

**Remarks of FCC Commissioner Michael O’Rielly
Before the Media Institute Luncheon, Washington, DC
May 11, 2017**

Thank you for that very kind welcome. I am so delighted to be here today at the Media Institute. Though I have joined you for lunch in the meantime, it has been almost three years since I last had the pleasure and the distinct honor of addressing this group. Time has certainly flown by since then, and the landscape in Washington has changed considerably since I likened the Commission to an ostrich burying its head in the sand on video issues. Candidly, we are in the process of digging our way out of that benighted state, and I am so appreciative of the opportunity for a return engagement.

Defending the First Amendment

To hear from to our so-called cultural icons, it seems to be a pretty pivotal time for the American news media. Recently, we have all been treated to some full throated defenses of the First Amendment, which should be music to the ears of any patriot. As much as Americans have always cherished our right to free speech, it certainly seems fair to say that the First Amendment is having *a moment*. During the Oscars, the New York Times ran its first television ad in seven years in order to remind us that “The truth is more important now than ever.” The Washington Post sells outerwear with the motto “Democracy Dies in Darkness.” The theme of this year’s annual White House Correspondents’ Dinner was “Celebrating the First Amendment,” giving rise to a number of stirring speeches by the attendees. And just last week, UNESCO’s World Press Freedom Day, complete with custom Twitter emoji, served as an occasion for another round of tributes to journalism as one of the pillars of democracy.

I couldn’t agree more, and I think you will find the current Commission to be a great partner in the effort to ensure a free press, primarily by not intervening in the area. You are all likely familiar with the past, thankfully failed, attempts to insert the Commission as a watchdog to make sure news is being covered appropriately. Though it should not have to be said, let me make it clear that the Commission currently has no role in regulating news content, and I would be opposed to any effort to give it that authority, via a resurrected Fairness Doctrine or other, more seemingly innocuous efforts. Count me in as a staunch defender of the First Amendment despite any drawbacks it may present. So you can rest assured that news content is safe from any potential FCC filter in the name of the public interest.

“Fake News” Definition & Use

But moving on to a more active controversy at the moment, it has been argued by some that urgent action must be taken to rid our media and society from the plague of “fake news.” In fact, a couple of weeks ago, no lesser authority than the editor in chief of the Washington Post called fake news “the greatest challenge we face in the industry at the moment.”¹ Really? Not the ongoing shift of ad revenue toward online platforms? Not the untimely demise of many once-revered newspapers? What about the archaic media ownership rules preserved for decades and fanatically locked in a 70’s view point by the FCC and a certain Circuit Court? What about the massive undertaking we are about to embark to repack the television broadcast spectrum? Not even the main studio rule? I have to say, I’m hurt.

¹ See <https://twitter.com/katiecouric/status/856895532282892288>

Well, OK then, let's talk about fake news.

The concept of fake news is not new, though its public profile has skyrocketed. In fact, the FCC, prodded by 2006 and 2007 complaints, actually fined two television stations for airing fake news in 2011 for commercials disguised as news segments. These days, the fake news moniker has morphed far beyond this limited scenario.

Last year when the term became exceedingly popular, it seemed to be referring to false reports cranked out, mostly overseas, on sketchy websites set up to visually mimic mainstream news sources. The concern was that easily-misled citizens were believing these reports and spreading them on social media under the false impression that they came from reputable sources. Then, the term seemed to be used as a critique of any positive coverage of a certain Presidential campaign, its media releases, interviews and personnel. More recently, it has been used to describe the viewpoint that major news media is not sufficiently examining all sides of an issue or covering all of the important issues of the day. At this point, the term seems to mean whatever anyone wants it to mean. On Sunday, for example, the President of the European Council tweeted, "Congratulations to French people for choosing Liberty, Equality and Fraternity over tyranny of fake news." Whatever that means.

