

Two-for-One Deregulation at the FCC?

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On January 30, **President Trump** signed an *Executive Order* on [Reducing Regulation and Controlling Regulatory Costs](#). The Executive Order sets out a number of related concepts focused limiting Federal regulations, including a “Regulatory Cap” that is implemented through three inter-related provisions

1. “Section 2(a): Unless prohibited by law, whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.
2. Section 2(b):. . . [T]he heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget (Director).
3. Section 2(c):. . . [A]ny new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.

During my years at the Federal Communication Commission, I worked on implementation of a one-for-one deregulation directive by the FCC Chairman that specified a new regulation could not be added unless an existing regulation was deleted. That initiative did not call for a comparison of costs of the proposed regulations and the proposed deletions; sometimes the outcome was the addition of a substantive and potentially burdensome new regulation “offset” by the elimination of an outdated or largely irrelevant regulation that no longer had significant impact and did not provide any real cost savings. Provision 2(c) of the Executive Order appears to call for a cost- based approach to deregulation.

An important legal distinction is that the FCC is not bound by the Executive Order because the FCC is an independent regulatory agency, rather than a part of the Executive Branch of the Federal Government. However, there is good reason to believe that the FCC may choose to emulate the Executive Order based on previous statements made by then minority Republican Commissioners Pai and O’Reilly in response to the adoption of new FCC rules, regulations and policies they viewed as either unwarranted or unduly burdensome.

In a December 2016 speech, prior to being named FCC Chairman, Commissioner Pai offered these [comments](#):

“In the months to come, we also need to remove outdated and unnecessary regulations. As anyone who has attempted to take a quick spin through Part 47 of the Code of Federal Regulations could tell you, the regulatory underbrush at the FCC is thick. We need to fire up the weed whacker and remove those rules that are holding back investment, innovation, and job creation. Free State and others have already identified many that should go. And one way the FCC can do this is through the biennial review, which we kicked off in early November. Under section 11, Congress specifically directed the FCC to repeal unnecessary regulations. We should follow that command.”

The biennial review referred to in then Commissioner Pai’s speech is underway in an FCC docket. The [Public Notice](#) issued in late December has a 57-page Appendix listing the rules adopted by the FCC 10 years ago and now due for review. Comments in that proceeding are due on or before May 4, 2017. As part of the biennial review, Chairman Pai could direct that the FCC follow a substantially similar approach to the Executive Order.

The change in attitude toward regulation at the FCC by the new Chairman and majority makes this the ideal time for an entity to compile its wish list of FCC regulations to eliminate as unnecessary or streamline to make less burdensome or more cost effective. The alignment of the Executive Order, Chairman Pai’s deregulatory mindset, and the biennial review are an opportunity that should be seized and quickly.

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