

Testimony of the Honorable Michael O’Rielly
Before the House Committee on Energy and Commerce
Subcommittee on Communications and Technology
Hearing Entitled, “The Telecommunications Act of 1996: 30 Years Later”
May 26, 2026

Summary Points

- In the blink of an eye, 30 years have passed since the Telecommunications Act of 1996 became law.
- This hearing can serve two connected and valuable purposes: review the lessons learned from the Telecom Act—what went right, what went wrong, which aspects remain contested, and what fell outside its scope; and whether Congress should undertake a major rewrite of our nation’s communications laws, focusing primarily on the Communications Act of 1934, and if so, what should be included.
- In terms of lessons learned, these were my takeaways from helping to pass the law and following its implementation: comprehensive legislation is extremely difficult; key industries were intentionally excluded or only marginally affected; timeliness and an asymmetrical trade affected outcome; cannot rely on the implementing agency; compromises proved painful; and advocates are still litigating vague language.
- There does not seem to be a strong need or demand for a massive rewrite of communications law at the moment. This notwithstanding, there are several areas for the Subcommittee to consider taking action, including: video services, including expanding FCC forbearance authority; universal service; satellite regulatory treatment; and VoIP.

Subcommittee Chairman Hudson, Ranking Member Matsui, Full Committee Chairman Guthrie, and Ranking Member Pallone, thank you for the opportunity to participate in today's hearing on such an important topic.

In the blink of an eye, 30 years have passed since the Telecommunications Act of 1996 became law. In a career timeline, I have gone from a youthful staffer to an overaged policymaker and now an advisor, seemingly overnight.

For those unfamiliar, I had the privilege of working for then-House Commerce Committee Chairman Tom Bliley (R-VA) and serving as a policy analyst during the crafting and passage of the Telecom Act. It was an exciting time for Capitol Hill, which operated somewhat differently than it does today. I am also one of the few staff members who remained in the legislative field to oversee the Act's implementation from the perspective of the main authorizing congressional committee.

Eventually, I left the House of Representatives in 2003 to become a senior advisor to a newly elected Senator from New Hampshire, who astounded me with his interest in communications policy, his willingness to actively engage in the subject, his overall brilliance, and his approach to the job as a Senator. After some ups and downs, fate led me to join the Senate leadership staff in 2010 to work for a policymaking titan, Jon Kyl (R-AZ). That position helped facilitate my 2013 appointment and confirmation to a minority seat on the Federal Communications Commission (FCC). After leaving the agency during COVID at the end of my term, I have operated my own consulting practice for over 5 years. I also maintain affiliations with the Free State Foundation, The Media Institute, Crest Hill Advisors, CableFax, The Hudson Institute, and APCO Worldwide.

With the utmost respect, I see this hearing serving two connected and valuable purposes. First, it aims to review the lessons learned from the Telecom Act—what went right, what went wrong, which aspects

remain contested, and what fell outside its scope. Second, the common question is whether Congress should undertake a major rewrite of our nation's communications laws, focusing primarily on the Communications Act of 1934, and if so, what should be included. That is a worthwhile inquiry.

Lessons Learned from the Telecommunications Act of 1996

Other Senators, Members, or staff involved in drafting and implementing the Act may have had different experiences and opinions, but these are the lessons I took away from that process. Humbly, I suggest that they may serve this committee and institution in considering communications policies and other areas.

1. Comprehensive Legislation is Extremely Difficult – Based on my count, at least three public attempts have been made in the last 30 years to replicate the efforts behind the Telecom Act in creating comprehensive communications law reform. Due to poor timing, policy disagreements, other legislative priorities, or other events, these efforts did not succeed. Our Founding Fathers did not intend for legislating to be easy.

The Telecom Act was enacted, partly because the right conditions existed, driven by the desire of various companies to compete in the then-existing local and long-distance telephone markets.

That single purpose helped propel the other provisions forward. It often takes a very strong engine to pull the rest of the cars forward. Although great work can be accomplished piecemeal and married later, if appropriate.

2. Key Industries Were Intentionally Excluded or Only Marginally Affected – Although the Telecom Act included reforms across many areas, some sectors or segments of the industry, such as wireless and the Internet, were not included or were only minimally impacted. Just as Congress addressed wireless spectrum auctions and allocations last year, the Telecom Act excluded these

core elements because they had been managed three years prior. Furthermore, contrary to some opinions, the Internet was not a major driving force during the Telecom Act's consideration. Since then, the wireless and Internet sectors have grown to become significant parts of the broader communications industry.

3. Timeliness and an Asymmetrical Trade Affected Outcome – Resolving the local and long-distance telephone disputes, which faced a fairly turbulent process, was driven by older legal and regulatory challenges. While addressing these disputes was needed, it didn't necessarily lay the groundwork for future legal treatment of the related industry sectors. The deregulatory efforts in the broadcasting and cable titles were modest in retrospect. Furthermore, Congress likely overestimated how difficult it would be to open the local voice market to competition, which still faces obstacles. Therefore, the tradeoff of allowing local telephone companies into the long-distance market and vice versa resulted in an unbalanced exchange. This shift changed which companies gained and which ones lost.

