

OFFICE OF THE CHAIRMAN

MEMORANDUM

TO: Pete Belvin
FROM: Blair Levin *BL*
DATE: November 23, 1994
RE: Your memo of yesterday



As they so often do to great effect, Commissioner Quello and Chairman Hundt discussed directly the subject raised in your memo. I understand that they are in agreement as to the nature and the timing of the kind of documents that should be circulated generally in order to facilitate full, thoughtful but efficient debate.

As you and I have discussed, if there is ever any issue about which you have any other concerns, please don't hesitate to call or just come down the hall.

BL:vcl

cc: Commissioner Andrew Barrett
Commissioner Rachelle Chong
Commissioner Susan Ness
Commissioner James Quello

Fax to Doug Halonen!

Well, the memo certainly wasn't distributed to make a big press splash or to cause anyone involved - the Chairman, the Commissioners, or the Bureau and Office staffs - any problems. In fact, questions about when and how the Chairman's Office makes staff-generated briefing material available to the other Commissioners are nothing new. In my twenty years here I've seen Chairman who make such material freely available as well as those who prefer not to. But the point here is that in this case ^{the} ^{is} ^{no} ^{question} these memos are to be made available, not only to the Chairman's Office, but also to the Office of General Counsel, the Office of Plans and Policies, and to the Chiefs of other Bureaus and Offices - BUT NOT TO THE COMMISSIONERS, who, after all, ARE THE ULTIMATE DECISIONMAKERS! The Commissioners and the Chairman need to be aware of the obvious problems entailed in such a selective distribution process so that we can work together collegially to develop a better approach.

JW Jullly

Vicki Dialtone

PCS - Satellite options for PCS --
"Terms of the case memos -- on multiple ownership - Stuart
said rule to the chairman -- attribution % interests? Deal alone
attribution as long as it is a non controlling interest - OK-

Pete's files

Confidential

Federal Communications Commission
United States Government

MEMORANDUM

DATE: 22 November 1994

TO: Blair Levin
Chief of Staff

FROM: Pete Belvin, Senior Advisor to
Commissioner James H. Quello 

RE: Commission Resources; Information Distribution

The attached Memorandum indicates that the Chairman's Office has instituted a new procedure by which the Bureaus and Offices are required to produce two drafts of a "theory-of-the-case" memorandum for each item, agenda or circulate, to be considered by the Commission. Commissioner Quello has asked me to express his concerns about this memorandum to you and to his colleagues.

Commissioner Quello would not question here the benefit of adding yet another two-part layer to the briefing process. Rather, he is most concerned that the Bureaus and Offices have been specifically instructed in the memorandum not to distribute such Commission-generated work product to the rest of the eighth floor. Although this is the first **documented** instance of "limited distribution," it is not the first time that this issue has been raised with you.

Assuming *arguendo* that the theory-of-the-case memorandum is beneficial to the Commission decision-making processes, should not **all** the decision makers, the five Commissioners, be given the opportunity to make use of it? It seems to Commissioner Quello that to pose the question is to answer it.

Commissioner Quello would therefore appreciate your instructing the Bureaus and Offices to provide copies of all brief sheets, option memos, and other general analyses, such as these theory-of-the-case memoranda, to our office at the same time such material is made available to the Chairman for his use. This request does not, of course, include staff work product that responds directly to a specific issue raised by another office.

I trust you foresee no difficulty in acceding to this request.

Copy: Chairman Reed Hundt, Comr. Andrew Barrett, Comr. Rachele Chong,
Comr. Susan Ness

UNITED STATES GOVERNMENT
memorandum

DATE: September 26, 1994

REPLY TO

ATTN OF: Kathleen M.H. Wallman *KW*

SUBJECT: Theory of the Case Memorandum

TO: Division Chiefs

The Chairman's office would like to receive a "theory-of-the-case" memorandum with each item considered by the Commission. This memorandum will be for the use of the Common Carrier staff and the Chairman's office. It would not be circulated to the 8th floor.

The memorandum will be written in two drafts. The Division originating the item will be responsible for the initial draft, and the Counsel to the Bureau Chief will be responsible for the second draft.

Attached is an outline of a theory of the case memorandum. Please share this information with your staff.

Thank you for your cooperation.

*When you get a phone call
show I get it*

THEORY-OF-THE-CASE MEMORANDA

Whichever bureau or office is responsible for drafting an item is also responsible for producing two drafts of a short (typically one or two page) memorandum outlining the statutory authority and fundamental economic theory underlying its approach.

The initial draft is prepared before final policy cuts have been made. In the case of an item for which an options memorandum is to be prepared, the theory-of-the-case memorandum is prepared first. The core legal and economic principles in the memorandum serve as guides for identifying and making policy choices and can help structure the item itself. The initial draft of the theory-of-the-case memorandum should lay out in annotated outline form:

1. The fundamental issues being addressed, with the minimal amount of background;
2. A summary of the Commission's statutory authority in the relevant areas;
3. The public interest issues and arguments relevant to the assessment of the Commission's potential actions; and
4. To the extent possible, any significant legal issues (e.g., those issues that are likely to set precedents for other Commission actions and those that are likely to be litigated).
5. The identities of bureaus or offices that face parallel policy issues where there is a need for consistency or the industries regulated by that bureau are significantly affected.

The second iteration of the theory-of-the case memorandum is distributed at the time the item goes to the Office of the General Counsel. The revised draft facilitates review of the item. This draft should lay out in annotated outline form:

1. The fundamental issues being addressed, with the minimal amount of background;
2. A summary of the Commission's statutory authority in the relevant areas;
3. The public interest arguments that support the proposed Commission actions;
4. The principal public interest objections to the proposed Commission actions;
5. Any key legal issues, including those issues likely to be the subject of litigation or having significant implications for other Commission actions.

6. The identities of bureaus or offices that face parallel policy issues and an indication that they have either signed off on the item or have significant concerns with it. In the latter case, these concerns should be briefly summarized.

Each theory-of-the case memorandum should be addressed to the chief of the originating bureau and copied to the Office of the Chairperson, the Office of the General Counsel, and the Office of Plans and Policy. For an item whose issues cut across organizational units, the memorandum is distributed to the chiefs of all relevant bureaus or offices.

but not to the 8th floor!!