



SUBMITTED STATEMENT OF
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SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
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U.S. HOUSE OF REPRESENTATIVES

HEARING ON
“THE TELECOMMUNICATIONS ACT OF 1996: 30 YEARS LATER”

MARCH 26, 2026

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Chairman Hudson, Ranking Member Matsui, and members of the committee:

Thank you for the invitation to participate in this important hearing. My name is Adam Thierer, and I am a senior fellow at the R Street Institute, where I cover technology policy. I have spent 34 years working on communications and media policy issues, and, in the early 1990s, I worked closely with members of this committee and others in Congress on what would eventually become the Telecommunications Act of 1996.

It was an exhilarating time when many hoped for comprehensive modernization of communications law and bold reforms of the Federal Communications Commission (FCC). Ultimately, however, the Telecom Act has not lived up to those lofty expectations.

A MISSED OPPORTUNITY

America’s information ecosystem remains over-regulated and subject to far too much FCC meddling with both markets and speech. This happened because the Telecom Act failed to impose serious constraints on the FCC and even empowered the agency to regulate in new ways using many open-ended powers on top of many older rules that remained untouched by the law.

Twenty-six years ago, while testifying at a House Oversight Committee hearing about the FCC, I noted that, just four years after the supposedly deregulatory Telecom Act passed, the agency had only grown bigger and more powerful. “There is simply no development within the communications marketplace today that is not scrutinized under the FCC’s regulatory microscope,” I noted in 2000.¹

¹ Adam Thierer, Testimony before the House Committee on Government Reform and Oversight, Subcommittee on Government Management, Information and Technology, Hearing on “The Role of the FCC in the Information Age,” Oct. 6, 2010. <https://www.heritage.org/testimony/the-role-the-fcc-the-information-age>.

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Unfortunately, that remains true today even though most experts agree “its original mission has faded” and, worse yet, “the FCC has become increasingly politicized.”² While the Telecom Act sought to “promote competition and reduce regulation” and encouraged the FCC to forbear from over-regulating, it became clear quickly that the agency would never relinquish control.

The FCC has taken advantage of the fact that the Telecom Act was in the words of the Supreme Court, “a model of ambiguity or indeed even self-contradiction.”³ The agency used the law’s many vague provisions and the countless existing rules to continue micromanaging markets and speech. As one leading analyst concludes, the agency’s “broad grant of authority, combined with its impenetrable complexity, means that it has nearly boundless ability to distribute favors and shape the trillion-dollar technology and media industries.”⁴

Today, the FCC ranks first among independent regulatory agencies in terms of rules promulgated, and an estimated 88 percent of those rules affecting small businesses.⁵ These continued mandates raise costs by undermining innovation and competition.⁶ The agency only seems to be willing to loosen restrictions once sectors or technologies have become

² Mark Jamison, “Disbanding the Federal Communications Commission,” American Enterprise Institute, *Working Paper*, Jan. 7, 2026. <https://www.aei.org/research-products/working-paper/disbanding-the-federal-communications-commission-2>.

³ *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999).

⁴ Brent Skorup, “Who Needs the FCC?” *National Affairs* (Winter 2016). <https://www.nationalaffairs.com/publications/detail/who-needs-the-fcc>.

⁵ Clyde Wayne Crews Jr., *Ten Thousand Commandments: 2025 Edition*, Competitive Enterprise Institute, 2025. https://cei.org/wp-content/uploads/2025/04/10K_2025_v5.pdf

⁶ Robert W. Crandall, *Competition and Chaos: U.S. Telecommunications Since the 1996 Telecom Act* (Brookings, 2005). Adam Thierer and Brent Skorup, “A History of Cronyism and Capture in the Information Technology Sector,” *Journal of Technology Law & Policy*, Vol. 18: No. 2 (2013). <https://scholarship.law.ufl.edu/jtlp/vol18/iss2/2>.

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completely obsolete, as when the FCC finally scraped its Morse code regulations in 2007,⁷ and eliminated rules governing telegraphs and phone booths just last year.⁸

The good news is that innovations in digital computing, e-commerce, smartphones, and video streaming were able to accelerate rapidly because they were not constrained by the FCC or older “Mother, May I” licensing restrictions.⁹

But this has left us with a bizarre and unfair situation: The innovators least regulated by the Act and the FCC are freer to innovate and speak, while the sectors still under their control remain burdened by excessive economic and speech controls.

POSSIBLE REFORM PATHS

Congress needs to address this situation and should do so by undertaking a thorough regulatory “spring cleaning” to address the unfinished business of the Telecom Act.¹⁰

Technological change has made the traditional rationales for FCC regulation obsolete.¹¹ Congress should establish timetables for the gradual phase-out of outdated telecom and media restrictions to free older sectors while also ensuring the FCC cannot expand its mission and become a veritable “Federal Computer Commission.”

⁷ “Morse code being eliminated from radio license test,” *Savannah Morning News*, Feb. 18, 2007. <https://www.savannahnow.com/story/news/2007/02/18/morse-code-being-eliminated-radio-license-test/13812059007>.