4. Cannot Rely on the Implementing Agency – Once enacted into law, much of the responsibility for implementing the law shifted to the FCC. While the agency managed some issues effectively, there have been numerous instances where the law's provisions were either intentionally or unintentionally misapplied. Some of these outcomes aligned with my views, meaning I generally agreed with the results, but the changes were never intended by the underlying law. In other situations, the abuses were extremely difficult to accept. In either case, I objected to an 'ends justify the means' approach. Overall, the FCC – once entrusted to correctly handle the law's technical aspects – became less than trustworthy and often misused its authority.

It is for this reason that I always advise policymakers to explain in great detail what they want an agency to do and, more importantly, what they do not want them to do. In other words, the

unauthorized line should be very, very explicit in law. Do not rely on the good intentions of a federal agency to interpret Congress's intent, and a manager's statement or committee report is meaningless unless it aligns with the FCC chair's vision. While there are many good people at the FCC, they tend not to appreciate this institution's work and generally avoid it at all costs, rather than pursue statutory changes.

5. Compromises Proved Painful – The legislative process is often complicated. Trade-offs are made, and provisions are accepted to simplify the process and garner support. In nearly every case, a seemingly harmless provision—one that would have drawn opposition from the Republican majority if examined separately—was added to the House version or to the Telecom Act during the conference committee, and it was used differently than intended and given more significance than it deserved. A study somehow turned into vague FCC authorizing language; a deregulatory measure was used to tighten regulations; exemptions were viewed as authorizing monopolies; and a long title, which has no legislative weight, was given undue prominence. My advice is to be very cautious about adding any text or provision solely to gain legislative support.

6. Still Litigating Vague Language – Contrary to the original intent of the law's architects, who aimed for industry to have clear rules and for focus to be on marketplace competition, several key provisions are still being challenged thirty years later. The most notable issue is the weakening of the preemption language. Allowing states and local governments to interfere with or block interstate commerce has proven to be highly problematic.

Components of a New Communications Law

Given my experiences, there does not seem to be a strong need or demand for a massive rewrite of communications law at the moment. The Communications Act of 1934, as amended by the

Telecommunications Act of 1996, is losing relevance as the industry and consumers continue to shift to technologies beyond its authority. Nonetheless, in no way should those unregulated sectors be subsumed in the FCC's purview. In my opinion, the FCC should never be allowed to become an Artificial Intelligence or Internet application regulator.

This is not to suggest that changes to the law are not appropriate. To the contrary, much of the current law has been diluted over time and in response to changing circumstances, allowing for the deregulation of those covered by it. The so-called legacy communications industry should be relieved of burdens that no longer make any sense or deserve clarification. Along these lines, the following provides several areas for the Subcommittee to consider:

1. Video Services – The 1992 Cable Act imposed significant burdens and responsibilities upon the cable sector. Many of these can and should be eliminated to reflect the fact that the marketplace is flush with competitive alternatives for consumers. At the same time, legacy video providers are dropping video services from their bundles or building their own streaming business lines. Chairman Guthrie is to be commended for prioritizing this for the committee.

One improvement that could be very helpful, without a full overhaul, is to expand the Act's Section 10 forbearance authority to include Title VI providers. Currently, the forbearance authority is limited only to telecommunications carriers, leaving much of the Act outside its scope. As I have previously written, the provision could be amended to include cable operators or providers, enabling the necessary deregulation and deobligation. Unlike other areas, the FCC has used Section 10 sparingly, and its procedures are quite structured, so concerns about its misuse should be minimal.

2. Universal Service – I have long supported the idea of Universal Service and respected the law’s provisions, whether at the FCC or even when I disagreed with their interpretation or implementation during my time as congressional staff. While the contribution factor for USF is currently high, it can be misleading when viewed in isolation. In reality, issues with distribution (spending) and administration are significant and warrant the committee’s attention, as these have contributed to the contribution challenges. Focusing only on contributions ignores the fact that spending has risen sharply, subsidy subprograms need serious reform, and the Universal Service Administrative Company operates without proper oversight. Furthermore, the solution to overspending and mismanagement isn’t simply to tax more industries—especially those that are vital to the economy and are financially stable. Fortunately, the FCC has limited authority to increase contributions or to tax the high-tech industry, and I would strongly oppose giving it any such authority.

3. Satellite Regulatory Reform – This Committee recognized before most anyone that the process for considering and approving new satellite systems was broken and in need of repair. At the Committee’s lead, the FCC has made it a priority to modernize this process and improve the regulatory model to prevent companies from shifting to other regulatory bodies in foreign countries. With U.S. industry leading the way, the satellite industry's revitalization is exciting and deserves a streamlined regulatory process that is sufficiently flexible to meet current demands.

4. VoIP – Despite decades of experience and my past work to properly classify Voice over Internet Protocol (VoIP) services, states are taking another look at regulating the Internet application. Yet the area is clearly interstate in nature and deserves treatment at the Federal level. There is no difference between a voice, video, or data bit, but somehow only the voice bit is getting such treatment. Standalone VoIP offerings can be made from anywhere in the country and should be free from the reach of state regulatory bodies. This will not add any work for the FCC or require

any additional regulatory burdens, as the dynamic voice market is functioning quite well to meet consumer and enterprise needs.

I would be pleased to answer any questions posed by Members of the Subcommittee.