ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

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COMMENTS OF ITIF

Before the

Federal Communications Commission

Washington, D.C.

In the Matter of:		
Delete, Delete, Delete	)	GN Docket No. 25-133
News Distortion Complaint Involving CBS Broadcasting Inc., Licensee of WCBS, New York, NY	)	MB Docket No. 25-73
Review of Submarine Cable Landing License Rules and Procedures to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks	)	OI Docket No. 24-523
Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules	)	MD Docket No. 24-524

April 11, 2025

INTRODUCTION

The Information Technology and Innovation Foundation (ITIF) submits these comments in response to the Commission's Public Notice on identifying and eliminating unnecessary FCC rules and regulations.[1] This retrospective review is a welcome opportunity to modernize the FCC's regulatory framework in light of today's rapidly evolving communications marketplace and the buildup of ill-advised or outdated rules. Rules gradually accrue over time, like barnacles on a ship. In fields such as broadband and spectrum policy that have enjoyed transformative innovation, it is worth starting from scratch with a thorough review every couple of decades or so.

As the Commission considers how best to close the digital divide, foster technological innovation, and enable competitive service offerings, a streamlined, innovation-friendly regulatory environment will better position the United States to lead in next-generation communications technologies and deliver improved outcomes for consumers.

THE COMMISSION SHOULD DELETE BARRIERS TO SECONDARY MARKET TRANSACTIONS FOR SPECTRUM LICENSES

Markets are the most powerful tool to drive spectrum to productive uses. However, the signals and incentives transmitted by market prices are hampered by transaction costs. While some transaction costs are unavoidable, others are creations of the Commission. Since productive spectrum use is the core of the Commission's public interest functions, it should declare that all leases, transfers, partitions and disaggregations of spectrum licenses are presumptively allowed and require a strong showing of public interest harm before stepping in to review such a transaction.

A more vibrant and functional secondary market for spectrum would obviate many of the allocation battles that now take place as Commission proceedings. For example, users who can make more productive use of small-area licenses could purchase pieces of a larger license. While legal today, the requirement, or even the possibility, of Commission review of that transaction erodes the profit parties could realize from the deal which, in turn, erodes the public interest benefits of a productivity-enhancing rearrangement of spectrum rights.

THE COMMISSION SHOULD SUNSET THE HIGH-COST FUND

The High-Cost Fund is a legacy program in need of dramatic distribution reform. Even since it transitioned to funding rural broadband, the broadband ecosystem itself has outrun the High-Cost Fund's purpose. With the advent of the Broadband Equity, Access, and Deployment (BEAD) program and other recent federal funding efforts, the landscape of rural broadband has fundamentally changed. BEAD alone will invest over

[1] Founded in 2006, ITIF is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute recognized as the leading think tank for science and technology policy. Its mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. ITIF's goal is to provide policymakers around the world with high-quality information, analysis, and recommendations they can trust. To that end, ITIF adheres to a high standard of research integrity with an internal code of ethics grounded in analytical rigor, policy pragmatism, and independence from external direction or bias. For more information, see: https://itif.org/about.

$42 billion in deployment, prioritizing unserved and underserved areas—precisely the regions the High-Cost Fund was intended to support. If we cannot deploy to everyone with that sum of money, then no amount of money will do it.

In parallel, private providers have ramped up their own investments, including expanding fiber, fixed wireless, and low-Earth orbit satellite service. Together, these efforts are addressing rural deployment at a scale and speed unmatched by traditional subsidy programs. Indeed, private Internet Service Providers (ISPs) have invested more than double the total BEAD appropriation every year since the enactment of the IIJA.[2]

Continuing to operate the High-Cost Fund in this context risks waste and market distortion. It is now more likely to subsidize the operating costs of otherwise-unprofitable ISPs, thus undermining the profit opportunity for more efficient and advanced technologies to serve those areas without ongoing subsidies. While the Commission should not renege on already obligated High-Cost funds, it should work to sunset the High-Cost Fund to make remaining digital divide programs more sustainable.

THE COMMISSION SHOULD DELETE VIDEO REGULATIONS TO CREATE REGULATORY PARITY BETWEEN TRADITIONAL MVPDS AND IP-BASED VIDEO PROVIDERS

The regulatory framework governing multichannel video programming distributors (MVPDs) is fundamentally out of step with today's competitive video landscape. While traditional cable and satellite providers remain subject to legacy Title VI regulations, IP-based video providers operate outside this framework and have flourished to the benefit of consumers. Streaming services like Netflix, YouTube TV, and Hulu Live offer experiences consumers often prefer frequently at lower cost and with greater personalization, all without being subject to the same regulatory burdens. This disparity twists competition by placing heavier regulatory weight on legacy providers which distorts and limits consumers' choices.

The success of streaming video is not a reason to impose new rules on online services—it is evidence that such regulation is not necessary to deliver pro-consumer outcomes. Broadband-fueled innovation has empowered viewers with unprecedented choice, flexibility, and price competition, all in the absence of legacy MVPD regulation. Rather than expanding legacy obligations to new entrants, the Commission should eliminate outdated video regulations to create a level playing field.

