ized racism, sexism and homophobia." Gag rules apply, in short, on all those whose views might fall outside the range of acceptable Left orthodoxy until we all set foot in utopia. In Houston, a faculty committee on human relations voted to banish Mark Twain's *Huckleberry Finn* from the library of the Mark Twain Intermediate School. With penalties ranging from official reprimand to expulsion, the University of Connecticut outlawed acts of "conspicuous exclusion from conversation" and "misdirected laughter."

On the politically correct sliding scale of free expression, of course, some were permitted more free speech than others. "Freedom of speech should belong mainly to the powerless rather than those in power," explained a Stanford law professor. While most students and faculty dared not publicly question the fairness or consequences of affirmative-action quotas—candor not being worth a trip to the Gulag—the Left felt free to launch politically correct, ad hominem offensives at the entire "bourgeois superstructure" (Western values, imperialism, Eurocentric "Anglos," militarism, democratic traditions, materialism, academic standards, capitalism, etc., etc.); to expel Aristotle, Shakespeare and other "dead white males" from required reading lists; and to purge "patriarchal hegemony" and "male-centered science" from the curriculum.

In *Illiberal Education*, Dinesh D'Souza wrote of being confronted by a self-described "sensitivity coalition"—some of whose members were outfitted in the rattling chains of slavery—during a speech at Tufts University. Before D'Souza took the podium in an auditorium protected by armed police, Professor Donald Klein, acting on university instructions, warned student activists to abstain from throwing things at the speaker or shouting him down. After his speech, D'Souza was approached by an outraged professor of Afro-American studies, who accused D'Souza of "logocentrism" (the "white man's obsession with big words") and of having a "white perspective" (a preference for "rationality" and "sexual restraint").

D'Souza's account of his encounter with ethnic tribalism and mindless groupthink underscores the significance of the Wisconsin faculty's long overdue vote. ■

The Federal Communications Commission and the Undersea Cable Market: Deterring Competition and Exacerbating a Trade War

By Lawrence J. Spiwak

POLITICIANS AND PUNDITS ALIKE LOVE TO proclaim that the world is in the midst of a "global telecoms revolution." That may be true, but the Federal Communications Commission (FCC) is once again threatening to turn the revolution into a trade war.

FCC fired the first salvo last year, just one year after the conclusion of the World Trade Organization (WTO) agreement on basic telecommunications services. Under that agreement, 69 nations—including the United States—made commitments about the opening and regulation of their telecoms markets. Despite that landmark agreement, FCC—after admitting publicly that it did not trust the market-opening efforts and commitments of other countries—unilaterally issued stringent regulations (including naked price controls), to the dismay of the international telecoms community. FCC's aggressive, unilateral actions engendered much ill will among America's trading partners, who saw those actions as mercantilist and found them hypocritical, given the slow advance of competition in U.S. telecoms markets.

FCC now is taking aim at the market for undersea cable service, the primary medium for international telecoms traffic.

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TARGET: THE UNDERSEA CABLE MARKET

UNDERSEA CABLE TRAFFIC IS IMPORTANT TO THE UNITED

States for several reasons. First, without undersea cable, the enormous growth of international data communications—driven principally by the accelerating growth of Internet traffic—would be substantially constrained. (The adoption of the WTO agreement has only begun to spur greater growth in international communications.)

Second, undersea cable is increasingly the most efficient medium for many telecoms services because new technologies have reduced submarine cable unit costs dramatically in the last few years. Five years ago, a 15-gigabit per second (Gbps) cable, such as the transatlantic TAT-12/13, was the state of the art. The new TAT-14, which is scheduled to go into service by the end of 2000, will have a capacity of 640 Gbps. There are now plans for cables with a capacity twice as great as that of the TAT-14, that is, 1.2 terabits per second.

Finally, satellite service is not a full substitute for undersea cable service. Although satellite service is a good medium for data transfer and an excellent medium for broadcasting, it is a poor medium for two-way voice applications. Voice communications are particularly intolerant of the delays inherent in geostationary satellite communications and, unlike cables, satellites and earth stations are vulnerable to sunspot activity and hurricanes. Moreover, a modern submarine cable offers much greater capacity than a satellite, and at a much lower unit cost.

