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In this Issue:

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Special Review Memorandum

Re: Tomorrow's Networks and Their Regulation.

Foreword

Longtime Federal Communications Commission (FCC) Commissioner (and, briefly, Chairman) James H. Quello was appointed to the agency by President Nixon, and served well into the second Clinton term (August 1974 through November 1997).

When Commissioner Quello retired, many rich (as well as regular) Americans contributed more than $3 million to establish the James & Mary Quello Center at their university, Michigan State. Over the years, the Quello Center's underwritten communications projects and research, and sponsored an annual conference in Washington. The 2008 Quello Center session took place this past week, at the National Press Club's first-rate conference facility. So, we thought we'd focus a bit on that.

"Wunnerful, Wunnerful... ."

Now, lots of important people showed up, and talked, at this conference. There were officials from Verizon and Comcast, a fellow who strives to get broadcasters into new services, wireless and Internet service providers. Personages like that. There were also a fair number of higher-graded Federal workers and, of course, all the "usual suspects": Washington lawyers.

Discussed, for example, was how much was being invested -- $70 billion a year, according to Verizon (that's everyone, not just them). Mentioned were all those communications and information services Ralph Nader in the 1970s called the "dazzling new electronic abundance" (and, former Deputy Assistant Attorney General for Antitrust Jonathan C. Rose jokingly called "wire-by-wire").

There was some discussion of some current regulatory policy debates -- for example, s Comcast really the most evil company that ever lived (as you might gather from recent FCC statements)? Do we really need to make the world safer for online music and video "pirates," as Senator Kerry has unwittingly urged (by calling for "network neutrality" legislation the poor fellow hardly understands). Complicated things like that.

"But I got the Sense that Something Was Missing... ."

But just as Miss Peggy Lee so famously sang -- "Is That All There Is?" -- we got the sense that three things were missing.

First, no one addressed how the vast investment capital to support this "dazzling new electronic abundance" was going to continue to be forthcoming. We know all about how "they get capital from everywhere," as an important Federal communications policymaker once so presciently explained. But do you know any stocks in this field which are "winners"?

Virtually all telephone and wireless company shares in this "space" are now trading at historically low levels. Media company shares are a minor-grade disaster. Ditto "Information Economy" shares and companies. The current prospects of a general recession can't be positive. So, who exactly is going to fuel all of this "electronic infrastructure" growth with their savings and retirement funds? Verizon and AT&T executives? Hillary and Bill? The Kuwait "sovereign wealth" fund? That key question wasn't mentioned.

Which, in Fairness, isn't unusual. There's something of a perennial "cargo cult" in Washington, remember -- the sense that good things will be forthcoming, if you simply wish for them with sufficient collective intention. And, in the past, things have always pretty much worked themselves out, haven't they?[1]

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[1] It is a tribute to the inveterate optimism of most of Washington's communications and "Information Economy" decision-makers that little things like the WorldCom collapse are hardly even remembered. From a policymaking standpoint, that was reminiscent of the old joke about that famous assassination: "Other than that, Mrs. Lincoln,

"It's Not My Fault, I Didn't Do It!"

Second, no one asked whether what the FCC's doing -- or, has done -- has helped or hindered the process of financing all these "wunnerful" new offerings.

Stock market analysts ought to regard regulation as an unliquidated claim on earnings. Historically, the FCC and its regulatory system has brooded over business operations -- and, periodically intervened to take money from winners. Usually, the FCC takes money from winners and gives it to competitive losers -- or, at least companies which aren't making as much. But sometimes the FCC also decides that there's a class of customers out there who deserve benefits, even though they haven't invested in these systems.

The FCC believes strongly that one acquires an equitable claim on assets and profits simply by purchasing a company's products. This'd be like assuming you have a claim on Safeway's profits because you occasionally shop at the company's stores. As one Secretary of Commerce explained, "It's like those people who come into the building and claim it's theirs, because they pay taxes."

