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## First Steps for the Trump Administration: Support Technology, Innovation Free Market Reforms to Foster Frontier Technologies

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The frontier sectors that define the new high-tech economy are uniquely vulnerable to political predation and cronyism. Airspace, spectrum, and roads are all controlled by governments. But, if President-elect Donald Trump sticks with his contention that 70 percent of regulation “can go,” prospects look good for American innovation and entrepreneurship. Regulation in advanced technology beyond the absolute minimum often devolves into government picking winners and losers, while imposing rigid frameworks on all.

The rationales for policy intervention in technology policy decrease over time, as “market failure” reveals itself to be a failure to have markets at all. Failures to define and defend network and property rights, privatize resources, and allow fluid contract are widespread. Especially in technology, governments can neither mimic competition nor best assure safety (which require innovations in insurance and liability). The yet-to-be-regulated technology frontier should be left that way. The new administration should adopt a strict presumption against economic regulation and agency mission creep in the telecommunications, technology, and tech-transport space. Sound principles in tech policy include (1) do no harm; (2) be patient; and (3) embrace change.

Conversely, President Trump should also avoid seeking to win favor with the tech sector by offering federal “help” through federal subsidies, favors, and steering, such as President Obama’s “manufacturing hubs.” Should Washington pursue overarching regulation like the Federal Communications Commission’s net neutrality mandates and cybersecurity rules from various federal agencies, it is easy to envision how progress on unmanned drones, self-driving cars, robotics, artificial intelligence, and emergent space exploration will be stifled, allowing only the largest companies to thrive while shutting out competition and innovation.

Overregulation stems not only from agency overreach, but from over-delegation to agencies by Congress. President Trump should avoid regulation of emerging technology sectors, work to eliminate agencies, and roll back recent overly burdensome interventions. He should work with Congress on broad regulatory reform efforts, and to the extent possible, reject new sectoral or category regulation by any agency until Congress votes to explicitly authorize it. The following are some specific recommendations given current policy disputes.

### Policy Recommendations

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**Free the Internet from Public Utility-Style Net Neutrality Regulation.** Although the Federal Communications Commission is an independent agency, it will be up to President Trump to designate a Chairman among the agency's five commissioners. He should entrust this office to a person who is willing to undo the FCC's 2015 Open Internet Order, which reclassified Internet service providers as common carriers under the Communications Act. This rule not only imposed on Internet providers a "net neutrality" mandate—prohibiting them from treating data differently based on its source or contents—but also subjected providers to a panoply of other regulations involving such practices as usage-based pricing and user data collection.

Under the next Chairman, the FCC should revert to its interpretation of the Communications Act that the U.S. Supreme Court upheld in 2005. Under that interpretation, the agency considered Internet service providers to be "information services" and thus exempt from common carrier regulation. Until the FCC completes this process, it should use its authority to refrain from enforcing public utility-style regulations on Internet service providers, as it is obligated to do, given that these regulations are not in the public interest and do not protect consumers or promote competition. Meanwhile, Congress should pass, and the President sign, legislation that explicitly strips the FCC of any authority to regulate how Internet service providers manage their networks, price their services, or enter into transactions with content companies. Such legislation would enable broadband companies to deliver lower prices and faster speeds and to experiment with more creative business models that can benefit consumers.

**Make Telecom Regulation More Accountable by Clarifying the Federal Communications Commission's Role.** President Trump should work with Congress to enact legislation phasing out the FCC, empowering voluntary institutions—or, if necessary, other government entities—to carry out the agency's current functions. This process should first identify which of the FCC's current regulatory roles merit ongoing governmental involvement, with an emphasis on eliminating economic regulations such as price controls or open access mandates. Social policy goals, such as universal service or diversity in media, should be divested from sector-specific regulators and instead addressed through on-budget programs funded by general revenues.

The next step should be to assess which governmental authority—federal or state—is best suited to carry out each regulatory duty for which there remains adequate justification. For any existing agencies that inherit FCC powers, a "firewall" should be crafted to prevent such bodies from regulating Internet-based services or new technologies. Ownership interests in the airwaves should be auctioned off to private or governmental owners, with a judicial body tasked with resolving any disputes that arise regarding spectrum rights. This will free up resources that companies can use to improve wireless communications, such as mobile broadband services.

