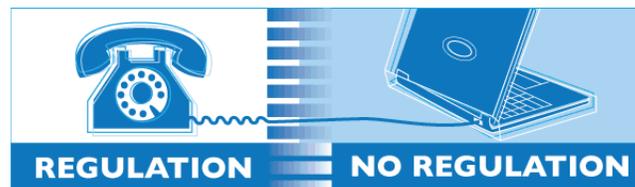




**The Free State Foundation's
Fourth Annual Telecom Policy Conference**

***"The Internet World: Will It Remain Free From Public Utility
Regulation?"***



**A Conversation with FCC Commissioner Mignon Clyburn
and
Randolph J. May, President, Free State Foundation**

**March 20, 2012
National Press Club, Washington, DC**

PROCEEDINGS

MR. MAY: As promised, Commissioner Clyburn is here. I want to welcome you, first of all.

COMMISSIONER CLYBURN: Thank you.

MR. MAY: And thank you for being here.

As I said earlier, we've got many repeat attenders or repeat offenders here. So I'm glad they're here.

COMMISSIONER CLYBURN: I see a couple of familiar faces, right.

MR. MAY: But they know that the previous conversationalists that have occupied that chair were Blair Levin, Eddie Lazarus. Gosh, I'm almost forgetting Commissioner McDowell. And so I think this is a step up, really.

COMMISSIONER CLYBURN: Mm-hmm.

(Laughter.)

MR. MAY: Don't tell Commissioner McDowell I said that.

(Simultaneous conversation.)

* 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.

MR. MAY: But I'll say this, it's nice to have a woman here.

COMMISSIONER CLYBURN: Thank you, thank you. Nice to be a woman.

(Laughter.)

MR. MAY: I should tell the audience that we're both Carolinians.

COMMISSIONER CLYBURN: Yes.

MR. MAY: I'm from North Carolina, and the Commissioner is from South Carolina.

COMMISSIONER CLYBURN: Yes.

MR. MAY: So we're fellow Carolinians. Most of you know we've got that certain brand of Southern hospitality.

COMMISSIONER CLYBURN: Right.

MR. MAY: I even speak too slowly sometimes. But we've got that Carolina connection.

I want to introduce Commissioner Clyburn. But with her indulgence, I'm going to do it the same way I introduced everyone else, because everyone has this nice brochure.

COMMISSIONER CLYBURN: And because everybody knows who I am.

MR. MAY: They've got your full bio and they know you. So I'm just going to pick out two or three things here.

You've been on the Commission since 2009.

COMMISSIONER CLYBURN: Yes.

MR. MAY: Before that you served 11 years on the South Carolina Public Service Commission.

COMMISSIONER CLYBURN: Yes.

MR. MAY: Before that, you were the publisher and general manager of *The Coastal Times*. That was a Charleston-based newspaper focused primarily on issues affecting the African American community.

I'm going to leave it at that. For all the other information, people have your bio.

COMMISSIONER CLYBURN: Yes.

MR. MAY: Just to get started, let's talk a little bit about your background and experience, and how that affects things.

So you have the South Carolina Public Service Commission experience. I had frankly forgotten, or didn't know, that you had served for that long on the Commission.

COMMISSIONER CLYBURN: Yes.

MR. MAY: Even twice as long as your FCC duties, so far.

What I'd like for you to do is describe how that experience affects the way you see your work at the FCC, and how you approach your job at the FCC.

And if there are any other life experiences that are particularly relevant, you can go ahead and throw them out right away, if you want to.

COMMISSIONER CLYBURN: Right.

Thank you for inviting me here today. I would say that I would go anywhere for a free meal. But luckily, I'm at a point in my life where that's no longer true. I can pick and choose a bit.

(Laughter.)

COMMISSIONER CLYBURN: So you know, I chose to come here. Thank you. And again, there are so many familiar faces and new faces. I appreciate you for joining me for lunch today.

My background and experiences are different from many of the classic commissioners. I don't know what that means exactly. But I did spend a number of years on my state's commission.

From a professional standpoint, that gave me a lot of my footing, so to speak. It helps ground me for how I look at and approach regulation.

