

# FCC's Pai Is Taking Aim At Array of Media Rules

5/08/2017 8:00 AM Eastern

By: [John Eggerton](#)

## TakeAway

**FCC chair Ajit Pai is moving toward a wide-ranging deregulatory rethink of the nation's telecom rules.**

WASHINGTON — Federal Communications Commission chairman Ajit Pai is looking beyond media-ownership regulations with an eye toward using his regulatory weed whacker on other rules affecting broadcasting, cable and satellite TV.

The review he plans to launch next week, with an expected public-meeting vote on Thursday (May 18), is targeted at trimming a much-larger landscape. Pai emphasized his media-ownership review last month at the NAB Show in Las Vegas, but that's part of a congressionally mandated quadrennial review of ownership regulations. Congress also mandates a periodic review of telecom regulations, but there is apparently no such requirement for a review of media regulations in general.

"The chairman is taking that on," an FCC spokesperson said.

In its tentative agenda for the May 18 meeting, the FCC said there will be a vote on a "Modernizing Media Regulation initiative."

Pai has already signaled he wants to take a fresh look at broadcast ownership limits, including small-market duopolies, the national ownership cap and cross-ownership. This new review would sweep far beyond that, looking at all regulations applied to all media services "including radio, cable and satellite," which the FCC noted "must comply with hundreds of pages of commission rules, many of which are decades old."

The comprehensive review would set the stage for targeted rollbacks in the future. Specifically, it will ask for input in three areas:

- “Which of the FCC’s media-related rules the commission should propose to modify or repeal in subsequent rulemaking proceedings.”
- “The impact of rules on small businesses with an eye toward regulatory relief.”
- Reducing “unnecessary regulations and undue burdens that can stand in the way of competition and innovation in the media marketplace.”

That second point is right in the wheelhouse of the American Cable Association, which spends much time trying to get the FCC to bake a recognition of the burdens of regulation on the ACA’s constituency of smaller independent cable operators into the agency’s regulatory DNA.

Scott Cleland, chairman of the ISP-backed NetCompetition, has some ideas about what the FCC should look at, starting with the public-interest standard that underpins its merger reviews.

While the FCC applies the public-interest standard to old media like TV and radio stations, new media gets a pass, he noted. The merger public-interest test also needs to be limited, Cleland said.

“There should be some rigor, some logic and some limits, so that it is not simply what three votes imagine it to be, doing whatever they want, whenever they want,” he said.

On the cable side, Cleland said the FCC needs to get rid of its “aspirational” definition of broadband. He called it just “making up” a definition to suit a policy goal, in this case, “taking a competitive market and [saying] it was not competitive.”

Randolph May, president of free-market think tank the Free State Foundation, said common-carrier regulations could also stand to be slimmed down.

“To the extent a need for regulatory oversight remains, for example, with regard to interconnection arrangements, a simple, antitrust-like rule would suffice,” he said.

With strong backing from the Trump administration and congressional Republicans for eliminating and revising rules, it looks as though a regulatory winnowing is only a matter of time.

<http://www.multichannel.com/fcc-s-pai-taking-aim-array-media-rules/412670>

# Out of Bounds

Rise of cord-cutting, virtual pay TV providers could force cable to launch an attack beyond its borders 5/08/2017 8:00 AM Eastern

By: [Jeff Baumgartner](#)

*Virtual MVPD offerings like Hulu's — which just launched in beta mode — could force cable incumbents to return fire with like offerings of their own.*

## TakeAway

**The rise of OTT video services could lead to a scenario where incumbent cable providers use internet-delivered services to expand into other operators' service territories.**

The rise of over-the-top television services and a growing cord-cutting trend are applying pressure to cable's pay TV business as never before.

As the quarterly impact of subscriber losses on legacy cable-TV operators is scrutinized, many investors' deepest concern is an eventual tipping point at which new, internet-delivered "skinny" TV services will become the dominant viewing option and traditional bundled packages will fade.

While an in-footprint strategy focused on a next-generation video platform helped Comcast buck the trend and actually grow its video subscriber base, most other U.S. cable operators are still consistently losing customers.

Most incumbent MSOs don't compete directly with other cable operators, a regulatory dynamic that, over many years, has resulted in a mélange of cross-industry policy, tech and marketing organizations such as NCTA—The Internet & Television Association, the Cable & Telecommunications Association for Marketing, the Society of Cable Telecommunications Engineers and CableLabs, as well as joint ventures like Canoe, the cable industry's advanced-advertising consortium.

Because cable-TV operators are essentially awarded an exclusive franchise to serve an area, they've focused their video and broadband assaults on their own footprints and against rivals such as the telcos, satellite-TV providers and overbuilders.

