



## **The Free State Foundation's Sixth Annual Telecom Policy Conference**



### **Panel I**

***"A New FCC and A New Communications Act:  
Perspectives from Industry Leaders"***

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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.

## P R O C E E D I N G S

MR. MAY: Okay. Let's go ahead and get started, please. I'm Randy May, President of the Free State Foundation, and I'm pleased to welcome all of you to the conference today. This is the sixth annual telecom policy conference of the Free State Foundation.

I'm especially pleased to welcome our C-SPAN audience today. I'm a fellow C-SPAN junky big time. I even watch Book TV on the weekends, although I catch a lot of flack from my wife for how much Book TV I watch on the weekends. That's on C-SPAN. So I appreciate C-SPAN being with us today.

And also, I understand Bloomberg TV is with us as well, and I appreciate that as well.

PANEL I: A NEW FCC AND A NEW COMMUNICATIONS ACT:

PERSPECTIVES FROM INDUSTRY LEADERS

MR. MAY: Welcome to the first panel of today.

Again, if there are any of our C-SPAN audience that's just joined us, I want to welcome you as well out there. I said earlier and I won't confess anymore about this, but I am an admitted C-SPAN junky of the first order,

so particularly glad to have C-SPAN with us today.

So this is the panel that I called the senior executives panel for a good reason, because everyone sitting before you is a very senior executive.

And we're going to do this in a conversational format today. They know that as well. And I'm going to do my best, and I think I can do this, to prevent long filibusters and make sure we cover a lot of ground. And I'm serious about that. You all will find out about that because there's a lot of ground really to cover today.

You have the brochures with you. Each of the members of this panel has a very distinguished bio, but I'm not going to take the time to go through that. I'm going to give you their titles. You can Bing them or Google them, and you can find out a lot more.

But when I tell you what they're doing in their current positions, then that will give you a sense of the expertise that they bring to the table.

So just in alphabetical order, first we have Rebecca Arbogast and Rebecca is Vice President, Global Public Policy at Comcast.

Sitting next to Rebecca is James Assey. James is

Executive Vice President of the National Cable and Telecommunications Association. I should say James is filling in for Michael Powell who a few days ago informed me that unexpectedly he had to be out of town. So I appreciate James filling in. He hasn't had the two months that the others have had to prepare, but nevertheless, I don't have any fear that the cable association is in good hands.

Next is Jim Cicconi. Jim is Senior Executive Vice President, External and Legislative Affairs for AT&T.

And then sitting next to Jim is Steve Largent.

Now, I'm going to break my own rule here for just a moment really with regard to Steve. As many of you know in this room, Steve has led CTIA--The Wireless Association, for over 10 years. I think that's correct, over 10 years. And he announced a few months ago that he's stepping down to resume his football career -- He didn't say he wanted to spend more time with his family. But no, he's not going to resume his football career, and I'm not sure what he's going to do. And I'm anxious to find out when that happens.

But I know that whatever he does decide to do that

Steve will do it in the same way that he set records in the NFL, which got him into the NFL Hall of Fame, and in the same way that he led CTIA. I think the record of success for the last decade with the wireless industry speaks for itself. And I don't want to step on any of his answers that he might give, so I'm going to leave it at that, Steve. But we're glad you're here, and the fact that you're stepping down doesn't mean that you're not going to have to come back in the future as well.

Now, I should say for those of you, last year when Tom Tauke was on this very same panel and he was stepping down, I took the liberty, because I've known Tom for a long time just as I've known Steve, of commending Tom Tauke for his work. And if any of you guys announce you're stepping down next year, I might do the same thing, but I can't make any promises.

MR. SILLIMAN: Will I get accolades for my NFL career?

MR. MAY: I'm going to have to do some Binging and Googling of that as well. I'm going to have to check into that.

But that brings us indeed to Craig Silliman, and

Craig is Senior Vice President for Public Policy and Government Affairs at Verizon.

So with that, welcome, distinguished panelists.

Now, again, I'm going to be throwing questions at the panelists. They're not going to necessarily have to answer all of the questions, but if you want to say something, you can let me know. I'll certainly welcome comments from all of them.

So the first question that I'm going to ask -- and this will test, I think, and demonstrate my resolve to remain in control of the panel because I know the natural tendency, I've been there myself.

But here's the question: From the perspective of your company or association, what should be the single most important priority for the Commission, with the emphasis on single most?

And I'm going to start with Rebecca and just go right down the row on this and take just a minute or two. Rebecca.

MS. ARBOGAST: Thank you, Randy, and thanks for inviting all of us here to have this conversation because I do think conversations are important.

I'm going to answer that story quickly with a very short historical story which was triggered by an event a couple months ago where the digital pioneers, the folks who were at the FCC when I started there 100 years ago, were being honored for their foresight at the time that they were developing policies when the Internet was starting.

And Michael Powell and Bill Kennard, both of whom I worked for, did this great riff together about how it was a bipartisan approach that started out very deliberately to stand back, let this new thing breathe, and grow. And Bill talked about -- the way he put it was, "The high tech Hippocratic oath of 'first do no harm.'"

And then Michael talked about how the two of them were in the wings for some event, and they cooked up this term "vigilant restraint." And that they took very close to heart the need to keep an eye on things but to step back and let this thing grow and evolve and concluded that that worked.

And I think that that approach is as much true now as it was back when Bill coined it in 1999 which is you don't know where things are going to go. You want to keep an eye on it, but you want to let it grow. And I think

that that approach, which is in contrast to what happened with a lot of the European countries, has served this industry and this country well in terms of investment and innovation.

And so the single most important thing I think the FCC needs to do is continue that trajectory and remain faithful to that historic arc because it's important for jobs and economic development.

MR. MAY: James, the single most priority from your perspective?

MR. ASSEY: I'm just glad to have an A that precedes me, usually.

I don't think I can say it much better than what Rebecca did. My two words were going to be regulatory humility, and it's based upon that same notion.

We've had this tremendous economic engine over the past two decades because we have recognized the constantly changing, evolving nature of the Internet and Internet technologies. We're not talking about something where we pour concrete and it hardens and that's what it is -- it just is going to be that form. It's constantly changing, and we want it to constantly change because that's really

what drives the innovation that leads to all the consumer benefits that provide all the new services that consumers enjoy.

So I think when we look back at the past two decades and where we were and where we are today, our biggest challenge, or the biggest challenge for regulators, I think, is to continue to have that economic engine go forward and as Rebecca said, do no harm.

MR. MAY: Jim.

MR. CICCONI: Well, I think it's the IP transition, and it's not just because the FCC is challenged with navigating the technological change successfully. I think it really tees up a much larger question for the agency, which is this: The IP transition really challenges the agency to modernize its entire approach to regulation.

I think we're all pretty aware of how dramatically the communications industry has changed just in the past decade let alone the last several. And the FCC really hasn't, and I think we're very encouraged that Chairman Wheeler and the Commission have decided to tackle this, pretty immediately after he assumed the job, in fact.

And I think Tom Wheeler's the kind of guy that I

think understands the challenge and the difficulty of altering the culture and approach of an agency. But I think the biggest challenge they have is really bringing the FCC into the 21st Century and updating its entire approach to match the realities of the marketplace.

