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Panel Subject: Challenges to Industry

I'm delighted to be here at University of Michigan at the initial invitation of my longtime good friend, John Evans, to discuss "challenges to industry" with a distinguished panel.

Of course, as a fugitive from the actuarial law of averages I should be glad to be anywhere. I have lived ten years beyond the average life expectancy -- a source of annoyance to some in Washington.

I'm often reminded of the three stages in life - youth, age, and the last stage, YOU LOOK GREAT! I feel great, but I don't store green bananas or take out 3 year subscriptions.
(also, etc.)

Anyway, I'm lucky my physiology hasn't caught up with my chronology and also, that I'm frequently a beneficiary of the permissive latitude accorded very senior citizens.

I'll take advantages of this permissive latitude to share a provocative observation with you. . . I consider intrusive government regulation as one of the serious challenges to industry progress with well-meaning government officials frequently treading on First Amendment rights in the process.

In fact, John Evans himself had to overcome an early intrusive regulatory challenge to be able to enter the cable industry. He needed a waiver to a regulation that classified Baltimore as a long distance signal that would have prevented

his Arlington cable system from importing a bona-fide long distance signal so essential at that time for economic viability.

Now we have new governmental challenges to industry.

If I were seeking a dramatic headline I could shout "The FCC is racing down the information superhighway with its eyes fixed on a regulatory rear view mirror . . . the FCC still invokes the old regulatory rationale of "scarcity" or monopoly control in the current era of dramatic technological advances and an abundance of multi media and multi transmission channels and lines.

Now that I can no longer be accused of being part of the problem, I can endorse the critical statement made by John Dingel, ranking democrat and former Communication

Committee Chairman, in a recent speech stating “If the FCC wants competition in advance telecom services to bring prices down, why don’t they get out of the way and let it happen.” He further charged the Commission had increased bureaucracy in virtually every area that Congress intended to eliminate it.

Let’s run down just a few of the long list of controversial regulatory issues.

Cable facing, intense and growing competition from DBS and also from, MDS, internet and PCS, is currently subjected to an exhaustive Commission questionnaire on program and administrative costs. Needless to say, detailed FCC government directives generate priority commitment of

management time which could be more productively spent on expanded programming and improved service.

Also some of the requests for expanded program access rules for cable must be very carefully weighed to avoid what Decker Anstrom, president of NCTA, charged “would be an extraordinary government intrusion in the marketplace.”

The program access rules were established as key provisions in the 1992 Cable Act with the intention of promoting competition in the multi-channel video marketplace through greater availability of satellite cable programming distributed by vertically integrated program distributors. Recent market developments demonstrate that the program access rules have served this purpose extremely well. DirecTv

now serves nearly 5 million subscribers -- which places the well managed DirecTv among the top 5 or 6 multi-channel distributors -- largely due to their offerings of attractive, national programming services. DirecTv's advertising also emphasizes their exclusive and popular major league sports packages for the NFL, NBA, an NHL.

In spite of these developments, some parties have argued to the Commission and in Congress that the program access rules should be extended to promote further competition to cable operators. In particular, the parties are claiming that the rules should now cover non-vertically integrated programming vendors as well as programming delivered by terrestrial – in addition to satellite – technologies. I say “weigh carefully, tread lightly - - - over-regulation is “out,” competition is “in”.

FCC's jurisdiction is also being questioned for its regulatory intrusion in the marketplace for inquiries into liquor advertising and the proposed inquiry into free political time for federal candidates two items I certainly would have deferred to Congress.

From time to time I have advised the new Commission "Remember you are an arm of Congress not a branch of this administration." The Commission was created by Congress as an independent agency, derives its authority and funds from Congress – I even recently advised the FCC Commissioners to add members of the Senate and House Oversight Committees to the Fourth Commandment. It is a good idea to honor them.

Commissioner Mike Powell recently and more eloquently than I, succinctly expressed my feelings about telecom regulation in the digital age. I'll quote his perceptive comments -- "Technological changes in the Digital Age requires government to change the way it regulates in the future. It's futile to perceive the balkanized regulatory framework that exists today because of evolution of technology -- particular digital that will erode and ultimately eliminate the legal, economic and conceptual boundaries of communications media. It is now possible for providers of traditionally distinct technologies and services to cross into new markets and attack each other with a panoply of applications and services. However, we continue to administer a regulatory regime crafted in a time long ago." Right on Commissioner Powell!

There are many communications issues that illustrate regulatory challenges to industry - - more than our time allows today.

