

Special Review Memorandum

Re: Martin, Cable & the Republicans.

Foreword

Has Federal Communications Commission Chairman Kevin Martin really jeopardized his Republican credentials by appearing to advocate more regulation of the cable television business? That seems a familiar theme in recent newspaper and magazine reports, doesn't it?

"A Party of Shopkeepers"

Anyone who believes all Republicans are automatically deregulatory in their thinking, however, probably haven't looked at former Missouri Senator John Danforth's track record as Republican Chairman of the Senate Commerce Committee, however. Or, the approach taken by now-Congressman, soon-to-be-Republican-Senator Chip Pickering, right?

Senator Danforth famously declared that "small business is the heart and soul of the Republican party," and he noted the interests of small businessmen -- and, business women -- in telecommunications didn't necessarily track the deregulatory policies urged by many. Thus, when Bell companies in the 1980s sought support for efforts to compete in long-distance markets, to enter cable television, or the alarm industry, the Senator listened politely -- but did virtually nothing.

Danforth's Commerce Committee Chief Counsel, Walter McCormick, currently heads the U.S. Telephone Association ("US Telecom). He's noted that many competitive local exchange carrier (CLEC) operations across the country were initially financed by successful car dealers, real estate developers, McDonald's franchisees -- Senator Danforth's "heart and soul," in other words -- and that's made it hard to sell "deregulation" to Congress.

It's a truism: Congressmen and Senators hate having to choose between actual and potential contributors. Like virtually all politicians, Washington's want everyone to like them -- and, contribute freely and equally. And, that's true for both parties.

"At Least We'd Have a Chance"

Similarly, anyone who thinks Democrats automatically favor regulation has probably been reading too many Huffington posts. President Gerald R. Ford and his economic team -- starring such luminaries as Alan Greenspan, Paul MacAvoy, and John Robson -- was convinced that economic regulation was handicapping the American economy. Ford's team argued that inefficiencies and costs which regulation placed on core sectors -- surface transportation, notably -- eventually rippled throughout the economy.

But Ford's successor, President Jimmy Carter, was just as enthusiastic about

deregulation. In his campaign biography (Why Not the Best?) Carter wrote of regulation in Georgia, where he'd been Governor, of course, and how "vested interests" had essentially captured Government and harnessed its powers to secure their position. Carter was no fan of traditional economic regulation, that's for sure.

During the Carter Administration, legislation was proposed to deregulate chunks of the then-monopoly Bell System. The bill which attracted the most attention would have allowed AT&T to place its "private line" -- now called "enterprise" -- businesses into an "arm's length subsidiary" which wouldn't be regulated. Small businesses and others complained that this affiliate would have enjoyed clear "market power." They argued strongly against deregulating anything having to do with AT&T.

As Posed by OMB

The Office of Management & Budget's Legislative Reference Division placed the question squarely before the President and his most senior policy advisers: Should the Carter Administration support legislation which could produce an "unregulated monopoly"? And, the answer back was, "Yes."

Why? Well, President Carter said that given a choice between a regulated and an unregulated monopoly, he'd take unregulated -- "Because at least we'd have a chance." And, that policy is reflected, by the way, in the airline and trucking deregulation Carter also pushed. At the time those laws were passed, remember, the "Big Three" airlines (American, United, Delta) all commanded substantial commercial power at "fortress hubs," and trucking companies like Yellow Freight had power by virtue of long-term contracts, too. But President Carter had confidence in unregulated markets and unregulated competition.

President Carter's principal communications policy adviser, Commerce Department Assistant Secretary (and FCC alumni) Henry Geller frequently observed that, "Everything in the world is compared to what." And, compared to the regulated variety, the very Democratic Carter Administration preferred the unregulated sort.

As Taught by Professor Alfred Kahn

In any event, it's naïve to cast these increasingly common debates over cable television policy in partisan political terms -- even if that does seem overwhelmingly popular these days.

Interviewed when he was Carter's White House economic adviser, former Civil Aeronautics Board Chairman Alfred Kahn famously said,

The marketplace doesn't have to work perfectly to make it preferable to regulation. All the competitive market has to do is work 'as efficiently' as regulation -- and, it's not hard to work as efficiently as regulation.

Today, the fastest growing, most technologically dynamic, most customer-appealing of all the markets operating under FCC auspices is the wireless world -- mostly cellular. It was noted this past week that cellular customers in the United States have risen from 150 million to 250 million in just the past four years. Cellular is how the poor and minorities all communicate. And, cellular's also the least regulated of all the fields, isn't it?

The second most-dynamic and fastest growing communications market is the "multi-channel video service distribution" business -- cable and satellite television. Not only has this business greatly expanded the viewing options it offers, it's expanded into telephony and now serves more than 13 million -- all with much innovation and competition. And, it's not very regulated, either, is it?

Just Imagine What It Would Be Like!

Senator Jim DeMint of South Carolina -- a Republican who's anti-regulation, period - worked in the supermarket business for years. He's correctly compared the various proposals to regulate cable television channel bundling and pricing to having the Federal Government regulate product placement in grocery stores (or, the up-front payments manufacturers often make for premium shelf space).

How many cable channels are there? At least 100 of the "expanded basic" variety. Can you imagine the FCC devising and then enforcing rules on how people pick one from column A, one from column B, and so forth? Or, when they choose, or when they can change? What would we have? An annual "open season" when everyone could switch their cable channels, without penalty, of course? Think of the administrative and overhead costs such a regime would impose. And, who really wants it -- particularly if they're told it'll cost more?

Just because you don't watch a channel constantly, moreover, doesn't mean you shouldn't have to pay for it. Professor Kahn wrote once on the value of options, even when infrequently exercised -- he used the example of the option to take Amtrak to and from Ithaca and Cornell. The answer, of course, is all these things are best left to someone else to sort out -- like a competitive market.

Conclusion

Ourselves, we're not quite sure why FCC Chairman Kevin Martin is so enthused about ratcheting down on the cable television industry. But, then, we never could figure out what former FCC Chairman Reed Hundt had against the Bell companies either, and we long ago quit worrying about such things. Who was it who said men don't make history, the people and market forces make history?

Mr. Martin and his policy predilections shouldn't be examined using the prism of

partisan politics, in any event. Regulatory reform shouldn't be seen in such terms, should it?

Experience in telecommunications in the past quarter century amply demonstrates that this is a field where, from a regulation standpoint, less almost always will prove more. Remember Jeremy Bentham's classic advice? That when it comes to interfering, it's best not-to -- without clear, compelling, unarguable reasons.

Well, the case simply hasn't been made for ratcheting down on cable companies, has it? So, our advice? Let's see if there's something we can do actually to help the country. There are lots of things, even in this tortured field. So.¹

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¹ For example, the FCC -- working with the National Oceanic and Atmospheric Administration and the Electronics Industry Alliance -- could encourage everyone in the country to get a low-priced weather radio. How hard could that be? The FCC, working with the Boy and Girl Scouts, and Junior Achievers, could set up a nationwide program to help people hook-up those HDTV digital converter set-top boxes. How hard could that be? Heck, we could even have a sticker on each box -- "This Box Brought to You By Your FCC Chairman [fill-in-the-blank]." The FCC, U.S. Treasury, and communications industry could recycle spectrum auction revenues in aid of research. Heck, there are obviously lots of easy, progressive things the FCC might do.