

ISSUE BRIEF

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New FCC Chairman Takes Weed Whacker to Regulation

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The first few months of a new presidential administration are often uneventful for regulatory agencies. Key leadership positions are still being filled, and, once selected, regulators can spend months or even longer simply learning where the bathrooms are and how the phones work, delaying implementation of the Administration's policy agenda.

The Trump Administration has been no exception to this tendency. Despite a blizzard of regulatory initiatives from the White House and from Congress, many of the agencies responsible for regulation are still getting up to speed.

New Chairman of the Federal Communications Commission

This state of affairs makes the news from the Federal Communications Commission especially noteworthy. Rather than install a neophyte to the job, President Trump in January tapped a sitting FCC commissioner, Ajit Pai, as the new chairman.

Pai has been on the commission since 2012, serving as one of two Republican members of the FCC. His appointment avoided the typical pitfalls for two reasons. First, it required no immediate Senate confirmation, because he was already on the commission.¹ Second, and more importantly, Pai did not

need any on-the-job training—he was ready to go on day one.

Pai's goal, as he colorfully put it, is to take a “weed whacker” to costly and unnecessary regulation that hinders “investment, innovation, and job creation.”² Pai certainly knows where the regulatory bodies are buried. He used his years as a commissioner not only issuing dissents to the interventionist policies of his predecessor, President Obama-appointee Tom Wheeler, but also articulating the case against those policies. This experience has paid off, as Pai has in his one month at the helm managed to take down rules in half a dozen or more areas.

Pai's Experience in Deregulation

Most recently, Pai, joined by fellow Republican commissioner Michael O'Rielly, stayed key sections of a rule limiting use by Internet service providers (ISPs) of consumer data.³ The 302-page regulation had been adopted in the waning days of the Wheeler chairmanship by a party-line 3–2 vote.

This rule barred ISPs from using “sensitive” customer information unless a subscriber “opted in” to allow such use. Pai and O'Rielly argued that an FCC rule was unnecessary because the Federal Trade Commission already had rules governing the same activity. Moreover, the FCC rules were in several ways more restrictive, putting a heavier burden on ISPs compared to other Internet firms (such as Google), solely because of jurisdictional happenstance. On March 1, the FCC voted to keep the rule from taking effect.

The IPS rule was not the first instance of Pai blocking or reversing a regulation. Although only holding office for a few weeks, he:

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- **Halted** FCC moves to prohibit Internet providers from offering certain “zero-rating” plans, under which consumers receive selected content from participating online content firms, without that usage counting against the consumers’ data caps. In January 2017, an FCC staff report concluded that such plans could violate the FCC’s “open access” or net-neutrality rules. Pai rescinded the report on February 3, writing in a statement: “Going forward, the Federal Communications Commission will not focus on denying Americans free data. Instead, we will concentrate on expanding broadband deployment and encouraging innovative service offerings.”⁴
 - **Pulled** a rule that would have required cable firms to offer FCC-approved apps to subscribers to replace their current provider-supplied set-top boxes. In effect, cable firms would have been forced to subsidize their online competitors, upsetting copyright protections and licensing contracts. The mandate had been circulating for signatures among the commissioners until Pai pulled it back in late January.⁵
 - **Eliminated** a 43-year-old FCC rule that required broadcast stations to keep copies of all correspondence from the public, in their office and available for public inspection. These files were unnecessary and costly, and almost never used by the FCC in making renewal decisions.⁶
 - **Eliminated** accounting rules requiring telecommunications carriers to maintain two sets of books, one based on financial accounting standards and another for regulator purposes. The duplicative systems also meant two sets of audits.⁷
 - **Exempted** small broadband providers from burdensome “transparency” requirements imposed as part of the FCC’s 2015 net-neutrality order. The rules required providers to make available detailed information on everything from network performance to fees and data caps.⁸
 - **Eased** rules restricting the siting of FM translators used for rebroadcasts on AM radio. This move is part of a broader “radio revitalization” agenda developed by Pai.⁹
- More regulatory rollbacks are on the way. The FCC’s recently announced agenda for its March meeting includes:
- **Easing** rules on international telecommunications providers,
 - **Increasing** flexibility for cellular phone services, and
 - **Rolling** back rules on prison phone rates adopted last year.