MR. MAY: Thank you, Jim. Considering it's 2014, it's probably not too much to ask that they get up to speed in the 21st Century.

Steve.

MR. LARGENT: I have to say after that introduction, my stock goes downhill with every word that I speak. So I'm better off just passing to Craig.

But I do want to say that when my wife and I go out to dinner and they come and ask me what I want to eat, my first response is always, "spectrum, spectrum."

Everything I say is spectrum from CTIA's perspective, and spectrum is our highest priority that we have. And it will continue to be. We began the debate about spectrum that's coming to auction now back in 2008, and it's actually the fastest that spectrum has ever come to market in terms of moving this debate along. So from 2008 till 2014, they've held the H block. It was a

successful auction. They're going to come up with AWS-3 later this year in the third quarter, and then, of course, we have the broadcaster's spectrum auction that is to be held by mid-2015.

And I applaud the Chairman for getting the spectrum out to the marketplace. It's about -- it's something less than 300 megahertz of the President's 500 megahertz that he called for a couple of years ago, and we certainly applauded him for that effort.

And we want to continue to push and get the spectrum as quickly as possible because companies like those the two gentlemen represent on either side of me are using the spectrum for new and varied uses, and the people who stand to gain the most are our consumers that are now over 310 million in this country. And so we want to see that continue.

MR. MAY: Thank you, Steve.

Craig.

MR. SILLIMAN: So a lot of good comments made, and I agree with all of these. But I think for my single highest priority, I'm going to agree with Steve on this. It's spectrum and to elaborate, spectrum, spectrum,

spectrum, spectrum, right?

Let me tell you why. I agree strongly with the idea of, for example, regulatory humility, but a lot of these are areas where the innovation and the investment in the industry and the technological progress are going to bring tremendous consumer benefits. And really, what we're looking for is policymakers to stand back and let that innovation investment take place.

Spectrum is a unique area where we need policymakers to take affirmative actions. Spectrum is the lifeblood for the innovation that's taking place in this industry, and this is an area where the spectrum needs to get into the marketplace or it's going to choke off that investment in that innovation.

And by the way, this is not just a role for the FCC. The FCC is doing a good job in now getting some spectrum out. We've got -- as Steve mentioned, we've got three spectrum auctions that are teed up here over about an 18- to 24-month period after going five years without any. And NTIA is working to make more spectrum available.

But there's a strong role for Congress here, too. This is an area where there is no central coordinated,

coherent strategy for managing spectrum in this country. It's controlled by lots and lots of different agencies, lots and lots of different entities. That makes it very difficult to get the spectrum, identify it, clear it, move it out. So there are roles for the FCC, roles for the Commerce Department, and roles for Congress in getting spectrum into the hands of industry where it can be best used.

MR. MAY: Thank you.

Now, the second question is going to be a bit of a softball, too, and then you may notice that they're going to get increasingly more difficult. But here's the second question. And this comes from today's *Washington Post* crossword puzzle. It's number -- you'll be at a disadvantage if you haven't seen it, but it's No. 63 down. You can check it out. I've got it here.

And the clue is: Government regulator of radio and television, and it's three letters. Who can answer that first?

Well, I guess they could all answer it or not. But my wife is an avid crossword puzzler, and she got it right away, the FCC. And I was just grateful it didn't say

government regulator of the Internet. So I think that was good.

Now, the next question is this, just sticking a little bit with the institutional side of things: What do you find most encouraging about what Tom Wheeler has done so far at the Commission, and what do you find most troubling about what he's done at the Commission? And keep in mind that our theme today, as you know, for the conference is "A New FCC," and we talked earlier about, of course, the new Chairman off the bat.

So I want to throw that out, and to some extent, it may coincide with what you said about your priority or not. But just let's start with Craig and go down the line and see whether you can -- what you might want to say in response to that.

MR. SILLIMAN: Sure. In terms of what's most encouraging, from the very outset, Chairman Wheeler has been talking about the role of competition. I think it's been very encouraging that he has recognized that the technologies have changed, the markets have changed, the fundamental policy ecosystem has changed from the times when a lot of these laws and regulations were put in place

and that, ultimately, regulation is meant to be a surrogate for when competition doesn't exist.

So we're going to look first to competition, so I think that's tremendously encouraging. Of course, we want to see that acted out in practice. But as far as a philosophy that he has laid out as a cornerstone of his regulatory approach, I think that's been tremendously encouraging.

Randy has said we can't just say the good without the disappointing. So as far as what's disappointing, I would say what's most disappointing is not something that Chairman Wheeler has done, but rather something that has not been done yet.

And for me, that is updating the spectrum screen because the spectrum screen in theory is a great tool. It is something objective. You lay out the total amount of spectrum in the industry. You lay out a clear and objective standard of where the limit is under which there's a safe harbor for any one company to own spectrum in the market, and that should provide clarity for investments, for secondary market transactions, et cetera. So it's potentially a very good tool.

The problem is that it hasn't been updated. There are huge swaths of spectrum, particularly held by Sprint, which holds more spectrum than anyone else in the industry by a long-shot, that aren't counted in the spectrum screen.

And the problem with this is first, within the spectrum screen itself, you take now a tool that should be clear and objective and allow companies to make investment decisions with clarity, and you've thrown in an element of uncertainty.

But the reason I find it particularly disappointing, Randy, is that it's more than just this particular issue. For me, an area that is so potentially objective and clear, there's no real -- there shouldn't be any real question around interpretation. This isn't a big macro, uber policy question. This is a question of -- you set a rule, and you apply it.

And yet the fact that it is so clearly results oriented becomes a question of institutional integrity. If this tool that is so potentially objective and clear is being used in a clearly results-oriented way, it then undermines credibility for the Commission on a whole lot of other issues that don't lend themselves to clarity in terms

of what the real objective is.

And so I think Chairman Wheeler should make this a priority because it sends the right signal, not just of how you're managing the spectrum assets in this country, but it sends a signal that says when we say this is what the policy is, this really is how we implement it.

MR. MAY: Thanks for that, and to illustrate how we're going to jump around today and make this completely interactive and conversational, I want to follow up on that, and then we'll come back to the general question.

But I know in the last day or so, the spectrum screen has been in the news because it was employed, I think, recently with the AT&T/Leap transaction.

So I want to take issue with you a bit in this sense -- That it seems to me, with my administrative law hat on, that a screen sort of by definition as opposed to a rule, a regulation that's adopted and put in CFR, I think kind of the inherent intent is really that the Commission can use it as a trigger, but then it, quote, "looks at other factors." And so it's a tool that has, I think, possibly been built into it as opposed to a rule.

So let's just get right to it. My question is --

I mean, that's the way I view it anyway. So would it be better to adopt a regulation that would be more binding in the sense that a, quote, "screen" really probably is not intended to be at least in the Commission's mind as opposed to yours from the beginning?

I think I'm going to ask -- because I think, as I said, AT&T was, I believe, just recently -- the issue came up with them, and Jim Cicconi may not agree at all with what I just said about a rule versus a screen. But I want to ask him about that, and then we'll come back to you, Craig.

