

The Free State Foundation

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The FCC's Future Of Media Inquiry:

What Is The FCC Doing –And Why?

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Transcript of the Proceedings:

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PROCEEDINGS*

MR. MAY: If I could have your attention, please. I am Randy May, President of The Free State Foundation. I want to welcome everyone here today. Our program is titled pretty straightforwardly, "The FCC's Future of Media Inquiry - What is the FCC is Doing and Why."

I am delighted that we have such a distinguished group of speakers, including, of course, the leader of the FCC's Future of Media Project, Steven Waldman. I am going to do proper introductions of the panelists in a moment, but first, I want to say a few words by way of introduction to the program.

In the public notice announcing the inquiry, the FCC says the objective is "To assess whether all Americans have access to vibrant, diverse sources of news and information that will enable them to enrich their lives, their communities, and our democracy." The notice expresses concern about the fate of what is sometimes called "accountability journalism." That is, journalistic endeavors that investigate, report, and hold public officials and public institutions' feet to the fire for their actions. I think this is a goal that we all share in this room, one that is important to maintaining the health of our democracy.

The difference may lie, of course, in the extent to which we believe there are serious problems that presently exist, and if so, what is the proper approach to address them. The FCC's public notice contains 42 separate broad ranging questions -- from whether there should be an

* This transcript has been edited for purposes of correcting obvious syntax, grammar, and punctuation errors, and eliminating redundancy. None of the meaning was changed in doing so. The editing assistance of FSF Intern Cody Williams is gratefully acknowledged.

expansion of the public media, that is media that in some form or another is Government supported, to whether public interest obligations relating to program content that traditionally applied to broadcasters, should be applied to a broader range of media or technology companies, to another set of questions, for example, asking about the role of schools and libraries in supporting community information flow, and so forth.

To put a finer point on the issues to help frame today's discussion, I want to quote just a bit from comments filed by Ellen Goodman at the FCC on the National Broadband Plan.

Ellen is a visiting Distinguished Scholar at the FCC, and one of Steve's deputies on this project. I know Ellen. She is a friend of mine and I respect her work. In fact, she's on The Free State Foundation's Board of Academic Advisors, which I will say is a very prestigious group. I asked her to join it because I value a diversity of opinions.

I want to quote from her comments, not because they represent obviously what the FCC has decided, or Steve has decided, at this point, but because I think they give some insight into the views of those who advocate some of the actions the FCC is, at least, asking questions about.

In her comments, Ellen says "The mission of public media - to engage publics with information relevant to improving lives in particular communities and shared polities - is of growing importance in a world where information is abundant but does not always reach people who need it, and where wisdom and knowledge remain hard won.

"Public media should create content where there are market failures in accordance with a public service objective.

"Public media should curate content serving as both a filter to reduce information

overload and a megaphone to give voice to the unheard."

What is striking to me about these quotes is the recognition of the reliance upon today's media abundance and media content proliferation as a justification for suggesting that we may need more Government involvement with the media.

When I first became involved in communications law and policy in the 1970s, the Supreme Court's affirmance of the FCC's fairness factor in *Red Lion* was still relatively fresh. Fortunately some of you are not that old and were not doing this at that time. Dan Brenner, I bet, remembers *Red Lion*. But I won't call out any other names.

The point is that, then, it was supposed that scarcity of outlets, not abundance, sanctioned Government involvement in shaping media content. The problem, in my view, is that in making determinations concerning whether there are, as apparently alleged, information deficits in an age of media abundance, you necessarily have to make judgments about media content. How else to determine whether such a deficit exists, and how to define a public service objective?

I might add that the idea that in connection with performing this curator function, the public media should serve as both a "filter" for weeding out some content and as a "megaphone" by amplifying other content, is at least somewhat troubling from a First Amendment perspective.

It does strike me as a bit discordant that anyone advocating net neutrality that would prohibit any content discrimination on the net, and I'm not saying all of the people doing so would necessarily be the same people, but would at the same time support an outright role for Government-supported media. I think that may be a bit discordant.

It is important to say at this point that the FCC's Public Notice says that whenever the

Government reviews the structure of the media, it must do so with great sensitivity to the need to protect free speech and an independent press. I certainly agree and appreciate that sentiment. Indeed, you may have noticed that I deliberately chose the First Amendment Room for today's venue, and paid a premium for it at the last minute. Otherwise, you might have had two of those cookies instead of one cookie in your lunch. But I am glad we are here in the First Amendment Room.

With that, let me introduce our panel and get started with the discussion today. You were handed the speaker bios with the full version when you came in. I'm going to do a shorter version right now.

As I said, I'm very delighted to have Steve Waldman with us today. He's the Senior Advisor to FCC Chairman Genachowski, and the leader of the Future of Media Project.

He's a highly respected journalist and Internet entrepreneur. He's the founder of Beliefnet.com, the largest multi-faith website for religion and inspiration.

He's an award winning journalist, and I also want to point out he's the author of the New York Times best seller "Founding Faith: Providence, Politics and the Birth of Religious Freedom in America." You should buy Steve's book, and if you have any money left over, we have some copies of "New Directions in Communications Policy" on sale. That is our Free State Foundation book.

With that, our first speaker is Donna Gregg. Donna is a visiting Associate Professor at Catholic University's Columbus School of Law and a Free State Foundation Adjunct Senior Fellow. We just released this morning, and there are copies outside as well, Donna's new paper

on today's subject. I would just point out that Donna served as Chief of the FCC's Media Bureau and also served as Vice President for Legal Affairs for the Corporation of Public Broadcasting.

I'm not going to do any more school affiliations after this, but for Donna, I want to note she is a fellow Duke Law School graduate. Some of you probably know about that basketball tournament that was held just a couple of weeks ago when 98 percent of the country, if not the world, was rooting against our Blue Devils. Anyway, you all know what happened. Right, Donna?

Next is James Taranto. James is the Editor of OpinionJournal.com and also the popular Wall Street Journal "Best of the Web Today" column. It is a terrific column if you have not looked at it. I told James when he came in that I have a brother in Philadelphia who looks at his column every day. He sends me things from it frequently. James is also a member of the Wall Street Journal's Editorial Board.

Our next speaker is going to be Deborah Taylor Tate. All of you know that Debi was formerly, and recently, an FCC Commissioner. She is now a Distinguished Senior Adjunct Fellow at The Free State Foundation. She is also a recent International Telecommunications Union World Telecommunication and Information Society Laureate, which is a very prestigious award.

With that, I want to welcome you all. I have asked Steve to speak for 12 or 13 minutes to begin, and then each of our panelists for six minutes. I am going to enforce those times so that we have a chance, after we go through the initial round, for them to interact with each other and then bring the audience into the discussion.

Steve?

MR. WALDMAN: Thank you very much. I have now attended many, many conferences and meetings like this about the future of media. I was late to the game. There were hundreds of conferences on this topic before I got into the field, which led me to think there was an obvious solution to the problems of journalism -- which is simply to charge a lot for attendance at these conferences, and that would raise more than enough money to fund all the journalism we need.

As foolproof as that idea seemed to me, the Chairman of the Federal Communications Commission, Julius Genachowski, asked that I go a bit further. He asked me to run a project on the "Future of Media" and the information needs of communities. As Randy said, the objective of this review is to assess whether Americans have access to diverse sources of news and information that will enable them to enrich their lives, their community, and our democracy.

Let's first start with a question that seems to be on your mind, which is is it even appropriate for the FCC to be looking at the future of media? One analyst has said the inquiry itself would chill free speech.

Let me start with a pedestrian point, which is what we are working on right now is a report - not a rulemaking. Looking at topics like the health of newspapers doesn't suggest that the Government would regulate newspapers, which it is not allowed to do, and should not be allowed to do. On the other hand, to do a report on the health of news and information media without understanding what is happening with newspapers would be like doing a study on baseball without looking at the role of pitchers.

Secondly, there is an implicit premise that if the FCC looks at the future of the media, that would represent a dramatic new role for Government. In fact, the Government is already very involved in the media industry.

I'm not talking about Ben Franklin getting postal subsidies for the Pennsylvania Gazette a few hundred years ago, although it is true the founders supported public subsidies for the newspaper business. It is also true that the Postal Service still spends hundreds of millions of dollars on postal subsidies for periodicals to this day.

