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**One Obama Executive Order That Makes Sense:
A Mandate to Trim Outmoded Rules Is One Trump Should Keep**

by

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In July 2011, President Obama issued an executive order that, at least on paper, actually makes good sense. It's Executive Order 13579, Regulation and Independent Regulatory Agencies, urging independent agencies such as the Federal Communications Commission (FCC) to establish plans for periodic retrospective reviews aimed at eliminating outmoded regulations.

Here's the heart of Executive Order 13579: "[I]ndependent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Referring to his earlier executive order applicable only to executive branch agencies, Mr. Obama declared that "independent agencies, no less than executive agencies," should consider whether their regulations promote "economic growth, innovation, competitiveness, and job creation."

In retrospect, it's easy to surmise that Mr. Obama's executive order urging retrospective review of existing regulations must have been issued with a wink and a nod. Few regulations were eliminated during his tenure while significant new ones continued to pile up at an unprecedented

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rate. According to the Competitive Enterprise Institute's Wayne Crews, the Obama administration already has completed 551 "economically significant" rules — those that are projected to have economic effects of at least \$100 million — compared to the 390 economically significant rules completed during President George W. Bush's eight years. With a month to go, this year's Federal Register page count already has set an all-time record at 87,000 pages.

While President-elect Donald Trump has said he will reverse many of Mr. Obama's executive orders on Day One, there's no reason to jettison Executive Order 13579. Instead, he ought to urge his appointees to the independent agencies, including those officials who are designated in "acting" capacities, promptly to initiate rigorous retrospective reviews of existing regulations.

Certainly, the Federal Communications Commission would be as good a place as any to start getting rid of regulations that long ago outlived their original purpose. Tom Wheeler, the Obama administration's FCC chairman, never took the president's retrospective review order seriously — or, for that matter, Congress' express direction in the Communications Act that the FCC engage in a biennial review of all telecommunications regulations to repeal or modify any rules that are no longer in the public interest.

During the past two decades, effective competition has developed in most segments of the communications marketplace, with digital-age technologies enabling more abundant consumer choices among services and applications. Despite this, the FCC has made no meaningful effort to engage in retrospective reviews with the objective of eliminating or curtailing regulations that no longer make sense. Instead, it acts as if it inhabits a time warp, with a mindset stuck in an era when monopolistic Ma Bell provided telephone service over copper wires and three television networks dominated the video marketplace.

That era is gone forever. In today's digital broadband environment, companies compete to provide innovative internet, video, data and voice services and applications across various platforms, whether these platforms employ fiber, wireline, cable, wireless or satellite technologies, or combinations of these.

The FCC needs to take account of current competitive marketplace realities in assessing whether legacy regulations are necessary. This includes not only reviews of regulations adopted decades ago, such as woefully outdated media ownership rules and requirements that prevent the discontinuance of little-used, economically inefficient legacy analog telephone services, but also recently adopted rules, such as the new public utility-like net neutrality mandates and overly expansive privacy regulations.

Recall that Mr. Obama's Executive Order 13579 urged the FCC, in examining whether to retain or modify regulations on the books, to consider whether the rules promote "economic growth, innovation, competitiveness, and job creation." These are certainly pertinent considerations, especially because Mr. Trump has said that achieving more robust economic growth and job creation are priorities.

In engaging in regulatory reviews, rigorous, empirically-based, cost-benefit analysis and consideration of the least restrictive alternatives are crucial. But above all, the agency must not turn a blind eye, as it has too often in recent years, to the existence of actual and potential marketplace competition.

When the Trump administration appointees gain majority control of the five-member commission sometime after Jan. 20, in conjunction with the Communications Act's own regulatory review requirements, they ought to take seriously Mr. Obama's retrospective regulatory review executive order — even if Mr. Obama's own appointees didn't. Indeed, there's no reason rigorous regulatory reviews, with the sensible aim of curtailing outdated regulations that inhibit economic growth and job creation, should be a partisan issue at all.

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