⁸ Federal Communications Commission, “FCC Deletes Obsolete Telegraph, Rabbit-Ear Receiver, Phone Booth Rules,” FCC-25-40, Docket No: 25-133, July 28, 2025. <https://www.fcc.gov/document/fcc-deletes-obsolete-telegraph-rabbit-ear-receiver-phone-booth-rules-0>.

⁹ Adam Thierer, “The Telecommunications Act of 1996 at 30, Part 3: A Few Important Accomplishments,” *R Street Analysis*, Feb. 10, 2026. <https://www.rstreet.org/commentary/the-telecommunications-act-of-1996-at-30-part-3-a-few-important-accomplishments>.

¹⁰ Randolph J. May, “The Telecom Act of 1996 Needs a Deregulatory Overhaul,” *Free State Foundation, Perspectives from FSF Scholars*, Vol. 21, No. 5, Feb. 6, 2025. <https://freestatefoundation.org/wp-content/uploads/2026/02/The-Telecom-Act-of-1996-Needs-a-Deregulatory-Overhaul-020426.pdf>.

¹¹ Adam Thierer, “Why Regulate Broadcasting? Toward a Consistent First Amendment Standard for the Information Age” *CommLaw Conspectus*, Vol. 15, (2007): 431-81. <https://scholarship.law.edu/commlaw/vol15/iss2/6>.

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Most old polices can be sunset after an orderly 2 to 3 year wind-down. Congress should pass a new “Communications Freedom Act” that would:

1. Scrap wireline common carrier regulations and media industry mandates and let the Federal Trade Commission and Department of Justice handle competition policy and consumer harm matters.¹²
2. De-politicize the spectrum and treat it as a fully flexible and tradable property right.¹³
Then transfer any remaining technical spectrum allocation and management tasks to the National Telecommunications and Information Administration or a technical coordination body.¹⁴
3. Convert inefficient universal service programs into a means-tested welfare program administered by other agencies or state governments.¹⁵
4. Sunset arbitrary “public interest” FCC speech controls to protect the First Amendment rights of all speakers and listeners.¹⁶

¹² Alden Abbott, “You Don’t Need the FCC: How the FTC Can Successfully Police Broadband-Related Internet Abuses,” Heritage Foundation *Legal Memorandum*, No 154, May 20, 2015. <https://www.heritage.org/government-regulation/report/you-dont-need-the-fcc-how-the-ftc-can-successfully-police-broadband>. Raymond Gifford, “The Continuing Case for Serious Communications Law Reform,” Mercatus Center at George Mason University, Nov. 9, 2011. <https://www.mercatus.org/research/working-papers/continuing-case-serious-communications-law-reform>.

¹³ Thomas W. Hazlett, *The Political Spectrum: The Tumultuous Liberation of Wireless Technology, from Herbert Hoover to the Smartphone* (New Haven, CT: Yale University Press, 2017). Thomas W. Hazlett, “The Evolution of Spectrum Property Regimes: Experiments with Disruptive Technologies in the U.S,” unpublished manuscript, Feb. 3, 2026. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6172558. Lawrence J. White, “Propertyizing” The Electromagnetic Spectrum: Why it’s Important, and How to Begin,” *Media Law & Policy*, Vol. 9, No. 1 (Fall 2000): 19-48. Adam Thierer, “A Policymaker’s Guide to Deregulating Telecommunications, Part 6: A Free Market Future for Spectrum,” Heritage Foundation *Talking Points* No. 11, March 19, 1996. Ronald H. Coase, “The Federal Communications Commission,” *Journal of Law and Economics*, Vol. 2 (Oct. 1959): 1–40.

¹⁴ Jeffrey Westling, “Rivalrous Regulators: Historical Analysis of the Dual Agency Approach to Spectrum Management,” R Street Institute *Policy Studies*, Oct. 4, 2021. <https://www.rstreet.org/research/rivalrous-regulators-historical-analysis-of-the-dual-agency-approach-to-spectrum-management>.

¹⁵ Solveig Singleton, “Universal Service Subsidies Have Failed,” Competitive Enterprise Institute, *Study*, June 25, 2025. <https://cei.org/studies/universal-service-subsidies-have-failed>. Joe Kane, “A Blueprint for Broadband Affordability,” Information Technology & Innovation Foundation, Jan. 2025, <https://itif.org/publications/2025/01/13/a-blueprint-for-broadband-affordability>. Adam Thierer, “Universal Service: The Fairy Tale Continues” *Wall Street Journal*, Jan. 20, 1995, p. A12

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5. Preempt or simplify remaining state barriers to competition that undermine interstate markets.¹⁷

CONCLUSION

In closing, the key lesson of the Telecom Act experience is that it is essential Congress get the job done when looking to clean up past messes, and even more crucial to not create new problems in the process. No matter how well intentioned any of these rules may have been, the resulting regulatory regimes have had many unintended consequences and costs for innovators and the public.

The danger of continued FCC meddling in existing and emerging information technology markets remains real and Congress should address the unfinished business of the Telecom Act by cleaning up this mess for good.