MR. CICCONI: I mean, we think a rule is warranted. I think we've argued for that for a couple years now. I think there's merit in having a screen, and I think it's supposed to work as you described, Randy, it provides companies some certainty.

You know you're under it. If you're over it in any particular market, then obviously, there's added layers of scrutiny that you know the Commission is going to subject it to.

What is a little disturbing to us is there seems to be a tendency now -- and we commented on this actually

on Friday. There seems to be a tendency to not, in fact, view the screen as a safe harbor, but to even raise questions if you're under the screen. And I think that's really a notion that I think calls into question the entire reason for having the screen.

I think if there's no certainty that any company has in terms of their spectrum holdings, then it's going to jam up the ability at least in the secondary market to operate effectively. If you're under the screen, yet you're still not somehow safe, then I think it really raises a question as to whether the Commission isn't just kind of making it up as it goes along there.

I think companies need certainty in these areas. I think the screen has operated fine, and I think it allows companies to invest in the secondary market to work when you know you're under the screen.

And so we wanted to at least raise that question on Friday because I do think it should be a safe harbor, and I think if you put it in a rule, then I think that ought to be one of the aspects of the rule.

MR. MAY: Steve, this involves spectrum. Do you have a view on this question of screen versus rule or how

the Commission administers the screen?

I should say, as most of you know, Steve -- at least in my view, being the head of a trade association probably was more difficult than getting in the NFL Hall of Fame, right, with all the different interests pulling in different ways.

But what -- do you have a view on the screen issue?

MR. LARGENT: Very, very briefly. My view is that instead of focusing on scarcity, we need to focus on abundance. We need to have more spectrum that's available for the industry and not be worried about how much spectrum you have, but just keep rolling out more spectrum through auctions and other ways. And that would be my only overall view of this.

MR. MAY: Okay. James or Rebecca, do either of you have anything you want to say on the spectrum screen specifically?

MS. ARBOGAST: No, but the only thing I would just add on the spectrum side is just picking up on the point that Commissioner -- Chairwoman Clyburn said about the importance of getting unlicensed spectrum out there, too,

and I think the Commission has paid a lot of good attention to that. And we're hopeful that that will get out there, too, to provide what we all need for Wi-Fi.

MR. MAY: Actually, I have a whole set of questions that we may get to, or we'll get to some of them on spectrum as well down the line. And this was just a little diversion, and so we'll come back to that. And I'll call on you first for that.

So I'm just going to go down the line and ask whether anyone else -- and I would appreciate comments if you have any. This could be a good sound bite. What do you find most encouraging about what Chairman Wheeler has done so far at the Commission, and what do you find most troubling?

MR. LARGENT: In just a few words, I would say I applaud his effort to continue the push to get spectrum auction. And the only other -- the caution I would say is that my hope is that Tom -- particularly Tom coming from the position that I am in now just 10 years ago -- would exercise regulatory humility at the FCC. And that's yet to be seen that that will happen.

MR. MAY: Thanks for that.

And you can see that some of these panelists may substitute caution for troubling or whatever, and that's fine, too. They're welcome to do that.

Plus Tom may be watching right now on C-SPAN, we hope.

Mr. Cicconi.

MR. CICCONI: Honestly, I think the most encouraging thing is that Tom's brought the Commission, I think, a very refreshing attitude and approach. He's brought a really stellar team in there with him, I mean, people that we all know and respect that have worked in this industry for a long time, who really understand the issues.

So you've got a really high quality team that he's brought in there. They reach out, they listen, and they act. Within a week of getting into the job, the Chairman took up the IP transition petition that we had filed over a year earlier and had just been sitting there unacted upon and vowed to act on it and did at the first subsequent meeting they had.

So I think that's really encouraging to see at the agency. It's a really refreshing approach. I'm sure by

the end of the year, I'll find some things that will trouble me, but so far at least in the months he's been there, I haven't seen anything else.

MR. MAY: James, do you want to comment?

MR. ASSEY: I would just echo what Jim said. Personnel, I think, is one of the things that you notice. He really has adopted some of the best talent that I know of to try and work through a lot of these issues.

And he's brought, I think, a sense of boldness and decisiveness. I think he very clearly knows what he wants to accomplish and has set about accomplishing it.

I also think it's been very refreshing. Tom's used, obviously, blogs, I think, to relay some of -- and we've seen this in a lot of his speeches -- his regulatory philosophy. He's talked a lot about the seesaw and the ability of industry to work together to solve what we see as societal issues or problems that are separate and apart from regulatory responses. And on any particular issue, we may have issues and believe that the teeter has tottered, but I think that type of mindset that we don't reflexively just -- when we hear about a problem, we feel the need to regulate it -- is refreshing.

And I'm hopeful that as Tom wants to look at all of these issues based upon the facts and circumstances brought before the agency, that they will continue to do that.

MR. MAY: Rebecca, is there any issue that you think the teeter has tottered or -- that's a new . . .

MS. ARBOGAST: We'll coin a new phrase here today.

MR. MAY: That is a new one for me, but if you have a comment, why don't you offer it, and then we'll go to another question.

MS. ARBOGAST: So just to demonstrate that we actually didn't coordinate our answers before, I had identified exactly the same things that the two James had done.

I think the team that he's brought in -- It says a lot about a person when you look at what people they surround themselves with to guide and advise them, and I can't think of a better group of people that he's brought in.

I hope at some point through this whole process of his tenure, there is the bandwidth to focus on those last half of the chapters of the National Broadband Plan. I

think that all those -- what Blair calls the verticals, I think are very important with healthcare and education, public safety. And so I hope that there is the ability to do some movement in that direction.

MR. MAY: Thank you.

I should say, as all of you know up here, that -- and most of you in the audience, from my own perspective, I found many encouraging things as well but also things that I'm troubled by. So I'm not going to say anything about those now, but read the Free State Foundation blogs, papers, and all of that, and then you can find out what we think at the Free State Foundation.

Now, let's talk about one of the really important issues that I think pervades a lot of what is happening at the Commission or may happen in the future, and that's net neutrality. I know some want to call it "Open Internet." Sometimes people don't want to talk about it at all, but in my view, it's important that we do wrestle with some of the questions raised by that.

And because, just -- so everyone is on the same page, what this question involves, and particularly after the D.C. Circuit's decision in January, is the extent of

the FCC's authority to regulate broadband.

So to start us off with this question and for your comments, I just want to quote Craig Aaron. He's President -- CEO of Free Press and tell you what he said after the D.C. Circuit's ruling. Quote: "This ruling means the Internet users will be pitted against the biggest phone and cable companies, and in the absence of any oversight, these companies can now block and discriminate against their customers' communications at will. We're disappointed that the court came to this conclusion," close quote.

Now, to my mind at least, it seems clear to me absent a further appeal, that under the D.C. Circuit's opinion, the FCC lacks authority to impose the very same regulations that it had put in place before that the court said amounted to common carriage. Again, I'm just assuming absent a further appeal or change in the law.

