The Gore Commission, 10 Years Later:
The Public Interest Obligations of Digital TV Broadcasters
in Perfect Hindsight

A mini-conference • Friday, October 3, 2008, 8:30 a.m.
National Press Club, 529 14th St. NW, 13th Floor, Washington, DC

http://iep.gmu.edu/gorecommission.php

Transcript / Prepared by IEP Staff (not exact but close to verbatim)

Thomas Hazlett:

Our next guest is a person with intimate knowledge, of course, of the Gore Commission, he was co-chair of that commission. Norm Ornstein, is a well-known political scientist at the American Enterprise Institute. And we are delighted that he's here to share his knowledge and viewpoint with ten years of perfect hindsight looking back now. We are delighted that he's here, not just because he's Norm Ornstein, but because he flew in from St. Louis this morning and he was supposed to get here on time, so we assumed of course that he would not be here on time, but he's right here on cue, so thanks very much for making that effort for us Norm.

Norm Ornstein:

Thanks Tom, and thanks for doing this and actually providing me with an occasion, an opportunity to think back to a topic I haven't thought about in a while. I'm especially delighted to be here with Gigi, an extraordinarily extraordinarily instructive passionate about what she believes and also very pragmatic.

Let me just start first with one observation and it's sobering when you think back at where technology was ten years ago and where it is today and realizing the dizzying pace of change has. It is certainly true that we're thinking about spending
And how much in many ways we underestimate how quickly things could change.

It's certainly true that when we were thinking about spectrum, when we were thinking about an information super highway which at that point had a substantial number of lanes going across the traditional highway model, we actually talked quite a lot about how we're entering the Jetson age or for those of us who've seen the Fifth Element, where you have layers of flying taxis and cars going across not quite an infinite number, but a very large number and how that was going to change everything. That we would reach something reasonably close to that model at this point was not what we anticipated.

At the same time, I remember vividly having one of the experts from Forrester Research talking about the penetration that digital television would have. And how long it would take, and they had these models and how prices would be so high and take so long for them to come down, that completely underestimated what would happen once a small number of people went into a bar, saw a high definition television with football or golf and would go home and say get me one of those. Or that the technology of the computer age would move so rapidly to reduce the prices and change the technology to get such high quality, high definition television out there. And I think that's a useful, sobering thought to have as we look ahead, because that really means almost anything we talk about today is going to change very radically within the next decade, and that means

there will be no model forever, no model perhaps lasting ten years from now will be in a very different spot than today.

Now, just to talk for a few minutes about the Commission, in some respects looking back the greatest regret that I have is that from the get go, we used a model where we looked for consensus for trying to get and most of us, particularly those who came from the non-broadcast side, accepted and embraced that model, basically believing that would make lots of changes and concessions, hoping that by getting a consensus and buy-in from broadcasters, we could get productive, incremental change that would actually work. What we did not want was simply another report that was pounding the table and screaming at people that would make a lot of people feel good and get a lot of wonderful editorials from the New York Times and Washington Post but then would sit on a shelf and have no meaning.

And that was a good idea. It proved basically not to work, and it proved basically not to work, even though we did get pretty much a consensus, we really had only one person at the end, Robert Decker, who just wouldn't sign on, to what was a pretty anyways modest set of recommendations.

The fact is that some of the modest, constructive change that we hoped for, some that we pursued during the course of the Commission, simply didn't work because the broadcasters didn't want anything. Let me give you a few examples. In the early days of the discussion of the Commission we had our broadcasters say repeatedly 'You know, we will do this on our own - we used to have a code of conduct. We can regulate ourselves, and you know it got taken away by the government for antitrust considerations, but if we had a code of conduct we could do it all ourselves.' So we went out and we got all kinds

of strong and powerful legal briefs that suggested that the antitrust reasons which related to commercials and commerce would not apply to the kind of code of conduct we were talking about. We got one of our great Commission members, Cass Sunstein, to draft a new code of conduct based on the old code of conduct with changes to apply to the digital age. And of course the broadcasters reacted vehemently against this, that there was absolutely no way they would do their own code of conduct.

