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ONE HUNDRED NINETEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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March 24, 2026

MEMORANDUM

To: Members, Energy and Commerce Committee
From: Majority Staff
Re: Communications and Technology Subcommittee Hearing

I. INTRODUCTION

On Thursday, March 26, 2026, at 10:15 a.m. (ET), the Subcommittee on Communications and Technology will hold a hearing in 2123 Rayburn House Office Building. The hearing title is “The Telecommunications Act of 1996: 30 Years Later.”

II. WITNESSES

- The Hon. Chip Pickering, Chief Executive Officer, INCOMPAS
- The Hon. Michael O’Rielly, President, MPORielly Consulting, LLC
- Mr. Adam Thierer, Resident Senior Fellow, Technology and Innovation, R Street Institute
- Mr. Matt Wood, Vice President of Policy and General Counsel, Free Press

III. BACKGROUND

On February 8, 1996, President Bill Clinton signed the Telecommunications Act of 1996¹ (Telecom Act) into law. The Telecom Act was the first major overhaul of the Communications Act of 1934. It was intended to “provide for a pro-competitive, de-regulatory national policy framework” to accelerate “private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.”² The Telecom Act succeeded in many ways, unleashing competition

¹ Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) (Telecom Act).

² H. Rept. 104-458 (1996).

and new services across the telecommunications industry by eliminating economic and regulatory barriers to entry.³ And yet, the Telecom Act failed in other ways to account for the rise of new technologies that developed in the years following passage. Written when voice was the dominant communications service, Congress did not anticipate the rise of services and technologies such as broadband internet. Moreover, implementation proved challenging. As Supreme Court Justice Antonin Scalia noted, “[i]t would be gross understatement to say that the 1996 Act is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self-contradiction.”⁴ However, despite these challenges, thirty years later and even as the communications landscape has changed dramatically, the Telecom Act remains the most significant update to communications law in recent decades, as Congress has yet to seek further major reforms since.

IV. SELECTED ISSUES

A. Competition and Regulatory Structure

One of the primary purposes of the Telecom Act was to promote competition within the communications marketplace. Prior to the Act, existing law regulated local telephone monopolies and imposed legal boundaries between different services—local and long distance, cable service and telephone service, for example. The Telecom Act attempted to break down these boundaries. It opened local telephone markets to new entrants by requiring incumbent local exchange carriers to provide interconnection and lease network elements to competitors⁵ and prohibited state and local governments from awarding exclusive franchises to a single company.⁶ The Act also permitted local competitors to enter the long-distance market⁷ and vice versa, eventually breaking the distinction between the two services—which is why today we no longer have separate local and long-distance companies. Finally, the Act allowed telephone companies to provide video service,⁸ and cable companies to provide voice service.⁹ Eliminating these barriers created competition that gave consumers new choices. This competition between technologies continues today, with cable now competing with cellular, fixed wireless competing with fixed broadband, and the emergence of low earth orbit satellite as a competitor.

Although the Telecom Act eliminated many legal barriers, it maintained the regulatory structure of the Communications Act, which regulates each communications technology in a separate title—for example, one for telecommunications services, one for radio services (broadcast and wireless), and one for cable services. Some of these provisions date to the Great

³ Jonathan E. Nuechterlein and Philip J. Weiser, *Digital Crossroads: Telecommunications Law and Policy in the Internet Age* 52 (2d ed. 2013); see also 47 U.S.C. § 253 (preempting state and local barriers to communications services).

⁴ *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 397 (1999).

⁵ 47 U.S.C. § 251.

⁶ *Id.* § 253.

⁷ *Id.* § 271.

⁸ Telecom Act § 302(b).

⁹ 47 U.S.C. § 253.

