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“Perspectives on Hot-Topic Communications Issues”

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* This transcript has been edited for purposes of correcting obvious syntax, grammar, and punctuation errors, and eliminating redundancy. None of the meaning was changed in doing so.

PROCEEDINGS

MR. MAY: Okay. We're going to get started. We've got a very distinguished panel here, as you can see, for our next segment. That was certainly a lively and informative, interesting session we had with the two FCC Commissioners. And I know this will be as well.

So this session is titled really creatively. It took me a while to come up with this, but this is "Perspectives on Hot-Topic Communications Issues." Okay. Those of you who were here earlier heard me say that these brochures have fuller biographies. If you want more, there may even be more complete biographies than you have here on the Web. So with their indulgence, I'm going to just say a word or two quickly about each one so we can get started and that way we'll move into it more quickly. I'm going to introduce them alphabetically here.

And, by the way, I want to mention that, my colleague, Free State Foundation Senior Fellow Seth Cooper, is standing at the other podium. We may do a bit of something like Bret Baier and Chris Wallace or you name it. I mentioned earlier I've been a bit under the weather, so I thought if my voice gives out, Seth is going to be there to chime in. In fact, he's going to chime in anyway later on. So thank you, Seth.

First we've got Meredith Baker. Meredith joined CTIA as President and CEO in June 2014. I'll just point out that she served, as almost everyone knows, as an FCC Commissioner. And prior to that, she served in the Bush Administration as Acting Assistant Secretary of Commerce for Communication and Information, as well as Acting Administrator of NTIA. So those are just the highlights.

I'm going to try and say something about each one. But what I always will

recall about Meredith is that she gave – if she doesn't recall – her first speech as an FCC Commissioner at a Free State Foundation event. I'm pretty sure that's true. In order to do that, she flew back from South America, and I think came straight from the airport to that event, and looked a lot better than I did having been on the plane for 12 hours. So I've always appreciated that, among all the other things you've done.

Next, Walter McCormick, of course, is President and CEO of the United States Telecom Association, the nation's premier telecommunications industry trade association. Walter joined USTelecom in 2001 and since then, since he assumed that position, his motto has been "keep on trucking." You don't get that joke unless you've read your brochure and know that prior to joining USTelecom, he was the President of the American Trucking Associations.

Now, the thing I'd just say about Walter, he's got all the other distinguished background. But I'm pretty sure this is right. You can get into trouble doing this, but I think you have announced you're retiring at the end of this year? So I just want to be serious and say that whether you've been on the same side as Walter or the other side, and whatever the case may be, I think everyone agrees you've done a terrific job for the Association. And I'm not sure what's coming next, but that's a job well done.

So next we've got Michael Powell. I think he must've been the former Chair of the Commission that Commissioner Clyburn was alluding to when she mentioned that in her remarks. Michael became President and CEO of NCTA, National Cable & Telecommunications Association, in April of 2011. He's former Chair, as I just said, of the FCC and has been an FCC Commissioner.

What I want to say about Michael, actually I don't think I've ever said this

publicly to him. But from the time that he served on the Commission as Chair and Commissioner, to my way of thinking, he wrote a lot of awfully good decisions. And I find myself citing them a lot to this day. So that's maybe one way of thinking about a legacy. Well, maybe not if Randy May's citing them. But anyway, I do and I appreciate your service.

So next we've got Brad Ramsay. Brad, as I just said a few minutes ago, is General Counsel of NARUC. He's been there 26 years, we pulled down from someplace. And that's a heck of a long time. It must mean he's doing his job superbly to hold on that long.

The thing I'll say about Brad, this won't mean anything to some of you, but I want to say it to Brad. Brad, I remember there was a period when you were sending out that daily combination of what seemed to be a tip sheet and a gossip sheet. It would tell us who had moved where or had a baby or so forth. And God, I miss that. That was terrific. I guess they said at NARUC you can't do that anymore, but it was terrific.