Yet the court also said in its opinion that pursuant to now-famous Section 706 in the Communications Act and in conjunction with what Verizon in its appeal and the dissent as well, by the way, referred to as the "triple cushion shot" theory of promoting broadband deployment, it seems clear that the FCC possesses some authority to

regulate Internet providers and possibly fairly broad authority.

So my question is this: Short of adopting the very same net neutrality rules that the court has struck down, let's assume that that's not going to happen, and just assume -- I know all of you, I think, are opposed to reclassifying Internet broadband providers under Title II. If anyone is not, raise your hand now.

But that being the case, really the question is this: How do you envision that the Commission can or ought to try and prevent, quote, "discrimination" against edge providers and content providers which seemed to be its principal objective in adopting the rules in the first place?

So comment on that, and I think this time we're going to probably keep alternating. I may go to the middle one time, but I'm going to start with Rebecca.

MS. ARBOGAST: I think rather than get into the nitty-gritty of the various legal ways that the Commission may get from A to Z, the court in the Verizon case gave them some hints, some guidance on how to do that, resting on 706. The high level points, I think, to keep in mind

are the way the court interpreted 706 was really quite generous, and so if you take the triple cushion shot theory -- and I'm sure we've all played parlor games internally on the range of things that might be done under that.

One of our favorites is ordering Silicon Valley executives not to retire and take their earnings at age 35 but make them keep on working so that they contribute to apps development which -- and so you get into 13th Amendment, involuntary servitude issues there, but you can go a long way with that.

I don't think that this Chairman will do that because he has a lot of other priorities -- spectrum, the IP transition -- and he will want to chart a path, I think, that probably hews closely to the core concept that Michael Powell had identified with vigilant restraint, and my instinct tells me that what comes out of this rulemaking, whatever the proceeding's going to be, it will be something that's going to be very close to those original principles that were articulated years ago that we have all basically followed throughout all these years with the ups and downs of the legal status.

I mean, what I was struck with in the court's

opinion was Judge Silverman's dissent about, with all these kazillion transactions that have happened over the years, you can count on one hand literally, four, that people cite to. And I think that that's a remarkable grounding for us to all stay on.

MR. MAY: Thank you.

I think to mix it up a bit, I'm going to go to Craig, and I'm just going to keep mixing it up now.

Now, remember, those of you in the audience, the Twitter handle, #fsfconf, and also, we're going to save some time for questions later in the session.

Craig, why don't you comment next? We're going to generally -- remember, we're going to try to limit these so we can have a series of questions, but I want you to answer particularly the question of, why did Verizon decide not to appeal the D.C. Circuit's decision?

I mean, I know you won in part, but just explain what your thinking was.

MR. SILLIMAN: Certainly, the FCC won in very significant part, and you're right. I think to answer the question of why we chose not to appeal, you have to look at the reason we brought the appeal in the first place.

And that has to do with the desire for clarity around the FCC's jurisdiction to impose regulations on the Internet. Just as a quick aside, I noticed even when you were asking the question, you read the Craig Aaron quote, and his quote talks about users.

And your question talks about the edge providers, right? It's company to company. And I think we should be clear on something, which is that there is sometimes a misconception that these rules have always been with us since the dawn of time like that opening scene in "2001 Space Odyssey" with the obelisk and there are the rules written on them. And that there's been this cataclysmic change in the industry.

It is not. They've been there for a couple of years. What has protected users, consumers, for two decades now is the fact that our incentive is to provide users connectivity, how they want it, where they want it, and when they want it. And that competition that is there to serve customers and provide them what they want is what continues to provide that protection for consumers.

Nothing changed in terms of how that was working when the rules were passed. Nothing changed when the rules

were struck down. So I want to be clear on that, that there are two different issues: One is the Open Internet rules and the impact they have. The other is the jurisdictional underpinning that the FCC looked to in promulgating these rules.

The reason we brought the appeal is that we were concerned about this broad jurisdictional claim by the FCC that would allow it to regulate, frankly, broad swaths of the Internet ecosystem.

As this case has gone through, frankly, this has become an empty vessel into which lots and lots of ideology has been poured, much of which, if not most, is unrelated to what the case is actually about. So by the time the case has come out, I agree with you and I agree with what Rebecca said, that I think it is clear that the FCC has broad jurisdiction to regulate many parts of the Internet ecosystem under the court's order.

But our overview at this point is, as we said, this is not our top priority. Our top priority is things like spectrum. There are other areas we want to focus on.

This has become a distraction. And frankly, I think we've reached a point where we really need to look to Congress.

Regardless of what you think the FCC's role should be in regulating the Internet, whether you think it should be a very minimal role or whether you think it should be a very expansive role, you should be somewhat troubled that where we are in the system today is people sort of saying, well, if I read this into this court's decision and the number of this argument and what Congress's intent may have been here and 706(a) versus (b) and through that, we will divine what Congress's original intent was. That's a very kludgy way to get to the solution.

And I think where we are is saying, it's time to stand back and have policymakers look at this holistically, look at what the right regulatory regime is to protect consumers on the Internet, and further appeals of this particular decision are simply a distraction from greater priorities.

MR. MAY: I'm going to ask the other panelists for some comment, too, but let me throw this into the mix -- just add a comment because you used that word "Internet ecosystem" I think a couple times and even "holistically."

So here's the question: Facebook just purchased WhatsApp for \$19 billion. That's *billion* dollars. And for

many of us, the question might be -- What is WhatsApp? I mean, that was my first question, but whatever it is -- and I do know something about what it is now. I've read that it's taking away business, potentially a significant amount of business from the broadband providers like Verizon, for example, or maybe AT&T.

So my question is: Should WhatsApp be regulated in the same form as a so-called, quote, "telephone companies" or "cable companies," and does Section 706's extent reach that far?

So I'm going to go to James and then Jim.

MR. ASSEY: So I really don't know what WhatsApp is, so I'm going to trust you on that.

I think I would just echo off what Rebecca said. I think the case pretty clearly sets out a fairly expansive view of Section 706, and I think it's important that we parse through what the FCC *could* do versus what the FCC *should* do. And there's a big distinction between the two.

I do think maybe going back to your original question, Randy, it's important to divide, I think, the legal issues that were teed up in the case versus the policy issues of what should the correct regulatory policy

be.

I think in a lot of respects, many of us who believe that the Verizon case was going to be about the ancillary authority and how far that extended were thrown a bit of a curveball by 706. I think it's fair to say a lot of folks didn't believe that 706 conveyed the extent of direct authority that the court -- at least a divided court -- found.

But it is the law of the land, at least here in the D.C. Circuit, and we know that 706 as currently interpreted, does something more than nothing and something short of common carriage. And it will be up to future decisions and future FCC rulemakings to determine, I think, what the contours of that legal authority are.

But aside from the legal questions, I think you have to go back to the underlying policy question of how are we going to regulate given all of this robust competition that exists not just among network providers but also the varying levels of the Internet kind of ecosystem stack.

I think -- and maybe this goes to where Craig was aiming -- towards a new statute. When we look at the

statutes that we have, so much of what we have is based upon the premise of a monopoly provider. In 1992, cable was 98 percent of the multichannel video universe. AT&T used to be the only game in town.

