

## Cooley Advisory: FCC About to Have Only Two Commissioners (Less Than a Quorum)

June 5, 2025

Federal Communications Commission (FCC) Commissioner Nathan Simington announced yesterday that he will resign his seat at the FCC on Friday, June 6, and Democratic Commissioner Geoffrey Starks announced that he also will leave the FCC on June 6. The surprising timing of Simington's departure while incoming Commissioner Olivia Trusty's nomination remains pending before the Senate will put the FCC in the unusual position of having only two sitting commissioners – Chairman Brendan Carr and Democratic Commissioner Anna Gomez. Until the Senate confirms Trusty, the FCC will lack a quorum of three commissioners and will be unable to conduct commission-level business. The FCC will continue to function and can still dispose of bureau-level business, but any issues of first impression – such as complex waivers – will need to wait until the commission again has three members and a Republican majority.

We expected the Senate to approve Trusty's nomination by mid-summer. Simington's resignation complicates that timeline. We would expect Democratic senators to try to delay a vote on Trusty until President Donald Trump commits to nominating another Democrat to replace Starks. But Trump has shown interest in eliminating minority-party members of independent agencies, and there has been speculation that the president might dismiss the FCC's Democratic commissioners. So, Democratic senators also would probably seek some form of commitment that the president will not fire the minority FCC commissioner. It is too soon to tell, but this could be a recipe for a protracted delay in restoring the FCC to a membership quorum.

Uncertainty about FCC leadership has significant implications for business planning for the rest of this year. For example, given the chairman's public and private comments about the television and radio broadcast rules, many companies have been exploring transactions that would require waiver of the current rules. With the FCC unable to muster a quorum, transactions that require a novel waiver – such as a waiver of the national ownership cap – likely cannot be approved because they would require a commission-level vote.

At the same time, the Media Bureau remains able to process applications that require waivers for which there is existing commission precedent. Thus, we would expect the Media Bureau to continue processing applications requiring waiver of the FCC's top 4 duopoly restriction, because there is precedent for such waivers. Because Carr controls the bureaus, we expect him to continue directing that transaction applications that can be granted at the bureau level be processed expeditiously.

While the current 2 – 2 FCC has continued to act on bipartisan issues such as robocalling, public safety and national security, an FCC lacking a quorum will not be able to adopt any new rules. This could have implications not only for pending 911 and national security rulemakings, but also for Carr's deregulatory agenda. For example, the Wireline Competition Bureau has issued waivers to streamline regulatory requirements, but repeal of rules to reduce regulatory burdens either will not be possible without a quorum or will face legal challenges that a bureau lacked the authority to reverse the rule. Without a quorum, it also is not clear how the FCC will be able to react to any remand by the courts, such as potential US Supreme Court action on FCC authority to collect contributions to support universal service.

We are following developments in DC closely and will continue to provide updates as the developments warrant.

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