Finally, and of course last but not least, is my friend Nicol Turner-Lee. And Nicol has been here at previous Free State Foundation events. I'm glad you're here again. She and I have had the privilege of participating in some panels together recently on Lifeline. It's always fun to be with her and I appreciate Nicol's really enthusiastic every time I've been with her. I'm just going to use that as a segue to say to Nicol and the others here as well that we're going to keep you moving along. Don't feel offended if I say you've got to keep moving. Not that Nicol has ever filibustered, but I'm going to keep everyone moving along. And thanks to everyone for being here.

Okay. Now, what I'm going to do to get us started is ask each of you just to take three minutes and no more. I want someone up front to use a stopwatch and this

is going to be enforced. Take three minutes just to tell us what you think the single most important issue is before the Commission. Or if you insist on doing a couple subparts before the Commission, wrap them in. That'll give us a basis as we move forward more specifically into the issues.

So I'm just going to go down the line and start with Meredith and go ahead.

MS. BAKER: Great. Randy, it's awesome to be here. It's terrific to see such an esteemed crowd, particularly nice to see Tom Tauke in the crowd. It's nice to see you, Tom.

So let me tell you, there's no shortage of differing opinions on communications issues these days. I know we're going to get to Lifeline and privacy, net neutrality. They're going to have their moment on this panel. But I wanted to talk about something optimistic and something that I firmly believe is going to change our future. And that's what the FCC's going to hopefully do this summer, which is a Spectrum Frontiers proceeding. This is going to be key. This is high-band spectrum.

For as long as you've had your cell phone we've been using spectrum under three gigahertz. Actually, when Michael was Chair, it was probably spectrum under one gigahertz. We locked our engineers in a room. We invested a ton of money in R&D and we figured out how to unlock the potential for high-band spectrum. So instead of miles to a tower, I think currently we have 600 megahertz under use in our entire wireless ecosystem. We're talking about 10,000 megahertz in the high-band frequencies that we're going to be able to unlock the value of.

These are huge bands as opposed to small slivers. We're talking about meters, not miles to a base station. Think about a network in this room connected by

base stations that are the size of a smoke alarm. We are talking about 10 times the speed of our wireless networks for this high band, which is going to be the key to our 5G future. Ten times the speed, 100 times more things connected, and a latency that's going to be 5 times better. So if you think about a 4G car, it'll stop in about 3.5 meters. Under a 5G connected car, it's going to stop in an inch.

This is life changing. It is really important what the FCC is going to do this summer and we are particularly excited about this. We need simple rules because the technology on this is really difficult.

I would say the most important thing that the FCC is doing in an optimistic way is the high-band Spectrum Frontiers proceeding. It's going to be the key for our 5G leadership, the same reason that 700 megahertz in AWS was key to our 4G leadership. We were the first movers. We had the advantage. FCC moves this summer. We're going to be the first leaders in 5G and we'll lead the world, which is key to our economic future.

MR. MAY: Good. I'm an optimist by nature, so it's good to start out with an optimistic one.

Dan are you keeping time? Okay.

So next, Walter, what's the single most important issue from your perspective?

MR. MCCORMICK: Well, Randy, first of all, thank you for the very gracious introduction. Thank you for the opportunity to be here.

I would like to suggest that there's an overriding issue. And the overriding issue is this: that historically Congress has said to regulatory agencies that part of your public interest objective is to promote the industry, the full development of the industry

that's under your jurisdiction. So if you just think about the transportation background, one of the public interest requirements of the FAA is to promote the full development of aviation. And in the '96 Act, Congress took that same approach. It really wanted that Act to promote the full development of advanced telecommunications to all citizens of the United States. In that Act, Congress said if you find that telecommunications is not being timely nor reasonably deployed, then you should look to eliminate barriers to entry.

I think that one of the big challenges that the Commission has in the coming year is to deal with the fact that there is a slowing of investment. I mean, facts are difficult. I know the Chairman has challenged whether or not there is a slowing of investment. But he himself has said that he doesn't think that broadband is being timely and reasonably deployed. What we have seen is that in every year since the recession in 2009, there have been increases in broadband investment up until the consideration of the Title II proceeding. And in that year, between 2012 and 2013, that was the first year that we saw investment slow. It slowed from 9 percent down to 4 percent. Then the following year after it was adopted, investment actually dropped by 4/10ths of a percent.