The problem, of course, is this unliquidated claim on profits -- or, worse, assets -- is hard to quantify. So, if you're the Wellington Fund or Barclays, do you want to invest heavily in a field -- when, unbeknownst to you, some "pointy headed bureaucrat who can't even park a bicycle straight" might come in and take part of "your" money? Probably not.

Alhambra Remodeling

Finally, no one at the Quello Conference raised the even more obvious point. If there are (a) these capital needs and (b) the regulatory system is complicating the task of meeting then, (c) do we want to remodel the "regulatory Alhambra" with a scalpel, or a steam shovel?

Most people at this conference are really into scalpels or maybe, badger hair brushes -- you know, those things the archaeologists use? We've never heard serious deregulation mentioned at these sessions. It's a bit like reading the results of the FCC's periodic "attic-to-basement" regulatory review -- "Combine Blocks 7a and 7b on Form 312." Stuff like that.

Bismarck used to say leaders needed to surround themselves with men (and women) with the "breadth of imagination needed to accomplish great things." But you don't see a lot of that these days. Indeed, it's amazing -- some might say appalling -- how into the details some FCC folks can be.

Unleash the Economists!

Yet remember, the last time the country faced serious "stagflation" problems, the Ford and Carter Administrations unleashed the dreaded "academic economists"! People like Professor Alfred Kahn, his understudy (and Interstate Commerce Commission Chair) Darius Gaskins, and Council of Economic Advisers Paul MacAvoy actually recommended major changes.

When the Reagan Administration came into office, Congress eliminated an awful lot of traditional international communication regulation. No more "International Quota Bureau," no more "carrier of the week." They also demolished a broadcast license renewal culture which had supported more than 800 people in the FCC's Broadcast Bureau. "Combine Blocks 7a and 7b"? Not on your life!

Conclusion

Now, to their credit, if the FCC over the past ten years hasn't deregulated much, they've allowed huge enterprises to emerge without the putative benefits of "pervasive regulation." At the conference, Washington über-lawyer Bob Corn-Revere asked, "Just imagine

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how was the play?" The WorldCom collapse was the largest in U.S. history, erasing at least $170 billion in wealth It was part of a "stock market correction" which, according to Dr. Robert Blau, eliminated about $3 trillion in market capitalization. But there's no evidence the WorldCom collapse, or the collapse of the "Dot.Com Bubble," registered with most of Washington. FCC employees, of course, aren't allowed by statute to invest in most of these areas, and don't.

if the FCC had played a role in creating the Internet -- though NPRMs, and so forth" (that's "Notices of Proposed Rulemakings," to those unsteeped in this lore).

The FCC's allowed wireless and the "Information Economy" to grow, pretty much "reins-free," as Senator Hollings said. And, that's good, isn't it?

But if we plan to raise the additional money needed to build "Tomorrowland," are we going to be able to do that given today's depressed stock prices and the brooding omnipotence of FCC regulation? Probably not.

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Special Follow-Up Memorandum

Re: Your Assignment, If You Choose to Accept It.

Introduction

Remember last year, when we suggested the FCC intervene in the ongoing debate over America's students and cellphones? Three-quarters of young people today have cellphones, you know, and the technology and its services have become integral to their lives. These instruments are also crucial to their parents -- who watch the growing violence on-campus, nationwide, with quite justifiable alarm.

But then you have small-minded folks, like that Clinton Administration lawyer who decided suing Microsoft -- on the wrong grounds -- was a good idea. Joel Klein's now reinvented himself as New York Schools superintendent (we're not sure, but in New York City, don't all the bureaucrats with a "ruby button" call themselves "Chancellor," or "Commissioner" -- something like that).

Thus, New York and some other school systems have imposed a flat ban on cellphones. Not a "reasonable restriction," but rather a flat prohibition. The city and school system were quite properly sued by parents, outraged by these actions.

