

**Remarks of Commissioner Michael O’Rielly
Before the Internet Innovation Alliance
“What is the Appropriate Role for Regulators in an Expanding Broadband Economy?”
June 25, 2015**

Thank you for such a warm introduction and for having me here today. I’ve known the leadership of the Internet Innovation Alliance for many years. I appreciate the efforts and mindset of people like Bruce Melhman, Larry Irving and Congressman Boucher. They approach problems with the pragmatic goal of finding solutions. Their initial response to issues or problems is rarely, “No”. Instead, they contemplate and intensely study all sides of the issue to find ways to common ground. In technology policy, that is no simple task as the issues are often very complex.

The extremely diverse membership of IIA truly embodies the personalities of its leadership and their willingness to build coalitions of unexpected entities. When current Association members include the Hispanic Technology and Telecommunications Partnership, the American Conservative Union, and the Labor Council for Latin American Advancement, you know you will have passionate and diverging views on policy issues. I can only imagine what internal IIA member meetings are like.

Introduction

I should start by saying that I have an affinity for technology and the benefits it brings. I am neither afraid nor ashamed to admit that technology has been one of the greatest loves of my life, besides my wife. Yes, the constant advancements and ever-changing marketplace have provided a profession and steady income but, more importantly, technology has expanded my capabilities beyond measure. I have taken advantage of Internet broadband to expand my horizons both as a consumer and a professional. I personally have a Blackberry, smartphone, two tablets, desktop and a laptop computer. I can multitask fairly well – from reading the latest communications-related story to ordering gifts on Amazon or music from iTunes anywhere, anytime -- except when I am driving of course. And yet, I consider myself in the middle-ground between early adopter and non-adopter when it comes to technology purchasing. Perhaps that is the fiscal conservative in me.

We can all agree that we live in a technology-centric society. From our work experiences to the cars we drive to free-time activities, the Internet and broadband are ever present. It is hard to find one aspect of the business environment that is not completely connected to the Internet. Technology runs our capital markets, our business purchasing and e-commerce capabilities, and our transportation systems from the train stockyard to the airport runway to the streetlight. It is also at the center of our shipping industries and agriculture production.

As individuals, many of us are addicted to the Internet. To quantify just a portion of this, a 2015 University of Derby, U.K. study showed that 13 percent – or one in eight – people are addicted to their smartphones. Moreover, the study found that the average user spends 3.6 hours on their phones per day. It has gotten to the point that there is a line of scholarly analysis dedicated to iPhone separation anxiety. True story. We even had a 2013 Joaquin Phoenix movie in which the main character fell in love with his voice operating system. Well, maybe, that entered the creepy side of technology.

Governing Principles

The question posed to me and the subsequent panel is: what is the regulator's role in our expanding broadband economy. This open-ended, yet important, philosophical question can touch upon many different things. For instance, it could be seeking input on how the rapidly changing technology marketplace outpaces the rulemaking process, making regulations outdated by the time they are adopted. It could also raise the question as to whether regulators can keep up on the intricacies of technology developing at warp speed. Alternatively, some may even envision that regulators have the authority and right to slow technology changes, if deemed necessary. Those are just three among many different visions on how one could approach Internet policy. Suffice it to say, I would not agree with that last scenario.

When contemplating today's topic, I started to form some basic principles that would serve as a good starting point for approaching these issues in the current environment. I don't mean to be so presumptuous to suggest that I have the perfect framework for all regulators charged with overseeing some aspect of Internet-related technology. Instead, I posit these principles, among others, that help guide my approach. Hopefully, some might see value in my thought process.

1. The Internet cannot be stopped

I don't care who you are or what magical powers you believe you possess, the Internet inevitably marches forward, continually expanding its capabilities and influence. Hundreds of businesses have tried to protect their business models by attempting to thwart Internet growth; all to no avail. The best restaurant in any town will crater to competitors if it doesn't have a top-notch website, business relationships with Internet delivery companies, and a social media plan. We've also seen regulators, who thought they were stronger or smarter than technology try to preserve long established rules, only to be proven wrong about the ubiquity of the Internet and its power to upend once settled expectations. Ask the taxi or airport commissions across the country about how new entrants are decimating their regulatory fiefdoms.

Some countries have even tried to cut off access to the Internet and have ultimately failed. See Egypt, Turkey and Iran. Think about how mind-blowingly backward China's effort is to censor Internet content and the impact it will have on its future as a participant in world affairs.

Beyond being shortsighted and plainly misguided, trying to curtail the Internet is a fool's errand. The dynamic and disruptive nature of the Internet is absolute. It will continue to spread to all aspects of our global economy and all parts of society. It was designed to prevent any one entity from pulling the plug. If connections are cut in one area, traffic will be rerouted another way until it reaches the desired destination. It is the ultimate mesh network. And all of this is a good thing.

As regulators, a word I absolutely despise, our function is not to try to capture, curtail, delay or stymie the Internet. Instead, we should embrace it and all of the benefits it brings to our citizens. To do so means examining every aspect of an agency's rules to determine which ones are not responsive – or even harmful – to the current marketplace and which ones can be jettisoned as obsolete. For instance, I ask why the FCC spends so much time on voice telephony when every data point shows that voice communications are shrinking, and fast. It also means taking advantage of the Internet and the treasure trove of data it provides. This data can help regulators better target solutions and see problems before they develop.

