Disbanding the Federal Communications Commission

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This paper argues that the Federal Communications Commission (FCC) has outlived the economic and technological conditions that justified its creation. The monopolistic telephone and spectrum-scarcity environments of 1934 have been replaced by dynamic, intermodal competition across broadband, wireless, and satellite platforms, eroding the rationale for common carrier and broadcasting regulation. As its original mission has faded, the FCC has become increasingly politicized, aligning with shifting partisan agendas rather than exercising independent expertise. The paper reviews the historical foundations of commission regulation, the evolution of communications markets, and the decline of FCC independence, and proposes reallocating the agency's essential functions while disbanding the Commission itself.

Keywords: Regulation, Deregulation, Independence, Competition
JEL codes: H11, K23, L51, L96

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America has a short but distinguished list of deregulatory heroes: Alfred Kahn led airline deregulation in the late 1970s. President Jimmy Carter broke down barriers in transportation and natural gas. President Ronald Reagan rolled back rules in energy, broadcasting, cable television, and banking. President Donald Trump is making a good case for joining the list as he works to remove regulatory barriers for artificial intelligence (AI) and the supply chain for the AI stack. It appears that he should add disbanding the FCC to his list of deregulatory accomplishments.

Why shutter the FCC? The reasons for its creation in 1934 have largely disappeared, resulting in a mission vacuum that makes the agency a convenient political tool (Jamison, 2016, November 15; Gillespie, 2025; Lenard, 2025). The FCC was designed to regulate yesteryear's government-protected telephone monopolies—which are gone—and to oversee the public airwaves—which, in contrast to today's abundance of streaming content by multiple modes, could support only a small number of broadcasters at the time. The FCC was designed as an independent commission because of lessons learned in the regulation of railroads and public utilities: Regulated businesses need stable, predictable oversight across administrations if investors are to access the capital needed to provide service.

But the telephone monopolies are long gone. While it might be argued that there are pockets in the country where some communications network providers face little competition and at least some small legacy telephone companies continue to enjoy favored regulatory treatment, the utility nature of the industry no longer exists: Rapidly changing technologies and intermodal competition make it impossible to define an enduring market to regulate. Similarly, improved computing, wireless, and internet technologies make broadcasting an antiquated technology, also not a market.

In part because its time has passed, the FCC has become a convenient political tool, drawing close to the Democrat Party in the waning years of President Barack

Obama's administration, withstanding pressure from Trump to regulate social media during his first term, and reaching beyond its authority during President Joe Biden's administration to try to oversee broadband supply chains and support organizations.

Shuttering the FCC would implement a deregulatory strategy for the communications sectors. Common carrier regulations for telecommunications would cease, as would content oversight of broadcasters. Other FCC functions, such as consumer protections, equipment authorizations, and radio spectrum management would be handed to other agencies.

The purpose of this paper is to describe the case for disbanding the FCC. It begins with an exploration of the motivations and principles for commission-style regulation. It then reviews the development of telecommunications, broadcasting, and their regulation in the U.S. Next it describes the current state of the industries and the decline of FCC independence. Then it describes what functions of the FCC should be kept in the government and where they might be housed should the FCC be disbanded.

I. Purposes and Principles of Commission-Style Regulation

This section describes motivations for creating regulatory commissions like the FCC. It explains that such institutions developed in the late 1800s and into the 20th century to deal with utility and some transportation monopolies. Common carrier regulation first emerged in common law centuries earlier to address issues where limited competition meant that customers were unable to protect themselves from carrier bad behavior. But as telephony developed, providers were granted monopoly status, making them public utilities and they were regulated as such. Political bodies, such as city councils, initially performed the regulatory function. But the complexities of regulation and the opportunities for political misconduct

overwhelmed political bodies, so they began creating expert commissions to perform regulatory functions at arms-length from political, industry, and special interest influences.

A. Utilities and Regulation

Common law and institutional economists were the main contributors to the development of the public utility concept. One of the earliest legal cases was *Munn v. Illinois* (94 U.S. 113, 131-2, 1877). The Court held that Illinois could regulate business prices if the private company was imbued with the public interest and was effectively a monopoly. Subsequent court decisions wandered from the monopoly requirement, but in *Phillips Petroleum Co. v. Wisconsin* (347 U.S. 632, 1954), the Court corrected the drift, moving toward two fundamental tests for public utility status: (1) the potential for exploitation or extortion, i.e., market power, and (2) the degree to which the service could be construed as a necessity. These tests remain foundational for the public utility concept (Trebing, 2001).

The Court also bounded governments' discretion in setting prices. In *Smyth v. Ames* (169 U.S. 466, 1898) and *Federal Power Commission v. Hope Natural Gas* (320 U.S. 591, 1944) the Court protected utilities' rights to due process and prices that were just and reasonable, reflecting the value of the utilities' assets.

For their part, institutional economists emphasized market power and fairness.[1] Charles Adams argued that because railroads were capital intensive, their value to the economy would be increased if prices were controlled, something many in the industry supported (Trebing, 1987). Martin Glaeser (1927) explained the economic and legal rationale for regulation, as well as lessons from experiments in regulating prices. James Bonbright (1961) wrote the foundational text on utility ratemaking.

[1] For more complete descriptions of the contributions of institutional and neoclassical economics to utility regulation, *see* Miller and Samuels (2002), Berg & Tschirhart (1995), and Faulhaber & Baumol (1988).

The basic postulates of these and other institutionalists were that regulation was needed to control market power, pursue public and social interest goals, improve efficiency and individual choice, and provide due process for stakeholders, operating with transparent processes (Trebing, 1987).

Neoclassical economists added to the normative literature on regulation. Alfred Kahn's classic texts provided a rigorous, yet non-mathematical explanation of economic efficiency aspects of utility pricing and the impacts of market structure on regulation (Kahn, 1988). William Baumol (1977, 1979, 1982, 1986), Gerald Faulhaber (1975, 1979), and William Sharkey (1982) introduced ideas of contestable markets, added rigor to concepts of natural monopoly, explained the cost structures and pricing incentives of multiproduct firms, and developed approaches for allowing price flexibility for multiproduct utilities serving both competitive and monopoly markets. Their work also laid foundations for cross-subsidy concepts, deregulation, and access pricing applied in telecommunications. Ronald Coase (1959) and William Vickery (1961) explained the use of auctions to allocate scarce resources. First formalized in recent times by the Austrian economist Stephen Littlechild (1983) for the regulation of British Telecom, the advancement of price cap regulation to dampen the effects of information asymmetries and to provide a transition to deregulation was enhanced by neoclassical economics (Sappington, 2002).

In statutes, utilities are generally regulated monopolies with well-defined services and geographic boundaries inferred by certificates of convenience and necessity (CCNs).[2] This utility status currently applies to electricity, natural gas, and water utilities in the U.S., and is effectively present in Title II of the Telecommunications Act (47 U.S.C. §§ 201–276) for common carrier telephone companies.

[2] In some contexts, these certificates took the form of franchises. As this was not true in all cases, we use the acronym CCNs.

