

# **The Free State Foundation**

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## **A Conversation with Blair Levin on FCC Reform and Other Issues**

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**P R O C E E D I N G S \***

**MR. MAY:** Thanks again to everyone for coming and welcome again to those who just arrived. I am Randy May, President of The Free State Foundation. I am really glad you're here.

This session has the exciting title of, "A Conversation with Blair Levin on FCC Reform and Other Issues." Those "other issues" could be the trickier aspects of this conversation -- which I know will be much more exciting than my title.

I think all of you know Blair. His full bio is in the program, so I'm just going to get the essentials on the record and then we will get started.

Blair is management director of Stifel Nicolaus. How do you really pronounce that?

**MR. LEVIN:** I don't really know.

**MR. MAY:** Okay.

**(Laughter.)**

**MR. LEVIN:** I have a last name that's always mispronounced, you know.

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\* 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 Research Assistant Tristan Hardy is gratefully acknowledged.

**MR. MAY:** If you maintain that same nice attitude, this is going to be really nice.

Blair recently served as team leader for the Obama transition team for the technology, innovation, and government reform group. He served as chief of staff to FCC chairman Reed Hundt from 1993 to 1997.

Before coming to D.C. to join the Hundt team, Blair lived in North Carolina, so he is a fellow North Carolinian, which some of you know, is my home state. That may just be one reason -- but only one -- that I like Blair so much. I like Blair so much that I've never asked him whether he roots for Duke or Carolina. Maybe I should.

**MR. LEVIN:** If you did, we may not be friends.

**(Laughter.)**

**MR. MAY:** I won't ask that question.

**MR. LEVIN:** Particularly next week.

**MR. MAY:** All right. Now, before I really get started in earnest here, in "Meet the Press" fashion, I want to just take a moment and say, as a matter of personal privilege, and without taking anything at all

away from the person who is expected to be nominated as FCC Chair, that I think Blair would make an excellent FCC Chair. I have great respect for the way that Blair approaches the issues, along with his experience and expertise. Just speaking for myself, I hope that the opportunity for further service comes along and, if it does, that you will take it.

**MR. LEVIN:** Well, thank you. First of all, I assume that you're going to ask me a question that, when I answer, will disqualify me from ever having a semi-confirmed position.

**(Laughter.)**

**MR. LEVIN:** Secondly, let me just say a word about the person who we refer to in the transition as "He Who Cannot Be Named."

**(Laughter.)**

**MR. LEVIN:** Two things I want to say about my friend Julius Genachowski. First, if I was ever in trouble, I would hire him as my lawyer. If he ever entered business, I would want to work for him. If he ever ran an investment firm, I would want to invest.

And if he ever ran for office, I would vote for him.

I can't think of any person I have ever known in my life about who I would say those four things. His talent across a broad spectrum of things is really immense. It's been a great pleasure to be his friend. It was a great pleasure to be his colleague.

If David Axelrod is an accurate predictor of Obama policy and it turns out to be true that Julius is named, I think it's a great thing for the country.

I should also say that I have known Reed Hundt, Bill Kennard, and Julius Genachowski for almost 80 years, which makes me feel very old. I would feel very lucky to see three friends of mine get appointed to chair the FCC.

But Julius -- and this is not taking away anything from my dear friends Reed and Bill -- is the best prepared. His combination of experiences will hold him in good stead. The country is really quite lucky to have him.

**MR. MAY:** Just keep in mind what I said about you. But, as you know, that doesn't imply that I

necessarily agree with you on everything.

**MR. LEVIN:** I am well aware of that.

**MR. MAY:** Or even a lot of things.

**MR. LEVIN:** Yes. If you did agree with me, I really would have zero chance of ever being confirmed by the Senate.

**(Laughter.)**

**MR. MAY:** What does that imply about my chances?

**MR. LEVIN:** Terrific... in eight years.

**(Laughter.)**

**MR. MAY:** We want to focus a lot of attention on FCC reform because that's been an issue that has really come to the fore now for numerous reasons. A lot of people weren't absolutely thrilled with the way everything went under the prior FCC Chairman. Because of your experience as the chief of staff, I am going to ask a lot about your personal view on the previous FCC administration.