THE COMMISSION SHOULD DELETE ALL CONTENT-BASED MEDIA REGULATIONS, INCLUDING THE NEWS DISTORTION AND EQUAL TIME RULES

The Commission's history of command-and-control regulation of spectrum has led to an accretion of content-based rules that are contrary to the actual nature of spectrum as a resource and the First Amendment. The FCC's longstanding justification for imposing content-based regulations on broadcast media rests on the false scarcity rationale—that because spectrum is limited, government must control not only who transmits but also what is transmitted. This reasoning, exemplified by 20th-century Supreme Court decisions such as *NBC v. United States* and *Red Lion*, mistakenly assumed that content-based regulation was the only viable

[2] USTelecom, 2023 USTelecom Broadband Capex Report, October 7, 2024, https://ustelecom.org/research/2023-ustelecom-broadband-capex-report/.

coordination mechanism to manage interference.[3] But as Ronald Coase demonstrated decades ago, spectrum scarcity is no different from the scarcity of other economic goods like land or labor, and it can be efficiently and neutrally managed through market mechanisms—such as the spectrum auctions that have successfully allocated rights for decades without dictating content.[4]

Technological advances have rendered the broadcast-scarcity argument obsolete. Spectrum-based services like Wi-Fi and mobile broadband operate without FCC content oversight, despite facing identical technical constraints.

Meanwhile, consumers now access information through countless non-broadcast sources (news websites, blogs, social media, podcasts, etc.), making it irrational to treat broadcasting as uniquely in need of government oversight. The FCC should acknowledge the doctrinal and empirical collapse of the scarcity rationale and eliminate all content-based media regulations, including the news-distortion and equal-time rules. As with newspapers or Internet providers, speech over the airwaves must enjoy full First Amendment protection.

THE COMMISSION SHOULD EVALUATE THE NECESSITY OF THE WIRELINE COMPETITION BUREAU

The Wireline Competition Bureau is the largest of the Commission's Bureaus, but the communications marketplace is dramatically different today than during the heyday of the Commission's management of a wireline telephone monopoly and its aftermath. Today, the broadband marketplace has grown into a vibrant and competitive market as extensive private investment drives increases in consumers' quantity of and quality of broadband services. All this took place without heavy-handed competition regulation, and the current Chairman and the courts have rejected calls to turn the broadband marketplace into the kind of telecommunications monopoly that would necessitate substantial day-to-day oversight by the Commission.[5]

Moreover, the moniker of "wireline" competition evinces the outdated nature of the Bureau's mission. We now live in a time of convergence in which Americans routinely access the Internet via Wi-Fi, ISPs are increasingly also wireless providers, and even space-based services are growing to fill remaining gaps in the broadband ecosystem. The outcome has been a multi-modal, highly competitive marketplace for which any heavy-handed regulation, much less wireline-specific regulation, would be harmful to consumer interests. Therefore, the Commission should look to eliminate any legacy restrictions on the development of the private broadband market and then consider ways to reform its structure in ways that recognize that its prior mission has been accomplished, rather than maintaining a siloed approach that encourages mission creep.

[3] *See,* Joe Kane, "Expression Over Radio Waves Is Not Exempt from the First Amendment," *FedSoc Blog*, February 11, 2025, https://fedsoc.org/commentary/fedsoc-blog/expression-over-radio-waves-is-not-exempt-from-the-first-amendment.

[4] Ronald Coase, "The Federal Communications Commission," The J. of L. and Econ., Oct. 1959 2.

[5] Ohio Telecom Ass'n v. FCC, No. 24-3449 (6th Cir. 2025)

THE COMMISSION SHOULD STREAMLINE REVIEW OF SUBMARINE CABLE LANDING LICENSE APPLICATIONS

The current submarine cable landing license application process is lengthy and complex, creating significant costs to applicants and discouraging investment in a critical part of global communications infrastructure. The overcrowded interagency review process and lack of standardized requirements, combined with the business and technical realities of cable projects, result in a regulatory environment that is exceedingly difficult to navigate. Given the importance of resilient submarine cable networks to U.S. national security and data capacity goals, the Commission should work with Team Telecom to streamline the application review process.[6]

Reforming the submarine cable landing license review process is essential for maintaining U.S. leadership in global telecommunications infrastructure while ensuring appropriate national security protections. The most effective security measure is a resilient network with redundant routes, which can only be achieved through a regulatory environment that encourages, rather than impedes, submarine cable development.[7]

CONCLUSION

We commend the Commission for conducting this proceeding as it can be a signficant opportunity for the Commission to eliminate red tape that holds back innovative and productive communications. Consumers will benefit from updated rules that recognize technical and economic realities and foster a dynamic marketplace for years to come. Thank you for your consideration.

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[6] Amber Jackson, "US President Donald Trump: Building a Data Center Empire," *Data Centre Magazine,* April 11, 2025, https://datacentremagazine.com/articles/us-president-donald-trump-building-a-data-centre-empire.

[7] Kent Bressie and Kathrine Creese, *Final Report – Clustering of Cables and Cable Landings* (Washington DC: Federal Communications Commission – Communications Security, Reliability and Interoperability Council August 2016), https://transition.fcc.gov/bureaus/pshs/advisory/csric5/WG4A_Final_091416.pdf.