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If Communications Policy Were a Campaign Issue

by

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I don't expect that communications policy reform will be a hot campaign issue during this election cycle. After all, spurring job creation and investment, growing the economy, increasing productivity, and reducing the nation's debt and deficit are likely to be the "macro" topics dominating the campaigns – and well they should be.

You probably won't find the candidates, whether President Obama or Mitt Romney, or candidates for Senate and House seats, arguing about how to address the spectrum crunch, or to implement further reform of the universal service subsidy system, or to jettison outdated video rules.

I get this. I am not suggesting these seemingly esoteric communications policy issues should become run-of-the-mill campaign fodder.

I do suggest, however, that, with the communications, information, and entertainment market sectors comprising fully one-sixth of the nation's economy, communications policy matters – a lot. Deregulatory, free market-oriented communications policies can spur job creation and investment, help grow the economy, and increase productivity.

I offer here some reform proposals worthy of consideration *if* candidates were trying to integrate communications policy reform into their broader platforms for spurring economic growth. These proposals, each of which would be a net positive for the economy, should be put on the table for consideration even if they are not discussed during the campaigns.

- Adopt a new Digital Age Communications Act which eliminates the current regulatory "stovepipes" grounded in outdated techno-functional characteristics, and the new statute should replace the ubiquitous "public interest" standard with an antitrust-like competition standard that places consumer welfare, not competitor welfare, at the forefront.

Rationale: We need a new communications law that does not regulate services differentially based on the technologies employed and which requires a convincing showing of market failure and consumer harm before regulating.

- Eliminate the current dual review of communications mergers and acquisitions by the Department of Justice/Federal Trade Commission on the one hand, and the FCC on the other, so that the antitrust authorities assess the competitive impacts of proposed transactions, and the FCC assesses whether the applicants will be in compliance with all existing laws and regulations.

Rationale: There is substantial overlap in the work now done by the antitrust authorities and the FCC, with the duplication leading to costly expenditure of substantial government and private sector resources and unnecessary delays in the review process. And FCC transaction reviews under the vague public interest standard invite arbitrary and unpredictable agency decision-making, along with the now standard private bargaining over so-called "voluntary" concessions that epitomizes "regulation by condition."

- Develop a national policy framework that makes it more difficult for localities to slow down the build-out of wireless infrastructure necessary to accommodate surging consumer demand.

Rationale: There are various actions that must be taken to address the spectrum crunch, such as allowing the secondary spectrum market to function more freely. But one helpful measure would be the development of some form of national policy that has the effect of accelerating local processes for siting towers and issuing permits for new infrastructure build-outs.

- Accelerate further reform of the universal service regime and transition, over time, to a much more limited program primarily directed to providing subsidy support to eligible low-income persons, not to high-cost communications providers.

Rationale: Until the FCC's high-cost universal service subsidy fund is further reformed, wasteful disbursements of subsidies supporting inefficient telephone providers will continue. This discourages build-out of newer, more efficient telecom networks. Absent further reform, the universal service subsidy program is a "telecom Solyndra" waiting to happen.

- Eliminate outdated legacy video regulations, such as must-carry, leased access, program access, program carriage mandates, and media ownership restrictions.

Rationale: These various video regulations were put in place in the analog-era during a time when the video marketplace still retained some monopoly characteristics. In today's digital broadband video marketplace, competition among various video providers using cable, satellite, fiber, telephone, wireless, and Internet platforms is fierce, so the regulations no longer are necessary.

- Sunset all FCC rules every seven years, subject to retention if the agency makes a showing of a compelling justification for keeping the regulation.

Rationale: Historically, the FCC, often by its own admission, has been notably slow in eliminating legacy regulations from its books that no longer serve any purpose. Now, even the Obama Administration, through its Executive Order 13563, is urging agencies to engage in retrospective reviews to get rid of, or relax, outdated regulatory requirements. With marketplace changes continuing at a rapid pace, driven by the ongoing development of new technologies, a large number of FCC regulations necessarily become obsolete over time. Therefore, all agency regulations should "sunset" seven years after adoption, unless the FCC, after providing an opportunity for public notice and comment, finds there is a compelling justification for retaining the rule.

These proposals, by reducing unnecessary regulation in what are now competitive markets, would lead to increased investment and innovation.

That's why a free market-oriented communications policy reform agenda should be an important part of an overall program to get the economy moving again.

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