But before doing that, I think there might be some people here in the audience that want to know the

answer to this question. You served as co-head of President Obama's transition team for this area. Can you tell us the top three recommendations that the transition team gave to the new administration about communications policy?

**MR. LEVIN:** There are several different parts of the transition. The first, and probably the most important, is personnel. In this transition it was a little bit odd because of the way things played out.

The second is agency review. I was actually not part of the team that conducted FCC agency review. That team was led by Susan Crawford and Kevin Werbach, who I know a lot of you know. Susan is now over at the NEC. They produced a massive report and I was so busy that I'm not even sure that I read it.

The group I was working with was called "Technology, Innovation, and Government Reform." We had four sub-groups. The first sub-group was really focused on the government reform piece. We helped draft Obama's second executive order and did a lot of work on the change.gov, whitehouse.gov, and recovery.gov websites.

The second sub-group dealt with science issues, the third dealt with social innovation, and the fourth dealt with how technology plays into the broader economy.

That last group was designed to make a series of recommendations but we ended up spending a lot of time on the stimulus bill. We focused largely on broadband, but also spent some time looking at health care information technology and how energy shapes the economy. So, we were really providing background.

Susan and Kevin did a very detailed analysis of the FCC, but I don't actually know if they made any big recommendations for policy changes. There were a lot of concerns about process, which I think reflect conversations that we have had publicly.

**MR. MAY:** Well, can you ask them whether they did and then let me know? Then, I will find a way to let all these people know.

**MR. LEVIN:** I will do that.

**MR. MAY:** I know your transition team spent some time actually developing the legislation on the Hill. That's not something that always happens, but

because of the timing of the transition and the imperative nature of the stimulus plan, you did.

We all know that a part of the stimulus package includes broadband deployment. The panel this morning on broadband policy expressed some concern about how that aspect of the package was going to be implemented. One way to implement the package would be to get the money out quickly, on a timely basis. The other way would be to slow down the process by developing the rules that define discrimination and other related limitations.

Now that the package has been passed, how did you or the team think it should be implemented to serve the goals that you think ought to be served?

**MR. LEVIN:** I think the broadband provisions, as well as many other provisions, are really supposed to hit a bottom line. That is to say, these provisions are meant to be stimulative and to drive jobs, but at the same time they're supposed to actually encourage the construction of useful infrastructure.

For example, we could create a lot of jobs by

having fiber to the igloos in Alaska. But, that's not the sole purpose of the stimulus package.

**MR. MAY:** And Ted Stevens is not even in the Senate any more.

**MR. LEVIN:** And Ted Stevens wasn't there. Actually, if he was there, we probably would have done that.

**(Laughter.)**

**MR. LEVIN:** So it is a balancing act between these two goals.

It was interesting to watch the legislative process to determine how NTIA will implements the stimulus plan. Fundamentally, we got a very flexible kind of requirement for NTIA. I don't think anybody knows what they are going to do, because I don't think they know what they're going to do exactly. We still don't know what kind of proposals are going to come in.

In other words, there are going to be a variety of proposals that should definitely be looked at, in terms of job creation, but should also be balanced against their actual impact on infrastructure

development. If one proposal costs \$100 million and creates 10,000 jobs, but only connects 3 people, and another proposal costs \$200 million, creates a few less jobs, but connects a million people, you probably want to do the latter.

There is a trade-off between those things, and I don't think there is an algorithm that can tell you ahead of time as to which proposals are going to get adopted. That's kind of the judgment call that I think NTIA will have to make through a process that is both transparent and flexible. That's not easy to do, but that's the job NTIA has been given.

**MR. MAY:** I might not be as familiar with the whole process as I should be, and I know I'm not as familiar with it as you are. Just to take that a bit further, the way you're talking about it makes it seem like a chicken and egg situation.

**MR. LEVIN:** There is a chicken and egg situation.

**MR. MAY:** You are speaking of the government not knowing what types of proposals will come in. But

it seems to me that the types of proposals that come in will be affected by what the government regulations are. When you're advising the NTIA, would you say that the program should be directed towards getting the money out quickly, and, in turn, sacrifice certain communications policies that people seem to want implemented, like "network neutrality" or "non-discrimination"?