Protected monopoly makes it feasible for the government to impose obligations on the utility that it could not fulfill without internal cross-subsidies. Such restrictions might include obligations to serve everyone in the utility's service area, limits on price and service discrimination, and limits on price levels. An internal cross subsidy is a situation where a utility uses revenue from one set of customers to make serving another set of customers financially viable.[3]

For legal and economic reasons, price limits must allow the utilities an opportunity to recover costs prudently incurred and used and useful for providing the utility service and to receive a fair return on investment (Bonbright, 1961; Jamison, 2011). When governments are not constrained by such laws, they sometimes behave opportunistically, with the result that investments are inadequate to ensure service (Klein & Roger, 1994; Bergara et al., 1998).

B. Common Carriers and Regulation

Common carrier obligations emerged in common law from the special roles that firms carrying goods on behalf of others played in the economy, beginning late in the Middle Ages, and continuing into the Renaissance. The services were generally considered essential for shippers' participation in the economy and that customers were particularly vulnerable if they were refused service or discriminated against, or if the carrier did not exercise care in handling the customers' property. The primary issues in the courts during this era were fulfillment of services and undue price discrimination. Overall price levels do not appear to have been in dispute. Customers were considered vulnerable and in need of regulatory protection if they

[3] More specifically, a cross-subsidy exists if the provision of each service or group of services by the firm is not Pareto superior to no provision, i.e., some consumer or group of consumers finds the pricing and service provision to be less preferable than (1) only some of the services being are provided by the enterprise (Faulhaber, 1975) or (2) what could be obtained if another enterprise that serves markets unserved by the firm in question, added this consumer or group of consumers to its market mix (Jamison, 1999). If the sum of the revenue from all customers covers the sum of the utility's costs, the obligation is financially viable.

had no alternative sources of supply. That said, there is little or no evidence that the courts gave unambiguous thought to whether a firm was a monopoly (Payton, 1989).

The importance of monopoly in common carriage emerged explicitly as U.S. courts and legislative bodies grappled with the challenges of market entry and pricing (Trebing, 2001). It became clear that governments could not and should not impose obligations that a firm could not commercially fulfill (Phillips, 1993). This consideration led governments to protect such carriers from competition by making them protected monopolies, and to apply the utility rate setting system, allowing them cost recovery and reasonable profits (Phillips, 1993; Janson & Yoo, 2013).[4]

Although there are common law foundations for common carrier obligations, today they are typically spelled out in legislation and sometimes detailed in regulatory rules (Payton, 1989; Cherry, 1999; Hauge & Jamison, 2014). These obligations would typically include an obligation to serve at prices deemed reasonable by the government without undue discrimination. The standard of reasonable prices is vague but has come to mean that prices are non-confiscatory, provide incentives for continued investment, and treat similarly situated customers the same (Bonbright, 1961; Jamison, 2011).

Initially in the U.S., regulation was performed directly by political bodies, such as cities or state legislatures, but this approach suffered from poor performance because political bodies lacked sufficient expertise to overcome information disadvantages, acted opportunistically, and engaged in corruption (Glaeser, 1927). The information disadvantage was that regulated companies were experts in their fields while the politicians were generalists with many political and policy concerns (Glaeser, 1927). Opportunism is commonly referred to as expropriation or the hold-up problem (Henisz & Zelner, 2001). Expropriation occurs when, once an operator

[4] Many common carriers, such as railroads and trucks, are not provided protected markets.

has sunk its investment, the government changes policies, effectively expropriating at least some portion of the value of the investment. Spiller (2005) and Henisz & Zelner (2001) show that absent strong property rights laws and independent regulatory agencies, utilities underinvest.

Expert regulatory commissions, with features of independence, provided remedies for these failings (Klein & Roger, 1994; Bergara et al., 1998). Independence does not mean that regulatory agencies are sovereign, but rather accountable to voters through laws and have arm's-length relationships with operators, consumers, other private interests, and politicians (Jamison & Castaneda, 2014). The essential features include a distinct legal mandate with formalized relationships between the agency and political bodies, staggered terms for decision makers, involvement of multiple political bodies in appointing decision makers, appeals of regulatory decisions through courts rather than through political bodies, security for decision makers that they cannot be removed from office except for cause,[5] prescribed professional criteria for employees, reliable funding, and ethics standards that limit conflicts of interest.

The first five features are intended to keep the agency free from the day-to-day pressures that politicians experience from media, political funders, and citizens (Jamison & Castaneda, 2014). This addresses the holdup issue and limits political pressures on the regulator, providing for a more stable investment environment. The sixth feature is intended to address the information disadvantage and should be accompanied by strong information gathering powers. The last two features are intended to further distance the regulator from stakeholders, including both operators and politicians.

These features also hold the agency accountable. The first and fourth features ensure that the agency acts only within its legal authority. Time-bounded terms for

[5] Recently Trump has asserted legal authority to remove regulatory commissioners at will. Whether a president has such authority is before the U.S. Supreme Court as of the time of this writing.

decision makers, selection processes involving multiple political bodies, and ethics requirements provide clear processes for holding individuals accountable for the quality of their work. These accountability-oriented features have proven valuable even though they can be used to effect political interference (Jamison & Castaneda, 2014). As with most commission-style regulatory bodies in the US, laws creating the FCC require that its commissioners represent a mix of political parties (47 U.S.C. § 154(b)(5)).

There are other agency features that are important for effectiveness (Australian Regulatory Forum, 1999; Berg et al., 2000). These include making information available to all stakeholders equally on a timely basis; participation of stakeholders in meetings; providing the logic, data sources, and legal bases for decisions; having well-known priorities, values, and decision-making models; adapting decisions to new, known realities consistent with laws and prior decisions; being cost effective in data collection and in policy implementation; providing clearly defined decision rationale; specified appeal procedures; and openness of process to stakeholder involvement. These features establish legitimacy, provide stability, promote professionalism and expertise, and provide clarity of roles, which diminishes authority conflicts and forum shopping.

Many of these principles were described in an FCC e-book created in 1999 to assist developing countries (Kennard, 1999). The e-book explains that an independent regulatory agency should be free from direct political pressure: "If the regulator is tied closely to the incumbent government, changes in government can introduce an element of uncertainty which heightens investment risk, and can serve potentially to deter future investment." In explaining transparency, it said, "Transparency means that the process of arriving at regulatory policies and specific rulings is open, consistent and predictable… The [FCC] announces proposed decisions in public memoranda, and written records of its proceedings are available

to the public." Section III describes how the FCC is failing to live up to these standards.

II. Co-Evolution of Industry and Regulation

This section describes how telecommunications and broadcasting industries in the U.S. developed and evolved along with the related regulatory institutions. Since the earliest days of telephony, cities, states, and the federal government encouraged the industry to be a legally protected monopoly. Cities and states did this through CCN arrangements. The federal government encouraged monopoly through its efforts to take over the industry. Utility-style regulation emerged because of the monopoly structure. But eventually the monopoly unraveled: Technological change and customer demand made it increasingly difficult for regulators to define the markets they were protecting and attempting to oversee. But regulation remained largely in place until competition made it unworkable. These dynamics apply to both telephony and broadcasting as these initially separate industries converge.

