



Hot Issues in 2024 for TMT Companies

AkinSM

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Introduction

2024 is shaping up to be a busy year in Washington for telecom, media and technology (TMT) companies.

A number of notable topics will require public comment this year, including net neutrality, digital discrimination, data privacy, cyber trust mark, early termination fees, hearing aid compatibility, robocalls and robotexts, supply chain security, broadcast blackouts and the future of the Universal Service Fund (USF). In addition to rulemakings, the now fully constituted Federal Communications Commission (FCC or the Commission) is poised to be much more active this year.

Other issues to watch include broadband affordability, especially if Congress allows funding for the Affordable Connectivity Program to lapse, and spectrum issues.

The FCC is likely to start working through the National Telecommunications and Information Administration's (NTIA) National Spectrum Strategy and recommendations from last year's World Radiocommunication Conference. However, without spectrum auction authority from Congress, it is unlikely that any material amount of new spectrum will be made available for commercial use.

In 2024, broadband funding will begin flowing to states and territories under the Broadband Equity Access and Deployment (BEAD) program, while broadband-related grants will continue to be issued by a number of agencies.

On the technology front, antitrust actions against Big Tech could result in the divestiture of companies by Meta and Google. Federal and state governments, worried about the impact of digital platforms and social media on society, will continue to consider whether there needs to be more regulation. In addition, the question of who should regulate artificial intelligence (AI), and how it should be regulated, will give birth to numerous competing initiatives among regulators and legislators in Washington, D.C. and international bodies.

Aerospace companies can expect heightened regulatory focus on space and satellites, human spaceflight and private space activities. The Federal Aviation Administration (FAA) and FCC will continue working on efforts to enable certification and operation of uncrewed aircraft systems and advanced air mobility, and these efforts will result in important rulemakings and trials for which industry participation and input will be critical. Finally, the National Defense Authorization Act, passed by Congress in December, reflects growing concern about cyber and data security, the use of AI, supply chain resilience and security, and potential threats from foreign entities.

This guide delves into these topics, pending actions and issues of interest that Akin will be monitoring in 2024. We hope these insights will be useful as you plan your activities for the year.

If you have questions about any of these topics or any TMT-related developments, please contact your Akin lawyer or any of the authors in this document.

Federal Communications Commission

The Federal Communications Commission (FCC or the Commission) had a busy 2023, as it finally reached a full slate of commissioners with the confirmation of Anna Gomez to the long-empty fifth seat in September. With a new Democratic majority, the Commission moved quickly on a number of Chairwoman Jessica Rosenworcel's priorities, including net neutrality and digital discrimination. Following is a breakdown of notable pending actions and topics of interest that will require industry input in 2024.

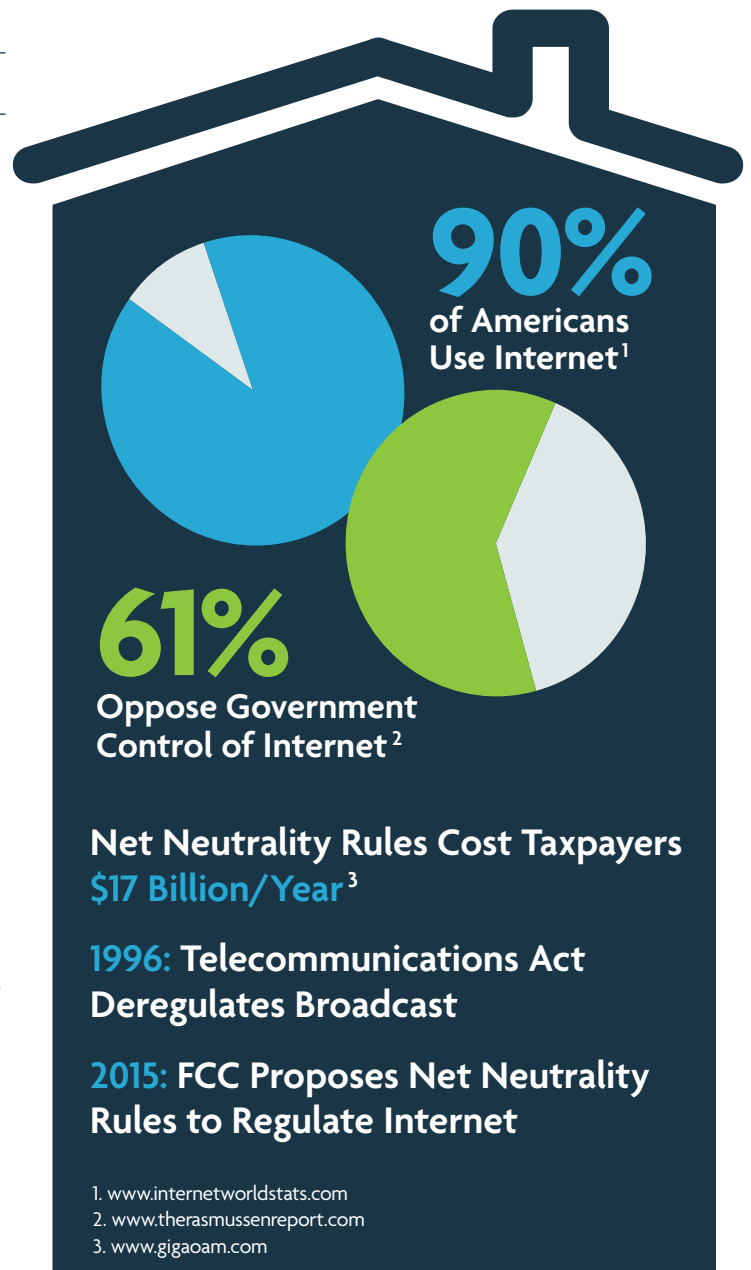
Consumer Protection

The Commission has undertaken work on a number of consumer protection issues that must be of concern for any company providing broadband and voice services, including: net neutrality, digital discrimination, data privacy, cyber trust mark, early termination fees, hearing aid compatibility, robocalls and robotexts, supply chain security, the future of the universal service fund and broadcast blackouts.

Net Neutrality

The Commission has reopened one of the most contentious policy debates in communications law over whether and how it should pursue policies aimed at protecting an open internet, often called net neutrality. In November 2023, the Commission adopted by a 3-2 vote, a notice of proposed rulemaking (NPRM) seeking comment on reclassifying broadband internet access service as a telecommunications service under Title II of the Communications Act. If those proposals are eventually adopted, they would effectively reinstate the rules put in place during the Obama administration, which were repealed in late 2017 during the Trump administration.

The reclassification would give the Commission the authority to regulate broadband as a common carrier service and prevent internet service providers (ISPs) from blocking, throttling or unfairly prioritizing certain traffic. However, the NPRM specifically proposes to forbear from rate regulation and mandatory unbundling. After reclassification, the following rules would also be adopted.





NO BLOCKING

Broadband customers must have access to all internet destinations paid for.

NO THROTTLING

ISPs must not impair or degrade lawful internet traffic based on content, source or destination.

NO PAID PRIORITIZATION

ISPs cannot manage their networks by accepting payment that benefits certain content.

NO UNREASONABLE NETWORK INTERFERENCE

ISPs cannot unreasonably disadvantage neither end users' ability to select providers or access content, services and applications, nor edge providers' ability to make available said content to end users.

TRANSPARENCY

ISPs must disclose information about its network management practices, performance and commercial terms to allow consumers to make informed choices and service providers to make appropriate internet offerings.

Critics of net neutrality have labeled the proposal as “a solution in search of a problem,” and government overreach that creates challenges for an industry that is thriving without additional regulation. Dissenting Commissioners Carr and Simington believe that the rules will stifle innovation, suppress investment and ultimately not survive legal challenge. Congressional Republicans have also been sharply critical, arguing that there is no need for such rules, and that the current regulatory regime has made American broadband networks some of the best in the world.

Congressional Democrats, however, along with many state attorneys general, interest groups and others in the TMT space, have been calling for the reinstatement of the rules since their 2017 repeal. They believe that net neutrality rules are critical to level the playing field and secure a truly open internet for all users. Chairwoman Rosenworcel, a staunch net neutrality supporter, has also noted that the current legal framework “renders unnecessarily vulnerable” much of the FCC’s most critical work. She argues that reclassification will create a uniform legal framework nationwide, and will allow the FCC to foster and protect cybersecurity, public safety, privacy, broadband deployment and more. Further, supporters correctly note that the FCC’s authority to reclassify broadband has been repeatedly upheld in the courts.

Initial comments were due on December 14, 2023, and the FCC received almost 40,000 comments from industry, academia, other governmental agencies and consumers. The largest communications service providers staunchly oppose the reclassification, arguing that the Commission lacks the legal authority to reclassify broadband, and that it would be unwise to do so. They maintain that consumers’ broadband experience did not deteriorate after the 2017 repeal of the

previous net neutrality rules, and that broadband networks are currently better than they have ever been. These providers cite the response to the COVID-19 pandemic, when broadband traffic spiked but U.S. networks remained resilient, as evidence that the light-touch approach under Title I worked well.

However, representatives of so-called “Big Tech” generally support the proposal, citing the lack of competition among terminating providers, which confers “gatekeeper” power on existing providers. That power necessitates conduct rules, they argue, because consumers lack the power to constrain potentially harmful behavior by ISPs. Reply comments were due on January 17, 2024

Digital Discrimination

In its November Open Meeting, the Commission adopted rules aimed at preventing digital discrimination of access to broadband meeting the statutory deadline for the establishment of such rules set by the Infrastructure Investment and Jobs Act (IIJA). The rules are intended to address discrimination in the provision of broadband service based on the characteristics listed by Congress in the IIJA: income level, race, ethnicity, color, religion and national origin.

A principal purpose of the rules is to define “digital discrimination of access,” which the FCC defines as “policies or practices, not justified by genuine issues of technical or economic feasibility, that (1) differentially impact consumers’ access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin or (2) are intended to have such differential impact.”

Notably, this definition encompasses both practices that intend to have a discriminatory impact and also practices that are facially neutral but have a discriminatory effect in practice. Covered entities must not engage in digital discrimination of access as defined by the FCC to avoid liability under the rules.

The item was approved in a partisan 3-2 vote, and the dissenting opinions of Commissioners Brendan Carr and

Nathan Simington portend some of the legal challenges the FCC may face ahead. Commissioner Carr, in a lengthy dissent, condemned the FCC’s new “sweeping regulatory regime” and contended that the FCC has greatly overstepped the authority granted to it by Congress. Commissioner Simington further argued that the new “open-ended liability regime” and particularly its enforcement scheme are outside of what Congress contemplated when enacting the IIJA. Of note, Congressional Republicans have been vocally opposed to the rules and have indicated they will attempt to overturn it using the Congressional Review Act.

In passing the final rule, the Commission did identify several items for further consideration. Specifically, it now seeks additional comments on whether it should include data from its proposed annual reporting requirement in existing reports released by the Commission for greater transparency. The FCC also requests input on whether it should create an Office of Civil Rights, as suggested by advocates and broadband providers, and if so, what set of issues would be handled by that office. Comments on the further notice of proposed rulemaking (FNPRM) will be due 30 days after publication in the *Federal Register* and reply comments will be due 60 days after the date of publication.

For Akin’s in-depth analysis of the FCC’s Digital Discrimination Rules, please refer [here](#).

Data Privacy

Despite somewhat limited jurisdiction of the issue, the Commission was exceedingly focused on data privacy in 2023, and we expect that trend to continue in 2024. It began with a January 2023 NPRM seeking comment on proposed updates to the agency’s data breach reporting requirements. Those rules, which require carriers to notify law enforcement and customers in the event of breaches involving Customer Proprietary Network Information (CPNI), which the FCC has interpreted to include “information such as the phone

numbers called by a consumer, the frequency, duration, and timing of such calls; [and] the location of a mobile device when it is in active mode,” have not been updated since 2007. The Commission adopted those updated rules in a 3-2 vote in December. The updated rules extend the definition of “breach” to include the inadvertent access, use or disclosure of covered data. The new rules also expand the scope of protected consumer information to obligate carriers to comply with the breach notification rule data that is CPNI,

and includes all personally identifiable information. When a breach occurs, the impacted entity is required to notify the FCC, the Secret Service and the FBI, as well as affected consumers, barring some exceptions that the rules outline, such as number of affected customers or involvement of law enforcement agencies.

Mid-year, the Commission launched a new Privacy and Data Protection Task Force which is led by the Enforcement Bureau and includes legal and technical staff from across the agency. The group is tasked with traditional enforcement work, including investigations, as well as rulemaking and public reporting. The Task Force has been active since its inception. Last fall, it joined the Federal Trade Commission (FTC) in announcing a renewed partnership with the international Unsolicited Communications Enforcement Network. That initiative, also led within the FCC by the Enforcement Bureau, similarly facilitates information sharing and coordination regarding investigations among its member countries.

In early December, the FCC announced that its Enforcement Bureau has signed memoranda of understanding (MOU) with the Attorneys General of Connecticut, Illinois, New York and Pennsylvania, under which the Bureau and the states will coordinate efforts around privacy, data protection and cybersecurity investigations. In discussing the need for collaboration, the FCC noted that both FCC and state enforcement cases require investigators to “seek records, talk to witnesses, interview targets, [and] examine consumer complaints,” among other things. The newly established partnerships are intended to facilitate the sharing of resources and expertise, and to allow the FCC to share “critical investigative tools including subpoenas and confidential response letters from suspected targets.”

Cyber Trust Mark

Last summer, the Commission proposed to create a “Cyber Trust Mark” – a logo to be applied to smart devices that meet certain cybersecurity criteria. The goal is to make products deemed safe easily identifiable for consumers. Under the proposal, the National Institute of Standards and Technology (NIST) will determine and publish the criteria requisite for Trust Mark eligibility. A similar program exists in the European Union (EU), known as the “CE Marking.”

Initial comments on the proposal were due in September and reply comments were due in October. The item is now pending FCC action. Commissioner Nathan Simington has been a vocal advocate for increased equipment security requirements throughout his tenure and has expressed support for the Cyber Trust Mark proposal.

Broadband Labeling

Broadband providers should pay close attention to the FCC’s new broadband labeling requirements, which take effect on April 10 for large providers and October 10 for providers with 100,000 or fewer subscriber lines. The rule, promulgated last year, requires all broadband plans marketed to consumers to be accompanied at the point of sale by a label akin to the Food and Drug Administration’s “nutrition facts” label. Among other things, the label must include information on pricing, service speed and latency, and links to further information on topics like privacy and network management. The requirement applies to all providers of mass-market retail broadband internet access service, or any service that the FCC finds to be a functional equivalent thereof.



Early Termination Fees

In December, the Commission, again by a 3-2 partisan vote, advanced a proposal to ban early termination fees charged by cable and satellite providers when consumers opt to cancel their plans before the expiration of their service contract. Under the proposed rule, companies would also be required to issue prorated refunds covering time remaining in a billing cycle after the plan is canceled.

The proposed rule will soon be open for public comment. Initial comments will be due 30 days after the proposal is published in the *Federal Register* and reply comments will be due 60 days after publication.

Hearing Aid Compatibility

The Commission also advanced a proposal in December on wireless hearing aid compatibility. The item tentatively concludes that hearing aid compatibility is achievable for 100% of wireless handset models and seeks comment on how to implement such a requirement. The Commission proposed a 24-month transition period for handset manufacturers, 30 months for nationwide service providers and 42 months for non-nationwide service providers.

This proposal will soon be open for public comment with initial comments due 30 days after the proposal is published in the *Federal Register* and reply comments due 60 days after publication.