What I am talking about is the large pile of communication policies that have grown over the years, often with bipartisan support. Among a small list of the many ways that the Government affects media, the Government restricts how many television stations a company can own in the country, or within a particular market, and whether a company can own a daily newspaper or TV/radio station in the same area.

The Government decided that the broadcast spectrum should be used to serve local communities, and that in exchange for the right to use the spectrum, each station must operate in the public interest. The FCC decides how spectrum is auctioned for wireless carriers. It requires satellite operators to set aside channels for educational or informational programming. It also allowed municipalities to require that cable TV operators do the same.

It decided that each cable system must carry the signals of those local TV stations that request it. The Government has also prohibited the airing of indecent material on broadcast or radio from 6:00 a.m. to 10:00 p.m., when children are most likely to be watching, and it limited the amount of commercials that may air on TV during children's programming.

Of course, the Government writes non-profit laws, tax laws, bankruptcy laws, all of which may have an effect on the evolution of non-profit media.

Significantly, it set aside what now amounts to billions of dollars of broadcast spectrum for use by non-commercial educational TV and radio stations.

Note I have studiously avoided saying which of these media policies I believe have had a positive effect and which had a negative effect. I'm mentioning these to make a much simpler point, which is that the common question, "Should the Government get involved in the media?" is the wrong question. It already is.

The real question is how much it should be involved, in what way, and toward what end. Not whether Government policies on media should exist, they do, but whether they are wise.

We could assume that policies, some of which were devised before TV existed, will create the right environment for TV's that fit in your pocket. We could assume that policies created before John Glenn orbited the earth will work for a media landscape in which TV shows bounce off satellites and back into our homes. It's possible that all these folks got it right. But it seems unlikely.

In fact, I would say it would probably be governmental malpractice if we were not assessing the new media landscape to make sure that the regulatory structure and other public policies are advancing public goals, such as private investment, competition, innovation, localism, diversity and the public interest.

By the way, as I've said before, and yet which never seems to be mentioned, such review should consider not only adding new policies but also potentially removing existing policies that

might be burdensome, counterproductive, or inhibiting of innovation.

There is something else I want to point out, with the exception of funding for the Corporation for Public Broadcasting, all of the rules that I mentioned have significant effects on the media without direct subsidies from the Government or dictating content on a specific level. So, talk about public policy in this field is not inherently the same thing as talking about subsidies, although subsidies are one of the issues on the table.

I've talked about why I think it's appropriate for us to look at this, and I've talked about at least one reason why I think it's sensible for us to look at this, but there is another important reason.

The press is one of the few institutions that the founding fathers specifically declared to be essential to the functioning of a democracy. They believe that a vigorous independent press would hold leaders accountable and provide citizens the information they need.

As James Madison put it "To the press alone, checkered as it is with abuses," he was a shrewd press critic even then, "the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression."

Now, consider these statistics. Newspaper ad revenue, including online, has dropped 41 percent in just three years. Newspaper spending on reporting and editing is down by one-third since 2000. The number of reporters covering state houses is down by a third since 2003. Staffing at news magazines is half what it was when I worked at Newsweek in the mid-1980s. Network news division resources are likely down by more than half.

While there is tremendous innovation going on online, it is not yet clear that it will be

enough to fill the gap. The Poynter Institute estimated that the drop in newspaper reporting capacity amounted to about \$1.6 billion. They also estimated how much foundations, a really important source of funding for the local news start ups, have put into the system. It actually was \$140 million. \$1.6 billion out, \$140 million in.

Obviously, it's not the dollars that matter, it's whether they lead to less accountability journalism and less civically valuable information for citizens.

If you were reporters covering the Board of Education, will more lousy schools survive? If no one is looking at the courts, will more innocent people be executed or will more violent criminals go free? If the hospitals that serve our veterans treat them as dirt instead of as heroes? How long will such travesties continue if there are not full time professional journalists digging it out? When I had a brief stint in the Federal Government in the early 1990s, I was told don't do anything you wouldn't want to read about in the Washington Post. What happens when Government officials no longer have that fear?

I should say there are many, many aspects of the news and information systems that are doing well. I spent the last dozen years working in the Internet space and I'm dazzled by each day's new innovations, including in the news space, both in the types of news coverage and on citizen participation.

In fact, if you were to take today's newspaper and go through it page by page, and rip the things out that are being done better by the new media and put in another pile the parts that aren't, I'd say the pile that is being done better by the new media would be substantially bigger. Many of those people who have access to high speed Internet or cable TV in fact have access to

a greater diversity of voices than ever before. For those who are well-wired, there are more ways of getting information than ever.

We should also be clear about one thing, which is that diversity in media outlets is not the same thing as there being a vibrant journalistic culture. A study of the media ecosystem in Baltimore by Pew found that on the one hand there were 53 different news outlets. That's an incredible profusion of media, far more than there were 10 or 20 years ago. In that sense, it's the golden age of media. On the other hand, they looked closer at the material and they found that most of it was re-hashing or commenting on stories that had been created by the traditional media, which is a valuable service but it is different.

In fact, of the stories containing new original material, 95 percent of it came from a small number of traditional sources, usually the Baltimore Sun and some of the TV stations. Those sources were doing less than they used to do. The Baltimore Sun produced 32 percent fewer stories in 2009 than it did in 1989, and 73 percent fewer than in 1991.

Our charge is to look at this, look at what's happening in the media landscape and answer a few questions. At the end of the day what should we be worried about? Are there ways in which the media system is not providing citizens with what they need and what the founders believed was essential for democracy? If there are problems, are there public policies that are making it worse? Are there public policies that could make it better?

As of now, we really haven't come to any conclusions, although I admit to a few biases. As a former entrepreneur who built a private media company from scratch, I have a bias toward assuming that the private and non-profit sectors will solve most of the problems we have talked

about. As a former and hopefully future journalist, I believe the first principle is the First Amendment. Anyone that has read my book – thank you for the plug, you should buy Randy’s book, too --.about the birth of religious freedom can tell I'm a Madisonian at heart. I believe in the brilliance of the marketplace of ideas, for religious ideas, but certainly in general.

How are we tackling this very daunting assignment? We're doing interviews. We are reviewing the existing research. We have issued a public notice asking a bunch of questions and soliciting comments. The deadline for those comments, by the way, is May 7. We set up a website, <http://reboot.fcc.gov/futureofmedia/>, where you can submit comments without having to hire a law firm to prepare it for you. We had a workshop on March 4 on commercial media, including the discussion of a very important topic -- what are the public interest obligations of local TV and radio broadcasters? We're having another workshop in April 30 about the future of non-commercial media, at which our star witness, of course, will be Randy May.

The founders recognized that having a healthy, aggressive and independent press was crucially important for democracy. We agree, and we hope that you will help us make sure that the founders' vision remains a reality. Thank you.

MR. MAY: Thank you very much, Steve. That was a great way to get us off the ground.

Donna, I'm going to turn to you next, please.

MS. GREGG: Thank you very much, Randy. I'm really pleased to be here today. It's a great opportunity to get to meet James. I'm always happy to be on a panel with my friend and former colleague, Deborah Tate, and to see a lot of former colleagues and friends that are here today.

I don't know when Randy picked this date whether he had focused on the fact that there is another very important media event that is taking place this very same week. I am referring not to the one that is taking place in Las Vegas, but one that took place in New York.

This past Monday, the 2010 Pulitzer Prize Awards were announced. A Washington Post article prior to the announcement of the prizes and the winners traces the positive influence of the awards and the decision that press pioneer Joseph Pulitzer made in 1904 to establish them.

Not only did the prizes help to legitimize the profession of journalism back then, but over the years they have served as an incentive to excellence, and to help preserve journalistic values in times like we're experiencing now, times of transition and financial distress for the new media.

Pulitzer is described as a visionary. He also had the foresight to establish a mechanism for changing the selection criteria because he anticipated that the media and journalism was going to change. In 1999, online content from newspapers were first made eligible for the public service award in journalism. In 2007, newspaper websites in all categories were eligible for the prize. Last year, 2009, was the first year that online only news and journalism was made eligible for the prize, and this year, there were two historic first's.