As it becomes more challenging for operators to gain, yet alone retain, video subscribers in their own territories as they fend off old rivals and a fresh

phalanx of virtual MVPDs, though, questions are swirling as to when, not if, MSOs will develop their own OTT services to launch beyond their traditional borders.

Such a brash move would create a cascade of consequences for programmers in particular, but it would certainly force other cable distributors to do the same, likely sparking an all-out video Armageddon.

### ***OTT ON THE MARCH***

AT&T and Dish Network have no such industry allegiances to worry about, and have already marched ahead with their own OTT TV services — DirecTV Now and Sling TV, respectively. Verizon Communications, meanwhile, has been rumored to be developing a virtual MVPD of its own that could be sold on a nationwide basis.

And though cable operators such as Comcast have stressed that the economics of an OTT TV service simply don't add up, it's clear that it and other cable operators are making the necessary preparations to build and deliver an out-of-market service — just in case.

The technology needed to pull this off is the easy part. The more difficult business-facing aspects of building an OTT service are also coming together. Earlier this year, industry sources confirmed a Bloomberg report that Comcast has already locked in the rights to offer some channels over-the-top on a national basis. However, it was also stressed that a portion of those rights came by way of “most favored nation” clauses in carriage contracts with programmers that ensure that Comcast gets the same terms that are granted to other distributors, including virtual MVPDs. There's also no clear indication yet that Comcast intends to act on those rights.

And Comcast hasn't wavered from its position about OTT economics.

“We think we have a lot of opportunity just in our footprint,” Brian Roberts, Comcast's chairman and CEO, said on the company's first-quarter earnings call. “It's a big upside. We continue to believe in what we're doing. ... The second thing, we just haven't found the business model that works outside. We'll keep evaluating, keep looking at it, but our success within our footprint is packaging, bundling. So we'll continue to drive that internally within our footprint.”

But Comcast is a different animal even among its MSO peers, and has some advantages and initiatives underway that others do not.

X1 is a prime example. That multiscreen, cloud-based platform now serves as the core of Comcast's next-generation video service. However, Comcast is also getting some out-of-footprint benefits, in terms of both economic scale and product influence, via X1 syndication deals it has forged with Cox Communications and two Canadian operators — Shaw Communications and Rogers Communications.

Comcast is also starting to underpin a new in-footprint skinny TV service with X1 technology. Sources confirmed that Comcast is eyeing a third-quarter commercial launch for Xfinity Instant TV, a managed IPTV service that will feature a range of packages, a cloud DVR service, and initially target broadband subscribers who don't take a pay TV package from Comcast. Reuters said the app-based offering will be priced starting at about \$15 per month and include packages that could sell for up to \$40 per month, and allow for add-ons such as ESPN.

With the proper digital distribution rights, it would not seem a difficult thing for Comcast to pivot that handiwork into an OTT product.

But would it make any money? Without the benefits of service bundling, including the latching on of superhigh margin broadband services and newer products like Xfinity Home, a standalone OTT TV service would certainly be less profitable.

As another potential advantage that other MSOs don't have, Comcast will also get a close-to-first-hand look at how profitable (or not) a virtual MVPD can be. Hulu, which is partly owned by Comcast's NBCUniversal, last week launched the beta version of a live TV service that starts at \$39.99 per month for a lineup of 50-plus channels, including live locals of the Big Four broadcasters in some markets. The new service, which includes Hulu's premium SVOD offering, also features some add-ons, including unlimited in-home streaming and enhanced cloud DVR service that allows users to fast-forward through ads in recorded shows, that, when bundled, push the price to almost \$60 per month.

Hulu's live service is just getting off the ground, but the company, which has revenues coming in the door from its millions of SVOD customers, is already costing Comcast big money. In a 10-Q report filed late last month, Comcast disclosed its share of losses at Hulu in the first quarter were \$54 million due to higher programming and marketing costs.

Speaking on CNBC, Hulu CEO Mike Hopkins expressed confidence the new OTT service will turn a profit via its mix of live TV, SVOD and advanced ad capabilities.

Dan Rayburn, executive vice president of [StreamingMedia.com](http://StreamingMedia.com) and principal analyst at Frost & Sullivan, is on board with Comcast's position about the economics of OTT.

"The economics don't make sense; we really don't have to debate that," he said, pointing out that the content-licensing costs alone are a killer. "People say all you need is big scale. Netflix has 100 million subs ... and they're still not profitable."

And the new class of virtual MVPDs face the challenge of marketing services that are designed to appeal to cost-conscious cord-cutters.

