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How the FCC Can Eliminate Unnecessary Regulations

by

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Upon taking office, President-Elect Trump has pledged to rescind executive orders issued by President Obama. Interestingly enough, a nearly forgotten 2011 Executive Order issued by President Obama set forth principles for independent agencies to actually reduce regulatory burdens. Now that is one order worth reviving, not rescinding.

In 2017, the Federal Communications Commission (FCC) should apply Executive Order 13579 and clear away old regulations, freeing up innovation and investment next-generation broadband services. A decades-long pileup of regulations is bogging down the future of broadband. Under new leadership that takes Executive Order 13579 seriously, the FCC can promptly eliminate swaths of costly, harmful rules.

Among its concerns, Executive Order 13579 addressed the problem of accumulated unnecessary regulations. Regulatory restrictions and compliance costs - including those designed for obsolete technologies in static market conditions - are harmful to our nation's innovative industries and to our overall economic vitality. Thus, the Executive Order called on independent agencies to "facilitate the periodic review of significant regulations" by considering how best to analyze

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"rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them."

Despite the fact that President Obama paid no mind to it, Executive Order 13579 offers a fine framework for assessing new regulations and reviewing old ones. It charged independent agencies such as the FCC to follow the same principles that prior executive orders charged Executive Branch agencies to follow. Namely, independent agencies should propose or adopt regulations based on reasoned determination that benefits justify costs. Best available techniques should be used to quantify anticipated present and future benefits as accurately as possible. In addition, regulations that are necessary should be narrowly tailored to impose the least burden on society. Also, independent agencies should identify and assess alternatives to direct regulation, including use of economic incentives or public disclosures of information.

Many worthy proposals for cutting back old regulations require action by Congress. But the FCC can apply the Executive Order 13579 principles without congressional say-so. Numerous FCC regulations were designed for 20th Century copper wire-based telephone services or analog-based cable TV services. Those regulations have been upended by the dynamism of today's digital broadband-centric communications markets. Cross-platform competition spurred by wireless services and direct broadcast satellite services gives consumers choices that were previously lacking. The FCC ought to consider current market realities when applying the Executive Order - and to eliminate or reduce the scope of regulatory reach based on considerations of cost-benefit, narrow tailoring, and less restrictive alternatives.

The FCC can also implement the Executive Order principles on a going-forward basis. Evaluation of likely costs and benefits and less restrictive alternatives to regulation have been conspicuously absent from recent FCC overreaches. The agency's so-called Open Internet rules, broadband privacy restrictions, proposed business data price controls, and proposed video device regulations all manifest a disregard of Executive Order 13579. FCC application of the Executive Order combines a less restrictive approach to perceived problems with more rigorous empirical analysis of proposed regulations.

Regulatory policy is often hotly debated along partisan, ideological, and interest group lines. But Executive Order 13579 offers a common frame of reference that appeals to diverse viewpoints. Or at least it should be. The Executive Order was issued by President Obama and publicly endorsed by his first-term FCC Chairman, Julius Genachowski. It also reflects common sense: Public benefits of regulations should outweigh costs. Necessary rules should be targeted to serve their actual purpose and avoid waste. And rules that protect the public from actual harm should be retained. For the FCC, applying the Executive Order principles means following through on a course announced with great fanfare by the Obama Administration yet never seriously pursued.

Now, a new Administration and Congress bring renewed hope for regulatory reform. Until Congress acts, the FCC can take the lead in eliminating or curtailing unnecessary and harmful regulations. By vigorously applying Executive Order 13579, the FCC can promote a pro-innovation and pro-investment future for broadband in America.

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