And we live in a very different world now. So to the companies represented up here and in the audience, a lot of the innovation that has occurred has really occurred kind of around the obstacles that the statute has provided, but at some point if we want to rationalize the statutory thinking with the world we live in today, we need to rethink the bases for these rules.

MR. MAY: Jim.

MR. CICCONI: Let me start with the rule, and then try and address your WhatsApp question.

I mean, first, AT&T doesn't block any legal content. We don't discriminate for or against any particular content. That's the main reason we didn't really have a problem with the original rule, and I trust that whatever the FCC does in this proceeding will be narrower than that. And so, hopefully, we won't have an issue with that, either.

I think the larger question that I think the

WhatsApp example tees up is this, I think: How do you ensure a level playing field when you do regulate under 706? And I think the FCC has confronted this or is confronting it to some extent right now in the text messaging area, for example. There are 911 requirements.

Well, if you're going to impose a 911 requirement on AT&T or Verizon or Sprint or somebody, you really have to do the same thing with the text messaging service offered by Apple, for example, on the iPhones. Because a consumer when they go in and send a text, presses that button, isn't necessary thinking about who's behind the curtain on it. They expect to be able to get 911.

So the FCC, I think, is trying to figure this out and how to address it. I think the key is that if you're providing one of these services which increasingly will be delivered over IP, they're going to be very difficult to distinguish one from another based on who provides it. If you're going to have a regulation in that area, it's going to have to apply equally to make any sense.

If you're going to put regulations on an IP voice provider, which we all will be, then you're going to have to deal with an issue like Skype or something like that.

Because at the end of the day if a regulation is justified in a particular area, it would have to be applied to all.

So I think that's the challenge the FCC's really going to have, but I also think it's probably a good reason for them to be very cautious. Because the whole point of it is when you've got all these competing services, in theory, the market ought to be able to address many aspects of these things without the need for rules.

Now, 911 would be an exception to that, but hopefully, I think it would bring about the type of regulatory humility that James mentioned earlier.

MR. MAY: Thanks.

And by the way, towards the latter part of the conversation, I probably want to end by asking you about your thoughts briefly about a new Communications Act. And in that context, we can think about how much the FCC can do itself now or how much might be done in a new act.

I want to just ask Steve whether he has any comment on this net neutrality question, but actually, I'm going to throw in one more wrinkle. And then if you want to, you can deal with it or just the original question, and then maybe the others can help me out on this as well.

Before the D.C. Circuit decision, I think it was assumed by many, at least I was one of these, that a predicate for the Commission exercising any authority, affirmative authority, at all under Section 706 was a prior finding by the agency that broadband was not being deployed on a reasonable and timely basis. I mean, that was a reading that I think was widely accepted, and in fact, as most of you know, in just only in recent years, very, very recently, did the FCC do a bit of a switch and make a determination that broadband was not being deployed on a timely basis.

And then so many of us thought, myself included, that that might have been done possibly to bolster the legal case concerning what 706 meant if it were challenged in court by people like Craig Silliman over here.

So I want to throw that out because as I read the decision, at least it seems like there's been a complete decoupling of the finding requirement from the determination about the Commission's authority that is a little bit puzzling to me.

So, Steve, why don't you go first, and then if anyone wants to comment that might resolve this question in

my mind, I'd welcome that as well.

MR. LARGENT: Let me say first of all, that 90 percent of consumers in this country have access to three or more wireless carriers for wireless broadband. Ninety-eight percent of all consumers in the United States have access to at least two wireless providers for wireless broadband.

So the fact is that healthy competition is taking place, and consumers have a lot of choices when it comes to broadband.

What I wanted to say about the whole net neutrality debate that it really came up about six, maybe seven years ago is that I was in Congress for eight years.

I've been at CTIA for over 10 years, and I have never seen a debate in Congress or anywhere else, the FCC or just in the public in general, that's been carried forward that long over what -- Rebecca, you said four cases of, that were alleged, network neutrality violations.

I've never seen that. I mean, nobody's life is at stake. But this has just been an issue that will not go away, and yet I'm not seeing any harm. And so there's a lot of issues that we need to work on at the FCC and within

the wireless industry and within Congress and everything else, but I just don't see network neutrality rising up to that level of urgent need -- we've got to fix this because this is a problem -- because it's not a problem.

We've got companies up here that have said that they're not -- they have a free and Open Internet, and they've always said that. So I just don't see what the debate is about. We have a number of things that we need to have a healthy debate about. Network neutrality is not one of them, in my opinion.

MR. MAY: Jim was raising his hand, so if you have a quick comment on this decoupling of the finding, I would welcome that.

MR. CICCONI: Yeah, no, I think a lot of the people in the industry recognize that the FCC's about face on the finding of broadband deployed in a reasonable and timely basis is probably a finding of convenience. It's certainly at odds with the FCC's own data and frankly, becomes even more out of place with the available data.

I do think at some point, the courts are probably going to step in. I think I read recently -- a smart person wrote something to the effect that it's really hard

to look at the phrasing Congress chose, which is reasonably and timely, and interpret it as immediately and today.

That's not what reasonably and timely means.

And it's certainly not what Congress intended, and I have to believe that if the FCC continues to press this, at some point, that issue is going to be litigated. And I'd have a hard time seeing a court interpret it as you need to be everywhere at once, otherwise, it's not reasonably and timely. I just have a hard time seeing that, and frankly, I think the Congress would as well.

MR. MAY: I'm going to ask maybe two more questions sort of in this area, and then we're going to move on to another area. And I'm going to ask the panelists again to keep the responses reasonably short. That's by my definition, not the FCC's or something like that.

So here's something that is always a question, I think, that arises over and over. There are some people that claim -- I could cite our friends over at Free Press again -- that because investment in broadband facilities has been robust over the past several years or decades -- and I think you all would say and have actually touted the

robustness of the investment of your companies -- that this proves that the adoption of net neutrality regulations or even the overhang of potentially Title II regulation or any other regulation, that that does not chill investment, as you claim that it chills investment.

How do you respond to this? I'm going to call on Craig, and maybe we'll get another response or two and move on. Craig.

MR. SILLIMAN: I'm reminded since you started by evoking Steve's NFL career, those weights that they put behind running backs when they're training and you say, hey, the running back just made it all the way down the field dragging 100 pounds behind him, so it must not have impeded him. I think you can't conclude the first from the second.

So I think two points: One is I think it cannot be coincidental that you look at the investment flows, and there tends to be a correlation between the level of regulation and the areas in which investment is going. So clearly, wireless has benefited tremendously from a lighter touch regulatory environment than have some of the wireline environments.

And if you begin looking at technology, looking at markets, I don't believe that investment -- that the regulatory environment has no impact. In fact, I know from sitting in a company day in, day out, seeing business case decisions that are made, the level of regulation absolutely is a factor that is taken into account.

The second thing is I think we tend to be deterministic on these, and we say the technology we have today is the technology that there would have been. And we can't imagine an alternative future. And we don't also think about the levels of innovation.

