

Special Review Memorandum

Re: Reviewing the FCC Budget Request (FY 2009).

Foreword

This past week, the President transmitted his Budget proposals for fiscal year 2009 to Congress. The Bush Administration's proposing to spend some \$3.1 trillion this coming fiscal year. Most discretionary spending's held flat. Meanwhile, the President wants to hike Defense spending nearly 9%!¹

No one gives this latest budget proposal high marks -- or, much chance of enactment. The President and his team are short. One definitely gets the sense this isn't a serious budget proposal (more on that, later).

The Bush Administration's only asking for \$338.9 million to be appropriated to the Federal Communications Commission (FCC). Industry fees and charges would generate some \$337.9 million -- so the total "cost" to American taxpayers would only be about \$1 million, right?

"Lies, Damned Lies, and [Budget] Statistics"

Of course, that \$338.9 million "budget request" -- headlined in the FCC's press release -- is somewhat misleading. The full request's available online. Go to p. 4, please, look for the line labelled "grand total proposed budget authority" and you'll see the real, magic number: \$466,967,000. That's what the FCC's planning actually to spend.² In fiscal year 2008 -- the current spending year -- they're going to spend \$436,967,000, they say.

In addition to agency spending supported by "appropriations" and fees, you see, the FCC annually deducts \$85 million from spectrum auction receipts. This is the agreed-upon cost of running these operations for the U.S. Treasury -- accounting and vouchering

¹ The increase might be even more. Many of the operating costs of the Iraq and Afghanistan efforts, remember, are paid for through "urgent supplemental" appropriations -- the numbers don't appear in the regular Budget. The Administration has never given a good explanation for this off-the-books approach to war financing. Congress, moreover, has allowed this to continue for what? About five years? It's a bad way to budget and cost-account, isn't it?

² They'll also have some 1.899 "full-time equivalent" employees -- but remember, that number's misleading. It doesn't include contract employees -- and, over the years, more and more FCC support functions have been contracted out. It also does not include the FCC's myriad unpaid interns. Your Review has argued for years that the FCC should stop exploiting college and law students. As Governor Huckabee would say, the laborer is always worth their hire. Interns should be paid a nominal salary. We also do not like the idea of scores of unpaid non-employees riffling through papers and documents which the private sector calls "business proprietary and confidential." Ourselves, we'd reduce the Commissioner's personal travel budgets by the amount necessary to pay all interns a GS-5 salary.

requirements aren't that rigorous. The \$85 million is similar to the "administrative overhead" colleges and universities charge.

"Slant Drilling"

Last year, moreover, the FCC devised a new and innovative "slant drilling" technique -- namely, siphon-off money from the Universal Service Fund (USF)! The FCC asked for and got permission to take from the USF the cost of hiring more auditors and support staff, to monitor the \$2.25 billion Schools & Libraries Program more closely. There'd been a few untoward developments in that program, you see -- it looked as if maybe \$200 million in aggregate was spent that shouldn't have been. The House Energy & Commerce Committee held hearings, and the FCC responded by asking for the ability to audit more closely. When in doubt, audit, right?

For fiscal year 2009, the FCC wants to siphon-off \$25,480,000 worth of USF money -- about \$4 million more. That's one heck of an insurance policy "premium," isn't it? In the overall scheme of things, this is trivial, not even the proverbial rounding error. But wouldn't you think someone might ask why the FCC's auditing state and local government agencies which are, themselves, subject to auditing? What is this? Like Sarbanes-Oxley, another full employment for accountants approach?

"Not Enough Zeroes"

Now, in those nearly immortal words of New Hampshire Senator Judd Gregg, when it comes to the FCC and its budget, there are just "not enough zeroes" to sustain serious inquiries, much less Congressional changes. That's especially true these days.

Remember how Senator Ted Stevens in 1991 said he didn't want the FCC to turn into a "giant regulatory cash register"? Well, for heaven's sake, what do you think they actually do for a living? Three-quarters of what the U.S. Government does, you know, is write checks and pay money to folks, hopefully the "truly needy" -- or, at least, deserving. That's what Social Security, Medicare, Medicaid, and other transfer payments are all about, right?

