ML STRATEGIES

Emerging Federal AI Strategy: FTC Sets Aside Rytr Consent Order; and Uncertainty Looms with BEAD Funding and State AI Laws — AI: The Washington Report

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VIEWPOINT TOPICS

- Artificial Intelligence
- AI: The Washington Report

Main Points

- On December 22, the Federal Trade Commission (FTC) **reopened and set aside its 2024 consent order against Rytr**, a generative AI company. The agency's withdrawal of the Biden-era order suggests what may be the FTC's emerging approach to AI enforcement and marks the first action from the FTC taken under last July's White House AI Action Plan directive to review "all FTC final orders, consent decrees, and injunctions, and, where appropriate, seek to modify or set aside any that unduly burden AI innovation."
- It is uncommon for the FTC to reopen and set aside a consent order without a petition from the respondent.
- On February 11, the National Telecommunications and Information Administration (NTIA) **held** a virtual listening session on the use of the Broadband Equity Access and Deployment (BEAD) program's "nondeployment" funds.
- President Trump's December executive order titled "**Ensuring a National Policy Framework for Artificial Intelligence**" seeks to withhold BEAD nondeployment funds from states with "onerous AI laws," creating uncertainty surrounding the remaining estimated $21 billion in nondeployment funds. The order directs NTIA to condition these funds on states either not enacting conflicting AI laws or entering into agreements *not to enforce* conflicting laws during the grant period.
- Both the BEAD nondeployment policy and the FTC set aside order on Rytr reflect the broader interagency effort directed by President Trump to centralize AI governance at the federal level, guided by the White House AI Action Plan and the December federal preemption-focused Executive Order.
- This coordinated approach was underscored by **remarks** from FCC Commissioner Olivia Trusty at the State of the Net conference on February 9, where she warned that fragmented state AI regulation poses a direct threat to US competitiveness and network-infrastructure deployment, language nearly identical to the AI Action Plan and other AI-related executive orders from the White House.

FTC Sets Aside Rytr Consent Order in Shift Toward Federal AI Policy

On December 22, the Federal Trade Commission (FTC) **reopened and set aside its 2024 consent order against Rytr**, a generative AI company. The agency's abandonment of the Biden-era order signals the FTC's emerging approach to AI enforcement and marks the first action from the FTC taken under last July's **White House AI Action Plan** directive to review "all FTC final orders, consent decrees, and injunctions, and, where appropriate, seek to modify or set aside any that unduly burden AI innovation."

We **previously covered** how the AI Action Plan could roll back Biden?era FTC consumer?protection practices for AI. By setting aside the 2024 Rytr order, the commission reinforces a broader shift at the FTC toward innovation-focused AI governance and away from more expansive enforcement advanced during the prior administration.

Background

The FTC initially launched Operation AI Comply, a law enforcement sweep targeting companies that use AI with deceptive or unfair conduct, in September 2024. Rytr was one of the five companies against whom the FTC took enforcement actions, with allegations that the companies used AI to promote false claims or advance allegedly deceptive business schemes.

Back in 2024, the Rytr case was the only one among the five cases decided on a narrow, party-line 3–2 vote. The dissenting commissioners, including current FTC Chair Andrew Ferguson, laid the groundwork for the set aside in late 2025 by arguing that there were not enough concrete actions to justify issuing the complaint. The case against Rytr, as then-Commissioner Holyoak **pointed out**, "does not allege that users [of Rytr's AI-generated review service] actually posted any draft reviews." Instead, the commission theorized "that a business could use Rytr's tool to create false or deceptive consumer reviews that the business could then pass off as authentic reviews in violation of Section 5," **criticized** Chair Ferguson in his dissent at the time.

Why did the FTC reopen and set aside the consent order?

Fast forward to the latest FTC action in December 2025. With a Republican majority, Chair Ferguson and Commissioner Mark Meador — the only two commissioners at the FTC — voted 2–0 to reopen and set aside the Rytr consent order, referencing its misalignment with the White House AI Action Plan. The commission also cited public interest, alleging that "there was no violation of Section 5 of the FTC Act," which prohibits "unfair or deceptive acts or practices in or affecting commerce." They concluded that the order was not in the public interest and conflicted with President Trump's January executive order on "Removing Barriers to American Leadership in AI" and his AI Action Plan.

The current FTC emphasized two theories of liability from the original order: (1) "means and instrumentalities" of deception and (2) unfairness.

On means and instrumentalities, the commission held that the potential misuse of an AI tool is not enough to establish a Section 5 violation. It noted that the original complaint (1) did not allege that Rytr itself generated deceptive content, only that users might have done so with the AI tool, and (2) failed to draw the connection that "Rytr had actual or constructive knowledge that these reviews were used to violate Section 5 or even that the reviews were ever in fact published." The commission adopted a narrow view of this theory in this context for AI tools, echoing Chair Ferguson's earlier dissent, warning that an overly broad approach could be overinclusive of the makers of any general?purpose communication tool — "pencils, paper, printers, computers, smartphones, word processors, typewriters, posterboard, televisions, billboards" — or other tools, simply because those tools *could* be used to create or disseminate false advertising.

To the second theory on unfairness, the commission took a more restrictive view, finding that the complaint did not demonstrate that Rytr's AI review?generation tool caused, or was likely to cause, any substantial consumer harm. The set aside order alleges "insufficient facts" for harm were cited in the original complaint, therefore falling short of the likelihood "to cause substantial injury." The commissioners reiterate a pro?innovation stance, noting that "consumers benefit from the invention and availability of new tools, even though almost all tools have both legal and illegal uses."

