

FCC blasted for “shameful” ruling against cities and fire department

Enlarge / FCC Chairman Ajit Pai on December 14, 2017 in Washington, DC, the day of the FCC’s vote to repeal net neutrality rules.

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The Federal Communications Commission is in another dispute with the fire department that fought for net neutrality rules after being throttled by Verizon during a wildfire response.

The Santa Clara County Central Fire Protection District, along with the cities of Los Angeles and New York, last week asked the FCC to extend a deadline for filing comments on the last remaining piece of FCC Chairman Ajit Pai’s net neutrality repeal. Pai had to seek another round of public comments on the net neutrality repeal and related deregulation of the broadband industry because federal judges who upheld the overall repeal ruled that Pai “failed to examine the implications of its decisions for public safety.”

The fire department and cities said they couldn’t meet the FCC’s comments deadline because of the coronavirus pandemic. But the FCC refused to grant more time for filing comments in an order issued yesterday, resulting in condemnation from the Santa Clara County Fire Department, Democrats, and consumer advocates.

“When the Trump FCC repealed net neutrality two years ago, it completely ignored public safety,” US Rep. Anna Eshoo (D-Calif.) said. “Santa Clara County firefighters paid a steep price when Verizon throttled their data speeds as they fought the worst fire in California’s history, and the County was helpless to resolve the issue... Now, when these same first responders of the Santa Clara County Fire Department are requesting a very reasonable extension to file their comments in the FCC’s order because they are on the front lines in responding to the worst pandemic of our lifetimes, Chairman Pai has ignored their pleas. The FCC’s decision is shameful, offensive, and dangerous. The FCC must rethink this decision immediately.”

Santa Clara, the FCC, and net neutrality

If your memory of the Santa Clara controversy is vague, here’s a refresher on what happened and what it has to do with the FCC’s net neutrality repeal.

In August 2018, the fire department said its “unlimited” data service was throttled by Verizon Wireless while it was fighting the Mendocino Complex Fire, making it harder to coordinate the response. This was shortly after Pai’s repeal of net neutrality rules took effect.

The net neutrality rule that banned throttling likely wouldn’t have directly outlawed this type of data slowdown, which had to do with limits on the plan selected by the fire department and what Verizon called a “customer service mistake” that resulted in the carrier failing to follow its own policy of “remov[ing] data speed restrictions when contacted in emergency situations.” But Pai achieved his net neutrality repeal by eliminating Title II regulation of broadband, which gave the FCC more power over Internet providers and allowed Internet users to file complaints about any unjust or

unreasonable prices and practices. Theoretically, an FCC chairman who was interested in regulating broadband could have used Title II authority to ensure that public-safety agencies are protected from throttling during emergencies.

Santa Clara County Fire Chief Anthony Bowden detailed his department's experience as part of a multi-state lawsuit that sought to reinstate net neutrality rules and Title II broadband regulation. Though federal appeals court judges didn't block the repeal, they ruled that the "commission's disregard of its duty to analyze the impact of the 2018 Order on public safety renders its decision arbitrary and capricious in that part and warrants a remand with direction to address the issues raised."

To comply with that order, the FCC on February 19 asked for public comment "on how the changes adopted in the Restoring Internet Freedom Order might affect public safety."

Pandemic delayed response to FCC

The FCC set a comment deadline of March 30, but on March 25, it granted a request from Santa Clara and others for an extension, making the new deadline April 20. (The petitioners asked for a 30-day extension; the FCC gave them 21 days instead.)

On April 16, Santa Clara, Los Angeles, and New York requested another extension, this time for 60 days:

While we appreciated [the 21-day] extension, circumstances have not improved since our initial request was submitted. To the contrary, after our March 11 extension request, jurisdictions around the country—including in the Cities of Los Angeles and New York and [Santa Clara] County—have ordered residents to shelter in place, and many essential public safety and public health officials are working around the clock to protect residents from the novel coronavirus

pandemic. Indeed, New York City is the current epicenter of the COVID-19 pandemic. For these reasons, a further extension is necessary to ensure that the refreshed record is complete.

Government personnel “including emergency operations staff and centers” are “fully occupied” by the response to the emergency and “cannot be diverted from their critical operations,” they said. That prevents municipalities from offering a thorough response to the FCC, they wrote, because “the input of our emergency and public safety personnel is critical to an accurate record in these matters as well as the commission’s meaningful consideration of public safety issues.”

The FCC was not swayed. The commission’s denial of the deadline-extension request said that its rules require motions for deadline extensions to “be filed at least seven days before the filing date,” but the extension request came four days before the deadline. The FCC continued:

While requestors note that there is an ongoing emergency, they have not established that the pandemic affected their ability to file a timely motion for extension of time. It is not plausible that requestors first became aware of their purported need for additional time less than seven days before the deadline for initial comments on April 20. It would be unfair at this late date to extend the comment deadline when other commenters (including, presumably, other states and localities) have been preparing to submit timely filings.

The FCC noted that it has provided “more than two months to submit comments.”

“As requestors recognize, the issues in this proceeding have public safety implications, and we do not believe that delaying resolution of these critical issues is in the public interest,” the FCC also said.

FCC faces blowback

Santa Clara County Counsel James Williams decried what he called “the absurdity of the FCC denying the County’s request for an extension to submit these comments in the midst of the pandemic response.”

“The FCC’s assertion is that the issue has public safety implications that must be decided without further delay,” Williams said. “The FCC lost on this issue [in court] precisely because it did not fully consider the repeal’s threats to public safety, and now it is attempting to cook the books by manipulating the timing of public comments in the middle of a pandemic that local public servants—our front-line defenders—are heroically battling. They cannot be diverted from their critical operations yet are essential to a full and accurate response to the FCC’s query.”

Jessica Rosenworcel, one of two Democrats on the Republican-majority FCC, said it is “shameful that the FCC did not heed” the municipalities’ request for more time. “The FCC was wrong when it repealed net neutrality and was wrong again today in its decision to deny a request from cities and first responders seeking extra time to comment on the net neutrality remand,” Rosenworcel said yesterday. “We are in the middle of an unprecedented nationwide crisis. Understandably, local governments and public safety officials have asked for more time to comment so that they rightfully can focus on responding to the public health emergency at hand.”

New America’s Open Technology Institute and Common Cause, two consumer-advocacy groups, also criticized the FCC for refusing the extension request. “The commission has an obligation to ensure robust participation of public safety voices in this proceeding,” the groups said in a filing. “The court admonished the commission for ignoring public safety and specifically cited the commission’s disregard of concerns

raised by Santa Clara County, one of the parties that now seeks an extension. The record would be incomplete without their full participation.”

The decision to deny the extension request “is as inexplicable as the FCC’s prior failure in 2017 even to consider the needs of public safety in holding that broadband is not a ‘telecommunications service’ under Title II of the Communications Act,” Benton Institute Senior Counselor Andrew Schwartzman said.

Schwartzman, who represented the Benton Institute and Consumer Reports in the lawsuit that unsuccessfully sought to reinstate net neutrality rules, said that the FCC’s latest decision could cause it further problems in court. “There is a reason that the [US] Court of Appeals [for the District of Columbia Circuit] told the commission to address that [public-safety] obligation, and today’s action likely will not be viewed favorably at such time as it goes back to the court,” he said.

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