I remember with each and every decision that I

make or consider that it is the individual that I am impacting.

At the South Carolina Commission, we had more personal interactive engagements. We had evidentiary hearings. I know that's not too common in these parts, as we like to say.

(Laughter.)

COMMISSIONER CLYBURN: I miss saying that too.

People come up and they are part of the testimony, along with the companies coming before you. With each and every encounter that interaction just reinforces why you are here and why you are serving.

So that is important to me, and that grounding has very much shaped the way I see things.

MR. MAY: You mentioned the interaction among people.

COMMISSIONER CLYBURN: Mm-hmm.

MR. MAY: I was at the FCC back from 1978 to '81. Frankly, we didn't have as much to do, number one. And I don't think we had quite as much interaction.

Just from my perspective, in my think-tank role and not as someone that comes in to really lobby the commissioners much, I get the impression, with all the *ex partes* I see, that there is plenty of interaction really

going on.

You mentioned the evidentiary hearings at the South Carolina Commission. But did people come in and do that same type of thing?

And recently people have talked about whether there are too many *ex parte* meetings and whether they're useful.

COMMISSIONER CLYBURN: Mm-hmm.

MR. MAY: Just talk about that process with me.

COMMISSIONER CLYBURN: Well, the South Carolina Commission evolved, especially my last four to five years, where we looked a little bit more like the FCC in terms of the process, in terms of that engagement.

To be honest with you, it really cut down quite a bit on my interactions. Once upon a time, everybody would come in. Then we bifurcated the Commission. An Office of Regulatory Staff took a lot of the consumer engagement away from the Commission. And we became strictly quasi-judicial, from my standpoint.

I don't want to speak ill, because I plan to go back home.

(Laughter.)

COMMISSIONER CLYBURN: But it took some of the heart and soul out of it for me. It made it more of a

paper process, as opposed to that reinforcement that I mentioned to you, from a consumer-based experience.

Part of the challenge and joy of my job was getting those phone calls from some folks who got to know me a little too well, who said that their lights were going to be cut off tomorrow. And I'm like, "Well, why didn't you call me the day before to help you?"

But honestly, those types of experiences and those types of relationships, as I said, reinforce.

So I missed that side. I really did miss that. So it's more like this agency, in that regard. And I just have fond memories of that prior experience.

So it might not be answering your question. Now you got me a little nostalgic. I'm going to get teary-eyed, and it's not going to be pretty.

MR. MAY: Don't do that yet.

COMMISSIONER CLYBURN: I don't wear too much mascara, but the little bit I wear is going.

MR. MAY: When I deliver eulogies, I like for people to get teary-eyed.

COMMISSIONER CLYBURN: I know.

MR. MAY: But that's not what we're doing here.

(Laughter.)

MR. MAY: So just on the institutions, before we

move on. One of the things that I've actually written about quite a bit is the Sunshine Act. At one point I headed a committee that studied it and made a recommendation to change the Sunshine Act.

COMMISSIONER CLYBURN: Mm-hmm.

MR. MAY: I'm still on that horse.

Was there a Sunshine Act that operated the same way for the South Carolina Commission? And whether there was or wasn't, after having been on the FCC, would you like to see the Sunshine Act changed?

COMMISSIONER CLYBURN: Yes. We had the same types of rules, where the majority of us couldn't meet. Sometimes, if I saw a couple of my Commissioners meeting, I would jokingly sit on the outside and bend down and look in and chuckle. That's before father or mother time caught up with me.

MR. MAY: (Laughing.)

COMMISSIONER CLYBURN: I was the silly one sometimes. So I could do that. We all got along.

The Sunshine Act has a significant impact, more than you know.

First and foremost, let me go on the record and reaffirm that I am a transparency proponent. I think everything should be in the light of day.

I am also the head of the Joint Boards.

There are three federal members on the Joint Board. Because of the state-federal interaction, most of the meetings take place over the telephone.

So what happens is that only two of the three federal commissioners or members can get on the phone at the same time.

So we're sitting here, having, say from 10:15 to 10:20, one commissioner on besides me. And then at 10:20, when I hear the other person say, "Hey, I'm here," the other one has to drop off.

