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Special Review Memorandum

Re: Sound FCC Reforms: How Well Are We Doing?

Foreword

There's an old story -- which seems relevant, you know. A top Chinese General during the Second World War is being briefed by his chief-of-staff and other aides. "We're experiencing heavy losses," the briefer says, "losing better than 10 troops for each Japanese casualty we inflict." "Good," replies the General. "Pretty soon there'll be no more Japanese."

Well, we sometimes feel like that Chinese General (even though we don't have jillions of troops. Obviously). The Federal Communications Commission (FCC) over more than 20 years has inflicted heavy casualties. They're the original "not-invented-here" bureaucracy, after all, more obdurate and resistant to suggestions than even your typical telephone company. "Faster than a speeding bullet, more powerful than a locomotive, able to leap tall buildings with a single bound" -- none of that particularly matters, you know, when you're arguing with the FCC. Like Frank Sinatra, they're going to do it their way, period, right? Only the courts are able to turn those folks around.

On the other hand, your Review's been making its strong and compelling FCC reform proposals for more than 24 years, hasn't it -- much longer than any of the current FCC have been in this business. We were here before them, and are looking forward to surviving their tenure. Heck, we even beat good ol' Judge Greene, didn't we? So, who knows? Sooner or later we might prevail here, right? Our recommendations, after all, do have the advantage of being well-grounded in law, governance, and practical experience. What could be better than that?

Ten Big Proposals

Now, several of our strong and compelling FCC reform proposals are procedural, right? For instance, we've recommended (1) that the FCC meet more than 70 minutes, once a month. It's a national embarrassment, you know, that this key Federal agency dodges its public responsibilities, isn't it?

True, we seem to be losing ground, here. The FCC Commissioners haven't even managed to get together at the scheduled time the past few months. In September, for instance, they were supposed to meet at 9:30 AM. They didn't get around to meeting until 8:30 PM! Sounds like Mexico City, doesn't it? "Mañana, always mañana." But don't

abandon all hope, yet. Sooner or later, someone in Congress has to zero-in on this, wouldn't you think?

Your Review's also recommended (2) that everything the FCC does be done in public -- unless there's an ad hoc exception accomplished with a recorded vote. There are some 3,000 county boards in this country -- and, that's how they mostly operate. If the FCC Commissioners had to get together more often and decide everything, that'd build collegiality and mutuality. There'd also be much, much speedier action. If the Commissioners are going to have to get together, after all, they'll want something to do, right?

So far, only Senator Barack Obama seems to agree with us, saying that the "people's business should be done in public." But, again, this is such a good idea, it just has to prevail over time. And, if the current group of Commissioners don't feel comfortable working in public, there's an easy solution: Get new Commissioners.

Third, your Review's recommended for decades (3) that the FCC Commissioners actually write their own opinions -- the way a court would. No flamboyant press releases, but serious, court review-worthy opinions. Just the way a quasi-judicial agency ought to proceed.

If they're incapable of doing that, again, get new Commissioners. But this would ensure shorter, more lucid, and certainly more sustainable decisions. Simply the process of having to explain rulings, moreover, would spur greater understanding of this whole process, wouldn't it?

Operational Reforms and Improvements

Then, there are a series of recommended operational reforms -- steps which ought to be taken, even if the Commissioners decide they don't want to meet more often, discuss issues collectively in public, and write their own opinions.

For example, we want (4) heavy use of fact-based, trial-type hearings, for just about everything. The current FCC processes are something of a "free good" -- thus they're abused. Anyone's free to denounce anyone of doing nearly anything. But if companies and parties had actually to prove their case in a public proceeding, there'd be lots fewer allegations, and people would be a lot more conscientious about these things.

Similarly, we want (5) a "speedy trial"-type law, or enforcement policy, at the FCC. This business of sanctioning radio stations for something they aired years ago, or wrestling with truly ancient accounting allegations in the telephone business is just fundamentally unfair. It's also destructive of any deterrent effect. There need to be definite time limits on all FCC enforcement actions. And, while we're not making great progress here, aren't we doing a bit better?

We want (6) a "responsible Commissioner" assigned to each and every matter -- someone who'll bird-dog the matter, and also be responsible to explain what's happened. As we've explained for years, too, this might cut-down on the FCC's ex parte process, where the individual Commissioners and staff are constantly lobbied -- a process which is grossly unfair to small protagonists, and highly amenable to abuses as well.

Doing the Right Thing

Your Review's recommended (7) that the old Hobbs Civil Appeals Act be scrapped, and the FCC granted independent litigating authority, too. The SEC, NLRB, and FTC have these powers. They'd contribute to good government. The FCC, incidentally, suffering from some variant on "Stockholm syndrome," seems afraid to even contemplate or imagine independent litigating authority, strange as that may seem.

And, (8) all interns at the FCC need to be paid. We think a GS-5, step 1 salary is sufficient. But it's scandalous, yet another national embarrassment, that so well-heeled an agency as the FCC exploits students the way they do. That's really quite unfair, you know. As the Bible says, the laborer is always worth his or her hire, right? See Luke 10:7.

Two Recent Substantive Recommendations

Finally, we ought to note that for years your Review's recommended (9) that the FCC ensure every parent and every child that they will have unimpeded cellphone access. In this time of monstrous attacks on children and schools, it's just outrageous that bureaucracies like the New York Schools can prohibit students and parents from accessing this life-saving technology.

At last check, the New York city council was preparing to override Mayor Bloomberg's unwise disapproval of a measure guaranteeing student's cellphone access. But the problem's nationwide, isn't it? Someone in Washington ought to address this critical communications policy issue which matters tremendously to tens of millions of students and parents.

And, then, there's (10) our longstanding recommendation that the FCC -- working with the National Oceanic & Atmospheric Administration (NOAA) and Wal-Mart et al. -- actively encourage every family and household in this country to have an emergency weather radio. These are genuinely life-saving devices, they don't cost much at all, and if the FCC and U.S. Government would encourage it, we could accomplish "universal" adoption of this technology in a year, or less.

In-Process

Now, we're still working on (11) the digital transition -- and, having both school seminars and recruiting the Boy and Girl Scouts to help out. Deregulating -- Federally -- local telephone operations (12) is in-process. For heaven's sakes! Why in the world is the

FCC so bent on regulating "access charges" when it's made findings that local markets are competitive -- remember the old section 271 process?

It's as if the March of Dimes staff went around trying to sabotage the Salk and Sabin vaccines, isn't it? Why not find something more useful for those 220 or so "Wireline Competition Bureau" workers to do? Transfer them to Office Space's Inotech and fill-out those TPS reports, or whatever?

Conclusion

The last three Administrations -- Bush père, Clinton, et Bush fils -- haven't had much interest in traditional regulatory reform. Their focus, if they had one, has been on so-called "social regulation" -- environmental, workplace, and consumer protection concerns.

But the next Administration may well be different. The "Information Economy" is perhaps the most diverse, competitive, and innovative of them all. Yet as that cashier told Deborah Winger in Terms of Endearment, "Hey, we're going in the wrong direction!"

Our recommendations are bipartisan, good government concepts. And, they'd make things better. So, as we said, don't abandon all hope yet. Sooner or later, we'll prevail!

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