



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



**Panel I:**

***THE RIGHT REGULATORY APPROACHES FOR  
WIRELINE AND WIRELESS BROADBAND PROVIDERS***

**March 21, 2013  
National Association of Home Builders  
Washington, DC**

**MODERATOR:**

**RANDOLPH MAY**, President, The Free State Foundation

**PARTICIPANTS - PANEL I:**

**REBECCA ARBOGAST**, Comcast

**DANIEL LYONS**, Boston College Law School, FSF Board of Academic Advisors

**ROBERT MCDOWELL**, FCC Commissioner

**MELISSA NEWMAN**, CenturyLink

**ROBERT QUINN**, AT&T

---

\* 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.

## Proceedings

MR. MAY: So welcome to the first panel. It's not very poetic, but it's named the "The Right Regulatory Approaches for Wireline and Wireless Broadband Providers." We're going to delve in further, probably with different dimensions, than we did with Commissioner Pai, all in the context of our overall theme.

Hopefully, you have your brochure with you. The brochure has all the bios. First of all, Rick Whitt was scheduled in this panel. Several days ago his travel plans changed unavoidably. So Rick Whitt is not here. And you can see that Steve Davis is not here, due to a family emergency. But I'm pleased that Melissa Newman is here in Steve's place.

Now, what I'm going to do is introduce our panelists in the short-hand version, basically giving you their current titles. If you want to know where they went to school and so forth, then you've got their bios. I'm just reading these in alphabetical order. It might not be the precise order I asked them to speak.

First we've got Rebecca Arbogast. Rebecca serves as Vice President for Global Public Policy for Comcast Corporation. She's responsible for the development and coordination of the company's public policy efforts across

the corporation.

Next is Daniel Lyons. Daniel is an assistant professor at Boston College Law School. He specializes in the areas of telecommunications, administrative law, and property. And I'm proud to say he's a member of Free State Foundation's Board of Economic Advisors.

Next we've got here Commissioner Robert M. McDowell, still-Commissioner Robert M. McDowell. Commissioner, I don't know whether you were here earlier during Commissioner Pai's conversation. But as soon as he mentioned your name, the room broke out into applause. It's going to happen today a couple times. And I'm going to say something about you, too, in just a minute.

Then we have Melissa Newman. As I mentioned, Melissa is Senior Vice President, Federal Policy and Regulatory Affairs for CenturyLink. Melissa is responsible for developing, implementing, and coordinating the company's advocacy at the FCC, as well as other federal regulatory agencies and the Administration.

And then, finally, we have Robert Quinn. Bob is Senior Vice President, Federal Regulatory and Chief Privacy Officer for AT&T, leading AT&T's Federal Regulatory Group, which is responsible for all matters affecting AT&T and its affiliates before the FCC.

So you can see we have here the people in the industry that seem to be responsible for all the things that we care about here, at least in terms of advocating positions here in DC, and even around the world. And I'm very pleased about that.

Now, just the ground rules. I said I was going to give each panelist up to four or five minutes to make an initial statement. I'm going to hold them to that. We're time constrained. And that includes Commissioner McDowell. The fact that he's soon to be ex-Commissioner McDowell makes it even easier for me to hold him to that. So just try me. But after we go through those initial statements, we have some questions.

Hopefully, you'll think of some questions as well, and we're going to have the panelists interact with each other and mix it up a bit. Now, Commissioner McDowell, I'm going to have him go first. He asked that he could.

I want to say this about Rob. And I said it yesterday in a statement I issued, and it basically went like this: My first and my last reaction when I heard the news was that this was a real loss for the Commission.

And I said that he had always been very thoughtful and principled, and even scholarly in his approach to his work at the Commission. I said those are obviously

attributes that are to be admired in any commissioner. Of course, there are others that share those, but Rob especially demonstrated them. But then I went on to say that his free market-oriented perspective and his pro-First Amendment perspective, especially important for me, was really just icing on the cake.

So we can give him one more round of applause, and I thank you, Commissioner McDowell.

(Applause.)

All right. You've got about four minutes to start us off, sir.

COMMISSIONER MCDOWELL: Thank you, Randy, and in terms of punctuality, thank you for leading by example.

(Laughter.)

MR. MAY: How soon did you say you were leaving the Commission?

(Laughter.)

COMMISSIONER MCDOWELL: Thank you for your very kind words. I'm wearing a Duke tie today. It's not just March Madness, but you're here. Michelle's here. I'm going to go see David Rubenstein here in a minute at the Economic Club, and then I'm coming back, by the way, for the luncheon. So I've got to run and come back; but first of all, thank you all very, very much.

I've been overwhelmed by the response to my departure. It's something I really didn't expect. I guess it could cut both ways, but I've literally got hundreds of e-mails in my inbox and voicemails. So I'll try to get back to each one of them, but thank you all very, very much. I see Michelle and several faces of people who sent me things. A lot of people have said congratulations.

It's hard to leave a dream job. But believing in the principles of limited government, I think it's important to move on. We should not have a permanent governing class. I also have three very expensive children who are getting more expensive by the day. So it was an economic decision, too.

I'd like to get back into my natural habitat, the private sector, at some point. I have no idea what I'm doing next. But thank you all very, very much for all of your kindness. It's been wonderful working with everybody. I see the press table; that includes you. I am the product of two journalists, as you all know. And I respect what you do, respect your freedom as well and everyone here for your great thoughts, even when we disagree. I appreciate all your thoughtfulness.