STIFLING COMPETITION IN THE NAME OF COMPETITION

FCC ANNOUNCED LAST SUMMER THAT IT WOULD SOON institute a proceeding to investigate whether undersea cable consortia "may slow the growth of competition in international telecommunications" and, if so, whether the efficiency benefits of undersea cable consortia offset those anticompetitive effects. Reading between the lines, FCC is saying that if the dominant firm in a foreign market is also a member of a cable consortium serving that market, then the consortium, a fortiori, has the ability to control *all* traffic in that market, incoming and outgoing. By that logic, a U.S. firm that is not a member of the consortium cannot enter the foreign market; thus, U.S. regulatory intervention is required. That conclusion simply is wrong.

Indeed, FCC's purported rationale for its inquiry is that foreign firms in telecoms consortia control "key inputs" of production. Just what inputs does FCC have in mind? In a recent case, FCC grudgingly granted a petition by Japan-U.S. Cable Network (JUS) for a cable landing (FCC Case 99-167). But FCC *was* sympathetic to the argument of Global Crossing (a competitor of JUS) for American regulatory *intervention in a foreign-destination market*, simply because certain inputs—for example, back-haul capacity (facilities for transferring traffic from a cable landing to a distribution point), rights of way, and real estate—are *too expensive*.

Like it or not, telecoms is an expensive business because it requires expensive inputs. FCC should not confuse the normal costs of entering a market with incumbent- or regulation-imposed costs that require governmental intervention (e.g., exorbitant one-time charges for co-locating in an incumbent's central office or cable-landing stations, hidden "universal service" fees, high access and interconnection charges). The inability of a potential entrant into the undersea cable market to afford the price of admission is not a cause for intervention.

There *are* regulation- and incumbent-imposed entry costs in foreign markets. Should FCC assert extra-territorial jurisdiction to deal with such costs? Again, the answer is no. Like it or not, through the WTO agreement a majority of America's trading partners made specific commitments about the openness of their telecoms markets—and the United States accepted those commitments.

Even if FCC ought to act, it is unclear what it should do. One option is to deny a foreign entity's request for a U.S. cable landing, which FCC has done before. But if an entity says it is willing to risk a significant amount of capital to lay a cable on our shores to meet an ever-expanding demand, you might expect FCC to accelerate the approval process rather than engage in regulatory shenanigans. But you would be wrong. As FCC commissioner Harold Furchtgott-Roth noted recently, "this whole process is subject to abusive, clandestine arm-twisting."

A second option is for FCC to use its delegated authority under the Cable Landing Act to grant a license only "upon such terms as shall be necessary to assure just and reasonable rates and service." But FCC already has traveled (unsuccessfully) down that route with its unilateral "competitive safeguards"—much to the dismay and consternation of America's trading partners.

There is growing support for a troubling third option. Several former Clinton administration officials— including Anne Bingaman, former assistant attorney general for antitrust; Peter Cowhey, former chief of FCC's International Bureau; and Greg Simon, former domestic policy adviser to Vice President Gore—are arguing that FCC should initiate a "fair marketing period," during which the U.S. government would abrogate private submarine consortia contracts and assign customers among specific competitors.

That approach has several fundamental problems. First and most obviously, it is simply the worst form of central planning and should not be condoned. Indeed, it amounts to nothing less than an attempt at government-mandated horizontal market division, which courts as far back as *Addyston Pipe* (1899) have held to be a per se violation of antitrust law. Moreover, the institution of a so-called fair marketing period would violate not only FCC's prime directive but also black-letter case law that forbids it to "subordinate the public interest to the interest of 'equalizing competition among competitors.'"