"With a live, linear service, you can never charge customers enough to make up your costs," Rayburn said, pointing out that it's this degree of sticker shock that caused Microsoft to throw in the towel years ago when it was mulling its own OTT TV service.

He also doesn't believe the current pay TV environment and its battle against cord-cutting and luring in cord-nevers will force cable's hand to go out-of-market.

He said services like Sling TV, PlayStation Vue and DirecTV Now have hardly put a dent in the market, and that there's a good reason why they don't (or rarely do) offer subscriber numbers — because they don't want Wall Street to figure out the costs of running a service that sells for \$20 to \$40 per month. But today's troubling pay TV trend "certainly makes [cable operators] re-look at how things are packaged and offered," Rayburn said. "But what's the benefit to your overall business? I don't see one."

Telsey Advisory Group media analyst Tom Eagan also isn't convinced operators are plotting to offer video service outside of their footprints anytime soon. In an interview, he said any attempts to secure out-of-market content rights are more than likely an effort to keep their options open.

"Who knows what will happen in five years?" Eagan said. "You always want to have as many levers as you can. I don't expect anything in the next couple of years, but they want to have the optionality."

So why, then, are all of these OTT TV services entering the fray if there's no money to be made? Rayburn said the answer is simple — they all are owned by larger companies that can hide the bad economics, or take the hit without

getting killed. DirecTV Now is owned by AT&T, YouTube TV by Google, Sling TV by Dish, PlayStation Vue by Sony and Hulu by a handful of major programmers. fuboTV, the sports-oriented vMVPD, is an exception.

### ***TOO BIG NOT TO TRY***

“No one is standalone” in that OTT TV grouping, he said. “None of these guys can survive or exist if it wasn’t a big conglomerate that was actually operating it or running it, because the economics don’t work as a standalone business.” Colin Dixon, founder and chief analyst of nScreenMedia, agrees that rising content costs are making all pay TV services less profitable, but also believes that cable operators going OTT is an inevitability.

“I think they’re all going to end up having to do it — the environment is just ripe for it,” he said, adding that pay TV subs are seeking other video options in increasing numbers. “Even if it’s marginally profitable, it’s still incremental revenue that they get to add to the bottom line. I don’t see how they can resist doing it in the long run.”

*Mike Farrell contributed to this story.*

### **SIDEBAR: Cord-Cutting Draws More MSO Blood**

If cord-cutting is among the key reasons prompting cable operators to look beyond their borders for video growth opportunities, then consider that box checked — in permanent ink.

It’s now undeniable that U.S. pay TV providers are contending with cord-cutting along with a large group of consumers who have never taken a traditional pay TV package.

Even before all public cable providers reported their first-quarter results, MoffettNathanson issued a report that said the U.S. pay TV industry lost about 762,000 video subscribers in the period, making it the worst-ever Q1 when viewed through the video lens.

“For the better part of 15 years, pundits have predicted that cord-cutting was the future. Well, the future has arrived,” MoffettNathanson principal and senior analyst Craig Moffett declared last week in his *Q1 2017 Cord-Cutting Monitor*, which found that multichannel video programming distributors were taking it on the chin despite positive new household formation. First-quarter video losses were more than five times as large as last year’s loss of 141,000, and that the incremental number of cord-cutter and cord-never homes has grown to more than 6.5 million since 2013.

— *Jeff Baumgartner*

<http://www.multichannel.com/out-bounds/412671>

# Newest Battle for 'Open Internet' Begins

Net neutrality fight will play out on multiple fronts, FCC, Capitol Hill and the courts 5/08/2017 8:00 AM Eastern

By: [John Eggerton](#)

## TakeAway

**Interests on both sides are lining up for an Open Internet issue fight that will only get uglier.**

WASHINGTON — How internet access should be regulated, if at all, has been the subject of an ongoing battle for well over a decade. Federal Communications Commission chairman Ajit Pai has fired the latest salvo and the battle lines are being drawn once again at the commission, on Capitol Hill and in the courts.

Verizon Communications, whose challenge to the last set of rules resulted in the court decision that eventually morphed into reclassification of broadband under Title II of the Communications Act, took to YouTube to explain why wiping away such common-carrier classification was the right way to go. In a video, Verizon general counsel Craig Silliman said emphatically that ISPs were not looking to get out from under open internet rules, instead just supporting putting Open Internet rules on “a different legal footing” in “an enforceable way.”

The best defense is a good offense, so Silliman talked about the advocacy groups that like to use the issue to raise funds and “stir people up with outrageous claims.”

