

A stylized map of the United States is shown in a dark blue color, set against a background of lighter blue stars and curved lines. A vertical red line is positioned to the left of the main title text.

**FREE SPEECH,
PUBLIC SERVICE,
AND INNOVATION:
THE FCC'S ROLE
IN AMERICA'S
COMMUNICATIONS
FUTURE**

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<https://www.mediainstitute.org/the-madison-project/>

One issue much in the news of late is the First Amendment and broadcasting. At the FCC, our regulatory and oversight responsibilities span the media and communications sectors, which means that protecting the First Amendment is paramount to our policy work.

Yet in the broadcasting context, the interplay between constitutional protections for speech and the requirements of the Communications Act

can be uniquely complex. Let me offer a short Commissioner Trusty Office original metaphor to help explain this complexity:

When you think about the First Amendment, imagine a cliff. You can walk right up to its precipice, look down, and see exactly where the ground gives way. The danger is obvious, but more importantly, the boundary is clear, uncompromising, and absolute. And for many types of speech protected by the First Amendment, that metaphor isn't too far off. Speech, with the exception of incitement and defamation, among other discrete categories, is protected within the bounds of the First

Amendment and government attempts to silence that speech are unlawful.

But for speech in broadcasting, there isn't a cliff. Instead, imagine the proverbial frozen lake. At first as you step on it, the surface feels solid. But, as you continue to move forward, the ice groans underfoot. Cracks

spread. You can't always see how thick the ice is beneath your feet, or whether it will hold if you take that next step.

“ At the FCC ... protecting the First Amendment is paramount to our policy work. ”

That is because, under existing precedent, broadcasting is treated differently than most Americans might expect. Yes, the First Amendment still applies – both by its own terms, and as confirmed by Section 326 of the Communications Act. But in broadcasting, content-based regulation that would be unthinkable in other contexts is indeed permitted under longstanding doctrine:

- Congress placed public interest obligations on broadcasters when it entrusted them with use of the public airwaves.
- Federal law restricts the broadcasting of obscenity, indecency, and profanity.

- Section 315 of the Communications Act imposes equal opportunity obligations on broadcasters once they grant access to one candidate for a political office.
- The FCC has a policy against news distortion, which prohibits broadcast station licensees from deliberately manipulating, slanting, or rigging the news.

These provisions, and others, are grounded in the statute and decades of precedent.

The Supreme Court has long recognized that the public interest standard is guided by the purposes of the Communications Act and the requirements it imposes.

Localism is one such purpose, reflected in Section 307's requirement for fair, efficient, and equitable distribution of service among states and communities.

Section 308 of the Act considers the character qualifications for licensees. And there are long lines of Commission

precedent considering these sorts of issues in the case of broadcast licensees.

Courts, too, have historically been more willing to accept regulation of broadcasters' speech as consistent with the First Amendment.

In *Red Lion*, the Supreme Court upheld regulations designed to expand the

viewpoints available to the public. In other cases, intermediate scrutiny has applied to restrictions on broadcast content. Many have predicted the Supreme Court would eventually erase this distinction. But that day has not yet come. Until it

does, the Commission has an obligation to apply the law as it stands.

Even the recent Supreme Court decision in *NRA v. Vullo*, invoked in connection with broadcasting, does not map neatly onto this terrain. That case addressed a government official who sought to use state power to deter disfavored speech. The Supreme Court reaffirmed that government cannot

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do indirectly what it is barred from doing directly. But how that principle applies in a space where the FCC can directly regulate content under current precedent is a more difficult question.

Walking this frozen lake requires careful judgment. At what point are you still on solid ice, enforcing clear statutory requirements? At what point do the cracks appear, signaling that the ice might not hold? Navigating these questions requires a thoughtful, deliberate approach.

For me, the preferred path is clear: When the marketplace, through the choices of individual licensees, advances the public interest, that is the best outcome – for the First Amendment, the Communications Act, and our constitutional republic. Most broadcasters take their public interest obligations seriously. Our role should be to foster an environment that empowers them to do so voluntarily.

This raises a larger question: How do we create an environment where the

marketplace itself produces outcomes that serve the public interest and respect the First Amendment? Not just in broadcasting, but across the communications landscape?

