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Congress Should Adopt a "Skinny" Communications Reform Bill

by

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It's been thirty years since the passage the Telecommunications Act of 1996, the last significant revision to the Communications Act of 1934. Given the dramatic technological and marketplace changes in the communications and media landscape since 1996, it not surprising there's now discussion about updating the statute.

Leaders in both the Senate and House have suggested it may be time to consider rewriting our nation's basic communications law. In December 2025, Senator Ted Cruz, Chairman of the Senate Committee on Commerce, Science, and Transportation said, "given the rapid pace of evolution in technology and telecommunications, it's a wonder that the legal regime governing these issues, and the Commission's role in regulating them, has largely not been updated since 1996." Therefore, he declared, "a statutory update might be worthwhile."

On March 26, Representative Richard Hudson, Chairman of the House Subcommittee on Communications and Technology, said: "The world of 1996 looks nothing like the world of today, and it's time we update our laws to reflect that."

And on April 17, at a forum in Washington, Federal Communications Commission Chairman Brendan Carr joined the "it's time for an update" chorus, declaring, “I think it can be really helpful when Congress … steps in and updates old legislation like the 1996 Telecom Act.”

Despite the widespread agreement among key policymakers that the Communications Act should be updated, the prospects for legislative action any time soon are dim. The problem is that congressional leaders apparently assume they need to "go big" to accomplish anything meaningful. Not true. At least as a transitional measure, and until adoption of a more comprehensive rewrite that likely would take at least a year or more, Congress could adopt a "skinny" bill – no more than a page or two – that nevertheless would redirect communications policy in a free market-oriented way, which is what today's competitive marketplace environment requires.

Twenty-five years ago, the Telecommunications Act in 1996's preamble declared that its purpose was to "promote competition and reduce regulation in order to secure lower prices and higher quality services."

While reducing regulation may have been Congress's intent in 1996, for various reasons, including the FCC's natural bureaucratic imperative to retain, if not expand, power, there hasn't been as much deregulation of communications market sectors as there should have been. Overall, this continued over-regulation has meant lower investment and slower innovation than otherwise would have been the case.

To accomplish real regulatory reform that constrains the FCC's bureaucratic imperative, the "skinny bill" I envision would simply replace the Communications Act's one hundred statutory provisions authorizing the FCC to act in the "public interest" with language directing the agency to act to promote "consumer welfare." The "public interest" delegation is an unbounded vague standard facilitating the agency's exercise of essentially unconstrained bureaucratic discretion. In contrast, the antitrust-like "consumer welfare" standard traditionally has been understood, and interpreted by the courts, to require a targeted focus on the effects of government actions on consumers, not on competitors or broader societal goals. In short, consideration of consumer harm or benefit is the primary focus of the consumer welfare standard.

By substituting the phrase "to promote consumer welfare" wherever language authorizing the Commission "to act in the public interest" appears, Congress will make it less likely that the Commission can employ its discretion to adopt or maintain costly regulations that don't benefit consumers. And, importantly, in considering whether to approve mergers or other transactions requiring its approval, the agency no longer will be able to invoke its "public interest" authority to impose all sorts of extraneous conditions, entirely unrelated to the competitive effects of the specific transaction.

Moreover, it is the FCC's indeterminate "public interest" authority which has supported the agency's regulation of radio and television programming content from the agency's creation. While current FCC Chairman Brendan Carr's invocation of the agency's public interest authority to threaten broadcasters with sanctions for what he considers programming inconsistent with the

"public interest" has provoked rebukes, the reality is that the FCC's Democrat commissioners frequently have invoked such authority in efforts to regulate program content to conform to their own notions of the public interest.

In today's era of media abundance, when listeners and viewers have countless choices of outlets with a wide diversity of views, it's time to get the government out of the business of regulating programming content. Eliminating the public interest standard in favor of an antitrust-like consumer welfare standard should accomplish that. And Congress could make doubly sure by declaring that, consistent with the First Amendment's strictures, the FCC no longer possesses the authority to regulate the programming of broadcasters or any other media outlet subject to its jurisdiction.

In sum, adoption of a "skinny bill," while perhaps not accomplishing comprehensive communications reform, in the meantime would redirect communications policy in a free market, free speech-friendly way fit for the Digital Age.

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