First of all, the investigative reporting prize was awarded to Sheri Fink, an online ProPublica journalist. It was an investigation of controversial deaths that occurred in medical centers in New Orleans during Hurricane Katrina. Second, the award for editorial cartooning was awarded to Mark Fiore for Internet-based animated cartoons on the San Francisco Chronicle's website. We have seen how even an old traditional award that has been given for many years, for almost an entire century, has changed with the media. I think that the event that

took place in New York underscores the fact that the future of the media that we're all concerned about and worried about is happening right now.

As the FCC joins a host of others, hundreds as Steve pointed out, conferences and reports and studies and inquiries taking place all over the country within Government and without, in explaining and trying to find out what the problems or the status of media is today and what can be done to make it better in the future, I think it's wonderful that so many people, so many thoughtful, intelligent and well-intentioned people are exploring these questions.

Certainly, I think we can all agree that there is no shortage of intelligence and thoughtfulness and good intentions at the Commission. Also niceness. I'm looking at one of the staffers right now who used to work for me. However, after reading through the 42 questions in the public notice, I have three major concerns about this proceeding, about the purpose, the direction, and yes, the appropriateness, and the possible outcome.

Here's my first concern. After a long private practice career, focusing on representing companies in the media, including news organizations, two stints at the Commission, one at the beginning and one after I discontinued private practice, I view the sheer breadth and scope of the inquiry with some concern. I will say first of all it seems in many respects outside the FCC's jurisdiction, and is definitely outside its core expertise.

Also having been a Media Bureau Chief, I have to ask whether the FCC really has the administrative resources to take on such a vast project, given the scope of the other important responsibilities and backlogs and people needing the FCC's decisions on things, I'm wondering if that will suffer because of the resources being devoted to this inquiry.

Finally, my view of the history of the FCC is that it tends not to do its best job when it's operating outside of its wheel house. That's a minor concern compared to my other concerns.

My second concern is this, the practical considerations notwithstanding, I see the FCC venturing into not just unfamiliar territory, but really heading into a collision course with the First Amendment.

I agree with Randy, and I'm pleased to see that the FCC and Steve do have the First Amendment in mind. It troubles me when I hear people from Government asking things like whether news media or whether news is vibrant or is it diverse enough; is the quality high enough. How much coverage should be devoted to local issues as opposed to national or international issues? How much coverage should be devoted to other issues?

It's one thing for the FCC to think about these things and to explore them and to gather information and write a report. It's another thing for them to make recommendations. Oftentimes, when you deal with administrative agencies, and well intentioned, intelligent, energetic people in Government, when there are recommendations, how far behind is action?

Here's my third concern. The fascination with many of the people who have had conferences and have written reports and at the FCC and people who testified at the FCC's first proceeding, their fascination with this whole concept of public media or public support in one form or another being the source for solving a lot of the issues that appear to be arising as media moves into the future.

There are many problems with any model that involves public media. Having been a veteran, some of the first clients I represented when I started practicing, after I left the FCC on

my first stint, were public broadcasters. I have to confess that I am a public broadcasting junkie. I love National Public Radio. When I have the radio on, invariably the dial is always at the left end, it never goes above 92 unless I want to get sports, traffic or weather from WTOP.

I find that the public broadcasting content, particularly on the radio, is just well-suited for me and I enjoy it. On the other hand, I think there's balancing to be done here. Part of that balancing is public broadcasting was established to cover shortages in the media because there weren't children's program, there wasn't enough news. In some communities, there was no news or information at all, nothing local, nothing even national. I see the need for public broadcasting shrinking, but yet I don't see a corresponding shrinkage in the idea that public support or public media or Government involvement in media is a good thing.

In response to that, a lot of people say well, you can have safeguards. Public broadcasting has been our model but public support for media in public broadcasting does have safeguards. Congress was very persistent over the years from 1967 until now to continually amend the Public Broadcasting Act of 1967 to include a variety of safeguards.

If you look back, even if you just Google it, look back and read some of the history of public broadcasting, I think you'll find that the safeguards are far from perfect. They don't always work. You will find that Congress has never been shy about using the appropriations process to try to influence or express their dislike or like of particular public broadcast program content. The Administration has often used the budget process and also the process of appointing members to the Corporation for Public Broadcasting's governing board, to try, under the guise of objectivity and balance, to have certain views or viewpoints that are favored by a

particular Administration get more air time or get more coverage in public media.

In saying that, I just want to say that I think there are some issues that are still troubling and that need to be viewed very carefully.

I hope as Steve promised, the FCC will continue to keep those considerations in mind, particularly in regard to public media and public broadcast funding as a model for the future of other media.

MR. MAY: Thank you very much. Next, we will hear from James.

MR. TARANTO: Thank you, Randy. Unlike my distinguished fellow panelists, I have no experience or expertise in the area of telecommunications law and policy. I've never worked for the FCC. I do toil in the media, and I write a lot about the media.

I come at this as somewhat of an outsider. As I was thinking about how to prepare for this, I asked myself a question. Why does the FCC exist? I don't mean that as a rhetorical question. It may sound that way.

I actually wanted an answer so I went and looked it up. I'm going to read to you, with your indulgence, Title I, Section 1 of the Telecommunications Act of 1934, which created the agency.

"For the purpose of regulating interstate and foreign commerce in communications by wire and radio so as to make available as far as possible to all of the people of the United States without discrimination on the basis of race, color, religion, national origin or sex, a rapid efficient nationwide and worldwide wire and radio communications service with adequate facilities at reasonable charges; for the purpose of the national defense, for the purpose of

promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies, and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, has hereby created a commission to be known as the 'Federal Communications Commission,' which shall be constituted and hereinafter provided and which will execute and enforce the provisions of this Act."

I read the FCC's public notice about this initiative, in light of the stated purpose of the FCC, and three things struck me.

First of all, some of these questions that are asked are very clearly within the FCC's domain. For example, question number two: "How have the changes in the media landscape affected the delivery of critical information in times of natural disasters, extreme weather or public health emergencies?" No question, that's under the FCC's jurisdiction.

The second point is the legislation from 1934 talks about "without discrimination on the basis of race, color, religion, national origin or sex," but then we have questions like number four: "Are media consumption patterns different in minority communities? How would those differences affect business models for various media platforms?" So on and so forth.

I realize this is not by any means a matter that is unique to the FCC, and I suppose people like me who think that "without discrimination" actually means without discrimination, and not with a purportedly benign pervasive racial consciousness designed to correct past injustices, are fighting a losing battle. But I still adhere to that old fashioned view, so I wanted to register that

objection.

The biggest objection I have, and it has been raised already by the other panelists, is it just seems to me that a lot of this goes beyond the FCC's mandate and way beyond what is appropriate for the Government to consider.

A lot of these questions have to do with things like business models for media organizations, and most particularly with content. There's nothing in the Communications Act of 1934 that I read about the content of communications other than for the purpose of national security and for the purpose of public safety.

It doesn't say anything about holding Government officials accountable, promoting diverse voice and so forth. It's about the means of communications, not the purposes or the content of communication.

Steve talked about the need for a vibrant journalistic culture. I agree there is a need for a vibrant journalistic culture. The way that we assure that is by keeping the Government out of it. That's what the First Amendment is all about.

I appreciate Steve's points about the importance of free speech. I appreciate the language in the document, in the public notice, about doing this all with appropriate respect for free speech. I'm not so sure I am as willing as some of my co-panelists to credit the good intentions of those who run the Government.

I will start out by stipulating that Steve is a great guy. I've known him for a while. I would trust him with my mother's life. If he were doing this for a private organization or university, I would have no objection. I would wish him well and none of these objections

would apply.

Doing it for the Government makes me nervous. Let me read you some quotes from the President of the United States about his attitudes toward freedom of speech and the First Amendment. This is a quote from President Obama in an interview last month with Matt Lauer.

"We now have a pattern of polarization where the political culture gets so wound up, frankly, Matt, it gets spun up partly because of the way the media covers politics these days, on 24/7 news cycle, and the cable chatter and the talk radio and the Internet and the blogs, all of which tend to try to feed the most extreme sides of any issue instead of trying to narrow differences and solve problems. There is something about the political culture here in Washington that is a chronic problem. I haven't solved it yet."

Maybe this is just kind of a prissy high-mindedness the "I haven't solved it yet." The President has a tendency to be a little bit full of himself. One can be censorious without practicing or seeking to practice censorship.