¹⁶ Spence Purnell and Adam Thierer, “It’s Time for Congress To End the FCC’s Escalating War on Free Speech,” R Street Institute *Analysis*, March 18, 2026. <https://www.rstreet.org/commentary/its-time-for-congress-to-end-the-fccs-escalating-war-on-free-speech>. Robert Corn-Revere and Ronnie London, Comments of the Foundation for Individual Rights and Expression “In the Matter of Delete, Delete, Delete,” Federal Communications Commission, MB Docket No. 25-133, Apr 11, 2025. <https://www.fcc.gov/research-learn/fire-comments-fcc-delete-delete-delete>. Randolph J. May, “The Public Interest Standard: Is It Too Indeterminate to Be Constitutional?” *Federal Communications Law Journal* Vol. 53 (May 2011): 427–468. Adam Thierer, “Is the Public Served by the Public Interest?” *The Freeman*, (Sept. 1996): 618–20. <https://fee.org/articles/is-the-public-served-by-the-public-interest-standard>.

¹⁷ Ellis Scherer, “Comments to the FCC Regarding Eliminating Barriers to Wireline Deployment,” Information Technology & Innovation Foundation, Nov. 17, 2025. <https://itif.org/publications/2025/11/17/comments-fcc-regarding-eliminating-barriers-to-wireline-deployment>. Jeffrey Westling, “Barriers to Broadband Deployment,” R Street Institute *Real Solutions*, Nov. 9, 2021. <https://www.rstreet.org/commentary/barriers-to-broadband-deployment>.

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APPENDIX

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Appendix I: The Telecommunications Act of 1996 at 30, Part 1: Why It Was Needed

by Adam Thierer (Originally Published by the R Street Institute on Feb 2, 2026)

February 8th marks the 30th anniversary of President Bill Clinton signing the [Telecommunications Act of 1996](#) into law. Its passage marked a crucial moment in the history of information and communications technology (ICT) policy in the United States. I was actively involved in the debates leading up to the passage of the Telecom Act during my time as an analyst at the Heritage Foundation in the early 1990s. In this 4-part series, I discuss how the Telecom Act came about, its lasting impact, and the path forward for communications and media reforms.

The Telecom Act’s overall effect has been mixed. The law did help to somewhat move the U.S. away from a [convoluted analog era regulatory regime](#) that had served the public poorly. Part 1 in this series looks back at the historical problems that led Congress to pass the Telecom Act. Unfortunately, as part 2 in the series explains, reforms unfolded quite slowly and the law’s ambiguity created new problems. Specifically, the Federal Communications Commission (FCC) continued to meddle in ICT markets in costly, inefficient ways.

Part 3 argues that the best thing about the Telecom Act lies in what it did *not* do. Specifically, the law treated some sectors (like wireless markets) with a much lighter regulatory touch while largely ignoring other technologies (like the internet, digital commerce, and social media). Immediately after the Telecom Act’s passage, regulators prioritized older sectors, such as wireline telephony, cable television, and over-the-air radio and television broadcasting, over emerging technologies. This was a blessing. By passing a mostly backwards-looking law, Congress created an implicit policy firewall between the analog and

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digital eras. Regrettably, older sectors continued to labor under mountains of meddlesome regulatory policies. Luckily, however, newer technologies—especially online services, personal computing, electronic commerce, and smartphone hardware and applications—enjoyed general regulatory forbearance and benefited from a presumptive freedom to innovate.

Unfortunately, many problems with the Telecom Act remain because Congress failed to provide a clear vision and timetable for reform, while also leaving the door open to ongoing FCC regulation. Part 4 will focus on the reforms still needed 30 years later.

A Response to Analog Era Regulatory Mistakes

The primary objective of the Telecom Act was “[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” Congress was responding to the convoluted thicket of federal, state, and local regulations that limited innovation and competition in ICT sectors. The FCC was responsible for much of this problem, but every state also had a [public utility commission](#) (PUC) that established entry requirements, regulated rates, and managed market outcomes in various ways.

Geographic monopolies in telephony, cable, and broadcasting developed [not by natural market forces](#), but through intentional political decisions and the imposition of a wide variety of regulatory mechanisms. These included line-of-business restrictions, operating licenses and permits, price controls and rate-of-return regulations, technical device/equipment regulations, and various quality-of-service or access requirements. There were also overlapping and

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inefficient “universal service” subsidies that distorted markets and reinforced monopolies.

Meanwhile, under the theory that the government owned the airwaves, the FCC tightly controlled wireless spectrum allocation and use decisions. As a result, bureaucrats possessed sweeping control over the information means of production for the nation. These policies created direct barriers to new entry, innovation, consumer choice, and free speech.

The Telecom Act was also a response to the [1982 antitrust breakup of AT&T](#) by the Department of Justice (DOJ). Incredibly, the DOJ handed control of the resulting [AT&T antitrust consent decree](#) to just one judge on the U.S. District Court for the District of Columbia. This arrangement left him free to dictate important policies for the communications marketplace unilaterally, adding another layer of court-based regulation to what the FCC and the state PUCs were already imposing. With the Telecom Act, Congress looked to reassert its authority over these issues to address this problem.

