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ALERT

The Supreme Court Overruled Chevron. What Comes Next For Telecommunications, Media, and Technology?

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On Friday, in *Loper Bright Enterprises v. Raimondo*, the U.S. Supreme Court held that federal agencies are no longer entitled to deference when they interpret ambiguous statutes. *Loper Bright* thus overrules an earlier Supreme Court decision – *Chevron v. Natural Resources Defense Council* – under which courts gave controlling weight to regulators' reasonable interpretations of ambiguous statutes. The impact of the decision is hard to overstate. Its effects will be felt acutely across the telecommunications, media, and technology sectors for years to come. Here, we discuss what comes next.

Chevron Deference

To understand *Loper Bright* requires an understanding of the doctrine that it overruled. The Supreme Court's 1984 *Chevron* decision required courts to give agencies the benefit of the doubt when interpreting ambiguous federal statutes. Courts did so through a two-step inquiry. First, a reviewing court applied ordinary principles of statutory interpretation to determine whether a statute was "ambiguous." If the statute was unambiguous, then the inquiry was at an end, and a court gave the statute its unambiguous meaning. However, if the statute was ambiguous, the reviewing court deferred to the agency's reasonable interpretation of it.

This two-step framework guided judicial decisions for decades and was cited nearly 18,000 times by federal courts prior to *Loper Bright*. Although courts invoked *Chevron* to interpret statutes across all sectors, its effects were particularly pronounced in the communications context. For, example, the Supreme Court remarked

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in its 1999 *AT&T v. Iowa Utilities Board* decision: "It would be gross understatement to say that the [Telecommunications Act of 1996] is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self-contradiction." And in its 2013 *City of Arlington v. FCC* decision, the Court rejected a broad attack on *Chevron* that would have exempted from deference agency constructions that expanded an agency's jurisdiction.

The Supreme Court's Decision in *Loper Bright*

On June 28, 2024, the Supreme Court overruled *Chevron*. The Court's merits analysis was straightforward. In the Administrative Procedure Act (APA), Congress provided that a "reviewing court shall decide all questions of law." That provision, the Court found, mirrored a longstanding pre-APA norm under which agencies were allowed to resolve questions of fact, but judges were charged with independently interpreting the meaning of statutes. Given this text and history, the Court held that "the APA means what it says." Reviewing courts – and not federal agencies – are tasked with interpreting the meaning of statutes, and *Chevron* "defie[d] the command of the APA" in holding otherwise.

Finding *Chevron* wrong on the merits, the Court next found that overruling the case was consistent with *stare decisis*. *Stare decisis* is a doctrine that requires courts to consider several prudential factors before overruling a decision, such as its workability and any reliance interests it has created. The Court found *Chevron* unworkable because the doctrine applied only when a statute was "ambiguous," but courts lacked a well-defined standard to determine when a statute was unclear enough to be deemed ambiguous. The Court also found that this deficiency rendered *Chevron* an indeterminate legal principle, such that it did not generate "meaningful reliance" by regulated parties. Thus, the Court explained, it was time "to leave *Chevron* behind."

So how will courts interpret statutes post-*Chevron*? "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." In conducting that independent review, they may give "due respect" – but not deference – to agencies' interpretations. And they must respect Congress's express statutory delegations of discretion to agencies – for example, when a statute directs the agency to "define" statutory terms or promulgate "appropriate" regulations – while simultaneously ensuring agencies stay within the bounds of the discretion they have been granted.

Finally, the Court explained that its decision does "not call into question prior cases that relied on the *Chevron* framework." "The holdings of those cases that specific agency actions are lawful," the Court explained, are still good law entitled to statutory *stare decisis*. The *Loper Bright* decision, standing alone, "is not enough to justify overruling a statutory precedent." So even though many *Chevron* decisions technically are wrongly decided following *Loper Bright*, they are not formally overruled and may not be overruled unless the *stare decisis* factors counsel in favor of that result. So, for now, all *Chevron* cases decided pre-*Loper Bright* are still the law of the land.

Implications for Telecommunications, Media, and Technology

Loper Bright fundamentally changes the landscape of federal regulation. On questions of statutory interpretation, *Chevron* tipped the scales in the government's favor for decades: One study found that courts of appeals applied *Chevron* deference 77% of the time and that agencies were significantly more likely to win when a court afforded it deference. Now that the Supreme Court has prohibited this often-decisive advantage, agency rules and orders will be more vulnerable to legal challenges.

Although *Loper Bright*'s holding is not limited to any sector, its impacts will be particularly acute across the telecommunications, media, and technology (TMT) sectors. Indeed, as Wiley previously explained, much of the oral argument in *Loper Bright* centered on technologies like cryptocurrency, broadband, and artificial intelligence (AI). And that focus is understandable because these sectors are inherently dynamic. When Congress enacted the Communications Act of 1934, it could hardly have envisioned the internet or social media. When it enacted the Federal Trade Commission Act of 1914, AI was still science fiction. The nature of these technologies has often led Congress to lean heavily on sectoral agencies to fill in interpretive gaps – the precise kind of agency action that will no longer receive *Chevron* deference.

Regulated parties should consider both the opportunities and the risks presented by this changed regulatory landscape. To begin, proposed or newly promulgated regulations will be more vulnerable to statutory-authority challenges under *Loper Bright*'s more petitioner-friendly standard of review. Agencies will now have the burden of showing that their new initiatives are justified under the best reading of the relevant statute – not merely a "reasonable" reading of such statutes.

Previous regulations – even those upheld by a court – may also now be subject to fresh challenges. Indeed, this term in *Corner Post v. Board of Governors of the Federal Reserve System*, the Court clarified that the APA's six-year statute of limitations starts running when a party is injured – not when a rule is promulgated. Although not all agency actions will be impacted by *Corner Post*,[1] the combination of its more relaxed limitations period and *Loper Bright*'s more petitioner-friendly review standard opens the door for parties to challenge older regulations.

Enforcement actions will likewise be affected by *Loper Bright*: If an agency adopts an aggressive reading of a statute when it pursues penalties or other remedies, it will have to defend that reading without resort to deference on appeal. And the Court's decision this term in *Jarkesy v. SEC* throws yet another wrench into agency enforcement, holding that some administrative-enforcement schemes trigger the Seventh Amendment and require a jury trial. Both *Loper Bright* and *Jarkesy* will give enforcement targets additional avenues to push back against agency enforcers.

Regulated parties should be prepared to grapple with this changed landscape in their advocacy before both federal agencies and reviewing courts.

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It will be years before the full extent of *Loper Bright* is realized across the TMT sectors. But it will touch everything from broadband, to privacy and cybersecurity, to AI and cryptocurrency, to broadcast and social-media regulation, and much more. Wiley has a deep bench of attorneys monitoring this issue in both its Issues

and Appeals and Telecom, Media & Technology groups. For more information about this dynamic area of the law, please contact one of the authors.

[1] For example, the Court expressly mentions that the Hobbs Act – the statute under which many FCC orders are challenged – is different from the APA because its 60-day filing deadline runs from the "entry" of the relevant order.