

Telecommunications Issues in the Trump Administration/ 115th Congress

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Commercial

Jan. 17	HUD Consolidated Plan Rule Effective
January 19	HUD Broadband In Building requirement
January 20	NEW PRESIDENT SWORN IN
January 31	FIRST FCC Meeting under GOP control New Date – see agenda above
Feb. 9	Comments in support of ACM exemption from closed captioning registration for programmers
Feb. 24	Reply Comments in support of ACM exemption from closed captioning registration for programmers
Feb 28-March 1	NACo Legislative Conference
March 8	Mobilitie Comments Due
March 11-15	NLC Congressional City Conference
March 16-17	FCC IAC Meets
Mid-March	Debt Ceiling Reached
April 7	Mobilitie Reply Comments Due

Congress

I. Congress

- Net Neutrality/TCA Rewrite
- Last Year's Unpassed Bills That Could Rise Again in 2017.
 1. Wireless Tax Fairness Act (HR 4287); would impose 5-year moratorium on new taxes and fees on wireless services – update.
 2. Online Sales Taxes.
 3. Mobile NOW

Congress

On Line Sales Tax:

- Marketplace Fairness Act of 2015 (S 698); provides for easier collection of remote sales and use taxes; update. (Destination)
- Remote Transactions Parity Act of 20115 (HR 2775); provides easier collection of remote sales and use taxes; update. (Destination)
- Online Sales Tax Simplification Act of 2016; draft released August 25, 2016 by Rep. Goodlatte (R-VA). (Origin)

The FCC

II. The FCC

- A. Mobilitie Petition. Request that FCC interpret/clarify 47 USC § 253(c); “fair and reasonable compensation”; “competitively neutral and nondiscriminatory”; “publicly disclosed by such government.”
- B. Independent Programming. Notice of Inquiry adopted to address availability of diverse and independent sources of video programming (MB Docket No. 16-41); update.

The FCC

C. Set-Top Boxes. NPRM to address expanding consumers' video navigation choices and commercial availability of navigation devices, MB Docket No. 16-42 and CS Docket No. 97-80.

- Commission action stalled before election.
- Now likely dead.

D. FCC Reorg

- I know nothing more than what is in the trade press. Please don't focus on the arrangement of the deck chair, direction of the agency is more important. Might provide some additional time.

The FCC

- D. Broadband Privacy. NPRM issued and rules adopted to address privacy of broadband users (WC Docket No.16-106);
- Report and Order released November 2, 2016.
 - Possible CRA target in 2017.
 - If not, court appeal certain;
 - Trump/OMB;
 - FCC; or
 - Hill “reversal.”

The FCC

E. Digital Inclusion. Lifeline Report and Order released April 27, 2016 – update:

- NARUC and coalition of states are challenging the order in DC Circuit Court of Appeals;
- Petitions for review filed with the FCC by CTIA, NASUCA, NTCA, USTelecom, and others.

F. HUD Broadband dockets.

- New Construction
- Consolidated Plan

The FCC

- F. Closed captioning certification rules not yet effective; earliest date to begin filing will be July 1, 2017.
- G. FCC Transfer Consents.
 - To come in 2017: AT&T/Time Warner?

The DOJ

- A. Government Websites: DOJ sought comments on accessibility/closed captioning requirements for state and local government websites; comments filed early October.
- B. AT&T/Time Warner merger review

The Courts

III. The Courts

NATOA v. FCC (DC Cir.), appeal of FCC's *Effective Competition Report and Order* (MB Docket No. 15-53) – update.

- Oral Argument November 10.

The Courts

US Telecom Assn. v. FCC (recon pending)-- DC Circuit upholds FCC's *Open Internet Order*.

FTC v. AT&T Mobility: 9th Circuit rules FTC Act's "common carrier" exemption bars FTC from proceeding with deceptive practices action against AT&T for data throttling practices; exemption applies based on AT&T's carrier status; that the service may not be a common carrier service doesn't matter. Note potential implications of same for FCC's ISP privacy proceeding mentioned above.

The Courts

City of Eugene v. Comcast (OR Supreme Court): Upholds imposition of Eugene's 7% ROW fee on Comcast's broadband service against ITFA and Cable Act attack.

States of Tennessee and North Carolina v. FCC – 6th Circuit Court of Appeals overturns FCC's *Municipal Broadband Order*; FCC declines to take further appellate action.

The Courts

Montgomery County v. FCC (4th Circuit) – Court upholds FCC’s *Wireless Siting Order*.

Montgomery County v. FCC (6th Circuit) -- Pending appeal of FCC’s denial of recon of 2d R&O in *621 Video Franchising* proceeding.

Oral argument held on December 8, 2016.