Like I said yesterday at the open meeting, to quote Monty Python, "I'm not dead yet." So I'm still

around for a few weeks, at least. Substantively, I'll try to wrap this up. I hope we talk about a couple things, incentive auctions, where that might go, and the pitfalls in front of the Commission as it tries to implement that. I'm sad I won't be around for that, but it doesn't look like I will be.

I hope we also talk about what happens should the D.C. Circuit ever hear an oral argument in the Open Internet case. Then talk about that vis-à-vis Title II and also vis-à-vis the concern and likelihood that the ITU will continue to expand its reach into regulation of the Internet and how it's all related. Thank you very much, Randy.

MR. MAY: Thank you, Rob. Okay. I'll turn to Rebecca for her opening remarks.

MS. ARBOGAST: Thank you and congratulations, Commissioner, on a good run. Thank you.

The pioneering computer scientist, Alan Kay, famously said that the best way to predict the future is to create it and invent it. So one level of policymaking is about predicting the future, which none of us are very good at. But as Kay notes, we create our future as well. I'm going to outline three things about broadband that policymakers should keep in mind as they're creating our



better future and as we transition to the IP world. And then I'm going to talk about one big thing we do not know.

First, we know that the U.S. is a global leader in the Internet. There's been hand-wringing over the alleged failing state of the U.S. broadband market. But most of this has been based on misunderstood and misused statistics. And that's not the way to create policies that would create a better future.

The U.S. is the leader in broadband speed. We hear claims that it ranks low in broadband speeds internationally. But it's a comparison that's designed to confuse, because it compares average speeds in the U.S., which is a huge country with a varied population density, with countries like Korea. We're seven percent of their population density. Comparisons that ignore those differences are silly, at best.

The U.S. also has the second most affordable entry level broadband among OECD countries. This is important because it helps bring people online, which is key. Absolute prices for broadband have remained essentially flat over the past decade while, at least for cable, the speeds have increased by 900%. So that positive trend in broadband stands in sharp comparison to trends in other key services, like education and health, to determine a

person's and a country's future.

While the costs of broadband remain flat, the average annual cost of college, a factor I'm newly quite familiar with, increased by 72% over the last decade. Private health insurance costs increased by 114% over that same period. Those are real problems. Broadband isn't.

The U.S. is a leader in how we use broadband. It's important to remember that broadband is not an end in itself; it's what we do with broadband and the Internet that counts.

Several independent organizations rank the U.S. at the top in qualitative measures of the Internet's impact on economic, political, and social life. We'll continue to move forward if we take on the challenge that my former colleague Blair Levin set for us in the National Broadband Plan, which is to leverage broadband and leverage the Internet to promote advances in health, education, and national security.

And this goes to some of the comments that you were making, Randy, with Commissioner Pai. We're also a leader in competition and infrastructure. We have the third highest population served by different Internet networks. Retail-based competition that's achieved by mandated network unbundling led to somewhat initial lower

retail prices in Europe and elsewhere. But it also discouraged investments in the networks. And now we hear Neelie Kroes, who is the E.U. leader in broadband policy, has charged the EU with turning around their policy so that their networks can catch up with ours.

I want to make just one last point on this issue. We hear so often that the U.S. is 22nd in broadband, and in some circles that's become an accepted truth. But it's not true. It doesn't even rise to the level of "truthiness" in the "Colbertian" sense. The number, near as we can tell, comes from the third quarter 2009 Akamai report on speed, which doesn't reflect the advances that have taken place in the last three and a half years. So that kind of disinformation isn't a good foundation for policy analysis.

Are we first in every measure of broadband and Internet performance? No, but we're strong across all measures, and our broadband standing exceeds our performance in a lot of other key comparative measures. On infant mortality, we're number 48. We rank 22nd out of 27 developed countries in our high school graduation rank. The plain truth is that the U.S. model has delivered us world class broadband, and it's powered the U.S. economy to be the home of much innovation for many companies and many people across the world.

Second, we know that we need to keep working together to increase adoption. In 2007 the adoption rate was about 40%. In 2012 it's about 66%. That's a remarkable increase, but it appears to have plateaued. I make a challenge that we all work together to do what we can to increase broadband adoption in this country so that we don't end up with a failing pocket of society that's not keeping up with the rest of us.

That's the one place I would make a commercial for my company. Comcast Internet Essentials is a program that's bringing hundreds of thousands of low-income families online. I urge us all to think about what we can do together to improve broadband adoption.

Third, we know that international voices that are shaping Internet governance are only going to increase. We were one of the companies, together with Google, Verizon, Intel, AT&T, and Cisco that formed an industry coalition last year, in part with the support of Commissioner McDowell, to try to get a good outcome in the ITU meeting. We learned some key lessons that are important to take into account.

One is we know there's a hardcore set of countries that are presenting a challenge to Internet freedom. But there's a much larger group of countries that recognize the

power of the Internet for their people in their countries, and they just don't want to be left behind. They don't necessarily trust the United States, but they're not necessarily looking to join the block of countries that are working to control the Internet. So we need to show that there are good alternatives to the ITU with multi-sector private associations around the world.

There's been considerable confusion about what is encompassed by Internet governance and Internet freedom in these international debates. Some think that governance just refers to the ICANN address system. But it's much more than that. And some would restrict the definition of the Internet to just the content and the applications providers. But what we need to recognize is that it includes ISPs as well. So we need to accept that Internet governance encompasses all the elements of the Internet as well as all of the ways that international and domestic governments can regulate the Internet.

