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**Let Us Not Raise a Ruckus Over Net Neutrality**

by

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Earlier this month, the Federal Communications Commission (FCC) initiated a rulemaking -- the [Safeguarding and Securing the Open Internet](#) proceeding -- that proposes to reimpose “net neutrality” regulations on internet service providers. With Democrats finally securing a majority on the five-member commission following the Senate’s confirmation of [Anna Gomez](#) to fill the long-vacant fifth seat, the Biden Administration’s FCC now proposes to repeal the Trump Administration’s FCC’s repeal of the Obama FCC’s net neutrality regulations.

As I have explained in two [earlier essays](#) in *The Regulatory Review*, whether the FCC will adopt net neutrality regulations, or repeal them, has depended, like a “bouncing ball,” on whether Democrats or Republicans control three seats on the Commission.

On the merits, for substantive policy and legal reasons I have [explained elsewhere](#), I oppose this new proposal to reimpose net neutrality mandates. But here I do not want to address the substantive pros and cons of net neutrality regulation. Rather, I wish to address matters of

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process that go to the integrity of the notice-and-comment rulemaking process and the role of agency expertise in the adoption of regulations.

As many observers of the FCC, and of the rulemaking process in general, are aware, the last two FCC net neutrality rulemakings – the [Open Internet](#) and [Restoring Internet Freedom](#) proceedings – are, as I explain in an earlier [essay](#), “perhaps the most notorious examples of mass comment wars having gone nuclear.” A 2021 report by the Administrative Conference of the United States (ACUS) [confirms](#) evidence of the millions of “mass, computer generated, and falsely attributed comments” submitted by those on both sides of the net neutrality controversy.

With respect to the Restoring Internet Freedom proceeding, a [report](#) issued by New York Attorney General [Letitia James](#) labeled 18 million of the 22 million comments filed with the agency “fakes,” with the number of pro and con “fakes” approximately equal. A college student using fictitious identities filed 7.7 million comments supporting the retention of net neutrality regulations.

Almost all the millions of mass submissions were computer-generated form comments containing little or no informational content beyond the expression of a “pro” or “con” vote, as if the FCC’s electronic comment filing system is nothing more than a ballot box to be stuffed.

There are many questions raised by the “mass comment wars” phenomenon. These include, for example, ensuring that the opportunity for effective public participation is not dampened and assessing, on an ongoing basis, the role of AI in preparing mass comments and evaluating their content. The ACUS [report](#) does a good job exploring some of these issues. But, as I have said earlier, it bears [emphasizing](#) that “issues in rulemaking proceedings generally should not be decided through mere plebiscites, or the sheer counting of the number of mass comments for or against a particular proposal.”

Even though the ACUS report did not take a position involving the decisional weight, if any, that an agency should give the sheer number of comments filed in favor of, or in opposition to, a rulemaking proposal, a Regulations.gov “tip” [declares](#) that “the comment process is not a vote – one well-supported comment is often more influential than a thousand form letters.”

Given the history of the two most recent net neutrality proceedings, as the FCC embarks on this latest net neutrality rulemaking, hopefully, this “tip” will be taken seriously. This is especially so because there are important economic, technical, social, and legal questions at issue that deserve thoughtful, well-supported substantive treatment.

I have earlier [suggested](#) that, in conjunction with the initiation of any future net neutrality rulemaking, the FCC commissioners should issue a joint statement reminding the public that “the comment process is not a vote.” This was not done with the recent FCC proposal.

Unfortunately, in announcing the new rulemaking, FCC Chair [Jessica Rosenworcel](#) [urged](#) net neutrality proponents – as she had done in the previous proceeding – “to make some noise.” For good measure, she added, “raise a ruckus.”

To my mind, inviting commenters to make some noise and raise a ruckus is not the proper way to encourage public participation most conducive to creating a rulemaking record consistent with the agency's supposed expertise.

To the extent that making noise and raising a ruckus is understood as gearing up the mass comment machines, the notion is devalued that the FCC will be applying its expertise in deciding complex issues – say, what constitutes reasonable network management versus throttling or the impact of the proposed restrictions on investment and innovation. If the filing of computer-generated mass comments with little or no content beyond “yes” or “no” is understood by the public to play a determinative role in the agency's decision-making process, then what the Commission needs more than expertise is a good electronic filing system for counting votes.

Finally, this must be said. During the Restoring Internet Freedom proceeding, then-FCC Chair [Ajit Pai](#) and members of his family faced persistent demonstrations outside of their home and received death threats, leading to the arrest of an individual. As Chair Rosenworcel said, “this is unacceptable.”

With the initial comment filing deadline now set for December 14 in the [Safeguarding and Securing the Internet](#) proceeding, it is not too late for Chair Rosenworcel to change the messaging. Rather than inviting the public to make some noise and raise a ruckus, she should make clear that widespread public participation is encouraged, especially through the submission of thoughtful substantive comments, while, at the same time emphasizing that the comment process is not a vote. If she does this, her fellow commissioners should amplify the message.

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