Robocalls and Robotexts

The Commission will continue its work protecting consumers from illegal robocalls and robotexts. Over the past year, the Commission has implemented rules requiring providers to block certain texts that are highly likely to be illegal, and in December extended that requirement to require terminating providers to block all texts from particular numbers when notified by the Commission of illegal texts from that number. In the same December item, the Commission also clarified that the do-not-call registry applies to text messages in addition to voice calls, and encouraged providers to make email-to-text an opt-in feature, rather than an opt-out feature of mobile wireless service. The Commission will be seeking comment on and issuing new rules concerning a number of aspects related to robotexts and robocalls in 2024. The Commission has proposed requiring originating providers to block texts from particular numbers when notified by the Commission of illegal texts from that number, in order to stop them at the source. The Commission is also exploring its legal authority to require providers to make email-to-text an opt-in feature, rather than simply encouraging providers to do so. Additionally, the Commission is seeking input on whether spoofing is an issue in text messaging and if an authentication program similar to STIR/SHAKEN could be useful. Similarly, the Commission is seeking comment on whether a traceback program could be useful, or even feasible, and whether the Commission should require providers to respond to traceback requests.

The Commission has also opened an inquiry into the implications of artificial intelligence (AI) for robocalls and robotexts. The Commission is seeking comment on how AI could stop unwanted calls and texts, improve the use of telecommunications relay services with robocalls and ensure the accessibility of automated calls. Reply comments were due on January 16, 2024.





Supply Chain Security

While the FCC's Public Safety and Homeland Security Bureau already maintains the Covered List, which identifies equipment and services deemed to threaten national security that is maintained by the FCC based on the recommendations of qualified national security agencies, the Commission is continuing its efforts to secure the communications supply chain through reforms to its equipment authorization process. The Commission has already updated its rules to deny authorizations to devices manufactured by companies on the Covered List, and has proposed and sought comment on potentially revoking existing authorizations held by Covered List companies. Additionally, the Commission is exploring how far up the equipment supply chain its prohibitions should extend, and whether finished devices that contain minor components manufactured by Covered List companies should also be denied authorization.

Enforcement Priorities

The FCC has signaled it will be ramping up enforcement efforts to police waste, fraud and suspected misuse of FCC-administered broadband funding, and recently announced a negotiated settlement to recapture improperly disbursed funding from the Lifeline, Emergency Broadband Benefit and Affordable Connectivity Programs (ACP).

These programs have come under intense scrutiny on Capitol Hill, and the FCC will respond through vigorous investigation and enforcement actions. Such proceedings will lead not only to the disgorgement of previously received funds, but also massive civil penalties; therefore, rigorous internal audits, compliance processes and proactive engagement with the FCC and Universal Service Administrative Company are highly recommended.

Similarly, as noted above, the FCC has entered into a new partnership with state attorney general offices, focused on privacy and data protection and violations of Section 201 and 202 of the Communications Act. The FCC's Enforcement Bureau and Privacy and Data Protection Task Force will work together with the attorneys general of Connecticut, Illinois, New York and Pennsylvania to examine consumer complaints, subpoena records, interview witnesses, build cases and potentially prosecute violations of the Commission's rules. Expect more thorough and frequent investigations into violations related to consumer protection, including on the basis of the recently expanded breach notification rules, as mentioned above.

The Commission has been regularly issuing notices of apparent liability for providers that have since defaulted on bids in the Rural Digital Opportunity Fund. While the Commission has already issued the notices for the largest defaults, we expect the Commission to continue pursuing defaults through additional notices and potential forfeiture orders to those who fail to pay fines.

Universal Service Fund

The FCC's Universal Service Fund (USF)—which operates on mandatory fees collected from telecommunications consumers and providers, distributing those funds across several subsidy programs for consumers, including Lifeline, E-Rate and Rural Health Care—has faced a slew of legal challenges recently. Lawsuits have alleged that the program is unconstitutional under the non-delegation doctrine, which limits the extent to which federal power can be delegated among federal agencies and other entities. So far though, USF has fared well in the federal courts of appeals. The 6th Circuit rejected one such challenge in May, and the 11th Circuit rejected another in December. A challenge remains pending in the 5th Circuit, however, where an initial panel ruled in favor of the Fund, but an *en banc* review of that panel decision remains pending as of the date of this report. A ruling striking down the program from the 5th Circuit would create a circuit split, potentially teeing up Supreme Court review.

Affordable Connectivity Program

Funding for the Affordable Connectivity Program (ACP), which allows eligible, low-income households to receive discounted internet service, is quickly running out. On January 8, Federal Communications Commission (FCC) Chairwoman Jessica Rosenworcel sent a letter to Congress warning that existing program funds will be exhausted by May 2024 if additional money is not made available, and that the FCC will soon begin taking steps to wind down the program as a result. Termination of the ACP would affect over 1,700 internet service providers who are currently participating in the program, and potentially cause millions of households who rely on ACP funding to lose access to their internet service. Congress has responded by proposing bipartisan legislation that would allocate an additional \$7 billion in funding for the program; however, it remains to be seen whether that legislation will move in time to circumvent imminent wind-down measures.

Proposed Reporting Requirements for Commercial Television Broadcast Station Blackouts

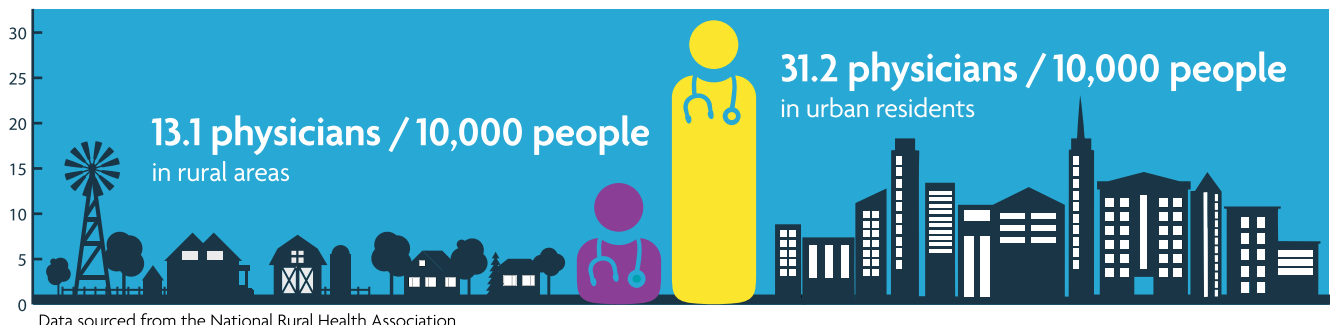
On December 19, 2023, the FCC adopted a new NPRM seeking comment on proposals that would require notification to the Commission when a blackout of a broadcast television station, or stations, occurs on a video programming service offered by a multichannel video programming distributor (MVPD) for 24 hours or more due to a breakdown in retransmission consent negotiations between broadcasters and MVPDs. The proposed reporting framework would require public notice to the Commission of the beginning and resolution of any blackout and submission of information about the number of subscribers affected. The NPRM states that “by requiring timely notification of broadcast station blackouts in a centralized, Commission-hosted database, these proposed reporting requirements would ensure that the Commission and public receive prompt and accurate information about critical MVPD service disruptions involving broadcast stations when they occur.” Comments on the NPRM will be due 30 days after the date of the NPRM’s publication in the *Federal Register*, with reply comments due 30 days thereafter.

Broadband

Rural Health Care

The Commission recently undertook administrative reforms of its Rural Health Care programs to remove some regulatory burdens on participating health care institutions. In the December 2023 Rural Health Care Third Report & Order, the Commission changed its rules to allow health care providers to receive conditional approval of their eligibility so that they may initiate the competitive bidding process for the funding year for which they are likely to be approved. The Commission also streamlined the application process by moving the Telecom Program and the Healthcare Connect Program to a single eligibility form that covers both programs, which must only be submitted once, rather than with each bidding round. Administrative changes were also adopted, such as modifying deadlines so that the program timelines fit together more harmoniously, and simplifying how urban rates are calculated by removing the standard urban distance provision, which is rarely used and complicated the calculation.

Number of Physicians Per Unit of Population in Rural vs. Urban Areas



Data sourced from the National Rural Health Association.

Pole Attachments

Access to mounting assets for transceivers, such as pole attachments, remains an essential bottleneck for the deployment of broadband. The Commission will continue its push to accelerate broadband deployment by moderating disputes over access to utility poles. At its December 2023 meeting, the Commission voted to establish a new Rapid Broadband Assessment Team (RBAT) to review and help resolve disputes. The RBAT can also assess whether a particular case should be placed on an accelerated docket with the Commission, should it ultimately require Commission intervention. The order also amended the Commission's make-ready rules to require pole owners to furnish communications attachers with more information on poles, such as the latest pole inspection reports. Relatedly, in an attached declaratory order, the Commission clarified the rules concerning when pole replacement is necessitated by a new attachment and when replacement is required for any other reason.

The Commission is also seeking comment on further proposed changes, namely whether it should allow faster access by attachers under the self-help rules and whether attachers should be able to use their own contractors to do the self-help and make-ready work when there are no available contractors on the utility's list. Additionally, the Commission is seeking guidance on how the Commission and utilities should process applications submitted in large batches, such as applications for access to hundreds, or even thousands, of poles. Comments and reply comments should be due in the first and second quarters of 2024.

Spectrum

WRC-23 Update

The 2023 World Radiocommunication Conference (WRC-23) concluded in Dubai on December 15, 2023, after four weeks of meetings and deliberations. The WRC is a conference that is held every four years by the International Telecommunications Union to discuss global spectrum policy and to update the International Radio Regulations, a treaty-level instrument governing coordination and use of the radio frequency spectrum and satellite orbital resources. The United States delegation to WRC-23 included nearly 200 participants, including representatives from the Department of Commerce (DOC), Department of Defense (DOD), the FCC, NASA, FAA, Department of Energy (DOE), National Science Foundation, Office of Science and Technology Policy, and the U.S. telecommunications and technology sectors.

Key Highlights from WRC-2023

- Further harmonization of 5G spectrum across the Americas, with an international mobile telecommunications (IMT) identification in the 3.3-3.4 and 3.6-3.8 GHz bands in Region 2, which includes the Americas, Greenland and some eastern Pacific islands. State Department Deputy Assistant Secretary of International Information and Communications Policy Steve Lang praised this development, stating that it would create 500 MHz of contiguous spectrum in the 3 GHz band for 5G.
- Despite some disagreement among member states regarding non-geostationary orbit (NGSO) satellite issues, WRC-23 made some allocations in the 17 GHz range for NGSO and geostationary orbit (GSO) downlinks and harmonization of Ka-band earth stations in motion (ESIM) rules for NGSOs with existing GSO ESIM use rules in the band. WRC-23 also saw agreement on spectrum allocations for GSO and NGSO satellite systems, including inter-satellite links and updated regulatory procedures for NGSOs.
- The U.S. was able to block a proposal from China that would have identified the upper portion of the 6 GHz band for IMT use. While that portion of the band is already approved for unlicensed use domestically, the proposal would have precluded unlicensed use in those frequencies outside of the United States. The State Department hailed this development, stating that it would help “keep the 6 GHz band open for unlicensed deployments without further studies,” enabling countries “to take decisions promptly to make this spectrum available for next generation Wi-Fi deployment.”
- The WRC also reached consensus on the agenda for the next WRC, which is scheduled to take place in 2027 (WRC-27). These included studies that will cover a range of new technologies and services over the next four years, such as identifying new spectrum for 5G and future 6G communications, setting the stage for future communications on the moon, reviewing regulations for aeronautical communications and enabling additional growth in the satellite sector such as communications direct to consumer mobile devices. The next conference will also consider actions to further promote scientific research into space weather and climate change mitigation.

Spectrum/Auction Authority

The FCC's spectrum auction authority, which grants the FCC power to use the competitive bidding process to grant licenses to non-federal entities for commercial wireless communication, expired on March 9, 2023. Since then, the House Commerce Committee approved a Spectrum Reauthorization Act (HR-3565), which would reinstate the Commission's spectrum auction authority through September 30, 2023, but negotiations on the bill have stalled. The bill's prospects were recently called into further question after the DOD issued a confidential report on findings from a study about the potential effects commercial 5G use of the lower 3 GHz band will have on incumbent military systems. DOD held a classified briefing for some lawmakers about the findings just before the Thanksgiving recess. While lawmakers are still digesting the report, some have suggested that DOD's findings may complicate Congress's ability to authorize an auction of lower 3 GHz spectrum. Since the Spectrum Auction Reauthorization Act contains a key provision calling for an auction of lower 3 GHz spectrum, proceeds from which would be used to fund several telecommunications projects such as NG-911 and the Secure and Trusted Communications Networks Act Reimbursement Program, this development could send lawmakers back to the drawing board. Senate Commerce Committee Ranking Member Ted Cruz (R-TX) has already introduced an alternative bill called the Spectrum Pipeline Act of 2023, which would reinstate the FCC's general spectrum auction authority through September 30, 2027, and mandate the National Telecommunications Information Administration (NTIA) to identify within two years at least 1500 MHz of spectrum for nonfederal and shared use. Senate Communications Subcommittee Ranking Member John Thune (R-SD) is partnering with Cruz on the bill.

In the meantime, President Biden has signed a stopgap measure called the 5G Spectrum Authority Licensing Enforcement Act, which gives the FCC temporary authority for 90 days to issue T-Mobile and other winning bidders the licenses they won in the 2.5 GHz auction in 2022. As House Communications Subcommittee Chairman Bob Latta (R-OH) noted, these licenses "have been locked up since" the FCC's auction authority expired in March, and have yet to be deployed for the benefit of consumers despite having already been paid for by winning bidders.

House Oversight Hearing

On November 30, 2023, the House Energy and Commerce (E&C) Committee's Subcommittee on Communications and Technology held a hearing titled "Oversight of President Biden's Broadband Takeover," led by Rep. Bob Latta (R-OH) and Rep. Cathy McMorris Rodgers (R-WA). All five FCC commissioners served as witnesses at the hearing.

The House Subcommittee raised several recent FCC and broadband-related issues to address at the hearing, including net neutrality, digital discrimination, the Universal Service Fund program, the ACP, rip and replace, spectrum auctions and robocalls. The hearing took a partisan stance, with Republican members protesting the FCC's "heavy-handed regulatory approach" toward key issues like net neutrality implementation and digital discrimination enforcement, and Democratic members arguing for a larger footprint for broadband access programs and support for the current FCC's regulatory trajectory. FCC Commissioners fielded questions on all of these topics, advocating for legislation on items like the FCC's spectrum authority and providing further information on FCC initiatives and rulemakings.



NTIA and the BEAD Program

National Spectrum Strategy

In November 2023, the Biden administration released its [National Spectrum Strategy](#), which is aimed at modernizing spectrum policy and management and driving innovation in spectrum usage, accompanied by a [Presidential Memorandum](#) to the heads of the various executive branch departments and agencies directing implementation of the Strategy. Publication of the Spectrum Strategy followed many months of NTIA coordination with the FCC, public listening sessions, Tribal Nation consultations, meetings with stakeholders, consideration of written comments and guidance from federal agencies, and government-only listening sessions.

Four Pillars of “Essential Actions”

Pillar 1

A Spectrum Pipeline to Ensure U.S. Leadership in Advanced and Emerging Technologies: To further this goal, NTIA will engage in an in-depth study, within two years, of 2,786 MHz of spectrum for possible repurposing in the 3.1-3.45 GHz, 5.03-5.091 GHz, 7.125-8.4 GHz, 18.1-18.6 GHz, and 37.0-37.6 GHz bands.

Of note, NTIA Administrator Alan Davidson has since stated, in a hearing in Congress before the House Communications and Technology Committee, that DOD has concluded that it cannot share the lower 3 GHz band with commercial users, as had been floated. Administrator Davidson stated that DOD did “not see a way forward” on sharing at present.

