



Broadband Policy in 2017: What to Expect February 1, 2017

From \$7.2 billion in 2009 that funded State Broadband Initiative programs, or broadband infrastructure, adoption, and public computing center programs, to an historic shift in 2010 of the Universal Service Fund (USF) to broadband, the inception of the FirstNet first responder emergency communication network in 2012, or the FCC's adoption in 2015 of controversial net neutrality rules, there can be no argument that the Obama Administration presided over foundational changes in broadband policy in America and the federal government's role in shaping that policy.

The new administration of President Donald Trump and control of both the U.S. House of Representatives and the U.S. Senate almost certainly ensures a definitive shift in telecom/broadband policy. Below are some of the many broadband policy issues to watch for:

New Direction at the Federal Communications Commission (FCC)

The resignation of Tom Wheeler as FCC Chairman leaves a two-to-one Republican majority on the Commission, which is composed of Republicans Michael O'Rielly and Ajit Pai, and Democrat Mignon Clyburn. On Monday, January 23, President Trump nominated Commissioner Pai to replace Wheeler as FCC Chairman.

Wheeler's tenure saw significant action on broadband policy: the FCC expanded a rural broadband program; shifted the USF High-Cost Fund toward broadband with the Connect America Fund and the Mobility Fund; reformed and expanded the USF E-rate program; reformed the USF Lifeline program and made that low-income subsidy eligible for broadband; and enacted highly controversial rules on net neutrality on consumer data privacy.

- An excellent post-mortem on Wheeler's tenure ran in the Washington Post on January 19: ["How a one-time ally of Comcast and AT&T turned the tables on industry" by Brian Fung](#);
- While Pai's appointment as chairman is subject to the Senate's advice and consent powers, as acting chairman he has begun appointing staff, has removed Wheeler's proposed, contentious rules on set-top boxes from circulation, [which was supported by Congressional Republicans](#), and [circulated an order to renew a small business exemption from the FCC's Title II regulations that had expired in December 2016](#), and voted on January 26, 2017 [to use \\$170 million from the Connect America Fund for rural broadband access in New York](#).
- The FCC had its next [Open Meeting on January 31, 2017 at 10:30 am ET](#), with a light agenda consisting of one Order regarding the public inspection files of commercial broadcast stations.
- With three members, the FCC has two open seats subject to nomination. Commissioner Jessica Rosenworcel, whose term ended on December 31, 2016, was re-nominated by President Obama, but the Senate did not act upon this nomination.

Senate Democrats have indicated a desire to see Rosenworcel confirmed in the new Administration. It is unclear whether Pai's confirmation proceedings will proceed with nominations for the two vacant seats, which would likely include one additional Republican and one additional Democrat.

- It was widely reported during the week of President Trump's inauguration that his transition team was considering a transformative policy change that would remove much of the FCC's regulatory power and shift it to the Federal Trade Commission (FTC). The first, and most detailed report on this prospective development was included in a January 15, 2017, report by John Eggerton in Multichannel News, ["Exclusive: Trump Team Embraces FCC Remake Blueprint."](#)

Net Neutrality

Perhaps no FCC action during the Obama Administration was as controversial or generated as much public interest as the 2015 "net neutrality" order, which regulated for the first time broadband service as common carrier service under Title II of the Communications Act of 1934 and Section 706 of the Telecommunications Act of 1996.

Passed by a 3-2 party line vote after years of deliberation, public comment, and litigation, these Open Internet rules were immediately challenged and ultimately upheld by the federal court system. With Republicans in control of the White House and Congress, it is almost certain that new regulatory action by the FCC or legislative action by Congress will seek to amend, replace, or eliminate entirely the 2015 net neutrality order.

AT&T and Time Warner Merger

AT&T reached an agreement to acquire Time Warner for \$85.4 billion in a deal announced in October of 2016. Due to the size of the companies, the proposed merger was certain to generate intense interest, criticism from consumer groups, and regulatory scrutiny from the federal government's Department of Justice and the FCC.

AT&T, which had unsuccessfully sought to merge with competing wireless carrier T-Mobile just a few years ago, believes that the difference between its business (wireline and wireless telecommunications and broadband services; pay-tv service through Direct TV) and that of Time Warner (video content through a conglomeration of companies and products such as CNN, HBO, and Warner Brothers) poses much less of a public interest concern over less competition in the marketplace. Indeed, the proposed merger causes little overlap or media concentration while producing significant synergies.

That said, on the campaign trail President Trump publicly criticized the proposed merger. While [some observers expect that opposition to weaken](#) enough to allow the deal to proceed, [it's too early in the Administration to predict how Trump's antitrust regulators will handle the union of telecom titan and media giant.](#)

Capitol Hill

The Commerce committees in both the U.S. Senate and U.S. House of Representatives have moved quickly on broadband and tech policy in 2017. While Senate Commerce has been busy with confirmation hearings, Committee Chairman John Thune (R-SD) announced the committee's tech agenda for the 115th Congress at the 2017 State of the Net conference.

During his [speech](#), Thune referenced the Internet of Things, his own mobile wireless legislation (the MOBILE NOW Act), a need for less regulation, and Congressional action on net neutrality, and he also addressed the need for Congress to craft a replacement for the Telecommunications Act of 1996.

The Senate also [announced a hearing](#) on ways to reduce unnecessary regulation, scheduled for February 1, 2017 at 10:00 am ET.

In the House, the Subcommittee on Communications and Technology announced a hearing for February 2, 2017, to explore a long overdue reauthorization of the National Telecommunications and Information Administration (NTIA). NTIA is the agency within the U.S. Department of Commerce that was tasked with oversight of most of the 2009 broadband stimulus package. Subcommittee Chairman Marsha Blackburn (R-TN) [said in a press release](#) that “Given NTIA’s critical role in communications policy and the fact it hasn’t been reauthorized since 1992, it’s past time for us to take a thorough, comprehensive look at the NTIA. I’m looking forward to discussing NTIA’s work on spectrum allocation, and ICANN activities, and what steps we can take to ensure America remains competitive in today’s digital environment.”

The full House also passed H.R. 288, the Small Business Broadband Deployment Act, which also deals with the small business exemption covered by the FCC’s January 27 action (see above). (The Small Business Deployment Act picked up a Senate companion bill sponsored by Sen. Steve Daines (R-MT) and Sen. Joe Manchin (D-WV).)

Finally, President Trump included on the campaign trail a pledge to fund a robust infrastructure spending package. Since his inauguration, speculation has swirled about what might be included in such a stimulus proposal. The Washington Post [obtained a list](#) reportedly circulated to the National Governor’s Association, which included but wasn’t limited to road, bridge, port, water, oil and gas, electricity, and rail projects. The Post reported that the Trump Administration has a group working to vet infrastructure projects.

Democrats initially responded favorably to the concept of a jobs plan, although reports this week indicated that each side’s foundational concepts for infrastructure spending may be so far apart as to make compromise difficult to achieve.

Politico reported last week that broadband infrastructure is a bipartisan effort (“[Broadband infrastructure and its rare bipartisan appeal](#)”), with billions targeted for broadband in unserved/underserved areas. Chairman Thune is quoted by Politico as saying “We’ll look at [the Democrats’ plan] - we’re obviously big believers that infrastructure should include broadband deployment.”

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