Emerging Federal AI Enforcement Approach

It is uncommon for the FTC to reopen and set aside a Consent Order without a petition from the respondent. This decision not only suggests the FTC's current approach to regulating AI tools — one that is aligned with the White House's AI Action Plan and its executive orders — but also may preview the heightened evidentiary review for alleged unfair or deceptive practices by AI tools.

This turning point for the FTC may signal its enforcement approach for how it may interpret consumer protection for AI tools. This ruling also indicates caution about imposing theories of liability on AI?tool creators: mere potential misuse does not render the AI tool itself improper, and in the case of Rytr, the commission alleged that it found little to no "empirical or even qualitative evidence" of injury or likely injury to consumers.

The commission's decision also aligns with the December executive order directing the FTC, and AI Czar David Sacks to clarify how Section 5 applies to AI models and to articulate when state laws altering "truthful outputs" may be preempted by the FTC Act. Together, these actions not only suggest a narrower conception of AI-related consumer harm and injury but also underscore a growing federal-state tension, particularly where state laws attempt to regulate AI tools in ways the FTC may view as inconsistent with Section 5 of the FTC Act.

We will continue to monitor FTC recalibration of AI enforcement, including any additional reviews that may come about as the agency moves in step with White House priorities on AI innovation and competitiveness.

BEAD Funding Uncertainty tied to State AI Laws and AI Executive Order

On February 11, the National Telecommunications and Information Administration (NTIA) **held** a virtual listening session on the use of the Broadband Equity Access and Deployment (BEAD) program's "nondeployment" funds. Stakeholder feedback gathered during the session will help "inform NTIA's future planning and policy development regarding the use of these nondeployment funds," as the agency prepares to implement policy changes directed by the December AI executive order.

Fifty of 56 states and territories have received NTIA approval for their BEAD proposals as of the publication date of this newsletter. However, President Trump's December executive order, titled "**Ensuring a National Policy Framework for Artificial Intelligence**" seeks to withhold BEAD nondeployment funds from states with "onerous AI laws," creating uncertainty surrounding the remaining estimated $21 billion in nondeployment funds. The executive order directs NTIA to condition these funds on states either not enacting conflicting AI laws or entering into agreements *not to enforce* conflicting laws during the grant period. This conditional approach mirrors language from the previously proposed but ultimately unsuccessful Senate proposal that would have imposed a 10-year moratorium on certain state AI regulations, which **we've previously covered**.

Context

The "nondeployment" funding is derived from the June 2025 restructuring of the Biden administration requirements on the BEAD program. In implementing this shift, which the Trump Administration has dubbed the "**Benefit of the Bargain"** reforms, NTIA rescinded previously approved nondeployment uses, including workforce training, digital literacy efforts, and outreach. The resulting "remaining funds" pool sits outside the original formula-based allocations (the "deployment" funds) and has become the focal point of the executive order's conditional directive. President Trump's December executive order leverages the "nondeployment" pool of funding to advance the administration's broader policy objective of preempting or discouraging state AI regulations in favor of a more uniform federal AI framework.

It is also important to note that the BEAD Act does not expressly authorize NTIA to condition BEAD funding based on state AI policy and laws, raising broader federalism and preemption questions amid an already tense federal-state debate over AI regulations. The BEAD Act establishes a formula-based allocation structure tied to expanding broadband access, and it does *not* explicitly mention AI. However, the December executive order connects BEAD funding to state AI policies by drawing the connection between AI applications in driving demand for high-speed networks. Section 5 of the order directs the Secretary of Commerce to issue a policy document by March 16, 2026, to "describe how a fragmented State regulatory landscape for AI threatens to undermine BEAD-funded deployments, the growth of AI applications reliant on high-speed networks, and BEAD's mission of delivering universal, high-speed connectivity."

At the center of the dispute is whether NTIA's authority to approve state spending proposals "in the public interest" and consistent with the "purposes" of BEAD extends to evaluating state statutes on AI. The controversy raises broader federalism and preemption questions amid an already tense federal-state debate over AI regulation. It remains uncertain whether Congress will weigh in on conditioning these federal funds based on state AI laws. Absent legislative clarification, the dispute is likely to be resolved through litigation over the scope of NTIA's statutory authority and the bounds of federal spending for AI policy and regulation.

Interagency Coordination for National AI Strategy

The coordinated approach to AI strategy by the Trump administration was underscored by **remarks** from FCC Commissioner Olivia Trusty at the State of the Net conference on February 9, where she warned that fragmented state AI regulation poses a direct threat to US competitiveness and network infrastructure deployment — language nearly identical to the AI Action Plan and other AI-related executive orders from the White House. She noted that over 1,000 AI-related bills were introduced across states last year and that "this growing patchwork of approaches creates uncertainty, increases compliance costs and risks slowing deployment."

Her remarks align closely with the FTC's narrower enforcement posture in the Rytr matter and the NTIA's effort to condition BEAD nondeployment funds on states' compliance. These federal agency actions reflect an emerging executive?branch agreement across agencies that state?level AI regulations threaten federal AI strategy.

Commissioner Trusty further underscored the administration's whole-of-government approach to AI innovation and national competitiveness. Her pro-industry remarks — that prescriptive regulation "does not work for fast?moving technologies" and that policy frameworks must reflect the realities of AI development — emphasize a deregulatory posture to AI within the executive branch. And while the FCC does not oversee the BEAD program, the agency does have an operational relationship with NTIA. This means that her comments also heighten the relevance of NTIA's BEAD funding uncertainty, as she emphasized not only AI's critical role in modern network deployment but also the need for the FCC to reduce regulatory friction for permitting to maintain American leadership in the sector.

We will continue to monitor, analyze, and issue reports on these developments. Please feel free to contact us if you have questions about current practices or how to proceed.

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