

May 19, 2016

Dear Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Rielly:

We, the undersigned organizations, write to express our concern regarding the backlog of public comments submitted to the Federal Communication Commissions' electronic comment filing system (ECFS).

Additionally, as a result of the delays, we respectfully request that the comment periods for ongoing dockets be extended until every currently submitted comment can be posted and given adequate time for public consideration.

On May 12, an FCC spokesperson admitted the agency faced a backlog of backlog of 74,000 comment filings across all of the FCC's proceedings. These backlogs are expected to exist until the implementation of a new electronic filing system.

This backlog was exposed following the revelation by Protect Internet Freedom that more than 2,200 public comments on the Notice of Proposed Rulemaking regarding broadband consumer privacy regulations went unposted more than two weeks after their submission to the FCC.

Initially, the FCC claimed it was unaware that the comments were filed. A day later, when Sen. Mike Lee (R-UT) asked Chairman Wheeler about the delay in posting the comments during a Senate Judiciary Subcommittee on Privacy, Technology, and Law hearing, Wheeler stated that the comments were not posted as a result of a "software glitch." Finally, the agency admitted to a horrendous backlog on the ECFS system that is affecting several major decisions currently pending at the agency.

Public comments are a vital component to FCC rulemaking efforts. The comments inform, educate, and guide commissioners. They also inject an important layer of transparency and accountability into agency proceedings.

The FCC's current delay in posting comments is unavoidably limiting the length of time those remarks are available to the public, thereby reducing the potential reach and impact of the comments.

The delay also gives the unfortunate impression that the FCC is actively silencing Americans who oppose the agency's actions. While we assume this is not the case, it is important for the FCC to understand this concern.

As a result, it is incumbent on agency to extend existing comment periods until the backlog is resolved and comments are posted.

There is precedent for the FCC to grant such a delay. In 2014, when the ECFS was overwhelmed by comments in response to the FCC's net neutrality proposal, the agency agreed to extend the comment period.

Comments are the public's one opportunity to influence the actions of a powerful, but unelected and, largely, unaccountable agency. When that opportunity is stifled or restricted, steps must be taken to ensure that voices of Americans are sufficiently heard in the context of FCC proceedings.

Consequently, we respectfully request that the comment periods be extended for all proceedings being impacted by the FCC's overwhelmed electronic comment filing system.

Additionally, we encourage the FCC to redouble its efforts to ensure that comments are posted in timely and public manner in the future so that they may have the opportunity to inform commissioners, influence public discourse, and enhance the dialogue surrounding the important decisions undertaken by the agency and its commissioners.

Sincerely,

Drew Johnson
Protect Internet Freedom

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1851 Center for Constitutional Law

Justin Owen
Beacon Center of Tennessee

Mark Bucher
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Jeffrey Mazzella
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Tom Schatz
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