Other Key Developments

IV. Other Key Developments

- FirstNet

TRUMP POLICY PRONOUNCEMENTS

Many Thanks to the Information Technology and
Innovation Foundation (ITIF)

Table 1: The Candidates' General Philosophies Toward Technology and Innovation Policy

Clinton	Trump
<ul style="list-style-type: none"> ▪ Would engage government as an active partner with private industry in setting and implementing a technology and innovation agenda. ▪ Would focus innovation policy on achieving key social goals related to “place and person” economic opportunity. ▪ Supports some regulations in the tech economy but also stresses smarter regulation in other areas. ▪ Would support high-skill immigration and STEM education. ▪ Less emphasis on policies to enable innovative U.S. companies to be competitive in global markets. ▪ Would strengthen trade enforcement. 	<ul style="list-style-type: none"> ▪ General lack of focus or specificity regarding tech and innovation policy. To the extent there is a sector focus, it is on traditional manufacturing. ▪ Generally conservative position of significantly reducing business taxes and regulations, including a significant reduction of corporate taxes. ▪ Unclear position on high-skill immigration. ▪ Supports strong homeland security with likely effects on weakening encryption. ▪ Would strengthen trade enforcement by renegotiating existing trade deals.

OMB Regulatory Reforms

- No position.
- Would issue “a temporary moratorium on all new agency regulations.”¹¹⁷
- Order agencies to catalogue and eliminate all existing regulations “which are not necessary, do not improve public safety, and which needlessly kill jobs.”¹¹⁸
- Immediately cancel “all illegal and overreaching” executive orders.¹¹⁹

I. Table 7: The Candidates' Positions on Telecommunications Policy

Issue	Clinton	Trump
<p>I. Wireless II. Spectrum and 5G</p>	<ul style="list-style-type: none"> Clinton would reallocate and repurpose spectrum for next-generation uses.¹²² Pledges to identify underutilized bands, including those held by the federal government that can be put to more valuable uses.¹²³ Offered to foster the evolution to 5G networks and the deployment of licensed, unlicensed, and sharing regimes, as well as support the development of a "civic Internet of Things."¹²⁴ 	<ul style="list-style-type: none"> No position.
<p>Title II and Net Neutrality</p>	<ul style="list-style-type: none"> Clinton supports the FCC's Open Internet Rules, which classified Internet providers as common carriers under Title II of the Communications Act¹. Has pledged to continue the fight she started as Secretary of State for an Open Internet abroad, and opposes government interference with broadband networks.¹²⁶ 	<ul style="list-style-type: none"> Trump has expressed displeasure with the FCC's Open Internet Order, tweeting that "Obama's attack on the internet is another top down power Fairness Doctrine_ Will target conservative media."
<p>Communications Act Update</p>	<ul style="list-style-type: none"> In an interview, Clinton characterized Title II as the "only hook [the FCC's] got" to write net neutrality rules and expressed preference for "another hook" for net neutrality and an update to the Communications Act.¹²⁸ 	<ul style="list-style-type: none"> Trump does not appear to have commented on the need for an update to the Communications Act.

Issue	Clinton	Trump
Broadband and Telecom Subsidies	<ul style="list-style-type: none"> ▪ Supports delivering affordable broadband to all American households by 2020. Networks should provide “speeds sufficient to meet families’ needs.”¹²⁹ • This 100 percent goal will be achieved through continued investments in the Connect America Fund, Rural Utilities Service program, and Broadband Technology Opportunities Program. • Supports recent reform of the Lifeline program to include additional anchor institutions beyond schools and libraries for subsidized access. • As part of her proposed \$275 billion infrastructure investment, Clinton has pledged a \$25 billion national infrastructure bank that would support broadband projects, among others. 	<ul style="list-style-type: none"> ▪ No position.
Broadband Adoption and Digital Literacy	<ul style="list-style-type: none"> ▪ Clinton aims to “close the digital divide” through 	<ul style="list-style-type: none"> ▪ No position.

Issue	Clinton	Trump
<p>Broadband Competition and Public Private Partnerships</p>	<ul style="list-style-type: none"> • As part of her proposed "Model Digital Communities" program, under her Infrastructure Bank, Clinton would award grants on a competitive basis to regions or municipalities for proposals that foster greater access to high-speed Internet-¹³³ • These grants would reward proposals that seek to streamline regulatory barriers to private investment, coordinate broadband deployment with other municipal projects, and fill gaps in underserved areas through public-private partnerships. 	<ul style="list-style-type: none"> - No position.
<p>Online Sales Tax</p>	<ul style="list-style-type: none"> • According to a Reuters article, Clinton has stated that she supported allowing cities and states to tax online purchases, but she would not mandate it. 	<ul style="list-style-type: none"> • Trump has suggested that he believes online retailers should collect and remit sales taxes_⁴⁷

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