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Christopher Spruce

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## **Conference Reports: Public Utilities Research Center Annual Conference: Regulation as art and science**

### **Maine Policy Review (1992). Volume 1, Number 2**

*by Christopher Spruce*

The efforts of the past 15 to 20 years to roll back the regulation of private enterprise by the government has produced unforeseen results. The most significant of these is that the amount of regulatory activity actually has increased, concluded Glen Robinson, former commissioner of the Federal Communications Commission (FCC). Robinson's remarks were made at the annual conference of the Public Utilities Research Center at the University of Florida in Gainesville, Florida on April 23-24, 1992.

Robinson, now a professor of law at the University of Virginia, cited the telecommunications industry as an example of "remarkable transformation" that resulted from public policies that consciously encouraged competition in lieu of monopoly regulation. But what really has happened, he argued, at least in telecommunications, is that deregulation has increased both the number of players and the number of plays to be watched by the FCC and other regulatory agencies. "Thus, we get more, not less, regulation," Robinson said. "That regulation seems more active today than it was in the monopoly era...is ironic, but not inexplicable."

#### **Neither art nor science**

To support his contention that "the history of regulation is a history of a growth industry," Robinson cited a study he conducted. The study sampled three years of FCC reports devoted to final telephone and telegraph decisions. In 1968, such reports totaled 180 pages or four percent of FCC report pages for that year; in 1977, the reports totaled 1,000 pages or 20 percent of all FCC report pages for that year; and, 1991, 1,800 pages or 25 percent of all reported FCC actions. In other words, over 23 years, the volume of FCC regulatory reports on telecommunications has increased by one order of magnitude, said Robinson. Very few of those pages were related to deregulation, he noted.

One of the key questions facing regulation today, Robinson suggested, concerns the system's tolerance of experimentation. How much risk of failure will it allow, he asked.

"Regulatory policy is neither a science nor an art," Robinson observed. Science, he said, "operates at too fine a level to answer" many important policy questions, while "art" implies fuzzy judgments." On the one hand, too much information; on the other hand, too little precise information. Somewhere in between is the appropriate balance.

Regulators," Robinson concludes, "need to act more like artisans than political artists," if the regulatory system is to operate as it should.

## **Preserve the marbled structure**

Another conference speaker, Sharon Megdal, a former commissioner of the Arizona Public Service Commission, agreed with Robinson that regulation is neither an art nor a science. Ultimately," she pointed out, "this is a very political exercise as well as an economic exercise."

Megdal recalled the social contract theory of regulation, which established regulatory bodies to price the services of natural monopolies and which required that the government not grant monopolies without protecting the public from price gouging. But as fellow conference speaker Harry Trebing and others have pointed out, the old social contract has broken down. Questions now arise as to the purpose of regulation and at what governmental level it ought to occur. Megdal asked, is localism in regulation still important? Should the "marbled structure" of regulation - local, state and federal - continue or are state and local regulations anachronisms?

Megdal argues for a preservation of the marbled system. She argues that the centralized approach to regulation (i.e., federal only) "would not provide the laboratories of the states." The results of experiments within regional holding companies, Megdal claimed, have provided important data on models that may have national applications. "A uniform federal policy," she argued, "would not provide various data on different models." The downside of state experimentation is the lack of control within state laboratories, which means "the results are not always quantifiable in the short-term."

## **Deregulation is not enough**

Harry Trebing, former director of the Michigan State University Institute for Public Utilities, as the first speaker at the conference, argued that public utility regulation was at a crossroads where two schools of thought are attempting to define the future direction of public policy. The first school argues that competition is increasing and thus further deregulation is the appropriate policy path. The second maintains that "evolving industry structures are not competitive" and that competition and monopoly will continue to operate at the same time. Public policy, then, "must redefine the role of regulation to come to grips with the new market structures," according to this theory.

Under the first approach, said Trebing, new forms of competition have made regulation obsolete. These new forms of competition include supply-side options (e.g., qualifying facilities, independent power producers) and demand-side options (e.g., conservation) in electric power generation, and changes in both the interexchange and local exchange markets in telecommunications. As a result, the argument for further deregulation goes, the original social contract has been "badly eroded."

The second theory is put forward by those who believe that competition is not pervasive, but selective and cannot be sustained when applied broadly. They also believe, particularly in telecommunications, that technology and consumer demands are driving change. But the way to respond to these changes is through regulatory reform that includes policies which constrain markets as well as policies which allow market pressures to work. Policies that rely solely on

deregulation will result in major distortions, this view argues, because of the structural changes that have occurred in public utility industries in recent years.

Trebing's own view is closer to the second approach. Regulatory reform should "take a holistic view of (1) regulatory planning responsibilities, (2) parameters for management decision-making, [and] (3) exploiting market forces in a realistic fashion as an adjunct to regulatory oversight" Among favored options for effecting the latter, Trebing advocates "targeted incentives" that will be linked to quality of service and performance criteria. He cited incentives for cost-effective fuel procurement for electric utilities and incentives for reliable service in telecommunications.

The Public Utilities Research Center at the University of Florida is one of the oldest centers in the U.S. devoted to teaching, service, and research in energy, communications and public utilities. The PURC program has been the inspiration for other such university-based centers, including the University of Maine's Project for the Study of Public Regulation and the Environment (PURE).

*Christopher Spruce*

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