The “Public Interest” Charade

In sum, for most of the 20th century, a multi-headed regulatory hydra comprehensively controlled almost every facet of American communications and media technology, with the notable exception of newspapers, publishing, and computing. Strangely, therefore, the oldest and newest ICT sectors were largely exempt from most of this regulatory regime, but everything in between was smothered in multiple confusing layers of technocratic regulations, distortionary subsidies, antitrust micromanagement, and speech controls.

While the policies imposed by the FCC, state PUCs, and the courts were supposed to serve “the public interest,” by the early 1990s it became clear that this system was broken and failing consumers. As enforced by politicians and bureaucrats, “the public interest” [ultimately](#)

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had little to do with what the public actually wanted—more competition, more choices, and more diverse content. Instead, the system was often serving *private* interests who had “captured” the regulatory process. As the early 1990s witnessed the dawn of digital technologies, personal computers, the internet, electronic commerce, and advanced wireless systems, it was obvious the old regulatory system had to come in line with modern marketplace realities and consumer desires.

Part 2 explains how Congress sought to fix the Telecom Act’s problems, but failed to deliver a proper solution.

Appendix II: The Telecommunications Act of 1996 at 30, Part 2: Why It Failed in Many Ways

by **Adam Thierer** (Originally Published by the R Street Institute on Feb 6, 2026)

[Part 1](#) in this series discussed the troubling history of information and communications technology (ICT) regulation in America, which created monopolies, limited innovation, and diminished consumer choices. This led Congress to pass [The Telecommunications Act of 1996](#), which turns 30 years old on February 8th. Part 2 in this series explores how, despite the best of intentions, Congress made many mistakes in the Telecom Act that left the door open to considerable Federal Communications Commission (FCC) regulation of American communications and media markets.

Addressing the Analog Era Regulation Through “A Model of Ambiguity”

The unfortunate regulatory history described in part 1 forced Congress to explore major reforms to traditional communications and media policies, and after an intense debate, the Telecommunications Act of 1996 passed. While Congress hoped to “promote competition and reduce regulation,” the Telecom Act ultimately yielded micromanaged, partial liberalization. The law did not initiate far-reaching deregulation or agency abolition—which was what [the Carter administration and Congress did in the late 1970s](#) by sweeping away the regulatory regime that once governed the commercial airline marketplace. The Telecom Act instead retained much of the traditional regulatory apparatus. It tweaked some old rules, introduced new ones, and even empowered the FCC to engage in new types of market manipulation.

The Act retained the traditional regulatory approach of partitioning ICT markets in different “silos,” with sector-specific FCC bureaus overseeing unique bodies of law for “cable

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companies,” “telephone providers,” “mobile firms,” or “broadcasters.” The rise of digital markets, online speech, and other new communications and media options signaled that a world of technological convergence was coming. Yet, instead of eliminating those past artificial distinctions and regulatory silos, Congress allowed them to persist and even bolstered them.

In a [1999 Supreme Court decision](#) that evaluated the FCC’s powers under the Telecom Act, Justice Antonin Scalia concluded, “It 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. That is most unfortunate for a piece of legislation that profoundly affects a crucial segment of the economy worth tens of billions of dollars.” Despite this ambiguity, the Court allowed continued FCC micromanagement of telecom markets because the justices generally deferred to Congress and its authority to establish the powers of the agency, even if the law was broad and contradictory in many ways.

This makes it clear that the biggest problem with the Telecom Act was Congress’ failure to impose serious constraints on the FCC, which empowered the agency to regulate more using open-ended new powers. The most problematic of the new rules promulgated by the agency involved [“open access” provisions](#) regulating the sharing of traditional wireline telephone lines and components.

Leading up to and following the Telecom Act, an astonishing amount of time and paperwork was devoted to maintaining the artificial demarcation between “long distance” versus “local” telephony. Instead of sweeping these distinctions away in the Telecom Act, Congress reinforced them and created new regulatory authority through infrastructure-sharing rules and

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interconnection mandates, and left broad discretion to the FCC to enforce them. The agency used these ambiguous provisions to create a confusing new set of “[unbundled network element](#)” (UNE) sharing rules and a convoluted pricing formula for them called “[Total Element Long-Run Incremental Cost](#)” (TELRIC) pricing.

Like all central planning efforts, the UNE / TELRIC regulatory regime produced more paperwork and litigation than consumer benefits. Three of the most important rules the FCC generated during this period—the [Local Competition Order](#) (1996), the [UNE Remand Order](#) (1999), and the [UNE Triennial Review](#) (2003)—totaled a staggering 1,575 pages and 6,770 footnotes of regulations. The FCC promulgated many other rules and to implement other parts of the Telecom Act, and countless additional [state Public Utility Commission \(PUC\) proceedings](#) created many new rules and proceedings.

Lawyers benefited far more from this paperwork than the public did, and it set back industry investment for a time as more regulatory proceedings and legal challenges ensued, creating enormous market uncertainty. In the wake of the 2003 UNE Triennial Review rulemaking, [one telecom lawyer famously told *The New York Times*](#) that “Every word will be challenged ... My children will go to college on this stuff. This is a lawyer’s dream.” What is most astonishing about this is how irrelevant it would all become due to dynamic change within ICT markets. With the rise of robust nationwide wireless networks and high-speed fiber networks, the “long distance” versus “local” telephony distinction became meaningless rapidly. Markets and the public moved along faster than the FCC.

