

**Remarks of FCC Commissioner Michael O’Rielly  
Before the International Institute of Communications’  
Annual Conference 2017  
October 11, 2017**

Good Morning. It is a pleasure to be here at the IIC Annual Conference, and I thank Chris and Andrea for inviting me. I extend my appreciation to the host country and city for their graciousness and hospitality. It is good to see all the distinguished guests, except for my friend from Trinidad and Tobago, as her soccer – or should I say football – team defeated ours last night. I also thank fellow panelists in advance for sharing their unique views and experiences.

As outlined by our capable moderator, this morning’s panel is designed to help set the overall tone for the subsequent panels and discussions for the conference. That is a lot of responsibility, but I think we are up to the task.

I provide the qualification that I speak only for myself, not the FCC or the Trump Administration.

*Technological Conversion & Regulatory Authority*

I will begin by suggesting that in order to properly determine and comment on the larger issue of how the world’s telecom regulators are adapting to the changing environment and technological explosion, it is critical to first recognize the differing levels of legal authority that respective governments bestow upon each regulatory agency. In other words, regulators can only regulate when they are authorized to do so.

In the United States, which has seen monumental technological advancements as the result of convergence and digitalization, we constantly struggle with these lines of authority. To act outside our bounds – however meritorious it may seem – can be harmful. It increases uncertainty and can paralyze entire industry segments for months or years with legal challenges and/or legislative responses, thereby depriving consumers of valuable services and opportunities in the meantime. This isn’t just my opinion, as there are numerous examples of Commission actions to highlight this.

The issue of data privacy provides a case study. An FCC effort to enact data privacy regulations for broadband providers in 2016 was effectively overturned by Congress earlier this year. One of the most salient arguments against our prior rules was that such privacy authority already lies not with the Commission but with our sister agency, the Federal Trade Commission (FTC), which had been actively engaged on the issue for decades. The legislative action helped clarify that regulatory duplicity would not be permitted and the lines of authority are an important consideration.

Accordingly, I think it is quite appropriate to characterize our position as having a bird’s eye view of the landscape. However, this must also come with recognition that, to carry the analogy further, we are only allowed to fly into particular areas.

When these lines of authority are acknowledged, there can be thoughtful debate over whether they should be altered by the appropriate entities, in my case the U.S. Congress. In recent years, their collective wisdom has been to not act. This means they decided, either actively or passively, not to provide our agency additional authority and not to alter the regulatory lines between the FCC and other U.S. agencies, such as the FTC, the latter holding the oversight responsibility over much of the high-tech

industry. Not only is this the right decision, but we are obligated to comply with such decisions. Other nation's regulatory agencies may be similarly and properly restrained.

### *Cross-Border Regulation*

But this situation also plays out across national borders as well. In particular, the increased prevalence and adoption of the Internet and digitalization raises a related issue of authority: what role or right do international regulators have to regulate industries from afar. Over the past few years, the U.S. has seen international jurisdictions attempt – and, in some cases, succeed – in imposing their regulatory schemes on U.S. headquartered companies based on tangential lines of authority. In some cases, it has been based on the mere transfer of information, or data flows, internationally – and, in others, it has been tied to consumer usage and rather weak company operating standards. From taxes and privacy to competition and merger approvals and beyond, there seems to be no shortage of interest from abroad in regulating the high-tech industry, and specifically U.S. companies, in one form or another.

Take, for instance, the Right to be Forgotten. The interpretation of older statutory and constitutional provisions within some European nations led to the eventual mandate on data collectors that individuals be allowed to expunge any information, including accurate data, from their data profiles. This issue exploded because of protracted litigation involving Google. While we could debate the merits of the obligations, which I find extremely harmful, it is troubling to see the capture of U.S. companies within such a morass with little direct ties or physical presence within such nations.

More troubling are foreign regulators' efforts to extend this mandate to U.S. individuals by pressuring companies to do so. It is one thing to have international regulators attempt to impose their beliefs and requirements on U.S. companies, to the detriment of consumers; but, it's quite another to see regulators seek to stretch the scope of their regulations to apply to U.S. citizens.

At some point, this begins to look a lot less like efforts to protect consumers and a lot more like protecting regulatory power or local industries. This overreach has the potential for significant backlash from governments and the private sector. Keep in mind that the pervasiveness of the technology and the architecture of the Internet means that companies do not have to be located in any particular country. Instead, they can operate from anywhere, leaving the regulators with only one recourse: preventing consumer access. God save the regulator that tries to cut consumers from popular applications or Internet sites, such as Netflix, under the premise of "protecting consumers."

### *Improper Intervention*

Setting aside the authority discussion, there is an equally important component to this entire debate and one of the underlying reasons for this panel: what activity should regulators take, if any, to reflect the vastly changing technology marketplace. Most of us maintain imperfect information about the dynamic technology platforms and applications causing vast disruption to incumbent networks. The lack of data, the lack of backgrounds in coding, the lack of natural Internet boundaries and countless other limitations make our jobs much more difficult.

I've been involved in government policy making concerning the incumbent communications industry and developing technology sector for over twenty years, and have watched the transformation of these new mediums from their infancy to the more mature state that exists today. My experience leads me to one conclusion: It isn't our job to make ourselves relevant. There are moments in time when

technological shifts require different approaches and more reliance on the free market. We are at that point with the Internet economy today. Boundaries between voice and video services are evaporating before our very eyes and their underlying networks are becoming unrecognizable. As the father of a two-year old, I am often reminded and find applicable the hit song from the movie *Frozen*, "Let it Go."

I will stop there in order to preserve time for more interactions with my panelists and questions.