Pillar 2

Collaborative Long-Term Planning to Support the Nation’s Evolving Spectrum Needs: This pillar aims to create a process for long-term spectrum allocation decision-making—a “national spectrum planning process”—that involves broad input from various private stakeholders and government agencies that require spectrum to deliver essential products and services.

Pillar 3

Unprecedented Spectrum Innovation, Access and Management Through Technology Development: This pillar encourages spectrum use innovation and technology development to support the United States’ spectrum leadership. NTIA will engage in a “moonshot” effort spanning the next 12-18 months to advance spectrum access by creating spectrum testbeds, facilitating the publication of a national spectrum research and development plan, and supporting private sector research and development.

Pillar 4

Expanded Spectrum Expertise and Elevated National Awareness: This pillar seeks to “foster spectrum expertise and awareness” by creating a National Spectrum Workforce Plan that can support development of a modernized, skilled and diverse workforce intended to fill the operational, technical and policy roles in the spectrum ecosystem. The Spectrum Strategy also outlines an initiative to educate policy-makers and the public regarding spectrum decisions and considerations, as well as the role spectrum has in everyday life.

Next Steps

NTIA will now work with the FCC and other federal agencies to prepare and publish an Implementation Plan within 120 days. The plan will align specific outcomes to the strategic objectives in the four pillars, assigning responsible parties and anticipated timelines for each outcome. NTIA welcomed public input on the plan, with written comments due on January 2, 2024. Although, NTIA staff will generally continue taking meetings while they deliberate.

For Akin’s in-depth analysis of NTIA’s strategy, please refer [here](#).

Broadband Equity, Access and Deployment Program

The implementation of the \$42.5 billion Broadband Equity, Access and Deployment (BEAD) Program is well underway and now is an excellent time for broadband providers and their suppliers to make their voices heard in the states and territories receiving funding. NTIA announced funding amounts allocated to each of the participating states and territories (“eligible entities”) in June 2023, and those entities soon turned to crafting initial proposals for the distribution and use of awarded funds.

Following NTIA’s approval of an eligible entity’s initial proposal, the entity will receive the first 20% of its funds. Next, each entity must run (i) a challenge process in which local governments and other entities can dispute characterizations of different areas as unserved or underserved, and (ii) a competitive subgrantee process through which entities will distribute funds to ISPs, government entities and nonprofits. At the conclusion of these processes, entities will submit their results to NTIA and, upon approval, will receive the remainder of their funds.

You can follow along with states’ progress through the program [here](#). As of this writing, all eligible states/territories have submitted their full initial proposals to NTIA, which is in the process of reviewing and providing feedback. On December 15, 2023, Louisiana became the first state to receive NTIA approval of its second volume and thus its full initial proposal. Louisiana will begin distributing funds in early 2024, whereas most eligible entities are expected to begin doling out funding in late 2024 and continue through 2025.

NTIA Oversight Hearing

On December 5, the House E&C Committee’s Subcommittee on Communications and Technology held a hearing titled “Oversight of the National Telecommunications and Information Administration,” led by Rep. Bob Latta (R-OH) and Rep. Cathy McMorris Rodgers (R-WA). Alan Davidson, the NTIA Administrator, served as a witness at the hearing.

Members of Congress raised issues including broadband programs authorized by the IIJA and the Consolidation Appropriations Act of 2021, the National Spectrum Strategy, the Innovation Fund and the First Responder Network Authority at the hearing. Administrator Davidson fielded questions related to the BEAD program, spectrum policy and strategy and the ACP. Democrats on the Committee targeted issues like funding running out for the ACP and BEAD, while Republican members questioned whether programs like BEAD would subject providers to rate regulations to ensure low cost. Committee members also sought further information on spectrum studies, like the DOD report on using the lower 3 GHz band for 5G, and identifying spectrum bands that can be opened.



Broadband Funding Programs

As of May 2023, the total count of federally administered programs to increase broadband access, including funding specifically for broadband and broadband-adjacent programs, is 133 programs across 15 agencies. Following is a high-level overview of notable ongoing programs in addition to those discussed in detail in the previous section.



The Public Wireless Supply Chain Innovation Fund

The [Public Wireless Supply Chain Innovation Fund](#) is a 10-year grant program funded through the CHIPS Act to accelerate the development and adoption of open and interoperable wireless networks. First round of funding is focused on promoting and improving the testing and evaluation ecosystem for these technologies, as well as supporting testing methods to research and development (R&D).

- **Administering Agency:** NTIA.
- **Eligible Recipients:** Private companies, nonprofits, institutions of higher education, industry groups and consortia including two or more such entities.
- **Eligible Services:** The first phase funding is available for testing and evaluation and testing methods R&D for Open RAN technologies.
- **Total Funding:** \$1.5 billion.
- **Timeline:** Funds will be disbursed over a 10-year period in multiple phases. Applications for the first phase were due June 2, 2023, and the first grants were awarded on August 8. Grantees included Northeastern University, NYU and DeepSig Inc. The second Notice of Funding Opportunity is expected in Spring 2024.

The Enabling Middle Mile Broadband Infrastructure Program

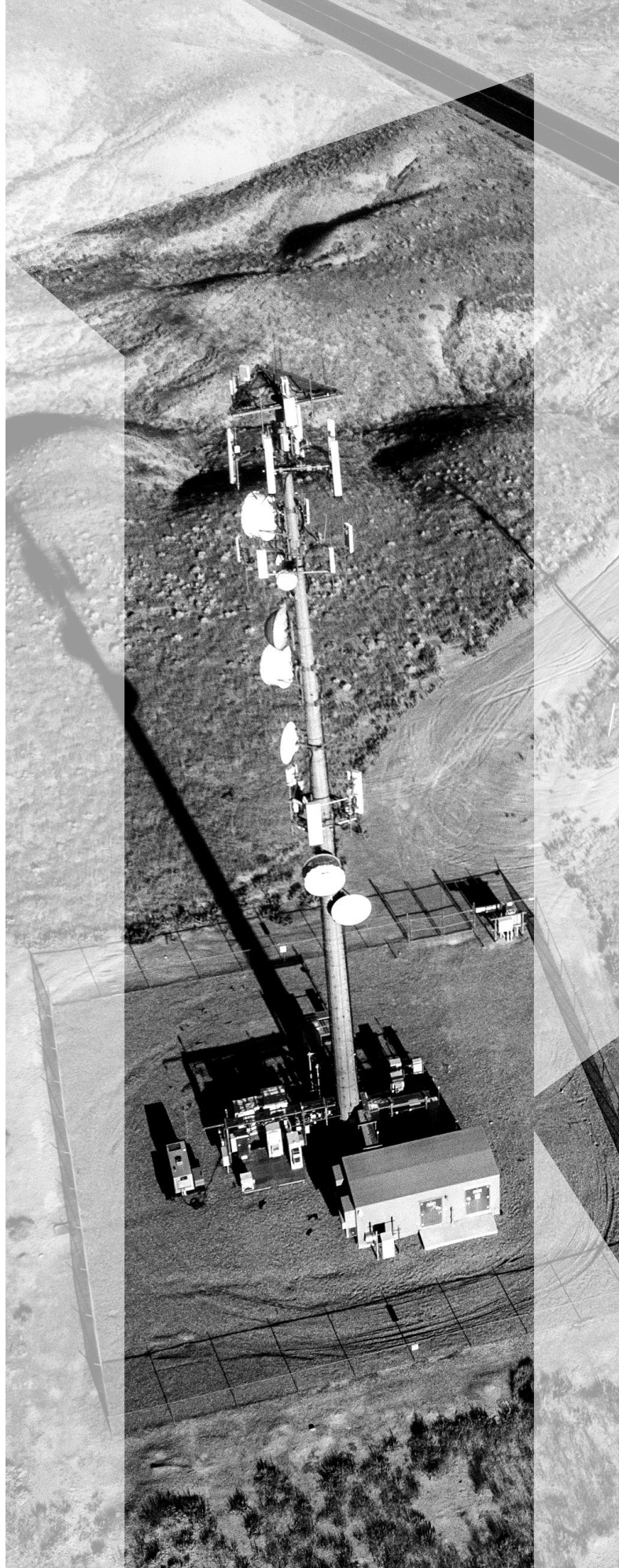
The Enabling Middle Mile Broadband Infrastructure Program offers funding for the construction, improvement or acquisition of middle-mile infrastructure.

- **Administering Agency:** NTIA.
- **Eligible Recipients:** States, D.C., territories, political subdivisions of a state, Tribal governments, utility providers, telecommunications companies or cooperatives, and nonprofits, among others.
- **Eligible Services:** Fiber infrastructure deployment.
- **Total Funding:** \$1 billion.
- **Timeline:** Applications were due on September 30, 2022 and funds were awarded on a rolling basis, with the last set of funds awarded on September 26, 2023. A list of funding recipients and projects is available [here](#). Recipients must submit and receive approval for six-month expenditure plans before initial funds can be distributed. While “major suppliers” (not defined) had to be listed in initial applications to NTIA, it is not too late to reach out to recipients to discuss potential involvement in their programs moving forward.

The Tribal Broadband Connectivity Program

The Tribal Broadband Connectivity Program provides funding for eligible entities to expand adoption and deployment of broadband on Tribal lands and to support distance learning, remote work and telehealth.

- **Administering Agency:** NTIA.
- **Eligible Recipients:** Tribal governments, organizations, colleges and universities, Native Hawaiian Communities and Native Corporations.
- **Eligible Services:** Broadband infrastructure deployment, affordable broadband programs, distance learning, telehealth, digital inclusion efforts and broadband adoption activities. Note that the application requires details on specific activities and proposed service offerings.
- **Total Funding:** \$3 billion.
- **Timeline:** Applications for Round 2 funding were due on January 23, 2024. Round 1 projects are ongoing after initial applications were due September 1, 2021.





The Broadband Infrastructure Program

The [Broadband Infrastructure Program](#) provides grants to fund the deployment of broadband infrastructure in areas lacking broadband service, with an emphasis on rural areas.

- **Administering Agency:** NTIA.
- **Eligible Recipients:** Partnerships between state government entities and providers of fixed broadband service.
- **Eligible Services:** Broadband infrastructure deployment.
- **Total Funding:** \$288 million.
- **Timeline:** Applications were due August 17, 2021, and a total of 14 projects were awarded grants. Projects remain ongoing.

The ReConnect Program

The [ReConnect Program](#) provides funding to construct, improve or acquire facilities and equipment needed to provide broadband in rural areas that lack sufficient access.

- **Administering Agency:** U.S. Department of Agriculture (USDA).
- **Eligible Recipients:** Private companies, state or local governments, U.S. territories or possessions, and federally recognized Tribes.
- **Eligible Services:** Broadband service and infrastructure within eligible service areas.
- **Total Funding:** Funds totaling \$4.56 billion were invested through the program over four rounds. The Biden administration has requested additional program funding for fiscal year (FY) 2024.
- **Timeline:** The program has gone through four funding rounds, starting in FY2019. The fourth and latest round of funding has been announced on a rolling basis starting in April 2023. Grantees include rural telephone companies and Tribes. The Agency has not yet announced if and when the next round of funding opportunity will be available.



The Telecommunications Infrastructure Loan and Loan Guarantee

The Telecommunications Infrastructure Loan and Loan Guarantee provides financing for the construction, maintenance, improvement and expansion of telephone service and broadband in eligible rural areas.

- **Administering Agency:** USDA.
- **Eligible Recipients:** Most entities that provide telecommunications service in qualified rural areas, including state and local government entities, federally recognized Tribes, nonprofits and private companies.
- **Eligible Services:** Funds may be used to finance broadband capable telecom service, including improvements, expansions, construction, and in certain cases, acquisitions and refinancing.
- **Total Funding:** \$690 million.
- **Timeline:** Applications for the program are accepted year-round. A directory of current borrowers by state is [available here](#).

The Digital Equity Capacity Grant Program

The Digital Equity Capacity Grant Program provides funding for state-led efforts on digital equity and inclusion, to be awarded based on state populations and demographics, and the “Digital Equity Plans” submitted by each state.

- **Administering Agency:** NTIA.
- **Eligible Recipients:** States, D.C., territories, federally recognized Tribes, Alaska Native entities and Native Hawaiian organizations that have submitted Digital Equity Plans. Governors will select an “Administering Entity” to administer the program statewide. These entities can be the state itself, a nonprofit, a community anchor institution, a local education agency, etc.
- **Eligible Services:** Digital literacy training, technical support and other projects aimed at promoting adoption and use of high-speed internet, with a focus on reaching certain populations, such as low-income households, veterans, people with disabilities and the elderly, among others.
- **Total Funding:** \$1.44 billion.
- **Timeline:** The Capacity Grant Program is one of three programs funded by the Digital Equity Act. First, states were required to submit Digital Equity Plans to NTIA by July 12, 2022. NTIA announced planning grant awards on a rolling basis through summer 2023. States are now in a one-year planning period, during which they will use their planning grants to develop proposals for the Capacity Grant Program. Applications for the Capacity Grant Program are expected to open in early 2024, though no date has yet been announced. The program will run for five years.

The Digital Equity Competitive Grant Program

The [Digital Equity Competitive Grant Program](#) provides funding for projects promoting the development of digital skills, digital inclusion activities, and increased adoption of broadband among certain populations.

- **Administering Agency:** NTIA.
- **Eligible Recipients:** Private- and public-sector entities, as well as nonprofits.
- **Eligible Services:** Projects intended to “advance digital equity and engage in digital inclusion activities.” More details will become available when the Notice of Funding Opportunity is released closer to the program’s start in 2025
- **Total Funding:** \$1.25 billion.
- **Timeline:** The Competitive Grant Program is the last of the three Digital Equity Act Programs, and unlike the Planning and Capacity Grants, will be open to private and non-government entities. Applications are expected to open in early 2025. The program will run for five years.

The Emergency Connectivity Fund

The [Emergency Connectivity Fund](#) provides schools and libraries with the tools necessary to support remote learning.

- **Administering Agency:** FCC and Universal Service Administrative Company.
- **Eligible Recipients:** Schools, libraries, consortia of schools and libraries, and Tribal libraries.
- **Eligible Services:** Wi-Fi hotspots, modems, routers, connected devices, and commercially available broadband service that provides a fixed or mobile broadband connection for off-campus use; specific funding plan required.
- **Total Funding:** \$7.17 billion.
- **Timeline:** There were three application phases. The filing window for the third round of funding closed on May 13, 2022. Awardees can apply for funding of purchases of eligible equipment and services until the program sunset date of June 30, 2024.

The Connecting Minority Communities Pilot Program

The [Connecting Minority Communities Pilot Program](#) provides grants to support purchases of broadband service and equipment, or to hire and train information technology personnel.