Obsessed With Money

Well, three quarters of what the FCC does is conduct auctions. The agency's leadership is a bit like public broadcasting. They present an image of disdain for mere commerce and money. In actuality, they're obsessed with the topic -- and, financial goal. Frequency management goals are devised and adjusted with a view toward how much money they'll generate for the U.S. Treasury. It's an amazing, selfless preoccupation, isn't it? All for Treasury, right?

From a Congressional standpoint, the FCC's principal responsibility is to generate billions in spectrum auction revenues which Congress can then distribute

to others. Congressmen and Senators read in the newspapers that the FCC periodically does other things -- fine Janet Jackson, for instance, or punish Don Imus. But what the Membership really knows about is the FCC's money-making activities.

The latest FCC auction generated what? About \$19.2 billion in bids? All FCC Chairman Kevin Martin has to do is mention that number and Congressional scrutiny of the agency's plans or programs will grind to a halt. It's better than Judge Frank's famous "woosh-woosh."

No One Like Senator Hollings

It's worth noting, too, that there hasn't really been "effective oversight" of the FCC since South Carolina Senator Ernest F. ("Fritz") Hollings retired in 2004. Hollings, you see, served as (a) Chairman of the Senate Commerce Committee's Communications Subcommittee for years (and, later, Chairman of the full Committee). And, Hollings was also (b) Chairman of the State-Justice-Commerce-and Related Agencies Subcommittee responsible to review the FCC's budget.

Do something that displeased the Senator on the policy front, and there were definite budgetary implications. In 1988, for instance, FCC Chairman Dennis Patrick proceeded to rescind most of the "Fairness Doctrine," despite strong complaints from Senator Hollings -- and, House Energy & Commerce Committee Chairman John Dingell. As a result, the FCC's budget was frozen for the next two fiscal years.

That didn't affect Commissioners, or others high on the FCC's "food chain." They continued to travel, to redecorate, to remodel. But freezing an agency's budget can definitely hurt drones and worker bees. That's because the annual Federal pay increase, the associated "price" increases imposed by the General Services Administration, and other "nondiscretionary" costs all rise -- and, have to be born by the agency's budget base.

"Free at Last, Free at Last..."

These days, there's virtually no overlap between the Senate Commerce Committee and the Senate Appropriations Subcommittee which oversees the FCC. There's also no one on the Senate Commerce Committee as steeped in budget terms and lore -- other than Senators Stevens and Inouye (and, they have lots of interests other than the FCC and its operations).

In the House, the Energy & Commerce and Appropriations Committees are both "exclusive." There's no membership overlap allowed. There also doesn't appear to be even consular relations between the House Appropriations Subcommittee that oversees the FCC, and the Energy & Commerce Committee's Telecommunications Subcommittee. Heck, the FCC last year was shunted to the Appropriations Subcommittee that oversees Treasury, FDIC, etc. -- which at least honestly reflects what the FCC's really about. But we expect no one on that

Subcommittee had ever heard of the FCC -- much less "unbundled network elements" and similar telecommunications lore.

Increasingly, FCC oversight by Congress tends to be highly episodic. The focus is on whether the School & Libraries Program has been administered well, for example -- not on whether we need such a Federal program now, or whether placing such an operation under an independent regulatory body makes much sense. The current Appropriations

process increases this tendency to focus on specific topics and decisions, not "high-policy matters."

"Not Broomers in a Curling Match"

Now, there certainly are serious questions and issues raised by the FCC and its budget. For example, why does the agency continue to grow when most of the growth in the "Information Economy" is occurring external to the regulated sectors? Regulation and the "Information Economy" are decoupling -- so why wouldn't you expect the level and intensity of regulation to attenuate?

Remember one of your Review's favorite lines from the Oscar-winning Terms of Endearment? Where the Des Moines grocery store clerk tells Emma (Deborah Winger), "Hey! We're going in the wrong direction." Well, don't you think this is a question worth asking here?

President Jimmy Carter insisted on "zero-base budgeting," but has that ever been undertaken at the FCC? As your Review's said often, the case for continued Federal oversight of the long-distance telephone business is quite weak. If this were 1975-76, when the Ford and Carter Administration's were gung-ho regarding "regulatory reform," please be assured budgetary gallows would be popping up all over the FCC. But that isn't likely to occur these days.