So I sometimes point to the postal industry, and had you a number of years ago said we should have postal neutrality, that would have sounded very rational and very logical because neutrality has to be a good thing. And 20 years later, we wouldn't have had next day mail, and we wouldn't have had bulk mail. And you would have just dropped things off at the post office, and everything would have been treated equally. And you wouldn't have known that there was any possibility that I could have actually paid a little more to have next day mail, and so you wouldn't have known what you would have foregone.

Who knows the areas of health and education and energy management that may have been developed and innovated in with areas of lighter touch regulation? You can't point to the counterfactual where of what doesn't exist, and I think it's a false premise to say that because some investment took place and some innovation took place, no other was impeded because of this regulation.

MR. MAY: I want to transition really to another area --

MR. CICCONI: Can I one make brief comment on that? Because if you don't think regulation impedes investment, then why isn't Google Fiber offering voice service?

MR. MAY: Well, that was dutifully brief.

Rebecca, do you have a brief comment?

MS. ARBOGAST: I'm thinking back on the 10 years I spent on Wall Street. I think the investors aren't particularly worried about net neutrality, that they see that we've all been living with it.

I think Title II is something completely different, and I think many of us still remember the day that Julius announced he was going to do Title II light and

saw the stock market react to that.

And the other thing I think people should keep in mind and watch because it's an interesting -- it's hard to shift entire industries back and forth between regulatory regimes. It's inefficient, and once you go on a particular course, it's very difficult to unwind at some times.

But I think we've got a natural experiment that's been going on for about a decade now between the U.S., which did not apply these rules to Internet systems, and the EU, which did. They took the pretty aggressive regulatory regime that everybody was applying to the telephone network and extended that over to the Internet networks.

And what you see very clearly happening over that period of time is the investment shifted out, so the investment and jobs growth happened in the U.S., and investment and jobs growth declined very seriously in the EU.

And then Australia, I think, is the third sort of model of investment which is -- or model of approach to this -- they did the same kind of resale competition that the EU did, found that they weren't able to get the

investment they needed, so a few years ago decided to decommission the private plant and do a government-owned network.

And so it will be interesting to watch that play out, right? It's too early to know for sure, but they've had a rocky start. And I think watching those three different models and where the money flows because anybody knows that money can go wherever it's going to make profit, and the investors are watching that very closely.

MR. MAY: Well, those are valuable insights from a former investment analyst, and thanks for that.

You know when I started this panel and I referred to today's *Washington Post*, that crossword puzzle, No. 63 down where the answer was FCC? I just looked up at our conference logo up there which, by God, it looks like a crossword puzzle or something, and FCC is up there. And I think those people at the *Post* must have gotten that idea from us.

Now, here's the next question. Tom Wheeler in reacting to the net neutrality decision came out just a couple weeks ago with a statement listing a bunch of actions that the FCC might take. And I just want to focus

on only one of those.

Under the heading of "Enhancing Competition," there was a suggestion made -- it wasn't necessarily explicit, but it at least was read this way by many -- that one of the things the Commission might do to enhance competition in the broadband is act to preempt state bans, which restrict or otherwise prohibit municipalities from offering communication services or broadband services.

In my own perspective, it's not necessarily the way I think about competition, but I want to get your reaction to that particular suggestion from the Chairman.

Anyone? Steve?

MR. LARGENT: I would just say, do you want the government in the gasoline business? Do you want the government in the grocery business? Do you want the government in the wireless business? I don't think so.

I don't think we want the entity that also regulates wireless to also be competing in wireless. So I think it's a *non sequitur*, and I don't think that that's going to happen.

MR. MAY: Jim.

MR. CICCONI: Municipalities are creations of the

state law, and I think it's a proposition of dubious constitutionality to think that the FCC somehow would have the authority to preempt a state law prescribing what a municipality, which it created, can and cannot do.

I just -- I would hope they would be very cautious. It's not just unwise, as Steve mentioned, but I think it's probably not constitutional for him to do this.

And I think it would create an uproar across the country, and I think you'd have at least 20-plus state AGs, I would expect, that would go to court to defend their state laws.

MR. MAY: Rebecca, do you want to --

MS. ARBOGAST: I would just quickly commend people who are following this, too, in a paper that was issued last week or the week before. Diana Carew, who's an economist at PPI, did a study that looked at where there is need for public funding, and along with Ed Rendell -- I think Arnold Schwarzenegger was involved with this group. I can't remember the acronym, but -- Building for America, I think, or America's Future or something like that.

But they're showing how we have a massive, massive underfunded core infrastructure need in this country. And when you hear Ed Rendell talk about it, he talks about the

Panama Canal as apparently being completely dredged so these huge tankers can come through, and in our country on the Eastern seaboard, there are only two ports that are deep enough to accommodate these big tankers. And so all of that commerce is going up to Canada. Love Canada, but I'd like to see some of those jobs stay here.

And the amount of delayed investment in roads and ports and water in this country, it is really scary. And so what her paper looked at was the fact that there's plenty of private capital going into broadband, more than - - plenty, ample -- and that we have this incredible shortfall of state, local, and federal funding in the core infrastructure that the country needs. So take a look at Diana's paper.

MR. MAY: Remember when I asked you initially what troubled you potentially, possibly about the new Chairman? Maybe we could put that in the troubled category.

Now, let's switch gears and talk about spectrum, spectrum, spectrum, which we did talk a little bit about earlier, but I want to talk specifically now about the incentive auction and the process the FCC is going through to develop plans for that auction.

And because I think you all agree, I suspect, that in order to provide wireless services, spectrum obviously is a key input. But as you know, T-Mobile and Sprint suggest that somehow the rules be fashioned in a way -- and I don't want to put words in their mouth because there are different ways you could say this, but somehow that they, quote, "win" enough spectrum to make sure that they remain competitive.

And again, I want to turn to my friends over at Free Press and give you this quote as well, and then have you respond to questions about specifically structuring the bidding in a way that limits the amount of spectrum that a company can gain. So Free Press said, quote, "While no qualified entity should be barred from participating in the upcoming auction, clear, transparent, and fair limitations on how much low frequency spectrum any one carrier can acquire do not bar participation." They said that rules can be structured, quote, "to allow all interested bidders a legitimate chance of winning the spectrum. They need to deliver wireless services," closed quote.

So how do you respond to that suggestion for the FCC to develop rules in the auction? Jim, you want to go

first?

MR. CICCONI: I was trying to kick it to James here but --

MR. MAY: James, do you want to go first?

MR. ASSEY: I'll wait.

MR. CICCONI: He may want to rebut me. I don't know.

Look, T-Mobile wants to stack the deck in the auction, and I don't fault them for that. But I would be very surprised if the FCC actually went in that direction.

The Congress directed the FCC to conduct an auction, not an allocation. And what T-Mobile is really arguing for is an allocation.

Moreover, I think it would raise serious policy questions if the FCC were to go into this auction with the intention of rewarding companies for not bidding in previous auctions and penalizing those who did. We've been very clear that it's entirely appropriate for there to be reasonable limits in the auction on what any one company can purchase. That's been true of past auctions.

But those limits ought to apply equally to everyone. And I think that was also what Congress intended

when it passed the law. It was very clear in the provisions it had there, that it wanted the auction opened to everyone.