Then there was this meeting. I don't have a quote from this because this was an off-the-record meeting, but I heard accounts of it. The President met with about a dozen journalists, mostly liberal journalists, including such giants in the field as Keith Olbermann, who I guess is an example of the kind of people who try to narrow differences and solve problems.

This is about six months ago. According to accounts that I heard of this meeting, the President personally criticized the Fox News Channel in this course of this meeting. What I'm told he said was, "I don't mind the opinion, they're entitled to their opinions, but what I really don't like is their news reporting."

He was complaining about Fox's coverage of stories like the ACORN scandal, use of the National Endowment for the Arts to promote the President's political agenda, and the Van Jones story, which are stories that Fox had broken and other media had come to very late. The New York Times public editor acknowledged they had been late to the story and they should have been on top of it.

This suggests to me that when the Government is in the business of determining whether the media holds the Government accountable, maybe there is a conflict of interest there.

The third quote I would read to you is from the President's State of the Union. This is his attack on the Supreme Court. "With all due deference to the separation of powers," he begins, that's one of those disclaimers that of course means exactly the opposite. "Last week, the Supreme Court reversed a century of law that I believe will open the flood gates for special interests, including foreign corporations, to spend without limits in our elections. I don't think American elections should be bankrolled by America's most powerful interests or worse, by foreign entities."

This is just sheer demagoguery. First of all, his characterization of the decision, which is *Citizens United v. FEC*, was false. It was not a century of law. It was two precedents, one of which goes back about 20 years and one that goes back to 2003. It didn't actually open the flood gates to corporate investment. It said the First Amendment applies to corporations as well as to individuals and to unincorporated organizations, and it left in place the complete ban on foreign donations to campaigns.

What is really troubling about this is the position of the dissenters in this case, it was a 5-

4 case, including President Obama's appointee, Justice Sotomayor, is that corporations don't have First Amendment rights because the founders didn't know about modern corporations and therefore the First Amendment doesn't protect corporations.

The Government can regulate core political speech when it's engaged in by corporations. I work for a corporation. Almost every employed journalist in America works for a corporation. We were not affected by the law that the Court overturned because it had an exemption for media corporations. This was a statutory exemption. It was not a Constitutional protection.

Let's say Justice Kennedy or Scalia leaves the Bench. They will both be 80 by the time Barack Obama serves a second term if he's re-elected. This could conceivably be overturned. This would at least, I think, raise the possibility of the direct regulation of the press, of the content of the media.

Even if the Court somehow made this distinction between media corporations and other corporations, which it is hard for me to understand how if the founding fathers didn't anticipate corporations, they anticipated the existence of media corporations and somehow managed to protect them, but whatever. You still are left with the issue of the Courts then deciding what constitutes a media corporation.

It seems to me there is this line of argument on whose side the current Administration is on that opens the door to all sorts of regulations. That's why it makes me very uneasy for the Government to look even as a seemingly benign study like this, what the media ought to be doing, what a vibrant journalistic culture ought to look like.

I would be the first to concede that I have my own political biases here. Perhaps I'm

being uncharitable to President Obama. Not everyone is going to agree with me. If you think I'm being unfair to President Obama, step back and think how you would feel about the Government undertaking this sort of effort if George W. Bush was still President, or let's say if Sarah Palin was President. Perhaps then you can understand why I'm uneasy about this.

Thank you.

MR. MAY: Thank you very much. Leave it to a non-lawyer, or one who claims to be a non-lawyer, to read that Communications Act.

MR. TARANTO: It's on the Internet.

MR. MAY: I was afraid you were going to filibuster there for a minute. Actually, you and the D.C. Circuit may be the one only ones who ever read the statute. That was good. Thank you very much.

Now we are going to turn to Deborah Tate to wrap up the initial presentations.

MS. TATE: Thank you so much, Randy. I feel like I should give my six minutes to James. That was so entertaining and actually got our blood going here.

I'm usually the one I feel like that Randy imports for the outside the beltway perspective now that I am happily back in Nashville, Tennessee, although I don't spend an awful lot of time there.

It was wonderful to have somebody also who had a non-inside the beltway perspective. Of course, I hope that you all remember I was frequently heard to say I also hope I can inject some common sense into these discussions.

The first thing I want to do, and this really is with all humility and sincerity, is to thank

Steve for his public service, because it's hard to sit in that seat. I know. I've done it many, many times, and been the one that everybody is throwing arrows at. Also, to take off time from a very lucrative career in the new media and come inside and spend some time in Government. Thank you.

I'm also glad to hear, and I know everybody in here can have a big sigh of relief and say, oh, this is just a report, it's just going to get filed on a bookcase up at the FCC. However, a lot of us know that's probably not the case, and somehow, Government tends to start out with an innocuous report and it seems to creep into possible regulatory action and even more enforcement than perhaps you envisioned.

It's interesting that the number one issue that people still talk to me about wherever I go across the country or in the grocery store in Nashville is that people are still concerned about their kids and what they are seeing on television, and now it's going on in the new media, and why can't the Government do more.

Eighty-five percent of parents are concerned about the risk to their kids on-line, more than any other media. And also, there have been several studies about the total disconnect between what parents think their kids are doing, seeing and watching and what their kids actually are doing, seeing and watching.

That doesn't necessarily mean we necessarily need regulations over all of that, so I'll do a very quick ad: I'm now on the Board of Common Sense Media. I know there have been a lot of filings that discuss curriculum and empowering both children and parents. I am certainly a big advocate for that.

I just returned from the Texas Public Policy Institute in Austin where we were discussing the *Comcast* decision that came out last week, and I actually got to be with my former colleague, Commissioner McDowell, so we had a great time there.

They are inextricably linked in so many different ways. They both have to do with jurisdiction and policy, and in which direction the FCC plans to go, and the pathways for both the FCC and what the FCC plans to do for many of the industries.

When I first arrived at the FCC, my speeches used to talk about convergence all the time, and how quickly in five years convergence sounds so passé because it just happened almost overnight. We all know our cell phones and our cars have become movie theaters, and massive amounts of data, in fact, our computers are the size of cell phones now.

It is absolutely mind boggling in a way, this monolithic, multi-channel, multi-platform media ecosystem environment in which we live, work, and can be entertained, is around 24/7. Not to be disrespectful, but the question could just be answered with a word and that is "yes." Yes, there is an explosion of information, news and information that we as consumers can get 24/7.

Our super-sized intake of media, I like to say, is like our super-sized meals. Perhaps we don't need more, but perhaps we actually have too much, or we consume too much. Do we also need to be talking about other issues, and as you all know, I spoke a lot about obesity and we had a national taskforce on obesity, and many of you all who are part of corporations were very helpful. And we are very much concerned not only about the impact on our children, but the billions of dollars that obesity costs this country every year.

Indeed, you can talk about subjects and you can make a difference at the FCC without any kind of regulation. Maybe the FCC, or maybe other parts of our Government, might want to take a look at piracy that is costing our content producers over \$58 billion, to our economy; obviously, it's one of the top exports from Music City, Nashville, as well as America. The loss of over 375 jobs in this downturn in a high time of unemployment is not a positive.

Maybe we ought to be talking about some of these issues, or for instance, spending some time on cybersecurity and increasing global concerns every single day, not just here but around the whole world, so that we could allow our networks and corporations to better protect their networks as well as all of our information.

This is also a discussion about how Government makes decisions, about how to use their time, how to use hours of employees' time, and in the end, our taxpayer dollars. That ought to matter to every single person in America, whether or not they are involved in this discussion or not.

It is interesting, of course, this week was NAB. I remember going to my very first NAB convention and walking in and seeing of the most gigantic 180 inch television -- I don't even know what they are up to any more -- and looking at the person who was showing it to me and saying do you think that will just be like a computer screen one day and we will just be able to access whatever we want to? And this person was absolutely horrified, and said "Are you kidding? No. There will always be a television."

Look at what has just happened. It's unbelievable. I didn't think of that op-ed, however. So sorry I didn't do that.

What I was going to mention is that most of you all who are attorneys remember that when you walk into my office, the first thing I said was let's get out the Act and let's actually read the subsection and the provision that you're talking about. I'm very glad that James brought up the statute, because I think that's very important and something that we need to do.