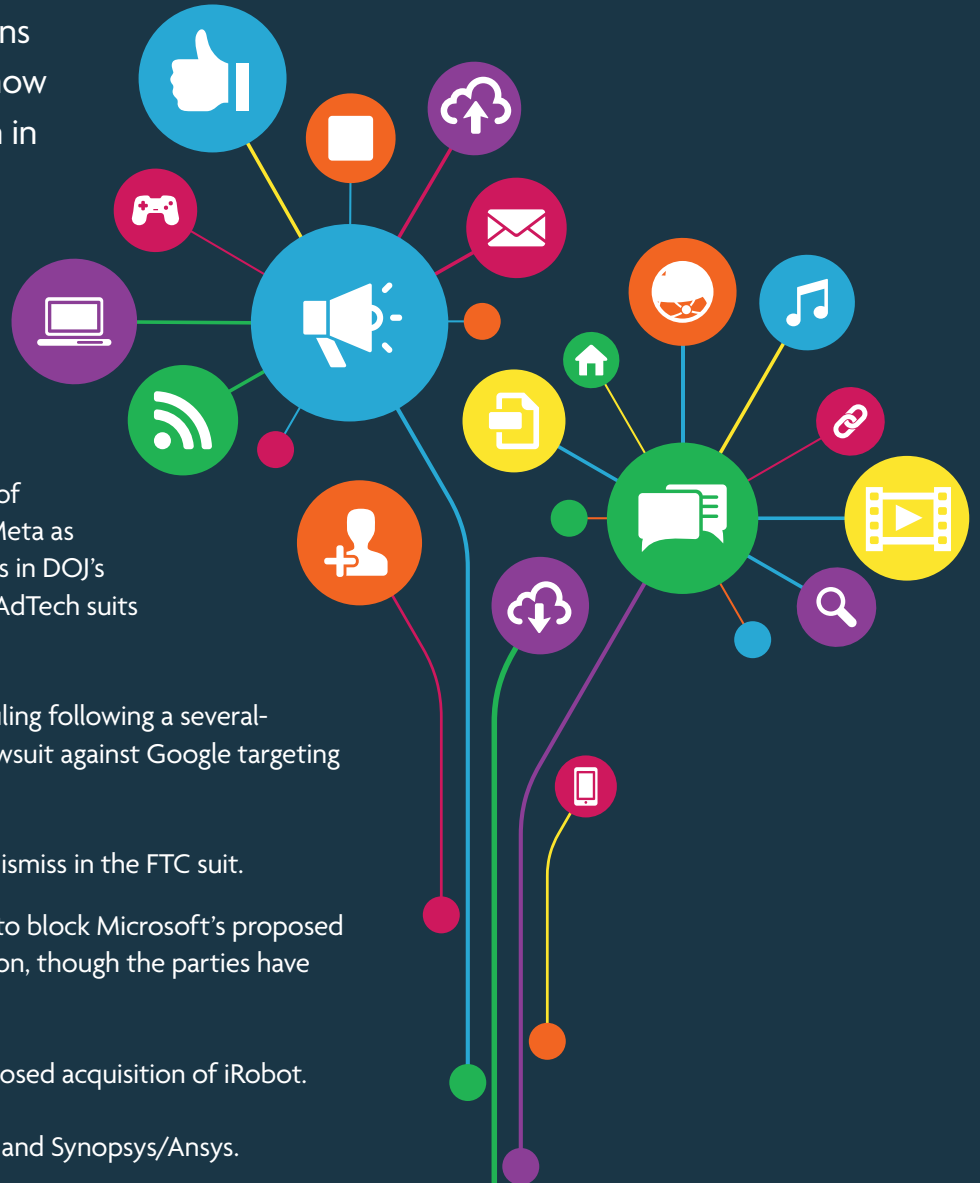
- **Administering Agency:** NTIA.
- **Eligible Recipients:** Historically black colleges and universities, Tribal colleges and universities, and minority serving institutions.
- **Eligible Services:** Broadband internet access service; eligible equipment such as Wi-Fi hotspots, modems, routers or connected devices; hiring and training IT personnel.
- **Total Funding:** \$268 million.
- **Timeline:** Applications for the program were due December 1, 2021, with the first grants awarded on July 22, 2022. All funding for the program was awarded by February 22, 2023. The program is currently in post-award phase, with NTIA monitoring and offering post-award assistance to [93 awardees](#) for ongoing projects.

Antitrust Focus on Big Tech

2023 provided a lot of excitement on the antitrust front in the TMT space, including two lawsuits brought by the DOJ Antitrust Division against Google, an FTC loss at the district court level in its suit to block Microsoft's bid to buy Activision (now on appeal), a loss by the FTC in its attempt to stop Meta's acquisition of Within, a new and long-anticipated suit against Amazon by the FTC, and new merger guidelines that the antitrust agencies will rely on in reviewing proposed mergers. Coming into 2024, Hewlett Packard Enterprise (HPE) has announced an acquisition of enterprise network competitor Juniper in a bid to create a more formidable opponent for CISCO, and Synopsys has announced its plan to buy engineering software company Ansys. How the agencies view these transactions will likely provide insight into how the agencies view competition in the AI space as well as in the enterprise network and software spaces.

Still to come are:

- 1 Summary judgment ruling in the FTC's lawsuit seeking divestiture of Instagram and WhatsApp from Meta as well as summary judgment rulings in DOJ's and the state attorneys' general AdTech suits against Google.
- 2 Closing arguments and a court ruling following a several-months-long trial in DOJ's first lawsuit against Google targeting its search business.
- 3 Ruling on Amazon's motions to dismiss in the FTC suit.
- 4 Final resolution of the FTC's suit to block Microsoft's proposed \$69-billion acquisition of Activision, though the parties have already closed their transaction.
- 5 FTC's decision on Amazon's proposed acquisition of iRobot.
- 6 Agency decisions in HPE/Juniper and Synopsys/Ansys.



If the FTC prevails in its lawsuit against Meta seeking divestiture of Instagram and WhatsApp over a decade after they were acquired, the decision would be one of the most momentous decisions in antitrust law in at least the last 25 years (if not ever). The trial date is not set. Regardless of when a decision is handed down, it will almost certainly be appealed by the losing party. The parties will submit proposed schedules for summary judgment briefing on February 21, 2024, a day after the end of expert discovery. How Judge Boasberg rules on likely competing summary judgment motions could be determinative. Even if it is not, his decision will potentially provide significant insight into whether he may be willing to enter an injunction requiring a divestiture and, if so, what standard he will apply. It remains to be seen how much Judge Boasberg will be influenced by the D.C. Circuit's decision on an identical case brought by state attorneys general (AG). There, Judge Randolph, writing for a unanimous panel for the D.C. Circuit, affirmed dismissal of the suit on statute of limitations grounds, but along the way described the lawsuit as "old" and "odd," expressing that courts "should proceed cautiously when asked to deem novel products or practices anti-competitive." It ruled that ordering "an injunction breaking up Meta [and] ordering it to divest itself of Instagram and WhatsApp under court supervision, would have severe consequences, consequences that would not have existed if the States had timely brought their suit and prevailed." The statute of limitations at issue in the State case does not apply to the FTC's challenge, but the language of the D.C. Circuit's opinion is particularly friendly to the FTC's late divestiture request.

DOJ also filed a lawsuit against Google seeking divestiture of the company's AdTech businesses (their ad server and their ad exchange services). The suit is in the famous "rocket docket" in the Eastern District of Virginia (EDVA), which means the case is likely to reach resolution even before the state AG suit that is currently pending in the Eastern District of Texas and is set for trial in March 2025. As of this writing, the EDVA case is set for a final pretrial conference on March 15, 2024. Trial is likely to be set a few months after that date, depending on Judge Brinkema's calendar, with summary judgment and Daubert motions being filed in the interim. We expect a resolution in the EDVA case, and appeals filed, before the state AG trial starts in Texas.

In the meantime, DOJ's first lawsuit against Google, primarily challenging Google's ability to negotiate for the position of "default search engine" with various companies, most importantly Apple and Mozilla, completed a several-months-long trial, with closing arguments scheduled for May 2024. As with the Meta rulings referenced above, we expect that any decision will be subject to appeal.

More recently, the FTC brought a long-anticipated lawsuit against Amazon, alleging monopolization of the "online superstore market" via conduct that discourages vendors from offering lower prices outside of Amazon. Amazon filed its motion to dismiss on December 8, and briefing continues as of this writing.

Finally, in the merger space, we are paying close attention to the resolution of the FTC's case against Microsoft/Activision. While the FTC lost at the district court level, it is pursuing an appeal of that decision and arguing that the case is not moot despite the closing of the merger. Success could embolden the antitrust agencies and increase the unpredictability of regulatory review for merging. The FTC has asked for and received additional discovery on the now-combined entity, suggesting that they are planning to continue a post-closing investigation. We are also keeping a close eye on the HPE/Juniper and Synopsys/Ansys transactions, which could be important indications of current agency scrutiny of industries that in the past have not generated substantial merger challenges.

Regulation of Digital Platforms: Section 230 and Social Media

Federal Protection for Internet Service Providers

Section 230 of the Communications Decency Act of 1996, which protects internet platforms from liability for content posted on their sites and related content moderation decisions, has long been described as foundational to the existence of the internet. The Statute itself protects both users and providers of “interactive computer services” from being treated as the “publisher” or “speaker” of content from third parties posted on their platforms, thus shielding them from civil liability for content generated by their users. It also protects providers’ rights to make good-faith content moderation decisions. In recent years though, it has been criticized both for granting “too much” immunity to tech companies and for allowing them excessive leeway in making content moderation decisions.

Many predicted that Section 230 would be gutted or at least narrowed in 2023 after the Supreme Court took a set of sister cases, *Gonzalez v. Google* and *Twitter v. Taamneh*, in which families of victims of terrorist attacks tried to hold social media platforms liable for terrorist content they host. Justice Thomas had long expressed skepticism of the law, raising concerns about its breadth and implications in opinions as recent as 2021. However, even Justice Thomas backed away from his previous stance in oral argument, with both conservative and liberal justices suggesting that Congress might be better suited to address the issue. The Court declined to touch Section 230, holding in an unsigned opinion that its decision in favor of social media companies on a preliminary issue in *Twitter v. Taamneh* meant that the *Gonzalez* plaintiffs had no real case, and thus, there was no need to reach the Section 230 questions they raised. Section 230 remains untouched for now, unless and until the executive or legislative branches move forward on reform.



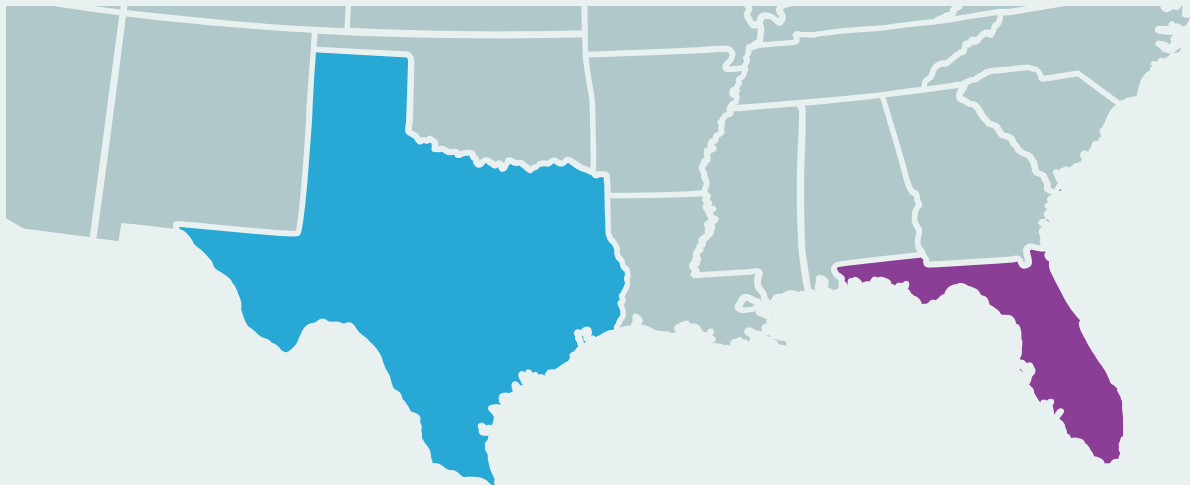
State Efforts

In the absence of federal action, more and more states are opting to address these issues themselves through legislation and litigation. Their efforts have not been without controversy – the Supreme Court recently agreed to review two cases challenging content moderation laws coming out of Florida and Texas.

The Court invited the U.S. Solicitor General to weigh in in January, and she did, taking the position that both laws violate the First Amendment. The Court ultimately agreed to take the cases in October after the 11th Circuit largely upheld an injunction against the Florida Law and the 5th Circuit rejected a challenge to the Texas law, creating a circuit split.

The cases remain in the briefing stage, with amicus briefs due by January 23. We expect oral argument in early 2024. There is generally a delay of at least two to three months between oral argument and the release of an opinion. We therefore expect to see opinions in both cases released in May or June, when the Court releases the bulk of its opinions. The last opinions of each term are usually released by June 30.

In October, 41 states and the District of Columbia announced lawsuits against Meta, parent company of Instagram and Facebook, alleging that those platforms are designed to be addictive and are thus harmful to children’s mental health. The lawsuits follow a 2021 investigation by a bipartisan group of attorneys general into the techniques that social media platforms use to target young users. Tennessee Attorney General Jonathan Skrimetti (R), who co-led a joint lawsuit filed by 33 states, said that Meta was an obvious target to “lead off with,” suggesting that more suits against other tech companies may follow.



Texas’ law prohibits

social media platforms with 50 million or more users from blocking, deleting or “demonetizing” content on the basis of users’ viewpoints. Social media companies have argued that the law prevents them from taking down harmful and violent content, hate speech and disinformation. In May, the Supreme Court voted 5-4 to stay enforcement of the law while challenges worked their way through the courts. The vote, in which three conservatives (Chief Justice Roberts and Justices Kavanaugh and Coney Barrett) joined two liberals (Justices Breyer and Sotomayor) in support of the stay, suggests disagreement on the issue even among the justices’ usual ideological factions.



Florida’s law prohibits

platforms from removing the accounts of Florida political candidates and “journalistic enterprises” and requires them to apply their content moderation practices consistently across their platforms. The law aims to limit platforms’ ability to censor, “deplatform” and “shadow-ban” their users.

Artificial Intelligence

In recent months, the U.S. government has worked to assume the mantle of global leadership on responsible AI regulation. Specifically, the U.S. Department of Commerce (DOC) broadened its export controls on semiconductors used to develop AI foundation models, and the Biden administration published its long-awaited executive order (EO) on AI. Congress has also continued its slate of AI-focused hearings and Senate forums. Meanwhile, the EU came to a political agreement on the AI Act, a first-of-its-kind AI regulation with global reach.



President Biden Signs Executive Order on AI

On October 30, 2023, President Biden signed his [Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence](#). Among other things, the sweeping EO directs over 20 federal agencies to consider the development, use and potential regulation of AI models and systems. Akin's summary of the EO is available [here](#).

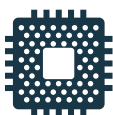
Many federal agencies were given specific directions to advance the EO's objectives, with deadlines for implementation ranging between 30 and 540 days from the date of the EO's publication. Akin provides a detailed breakdown of these deadlines [here](#). For more on the EO, see [Akin's summary](#), [key takeaways for health care and life sciences](#), and [key takeaways for cybersecurity and privacy](#).

Notably, on December 20, 2023, the NIST issued a [Request for Information \(RFI\)](#) to assist in the implementation of its responsibilities under the EO. The RFI requests feedback on (1) generative AI risk management, AI evaluation and red-teaming; (2) synthetic content creation, detection, labeling and auditing; and (3) topics related to the development and implementation of AI-related consensus standards, cooperation and coordination, and information sharing. Comments must be received on or before February 2, 2024.

Further, NIST issued guidance for employing differential privacy as a privacy-enhancing measure, pursuant to the AI EO, which called for an evaluation of "the efficacy of differential-privacy-guarantee protections, including for AI." The agency was accepting public comments until January 25, 2024.

NIST also recently convened a virtual workshop to examine secure software development practices for AI models, to inform the agency's mandate under the AI EO to "develop[p] a companion resource to the SSDF to incorporate secure development practices for generative AI and for dual-use foundation models."

Looking to the White House, on December 12, 2023, the Office of Management and Budget (OMB) convened the first meeting of the Chief AI Officers Council, which was created by the AI EO and is chaired by OMB and vice-chaired by the White House Office of Science and Technology Policy (OSTP).



Department of Commerce Issues New Export Controls on Semiconductors

On October 17, 2023, the DOC's Bureau of Industry and Security (BIS) released three rules amending the Export Administration Regulations (EAR) that significantly build on BIS's October 7, 2022, semiconductor controls and add several parties to the Entity List. Akin's full write-up of these rules is available [here](#).