### ***SUPPORT GROUP FORMS***

Elsewhere, one of President Donald Trump’s former state campaign directors has launched a group, Free Our Internet, which sounds as though it could be



for supporters of Title II but, in fact, puts the blame on the left and Silicon Valley “monopolies.”

Former FCC chairman Tom Wheeler justified his Title II approach by saying it was necessary to ensure rules could be applied to the gatekeeper internet service providers he said were the threat to openness.

“In a well-coordinated and secretive campaign orchestrated by George Soros, other far-left funded activist groups, and Silicon Valley companies like Google and Facebook, President Obama passed rules in 2015 that gave the federal government virtually unlimited powers over the internet for the first time in history,” said former Trump Maine campaign coordinator Christie-Lee McNally, who launched Free Our Internet. “This gave the federal government and its Silicon Valley allies free reign to control our nation’s communications apparatus, together.”

That effort from the left has been an attempt to “censor conservative news, ban conservative voices and manipulate content across their platforms to benefit their political agenda,” she said.

That is in contrast to some complaints from the right that rolling back Title II would give the left more opportunity to chill conservative voices via the “liberal” media President Trump is consistently vilifying.

The FCC is expected to vote May 18 on Pai’s plan to reclassify wired and mobile ISPs as information services not subject to Title II and review the Open Internet order rules. Pai also wants to get the FCC out of the business of regulating interconnection and throw out the internet conduct standard it can use to review a host of commercial practices and business plans on a case-by-case basis.

ISPs have called on Congress to step in and clarify the FCC’s authority, which at baseline means to clarify that they are not common carriers. One cable executive said that could be a long process, if it happens. Even Pai has signaled he would be happy for Congress to provide “rules of the road” as he tries to rewrite the current ones.

The FCC process could be a long one. Pai has essentially crowd-sourced the issue, seeking answers to a host of questions, allowing for three months of comment and signaling the process was just beginning. But it clearly looks like Title II classification is going away, one way or the other. It is less clear how the bright-line rules against blocking, degrading and paid prioritization will fare.

The U.S. Court of Appeals for the D.C. Circuit has added a new wrinkle, denying full-court review of its three-judge panel decision upholding Title II reclassification. It pointed out that the FCC was already reconsidering the decision, so it did not want to find itself in the position of “examining, and pronouncing on, the validity of a rule that the agency had already slated for replacement.” Sen.

Mike Lee (R-Utah) has already introduced a bill to roll back Title II, one that would mirror a Congressional Review Act resolution like the one that repealed the FCC’s broadband privacy regulations.

It would nullify the 2015 Open Internet Order and prevent a similar rule from being adopted in the future. That is in contrast to calls from some other Republicans for a bipartisan bill, since nullification does not sit well with Democrats or net neutrality activists.

“You would have to be a fool to think [the Republicans] are actually going to legislate something that is going to be anywhere near as protective [of net neutrality],” said Rep. Frank Pallone (D-N.J.) at the appropriately named New America event, “The Fight for Net Neutrality Begins Again.”

“It’s particularly telling that they would introduce such a polarizing bill that would eliminate the current open internet protections even as Republican leaders urge Democrats to work with them on compromise legislation,” Public Knowledge associate policy counsel Kate Forscey said. “This suggests that Republican- led legislation protecting net neutrality is not as they like to claim, and some remain hell bent on extinguishing the open internet as we know it.”

### ***COURT CHALLENGES BREW***

The D.C. Court decision paves the way for direct appeals of the panel’s decision to the Supreme Court, as various parties have promised. It’s likely the court wouldn’t hear such an appeal until sometime next year — if it agrees to hear it at all.

Any legislative approach would likely not happen until then, too, said one cable executive speaking not for attribution.

VoIP pioneer Daniel Berninger said he is definitely appealing the decision to the Supreme Court, but said he will wait for three months or so “to avoid revealing his cards to the opposition. I also plan to petition the court to change the caption in the case to *Berninger v. FCC* to give the entrepreneur perspective more visibility.”

Then there is the court of public opinion. At press time, petition drives were underway, in addition to calls for protests and comments to again flood the FCC.

### **What's Next on Each Front?**

**The FCC:** The agency plans to vote May 18 on the notice of proposed rulemaking, triggering a three-month comment period — or more if the FCC extends the mid- August cutoff. The NPRM asks a ton of questions in what has been likened to a “crowd-funding” approach to how to proceed. Of course, there is still the possibility that Democrat Mignon Clyburn could sit out the meeting and deny the chairman the quorum he needs to launch the review.

