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Dear Professor Padden,

You asked me to write a 2-3 page memo detailing what I learned this summer during my time at NewsCorp in the Office of Government Affairs. I learned about three interconnected facets of the communications industry: lobbying, law, and the FCC. I had limited knowledge of each before this summer, but drafting memos, attending hearings, listening in on calls, and doing the nuts-and-bolts legal work necessary for broadcasters to maintain their licenses provided a crash course, such that I am at least acquainted with the current state of affairs of all three.

### **Lobbying**

I truly never understood how lobbying worked, aside from the donation of money to certain influential people. Working for Mrs. O'Connell this summer enabled me to see how day to day lobbying takes place.

The first myth about lobbying that this summer dispelled was the role of money. Certainly it's a part of the game, but money is a mere proxy for time: time available for an advocate to spend convincing a target that their perspective is the correct one. For example, while Newscorp had around 40 consultants on hand at any given meeting, the word around the office was that Google had roughly 200 consultants on their payroll. Paying consultants to spread a message is still costly, but it's an indirect cost as opposed to the direct cost of donating to a lawmaker.<sup>1</sup>

Moreover, no matter how much money a lobbyist spends, they are still not the ultimate constituents of lawmakers. The generally-accepted postmortem of the failure of SOPA/PIPA from the broadcaster's perspective is that, despite broadcasters' efforts to convince lawmakers to vote one way, those lawmakers would still obey a tidal wave of public opinion. Humorously, I witnessed a room full of consultants tell the in-house lobbyists of NewsCorp that, sadly, the game had changed during SOPA/PIPA: a flash-mob of internet-generated public opinion could now trump lobbyists' best efforts.

The second lesson I gleaned from the summer is that lobbyists exist to serve a real need: the information gap between lawmakers and their various constituents. Lobbyists are happy when their public-facing messengers, be they Congressmen, consultants, or industry participants, are "on message." The crafting of that message involves hours of internal debates in order to distill a complex web of laws from various sources into something digestible by a busy Congressman, much in the way an

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<sup>1</sup> I got a huge kick out of personally delivering a \$10,000 "donation" to Nancy Pelosi's office at the DNC. "Hello, I'm from Newscorp. I'm here to see Mrs. Pelosi. She's not here? That's ok, I'll wait."

appellate lawyer might draft a question presented, and with broader impact. I worked on NewsCorp's "message" on the FCC v. Fox, as well as the company's statements after the Court's decision came out.

Finally, I learned that lobbying is rarely a first career. One must practice law or be intimately familiar with the area to even consider lobbying. It is an appealing life compared to the grind of a big firm, but it takes years of practice and relationship building to enter the lobbying world.

### **Communications Law**

I had no prior knowledge of the laws governing broadcasters, cable companies, and satellite networks. The FCC was a total mystery to me, as were the debates surrounding over-the-top video, the definition of an MVPD, retransmission consent, the compulsory license, must-carry, and the fight over spectrum use/allocation. I learned about these areas by summarizing the latest cases, attending hearings, working on station renewal applications, listening in on executive strategy conference calls, and attending weekly seminars.

Throughout my whole summer experience, what most struck me was the way in which industry players are fighting over the application of old laws, written before internet video and smartphones, to those new technologies. For example, broadcasters and OVD's clash over the definition of 'MVPD', but all they really disagree upon is how much broadcast content is worth on the internet. Who delivers it, who sees it, and how, are secondary questions. Replace "the internet" with "cable systems", and you have the essence of the debate surrounding the compulsory license and retransmission consent. These are multi-billion dollar industries being governed by outdated metaphors (is the internet like a channel or something else? In what situations?), while industry players struggle to maintain the status quo because the alternative is too scary, too unknown. For example, broadcasters would love to get rid of retransmission consent, but fear that the compulsory license would not go with it, leaving all their content free to be sold in other mediums without their consent.

As illustrated by Aereo, confusion as to what law applies creates opportunity. There is no consensus on which way the industry will head. If broadcasters, OVDs, cable companies, and satellite networks were free to negotiate with each other as they pleased (within the confines of antitrust, etc.), it is not at all clear to me that they would reach a more efficient outcome than the system produces now. I mention all this not as a pessimist, but as an admitted newbie who sees a tremendous amount of value, for both industry and consumer, left on the table by inefficient laws and regulations.

### **Regulators**

I do not mean to belittle the FCC and FTC when I say that there is a lot of value left on the table. With less resources and economic incentive than the industries they regulate, public servants are valuable and necessary. However, seeing the way the FCC handled indecency gave me a few thoughts.

First, for an agency with billions in funding and thousands of employees, not being able to address indecency complaints against broadcasters for up to 12 years (in the case of one Atlanta station) is hilariously inept. Second, to leverage that inability to process complaints into a bargaining chip to hold up license renewals for stations nears extortion. Finally, to exchange license renewal for those stations' agreeing to eliminate the statute of limitations for the FCC's processing of those complaints is extortion.

Even two months after the Supreme Court's ruling in FCC v. Fox that the FCC's indecency policy did not give broadcasters sufficient notice of what constituted indecency, the FCC had yet to decide what to do with complaints made under the unconstitutional policy. Unable to effectively regulate old forms of communication, Chairman Genachowski promised to "[unleash](#) the opportunities of mobile broadband." I understand that this sort of rhetoric and horse-trading is what runs Washington and employs thousands of communications lawyers, but it does not excuse public servants from doing their jobs.

## **Conclusion**

Working at NewsCorp this summer gave me an invaluable opportunity to learn about lobbying, working in-house, communications law, and the FCC simultaneously. Knowledge of this sort cannot be taught, therefore I am immensely grateful that the Padden Scholarship gave me this opportunity. I come out of this summer with fantastic contacts in Denver and Washington, as well as several potential law review topics. Finally, Preston and Dale, thank you for organizing this program; I am in your debt, and I hope you call it early and often. I hope to be able to give back to the program in law school and beyond, and I'm looking forward to this year's conferences, programs, and papers.

Sincerely,  
-Thomas Codevilla