Finally, the one thing we don't know is the future. A decade ago, some people argued that cable would never become an effective competitor to telephone companies, and that telephone companies should be under heavy utility regulation. Back then they didn't mention wireless broadband or the platforms that are being

developed by Apple and Google, which now have a rich and integrated suite of content, applications, devices, and networks.

They didn't mention these things because we couldn't predict the future. So the one very important thing we don't know is what the Internet's going to look like 10 or even 5 years from now. Through broad and, I would say, nonpartisan consensus, we decided a decade ago that the government should be cautious and that business should be bold. That opened the road to this crazy, fractured, vibrant, messy, experimental Internet world we continue to enjoy.

The path we took back then was the right path. It may not be perfect, and it may not always be pretty. But what I learned working on Wall Street, and it applies equally to policymaking, is to ask: "Is it trending in the right direction?" And it is.

Thank you.

MR. MAY: Okay. Thank you, Rebecca. You were just talking about predictions. Were you here when I was talking to Commissioner Pai?

MS. ARBOGAST: Yes.

MR. MAY: And did you get that Yogi Berra quote that I gave him?

MS. ARBOGAST: I like that. I wrote it down.

MR. MAY: "Predictions are tough if they involve the future." Okay. Next, Daniel, you're up.

MR. LYONS: Thanks.

MR. MAY: I assume everyone can hear in the back, because no one's raising their hand. But let's make sure we speak up so we're getting all of this recorded.

MR. LYONS: Fair enough. Four to five minutes is not a lot of time, even for someone who talks as fast as I do.

I want to spend a little bit of time with my opening remarks drilling down a bit on the issue of competition in the broadband industry. This is a topic that Professor Crawford's book has raised. I think it's a good one. Is the telecommunications marketplace, the broadband marketplace, competitive?

Professor Crawford thinks that other than Kansas City, and within the FiOS footprint, the answer is, generally, "No." But, as Randy had suggested earlier, I think she probably takes an overly narrow market definition. The National Broadband Plan says the vast majority of us have two or more fixed broadband providers.

Now for most of us two or more means the cable company and the phone company. That's a reason for some to

be a bit concerned. But Fred Kahn, the late dean of regulated utilities law, tells us that it's not clear from an economic perspective whether a two-player market is one that's going to trend toward cooperation or competition.

So the question then is: "Do we have evidence of competition?" I agree with Commissioner Pai that the substantial amounts of capital investment that we've seen evidence competition. Cable companies invested billions to roll out DOCSIS 3.0, and AT&T and Verizon are responding.

Greg Sidak has noted that among broadband providers who are reporting return rates, some of them are showing return rates that are fairly significant. What that shows is that companies are competing. They're competing with capital dollars to try to attract customers. Customers are responding by actually switching providers. So it's a mistake to assume that just because we have few players there's no competition. And that ignores wireless. With LTE we're finally reaching wireless speeds that might give us a robust third competitor nationwide.

Now what's the role of the FCC as the regulator of this increasingly dynamic and competitive marketplace? It's a mistake to assume that the agency's role is to manage competition by guiding companies toward some preconceived notion of what the industry should look like



and what the optimal level of competition is. History shows that we're notoriously bad at these kinds of predictions.

The 1996 Act was going to break the ILEC monopoly. And the way it was going to do that was by artificially creating intramodal competition from -s. There's still a few CLECs hanging around, but it didn't really take off the way the regulators had hoped.

Similarly, those with longer memories would know that in the '60s and '70s the Commission saw the need for more competition in broadcasting. And the grand solution was the UHF band, which never really took off in any big way despite huge regulatory subsidies.

At this conference last year, Professor Howard Shelanski was talking about the AOL-Time Warner merger. The agency was obsessed with preventing the combined company from having monopoly control of the market for instant messaging. That sounds silly now.

Of course, we did get telephone and video competition. But that competition came from intermodal sources that the FCC didn't anticipate. And our biggest successes since 1996 have been the two areas that the Act didn't touch, the Internet and spectrum.

The corollary to this is that we have to fight the

urge to believe the way things are is necessarily the way things must be. We need to consider the cost of regulations that require the homogenization of a product because they eliminate points of potential differentiation in competition among providers.

Net neutrality is one good example. If all providers have to carry traffic in the same way, then it closes the door to non-net-neutral business models like the low-cost Facebook phones that we're beginning to see emerge in Latin America. Similarly, it's a mistake to prohibit tiered pricing and other forms of usage-based broadband pricing. Different pricing structures could allow companies to shift their cost across their customer bases in ways that might be more efficient than the traditional, all-you-can-eat, unlimited flat-rate plan.

The reality is that innovation flourishes with minimal *ex ante* regulation, because it maximizes the flexibility for competitors to try new business models and differentiate themselves. Fred Kahn understood this. He led the deregulation of the airline industry in the Carter Administration. And in my notes I have an exclamation mark after "Carter Administration." That and allowing the home brewing of beer were the two greatest things that came out of the Carter years.

So what is it that the FCC should be doing? It's not a paper tiger. Rather, its role should be policing the market to stop specific anti-competitive practices. If an entity has market power and is abusing that market power in a way that causes consumer harm, then by all means the Commission should intervene in order to stop the practice. But my sense is that type of intervention is probably the exception rather than the rule.

