

How Biden's FCC could fix America's internet

The FCC can bring back net neutrality and help Americans stay connected during the pandemic — if everything goes its way now.

[Sara Morrison](#) Jan 21, 2021, 5:41 pm EST



President Biden's FCC could help more Americans than ever access and afford the internet.

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President Biden has named Jessica Rosenworcel as the acting chair of the Federal Communications Commission (FCC). Rosenworcel, a two-term commissioner who has championed [closing the digital divide](#), restoring net neutrality, and women (she even has a [podcast](#) where she talks to women in

various communications fields). She'll head up a divided FCC with two Democrats and two Trump-loyalist Republicans — at least until whoever Biden picks to be the third Democratic commissioner is confirmed.

That pick may well be the permanent chair. Typically, the new president brings in someone new to be the FCC chair, but it's not unprecedented for an acting chair to get the permanent spot. Trump did just that with Ajit Pai, who was a commissioner before being named as chair. Rosenworcel, an Obama appointee, is seen as a contender for the top job, and she has supporters.

"Commissioner Jessica Rosenworcel is brilliant and effective, and possesses a broad and deep knowledge of all things FCC," Rep. Anna Eshoo (D-CA) told Recode in November. "Hands down, she's my No. 1 choice for chairwoman of the FCC. She would hit the ground running from day one."

Biden's FCC has the potential to do remarkable things after four years of the business-friendly "light-touch" approach that defined Trump's FCC, such as making the internet more accessible and affordable for everyone. And with a Democratic majority in the Senate, it's more likely than ever that the president will be able to appoint a third Democratic member to pass some of those measures.

Under [Pai's leadership](#), the FCC pushed to deregulate the industries under its purview. This meant there were few rules, little accountability, and minimal oversight for some of the biggest and most powerful companies in the world. But in the months and years to come, the FCC is likely to reverse some of those policies, especially Pai's most controversial decision: repealing net neutrality, a policy that required internet service providers to [treat all types of internet traffic the same](#).

Getting broadband internet in as many homes as possible during the pandemic is many Democrats' most urgent goal. It's also something they feel the Trump administration failed to accomplish.

“Because the Trump FCC failed to meaningfully address the digital divide, tens of millions of Americans still lack high-speed internet,” Eshoo said. “This worsens the impacts of the pandemic, and the Biden administration has to take this head-on.”

She added: “Every person in our country must have high-speed internet. Period. We’ve failed for too long to expand access to rural and tribal areas, and too many urban communities can’t afford broadband.”

The Biden administration’s FCC can aid this effort by providing more subsidies to lower-income people, continuing its work increasing broadband access, and opening up more radio frequency bands for high-speed 5G networks in order to bring the United States to [the level of its peers](#). The agency is also poised [to restore](#) net neutrality and reclassify broadband internet as a Title II service, which would give the FCC more authority over carriers.

Experts and FCC insiders told Recode they foresee a Biden FCC that goes back to trying to govern and reclaims some of the authority it ceded under Trump. And the FCC’s glass ceiling may finally break with its first chairwoman in the agency’s 86-year history.

Where the FCC is now

Pai left the FCC on January 20, the day Biden was sworn in. The legacy of Pai’s FCC will be a “light-touch” approach and mass-scale deregulation. [Proponents say this encourages](#) investment and innovation, and opponents argue that it favors businesses at the expense of consumers. While Pai’s FCC made an effort to bring [broadband internet to rural and tribal communities](#) — which overwhelmingly benefits red states — it didn’t do much to make those services affordable to lower-income people.



A large mug, and former FCC chairman Ajit Pai.

Alex Wong/Getty Images

"We still don't really know what the results of [Pai's] multibillions of dollars to rural internet service providers will be," Gigi Sohn, a distinguished fellow at the Georgetown Institute for Technology & Law Policy who was a staff member of the FCC during the Obama administration, told Recode. "I hope it results in a lot more people being connected, but that's the smallest part of the digital divide. The biggest part of the digital divide is affordability. He never talks about that."