Depression and were intended to regulate monopolies.¹⁰ This raises questions about whether these regulatory distinctions are still necessary or whether a technology-neutral approach would be more effective at ensuring that like technologies are treated the same.¹¹

B. Broadband

1. Regulatory Classification

The internet was a nascent technology in 1996. Thus, broadband internet service was not contemplated when Congress enacted the Telecom Act. The Federal Communications Commission (FCC) first classified broadband as an interstate information service in 2002, meaning it would be regulated under the “light-touch” framework of Title I of the Communications Act of 1934.¹² This changed in 2015, when the FCC under President Obama adopted—on a party-line vote—the *Open Internet Order*,¹³ reclassifying broadband as a telecommunications service under Title II. This action imposed Depression-era, utility-style regulations on internet services.¹⁴

In 2017, the FCC reversed the *Open Internet Order* and reinstated Title I’s “light touch” regulatory approach to broadband.¹⁵ The FCC changed course again in 2024, when it reclassified broadband as a Title II telecommunications service.¹⁶ Courts had affirmed this regulatory back-and-forth on *Chevron* deference grounds,¹⁷ giving deference to the FCC’s interpretation of the Communications Act.¹⁸ In January 2025, the United States Court of Appeals for the Sixth Circuit, in a decision after the overturning of *Chevron*, held that broadband does not meet the Communication Act’s definition of telecommunications service, thus foreclosing Title II regulation and likely ending the regulatory back-and-forth.¹⁹

¹⁰ Randolph May, We Need a Communications Act That Befits the Digital Age, Real Clear Markets (Jul. 7, 2025), https://www.realclearmarkets.com/articles/2025/07/11/we_need_a_communications_age_that_befits_the_digital_age_1121656.html.

¹¹ See Randolph May, The Telecom Act of 1996 Needs a Deregulatory Overhaul, Real Clear Markets (Feb. 4, 2026), https://www.realclearmarkets.com/articles/2026/02/04/the_telecom_act_of_1996_needs_a_deregulatory_overhaul_1161835.html.

¹² See *Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4802, para. 7 (2002).

¹³ *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, 30 FCC Rcd 5601 (2015).

¹⁴ See, e.g., *id.* (dissenting statement of Commissioner Ajit Pai) (“Imposing on competitive broadband companies the rules designed to constrain Cornelius Vanderbilt’s railroad empire or the continent-spanning Bell telephone monopoly will do nothing but raise the costs of doing business.”).

¹⁵ *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Order, Report and Order, 33 FCC Rcd 311 (2017).

¹⁶ *Safeguarding and Securing the Open Internet et al*, WC Docket No. 23-320 et al, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, 39 FCC Rcd 4975 (2024).

¹⁷ *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

¹⁸ See e.g., *Mozilla Corp. v. FCC*, 940 F. 3d 1 (D.C. Cir., 2019); *United States Telecom Association v. FCC*, 825 F.3d 674 (D.C. Cir. 2016).

¹⁹ *In re MCP No. 185*, 124 F.4th 993 (6th Cir. 2025).

2. Universal Service Fund

Ensuring that all Americans had access to communications service has long been a goal of federal policy. During the monopoly era, companies relied on implicit cross-subsidization to ensure rates for urban and rural areas stayed the same. In other words, urban customers (and customers of other services) paid above-cost rates while rural customers paid below-cost rates.

The Telecom Act established a new framework for universal service. First, it established principles for universal service on which the FCC should “base policies for the preservation and advancement of universal service.”²⁰ The law went on to require every telecommunications carrier providing interstate service to “contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”²¹ It also made universal service support explicit rather than implicit.²² Finally, it established mechanisms for rural health providers to receive subsidized telecommunications services and for schools and libraries to receive discounted services.²³

The FCC used these principles to establish the Universal Service Fund (USF). The USF is a user-fee-based support program that subsidizes broadband and voice services in high-cost, typically rural, areas (High-Cost Program); for low-income households (Lifeline Program); in schools and libraries (E-Rate Program); and at rural health-care facilities (Rural Health Care Program). It is funded through a fee assessed on telecommunications service providers’ interstate and international voice-service revenues. This fee, known as the contribution factor, is adjusted each quarter based on what the fund is projected to disburse that quarter. The contribution factor for the first quarter of 2026 is 37.6 percent, down from 38.1 percent in the fourth quarter of 2025, which was a record.²⁴