**Congress:** Sen. Mike Lee (R-Utah) just introduced (see story) a bill to nullify the FCC's Open Internet rules and prevent their return. That would almost certainly gain no Democratic support. Both Democrats and Republicans say that legislation is needed to provide regulatory certainty. Sen. Bill Nelson (D-Fla.), ranking member of the Senate Commerce Committee, said last week that while a bipartisan bill was necessary, it appeared impossible in the current climate, though he would keep trying. Sen. John Thune (R-S.D.), chairman of the committee, said he would too, and signaled he thought Pai's initiative could spur a legislative solution.

**The Courts:** The challenge to Title II could be on a parallel track to the Supreme Court after a D.C. federal appeals court again declined to overturn the FCC's Title II classification. If the Supreme Court were to take the appeal, arguments would likely not happen until early 2018.

— *John Eggerton*

<http://www.multichannel.com/newest-battle-open-internet-begins/412675>

# Net Neutrality Activism on the Rise As FCC Approaches Vote on Title II

5/15/2017 8:00 AM Eastern

By: [John Eggerton](#)

Washington, D.C., is experiencing rush hour on the neutral/non-neutral (depending on your viewpoint) information highway. The catalyst: the **Federal Communications Commission's** imminent vote on the Republican majority's proposal to roll back Title II regulations on broadband and whether prohibitions on blocking, throttling or paid prioritization are needed at all.

Flashpoints include calls for resistance from **John Oliver**, host of **HBO's *Last Week Tonight***, and Democratic FCC member **Mignon Clyburn**; an alleged distributed denial-of-service (DDoS) attack on the FCC's website and new survey data from cable's top trade group.

Here are highlights:

- **NCTA-The Internet & Television Association** and **Morning Consult** released a poll that found 78% of respondents favored either light-touch internet regulation (53%) or no government internet regulation at all (25%). Asked if they supported the net neutrality rules of no blocking, throttling or prioritization of certain content (it did not say "paid prioritization"), a majority (61%) either strongly supported those rules (24%) or somewhat supported them (37%).
- Oliver, a fan of the 2015 Open Internet Order, took aim at FCC chairman **Ajit Pai** and his planned Title II rollback. He mocked Pai's oversize Reese's Peanut Butter Cups mug, which the chair plugged at an open meeting

and — as he did in 2014, when he went after Pai predecessor **Tom Wheeler** — likened the Internet trolls he was whipping up to the flying monkeys in *The Wizard of Oz*. (This time around, *The Wire* would call them flying “Reese’s monkeys.”)

- The FCC claimed it had suffered a DDoS attack at about the same time that Oliver made his call for comments, leading various groups — and a few congressional Democrats — to seek proof that it was indeed an attack and not the FCC’s inability to handle a flood of comments.

- There was indeed a flood of comments to the FCC. At press time, almost a half million comments had been posted to the Restoring Internet Freedom docket (Pai’s branding of the effort to roll back Title II and reconsider the Open Internet rules), compared with only about 30,000 the week before. A lot of them were anti-Title II, and many appeared to be form complaints, something that had the activists crying foul and “bot.”

- Clyburn did not call those commenters minions but, in a Los Angeles speech to a Title II-friendly crowd, she called on them to help stop the FCC from “dismantling” an open internet.

“Are you willing to stand up, demand from us, and join forces with those who are willing to fight?” she asked. “Then let’s do this ... Keep those voices for internet freedom raised and let’s lay out a plan on how best to go forward, starting now.”

Clyburn has the power to block the vote temporarily by not showing up for the FCC’s May 18 public meeting, which would deny the quorum needed for a vote. Her office has declined to say if she will exercise that regulatory “nuclear option.”

### ***Cueing Up The Queue***

Quick suggestion to the **Altice USA** people the next time you decide to hold an impromptu call with reporters: Think about implementing a question queue.

*The Wire* was pleased to be included in what we think was the first reporters’ call ahead of earnings for Altice USA parent Altice Group and hopes to be included in future telephonic get-togethers.

But on the Altice reporter call, after brief comments from **Altice Group** CEO **Michel Combes**, chief financial officer **Dennis**

**Okhuijsen** and Altice USA CEO **Dexter Goei**, a literal shouting match

ensued, as reporters tried to ask questions and executives tried to figure out who was asking them.

At one point, a member of the French press on the call asked why everyone was speaking English. “Are we only French people talking English together?” she asked. Combes replied he had at least two non-French executives on the call — Goei and Okhuijsen — but that he would be happy to speak French next time as well.

The Wire got in a shouted question at the end — sometimes growing up the youngest in a large family has its advantages — which Goei answered patiently and thoroughly. We weren’t sure if others on the call were as lucky.