A. Telecommunications Early Development

Telecommunications in the United States began with competition between Alexander Graham Bell and other inventors, including some employed by Western Union—the American telegraph provider—over patent rights to the telephone device and the establishment of telephone exchanges. Bell negotiated an agreement with Western Union to divide the industry between telephony and telegraph, and to settle the patent dispute.[6] That gave Bell, whose company became AT&T, the telephone patents in exchange for staying out of the telegraph business. Bell enjoyed a largely unregulated monopoly until the key patents began expiring in the

[6] Disputes continued with others competing against Bell until the Supreme Court upheld Bell's patent rights. *See* Dolbear v. Am. Bell Tel. Co., 126 U.S. 1, 572–73, 8 S. Ct. 778, 802, 31 L. Ed. 863 (1888).

late 1800s. Then numerous competitors—called independent telephone companies or simply independents—arose to challenge Bell. Soon the independents served more lines than did Bell (Brock, 1981; Hochfelder, 2002).

Bell and the other telephone companies developed by obtaining CCNs from cities. These agreements regulated prices (Nix & Gabel, 1993; Gabel, 1994; Mueller, 1993; Mueller, 1997).

Early telephone technologies could not carry calls between cities, so telephone service was initially limited to service within a city, which became known as a local exchange (Brock, 1981). This technology boundary became a regulatory boundary through the city and state CCN processes (Nix & Gabel, 1993; Gabel, 1994; Mueller, 1993; Mueller, 1997).[7]

However, cities and other political bodies were ill suited for regulating sophisticated companies, so state legislatures began creating public utility commissions in the early 1900s, regulating utilities in general, including telephone companies (King, 1912; Glaeser, 1927).

Federal regulation of telephony began with the 1910 Mann-Elkins Act, which gave authority to the nation's transportation regulator—the Interstate Commerce Commission (ICC)—to regulate interstate telecommunications, i.e., communications that crossed state boundaries, made possible by the development of long-distance telephone technologies. State authority was not preempted (Brock, 1981; Noam, n.d.). The ICC performed little, if any, regulation of the prices and practices of the telecommunications industry, leaving most regulation to the cities and states (Brock, 1981).

The federal government also used antitrust to regulate AT&T by way of the Kingsbury Commitment of 1913. This commitment was an antitrust settlement

[7] The boundary provided the framework for how AT&T would be broken up in the early 1980s and would persist through the 1990s until deregulation allowed consumer preferences and technology economics to direct the industry to function with little regard to geography.

reached in December 1913, named after AT&T Vice President Nathan Kingsbury who brokered the deal. Under the agreement, AT&T pledged to stop acquiring directly competing companies and to permit the independents to interconnect with AT&T's burgeoning long-distance network (Janson & Yoo, 2013).

After a leak of the news was published in the New York Times (New York Times, 1913), President Woodrow Wilson's Postmaster General let it be known that the administration was studying nationalizing the telephone system (Burleson, 1913). AT&T campaigned against such government ownership (AT&T, 1913), and in doing so, advocated for private monopoly subject to government regulation (Bickers, 1988). AT&T asserted that "no government owned telephone system in the world is giving as cheap and efficient service as the American public is getting from all its telephone companies." Also, AT&T argued, it was regulated by the ICC and 40 state commissions, which effectively curbed monopoly exploitation. The company described regulation as analogous to a board of directors representing the public as well as the corporation (AT&T, 1913). The effort was successful: Legislation that would have authorized government ownership died in Congress (H.J. Res. 206, 65th Cong. 1918).

But Congress did adopt a resolution allowing government control in emergency situations (H.R.J. Res. 309, 65th Cong., 40 Stat. 904, 1918). Wilson acted quickly: The Post Office took over the telephone system on July 31, 1918, but relinquished control when World War I ended (U.S. Post Office, 1919).

With government support, AT&T's dominance quickly re-emerged as independent companies sought to be purchased rather than compete. This reflected a deliberate government policy: When the Post Office operated the system in 1918-

1919, the Postmaster General condoned and accelerated the process of industry consolidation (Janson & Yoo, 2013).[8]

B. Airwaves Early Development

The development of federal regulation of the airwaves began in the U.S. Department of Commerce but moved to commission-style regulation in the early 20th century, driven primarily by concerns over safety and signal interference. Radio telegraphy's first widespread application was improving the safety of ships at sea, but early operations lacked rules for training, monitoring, or prioritizing emergency messages (Hazlett, 1990).

Following the 1912 Titanic disaster—perhaps worsened by the lack of clear rules for radio services—Congress passed the Radio Act of 1912 (Pub. L. No. 62-264, 37 Stat. 302, 1912) and updated it in 1927 (Radio Act of 1927, Pub. L. No. 69-632, 44 Stat. 1162, 1927). These laws created the Federal Radio Commission (FRC) and gave it authority to license radio stations and manage the radio spectrum. The FRC was empowered to deny broadcasting licenses and to establish a licensing and frequency allocation system for commercial stations, assigning specific frequencies and power levels for each licensee. The FRC was directed to ensure that radio broadcasting served the public interest, convenience, or necessity, as well as address anticompetitive conduct (FRC, 1927).

While the FRC did not have authority to censure content, its power to deny broadcasting licenses and manage radio frequencies enabled it to influence content: In making its decisions, the FRC could consider whether a licensee's content served the public interest, convenience, or necessity (Smead, 1959). As Section III explains, this pressure tactic remains present in the FCC.

[8] The Wilson administration was supportive of the strategic formation of monopolies. The president intended that radio equipment would be a monopoly in the U.S. as a counterweight to what he saw as a British monopoly over underseas cables (Chernow, 2010).

C. Formation of the FCC

Regulation by the ICC and the FRC was unsatisfactory, so Congress dissolved the FRC, removed the ICC's authority to regulate telephony, and passed the Communications Act of 1934, creating the FCC (Brock, 1981; Noam, n.d.). The FCC's authority over telephone companies as common carriers falls under Title II of the Communications Act. To avoid interfering with state regulation, Congress limited the FCC's authority to interstate and international telecommunications, creating a system of dual jurisdiction, leaving in place the city and state prohibitions on competition (Noam, n.d.).

The federal government's legal authority to regulate comes from the U.S. Constitution, which provides that the federal government has the authority to regulate commerce among the states (U.S. Const. art. I, § 8, cl. 3). The various. state governments' legal authorities to regulate come from their police powers (Howe & Rasmussen, 1982), which the Constitution says are not given to the federal government (U.S. Const. amend. X). Over time, these police powers came to include the authority to regulate prices and services of businesses that were deemed to be public utilities (Phillips, 1993).

The methods for regulating the telephone monopolies and other utilities' prices became known as rate of return regulation, in which the FCC and the states permitted prices that enabled companies to maintain financial integrity, attract capital, and compensate investors (Kahn, 1988). But with dual jurisdiction over a single company's operations, there needed to be a way for each company's costs to be divided among the jurisdictions. By statute the FCC had responsibility for this cost separation—formally called Separations—but failed to fulfill this obligation until the late 1960s, about the time that cracks began to form in the telephpone monopoly (Gabel, 1967).

Although Separations is the FCC's responsibility, the Communications Act requires the agency to work with state commissions on this issue (47 U.S.C. 410), making Separations a system of political compromises between the FCC and the states (Gabel, 1967), as well as industry compromises between AT&T and the independents (Mueller, 1993). But the rise of competition in long distance and the breakup of AT&T made these political resolutions unworkable and unsustainable. Perhaps in recognition of this, the FCC and the states effectively abandoned their roles in Separations by freezing factors used in the cost allocation formulas, meaning that the cost allocation factors would no longer change as telecommunications markets evolved (47 CFR § 36.3).