Although the Supreme Court affirmed the constitutionality of the USF in June 2025,²⁵ it still faces challenges in light of new broadband programs and a diminishing funding base. Subcommittee Chairman Hudson and Ranking Member Matsui are part of the bipartisan, bicameral USF Working Group, which is discussing legislation to reform the USF.²⁶

C. Section 230

The Communications Decency Act of 1996, which included what we now know as Section 230, was included in the Telecom Act.²⁷ Congress enacted Section 230 in response to

²⁰ 47 U.S.C. § 254(b).

²¹ *Id.* § 254(d).

²² *Id.* § 254(e).

²³ *Id.* § 254(h).

²⁴ Contribution Factors, USAC, <https://www.usac.org/service-providers/making-payments/contribution-factors/> (last visited Jan. 5, 2026).

²⁵ *FCC v. Consumers’ Research*, 606 US __ (2025).

²⁶ Press Release, Fischer, Luján Announce Bipartisan, Bicameral Universal Service Fund Working Group (Jun. 12, 2025), <https://www.fischer.senate.gov/public/index.cfm/news?ID=D8ACC418-4EDB-46BB-AA04-50692166BD2B>.

²⁷ 47 U.S.C. § 230.

Stratton Oakmont v. Prodigy Services,²⁸ a New York state court decision that held an online platform liable for defamatory content posted by a user on its message boards. The court concluded that the platform was a publisher of the content, and therefore subject to higher liability, because it exercised editorial control over the message board by moderating content. As a result of this ruling, Internet platforms faced liability for the content posted on their website by a third-party user if the platform engaged in any content moderation or removal practices. Congress enacted Section 230 so that platforms would not have to choose between subjecting themselves to liability or not moderating their websites at all.

Today, Section 230 is seen as a contributor to the modern Internet and a driver of growth of websites that facilitate user-generated content, such as social media platforms. Section 230 protects Internet platforms from (1) liability for content created by users of their services and (2) for their decisions to moderate or remove user-generated content. Courts, however, have applied Section 230 very broadly and arguably more expansively than Congress intended.²⁹ Courts have granted platforms immunity for selecting,³⁰ editing,³¹ and recommending content.³² Some courts have even granted immunity to platforms for their design.³³ And some courts have collapsed Section 230(c)(1) and (c)(2), granting immunity for removal decisions regardless of whether the content was objectionable or removed in good faith.³⁴

Over the past decade, Congress has considered numerous proposals to reform Section 230. The last successful proposal was the Stop Enabling Sex Traffickers Act (SESTA) of 2017, which was enacted as part of the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) of 2017.³⁵ This law created an exception to Section 230 to permit state law enforcement officials to prosecute websites that knowingly assist in or facilitate sex trafficking. Other proposals include eliminating a platform's Section 230 liability protection for content that exploits children,³⁶ modifying the procedural aspects of Section 230,³⁷ requiring more transparency and accountability to users regarding content moderation decisions,³⁸ clarifying the

²⁸ 1995 WL 323710 (N.Y. Sup. Ct., May 24, 1995). This is the same Stratton-Oakmont depicted in the 2013 film, *The Wolf of Wall Street*.

²⁹ See, e.g., *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997).

³⁰ See, e.g., *Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398, 403 (6th Cir. 2014) (granting immunity to a platform that selected and commented on content submitted third parties that it chose to post).

³¹ See, e.g., *Batzel v. Smith*, 333 F. 3d 1018 (9th Cir. 2003) (granting immunity to a platform that edited portions of an email before posting that email on its website and listserv).