And the environment for investment is challenging. It's challenging in that innovative business models have now been put on the shelf because the industry has been told that if you operate a network, you can't have a two-sided market. You're limited in what you can charge for.

In the privacy proceeding, the FCC is considering standards for ISPs that would be different than for the rest of the Internet ecosystem. And Moody's has said that this will disadvantage those who operate networks. We have seen the discussion

over Binge On and other innovative applications and the Commission explained those.

MR. MAY: Walter, excuse me. But I want you to wrap up.

MR. MCCORMICK: Going overtime. So my basic line would be this: I think the biggest issue for the FCC in all these proceedings is to keep in mind that there is a need to focus on the importance of the full development of the telecommunications industry.

MR. MAY: Okay. Thank you.

Michael?

MR. POWELL: Well, I'll be brief because I look forward to the questions.

I would say there are three proceedings that are of most significance to us. Obviously, the cable set-top box AllVid proceeding, the privacy proceeding, and I also think the ultimate resolution of the legal course of net neutrality all the way to the Supreme Court.

I think what's most important is the interplay of all three. If all of those succeed as proposed, it fundamentally puts the government *imprimatur* on a notion of competition that relegates infrastructure to not being a full and active and innovative competitive entrant and competitor in that space and biases the regulatory impingement to the benefit of technology companies and edge providers. I don't think over time that's going to be a healthy framework for the country. If you look at these proceedings and read them together, they fundamentally represent the view that those types of companies should be permitted to compete and invade into our traditional spaces. But we should be constrained and not allowed to enter into spaces in which they are dominant. And I think that will be solidified if all three of these things come to full fruition.

MR. MAY: Okay. Well, that's helpful and we're talking about those

proceedings or some of them more specifically too.

Brad, just take a couple minutes on the single most important issue.

MR. RAMSAY: Sure. Just first I wanted to thank you for inviting me. I was really honored by the invitation and was very pleased that I was going to be on a panel where I literally admire and respect every other single member of the panel and disagree with them on almost every issue.

(Laughter.)

MR. MAY: Well, that's good. I wasn't sure that was true.

MR. RAMSAY: Hey, for NARUC, no big surprise. The Congress in the 1996 Act set up a federal-state cooperative partnership for implementing the entire statute. Pieces of that have fallen away over the years. You would expect me to focus on the future of the federal-state partnership, so, of course, in the proceedings that are pending before the agency, the ones that I'm most interested in are contribution reform and what impact that will have on the complementary state universal service programs – high-cost and otherwise. The Lifeline proceeding, as it's currently described to me, I still don't have all the details. We've made a number of meetings at the FCC. But certainly in its current form it will undermine state programs and certainly make them less effective. And I think that will lead to additional fraud and abuse. The third is the transitions docket, which depending on how the Commission acts, there are a lot of related dockets intertwined with that, will take state cops off the beat in terms of oversight.

One thing that I wanted to mention was actually raised by Commissioner O'Rielly's comment on the last panel, that frequently the FCC insults the statute. I just want to say in the last 30 years that I've been doing administrative law here in D.C., the

FCC has insulted the statute with great frequency and something happened last week that I was very pleased to see.

I started at NARUC in 1990 and I cut my teeth lobbying the first five years that led to the enactment of the 1996 Act. Everybody in this room has a stake in what is starting or probably started really last year or a year-and-a-half ago. We're starting another 5 to 10 to maybe 15-year cycle to revamp the entire federal landscape in terms of the law, the federal law. We're starting that process again and the problem I have now is at the FCC. This has been consistent throughout all the administrations since I've been doing this, at one time or another. They will look at the policy they want to achieve and then they will basically rewrite. Instead of using the tools in the statute to get to the place that they want to go, they'll rewrite the statute.

MR. MAY: Okay. Why don't you hold that thought because we may come back to rule of law issues, which is our theme for this year's conference.

MR. RAMSAY: Oh, okay.

MR. MAY: Hold that and let's have Nicol tell us about the single most important issue before the Commission.

MS. TURNER-LEE: Thank you, Randy, for having me. Honored to be on this panel with these folks. And all of you who are here, thanks for taking your time out to be here.

