

Updates

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What to Expect From Acting Chairwoman Rosenworcel's FCC

Shortly after his inauguration, President Biden appointed Commissioner Jessica Rosenworcel as acting chairwoman of the U.S. Federal Communications Commission (FCC). Acting Chairwoman Rosenworcel is expected to pursue the priorities of the new administration and begin to roll back many of the policies and rules adopted by the FCC during the Trump administration. With the resignation of former FCC Chairman Ajit Pai, the FCC currently has four commissioners split along partisan lines. This split will temporarily prevent Acting Chairwoman Rosenworcel from obtaining a majority vote on FCC orders without being joined by at least one of the two Republican members, but President Biden is expected to nominate a new member to give the Democrats majority control in the near future. It is also uncertain whether Acting Chairwoman Rosenworcel will be nominated to be the Senate-confirmed chairwoman of the agency.

Below, we examined Acting Chairwoman Rosenworcel's published dissents and concurrences that she previously issued to provide an overview of her likely priorities for the FCC under the new administration. In addition, she has [stated](#) an immediate desire to assist the Biden administration's broader efforts to implement COVID-19 relief through assistance to low-income households for internet and telehealth services.

Based on her dissents and concurrences issued during the Trump administration, we believe the following topics will be among her priorities:

Net Neutrality

During the rise and fall of net neutrality at the FCC and before the courts, then-Commissioner Rosenworcel consistently remained a strong supporter of the consumer protection policy. In 2015, she voted in support of [reclassifying broadband internet access service providers as telecom service providers for purposes of Title II of the Communications Act](#), which restricted them from blocking or throttling lawful content, banned paid prioritization practices, and required providers to abide by certain reporting requirements. In 2017, the FCC [voted to repeal the 2015 net neutrality rules](#), thereby deregulating such providers under Title I of the Communications Act. The FCC also relinquished its enforcement authority in this area to the Federal Trade Commission.

Then-Commissioner Rosenworcel [dissented](#) from the FCC's 2017 deregulatory order. In her dissent, Commissioner Rosenworcel did not mince words, "This decision puts the [FCC] on the wrong side of history, the wrong side of the law, and the wrong side of the American public." She argued that the repeal would give broadband providers the legal grounds and business incentive to discriminate and manipulate internet traffic, and would further calcify broadband markets that were already marked by low competition. She also contended that the FTC was ill suited to assume control over consumer complaints about broadband providers, particularly following the repeal of the rules. She further described the process by which the FCC repealed net neutrality as "corrupt," noting that the proceeding's record was replete with thousands of fraudulent and duplicative comments favoring the repeal, while many bona fide consumer comments and complaints in favor of retaining the rules went missing or were disregarded.

As we noted in [our earlier update](#), net neutrality's future faces a fork in the road: the FCC could either revive it in a new rulemaking proceeding or Congress could pass a net neutrality law. The problem with the regulatory path is that it would presumably require the third "reclassification" of broadband internet access services in the last six years and would inevitably be challenged in the courts. The legislative path would result in a more sustainable solution, and with both houses of Congress and the White House under the control of the Democrats, have reasonably strong prospects of success. A threshold issue with pursuing either path is identifying the consumer demand for restoring net neutrality. The FCC order repealing net neutrality eliminated the "ombudsman" staff position who was tasked with monitoring consumer complaints about net neutrality violations. Acting Chairwoman Rosenworcel could remedy the agency's lack of transparency about consumer complaints by restoring the staff's role in monitoring consumer complaints (without necessarily reestablishing the position of ombudsman). That step should be within her discretion as acting chairwoman and not require a vote of the full Commission, which as we noted is currently divided on partisan lines. Anecdotally, it does not seem consumers have been universally thrilled with the service quality and practices of their broadband providers while working and attending school from home during the pandemic. Some more transparency around consumer complaints could be a first step for the FCC to establish whether there is sufficient demand for restoring net neutrality. In addition, it should also be in her discretion to withdraw agency support from the Trump administration's still pending lawsuit against California for enacting its own net neutrality law.