Notably, these controls expand existing controls on advanced computing integrated circuits (ICs) that are particularly capable of training large-scale AI systems. These controls are targeted, in large part, at inhibiting the development of “frontier” AI models in the People’s Republic of China (PRC). In its commentary to the rules, BIS states that “[a]dvanced AI models, trained on advanced computing ICs, can be used to improve the design and use” of “weapons of mass destruction, advanced weapons systems, and high-tech surveillance applications that create national security concerns, including through their use in exascale supercomputing[.]” BIS also states that “[t]he PRC seeks to use advanced computing ICs and supercomputing capacity in the development and deployment of these AI models to further its goal of surpassing the military capabilities of the United States and its allies.” The public comment period for the rules closed on December 18, 2023.



FCC Announces Notice of Inquiry Regarding Robocalls

On November 15, 2023, the FCC adopted a new Notice of Inquiry (NOI) seeking comments on AI’s ability to halt the increase of unwanted and illegal robocalls and robotexts. As part of its efforts to protect consumers from unwanted calls under the Telephone Consumer Protection Act (TCPA), the FCC seeks feedback on how AI could, among other things, be used to:

- **Protect consumers** through more precise automated messages from legitimate callers.
- **Analyze and block scam** and other unwanted calls.
- **Detect unwanted or fraudulent traffic** before it reaches consumers.
- **Assist callers** with ensuring compliance.
- **Improve accessibility** of calls for persons with disabilities.

The NOI also seeks feedback on AI risks, such as its use in illegal, fraudulent or otherwise unwanted calls, and whether AI could make consumers more susceptible to fraudulent calls. Beyond information gathering, the NOI further requests comments on steps that the FCC should take on AI, with particular focus on voice cloning and whether consumers should be notified when interacting with AI.

The NOI was adopted on November 15, 2023. Comments were due December 18, 2023, and reply comments were due on January 16, 2024. Following the NOI, the FCC may issue an NPRM or conclude the NOI.

DHS Publishes First AI Roadmap

On November 14, 2023, the U.S. Department of Homeland Security’s (DHS) Cybersecurity and Infrastructure Security Agency (CISA) published its first Roadmap for Artificial Intelligence. The roadmap’s release comes a month after President Biden’s AI Executive Order called on the DHS to increase its responsibility in leading global efforts on AI safety standards. CISA’s Director Jen Easterly states that the roadmap is an overlap of AI, cyber defense and critical infrastructure, which will advance the agency’s goal of promoting “the beneficial uses of AI to enhance cybersecurity capabilities; ensure AI systems are protected from cyber-based threats; and deter the malicious use of AI capabilities to threaten the critical infrastructure Americans rely on every day.”

The AI roadmap contains five lines of effort for CISA, including:



Using AI-enabled software tools to responsibly support its mission.



Assuring AI systems are secure by design, develop best practices and promote adoption across the government and private sector.



Protecting critical infrastructure from malicious use of AI by assessing threats and recommending mitigation strategies, in part by establishing a Joint Cyber Defense Collaborative (JCDC) website focused on AI threats, vulnerabilities, and mitigation.



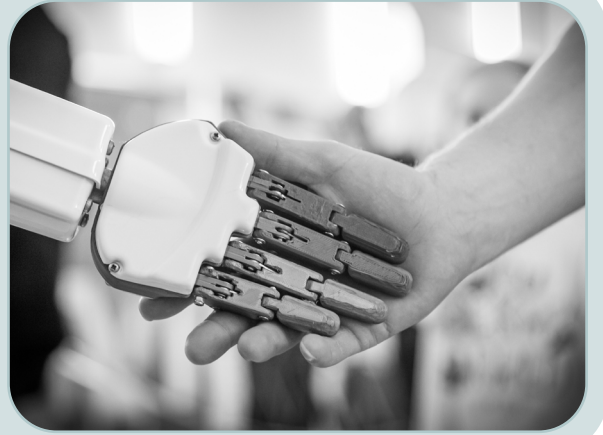
Contributing to key interagency, international and public AI efforts such as developing policy.



Educating and recruiting to ensure AI expertise within CISA’s workforce.

AI Provisions in the National Defense Authorization Act

On December 22, 2023, President Biden signed into law the National Defense Authorization Act (NDAA) for fiscal year 2024. The NDAA includes several provisions regarding AI, including policy oversight, a competition for developing technology to detect the use of generative AI and programs to investigate and adopt AI for specific needs. For more information and an overview of key provisions of interest to TMT companies, see Akin's coverage [here](#).



“Group of Four” Respond to AI Executive Order; Continue Additional AI Insight Forums

The Biden administration's AI EO arrived on the heels of Senate Majority Leader Chuck Schumer's (D-NY) second “AI Insight Forum,” where the Majority Leader outlined the need to provide for \$32 billion in annual federal investment to enable the U.S. to lead in safe innovation.

Following the AI EO's release, Leader Schumer and Sens. Mike Rounds (R-SD), Martin Heinrich (D-NM), and Todd Young (R-IN) (collectively, the “Group of Four”) met with President Biden to discuss a path forward on AI legislation. Leader Schumer said the meeting was constructive and focused on bipartisanship and investment, noting that the lawmakers will continue to closely coordinate with the White House. Sen. Rounds said the meeting focused on both regulating and furthering U.S. leadership in AI, with the goal of bringing talent to the U.S. and enhancing innovation.

Following the second AI Insight Forum, the Group of Four convened seven additional forums to close out the end of the year:

Third Forum

- *Examining Workforce Considerations* (November 1, 2023): The third forum focused on how AI will affect the workforce across a wide range of industries. It included representatives from leading labor unions, such as the Communications Workers of America (CWA) and the International Brotherhood of Electrical Workers (IBEW), which echoed the calls to protect workers from displacement, as well as upholding collective bargaining rights and allowing union contracts. The full list of speakers, and their statements, is available [here](#).

Fourth Forum

- *High-Risk Applications* (November 1, 2023): The fourth forum, which followed the release of President Biden's executive order on AI, focused on AI's impact on high-risk applications such as health care and finance and explored how developers can mitigate potential harms regarding algorithmic bias and civil rights/discrimination laws. Participants discussed the risks and opportunities of AI. The full list of speakers, and their statements, is available [here](#).

Fifth Forum

- *Democracy/Elections* (November 8, 2023): The fifth forum focused on democracy and elections. Leader Schumer noted the influx of political ads being manipulated by deepfakes. He pointed to the Protect Elections from Deceptive AI Act ([S. 2770](#)) and the REAL Political Advertisements Act ([S. 1596](#)) as potential remedies. Moreover, the forum continued the focus on AI's impact on civil rights through the lens of civic participation and addressed content provenance standards, such as watermarking AI-generated content. Following the forum, Leader Schumer emphasized the importance and timeliness of maintaining the integrity of elections and democracy. The full list of speakers, and their statements, is available [here](#).

Sixth Forum

- *Privacy/Liability* (November 8, 2023): At the sixth forum, which focused on privacy and liability, Leader Schumer and Sen. Young led the privacy-focused panel, while Sens. Rounds and Heinrich led the liability discussion. Participants, including those from Public Knowledge and the Information Technology and Innovation Foundation (ITIF), broadly reiterated the need to enact a comprehensive federal privacy law. In the absence of such legislation, the Center for Democracy and Technology (CDT) outlined the need for any AI legislation to, at a minimum, encompass protections that would address the privacy harms created and exacerbated by use of AI. The full list of speakers, and their statements, is available [here](#).

Seventh Forum

- *Transparency/IP Protections* (November 29, 2023): The seventh forum was centered around transparency in AI and the intellectual property (IP) protections that creative fields should be afforded. Regarding IP rights for creative fields, lead entertainment associations debated how the government should approach regulations for digital image, voice and likeness rights, and leading journalism associations warned attendees about large-language models (LLMs) being a catalyst of misinformation and disinformation. Leader Schumer concluded the forum by echoing the calls of attendees to protect American companies' IP, enforce transparency in the training data of AI systems, and expand the Biden administration's EO to address disclosure requirements. The full list of speakers, and their statements, is available [here](#).

Eighth Forum

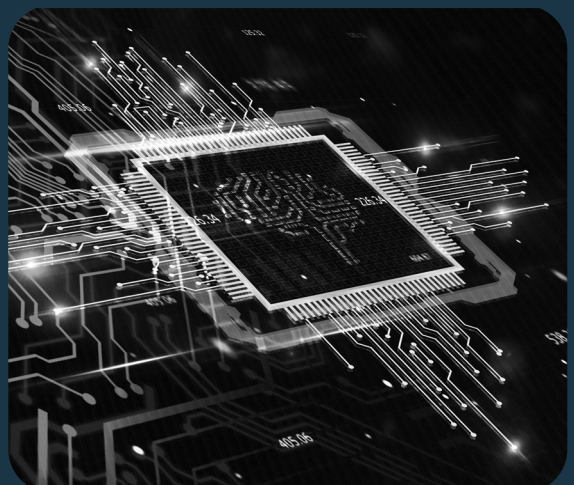
- *Doomsday Scenarios* (December 6, 2023): The eighth forum focused on “doomsday scenarios,” discussing all risks associated with the development and deployment of AI. Leader Schumer focused his questions on artificial general intelligence; whether it was achievable, and whether that should be the biggest concern in the case of doomsday scenarios. In addition to the Group of Four, Sens. Tammy Baldwin (D-WI) and Alex Padilla (D-CA) both attended the forum. The full list of speakers, and their statements, is available [here](#).

Ninth Forum

- *National Security* (December 6, 2023): The ninth and final forum encompassed AI's intersection with national security, and how AI can be maximized to bolster America's military capabilities. Leader Schumer emphasized the importance of leading in competition with respect to China, as well as utilizing AI systems for defense capabilities. Participants also discussed the need to establish an AI-literate workforce, maintain the talent pipeline, enhance the clearance process and create new pathways for digital workers. The full list of speakers, and their statements, is available [here](#).

Sen. Thune Unveils AI Certification Bill

On November 15, 2023, Sen. John Thune (R-SD) [unveiled](#) his long-awaited AI certification bill – the [Artificial Intelligence Research, Innovation and Accountability Act](#) (one-pager available [here](#)). The legislation outlines content provenance and detection standards to be developed by NIST. NIST is also tasked with developing recommendations for federal agencies on guardrails for “high-risk” AI systems. The legislation provides new definitions of “generative,” “high-impact” and “critical impact” systems, with distinctions made between developers and deployers. The bill requires companies deploying “critical-impact AI” to conduct risk assessments and submit transparency reports to the Commerce Department. The bill is co-sponsored by Sens. Amy Klobuchar (D-MN), Roger Wicker (R-MS), John Hickenlooper (D-CO), Shelley Moore Capito (R-WV) and Ben Ray Lujan (D-NM).





Senate Lawmakers Introduce Standalone AI Bills

Deepfakes

Sen. Chris Coons (D-DE), Chair of the Senate Judiciary Subcommittee on Intellectual Property, and Sens. Marsha Blackburn (R-TN), Amy Klobuchar (D-MN) and Thom Tillis (R-NC) have unveiled a [discussion draft](#) of their Nurture Originals, Foster Art, and Keep Entertainment Safe (NO FAKES) Act, which aims to protect the voice and visual likeness of all individuals from unauthorized recreations from generative AI. A one-pager on the draft is available [here](#).

In the House, Reps. Maria Elvira Salazar (R-FL), Madeleine Dean (D-PA), Nate Moran (R-TX), Joe Morelle (D-NY), and Rob Wittman (R-VA) have introduced a discussion draft of the NO AI Fraud Act. This bill would establish a federal framework to protect Americans' individual right to their likeness and voice against AI-generated fakes and forgeries.

Defense

On October 3, 2023, Sens. Joe Manchin (D-WV) and Mike Rounds (R-SD) introduced a bill to establish the Chief Digital and AI Officer's (CDAO) Governing Council, which would be tasked with providing oversight of the DOD AI priorities ([S. 3004](#)). Both Sens. Manchin and Rounds expressed interest in getting this bill included in this year's National Defense Authorization Act (NDAA).

Bug Bounty Programs

On October 17, 2023, Leader Schumer and Sens. Mike Rounds, Martin Heinrich (D-NM), and Todd Young (R-IN) introduced the Artificial Intelligence Advancement Act of 2023 ([S. 3050](#)), which would establish AI bug bounty programs and require reports and analyses on a variety of AI-use cases.

Transparency

On October 24, 2023, Sens. Brian Schatz (D-HI) and John Kennedy (R-LA) introduced the AI Labeling Act ([S. 2691](#)), which would, among other things, notify consumers when they are interacting with AI-generated content, require developers to disclose such content and create a working group that establishes related standards for social media platforms. Rep. Tom Kean (R-NJ) has introduced a House version of the bill ([H.R. 6466](#)).

Reps. Don Beyer (D-VA) and Anna Eshoo (D-CA) have also introduced the AI Foundation Model Transparency Act of 2023 ([H.R. 6881](#)), which would require entities deploying AI models of a certain size to disclose their training data to avoid copyright violations. Specifically, the bill would (1) direct the Federal Trade Commission (FTC), in consultation with NIST, the Copyright Office, and OSTP, to set

transparency standards for foundation model deployers; (2) direct companies to provide consumers and the FTC with information on the model's training data, model training mechanisms, and whether user data is collected in inference.

Procurement Standards

On November 2, 2023, Sens. Jerry Moran (R-KS) and Mark Warner (D-VA) introduced the Federal Artificial Intelligence Risk Management Act ([S. 3205](#)), which would direct the Office of Management and Budget (OMB) to issue guidance requiring federal agencies to incorporate the NIST AI Risk Management Framework into their AI management efforts. Rep. Ted Lieu (D-CA) plans to introduce companion legislation in the House.

Testing/Evaluation

On October 30, 2023, Sens. Ben Ray Lujan (D-NM), Dick Durbin (D-IL), John Thune (R-SD), Jim Risch (R-ID) and Marsha Blackburn (R-TN) introduced the TEST AI Act ([S. 3162](#)), which would encourage NIST and DOE to develop testbeds for testing and evaluation of AI systems and establish guardrails on the development of AI systems. A one-pager on the bill is available [here](#).

Medicare Fraud

Sen. Mike Braun (R-IN) plans to soon introduce the Medicare Transaction Fraud Prevention Act to utilize AI and machine learning to detect suspicious diagnostic testing and durable medical equipment coverage. Sen. Braun has indicated he is still looking for a Democratic sponsor for the bill prior to introducing it on November 16.

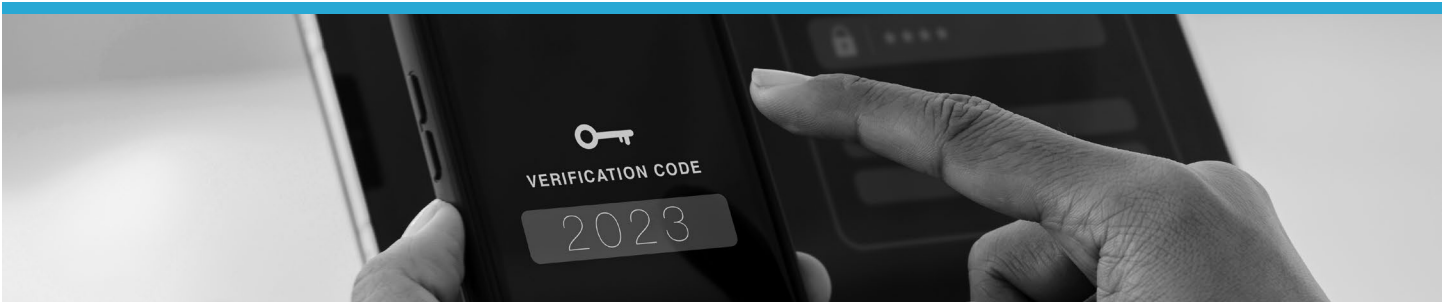
Global Coordination

Rep. Mike Gallagher (R-WI) has introduced [H.R. 6425](#) directing DOD to establish a working group to develop and coordinate an AI initiative among the Five Eyes countries.

