

# So Just What Does the Election Mean for Broadcasters?

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David Oxenford  
Wilkinson Barker Knauer LLP

202-383-3337

[doxenford@wbklaw.com](mailto:doxenford@wbklaw.com)

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# A Most Unusual Election in a Most Unusual Year

- When this webinar was scheduled, we assumed that this would be a normal year
- FCC still working remotely – and will be through the beginning of next year at least
- By this time, we assumed that we would have a recognized winner in the Presidential election and that an orderly transition would be starting
- We assumed that the make-up of Congress would be decided – but Georgia Senate seats will decide control of the Senate in January

# Speculating About Who Ends Up Where

- But that does not stop the speculation about who will be doing what in a new administration
  - FCC “landing team” for Biden administration already named – includes former Commissioner Clyburn
- Jockeying for seats on the FCC – and lots of speculation about who will be the Chairman in a Biden administration
  - Chairman sets the agenda and priorities of the administration
- How will it affect the heads of the FCC Bureaus?
- What will happen in various Congressional committees?
- What about government agencies – particularly in DOJ Antitrust Division that looks at media mergers and music industry consent decrees

# What Does A Democratic FCC Mean?

- Several areas of particular concern
  - Ownership
  - Public Interest Rules and Disclosure Obligations
  - Enforcement
- We will look at each of these – and other issues

# Ownership

- Supreme Court review now of abolition of newspaper-broadcast and radio-TV cross-ownership rules and rule of eight for combinations of TV stations
  - FCC briefs already filed last week
  - Potential that reply briefs would be filed after the inauguration - and oral argument later too – will new FCC defend actions of the old one?
  - Industry parties also defending FCC actions
- Radio Ownership
  - Rulemaking pending proposing substantial liberalization
  - Will new FCC pick up that proceeding or start over
  - Would AM ownership be a possible area where all could agree on changes
- National Caps
  - UHF discount could be revisited
  - Rulemaking to change the national cap – questions as to whether the FCC has the authority to do so

# Public Interest Rules

- Media modernization
  - Many of the procedural issues were bipartisan and likely can continue
- Community service issues can be more troublesome
  - Main studio and studio staffing
  - Community service mandates in license renewal context
- Sponsorship ID
  - Lots of Democratic concerns about sponsorship identification in political advertising
  - Also commercial sponsorship ID proceeding from last administration that is outstanding
  - Foreign programming proceeding outstanding and likely will continue
- EEO
  - Rulemaking to look at how EEO programs can be made more effective
    - Likely needs further notice before anything can be done
  - Congressional review of return of tax certificate is possible – no clear opposition other than for budgetary reasons

# Enforcement

- Big fines were in during last Democratic administration and kept up in the current Republican one
- Could a new administration be more enforcement oriented – and if so, in what ways?
- This administration took a very aggressive role in combatting pirate radio – will it continue? Statutory authority to do more

# Tech Regulation

- Section 230 and DMCA Safe harbor
  - Section 230 proceeding pending at the FCC – though we have not seen a formal NPRM yet
  - Both parties want Section 230 revisions – but they may not want the same revisions
  - DMCA safe harbor like Section 230, but applies to copyright and intellectual property issues – also Congressional reforms there
- Privacy?
  - Lots of concerns from everyone – but no clear consensus on how Congress will act
- Antitrust review?
  - Big tech merger reviews?
  - Review of broadcasters unique market definition?
  - Antitrust consent decrees – next slide
- Other public interest obligations
  - Talk of imposing political advertising and other restrictions on tech companies – and Facebook and others have actually welcomed it – though again, no clear agreement on the scope
  - Emergency communications too



# Music

- Consent Decrees
  - DOJ review of the consent decrees may result in some report before the end of the year
  - Will new DOJ pursue it?
  - Will they have any interest in the future?
  - How about Congress?
- Performance Royalties
  - Not necessarily a partisan issue – supporters and opponents on both sides of the committees
  - Will likely again be a battle in Congress
  - Will also have new webcasting royalties – not really politically dependent – but could be instructive on future performance royalty battles

# Lots of things to think about

- These are the areas most directly relevant to broadcasters, but plenty of other issues to consider throughout any new administration
  - Public advertising dollars
  - Tax policy
  - Environmental rules
  - Fiscal policy
- Lots to figure out – the transition lasts months and maybe more – so all won't be clear on January 21

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