**MR. LEVIN:** I will answer that, but first I will say that it was interesting how different the telecom sector came in to talk about the stimulus package as compared to other sectors.

In other sectors, they don't have the kind of funded competition like in the telecommunications sector. For example, road builders only care that the total amount of money being granted under the stimulus is really high. They don't care how their competitors receive the stimulus, because they're all funded the same way. You've had projects for years that are on a list, just waiting to be funded.

This stimulus package is very unique in that it is the first time the government has had a program

that will provide a one-time capital expenditure to the telecommunications industry. So, the telecom sector came in and they all disagreed on pretty much everything. They disagreed on the number of unserved homes, they disagreed on the right strategy, and they disagreed on how things should be defined.

This partly makes sense because they haven't done this before. But it also makes sense because there are a lot of very competitive factors involved. People wanted to get money, but, more importantly, didn't want their competitors to get money.

That does lead us to a certain chicken and egg thing. I would answer the question by looking at a series of parameters. Faster speeds are better than slower speeds. More leverage in the money is better, in the sense that more money from private or other non-government sources is better than less money. More people served is better than less people served.

So, there is no single metric by which you should think an application will be judged. The velocity of the money, the spend-out ratio, is obviously

really important. But it's not the only factor to be considered.

If you could spend \$200 million in a month and serve 1 person, I don't think you could fund it. It's a trade-off of a variety of things.

**MR. MAY:** I'm still a little bit shocked that there were companies that came in and said, "We should get the money, but we don't want our competitors to get the money."

**MR. LEVIN:** They didn't use those words.

**(Laughter.)**

**MR. LEVIN:** But, it's always funny, particularly when you're talking about broadband speeds, the definitions that they use.

**MR. MAY:** Right, right.

**MR. LEVIN:** It's right there. But -- yes.

**MR. MAY:** Right.

**MR. LEVIN:** Shocked, shocked.

**MR. MAY:** Let's talk about FCC reform in an institutional sense. While we're doing that, I'm sure some specific policies might come up as well by way of

example. Let's talk about the FCC as an institution, because it has been subject to quite a bit of criticism.

I want to start off by saying that's not really anything new for any of you that have followed communications for a long time. I want to give you some markers, and then we will depart from that point.

Back in 1960, James Landis, who is one of the most famous administrative law scholars of all time, wrote a transition report to President-elect Kennedy on several government agencies. For the FCC, he recommended centralizing greater authority in the chairman's office, with greater oversight of the agency by the President. That was 1960.

In 1963, then-Chairman Newton Minnow recommended vesting the FCC's adjudicative functions in an independent administrative court with all other functions -- executive and rulemaking -- the responsibility of a single administrator, serving at the pleasure of the President. Keep in mind that this was before the rise of a lot of rulemaking, as we know it now.

To bring us right up closer to the current time-frame, in 2006, Reed Hundt, with Greg Rosston, wrote an article in the Federal Communications Law Journal that advocated centralizing all authority in the hands of a single administrator, preferably one that would somehow be non-partisan.

And, for what it's further worth, Randy May has advocated splitting the agency so that the adjudicative functions remain with the multi-member body, like the current Commission, while the policy-making functions would be shifted to the executive branch, where there would be, in my view, more political accountability.

But, again, in my view, I would tie that in with a new governing standard under which the FCC did most of its regulatory activity.

Do you think that it's time, based on your experience, and what Mr. Hundt and these others have said, to restructure the Commission?

**MR. LEVIN:** The answer is no, one of the main things on which we disagree. One of my favorite moments

from my time at the FCC was when Congressman Townsend, who was a huge critic of Reed, said, "We really need to reform the FCC. We ought to have a single person in charge." And I personally killed this idea by immediately saying to somebody, "Chairman Hundt thinks that's a fabulous idea."

**(Laughter.)**

**MR. LEVIN:** And furthermore, he is consulting with FDA Administrator David Kessler on how to do it. It's ironic, but Townsend went on to focus on pharmaceuticals.

**(Laughter.)**

**MR. LEVIN:** You know, I knew you were going to ask about Landis because if you're talking about reform, you've got to read the Landis report.

