department talked in 2013 and 2015 with Regulations.gov and concluded it would have had the same challenges, an FCC spokesman told us. Regulations.gov also said the traffic volume the FCC handles far exceeds what it normally handles, while using Regulations.gov would cost the FCC about five times what it pays to operate and maintain ECFS, he said.

Regulations.gov offers all agencies not just a comments portal but a docket management system, said Hudson Hollister, founder of open data advocacy group Data Coalition. He said the FCC and the SEC are rarities in not using Regulations.gov, while the FTC “is kind of in the middle” as commenters can opt to use that shared site. He said the distinction is the FCC and SEC have sites that largely cater to the legal communities that closely and frequently deal with those agencies. The FCBA said the issue is on the agenda for its next executive committee meeting.

Hollister said the federal government broadly needs not only a common portal but also a consistent data structure across agencies, such as consistent data fields. He said the lack of consistency makes accessing government data for such uses as business intelligence nearly impossible. The Financial Transparency Act introduced in March by Rep. Darrell Issa, R-Calif., would require all financial regulators to adopt common data fields for the information they collect, and that could serve as a foundation to eventually broader practices of consistent data fields, Hollister said.

“There was a hoopla” when then-Chairman Julius Genachowski had ECFS update plans, former Commissioner Michael Copps said. “Any improvements [seem] decidedly marginal. The informational retrieval system is not the best.” He said while the ECFS woes reflect negatively on governmental transparency and accessibility, “it also says something about a Congress that’s been rather stingy about [FCC]
resources. It needs more engineers, more everybody, and it’s suffering a slow death through the stinginess of Congress.”

'Creaky' ECFS

The 2014 net neutrality proceeding showed “how creaky and old the 16-year-old ECFS system was,” Sunlight Foundation Deputy Director Alex Howard said. The move in late 2015 to an updated ECFS (see 1512110039) was supposed to obviate such problems by being, for example, cloud hosted, he said.

Problems accessing the site in the run-up to Thursday’s scheduled vote on the Title II NPRM “is emblematic of people’s existential concerns about what could happen if internet access isn’t appropriately regulated transparently—if there aren’t some boundaries where some entity has some authority,” Howard said. “It should not be an issue for any public-facing government website to be able to hold up under high public demand,” particularly during a regulatory proceeding of high interest, like Title II, he said. “In 2017, there are many different services that can and do enable websites to hold up under massive demand. This is not 2007.”

After Oliver’s 2014 segment regarding net neutrality, the FCC got many automated filings via “deadlocking” in which the search index was tied up, so that regular users couldn’t access ECFS search, said an FCC representative. The FCC then shifted the system to the cloud to add capacity, and added an API to discourage the use of bots, he said. The agency didn’t require user authentication each time a comment was filed, such as via CAPTCHA, because that could potentially impede legitimate filings, the rep said.

The FCC should take additional steps now to bolster ECFS, Shoemaker and others said. The FCC should begin testing ECFS in a controlled environment to determine what vulnerabilities the system faces so it can correct them before any additional incidents occur, Shoemaker said. The FCC should reconsider applying user authentication technologies to ECFS, he said.

The regulator must face that either an attack or resource exhaustion points to ECFS traffic capacity issues that the agency may need to address ahead of future proceedings that could generate high-volume traffic, Weagle and others said. “Every DDoS attack is fundamentally a capacity issue,” Williams said. Filtering technologies can be effective for the private sector “but do you really want to implement barriers for the American public to communicate with their government?” Bambenek said. The FCC should consider implementing a shared IT services solution, which President Donald Trump is seeking as part of his federal IT modernization push, Bambenek said. — Matt Daneman, Jimm Phillips, and Jonathan Make
FCC Staff Actions in Wheeler’s Final Days Subject to GOP ‘Midnight Regulation’ Scrutiny

FCC staff took many actions in Chairman Tom Wheeler’s last three weeks in office, including some that were controversial, despite Republican pressure to act by consensus during the transition to President Donald Trump. Then-Commissioner Ajit Pai warned in December about “midnight regulations.” He and fellow Republican Mike O’Rielly objected to several items issued in January—a Wireless Bureau report criticizing AT&T and Verizon zero rated data practices, and certain Media Bureau broadcast orders—and they indicated the issues would be revisited in a GOP-run commission.
Other staff actions under Wheeler—some raising outside criticism—could also be reviewed, though now-Chairman Pai hasn’t specified his course. Some in interviews offered fresh criticism after receiving our compilation of about 30 significant staff actions taken in January before Wheeler departed last week. One such action couldn’t be reviewed, an admonishment of T-Mobile over customer privacy. That’s because it was quickly pulled back by the FCC, citing unspecified errors (see 1701180074).