I think the issues of importance to groups like MMTC have already been echoed. In particular, the issue of foremost importance is obviously Lifeline modernization because of its impact on low-income consumers, and moving forward, as we get into deeper conversation, our hope is that the Lifeline reform will happen in a cautious way that doesn't make the presumption that broadband will be ubiquitously

available in all communities in three years.

There's some real danger and concern about some of the ambivalence in those proposals that we at MMTC are looking at very carefully to ensure that low-income consumers actually benefit. But I want to use my last minute, if you don't mind, to say what is not on the critical issue list for the FCC. And that is diversity and localism. If you don't mind, I'd like to just put in a plug here because I think it's really important.

In all of the proceedings that we've seen before the FCC, whether it's in the set-top proposal proceeding, whether it's in Spectrum policy, communities of color and other diverse entrants, small businesses, and other new types of businesses will not prosper. And it's very clear that the FCC is not taking diversity into account. The FCC's diversity committee is the only subcommittee at the agency that has not been re-chartered in two years. That's a problem.

This is an agency that is actually designed to ensure that the unintended consequences, particularly for minority programming, and the unintended consequences for minority ownership of commercial wireless Spectrum, do not get discussed after the rulemaking has hit the floor, but those consequences are reviewed prior to. And so for groups like ours, out of all the critical issues that are before us on the table, the one big thing that is missing is diversity. And as we talk about all these other things, I'll bring it up. That's my commercial and I'm sticking with it.

MR. MAY: No, that's fair enough. I don't know whether you were here when we started with Commissioner Clyburn. And I forget what it was, but she took the words out of my mouth in terms of something I was going to say. I have down here -- "Nicol," a question for you. "I appreciate that the interest of MMTC in the media and

communications policy realm are broad and your expertise is broad, but give the current Commission a grade for its attentiveness to the diversity agenda and briefly tell us why.” So I'm glad you don't say anything.

MS. TURNER-LEE: Oh, I'm not saying nothing.

MR. MAY: I'm glad you anticipated my question and brought that up.

Okay. So, with that, let's talk about some of these specific issues and try and get a lot in.

So the two that are up at the Commission shortly are Lifeline and privacy. With Lifeline, Nicol said something. I'm assuming that all of the panelists, in a general way, probably favor the extension of the Lifeline program to broadband. If that's not true, you can say so. But I'm going to go down the line. Just tell us briefly what problems or a problem that you have with the proposal as you understand it. And let's just see what they are.

I'll alter it next time, but why don't we start with Meredith and go down the line?

MS. BAKER: Sure, Randy. You're right. Of course we support the program. We support the shift to broadband and we support improved program administration. What has to be done is that it has to be done in a way that reflects the market realities and the consumer preference for mobile. We risk right now something that is too fast a transition or mandates that are not based on mobile pricing or packaging in a degree that's going to lessen the program participation for consumers. We hope that we can find some middle ground together on this.

MR. MAY: Walter? You know, on all these things, I should just say, everyone won't have necessarily something to say about everything. But on Lifeline, if

you have a problem with what the Commission's doing, this is what we're doing now.

MR. MCCORMICK: No, we don't have any large problems with it. We think it made sense to expand it to broadband or reorient it that way. Our big objective was to try and streamline the programs so that there would be a third-party national verifiable certifier so that we wouldn't be administering the program. The Commission is doing that. So we think that they're taking the right direction on the program.

MR. MAY: Michael?

MR. POWELL: I think we're in violent agreement on the positives. These aren't negatives. But they're the issues that the Commissioners teed up. One is this burdensome complex ETC certification process. I think one barrier for a lot of cable companies in the participation in these Lifeline programs has been the onerous burdens of getting ETCs qualified. And we hope that the Commission, as they've suggested, will go a substantial direction into lightening that burden and attracting more participants into the program.

We also think that it's really important to permit access to Lifeline support for different levels of service. I continue to think the country is potentially making a mistake by trying to establish only a particular level of broadband provision as the only acceptable level and assuming that that one size fits all to the unique geography and socio-demographics of the country. And I think that increasingly, by promoting that vision, we lose the opportunity to increase access through lower cost alternatives that might be less capability of the high end, but still would be extraordinarily valuable to someone who hasn't even been able to get online yet. I hope we become more granular in the way that we do that.