It is, forgive me for saying, a very silly process, this type of engagement. And I don't use the word silly lightly.

It just makes for a very haphazard engagement, especially with a process like the Joint Board's that is not the final decision-making.

When the Joint Board comes up with a recommendation, it goes to the FCC. So it's not like it's a final decision-making platform.

That is just one example where the current interpretation of the Sunshine Act is really not doing well for the Commission.

MR. MAY: Good. I agree with that. You and I

probably don't agree on 90 percent of the things, but we agree on this.

COMMISSIONER CLYBURN: Now you know what, we probably do. We had more conversations that didn't take place in front of all our friends here. We probably agree on more than that.

MR. MAY: Well, these are just our friends here.

Okay, let's continue on. Before we talk about some issues a little more substantively, let's just stick with the FCC as an institution for another minute. You have the experience of having been on the South Carolina Commission, as well. But there are always things you can change or improve in an institution.

COMMISSIONER CLYBURN: Mm-hmm.

MR. MAY: Now I particularly have in mind that everybody, or at least some people, are concerned about the size of government and in the size of our nation's debt.

Are there two or three things that you would change about the FCC institutionally? You mentioned the Sunshine Act. So I'm checking that off. Do you have another one or two?

COMMISSIONER CLYBURN: I do. And it should not surprise you, given the way we began the conversation, in that I wish, from a budgetary as well as a scheduling

perspective, that we could get outside of the Beltway more.

We make significant decisions that impact this nation. Though we have what we feel is a robust process that has more of an online engagement, we ask for comments, and we attempt to connect with different public interest groups and companies from around the nation, nothing beats going out into communities, especially when it comes to the significant issues that we're addressing: USF reform, and the like. Those are very significant issues that affect real people.

Last week was the second anniversary of the National Broadband Plan. Somebody jokingly said this week that it's "almost out of diapers." I thought that was kind of funny. You all might not, right?

(Laughter.)

COMMISSIONER CLYBURN: But anyway, my humor is a bit different than this crowd, obviously.

When we talk about issues like the National Broadband Plan, and when we are implementing and noticing these types of particular life-changing, ever-changing issues, getting out to the public and seeing how people think and how these things potentially impact them would be important.

So if I could enhance the budget and enhance our

ability to manufacture more time, I would get out on the roads a bit more.

MR. MAY: Okay. By the way, the Commissioner told me that she just celebrated her 30th birthday.

COMMISSIONER CLYBURN: Thursday.

MR. MAY: Oh, Thursday.

I just want to wish you a Happy Birthday.

COMMISSIONER CLYBURN: I'll put it this way. I already have my card. So most people would know what that means.

(Laughter.)

MR. MAY: Happy Birthday.

COMMISSIONER CLYBURN: Thank you. And I do take gifts.

(Laughter.)

MR. MAY: While I'm thinking about it, as you know, we always have questions at every session of our program.

So while we're chatting, you in the audience can think of any questions that you have for the Commissioner, and we're going to try and get to some of those.

Then, I just want to add, if some of you just came for lunch, right after we get through, we're really fortunate to have Danny Weitzner here from the White House.

After our conversation, Danny is going to deliver some closing remarks.

COMMISSIONER CLYBURN: And since Danny is here, when I said gifts it was in the confines of what's permitted.

(Laughter.)

MR. WEITZNER: You're independent.

(Laughter.)

COMMISSIONER CLYBURN: Not that independent.

MR. MAY: So that will be a real treat, as well.

Now, I describe myself as having a free-market orientation. I'm not abashed about it.

I also will nod in the direction of data-driven decision-making and so forth.

COMMISSIONER CLYBURN: Mm-hmm.

MR. MAY: But I bring a free-market disposition to these issues, particularly in light of where I think the communications industry is today, after having watched it for three or four decades.

So what I want to ask you is: How would you describe your own regulatory philosophy, just as I described mine? And in conjunction with that, is there any particular person that you can point to, that's a model for your regulatory philosophy?

COMMISSIONER CLYBURN: I am a regulator. A lot of people run away from this title. I do not. I am proud to be a regulator.