Having multiple definitions for the same term causes a problem in its own right: it opens the door to inclusion of a much wider range of content, as reasonable minds can differ on such questions of what is false, what sources are reputable and what is the scope of the material in question. So, it's important to ask what someone means when they start handwringing about the problem of fake news. But however you want to define the "problem," we need to be looking closer at certain highly suspect solutions being proposed and implemented.

Questionable Policing by Online Companies

In response to the outcry from some of our most notable media personalities and political figures, efforts are now afoot at some of the largest speech platforms ever created on Earth, operated by America's online high-tech companies, to retool their search and news feed algorithms and even bring on board thousands of "fact checkers," all in the name of "protecting" the eyes and minds of citizens from fake news. Unfortunately, the ultimate result of these efforts may very well be to bury disfavored content, and even promote certain speech with a visible seal of approval. And while this may be squarely within the rights of private platforms, I don't think sufficient consideration has been given to the questions of whether these tactics would provide a solution to the fake news problem or are overall positive developments.

Any effort to sanitize the Internet from someone's idea of fake news or questionable news sources would naturally cause great concern to conservatives, as somehow the ground assumptions and the benefit of the doubt seem to lean exclusively in one ideological direction over others. But such efforts should be an even greater concern to legacy media outlets, any one of whom could just as easily find themselves on the losing end of a new algorithm, in an era where clicks are king. To paraphrase former President Gerald Ford, an online platform big enough to divert millions in ad revenue and indeed, the very flow of public discourse, by promoting your content over a competitor's, is certainly big enough to do exactly the opposite to your organization.

And here's the kicker – you may never even know about it since the algorithms are completely proprietary, for entirely legitimate and obvious reasons. But at the same time, it is undeniable that when it comes to facilitating or controlling speech in 21st century America, the power of the Executive Branch pales in comparison to that of the Internet. Any actual government attempt to constrain speech would be met with years of well-funded litigation, but online it's as easy as pushing a button.

Should this not raise an eyebrow or skepticism among those of us who work on these issues for a living? Effectively, private companies will be presumably monitoring each Internet communication of every American to determine the veracity of their statements, writings, or musings. Is an algorithm able to discern sarcasm or satire, both valuable tools for political reporting? It's being looked at in the lab but how accurate and how soon? What exactly will be garnered by human fact checkers? Such a function appears to be similar to how the Internet must operate in China. Lest a misinformed individual try to use my concern here to bolster their Net Neutrality arguments; asking people to think critically about the effect of algorithm skewing is far afield from imposing government edicts and false remedies for broadband providers.

Free Market Remedy

So what is a proper solution? It should come as no surprise to anyone that, if fake news is indeed such a big problem, I would recommend a more free market approach to solving it.

Far from assuring a perfectly manicured media environment featuring approved information and carefully cultivated superstars, the First Amendment was meant to prevent the government from refereeing the rough and tumble media scene that we as Americans are so accustomed to seeing, hearing, or reading. The dandelions and ragweed are a feature, not a bug. Of course there are many more players and many more mediums than there used to be, but even back in the 1700's the press included participants large and small, with varying degrees of reputability. Consider that Thomas Jefferson held some very low opinions of the press in his time: "Nothing can now be believed which is seen in a newspaper," Jefferson wrote. "Truth itself becomes suspicious by being put into that polluted vehicle."²

And Jefferson was equally as concerned as anyone today about the dangers of his fellow citizens filling their heads with fake news: "The man who never looks into a newspaper is better informed than he who reads them, inasmuch as he who knows nothing is nearer to the truth than he whose mind is filled with falsehoods and errors,"³ Jefferson stated. Notwithstanding these feelings, Jefferson was, of course, one of the primary advocates of adding to the newly adopted Constitution a Bill of Rights protecting the freedom of the press, along with trials by jury, the right of habeas corpus, and freedom of religion. According to Jefferson, "The few cases wherein these things may do evil cannot be weighed against the multitude wherein the want of them will do evil."⁴

Back then, the decision was made that, fake news and all, we trust Americans to decide who they in turn will trust. The call was made that more information and more perspectives are better than the alternative. The appropriate response to speech you don't like, for whatever reason, is not to

² See http://press-pubs.uchicago.edu/founders/documents/amend1_speechs29.html

³ See Id.