Each one of those 42 questions, some of which have seven or eight subset questions, maybe we need to get out the Telecom Act and ask do these questions fit within the FCC's jurisdiction.

I have a few other concerns that also are similar to some that my friend and colleague, Donna Gregg brought up. And that is the fact that all the public interest questions that are being asked, public interest obligations have been around -- they date back to the Radio Act of 1927 in addition to the 1934 Act, so we have had this notion that has basically been one of the cornerstones of broadcasting in America.

I guess one of the problems here is that the public interest proponents, at least some of those I read in the docket, are saying their values, or their objectives, or what is in their opinion, is what we should adopt as what is consistent with the needs and desires of the public.

It was amazing after traveling around the country, and we had media ownership hearings all over the country, and didn't they just conclude? I can't believe you all are back at that again, but some of this obviously fits within that review, and the review is required by law.

Just to give you one statistic, how much public service have the broadcasters done? On an annual basis, it's over \$10 billion. Nearly three-quarters of Americans, 73 percent, had a favorable opinion of local television news.

There have been new obligations that were added on as necessary. Some of those obviously include EAS, closed captioning, EEO, outreach and reporting about digital television, and of course, multi-stream including three hours of children's programming. Those obligations have changed. It's not like they have just been static and no one has ever looked at those again.

Something that was very interesting about all this discussion about kind of civics, and that is what does the marketplace really look like? We have a stunning array, as we have all talked about, of media inputs and options. And I just wanted to bring up a little bit under the civic concept, and that is that C-SPAN provides over 8,438 hours of programming, 2,700 hours of House and Senate floor activity, 1,200 hours of Senate committee hearings -- those are always so exciting. They also have 23 years of searchable content. Was this a Government mandate? No. C-SPAN and now all of its brother and sister C-SPANs were created, as you all know, through a license fee that was paid in by non-profits and by the cable and satellite companies, totaling over \$922 million invested.

I thought it was interesting when Randy brought up Ellen Goodman. I respect her as well. I thought it was very interesting. This is a quote of hers. "Today, the scarce resource is attention, not programming."

The other thing is, just look at the economy. Part of this goes back to the whole discussion about piracy. It also is an interesting timing for Government to get involved when there is such a down turn in our economy.

Usually, the Government gets involved when there has been an emergency, an incident, or there has been some specific harm to consumers. Now is a time when many of the traditional

media providers are absolutely fighting for their very existence. Audiences, as we have heard, are fragmenting, and advertisers are fleeing to other platforms.

I am a little concerned about some of the ideas that are in the docket could actually make that economic viability even worse: these public interest vouchers, broadcast spectrum taxes, forcing some kind of tax on commercial advertising or electronics, or whatever.

Of course, back to the original concern and that is, what is the appropriate role for our Government. I know my time is really up. We can get into this more.

I think the kidvid settlement, and some of you were very much involved in that, is a really good example of the FCC being able to bring the industry together and actually come up with some really strong and good proposals that had to do with new media and moving content to the Internet that still protect our children without hard Government regulations.

Thank you.

MR. MAY: Thank you very much, Debi. I appreciate it.

Remember at the beginning when I told you that but for moving this into the First Amendment room, that I would have put two cookies in your boxes, I said that, but the real truth is I knew Deborah was going to talk about obesity probably.

MR. TARANTO: Do I understand you to be saying the FCC actually had an initiative to study obesity?

MS. TATE: Along with several of the Senators; yes.

MR. MAY: Let's defer that for a moment. We can get back to that.

MR. TARANTO: Wait, why didn't you just ban television?

MR. MAY: Anyway, that's why there was only one cookie.

Here's what we are going to do now. I want to go back to Steve and have Steve take maybe up to five minutes or so, if he would like, so we can get a discussion going. You can respond to anything that has been said.

One thing that maybe in the context of doing that, if you could respond to, if you would, if you have an opinion, I mentioned the curator function that Ellen talked about, and curating content, and for the public media serving as a filter to reduce this information overload or abundance.

That to me, in light of the First Amendment concerns we have talked about, is particularly troublesome. So if you are able to talk about how that might be done, the filtering process, if it were done. I know you're not proposing anything right here today, but how that would work out consistent with the First Amendment, I'd be interested in hearing that as well. Go ahead.

MR. WALDMAN: Thank you. First, if President Bush or President McCain had asked me to do this assignment, I would have said yes, as long as the charge was the same as the charge that Chairman Genachowski gave me, which was very open-ended, and I haven't covered Washington. I said no one ever creates a commission without actually knowing what you want it to say at the end. So I said "what is it you want this to say at the end?" He said "I really don't have anything I want you to say, I just want you to help us figure out what we should think about this." If President Bush or McCain had given me that charge, I would have happily accepted because I think the potential stakes, if there is a serious problem, are serious and it's worth

looking at.

In terms of the jurisdiction issues, I guess I really would just make the distinction between what the FCC has the jurisdiction to regulate and what the FCC has the jurisdiction to think about. I can promise you that this report will not recommend that the FCC take regulatory action in areas that it doesn't have authority to. We may make recommendations for other people to do stuff, and those recommendations will have the power of the paper they're written on, the ideas themselves. People can listen to them or not.

I just don't think that it is possible to get a handle on the situation, or to come up with reasonable recommendations on public policy without taking a pretty broad look.

If I were writing a magazine article on this topic, these are the questions I would ask. If I were writing a book on the topic, these are the questions I would ask. If I were writing it for a private group, these are the questions I would ask, because these are the questions I would want to know the answers to -- to help have a full informed opinion.

It's safe to say that for the Government to deprive itself of certain ideas as it is making its own study, it seems like it would be pretty much destined to lead to a poor study.

In terms of the inherent collision course with the First Amendment, I actually share your concern. I think any media policy has potential, when abused, to run afoul of the First Amendment. I don't think it's inevitable. I don't think it always happens.

You have all sorts of Government rules and regulations that we have talked about that have not, so I don't think it is inevitable. But I think it's enough of an issue that you should be sensitive to it.

We will just have to check back in to see whether you see if we have hit it. All I can say is I've been working at the FCC for four months. I worked as a journalist for 30 years. It's going to take at least a couple more months before I lose my commitment to the free press.

Let's talk a little bit about public media. By the way, it's interesting that we are using the term "public media" now, because we used to say "public broadcasting." I think that's reflecting the changing world and the idea of questions to be asked, like is a non-profit website public media or is public media really only limited to TV stations or radio stations? I think those are appropriate questions that are being asked right now.

I really didn't read Ellen's paper the same way you did, it might surprise you to hear. The section that's talking about curation, she's essentially talking about what editors do. Editors do filter things. That's what editors do among other things. Commercial editors do that. Public TV editors do it. The editors of the NewsHour curate and filter.

That part of it I find actually non-controversial. What I do think is that the idea that there would be a Government role in any direct way in doing the filtering, I would disagree with. I don't actually think that's what she was advocating. But if she was, I don't agree with that.

On the other hand, the Federal Government funds are part of the funds for the NewsHour on PBS. That seems to be an example where the firewall or the funding system that is set up or enabled NewsHour or NPR, some of the shows Ms. Gregg likes to listen to, to get Government money and nonetheless not be under the thumb of the Government.

I think that if public media is going to get more into local news and information, which is something that is being talked about, that the firewalls actually have to be improved and

increased, because if we have the potential for politicization around Big Bird, you can only imagine how much worse it could be if you're talking about somehow getting more into doing news, so I actually would love if we have time to hear your thoughts.

I think we invited you to our panel but you had a conflict, so here's my chance to get some ideas on how you would strengthen the Corporation for Public Broadcasting, the firewalls, from what they are now.

In general, I think public media is absolutely part of the discussion right now. That's why we are having the whole hearing on it. Is it serving the public well now? Are there things that could be done to make it work better? Should CPB be allowed to give grants to non-profit websites?

Those are all, I think, legitimate questions. Again, as I said earlier, the question is not whether the Government should get into this. They already are. It's whether or not we should structure rules in a wise way.

MR. MAY: You look so young to have been a journalist for 30 years.

MR. WALDMAN: I'm counting my junior high newspaper.

MR. MAY: I figured something like that.

MR. WALDMAN: JV Varsity team.