And I'm also a pragmatist. I am a person that always aligns her philosophy, so to speak, with the eucalyptus tree. I say that I'm strong. I bend, but don't break.

That's how I view myself. We have to be nimble enough, have the strength, and have the dexterity to be able to navigate in these changing times.

So when I say that, I always attempt to not be so rigid and to not ignore what the market trends are, what the needs of the nation are, what our national priorities are.

All of those things go into what I call a utility or regulatory gumbo.

And that's how I come to my decision-making. I attempt to look at the market. I attempt to look at the trends. And I make a decision based on that.

I'm not a philosopher; I'm a regulator who attempts to take all of these things into consideration to make the best decisions that I know how.

MR. MAY: Okay. Well, I like the eucalyptus tree imagery. Now I may refer to the eucalyptus tree regulatory

philosophy, and ascribe it to you.

COMMISSIONER CLYBURN: (Laughing) If it's positive, I'll take it.

MR. MAY: But let's drill down a little further here.

COMMISSIONER CLYBURN: Mm-hmm.

MR. MAY: And it's fine to address a particular market. But you don't have to, at this point, unless you want to.

I can take what you just said, but then the next question really would be: How do you yourself assess whether a market is competitive? Because I assume you would say if a market's competitive or has a certain level of competitiveness, then you don't need to regulate.

I mean, tell me if not. But what are you looking at when you decide whether a market's competitive or not?

COMMISSIONER CLYBURN: We all want a robust, competitive market. That's why I said that 90 percent might not be realistic in terms of how we disconnect.

We want a robust, competitive market. But it doesn't always happen organically. An efficient market is a robust, competitive market. And when the markets aren't working efficiently, then you've got persons like me in place that are the eyes and ears, not only for the

companies doing business in this space, but most particularly, for the consumers.

So that's why in the '30s, most of these agencies like ours were formed. Because without a competitive, robust marketplace, then companies or entities or individuals would do what's natural.

They will take advantage of all of the opportunities that they have before them. And in a noncompetitive marketplace, that does not necessarily work in favor of consumer engagement, the consumer experience, and consumer rights.

That's why you have regulatory agencies and regulation in place.

MR. MAY: I actually agree with what you said.

COMMISSIONER CLYBURN: I told you we're going to get there. Keep count out there, please.

MR. MAY: We're still within the 90 percent, maybe.

COMMISSIONER CLYBURN: Okay.

MR. MAY: But I'm going to press you on that a little bit.

COMMISSIONER CLYBURN: I understand that.

MR. MAY: Because what I really want to know is: How do you know? What, in your mind, would tell you

whether there's a market failure, or whether a market's competitive?

Now let's be specific.

COMMISSIONER CLYBURN: Okay.

MR. MAY: We've got the video market, for example, that's changed so much from when you and I were a bit younger.

COMMISSIONER CLYBURN: All right. Just be careful.

(Laughter.)

COMMISSIONER CLYBURN: I know it's my birthday.

(Simultaneous conversation.)

MR. MAY: You've got Kyle McSllarrow sitting out there.

COMMISSIONER CLYBURN: He's getting on up there?

(Laughter.)

MR. MCSLLARROW: (Off mic.)

MR. MAY: No, I usually do the jokes here.

COMMISSIONER CLYBURN: Sorry, sorry, sorry.

MR. MAY: But no, you are terrific. But you've got Kyle sitting there, he's in a marketplace, the video market.

COMMISSIONER CLYBURN: Mm-hmm, right.

MR. MAY: He probably feels like he's got a lot of

competitors in that market, online.

Then you've got Tom Tauke sitting over there. And I used to think of him as a telephone guy, right? But he's in the video market.

COMMISSIONER CLYBURN: He is, he absolutely is.

MR. MAY: He's in the video market, and they compete, along with others.

In most markets we don't have a monopoly like we used to have with Ma Bell. We're far from that. So how do you assess when a market's competitive?

COMMISSIONER CLYBURN: Again, you mentioned one thing. You look at the number of players in the space. You look at the product or the number of devices, and whether that particular utility or whatever we're speaking of, calls for regulation.

I don't want to get too transaction-specific, but you look at national, as well as regional, as well as local engagement.