And so I think if the FCC went down the path that T-Mobile is arguing for, not only would it be unfair and I think would call into question whether they were following Congressional intent, but I think they'd be setting the auction up to fail. I think that somehow Christie's and Sotheby's and everybody is missing the point of auctions if you're supposed to go into it with inhibitions and restrictions on certain participants.

So I'm hopeful that people will see their view for what it is which is simply a self-serving proposal and designed to help them and penalize everybody else.

MR. MAY: James, I'm going to turn to you, and I may let Steve resolve this definitively and have the last word. And then we're going to move on to another question. James, do you want to say anything? You don't have to.

MR. ASSEY: I look forward to bidding.

MR. MAY: You look forward to bidding?

MR. ASSEY: I'm kidding.

MR. MAY: I know you were a man with deep pockets

but --

MR. LARGENT: I would just say our members have diverse opinions on spectrum and auctions and all the proceedings that are going to take place. And the solution to all of this is let's allocate the 500 megahertz of spectrum that the President called for so that everybody gets some spectrum and we're not having to have these fights over the little bit of spectrum that's coming out.

As I said, the spectrum that's teed up right now that's been auctioned or going to be auctioned in the next year is something less than 300 megahertz, and the President's called for 500. So let's get 500 out there, and let's start investigating where that other 200 megahertz or 220 megahertz of spectrum is and get going on that because it shouldn't take somewhere between nine and 12 years to get spectrum to auction.

This industry just doesn't operate that way, and so if we can accelerate the process somewhat to get more spectrum to auction, then a lot of these other debates go away.

MR. MAY: I know earlier someone mentioned the question which is also in these auctions concerning

allocation of license versus unlicensed spectrum. So I'm going to -- I know I said I was going to come back to it. I want to do it quickly.

Rebecca, I think -- or maybe you said your piece earlier, but if you want to -- if anyone wants to say anything about how the Commission should go about this process of licensed or unlicensed auction, you can do so now. It's kind of a technical issue. Let's don't dwell on it too long.

James.

MS. ARBOGAST: But James maybe.

MR. MAY: James.

MR. ASSEY: I think the important thing for us to all recognize, not only has licensed spectrum just been a tremendous American success story, but so has unlicensed spectrum. This is not an either/or proposition.

We need to ensure that we have the inputs necessary to allow both the licensed economy to grow as well as the unlicensed economy to grow. And we've seen tremendous consumer benefits as a result of that.

I think we're very encouraged by the action teed up later this month in the 5 gigahertz proceeding that the

FCC has shown some real leadership in. That has not been an easy process, and it involves opening up a band, the UNII-1 band and 5 gigahertz to allow us to coexist with licensed users and develop rules that will permit that.

But the fact of the matter is, we all know we have more Internet adopters. We have more wireless devices out there. We have more intensity of use as people migrate from just looking at webpages to wanting to watch videos as well, and we don't see any signs of that hockey stick stopping.

So we're foolish if we don't figure out a strategy that will allow both licensed and unlicensed to grow. We're very encouraged by this first step that the Commission is going to take, but it is a first step. And we're going to need to continue to try and keep this engine running.

MR. LARGENT: I would add -- and I applaud what James just said, and I would add to that, as long as there's no interference. Interference is the only issue that is a concern for the wireless industry.

MR. MAY: So now we're going to switch gears a bit and talk about the video area and what's happening in that

space. In case some of you may not have heard, there's a merger proposed between Comcast and Time Warner Cable, I guess three or four weeks ago maybe. And that will provide a context in which we can talk about the video marketplace and maybe the broadband marketplace, too.

I'm going to ask Rebecca this question because she happens to be from Comcast, so she'll get first stab, and then maybe another panel member will have a reaction. And I'm going to invoke my friends again in the public interest community and ask you to respond to what they claim to be their concerns because they've said -- well, I'm just going to tell you what I've read in the press, and then I'm going to ask you to respond.

They say that this merger ought to be stopped or perhaps conditioned because the combined company would exercise too much dominance in the video marketplace and also the broadband marketplace. And they claim that this merged company would have the power to stifle diversity in news and information services, stifle the development of over-the-top online services, raise prices for multichannel video services, maybe even other things.

Do you agree?

(Laughter.)

MS. ARBOGAST: So we've all watched this cycle before, and I think in the very days of a transaction being announced, there's a lot of noise and high level rhetoric around it. I think that everybody looks forward to getting deeper into a lot of the issues and a lot of the analysis.

From my point of view, I think that the transaction itself is -- people need to remember, it's not a horizontal concentration. It's not vertical acquisition. It's an expansion of a footprint which really presents very limited sets of issues.

In this particular case, there will be a lot of benefits that would accrue to the consumers that are in the Time Warner territory which is where the footprint has expanded to. So Comcast, I think everybody would recognize, has been a leader in our industry in terms of innovation and investment, and we'll be able to bring those speeds, those services that we provide to broadband customers to the Time Warner Cable customers over time.

And on the video side of things, we have a lot of new really quite good products in terms of user interface.

The X-1 platform is incredible. I can tell you that

firsthand. And we have a deep bench of video that's available and a lot of other video innovation and services that we can also then extend to the Time Warner cable footprint.

The simple fact is that times have changed, and so the regional model of the cable footprint just isn't tenable any longer given that the companies that we're competing against have national footprints. And it's important to be able to have that scale, not just to do things like expand the speed of broadband and get the deep video libraries but also to do things that are kind of hidden behind the scenes.

IPB-6, we were a leader on in transitioning over to. Cybersecurity, we lead on. And you really need to be able to have a base over which to spread that research and development.

We're able to do a lot of -- I think a lot of the focus is on residential. I think it's important to look, too, at what happens with the business services which don't get as much of the advocacy groups' attention, but I think it's incredibly important for economic growth and development and jobs. We'll be able to bring services and

provide more competition to Verizon, to AT&T to the services that they provide businesses across those new footprints, which is important as well.

And you get all this benefit without decreasing competition, so there will be no fewer services or competitors that will be available. In fact, it probably will increase competition. Those folks who have said there's no incentive to keep on upgrading and investing among our companies, I think are being proven wrong.

MR. MAY: I will say this, not taking a position on the merger, but I've quoted, of course, and maybe to the discomfort of my friends up here, my other friends over at Free Press throughout the morning. But I will say this and many of you in the audience know it as well, at the time of the proposed AOL/Time Warner merger, because I was actively writing and trying to think back then as well, some of the same statements that are now used about the dominance, if that merger were allowed to go forward, in terms of really taking over the Internet, taking over the video marketplace, almost in the same language were used then.

And for those of you who are interested, I quote that language quite a bit in some of our blogs. So some of

you may remember what happened to the AOL and Time Warner, so I just throw that out.

Now, I want to just ask whether either Jim or Craig have any quick comments on this merger, any concerns that you might have, and then we're going to turn to a final question and then try to get in a question or two from the audience.

Anything you want to say?

MR. CICCONI: I mean, our chairman spoke to this at the investor conference last week, and one of the things I've learned is I usually don't need to expand upon the things he says, so.

MR. MAY: What did he say for those that don't know it? You don't have to expand it.

MR. CICCONI: It's a matter of public record.