MR. MAY: Commissioner Tate wants to say something, which is good, and Donna, if you could respond briefly to Steve's question, that would be useful to get on the record. Then I'm going to turn to questions from the audience so we can get those in.

Jonathan, I'm glad you're here. If you have a question, I'll let you ask the first one, like

that lady that sits up in the front row at the White House.

SPEAKER: I've always thought of Jonathan Make as the Helen Thomas of communications.

MR. MAY: Debi, why don't you make a quick remark, and then Donna.

MS. TATE: This goes back to curator, and it's interesting because I had circled this quote, too. It's not really fair to ask you to respond to what exactly Ellen means. It's not just curate content, serving both as a filter to reduce information, it's also a megaphone to give voice to the unheard.

Does that mean the marketplace decides that very liberal talk radio isn't going to be supported, and so now somehow there is going to be public support for something that the marketplace doesn't support?

MR. WALDMAN: I'm not yet an expert as much as I should be on public media. My understanding is it has always been the case that public broadcasting has had part of its mission as outreach and programming in areas where they think it is being underserved. Is that not right?

MS. TATE: Maybe. Donna can shed some light.

MS. GREGG: Some of the underserved part of public broadcasting has been just serving geographic areas of the country that have no broadcast service whatsoever, the remote areas north of the Arctic Circle in Alaska, the Indian reservations, and so forth. Some of it is just bringing a distribution medium to those kinds of communities.

I remember the wonderful stories about people in Alaska who used the local public radio station to let people know that their family member who was coming home by dog sled in a

snowstorm had checked in somewhere and that sort of thing.

I do think children's television is another area where public broadcasting fills the need that had not been served by the marketplace, but that's changed. There is a lot of children's television and I guess public broadcasting got a lot of it started with the research and development they did on Sesame Street.

That just simply doesn't exist anymore. I think taking the risks that are inherent in public funding or public support that touches content, the risks are not justified by a need, in my view.

One other thing I would like to mention is that even though the Lehrer NewsHour has survived and has been by and large objective and gives balanced viewpoints, they have not been immune from pressure from both sides of the aisle.

MR. MAY: Now we are going to turn to audience questions, and we will keep mixing it up. First, I'm going to call on Jonathan.

MR. MAKE: Jonathan Make with Communications Daily. A two-parter. First, for Steve, second for Donna and Debi.

You have been doing the inquiry now for a couple of months. Can you tell us a little bit more about how its conclusions, without knowing what they will be, are going to relate to the review?

Then the question for Debi and Donna is: what did both of you learn from your time at the Commission that you think can be applied now, process-wise, not outcome-wise, but process wise to how the Commission can both efficiently and exhaustively conduct the current review?

MR. WALDMAN: As you know, the FCC is required by Congress to review its

ownership rules every four years, and we are in the season right now, and that's an ongoing proceeding that existed before I got here.

Basically, we're just coordinating. The ownership review has to consider a variety of different factors beyond what we are looking at. We will look at one part of the elephant, the part that relates to local news and information, which is something they always look at, but they will look at other factors as well.

We are just going to coordinate the timing. It's not likely it's going to be perfectly synchronized, so one of us will go first. If we go first, it will be in a kind of advisory form because their proceeding is the one that's dispositive.

MR. MAY: Donna or Debi?

MS. TATE: I couldn't even begin, and we don't even have enough hours, Jonathan, to talk about the process. Most everybody in the room is familiar with it.

I think what we can say is that by not moving farther toward relaxing some of the ownership rules, we watched the negative impact on corporations and businesses and the health of local newspapers in this country, and that was sad both as a Commissioner and certainly as a citizen.

I will say that I think getting outside the beltway is really great. I think the Commission should continue and has continued to do that. I think that is very important. I think it is sad that many of the places at those hearings are taken up by people who are bused in from out of town rather than hearing from the local citizens. I think that's why the FCC goes out on the road. I would hope they would keep that in mind.

I just wanted to go back to something and say there is a docket regarding spectrum and inventory and infrastructure needs. There are multiple public safety dockets going on. We have dealt a lot with disabilities and close captioning.

There are so many dockets that are already open about so many of these 42 questions.

MS. GREGG: I guess one of the things that I would add is, I would like to see -- it seems there was an assumption or predisposition of asking on the FCC's part, what else can we do. What can we do more of?

I think I'd like to see people look with more seriousness and purpose as to what we have here that we can get rid of. That would help, to just look at it from a slightly different perspective.

Amending existing rules where it is warranted is something the FCC definitely has jurisdiction to do. I think the media ownership/cross ownership area, especially the ones involving newspapers and broadcasting, depending on what happens now with that proceeding, would be an area that the Commission should continue to look at.

I would say look at what is there that can be removed, to let the marketplace function more effectively than always just looking at what else can we add, what else can we regulate, what else can we do.

MR. MAY: Mark?

MR. HYMAN: Thank you, Randy. Mark Hyman, Sinclair Broadcast Group. Two observations. I would appreciate it if Mr. Taranto would respond to the first and Mr. Waldman to the second.

First observation. I just want to give you an example of concerns when the Government gets involved in determining what is the right kind of media. Let me give you an example of concern.

The Department of the Navy operates the Navy/Marine Corps Internet, NMCI, and the 400,000 military and civilians of the Navy and Marine Corps access the Internet on military facilities only using NMCI, which requires a Smartcard to access.

Everything available on the Internet is available to the members with a couple of exceptions, stock trading sites, eBay, dating sites, the sorts of things that we don't want our military spending their time on.

As of today, the Department of the Navy has blocked a single news site, commencing today -- FoxNews.com. It has been decided by the Department of the Navy that it is deemed inappropriate for members of the military to access FoxNews.com. You can still go to Democraticunderground.com, you can still go to the DailyKos, but not FoxNews.com.

One would think that perhaps the Government's role in determining what is appropriate and not appropriate for the public to use may not be a good approach to a free media. That's the first one.

Second observation. I would suggest that most people if not everybody in this room would run fleeing if we simply, globally, replaced the word "media" in this study, Future of the Media, with a government study of the future of religion.

Do we have a vibrant religious culture? Do we want to protect traditional faiths? Do we want to provide a megaphone to those less-listened to faith religions to give them an opportunity

to be heard?

I'd appreciate it if Mr. Waldman could comment on that.

MR. MAY: James?

MR. TARANTO: Quickly, in response to the second point. I had the same thought. I didn't bring it up. It occurred to me as I was preparing for this.

I saw the Fox story this morning. I actually got a FoxNews breaking alert in my e-mail box saying U.S. Navy blocks FoxNews.com or U.S. Navy denied access to FoxNews.com, which was a little hard to decipher.

I looked at the story. I think it is an apt example, an example where I suspect this policy is not going to remain in place because it's going to be embarrassing to the Navy.

It sounds like one of two things. Either somebody who was in a position of authority probably shouldn't have had made this decision for invidious reasons and it will be quickly overturned, or it was just a bureaucratic screw up.

I should add for the Government to exercise a certain amount -- for military service to exercise control over what its servicemen can see -- is an issue of military discipline. There is room for some more Government involvement, the same rules wouldn't apply as if they were censoring what you and I can see in our civilian lives. That said, it does seem to be pretty egregious, either egregiously wrong or just egregiously foolish.

MR. MAY: Steve, you can comment on the first one, too, if you would like. I forget the second question. Go ahead.

MR. WALDMAN: The second question is about how I would feel if we were talking

about encouraging religious activities. Of course, we did have a very aggressive governmental effort to encourage religious activities, in President Bush's faith-based initiative.

The religious community was divided over that. Some like the Baptists were opposed to it on the grounds that that kind of an intrusion was, although well intentioned, inevitably going to lead to problems, but then others supported it.

I guess I come down where Madison did, which is that Madison was faced with both of these issues. He basically --there are two parts. Can the Government restrain an activity, religion, press, and secondly, can the Government help an activity, religion or press. Those are two different things.

In the case of religion, Madison said of course, you can't restrain it, and he went as far as to say that the Government also shouldn't help religion. This is controversial. This is a topic of my book, that Madison and Jefferson were on one side of that argument, and Washington and Adams were on another side.

Madison believed that even well-intended efforts to help religion would back fire.

However, when it came to the press, he said yes, of course, you shouldn't have restraints, just as with religion. He supported the main form of Government help for the press back then, which was the postal subsidy system.