Second, the proposal would take FCC's authority under the *Mobile-Sierra* doctrine onto uncharted and dangerous ground. Under *Mobile-Sierra*, government may abrogate a private contract if the contract is contrary to the "public interest" (e.g., the economic costs imposed by the contract outweigh the efficiencies created by the contract). Before government may exercise its authority, however, it must

cross a threshold that courts have held to be "practically insurmountable."

It is doubtful that the abrogation of international cable consortia agreements could meet that test. International ventures are inherently risky, and the mitigation of risks through joint ventures has been standard industry practice for 60 years. The parties to joint ventures must have confidence that their contracts will not be abrogated or challenged in either domestic or (especially) foreign courts. FCC intervention to abrogate contracts in the undersea cable market—where there is no policy-relevant barrier to entry—would undermine the sanctity of private contracts and make it far more difficult for *all* U.S. firms—telecoms or otherwise—to do business abroad.

WHITHER (OR WITHER) FREE TRADE?

WHERE DO WE GO FROM HERE? IF THE U.S. GOVERNMENT really favors creating a global information infrastructure, it simply makes no sense to erect barriers to entry into the primary market for international voice and data communications. The FCC-instigated telecoms trade war is dangerously close to getting out of hand. Thus, in remarks before the Dallas Ambassadors Forum last April, Federal Reserve Chairman Greenspan expressed his "regret" that the United States' "trade laws and negotiating practices are essentially adversarial" and his concern "about the recent evident weakening of support for free trade in this country."

More than 200 years ago, Adam Smith warned that naked mercantilism harms consumer welfare. That warning notwithstanding, it seems that we must again remind the Federal Communications Commission that trade and public utility regulation do not mix. Indeed, given America's already tenuous credibility in the international community, the commission's inept Machiavellian maneuvers can only goad other nations to retaliatory acts that will make it more difficult for U.S. firms to do business abroad (contrary to the Clinton administration's ostensible goals) and, more importantly, will harm U.S. consumers. ■

Libertarian Advice: Superfluous or Essential?

By Richard L. Gordon

MUCH LIBERTARIAN ECONOMIC ANALYSIS examines barriers to regulatory reform. In a recent article entitled "Of Stranded Cost and Stranded Hopes: The Difficulties of Deregulation" (*The Independent Review* 3 [1999]: 485), Fred McChesney draws on that literature to produce an extremely pessimistic analysis of the possibility of and benefits from deregulation. Although he describes his analysis as positive—obviously as opposed to normative, certainly not as the antonym of negative—he gives the impression that policy analysis is an exercise in futility.

McChesney's case is an elaboration of prior theoretical analyses of the difficulty of regulatory reform. He emphasizes the most pessimistic interpretations of the most pessimistic sources. He neglects more optimistic views in the same sources. Even when he expresses optimistic views, he tries to undermine them. To twist the words of a 1940s song, he "accentuates the negatives, eliminates the positives, and messes with Mr. In-between."

CAUSES FOR PESSIMISM

McCHESNEY ARGUES THAT DEREGULATION IS DIFFICULT for several reasons. First, it creates concentrated wealth losses and diffuse efficiency gains, the net effect of which is to produce great political resistance. Second, the efficiency gains from actual (as opposed to theoretical) deregulation are reduced because a substantial portion of the costs of regulation are sunk and thus not recoverable through deregulation. Third, actual (again, as opposed to theoretical) deregulation yields even lower benefits than implied by the previous point because deregulation does not lead to the pristine free-market environment desired by advocates of reform. Instead, different forms of market intervention are enacted that also distort efficiency (e.g., excise taxes) or politicians extract rents (e.g., pork-barrel spending) in return for not intervening in markets.

These arguments are not new. McChesney builds on oft-cited articles by Gordon Tullock ("The Transitional Gains Trap." *Bell Journal of Economics* 6 [1975]: 671) and Robert McCormick, William Shughart, and Robert Tollison ("The Disinterest in Deregulation." *American Economic Review* 74 [1984]: 1075) as well as his own recent work on political extortion.

COUNTERPOINTS

THE NEGATIVE VIEW MISSES MUCH, HOWEVER. GIVEN THE heavy economic burden imposed by regulation, it takes

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