

# Comment: The Regulatory Setting

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Michale Botein's study conveys the impression that he disapproves of the FCC's deregulatory efforts. His rhetoric makes that clear. What is unclear, however, is the direction in which he believes the Commission should go. The polemic nature of his approach highlights several misunderstandings of the Commission and its current response to technological innovation.

Early in his paper Botein refers to "the current, ideologically pure Commission." It is essential to understand that the FCC, with seven or five members, is a collegial body with members of diverse backgrounds and varied viewpoints. While the Commission acts as an entity, it is a serious error to ascribe to it a unity and consistency of ideology that does not exist.

Each commissioner comes to the question of regulation or deregulation differently and votes on a particular matter in a unique context. In my case, for example, I did not take up the cause of deregulation because Adam Smith appeared to me in a dream or because I was plotting the sacrifice of public interest objectives at the altar of private greed. Having spent nearly a decade inside the FCC and several more years affected by it, it became clear to me that regulation was not always the most efficient means to achieve social goals.

There are ways to achieve social goals by using the marketplace to do what government intervention had been intended to do. The essence of deregulation is to identify the optimal structure which maximizes the private contribution and minimizes governmental participation, while yielding the same result. As Botein points out, "The basic assumption . . . is that effective competition makes regulation unnecessary." Competition is "effective" if it achieves the goals which regulation would have sought to achieve.

If we ask whether competition may be "effective" in achieving a goal, it is important to ask whether government regulation has been "effective" in reaching the same goal. Both means should be held to the same

standard of effectiveness in evaluating which should be used or what combination of both is called for. After observing the implementation of many regulatory schemes and their effects on economic and social behavior, I came to doubt that regulation was necessarily the best approach.

These doubts were heightened by measuring what I refer to as “regulatory dysfunction,” or impairment of the achievement of other worthy goals created by the existence of government regulation. For example, the costs of compliance with government regulations, both in dollars and in management attention are considerable. Reduction in government forms and detailed rules provides management in the affected industry with the opportunity to devote those resources to serving better the public it has as its customers. Minimizing government intervention also serves to avoid the unintended and usually unanticipated negative side effects of government involvement.

The policy of the current Commission has been to allow the development of new technologies. We resolved not to be branded as electronic-age Luddites, but rather to allow technology to benefit society while trying to minimize sudden economic or social dislocation. The “level playing field” is a figure of speech which essentially tries to describe equity or fairness.

The Commission understands handicaps. Professor Botein’s example of government regulation, the antisiphoning rule, was not a handicap which reined in the most effective player. It was a shackle on the new entrant which preserved the status of the most effective player (the broadcaster) at the expense of the new entrants (cable and STV). This Commission has avoided shackling new entrants, having learned the lessons of excessive government regulation in such instances as anti-siphoning.

Professor Botein notes that, “the FCC has embraced the concept but not the details of fostering the level playing field.” Unfortunately, he does not offer any solutions nor provide any of his own details which I had hoped to see.