With respect to broadcasting, the FCC inherited the FRC's mandate to ensure that broadcasting served the public interest, convenience, and necessity, based on the idea of radio frequency scarcity. This open-ended standard provided the FCC with broad discretion to supervise content, which the FCC did through its Fairness Doctrine, prohibitions on knowingly broadcasting false information that would cause substantial public harm, and an Equal Time Rule for federal political campaign advertising, ensuring that if a station sells advertising to one candidate, it must sell the same amount to others.

D. The End of Monopolies

Although cities and states protected local telephone companies from competition, the Communications Act did not. A company called Hush-A-Phone emerged in the middle of the 20th Century providing attachments for AT&T phones to protect privacy. AT&T opposed these attachments but lost its legal battle (Brock, 1981), opening the door for others: Carterphone allowed customers to connect private

radio networks to AT&T's network, and the FCC's *Above 890 Decision*[9] made the way for MCI to begin competing with AT&T for intercity communications (Brock, 1981).

The belief that providing telephone lines was a natural monopoly—not just a government-protected one—provided the framework for the breakup of AT&T in 1984.[10] The DOJ's basic concern was that AT&T had used its control of bottleneck local telephone lines to foreclose competitors of other services and to cross subsidize its potentially competitive markets (Temin, 1990). The breakup required AT&T to divest its ownership of the Regional Bell Operating Companies, which owned the AT&T local telephone lines (Hughes, 1996).[11]

This laid bare the vulnerabilities of politically driven telephone pricing as large customers and long-distance companies began bypassing the local telephone monopolies (Eisenach & Caves, 2012). This threatened the cash flows of these companies, so state commissions fought back (Kahn & Shew, 1987). Dual jurisdiction tied the FCC's hands, limiting its ability to undo numerous cross subsidies in the telephone pricing system.

While this was going on, technologies for providing local telephone networks had evolved to the point where it made economic sense for these companies to integrate unregulated information services into their networks. But as these information services were open to competition, entry by the local telephone monopolies into competitive markets raised issues of cross subsidy and unfair

[9] *In re Allocation of Microwave Frequencies Above 890 Mc.*, Dkt. No. 11866, 27 FCC 359 (1959), *aff'd on reh'g*, 29 FCC 825 (1960).

[10] In 1982, the Antitrust Division of the U.S. Department of Justice and AT&T agreed to enter into a consent decree to settle the government's antitrust suit against AT&T. This decree would, among other things, caused AT&T to divest its ownership of the Bell Operating Companies, through which AT&T owned local access facilities. See United States v. Western Electric Co., 552 F. Supp. 131 (D.D.C. 1982) (Modification of Final Judgment or MFJ), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (approving MFJ); United States v. AT&T, 569 F. Supp. 1057 (D.D.C. 1983) (Plan of Reorganization), aff'd sub nom. California v. United States, 464 U.S. 1013 (1983) (approving Plan of Reorganization).

[11] Had the authorities not believed that fixed line was a natural monopoly, other viable options might have been considered, including removing barriers to competition in fixed lines, taking steps to ensure that the emerging cellular technology would be a substitute for fixed line, and creating a horizontal breakup into vertically integrated network operators.

competition. The FCC tried to resolve these issues by distinguishing between basic services, i.e., regulated common carrier services, and enhanced (information) services, imposing numerous competitive safeguards, and requiring the local companies to engage in additional cost allocations.[12]

The economic pressures against the local telephone monopolies became too much to bear and states began removing their protections for the companies. Fixed line service was opened to competition on a state-by-state basis until the passage of the Telecommunications Act of 1996 (1996 Act),[13] which made local telephone competition a national policy and put in place processes for erasing regulatory boundaries, such as between basic and enhanced services.

The 1996 Act imposed new regulatory processes for opening local telephone markets to competition, but regulated competition proved unworkable. Competition emerged primarily in urban areas (Zolnierek et al., 2001), the prices regulators created for rivals to interconnect with incumbents discouraged entry (Jamison 2004), and the new regulatory processes led to more regulation and costly, contentious proceedings (Crandall, 1997; Crandall, 2005; Economides, 1998). The Consumer Federation of America and the Consumers Union (2000) argued that the 1996 Act resulted in little competition.

E. Wireless Telecommunications

Wireless telecommunications developed largely without common carrier regulation and its evolution demonstrates how such regulation had held traditional telephony in an antiquated industry and service structure. AT&T's Bell Labs developed the concept of cellular phones in 1947 and proposed to the FCC that it

[12] *See Second Computer Inquiry, Final Decision, 77 FCC 2d 384 (1980), modified on reconsideration, 84 FCC 2d 50 (1980), aff'd sub nom. Computer and Communications Industry Association v. FCC, No. 80-1471 (D.C. Cir. November 12, 1982); Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities*, Report and Order, CC Docket No. 86-111, 2 FCC Rcd 1298 (Joint Cost Order), *recon*., 2 FCC Rcd 6283 (1987), *further recon*., 3 FCC Rcd 6701 (1988), *aff'd sub nom. Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.D. Cir. 1990).

[13] PUB. L. NO. 104-104, 110 Stat.56.

allocate a large number of radio frequencies to cellular service so that the service could be widespread. However, the FCC allocated only a limited amount of spectrum at that time; only enough to allow twenty-three simultaneous phone conversations in the same service area (Brock, 1981).

Following Motorola's invention of the first modern portable telephone handset in 1973, the FCC authorized three tests of cellular service, granting experimental licenses to AT&T for Chicago and Baltimore, and a third experimental license to American Radio Telephone Service, Inc., for Washington, D.C. It was not until 1982 that the FCC authorized commercial cellular service.

According to the FCC (2024a), mobile telephony now covers almost the entire country: AT&T, T-Mobile, and Verizon each cover at least 95% of the U.S. population with their fourth-generation networks and at least 75% of the U.S. population with their fifth-generation networks. Single pricing structures cover nationwide calling, erasing the long-distance-local-exchange dichotomy created by regulation of traditional telephony in the early 20th century.

III. Vanishing Purpose and Institutional Decline

The U.S. telecommunications and broadcasting sectors no longer have features that created the need for the FCC. Their technologies, services, and markets are constantly evolving, eliminating monopolies and creating situations where it is impossible to define service and market boundaries[14] in ways needed for regulation. An array of broadband providers uses several technologies—including cable, fiber optics, fixed and mobile wireless, and satellite—to provide customers with constantly evolving networks that offer two-way communications and one-way communications. These providers offer alternatives to broadcasters' services.

[14] A market boundary is the space where products are sufficiently different that customers find them to not be reasonable substitutes. The boundary might be comprised of some combination of product features, service features, and geography.

Perhaps because of this lack of purpose, the FCC has declined as an institution. It aligned with the Democratic Party and with Obama in the waning years of his presidency, seeking to pressure newsrooms and creating new regulatory agendas. Trump followed this precedent. Under Biden the FCC sought to refresh the Obama effort to expand common carrier regulations to internet service providers (ISPs) and adopted rules to regulate anyone involved with broadband services, not just broadband providers.