The Net Neutrality Wars and Continuing FCC Speech Control Efforts

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The FCC promptly shifted its attention to control of broadband markets as the “net neutrality” wars began in the mid-2000s. Another long fight ensued over whether the FCC could regulate how broadband services were packaged and priced. Once again, lawyers and lobbyists benefited more than anyone else from this until the regulations were finally beat back after a protracted decade-long fight.

There were also many other FCC efforts to use its ambiguous authority under the Telecom Act (or previous policies that Congress failed to reform) to regulate in other ways. That includes agency efforts to influence television programming decisions both directly and indirectly (something the FCC is still doing in 2026) by using the threat of agency fines and other penalties. And the law included requirements for new broadcast television ratings to address violent content using a so-called “V-Chip,” which could block rated shows if households programmed their V-Chip to do so. Few did, however, and the system proved to be a bust and was forgotten quickly.

The Telecom Act also included a variety of other new speech-related regulatory schemes that raised First Amendment-related challenges. The law included Communications Decency Act provisions seeking to regulate “obscene, lewd, lascivious, filthy, or indecent” content online, but the Supreme Court unanimously declared them unconstitutional in the historic 1997 case *Reno v. ACLU*. The Act also included cable TV signal “scrambling” rules to filter sexually explicit programming, but the Supreme Court also struck those down in 2000.

On top of all the economic and speech-related regulation that unfolded in the wake of the Telecom Act, the FCC also used any telecom and media merger as an opportunity to extract from firms a variety of “voluntary concessions” that could not otherwise be obtained through

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standard legal procedures. Again, this happened because Congress failed to limit the scope of agency powers in the Telecom Act.

While this dismal history suggests the Telecom Act has been a failure, Part 3 will identify some benefits of the law.

Appendix III: The Telecommunications Act of 1996 at 30, Part 3: A Few Important Accomplishments

by Adam Thierer (Originally Published by the R Street Institute on Feb 9, 2026)

[Part 1](#) of this series discussed the history of communications and media regulation that led Congress to pass the Telecommunications Act of 1996, which turns 30 years old on February 8th. [Part 2](#) identified some of the failures of the Act and explained how its open-ended provisions led to continued Federal Communications Commission (FCC) meddling in America’s communications and media marketplace.

Despite those problems, the Telecom Act included some provisions that produced positive results. The law spurred a move away from price controls and [rate-of-return regulations](#), which were highly destructive. It also clawed back authority from the courts, which had been empowered to dictate important policies for the communications marketplace by the 1984 [AT&T antitrust breakup](#).

Part 3 focuses on two of the most important elements of the Act. The first are preemption provisions that helped spur the development of robust nationwide markets. The second is [Section 230 of the Communications Decency Act](#) of 1996, which was part of the Telecom Act. This provision became a catalyst for the explosive growth of online markets and speech.

Addressing State Barriers to Innovation and Competition

The Telecom Act recalibrated the federal-state balance of powers and helped push communications markets into a new technological era, especially by moving the nation away from regional regulation and local monopolies.

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Section 253 of the law that stated that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” This addressed the costly patchwork of anticompetitive state public utility regulations that had encumbered communications markets for decades, as discussed in Part 1 of this series.

Unfortunately, the way Congress addressed jurisdictional responsibilities throughout the Act resulted in some continuing confusion and [contentious court battles](#). Supreme Court [Justice Antonin Scalia argued](#) the Telecom Act was “a model of ambiguity or indeed even self-contradiction,” because of this. A [2021 Congressional Research Service \(CRS\) report](#) similarly noted how “[d]elineating the contours of the FCC’s preemption authority can become complex once specific statutory provisions are brought to bear on particular issues.”

This confusion flowed from the Act’s back-and-forth provisions regarding some jurisdictional assignments. For example, Section 704 of the law said that “nothing in this Act shall limit or affect the authority of a State or local government ... over decisions regarding the placement, construction, and modification of personal wireless service facilities.” However, the Act went on to establish important limitations on this local power by stipulating that governments “shall not unreasonably discriminate among providers of functionally equivalent services; and shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”

Congress included other provisions granting the FCC authority to preempt laws that undermined nationwide competition. Section 706(a) specified that the FCC and state regulators should “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans,” through the use of “regulatory forbearance,

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measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.”

Despite some contradictions, the Telecom Act helped establish more robust national wireless and broadband markets. Luckily, Congress had already [authorized spectrum auctions](#) as a method of allocating national wireless licenses. Federal lawmakers were attracted to the revenues such auctions could generate—and ongoing auctions did [generate billions for federal coffers](#). More importantly, auctions injected greater market discipline into the spectrum allocation process by distributing wireless licenses. Previously, the agency used highly politicized [comparative hearings or random lotteries](#) to determine who received licenses. Unfortunately, as Part 4 will highlight, Congress did not follow through with additional policy reforms needed to ensure fully flexible, tradeable spectrum rights.