The Commission should also help address market failures. Here I'm speaking specifically about USF reforms. There's a role for the agency in funding build-outs where it doesn't necessarily make economic sense to build. But that is different than providing regular, ongoing subsidies of operations the way the High Cost fund has been historically.

MR. MAY: Thank you, Daniel. Daniel's a member of the FSF Board of Academic Advisors, and he mentioned Fred Kahn. I'm really proud that Fred Kahn himself was a member of the FSF Board of Academic Advisors, except I haven't been able to take his name down. I've got his years of life up. But I was always proud that he was a member.

And I'll put in another quick plug for Daniel. I have a paper in my stack of things that he's written on the regulation of VoIP. Specifically, its on what some of the

states are doing and how that might impact the future direction of regulation of the Internet. Shortly after this conference, we'll be publishing that *Perspectives* from Daniel. I thank you for that.

Melissa, why don't you go next?

MS. NEWMAN: First of all, I'd like to say, Commissioner McDowell, you have been a true statesman at the FCC. It has been a pleasure for these last seven years to work with you and your staff. You are going to be missed.

Daniel and I did not coordinate. But you're going to hear a lot of the same things from what he just said with my remarks.

Step back and look at the history of our regulated utility model. For many years, both the monopolistic business environment and the regulatory environment that we operated under were aligned.

Along comes the 1996 Telecom Act. We move to competition. We make tweaks to the regulatory model, but we don't really change it. In part we accommodated this model to the 1996 Act's provisions for competition. What we have then is a continuation of this model for writing rules upfront, anticipating problems.

As we look forward, especially with the TDM-to-IP

transition, we have to turn that model on its head. It's the perfect example of how the construct for how we look at things needs to be changed. We can't write the rules upfront.

It's going to be messy, but you need to allow the problems to be resolved on a case-by-case basis. And there will be problems. But resolving problems through the courts, the regulatory agencies, and arbitrators is the best way to approach this brave new world of IP. Over time the rules of this world will become clear. In the meantime, regulations will not be accidentally holding back technology or innovation leaps.

With all the universal service reform that we've seen, there are areas where network deployment is uneconomic or there are issues with serving an area. And that is the right place and the right time to have rules-of-the-road regulations about funded areas and tailored obligations to meet those needs. They work hand in hand, depending on the situation that you're in.

The time to look at the TDM-to-IP transition is now. We agree that the phased approach proposed by AT&T would allow for meaningful market trials and resolve issues. Or, it would at least bring up issues. And then we can try to resolve issues as they arise in a controlled

environment. CenturyLink looks forward to participating in those trials, both as an ILEC and as a customer of TDM and IP services from AT&T and others.

We think that is the right way to go. We at CenturyLink are pursuing our own migration to IP. The dynamics are different for companies. AT&T has one approach. CenturyLink is going to have to have another approach. We serve a lot of rural America. Those are going to be the most challenged areas to get IP, like they always are, in terms of when you move and what you do.

Again, this is the time to start that conversation and to work with carriers like AT&T and others to see the best way to do it. Notice I'm not talking about setting the rules of the road for regulation right now. We can't do that.

When we look at that TDM-to-IP transition, the FCC and the industry should be guided by a few principles. First, the FCC should refrain from applying any new regulatory obligations on IP-based services that are not narrowly tailored to address a specific problem.

Second, the FCC should refrain from applying any regulation found to be unnecessary and counterproductive.

And third, we need to have some flexible guidelines for the transition to IP. One-size-fits-all

standards and deadlines are not going to work for all the companies moving to IP in this country. Each carrier faces unique circumstances and challenges as it migrates over. This is important again to CenturyLink and other carriers, especially in rural areas.

This all works where effective competition exists. And in this situation it does. In other areas, that may not be the case. We've been very supportive of universal service reform. But we do think there are areas that do need help from the government with funding, and that obviously comes with tailored obligations. Putting that aside, going forward, as we start on this new journey on IP, we think that the approach AT&T took was the right measured one for now.

MR. MAY: Melissa, just wrap up in the next minute.

MS. NEWMAN: And I'm done.

MR. MAY: Well that was a segue to our next speaker.

MS. NEWMAN: In all my years doing panels, I have never gone long. Never!

(Laughter.)

MR. MAY: You did fine. Actually, as I said earlier, Melissa found out two days ago that she was a

substitute when Steve Davis had a problem. And I appreciate that very much. So thanks again for that.

Bob, why don't you just take four or five minutes. I'm going to do the same thing with you. And then we're going to go to questions.

MR. QUINN: Thank you for having us here today. I echo Melissa's comments about Commissioner McDowell. He's going to be greatly missed at that agency. I hope whomever it is that they choose to replace you carries on the standard that you set, because you are a really important voice in this debate. That voice is going to be greatly needed in the future.

The title of today's event is the right title. It's "Completing the Transition to a Digital World." From our perspective, you couldn't have a more accurate assessment of where the market is today. In the recent comments that we filed on our IP transition petition, we pointed out that the percentage of households connected to the plain old telephone service infrastructure is 25.

I'm going to focus on wireline, not wireless, because the IP transition petition is really about the wireline infrastructure we have at the agency. That's not to leave alone the wireless side, where a huge transformation is going on.



When we look at the state of the IP transition, across the entire 22 states that we do business in, only 25% of the housing units in those states are connected to the old POTS infrastructure today. And when you break down the individual states the numbers are really striking. This is an appendix to the filing that we did.