This section examines these changes, beginning with industry evolution.

A. Loss of Purpose: Common Carrier

The U.S. telecommunications sector's technologies, services, and markets are constantly evolving, eliminating monopolies and creating situations where it is impossible to define service and market boundaries in ways needed for common carrier regulation.

Fiber optics and other fixed-line technologies now compete with and are complemented by new technologies such as 5G fixed wireless access and low earth orbit satellite broadband, representing Schumpeterian competition as innovations constantly supplant prior technology generations. The new technologies introduce new performance dimensions—coverage, flexibility, and deployment speed—that continuously alter the trajectory of broadband development. These developments illustrate how innovation erases concepts like market structure and static price competition, creating ongoing processes of technological differentiation and capability building (FCC, 2024b).

These new technologies make market boundaries dynamic. Fiber optics and other wireline technologies differ in their economics, meaning that they differ in their geographic deployments and the services they enable (Afflerbach, 2023). And their capabilities evolve quickly as their abilities are driven in part by the electronics that

power them, including emerging AI capabilities. Similarly, fixed wireless technologies differ in their deployment and capability economics, and are different from the wireline technologies (Afflerbach, 2023; FCC, 2024b). These diversities mean that markets related to these technologies have unclear geographic and service boundaries. And even if there were moments of clarity, the economics quickly change, making the boundaries constantly moving targets.

When market boundaries are dynamic, it is impossible to establish common carrier regulations that apply only in situations where customers are unable to exercise options. Common carrier obligations emerged under common law in situations where customers were unable to protect themselves by choosing alternative service providers. In statute, common carrier obligations were imposed at a time when carriers were granted monopolies. This criterion—that customers were not making choices among providers—was important for regulation because providers, customers, and regulatory officials needed clarity on which services were under common carrier obligations. Also, government-imposed obligations would be unsustainable in the presence of customers making their own choices. The FCC and state regulators struggled for years trying to define what was and was not regulated under common carrier statutes, and how to create price and service obligations that were sustainable in the presence of competition.

Mobile services also fold into this mix, sometimes competing with fixed, at other instances complementing, and at other times irrelevant to fixed services. For example, since the early 2000s, customers in Portugal have varied in their choices of fixed and mobile broadband, reflecting varied preferences for video, gaming, or financial applications (Hauge et al., 2011). In Florida, as mobile technologies became, low-income customers that had fixed services quickly switched to mobile as it better served their needs. Higher income households were slower to switch, treating mobile as a complement to fixed for several years (Hauge et al., 2009). Now nearly all households in the U.S. have dropped fixed services for voice

(Jamison, 2020) and alternatively use various forms of fixed and mobile for broadband (FCC, 2024b).

Mobile communications providers offer examples of dynamic and intermodal competition. The merger of T-Mobile and Sprint might suggest increased market concentration from a static view, yet a broader perspective reveals that the merger intensified rivalry across technological platforms (Hazlett & Crandall, 2025). Cable television firms expanded into mobile through mobile virtual network operator arrangements that exploit heterogeneous network assets, including Wi-Fi offloading—a form of asset reuse that reduces marginal costs and provides alternatives for mobile subscribers. And wireless carriers compete with fixed broadband providers, using for example 5G home internet products. DISH's cloud-native, Open RAN 5G network demonstrates the role of architectural innovation in the constantly evolving industry (FCC, 2024b).

The commercial space sector also exemplifies these dynamics. Falling launch costs, rapid satellite deployment, and emergent business models for non-geostationary satellite orbit constellations have created a new competitive domain. Modernization of satellite licensing, spectrum access, and orbital debris rules reduce structural entry barriers and mitigate incumbency advantages. As a result, while space-based communications rapidly evolve, they both compete with and complement terrestrial broadband and. The result is an intermodal competitive environment where satellite, fixed, and mobile suppliers simultaneously innovate and compete, creating greater technological heterogeneity and reducing the potential for market power (Calabrese et al. 2025; FCC 2024b).

B. Loss of Purpose: Broadcasting

Video delivery in the U.S. has evolved into a technologically diverse and highly competitive ecosystem in which legacy broadcasting represents only one of several

means of delivery. Consumers obtain video programming from multichannel video programming distributors (MVPDs), online video distributors (OVDs), and broadcast television stations, each using different infrastructures and business models. What was once a broadcasting-centered market—providing video and audio to licensed service providers—has become an intermodal complex of companies providing various forms of fixed and mobile networking, including traditional cable and telephone companies, satellite providers, streaming platforms, and over-the-air (OTA) broadcasters. These technologies complement and compete to deliver a wide array of programming—local news, entertainment, user-provided content, sports—through fundamentally different production and distribution strategies. Broadcasting itself is no longer a distinct economic sector (Thompson 2024; FCC 2024b).

Traditional MVPDs historically dominated video distribution. Their dominance has eroded continuously since 2012, with subscribership falling from over 100 million households to about 54 million in 2023. Cable, satellite, and telephone-company video providers have each experienced substantial subscriber losses as consumers migrate to internet-based alternatives. MVPDs increasingly rely on bundling video with broadband, voice, or mobile services (FCC, 2024b).

OVDs are now a central dynamic in video distribution. Leveraging nationwide broadband infrastructure, OVDs such as Netflix, Hulu, Amazon Prime Video, Disney+, and YouTube deliver video to nearly any connected device and at any location. Their business models—advertising-supported, subscription-based, and transactional—enable consumers to time-shift, device-shift, and location-shift their engagements, attributes that traditional broadcast and cable systems were unable to provide. And major OVDs increasingly invest in original content and maintain exclusive libraries. Social media platforms have further blurred boundaries by distributing user-generated and AI-generated video at scale (Deloitte, 2025; FCC, 2024b).

Across all distribution technologies, consumer preferences have shifted toward flexibility in time, place, and device. OVDs offer the greatest adaptability through vast on-demand libraries and multi-device access. MVPDs attempt to mimic this flexibility using DVR, video-on-demand, and out-of-home streaming features, while some providers are exiting the video business to focus on broadband. OTA broadcasters remain tied to linear programming and their content is widely redistributed via MVPDs, and OVDs. Because consumers increasingly view broadcast programming through non-broadcast channels and regard it as one option among many, broadcasting no longer constitutes an industry in the traditional sense and deserve no special licensing other than a right to use radio spectrum.

C. Loss of Purpose: AI

AI is reshaping the industries that the FCC traditionally regulated, turning them into a complex unlike the monopoly common carrier and traditional broadcast industries that motivated the creation of FCC oversight. AI is impacting telecommunications by transforming both customer-facing features and network operations. Providers use AI to analyze customer behavior, predict churn, and tailor marketing offers. AI is often integral to customer service, speeding responses to routine inquiries instantly while augmenting call-center staff. AI systems also detect billing anomalies and help maintain transparent, accurate customer service practices.

Beyond customer engagement, AI is providing predictive maintenance that analyzes data from towers, routers, and fiber networks that change industry economics by anticipating failures before they occur, reducing outages and extending asset lifetimes. AI-supported network optimization tools improve capacity planning, spectrum management, and traffic routing, enabling operators to respond to demand fluctuations created by customer streaming, gaming, and cloud

computing. These capabilities press telecommunications towards software-defined networks, responding to the computational demands associated with AI-driven services.