**MR. MAY:** I shouldn't have given you things in advance, right?

**MR. LEVIN:** No, I just want to read something very quickly on Landis. And you might think some people would say the same thing about another Carolinian, Kevin Martin.

This is from 1961: "The Federal Communications Commission presents a somewhat extraordinary spectacle despite considerable technical expertise on the part of its staff.... The Commission has drifted, vacillated and stalled in almost every area. It seems incapable of policy planning, of disposing within a reasonable period of time the business before it. The quality of its top personnel is, of course, primarily responsible for these defects."

But here is the reason I really don't think the FCC requires restructuring. I am going to throw out something which will kill any chance I have of Senate confirmation for anything. If I could write one rule that you could implement very quickly, it would be that not more than one commissioner could serve as a Hill staffer.

I know I was really distressed the other day when I was reading the so-called list of Republicans being considered for commissioner positions, and they're almost all Hill staffers. I know some of these people, and I'm sure many of them would be very good.

In 1996, we were given by Congress over 50 things that we had to do in 6 months and 110 rule-makings in 18 months. Congress was laughing at those deadlines. Nobody thought that we could get them done.

But we did get them done. And, furthermore, we got them done with unanimous vote. As I look back on it, a lot of the reason we were able to do that is because we had a group of commissioners who didn't look at this as a congressional appropriations debate or some other kind of congressional debate.

I am not saying that Congress is bad or anything like that. But the nature of the way they debate issues, their fundamental starting points and the way they try to get to a resolution, is fundamentally different than what an expert agency ought to do.

You have people, like Jim Quello, who, as some of you might remember, was not terribly a big fan of my boss, Reed Hundt, but who provided enormous benefit, because he had actually been a broadcaster and actually understood the business. Susan Ness was actually a banker. Rochelle Chong had really been a business

lawyer for a lot of wireless services. It made a huge difference in the way they approached things.

Over the years, we have drifted to a situation where almost everybody at the Commission is a former Hill staffer. Commissioner Tate, I believe you were the only one on the last Commission who was actually from outside of Washington.

I think that that is the fundamental change that needs to be undertaken. Not to play neoconservative here, but if you want to criticize the culture of the place, it starts with the leadership of the commissioners. That, to me, is much more important than the Commission's structure.

If you really want the reform that I think you're talking about, get people with different backgrounds there, whatever their ideological views. If you get them there and they're approaching problem-solving in a particular way, I think you will have a far more salutary effect on the changes.

**MR. MAY:** I think that's a fair point. In the legislative history of the Communications Act, Senator

Dill, the primary sponsor and mover of the Act in the Senate, described the Commissioners as "men with big vision." I think we can remember when there was a time when most of the commissioners didn't come from the Hill. So, a fair point.

This morning there was a discussion of several different points, some of it in connection with the Comcast order and broadband, more generally, about whether the Commission, in an institutional sense, should do more regulating through adjudication or through rule-making.

As you know, there were explanations of the values of each. With adjudication, you've got specific facts before you. When you do a rulemaking, there is a tendency to try to anticipate all future harms.

Should the Commission do more of its regulation through adjudication? And, if not, would you be in favor of sunseting Commission rules with some presumption that they aren't going to be renewed, as a way of trying to control this tendency to have rules stay on the books long past when they're still

addressing the problem?

**MR. LEVIN:** I think it depends on what you're doing. For example, if you look at the Commission's goals over the next 12 to 18 months, such as the digital television transition, they're fundamentally more operational.

My guess is the Commission is going to soon address, over a 12-month period, certain kinds of mergers that are really being brought on by the economic situation. We could have a debate on the FCC's merger authority, but, in these cases, the Commission is simply engaging on a case-by-case basis. It's interesting to think about media policy in light of what the current economic situation is going to be, and in terms of the number of restructurings that are going to have to be done.

Congress has also asked the FCC to design a nationwide broadband plan. I don't know what the result of this plan will be, but I'm not sure that adjudication versus rulemaking analysis applies. It may be that certain situations will come up where rulemaking

applies.

**MR. MAY:** Just take the Comcast situation.

**MR. LEVIN:** I think that's a great situation, because, since we wrote our first piece on network neutrality in 2002, there have been various things that the Commission has done.

