



## Post-Election Outlook | FCC Rules Under Scrutiny: Net Neutrality, Digital Discrimination, and Consumer Protections

December 18, 2024

Reading Time : **1 min**

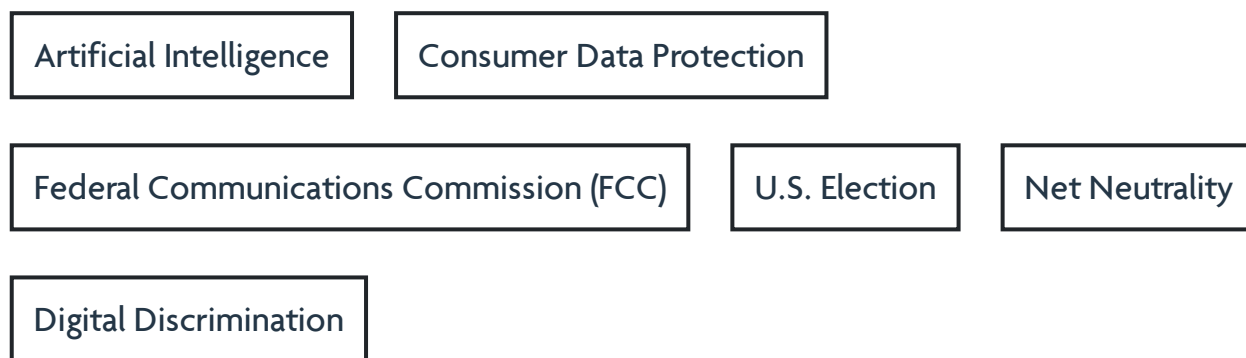
By: Jennifer L. Richter, Douglas I. Brandon, Steven A. Rowings, Virginia Hiner Antypas, Joseph S. Calascione, Sharanya Sriram

The U.S. Court of Appeals for the 6th Circuit heard oral arguments on a challenge to the Federal Communications Commission's (FCC) net neutrality rules, which reclassified broadband Internet access services under Title II of the Communications Act, on October 31. The court has already issued a stay of the rules' effectiveness pending its decision on the merits, citing the "major question" doctrine. The rules, originally adopted under Obama-era FCC Chairman Tom Wheeler, later repealed by Trump-appointed FCC Chairman Ajit Pai, and readopted under current FCC Chairwoman Jessica Rosenworcel, if upheld by the court or remanded to the agency for further action, will almost certainly be repealed under Commissioner Brendan Carr.

The FCC's digital discrimination rules adopted under Chairwoman Rosenworcel are also being challenged in the 8th Circuit. Industry has argued that the FCC overstepped its authority by defining "digital discrimination" to include deployment decisions that have a disparate impact regardless of intent, rather than limiting its rules to instances of intentional discrimination. Republican commissioners dissented from the final rules, arguing that they went far beyond what Congress had authorized in the Infrastructure Investment and Jobs Act. Commissioner Carr's dissent contrasted the statutory text requiring the FCC to "facilitate equal access to broadband" with the FCC's "unfunded build mandates" and "punitive liability rules." We therefore expect a Republican-led FCC to revisit these rules should they survive the court challenge.

Other consumer protection initiatives undertaken by the current Democratic FCC, including proposals to require rebates to cable and satellite TV subscribers for blackouts, limit “bulk billing” arrangements for cable and broadband service in multi-tenant environments, impose limitations on the use of artificial intelligence in telephone and text message marketing and political advertising and investigate the appropriateness of wireless data caps, are likely to be rescinded under new Republican leadership.

## Categories



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