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Shrinking Government Bureaucracy Rethinking the Federal Communications Commission Free Market Reforms to Protect Free and Open Internet

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Created by the Communications Act of 1934, the Federal Communications Commission (FCC) wields broad authority to regulate broadcasters, telecommunications services, and wireless providers. Recently, the FCC even claimed to have the power to regulate Internet access.¹ Yet the economic and technological realities that purportedly justified the creation of this agency 83 years ago no longer hold true. Information scarcity has given way to information abundance. Americans today do not depend on a tiny handful of companies to communicate with one another and learn about the world around them.

Therefore, the FCC should undertake a comprehensive review of its many regulations and eliminate those that no longer serve consumers to the extent the agency has the discretion to do so. Congress should amend the FCC's enabling statute to curtail the agency's authority to regulate the Internet and the media. Lawmakers should also consider abolishing the agency as it currently exists and moving some of its functions elsewhere in the federal government.

With a handful of exceptions, the FCC continues to regulate as if it were 1996—or, in some cases, 1934. For example, even as the once-profitable newspaper industry has declined in recent years, FCC rules continue to restrict the ability of local broadcasters and newspapers to operate under a single owner. This is just one of many media ownership rules that artificially inflate the cost of producing local news in the name of promoting a diversity of voices. In fact, these rules are far more likely to reduce the number of viable media outlets in communities across the nation.

Similarly, the FCC's current regulatory regime for television can be traced in large part to the Cable Television Consumer Protection and Competition Act of 1992.² Remarkably, the FCC's most recent TV broadcasting rules address the emergence of satellite carriers, which were already well established by 2000.³ Yet instead of seeking to relax legacy rules in light of cord-cutting, as consumers drop cable TV subscriptions in favor of Internet video platforms like Netflix and Hulu, the FCC has sought to expand its role as a television regulator, with proposals such as new set-top box rules and subjecting some Internet video services to rules designed for cable companies.

The FCC has also attempted to position itself as Internet regulator, issuing a number of rules over the past decade. These rules were rebuffed by the courts on two occasions but eventually approved in 2016 by the U.S. Court of Appeals for the District of Columbia

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Circuit.⁴ Yet when Congress last overhauled the Communications Act in 1996, it made barely any mention of the Internet.⁵ The one provision of law that addresses the Internet in particular (47 U.S.C. § 230) makes clear that the Internet should remain unfettered by federal or state regulation. Unfortunately, this has not stopped the FCC from placing Internet providers under the same regime as the telephone companies descended from the old Ma Bell monopoly.

The FCC also possesses considerable control over the airwaves, which are used by every American who owns a cell phone, Wi-Fi hotspot, or a plain old radio. Because of FCC rules, many of the most valuable airwaves cannot be licensed by wireless providers. The resulting scarcity of spectrum means consumers pay higher prices for inferior mobile broadband service than they would in a more competitive market environment.

As an independent regulatory agency, the FCC can reform some of these outdated and costly rules on its own. But to truly liberalize America's media and communications markets, Congress must step in and rewrite the Communications Act to eliminate most of the FCC's current duties. Congress should also explore folding a much smaller FCC into another arm of the federal government, such as the Department of Commerce.

Notes

¹ Act of June 19, 1934, ch. 652, 48 Stat. 1064 (codified as amended at scattered sections 47 U.S.C.).

² Pub. L. No. 102-385, 106 Stat. 1460.

³ 47 C.F.R. §§ 76.120–.123.

⁴ *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010), *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014), *US Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016).

⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.