

**REMARKS
OF
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BEFORE THE
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COMMUNICATIONS POLICY AND FREEDOM

[AS PREPARED FOR DELIVERY]

Thank you, Kelly, for asking me to speak at CPAC this year. It's good to be back. CPAC has yet another provocative program lined up this year. I wish I could attend every session. And we have an interesting panel coming up in a few minutes, so I will try to keep my remarks as short as possible.

The issues covered in the FCC's portfolio directly affect Americans' freedom to communicate, perhaps the most important of our enumerated Constitutional rights. After all, it's no accident that the First Amendment sits atop the Bill of Rights.

The FCC consists of five commissioners, including one chairman, who are appointed by the President and confirmed by the Senate. The statute says that no more than three of us may hail from the same political party. We serve five-year terms and cannot be fired by the President. This structure gives the Commission a certain amount of independence, and thus we are called an "independent agency" that is not part of any of the three branches of government.

Some have estimated that the FCC has sway over about one-sixth of the American economy, or \$2.5 trillion in commerce – with indirect influence over anything that rides

over the airwaves, including radio, TV, smartphones, satellite communications and such, and copper, fiber or coaxial cable, among other technologies and media. In short, please watch the FCC. What we do affects your every day life and your freedom to communicate.

A few issues that you may have heard the FCC act on in the past year or two include: “net neutrality,” or the regulation of Internet network management, which I voted against; reform of a Congressionally mandated phone subsidy program called “Universal Service”; and spectrum management, or trying to find ways to allow your smartphone to work more effectively by auctioning off more of the most useful parts of the airwaves to use for mobile broadband. Congress is working on legislation to help bring more spectrum to market, and this issue has been incorporated into the payroll tax cut extension debate. I look forward to talking about all of these issues more during our panel discussion, if you’d like.

More immediately, however, the FCC may vote on a proposal to place television broadcasters’ public inspection files, including information regarding political ads, on a government-hosted website. The requirement for broadcasters to maintain complex public inspection files was created more than 40 years ago to provide information about broadcaster operations and encourage a dialogue with the local community. When the FCC originally considered creating an online option for the public file requirement in 2007, we found that the burdens of placing the portions related to political ads online outweighed the benefits of posting this information. Historically, the political file has been required to contain all requests for broadcast time made by or on behalf of qualified candidates, along with the disposition of the request, and information about the price of

the ad, which is proprietary and competitively sensitive information. The Commission is now thinking about reversing its position from 2007 with little to no evidence that candidates, their representatives, or members of the local communities served by broadcasters were unable to access the required information.

I must ask why the FCC is once again proposing to fix what appears to be a non-existent problem? We also must question whether a requirement to post an online political ad file truly promotes the public interest obligation of broadcasters to provide programming responsive to the needs of the local community, or is another motive at hand?

Some speculate that a few are interested in this information so the government can track political spending in light of the Supreme Court's *Citizens United* decision, which prohibits the government from limiting communications spending for political purposes by corporations and unions. Keep in mind that, in its *Citizens United* decision, the Supreme Court reaffirmed that political speech is core protected speech under the First Amendment, therefore the Constitution severely curtails the government's ability to regulate it. Given this Constitutional context why would the government want to have such information loaded onto its website to monitor in real time?

Furthermore, is a regulation that burdens the private sector by imposing compliance costs and forcing disclosure of competitively sensitive business information while providing marginal, at best, benefits to the public appropriate and truly consistent with the original purpose of the public and political files?

I am generally concerned that the Commission is once again heading down a path that is overly regulatory and with unclear justifications. Although there may be a

marginal upside to placing political files online, we must resist imposing a burdensome requirement to upload all correspondence regarding political ad buys “immediately,” as the FCC has proposed, which during a busy election season may need updating several times a day.

The record suggests that this requirement may cost each broadcast station up to \$120,000 to \$140,000 on average per year, at least one new full-time job, and the entire industry \$15 million or more in upfront costs just to upload existing political files. The extra capital and personnel resources needed to maintain an online political file would require broadcasters to divert funds from their newsgathering operations and local programming. Such a rule would be especially onerous for small, independent broadcasters in these hard economic times. This idea is likely to be a jobs destroyer.

