Perspectives from FSF Scholars
July 29, 2026
Vol. 21, No. 32

The Telecom Act of 1996 Needs a Deregulatory Overhaul – Even More Now!

by

Randolph J. May *

The celebrations of America's 250th birthday will soon be winding down. The occasion has been an opportunity for Americans to engage more deeply with the foundational ideas expressed in the Declaration of Independence and our Constitution.

Admittedly much less momentous, but nevertheless significant, this year marks the 30th anniversary of the Telecommunications Act of 1996, which was the most noteworthy amendment of the Communications Act since its enactment in 1934. Like most anniversaries marking important regulatory milestones, the Telecom Act of 1996's thirtieth anniversary ought to prompt consideration of whether the Communications Act may need a substantial overhaul.

My answer, unequivocally, is "yes." This is especially so considering the undeniable marketplace changes that have occurred since 1996, driven in large part by ongoing technological advancements. And it is also undeniable – even though "deniers" exist whose default position always is and always will be towards more government control – that the direction of marketplace change for telecommunications and the media is towards ever more competition and consumer choice.

In short, today's undeniably increased consumer choice results from the emergence, since 1996 in the waning days of the Analog Age, of facilities-based multiplatform competition among service providers. This multiplatform competition characterizes the Digital Age telecommunications and media environment.

In an essay titled "The Telecom Act of 1996 Needs a Deregulatory Overhaul" published by RealClear Markets in February 2026, I explained why such an overhaul is needed and how, in basic form, it should be accomplished. Now, with the Supreme Court's decision in *Trump v. Slaughter*, issued on June 29, making clear that the president has the power to dismiss FCC commissioners without cause, there is a further impetus for Congress to undertake substantial Communication Act reform. (A further word regarding the impact of *Slaughter* on the FCC at the end.)

But here is the nub of the matter excerpted from my February essay, which remains the same today:

"[A]ny new legislative update should include matters such as reexamining the division between federal and state regulatory authority, reforming the broken Universal Service subsidy system, and making more spectrum available for private sector use. But two major "structural" reforms should take center stage: replacing the existing statute's "stovepipe" regulatory paradigm and the law's pervasive delegation of authority to the FCC merely to act in the "public interest."

By way of further explanation, I wrote then:

With cable, fiber, mobile and fixed wireless, and low-earth orbit satellite systems vying to deliver constantly evolving converging services, it is no longer possible to delineate service categories that reflect stable real-world market boundaries. Yet the statutory "stovepipes," based on outdated "techno-functional" definitional constructs, serve as impediments to deregulating markets in which comparable services compete. The result is to keep power in the hands of bureaucrats rather than consumers.

After passage of the 1996 Act, there remain nearly one hundred statutory provisions that authorize the FCC to act in the "public interest," an essentially standardless standard enabling the agency to exercise, and at times abuse, unconstrained bureaucratic discretion. Aside from continuing to govern certain key aspects of the operations of wireline telecommunications providers, the vacuous public interest standard is the regulatory vise that hold in its grip any user of the radio spectrum.

Thus, the agency's decision to grant or renew a broadcast license must be based on a finding that such action serves the public interest. This authority has long been the basis of the agency's regulation of broadcast programming content, such as the now long abandoned Fairness Doctrine. And because the agency must determine that a proposed transaction to transfer a broadcast license is in the public interest, the agency holds a proverbial sword of Damocles over merger applicants.

This sword has been much in the news in recent months as Brendan Carr, the current FCC Chairman, has used it to threaten broadcast licenses with holdups of pending merger applications absent changes to programming content, presenting delicate First Amendment issues. To be sure, he's not the first FCC chairman to wield the agency's public interest authority to dictate program content. But in this age of media abundance, he should be the last.

As long-time readers of this space know, I have been urging deregulatory reform of the Communications Act along these same lines for at least two decades. And I have done so – based on free market-oriented, free speech-protective, rule of law-grounded principles – regardless of which party has controlled the White House, Congress, or the FCC.

I understand that any new legislative update should consider matters such as reexamining the division between federal and state regulatory authority, reforming the broken Universal Service subsidy system, developing plans for making more spectrum available for private sector use, and protecting national security. But the two major "structural" reforms I have identified – replacing the existing statute's "stovepipe" regulatory paradigm and the pervasive delegation of authority to the FCC to act in the indeterminate "public interest" – are core issues that must be resolved.

And given the 20-year back-and-forth struggle to prevent the imposition of "net neutrality" mandates on Internet service providers, Congress should make explicit that the FCC, or any other government agency, lacks authority to impose public utility-like regulatory controls on broadband providers. This should be done separately if a more comprehensive rewrite would delay enactment of a specific "net neutrality" prohibition.

I am not naïve about the prospect for Congress acting this year in the meaningful way I am advocating. Likely "slim to none," as they say. But in light of the concerns expressed by many, some of which I share, regarding FCC Chairman Brendan Carr's use of the FCC's public interest authority in a way that appears to threaten broadcast licensees based on the content of their speech, perhaps there is now more willingness across the political and philosophical spectrum to consider eliminating, or at least substantially constraining, the exercise of this essentially indeterminate delegation of authority.

Let me be clear: As I have explained here and elsewhere, Democrat-controlled FCCs too have a history of using the agency's public interest authority to control programming content. This includes the Biden-era FCC's transparent holdup of the license renewal of Fox-affiliated broadcaster WTXF Philadelphia which was resolved only as Democrat FCC Chairwoman Jessica Rosenworcel was walking out the door. Unless Congress acts, I have little doubt that when Democrats next control the FCC in the post-Trump era, we will see efforts – likely as pervasive or even more so – to act in ways that attempt to control broadcasters' speech. In other words, to act in ways that many now decry.

Finally, the Supreme Court's *Slaughter* decision, clarifying the president's control of what use to be thought of, by some, as "independent" agencies, should surely provide an additional impetus for Congress to rethink the FCC's role, its powers, and its current multimember structure. In that regard, Justice Neil Gorsuch's concurring opinion in *Slaughter* is well worth a close reading for an appreciation of how the FCC's world has changed pursuant to the Court's understanding of what the Constitution's tripartite separation of powers requires.

The ball's in Congress's court. Or should I say the bill ought to be in Congress's court. Because delay only leaves the FCC out of sorts with what ought to be its proper role given Digital Age realities.

* Randolph J. May is President of the Free State Foundation, a free market-oriented think tank in Potomac, MD. The views expressed in this *Perspectives* do not necessarily reflect the views of others on the staff of the Free State Foundation or those affiliated with it.