In Michigan, only six percent of the housing units are currently connected to the old POTS infrastructure. In Nevada it's 18%. In a state like Florida, it's 19%. So this transition is not only under way, it's almost done.

Over the course of the next 10 years we are going to be dealing with the last adapters - to make sure no one gets left behind in this transition, and with the regulators - because regulators are in large part standing in the way of allowing carriers to make this transition.

There are a lot of very thorny issues that have to be addressed in order for us to be able to complete the transition. And because of that we asked for a proceeding at the Commission to partly oversee this transition of the last adapters and of the regulatory structure that applies to the old POTS network.

In the AT&T filing, we asked for two basic things. We asked: "Is it better for the FCC, which has a myriad of these issues, including a couple dozen issues teed up in a

couple of dozen different dockets, to address all of the issues implicated by this transition in 21 or 22 unconnected proceedings? Or, is it better to look at these issues comprehensively in a limited geographic area and conduct an experiment?" The second question we asked is: "Is the FCC the right place to do this?" In the filing we think the answer to both of those questions is "yes."

It's very important to do this in a way that's both efficient from a technology perspective, as well as efficient from a consumer perspective. We don't want to leave anybody behind in this transition.

We have a big team that is looking at how we're going to accomplish this. Making this shift from the TDM technology and architecture we use all over to all-IP is a massive undertaking. There are also policy issues that are going to be implicated. And we don't even know what all the questions are, let alone what all the answers are.

That's why we thought that approaching last adopters and the regulatory structure over the old POTS system in a comprehensive proceeding at the FCC made sense. I'm going to make three points about what the FCC really needs to do in conducting this proceeding on the IP transition.

MR. MAY: Okay. Now, do it fairly briefly.

MR. QUINN: Very quick.

One, they've got to let providers retire old technology. This is not something that has never happened before. We did it with the Internet Backbone when we made a shift from OC 192s to OC 768 Backbones. We did it with digital TV and we did it with the analog wireless networks.

Two, when we're looking at the new regulatory structures, we have to be looking at these services at the service level. A lot of the distinctions the FCC wants to make today would apply regulations at the service level, but only to the providers that have infrastructure. It's not a valid way to do that. And we have to be very limited about the areas in which we're going to put regulations on these new services, such as public safety and 911. Does that mean that we have to have a 911 requirement on the Xbox voice service for people to communicate while gaming? No, but we have to figure out where those lines are and what real-time communications services are going to be important for putting in place very minimal regulation, narrowly tailored, to accomplish the purpose that we're trying to achieve.

And three, overriding all of this, the policies that are adopted at the Commission should be designed to incent investment and infrastructure. The first and

foremost question that gets asked should be: "What is going to be the impact of what we do on the incentives of companies to invest in infrastructure in this country?" With that, I'll wrap it up, because I know we're going to get some questions.

MR. MAY: Okay. Thank you very much, Bob, and all the panelists. Again, to the people in the audience, you can think of questions as well. And we're going to get to a couple of those questions.

I notice there are some people that have come in late. I've discovered some of you just don't read all of your e-mails. And I want to make sure you know Senator Rubio is speaking around 1:00. I did have a chance to look at the draft of his speech, and it's quite detailed in laying out his telecommunications priorities. We're in for a real treat.

Commissioner McDowell, now that you can speak freely or almost freely, I want to ask you this. When you look at this IP transition and AT&T's petition, what you've heard here and what you know about, what are the real concerns that you have, really? And what advice can you give to the Commission about how to approach this thing from your own perspective? Just follow up on Bob Quinn and Melissa Newman, because the reality is you're not going to

really be making these decisions now.

COMMISSIONER MCDOWELL: First of all, thank you again for having me. By the way, congratulations to FSF and the new venue here, showing that you need new space. It won't be long before you have these things at the Verizon Center.

(Laughter.)

COMMISSIONER MCDOWELL: So congratulations, Randy, and all success to FSF.

MR. MAY: Thank you.

COMMISSIONER MCDOWELL: There's some excellent questions raised. Some of these IP transition issues have been lurking for years and years, but we have hit a point in the market where we need to rethink things. The Commission has a lot of statutory authority to act here, so I agree that its proceeding on the AT&T and NTCA petitions is a good forum.

And I do think Congress needs to step up and as quickly as possible look at a fundamental rewrite of the Communications Act. Randy, you're really the father of Digital Age Communications Act, so you know. You foresaw this coming. How many years ago was that?

MR. MAY: That was 2005, so it's about time now. We're getting close.

COMMISSIONER MCDOWELL: Yeah. A lot of these ideas regarding the IP transition were being envisioning with DACA back in 2005. I think it's important.

I see Bob Quinn. I saw Jonathan Lee. I saw Carol Wilner earlier. And I was having a little bit of a flashback here, especially given the announcement of yesterday. I think regulators and policymakers need to be patient, and wait to see what markets can do.

If I think back to 10 years ago, exactly right now, I was in the throes of the debate over the unbundled network element platform, "UNE-P," as we called it. That was all about trying to bring residential voice competition to wireline services. The best and the brightest on both sides of that debate did not foresee - did *not* foresee - the rise of cable telephony or the rise of wireless as a substitute.

That whole concept of wireless substitution was laughed at. It was said: "The quality of wireless isn't any good. Or calls get dropped. And there's not enough build-up in residential areas, not good enough reception. People are never going to substitute - *never* going to substitute - wireline for wireless or have wireless as a substitute for wireline."