— *Mike Farrell*

### ***Spectrum Touts Its Local Reach While Cutting Some Sports Nets From Roster***

**Spectrum Reach**, the ad-sales arm of **Charter Communications**, had its first IAB New- Fronts show-and-tell on May 5, touting its advertising solutions and showing off local programming talent carried over from **Time Warner Cable** and **Bright House Networks**, the cable providers Charter took over in 2016.

Anchors from **Spectrum NY1 News** in New York City (including **Pat Kiernan**), News 13 in Orlando, Fla. (**Ybeth Bruzual**), and from **Spectrum SportsNet** in Los Angeles (former Lakers star **James Worthy**) were on stage at the Edison Ballroom in New York. Worthy plugged Spectrum’s 30-plus local news and sports channels.

As of May 4, though, that roster was minus a couple of former players on the local sports network side, as Charter has closed down **Spectrum Sports** channels in Texas and in North and South Carolina, the cable operator confirmed. “We will allocate those resources to strengthen our local news operations in Austin, San Antonio and the Carolinas,” it said in a statement.

“We also plan to increase news coverage and shows around local sports.”

The Wire hears Spectrum also won’t renew a prior TWC pact (struck in 2014) with the NFL’s **Carolina Panthers** for ancillary programming about the team, though a person familiar with the situation said that might not be accurate and that news on that front could happen soon. A Panthers team spokesman did not return a call seeking comment by press time.

Spectrum also said it's "combining" Spectrum Sports channels with Spectrum News operations in upstate New York, though it's committed to covering Syracuse University athletics on the Spectrum News channel in Syracuse. No news channels are affected by the moves, Charter said. Charter recently made headlines in New York by letting go several longtime on-air personalities at NY1 to shift resources to more news and investigative coverage. Charter puts the current local network count at 19 news channels, 10 sports networks and three regional sports networks in California, including Spanish-language **Spectrum Deportes**.

— *Kent Gibbons*

<http://www.multichannel.com/net-neutrality-activism-rise-fcc-approaches-vote-title-ii/412845>

Multichannel News

# Title II Rollback Rolls On

**FCC begins work of reclassifying ISPs out from under common-carrier regulations** 5/22/2017 8:00 AM Eastern

By: [John Eggerton](#)

WASHINGTON — Mignon Clyburn, the lone Democrat on the Federal Communications Commission, spent more than 20 minutes reading the riot act to the agency’s Republican majority as she dissented from the rollback and revision of its Title II-based Open Internet Order.

“I’ll mark you down as a ‘no’ on this one,” FCC chairman Ajit Pai joked.

In a public meeting notable for its occasional humor and lack of protesters — at least inside the meeting room — Pai and fellow commissioner Michael O’Rielly last Thursday (May 18) began the serious business of rolling back the classification of internet-service providers as common carriers under Title II of the Communications Act, and reconsidering whether any of the FCC Open Internet Order’s brightline rules are needed to protect the public interest.

ISPs have been seeking to reverse Title II since the rules were adopted in 2015, and last week pledged not to block or throttle web traffic — paid prioritization is a grayer area, but ISPs have said they don’t do that either — regardless of what the FCC concludes in the months-long (at least three and probably more) process of gathering input on the proposal.

In short, the proposal is: 1) end Title II regulation of the internet; 2) reinstate that mobile broadband as a private mobile service; 3) eliminate the “general conduct standard” for reviewing possible violations of open internet principles not covered under “bright-line” rules; and 4) seek comment on whether to keep, modify or eliminate those rules against blocking, throttling or paid prioritization. Pai promised that any resulting order would be made public well before a vote.

He also conceded any such order will likely also wind up back in court.



While industry players praised the move, many also said Congress needs to step in to clarify the FCC's broadband regulatory authority (and help the agency get off the legal merry-go-round).

Also calling for legislation was the Republican chairman of the Senate Commerce Committee, John Thune of South Dakota, who took to the Senate floor just before the FCC vote to say that effort should start ASAP. But the general two-cats-in-a-sack relationship between Republicans and Democrats over issues like health care and immigration carries over to net neutrality. Democrats are wary of promises of bipartisan legislation, with Rep. Frank Pallone (D-N.J.), the House Energy & Commerce Committee ranking member, on the record as saying that well has been poisoned, hardly the beginning of a kumbaya moment.

But it is likely the beginning of a summer of protests.

Open Internet Order proponent Demand Progress sent an email to supporters hours after the vote asking for a \$5 donation to help save net neutrality, by which it means it plans to "flood" congressional offices with phone calls and drive what it said are "1 million" grassroots actions against what they call the "Trump-Pai plan."

