

**Remarks of FCC Commissioner Michael O’Rielly
Before the Free State Foundation’s Tenth Anniversary Luncheon
December 7, 2016**

Let me start by extending my congratulations to Randy and offering my sincere thanks for inviting me to be a part of the festivities marking the Free State Foundation’s tenth anniversary. The Foundation holds a special place in my heart. As a newly minted Commissioner, one of my first speaking engagements was at a Free State Foundation event, and it seems that, miraculously, I have not yet worn out my welcome, despite having made a number of additional visits since then.

Looking back, it is at Free State conferences where I dissected and disposed of the imaginary authority some claim is contained in Section 706 of the Telecom Act. It’s also where I denounced the Commission’s process and direction on net neutrality regulations, particularly its abuse of the forbearance function. And it’s where I explored at length the need for FCC process reform. On that issue, I even got some agreement from Commissioner Clyburn at another Free State discussion.

Under Randy’s deft leadership, the Free State Foundation has established itself as a leading champion of free market principles and policies that respect property rights and the rule of law. It has also been a platform – hosting numerous events like this one – to explore thought-provoking policy issues with some of the best legal minds. Right from the beginning, the Foundation has made invaluable contributions to nearly every major policy debate in the communications world. And Randy’s energy, passion and prolific writing when it comes to communications and Internet policy are truly contagious.

Like many of you, I wholeheartedly welcome the opportunities that 2017 will bring. The American people have entrusted the government, under new leadership, with a weighty responsibility, and I look forward to working with everyone here to live up to their expectations, by helping to chart a new course and tenor in communications policy. Examining closely the track record of this Commission and the current state of play, I can’t help but feel that this opportunity has arrived not a moment too soon. The last few years have been marked by a comprehensive effort to exert full control over every detail of anything even arguably within the agency’s grasp, while also expanding our reach into every nook and cranny of the vast Internet economy. Many at the Commission seem to believe that innovation in the marketplace is driven by disruptive regulation, not disruptive technology. Unfortunately, this urge to micromanage has become pervasive across a number of matters. So there is plenty of work for us all to start next year, with arguably lots of room for improvement at every level. And the Free State Foundation will undoubtedly prove to be an exceptional partner and agitator in these efforts.

From the perspective of the Commission, President-elect Trump and his team will soon be making decisions regarding our leadership and direction going forward. It should be clear that I do not speak for the new Administration-to-be. The President-elect and his team have earned the right, with an amazing election outcome, to make appropriate decisions about the next Chairperson and any Commissioner openings, and the future direction of the Commission.

In all honesty, I’m excited and honored to play a part in the new Commission, and to the extent it is helpful, I am humbly going to outline some very broad areas where the next Commission could potentially focus some of its efforts. To have the maximum possible impact, I suspect that each of these areas could command a significant share of time and attention, although they are not necessarily mutually exclusive. The four general themes for potential consideration are: undoing harmful policies,

clearing regulatory underbrush, developing and executing a strong pro-growth, pro-innovation agenda, and overhauling the Commission's arcane processes and its organization.

1. Undo Harmful Policies

Foremost in many minds is the need simply to undo the more harmful policies adopted by the current Commission. This audience needs no reminders of all the instances in which minority viewpoints were discarded without real consideration. Moreover, the policy direction chosen in these instances was wrongheaded, harmful to consumers and the industry, costly, and ultimately unworthy of continuation.

For instance, we are already starting to see the impacts of reclassifying broadband Internet service under Title II. Most recently, the Commission created a privacy scheme inconsistent with the Federal Trade Commission regime that has governed the Internet until now, and will continue to govern most of it. And make no mistake, the list of harmful actions by this Commission is by no means final yet.

As we speak, the Commission is working on a number of last-minute projects in an attempt to move the goalposts a little more to the left, despite the clear instructions of Congress that we should immediately stop work on any controversial items. Most notably, the Wireless Bureau is still aggressively pursuing its year-long zero-rating investigation against broadband providers, and has demanded another round of responses from two providers by December 15. While it is still unclear exactly where they are planning to go with this, the contentious nature of the letters that were sent last week seems to hint at one last gift to be left under the tree for net neutrality activists.