Telecom Act preemption provisions also facilitated [wireline broadband](#) rollout. After a protracted battle over proposed “[net neutrality](#)” [regulations](#) subsided, investment grew and high-speed fiber networks came to have broader reach. A recent [USTelecom report](#) on broadband capital expenditures for America’s major wireline, wireless, and cable broadband providers totaled nearly \$90 billion in 2024. In turn, these investments laid the groundwork for the [massive AI-related infrastructure buildout](#) happening today.

In sum, the Telecom Act’s push for nationwide competition and deployment encouraged more robust investment and innovation as a new global information technology marketplace was taking shape. The provision discussed next furthered that outcome even more.

Section 230: Foundation of American Digital Technology Success

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The greatest irony of the Telecom Act is that its most consequential provision was largely an afterthought upon implementation. “When the 1996 Act passed, few observers would have thought that Section 230 would have any long-lasting or profound effects,” [note Hudson Institute scholars](#). Yet, this provision would become [the legal cornerstone of the modern digital economy](#) and the foundation of America’s dominance in the global tech markets.

Section 230 was meant [to address confusion in lower courts](#) regarding liability for third-party speech on online platforms. The provision addressed that problem by shielding online intermediaries from liability for the third-party content and communications that traveled over their networks. This liability shield [facilitated more speech outlets and opportunities](#), and “[has served as protective armor for internet users of every stripe](#).”

Section 230 also led to an explosion of online commercial activity and investment as information platforms and applications grew. “No other sentence in the U.S. Code,” [one expert argued in 2015](#), “has been responsible for the creation of more value than that one.”

Section 230 allowed an entirely new generation of once-tiny tech start-ups to grow rapidly, generate trillions in economic activity, and create American-based global technology powerhouses.

Without Section 230, internet entrepreneurs, smartphone apps, and social media platforms would have faced the threat of litigation-happy trial lawyers and countless state regulators. While some critics of the provision think it has been *too* generous to tech companies, eliminating it would have devastating ramifications. A [January 2026 study by Computer & Communications Industry Association](#) said that repealing Section 230 protections would cost investors at least \$2.2 trillion amounting to a 3.8 percent decline in the S&P 500. Without this default liability shield, online speech [would also be less free and vibrant](#), as even senior

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Trump administration officials have argued. Ultimately, legal simplicity and a general freedom to innovate are powerful catalysts for the growth of both commercial applications and free expression.

Where Deregulation Happened, It Worked

The key takeaway of these successes is that, where markets and technologies were freed from regulatory shackles, and where the FCC and trial lawyers were restrained from intervening in emerging sectors, innovation and speech blossomed.

Unfortunately, Congress did not finish the job it started in the Telecom Act because it delegated too much authority to the FCC and did not sunset many archaic rules that remain today. Part 4 in the series will conclude by outlining the reforms Congress still needs to undertake to address the Telecom Act’s unfinished business.

Appendix IV: The Telecommunications Act of 1996 at 30, Part 4: The Continuing Need for Reform

by Adam Thierer (Originally Published by the R Street Institute on Feb 18, 2026)

The Telecommunications Act of 1996 just turned 30 years old, and this 4-part series commemorating its anniversary has explored why Congress passed the Act ([Part 1](#)), some of the problems with the law and the Federal Communication Commission’s (FCC) enforcement of it ([Part 2](#)), but also the way certain provisions helped boost national markets and innovation ([Part 3](#)). This final installment in the series identifies the continuing need for communications policy reforms, most of which Congress should have implemented long ago.

Just 11 years after the law passed, [the Congressional Research Service \(CRS\)](#) had already concluded that “the environment we live in today was barely contemplated” when the Telecom Act passed, and “[t]here is consensus that the current statutory framework is not effective in the current market environment.” What was obvious to CRS in 2007 is even more evident in the remarkably diverse information and communications technology (ICT) ecosystem of 2026.

Unfortunately, the FCC continues business as usual, which threatens to extend [analog era regulations](#) into the AI age. Congress still needs to address the archaic, unnecessary regulations that encumber this marketplace and then move to shrink the powers of the FCC and devise a timetable to close the agency for good.

Congress Left the Door Open to Regulatory Mischief

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While the FCC’s relevance rapidly wanes, the agency remains remarkably active and continues to exert considerable influence over ICT markets. According to the Competitive Enterprise Institute’s latest annual survey of federal regulatory activity, the FCC [ranks first among independent regulatory agencies in terms of rules promulgated](#), outpacing the Securities and Exchange Commission and Nuclear Regulatory Commission, among others. An estimated 88 percent of those FCC rules affect small businesses.

Even if some of these rules have pro-competitive intent, most of the agency’s regulations are unnecessary vestiges of a bygone era. Worse yet, many of the regulations benefit incumbents, not the public. “The FCC’s broad grant of authority, combined with its impenetrable complexity, means that it has nearly boundless ability to distribute favors and shape the trillion-dollar technology and media industries,” [notes telecom scholar Brent Skorup](#).

For example, [universal service subsidy rules](#) have resulted in [decades of cost overruns and inefficient delivery of service](#). For households in need of broadband assistance, subsidies should have long ago been divorced from distortionary FCC regulations that mostly benefited rural carriers. Policymakers should have delivered assistance directly to needy families as targeted, means-tested welfare instead.