AI is also altering the production, distribution, and consumption of video programming. AI enables automation of historically labor-intensive workflows, including video editing, captioning, translation, and metadata generation. Generative AI systems contribute to content creation—drafting scripts, producing voices, and creating virtual environments. Broadcasters and streaming platforms use AI to analyze viewer behavior and tailor recommendations, shifting video consumption from a mass-market model to one based on personalized curation. Personalization is central to the competitive strategies of streaming platforms and perhaps vital for traditional broadcasters seeking to remain relevant.

AI is accelerating the convergence of broadcasting, streaming, and telecommunications. Platforms increasingly rely on AI analytics to optimize ad placement, personalize content flows, and integrate interactive features, such as real-time polling or audience chat systems. In moving beyond their OTA business models, broadcasters are using MVPDs, OVDs, and digital platforms and using AI for audience measurement, targeted advertising, and content discovery. These applications create challenges, such as deepfakes, content authenticity, and the realignment of creative labor, but they reinforce the broader conclusion that common carrier is a concept whose time has passed for electronic communications and broadcasting is no longer an industry.

D. Institutional Decline

It is not unusual for the quality of an institution to strengthen or weaken based in part on the quality of leadership. What is different with the FCC is that its quality appears to be at a steady low state consistent with its loss of purpose.[15]

The FCC's decline has at least two dimensions: A weakened independence and a diminished interest in expert analysis. As Section I and II explained, expertise and independence are two primary reasons for having a regulatory commission.[16]

Given the importance of the issues it has faced and the amount of money at stake, it is likely that the FCC has prioritized politics over law from time to time. This paper focuses on the institutional decline that corresponds with the FCC's waning purpose.

With respect to telecommunications, the FCC began shifting from a regulator of common carriers to an implementer of political vision with the election of President Bill Clinton and Vice-President Al Gore. Reed Hundt, who became the first FCC chairman for this administration, campaigned for the job of chairman by telling then Vice President-elect Al Gore's chief of staff that he, Hundt, would be "Al's lieutenant" at the agency to "effectively implement his agenda" (Hundt, 2000). As a senator, Gore had been instrumental in funding projects that led to the development of internet and other advanced information technologies. Hundt knew Gore well and sensed Gore's ambition for an information highway. The promise to pursue that vision got Hundt the chairmanship.[17]

[15] This section examines situations where FCC commissioner actions demonstrate institutional decline. We use examples that are documented and exhibit clear ties between FCC action and political interference. Any such selection of examples is inherently unfair as it is likely that some interference, or at least the clear footprints of interference, has been kept from view. So, while the examples reflect the actions of specific individuals, this is not meant to imply anything personal about the individuals involved.

[16] There is a vibrant and relevant legal argument in the U.S. about whether federal independent commissions are constitutional. The essence of the issue is whether Congress can pass laws that bind the President's executive authority given that the Constitution places all executive authority in the President. This paper will not weigh in on the legal argument.

[17] We found no evidence that Hundt compromised the integrity of the agency as chairman. Indeed, FCC staff that worked in the agency during Hundt's chairmanship noted that the quality of agency leadership was unusually good (Jamison November 15, 2016).

The agency's pursuit of political agendas emerged in 2012 with an FCC plan to investigate newsrooms' choices of content, looking for bias and for inattention to themes, such as "environment" and "economic opportunities," in which the Obama administration was particularly interested (Friedland, 2012; FCC, 2013; Pai, 2014). In particular, the FCC sought to look inside newsrooms "to ascertain the process by which stories are selected, station priorities (for content, production quality, and populations served), perceived station bias, perceived percent of news dedicated to each of the eight [critical information needs], and perceived responsiveness to underserved populations" (Gonsalves, 2014).[18] Critical information needs was the term the FCC used for topics selected by a University of Southern California report sponsored by the FCC (Friedland, 2012). The FCC said its planned investigation into newsrooms "may assist the Commission in assessing the need for government action" (FCC, 2013). The FCC received numerous criticisms for investigating how broadcasters select stories and eventually dropped the investigation without explanation (Gonsalves, 2014; Cole, 2014).

Overt political intrusion at the FCC emerged again with net neutrality. When Tom Wheeler became chairman of the FCC in 2013, he tried to formulate a compromise position on net neutrality—somewhere between the Obama White House's preference for regulating ISPs as common carriers under Title II and the traditional light touch approach that the FCC had used since the beginning of the public internet (Sparshott & Kendall, 2015). But in November 2014, the White House informed Wheeler that Obama was ready to formally and publicly unveil his desire that ISPs be regulated with the "strongest possible rules" (Sparshott & Kendall, 2015; Obama, 2014). Appropriately, given the FCC's status as an independent agency, Wheeler had not been involved in the White House's decision making, according to reports. He had been preparing an FCC decision for a lighter

[18] Some of the FCC's original documents are not on the agency's website (see, for example, Margolis 2012), so we cite others for the content.

touch approach. But once informed of Obama's strong stance, Wheeler quickly lined up with Obama (Sparshott & Kendall, 2015; Wheeler, 2015).

The chairman chose to move fast and with little transparency. FCC staff had been working on a decision document that reflected Wheeler's middle-ground position, and they were caught flatfooted when he suddenly changed direction. To implement his new direction, Wheeler changed which staff were drafting the decision and sought to "beef up the record," as the existing legal record did not support the new policy preference. As part of the beefing-up effort, the agency's General Counsel solicited meetings with outside groups, raising concerns among some FCC staff that such solicitation of new evidence violated the Administrative Procedures Act (Majority Staff Report, 2016). Republican commissioners were not allowed to see the new draft until 21 days before the vote, nor was the draft released to the public (Pai, 2015).

The chairman's pivot and staff reassignments reflected what appears to have been a dismissive attitude towards economic analysis. Economists were excluded from the new drafting, resulting in an embarrassing number of errors and incorrect attributions. After the FCC voted along party lines to adopt the Obama White House's policy,[19] former FCC chief economists commented that the decision was free of credible economic analyses (Technology Policy Institute, 2015; Brennen, 2016). This dismissal of economic analysis was part of a broader trend at the FCC during the Obama years: FCC economists and other policy analysts had produced 46 cutting-edge economics papers on deregulation, radio spectrum management, and other topics since 1980 – a pace of about 1.5 per year – but had produced none between 2012 and 2017 (Faulhaber et al., 2017). FCC staff research

[19] 80 FR 19737 (04/13/2015)81 FR 93638 (12/21/2016).

resumed when Trump became president: Staff released four papers during Trump's first term and released three papers while Biden was president.[20]

A March 2016 FCC decision regarding Lifeline—a program that provided discounts on telephone service for low-income households—further illustrates politics' infiltration at the FCC. The Lifeline program had been replete with fraud for years, and the FCC's two Republican commissioners wanted the agency to act on it. Prior to an FCC Open Meeting where commissioners were to vote on a Lifeline decision, the Republicans and a Democratic commissioner reached an agreement that program spending should be capped to limit waste. The three would constitute a majority, which would make their compromise agreement the agency's decision. But this agreement was not in line with what the White House and Wheeler wanted. The chairman learned about the capping agreement shortly before the Open Meeting was to take place and delayed opening the meeting by several hours, during which time the Democrat commissioner "heard from a wide range of individuals," including Senator Cory Booker (D-NJ). Apparently nine House Democrats sent a letter urging the commissioner to align with Wheeler and the White House. The Democrat commissioner pivoted and the Obama/Wheeler preferred decision passed with a party-line vote (Byers & Tummarello, 2016; Thune, 2016).