Furthermore, there are potential unintended consequences of publishing competitively sensitive information regarding broadcasters’ advertising rates and practices. The gathering and distribution of broadcasters’ political ad pricing and lowest commercial advertising rates may result in anticompetitive practices, such as price collusion, and would put the government’s thumb on the scale during advertising negotiations.

Before taking any further steps, the Commission should pause and think through not only the potential economic effects of its proposals, but the electoral and Constitutional consequences as well. After all, what’s the rush?

The most important communications issue affecting freedom, however, will not unfold at the FCC. This struggle will be fought far from our shores. By the end of this month, a diplomatic process will begin in Geneva that could result in a new treaty giving

the U.N. expanded powers over the Internet. Dozens of countries, including Russia and China, are pushing hard to reach this goal by year's end. While American diplomats and Internet companies have been focused on other important matters, this campaign to reverse long-standing international consensus to keep governments from regulating core functions of the Net's complex systems has been gaining momentum. The potential reach, scope and seriousness of this effort are nothing short of massive.

Don't take my word for it, however. As Russian Prime Minister Vladimir Putin said last June, his goal and that of his allies is to establish "international control over the Internet" through the International Telecommunication Union (ITU). The ITU is a treaty-based organization under the auspices of the United Nations. Inexplicably, across the globe many private sector and government proponents of Internet freedom have fallen behind this fast moving attempted power grab despite the enormous global economic and political implications.

If successful, this new effort would upend the Internet's flourishing deregulatory model which has been in place since 1988. Since then, the Internet has been insulated from economic and technical regulation and quickly became the greatest deregulatory success story of all time.

Since the Net's inception, engineers, academics, user groups and others have convened in bottom-up non-governmental organizations to keep the Net operating and thriving through what is known as a "multi-stakeholder" governance model. This consensus-driven private sector approach has been the key to the Net's success. For instance, in 1995, shortly after the Internet was privatized, only 16 million people used the Internet worldwide. By the beginning of last year, however, well over 2 billion

people were online – and that number is growing by as much as half a million new users *per day*. This phenomenal growth has been the direct result of governments generally keeping their hands off the Internet sphere.

Today, however, several countries within the 193 member states of the ITU want to renegotiate the 1988 treaty to expand its reach into previously unregulated areas.

Reading even a partial list of proposals that could be codified into international law next December at a conference in Dubai is chilling:

- Subject cyber security and data privacy to international control;
- Allow foreign phone companies to charge fees for “international” Internet traffic, perhaps even on a “per-click” basis for certain Web destinations, with the goal of generating revenue for state-owned phone companies and government treasuries across the globe;
- Impose unprecedented economic regulations on the Internet’s global backbone;
- Establish for the first time ITU dominion over important functions of multi-stakeholder Internet governance entities such as the Internet Corporation for Assigned Names and Numbers, the non-profit entity that coordinates the .com and .org Web addresses of the world;
- Subsume under intergovernmental control many functions of the Internet Engineering Task Force, the Internet Society and other multi-stakeholder groups which establish the engineering and technical standards that allow the Internet to work; and
- Regulate international mobile roaming rates and practices.

A top-down, centralized, international regulatory overlay is antithetical to the architecture of the Net, which is a global network of networks without borders. No government, let alone an intergovernmental body, can make engineering and economic decisions in lightning-fast Internet time. Productivity, rising living standards and the spread of freedom everywhere, but especially in the developing world, would grind to a halt as engineering and business decisions inevitably would become politically paralyzed within a global regulatory body.

Unfortunately, pro-regulation forces are, thus far, much more energized and organized than those who favor the Internet freedom and prosperity that the bottom-up multi-stakeholder approach delivers. Regulation proponents only need to secure a simple majority of the 193 member states to codify their radical and counterproductive agenda. Unlike the U.N. Security Council, no country can wield a veto in ITU proceedings. With this in mind, some estimate that approximately 90 countries could be supporting intergovernmental Net regulation – a mere seven short of a majority. We must awake from our slumber and engage before it is too late. Not only do these developments have the potential to affect the daily lives of all Americans, they threaten freedom and prosperity across the globe as well. Working against this effort is my number one priority for the year.

Thank you again for having me here today. I look forward to the panel discussion and taking your questions.