So you look at all of those things, in terms of the dynamics of the markets, the entire ecosystem.

We teed up in our video competition report notice that that marketplace is definitely changing. You mentioned the number of players in this space, and the amount of concentration that has lessened because of the

number of players, with DBS and the like.

So yes, that market has changed. Our 2011 competition report notice affirmed that.

And so we're looking at online engagement. There are a lot of things that are going on in this space, and the FCC has acknowledged that.

In terms of our inputs and how we evaluate that market, that has evolved too.

So again, we are looking at a dynamic marketplace. And I think if you look at our competition report notice, it reflects it.

We've got figures that, in 1992, the number of cable share of the MVPD subscribers was 95 percent, and in 2010, it was 59 percent.

The FCC has acknowledged and the report affirms that. But that didn't all happen organically. We did some things in the market in terms of ensuring that there were refinements in the terrestrial loophole. We did some things in terms of looking at exclusive arrangements. That loophole was gotten rid of.

So there are some things that the FCC did in terms of encouraging competition. That didn't happen naturally. And so that's what I'm speaking of when we're talking about the positive influence of regulatory engagement to

stimulate this type of competition that we brag about.

When it doesn't happen naturally, we need this type of engagement in order for those benefits to be actualized.

MR. MAY: Okay. I mentioned the video market. But everyone today is focused on spectrum, including a lot of people in the wireless market. That's a big subject.

When I look at the wireless market, I see multiple operators.

COMMISSIONER CLYBURN: Yes.

MR. MAY: I see them advertising every week, full-page ads in the paper. And I see a lot of demand. They're changing their pricing all the time. So I see a competitive market.

COMMISSIONER CLYBURN: Mm-hmm.

MR. MAY: Do you think the wireless market is competitive now? There has been some criticism of the Commission for not being willing to find that it's a competitive market.

COMMISSIONER CLYBURN: Our last report did not take a position on whether or not the market is competitive. We are a data-driven organization, and we brag about it.

So we had a very robust, intense report that

contained a lot of facts and data. It did not draw the conclusion whether the market was competitive, because it looked at a number of things.

It looked at the national framework, and it looked at the regional framework. It looked at devices or products being offered, and it looked at the number of players in the ecosystem. It looked at backhaul and the like.

So if you look at the number of things in which it addressed, it is quite robust. No, it did not draw a conclusion on whether the market was competitive. But it did put forth a very comprehensive framework for all of us to evaluate the market.

MR. MAY: Okay. Before we move to another topic, see whether we can agree on this.

Take this data-driven process, and all of this input. You look at the market, and it's not the old Ma Bell. It may not be the wheat market that textbooks all used as perfectly competitive. But you look at it, and you say: "This is really a close question as to whether this market's competitive, or not."

COMMISSIONER CLYBURN: Mm-hmm.

MR. MAY: And consequences flow from what your determination is.

So in my view, because of the dynamic nature of the communications marketplace, the way the technology changes, and so forth, if I reach that point where things are pretty close to being in equipoise, I say my default position, at this point in history, is going to be not to regulate, to default to no regulation.

Would you agree with me? Is that a good way to approach it? Or do you have another way?

COMMISSIONER CLYBURN: Maybe I wasn't as clear as I should have been. Ideally, we want the marketplace to be robust enough, so that there's less regulation.

When regulation is needed, I'm the cop on the beat. But I'm not looking for a robust and enhanced engagement in this market. I'm looking for ways that I can influence the ecosystem for it to hopefully work more efficiently.

I really don't think you and I are necessarily different in our goals and objectives. We might differ a bit on how we should get there and the type of engagement needed to get there.

When we talk about the video marketplace, I pointed out those exclusive agreements, and some other things in terms of refining the terrestrial loophole.

When we talk about the mobile marketplace, there

were some proactive things that the FCC did.

We may disagree whether it's robust here or robust there. But in terms of the options and number of players in the market, just look at what the long-distance market used to be, look how it was back in the day.

Look at what it evolved into. And in a lot of ways we don't even say "long-distance" any more.

All of those things did not happen organically. It took this type of engagement or intervention in order for us to get to this point.