1. President Trump did nominate Pai as a member of the Commission on March 7, for a term ending in 2021. This nomination requires Senate confirmation by the end of the congressional session. Pai’s designation by the President as chairman, however, requires no such approval.

2. Jim Puzzanghera, “Trump Names New FCC Chairman: Ajit Pai, Who Wants to Take a ‘Weed Whacker’ to Net Neutrality,” *The Los Angeles Times*, January 23, 2017, <http://www.latimes.com/business/la-fi-pai-fcc-chairman-20170123-story.html> (accessed March 7, 2017).

3. The FCC currently has two vacant seats, leaving the Republicans with a 2-1 majority.

4. Chairman Ajit Pai, “Statement on Free Data Programs,” Federal Communications Commission, February 3, 2017, http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0203/DOC-343345A1.pdf (accessed March 7, 2017).

5. John Eggerton, “FCC’s Pai Pulls Set-Top Proposal,” *Broadcasting and Cable*, January 31, 2017, www.broadcastingcable.com/news/washington/fccs-pai-pulls-set-top-proposal/162928 (accessed March 7, 2017).

6. Chairman Ajit Pai, “Statement: Commission Eliminates Two Public Inspection File Requirements,” Federal Communications Commission, January 31, 2017, <https://www.fcc.gov/document/commission-eliminates-two-public-inspection-file-requirements/pai-statement> (accessed March 7, 2017). Chairman Pai credited his colleague Michael O’Rielly for identifying this useless paperwork requirement.

7. Chairman Ajit Pai, “Statement: FCC Addresses Unnecessary Accounting Requirements for Carriers,” Federal Communications Commission, February 23, 2017, <https://www.fcc.gov/document/fcc-addresses-unnecessary-accounting-requirements-carriers/pai-statement> (accessed March 7, 2017).

8. Chairman Ajit Pai, “Statement: Small Business Exemption Order,” Federal Communications Commission, March 2, 2017, <https://www.fcc.gov/document/small-business-exemption-order/pai-statement> (accessed March 7, 2017).

9. Adam Jacobson, “FCC Unanimously OK’s Eased Translator Siting,” *Radio and Television Business Report*, February 23, 2017, <https://rbr.com/fcc-am-revitalization-0223/> (accessed March 7, 2017).

The commission will be increasing regulation in at least one area, considering new limits on automated “robocalls.”

Chairman Pai’s Biggest Challenge: Net Neutrality

However, the real challenge for Chairman Pai still lies ahead: rescinding the 2015 “open Internet,” or “net neutrality,” rules.¹⁰ These rules—which essentially require ISPs to offer the same level of Internet service to all content providers—have been debated by the FCC for over a decade. Twice during that time, the FCC has promulgated rules, only to have them overturned by the courts. The current rules have passed muster in federal appeals court, seemingly ending the controversy. The changes in the FCC makeup has given opponents of the rule new life. There is little doubt where Pai stands, as he opposed these regulations consistently as a commissioner.

Erasing these rules is by no means easy. Pai must eliminate the rules in a such way that will stand up to court review. Moreover, the elimination must minimize the ability of a future FCC to simply reimpose them.

Conclusion

Rolling back regulation and red tape at the FCC is a daunting task. So far, however, Chairman Pai and his weed whacker seem ready for the challenge.

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10. For background on this issue, see James L. Gattuso and Michael Sargent, “Beyond Hypothetical: How FCC Internet Regulation Would Hurt Consumers,” Heritage Foundation *Backgrounder* No. 2979, November 25, 2014, http://thf_media.s3.amazonaws.com/2014/pdf/BG2979.pdf.