

NSR Policy: Election implications for Tech and Telecom: Takeaways from the call

By [Matt Perault](#) | November 11, 2022

What's new: New Street Research's Policy team held a call yesterday to discuss the implications of the election for tech and telecom policy. A replay is available here ([LINK](#)).

Here are 8 key takeaways:

1. Congress:

- **For tech:** Meaningful tech policy reform is marginally less likely than it was before the elections. Given the high likelihood that there will be a divided government – with Republicans controlling a majority of at least the House – bipartisan agreement on new legislation is less likely. Legislation in the lame duck session (which runs until the new Congress begins in early January) is possible, but with a Georgia runoff now scheduled for early December, there are limited days in the legislative calendar when legislators are likely to prioritize tech reform.
- **For telecom:** While House oversight of the FCC will be more time-consuming, it is not likely to change the FCC policy or direction. Legislative initiatives, such as on spectrum and permitting reform, require significant bipartisan support to succeed, so are not changed. The biggest impact may be that a divided Congress makes it difficult for Congress to act to reform universal service, which is likely to be required if the courts blow up the current system and/or when the Affordability Connectivity Program runs out of money.
- **For markets generally:** if there had been a “red tsunami” or even a “red wave” we think there was a material risk of debt ceiling game of chicken which could have caused a market disruption. We think that risk has been lowered dramatically.

2. **State policy:** State capitals are likely to continue to be the focal points for tech reform. The key factor is whether a state's legislature and governor's mansion are both controlled by one party. Democrats gained

governorships in Massachusetts and Maryland, unifying Democrat control of the capitals in those states. In Kansas and Wisconsin, Democrats won the governor's races, but the legislatures are controlled by Republicans. Results in 10 states remain too early to call.

3. **Enforcement agencies and litigation:** Lina Khan, chair of the FTC, and Jonathan Kanter, the head of the antitrust division at the Justice Department, may read the election results as an endorsement of their aggressive and novel approach to antitrust enforcement. It's not clear to us that the data supports that reasoning; the more likely read is that voters do not view tech as a priority issue. We anticipate continued aggressive enforcement by the agencies, as evidenced by the policy statement on Section 5 enforcement that the FTC published on Thursday. The FTC may try to use this type of Section 5 enforcement as a means of achieving through litigation what Congress may be unable to achieve legislatively.
4. **Courts:** With a divided federal government and Congress likely to struggle to pass meaningful tech reform, courts will fill some of the policymaking gap. Federal courts will play a role in antitrust (two FTC cases against Meta are pending in federal courts, including the Meta-Within case, and there are several ongoing cases against Google) and content moderation (with the Supreme Court scheduled to hear important cases on platform liability). They also have key telecom cases, such as the ones related to the legality of the universal service program and the ability of states to mandate low-income broadband offerings.
5. **Key areas of tech policy** (privacy, antitrust, content moderation): As noted above, Congressional action in tech policy is unlikely. Yet, of the key topics that have been debated – privacy, antitrust, and content moderation – we think privacy is the most likely to get traction in a divided federal government. Republicans and Democrats may both be interested in establishing a baseline standard for privacy, with Democrats aiming to secure broad privacy rights and Republicans supporting a federal standard as preferable to a complex state patchwork of rules. We think some Republicans may pull back on antitrust reform and content moderation, preferring to wait to see if Elon Musk is able to provide a market-based solution to some of their concerns.
6. **Key areas of telecom policy.** We think the election will have the following impacts, or lack of impact, on the following topics:

1.
 - **Net neutrality.** If the Democrats get the third commissioner at the FCC, they will pass a new order, reclassifying ISPs as Title II carriers and impose net neutrality rules. If not, the status quo, including the right of states to adopt rules, will continue.
 - **Universal service.** As noted above, a divided Congress makes it difficult for Congress to act to reform universal service, which is likely to be required if the courts blow up the current system and/or when the Affordability Connectivity Program (ACP) runs out of money. Republican control of the House makes it less likely that Congress will appropriate funds for an ACP like program, which in turn increases the likelihood of state action to keep low-income persons online.
 - **The Tegna deal.** Republicans in the House may push for deal approval but the FCC Chair holds the critical cards and the election is unlikely to affect the outcome. (See our note on the subject [here](#)).
 - **A DBS combination.** The critical review will be at the antitrust agency that handles the case and it will be more influenced by court decisions than by changes in the Congress.
7. **China and TikTok:** We anticipate that this issue will remain front and center, since both parties are concerned about China. Angling for the 2024 election, Republicans will try to brand Democrats as soft on China, and Democrats will try to pursue a set of policies that will make it harder for Republicans to succeed with that argument. TikTok will likely be caught in the middle of that political battle. We anticipate that the Administration will announce a resolution to the CFIUS investigation of TikTok, timing the release so that it might get lost in the shuffle of holiday travel. The most likely result is that TikTok will continue to be operational in the United States, and ByteDance will not be forced to divest it. CFIUS will impose mitigation measures, such as requiring TikTok to use Oracle as a data management partner.
8. **Appointments:**
 - **Sohn:** It remains to be seen if she is confirmed in the lame duck, but if the Democrats hold, Schumer will have more floor time as the urgency of confirming judges will be less.
 - **Starks:** If the Democrats hold, either he or his replacement will be more likely to be confirmed before his term runs out at the end of 2023.
 - **FTC and filling Noah Phillips' seat:** Before the election, there had been speculation that this seat

might be filled by a Trump-supported critic of Big Tech, potentially leading to an alliance on some issues between this appointee and Chair Khan. With the Trump wing of the party weakened in the wake of the election, we think that's slightly less likely now. Yet even if the seat is filled with a more establishment, pro-business Republican, Democrats will retain their majority, and will continue to be able to outvote the Republican nominees on key tech issues.

Full 12-month historical recommendation changes are available on request

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