Financial Services

Sens. Mark Warner (D-VA) and John Kennedy (R-LA) have introduced the Financial Artificial Intelligence Risk Reduction (FAIRR) Act ([S. 3554](#)), which would require the Financial Stability Oversight Council (FSOC) to (1) coordinate financial regulators' response to threats to the stability of the markets posed by AI; (2) identify gaps in existing regulations, guidance, and exam standards that could hinder effective responses to AI threats; and (3) implement specific recommendations to address such gaps.

[Click here](#) to learn more about Akin's Artificial Intelligence & Machine Learning practice.



House E&C Committee Continues Exploration of AI Across Sectors; Maintains Focus on Privacy

The House E&C Committee continues to explore the role of AI across every sector of the economy, including health care, telecommunications, emerging technologies and energy.

Data/Innovation

- On October 18, 2023, the House E&C Subcommittee on Innovation, Data and Commerce held a [hearing](#) titled, “Safeguarding Data and Innovation: Setting the Foundation for the Use of Artificial Intelligence.” During the hearing, all witnesses and members on both sides of the aisle reiterated the need to build on the Committee’s efforts to advance the American Data Privacy and Protection Act (ADPPA; H.R. 8152) as a foundational step to AI regulation. Witnesses and members also discussed the benefit of increasing the fining authority of the FTC, mandating impact assessments for companies deploying or developing AI and watermarking AI-generated content. A full summary of the hearing is available [here](#).

Energy

- On October 19, 2023, the Committee held a [hearing](#) to examine the use of AI in the energy sector, where Ranking Member Frank Pallone (D-NJ) also reiterated his concerns about the data privacy implications of AI technologies, stating, “I strongly believe that the bedrock of any AI regulation must be privacy legislation that includes data minimization and algorithmic accountability principles. Last year, Chair Rodgers and I worked in strong bipartisan fashion to pass the American Data Privacy and Protection Act out of our Committee by a vote of 50 to 2. I will continue to push for a comprehensive, national federal privacy standard.” In an [op-ed](#) for Bloomberg Law, Rep. Cathy McMorris Rodgers (R-WA), Chair of the House E&C

Committee, and Rep. Jay Obernolte (R-CA), who was tapped by then-House Speaker Kevin McCarthy (R-CA) to lead an informal AI working group, urged passage of comprehensive federal privacy legislation to set the stage for AI regulation.

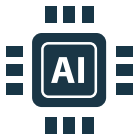
Communications

- The Committee’s Communications and Technology Subcommittee held a [hearing](#) on November 14, 2023, to examine the use of AI technology on communications networks. During the hearing, witnesses and members on both sides of the aisle discussed implementation of the Biden administration’s AI EO. While they noted the EO is a step in the right direction, participants called for concurrent legislative reforms, including disclosures of AI-generated content and algorithmic accountability standards. Committee leaders also reiterated the need for a federal privacy standard. A full summary of the hearing is available [here](#).

Health

- On November 29, 2023, the House E&C Committee’s Health Subcommittee held a [hearing](#) to examine how AI is changing health care. During the hearing, lawmakers on both sides of the aisle recognized that AI would help physicians avoid burnout, navigate workforce shortages in the industry and increase the efficiency of the health care system. Ranking Member Pallone echoed the call for information and privacy protections, especially around medical data.

Following the series of Subcommittee hearings, on December 13, 2023, the House E&C Committee held its first AI [hearing](#) at the Full Committee level, featuring testimony from the [U.S. DOE](#), [U.S. Department of Health and Human Services \(HHS\)](#) and the [Commerce Department](#). During the hearing, Chair McMorris Rodgers and Ranking Member Pallone emphasized the need for the White House and Congress to work together to enact a national privacy standard to set the stage for AI regulation.



Other Congressional Committees Continue Slew of AI-Focused Hearings

Senate/House Homeland Security

On November 8, 2023, the Senate Homeland Security and Governmental Affairs Committee (HSGAC) held a [hearing](#) titled, “The Philosophy of AI: Learning from History, Shaping Our Future.” A summary of the hearing is available [here](#).

On December 12, 2023, the House Homeland Security Committee’s Cybersecurity Subcommittee held a [hearing](#) titled, “Considering DHS’ and CISA’s Role in Securing Artificial Intelligence.” During the hearing, witnesses discussed how to build off of recent federal policy efforts such as President Biden’s AI EO, including engaging with international standards setting bodies, reaffirming the U.S.’s commitment to digital trade standards and ensuring CISA is adequately funded.

On January 10, 2024, (HSGAC) held a hearing on “Harnessing AI to Improve Government Services and Customer Experience.” During the hearing, Chair Gary Peters (D-MI) outlined the need to explore needed changes to the federal procurement framework to better obtain and use capabilities like AI, as well as measures that can be taken in federal procurement to promote competition.

Senate HELP

On October 31, 2023, the Senate Health, Education, Labor and Pensions (HELP) Subcommittee on Employment and Workplace Safety, held a [hearing](#) on “AI and the Future of Work: Moving Forward Together.” During the hearing, Chair John Hickenlooper (D-CO) emphasized the need to support workforce development programs around AI and ensure that programs are inclusive. A summary of the hearing is available [here](#). On November 8, 2023, the Committee convened another AI-focused [hearing](#) on “Avoiding a Cautionary Tale: Policy Considerations for Artificial Intelligence in Health Care.” A summary of the hearing is available [here](#).

Senate Foreign Relations

On November 15, 2023, the Senate Foreign Relations Committee held a [hearing](#) to examine U.S. leadership on AI, featuring testimony from [Nathaniel Fick](#), Ambassador-at-Large of the State Department’s Bureau for Cyberspace and Digital Policy, and [Matthew Graviss](#), the State Department’s Chief Data and AI Officer. During the hearing, Fick reiterated President Biden’s commitment to building on his AI EO and working with Congress to craft bipartisan AI legislation that establishes an enduring domestic policy framework, as well as to working internationally to advance shared views on AI policy.

Senate Aging

On November 16, 2023, the Senate Aging Committee held a [hearing](#) to discuss the role of AI in fraud and scams. Chair Bob Casey (D-PA) voiced concern about the proliferation of deepfakes and their ability to easily dupe consumers and businesses into giving away personal information or money. Ranking Member Mike Braun (R-IN) highlighted his plans to soon introduce the Medicare Transaction Fraud Prevention Act to notify beneficiaries in real time with suspicious purchase alerts. The Ranking Member also outlined the need to avoid “heavy-handed” federal regulations on AI.

Senate Agriculture

On November 14, 2023, the Senate Agriculture Committee held a [hearing](#) titled, “Innovation In American Agriculture: Leveraging Technology And Artificial Intelligence.” During the hearing, Chair Debbie Stabenow (D-MI) underscored the need to pass a Farm Bill that leverages technology and AI and invests in related research.

House Science

On October 18, 2023, the House Committee on Science, Space, and Technology held a joint subcommittee [hearing](#) with the Subcommittee on Investigations and Oversight and the Subcommittee on Research and Technology, titled “Balancing Knowledge and Governance Foundations for Effective Risk Management of Artificial Intelligence.” During the hearing, Members called for increased resources for the research and development of AI systems, with a focus on risks and benefits.

House/Senate Judiciary

On October 19, 2023, the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet held a [hearing](#) titled “Intellectual Property and Strategic Competition with China: Part III – IP Theft, Cybersecurity, and AI.” During the hearing, witnesses broadly called on the federal government to bolster its investment in AI to avoid ceding leadership in AI to U.S. adversaries. A summary of the hearing is available [here](#).

On January 10, 2024, the Senate Judiciary Committee held a hearing on “Oversight of A.I.: The Future of Journalism.” During the hearing, media executives and academic experts discussed concerns related to AI’s contributions to the decline of journalism and raised alarms about the dangers of AI-powered misinformation. Subcommittee Chair Richard Blumenthal (D-CT) outlined the need to explore a range of solutions, including licensing for content use, an AI framework for transparency and copyright use, clarification that Section 230 immunity does not apply to claims based on generative AI, and updates to antitrust laws.

House Oversight

On December 6, 2023, the House Oversight and Accountability Committee’s Cybersecurity, Information Technology and Government Innovation Subcommittee held a [hearing](#) to examine White House policy on AI. During this hearing, Subcommittee Chair Nancy Mace (R-SC) discussed the OMB’s draft guidance on government use of AI, expressing skepticism that federal agencies will keep to the timetable of actions outlined in both the EO and OMB guidance. Subcommittee Ranking Member Gerry Connolly (D-VA) reflected on the need for the U.S. to maintain its competitive edge in AI over China.



EU Agrees on AI Act Following Marathon Trilogue Negotiations

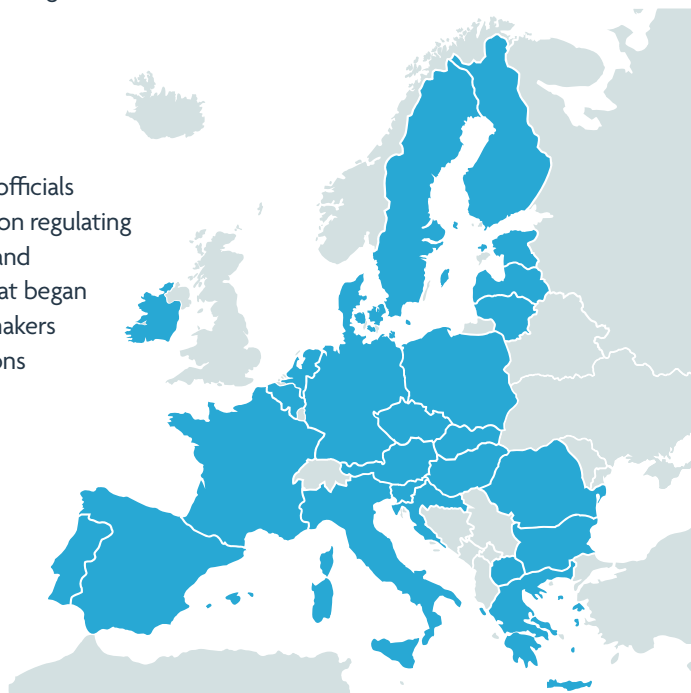
Outside of U.S. federal and congressional updates, on December 8, 2023, EU officials [reached an agreement](#) on the AI Act, the world’s first comprehensive legislation regulating AI. The trilogue (discussions between the European Parliament, Commission and Council) resulted in a political agreement following marathon negotiations that began on December 6 and culminated in a deal late on December 8. Although lawmakers reached an agreement, the final draft is not yet available because the provisions and technical details still need to be drafted and finalized.

The EU Parliament’s overview of the agreement indicates that several sticking points were resolved and the Act will include:

- Bans on systems imposing unacceptable risk, such as social scoring, user manipulation, untargeted scraping of facial images from the internet or CCTV footage, and certain emotion recognition systems.
- Strict obligations for high-risk systems, classified as high-risk due to their significant potential harm to health, safety, fundamental rights, environment, democracy and the rule of law, including a right for citizens to receive explanations about decisions based on high-risk AI systems that impact their rights.
- A two-tiered approach to general AI systems, including enhanced transparency requirements applicable to high-impact models that may present systemic risk.
- Limits on law enforcement use of biometrics with narrow exceptions.
- Support for innovation, such as regulatory “sandboxes” and “real-world-testing.”
- Fines up to 7% of global turnover for non-compliance.

We anticipate the final draft will be available in early 2024, with a vote on the Act likely held in the spring before EU Parliamentary elections in June 2024.

To read more on Akin’s preliminary coverage on the EU AI Act, refer [here](#).



Space & Satellite Regulation and Policy

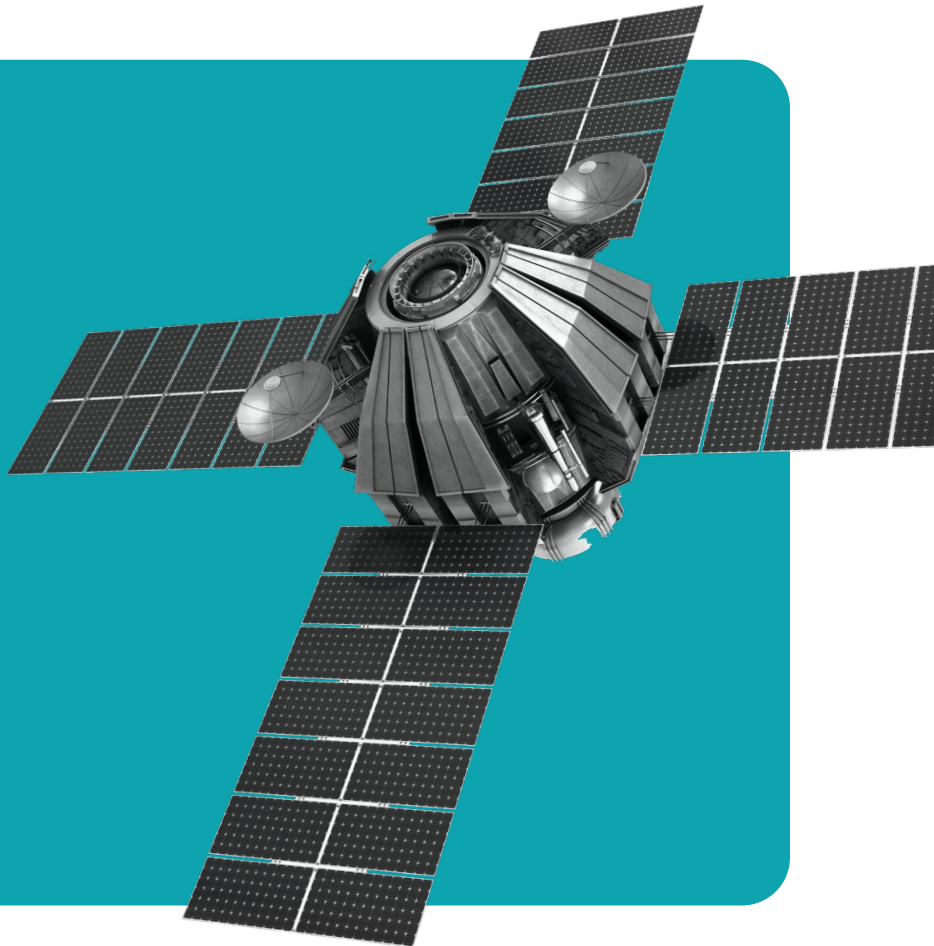
The FCC and other agencies continue to engage with the space and satellite area as the growth of new satellite constellations and innovative commercial space operations necessitates a heightened regulatory focus. For example, the new [FCC Space Bureau](#) emphasizes both streamlining outmoded regulatory models and ensuring that the authorization of more satellites does not reduce safety or competition in space.

In preparation for a sunset of the existing regulatory learning period governing private human spaceflight, the FAA Office of Space Transportation (FAA-AST) is updating its human spaceflight regulations. A new 25-member [Human Spaceflight Occupant Safety Aerospace Rulemaking Committee \(SpARC\)](#) was established in July 2023.

Congress and the White House are working on several bills and legislative proposals to update the regulation of private space activities. The bills and proposals cover a range of issues, including on-orbit operations, launch and reentry, and remote sensing satellites.

New FCC Space Bureau

In October 2023, the new FCC Space Bureau, led by Julie Kearney, launched its [Transparency Initiative](#) to facilitate easy user access to information about the FCC's licensing requirements for satellite and earth station operations. The Transparency Initiative will issue guidance to license applicants to make the licensing process for space stations and earth stations less burdensome. To ease engagement with the Commission, the Space Bureau will provide resources such as answers to frequently asked questions regarding applications, applicant guides and explanatory documents. The first of these documents, with information on space station license processes, terms and costs, was posted in October.