Much to the consternation of many Democrats, including Rosenworcel and the other Democratic commissioner, Geoffrey Starks, the agency dragged its feet on updating programs like [E-Rate](#) and [Lifeline](#) that could help people afford increasingly necessary internet services in their homes.

But Pai will perhaps best be remembered for repealing the Obama-era net neutrality decision, which he vehemently opposed as a minority party

commissioner. When Trump took office and promoted Pai to chair, he immediately set about [undoing that decision](#). Under Chairman Tom Wheeler, the Obama FCC had classified broadband internet as a Title II service, subjecting it to increased oversight and establishing internet service as a necessary utility for Americans. This meant internet access would no longer be treated as a luxury, like cable television, but rather protected and ensured like telephone service. Pai's FCC reclassified broadband as a Title I service, which put it largely under the purview of the Federal Trade Commission.

This was perhaps one of the most controversial decisions in the FCC's history, seen by its opponents as a gift to internet service providers that could now charge consumers more for accessing certain sites or using different internet services. Pai [framed it](#) as "restoring internet freedom" and encouraging internet service providers to pour more money into extending their reach across the country without having to worry about burdensome regulations that would cut into their bottom line. Pai's order was protested by [millions](#) of Americans, [in person](#) and [online](#). Meanwhile, millions of comments supporting the end of net neutrality were [determined to be fake](#).



One of the many protests against the Trump FCC's net neutrality repeal.

Chip Somodevilla/Getty Images

So that's how Pai's FCC began. Here's how it ended: Pai's FCC tenure ended with a half-hearted attempt to introduce more regulation through [Section 230](#), a 25-year-old law that lets websites moderate third-party content as they see fit without being liable for that content (with a few exceptions). Simply put, you can sue a Twitter user if they tweet something defamatory about you, but you can't sue Twitter. This is what allows websites that rely on user-generated content to exist. Trump hoped to weaponize the FCC, a supposedly independent agency that has become [increasingly partisan](#) in recent years, against social media companies that he believes censor conservative speech by making rules that could remove their Section 230 protections.

Repealing or significantly changing Section 230 became Trump and his surrogates' rallying cry in the latter half of his one-term presidency. But Republican lawmakers' bills that would change Section 230 to force

platforms to be “politically neutral” in their moderation or make their moderation rules more transparent and clear to users came to nothing. An [executive order](#) Trump issued in late May 2020 attempted to circumvent the legislative process by asking the FCC to “clarify” what content platforms can and cannot moderate if they want to keep their Section 230 protections.

Some [scoffed at](#) this authority, arguing that it was wrong and in direct conflict with Pai’s reasoning behind [repealing net neutrality](#) rules. Less than two weeks before his time with the FCC would end — and in full Trump-distancing mode — Pai said he [wouldn’t move forward](#) with rule-making on Section 230. Even so, Pai’s willingness to accede to Trump’s demands over Section 230 means his tenure, which was once defined by the desire to impose as few rules as possible on private businesses, ended with a failed attempt to introduce more rules for some of the biggest companies in the world.

Do not expect Biden’s FCC to pick up where Trump’s left off on Section 230. Rosenworcel and Starks have publicly stated that they do not think the FCC should play a role in Section 230, and this opinion seems to be shared by Democratic lawmakers. While Biden expressed a desire to revoke Section 230 [to the New York Times](#) in January — an opinion that a campaign spokesperson told Recode he hasn’t changed — he has yet to follow that up with any proposed action to do so, and Section 230 is not likely to be a major priority for the administration anytime soon (Congress, however, [might be willing](#) to give the law another look).

Who will be on the FCC when Biden takes office

The FCC can only have three commissioners from the same political party, which leaves one open spot for Biden to fill now. The two Republicans, [Brendan Carr](#) and Nathan Simington, are Trump picks whose terms won’t expire until well into Biden’s presidency, thanks to Simington’s rushed confirmation just a month before Trump left office. Carr and Simington were

seen as proponents of Trump's vision for the FCC, but that doesn't really mean much now that he's gone and Democrats have control of the Senate.