⁴ See <https://founders.archives.gov/documents/Jefferson/01-13-02-0335>

restrict speech but to favor more speech. Jefferson was not only an advocate but also a purveyor of this concept by secretly funding and supplying content to favored newspapers in order to get his message out.⁵

Think about what has happened in the communications reporting space. Once dominated by two or three publications, the tech and telecom sphere now see no fewer than seven outlets focused on each and every decision at the Commission. And we, as a whole, are better for it. While some may quibble about one story or another, most people are keenly aware that some other news media will cover the same story. Thus, the function as a reader becomes to browse and study multiple publications to get different perspectives and views. Call it mosaic media reading.

In our uniquely American free speech market, Media Institute members are blessed with outsized platforms and powerful microphones built painstakingly over years, decades, or in some cases, even centuries of hard work. They have earned and re-earned the trust of the American people on a daily basis, for that trust is the lifeblood of their businesses. But we have now reached the point where only 29 percent of Americans polled say that they trust the political media to tell the truth, according to a recent survey.⁶ Herein lies the true challenge. But, in my view, the remedy lies directly in the hands of the media. They have the burden, which they have seemed to accept, to convince the American people of both the value they bring and the thoroughness of their work. And you can see this happening real-time as reporters, bloggers, tweeters and whomever are checking and rechecking their work products and increasing the number of sources for critical quotes and details. At the same time, the need for dedicated marketing has not been lost. Take for instance, the Wall Street Journal's simple twitter campaign message of "Real News. Real Journalism. America's Most Trusted Newspaper." I have every confidence that with dedication to rebuilding trust every day, the challenge of fake news can be easily overcome... no matter where you would place that challenge on the priority list.

Pending FCC Matters

So there you have my two cents on a hot media topic of the day, for what it's worth. But am I sensing some disappointment on the part of some of you who were hoping for yet another speech on the hot media topics *at the Commission*? OK, OK, due to demand... here goes.

We all remember too well the fiasco that was last year's Quadrennial Review of media ownership rules. Actually, we should have all started calling it the Decennial Review since almost a decade had elapsed since the last effective attempt to overhaul the rules. I would like to see the new Commission use this opportunity to revisit and update all of those rules in a thoughtful way, as soon as possible, and we have already taken the first step in that process by reinstalling the status quo through our restoration of the UHF discount. Now that we have at least moved back to square one, we have some time to consider what comes next. As they say on many news segments, stay tuned for further updates.

On another topic, the upcoming repack has quickly worked its way to the top of the priority list at any gathering of broadcasters. It's easy to see why there is concern. I think absolutely everyone involved with this project understands the magnitude of the task involved and the extremely high

⁵ See <https://www.monticello.org/site/research-and-collections/james-callender>

⁶ See <https://morningconsult.com/2017/04/28/political-media-earns-poor-marks-americans/>

stakes. As much of a feat as it was to navigate the first-ever broadcast spectrum incentive auction with so little turbulence, it also seems safe to say that the real work is just beginning. And as I have said on many occasions before, I pledge to keep an open mind and ear throughout the process in case any intractable problems develop, but I am not prepared to seek changes at least now before even the first of ten phases is accomplished.

Finally, there is a bit of great news from the Commission on the media front, in that the Chairman has circulated an item to open a comprehensive review of all the hundreds and hundreds of pages of media regulation currently on our books. This fits nice and tidy with my request at NAB that the Commission initiate the very same. Not surprisingly, I wholeheartedly support this effort and commend the Chairman for leading the charge. We expect the item to be adopted and the process to get under way starting next week. This is a golden opportunity for anyone in this room with a good notion for rules that should be changed or discarded altogether. I implore you to participate fully so we can make this proceeding as productive as possible. We will drag the Commission's media rules into the 21st century, kicking and screaming if necessary.

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So with that, I want to thank you for your attention and I stand ready to answer any questions you may have.

Thank you so very much.