

MEDIA MENTION

Tom Johnson Says ‘Net Neutrality’ Rules, if Restored by FCC, Will Likely Bring Legal Challenges

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Thomas M. Johnson, Jr., co-chair of Wiley’s Issues and Appeals Practice, was quoted by *Bloomberg Law* in a July 20 article, discussing legal challenges the Federal Communications Commission (FCC) will likely face if it adopts internet regulations recommended by President Biden in a recent Executive Order.

The July 9 *Executive Order on Promoting Competition in the American Economy* encourages the FCC to restore so-called “net neutrality” rules, which were adopted in 2015 during the Obama Administration and repealed in 2017 during the Trump Administration.

Prior to joining Wiley in April 2021, Mr. Johnson served for four years as General Counsel of the FCC. In that role, he oversaw the legal review of the FCC’s 2017 Restoring Internet Freedom Order – which repealed the net neutrality rules – and successfully defended the order’s light-touch regulatory framework at oral argument before the U.S. Court of Appeals for the D.C. Circuit.

As noted in a July 12 Wiley Client Alert co-authored by Mr. Johnson, the FCC is an independent agency that typically is not directed to take action under Executive Orders.

Mr. Johnson told *Bloomberg Law* that if the FCC adopts net neutrality regulations as recommended by President Biden, the Executive Order will provide opponents of such rules with a springboard for the package of legal challenges they will likely bring to court.

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“When I was General Counsel at the FCC, you never wanted to be responding to an argument that you had predetermined the answer to a rulemaking,” Mr. Johnson said. “It was an argument that could be raised in court to defeat whatever you were trying to accomplish. And unfortunately, through this Executive Order, the President has handed opponents of whatever the FCC decides to do next an argument that this was a predetermined outcome.”

Mr. Johnson also noted that, because this would be the third time in the last six years that the FCC would change its position on net neutrality, the next round of litigation could raise questions over the breadth of judicial deference to administrative agencies, known as the *Chevron* doctrine.

To read the article, click here (*subscription required*).