Maybe He's Legally Right

Well, this past week Judge Mazzarelli of the New York Supreme Court's Appellate Division, First Judicial Department, dealt with the Klein cellphone edict. Judge and colleagues concluded the matter really wasn't "justiciable" -- that it was akin to questions of school dress or routine discipline. Things like that. See Price v. New York Board of Education, 2008 NY Slip Op. 03512 (Apr. 2008).

But because the FCC didn't intervene, the better question wasn't raised, or resolved, was it? And, that's the question of whether the benefits of communications developments -- and, competition -- should be arbitrarily withheld from hundreds of thousands of parents and young people. When perfectly reasonable alternatives are readily available.

Years ago, remember, the FCC adopted rules which said hotels, hospitals, colleges, and other "public places" had to allow Americans to use a long-distance carrier of their choosing. That these and other "aggregators" of demand couldn't arbitrarily impose restrictions. And, remember more recently, when Congress passed legislation saying homeowner associations and landlords can't unreasonably restrict multi-channel video options -- that if people want to sign up for DirecTV, they can?

What's the Difference Here?

Just as we said before, we think it's up to the FCC to establish clearly (a) a national policy of fair, unimpeded communications access. And, (b) the principle that any restrictions need to be the minimal needed to satisfy some clearly delineated, acceptable public policy goal.

No one wants young people using cellphones to organize gang fights, harass, or disrupt the education process -- some of the potential evils New York imaginatively cited. But is it so hard to say (c) phones have to be silenced (or turned off), and (d) will be confiscated if they're not?

A flat, across-the-board ban on all cellphones, it seems to us, is unfair to young people -- and, to their parents. This isn't Cuba, you know. And, it's also potentially a personal safety risk. How many times have students used their phones in other school systems to summon the police? Isn't that what happened at Virginia Tech?

Conclusion

Now, we wouldn't want to derail some critical, urgent FCC initiative -- fining a radio station for something broadcast five years ago, say. Or, combining those blocks on Form 312.

But cellphone access is a real issue, affecting real people. We're all in favor of "regulation as if people really mattered." And, here's the chance for the FCC to intervene, establish clear Federal access policies, and eliminate the harm which educational administrators are needlessly inflicting on parents and young people. So.

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Special As-Seen-On-TV Memorandum

Re: John Adams and the Mails.

Introduction

One "programmatic aspect" of that good "John Adams" series HBO's been airing has been the frequent exchange of letters -- between John and wife, Abigail. Or, between John and son, John Quincy. Or, perhaps most famously, between Adams and his once-friend, then enemy, Thomas Jefferson.

These letters have been such a feature that the U.S. Postal Service is involved in promoting the program. From the people who sponsored Lance Armstrong, now... . Right?

Authentic In Every Detail

But there were some Postal aspects of this program which just didn't seem adequately explained, so naturally we turned to James I. Campbell, Jr., probably the only person in Washington -- perhaps the entire known world -- who knows all about this stuff. A Georgetown Law School classmate of Washington communications guru-ette, Janice Obuchowski, Jim Campbell knows all these things (and, practices the relatively narrow field of Postal law, too). Here's what this authority told us:

Q: In the HBO series, you see General Washington, even, carrying letters. What about the famous Private Express Laws? Was George Washington one of the earliest offenders? Does Roger Craig know about this?

A: Well, it depends a little on the period but the basic answer is no. The first U.S. postal law was adopted in 1792 but it was refined considerably in the 1794 law. Americans only copied half of the British postal monopoly. It was illegal to set up a private system of posts (i.e., relay stations for transmitting letters) but an individual could carry letters. In fact, lots of letters were taken by travelers going in the right direction. Of course, people sent letters by servants as well in those days.

Q: How long did it take to get a letter from Quincy, Massachusetts, say, to Jefferson at Monticello -- or, vice versa?

A: Massachusetts to Virginia? Let's say 400 to 450 miles. A good speed was about 4 to 7 miles per hour or 60 to 120 miles per day along the main routes. So I would guess 4 to 7 days in 1800.