



With President-elect Donald Trump’s election victory and the Republicans gaining control of both houses of the legislative branch, significant policy shifts at the Federal Communications Commission (FCC) are expected, setting the stage for an agenda focused on deregulation and other measures designed to encourage investment, relieve industry from onerous regulatory oversight, and eliminate rules and policies disfavored by the new administration. To help determine what actions the new Trump FCC may take, we examined the dissenting statements issued by the two current Republican members of the Biden FCC, Commissioners Brendan Carr and Nathan Simington, under the assumption that any FCC actions adopted over their objections will likely be revisited by the new Trump FCC. This Update provides a summary of our findings based on our review of the FCC commissioners’ prior dissenting statements. In addition, this Update discusses possible legislative actions by the new Republican-controlled Congress and in the courts related to the FCC.

New FCC Priorities

A New FCC Chair

At this time, current FCC Republican Commissioner Brendan Carr appears [likely to be nominated](#) by Trump as the next FCC chairman. Carr was appointed to serve as the agency's general counsel during the Trump administration in 2017 and previously served as legal advisor to former Trump-era FCC Chairman Ajit Pai. During current Chairwoman Jessica Rosenworcel's tenure, Carr has emerged as the primary voice of opposition to her agenda. He also wrote the [chapter](#) on the future Trump FCC in "Project 2025," in which he addressed several policy priorities for the FCC and the tech industry generally. But regardless of whether he is selected, Brendan Carr's dissent and his chapter in "Project 2025" should provide a roadmap for the next Trump FCC chair.

Net Neutrality on the Chopping Block

The new Trump FCC is expected to act swiftly to overturn the Biden FCC's [order](#) to reinstate net neutrality. In Carr's dissent in the FCC's reinstatement order, he criticized what he describes as "flip-flopping" by the FCC on whether to classify broadband internet service providers as telecom carriers under Title II of the Communications Act of 1934 (the FCC's organic act). He argued that Title II has become "a matter of civic religion for activists on the left," with proponents "demanding that the FCC go full Title II whenever a Democrat is President." Carr emphasized that the FCC's shifting stance on Title II regulation has been driven not by evidence but by the influence of the executive branch. He further noted in his dissent that the FCC's "latest power grab" is dressed up in hundreds of pages of what he calls "bogus justifications," with "few of them rely[ing] on actual evidence."

The new Trump FCC could open a rulemaking proceeding to once again repeal net neutrality, as the Trump administration did in its first term. On the other hand, the FCC may not need to act on its own because the FCC's reinstatement order is currently pending before the U.S. Court of Appeals for the Sixth Circuit. As discussed further below, the Sixth Circuit could overturn the FCC's net neutrality reinstatement order by relying on the Supreme Court of the United States' recent [decision](#) to overturn the *Chevron* Doctrine in *Loper Enterprises*. If the Sixth Circuit were to overturn the FCC's net neutrality reinstatement order, the FCC would not have undertaken the lengthy rulemaking process to overturn it. Similarly, if the Sixth Circuit affirms the FCC order, the new FCC and U.S. Department of Justice could appeal the Sixth Circuit decision to the Supreme Court.

There may be another available path to eliminate the net neutrality reinstatement order—a Congressional repeal under the Congressional Review Act (CRA). As discussed more fully below, the new Republican-controlled Congress can look back until approximately August 1, 2024, to legislatively overturn final rules adopted by the Biden administration. Although the net neutrality reinstatement order was adopted on April 25, 2024, and published in the *Federal Register* on May 22, 2024 (well before August 1), it never took effect due to a stay issued by the Sixth Circuit. There is at least the theory that it remains eligible to be overturned under the CRA because it did not become legally effective before August 1 (and still has not). In any event, given the multiple ways in which the net neutrality reinstatement order could be eliminated, it is safe to say its future is not bright.

Silicon Valley and Section 230 Reform

As [outlined](#) in his chapter in "Project 2025," Carr is a proponent of reducing the apparent liability shield for online distributors of end user content under Section 230 of the Communications Decency Act. Shortly before

the expiration of the first Trump administration, the FCC considered limiting the liability shield of Section 230 but ultimately [terminated the proceeding](#) in the closing days of the administration. In his dissent in the net neutrality reinstatement order, Carr emphasized that the “real abusers of gatekeeper power” are not broadband internet service providers but tech platform companies at the application layer, suggesting that recent FCC orders “made Big Tech behemoths even stronger than before.” Carr’s proposed approach includes transparency requirements and even a potential mandate requiring tech platforms to contribute to the Universal Service Fund, redirecting broadband costs from traditional telecom providers to large tech platforms. Such changes would present significant operational and legal challenges for tech companies and could fundamentally alter their content management and moderation policies. One factor that could cut against this outcome is the fact that any sweeping reform of Section 230 would presumably apply to the social media companies owned by the president-elect and Elon Musk.