5G Deployment

Acting Chairwoman Rosenworcel has generally been in favor of efforts to increase the development and deployment of small cells to support 5G networks. But unlike the FCC leadership during the Trump years, she has been opposed to [reducing](#) or [preempting](#) the role of state and local authorities in the review of wireless facility applications and [paring back historic preservation or environmental requirements for small cells](#). Acting Chairwoman Rosenworcel has also praised recent reforms to streamline FCC's pole attachment procedures (which play a key role in 5G deployment), but has [raised concerns](#) about ambiguities in such procedures, protecting jobs and safety, the effects of the FCC's rules on existing attachers, and preempting state and local pole attachment requirements. In addition, Rhode Island Governor Gina Raimondo, nominated for secretary of the U.S. Commerce Department (which oversees the use of federal spectrum and the Executive Branch's telecommunications policy), [testified](#) at her recent confirmation hearing that, "The race is on for 5G. I want America to win and lead, and that requires spectrum. What we need to do is—and the president has been clear—is to step back and have a national strategy on spectrum, and look to make spectrum available from public and commercial uses." This statement appears to be in response to the Trump administration's [confusing and controversial idea](#) of having the Pentagon grant to a politically connected private company the right to privately lease the U.S. Department of Defense's spectrum to create a nationwide commercial 5G spectrum network, even as the FCC carried out auctions of large amounts of 5G spectrum. If Acting Chairwoman Rosenworcel shares this desire for a more coherent approach to 5G spectrum management, the FCC under her leadership could take steps towards the adoption of a national 5G spectrum plan.

Digital Divide

Throughout her tenure at the Commission, Acting Chairwoman Rosenworcel has sought to increase broadband access to Americans nationwide, [particularly in the area of education](#). However, with respect to certain Trump administration's efforts allegedly intended to bridge the digital divide (such as the [Rural Digital Opportunity Fund](#), the [5G Fund for Rural America](#), the [Connect America Fund](#), and the [Rural Health Care Program](#)), she has criticized the Commission for moving too quickly and collecting insufficient data to support its actions, failing to account for relevant cost barriers to broadband deployment, and ignoring the needs of the most vulnerable communities. In this sense, the Trump administration shifted the longstanding bipartisan effort to bridge the digital divide to focusing on rural geographic areas. The Biden administration has already demonstrated that racial equity will be a high priority for the administration generally, and if fellow Democratic Commissioner Geoffrey Starks's [recent remarks](#) are any indication, this priority could be carried out by Acting Chairwoman Rosenworcel by restoring the traditional focus of bridging the digital divide on racial disparities in telecom and broadband connectivity, which appears to have only worsened during the pandemic.

Mergers and Acquisitions

When she served as a commissioner, Acting Chairwoman Rosenworcel showed more skepticism than the Republican members of the agency towards claims that major mergers and acquisitions of FCC-regulated companies would serve the public interest. [Dissenting from the FCC's approval of the T-Mobile-Sprint merger in 2019](#), she criticized the FCC for approving a combination that, she argued, would result in reduced competition, increased prices, lower-quality service, and diminished innovation. She added that the commitments secured by the FCC in return for its approval—including promises by the merging parties to not raise prices for three years, to deploy 5G networks within six years, and to divest assets to a new wireless competitor—were insufficient and betrayed the free-market principles that the then-FCC leadership espoused. This suggests we can expect her to seek concrete commitments of public interest benefits from parties to future mergers and acquisitions, likely in the form of merger conditions (a practice that Ajit Pai derided as ["broken"](#) before he became FCC Chairman).

Media Ownership

Acting Chairwoman Rosenworcel is also likely to strongly support revisiting limits on the number of broadcast television stations that a single company can own. She [dissented](#) from the FCC order that removed these limits, saying that the existing limits represented "policies [that] were designed to sustain media diversity, localism, and competition" and that removing them likely undermines those values. Further, in her [concurrence](#) to the elimination of the EEO broadcaster midterm filing requirement, Rosenworcel expressed disappointment that the order did not address the "duty to develop policies to support the diversity of broadcast ownership."

Her views on the state of diversity in the broadcast industry may affect the FCC's case currently pending before the U.S. Supreme Court, [FCC v. Prometheus Radio Project](#), as then-Commissioner Rosenworcel's dissent in the media ownership order was sympathetic to some of the arguments made by those challenging the FCC's decision. In her [dissent](#), Commissioner Rosenworcel specifically noted that she thought the FCC's decision would negatively affect women and minorities. In ruling for those that challenged the FCC's order, the U.S. Court of Appeals for the Third Circuit echoed the same concerns. Should the Supreme Court ultimately remand

the case to the Commission, Acting Chairwoman Rosenworcel's position may influence how the FCC evaluates media ownership issues going forward.