The postal subsidy system is an interesting one because it was a massive subsidy of the press. It was because the founding fathers believed that the press' health would be greater if there wasn't just lack of censorship but actual affirmative forms of assistance. It is also instructive because the way that they did it was in an entirely viewpoint neutral way.

They didn't have postal subsidies just for Federalist newspapers or postal subsidies just for Jeffersonian newspapers. It was for everyone. That was just the deal. If you were Adams, you had to put up with the knowledge that tax dollars were going to subsidize Jefferson's newspaper.

I'm not saying there is necessarily an analog today for what kind of form of assistance to the press is analogous to the 18th Century postal subsidies, but the principle that they followed -- if there is assistance from the Government, that it needs to be viewpoint neutral -- I think it worked in their time, and it's just an example that Government involvement in this, whether it's regulations about indecency for kids, which is a Government intervention, I don't know whether you support that or not, it's a Government intervention. It's difficult, but it's possible.

The other thing I wanted to mention is we talked a little bit before about the public interest obligations for broadcasters. This is a really tough issue because the public interest obligations, the idea that there is a public interest obligation for broadcasters is an idea most aggressively espoused right now by the broadcasters.

They argue that they have a public interest obligation, both TV stations and radio stations. There is always debate about what that means. We have been arguing about what that means as long as the phrase has been in circulation.

They are the ones who do that, and they do that because they know they had a special deal because their spectrum was not gained through an auction, or through purchasing. It was given to them as an industry. There was a *quid pro quo*.

The broadcasting industry, as far as I know, and it would be very interesting if you were

to make this case to see what the reaction would be, has not taken the position that Government should get out of the business of broadcasting and there should be no public interest obligation. At the end of each license period, the license should go back up for auction, and that is how we should determine the outcome. I think you probably have a sense of how that would go over. That would be a free market approach to broadcast.

As of now, we have a situation where there is a public interest obligation stipulated. It's been around forever. It's something that the broadcasters advocate for. Yet, it's not really clear to anyone what it actually means or how it can be defined or how it can be enforced. That is a question that we are looking at.

MR. MAY: I think the best answer to what the public interest means, Steve, is that it means whatever three of the five Commissioners say it means on any given day. That's what it means.

I'm going to ask James a question that I have, but if anyone else has a question, you can step to the microphone now.

James, the Wall Street Journal is commonly cited as an enterprise newspaper that has been more successful than most in the on-line world and been able to monetize, I guess is the term, the effort in order to support the journalistic endeavor that you are known for. You were early on involved in the creation of that effort, which I think has been successful. But not all newspapers have done what you have done. I guess most of them haven't.

When you look at where we are right now in this transition, in this digital environment where we are undergoing these changes, what are your thoughts based on what you have learned

about the future and how worried are you? Let's assume, as I said initially, that we all ought to be worried if accountability journalism was to go away. Let's assume that, how worried are you that it is? Are we just in sort of a transitional point here?

MR. TARANTO: I'm not worried that journalism is going to go away. I think it will do fine. Clearly, the traditional daily newspaper is diminishing and really has been diminishing for what, at least 60 years. Newspapers were closing down. New York had how many newspapers in the middle of the last century? It was down to three or four a few years ago, depending on whether you count the Wall Street Journal as a New York newspaper or not.

The reason that the Journal has been successful here where nobody else has, I think, is one, we have a unique product and a product people are willing to pay for. Being a business newspaper helps because people see the Journal as a business expense rather than a discretionary expense.

The other thing is we have charged all along -- I actually joined the paper on the print side in 1996, but the reason I joined was because my colleague, Jason Riley, who had been editing op-eds, was moved over to be the first editor -- I guess the title then was opinion interactive editor or interactive editor, which basically meant he was responsive for getting our stuff up online.

My career with the Journal has almost precisely matched the existence of WSJ.com, and then I launched the vertical site, OpinionJournal.com, which was brought in.

The fact that we have always charged, so there hasn't been this expectation you would be able to get everything free, also works to our advantage. I think if the New York Times were to

start charging tomorrow, and I guess they are talking about figuring out a way to do that, it would leave a lot of people unhappy because people are used to getting it for free. When you are used to getting something free, it doesn't necessarily feel like it's worth paying for, even if it would be worth paying for if you had started out that way.

Of course, there is also a tension here between the desire to get your news, your ideas and so forth out there, and the need to make money. When the Times tried its experiment with Times Select, where they charged for their op-ed columnists, I thought it was great because it meant I didn't have to read Paul Krugman and Maureen Dowd.

Paul Krugman and Maureen Dowd must have absolutely hated it because it meant nobody was reading them. A couple of years went by when hardly anyone ever talked about them. You have to be careful. There is more than money that goes into the strategic decision about what to charge for and what to give away.

MR. ARLEN: Cary Arlen from Arlen Communications.

MR. ARLEN: Donna, you were really the only one that referred to the FTC journalism workshop in your paper. Is there any coordination at all with that FTC program? More substantively, media. What the hell does it mean? User-generated content? Is citizen journalism and all kinds of other non-traditional media going to be part of the future of media?

MR. MAY: Steve, why don't you start and anyone else that wants to say anything, we will just go down the line.

MR. WALDMAN: With the FTC, there is a bit of light coordination, but I guess I would say this has been a natural sorting out just by area of expertise and interest. The FTC is focusing

a bit more on issues of intellectual property, tax law, corporate law, antitrust, things like that.

The FCC has tended to be focused a bit more on things like broadcast, cable, satellite, public media, things like that that are little bit more in our central focus.

It's actually working out. They should complement each other pretty well. What was the second question? I'm sorry.

MR. ARLEN: Citizen journalism, blogging, the real future of media.

MR. WALDMAN: I think they are journalists. There are a lot of different types of journalism. I think citizen journalism is a valuable type of journalism. It's not the only type we need. I spent 12 years running a website. I left the traditional media because I felt there were greater creative opportunities on the online side.

As I said earlier, I would say not only are there areas where the new media are doing as well as the traditional media, but there are many areas where they are doing far better.

It's not impossible that if these problems that I think potentially exist with the sort of cynically-oriented accountability journalism, sometimes people will refer to it as "broccoli journalism," if those turn out well through whatever means, you could end up with a situation where this is the best age in American history in terms of media.

The new media is adding elements that traditional media was never capable of doing before. There are all sorts of examples. Just to take two examples. Hyper-local coverage. Even the best metropolitan city daily newspaper or the best local TV station could not get granular enough to know about your high school or your neighborhood in the way this world of hyper-local journalism and blogs and citizen journalism is able to do.

Another example is public events, a speech or events that a public official wants you to see. In the olden days, like a year ago, you would read the article and the reporter would pick the quotes they felt were most interesting, and then the newspaper might, if it was a big speech, it might do an excerpt of six or seven paragraphs from the speech.

Now, you can go watch the speech. You can listen to the speech. You can read the whole transcript. Within seconds, you can have way more variety of commentary on that speech than you would have gotten in the newspaper. And oh, by the way, it happens that day instead of the next day. Those are just two examples where I think there have been tremendous improvements from the evolution or revolutions we have seen.

MR. MAY: When it comes time to edit the transcript, Steve, someone is going to get to the point where you said "broccoli journalism," and they are going to call me and say what is that word? What does that mean? You can tell me off line, if you want to.

MR. WALDMAN: I can tell you in public, if you like. It's not dirty.

MS. TATE: And healthy.

MR. WALDMAN: And healthy. That's part of it. It's like journalism that is good for you, but may not be the first thing you demand, or the first thing you ask for or look at. Like municipal government. It's not the first thing anyone wants to look at, and yet we kind of think it's a good thing if someone is covering municipal government.

MR. MAY: Sounds like a matter of taste. James?

MR. TARANTO: This suggests to me an analogy for thinking about the question of what is journalism. Journalism is a little like cooking. It is something you do. It's not necessarily

something you are.

I cook a lot of my own meals. I will sometimes cook for friends. I am told I'm a good cook. I'm not a professional cook. You don't have to be a professional cook to cook food.

Of course, don't use this analogy when thinking about regulation because obviously professional cooks and commercial restaurants are much more heavily regulated than the press can be under the First Amendment.

MR. WALDMAN: Do you think there is such a thing as a professional journalist?