MR. MAY: Brad? I know you alluded to something.

MR. RAMSAY: We don't have time to go into extraordinary detail here. There are state matching programs and there's state involvement in the designation procedure. The optional procedure, at least as I understand it, that was outlined in the fact sheet can only have one effect. It can undermine state matching programs. It can undermine state policing of the system and that includes both for fraud and abuse and for service quality. A lot of times, if you have problems with your Lifeline service, you complain to the state commission and they'll come back and they have the option of pulling the ETC designation and cutting off your federal and state funding. So that goes away too through the national designator.

I'm not sure exactly how the geographic designations that are required by the statute occur there in terms of determining if someone actually has the coverage to provide ETC. It's some kind of optional basis to provide, I guess, wherever you have facilities and there are advertising requirements associated in the statute.

It doesn't seem particularly consistent with the scheme that Congress set out. And I don't think I've heard the case when I've been at the FCC. There's been a lot of lobbying about how this could draw some large facilities-based carriers into the system that are not already there. Let's just say I'm very skeptical because, for example, in California, if you weren't getting the state certification and you were only getting the national certification, why on earth would any carrier go in knowing that people that are certified already in California have a \$13.50 advantage in offering service. It doesn't really compute.

MR. MAY: Okay. I should say for the panelists, since we're getting into these issues more specifically now, if you do want to add something when we've gone down the line that's a response to what someone says, then we can work some of those

in. That's part of what we want to do.

So Nicol?

MS. TURNER-LEE: Yeah, I'm not going to speak specifically to Brad's comments on the states. I mean we also think that the states play a huge role in Lifeline administration. So I don't want to discount what he said. But I do think on behalf of getting more consumers into the system and making the program much more cost efficient and program efficient, that it's important to streamline the eligibility verification process.

MMTC will be releasing a paper shortly with Dr. Coleman Bazelon on the costs of the administration of the Lifeline fund, which are just extremely high. It's even higher than most federally managed programs. We have to figure out a way how to redirect some of that savings to open up the marketplace to more enhanced competition, while at the same time making sure we're going towards more coordinated enrollment to get at the waste, fraud, and abuse that is part of those program efficiencies.

I think it's also important that we're sensitive to this whole concept of skin in the game for low-income consumers. The people that we're trying to reach are already unbanked. They're already geographically isolated. They do not have the means to travel in their wheelchairs to places to re-up their Lifeline card or benefit if that's the case. There's got to be some sensitivity there. This is a conversation that came out in the House hearing just last Tuesday. I know that was brought up a lot this past Tuesday in terms of Lifeline eligible consumers. And I just want to keep reiterating we're not there yet in the marketplace to assume that three years is enough time for the marketplace to be readily available where broadband becomes an eligible service over voice.

MR. MAY: Okay. Brad?

MR. RAMSAY: I was just going to say, NARUC has endorsed by resolution the idea of some streamlining with the verification process. So I agree with you. I didn't want to suggest there was a disagreement there. Yeah.

MS. TURNER-LEE: We figured that out. Yep.

MR. MAY: Just a quick editorial comment. I won't do many of these. But I've been a longtime supporter of the Lifeline program, going way back before there was a proposal to expand it to broadband. Sometimes people say, –"well, you're a free market oriented person" or "I thought you were 'conservative' or whatever and you support Lifeline," which I've done for a long time. And I have questions and Nicol and I have been on panels, where we've debated some of these. But the reason I do it – and I assume the same is true here – is because there's a legitimate role for safety net programs really. I consider this really a safety net program.

I think it has to be properly structured to remain one really and not something else. But for those of you who have asked, sometimes I do support Lifeline and its expansion to broadband if it's implemented in a proper way.

Okay. So if there's nothing more on that, let's talk about privacy. That's another controversial issue, I think. And again, as you're thinking about these things and talking about them there's always the question of the Commission's lawful authority and how it does things in addition to the policy issues. And I think Michael alluded to this earlier and others. But I assume at some general level, again, you all agree that ISPs' subscribers have some legitimate expectations concerning the privacy of their information. I assume that's probably true. Nevertheless, I know that you probably also have concerns about the particular proposal that Chairman Wheeler has put forward. So

I just want you to comment on his proposal.