2. *Understand how the Internet economy works*

Having worked on technology policy for two decades, I am amazed at how few people actually understand how the Internet economy works. It is frightening to hear the calls for absurd individual privacy standards in the same breath as accolades championing our nation's technology companies. Here is a simple truth: the Internet thrives today on aggregating information for the purposes of increasing advertising revenues and the use of data analysis for multiple purposes. The growth in a company's user base is, in and of itself, meaningless. Think of all the people that once played Zynga's Farmville; each additional player meant nothing to Zynga's bottom line. Companies want more users because, while the cost to support an additional user is near zero, it opens the door to other possible revenue streams.

In today's commercial Internet environment, there is a generally accepted symbiotic relationship. Consumers trade data about their activities in exchange for the ability to take part in all of a company's offerings. More specifically, Internet companies monetize user data and interactions by selling this valuable information to advertisers for the purpose of effectively placing and targeting ads and to others for data compilation. This relationship allows companies to make the bulk of consumer Internet products and services free to consumers. Does anyone really think that Google is offering Gmail for free because of altruistic motives? Data and advertising are why Internet-related companies are valued so highly by investors and Wall Street, and why those companies that cannot monetize such activities face harsh realities and uncertain futures. Think of the crisis of confidence that Twitter and Yahoo! have faced recently.

Regulators trying to alter an aspect of Internet activity *must* realize that they risk disturbing the entire Internet marketplace, dramatically affecting other offerings by Internet-related companies. It is as if no one remembers the early days of the Internet when companies tested pay sites as a source of revenue. Accordingly, I would argue that regulators should take the time to investigate and learn how the modern commercial Internet operates before trying to restrict or restrain any particular practice. It's important to understand the interaction between funding, revenues, advertising, data usage, jobs, and growth before rushing in to experiment with new regulatory schemes or impose old rules on the Internet economy.

3. *Follow the law; don't make it up*

My next principle to consider is based on the simple belief that all regulators should have the obligation to follow the law. For the Commission, our ability to take action is predicated on specific statutory language, first and foremost being the Communications Act of 1934. The Commission has no right or ability to exercise authority not specifically provided by Congress, notwithstanding how good an idea or outcome may be. In fact, I would argue that these instances, in which regulators reach outside the law to do something seen as valuable, are most dangerous. That is because even benevolent-seeming ideas can turn into bad precedent that will be used to justify future harmful actions.

Despite what some people think about Congress, it is the only proper venue to increase or decrease an agency's authority. If there is a good idea or set of Internet policies that deserve attention, but the current law doesn't provide for it, the best course of action is to seek Congressional support through the passage of legislation. Regulators, on their own initiative, must not stretch existing provisions that are tangentially related or cobble together unrelated provisions or even common law to justify action. That

is a recipe for disaster and undermines our entire governmental separation of powers. If regulators are allowed to effectively create law, which then gets sanctioned by the court system under the plausibility of *Chevron* deference, then it cuts the representatives of the American people, for whom we work, completely out of the process.

I realize that most operating and related statutes may not speak to or provide extensive authority on Internet-related activities. And that is not without design. Having worked for Congress as a staffer over the last many years, I can say without equivocation that this is intentional. More specifically, Congress did not and does not want Federal regulators to take action on Internet-related issues in most circumstances. That is its prerogative, and it is not our role to challenge this position by doing end-runs around the statute or using convoluted statutory interpretations to usurp their Constitutional functions. Either have the will to seek changes in Congress or accept this fate.

4. Internet access is not a necessity or human right

It is important to note that Internet access is not a necessity in the day-to-day lives of Americans and doesn't even come close to the threshold to be considered a basic human right. I am not in any way trying to diminish the significance of the Internet in our daily lives. I recognized earlier how important it may be for individuals and society as a whole. But, people do a disservice by overstating its relevancy or stature in people's lives. People can and do live without Internet access, and many lead very successful lives. Instead, the term "necessity" should be reserved to those items that humans cannot live without, such as food, shelter, and water.

It is even more ludicrous to compare Internet access to a basic human right. In fact, it is quite demeaning to do so in my opinion. Human rights are standards of behavior that are inherent in every human being. They are the core principles underpinning human interaction in society. These include liberty, due process or justice, and freedom of religious beliefs. I find little sympathy with efforts to try to equate Internet access with these higher, fundamental concepts.

From a regulator's perspective, it is important to recognize the difference between a necessity or a human right and goods such as access to the Internet. Avoiding the use of such rhetorical traps is wise.

5. The benefits of regulation must outweigh the burdens.

As regulators consider proposals that would impact the Internet or the deployment of broadband, thoughtful analysis should be done prior to enactment to consider whether the costs and burdens imposed are greater than the benefits of acting. Given the amazing positives to be gained from an Internet free and open from government intrusion – or at least significant government intervention -- there should be a universal requirement for quantifiable data under a cost-benefit analysis regime. It seems universally accepted that there are direct and indirect costs to every burden placed on Internet activities. It should be our duty to show the detailed costs and benefits of every proposal, not hypothetical claims that give short shrift to statutory requirements to do an actual analysis. If a regulator involved in some capacity with the Internet cannot accept this basic premise, maybe they are in the wrong line of work.

Let me also take a moment to provide a few other premises that most people who operate in this space accept: Internet-related taxes depress deployment and adoption; costs of regulations are ultimately passed onto consumers; and the structure of the Internet will produce some type of reaction to

undermine any imposed regulation. If these premises are accepted, and they have proven to be true time and time again, it means that regulators need to be extremely cautious in acting or risk decreasing deployment, or raising prices – and all for naught.

Conclusion

So there you have it. Five principles for regulators to consider as it relates to the Internet and our broadband economy. They do not represent the totality of all of my beliefs but should serve as a starting point for any conversation involving Federal regulators and Internet policy. And if followed properly, may just prevent the government from crushing the greatest man-made invention of my lifetime.