Then when it came to the question of politics and campaigning and free time for basically political discourse, what we got from our broadcasters, throughout the discussions was, 'We'll do our part if Congress will do its part, if only Congress will do something about financing of campaigns and reform that system, but that should come first and then we will respond.' But of course, a few years later, Congress did its part with pretty substantial campaign finance reform and the broadcasters did zero, zip, nada.

We asked for a couple of things, and the single most significant really was the most modest that one could imagine and voluntarily, giving five minutes of time, in the thirty days before the election, each night spread out over the broadcast evening with all the choices to be made by the individual broadcasters. Do it inside newscasts, do it outside newscasts, do it in one five-minute chunk, do it in thirty-second or one-minute chunks, you pick the races that matter the most in your local area. You decide whether you're going to have a debate, a mini-debate with candidates, or give them a minute of time to talk. But five minutes a night for just thirty nights. And we ended up with basically less than 1% of the broadcasters around the country saying they would make that commitment. When we looked back at the 1% who said they did, most of them fell pretty woefully short of even that very modest standard.

So I did not come away frankly with a great regard for the commitments that our broadcasters on the panel made. The bargain that was set just didn't work. What I did come away with was a growing belief that Henry Geller got it right. That he got it right from the start. But also a belief that most of what broadcasters have done to fit public interest obligations and requirements were not done because they felt any sense of obligation or requirement, and of course, to return to my earlier theme, we had broadcasters telling us repeatedly what an enormous burden this was on them and how much they had to do to go out of their way for it. But when we said, 'Well okay, let's find a way to relieve you of that burden, with a fairly modest change,' it was 'Oh, no, we don't want that.'

Because most of what they did was because it's a good business model. When our local NBC affiliate Channel 4 here in Washington does Race for the Cure, and does all kinds of ads in the public interest to promote its sponsorship of Race for the Cure, does anybody really believe that that's because they have a public interest obligation? Or that if you took away that obligation they wouldn't do it? It is great advertising, building of reputation in the community and most of what's done fits that. Of course public service announcements other than those that directly promote the station itself, have generally been relegated to 1 or 2 in the morning and are valued by the broadcasters at a much higher rate than they would charge at any other time.

I have come around almost completely to believing that if I could do it all over again, I would have said, 'Let's relieve the broadcasters in the digital age, of all those public interest regulations and charge a rent for use of the spectrum and give that money over to public broadcasting,' which in the digital age was dying to create a Channel 4

public discourse, public square channel, and could use its local stations as well to have some of that discourse for local candidates for national or local office. An imperfect solution to be sure because even though as we've seen these dramatic changes in spectrum, the fact is that commercial broadcasters are still the medium of choice for political candidates to advertise and get messages across. We need to reach a broad audience, and we want to have broad audiences, we want to have a public square, or else we will end up with a smaller narrower group of people interested in the process turning to only one channel, but this is an opportunity to broaden that discourse with those who are willing and eager to engage.

Now, I am not as knowledgeable by far as most of this group about what has happened in terms of the White Spaces and this dramatic change. But I have also been thinking a lot in parallel to what Gigi has said that we are moving to a completely new model, that we are moving away from the notion of spectrum scarcity and over the long run broadcasting will still be a medium of choice. There will always be a need. And frankly a unique need in the society to have a public square. It is worrisome that we are moving off into more and more fragmented audiences that are becoming the communications vehicles of choice for people where you cocoon in and narrowly get a reinforced message over and over again. We are no longer hearing surveys, that suggests that we have a common basis of shared knowledge and facts to debate. I'd like to think of ways to encourage broader audiences for some things other than just American Idol - type debates that we get periodically for presidential and vice presidential candidates. But the fact is we have to accommodate ourselves to the reality of a world where there are going to be dizzying numbers of channels of communication and it may well be that

the best thing to do is to find a way to unleash the creativity of the public and to create more avenues and opportunities to do so. Candidates and the political process will adjust and adapt along the way. So what Gigi suggested as "either / or," as an alternative has a lot of appeal to get through those details and make it work. But I would be perfectly happy to get to a model as well that basically said to broadcasters, have something to lease to the public the same way that we have farmers in the West leasing grazing lands, in the same way that we have oil companies lease off-shore spaces or even on-shore drilling areas, pay for it and then we will use the resources of the public lands and public property for the public use. Thanks.