Pai said Jan. 11 that Wheeler was spending his last days in office the same way he “spent the last few years—cutting corners on process, keeping fellow commissioners in the dark, and pursuing partisan, political agendas that only harm investment and innovation” in the market. “This time the midnight regulations come in the form of a Bureau-level report casting doubt on the legality of free data offerings—offerings that are popular among consumers,” Pai said in a statement on the zero rated item: “This report, which I only saw after the FCC released the document, does not reflect the views of the majority of Commissioners. Fortunately, I am confident that this latest regulatory spasm will not have any impact on the Commission’s policymaking or enforcement activities following [the Jan. 20] inauguration.” O’Rielly said the report “is a shame, but it will soon be lost to irrelevance” (see 1701110070).

Pai and O’Rielly also hammered a Jan. 4 Media Bureau order denying petitions for the full FCC to reconsider a decision they said “imposed unnecessary reporting requirements” on noncommercial educational TV stations. “The Commission’s ruling no longer enjoys the support of the majority of Commissioners—nor is there a majority that supports today’s Media Bureau decision—so it was wrong for the Bureau to bypass Commissioners and reaffirm these reporting requirements unilaterally,” they said in a statement on the denial. “Procedurally, it’s just another example showing why the Commission’s use of delegated authority needs to be fixed. The good news is that today’s decision need not be the final word. We encourage public broadcasters to file an application for review so that the newly constituted Commission will have an opportunity to revisit this matter” (see 1701040069). A public broadcaster group said it would seek review (see 1701050069).

The Republicans questioned Jan. 6 Media Bureau orders admonishing Scripps and some other broadcasters (here, here) for violating political advertising disclosure rules. Pai and O’Rielly said they agreed with much of the substance of bureau rule clarifications and believed consensus could have been reached. “Sadly, we were never given that chance and these orders thus will need to be revisited in the new Administration,” they emailed then. “It is disappointing that even in its final days, Commission leadership continues to lean on the crutch of delegated authority while excluding Commissioners from the process” (see 1701090064).

Local number portability administrator Neustar recently asked the FCC to reverse a Jan. 6 staff letter siding with North American Portability Management in a dispute over confidentiality protections in the LNPA transition to iconectiv (see 1701190030 and 1701060065). A Media Bureau approval of five Entercom stations drew criticism from the Media Action Center (see 1701200052). The Republicans haven’t commented on those issues.

Scores of Actions

Bureaus and offices issued scores of orders, reports and other items in January. Most appear routine or noncontroversial, but some substantive actions have drawn criticism from observers and stakeholders.

For instance, the Public Safety Bureau issued a Jan. 18 white paper that said broadband ISPs need government oversight to reduce cybersecurity risks (see 1701180082). The paper’s “proposed cyberse-
We’re working hard to make our service work harder for you.
“security regulation” is “fatally flawed,” and the “naked power grab should be rebuffed by policymakers in the new Administration,” said Tech Knowledge Director Fred Campbell, a former Wireless Bureau chief, in a blog post Wednesday. AT&T also criticized the report (see 1701250077). In a December C-SPAN appearance, O’Rielly recognized cybersecurity was important but doubted the FCC has a large role to play absent a new congressional mandate.

New video relay service (VRS) interoperability and portability standards adopted by the Consumer and Governmental Affairs Bureau in a Jan. 17 order also came under attack. “The Bureau went far beyond what was necessary and has adopted what providers all told them were unneeded and costly requirements,” said Paul Kershisnik, chief marketing officer of Sorenson Communications, the next day. “We will be urging the Commission to review and correct these midnight regulations,” he said (see 1701180036). VRS providers also opposed VTCSecure’s petition to gain access to a numbering directory for its direct video calling customer-support services for the deaf and hard of hearing; it was granted in a Jan. 18 order by the Wireline and Consumer bureaus (see 1701190038).