I don't want to be too irreverent. But in terms of what the objectives are, we might have disconnects along the way as to how we get there.

MR. MAY: Okay.

You mentioned long distance. It's true, we don't refer to it as that. But when people say "long distance," sometimes I think of my mom.

When I was a kid and we used to get a long-distance call, my grandmother would call from Arkansas, and she would hand me the phone, and say, "It's your grandmother."

And I'd start to say, "Hello," and she'd yank it back because it cost so much.

COMMISSIONER CLYBURN: Right, because it was

several cents a minute.

MR. MAY: So we've come a way since then.

COMMISSIONER CLYBURN: We have come a way.

MR. MAY: But let's talk about USF reform for a minute. You're chair of the Joint Boards, as well.

COMMISSIONER CLYBURN: All of them. Whatever is joint at the FCC.

(Laughter.)

MR. MAY: Debi Tate is with us, of course. I know that she's your predecessor in that position.

COMMISSIONER CLYBURN: Right.

MR. MAY: And she is our Distinguished Adjunct Senior Fellow at the Free State Foundation.

COMMISSIONER CLYBURN: Absolutely.

MR. MAY: I know she laid out a lot of the work on USF reform.

COMMISSIONER CLYBURN: And she's a mentor of mine. We're about the same age, right?

MR. MAY: Congratulations to you and the others for the strides that you took on USF reform.

I know it's complicated and there is a lot of politics. If I were just Randy May, I would have gone a lot further.

COMMISSIONER CLYBURN: I wouldn't have guessed

that.

(Laughter.)

MR. MAY: But you deserve congratulations.

Let's put aside what you've done. Here's what I want to do on this subject, fairly quickly.

Number one, you've got the contribution side issue.

COMMISSIONER CLYBURN: Mm-hmm.

MR. MAY: Just tell me, what are your thoughts about how to deal with the contribution side? Because it's no secret there's a 17 percent tax we have now. And this is an important issue.

COMMISSIONER CLYBURN: I don't think you will have disagreement anywhere that contributions is an issue that is a concern of ours.

We have many conversations, me and my colleagues. And it comes up. I call them round-robins. We have meetings among the now-three Commissioners. So sometimes it doesn't take us long.

(Laughter.)

COMMISSIONER CLYBURN: But we have conversations. And if we have three conversations and two times they are about contributions, then it is definitely a center of our attention.

I have not taken an express position on contributions as of yet. But it is of concern to all of us. I pay four or five telephone bills. So I recognize the impact is on me too.

Trust me, as much as you're speaking about contributions, we're probably speaking about it just a bit more among us.

MR. MAY: Okay. An area where I know that we do agree is on Lifeline. For some people it's been counterintuitive when they think of the Free State Foundation.

But for a long time I've been a supporter of Lifeline Service. It seems to me that that's an efficient way to direct support to people that need it. And so I've been supportive.

To be honest with you, I've done it in large part because I've thought a healthy, effective Lifeline regime should make it easier to reform the other part of the program, where the subsidies are not as directed to where they're needed.

COMMISSIONER CLYBURN: Right, right.

MR. MAY: So I think you probably agree with that, at least in part. You champion the Lifeline program.

COMMISSIONER CLYBURN: Yes.

MR. MAY: Take a second or two and just tell us whether you're pleased with the way that came out. We don't want fraud and abuse and waste and so forth.

COMMISSIONER CLYBURN: Right, right.

MR. MAY: Nevertheless, we want it to work. Where do you think we are right now on that? Because I know there are still some further proceedings.

COMMISSIONER CLYBURN: Right.

Number one, I want to acknowledge once again the work of Debi Tate, who chaired these Joint Boards, who was in constant contact with our office.

Just think where we would be without Lifeline. This particular mandate has literally, from a communications standpoint, connected America. That is important.

And it's 95 to 98 percent effective in terms of connectivity. We still have connectivity issues on tribal lands and the like in some areas. But it has been a success.

Now the way in which we communicate, that's changed. We're moving from a PSTN platform to IP.

And we know, as affirmed by the National Broadband Plan and other national principles that, from a data perspective, if we're not broadband-connected we're going

to have disconnects in terms of delivery of education and connectivity to a potential employer.