MR. MAY: All right. Anyone else want to say anything?

Then here's what we're going to do. I'm going to ask this final question. I said earlier I wanted to get reactions concerning a new Communications Act. That's the second line in our conference theme.

We're going to do this really pretty quickly

because that could be the subject of whole other conference, and actually, I'll make this promise. We'll do a whole other conference on a new act at an appropriate time.

But I'm just going to do down the line, and give me just almost in bullet form two or three points that you would like to suggest in terms -- just assuming that there may be one, if you think that's appropriate, what a new act should focus on.

I'll just start with Craig, and we'll go down the line quickly.

MR. SILLIMAN: Real quickly, markets, technologies have changed radically since the laws were first written in 1934 or even in 1996, so start with a clean slate. Rely as much as possible on competition, not on economic regulation.

Build your platform around consumers, not around technologies. Technologies will change. Protection of the consumer should be your first principle.

And avoid technology silos and focus on consumer protection and competition.

MR. MAY: Steve?

MR. LARGENT: Service, focus on service, not platform. Focus on enforcement, not regulation. Focus on predictability and have a bias for markets, not regulation.

And in those areas that with respect to the disabled or things like E-911 or other emergency services, they should be competitively neutral.

MR. MAY: Jim?

MR. CICCONI: I think too often in past years, the FCC has felt its mission is to regulate, and that's not true. Its mission is to anticipate and address problems, and regulation is the tool they use to do that. I think they've gotten away from that.

I think in any new law that the Congress ought to be very specific about what problems it wants the FCC to address and ought to, I think, circumscribe them getting this broader authority to act in the public interest.

I think that might have been necessary in the days of a monopoly. I don't think that broad a grant of authority which is in essence allowing them to do just about anything that they want or feel they could justify publicly, and so I think they ought to be very clear, very specific and define the mission clearly.

MR. MAY: James?

MR. ASSEY: I think a recognition of technological convergence, an embrace of service competition, and a result that comes out in the form of a more simple structure focused on consumer protection.

MR. MAY: Rebecca, next.

MS. ARBOGAST: Of course, I agree with everything. I think I'll quote two other people.

One is that I think the key thing they need to do is recognize that the world changes so fast, and so all the dynamic competition that we talk about means that you can't predict where things are going.

There was an event last week that Gerry Faulhaber and Larry Downes, who I see in the audience, were talking about -- and their point was when things are changing that fast, the last thing in the world that you need are prophylactic rules. So whatever happens, I would guard against that.

And then my final comment is I will channel Howard Shelanski, who spoke at this event a couple years ago, who made the caution of "beware the not so sweet nothings." And so the general what sound like benign mom and apple pie

edicts out there get played, and so we need to, I think, follow Howard's good advice and beware the not so sweet nothings.

MR. MAY: Thank you.

We definitely need to have another seminar or event, and we'll drill down a little more deeply on what a new act should look like. And in just sort of a preview of coming attractions, I should mention that on the next panel, we're going to have with us David Redl and Shawn Chang. They're the two lead staff persons who are working on this process to develop a new Communications Act -- what they call carefully an "update" and not a "rewrite."

So we're pleased that you guys are going to be with us then.

We could do so much more. This has been so much fun, and so I've probably just got time maybe for two quick questions, if you have any questions. Raise your hand. We're going to bring a mic. It's the same rule. You have to identify yourself and just ask a question without making a statement.

Scott, and then I'm going to come just so you'll know to the gentleman that professed not to be a gentleman

but I know is a gentleman.

MR. CLELAND: Scott Cleland from Net Competition.

A very quick question.

The pro-competitive development now of LTE and the outgrowth of Wi-Fi really is changing the dynamic in the sense that now we have wireless capacity, and the U.S. is leading in LTE deployment, of being able to deliver video.

And so over-the-top, especially now with the court appearing to bless two-sided markets, could people give a comment about how competition is addressing a lot of the video and broadband issues? Because more competition is on the way.

MR. MAY: Who would like to comment quickly?

MR. ASSEY: I'd only agree with you, Scott, to the extent that I think the consumer has more choices available to them now than ever before, and they increasingly, I think, have the power to select the video choices that meet their needs. And I would say the communications choices that they want to use, whether it's AT&T, Verizon, or WhatsApp, is one of the greatest benefits of convergence that we've seen, and I don't expect that to slow down anytime soon.

MR. CICCONI: I'd add that I think you find most of the industry, but particularly AT&T in our U-verse product, we really embrace over the top. And I think that's a real good example of how competition in the market really addresses concerns that in the past have motivated regulation.

In fact, when the net neutrality debate started, one of the arguments is that companies like ours would never embrace over the top. And in fact, the opposite is the case, and not only have we embraced it, but frankly, we make good money at it.

MR. MAY: Craig, were you --

MR. SILLIMAN: Just one quick comment, I think we all -- because Scott evoked LTE. Remind people that when we -- when Verizon first announced that we were embracing LTE, it was a very controversial decision. A lot of people thought the devices wouldn't be there, we were way too early to the market. We look back now and say this was a successful platform, but that only came about because we had this competitive environment where we were trying to differentiate ourselves. That could have failed. It turned out succeeding.

You have to have that vibrant environment where everyone's experimenting, and what you end up with is these types of platforms.

MR. MAY: One last question, right up here.

MR. BOLIEK: Brooks Boliek, Politico. Why does Comcast get it both ways? I mean, they argue that it's only local markets, that we don't -- we replace a competitor, we don't eliminate a competitor. Yet then Comcast will say it's a national market. So why shouldn't we look at it as a national market instead of a local market, which you just said is failure?

MS. ARBOGAST: When you say we say it's a national market in what respect? I'm just not sure I follow the question. I'm sure you're right. I just don't follow the question.

MR. BOLIEK: You just said that Comcast says that the merger should be looked at on a regional basis, a market-by-market basis, that in, like, L.A., Comcast doesn't replace Time Warner. It replaces Time Warner, but it doesn't replace a competitor. And then you say we need this scale to compete nationally.

So why shouldn't the reviewers look at it as a

national marketplace instead of a local marketplace? It looks like Comcast is talking out of both sides of its mouth.

MS. ARBOGAST: I think they're just -- from an anti-trust perspective, from a competition perspective, just two entirely different conversations.

MR. BOLIEK: So?

MR. ASSEY: I mean, I think the answer is also the regulators are going to look at both, right? DOJ and the FCC look at all the different markets any merging party is going to affect. So I think what your point brings out is the fact that there are facts that are going to be put before the agencies, and the agencies will consider the effect on the relevant markets.

MS. ARBOGAST: And maybe this is more responsive. So you talk about when you're doing anti-trust analysis, you look at what the efficiencies are, what are the benefits that come from the transaction, and you balance those against harms to competition. So the benefit of the transaction by doing a footprint expansion goes to the scale, and then you balance that against the reduction of completion, where here, there isn't one.

So that's just kind of the high level way anti-trust would look at a transaction like this. So the two points are just located at different points of the analysis.

MR. MAY: Thank you for that, Rebecca.

I want you to join with me in thanking this panel. They were extraordinary. We could go on.

(Applause.)

(A recess was taken.)