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BUT WAIT, THERE'S MORE —

FCC will *also* order states to scrap plans for their own net neutrality laws

Double win for ISPs: No more net neutrality, and state laws will be preempted.

JON BRODKIN - 11/21/2017, 12:58 PM

Getty Images | Chip Somodevilla



Enlarge / Federal Communications Commission Chairman Ajit Pai arrives for his confirmation hearing with the Senate Commerce Committee on July 19, 2017 in Washington, DC.

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In addition to **ditching its own net neutrality rules**, the Federal Communications Commission also plans to tell state and local governments that they cannot impose local laws regulating broadband service.

This detail was revealed by senior FCC officials in a phone briefing with reporters today, and it is a victory for broadband providers that asked for widespread preemption of state laws. FCC Chairman Ajit Pai's proposed order finds that state and local laws must be preempted if they conflict with the US government's policy of deregulating broadband Internet service, FCC officials said. The FCC will vote on the order at its December 14 meeting.

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It isn't clear yet exactly how extensive the preemption will be. Preemption would clearly prevent states from imposing net neutrality laws similar to the ones being repealed by the FCC, but it could also prevent state laws related to the privacy of Internet users or other consumer protections. Pai's staff

said that states and other localities do not have jurisdiction over broadband because it is an interstate service and that it would subvert federal policy for states and localities to impose their own rules.

FCC officials did not take questions from Ars during today's phone briefing, but we have followed up with Chairman Pai's office to get more details on the scope of the proposed preemption. We will update this story if we get a response. Pai's draft order will be released publicly tomorrow and may provide more detail.

Pai staff echoes industry arguments

The arguments made by Pai's staff echoed those made previously by Internet service providers. Comcast, Verizon, and mobile industry lobby group CTIA had all **urged the FCC** to preempt state laws in the weeks leading up to today's announcement by Pai.

CTIA **argued last week** that broadband Internet access shouldn't be regulated by states because it is an interstate service "within the sole jurisdiction of

the FCC, and Congress has advanced a national policy of non-regulation for information services." That's the exact position the FCC chairman's office is now taking.

Legislators in numerous states have tried to impose state-level versions of the FCC privacy rules that were eliminated by Congress earlier this year. With the FCC about to take its net neutrality rules off the books, ISPs said they worry that states will try to enforce net neutrality on their own.

The FCC's preemption authority does have limits. A previous FCC decision to preempt state laws that restrict the expansion of municipal broadband was struck down by a [federal appeals court](#). The FCC will almost certainly face lawsuits challenging the net neutrality repeal order, and the preemption of state laws could play a big role in litigation.

It's not clear whether the FCC provided adequate notice to the public about the preemption plan. Today's proposal stems from a [Notice of Proposed Rulemaking](#) (NPRM) that the FCC issued in May, but that proposal did not ask the public for input on preempting state net

neutrality laws.

Pai argued in 2015 that the FCC violated federal administrative procedure rules by reclassifying ISPs as common carriers without providing adequate notice to the public beforehand. But in that case, the FCC did ask the public for input on whether it should impose common carrier regulations in an NPRM months before it voted. In the present case, the FCC did not ask for input on preempting state net neutrality laws at all.

We have asked Pai's office about this and will provide an update if we hear back.

More details on net neutrality repeal

Senior FCC officials also provided some more details on the rollback of federal net neutrality rules. For the most part, all consumer protections in the 2015 net neutrality order are being eliminated. That goes beyond the core net neutrality rules that outlaw blocking, throttling, and paid prioritization.

For example, rules requiring disclosure of hidden fees and data caps will be overturned. The FCC will relinquish its role in

evaluating whether ISPs can charge competitors for data cap exemptions and will no longer oversee [interconnection disputes that harm Internet service quality](#). For a longer list of what's being eliminated, check out this [previous article from July](#). As we wrote then, numerous consumer protections rely on the FCC's Title II common carrier authority to regulate broadband providers, and those rules will go away as a consequence of Pai's plan to eliminate the Title II classification.

Pai's proposal does add one new requirement—ISPs will have to make public disclosures if they engage in blocking or throttling of Internet content, and they will have to disclose deals that prioritize content from affiliates or content from companies that pay ISPs for priority access.

There won't be any specific FCC rules preventing Internet providers from blocking, throttling, or prioritizing content in exchange for payment. It would be up to the Federal Trade Commission or other consumer protection agencies to determine whether specific conduct should be allowed, FCC officials said. The new disclosure requirements will help the FTC and other agencies decide whether to take

action against ISPs, the officials said.

FCC officials also said they plan to scale back their regulatory authority with a new interpretation of **Section 706** of the Telecommunications Act. The section requires the FCC to promote competition in local telecommunications markets and to remove barriers that impede infrastructure investment.

Former FCC Chairman Tom Wheeler treated Section 706 as a grant of authority. But Pai's order would end that policy by re-interpreting the section as merely "oratory."

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