Spectrum Auctions and Reallocations

The Trump FCC's efforts to make greater amounts of spectrum available for flexible, unlicensed use has generally gained the support of Acting Chairwoman Rosenworcel. We can expect, however that she will take a close look at the equity of the costs imposed and funds raised in spectrum auctions and reallocations for licensed frequencies (as she did in connection with the Commission's [recent C-band auction proceeding](#)), as well as the effects of such spectrum auctions and reallocations on displaced incumbents (particularly those that operate in the arenas of [education](#) and [public safety](#)).

ATSC 3.0 and Broadcast Internet

Acting Chairwoman Rosenworcel is likely to continue to support ATSC 3.0 as the next-generation broadcasting standard, which will enable the provision of new broadcast internet services. In particular, she has praised the wide variety of technological benefits that ATSC 3.0 has the potential to yield, including "[Ultra High Definition picture quality and immersive audio, advanced emergency alerts, and innovative interactive services](#)." Given a range of consumer concerns that she has raised on [various occasions](#), however, she will likely pursue new efforts to defray the cost of the new devices, equipment, and television sets that consumers will need to purchase in order to access ATSC 3.0 content.

Enforcement

One of the first acts of former Chairman Pai in 2017 was to curtail the autonomy of the FCC Enforcement Bureau to adopt penalties without a full vote of the agency. This decision was widely construed as an act to reduce the authority of the Enforcement Bureau and send a signal that the Trump FCC would be more lenient to industry. Under Acting Chairwoman Rosenworcel's leadership, we will likely see greater enforcement activity from the FCC for entities violating the Commission's rules. She has suggested standing up a [new division](#) within the Enforcement Bureau to combat robocalls. [Rosenworcel has also indicated](#) that she would request that the FCC seek maximum fines permissible under its rules for repeat and egregious violators of FCC rules. Then-Commissioner Rosenworcel issued strong dissents in several high-profile enforcement actions, complaining that the proposed sanctions did not go far enough. For example, Rosenworcel viewed Sinclair's repeated violations as warranting a greater fine than that proposed by the Pai FCC. Instead, Rosenworcel suggested that an "[unprecedented volume of these violations deserves an unprecedented response](#)." She also spoke out against the FCC's notices of apparent liability issued to the big four wireless carriers in response to the carriers' location data sharing practices. She characterized the proposed fines as [too little and too late](#). Her dissenting opinions also indicated a potential desire to initiate greater enforcement activity for the Commission's customer proprietary

network information (CPNI) rules protecting telecom service subscribers.

On the other hand, she recently dissented in several [Notice of Apparent Liability](#) orders against Educational Broadcast Service licensees adopted in the final days of former Chairman Pai's tenure. Among other reasons, she argued that the proposed multimillion-dollar fines against the nonprofit licensees during the pandemic was "unreasonably punitive." Therefore, while many of her past dissents suggest she will take firm stands in enforcement proceedings, her most recent dissents suggest that she will also seek to avoid unduly severe actions, particularly under mitigating circumstances.

Robocalls, Spam SMS, and Caller ID

Acting Chairwoman Rosenworcel is likely to promote [further action](#) by the Commission to address the relentless torrent of robocalls that many Americans experience. Previously, then-Commissioner Rosenworcel criticized the FCC's delay in requiring carriers to implement the SHAKEN/STIR call authentication protocol. Even though the FCC required carriers in 2020 to implement the protocol for their IP-based telephony networks, as acting chair, Rosenworcel would likely support further measures on carriers to implement free solutions that allow consumers to stop receiving robocalls, such as mandatory measures requiring carriers and call originators to take steps to stem the flow of robocalls. On the enforcement side, she would likely support [investigations into the robocall chain of communication](#), as well as larger fines against [companies and individuals](#) found to have engaged in robocalling in violation of the law. She may also propose classifying text messaging as a [telecommunications service](#), and propose rules to stop the onslaught of spam text messages.

Promotion of Services Assisting People With Disabilities

Although then-Commissioner Rosenworcel supported the FCC's 2018 rulemaking to modernize the Telecommunications Relay Services for persons with disabilities, she indicated in her concurrence that the rules [did not go far enough](#) because the rules put "the cart before the horse by introducing automatic speech recognition into the IP CTS program" before the FCC addressed its "basic regulatory responsibilities." As acting chair, she may initiate proceedings to set rates and service quality standards for automatic speech recognition. Acting Chairwoman Rosenworcel would also likely address how telecommunications relay service [fees are presented on consumer bills](#) in a manner consistent with recommendations from disability advocacy groups.