³² See, e.g., *Force v. Facebook, Inc.*, 934 F. 3d 53, 65 (2d Cir. 2019) (granting immunity to Facebook for recommending content by terrorists).

³³ See, e.g., *Herrick v. Grindr LLC*, 765 Fed. Appx. 586, 591 (2d Cir. 2019) (granting immunity to a platform for a claim that it designed its application without safety features to prevent harassment and impersonation); *Lemmon v. Snap, Inc.*, 440 F. Supp. 3d 1103, 1107, 1113 (C.D. Cal. 2020) (granting immunity to a platform for a claim that its product encouraged reckless driving).

³⁴ See, e.g., *Sikhs for Justice, Inc. v. Facebook, Inc.*, 697 Fed. Appx. 526 (9th Cir. 2017) (affirming a lower court's grant of immunity that said "any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune" under §230(c)(1)).

³⁵ Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164 (2018).

³⁶ EARN IT Act of 2023, S. 1207 118th Cong. (2023).

³⁷ SAFE TECH Act, S. 299, 117th Cong. § 2(1) (2021).

³⁸ Internet PACT Act, S. 483, 118th Cong. (2023).

meaning of the protections,³⁹ or ultimately repealing Section 230.⁴⁰ None of these proposals have been considered by either chamber of Congress.

D. Media Ownership

The Telecom Act made significant changes to deregulate broadcast ownership. For radio, the Act eliminated the cap on the number of radio stations a single entity could own nationwide and increased the number of stations a single entity could own in a particular market.⁴¹ For television, the Act similarly eliminated the FCC's 12-station limit on the number of stations a single entity could own and directed the FCC to raise its ownership cap (National Television Ownership Rule) from an aggregate of 25 percent of the national audience to 35 percent.⁴² The debate over broadcast ownership continues today, as parties try to balance the need for diverse viewpoints with allowing broadcasters greater scale to compete against new sources of news. The National Television Ownership Rule, which is now set at 39 percent, has received significant attention. Last year, Subcommittee Chairman Hudson led over 70 members from both parties in a letter to the FCC asking the agency to update its media ownership rules.⁴³

The rise of streaming is a major force behind the push to update the FCC's ownership rules. Today, streaming viewership exceeds both broadcast and cable viewership,⁴⁴ the two primary ways of viewing television content in 1996. Outdated rules have made it more difficult for broadcasters to compete against streaming and tech platforms that are competing for advertising revenue but are not subject to the same regulations. The Telecom Act directs the FCC to review its broadcast ownership rules every four years,⁴⁵ and it launched its most recent review in November 2025.⁴⁶

Last week, the FCC approved the sale of certain television broadcast stations from TEGNA to Nexstar Media.⁴⁷ In approving this sale, the FCC waived the National Television

³⁹ Online Freedom and Viewpoint Diversity Act, S. 4534, 116th Cong. (2020).

⁴⁰ See, e.g., S. 2972, 117th Cong. (2021); H.R. 8896, 116th Cong. (2020); Cf. 21st Century FREE Speech Act, S. 1384, 117th Cong. (2021).

⁴¹ Telecom Act § 202(a), (b).

⁴² *Id.* § 202(c)(1).

⁴³ Letter from Richard Hudson, Member of Congress, et al to The Hon. Brendan Carr, Chairman, FCC (Mar. 28, 2025), <https://hudson.house.gov/press-releases/hudson-leads-colleagues-in-urging-the-fcc-to-reform-outdated-ownership-rules>.

⁴⁴ Press Release, Streaming Shatters Multiple Records in December 2025 with 47.5% of TV Viewing, according to Nielsen's The Gauge™, Nielsen (Jan. 20, 2026), <https://www.nielsen.com/news-center/2026/streaming-shatters-multiple-records-in-december-2025-with-47-5-of-tv-viewing-according-to-nielsens-the-gauge/>.

⁴⁵ Telecom Act § 202(h).