Pai and O’Rielly made it clear they plan to review and reverse at least some decisions decided by the previous Democratic majority. At the top of the list is the net neutrality and broadband reclassification order under Title II of the Communications Act, and broadband privacy rules adopted in October pursuant to that authority. The Republicans and Wheeler didn’t comment for this story.

Deal OKs

Among the items released since Jan. 1 were approvals of deals worth at least $6 billion.

TechFreedom President Berin Szoka said he believes any item based on Title II broadband authority will either be overturned or mooted. He told us the Republicans’ precise course remains to be seen. They could move relatively quickly to reclassify broadband as a Title I information service, removing the Title II authority for net neutrality and broadband privacy rules, and the bureau reports on mobile zero rated offerings and cybersecurity, he said. If they take longer to sort out all the details of broadband reclassification, it’s possible they would address more quickly some staff actions individually, he said. There could be other staff actions that could simply be rescinded or revised, he said.

“Obviously, there are going to be some sharp changes in policy,” said Doug Brake, telecom policy analyst at the Information Technology and Innovation Foundation, who cited zero rating and privacy as the most notable recent actions. “Zero rating is relatively straightforward, Chairman Pai has already made his position clear, and with no real teeth to the bureau’s report, free data can move forward. Unwinding the privacy order is a bit more complicated. Step one should be a stay of the order—with so many issues at play ... it makes an awful lot of sense for the FCC to put a hold on the privacy rules until the dust settles.”

We gave Szoka, Brake and others a selection of major FCC staff actions in the first three weeks of January. Beyond those already mentioned, the list included: bureau approvals of Windstream buying EarthLink in a $1.8 billion deal (see 1701190048), a Nexstar waiver to buy Media General for more than $4 billion (see 1701110078), two major trans-Pacific undersea cable systems (see 1701130062), and AT&T’s spectrum swap with U.S. Cellular (see 1701050083) and 2.3 GHz license relief (see 1701180088); a Wireline Bureau waiver and extension for Progeny aimed at improving wireless 911 location accuracy (see 1701170067); an Enforcement Bureau $100 million consent decree with Straight Path Communications to settle alleged rule violations in the 28 and 39 GHz bands (see 1701120046); a Media Bureau order freezing
digital companion channel applications (see 1701190053); reports on video competition (see 1701180020), universal service monitoring (see 1701130075), USF E-rate “progress” (see 1701180086) and state 911 fee diversion (see 1701130065); and plans on digital inclusion to build on Lifeline USF changes (see 1701110079) and U.S. digital infrastructure (here).

“All of these are fairly straightforward actions ... decided on delegated authority,” emailed Public Knowledge Senior Vice President Harold Feld. “In my 15 years of practice, I've had my fair share of petitions and recon petitions decided on delegated authority at the Bureau level, even when the Petition is addressed to the full Commission. ... It’s typical of the Bureau to wrap up pending old business and push things out at the end of a Chairman’s term. Bluntly, you can’t expect the FCC to shut down for two months. Anyone can claim that a decision is ‘controversial’ or ‘midnight regulation’ or whatever phrase is in vogue. But most of these—including the Bureau Report on zero rating practices—hardly moved the needle on anything. (Importantly, the Wireless Bureau did not find that AT&T or Verizon were in violation of anything. The Report noted that there are heightened concerns when you charge rivals and affiliates the same price for a service because the payment by the affiliate is simply moving money from one corporate account to another ... This is a well documented economic concern and hardly a controversial proposition.)”

Szoka said the Republican concern is that delegated authority not be abused. Pai “is going to say this is a new day at the commission, and that means commissioners are going to be making these decisions. It’s democratic, and accountable, and good government,” Szoka said. He said he couldn’t predict all of the staff actions that would be revisited, which include decisions made in previous years, but “it could be a long list.” — David Kaut
Rosenworcel Seen as Lock, Carr Likely, as Trump Nominees for FCC

FCC Security Criticism Helping Prompt Media Industry ‘Summit’

Ross Defends Commerce Funding Request, With Cuts Affecting Spectrum, Broadband

Trump Robocalls May Sidestep Montana Prohibition, but TCPA Suits Possible

Rural Telcos, CenturyLink Urge FCC Not to Overhaul Jurisdictional Separations Rules

Broadband Healthcare Comments Seek FCC Rural Funding Hike, Deployment Efforts

Comcast, Cox Targeting Smart Home Amid Privacy, Other Challenges

Europe’s Views on Encryption Could Spell Problems for US Tech Companies, Say Experts

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Carr "would hit the ground running, and would become a reliable vote for the chairman's agenda," said Adonis Hoffman, chairman of the for-profit Business in the Public Interest and ex-aide to Clyburn. "On the Democratic side, they don't come any smarter than Rosenworcel, who has keen insights on policy, especially on tech issues."