I thought that that report by Peter Swire from Georgia Tech – who's generally thought to be a scholar in the field and with not a dog in the fight, as they say – was telling. I confess, I didn't read the whole thing, but I read some of it and the executive summary. But just comment on the Chairman's proposal and what you don't like about it. Let's try and focus on that.

So I said we were going to go back the other way this time. We'll keep rotating. Nicol?

MS. TURNER-LEE: So I have to admit, too, Randy, I haven't gotten through the full document myself. But I would say this: I did read Peter's report and I've looked at all of the draft proposal. And I really want to leave this to the industry folks to comment further. But I think the privacy concern is very much a resemblance of how the FCC's operating right now, where it is paying particular attention to regulated industries without looking at the ecology in a holistic sense.

Clearly, people who are consumers do not have a fragmented experience on the Internet. So putting particular rules on ISPs for their portion – their millisecond portion in some cases – of the Internet experience, is clearly without fault to the other providers that actually make up the entire ecology.

Some of us have been in this since early '90s talking about policies around privacy. We all want to see a coherent glide path that keeps consumers' information safe. I don't think anybody in here does not want to see that. But you can't parse up the Internet to pick winners or losers or tighten down on certain aspects of it without looking at the entire user experience.

MR. MAY: Brad, do you have any problems with the proposal as you

understand it?

MR. RAMSAY: NARUC doesn't have a position on it. My only comment would be in the wake of the net neutrality order, it's something that they have to examine if you believe in the rule of law. I don't know that what's been suggested is particularly good or a bad approach.

MR. MAY: Okay. That's fair enough. Michael, you probably do have some positions on it, I expect.

MR. POWELL: No doubt. Look, what's interesting to me is privacy's not controversial. It's the hypocritical inconsistency of legal application that's controversial.

You can't describe, as the Commission does, and as I heard Commissioner Clyburn, the parade of horrors associated with data collection and monetization of that data and say that's the justification for the depth, breadth, and intrusion of these level of rules, while ignoring the fact that that same level of activity behavior probably by a factor of 10 takes place in the consumer experience on every other digital experience they have. Yet, that's not worrisome from a public policy position because there are some benefits that go along with personalized data applications. And so those should be allowed to breathe and innovate and find a tradeoff – a balance – between privacy and personalization. Right?

And then to turn around in another proceeding and say, "But no. When that same activity is occurring with a company that we happen to regulate, we think it requires a heavy-handed approach with a priori specificity around privacy."

Now, I heard Commissioner Clyburn say something which I really do reject, which is: "Oh, well, we're just two different agencies and they are complementary. They don't have rulemaking authority, so you can't compare us." But

you forget that restraint is a regulatory tool as much as action is. The Commission certainly has available to it the choice to create a privacy regime for the companies that it oversees that is in consistent harmony with the privacy experience that consumers are having with other providers in the economy. You could make that choice.

In fact, the proposals that we and others have put on the record call for a pretty significant approach to privacy that does attempt to harmonize the experience. Because you can't convince me that when a consumer sits down at a computer and fires up Facebook, they make any distinction between what their expectation of privacy is, thinking about whether it's their Comcast ISP or Mark Zuckerberg collecting their data. It's just nonsensical, it seems to me. And dodging that by saying: "Well, we're different regulatory authorities, so it doesn't matter" is a completely incomplete justification for the action.

MR. MAY: Okay. Well, I suspect that Walter and Meredith agree with at least some substantial part of what Michael said. So what I want to do is just ask you if you have anything you want to say that adds or differs from what he said. Do that and then we'll move to another issue.

MR. MCCORMICK: Yeah. I agree completely with Michael and I would just have two points.

The first that the Commission's statement that ISPs have some sort of unique eye into what the consumer is doing is disproven not only by the Peter Swire paper, but also by what Marc Rotenberg of the Electronic Privacy Information Center said yesterday. He said it's just basically pure baloney, that to say that ISPs are some sort of unique gatekeeper. So the premises that the Commission is moving on are premises that are just inaccurate. And Rotenberg says that he believes that agencies

have a fundamental responsibility to accurately present the problems that they seek to resolve.