MR. TARANTO: Sure. I get paid to do this. It's not professional in the sense of a credentialed professional like a doctor or a lawyer. There are certainly people who do this as a profession.

MS. TATE: Is anybody here from the School of Journalism? I think it is very interesting. I have kind of been part of discussions that are ongoing. They are changing their names. They are trying to figure out what they are going to call themselves. They are also having discussions about well, are bloggers journalists. Would we give a blogger a degree, if that's all they want to do? It's very interesting. This is all across our own society.

MR. MAY: Yes. I think there is a new University of Tennessee School of "Broccoli Journalism" that is getting started up.

MR. MAY: We are getting close to when I want to wrap up. You have been a terrific audience here. What we are going to do, there are two people standing, so we will have those two questions and answers, and then I'm going to allow the panelists just to take one minute when we get through with these questions and just leave you with any parting thoughts.

John?

MR. HANE: Randy, can I ask the audience a question?

MR. MAY: First, identify yourself.

MR. HANE: I'm John Hane with Pillsbury.

MR. MAY: They can't all give you an answer for sure.

MR. HANE: A hand raise. Does anybody in the room believe that broadcasters would make more money if they were completely deregulated with respect to ownership and public interest obligations? Everybody who thinks broadcasters would make more money in that environment, raise their hands. I thought actually everybody would raise their hands. A lot of people think broadcasters, if they were deregulated, would make no more money.

MS. TATE: As opposed to what? Are you trying to say no advertising?

MR. HANE: If the FCC completely deregulated, said we are not going to regulate broadcasting any more, all the rules are gone, the technical rules, the ownership rules.

MR. MAY: If you have a question to the panelists, one pointed question, and we are going to make these pointed because we are getting ready to wrap up.

MR. HANE: My question is to Steve. Steve, is there a realistic probability that your proceeding will lead to a recommendation that broadcast ownership be deregulated, and not just crossownership with newspapers, but multiple ownership, the local and national ownership rules?

MR. WALDMAN: I can't put probabilities on it. That is one part of this report that isn't my decision alone. There are a lot of other people at the agency working on it.

I will say it is definitely an issue that we are looking at carefully. We have heard very strong arguments from both sides, actually. But we have heard very strong arguments that on the issue that is of primary concern to this project, that deregulating the cross-ownership rules in particular, I think, I would say is the one that people say would improve the availability of news in different communities.

But, there are people that argue the opposite, and basically say look at what happened to news on the radio dial when radio was deregulated and concentrated with Clear Channel and others.

As often with these things, there are examples that prove both points. In fact, the next ownership hearing we are having is in Tampa, which is Monday, which I will be co-chairing with the ownership folks, and is about cross-ownership and what kind of effect it might have on news and journalism.

MR. HANE: I'm wondering if newspaper journalism would be improved if the FCC required there be eight daily newspapers in every market.

MR. WALDMAN: There would be more of them. Are you suggesting we should require there be only one TV station in each market?

MR. HANE: Yes, and give it all to (Inaudible.)

MR. MAY: Steve, and of course I understand you are not at the point where you are picking up pen to paper and won't be for a while, and I think you did frame the issue with both sides.

If we want to be candid here, and be more specific for the audience, you have someone

like, say Commissioner Copps, he believes there is too much concentration of control. That's even a word we haven't used today in those terms, "concentration of control" in the media. He says it over and over again. He's very worried about it.

Whereas, others, and we have been using Ellen, but she was talking about now there is an abundance and the need for filters. Myself, having started back in the 1970s, it seems like we really do live in an age of abundance, and we shouldn't worry about concentration.

Do you have at this point -- having done journalism since the ninth grade, what is your view of whether we ought to be worried about concentration of control or about doing things that change the regulatory structure that might provide more health and vitality to the existing regulatees?

MR. WALDMAN: I'll address that in a general way. I think one of the things that's confusing about this area is that traditionally, the way that policymakers in the media space would think about whether things were going well was whether or not there was diversity of viewpoints. That was kind of the metric that was commonly used or competition between viewpoints.

What we have here is a little bit of an odd situation where you simultaneously have an incredible abundance of viewpoints, diversity of viewpoints, and the same forces that are causing that, which we didn't even get into, which is the unbundling of content from advertising, has caused the breakdown of traditional media business models and to less and less journalists.

You have both an abundance of outlets and potentially a scarcity of inputs. You have to kind of break it apart in a slightly different way.

I think the study I mentioned in Baltimore showed that same thing. If you ask is there a diversity of viewpoints, it's never been more diverse. Citizens of Baltimore have more choices, more ways of expressing themselves, but also ways of gathering opinions and information than they ever had before, and at the same time, the actual institutions that are doing this one type of journalism are shrinking. Both things can be true at the same time.

MR. MAY: Last question before the closing brief remarks.

MR. SHANKER: Thank you. I'll try to make it brief and good. Jason Shanker with Strapview Advisors. My question is actually related to that area, so I'll adapt it a little bit, which is, I think whenever you hear about the sort of handwringing or breathless concern about the reduction in journalism, and in fact the lower diversity of journalistic sources, 100 to 200 years ago, inspired the need for public funding to close those gaps, it seems like both of those things are decreasingly relevant to today when the marginal costs, the incremental costs of broadcasting, either live video or a daily podcast or newsletter that can reach 97 percent of the country at zero incremental cost, it feels like a lot of these efforts to micro-manage the media that's available are grossly outdated, and you don't need that any more.

We have now the most democratic access to journalism and news that we have ever had, not only that this country has ever had, but any country has ever had.

The example that comes to mind is the 60 Minutes memos that Dan Rather put out, the supposed National Guard memos. This was the venerable Dan Rather of 60 Minutes putting forth what were obviously fabricated memos, and it was some unknown blogger who noticed them, did some analysis with the incredible analytic tool of Microsoft WORD, and brought down

not just that story but ultimately Dan Rather.

My concern that there aren't enough journalists, or their concern there aren't enough journalists is exactly the opposite, I think, of reality. There are now tens of thousands of people who can be out there analyzing, studying and sharing their views, and the good ones will prevail.

MR. MAY: I'm going to take that actually as a statement pretty much rather than a question. To the extent someone wants to in your closing remarks, certainly address it.

What I want to do, starting with Donna, is just take a minute or so and we will work our way down the table, if you have anything else you want to say at this point to close up.

Donna?

MS. GREGG: I kind of have only one word, and then I'll yield my time. "Restraint." I would really like to see the Government remember that word when they're engaging in an inquiry. I think obviously the ability to practice restraint is there, but the temptation not to is there as well.

MR. MAY: James?

MR. TARANTO: I don't even have even one word to say in closing, so I'll pick up on Jason's comment and just observe that last year, Dan Rather gave a speech and I think wrote an op-ed for the Washington Post in which he called for a Government bail out of the media. Seriously.

He said we need the Government to preserve this institution by pumping in subsidies. I just loved this, after his humiliation at his own hands for this phony story, he's calling for a Government bail out. He's the AIG or UAW of blog journalism.

MR. MAY: Debi.

MS. TATE: I guess I have several words. One is "jobs," jobs, jobs. The "economy." I will second Donna's "restraint." Just the security of our country as over-arching concerns that I think most all Government agencies need to be thinking about before they delve into questionable jurisdictional areas.

Jason, if you think these are old fashioned, have you taken a look at the telecom laws recently?

MR. MAY: Steve, right before you start, once you finish, we are going to all erupt into applause, because this has been great, and that is going to happen, but before we do that, I just want to tell you I really appreciate you being here, and you were terrific. I think it was a good interchange of ideas, useful to all of us and, hopefully, you too.

We especially thank you.

MR. WALDMAN: Thank you. First, I will try not to undermine our national security -- I think I can probably achieve at least that much with this report. Otherwise, I would just say even knowing that probably 85 percent of the people in this room will simply not believe me when I say this, we are really very open-minded at this point and want your input and want a wide range of views to help shape this so we can do the best job we can, and help achieve goals we can all be proud of while protecting and treasuring the First Amendment.

MR. MAY: I think you may have under estimated the number of people in the audience that do believe you, I bet. I certainly put myself in the number that do.

Again, I thank you and all of our panelists. I would like to ask the audience here to join

me in thanking them for being here today.

MR. MAY: Thank you. We are adjourned.