Oversight Over Alleged Broadcast Network Bias

Trump’s historically contentious relationship with the media is reflected in Commissioner Carr’s critiques of broadcast networks, arguing that the FCC’s “[news distortion rule](#)” was violated when *60 Minutes* allegedly edited Kamala Harris’s interview and that the FCC’s “[equal time rule](#)” was violated when Harris appeared on *Saturday Night Live* on the weekend before Election Day. President Trump was also highly critical of the ABC television network after his presidential debate with Kamala Harris, arguing that the debate moderators treated him unfairly. The Trump FCC could pursue one or more of these alleged violations through FCC enforcement proceedings.

FCC Approval of Merger and Acquisition (M&A) Transactions: A Smoother Path Ahead

The FCC has broad authority to determine whether a proposed transfer of control or assignment of spectrum licenses (among other FCC authorizations) would serve the public interest. Generally, under Republican administrations, the FCC construes this public interest standard more narrowly and leniently. If past is prologue, the new Trump FCC will be more favorably predisposed to telecom and media consolidation. Traditional critics of M&A transactions, such as consumer advocacy organizations, will likely have less influence with the new Trump FCC than the current Biden FCC. However, there is also a possibility that if one of the parties to a major transaction controls a media organization strongly disfavored by President Trump, he may encourage governmental opposition to the transaction, as he reportedly did with the [AT&T-Time Warner](#) merger in 2018.

Broadband Infrastructure Shifts: A Satellite-Centric Approach?

The Broadband Equity Access and Deployment (BEAD) program, a \$42.45 billion initiative from the Biden administration, was designed to expand broadband access in underserved rural areas, primarily by funding terrestrial broadband network infrastructure projects through state-level grants. However, the Trump administration may prioritize the BEAD funding of satellite technologies over terrestrial network infrastructure. Carr has shown a [favorable](#) stance on Elon Musk’s satellite initiatives and has criticized regulatory barriers that he believes have unfairly limited Starlink’s participation in federal broadband programs. In [Commissioner Carr’s dissent](#) to the FCC’s order to revoke Starlink Rural Digital Opportunity Fund (RDOF) award, Carr suggested that the Biden FCC’s treatment of Starlink was “regulatory harassment,” citing an “entirely new standard of review that no entity could ever pass,” which he argued was designed solely to revoke Starlink’s broadband award. Commissioner Simington echoed these concerns in his separate [dissent](#).

Similarly, in his [dissent](#) on the FCC’s order to reinstate net neutrality, Carr warned that excessive regulation could deter capital investment in broadband networks. He added that satellite-based broadband could provide

robust connectivity without the need for regulatory constraints. While Carr [acknowledged](#) that the denied funding to Starlink “is likely lost...as a practical matter,” he expressed that he “still believes it would be fair to get [Starlink] back” into the FCC’s broadband programs. In light of Carr and Simington’s past criticism of the FCC’s treatment of Starlink and Elon Musk’s expected role in the Trump administration, the FCC may seek to redistribute broadband funding towards satellite solutions.

Proposed Rule To Require Disclosure of AI-Generated Content in Political Ads

The FCC approved a [Notice of Proposed Rule Making](#) over the objections of Commissioners Carr and Simington to propose a new rule that would require disclosure of the use of AI-generated content in political advertisements. A key objection by the dissenting members was that the FCC’s jurisdiction is limited to television and radio broadcasters, satellite television, and cable television and fails to reach political advertisements on social media platforms and streaming digital media services (*e.g.*, audio podcasts and online video services). In light of the rapid growth of social media and streaming content, Commissioner Carr argued in his dissent that, among other things, the proposed rule would create a confusing “[patchwork of inconsistent rules](#).” Due to the strong opposition of Republican members, it is likely that the Trump FCC would not adopt the proposed rule as a final rule.

Reducing Regulatory Fees on Industry

In his [partial dissent](#) to the FCC’s 2024 regulatory fees review, Carr called for a comprehensive overhaul of the fee assessment and collection process, advocating for reforms that would “question every requirement, delete unnecessary processes, and then simplify and optimize.” While there are likely measures the FCC can take to streamline the process, a comprehensive overhaul of the FCC’s regulatory fee structure will likely require legislation, but with Republicans in control of the legislative branch, the FCC’s regulatory fees could be reformed during the Trump administration.