"The Republicans have a deep bench of potential FCC commissioners, including people with deep FCC experience," said Richard Bennett, free-market blogger and network architect. "The Democratic talent pool is quite thin once the activists are excluded unless they reach beyond Capitol Hill into the state utility commissions."

— Howard Buskirk

Too Many Incidents

FCC Security Criticism Helping Prompt Media Industry 'Summit'

Prompted in part by last week’s manhandling of a reporter at an FCC meeting, the National Press Club told us Thursday it plans to organize “a summit” among news, public affairs and security interests to discuss best practices or possible new models for media access to government agencies. “We have had too many of these incidents happen,” said NPC Press Freedom Fellow Kathy Kiely. “Having a conversation might be helpful” in balancing security concerns with maximizing openness, she said. Kiely said the FCC has been invited to participate. The agency didn’t comment.

The incident and subsequent criticisms of the FCC (see 1705190031), as well as a reporter having his credential temporarily taken by the agency last year (see 1607140052), come as government in general is becoming less accessible to the public and media, critics say. Some say that line of criticism may be misguided. National Association of Government Communicators President-elect Chris O’Neil told us that “when people say they don’t have access, I don’t think that’s accurate. They don’t have access in their time frame that matches the digital environment. Everybody wants to be first.”

The issue of public and media access at government meetings is coming up more frequently at all levels of government, said Society of Professional Journalists President Lynn Walsh. Public officials increasingly don’t make themselves available for phone calls and direct communications through their PR staff, making public meetings one of the few ways to catch them, Walsh said. She said SPJ contacted the Obama administration about growing difficulties in getting access to federal officials, and also sent a letter to then-President-elect Donald Trump, though it hasn’t heard back. “We really do think it’s something that has to come from the top down,” Walsh said.

There isn’t one model or list of best practices for public access at government meetings, media experts told us. Under the general presumption of openness, government agencies don’t have to make themselves available to the media “though there’s that expectation,” said Jeffrey Blevins, head of the University of Cincinnati journalism department. “The acme of openness is Capitol Hill or any legislative body where reporters can walk up to principals.”

Walsh said one of the biggest issues in constrained government openness is the growing use of PR professionals. “You see these armies of public relations individuals,” she said. “You really can’t get through.” There also is an ongoing cultural shift in media relations, she said: “There’s sort of been an acceptance of that’s how it’s done. And journalists have not done a good job of pushing back. Not enough people are talking about it.”
O’Neil said at the federal level, communications are less tightly controlled now than they were in the Obama administration, but “tight control on the narrative and the message ... we’re paying for that today” in perceptions there’s tight control on release of information. O’Neil—chief of media relations at the National Transportation Safety Board though speaking in his personal capacity only—said the FCC model of operation at monthly commissioners’ meetings—taking questions from individual reporters after the meeting—roughly follows how the NTSB operates at public meetings. He said the fundamental thing agencies can and should do to avoid any conflicts is to establish ground rules and expectations in advance: “All those particulars should be well explained, which avoids the ‘let me try to catch this person on the way out.’”

Both media and government communications interests generally defended reporters trying to buttonhole FCC commissioners after the meeting—that being the type of instigating incident that set off last week’s reporter manhandling. “A government building, in a public hallway, that’s not an inappropriate area to ask a question,” particularly if a reporter is being respectful, Walsh said. O’Neil said that “you can’t blame a journalist for wanting to do their job and raise questions that hadn’t been raised during the meeting.” When an official might not want to engage one on one, he said, “those kinds of moments are avoidable” by setting conditions beforehand. — Matt Daneman
Ten Months Under Pai