Another example was an initiative to regulate cable television set-top boxes. The idea was launched by Democratic senators, then formalized by Wheeler, and then endorsed by the Obama White House, before dying after the 2016 election of Trump. In 2015, Senators Edward Markey (D-MA), Elizabeth Warren (D-MA), Al Franken (D-MN), Richard Blumenthal (D-CT), and Bernie Sanders (I-VT) advanced the rhetorically attractive, but empirically fragile claims that competitive conditions in cable television were such that customers were being exploited

[20] See the website of the Economic Analysis Division of the Office of Economics and Analytics, https://www.fcc.gov/reports-research/working-papers.

(Jamison, 2016, May 16). Their public statements asserted dramatic price increases and widespread consumer harm. But their data and analyses were flawed (Singer, 2016, February 5). Indeed, cable subscriptions had peaked around the year 2000 and declined about 20% by time of the set-top box initiative (FCC, 2002, 2015).[21] The senators nevertheless treated their assertions as authoritative, as did Wheeler.

The chairman then launched an FCC initiative (FCC, 2016, February 18) that closely tracked these senators' preferences and relied heavily on their claims, despite their significant analytical shortcomings (Singer, 2016, February 5). Evidently the FCC's expert economists were not engaged to inspect the flawed work. In his January 27, 2016, *Re/code* op-ed[22] announcing the new effort, the chairman repeated—without attribution—the statistics supplied by Markey and some advocacy groups that allied with the senator (Jamison, 2016, February 2). Rather than ground the initiative's Notice of Proposed Rulemaking in expert analysis, the FCC adopted the senators' narrative indiscriminately, even citing Markey's website as an authoritative source (FCC, 2016, February 18; FCC, 2016, September 8; Jamion, 2016, February 02). The proposal envisioned a government-designed standard for apps and device interfaces to take over set-top box functions.

The Obama White House soon weighed in in support of the plan. In April 2016, the administration released a coordinated package—including a YouTube video (Obama, 2016, April 16) and analyses from the Council of Economic Advisers (Furman & Zients, 2016), explicitly endorsing Wheeler's set-top-box proposal. The White House economists echoed Wheeler's and the senators' analytically flawed claims (Ford, 2016, April 12), even extending the analogy to historic interventions such as Carterfone, despite important disanalogies in market structure and technological evolution.

[21] Penetration rates in 2025 had further declined to 35%, compared to 85% in 2015 (Veney 2025).

[22] The op-ed does not appear to be available online any longer.

Obama's second term also marked an unprecedented rise in partisanship at the agency. Research on commission votes from 1994 to 2016 found that during Wheeler's term, 26 percent of votes split along party lines—more than triple the rate under other Democratic chairs (8%) and more than five times that under Republican chairs (4%) (Wallsten, 2016, February 16). Likewise, fewer than half of the votes of this era were unanimous, compared with averages of 65% and 58% under other Democratic and Republican leaders, respectively (Wallsten, 2016, February 16). The FCC experienced more party line votes from late 2014 through 2015 than in its previous 43 years (Eggerton, 2016, January 14).

A second long-standing problem—magnified during this same period—involved the divergence between when commissioners voted on decisions and when the texts were released to the public. For decades, the FCC routinely withheld the text of final orders prior to votes, granting staff post-vote editorial privileges to make necessary edits. This practice created opportunities for substantive post-vote modifications outside public view. Reforms to the Universal Service Fund's High-Cost Program—a program that subsidizes services in rural areas—illustrates the stakes: while a Notice of Proposed Rulemaking sought comment on imposing a $4.5 billion cap, and the commissioners voted to approve a cap, the final order established an un-discussed $4.5 billion floor—effectively guaranteeing perpetual funding at that level (FCC, 2014). The absence of available pre-vote text and post-vote revisions makes it impossible to determine whether commissioners knowingly approved this policy shift (Wallsten, 2014).

A related transparency concern involves this delay between Commission votes and the public release of order texts. For many decades—including through the Wheeler chairmanship—the FCC did not publish the operative text of its decisions until weeks or sometimes months after the vote, preventing stakeholders from knowing precisely what the Commission had adopted or from assessing whether substantive changes occurred post-vote. Wheeler's successor, Chairman Ajit Pai,

ended this practice in 2017 by instituting the public release of "white copy" drafts three weeks prior to Commission votes. This reform materially improved transparency by giving the public and commissioners a stable, reviewable text before votes occurred and enabling meaningful comparison between the voted-upon draft and the final published order (Wallsten, 2017).

Pai also worked to give economic analysis a greater voice at the agency. In April 2017 he proposed an Office of Economics & Analytics (OEA). The commissioners voted to create the Office in January 2018.[23] Commenting on the vote, Pai said OEA analyses would be involved in all major issues: "…the OEA will provide Commissioners with a memorandum discussing economic issues implicated by all circulated items. And we'll now conduct a rigorous cost-benefit analysis for rulemakings estimated to have over $100 million of economic impact. Behind the scenes, we'll also be working hard to integrate OEA staff into the day-to-day policy work of the Bureaus" (Pai, 2018, January 31).

But Trump appears to have learned that the FCC can be a convenient political tool. In 2020, he signed Executive Order 13925 (Trump, 2020) targeting social media platforms like Twitter and Facebook for alleged bias, aiming to limit their Section 230 protections by having the FCC define "good faith" in content moderation. The National Telecommunications and Information Administration (2020) petitioned the FCC to act accordingly. The FCC asked for public comment, but the petition died after Biden became president. In the meantime, Commissioner Michael O'Reilly publicly expressed skepticism about the FCC's authority in this matter, with the apparent consequence that Trump withdrew his nomination of the commissioner to serve another term (Johnson, 2020, August 3).[24]

[23] 33 FCC Rcd 1539 (2).

[24] O'Reilly's nomination had already been passed out of committee, but had not been voted on by the Senate, before Trump withdrew the nomination.

Political intrusion during the Biden administration was made difficult by the agency having equal numbers of Democrat and Republican commissioners for most of the four years, a situation brought about by the failure of Biden's preferred third Democrat commissioner to pass Senate confirmation, and by the president's delay in nominating a different person. But once Democrats had a majority at the FCC, the agency moved quickly to create regulations in line with the White House's priorities, including re-adopting Title II regulation for ISPs[25] and adoption of digital discrimination rules that exceeded the FCC's authority: The agency asserted authority over not just broadband providers, but over anyone involved in the broadband supply chain, including entities trying to assist people in signing up for broadband (FCC, 2023, October 25; Jamison, 2023, November 17). While these acts show policy alignment with the Biden White House, they are not by themselves convincing evidence of a lack of independence as it is possible that the Democrat commissioners sincerely agreed with the White House. But these decisions do demonstrate that commissioners view the FCC's authority as sufficiently vague to allow wide swings in FCC decisions when the White House changes hands.

