

Media Institute
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Knowing that this will likely be my last speech to the Media Institute, I decided to use the occasion to share some parting thoughts on my four years' experience serving on the FCC, and especially my thoughts on media regulation today.

Over the weekend I struggled to come up with a theme lofty enough to carry my thoughts with the gravitas suitable to this occasion. And finally I hit on it: I would look to the philosophy of one of the world's great thinkers and then attempt to gain some insight by applying it to media policymaking and the FCC today.

But then another dilemma presented itself. Given the numerous intellectual heavy weights from which to choose, how should I pick?

I surveyed the landscape and quickly rejected a number of candidates. For example, why not Marcus Aurelius? He had some great quotes about all things in life coming full circle, and about reality being what our thoughts make of it. Good stuff, but a bit too heavy, especially after lunch.

Socrates? He had that little gem about the unexamined life not being worth living. But I guess we all know what happened to him so I decided to move on.

Thoroughly discouraged, I stopped trying to write and turned on the TV. The Yankees and Red Sox were playing their winner-take-all game for the American League East pennant. Now I must confess I'm not much of a baseball fan but I did recall that there was this baseball guy who had some interesting observations about life.

After perusing his collective works and compiling a small store of his most insightful observations, I came to a sobering conclusion. With apologies to a best-selling author, it's this: everything I know about regulation I learned from Yogi Berra.

As it turns out, no Marcus Aurelius, no Newton Minow or Henry Geller, not even Dick Wiley, has more to teach us about the nature and practice of media regulation than Yogi Berra. So let me share with you today just a few of Yogi's observations that so perfectly capture the essence of media regulation and some of my thoughts about it.

Yogi's first pertinent insight is:

You've got to be very careful if you don't know where you're going, because you might not get there. After all, if you don't know where you're going, you'll wind up somewhere else.

How could anyone possibly disagree with that? In media regulation terms, it means this: it might be a good idea for the Commission to devote more forethought to what we want to accomplish in major rulemakings proceedings before we launch them.

In saying this, I'm not arguing in favor of prejudgment. But what I am suggesting is that we at least consider returning to an old, largely forgotten approach, in our rulemaking notices: breaking big issues down into digestible bites, and then making specific proposals on how to resolve each of them.

Also, in the past many of the rulemaking proceedings were actually triggered by Commission staff reports analyzing important policy issues in economic and social terms. These staff papers served as a springboard for a host of major rulemaking initiatives, from radio deregulation to access charge reform to the use of auctions for the allocation of spectrum. The sometimes controversial, but always thought-provoking contents helped sharpen the issues for those planning to comment in an NPRM. The papers also helped the Commission and its staff see potential holes in their own thinking much earlier in the rulemaking process, thus giving us more flexibility to fine-tune our approach.

Even without staff studies preceding the issuance of NPRMs, however, I think we would still be better off making our Notices more focused, honing in on one or more stated proposals instead of asking open-ended questions that sound more like attempts to define an issue than proposals to resolve it. Admittedly, this kind of approach requires more up-front work by the staff. It also increases the odds that a Commissioner might be dissatisfied with the specific tone or direction in the text of a rulemaking and would therefore feel constrained to express his or her own opinions separately. And it probably lengthens the time needed to finally bring rulemakings to a conclusion which may explain why we moved away from this approach. And the 1996 Telecom Act imposed aggressive deadlines on the Commission which forced a different approach to rulemaking. But now with the benefit of hind-sight, I am convinced that making our rulemaking notices more specific and detailed is likely worth the effort. It should produce comments that are more focused, debate that is more meaningful, and results that are more defensible.

This brings me to another of Yogi's relevant observations:

It's impossible to get a conversation going with everybody talking so much.

Asked for the antidote to so much unproductive noise, Yogi says:

Well, you can observe a lot just by watching.

Here again, Yogi expresses a great truth. A big drawback to media regulation today is that there's too much talking, too little real conversation, and some people just aren't watching.

Exhibit A for this proposition is the dialog surrounding media ownership limits and localism obligations. From where we stand now, these debates seem almost hopelessly polarized. Everybody has an opinion; but when it comes to these fundamental policy issues people have a tendency to talk at each other, rather than to each other. There has been comparatively little constructive conversation about how to craft sensible new

rules grounded in what is happening in the media market today. Instead the focus has been on remembrances of things past or fears of what might someday happen.

My suggestion to advocates on both sides of these issues is to listen and watch, and not talk quite so much.

Advocates of maintaining or even strengthening the existing rules might learn that the markets for news, information and entertainment have all changed significantly. As an agency we have an obligation to fully consider the impact of multichannel nonbroadcast services like cable and satellite television on our national and local structural and content rules. But this already-complex task is made even more difficult by the advent of digital broadcasting and the multiple digital subchannels that both television and radio broadcasters will be able to program. How should the addition of these new channels impact the current ownership and localism rules? I think we have to pay careful attention to the different ways consumers are adapting to new sources of local, regional, and national news, entertainment and information. Only by understanding how consumers gather

information can we accurately calibrate the legitimate role for government regulation in a future that offers an array of virtually limitless broadcast and nonbroadcast program options.

And what of this future and its implications? Well, here again, Yogi said it best:

Prognostications are tough, especially when they're about the future. After all, the future ain't what it used to be.

News, information and entertainment programming (including gaming) that suits the needs and interests of most viewers and listeners is either already out there or is right around the corner, thanks to the marvels of digital technology. But this abundance of choice requires the audience to make affirmative decisions about what they will, and will not, watch and listen to. And that need to choose is a two-edged sword.

Many people are simply used to the good ol' days when you could watch TV or listen to radio without having to be poised to

pounce on the dial for the benefit of either your kids or yourself. Others have a sort of deep-seated resentment that daily life is already complicated enough without having to remain on active alert while watching TV or listening to radio. And they want things to be the way they used to be -- and will never be again. And still others sincerely believe that some content shouldn't be available to any one at any time, period.

Choice is the antidote to all these complaints, and choice -- or, more precisely, consumer acceptance of the need to choose -- will drive the future of telecommunications policy. What makes this a regulatory challenge is the fact that today not all people are equally prepared and willing to adjust to the reality that they, and not government, are increasingly responsible for determining the educational, informational, and entertainment services they receive.

The major task for the FCC going forward is not just managing the megahertz and gigabits and opening the floodgates to new services. Rather, the Commission's challenge will be to monitor the effects on consumers, and ensure consumers have the tools

needed to adjust to the pace of technological change. Where unforeseen problems occur, the Commission must be ready and able to step in.

But in this the Commission must walk a fine line. It, too, will be forced to make choices. It must affirmatively abandon the traditional if unsaid notion that only government can choose what's best for people. It must school itself to distinguish real consumer harm from hypothetical harm. It must discipline itself to address only real long term problems, not the transitional ones.

That's why I believe that the Commission, in the days and years to come, must give the same importance to consumer education and outreach efforts as it does to its regulatory and enforcement activities. And that's why I predict that adjusting to these new regulatory imperatives will prove to be a more formidable challenge than writing new ownership or content rules.

I could go on, but as Yogi says, it's getting late early. So I'll close now by saying that I am coming to a fork in my own personal road and, as Yogi recommends, I'm going to take it.

But before I do I want to thank the members of the Media Institute for your advice on so many of the challenging issues that I've faced as a Commissioner. It's comforting to know you will continue to engage on these very difficult and important issues. And, as Yogi once said, I'd like to thank all of you for making this luncheon necessary.