<http://www.multichannel.com/title-ii-rollback-rolls/412988>

Multichannel News

# Net Neutrality Debate Goes Viral

Social media an active front in battle over an open internet 5/22/2017 8:00 AM Eastern

By: [John Eggerton](#)

WASHINGTON — The Federal Communications Commission’s network neutrality docket has returned with a vengeance.

It’s now not only a place for well over 1 million comments, but it is once again something of a social media touchstone, with the help of HBO viewers and FCC chairman Ajit Pai’s willingness to join in the exercise.

It is hard to keep up with all the net neutrality goings-on with the FCC docket, branded “Restoring Internet Freedom,” but it is a way to frame the debate in terms of the irritation that has been inflamed and the power of the internet, the central player in this regulatory passion play.

The FCC’s professed distributed denial of service attack did not prevent it from ultimately posting more than 1 million comments and counting in the docket since the attack was announced. The melange is a collection of individual comments, many spurred by John Oliver of HBO’s *Last Week Tonight*, as well as comments prompted by activists who support Pai’s plan to reclassify ISPs as information service providers not subject to common-carrier regulations under Title II of the Communications Act.

But there was a racial undercurrent to some of the comments — Pai is the first Indian-American FCC chairman — that prompted some pushback from Oliver and even a response from Pai himself in an online video.

Oliver took some credit for the flood of comments, but also provided a warning on his Sunday-night show about the tenor of some of the missives.

## **No Debate on Racism**

On the May 14 episode of *Last Week Tonight*, Oliver pointed to some of the racist reaction. “If any of those came from anyone who watches this show, stop it,” he said. “Writing racist things on the internet is not how you win the net neutrality debate; it’s how you win the presidency.”

He encouraged viewers to keep filing comments, but to wait until after the FCC's May 18 vote, since the agency was in the pre-meeting "sunshine" quiet period. Comments could still be filed, a test of the system confirmed, but the commissioners and staff cannot be lobbied on agenda items in the week before a public meeting.

Pai even took to the web himself — through the social-media news site *Independent Journal Review* — to read some of the "mean tweets" aimed at him, taking a well-worn page from ABC's *Jimmy Kimmel Live*.

Perhaps not surprisingly, that generated an online pushback from some who suggested it was a diversionary tactic. "Flooded with thoughtful net neutrality comments, FCC highlights 'mean tweets,'" read one headline.

An FCC spokesperson suggested the chairman hardly cherry-picked the worst of the bunch.

"The tweets that chairman Pai read were by no means the most egregious tweets or personal attacks," the spokesperson said. "Moreover, they were of a similar nature to those read by President [Barack] Obama and members of Congress in other mean tweets videos."

### **Laughing It Off**

An opportunity to use some online wit to diffuse the pointed criticisms would not be a big stretch for Pai. The chairman has brought his well-documented brand of humor to FCC meetings for years, with song lyrics and cultural references peppering his public statements, and even singing along to a protest song offered up at his first public meeting and joking with lone Democrat Mignon Clyburn at that meeting about her injured finger that was wrapped so the middle finger was sticking out.

In the video, Pai says he enjoys the public debate about the future of the internet. The video certainly gives that impression as he jokingly reads the "mean tweets" and responds good naturedly, bobbling his own head when he is likened to a bobble-head doll, for example, and defusing various racially charged tweets with humor.

"Go back to Africa were you came one," he read, answering, "Do you even English, bro?" He follows that with: "Ajit Pai is another fascist who needs to be apprehend and to be put on trial for crimes against the people. The Guillotines are coming." His response: "Well, you're not going to catch me if I'm back in Africa, now are ya?"

Looking to return social-media fire as well was Pai's chief of staff, Matthew Berry, who tweeted about his boss' "mean tweets" video; protests in Pai's Arlington neighborhood, which he called a "pathetic" attempt to harass Pai's family; and to call the chairman "the internet's friend."

Friend or foe, last week's vote to launch the process of unwinding Title II is likely only going to increase the social media decibel level.

<http://www.multichannel.com/net-neutrality-debate-goes-viral/412994>

Multichannel News

# Rosenworcel Returns, Who's Next?

**Handicapping some names that might fit for other potential  
FCC seats** 6/19/2017 8:00 AM Eastern

By: [John Eggerton](#)

WASHINGTON — Jessica Rosenworcel looks as though she will be making a return to the Federal Communications Commission, filling its vacant Democratic seat — the president has signaled his intention to nominate her and the Senate will almost surely confirm.

Now, Washington insiders are turning toward candidates for a second Democratic seat in the event that Mignon Clyburn decides not to stay on past the end of her tenure, or President Donald Trump and congressional Democrats want to nominate someone else.