Question (unidentified):

Norm, I hear the irony of the dizzying number of platforms and channels but isn't that the opposite of scarcity. Now we have a world of abundance and I hear you saying we've got problems?

Norm Ornstein:

On balance, it's wonderful, does provide an incredible opportunity to find out all the things that are going one. Provides voices and platforms to people who didn't have voices before and it is providing multiple opportunities in other ways. Involved in a second working group on campaign finance reform to craft where we are now on the next generation, where we can raise money in small increments from large numbers of people, changes the way you think about the campaign funding process. When you see Obama's campaign, or tax credits for small contributions and matching funds, encouraging

campaign contributions in small amounts, simply couldn't be done before because the costs are now trivial. At the same time, see what the Obama campaign has done with communities like Facebook and MySpace, there is far more that's positive than negative, I don't decry that. I do think the public square needs to encompass the larger polity. We just imply have to think of ways to adapt. But I don't want to turn the clock back.

Question (inaudible):

Inaudible

Norm Ornstein:

Frankly, if I couldn't do some other things, I'm still for it, but I would rather have the model that I talked about, which is having a fee for public interest obligations and then use some of that resource to go into paying for a tax credit or funding which would provide opportunities for more discourse. Open to something like that.

Question (T. Hazlett):

Free time for political candidates, and I believe that had been tried in 1996, and the Gore Commission right after that just about that, in 1996 there was free time, but and is there any evidence that people actually watched that or helped discourse?

Norm Ornstein:

I was not concerned about Presidential candidates. Presidential candidates do not need free time. And back then you actually had public funding system where you had

enough money to run a national campaign and presidential candidates were not struggling to get even basic name recognition. We were looking much more at the implications at the congressional level where challengers, the biggest problem, other than redistricting itself, was that competitor recognition for challengers could get their message across. And perhaps the paradox that as the share of audience that broadcasters could reach was reduced, the price for getting onto television was going up, made it prohibitively expensive for challengers to get any kind of recognition. That's one reason why I was so enthusiastic to get the five-minute- thirty-day commitment, it was a commitment that gave them an enormous amount of freedom. You could simply get a 6 o'clock newscast and an 11 o'clock newscast, a few minutes and make that your political coverage. As it turns out most local news don't do any of their local or congressional races. But this was a way to get some local candidates to get their message across at a pretty low cost. And there it was on a voluntarily basis. If we got just 10% of stations who actually could and followed through, we would have had an enormous impact on our political discourse. But it showed to me the absolute emptiness both of the public interest standard, because they were doing nothing in terms of political discourse and there were no consequences for it. And the emptiness of the promise that they was a real desire that only if they could regulate themselves and they would step up to the plate. Almost none of them did.

Question (T. Hazlett):

To follow up from the other dimension, the reason they're not doing the local programming or covering local politics is has something to do with demand. The question is, if you do get the broadcasters to put stuff out there, people have remote

controls, and if the demand is low, people are going to go else where. The proof of that is, a high percentage of households have c-span where they could watch a lot of this stuff. And state-versions of c-span that do quite a lot of local programming. With very limited audiences there. The stuff that is available to tens of millions of households and what the evidence that it's not provided in the marketplace.

Norm Ornstein:

Well, look I don't want to argue that voters go to the barricades because they are not getting coverage from the local races. But there are a lot of things that aren't covered for reasons of demand. I don't want to be so Machiavellian, but the fact is that for an awful lot of local races covered, the more heat there is for those candidates to buy time.

It is a business decision as much as what voters want. It's bringing in a lot more money. Back when we were doing this, I went to Tom Murphy, who's a giant of broadcast and had a long conversation with him who had retired for Cap Cities, and was still on the board. He said, I want to show you something and he took out a book that had revenues and operating statements, and it was a very interesting thing, he showed me the charts, and showed the advertising revenues over 24-month period and they jump up for two months, then come back down again. Guess what those two months are, September and October in an election year. They're not dummies. And the more you cover these races the less need there is for candidates to buy time.