Now, more than a third of all U.S. households are

wireless-only. That's evidenced by a lot of what's pointed out in AT&T's petition. But 10 years ago, nobody saw the rise in rise in wireless competition happening. If you're patient as a regulator, or as a member of Congress, the markets will find a work-around.

There were some other comments regarding broadband competition. Consumers are telling us that wireless broadband is a substitute - not in every case, not for every market. But it is a substitute. The fastest growing segment of the broadband market is wireless, with the vast majority of consumers having a choice of at least four wireless broadband providers. And that number will increase as we see the build-out of LTE continue. If LTE continues to spike it will be game changing, as we will get broadband in the car and things like that. We don't know what's coming over the horizon. And the last thing we want is the government to preempt or nip in the bud the innovation coming over the horizon.

Regarding the IP transition, I certainly want to make sure that consumers aren't cut off. We have a plethora of wireless and wireline devices in the McDowell household, one of which is a twisted copper pair Verizon line that comes in with the phone number I've had my entire life, literally, because I live in what's left of the farm

where I grew up. So we've kept that wireline phone, in part as an experiment to see how long is it going to last.

For those who depend on that, and that's all they have, my concern is that we don't want to cut them off. But we do want to nudge them.

There's good precedent for this. Let's talk about the analog cellular sunset, for instance. That was overdue when it happened. But I was proud to have been part of the vote that finally got rid of analog cellular. So let's be patient and let's be optimistic. Let's not try to think that we're smarter than markets.

MR. MAY: Okay. Thank you, Rob. I want to ask Rebecca a question. Earlier, during my conversation with Commissioner Pai, I asked him whether he had read Susan Crawford's book, and he said "No." But I bet you \$100 that you read Susan Crawford's book. This will be on page 74, and it has a lot of appeal to a lot of people.

She forced me to think about these issues, and she basically says cable has really won the battle. So I'm going to give you a chance right now, here today, to say that you've won the broadband battle. Maybe Mr. Quinn will disagree. But she says cable has won the battle, because with your technology, you can really offer the very high speed service, 100 GBs or more; and therefore you dominate



and control the market, and that Wireless broadband is not a competitor and that Comcast should be regulated like an electric utility.

And that's basically what the book says, if you didn't get all the way to the end. Now, you can only have a couple of minutes to respond. But tell me what your response is to her thesis.

MS. ARBOGAST: I'd like to say we won the battle, because when Verizon introduced service that was 300 MBs per second, we went to 305. So we're continuing to outflank each other. On the issue of market competition, how you define the market is a huge part of the conversation. I think on wireless the answer is simple, which is: It's complicated.

And I have always liked the Obama DOJ submission in the National Broadband Plan proceeding. It is now a few years old, but I thought they got it right. DOJ got it right that clearly wireless competition is a trend that's going to increase competition. Exactly how it's going to unfold, exactly for whom it's going to be a substitute, and for what sub-segments it's going to be something that's ancillary, we don't know. But as Commissioner McDowell said, and that anybody who's awake would know, wireless is already and is going to be a huge force.

We do need to get more spectrum out for wireless to be able to continue to grow, that's for sure. But the government is doing what they can on that. In terms of very high speeds, I don't think any serious academic, business person, economist, or engineer would subscribe to a definition of high speed networks at 1 GB or 100 MBs per second. Just looking at the cable industry, about 10 years ago our speed was 1.5 MBs per second. It went up to 16 MBs per second in 2007. And then with DOCSIS 3.0 rolling out, went up to 50, and now we're up to 300. Just this week we doubled our speeds in many of our markets at the most popular tiers without imposing any cost. I saw Michael Powell come in, who will probably know this off the top of his head. Frankly, I don't think the notion of broadband being an ossified market that isn't making any changes and that needs to be regulated by public utility is a serious proposal.

That proposal is probably meant to be a more provocative one. Look at the investment. During the recession when most parts of U.S.-based industry were not investing, three of the top 10 companies that were investing during the recession were three of the broadband providers.

MR. MAY: When you referred to how people only

have to be awake to know about wireless competition, it made me think again about the Yogi Berra quote that Commissioner Pai and I exchanged; this one was "You can observe a lot just by watching." When Commissioner McDowell leaves he ought to endow a sign that they put up on the Commission entrance: "You can observe a lot just by watching," because that happens in markets.

Now, for Bob Quinn, I want to ask you a question. Then we're going to turn to some audience questions before we wrap up. In my earlier conversation with Commissioner McDowell I commended your IP transition petition proposal, and the fact that the Commission has opened up a docket. You explained your view on the importance of it and what it's intended to do. But you didn't talk as much about some of the concerns that have been raised about it, at least that I picked up in reading the press or the papers.

One of them is a notion the competitors are raising, that when we move to this new world they should have access on a wholesale basis or wholesale access to your fiber. When I hear that, it brings me back to the UNE issue, the unbundling issue, and before that, to the open-network architecture issue. I could go further back if I had to. But that has a certain appeal, because you guys are big. You're a big corporation. Comcast is pretty big

too. So what's the answer to the suggestion that in this all-IP world you should not have to unbundle and offer your fiber on a wholesale basis?

MR. QUINN: Thank you. I'm going to make an attribution.

MR. MAY: Do you really mean that "thank you?"

