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PERSPECTIVE

## Change in store for the FCC as the Pai era comes to an end

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As the productive and consequential term of Federal Communications Commission Chairman Ajit Pai comes to an end, significant challenges remain on the communications landscape. While great progress has been made in areas like securing U.S. leadership in 5G, closing the digital divide and modernizing media, much remains to be done. Chairman Pai's successor — whoever that may be — will wrestle with many of the same problems but is likely to pursue very different solutions.

Chairman Pai has served for over eight years on the commission, four of those as chairman. From the beginning, he was outspoken that certain principles would guide his decision making: focusing on consumers, competition and free markets. And so they have, to such a degree that many of his dissents as a commissioner in the minority roadmapped his decisions as chairman.

The early part of Chairman Pai's tenure was dominated by net neutrality, an unusually acrimonious issue. While the commission debated the merits of Title II common carrier telephone regulation for the internet the issue was distilled to apocryphal "fast lanes and slow lanes" and the "end of the internet" in the popular consciousness, with the help of latenight



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Ajit Pai, chairman of the Federal Communications Commission, speaks at an event President Donald Trump held regarding 5G wireless network expansion, at the White House in Washington, April 12, 2019.

comedian John Oliver. Against great opposition, Pai and his Republican colleagues successfully reinstated the FCC's Title I "light touch" approach to the Internet, which had prevailed prior to the Obama administration. As discussed below, this highly partisan issue may be revisited by a Biden FCC.

In the wireless area, Pai's 5G agenda dominated his chairmanship. Following his "5G Fast Plan," the chairman endeavored to make sufficient spectrum available for next generation wireless broadband. After an early focus on millimeter wave spectrum and a series of successful auctions, the chairman worked to address urgent demand for midband spectrum, which proved to be in short supply and fraught with technical and political barriers to entry. However, giv-

en bipartisan support for U.S. leadership on 5G, the Pai FCC succeeded in breaking loose the C-Band, 3.5 GHz, 2.5 GHz and even the thorny L-Band. This effort was coupled with streamlining state and local infrastructure regulation to expedite deployment of small cells (small but numerous transmitting antennas, in contrast to 4G macro-towers), an approach that was largely upheld on appeal.

The lack of high-speed broadband in rural areas — the digital divide — bedeviled the Pai FCC as it did his predecessors. But the chairman presided over first of their kind reverse auctions awarding subsidy funds to low-cost providers to buildout unserved areas. The importance of ubiquitous broadband was brought home by a global pandemic that prompted a mass work-from-

home and virtual schooling transition. Through a combination of securing a "keep America connected" pledge from broadband providers to prevent consumer disconnections and liberalizing access to unused spectrum on a temporary basis to meet increased consumer demand, the Pai FCC largely kept the country online.

In the media space, the chairman responded to the changing competitive dynamics of a video marketplace upended by streaming services. His consistent mantra was media modernization, which he implemented by streamlining and, in some cases, jettisoning outdated regulation of the television broadcast industry to level the playing field with streaming competitors. This included liberalizing the broadcast ownership rules to enable greater consolidation of traditional media properties, a perennial issue for FCC chairmen. The FCC's media-ownership handiwork will be reviewed by the U.S. Supreme Court in 2021.

Perhaps because of intense public interest in the FCC's work during his tenure — particularly net neutrality — Pai has had an unusually high-profile for an FCC chairman. The commission's work is usually conducted in anonymity. Not so with Chairman Pai! He has emerged as an affable media personality with ready pop-culture quips and even a signature prop. Whoever comes next —

as many have observed — will have a large coffee cup to fill.

It is difficult to predict how the Biden administration will advance its FCC-agenda now that Republican Nathan Simington has been confirmed as the agency's fifth commissioner, triggering an FCC "game of thrones." Simington's confirmation keeps Republicans in the majority until Inauguration Day, when Chairman Pai will leave the FCC and his successor will be elevated. Democratic Commissioner Jessica Rosenworcel likely will be named acting-chair and possibly as Pai's permanent replacement. Commissioner Rosenworcel will inherit an FCC in a partisan deadlock with two Democrats and two Republicans until the Biden administration can nominate, and the Senate confirm, a third Democratic commissioner.

Complicating things still further, Commissioner Rosenworcel's term expired in June 2020 and she is in a holdover term until the end of the next Congress. She must be re-nominated by the president and confirmed by the Senate before the expiration of the holdover period. Without a majority and with Senate confirmation looming, Rosenworcel likely will have to postpone pursuing key progressive priorities, including "re-reclassifying" broadband as a Title II service (reinstating net neutrality),

restoring related broadband privacy rules overturned by Congress, and reversing media ownership de-regulation now before the Supreme Court.

Instead, during the first year a Rosenworcel FCC likely will focus on the following activities that enjoy bipartisan support:

*Pandemic Response.* Commissioner Rosenworcel has compared broadband to other utilities like electricity and water and stated that "no individual, no household, and no community will have a fair shot at success" without broadband. The next FCC likely will focus on ensuring more households are able to get and stay connected to broadband, starting with using the E-Rate funds under the Universal Service Fund programs to close the "Homework Gap." Commissioner Rosenworcel regularly has highlighted that an estimated 16.9 million school children lack access to broadband at home. Despite statutory constraints, a Rosenworcel FCC will likely push the boundaries of using E-Rate funding to support school libraries with Wi-Fi hotspots and supply loaner wireless devices to students without reliable broadband connectivity at home. Should Congress provide broadband deployment or adoption funding in the next COVID-19 relief package, the FCC would be charged with implementation.

*Spectrum Auctions.* With the

C-Band auction already underway, the FCC likely will continue to focus on making more mid- and high-band spectrum available for 5G. Next up for auction: the 100 megahertz of federal spectrum at 3.45-3.55 GHz, which will require sharing with Department of Defense incumbents. In addition to identifying more federal spectrum to re-purpose for commercial use — there are already discussions about clearance of Department of Defense spectrum from 3.1-3.45 GHz for 5G — the next FCC will also oversee the clearance of satellite incumbents from the C-Band after the ongoing auction is complete.

*Enforcement.* The Rosenwor-

cel FCC can be expected to enforce the Communications Act aggressively, with a focus on preventing harm to consumers and uncovering waste, fraud, and abuse. Enforcement of merger conditions may reappear in the spotlight. Given Commissioner Rosenworcel's vociferous objection to increased filing fees for formal complaints, commission action to facilitate complaints may be expected.

Regardless of who leads the Biden FCC, the commission will continue to play an outsized role among federal agencies given the importance of the services the commission regulates to the economy and the America public. ■

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