Infrastructure and Cyber Security

As an FCC commissioner, Rosenworcel has been a vocal proponent of FCC efforts to secure national telecommunications infrastructure against attacks by foreign adversaries. Under her leadership, we may see [strengthened FCC rules and processes designed to protect U.S. telecom networks and equipment from malicious actors](#) by: (1) standardizing carrier approval process and providing for regular reviews and

reauthorizations/revocations, including Team Telecom security reviews; (2) promoting development of an "[open RAN](#)" standard to ensure security and U.S. development of wireless equipment; (3) adding national security considerations to the FCC's equipment import and authorization process; and (4) encouraging development of mid-band 5G radio resources.

Emergency Services and Disaster Response and Recovery

Acting Chairwoman Rosenworcel would likely be a strong proponent of [innovation for the wireless emergency alert system](#), and would potentially promote changes to allow multimedia in alerts, "many-to-one" feedback capabilities, and multilingual messaging. Acting Chairwoman Rosenworcel has indicated that she would propose new rulemakings to consider [911 location rules mandating transmission of vertical location](#) information to ensure [nationwide PSAP support and floor-level granularity](#).

She has also previously expressed interest in [overhauling the FCC's disaster response](#) and recovery rules to: (1) require the FCC to issue a report for every significant weather event causing damage to telecom networks, supported by timely field hearings; (2) update the FCC Wireless Resiliency Framework to promote network resiliency; (3) improve outage information the FCC collects to include information about disruptions involving broadband service; and (4) revise FCC policies regarding backup power for telecom facilities with a focus on small cells and changing network topology.

Transparency and Process Reforms

Acting Chairwoman Rosenworcel has criticized agency reorganizations and process changes by former Chairman Pai that she believed were unnecessary or misguided. For example, then-Commissioner Rosenworcel [dissented](#) from the creation of the Office of Economics and Analysis. Commissioner Rosenworcel said that "it's irresponsible to vote on a conceptual reorganization—which is what we have here—without frank information about how we will populate this effort." She outlined three values that she suggested should guide FCC reorganizations, particularly where they have an economic focus: (1) support legal duties beyond simple cost-benefit analysis; (2) commit to peer review of scientific and economic work; and (3) provide more transparency in data presented to the FCC.

Acting Chairwoman Rosenworcel has also been a [proponent of efforts](#) like the Engineering Honors Program and is likely to strongly support such efforts to attract engineering talent to the FCC.

Support for Local Authorities

Acting Chairwoman Rosenworcel seems likely to be open to revisiting some of the rule changes under former Chairman Pai's "modernization" push that, in her view, negatively affected local and remote services. For

example, then-Commissioner Rosenworcel [dissented](#) from the order curtailing local authorities' control over cable service franchising. She noted that the order would undermine local channels and access to broadband service in remote communities, stating that, "Washington is cutting local authorities out of the picture when it comes to infrastructure." She added that it appeared to be part of a pattern of the FCC disrespecting local authorities.

Inmate Call Rates

Rosenworcel was a consistent critic of excessive inmate call rates and fees during her tenure as a commissioner. In her [concurrency](#) to the order removing payphone rules, then-Commissioner Rosenworcel called out the lack of action on exorbitant inmate call rates, noting that the FCC "put in place limits on usurious rates and brought to an end some of the most abusive fees tacked on to the cost of every call. But last year the FCC gave up and refused to even defend this effort in court." In a [statement](#) in 2013, then-Commissioner Rosenworcel gave her full support to FCC efforts to curb inmate rates and fees, noting that addressing the cost of inmate phone services "is not just an issue of markets and rates; it is a broader issue of social justice."

Takeaways

In her two terms as an FCC commissioner, Acting Chairwoman Rosenworcel has established a strong record as a champion of consumers, vulnerable communities, local government autonomy, transparent agency practices, and the deployment of advanced services. We expect her voting record as acting chairwoman to largely track her voting record as a commissioner over the last decade.

Updated February 8, 2021—As anticipated above, the Biden administration today filed a Plaintiff's Notice of Dismissal of the lawsuit filed in 2018 by the Trump administration against the state of California's net neutrality law.

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