

Communications

Outlook for the 119th Congress & the Trump Administration

Key Takeaways

- President Trump, once inaugurated, is expected to name senior Republican Commissioner Brendan Carr as Federal Communications Commission (FCC) Chairman, which will ensure Republicans agenda-setting authority in the agency.
- A Republican controlled FCC and Congress are likely to focus on creating a spectrum pipeline, restoring spectrum auction authority and streamlining wireless and fiber siting laws and policy to facilitate broadband, 5G and 6G deployments.
- A Republican FCC and Congress are also expected to refocus broadband deployment initiatives, including the FCC's Universal Service Fund and the \$42.45 billion Broadband Equity Access and Deployment fund administered by the National Telecommunications and Information Administration.
- Finally, a Republican FCC is likely to pursue a broadly deregulatory agenda, including rescinding the net neutrality and digital discrimination rules, relaxing media ownership regulations and terminating proceedings on issues such as "junk fees," "bulk billing" and "data caps."

Additional Insights

- **Leadership.** President Trump is likely to elevate current senior Republican Commissioner Brendan Carr to the Chairman's seat. Commissioner Carr will try to change direction from current Chairwoman Jessica Rosenworcel on a number of issues such as net neutrality, digital equity and market competition. However, when the White House changes parties it is customary for the current Chair to step down which will leave the FCC with a 2-2 makeup. Getting a third Republican commissioner confirmed may take time, given that other nominations will take priority and the Senate calendar is crowded. With the Senate under Republican control, Sen. Ted Cruz (R-TX) is likely to take the reins as Chairman of the Senate Commerce Committee. In the House, if Republicans retain control, current Energy and Commerce Committee Chairwoman Rep. Cathy McMorris Rodgers (R-WA) is retiring. Three candidates—Reps. Brett Guthrie (R-KY), Robert Latta (R-OH) and Richard Hudson (R-NC)—are in contention to replace her.
- **Spectrum.** Congress is also expected to tackle the FCC's spectrum auction authority, which expired in March 2023. Republicans in the Senate will likely look to pass S. 3909, the Spectrum Pipeline Act, introduced by Sens. Cruz, John Thune (R-SD) and Marsha Blackburn (R-TN), which was referred to the Senate Commerce Committee but did not advance.

Republicans also have been highly critical of the National Spectrum Strategy released in the fall of 2023, and particularly of the fact that it did not identify specific frequency bands for reallocation to commercial use, and instead directed technical studies to determine the feasibility of reallocation or sharing of a handful of bands. The

Trump administration will likely seek to rescind the strategy in order to specify bands for reallocation, or to short-circuit the study processes to fast-track the identification and reallocation of spectrum for commercial use.

- **Broadband Funding.** Under Republicans control of Congress and the White House, expect a review of the handling of the Broadband Equity Access and Deployment (BEAD) Program. Republicans have questioned the effectiveness of the \$42.5 billion program and purported delays in the deployment of funding to states. Republicans also criticize the program's focus on fiber-optic cable deployment over other broadband technologies, claim it overlaps with existing federal subsidy programs and argue it is ripe for waste, fraud and abuse.

The constitutionality of the Universal Service Fund (USF) funding mechanism is also currently being litigated, and its future has long been the subject of debate in Congress. The 5th Circuit found the funding mechanism unconstitutional, a holding that is in conflict with decisions of the 6th and 11th Circuits upholding the constitutionality of the USF funding mechanism, and the FCC has sought review by the Supreme Court. Should the 5th Circuit decision stand, Congress will need to step in to keep the program funded.

There has been a bipartisan working group in Congress focused on reforming the program, but those efforts have yet to produce legislation. The most straightforward fix may be for Congress to move the funding to the regular appropriations process and fund it annually. Defenders of the current program, however, have said that will create uncertainty and make it difficult for carriers dependent on the funding to operate. Republicans have advocated for reforming the program and giving Congress more oversight, which would come with direct funding. Expect this to be an issue of discussion, should the 5th Circuit decision hold.

Additionally, Commissioner Carr has voiced support for reviewing how federal broadband subsidies are spent, ensuring that taxpayer money is used effectively, and money is not spent to build out in areas that already have broadband connectivity. Commissioner Carr has also voiced support for expanding the contribution pool beyond the traditional telecom providers and including online platforms, though he has conceded that doing so would require an act of Congress.

Congress will also need to look at the future of the FCC's now expired Affordable Connectivity Program. One option that has been discussed is to fold it into the USF program or Congress could fund it separately. There is bipartisan support for the program which helps low-income Americans purchase internet access, but Republicans have sought reforms before agreeing to additional funding. These reforms include new eligibility and verification requirements, as well as cutting the monthly funding amount.

- **Deregulation and Consumer Protection.** The 6th Circuit Court of Appeals heard oral arguments on a challenge to the FCC's net neutrality rules, which reclassified broadband access services under Title II of the Communications Act, on October 31, 2024. The rules, originally adopted under Obama FCC Chairman Tom Wheeler, later repealed by President Trump's FCC Chairman Ajit Pai, and readopted under current Chairwoman Rosenworcel, will almost certainly be repealed under potential future Chairman, current Commissioner Carr, or another Republican Chair, should the FCC win the appeal—though the 6th Circuit has stayed the rules' effectiveness during the pendency of the appeal, which may indicate that the FCC will have an uphill battle in saving its latest net neutrality order. This could restart the debate on Capitol Hill to create enforceable net neutrality rules and end the changing of the rules depending on which party occupies the White House and controls the FCC. There have been bipartisan efforts for Congress to take control of the issue and establish clear rules of the road to prohibit blocking and throttling of internet traffic.

The FCC's digital discrimination rules adopted under Chairwoman Rosenworcel are also being challenged in the 8th Circuit. Industry has argued that the FCC overstepped its authority by defining "digital discrimination" to include deployment decisions that have a disparate impact regardless of intent rather than limiting its rules to instances of intentional discrimination. If the court upholds the rules or if appeals remain pending, and should Republicans control the FCC next year, we expect them to revisit the rules or repeal them altogether.

Other consumer protection initiatives undertaken by the current Democratic FCC—including proposals to require rebates to cable and satellite TV subscribers for blackouts, limit “bulk billing” arrangements for cable and broadband service in multi-tenant environments like apartment buildings, and impose limitations on the use of artificial intelligence in telephone and text message marketing and political advertising—are likely to be rescinded under a Republican FCC.

- **Content Moderation.** Congress and/or the FCC may also look at reforms to Section 230 of the Communications Decency Act. Commissioner Carr and President Trump have supported the FCC taking action to limit the scope of Section 230 and the liability protections enjoyed by Big Tech companies under the statute. In 2022, President Trump released a campaign video that suggested, among other things, that companies should only qualify for the protections of the Section 230 liability shield if they satisfy “high standards of neutrality, transparency, fairness and non-discrimination” in making content moderation decisions, and that users over 18 should be permitted to opt out of all content moderation on digital platforms. Carr has also proposed the FCC imposing transparency rules, similar to those that apply to broadband providers, on Big Tech online platforms.

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