The Pai Perspective: A Look at the FCC’s New Deregulatory Leadership

Special Report on the FCC Under Pai Details Controversies and Successes
FCC Release of Drafts for Meetings Seen as Win for Transparency; Questions Remain
Congressional Democrats Don’t See Fundamental Rift Yet With Pai, Despite Frustrations
Pai FCC Divided Along Party Lines
Pai Expected to Keep Ambitious Pace Throughout Chairmanship
Local, State Governments Try to Raise Voices at Pai FCC
Aides to Pai Frequently Use Twitter to Praise, Criticize News Media Coverage of FCC
Pai’s Early Days as Chairman Were Filled With Lawmaker Talks, Media Interviews

Less than 10 months into the tenure of Ajit Pai as FCC chairman, areas of controversy and early success are coming into focus. The seven stories in this Communications Daily Special Report: “The Pai Perspective: A Look at the FCC’s New Deregulatory Leadership,” chart Pai’s path as the first Republican chief of the communications regulator since Kevin Martin left at the end of President George W. Bush’s administration in January 2009. These stories are the result of Freedom of Information Act requests, months of reporting and dozens of interviews.

Pai so far has met his promise to keep a busy agenda, often focused on deregulation that draws criticism from Democrats. Commissioner meetings under him had votes on an average of seven items, with controversial meetings on media ownership and net neutrality expected before his first year at the helm (and 2017) ends. Howard Buskirk reports (see 1711050001).
Don’t Forget States

“There’s very limited representation from the states,” said Nebraska Public Service Commissioner Crystal Rhoades, a Democrat. “At the end of the day, it’s the states that get the complaints from the customers. It’s the states that have to resolve the issues that arise out of these policies. It’s not the FCC, and so it’s very important the states get adequate input into the process and policymaking.” The FCC must include states to get states’ support, Rhoades said: “If they don’t, I envision this becoming an extremely litigious environment.”

Montana Public Service Commissioner Travis Kavulla is less worried, though the former NARUC president voted for the NARUC resolution. It would be difficult for many state commissioners to make time, especially those like Kavulla who work far from Washington, the Republican said. “Even when states have less membership than they should on a given body, it’s nonetheless understood that those members punch above their weight because they represent … something other than a narrow interest with a private profit motive.”

Pai “has been eager to hear the input of state, local and tribal officials, and that’s part of the reason why he’s made it a point to get out of” Washington, said a spokesman. The representative highlighted meetings with Arizona Gov. Doug Ducey (R), tribal leaders from South Dakota’s Rosebud Sioux Reservation, and public safety officials in Indiana, Illinois, Missouri and Kansas. He said Pai “has been actively reaching out to government officials across the country to gain their perspectives as the FCC works to bridge the digital divide and protect public safety.”

Huckaba said Pai is more inclusive than then-FCC Chairman Tom Wheeler, though both are driving agendas. “We felt a little bit cut off” with Wheeler, while Pai “seems more engaged” on local issues, the local official said. Resnick disagreed, saying Wheeler showed “much more respect” for local government authority and wasn’t as “beholden to the industry.”

Pai has been accessible to states, though it’s early in his chairmanship, Kjellander said. He said he met Pai in February during NARUC meetings in Washington: “I don’t think he’s trying to hide anything about where they’re headed.” Kjellander agrees with Pai that Congress, not the FCC, should drive policy. That’s different from Wheeler, he said: “It’s not to see how you can strain or manipulate the sections of the Telecom Act to move policy in the direction you want.” Rhoades said Wheeler was “responsive to the public.”

Pai “believes in the rule of law, but also forcefully advocated for limits on the FCC’s power to do things when he was in the minority,” observed Kavulla. As chairman, “he has to own that reputation.”

— Adam Bender

Experts Critical of Practice

Aides to Pai Frequently Use Twitter to Praise, Criticize News Media Coverage of FCC

Officials working for FCC Chairman Ajit Pai have often used Twitter to slam news critical about the commission, according to our eight-month review of social media activities. Also unlike at DOJ, the FTC and NTIA, FCC aides using their government Twitter accounts regularly praise the substance of reporting
that sheds a positive light on the agency under Pai. Some of the negative tweets may not abide by best practices, FCC responses to our Freedom of Information Act requests show.