DEI at the FCC

In his campaign, President-elect Trump [promised](#) to end diversity, equity, and Inclusion (DEI) programs in the federal government. In 2021, Chairwoman Rosenworcel charted the [Communications Equity and Diversity Council \(CEDC\)](#) to examine diversity and equity issues in the broadcast and tech sector and make policy recommendations to the FCC that would advance equity in the provisioning of tech, media, and telecom products and services. A new Trump FCC could materially change the CEDC’s charter or terminate it altogether. In light of the president-elect’s campaign promises, it would appear that the CEDC should expect material change.

The Potential Role of Congress

Legislative Repeal by the Congressional Review Act

Under the CRA, if both houses of Congress pass a resolution to repeal a final rule of a federal agency and that resolution is signed by the president, then the federal agency rule is repealed. In addition, the federal agency that adopted the repealed rule is thereafter blocked from adopting a substantially similar rule in the future unless Congress expressly grants the agency new authority to do so. The first Trump administration used the CRA more than a dozen times to repeal federal agency rules adopted in the final months of the Obama administration. With both houses of Congress and the White House controlled by Republicans, the CRA could be used again to repeal recent rules adopted by the Biden administration. However, the CRA limits how far Congress may look back for rules to repeal based on whether 60 “session” days in the U.S. Senate and 60 legislative days in U.S. House have

elapsed since the agency rule was adopted. Legislative and session days are terms of art and can take considerably longer than calendar days to elapse. The Congressional Research Service has tentatively suggested that the CRA's look back period will likely be limited to rules that became final by August 1, 2024, although Congress will ultimately determine this date after the new House and Senate are seated in January 2025.

The Status of the Universal Service Fund and Affordability Connectivity Program

The U.S. Court of Appeals for the Fifth Circuit recently found in a 9-7 *en banc* ruling that the longstanding regulatory framework for the funding of the Universal Service Fund (USF) is [unconstitutional](#). USF funds a variety of programs with bipartisan support, however, including the lifeline program's subsidized telecom service for low-income Americans. While the Biden FCC stated it would pursue "all available avenues for review" of the decision, a new Trump FCC could inform the Supreme Court that it does not seek its review of the Fifth Circuit ruling. If the Fifth Circuit decision stands, the Republican-controlled Congress could allow programs that rely on USF funding to terminate or, alternatively, enact a restructured version of USF that avoids the unconstitutional pitfalls of the prior USF structure. Senator Ted Cruz (R-TX) is next in line to be Chairman of the Senate Commerce, Science & Transportation Committee, which has jurisdiction over the FCC. In the past, Senator Cruz has sponsored legislation to reform (but not end) the USF program. His interest in reforming USF may be a "lifeline" for the program's future.

In addition, the Affordability Connectivity Program (ACP) exhausted its Congressionally appropriated funds over the summer. As a result, the ACP program has effectively been terminated due to the lack of funds. A new Republican-controlled Congress will need to decide whether to restore funding for the ACP.

The Role of Federal Courts

As discussed above, in addition to the FCC exercising its rulemaking authority to repeal prior FCC rules and Congress relying on the CRA, federal courts have greater latitude to overturn FCC interpretations of its own organic act, the Communications Act of 1934, as amended under [Loper Bright Enterprises](#). Essentially no prior FCC rule or policy—regardless of how long it has been in place—is insulated from fresh judicial scrutiny to the extent the rule or policy relied on an FCC interpretation of its own authority.

In addition to the USF case, the FCC's [rules](#) to combat digital discrimination, aimed at ensuring equitable internet access, are also being challenged in federal court. The U.S. Chamber of Commerce and several Texas business groups initially [filed suit](#) against these rules in the Fifth Circuit, and by March 2024, a total of 16 parties had petitioned for federal court review. These cases were subsequently [consolidated](#) in the U.S. Court of Appeals for the Eighth Circuit. As with the USF case, once the Trump FCC assumes power, it could change its litigation position and no longer defend the Biden FCC's order.

Takeaways

The incoming Trump FCC is poised to advance an agenda that scales back on regulatory oversight, champions satellite providers, eases regulatory enforcement, and repositions leading tech platform companies under greater scrutiny. Stakeholders in this area should prepare for significant and sweeping policy shifts affecting media, tech, and telecom service providers and device manufacturers. We can expect that the FCC will focus on fostering private investment and loosening the regulatory reins, emphasizing economic expansion and a rollback of disfavored Biden administration policies. This pivot not only reflects Trump's emphasis on reducing regulations but also signals an FCC dedicated to aligning with key objectives of President-elect Trump. Stakeholders should prepare for how the expected changes could affect their business operations and strategy.

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