Orbital Debris, Space Traffic Management and Space Sustainability

The ongoing [Space Innovations proceeding](#) continues, with the FCC considering policies to mitigate the risk of orbital debris with comments submitted by several industry players regarding the matter. Expect further action in this proceeding in 2024.

The FCC took its [first space debris enforcement action](#) on October 2, 2023, after investigating DISH for failing to properly de-orbit its EchoStar-7 satellite. DISH must now admit liability, comply with a de-orbit plan and pay a \$150,000 fine. The action comes alongside increased FCC activity in its space and satellite policy efforts.

On October 10, 2023, the U.S. Patent and Trademark Office granted NASA and its inventors a patent for a [novel space traffic management system](#). The technology is a decentralized, service-based architecture that enables automation of space traffic management and coordination. The system functions by offering a conjunction data message that allows spacecraft owner operators to “anticipate and avoid a space traffic conjunction” such as collisions or radio-frequency interference. The application aims to reduce the barriers to operating in space by making the space traffic management functions of the system available as services, thereby reducing the need for organizations to provide relevant expertise internally. Expect NASA and other government entities to begin conceptualizing use of this tool to coordinate civilian and governmental space traffic management, as space continues to increase in congestion with on-orbit satellites and orbital debris.

Spectrum Reforms

The FCC [adopted an NPRM](#) in March 2023 to facilitate integration of satellite and terrestrial networks, proposing a new regulatory framework for Supplemental Coverage from Space (SCS). Following industry trends, satellite operators collaborating with terrestrial service providers could obtain authorization to operate space stations on flexible-use spectrum that is allocated for terrestrial services. The FCC is exploring how SCS could enable expanded network coverage to subscribers on the ground, especially in remote, unserved and underserved areas. Another aim of the proceeding is to increase the availability of emergency communications. Comments in the proceeding were filed on May 12, 2023, and reply comments were due June 12, 2023. Commenters generally agreed that the SCS proposal would benefit the public, but suggested that the FCC could offer limited regulation in the space to maintain flexibility for industry operations. Expect further action in this matter in 2024.

In September 2023, the FCC [adopted new rules](#) intended to ensure spectrum availability for commercial space launches. Provisions of these new rules include a new allocation in the 2025-2110 MHz band for ground-to-launch vehicle telecommand uses necessary to support space launch operations; making the entire 2200-2290 MHz band available for launch telemetry; and establishing a non-exclusive nationwide licensing framework and technical rules to give operators the predictability needed to conduct commercial space launch operations. The FCC is further exploring the potential for additional spectrum bands to support commercial space launch operations.

Satellite Licensing Reforms

The FCC continues engaging with its Facilitating Capabilities for In-Space Servicing, Assembly, and Manufacturing (ISAM) proceeding. Following its [August 2022 NOI](#), the FCC now plans to vote on an [NPRM](#) to gather comments on its proposed framework for licensing ISAM space stations and their various capabilities, which include on-orbit activities like satellite refueling, removing orbital debris, rendezvous and proximity operations, and performing spacecraft inspections and repairs. The NPRM is tentatively scheduled for the Commission’s February 2024 open meeting, with comment dates to be scheduled if adopted. Expect further action on this in 2024 as the FCC receives comments on the NPRM.

On September 21, 2023, the FCC [adopted new rules](#) to expedite processing of space and earth station applications. The rules establish timeframes for placing space and earth station applications on notice for public comment, permit applicants to apply for authority to operate in frequencies in bands where there is not already an international allocation for satellite services, provide flexibility for NGSO licensees to have more than one unbuilt system without facing potential dismissal of their applications, and streamline processing of earth station operators’ requests to add space stations as points of communication.

The White House, through the National Space Council, released a [legislative proposal](#) on November 15, 2023 that would split responsibility for authorizing and supervising novel commercial space activities between the Department of Commerce (DOC) and the Department of Transportation (DOT). Such activities include launches, satellite communications and commercial remote sensing. The proposal assigns oversight of human spaceflight activities to DOT through the Federal Aviation Administration’s (FAA) Office of Commercial Space Transportation, and oversight of uncrewed spacecraft not regulated by DOT to DOC’s Office of Space Commerce.

In November 2023, NTIA [submitted comments](#) in response to the FCC’s NOI regarding missions conducting ISAM that involve Commission licensing and rules. NTIA understands that spectrum demands for ISAM operations are minimal, only spiking for short times during the rendezvous, proximity operations and docking of vehicles, and seeks to explore potential new spectrum allocation for these operations by studying the use of inter-satellite service or the Space Research Service, among other options. NTIA also acknowledges that the FCC and NTIA should monitor how companies develop their ISAM capabilities to determine the degree of spectrum necessary for successful operations. The FCC has not yet issued an NPRM for this matter; this could be

an area that will see updates in the coming year as interested stakeholders continue to engage with the FCC.

On January 10, the FCC Space Bureau [hosted an Open House](#) to discuss earth station licensing requirements. The Open House, held as a part of the Space Bureau's Transparency Initiative, reviewed earth station licensing processes and timelines, answered frequently asked questions, and discussed pre-submitted questions. The Space Bureau has posted documents to clarify the earth station licensing process [here](#).

FAA Office of Space Transportation

In September 2023, the [FAA released an NPRM](#) requiring commercial launch providers to dispose of upper stages from their launches. Under the proposed rule, companies with FAA commercial launch licenses would need to choose from one of five disposal approaches:

- 1 Having the upper stage perform a controlled reentry over an unpopulated region within 30 days of launch.
- 2 Placing the stage into a heliocentric orbit.
- 3 Uncontrolled reentry provided the stage, if left in low Earth orbit (LEO), meets certain risk criteria and will reenter no more than 25 years after launch.
- 4 Placing the stage in a highly elliptical, stable orbit taking up to 200 years to reenter.
- 5 Contracting with a third-party to handle the disposal within five years. The draft rule is subject to a 90-day public comment period.

NOAA's Commercial Remote Sensing Regulatory Affairs

In August 2023, NOAA Commercial Remote Sensing Regulatory Affairs (CRSRA) [announced](#) the modification of operating licenses of multiple commercial satellite systems. These license conditions had previously restricted the operations of the commercial satellites, preventing them from offering their full remote sensing capabilities to the public. On July 19, 2023, the first set of "Tier 3" conditions—imposed on the nation's most capable, unmatched commercial remote sensing systems—permanently expired. NOAA modified the licenses of its Tier 3 licensees to remove

39 individual temporary conditions. At the request of the Secretary of Defense, a small number of temporary Tier 3 conditions were retained to protect national security. These remaining conditions must be re-validated by the Secretary of Defense each year until they are retired.

Notable Legislation

The House E&C Subcommittee advanced multiple space-related bills in March 2023, with two proposing notable overhauls in FCC licensing authorities. The [Secure Space Act](#), also led by Pallone and Rodgers, prohibits the FCC from issuing satellite licenses or related authorizations to untrusted actors—most notably Chinese vendors such as Huawei and ZTE—based on the framework adopted in the Secure and Trusted Communications Network Act. The [Satellite and Telecommunications Streamlining Act](#), led by Rep. Cathy Rodgers (R-WA) and Rep. Frank Pallone Jr. (D-NJ), clarifies the FCC's authority under the Communications Act and gives the FCC defined deadlines for processing satellite licensing applications. This bill did not pass the House of Representatives after a July 2023 motion.

May 2023

Sen. Gary Peters (D-MI) and Sen. John Cornyn (R-TX) reintroduced the [Satellite Cybersecurity Act \(SCA\)](#), which would require the CISA to help protect commercial satellite owners and operators from disruptive cyberattacks. The bill requires CISA to consolidate voluntary satellite cybersecurity recommendations to help companies understand how to best secure their systems, and to develop and make publicly available online resources to ensure companies can easily access satellite-specific cybersecurity resources. The bill will also require the Government Accountability Office (GAO) to perform a study on how the federal government supports commercial satellite industry cybersecurity.

July 2023

House legislators introduced the bipartisan [Space Infrastructure Act](#), which would designate U.S. space systems as critical infrastructure and direct the Secretary of Homeland Security to manage their protection. The bill would initiate a 180-day scoping initiative to properly designate the meaning of "space systems" before establishing a sector-specific agency for coordinating protective measures.

September 2023

House Speaker Rep. Kevin McCarthy (R-CA) introduced a bill to extend current restrictions on the FAA's ability to regulate safety of commercial spaceflight participants. The [Space Transformation and Reliability \(STAR\) Act](#) would extend the “learning period,” limiting safety regulations on people who fly on commercial spacecraft to September 2031. That restriction is set to expire at the end of September 2023, but FAA officials said it may take them several years to develop regulations once the restriction expires.

October 2023

The Senate passed the [Launch Communications Act](#) (S. 1648), which, if enacted, would support access to the electromagnetic spectrum for commercial space launches and commercial space reentries. A similar bill passed the House in July 2023 (H.R. 682) and awaits Senate approval.

The Senate passed the [Orbital Sustainability Act of 2023](#) (ORBITS Act) (S. 447), which would establish a demonstration program for the active remediation of orbital debris, require the National Space Council to develop uniform orbital debris standard practices in order to support a safe and sustainable orbital environment, and require the DOC to create standard practices to coordinate on-orbit space traffic.

November 2023

Representatives in the House of Representatives introduced the [Commercial Space Act of 2023](#) (H.R. 6131). The bill would create a licensing process managed by the DOC's Office of Space Commerce for spacecraft not licensed by other agencies today. H.R. 6131 was marked in the House Science Committee and reported favorably to the House.

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UAS/AAM Update

Federal Aviation Administration

FAA Reauthorization Negotiations are Currently Under Way

The House passed a reauthorization package in July, but the Senate has yet to reach an agreement. Conference committee negotiations are currently underway to reconcile the House and Senate Plans. Congress recently enacted a bill pushing the deadline for reauthorization to March 8—it is now pending the President's signature. Of note, the reauthorization package that passed the House in July would require the FAA to release a Beyond Visual Line of Sight (BVLOS) NPRM within four months of passage and to hire more staff for the UAS Integration Office—a frequent request from the unmanned aircraft system (UAS)/advanced air mobility (AAM) industry.

BVLOS Notice of Proposed Rulemaking Expected August 2024

The FAA's BVLOS Advisory and Rulemaking Committee (BVLOS ARC) released a final report on March 10, 2023. The FAA sought comment in Spring 2023 on various issues related to BVLOS safety, including Detect and Avoid system performance standards, well-clear boundaries for UAS, the use of UTM for strategic deconfliction and shielded operations. Well over 400 comments were submitted. The FAA's staff does not expect to release an NPRM until late summer 2024. Once released, the NPRM is slated to cover topics such as airworthiness for drones up to 1,320 pounds, "fly-by-rule" for common BVLOS missions like infrastructure inspections and package delivery, and a path to regulatory approval for UTM services.

FAA Working to Standardize BVLOS Waivers

Last summer, the FAA issued three full-grant exemptions to Phoenix Air Unmanned, uAvionix and UPS Flight Forward that recognized infrastructure shielding, ground-based radar for detect and avoid, and UTM services to assist in managing collision risk between drones and crewed aircraft. Shortly thereafter, the agency issued three more summary grants to Zipline, Causey Aviation and Prime Air that leverage the first three full grants. These developments demonstrate the FAA's commitment to enabling a greater number of true BVLOS operations under existing rules, as well as data collection for the FAA's forthcoming BVLOS rule. The FAA intends these waivers to serve as models for future streamlined waivers. For waivers that do not fit within the existing buckets, the agency has signaled an openness to creating additional categories of standardized waivers.

UTM Pilot Program Underway; Expanding to Dallas Site

Less than one year after finishing its UTM Field Test Trials, the FAA announced that it would help a consortium of drone operators and UTM service providers stand up a "key site" to enable ongoing use of services. The Key Site Operational Evaluation will occur in the Dallas area starting in early 2024, using UTM services to mitigate the risk of collision between BVLOS drones that are currently operating under waivers and exemptions. This would mark the first large-scale, ongoing deployment of UTM services, without the pre-defined scenarios or limited timeline of UFT and previous demonstrations.



FAA Powered Lift Rule Imminent

The FAA may publish its powered lift rule by the end of the year, which would set training and other requirements for electric vertical take-off and landing (eVTOL) pilots. The NPRM was issued in June 2023 and received about 80 comments.

DOT AAM Working Group Underway; AAM Strategy Coming Late 2024

In October 2022, President Biden signed into law the Advanced Air Mobility Coordination and Leadership Act, which directed the Secretary of Transportation to establish an AAM Interagency Working Group (IWG) that will plan for and coordinate efforts to integrate AAM aircraft into the NAS. DOT kicked off this effort by hosting an in-person meeting with the working group, which is comprised of 22 members from across the federal government, in March 2023, and is framing the work through established subgroups focused on topics including automation strategy, security, infrastructure, air traffic, and community roles and engagement. An RFI was published in the *Federal Register* seeking comment on a broad swath of topics related to the future of AAM earlier this year, with comments due August 16, 2023. Nearly 500 comments were submitted. The AAM IWG is required by statute to deliver an AAM National Strategy by December 2024.

Federal Communications Commission

The 5030-5091 MHz Rulemaking Proceeding

In January 2023, the FCC released an NPRM proposing service and technical rules to enable a wireless band for UAS communications in the 5030-5091 MHz band. Comments and reply comments were due in the spring of 2023, and over 50 parties responded, including government agencies such as the FAA and NTIA, members of private industry, nonprofits, trade associations, and major wireless carriers. Although the FCC has not announced a specific timeline for the adoption of rules in this proceeding, it is possible that there may be some movement in 2024, potentially in the form of new rules and/or an FNPRM. In the meantime, industry is looking at uses cases that would leverage this spectrum to enable automated vehicle-to-vehicle (V2V or V2X) or aircraft-to-anything (A2X) communications and collision avoidance between drones and/or eVTOLs. An ASTM workgroup is developing an initial standard to define security requirements for such a protocol.

New Rules to Allow Short-Range Radars in the 60 GHz Band

In May 2023, the FCC voted to adopt new rules to expand the use of vehicle, drone and other short-range radars in the 60 GHz band (57-71 GHz). Among other use cases, the final rules allow for the use of field disturbance sensor (FDS) devices in the 60-64 GHz portion of the band for unmanned aircraft operating at low altitudes (below 400 feet above ground level). The decision to allow FDS operations onboard unmanned aircraft was inspired by a proposal from Amazon, which stated in comments that it would like to deploy 60 GHz radar on unmanned aircraft for obstacle avoidance and situational awareness. A number of other commenters, including the General Aviation Manufacturers Association (GAMA), the Consumer Technology Association, CTIA, the Information Technology Industry Council, NetChoice, TechNet and the U.S. Chamber of Commerce submitted comments supporting this proposal.

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National Defense Authorization Act

On December 14, 2023, Congress passed an \$874.2-billion defense authorization bill, sending it to the White House for President Biden’s signature. The contents of the NDAA for fiscal year 2024 reflect growing concern about cyber and data security, the use of AI, supply chain resilience and security, and potential threats from foreign entities—particularly in the UAS space. This section provides a summary of key provisions that may be of interest to our TMT clients, particularly focusing on cyber defense, AI, space and satellites, the technology supply chain and UAS.

Title III – Operation and Maintenance

Sec. 346:

Pilot Program on Optimization of Aerial Refueling and Fuel Management in Contested Logistics Environments Through Use of AI

- Directs DOD to establish a pilot program to optimize the logistics of aerial refueling and fuel management through the use of advanced digital technologies and AI.

Sec. 350

Strategy and Assessment on Use of Automation and AI for Shipyard Optimization

- Directs the Navy to demonstrate a digital platform using AI to analyze data on the maintenance and condition of shipboard assets.

