

NSR Policy: META and SNAP Rise on FCC Commissioner Comments on TikTok: But Should They?

By [Blair Levin](#) and [Matt Perault](#) | November 3, 2022

What's New: Tuesday, news reports quoted Republican FCC Commissioner Brendan Carr as saying that TikTok should be blocked from operating in the United States. As a result, both Meta and Snap enjoyed an upswing, reflecting a market view that as TikTok is causing a revenue weakness for both companies, government action against TikTok would help Meta and Snap. In this quick note we address whether Carr's comments should be seen as reflecting an increase in the odds of such government action.

What Carr Said. The Committee on Foreign Investment in the United States (CFIUS) is currently investigating whether the Chinese parent company of TikTok, ByteDance, can divest TikTok to an American company or take other actions to allow TikTok to continue to operate in the United States. Tuesday, Carr was quoted as saying "I don't believe there is a path forward for anything other than a ban," and that there isn't "a world in which you could come up with sufficient protection on the data that you could have sufficient confidence that it's not finding its way back into the hands of the (Chinese Communist Party)."

What the Market did. In response to those comments Snap shares rose 3.4% and Meta shares climbed 2.2%.

What's Carr Got to Do with It? The market must have believed that Carr, in some way, is a leading indicator of the likely government action. We want to clarify where that might be true but also where it is not.

The FCC has no jurisdiction over TikTok. The FCC has no jurisdiction over TikTok.[1]

- As a legal and policy matter, his statement and potential vote has no impact on any proceeding at the FCC[2],[3] or otherwise related to TikTok.

Carr has no influence over those federal government agencies that have jurisdiction over TikTok's activities in the United States. CFIUS is an interagency committee that conducts national security reviews of foreign companies' investments in the United States. It is staffed by national security experts.

- They will not be influenced in any way by Carr's comments.[4]
- They may come to the same conclusion, but Carr's comments will have nothing to do with it.

Carr could be seen as a leading indicator for the views of Congressional Republicans . Carr is close to Congressional Republicans so his comments serve as a leading indicator of how Congressional Republicans, who may soon control one or both houses, would react. While this is a reasonable view, it is not clear that Congress would have authority to block the CFIUS decision.

- A CFIUS decision, for example, would not be subject to the Congressional Review Act.
- While Congress could pass a general law limiting foreign investment more broadly than today, a narrowly targeted bill that would only affect TikTok could be viewed as violating a variety of constitutional and other legal prohibitions.

Carr could be seen as creating a safe space for the Biden Administration to demonstrate its anti-Chinese bona fides by banning TikTok. Perhaps Wall Street interpreted Carr's statement as an invitation for Biden Administration to ban TikTok without the risk of a Congressional Republican backlash.

- As a practical matter, any decision risks a backlash; a ban, for example, risks multiple backlashes, including from China and the nearly 140 million users in the United States.
- As a political matter, the Biden Administration knows it will have multiple problems with any Republican controlled house of Congress; we doubt the TikTok issue registers as an issue for which Republican support in Congress is a material consideration.

Moreover, it is just as logical to see Carr as a counter-indicator of future government action. We have no insight into why Carr chose to go with his (successful) media campaign on his views on TikTok.[5] But it could

just as logically be that Carr, reading the same public information we have, believes that CFIUS is working toward a divestiture or other controls, rather than a ban ([LINK](#)).

- In that case, his motive would be to get ahead on an issue on which he can attack the Administration.
- ***From a market perspective, that would mean he was a counter-indicator***, as his opposition suggests the next government action is likely to allow TikTok to continue operating in the United States.

Bottom Line. *Whatever the odds of CFIUS banning TikTok were before Carr’s comments, they are, in our view, at best, unchanged.*

[1] You might find it ironic that while ByteDance owns TikTok, US law would allow it to buy a local radio station anywhere in the United States. Our laws ban foreign ownership of broadcast licenses, reflecting that broadcasters represent essential news sources that we don’t want foreigners to control. Yet, at least so far, it is allowed to own a property from which 10% of adults in the United States gets its news. You might also find it stupid. You might find another adjective, say “insane” more accurate. But we like to retain a proper sense of decorum, so we’ll stick with ironic.

[2] One might also find it ironic that within days of a Republican House leader sending a letter to the FCC warning it not to step beyond its legal authority, a Republican Commissioner opines on an issue where the FCC has no authority without any Republican Congressional pushback. But that would not be on the list of top 25 weird ironies in today’s DC. See footnote above. And below.

[3] While we are thinking of ironies, we also find it ironic that while Republicans are upset about the influence of the Chinese Communist Party (CCP) on TikTok, they appear completely uninterested in the possibility that the CCP has an undue influence on the owner and policies of Twitter. They also seem uninterested in a report on how Chinese (and Iranian) networks are using Twitter to amplify “strong views on polarizing issues in American politics.” Those might make the top 25.

[4] Every bureaucrat in DC looks with disdain on bureaucrats from other agencies opining on something in

which the first bureaucrat believes the second has no jurisdiction. That truth is 10X when the first bureaucrat is an expert in national security.

[5] It could have something to do with trip to Taiwan for some bilateral meetings. We wonder if his hosts will ask him about Musk's tweet proposing Taiwan cede some authority to Beijing, a topic on which we don't think Carr has spoken, and which he also has no jurisdiction. Still, it might be of interest to many.

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