So I have again selected a subject of particular interest or rather annoyances to me . . . the regulatory hurdles proposed for digital broadcasts and HDTV.

I never supported and can't understand the government, and in some cases the FCC, launching an aggressive PR campaign for additional quantifiable public interest requirements for digital broadcasting, a new marketplace untested, unproven evolving technology. Also, I could not understand the justification for initially proposing public

auctions for broadcast-spectrum that had been allocated years ago.

I cannot understand the equity in rewarding the industry introduction of improved video and audio quality which serves the public interest in itself, with additional quantifiable public interest requirements.

We must remember that all broadcasters already have long-standing existing statutory public interest requirements that are conscientiously implemented by a great majority. Any imposition of burdensome additional quantifiable public interest obligations for new costly undeveloped services will impede growth, smack of "big government," and could easily run

afoul of our most cherished constitutional rights -- the First Amendment.

DTV and digital broadcasting are in an early evolutionary state with mind-boggling possibilities for multi-channel, multifaceted programming. It will initially be a costly challenging exploratory process. It should be encouraged in its development by limiting government intrusion.

A special commission formed by Vice President Gore is studying the extent and nature of additional public interest obligations for digital broadcasting. In fact, it is possible that the new FCC confirmed by the Congress as an independent agency could revise or reject the Gore Commission recommendations. In my opinion, the forming of a

government Commission to propose mandating additional public interest requirements on TV, the most influential and pervasive news medium, constitutes a First Amendment intrusion in itself.

Also, I cannot understand the logic in claiming it is a “give-away” to grant existing licensees digital spectrum that they themselves developed. I don’t see the equity in proposing that existing licensees compete in auctions against subscriber supported businesses just to be able to remain in their own business. Furthermore, broadcasters are merely being loaned the digital spectrum with the requirements that the analog channels be returned for auction after digital is established.

Most TV licenses were granted in 1949 and 1950 and broadcasters lost money for years in initiating TV services. Nothing happened to the initial TV spectrum grant until broadcasters invested in acquiring property and buildings, buying equipment, hiring personnel and creating and buying programs. Since that initial spectrum grant and TV pioneering, broadcasters have paid the full marketplace price. Very few, if any broadcasters today got their spectrum for free and no one was initially granted a free solvent business.

We must also remember that it was the broadcasting industry that developed HDTV and digital technological and program production advances, not government financing, and certainly not government regulation.

Broadcasters serve the public interest every day in ways in which no other medium or business does. They provide news, information, emergency bulletins, documentaries and public service announcements, entertainment, and education -- all free of charge. This year more than ever broadcasters provided immediate life saving information on floods, tornadoes, hurricanes and other natural disasters. No other medium can make that claim, and this tradition of free service is, in itself, an important, underestimated contribution to the public interest. Broadcasters contribute millions of dollars worth of public service programs and announcements every single month. In fact, stations and networks could be faulted for not doing a better job of informing the public and government officials of their many public interest contributions.

From my experience in broadcasting, I can tell you that the great majority of broadcasters make a commitment to community service over and above what the Communications Act requires because it is good citizenship and because it is good business -- not because of FCC regulations. And certainly not because broadcasting, the prime information and news medium, has a government mandate to make a “social contract” with their communities, outlining specifically how many hours and what types of public interest programming they must air to mollify government regulators.

The simple fact is that broadcasters enter into a “social contract” with their communities every day when they transmit their programs and the public votes its approval or disapproval

every day through audience ratings. Broadcasters depend on public acceptance for their very economic survival.

We have entered a new multi-channel, multifaceted media age in which abundance and diversity -- not scarcity -- are the rule. Now in this intensely and growing competitive communications marketplace, it is the time for the FCC to consider imposing fewer regulations on broadcasting and cable.

Lets conclude on an overall positive note . . .

As a former Chairman of the Federal Communications Commission and having served as a Commissioner for about three decades, I marvel at the accelerated change in the telecommunications marketplace over the recent past. As a

result, great pressure is placed on regulators to keep pace with new technologies, industry consolidations, the interrelationship of services, and to meet their obligation to assure that the needs of the public are served. The United States, as the leader in this transition, has had to confront its share of problems.

However, despite past and current government and technological problems, the United States has the largest most imitated TV system and the broadest, least expensive and most efficient telecommunications market in the world. With government encouragement rather than additional intrusive government regulations, our communications industries can maintain and strengthen our world communications leadership in the years ahead.