We've set up a situation where network discrimination is going to continue to be addressed on a case-by-case basis, with some kind of basic framework prohibiting any actions that block or degrade but allowing companies to engage in reasonable network management. There will be a lot of debate as to whether something is one or the other and it will end up being a case-by-case examination that's very factual specific.

By the way, I think the real economic debate is going to be about something completely different, but that's a separate subject.

Eventually some kind of common law elements will emerge from these case-by-case decisions that will provide clarity. People like me will write, "Well, the practical matter of the rule is," or the Commission may

choose to say, "As a practical matter, the rule is."

I don't know whether rulemaking or adjudication is always right, because I really think it depends on the nature of the issue. I think *Carterfone* was probably the single best decision the Commission ever made. But that doesn't mean that I think every decision should be like *Carterfone*.

**MR. MAY:** You mentioned mergers, so that rang a bell in my head that maybe this is something you and I can agree on here. When the Commission considers mergers, whether it's in the telecom area or the broadcast area, it does so to support the "public interest."

In light of what's happened, and the way that things have developed over the last 8 to 10 years, when there is a merger before the Commission, it's an opportunity for people to come in with broad wide-ranging issues. Would you agree that it would be good public policy for the Commission, just as a matter of self-restraint, to limit its considerations to only factors that involve particular competitive impacts of

those mergers? By the way, the Justice Department is looking at these mergers as well.

**MR. LEVIN:** I disagree. I don't think that would be good, in part because it depends on what the conditions are.

The Justice Department likes to only impart conditions that require no ongoing enforcement, while the FCC is capable of certain kinds of ongoing enforcement. As a practical matter on a lot of these mergers, there have been discussions between FCC staff and Justice where they would like to approve the merger but are going to have to require certain divestitures. Justice feels more comfortable about certain mergers if the FCC requires the merging entity to do a couple of other requirements. These requirements act to advance Justice's goals of protecting competition but also include other values, such as diversity of voice or localism.

If I were going to reform the FCC process, I would focus on timing. Putting aside the merits of the XM-Sirius merger, that company is in enormous financial

problems, in large part, because of the market structure. It's kind of interesting, having been at the Commission when we decided on a two-license structure, to examine whether that was the right decision or not.

Part of the reason Mel Karmazin had to enter into the very onerous lending agreement, was because that deal review lasted so long. That was really a huge problem. These things are unpredictable. If the economy picked up, maybe that company would be doing fine, and they could have repaid the loan and wouldn't have been forced into a deal which I think is probably better for Liberty Media than for Sirius.

But I still think that the timing element is really problematic.

**MR. MAY:** I want to try one more time to see whether I can tease out some agreement on this. The type of thing that I had in mind was something that maybe a bunch of reasonable people would agree is just extraneous to the matter of the merger.

There was a condition put in place, in what I think was the SBC/AT&T merger, that the companies not

outsource some type of business. It seems to me that that might be something the Commission could consider in rule-making, although I wouldn't necessarily endorse it myself. The condition didn't seem to have much to do with the particular companies that were immediately before the Commission.

Would it be useful for the Commission to be able to define those types of things and say that they are not going to let them interfere with its ability to get these mergers processed more quickly?

**MR. LEVIN:** I wouldn't know how you would write that as a rule. How would you right a rule that prohibits dealing with issues that are -

**MR. MAY:** Extraneous.

**MR. LEVIN:** Well, you say extraneous. What's the definition of extraneous? Just like with an examination of the public interest, you're going to go into a variety of things. You worry too much about what the FCC might do. Generally, if the company didn't want to do it, they wouldn't have agreed to it.

**(Laughter.)**

**MR. LEVIN:** I'm glad you laughed.

**MR. MAY:** I feel much better now.

**MR. LEVIN:** No, actually, what's funny is that Garrison Keillor once did this really great routine about how he decided to become a Republican because he was tired of worrying. The Democrats would worry about everything and that's why they want so much government. Republicans just think everything is going to be fine.

But I find that when Randy and I talk about these things, it's almost reversed. He worries that government is going to do all these things. No one would ever let them do that.

**(Laughter.)**

**MR. MAY:** We talked about the macro reform that I like to dream about that I think one day will get done. But let's assume that that doesn't happen in the next year or so. There are issues, which I might call more modest reforms that I would like to talk about. These are things that possibly could be done quickly and don't require congressional action.