MR. QUINN: I do, but I was really relieved when Ajit finally got the message and did the generational dumbing down and started referring to movies like "Cool Hand Luke." I was worried about you when he made a couple of movie references, and I didn't know what he was talking about.

MR. MAY: Me neither.

MR. QUINN: The wholesale issue is a very interesting issue. It's the reason that the competitive community has unanimously concurred that we should not do anything at all to finish or complete the IP transition, and that we shouldn't open up the docket. And I'm going to make one correction of you.

The FCC has *not* opened up a proceeding in response to my petition, the six-month anniversary of which is coming up on May the 7th, by the way. They have started a task force, but they have not opened up a proceeding yet.

MR. MAY: All right, six months' anniversary at

the Commission. You didn't say that anything's been unduly delayed at that point or if they're behind schedule. But go ahead.

MR. QUINN: The wholesale question is an interesting one, because when I talk about Ethernet services, I like to think about what Sprint says at the FCC versus what Sprint does in the marketplace.

For a long time Sprint would walk into the FCC and claim that for their WiMax network and for their wireless broadband network, T1s were a completely sufficient backhaul alternative for them and that they could not foresee the day when they would need anything more than T1 backhaul. Nobody believed that at the time.

Certainly, you can't deploy LTE or any kind of 4G technology with TDM-based T1 backhaul. But they came to their senses and did an RFP. They said: "We've got a nationwide network of cell towers, and we're going to do an RFP so we can get to 1 Gig, 100 MB per second, Ethernet backhaul for our entire network of cell towers. And these are cell towers in rural areas and urban areas." There were two phases of the RFP that they did. They were wildly successful.

They split the business up amongst 25 or 30 providers in a highly competitive bid situation. I see Tom

Tauke in the audience. Verizon did a filing at the Commission. And I want to get the number right, but I'm going to have to guess. I believe they said they got less than 20% of the bid in their own footprint. That tells you the market is highly competitive.

If you want to build fiber, you will have a plethora of companies willing to build it. You'll be able to choose amongst dozens of bids, and you'll get a market-based rate. The problem with going back to a world where we're now going to regulate that market is what the CLECs really want. They want a differential between what is achievable in the market and something less that they will be allowed to make a profit off of. They don't want to build that infrastructure themselves. And that takes us directly back to all the TELRIC wars and below-cost pricing.

It's going to have a huge disincentive for any infrastructure investment in this country. You'll remember my third point was we've got to understand what the policies are going to do. When you start enabling, for example, below-cost access to fiber, forcing somebody to deploy fiber, you're going to end up right where Europe is today. Europe is trying to walk back from those policies because they don't have the fiber infrastructure that's

been built in the United States of America.

I'm not afraid of that discussion. We adopted the Telecomm Act in 1996. At the end of the day we have to figure out how we're going to make the transition from that copper TDM-regulated world to fiber. And I don't think simply going back to re-regulating all that stuff is the way to make that happen.

MR. MAY: Thanks very much for that. Now I'm going to ask just one more question. I'm going to ask a question to Melissa, and next I'm going to recognize a couple from the audience. Then we'll have to wrap it up.

The other concern I've heard about the transition plan has come from, at least to some extent, state public utility commissioners. But it does raise how Susan Crawford wants Comcast to be regulated as an electric utility.

But state public utility commissions have plenty of electric utilities they could still regulate, and water utilities and others. Melissa, just address, if you would, what you envision the state utility commission role to be in an IP world?

MS. NEWMAN: First of all, I do think there's a role for the state commissions and consumers. They're the closest on the ground to what's going on in the states.

That is especially so with respect to my company serving rural areas and how that transition goes. And there is a role for them from a consumer protection standpoint, from understanding how different areas in the states will fare.

Some of that has to be worked out. I'm not sure I have the best answer. But I have always felt that the states have an on-the-ground know-how of what's going on that's very hard to manage from the federal level at the FCC. And I think state commissions should be working in partnership with the companies moving to the transition, and with the FCC. Those roles can be figured out. But I do not want to discount the states, because they know what's going on and what they're hearing from customers, more so, sometimes than the FCC can. And I think there is a role there. But I'll be honest, I'm not sure I yet know what that role is. This goes to figuring out things ahead of time.

MR. MAY: I've been thinking a lot about that question about the state utility commissions, having watched them for a long time and knowing what they do. But, it does seem like their role is fundamentally changing. Any other quick comments anyone has about the state utilities? Daniel?

MR. LYONS: The wireless model offer is a very



good model for the division between federal and state authority going forward. One can ask what issues should be done at the federal level and what issues should be done at the state level. At a very high level, this involves the benefit you get of local knowledge that state regulators have and that the FCC generally doesn't have the ability or the inclination to pursue, versus the spillover effects that happen when a state regulator enacts restrictions that affect customers beyond their borders. When the states start regulating a national enterprise, it has effects not only on the state regulators' own constituencies but those outside their borders as well.

MR. MAY: Okay. I'm going to take one or two questions, and there's going to be a premium on asking a question briefly. Does anyone have a question? Paul? The mike is coming. Just identify yourself, if you would.

MR. BARBAGALLO: Hi. Paul Barbagallo, reporter with Bloomberg BNA. Randy, as a follow-up to your question, should states maintain some type of regulatory authority over interconnection? And what should that regulatory regime look like?

MR. MAY: You aren't addressing that to me, I'm sure. We'll let one or two people answer that. Maybe we should let Bob really answer that first.