A similar pattern is reflected in Trump's second term as president. On Truth Social in 2025, the president questioned whether ABC and NBC should have their licenses revoked by the FCC because of perceived political bias (Trump, 2025, August 24). Within a month, new FCC Chairman Brendon Carr made public assertions of political bias at the networks, including weighing in on comedian Jimmy Kimmel's comments regarding the killing of Charlie Kirk (Johnson, 2025, September 17). Carr's actions appeared to pressure broadcasters regarding their political content (Dumay, 2025, September 19).

There are other instances in which Carr's actions appear to align with Trump's opinions (Casper, 2025, December 3). But as in the case of the Biden

[25] 39 FCC Rcd 4975 (6). While Pai was chairman, the FCC had largely reversed the decision under Wheeler to apply Title II to ISPs. 33 FCC Rcd 311 (1).

administration, there seems to be inadequate evidence to settle that he is doing the White House's bidding. Nevertheless, the policy swings demonstrate that the agency is not providing the dependable regulatory environment that it was created to deliver.

The FCC's pressuring of broadcasters isn't new. In the FCC's 1949 report on broadcaster editorial practices (FCC 1949), it established a policy that broadcast license holders were forbidden from distorting basic, factual information that the agency deemed needed for fair and free public discussion. Democrats attempted to use this policy against conservative news sources in 2018, sending a letter to Pai urging an investigation into Sinclair broadcasting, claiming that the conservative broadcaster was distorting news and forcing local news anchors to read warnings on the air about the dangers of one-sided news stories (Cantwell et al., 2018, April 11). The FCC did not act on this letter. However, the agency did use its 1949 policy to condition its approval of the Paramount-Skydance merger in 2025. More specifically, the FCC conditioned its approval on the business committing to news viewpoint diversity (FCC, 2025, July 24).

In a similar vein, in 2025 the FCC launched an investigation of CBS for news distortion regarding the program *60 Minutes*'s editing of its interview with then Vice President Kamala Harris, who was running against Trump for president (FCC, 2025, February 5). A petition for the FCC to investigate this editing was filed during the Biden administration, but it was dismissed. Carr revived the petition to launch the 2025 investigation.

IV. Disbanding the FCC

Given its loss of purpose and its institutional weakness, it appears that communications policy in the U.S. would be better off without the FCC. There is no longer a need for the two core functions for which the FCC was created:

Common carrier regulation and broadcasting licensing. The FCC does perform functions that should be continued, but these do not require an independent agency.

One such function is the licensing of radio spectrum. The FCC uses spectrum auctions as a transparent, market-based mechanism to sell the rights to use radio spectrum. Under the FCC's policies, to participate in auctions, interested entities must prequalify, i.e., demonstrate legal and financial qualifications and upfront payments, and applications to prequalify are made public. Bids are also public—although identities of bidders may be kept private—and follow procedures designed to prevent collusion and favoritism. After an auction is completed, winning bidders must make a down payment and file more extensive applications. Licenses are granted only after all approvals are completed and final payments are made. Prior to the FCC creating an auction process for determining who would receive licenses to use radio spectrum, the process was inefficient and politically driven.

The FCC staff's world-class economists created this auction process (Milgrom, 2021), which has served as a guide for the rest of the world. Unfortunately, because the FCC is the entity that conducts the auctions and members of Congress have political interests in the agency, including decisions regarding who receives spectrum licenses, Congress provides the FCC only temporary authority to conduct auctions. This practice has resulted in lapses in FCC authority to conduct auctions and created uncertainty in the markets for radio spectrum. However, this is not a function that is easily handed to another agency: No other federal agency is equipped with staff of sufficient expertise to conduct the auctions, So, if the FCC is dissolved, its auction operations and staff should be transferred to an agency that is noted for its ability to manage technically complex functions. Candidates include the National Institute for Standards and Technology (NIST) and the Cybersecurity & Infrastructure Security Agency (CISA). It might even be appropriate to form a new, specialized agency. If such a transfer is carried out, the authorizing legislation should specify that the auctions are to be transparent and competitive, using current

best practices, with periodic reports to Congress identifying advances in economics and other relevant disciplines on whether there are needs for Congress to update the legislation.

Another useful function of the FCC has been the management of subsidies for rural broadband services. FCC telecommunications subsidies have been only marginally effective (Gabel, 1967; Mueller, 1993). This has been in part because of the politics of the subsidies, but also because the FCC's systems evolved out of internal cross subsidies in the monopoly telephone system. But this weakness is not peculiar to the FCC: It has been no less effective than the numerous other federal broadband subsidy systems (GAO, 2023). However, the FCC has been working its way out of the legacy system and has developed an effective auction mechanism for such subsidies.

That said, it appears that funding of broadband for high-cost areas can be left to the states. All states now have broadband offices and most, if not all, are proving to be effective. But they need a system for learning from each other, developing best practices, and sharing information for benchmarking. Congress should facilitate the launching of such systems, including creating a knowledge transfer from expert FCC staff to the state broadband offices.

There remain a few other FCC functions that should be distributed to other agencies. Consumer protection should be handled by the Federal Trade Commission where other consumer protections lie. Equipment authorization functions could be handled by NIST. Emergency services oversight could be handled by the Department of Commerce, CISA, or Homeland Security. Space policy could be handled by NASA and international relations are already covered by the Department of State.

V. Conclusion

The case for shuttering the FCC rests primarily on the disappearance of the economic and technological conditions that originally justified its creation. Established in 1934, the FCC was to oversee government-protected telephone monopolies and to manage scarcity in the number of broadcasters. Those conditions have long since evaporated. Today's communications markets are defined by rapid innovation, intermodal competition, and abundant substitutes for both traditional telephony and broadcasting. With cable, fiber, mobile and fixed wireless, and LEO satellite systems vying to deliver overlapping and constantly evolving services, it is no longer possible to delineate stable market boundaries or enduring service categories of the kind that classic common carrier regulation requires.

In the absence of a clear mission, the FCC has increasingly become a political instrument rather than an expert regulator. Its actions in recent years reveal a drift toward partisan alignment and policy entrepreneurship unchained from its original statutory purposes. During the Obama years, the agency undertook newsroom inquiries, redefined internet services to fit the common carrier mold, and advanced initiatives shaped heavily by congressional partisans. The Trump administration continued the trend, attempting to enlist the FCC into regulating social-media content. The Biden administration pursued sweeping rules to oversee broadband participants and even broadband supply-chain relationships. The recent Biden and Trump efforts demonstrate the eroded predictability that regulatory-commission design was meant to protect.

Eliminating the FCC and redistributing its remaining legitimate functions would provide a coherent deregulatory strategy. Common-carrier oversight and broadcast content oversight would end, while residual responsibilities—such as equipment authorization, consumer-protection matters, and spectrum administration—would be reassigned to more appropriate agencies.

More research is needed on this topic. It is unclear how expertise and statistical histories can be transferred without loss of skill, professionalism, and proficiency. Work is also needed on how to protect from political interference agencies that take on FCC functions, especially those related to radio spectrum and subsidies. This research rises in importance if the Supreme Court rules that independent agencies—as currently constructed—violate the Constitution. While political interests are legitimate for providing laws, they can be destructive when applied in the execution of the laws.

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