Title XV – CyberSpace Related Matters

Sec. 1512

Cybersecurity Enhancements for Nuclear Command, Control, and Communications Network

- Directs DOD to establish a cross-functional team to develop and direct a threat-driven cyber defense construct for the systems and networks that support the nuclear command, control and communications.

Sec. 1513

Pilot Program Relating to Semiconductor Supply Chain and Cybersecurity Collaboration Center

- Directs the NSA Cybersecurity Collaboration Center to begin a pilot program seeking to improve the cybersecurity of the supply chain for the design, manufacture, assembly, packaging and testing of semiconductors. NSA is directed to collaborate with eligible entities, which (1) directly support the design, manufacture, packaging, or testing of semiconductors and (2) provide semiconductor components to DOD or any national security system.

Title XV - CyberSpace Related Matters Cont.

Sec. 1514

Transfer of Data and Technology Developed Under MOSAICS Program

- Grants DOD authority to transfer to private entities data and technology developed under the MOSAICS program to enhance cyber threat detection and protect critical control system assets related to the distribution of electricity.

Sec. 1521

Control and Management of DOD Data; Establishment of Chief Digital and AI Officer Governing Council

- Directs DOD to establish a Chief Digital and AI Officer Governing Council to provide policy oversight to ensure the responsible and ethical employment of data and AI capabilities across DOD missions and operations.

Sec. 1523

Management of Data Assets by Chief Digital and AI Officer

- Directs DOD's Chief Digital and AI Officer to develop a baseline of data assets on foreign key terrain and relational frameworks in cyberspace, maintained by its intelligence agencies, military departments, combatant commands and any other components of the DOD.

Sec. 1526

Requirements for Deployment of Fifth Generation Information and Communications Capabilities to Military Installations and Other Department Facilities

- Requires DOD to develop and implement a strategy for deploying 5G networks to military installations and other DOD facilities. This will involve the development of a process through which public 5G wireless network service providers may gain access to necessary facilities. The Secretary will determine whether to enter into contracts for neutral hosting or separate private wireless networks.

Sec. 1541

Modification to Acquisition Authority of Senior Official with Principal Responsibility for AI and Machine Learning

- Directs DOD's Under Secretary of Defense for Acquisition and Sustainment to, within 30 days of enactment, submit a plan to Congress on DOD's delegation and exercise of the Director of the Joint AI Center's (JAIC) acquisition authority. DOD's Chief Digital and AI Officer must also, within 90 days of enactment, provide a demonstration of operational capability delivered under such authority.

Sec. 1542

AI Bug Bounty Programs

- Requires DOD's Chief Digital and AI Officer to, within 180 days of enactment (and subject to the availability of appropriations), develop a bug bounty program for foundational AI models being integrated into DOD's missions and operations.

Sec. 1543

Prize Competition for Technology That Detects and Watermarks Use of Generative AI

- Requires DOD to, within 270 days of enactment, establish a prize competition to evaluate technology for generative AI detection and watermarking. The participants in the prize competition may include "federally funded research and development centers, entities within the private sector, entities within the defense industrial base, institutions of higher education, Federal departments and agencies, and such other categories of participants as the Secretary of Defense considers appropriate."

Title XV - CyberSpace Related Matters Cont.

Sec. 1544

Plans, Strategies, and Other Matters Relating to AI

- Directs DOD to, among other things, and within 120 days of enactment, issue Department-wide guidance defining outcomes of near-term and long-term plans relating to adoption of AI and efforts to monitor accountability; develop a strategic plan for the development, use and cybersecurity of generative AI; and assess technical workforce needs.

Sec. 1545

Study to Analyze Vulnerability for AI-Enabled Military Application

- Directs DOD to, within one year of enactment, complete a study to assess the functionality of AI-enabled military applications, related research and development needs, and vulnerabilities to the privacy, security and accuracy of such applications.

Sec. 1552

Management by DOD of Mobile Applications

- Directs DOD to implement the recommendations of the inspector general with respect to managing covered mobile applications (TikTok and anything developed or provided by ByteDance).

Title XVI – Space

Sec. 1611

Plan for an Integrated and Resilient Satellite Communications Architecture for the Space Force

- Directs the Secretary of the Air Force, in coordination with the Assistant Secretary of the Air Force for Space Acquisition and Integration and the Chief of Space Operations, to (1) consider options for the integration of resilient military tactical satellite communications capabilities; (2) develop a plan for the integration of such capabilities into the Space Force; and (3) ensure that a geostationary small satellite communications constellation is evaluated for inclusion as a component of the space data transport force design for the Space Force through, at a minimum, 2027.



Title XVI – Space Cont.

Sec. 1681

Extension of Authorization for Protection of Certain Facilities and Assets from Unmanned Aircraft

- References 10 USC § 130(i), which authorizes the DOD to take certain actions necessary to “mitigate threats” posed by UAS to the safety or security of certain military assets. This provision was originally scheduled to expire in 2023; the NDAA extends it through 2026.

Sec. 1682

Electromagnetic Warfare

- Adds a new chapter to Title 10 of the USC regarding electromagnetic warfare. This chapter establishes an Electromagnetic Spectrum Operations Executive Committee within DOD, which will be tasked with coordinating and advising DOD leadership on matters related to electromagnetic warfare and DOD spectrum operations. The Committee will also be responsible for coordinating with the greater intelligence community on matters related to spectrum operations. The Committee is required to submit to the congressional defense committees an annual report summarizing its activities for the preceding fiscal year, starting on February 28, 2024.

Sec. 1686

Actions to Address Serious Deficiencies in Electronic Protection of Systems that Operate in the Radio Frequency

- Directs DOD to establish requirements for and assign sufficient priority to ensuring the electronic protection of military sensor, navigation, and communications systems and subsystems against jamming, spoofing and other unintended interference.

Title XVIII – Other Defense Matters (including UAS)

Sec. 1823

Prohibition on Procurement of Covered Unmanned Aircraft Systems from Covered Foreign Entities

- Prohibits the head of any executive agency from procuring any covered UAS that is manufactured or assembled by a covered foreign entity, including associated elements related to the collection and transmission of sensitive information that enable the operator to operate the aircraft in the NAS (such as communication links and the components that control the UAS). The Federal Acquisition Security Council is directed to coordinate with the Secretary of Transportation to develop and update a list of such elements.
- There are limited exceptions for certain agencies in cases where the procurement is required in the national interest of the U.S. for certain enumerated purposes (e.g., for R&D related to defense/security, conducting counterterrorism or counterintelligence activities, or for UAS that have been modified to remove the capability to transfer to or download data from a covered foreign entity).

Sec. 1824

Prohibition on Operation of Covered Unmanned Aircraft Systems from Covered Foreign Entities

- Prohibits federal agencies from operating covered UAS manufactured or assembled by a foreign entity beginning two years after the date of enactment. This prohibition extends to contractors hired by such agencies. There are limited exemptions for certain agencies and certain types of activities. DHS is directed to issue regulations and guidance on this provision within 180 days of enactment.



Title XVIII – Other Defense Matters (including UAS) Cont.

Sec. 1825

Prohibition on use of Federal funds for procurement and operation of covered unmanned aircraft systems from covered foreign entities

- Federal funds awarded through contract, grant or cooperative agreement may not be used to procure or operate covered UAS that are manufactured or assembled by a covered foreign entity. There are limited exemptions for certain agencies and certain activities. The Federal Acquisition Regulatory Council is directed to issue regulations and guidance within 180 days on implementing these requirements with regard to federal contracts.

Sec. 1826

Prohibition on use of Government-issued purchase cards to purchase covered unmanned aircraft systems from covered foreign entities

- Effective immediately, government-issued purchase cards may not be used to procure any covered UAS from a covered foreign entity.

Sec. 1827

Management of existing inventories of covered unmanned aircraft systems from covered foreign entities

- Requires all executive agencies to track and account for their existing inventories of covered UAS manufactured or assembled by a covered foreign entity in their personal property accounting systems within one year of enactment.

Sec. 1829

Government-wide policy for procurement of unmanned aircraft systems

- Directs the OMB to work with DHS, DOT, DOJ, NTIA and others to establish a government-wide policy for the procurement of UAS (1) for non-DOD and non-intelligence community operations; and (2) through grants and cooperative agreements entered into with non-federal entities. This policy must be issued no later than 180 days from enactment.
- This policy must include certain specifications based on industry standards and technical guidance from NTIA to address the risks associated with processing, storing and transmitting federal information in a UAS (e.g., protections to ensure controlled access to the UAS, etc.).

Sec. 1830

State, local and territorial law enforcement and emergency service exemption

- Reserves the right of state, local and territorial law enforcement or emergency service agencies to procure or operate covered UAS purchased with non-federal dollars.

Sec. 1831

Study

- Directs the Under Secretary of Defense for Acquisition and Sustainment to provide a report to congress on the supply chain for covered UAS, including a discussion of current and projected future demand for covered UAS, within one year of enactment.



Title LXIII – Information Security and Cyber Diplomacy

Sec. 6303

Establishment of the Chief AI officer of the Department of State

- Directs the State Department to designate a Chief AI Officer, which may be dual-hatted as the Department's Chief Data Officer.

Sec. 6306

Digital Connectivity and Cybersecurity Partnership

- Authorizes the Secretary of State to establish a Digital Connectivity and Cybersecurity Partnership to help foreign countries (1) expand and increase secure internet access and digital infrastructure in emerging markets, including demand for and availability of high-quality information and communications technology (ICT) equipment, software and services; (2) protect technological assets, including data; (3) adopt policies and regulatory positions that foster and encourage open, interoperable, reliable and secure internet, the free flow of data, multi-stakeholder models of internet governance, and pro-competitive and secure ICT policies and regulations; (4) access U.S. exports of ICT goods and services; (5) expand interoperability and promote the diversification of ICT goods and supply chain service to be less reliant on imports from the PRC; and (6) promote best practices and common standards for a national approach to cybersecurity, in addition to advancing other priorities.
- The Secretary of State must submit to Congress within 180 days of enactment an implementation plan to advance these goals.

Sec. 6307

Establishment of a Cyberspace, Digital Connectivity, and Related Technologies (CDT) Fund

- Amends Part II of the Foreign Assistance Act of 1961 (22 U.S.C. § 2301 *et seq.*) to include authorization for the Secretary of State to provide assistance to foreign governments and organizations in order to (1) advance a secure and stable cyberspace, (2) protect and expand trusted digital ecosystems and connectivity, (3) build the cybersecurity capacity of partner countries and organizations, and (4) ensure that the development of standards and deployment and use of technology supports and reinforces human rights and democratic values. \$150 million in appropriations are authorized to support this effort.

Sec. 6308

Cyber Protection Support for Personnel of the Department of State in Positions Highly Vulnerable to Cyber Attack

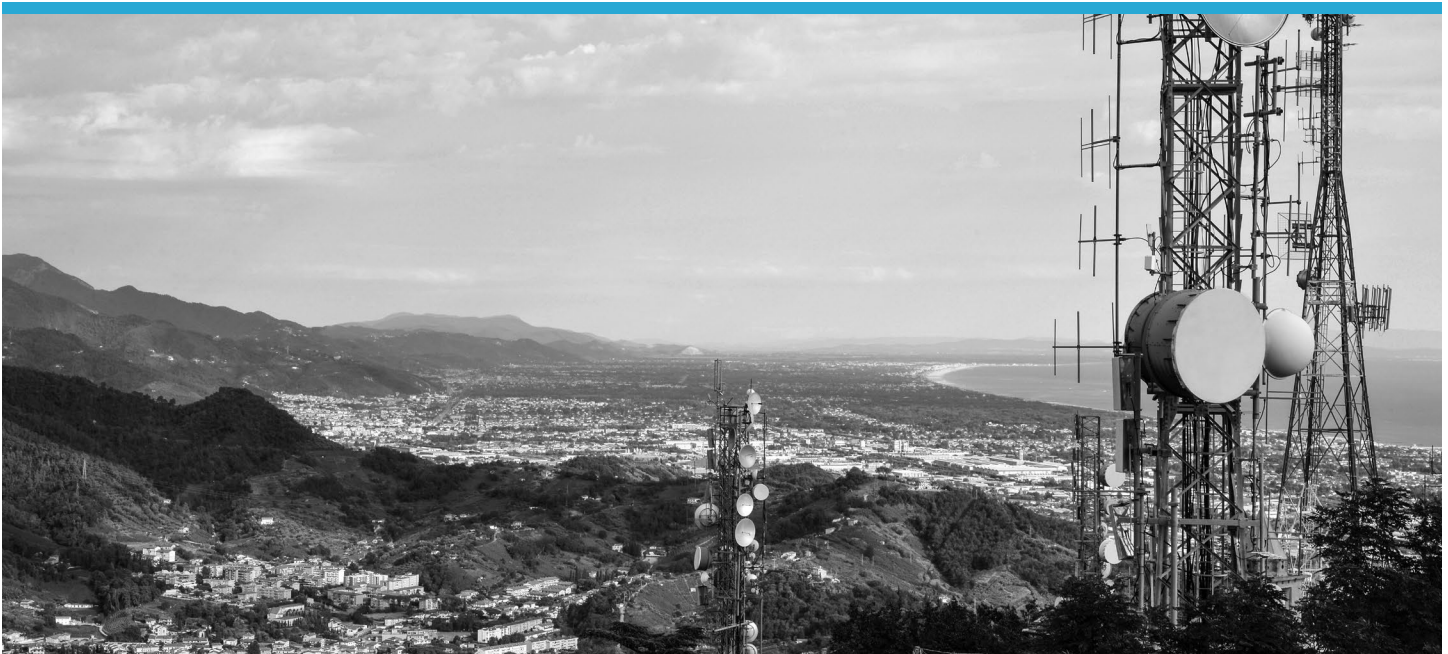
- Directs the Secretary of State to offer cyber protection support for the personal technology devices and personal accounts of State Department personnel who are deemed to be “highly vulnerable” to cyberattacks and hostile information collection activities.

Title V – Intelligence Authorization Act

Sec. 7507

Programs for Next-Generation Microelectronics in Support of AI

- Directs the Director of National Intelligence to oversee a program to advance microelectronics research, subject to the availability of appropriations.



Title V – Intelligence Authorization Act Cont.

7508 (p. 2260)

Program for Beyond 5G

- Authorizes the Director of National Intelligence to carry out research programs dedicated to R&D efforts relevant to 6G technology and any successor technologies and their potential applications for the intelligence community or other national security purposes. The Director must coordinate with the heads of other agencies, including NTIA, private sector entities, institutions of higher learning and others.

Sec. 7509

Intelligence Community Commercial Remote Sensing Requirements

- Acknowledges that the U.S. benefits from a “robust commercial remote sensing industry that supports a science, technology, engineering, and mathematics pipeline, enables skilled manufacturing jobs, and fosters technological information,” and which complements dedicated government remote sensing capabilities.
- Directs the Director of National Intelligence and the Under Secretary of Defense for Intelligence and Security to jointly develop within 180 days of enactment guidance requiring the Commercial

Strategy Board or other entities within the intelligence community/DOD to perform certain functions related to commercial remote sensing, such as evaluating current and long-term remote sensing capability needs, developing commercial remote sensing requirements for the commercial industry, etc.

Sec. 7510

Requirement to Ensure Intelligence Community Directives Appropriately Account for AI and Machine Learning Tools in Intelligence Products

- Requires the Director of National Intelligence to provide to Congress within 120 days of enactment a briefing on whether current intelligence community directives provide sufficient guidance and direction with respect to the use of AI and machine learning tools in intelligence products produced by the intelligence community.

Sec. 7513

Policies Established by Director of National Intelligence for AI Capabilities

- Directs the Director of National Intelligence to, within one year of enactment, establish policies for the acquisition, adoption, development and use of key AI capabilities.

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