As an FCC Commissioner, these are the questions I ask every day, about where law, policy, and technology intersect, and how our choices affect the ways in which Americans communicate, listen, and connect.

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Whether audio or video, voice or data, wired or wireless, the Commission has an important role. The ultimate goal is simple: to ensure that all Americans have access to and benefit from

advanced communications.

One of the most powerful ways to achieve that goal is through innovation. Innovation is not just about faster networks or smarter devices; it is about strengthening the foundations of free speech.

Innovation creates new opportunities to connect: Broadband opened new doors

for remote work, learning, healthcare, and entertainment.

Innovation expands reach: Wireless and satellite technologies extend connectivity services to the hardest-to-reach areas.

Innovation makes for better use of scarce resources: Advances like 5G network slicing and the promise of 6G enable us to stretch spectrum further.

Innovation even restores trust: Authentication tools are giving consumers confidence to answer their phones in the ongoing fight against illegal robocalls.

So, how do we ensure U.S. leadership in communications innovation?

First, we must maintain a regulatory environment that encourages it. That means eliminating unnecessary legal barriers, streamlining outdated rules, and modernizing the permitting process to support investment and deployment.

Second, we must use federal resources wisely. Spectrum must be put to its highest and best use. Universal service programs should embrace the most effective technologies to close the digital divide. And

Congress and the Commission must work together to ensure these programs remain financially sustainable.

Third, we must lead on the international stage. Working with the State Department and NTIA, the FCC can help advance U.S. priorities in global forums, whether for next-generation wireless or satellite services, or emerging technologies like artificial intelligence. A unified U.S. strategy abroad is critical not only for economic competitiveness and national security, but for promoting values like free speech worldwide.

Fourth, we must spotlight and celebrate innovation wherever it occurs, whether in accessibility, education, health, or new business models. The government can help set the stage, but it is the innovators, entrepreneurs, engineers, and visionaries who perform on it.

At the FCC, we are committed to using every tool at our disposal to promote U.S. leadership in technological innovation, across broadcast, broadband, and beyond. As the President summed it up in his White House AI Action Plan, “[t]o secure our future, we must harness the full power of American innovation.”

And that brings us full circle. Free speech and innovation are not separate stories.

They are two sides of the same coin. Free expression fuels innovation, because ideas flourish only when they can be tested, debated, and challenged. And innovation safeguards

free expression, because new technologies give people more ways to speak, to listen, and to be heard.

One way to cross the ice with greater confidence is to follow in the footsteps of

someone who went before you. I welcome the insights of those with deep experience

and long-considered views on free speech and broadcasting when these questions come before the Commission. When the ice is thin, thoughtful guidance is invaluable.

“**Innovation will continue to shape the future of communications and expression in America.**”

As we navigate these questions, one fact remains clear: Innovation will continue to shape the future of communications and expression in America.



Commissioner Olivia Trusty has served as a commissioner at the Federal Communications Commission since her Senate confirmation in June 2025. She has extensive Capitol Hill experience as a policy director, professional staff member, and legislative aide in both the House and Senate.

This paper is adapted from keynote remarks Commissioner Trusty delivered at The Media Institute’s “Free Speech America” Gala in Washington, D.C., on Oct. 29, 2025.

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THE MADISON PROJECT

The Madison Project: Free Speech and Press in American Democracy is a timely and much-needed assessment of the impact of free speech and press on the future of democracy, at a time when democracy itself has come perilously close to the brink in America. The Madison Project offers distinctive insights, assesses challenges and threats to free speech and free press, and seeks to chart a course forward to maintain these essential freedoms as the bulwark of our democracy.

The Madison Project is underwritten by organizations with an interest in media and communications, the First Amendment, and the preservation of American democracy. Initial support for The Madison Project was provided by **Verizon, LG Electronics, and Wiley Rein LLP.**

For more information about The Madison Project and sponsorship opportunities, visit <https://www.mediainstitute.org/the-madison-project/> or contact Richard T. Kaplar at kaplar@mediainstitute.org.

The Media Institute is a nonprofit, nonpartisan foundation specializing in communications policy and the First Amendment. Visit the Institute online at www.mediainstitute.org.



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