⁴⁶ 2022 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 22-459, Notice of Proposed Rulemaking, FCC 25-64 (rel. Sept. 30, 2025).

⁴⁷ *Applications for Consent to the Transfer of Control of TEGNA Inc. to Nexstar Media Inc.*, MB Docket No. 25-331, Memorandum Opinion and Order, DA 26-267 (MB Mar. 19, 2026).

Ownership rule, as Nexstar’s aggregate national reach would hit 54.5 percent.⁴⁸ Whether the FCC had authority to do that is disputed.⁴⁹

E. Wireless Reforms

The Telecom Act made significant reforms to the siting of wireless infrastructure, specifically through addressing state and local barriers to deployment. State and local governments play a key role in facilitating, or hindering, broadband infrastructure deployment. They regulate land use, review siting applications, and issue relevant permits. State and local governments’ review processes can be inconsistent with each other and costly, which can delay or even effectively prevent broadband deployment. For example, some state and local governments charge excessive fees for applications or to access the public rights-of-way for construction, and they often impose no deadlines for review of applications.⁵⁰

The Telecom Act added Section 332(c)(7) to the Communications Act. This section preserves local zoning authority while also stating that “[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”⁵¹ Since 1996, the FCC has used its authority to address state and local barriers to broadband infrastructure deployment, most notably from 2018-2020.⁵² Last September, the FCC voted on a Notice of Inquiry related to streamlining state and local wireline permitting and an NPRM on further streamlining the state and local wireless permitting process.⁵³

This permitting reform built on one of the biggest reforms to the wireless ecosystem that occurred three years before the Telecom Act. The Omnibus Budget Reconciliation Act of 1993 first granted the FCC authority to auction electromagnetic spectrum licenses.⁵⁴ Prior to this, the FCC used comparative hearings (also known as “beauty contests”) and lotteries to award electromagnetic spectrum licenses. Spectrum auctions have generated billions of dollars for the

⁴⁸ *Id.*

⁴⁹ *Compare We Interrupt This Program: Media Ownership in the Digital Age: Hearing Before the S. Comm. on Commerce, Science, & Transp.* 119th Cong. (2026) (written statement of Thomas M. Johnson, Jr., Former General Counsel, FCC)(arguing that the FCC has authority to waive the ownership cap) *with* Lawrence J. Spiwak, “Waiving” the Communications Act’s National Broadcast Ownership Cap is a Legal Non-Starter, Yale J. on Reg.: Notice & Comment (Jan. 4, 2026), <https://www.yalejreg.com/nc/waiving-the-communications-cts-national-broadcast-ownership-cap-is-a-legal-non-starter-by-lawrence-j-spiwak> (arguing the FCC lacks authority to waive the ownership cap).

⁵⁰ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088 (2018).

⁵¹ 47 U.S.C. § 332(c)(7)(B)(i).

⁵² *See, e.g., Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088 (2018) (streamlining state and local government review of wireless small-cell siting applications by limiting application fees these governments could charge an applicant, setting new shot clocks for small-cell wireless facilities (60 days for collocation of antennas on existing structures and 90 days for new facilities));

⁵³ *FCC Announces Tentative Agenda for September Open Meeting*, Press Release (rel. Sept. 9, 2025), <https://docs.fcc.gov/public/attachments/DOC-414409A1.pdf>.

⁵⁴ Omnibus Budget Reconciliation Act of 1993, P.L. 103-66 §6002 (1993).

federal government and the FCC’s spectrum auction authority was reauthorized until September 30, 2034.⁵⁵

V. KEY QUESTIONS

- What about the Telecom Act worked? What did not work?
- What lessons can Congress take from the enactment of the Telecom Act?
- How should Congress modernize the Communications Act?

VI. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Michael Essington or John Lin of Committee Staff at (202) 225-3641.

⁵⁵ One Big Beautiful Bill Act, Pub. L. No. 119-21 § 40002(b)(1) (2025) (“Working Families Tax Cut Act”).