

Trump's FCC: Tom Wheeler to be replaced, set-top box reform could be dead

Democrats' last-minute rulemakings could be easily reversed once GOP takes over.

[Jon Brodtkin](#) - 11/10/2016, 1:25 PM



FCC Chairman Tom Wheeler.

[FCC](#)

Tom Wheeler's time as chairman of the Federal Communications Commission is nearing an end now that Republican Donald Trump has won the presidency. You can expect Wheeler to step down from his chairmanship on or before January 20, when Trump is inaugurated.

It's customary for the chair to step down when the White House shifts to the opposing party. All five FCC commissioners are appointed by the president and confirmed by the US Senate, with the president's party having a one-vote majority. (The president usually appoints minority party commissioners

based on recommendations made by minority party lawmakers.)

Trump can't force Wheeler, a Democrat, to leave the commission entirely before his term expires, but the president can designate a new chairperson.

“The president decides who is the chair, so Wheeler will certainly no longer be chair on the first day of the administration,” Harold Feld, an expert on the FCC who is senior VP of advocacy group Public Knowledge, told Ars.

Wheeler's FCC passed a number of [controversial changes](#), none bigger than the reclassification of broadband providers as common carriers and imposition of net neutrality rules. If Democrat Hillary Clinton had won the election, Wheeler would still likely step down sometime in 2017, but he could push through some more rule changes without fearing that they would be quickly undone.

With Republicans about to take over, any last-minute votes are in danger of being overturned. Wheeler's attempt to save customers money by reforming the cable TV set-top box market may therefore be dead.

Chairman Pai?

Ajit Pai, the longest serving of the two Republican commissioners, would likely become interim chairman until Trump chooses a permanent successor, Feld said. Once Republicans obtain a majority, they could try to roll back net neutrality regulations and other controversial policies passed under Wheeler. (We contacted Pai today but haven't heard back yet. Republican Commissioner Michael O'Rielly's office declined to comment.)

Wheeler's five-year term doesn't technically expire until November 2018, so he could stay on as a commissioner but not the chair for a while. Wheeler might want to do that if it's necessary to preserve a 2-2 split between

Democrats and Republicans during the period before a third Republican joins the commission, Feld said.

Wheeler “won’t want to leave with the FCC 2-1 in favor of Republicans,” Feld said. “He’ll want to stalemate [Trump] as long as he can.”

While the FCC currently has three Democrats and two Republicans, Democrat Jessica Rosenworcel may have to leave at the end of December. Her term expired in June 2015, and Republicans have been [refusing to act on her re-nomination](#). (We contacted Rosenworcel today but did not receive answers to our questions about her renomination or the set-top box proceeding.)

The rules permit commissioners whose terms expire to stay in their posts for the remainder of the current session of Congress and for the entire next session of Congress, according to Berin Szoka, who practiced Internet and communications law and is now president and founder of advocacy group TechFreedom. As each session of Congress is one year, that lets commissioners serve more than a year past the expiration of their terms even if they’re not reconfirmed.

If Wheeler commits to leaving the commission entirely, the Republican-controlled Senate could reconfirm Rosenworcel for another five-year term. That also would leave the FCC at 2-2 in the early days of Trump’s presidency.

“Republicans say they cannot reconfirm [Rosenworcel] if Wheeler insists on staying in the commission, because that would give Democrats three seats on the commission until 2019 when [Democrat Mignon Clyburn’s] seat expires,” Szoka said.

Pai's term expired in June 2016, so he can stay until the end of 2017 even if he isn't reconfirmed, Szoka said.

Set-top box reform

Though he's a lame duck now, Wheeler does have another couple of months to lead his Democratic majority. The biggest question may be whether his plan to reform the cable TV set-top box market is approved. If approved, pay-TV operators would be required to make video applications for third-party devices, potentially letting customers watch TV without renting a cable box. But Wheeler has been [unable to secure the vote of Rosenworcel](#), who appears to be concerned about how cable company applications would be licensed to third-party device makers.

If they work out a deal, commissioners can vote on the set-top box item [at any time](#), even between meetings. The FCC also has a meeting November 17, with a vote [scheduled](#) on price caps for "[special access](#)" business data services.

Wheeler could go forward with existing plans and hope they don't get overturned. "It always turns out to be harder to roll something back once it's in than to stop it before it lands," Feld said.

Doug Brake, a telecommunications policy analyst at the Information Technology & Innovation Foundation, doubts Wheeler's final days will be very productive.

"The big-ticket outstanding items that Wheeler was hoping to complete seem to me pretty much dead now, especially the more controversial ones," Brake told Ars. "It seems like he's having difficulty getting three votes on set-top boxes as it is."

Policies passed right before the end of Wheeler's term could be easily overturned, Szoka said. Rulemakings don't take effect until after they're published in the Federal Register, a process that can take weeks or months.

“If you do something at the end of the administration, the new FCC could come in and just never publish it in the Federal Register, and it would have no effect,” he said. Parties also have [30 days](#) to petition the FCC to reconsider its actions, and a Republican-led FCC would be likely to approve petitions reversing Wheeler’s late-term decisions.

There could be some compromises between Republican and Democratic commissioners on new policies during any period with a 2-2 split—if they’re still willing to work together after the many disagreements and controversial rulemakings of Wheeler’s term.

But ultimately, Trump will get his majority, and Republicans will likely start the process of undoing Wheeler’s biggest initiatives, such as the net neutrality rules. Trump [didn't say much about telecom policy](#) during his campaign, but in 2014 he called net neutrality a "top down power grab" and "Obama's attack on the Internet." Republicans could attack Wheeler's agenda both within the FCC and by passing legislation in Congress to reverse FCC policies and restrict the commission's regulatory powers. We'll have more on that later.