



WHO NEEDS THE FCC?

When many Americans think of the Federal Communications Commission (FCC), they think only of fines for indecency on television and radio, like Janet Jackson’s “wardrobe malfunction” during the Super Bowl. Few Americans are aware of just how much power the FCC has to regulate almost every aspect of communications in the United States. With a broad mandate to regulate the country’s communications networks according to the “public interest,” the FCC holds substantial power over the most innovative sectors of the US economy. The FCC has used this far-reaching authority to develop and enforce an arcane regulatory regime that harms competition in the communications and technology industries and threatens free speech. The FCC’s recent adoption of “net neutrality” regulations demonstrates it will continue to find new ways to exercise power in the Internet era.

In a new [article](#) published in *National Affairs*, Mercatus research fellow [Brent Skorup](#) demonstrates that the discretion that Congress has afforded the FCC has undermined, rather than advanced, the public interest. In this era of growing competition and innovation, the FCC’s authority should be increasingly curtailed, if not eliminated outright.

THE PUBLIC-INTEREST STANDARD

Nearly 100 statutory provisions in federal law direct or authorize the FCC to pursue policy objectives that are in the “public interest.” Initial proponents of the FCC and its predecessor, the Federal Radio Commission, thought the public interest standard would be defined in ensuing administrative and legal proceedings.

However, despite the passage of 80 years, neither the FCC nor the federal courts have put meaningful limits on what the FCC can do with its public interest authority. In practice, this vague standard shields the agency from legal accountability, as it can always point to this standard when justifying regulations under court review.

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REGULATORY KLUDGEOCRACY

The FCC's expansive regulatory authority has led to what one scholar termed a regulatory "kludgeocracy"—an expansive system, updated only incrementally to deal with new issues, that is both opaque and prone to failure. For decades, the FCC's ad hoc processes have harmed competition and weakened the First Amendment rights of US media.

Harming Competition

- *Compartmentalizing industries.* The FCC uses a compartmental approach for regulating each of the industries it oversees. Maintaining artificial distinctions between technologies and platforms keeps companies in different industries from competing with each other, protecting dated business models and slowing innovation.
- *Delaying new technologies.* The FCC often delays new technologies by tying up approvals in years of hearings and limited trials, keeping new ideas and entrepreneurs from competing with established firms. For example, the capability to transmit television over a telephone wire was developed in 1927 but largely prohibited by law until the mid-1990s. The first mobile telephone service debuted in 1946 but languished as a technology because of FCC regulation and disinterest from the AT&T monopoly. Additionally, the development of cable—the foundation of modern Internet, video, and telephone services—was delayed by the FCC for years in the 1950s and 1960s because it threatened the FCC's carefully planned broadcast TV system.
- *Politicizing allocation of spectrum licenses.* Because the FCC oversees radio spectrum licenses, it is subject to intense lobbying that often delays auctions and allocations. These delays prevent licenses from being auctioned to their highest-valued use, distorting competition in industries, like broadband, commercial drones, and the Internet of Things, that use radio spectrum.

Threatening Free Speech

- *Architectural censorship.* Structural regulations that restrict how media companies are owned and operated are intended to increase viewpoint diversity and localism. While such regulations appear to be "content neutral," they end up privileging certain speakers and content over others.
- *Government pressures on speech.* The FCC, sometimes with the blessings of prior Congresses, has aggressively policed the speech of regulated media. This poses a problem for free speech because "new media" like Internet service providers, search engines, cable television, and applications are replacing the unregulated "print media"—newspapers, bookstores, and publishers—as Americans' source of news, entertainment, and information. The FCC and media access activists argue that new media should only be allowed to have curtailed First Amendment protections like those given to FCC-regulated firms, not the strong First Amendment protections provided to the (shrinking) print media. Net neutrality

rules and other Internet regulations will permanently weaken the First Amendment rights of most speakers and speech distributors in the United States.

REFORMING COMMUNICATIONS POLICY

While the FCC pursues some worthwhile goals, it often arrives at either the wrong policy for achieving those goals or the right policy years too late. Reforming communications law will require two major policy changes:

- *Targeted, transparent subsidies.* The FCC's Universal Service Fund, a complex system of taxes and subsidies for companies that is designed to ensure universal access to phone and broadband networks, has ballooned in cost and failed to appreciably increase access. Direct subsidies to consumers will better ensure that the nation stays connected. Television regulations intended to promote certain types of content have increased costs for cable and satellite customers. Direct funding for TV programming is a far more honest and transparent solution than FCC regulation—and it is ultimately less costly.
- *Reducing FCC authority.* The FCC has used its regulatory authority *carte blanche* to enact a bewildering maze of regulations that has created a mindset of compliance in the most innovative sectors of the US economy. Some of the FCC's functions, such as merger review, are duplicative of functions already served by other agencies. The costs of its regulations include higher cable and cellphone bills for consumers and reduced freedom of speech. The media and the country will be better off with a streamlined FCC that does a few things well rather than a myriad of things poorly.