Likewise, while some level of spectrum governance remains important, it too [should have been removed from the FCC’s hands](#) decades ago. Technical spectrum allocation and management decisions could have been transferred to the National Telecommunications and Information Administration or a private technical coordination body. FCC spectrum management simply has [too many political strings attached](#) and has too often been [coopted by industry players to exclude competition](#).

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Finally, as noted in [Part 2](#), the FCC never had any business being America’s third antitrust agency by imposing layers of indirect mandates on parties pursuing mergers. The Federal Trade Commission and the Department of Justice Antitrust Division already possess more than enough authority to police markets and mergers.

Regulators Will Only Change When Forced by Congress or Technological Realities

The key lesson of the Telecom Act experience, therefore, is that it is essential to get the job done when looking to clean up past messes, and even more crucial to not create new problems while doing so. Instead of specifying meaningful limits on FCC power and a clear timetable to achieve liberalization objectives, Congress hoped that regulators would voluntarily abide by the Act’s goal to “promote competition and reduce regulation.” This was wishful thinking. Even before the Telecom Act, it was clear the agency would never relinquish control over markets, even when encouraged by Congress to forbear from regulating.

While the Telecom Act included various forbearance provisions and requirements for periodic regulatory review, the agency largely ignored them even though there was plenty of regulatory deadwood that could have been discarded long ago. The FCC, however, only seems to be willing to throw in the towel after old ICT technologies have become completely obsolete. For example, the agency only [finally scraped](#) its Morse code regulations in 2007, and just last year the FCC [finally closed the book](#) on regulations governing telegraphs, rabbit-ear broadcast receivers, and phone booths. This is why Congress needs to fix the issues left unaddressed by the Telecom Act and then devise a plan to downsize and eventually closing the FCC.

Forgotten Reforms That Are Still Needed Today

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Various analysts and even some policymakers identified the deficiencies of the Telecom Act from the start. At the time of the Act’s passage, it was widely believed that Congress would follow-up with some important additional spectrum policy reforms as well as protections for internet services to ensure the FCC would not meddle in new sectors. Unfortunately, that also did not happen.

Many policy analysts and academics also [proposed comprehensive reform frameworks](#), but Congress never entertained those proposals. In each reform proposal, the goal was to eliminate arbitrary FCC “public interest” powers, streamline universal service efforts, create more fully flexible and tradable spectrum property rights, and limit the powers of the agency over information markets in other ways.

Federal lawmakers still need to act on these goals. “As its original mission has faded, the FCC has become increasingly politicized, aligning with shifting partisan agendas rather than exercising independent expertise,” argues American Enterprise Institute scholar Mark Jamison in [a new report](#) on disbanding the agency. “Given its loss of purpose and its institutional weakness, it appears that communications policy in the U.S. would be better off without the FCC,” he argues. The agency’s core functions—common carrier regulation of communications and broadcasting licensing—are now obsolete. The FCC now operates primarily for the betterment of the many lawyers and lobbyists who continue to petition the agency to extend the life of old, unnecessary rules or impose new obligations on technologies and sectors that it has no business regulating. Congress must not let the FCC expand its mission well beyond its traditional boundaries such that it would become a veritable “Federal Artificial Intelligence Commission.”

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Of course, the current legislative environment does instill one with much hope that any of this will happen. Congress has proven incapable of advancing comprehensive technology policy measures in recent years, and there have been no serious efforts to constrain the powers of the FCC. Nonetheless, the danger of continued FCC meddling in existing or emerging ICT markets is real and Congress should address the unfinished business of the Telecom Act.

Appendix V: It’s Time for Congress To End the FCC’s Escalating War on Free Speech

by **Spence Purnell, Adam Thierer** (Originally Published by the R Street Institute on March 18, 2026)

In 2019, Federal Communications Commission (FCC) Chairman Brendan Carr [declared](#) that the agency had no “roving mandate to police speech in the name of the ‘public interest.’” But he backtracked on that claim in a big way last Saturday—reportedly while visiting the president’s private club in Palm Beach, Florida.

Carr [warned](#) that broadcasters “running hoaxes and news distortions” should “correct course before their license renewals come up.” The threat came just after President Trump criticized press coverage of the war in Iran in a [social media post](#). The message was unmistakable: Broadcast outlets that report on the conflict in ways the administration dislikes risk losing access to the public airwaves. The instrument of coercion was equally clear: the FCC’s “public interest” standard, a regulatory concept so vague and so routinely abused that it has become whatever the sitting chair says it is.

The Public Interest Standard Is No Standard at All

The [public interest standard](#) has governed communications policy since the Radio Act of 1927, and in the near-century since its enactment, neither Congress nor the FCC has managed to define it with any precision. In 1959, Nobel Prize-winning economist Ronald Coase [argued](#) that the phrase “lacks any definite meaning” and that the inconsistencies in agency decisions had made it “impossible for the phrase to acquire a definite meaning in the process of regulation.” That assessment remains true today. The public interest standard is an empty

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vessel into which successive generations of unelected bureaucrats have poured whatever political priorities happen to be ascendant at the time.