The "Public Choice Economics" Questions

Someone should also be asking whether it makes sense to fund a regulatory agency completely through fees and other industry charges. Remember all those Supreme Court rulings regarding state justices-of-the-peace, and how their salaries shouldn't depend on the fines they assess? Well, if the FCC and its staff depend on their regulatory regime to generate budget "vigorish" -- "the vig," as Hesh on "The Sopranos" might say -- what incentive does that give the FCC to "deregulate"?

There's a great account in Charity USA about the crisis which the March of Dimes confronted after the Salk vaccine proved out. The charity decided it needed to diversify. They met with the Arthritis Foundation, and when a merger was rejected by them, threatened to enter the arthritis "business" independently. "See here," one of the Arthritis Foundation executives reportedly said, "You can't steal our disease!"

Well, ever wonder why the annual "attic-to-basement" review of FCC regulations always comes down to combining a few of the blocks on one of the forms? Or, making a reporting requirement biennial? Ever wonder why the FCC staff greets forbearance petitions much the same way the March of Dimes did news that polio had been conquered? "Where will it all end," right?

Not only does self-sufficiency generate strange institutional incentives, it also insulates the agency from public and Congressional accountability, doesn't it? If you were talking about an agency which operated openly -- like the NLRB, FEC, or FERC -- that'd be one thing. But 95% of what the FCC does is done in secret. We don't like that, obviously. So far, we've only persuaded one politician -- Senator Obama, who's said of the FCC, "The public's business should be conducted in public." But when and where is any of this going to be debated -- and, aired in public? Not soon, we expect.

"Stockholm Syndrome"

If Fairness, the FCC's relentless budget expansion -- and, the dearth of genuine oversight by Congress -- reflects the accommodationist attitude of the regulated industries, associations, and law firms the agency works with, all the FCC's traditional facilitators.

No major business leader, and certainly no Washington lawyer or association executive, has publicly questioned the FCC and its spending. Your Review's still the only publication in human history ever to note that the FCC never has trial-type hearings, and this lack of any procedural regularity is a major problem. No one asks why the FCC meets only 70 minutes, once a month -- and, has problems even doing that. No one -- besides your Review -- has asked why FCC Commissioners can't write their own opinions, the way judge do. Press releases are about all they seem able to muster. Why's that?

The facilitators's assumption is that the FCC and its bureaucracy, prodded sufficiently, will retaliate -- and, the risks are quite disproportional to potential gains. But it's interesting that there are not even any recent academic reports or analyses. Apparently Professors and other researchers are scared of the agency as well (or, more likely, they've been told by funders not to do too much).

Once in Ten Years

In the past 10 years, there's only been one (1) Washington "think tank" conference on regulatory reform -- where the FCC was mentioned. The Heritage Foundation held a session when the Clinton Administration was proposing a variety of new, pro-regulatory measures aimed at the airlines -- and, especially online ticketing operations.

Heritage brought in the late James Robson -- "inventor" of airline deregulation under President Ford, who later served as Deputy Treasury Secretary. They brought in Neal Goldschmidt, who served as Carter's Transportation

Secretary, and Darius Gaskins, who'd chaired the Interstate Commerce Commission. Needless to say, no one at the FCC attended the conference, unfortunately.

Conclusion

The Nixon, Ford, Carter, and Reagan Administrations focused on Federal regulation. Each Administration had serious regulatory reform initiatives -- and, high-level personnel were responsible to watch what Federal regulators were up to.

The Clinton Administration, if anything, was pro-regulation. The President embraced such hair-brained ideas as the "V-Chip" program, for instance -- anything to ratchet down on "the enemy." The Bush Administration has focused almost exclusively on social regulation -- occupational, safety, health, environmental. The price tag those regulatory regimes implicate is vast. On the other hand, the direct and other costs of FCC,

Federal Energy Regulatory Commission, and Department of Transportation regulation aren't exactly the proverbial "chopped liver," are they?

Will the next Administration restore "regulatory reform" to the national policy agenda? Maybe. Meanwhile, ask yourself why we're planning to spend nearly half a billion dollars on an agency to oversee the "Information Economy." Ask yourself further if you think changes should be made. If so... . Well, write your Senator or Congressman. So.

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