Today, you don't just walk up with an application, you fill out an application online.

All of these things we recognized as having to be a part of the conversation and a part of a policy. So that is why, in terms of efficiencies, in terms of modernization, all of us were very much motivated to make changes.

But along with these efficiencies that needed to be realized, we also knew that there were duplications. There were some abuses in the framework. And we wanted this very successful program to be solvent and to be able to do more within a certain framework.

Now, no, we did not cap the fund. I was not a proponent because the figures are relatively low as it relates to qualified persons who take advantage of the program. Going forward, I'm hoping we'll work on that through engagement.

But our office saw how successful this program was on a voice-only platform. We're migrating now, to include voice and data in the mix.

So from a policy-making standpoint, we made sure that we were not standing in the way, to ensure that those

providers and those individuals who are eligible could take advantage of the entire communications plate.

MR. MAY: Okay. Good.

I'm just going to ask you one more question. And then we're going to take a couple of questions from the audience.

So if we have any, someone can go to the mic.

But you've got to promise to come back, now, in the future. Because I have more questions, but I'm going run out of time.

COMMISSIONER CLYBURN: Okay. It depends on how you treat me on my birthday week.

MR. MAY: Okay.

(Laughter.)

MR. MAY: It's been good so far, though, right?

COMMISSIONER CLYBURN: Yeah, I guess so.

(Simultaneous conversation.)

COMMISSIONER CLYBURN: You could have been a lot worse.

MR. MAY: You can tell Genachowski back there it's not so bad, right?

COMMISSIONER CLYBURN: Now, you know what? We've got this thing back home, how to say A, and B, and C your way out.

MR. MAY: Right.

COMMISSIONER CLYBURN: So that's between you and someone else.

MR. MAY: Oh, okay.

COMMISSIONER CLYBURN: You and I are right here. Ask Laura, she'll tell you.

(Laughter.)

MR. MAY: All right. I'm going to ask you a tough one here at the end.

COMMISSIONER CLYBURN: Okay, no problem.

MR. MAY: Recently you gave a speech at the Federal Communications Commission Bar Association. Unfortunately, I couldn't be there. So this is the way it was reported at our end.

COMMISSIONER CLYBURN: Isn't there some kind of hearsay thing going? You lawyers talk about hearsay.

MR. MAY: Well, it was in *Comm Daily*.

COMMISSIONER CLYBURN: So that's the truth, right?

(Laughter.)

MR. MAY: It was in *Comm Daily*.

COMMISSIONER CLYBURN: Okay.

MR. MAY: And maybe *TR Reports*. I don't want to offend any reporter here.

COMMISSIONER CLYBURN: And I just offended all of

them. So.

MR. MAY: So here's the thing. You talked about gender equity being a goal.

COMMISSIONER CLYBURN: I did.

MR. MAY: And you said that when CEOs come in to talk with you, you're going to use the opportunity to talk with them about the subject, gender equity.

COMMISSIONER CLYBURN: Yes.

MR. MAY: Someone comes in to talk with you about a pending transaction or position. Say they have a combination, an application before you for a merger or whatever. They come in to talk to you. And you say to them: "Hmm, that's pretty interesting. By the way, have you considered whether your company is doing enough to promote gender equity?" Now, my question is: Do you ever worry that that CEO might get the wrong impression, that by raising that question you're linking your position on the pending transaction before the Commission with what you'd like to see that company do on some other subject? Do you worry about it, if you have that conversation?

COMMISSIONER CLYBURN: I would worry about it if I phrased it exactly the way that you did.

MR. MAY: How would you phrase it?

COMMISSIONER CLYBURN: You know, things happen.

You could probably tell that on my best days, I'm pretty friendly.

Number one, the CEOs that come to see me are very sophisticated. So I do not worry about them drawing the conclusions of the foundation in which you put forth. So let me affirm that.

But number two, I don't link in that way. I do look for an opening or two. And I had one conversation, believe it or not, with the NFL Commissioner.

MR. MAY: Now that could not have been about gender equity, though, right?

(Laughter.)

MR. MAY: Go ahead.

