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Forecast for Trump FCC: Deregulation with Chance of Media Concentration Review

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The election of Donald Trump continues to raise questions about the potential direction of regulatory policies under his administration. While much of his campaign rhetoric focused on reducing regulation, he also suggested he would move to block the proposed AT&T-Time Warner merger.

A key indicator of the likely direction of a Trump FCC will be who is appointed chair. Speculation since the election has focused on mainstream Republican choices. If this speculation is correct, the FCC should have a deregulatory bent across the agency's entire jurisdiction. If Trump does not follow this approach, and instead chooses someone who is not within the mainstream of Republican thinking, particularly as to regulation of media, then there is potential for, among other things, greater scrutiny of media mergers, efforts to reduce the power of larger or consolidated content providers, and other actions intended to rein in what Trump has characterized as biased media players. An unconventional choice may not, however, be much different from a mainstream Republican when it comes to other businesses regulated by the FCC.

The following are some key areas where a Trump FCC is likely to differ from the Obama FCC:

- **Enforcement:** The significant emphasis on enforcement actions adopted by Chairman Wheeler is very likely to end. The FCC likely will limit enforcement activity to well-understood violations, could change current policies requiring companies to admit to fault in consent decrees, and could significantly reduce the amounts of fines and consent decree payments.

- **Network neutrality:** Watch for signs that the new Congress will take up a broad revision of the network neutrality rules. If not, the new FCC should be expected to overturn the decision to reclassify broadband as a common carrier service and, at a minimum, to narrow the scope of the network neutrality rules.

- **Privacy and cybersecurity:** The broadband privacy rules adopted in October will not be enforced and will be repealed (likely at the same time the FCC acts on network neutrality). In general, the FCC likely will pull back from active involvement in privacy and cybersecurity issues and promote voluntary industry efforts.

- **Mergers and acquisitions:** With the possible exception of media transactions, it is likely that the FCC will be much more open to consolidation in the communications industry. This is particularly likely for telecommunications and satellite transactions. There is some possibility that the FCC will look to the Antitrust Division and the FTC for analysis of competition issues in mergers. It also could loosen or limit the impact of its existing ownership limitations.

- **Regulatory initiatives:** With very limited exceptions, it is likely that a Trump FCC will not pursue the kind of wide-ranging regulatory initiatives that occurred during the Obama Administration. It is more likely that the FCC will reverse many of those initiatives, particularly in areas like privacy, network neutrality, and universal service. Any new initiatives are likely to be focused on reducing regulation or opening avenues for new investment.

One area where a Trump FCC is likely to follow the same general path as the current administration is in opening up new spectrum. There is a broad consensus across party lines that the availability of new spectrum, particularly for wireless and unlicensed use, is critical to the development of advanced services, including the Internet of Things and other machine-to-machine communication. A key factor in the potential success of such initiatives will be the extent to which other federal agencies can be convinced or required to convert the spectrum they control to private use.

We continue to follow the signals coming from the Trump transition team about the direction of the new administration's policies in telecom, media and technology. If you have any questions about how these changes might impact your business goals and plans, please let us know.

Key Contacts

J.G. Harrington Washington, DC	jgharrington@cooley.com +1 202 776 2818
Robert M. McDowell Washington, DC	rmcdowell@cooley.com +1 202 842 7862