A lot of these have recently been bandied

about and I want to get your reaction. One is that, before the Commission adopts a rule, it ought to be required to publish the specific text of the rule.

By the way, we're talking now about the micro reforms of the FCC and I see Kyle McSlarrow just walked in. He might consider himself a poster child for the need for some of these FCC reforms.

**MR. LEVIN:** A poster/dartboard, I think, is what he would refer to himself as.

**MR. MAY:** A poster/dartboard. What do you think about the notion that the Commission should be required to publish the specific text of rules, which the APA doesn't require? I think that this is really where the FCC can exercise more self-restraint, in focusing NPRMs that have become awfully open-ended, to be more like what we call NOIs.

**MR. LEVIN:** I agree with the criticism, particularly as to the certain specific ones where you had no earthly idea what they said.

The problem is that you must think about it as a problem of process and logic. Let's say you have to

publish the exact rule before it's adopted. You publish it, then people have a bunch of things, you edit it, and then you have to publish a new one. People still have other requirements and the process repeats itself.

And when are you finished? I think you have to have some built-in flexibility. You have to give people the right to sue if they didn't have a warning. I'm in favor of that, but I think it would be destructive to say that you have to have every T crossed and I dotted.

The fundamental concept is right. I do think that one of the interesting things to watch with the new regime, is how they actually change the way things are done. I think that the FCC ought to be a poster child for openness and transparency in government.

**MR. MAY:** I agree with everything you just said. So, you see, we're in agreement! You might think I ought to stop right here, but we're not going to.

We're going to take about five minutes - and I've always wanted to be able to do this - to say that we're now going to move more to the lightning round.

I want to ask you about *ex partes*, because that's another aspect of the process that is receiving a lot of attention. A lot of people say that there are just too many of them, on the one hand, and that they're used strategically. Parties come in at the last minute and file one, which causes someone else to file an *ex parte*. It makes it more difficult for the Commission to ever get to the point where it can decide on an action. One thing that probably everyone agrees on is that many of these rulemakings just take too long. It's said that this is part of the process.

The other criticism is that *ex partes* often don't really say very much about what was discussed, other than who was at the meeting. On a panel recently I made the proposal, or offered the thought, that the Commission ought to limit the number of *ex partes* that a party could file in one proceeding. Reactions?

**MR. LEVIN:** It's actually a management issue and not a legal one. When I was a lawyer, most of what I did was basically figure out how to get around the rules. Whatever rule you wrote on *ex parte*, some people

would figure out how to get past it. If your company hit the limit, you could form a subsidiary. Why bother?

We got the 1996 Act through management by having very clear deadlines. We told the Bureau Chief very clearly, "It's over. This is the date it's over." Frankly, Congress did us an enormous favor by giving us deadlines.

You can rewrite the rules but I just think there are too many smart people in this town who will figure out how to get around them. This is really a management challenge.

**MR. MAY:** Finally, you had a bird's-eye view under Hundt, and there are different models of FCC management that have been used. How do you think a chairman should relate to other commissioners? Be as specific as you can, in terms of sharing information, how much access the other commissioners should have to the FCC's staff.

**MR. LEVIN:** There are just so many ways to tell the story. You could do it in a dramatic way, which would be kind of like E/R, which is just a lot of crises

all the time, or you could do it in a Seinfeldian comedic way, about how a group of people who are very concerned about themselves relate to each other.

**(Laughter.)**

**MR. LEVIN:** A soap opera is probably the best. I think we did it in a way that, roughly speaking, worked, given the cast of characters we had.

**MR. MAY:** How did you do it?

**MR. LEVIN:** Well, Reed had some really extraordinary qualities. One of them was in articulating policy.

He generally gave a speech after a decision giving broad outlines of what the Commission intended to do. He would visit with various folks and start to build a public support for the general notion of where we wanted to go.

But he didn't spend a lot of time negotiating with the other commissioners. If you've ever sat in a negotiation with Reed, you would know that that really wouldn't have worked that well. Reed was a tremendous lawyer, and he was very good at cross-examination.