MR. QUINN: I don't believe we should have Section 251-style regulation over IP interconnection. IP-to-IP interconnection for real time communications is really just emerging. We have in place a huge structure of Section 251 TDM interconnections in place. In the IP world we have peering in place that impacts networks across the world.

We were able to interconnect the entire worldwide Internet on an IP basis with no regulatory intervention from the states, from the federal government, or from any of the governments across the entire world. Again, real-time IP-to-IP connection is something that is just now emerging. The requests are trying to figure out how we're going to interact and how we're going to exchange traffic of real-time communications that's going to have to be managed.

That's just developing. And I harken back to something that Commissioner McDowell said. Let's have some patience and let's see how this develops. In an efficient IP world, I envision in the United States a limited number of points of interconnection, not in every individual state, because that's not how people communicate anymore. I don't envision carriers having to interconnect in every city and every state.

In an IP world, if we're managing the traffic, we

can do that at a lot lower cost and a lot more efficiently. Bringing the states and the municipalities back in the game makes it likely we have to have that interconnection in every city and every state.

We have a lot of experience in the IP-to-IP world. Markets and the networks figured it out very efficiently. We need to have some patience and see how this develops.

MR. MAY: Okay. Rob has a quick comment and then we're going to try to take one more question.

COMMISSIONER MCDOWELL: That was a very thorough answer. I will just build on that very quickly. When it comes to the IP transition, the idea of test beds could be very useful with a controlled environment and with the parameters premised on consumer protection. Let's answer some of these questions in the real world with a variety of test beds under different circumstances, different geographic locations, different states of competition and all the rest.

Let's get on with that. It's something that could be very, very useful.

I don't understand the vehement opposition to that way of approaching things, when premised on consumer protection. It's a test.

MR. MAY: Okay. Rebecca has a quick comment as

well.

MS. ARBOGAST: Just to amplify the amplification. What was the Yogi Berra thing about watching?

MR. MAY: "You can observe a lot just by watching."

MS. ARBOGAST: Yeah. We've had how many decades of traffic exchange over the Internet. That has worked just magically well, I would say. We need to be very practical and grounded in what's actually worked in the real world. And to muck that up would be a shame.

MR. MAY: Does anyone remember the original Yogi Berra quote that Commissioner Pai used that's relevant to a lot of things we talk about with the Commission? "If you come to a fork in the road, take it." That has to be done some times. Do we have one further question? I'm going to give that to my friend Lynn Stanton, please.

MS. STANTON: Hi. Lynn Stanton, *TR Daily*.

MR. MAY: Nice and loud.

MS. STANTON: This is a follow-up on Paul's question. You spoke of IP interconnection. But are you envisioning that one will have or not necessarily have the kind of voice service the cable companies now offer? In other words, where you're packaging voice with data? They're going to have data services? They're going to have

to go out on their own and get their own Skype, or whatever, to package on top of that, rather than the telecom providing something that looks to the consumers like what they have now, where they just pick up the phone and make a call? This, rather than having a camera on their computer or whatever? And how was that interconnection being described?

MR. QUINN: Skype's a good example. I think they have a quarter of a billion different VOIP accounts.

To be very clear, Commissioner Pai was referencing the number of VoIP subscribers in the United States. That's a subset of the VoIP community. I think the numbers that he was quoting from are from the FCC report, which requires interconnected VoIP providers and companies like the cable companies to report on their VoIP subscriptions. It doesn't count Skype at all, which I think has a quarter of a billion different customers across the world. A Skype call flows through the regular best-efforts network, and gets terminated today with no problem at all anywhere in the world.

My kids use Skype religiously, despite the fact that I work for a phone company, a communications company. What we're hearing from people is they want a different kind of interconnection than the Skype version, which is

just "best-efforts" Internet. And remember: All these broadband companies are all interconnected. You can connect and communicate with a broadband company. So if there's a Skype subscriber on the other side of the world, the best-efforts Internet is going to get those packets to where they need to go.

I hear that there's a demand for something different than that in real-time communications. People want something more in a managed service. And we're just now trying to figure it out. What does that product look like? Where do we interconnect? Are we going to manage it on both sides so that we're going to prioritize the traffic so that we can deliver a high quality service?

That's different than the Skype over-the-top model. But my view is it's going to be eminently the same kind of thing. It's just going to be at a higher quality. And if there are infrastructure companies that are hosting VoIP providers, that's going to be a service where they say, "Instead of best-efforts, why don't you sign up with me and I will manage your VoIP product, and I'll do the interconnection agreements. And we'll have a higher quality voice product in the marketplace." I think that's really going to work, if policymakers let it.

MR. MAY: Signing up with you is a good place to

stop, and with signing up with all of these people. Now, here's what we're going to do. As soon as we finish here, I'm going to ask my good friend and colleague here at FSF, and former Commissioner Debi Tate, to come up and get the video panel started. I want to thank her, of course, for moderating this and appreciate it. And, Senator Rubio is going to speak right at 1:00. So we're going to have to stay on a schedule.

We're going to have a really nice lunch for you guys in between. Now, Commissioner McDowell has been very kind to speak at many Free State Foundation events. Earlier we had a chance to thank him for his service again. And I hope you'll come back, once you don't have your exalted position and participate some more. I want just one more time to thank him for his service.

(Applause.)

MR. MAY: If you'll just join with me in thanking our panel for that great panel, I'd appreciate it as well.

(Applause.)