

The Top Telecom Developments That Defined 2020

By **Kelcee Griffis**

Law360 (December 11, 2020, 4:28 PM EST) -- During 2020, the Federal Communications Commission took aggressive steps to free up spectrum for new 5G technologies and sought to keep broadband consumers connected during a global pandemic.

At the same time, the agency wrestled with controversial notions pushed by the Trump White House: rolling back protections for social media companies under Section 230 of the Communications Decency Act and laying the groundwork for a centralized 5G sharing model backed by the Pentagon.

Here's a recap of some of the biggest telecom policy developments from the past year.

COVID-19 Response

As Americans moved to largely working and learning from home in March, both the FCC and internet service providers were under immense pressure to make sure U.S. networks didn't sag under the strain. The FCC also had to think creatively about how to help financially struggling Americans stay online amid the corresponding economic downturn.

The agency made adjustments behind the scenes, including freeing up spectrum on a temporary basis to help carriers cope with increased network strains. In order to get more students online, the FCC allowed schools and libraries to direct their routers out to parking lots and permitted schools to accept companies' donations of broadband service and equipment.

The pandemic "has really underscored the vital role that telecom services play in the U.S. and has reinforced several of the telecom policies that the FCC has prioritized and that the new administration will prioritize as well," said Maureen Jeffreys, who chairs Arnold & Porter's telecommunications, internet and media practice.

One of the FCC's most high-profile solutions was its voluntary Keep Americans Connected pledge, which stipulated that carriers wouldn't charge late payment fees or discontinue service based on overdue bills.

However, frustrated customers complained that ISPs didn't honor their commitments consistently, and others said a complete lack of internet service in their areas has hampered their ability to work and learn from home.

Broadband availability is "more important than ever and has really been brought into focus because of the COVID crisis," said Jennifer Richter, a telecom and media partner at Akin Gump Strauss Hauer & Feld LLP. "It's simply highlighting where we have those deficiencies."

Section 230 Debates

President Donald Trump, who accused major social media platforms of censoring him and fellow conservatives, took efforts to spur the FCC into narrowing the interpretation of Section 230 so that it would offer social media sites fewer protections from libel and other types of lawsuits over posted content.

Trump's May executive order encouraged the FCC to examine the issue in a rulemaking of its own, which FCC Chairman Ajit Pai collected public comments on and indicated in October that he'd proceed with. However, the agency has not issued a new interpretation of Section 230.

The theme has played out in Congress as well, as lawmakers summoned Big Tech heads to testify about their content moderation practices. A bevy of bills sought to address both misinformation and perceived bias, but lawmakers have disagreed over the central issues and none have passed.

"Republicans think that tech platforms took down too much conservative-leaning material, and Democrats think that the tech platforms haven't taken down enough of what they view as misinformation," said Howard Waltzman, a Mayer Brown LLP attorney who previously served as chief telecommunications and internet counsel for the House Energy and Commerce Committee. "Both parties [still] need to get beyond the raw politics of it."

It's unlikely that the FCC will have enough time to pass and implement its own Section 230 reforms before the incoming Biden administration takes office. However, pressing the matter until the bitter end may be more about scoring political points with the current president than addressing the FCC's actual policy concerns, said Marc Martin, who chairs Perkins Coie LLP's communications industry group.

"They may just do this because it's what Trump wants, and Pai wants to show his loyalty to the end," he said.

Spectrum Reorganization

The FCC made strides on opening up valuable swaths of spectrum in the last year, including commencing a commercial mobile auction in the contentious C-band satellite spectrum, opening up the 2.5 GHz educational spectrum band for tribal and flexible commercial use, auctioning off licenses in the 3.5 GHz band, designating the 6 GHz band for shared unlicensed use, and designating 100 MHz of U.S. Department of Defense spectrum for commercial use.

"I think the biggest story this year was spectrum, putting into service the thousands of megahertz ... that the FCC has made available," Waltzman said.

One matter that didn't take off in 2020: a push for the military to create a centralized airwave-sharing system for 5G.

In September, the Pentagon put out a request for outside suggestions on how it could facilitate public-private spectrum sharing, potentially skirting the process through which the FCC coordinates government-overseen spectrum auctions and sharing arrangements with the private sector.

Companies like Rivada Networks appeared eager to bid on some sort of venture to make the DOD's valuable but underused airwaves available on a temporary basis to commercial partners, for which Rivada would serve as the clearinghouse.

But as Trump surrogates were the main backers of this idea, observers expect any momentum that the plan had gathered to die down after inauguration day.

"My hope is that the Biden administration heeds the calls of multiple members of Congress on a bipartisan, bicameral basis not to deploy a nationalized 5G network — as well as the entire current FCC, which made the same plea," Waltzman said.

Broadband Mapping and Network Security

The FCC and Congress redoubled efforts this year to determine where broadband subsidies are needed and where carriers need help removing and replacing Chinese-made network equipment, although Congress has yet to fully fund both mandates.

The FCC moved ahead with implementing the Broadband DATA Act enacted in March, which aims to retool the way broadband data is collected, verified and reported by making the commission collect and disseminate more granular broadband service availability data.

The new mapping methodology that the FCC developed under Congress' direction is designed to weed out ISPs' overstated service areas and to more evenly distribute internet service in poor, rural and minority communities.

"The Broadband Data Act was important to accomplishing this goal. A lot of the providers know where broadband is, but they don't know where it isn't," said Galen Roehl, a senior policy advisor at Akin Gump. "The FCC does need the resources to fulfil that mandate."

The Secure and Trusted Communications Network Act, also enacted in March, brought home efforts by both the Obama and Trump administrations to bolster network security by setting aside \$1 billion to remove and replace Chinese-made network components that are believed to contain security vulnerabilities.

The FCC moved ahead with identifying carriers that would be eligible to receive the swap-out funds. However, the cost of the project is expected to exceed its \$1 billion allocation, and Pai pushed Congress to dedicate more money to the bill's implementation.

Richter of Akin Gump said this year's momentum for identifying and replacing components manufactured by companies like Huawei and ZTE is indeed part of a multiyear bipartisan effort.

"This is such an important set of issues that had been teed up in up in the FCC under former Chairman Tom Wheeler," Richter said. "The supply chain issues have become a massive focus."

--Editing by Alanna Weissman.