That top officials working for Pai opine on TV news coverage while the communications regulator issues broadcast licenses raised concerns among experts of all political stripes who reviewed our data. This could have a chilling effect, discouraging journalists and others from holding the FCC to account, they said. “You don’t want the government to slowly head down the path of criticizing the media,” said Technology Policy Institute President Scott Wallsten. Criticizing media “is a bad look” amid a global “history of censorship and chilled speech,” said Sunlight Foundation Deputy Director Alex Howard.

The trend is indicative of a time when, following President Donald Trump, some in government use social media to attack journalists, said experts including Lynn Walsh, a broadcaster and with the Society of Professional Journalists. “That the FCC does regulate the individual organizations that they’re being critical of does make it that much more chilling,” said Walsh, immediate past president of SPJ. (This story’s author is president of the local SPJ board.) Six days after Trump’s tweets about denying “licenses” to broadcast networks, Pai said that wouldn’t comport with the First Amendment (see 1710170022).

FCC Chief of Staff Matthew Berry and Policy Adviser Nathan Leamer offered the most social media commentary on the news among commission staffers our database tracked. Leamer also used Twitter to attack Democratic members of Congress (here and here) and an ex-FCC chairman who disagreed with Pai on net neutrality. Pai, a prolific tweeter, doesn’t use Twitter to opine on news content regarding the FCC but reacts favorably to others’ tweets opposing critical coverage. While Pai “is a responsible tweeter,” the FCC “should steer clear of commenting on the content of any of their licenses in this informal context,” said Media Institute Executive Director Richard Kaplar.

Commissioner Mike O’Rielly was the only other FCC member with such tweets. He called a Washington Post (see 1706230061) story a “nothingburger” and praised an editorial in the Providence Journal (see 1703080036) against 911-fee diversion.

“When there are stories about the FCC that contain false or misleading information, the Commission’s leadership has every right to correct the record,” emailed a spokeswoman.

Expansive Use

Pai fulfilled expectations he would use social media more than his predecessors (see 1701030020 and 1612280041), but experts said our database shows the agency doesn’t seem to fully engage with the public.

Observers don’t object to using the agency’s blog or to Pai, via Medium, explaining his proposals. They praised his approachable manner. But Sunlight’s Howard said Pai wouldn’t engage with him on Twitter, and others said our database shows little two-way interaction. “It’s like they are bravely standing up at a town hall meeting and reading from a script when everybody is yelling at them,” said Sunlight’s Howard. George Washington University assistant professor of media and public affairs William Youmans said that “what we should be demanding out of public officials is responsiveness.”

Some said it’s murky whether social media commentary creates policies requiring rulemaking processes. They noted blurred lines between whether FCC staff who tweet express personal or official views. “A bad practice,” said Georgetown University Institute for Public Representation co-Director Angela
Campbell. “It’s confusing.” It seems “it shouldn’t carry any official authority,” she said of Pai’s tweets, yet “it could be signaling important information.”

Tweets by FCC officials don’t always reflect agency guidelines on comments from the public. The agency won’t publish comments that “make unsupported accusations,” said its public policy. “Expect conversations to respect traditional conventions of polite discourse.” No “personal attacks.” An internal digital media style guide recommends messages be “friendly.” A 2014 directive said the agency “encourages the use of Social Media technologies to enhance communication, transparency, collaboration, and information exchange in support of its mission and Open Government.”

Attacking Media

In 15 tweets since March 1, top FCC officials slammed the substance of five news stories and editorials about the agency.

FCC Office of Media Relations Director Brian Hart tweeted Aug. 15 that it’s “tough for LA Times to make the case when so complimentary: ‘@AjitPaiFCC, who seems to have never met a regulation he didn’t want to kill.’” Pai “liked” that tweet, which quoted an editorial on “Pai’s retreat” on net neutrality rules in planning to undo the last Democratic-led FCC’s treatment of broadband service as akin to a utility.

In a dozen episodes, tweets praised reports favorable to the agency. Several were by news organizations linked to operations overseen by the FCC: “NBC Nightly News” came in for favor twice for reports on the FCC cracking down on robocalls, and NPR’s similar coverage got kudos. Leamer tweeted, “Great clip from @NBCNightlyNews showing how @AjitPaiFCC is leading the @FCC to combat robocalls.” Linking to a “Morning Edition” report on npr.org, Leamer tweeted, “Great article by @planetmoney on problematic robocalls. Click for the story, stay for the @AjitPaiFCC interview.” Berry and Hart retweeted Leamer’s praise.