As my colleague Commissioner Pai and I have pointed out, any attempt to roll out a new policy on this front can easily be reviewed and potentially reversed within weeks, but the underlying document could still be out there, waiting to be dug up like a time capsule years from now and cited as some sort of precedent. Next year's Commission should consider acting quickly to reverse any damaging policies put into place over the last eight years and in the last few weeks of this Administration. It should likewise close out any problematic notices and dockets.

2. Clear Regulatory Underbrush

Another priority worth attention is clearing away the existing regulatory underbrush that is choking businesses and diverting resources away from new and improved products, better service, and lower prices for consumers. In some instances, outdated rules are distorting entire marketplaces, preventing them from responding to modern realities and consumer demands, such as in the case of our media ownership rules. Relics of the nascent media world of a bygone era, these rules can and should be thoughtfully updated.

President-elect Trump has repeatedly noted the detrimental impact of the current stifling regulatory environment on the American economy overall, and he has promised fast relief. I particularly like his call for the elimination of two regulations for every new one created. Just imagine what Title 47 of the Code would look like now had this policy been in place during the hyper-regulatory approach of the current Commission.

There are many avenues available for the Commission to contribute to this effort. For instance, the Commission's latest biennial review, which was just initiated last month, seems like a perfect

platform in certain circumstances. I hope everyone will aggressively participate in this proceeding so the Commission has a broad and thoughtful list of rules that can be struck.

Meanwhile, I hope we work to complete some of the relatively easy initiatives I have championed, such as eliminating the need for broadcasters to keep paper correspondence files, or allowing employers to meet Equal Employment Opportunity advertising requirements by placing employment opportunities where every job hunter in 2017 will be looking – on the Internet. And certainly, we should move ahead to define and limit the black hole that is the Team Telecom review process for communications companies courting foreign investors. Quite frankly, I pushed for these reforms recognizing the limitations of being in the minority. I suspect there will be greater opportunity to think about bigger reforms and deregulatory efforts – done in a thorough way – in the next Commission.

3. Develop and Execute a Strong Pro-Growth, Pro-Innovation Agenda

The new Commission should have ample opportunity to showcase its creativity and foresight by developing and executing a strong pro-growth, pro-innovation agenda firmly grounded in free market principles. Our President-Elect is expected to move to address infrastructure needs, including broadband infrastructure. The Commission may have a role to play in setting the conditions to encourage major new investment in this space. Top of the priority list should be the elimination of unnecessary obstacles to the wireless infrastructure that will support nationwide next-generation networks. I'd hope to see that be included as part of any legislation considered on the topic, and plan to share my specific thoughts with legislators. Moreover, through further reforms to universal service programs, we can continue our progress toward extending 21st century communications networks, and all the benefits they bring, to the many areas of America that are still unserved. And we can continue efforts to identify new commercial spectrum to pave the way for 5G, while also optimizing bandwidth already in use, by facilitating sharing in bands like 5.9 GHz. There should also be the opportunity to craft fully functional license rules for the 3.5 GHz Priority Access Licenses.

Investors and innovators are unlikely to want to innovate, build or expand on shaky ground, so the Commission must assure all players that our licenses will be vigorously enforced when they are threatened. This was one of the first missions assigned to the Commission at its creation, and still ranks among our primary responsibilities. While we have generally done a good job of safeguarding spectrum usage rights, for too long the Commission has turned a blind eye to the interlopers stealing broadcast spectrum and threatening the viability of legitimate broadcasters in many of the largest American markets.

4. Process Reform and Organization

Last but not least, I hope the next Commission will take this opportunity to make substantial progress toward improving the efficiency of the Commission and increasing fairness and transparency in its processes.

Though some seemed to think my prior process reform push was either tied to a particular item or else an attempt to weaken the power of the majority overall, I maintained throughout that these are common sense, good government proposals that I would still advocate even if I was in the majority. Next year, I would like to get a chance to make good on that effort.

So, there you have some of my initial thoughts on possible directions for the new Commission. Addressing these areas would help produce greater benefits to consumers and a more accountable government. Personally, I can't wait to dig in and get started, with the help of interested parties, including Randy and the Free State Foundation. The payoff in terms of the potential boost to innovation and freedom will be enormous.