

**Remarks of FCC Commissioner Michael O’Rielly  
Before the International Institute of Communications’  
International Regulators Forum 2017  
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Good Morning. Let me begin by thanking Chris and Andrea for including me and by recognizing BIPT for being such wonderful hosts for this very important conference. It is a pleasure to be here with my fellow regulators to discuss the amazing benefits and challenges presented by the new digital age.

My goal today is to provide a picture of how this complex subject is being considered within the United States and what that may mean for my international counterparts. Please forgive me for having the task of reminding everyone that I do not speak for the Trump Administration or the Federal Communications Commission as a whole. My views are just my own.

The U.S. government and the FCC, in particular, have spent much time over the last few years contemplating the digital economy and the “disruptive” impact that the Internet has had on our regulated communications industries. The emergence of the Internet as a competitor to both our traditional telecommunications sector and our mainstream media market has led to a debate on whether and, if so, how to regulate these new entrants, and what that means for incumbent providers consequently facing its impacts.

Like many of you, the FCC’s regulatory authority is derived from the powers granted to it by a legislative body, in our case the U.S. Congress. Our primary statute was written in 1934, but has been amended on several occasions since then. While some of these amendments have provided some authority over the Internet in very select instances, to say that our authority to regulate the Internet is limited is an extreme understatement. In truth, it is virtually non-existent. No matter how well-intended, the provisions of current law cannot be stretched to capture that which was never contemplated.

Now, as you know, the U.S. changed administrations this year, and there has been a corresponding shift in regulatory philosophy. The previous Administration and FCC tended to view the law in a different light; one more pliable to their particular whims. For instance, somehow provisions directly intended to govern cable systems or voice networks were seen as applicable to the Internet. This was, however, contrary to the authority actually delineated by the legislature. Equally importantly, these efforts ran counter to the general hands-off approach to regulating the Internet – and for that matter our wireless networks – that have been so successful for quite an extended period.

The unprecedented growth and adoption of the Internet in the U.S. has been rooted in the principles of the free market. The statistics tell a compelling story. Approximately 73 percent of Americans subscribe to fixed broadband, but Americans are going mobile with 13 percent now using their smartphones as their sole means of home Internet access. As for our wireless networks, almost 100 percent of the U.S. population is covered by at least one LTE provider and 97 percent of Americans have a choice of three or more LTE providers. Wireless speeds have increased substantially to about 24 Mbps and the successful deployment of 5G is likely to convince more people to move towards wireless networks.

The FCC’s regulatory speed – and I am sure this isn’t a U.S. specific issue – quite candidly cannot keep up with technological change or the demands of consumers. Simply put, our rather drawn-out pace is not well suited for the dynamic digital age. For this reason, I maintain that we must be very hesitant to

regulate new, disruptive technologies. Instead, the presence of these innovative technologies should lead to reduced regulation of our traditional, more heavily regulated sectors.

Competition is incredibly relevant for our telecommunications carriers. For instance, wireless providers – not exactly the old guard – are seeing their business models change, as voice and SMS texting revenues decrease due to unregulated WhatsApp, Facebook Messenger, Skype, FaceTime, and others. In the future, the traditional mobile sector is likely to experience more, not less, competition from new 5G services, next generation satellites and other innovations. This competition must be considered not only as we contemplate imposing regulations – or more appropriately – enacting deregulations, but as we consider the convergence of industries and merger activity.

Ultimately, the Internet has changed the everyday lifestyles of Americans and, like many of you, the Commission is doing what it can to ensure that everyone has the opportunity to be connected. We have focused much effort of late on our universal service subsidy programs. Instead of imposing mandates on incumbent providers, we are modernizing our programs in an effort to lure providers to offer service in uneconomic areas with unserved individuals.

This brings me to the larger subject matter – the best means to regulate a dynamic digital economy. I don't think you will be surprised that my response is: Less is more. The FCC has many ex ante rules comprised of technical rules and construction metrics for licensees. These appropriately promote spectral efficiency, interference free services, deployment and certainty for our licensees. However, the FCC does maintain a considerable number of old rules that can, and should, be eliminated because of competition, especially as over the top services experience greater maturity.

What has proven not to work is attempting to regulate with the goal of preventing unidentified, hypothetical harms. This raises the ever-present discussion about Net Neutrality. You may be aware that as part of our misguided rules, the Commission implemented what is known as the General Conduct Standard, a vague rule that empowered the Commission's enforcement personnel to saunter around issuing penalties and stop orders against any practice or service it deems harmful to the Internet. This led to extensive reviews and eventual declarations against certain zero-rating offerings. Several licensees told me of numerous projects that were put on hold or ultimately scrapped due to the mere uncertainty and fear of Commission action.

As you may know, the U.S. does not maintain regulatory key performance indicators (KPI). Instead, I have outlined certain principles that may serve to further such discussions, but are clearly centered on both regulatory restraint in the digital age and corresponding congressional authority. Specifically, I would argue that regulations can only be imposed when (1) there is verifiable and specific evidence that there is market failure, (2) data shows that there is actual harm to consumers that the regulatory body can resolve, (3) the solution can be carefully tailored and apply only to the relevant set of providers or services, and (4) the benefit of regulation outweighs the associated burdens.

I will end my remarks there and look forward to the discussion with colleagues and questions as well.