**Empower Markets to Bolster Privacy and Cybersecurity.** On privacy policy, the issue has never been whether or not markets can offer anonymity on the one hand or authentication on the other. The question is whether the government will *allow* privacy, as opposed to forcing you through a body scanner, sweeping up your phone data, or hacking into your phone. To level the playing field between the government and the governed, the legal framework under which law enforcement and intelligence officials conduct surveillance and compel private companies to divulge private information needs to be updated to reflect 21<sup>st</sup> century realities. Congress should pass, and the President sign, legislation based on the Email Privacy Act (H.R. 699), which passed

the House of Representatives unanimously in April 2016. The bill would require law enforcement officials to obtain a warrant issued upon a showing of probable cause before compelling third-party service providers from divulging users' private information, such as stored emails and backup files. President Trump should also urge Congress to reform Section 702 of the Foreign Intelligence Surveillance Act (50 U.S.C. § 1881a) to protect Americans from warrantless governmental interception of their communications that traverse foreign networks.

**Don't Slam the Brakes on Self-Driving Vehicles:** The National Highway Traffic Safety Administration (NHTSA) released the Federal Automated Vehicles Policy in September 2016. It suggested a relatively measured approach to automated vehicle technology and made some important positive contributions to the public policy environment, but the administration needs to clarify some aspects of it. For example, NHTSA needs to decide whether it wants its guidance on safety assessments for automated vehicles to be voluntary or binding. If it is to be a requirement, it should go through the normal rulemaking process.

In addition, NHTSA must correct in future guidance its current contradictory stance on states codifying automated vehicle safety assessments in their motor vehicle regulations. The agency simultaneously says states should not codify its safety assessment, which it claims is a nonbinding recommendation, but then in its model state policy it says that states should mandate the safety assessment as a condition for state testing permit approval. NHTSA must work to limit its precautionary impulses, which have the potential to delay and increase the cost of automated vehicle deployment—meaning more preventable crashes, more injuries, and more deaths.

**Avoid Internet Sales Taxes.** A Trump administration should oppose any efforts by state sales tax authorities to export their taxation regimes to other states' businesses for purchases made online. Plans currently before Congress to do so would impose crippling compliance costs on e-commerce companies. It would also lead to consumers paying higher taxes overall, as it would end healthy tax competition by eroding incentives for states to keep taxes lower to attract businesses and consumers. If the administration is truly interested in the "fairness" of treating all types of sellers the same way and honoring our Constitution's federalism principles, an origin-based approach to online commerce sales tax is preferable.

### **For Further Reading**

CEI and TechFreedom Comments to the Federal Communications Commission, "Protecting the Privacy of Customers of Broadband and Other Telecommunications Service," July 6, 2016, [https://cei.org/sites/default/files/tf\\_cei\\_reply\\_comments\\_fcc\\_privacy\\_nprm\\_7.6.2016.pdf](https://cei.org/sites/default/files/tf_cei_reply_comments_fcc_privacy_nprm_7.6.2016.pdf).

CEI and TechFreedom Comments to the Federal Communications Commission, "Expanding Consumers' Video Navigation Choices and Commercial Availability of Navigation Devices CS Docket," April 22, 2016, <https://cei.org/sites/default/files/TechFreedom%20%26%20CEI%20Comments%20on%20Set%20Top%20Box%20NPRM%20-%20April%202016.pdf>.

Braden Cox and Clyde Wayne Crews Jr., “Communications without Commissions: A National Plan for Reforming Telecom Regulation,” *Issue Analysis* 2005 No. 9, Competitive Enterprise Institute, October 18, 2005, <https://cei.org/studies-issue-analysis/communications-without-commissions>.

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Jessica Melugin, “Why Internet Sales Taxes Bolster Bigger Government: A Primer on Leading Proposals and their Political Prospects,” *WebMemo* No. 36, Competitive Enterprise Institute, November 10, 2016, <https://cei.org/content/why-internet-sales-taxes-bolster-bigger-government>.

Fred E. Foldvary and Daniel B. Klein (Eds.) *The Half-Life of Policy Rationales: How New Technology Affects Old Policy Issues* (New York: New York University Press, 2003).