“Great article about @AjitPaiFCC’s proposal to stop rural Americans’ phone bills from rising. Vote is tomorrow,” tweeted Berry May 17 about a Community Newspaper Holdings story, to which the reporter replied favorably. The next day, commissioners voted along party lines to freeze a rural subsidized rate some telcos charge customers monthly for basic voice service (see 1705180061). Raycom Media recently said it’s buying Community Newspaper, which would put it under more direct FCC authority (see 1709250052).

Post, Politico Targeted

The most-targeted news organizations for criticism by FCC officials were The Washington Post and Politico; they didn’t comment. The Wall Street Journal was the most praised, in three instances, followed by two for NBC.

In the Twitter episode involving the largest number of FCC officials opining on one piece (see 1706230061), Berry, Leamer and O’Rielly slammed a story by Post tech reporter Brian Fung that said Pai and President Donald Trump were chummy. Fung initially had reported incorrectly that Pai attended a meeting Trump held with tech executives. Well after that error was corrected, FCC officials’ Twitter onslaught continued. “This correction undercuts the entire article. Unfortunately for some narrative supplants truth,” tweeted Leamer. Berry called it “disgraceful” the newspaper wouldn’t “pull the article.” FCC staffers called the ar-
article a “complete fabrication,” asking, “Does Post not do basic fact-checking,” amid a “fake meeting.” The Daily Caller and RedState reported on FCC officials’ tweets.

Another time, Berry tweeted to Fung that the reporter’s piece on Pai cracking down on Lifeline fraud in subsidizing broadband service to the poor missed a supportive statement from state regulators. Responded Fung, “ah, thanks.” The report now includes NARUC’s statement.

Coverage favorable to the FCC in the Post and The Wall Street Journal won praise. Leamer called an editorial in The Post on Pai’s robocall crackdown “a great column detailing @AjitPaiFCC’s efforts to shutdown robocalls and scammers.”

Even content unrelated to the FCC met criticism. Chief of Staff Berry Aug. 16 tweeted to Politico Pro Tech reporters Margaret McGill and John Hendel regarding another reporter who doesn’t cover the FCC, “Are homophobic slurs consistent with POLITICO’s editorial standards? Only when directed against conservatives?” On Aug. 30, Berry tweeted it’s “shameful that @politico would run a cartoon attacking the people of Texas at a time like this. #Harvey.” A Politico cartoon made light of some Texans wanting to secede as the federal government assisted in hurricane relief. — Jonathan Make
CEO Randall Stephenson said that throughout DOJ's review of the deal, "I have never offered to sell CNN and have no intention of doing so." Turner's assets include CNN. AT&T had expected to close on TW by year's end (see 1711020051). Free Press said it continues to oppose AT&T/TW on media consolidation grounds, and forcing divestiture of content properties such as Turner distribution properties or DirecTV could soften those consolidation harms, but department opposition is problematic if it's based on President Donald Trump's antipathy to CNN coverage: "Everyone should agree that the government shouldn't base antitrust decisions or FCC rulings on whether it likes a newsroom's coverage." As a candidate for president, Trump said he opposed AT&T/TW (see 1610220002). If Justice has a problem with a vertical merger like AT&T/TW, the possibility of horizontal mergers in the sector seems "substantially lower" than previously thought, meaning a Disney move for Fox wouldn't pass muster, let alone Comcast buying Charter or any further content assets, BTIG analyst Rich Greenfield emailed investors Wednesday. He raised the specter of Comcast having to sell its NBC or Hulu ownership after the Comcast/NBCUniversal consent decree ends, saying if AT&T/TW is problematic for DOJ, "how is the former okay?" DOJ in a statement said it's "committed to carrying out its duties in accordance with the laws and the facts." Wells Fargo analyst Marci Ryvicker, in an email to investors, said there are no potential buyers for DirecTV, but CNN could command $8 billion to $10 billion and be a strategic fit with CBS. She also said while there's now "a really uncertain spell on M&A in general," Discovery/Scripps Network and Sinclair/Tribune are likely not at risk. —MD

Clarification: Media Institute Executive Director Richard Kaplar was referring to FCC licensees in recommending agency officials not tweet about news coverage of the agency by such licensees (see 1709260014).