

September 24, 2026

The Honorable Anna Gomez
Commissioner
Federal Communications Commission
45 L Street NE
Washington, D.C. 20554

Dear Commissioner Gomez:

I write to ask for your legal opinion on whether the Communications Act permits the Federal Communications Commission (FCC) to legally function with only three Republican commissioners. I read the statute to prohibit an all-Republican commission; as such, any actions taken by such an FCC would be null and void.

As you know, President Trump recently nominated Danielle Thumann Severs to be an FCC Commissioner. If confirmed, she would become the third Republican commissioner on the FCC, with you as the sole Democrat. Because the Communications Act sets a quorum at three members, there is speculation that the President intends to fire you once she is confirmed, attempting to run the agency with an all-Republican 3-0 panel.

I hope this speculation is off the mark. But if true, in my reading, the Communications Act would stand in the administration's way. Congress established the FCC so that no party can grab total control over the nation's communications infrastructure. In 1982, Congress amended the statute, replacing a numeric limit to partisan representation with a novel mathematical formula: "The maximum number of commissioners who may be members of the same political party shall be a number equal to the least number of commissioners which constitutes a majority of the full membership of the Commission." The text and history of the Act suggest that "full membership" means the operational size of the sitting FCC. Thus, when there are three sitting commissioners, no more than two may be from the same party.

Some commentators have tried to suggest that this mathematical formula is just a complicated way of creating a limit of three members from one political party. But Congress has, in other contexts, shown that it knows exactly how to write a numeric upper limit. In establishing other bodies, such as the Securities and Exchange Commission and the International Trade Commission, Congress provided that "not more than three" commissioners may belong to the same party.

Prior to 1982, the Communications Act also provided that "not more than four members" (of a then seven-member FCC) could belong to the same party. But with the enactment of amendments in 1982, Congress charted a different course for the FCC. While drafting a bill to resize the FCC to five members, the Senate initially passed a bill that maintained a numeric limit on partisan representation: "Not more than three

members of the Commission may be members of the same political party” (128 Cong. Rec. 21826-21830). When the House and Senate conferred on the bill, however, Congress expressly rejected the Senate’s version and chose the current mathematical formula. The conference report confirms that Congress wrote this language “to establish a formula for political balance in Commission membership, regardless of the size of the Commission” (H. Rep. 97-765, at 24).

Indeed, Congress changed how it formulated limits to the FCC’s partisan composition at the same time that it retained a numeric partisan limit for another commission. Congress enacted the same change to the FCC’s composition twice within the same week (Pub. L. 97-253, title V, § 501(b)(2), Sept. 8, 1982; Pub. L. 97-259, title I, § 102, Sept. 13, 1982). In that first bill, Congress also reduced the size of a different commission, the Interstate Commerce Commission (ICC), in the very next section of the bill (Pub. L. 97-253, title V, § 502(b)). But critically, Congress did not change how it formulated the limit to partisan representation for the ICC, amending the statute to read that “[n]ot more than 4 members” could be from the same party.

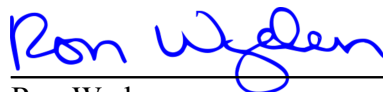
Under well-settled canons of construction, such as the reenactment and consistent-usage canons, when Congress amends language in a statute or uses different language in related provisions, courts presume that Congress enacted a distinct legal meaning. In 1982, Congress deliberately chose a mathematical formula as the limit on political representation in the FCC. Congress made that change for the FCC, even as it retained a numeric limit for the ICC in the very next section of the same bill. Congress’s amendments must mean something; specifically, Congress tied political balance to the actual size of the FCC.

If the administration were to decide to operate a 3-0 Republican FCC, despite this clear statutory design, the consequences would be staggering. The FCC’s daily docket consists of thousands of routine but essential administrative actions that are taken through delegated authority. The U.S. communications sector represents hundreds of billions of dollars in economic valuation, and relies on the legal validity of these FCC actions. In 2010, the Supreme Court held that the National Labor Relations Board could not creatively delegate its way around a statutory quorum requirement. So too for the FCC. Under an all-Republican commission, every single license renewal, equipment certification, spectrum transfer, or other delegated action would be legally defective, casting a cloud of crippling legal uncertainty over the entire communications industry.

Given these apparent consequences, I request your opinion on whether the FCC can lawfully function as an all-Republican 3-0 panel.

Thank you for your attention to this important matter.

Sincerely,



Ron Wyden

United States Senator