That leaves the question of who Biden will select as the FCC's new permanent chair. Many expect Biden to appoint a woman, as the FCC has never had a chairwoman in its 86-year history and Rosenworcel is now only its second acting chairwoman (Mignon Clyburn was the acting chairwoman for several months in 2013). Clyburn and Rosenworcel have been circulated as likely choices here. Both have FCC experience and both have championed broadband affordability and expanding the Lifeline program, which subsidizes phone bills for low-income people, to include broadband internet.

But Clyburn seems to have moved on from her time at the FCC, which ended in 2018. She joined the board of [Lionsgate](#) last July and of [RingCentral](#), a cloud communications provider, last November. Rosenworcel [has long advocated](#) for FCC measures to close what she calls the "homework gap" between students who have access to reliable high-speed internet to do their schoolwork at home and students who don't. That gap has never been more apparent or destructive than during the pandemic.

There's also Starks, the other Democratic commissioner. He's a long shot at this point, given that Biden went with Rosenworcel as acting chair. Civil rights advocacy group Color of Change recently rallied for Starks, who is Black, to get the chair, saying in a statement: "The Biden-Harris Administration must ensure that regulatory agencies like the FCC are steered by people who reflect the communities most impacted by the policy decisions they dictate ... As FCC Chair, Starks will be the leader we need to restore essential protections for millions of Black Americans who rely on digital spaces for information and commerce."

It's also entirely possible that Biden nominates someone else — perhaps even someone completely unexpected — to head up the FCC. Clinton-era FCC chair Reed Hundt, for example, was unknown and had very little to no telecommunications experience before he was appointed. He was, however,

[Vice President Al Gore's college roommate.](#)

"I know that a whole bunch of people want it," Wheeler, the former FCC chair, told Recode. "The fact of the matter is that Joe Biden's been around this town for 47 years. He knows a lot of people, and it doesn't have to be the usual suspects."



Former FCC Chairman Tom Wheeler with then-commissioner Mignon Clyburn (left) and Jessica Rosenworcel (right) in 2015. Both women are rumored to be likely picks as the next FCC chair.

Mark Wilson/Getty Images

What the FCC will do

It's pretty clear that the Biden FCC will want to do as much as possible to address the digital divide. Broadband affordability is a major part of this. Along with expanding E-Rate and Lifeline programs and continuing work to increase access in rural and tribal areas, expect a Biden FCC to reverse the net neutrality repeal and reclassify broadband internet as a Title II service

under the Communications Act. This would subject broadband internet carriers to the same increased oversight and rate regulations that phone companies have. So, where Pai [had to ask](#) companies not to cut off homes or businesses from the internet if they couldn't pay their bills during the pandemic and to expand their low-income programs (the results of which are [up for debate](#)), an FCC that classified broadband as a Title II carrier would have more leverage to require it.

There is also one possible privacy benefit if internet service providers become Title II carriers, as Wheeler pointed out. Under Title II, the FCC was able to [establish the authority](#) to require ISPs to get consumers' permission before sharing certain information about their internet lives, including browsing history, location, and email contents. This was seen as a big win for data privacy, and Wheeler hopes that the new FCC will find a way to restore those privacy protections.

The Biden FCC will also have to help facilitate [the spread of 5G](#) across the country and will be responsible for freeing up more bands in the spectrum to provide it. Increased 5G access would give more Americans access to higher internet speeds in more places, which has become a priority during the pandemic. While the current FCC is already working on this effort, some think the Biden administration will promote the interagency cooperation necessary to do it quickly. During the Trump administration, [different agencies fought over](#) spectrum, which [held back](#) efforts to open up more bands and expand 5G's potential.

"The way that Trump ran things was to set everybody against each other," Harold Feld, senior vice president at open internet advocacy group Public Knowledge, told Recode. "It has become much more of a problem in that federal agencies have now just increasingly said 'no' to the FCC. ... It's critically important that a Biden administration takes steps to smooth this over."

It's now up to Biden to pick his new commissioner (and possible chair). And

in the meantime, it's on Rosenworcel to set the agency's agenda. There are still a lot of unknowns, but one thing is almost certain: The light-touch era is over.

"It's gonna be interesting," Wheeler said. "This will be a great time to be chairman of the FCC."

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