And you can't obviously, and counter productive for every congressional candidate can have a block of time. NYC but CT, NY, NJ have delegations, it's confusing. It isn't going tog work. That's why the model under McCain Feingold, that

we would craft was built on a competitive model where you would get vouchers for time if you got over a threshold of small donor contributions. You would not get time just because you are a candidate for office, but you could demonstrate that you have some basis, then you can have an opportunity to get heard. You can sort this process out and have it done in this fashion. I'd much rather have it come in thirty-days where smart broadcasters who take local races seriously got innovative. Like when you have a two-minute debate in a local studio, at a minimum you're going to give a challenger the opportunity to see somebody opposite to an incumbent.

I would have preferred that kind of model but what you see, and what our delegation showed, is that there is no way to provide encouragement to build a broader base, that we'll take you at your word. On that basis, I threw up my hands, just as Henry did before, it's ridiculous to have some regiment of government imposed public interest obligations where it works less well than regulations on Wall Street. Secondly, doesn't give you anything in return. I'm willing to take the broadcasters at their word, that burden, relieve you of those burdens and instead we'll take a tiny share of your revenues. And in return you can do whatever you want. Frankly, if we saw that happen, the commercial broadcasters would show zero effect to show what they're giving to public interest. They would do because in their interest. And we would have revenues and a lot of other things that would server a broader public purpose.

Question (unidentified):

There are a lot of broadcasters out there who would love to have candidates. But candidates have consultants that would discourage them from coming on.

Norm Ornstein:

That's fine, let them call your bluff. See how many incumbents would let their challengers have two free minutes. Then local stations said, we're going to stage a debate, and we will run it for whoever shows up and then see what the results would be. And we got a good example of that just last week, when the debate commission called John McCain's bluff and Barack Obama said I'm going to be there. And the stations will be there. And if McCain didn't show up, they wouldn't do an empty chair debate, but they would have turned it into a town hall meeting if he didn't show up. But that's an example. I just don't believe that's the reason not to do. I'm not advocate of an hour-long debate. I think it's much better to have small segments of debates and discourse. How about a local station that picks an issue, this week, and candidates to say what they think. People are going to watch. There are lots of ways for broader audiences. We tried it and it simply didn't work. I would have loved to see voluntarily even now or spontaneously. Without me or others pounding away trying to get them to. But in the absence, I say, throw up our hands, let them do what they want, there are other outlets out there, but let's take something in return for public space and use it for other public purposes.

Question (Drew Clark):

Just to be clear, the "either/or" proposition, the model you're suggesting, free them from any requirements, and have a lease of some sort. Or you don't and continue as

is. The analogy to forest, timber, or what not. Whereas many people are comfortable telling broadcasters how to operate their business. What about the lease theory?

Norm Ornstein:

Well actually if you look at other models, whether grazing or drilling, there are all kinds of requirements. You can't overgraze, there are certain limits of what you can do to repent the rapaciousness of land. There are safety requirements, not down to the level of the particular drill bit but there are ways you're allowed to drill or not drill. But that aside, I'm willing to take all those aside. Let them do what they want. No children's programming requirements. No political discourse requirements. Just let them pay a reasonable fee. First thing, 90% plus of what is happening now will be done. But you're going to free people up and then you're going to have a reasonable opportunity to find other ways to provide for the public. For children's television requirement, I'm delighted to have more resources going to public broadcasting. Frankly I would create a foundation to take proposals, whether from Nickelodeon or from CBS or from PBS or from quality children's programming and use some of the revenues for that. And we'll end up with better quality children's programming. Much of what's done is in a half-hearted way. I haven't talked to Peggy Sharon about this, but I just don't see how the children's television requirement has worked as something that necessarily has to be continued as is. I would put all that money from leasing the spectrum and put into a foundation and creating a broad group of people to find the best way, whether television or otherwise, to satisfy whatever we decide is in the public interest. I'm open to any of that. But I'm perfectly happy to take off obligations on the broadcasters.

Thank you.