The current bet is that FCC general counsel Brendan Carr, a former adviser to chairman Ajit Pai when he was a commissioner, is a leading candidate for the other empty Republican seat. A source said the White House has signaled it would leave that pick up to Pai.

Trump has only signaled his intention to nominate Rosenworcel. Industry sources said that the paperwork on Carr hadn't been completed sufficiently to pair the two announcements, which is typically how FCC nominations work. Another seat could open up, though.

Clyburn has not said whether or not she will stay on after her term expires June 30, or whether she has discussed that possibility with the Trump administration. She has sent cryptically valedictory signals, suggesting that she will continue to fight for issues such as diversity and inclusion and reasonable prison cellphone rates wherever she winds up. She declined to comment on her future plans.

In any event, Clyburn can serve, if she chooses, until a new person is nominated, vetted and confirmed or until the next Congress is seated — which would be in another year and a half — whichever comes first.

But Clyburn's uncertain signals have prompted the name game that always crops up when an FCC seat could open up.

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<http://www.multichannel.com/rosenworcel-returns-who-s-next/413505>

# The FCC Short List

Democrats floated for potential second seat 6/19/2017 8:00 AM Eastern

By: [John Eggerton](#)

*Gigi Sohn is among those being floated for a second Democratic FCC seat, should it open up.*

In the event that FCC commissioner Mignon Clyburn decides not to stay on past the end of her tenure -- or if the president or congressional Democrats decide to nominate someone else -- plenty of names are being floated for the job. The list of potential FCC nominees, which one Capitol Hill source said is the most definitive list around, includes the following:

**Gigi Sohn:** A former top aide to FCC chairman Tom Wheeler, Sohn is former head of Public Knowledge and a strong proponent for Title II-based Open Internet regulations, though she was also at the table — with Public Knowledge — for the previous non-Title II-based open internet regulations under then-chairman Julius Genachowski.

Sohn was a familiar face on Capitol Hill as a witness on various issues during her time atop Public Knowledge. A Hill source said Sohn seemed to be getting a lot of buzz for the post, though it usually requires Senate backing and there are other candidates with closer ties.

**Danny Sepulveda:** His resume includes deputy assistant secretary of State and U.S. coordinator for International Communications and Information Policy in the Obama administration — Politico tagged him “ambassador to the internet” — and before that, senior adviser to then-senator and future Secretary of State John Kerry (one of those important ties, so long as Kerry still has some pull) and an aide to then-Sen. Barack Obama. He also worked with Sen. Barbara Boxer (D-Calif.) and for the National Council of La Raza.

**Tim Wu:** If he does not get the open Democratic seat on the Federal Trade Commission — an industry source said another name has been floated for that post — he is in the mix for a Clyburn seat.

Wu, a professor at Columbia University, coined “network neutrality,” a term that does not ring pleasantly in the ears of most Republicans, at least when paired with Title II. But he has also suggested the government should take a

close look at Google's search activities, given what he said was "new evidence that it has been favoring its own content in local search."

**Joseph Wender:** Wender is senior policy adviser to Sen. Ed Markey (D-Mass.) and a staffer since 2009. As such, Wender has been at the senator's side, and ear, through his very public fights for net neutrality, broadband privacy, set-top box rules, children's TV rules and virtually all the major communications policy issues over that time. One Democratic source said Wender was one to watch, particularly if Markey gets Sen. Elizabeth Warren (D-Mass.) and progressives on board, which would be a "formidable combination."

**Roger Sherman:** Sherman, probably a long shot, is the former FCC Wireline Bureau Chief and was an aide to then-Sen. Henry Waxman (D-Calif.). Waxman was chairman of the House Energy & Commerce Committee. Sherman is a former Democratic counsel to the House Energy & Commerce Committee, under Rep. Walden's predecessor, Fred Upton (R-Mich.), and staff director of the Communications Subcommittee. His resume also includes a stint as an attorney at Sprint and he was with Wiley Rein, the law firm that has a reputation as something of a training ground for high FCC posts (the "Wiley" is Dick Wiley, former FCC chair), and sometimes welcoming them back again.

**Chanelle Hardy:** A list of potential additions to the government would hardly be complete without at least one Google connection. Hardy is currently the Strategic Outreach and External Partnerships director for the search giant. But even more germane, before that post she was Clyburn's chief of staff. Hardy is the former head of the National Urban League's Washington bureau and was chief of staff to then-Rep. Artur Davis — a Democrat who switched to Republican, then switched back again — as well as serving as a staff attorney at the Federal Trade Commission.

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