That's not really the preferred method of these things but he was very good at taking huge amounts of information and articulating it in a really good way.

Chairman Wiley had a very different kind of relationship with the commissioners. I suspect that Dick chose a very different path because you had a much bigger Commission in those days.

I think it largely depends on who you have in the FCC. It also depends on how you staff yourself. I was somewhat kiddingly pointing out the other day that we staffed and operated on the basis of Phil Jackson's triangle offense for the Chicago Bulls in the 1990s. And, actually, there was some truth to that. Of course, Telecommunications Reports quoted me as saying, "A triangle defense," which is really embarrassing to anyone who knows basketball. I hope I said "offense."

My point is that we staffed in a certain way to drive the process, assuming that Reed would do the things he did best. Dick did it a different way, because he was doing the things that he did best.

I actually am very sympathetic of what Kevin

had to go through. He was trying to deal with lots of different issues. I know Commissioner Tate would disagree with this, but the FCC's transparent operation is a two-way street. I suspect that Kevin was often frustrated, because he didn't know what the other commissioners wanted. It's constantly a tug of war between various folks.

I don't think there is a hard and fast rule. I would just advise any future chair to build a team that works best with what you're strong at and works the floor so that everybody has a common sense of purpose.

Again, I would go back to what I said earlier. The most important thing is that you have people who look at it from the perspective that you're trying to solve a problem like an expert agency, not that you're trying to solve it like a congressional committee. There is nothing wrong with the way Congress solves a problem, but the cultural way they approach an issue is very different from what the FCC is supposed to do.

**MR. MAY:** I said this morning that for every session we have, we have some time for questions. We

don't have much time, but I am going to allow two questions, if we have any. The rule is there can't be any sub-parts. Tom?

**AUDIENCE PARTICIPANT:** In the last regime, if you got on the wrong side of the chairman, you'd often find yourself perhaps targeted to some issues that would come out of the blue.

**MR. MAY:** Is this some type of code language that you're using?

**AUDIENCE PARTICIPANT:** Some of us had that experience. My industry, in the last year, got into something with the chairman over a spectrum matter, and then a strange 9/11 issue came up. Fortunately, four of the other commissioners sort of pushed it aside. My point is, that struck me as really abusive, to be honest with you. Is there a way to structure a reform to address this kind of professional behavior?

**MR. LEVIN:** If there is a rule that can do it, I don't know what it is because I don't think you want to limit someone's power to bring out a rule that they argue is in the public interest. I will say that we

were accused of such linkage all the time, and I can't remember us ever really being able to do it. I think Reed once told me that the most revenge we could ever really inflict on someone if we didn't like them was to make them wait an extra 15 minutes in the lobby. The policies have to be justified on their own merits.

So to a certain extent, I was in awe of Martin's ability to pull off what he did.

**(Laughter.)**

**MR. MAY:** Do we have one more question from the audience?

**AUDIENCE PARTICIPANT:** A question, then a comment. As bureau chiefs that operate under the Hundt Commission, you were actually encouraged to talk to the commissioners. And I think Chairman Hundt actually gave the bureau chiefs a lot of leeway and delegated authority to do that. Bureau chiefs and their roles weren't really discussed in this session.

I think the role of the bureau chiefs, and how staff obtains and continue to get delegated authority, is another thing to consider when structuring the FCC.

**MR. LEVIN:** Yes and bureau chiefs did speak.

It wasn't that they were actually speaking for the chair, but they were really speaking for the bureau.

And I think that one of the things that Reed did was understand that hiring was absolutely essential to getting things done. No matter how brilliant you are, you're just going to get a lot more done if you have 20 great people working for you than if you have 3 people working for you. He really trusted that he had hired well on the bureau level and that that was the only way to get things done.

**MR. MAY:** I think this was just really terrific. I know everyone enjoyed it. I know I did. I always learn every time we have a conversation. The important thing is that I stand by my initial statement. I think you would make a fine FCC chair.

**MR. LEVIN:** Well, that probably disqualifies me in the eyes of people right down the block.

**(Laughter.)**

**MR. MAY:** Even though we don't agree on anything.

**MR. LEVIN:** Thank you for having me.

**MR. MAY:** Thank you very much.

**(Applause.)**