COMMISSIONER CLYBURN: Funny you should say that. And see, you would not think that there was a natural way for me to come into that. But I found a way.

(Laughter.)

MR. MAY: Okay.

COMMISSIONER CLYBURN: One of the things that a lot of people probably take for granted now is the Rooney Rule.

So I asked the Commissioner about that, and what that has done, in terms of diversifying the head coaching positions. Because it went from a number that was not

desirable to about 20 to 24 percent of the head coaching positions that are occupied by persons more reflective of our wonderful engagement that we have in America.

And he talked about how positive that was and that qualified individuals, who were not being considered, would not only be considered, but hired.

So that, to me, is front and center of many of the conversations that I have, that I look for openings.

Again, you didn't think I could bring it up with the NFL. And I did, because they had a template in place that is transportable. He talked about other entities calling and asking about that, who recognize that it's good business that their bottom lines are more enhanced, that their decisions are better when they have a demographic framework or make-up that's reflective of all of the American experiences.

So I don't bring it up in a way in which you said. But I do find a way, even with the NFL.

MR. MAY: That question was actually a prelude to the next question I was going to ask about the so-called voluntary commitments that come up in mergers.

Some people in the room have had experience with those. But you know what? I'm going to save that for next time, because I want to think about that answer you just

gave.

COMMISSIONER CLYBURN: Okay.

MR. MAY: Now we've got time for a couple questions, if we have any.

Go ahead, all the way in the back. And please keep your questions short, not statements.

MR. SZOKA: Sure. Berin Szoka, TechFreedom.

The Commission sat on the Sirius-XM deal for 16 months. Then the two parties were under pressure and suddenly agreed to conditions.

COMMISSIONER CLYBURN: I'm going to speak from my experiences, as it relates to that particular transaction. When I came into the FCC, there was something before me that, even without a law degree, I knew was problematic. And it had been languishing for a long period of time.

I will affirm to you that our office attempted to influence negotiations. We came up with a framework that was constitutionally sustainable. And if you speak to the parties right now, they will say that that ecosystem has been enhanced. They're stations on the air right now.

So we took a situation that was constitutionally unsustainable and wasn't going anywhere. And with the parties, we came up with a framework in which it is sustainable; and not only sustainable, but is on the road

to being economically beneficial, and from a program option standpoint, beneficial.

You could tell there are certain sensitivities I had. But in terms of that particular framework, particularly in my office, we worked to try to find a viable solution.

Because of that, you've got some stations on the air, and if you were to ask the persons at Sirius XM, they are hyper-excited about the programming and the opportunities before it.

MR. MAY: Okay. I think you got that exchange.

COMMISSIONER CLYBURN: But I was unfair to him, though. I didn't let him finish.

MR. MAY: Okay, real quick.

MR. SZOKA: My question was just about the threat of the raised eyebrow. Do you worry that people might look at that case and think: "Well, you know, the Commission in this case seemed to be able to extract a condition that would have been unconstitutional if the government had imposed it directly." But because it was voluntarily in the context of a process where the FCC was able to sit on the merger application for 16 months there might be those in the industry who would fear, in similar situations, that when a Commissioner said something to them, it might have

been framed as a suggestion.

COMMISSIONER CLYBURN: What I believe you saw put forward was something that preceded me.

I cannot tell you what all of the influencers were there. I cannot tell you if that was solely the reason why it took that period of time to come to that.

I wasn't there. But I just cannot think that that particular unsustainable framework was a cause for a 16-month delay.

I can say that when I got there and learned of the challenges, we did what we could to influence a constitutionally sustainable framework, which has provided a whole host of opportunities for new players in a diverse market, from Howard University to Brigham Young University.

MR. MAY: Unfortunately, the reality is we are just out of time.

COMMISSIONER CLYBURN: Oh, I'm sorry.

MR. MAY: Because I want to get Danny Weitzner on. But this has been really terrific, and I really do want you to come back.

COMMISSIONER CLYBURN: Thank you.

MR. MAY: It was really educational.

(Applause.)

MR. MAY: It was informative. It was terrific.

So thank you very much.

COMMISSIONER CLYBURN: Thank you so much.