Carr’s invocation of “hoaxes and news distortions” is particularly misleading, as the FCC’s own rules define those terms far more narrowly than his rhetoric suggests. The “hoax” rule applies exclusively to false information concerning a crime or catastrophe, and only when the licensee knows the information is false and that the broadcast is likely to cause substantial public harm in some direct way. It is difficult to argue that criticizing a global military action meets this entire criterion.

So how does the FCC determine what constitutes “fake news”? Carr offered no criteria, no specific broadcast, and no standard by which a regulator could distinguish impermissible reporting from legitimate journalism. The absurdity of the exercise becomes apparent the moment one examines who is raising concerns about the war. The president himself campaigned against “endless wars,” calling his opponent “the candidate of endless wars” and vowing, “I’m not going to start a war. I’m going to stop wars.” As recently as June 2025, Vice President JD Vance said he empathized with Americans “exhausted after 25 years of foreign entanglements in the Middle East.” He has since conspicuously avoided lending the current war his full-throated public support. Prominent conservative commentators have questioned the administration’s justifications, and the conflict has visibly divided the president’s own political base.

If reporting that reflects the skepticism of the administration’s own voters and allies constitutes “fake news,” then the term has no meaning beyond coverage the president finds

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inconvenient. This means that the public interest standard has been reduced to a loyalty test administered by the FCC on the White House’s behalf.

The rule against “broadcast news distortion” is impossible to wrangle. It applies only where there is evidence that a news report deliberately intended to mislead viewers or listeners. The FCC’s own guidance specifies that enforcement requires proof of deliberate distortion of a significant factual event, [drawing a clear distinction](#) between intentional fabrication and mere inaccuracy or difference of opinion—the latter of which is expressly not actionable. Nothing in Carr’s weekend broadside identified a specific broadcast, a specific falsehood, or a specific intent to deceive. He simply gestured at coverage he found unfavorable and invoked regulatory consequences.

Importantly, this not the administration’s first foray into bullying the media. It is one incident in a pattern of coercion that constitutes a clear danger to free speech. In September 2025, Carr pressured broadcasters into temporarily [suspending a late-night comedy program](#) after the host made remarks the administration found objectionable. By January 2026, the FCC had issued [regulatory guidance](#) reinterpreting the “equal-time rule” to cover both daytime and late-night talk shows—a move the commission’s sole Democratic member [characterized as](#) “an escalation in this FCC’s ongoing campaign to censor and control speech.” CBS subsequently [refused to air](#) an interview its own host had conducted with a political candidate, citing fear of regulatory reprisal.

As noted in a [previous R Street analysis](#), the Federal Trade Commission’s recent letter to Apple about the curation decisions of Apple News reflects the same troubling impulse to use regulatory authority (or even the implication of it) to pressure private companies into altering their editorial choices. The pattern is consistent across agencies. Government officials

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leverage their oversight power not to enforce clearly defined statutory obligations, but to coerce private actors into producing speech outcomes the administration prefers. This is precisely the kind of government conduct that free-market proponents have historically opposed, and rightly so.

As a practical matter, these threats are largely [unenforceable](#), which makes them even more nefariously coercive. The FCC has not denied a license renewal in decades. Television licenses do not come up for renewal until late 2028 at the earliest, and any government action against a licensee would trigger protracted litigation in which the station would mount a First Amendment defense.

But enforceability is beside the point. The real function of these threats is not legal, but atmospheric: to create a climate of self-censorship in which media companies—particularly those with pending business before the commission (e.g., mergers, license transfers, spectrum allocations)—preemptively soften their coverage to avoid regulatory friction.

Congress Should Act to Constrain the Powers of the FCC

The reason Carr and other FCC officials are able to abuse their authority in this fashion is because Congress has never taken steps to restrain the agency’s open-ended powers.

Lawmakers have refused to provide any meaningful guidance regarding the amorphous “public interest” powers of the agency, preferring to delegate open-ended authority to the agency and castigate FCC officials when they overstep.

The last time Congress took up serious reform of archaic telecom and media policies was 30 years ago in the [Telecommunications Act of 1996](#). Unfortunately, not only did lawmakers fail to provide any meaningful guidance or limitations on the agency’s public interest authority,

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they ultimately expanded the FCC’s powers. As a [recent R Street series](#) on the Telecom Act’s 30th anniversary [noted](#), this has left the door open to ongoing and unnecessary FCC meddling in markets and speech.

What makes this situation even more bizarre is that the FCC is now engaged in full-time harassment of news providers in one increasingly narrow segment of the media ecosystem while the disputed content is often available via multiple online and social media platforms. Essentially, the oldest electronic media are governed by a lesser First Amendment standard than the one applied to newer electronic media. This scenario is a veritable “[telecom Twilight Zone](#)” that creates bifurcated First Amendment rights with no grounding in modern realities.

Congress should have closed the book on this unfair regulatory regime when it passed the Telecom Act. Unfortunately, the system persists and allows continued FCC speech meddling that is wholly offensive to the First Amendment and the rule of law. It is not too late for Congress to end this by limiting FCC powers over free speech—or better yet, taking steps to [eliminate the agency for good](#).