



The Year Ahead in Broadband Policy

Blair Levin

Non-Resident Fellow, Brookings Institution

Policy Analyst, New Street Research

TFI Technology Conference

January 21, 2021

Overview

- **Why, In Our Little World, 2021 is More Unpredictable Than 2020**
- **What to Expect from a Democratic FCC**
 - Priorities
 - Cleaning up RDOF
 - Spectrum Wars
- **Tech Regulation**
- **The Courts**
- **M & A**

*Why, In Our
Little World,
2021 is
More
Unpredictable
Than 2020*

- Election years are unpredictable in outcomes but predictable in policy
- First year of a new term most open to new and big ideas
- So far Biden has been very predictable
 - Consistent issue set
 - Personnel picks
- That will change
 - Interest in some broadband issues growing
 - Anger at Tech from multiple sides also growing

What to Expect from a Democratic FCC

- **Title II**
- **Universal Broadband**
 - **More Important than Ever with a Funding Base Weaker than Ever**
- **Cybersecurity, Privacy and other Consumer Concerns**
- ***Wild Card: Infrastructure Bill or Broadband Package.***

Cleaning Up After RDOF

- **What worked**
 - Reducing cost of subsidy
- **What didn't work**
 - Mapping
- **What remains**
 - A promise made is not a promise kept
 - FCC has problems enforcing commitments
 - As time goes on leverage moves away from the FCC
- **What to watch**
 - Long Form Application review

Spectrum Wars

- For DC It's All About 5G
 - C-Band Hangover
 - 12 GHz
 - 2.5 GHz
- For Markets Its About Spectrum Based Business Models and Which Best Serve the Applications to Come
 - 5G v. WiFi
- *Wild Card: Pentagon Spectrum Plans and Biden 5G strategy*

Tech Regulation

- Courts
 - Antitrust
- Congress
 - Section 230
 - Privacy
 - Antitrust Report
- FTC /DOJ
 - What will FTC do with the information request
- States
 - Activism will continue until blocked
- Brussels
 - Already ahead of US
- *Wild Card: China Policy*

The Courts: Welcome to the Center of Regulatory Resistance.

- **Step One: Limit State and Local Power**
 - Interstate Commerce Clause/Federal Supremacy
- **Step Two: Limit Federal Agency Power**
 - Chevron/Deference
 - Gundy/Delegation
- **Step Three: Limit Congressional Power**
 - First Amendment
 - Fifth Amendment

M & A Reviews

- AG Garland is neither Bork nor Wu
- General political environment favors tougher anti-trust enforcement
- Court decisions will make antitrust officials more nervous about attempting to block a deal
- Analysis always deal-specific but a lot more pressure on early deals

Questions?

- **And Thank You**