

Republican FCC Commissioners Fire First Shot in Next Network Neutrality Battle

December 21, 2016

In a [statement](#) released on Friday, December 16, and a [letter](#) to leaders of industry trade groups released on Monday, December 19, Michael O'Rielly and Ajit Pai, the two current Republican FCC commissioners, began the next battle over network neutrality regulations.

The specific issue that triggered the statement and the letter was the failure of the FCC to extend the small business exemption from the "enhanced transparency" requirements of the network neutrality rules. The small business exemption permitted providers with 100,000 or fewer subscribers to avoid these requirements. The exemption originally was to end on December 15, 2015, but that date was [extended](#) to December 15, 2016. The enhanced transparency rule requires broadband Internet access providers to disclose detailed information on their terms of service, the performance of their Internet access services, the impact of other services on the performance of their Internet access services, and their network management practices. The FCC [announced](#) last week that the rule will go into effect on January 17.

Commissioners Pai and O'Rielly announced that they had proposed that the exemption be extended and broadened to cover providers with 250,000 or fewer subscribers, but had been unable to reach agreement with the Democratic commissioners. This change would have been consistent with legislation that passed the House earlier this year, but that was not approved by the Senate. They also said that, when the transparency rule goes into effect on January 17, they "would not support any actions against small business providers for supposed non-compliance" with the rule. Finally, they said that they intend to "revisit" the transparency rule "and the Title II Net Neutrality proceeding more broadly, as soon as possible."

The agenda of the Trump Administration FCC will be determined by the new chair, who has not been named. However, the statement and the letter are a very clear indication of the priorities of the current Republican commissioners. They suggest that, absent legislation that mandates some form of network neutrality requirement, the Republicans on the FCC intend to make the current regime one of their first targets in 2017, and that, at a minimum, significant changes to the rules are likely.

In addition, because one of the two current Republican commissioners will be named chairman or will serve as the acting chairman while the nomination of permanent chair is pending, it is almost certain that the FCC will not take any action to enforce the enhanced transparency rule against any provider with fewer than 250,000 subscribers. There also is some chance the FCC will not enforce the rule even against larger Internet service providers.

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