Secondly, I would say this: The White House itself has said that its agencies should provide the consumer with consistent expectations in this area. And what the FCC is doing is moving forward in a way that is not aimed at consumer protection. It's aimed at market regulation and it is not going to give consumers consistent protection in the area. In fact, if anything, it is going to mislead consumers. It is going to deceive consumers to think that if they opt out in one circumstance or don't opt in to sharing of information that they are protected on the Internet. I think that that is just wrong for an agency to do. Consumers expect their federal government to speak with one voice in this area.

MR. MAY: Meredith?

MS. BAKER: I'd like to underline, put it in all caps, and add exclamation points to what Michael and Walter and Nicol have said here. We are obviously committed to consumer privacy and I think that it's working very well under the FTC approach.

I hope that the FCC rejects the idea to treat ISPs differently. I think it's confusing to consumers and it's very harmful to competition. If you read the Moody's report, it shows the magnitude of the harm of the proceeding that is taking place at the FCC.

The industry spent months on a proposal, months. And I think we went a lot further than a lot of people wanted to go in the room. We don't necessarily agree on a lot of things these days. We came out with an industry proposal that reflects the regulation aligned with the FTC approach. I hope that the FCC gives good and

thoughtful time to this proceeding. I think we need to take a look, take a breath.

Privacy is important. Consumers expect it. But we need to do this in a way that consumers understand and that won't harm competition. So I'm hopeful that the FCC will take a good look at this framework.

MR. POWELL: Randy, if I could just have one point, too.

MR. MAY: Yeah.

MR. POWELL: I've heard FTC Commissioners try to make this argument, too, that: "Well, the reason it's different is that a customer can choose not to use Facebook or choose not to use another service while they can't choose their ISP." First of all, you could take issue with the fact you can't choose any ISP. But even so, that's a red herring. Can you choose to disconnect from every digital property? While you might choose not to go to Facebook, what is it that you're supposed to go to that you will gain greater privacy protection from?

MR. MAY: Right.

MR. POWELL: It is Google, Facebook, Amazon, eBay. Everybody in that ecosystem is subject to a different set of rules. So the idea that you can choose one over another doesn't in any way create an argument that that's a unique space of choice.

MR. MAY: Right.

MR. MCCORMICK: I'd like to add just one thought. Keep in mind that what the Chairman of the FCC has said is he has established a standard. He has said repeatedly "this information belongs to the consumer." If that's the standard that the lead federal agency in the federal government with regard to the Internet has set, then it will be inevitable for other agencies not to be able to abide by the same standard that this information belongs to the consumer.

Consumers are going to reasonably expect that's the standard that the federal government has set and that there will be consistent standards across the board. So I think that the FCC does need to be very, very careful in this area to understand that whatever it does, it really is establishing a standard. It really is establishing a standard for the entire Internet.

MR. MAY: Okay. Seth, in just a moment I'm going to ask you to formulate the next question, maybe on the set-top box proposal. That's another one that draws some controversy. But in the meantime, Meredith is really the spectrum expert/guru here. I mean, that's her job if not her passion. We'll do another whole program on it sometime. So take a moment, to the extent you didn't do it initially, and just explain: Everyone keeps hearing about 5G. We understand that's probably the next generation after 4. But tell us why that's important and what policymakers, just briefly, need to do so that we maintain the lead, and why it's important to fill the spectrum pipeline. Just give us the quick overview and let's commit to doing another spectrum program later.

MS. BAKER: Let's do. Spectrum should be a national priority. It's important for all of our lives. The 5G is the next generation of our networks. So if you think about 1G to 2G to 3G, that's when you went from voice to text to broadband. And then in 4G, you actually can access the Internet on your mobile device virtually anywhere you want, almost as fast you want to.

So what 5G is going to bring you is the Internet of Things to the extent that a Fitbit isn't doing that currently. It's going to have 100 times more things connected to the Internet, 10 times faster speed. It's going to be high-band and low-band spectrum.

What's been so important to us is our 4G lead. We lead the world in 4G. Ninety-eight percent of our people are covered by 4G networks and that has created an ecosystem. They say 100 megahertz equals \$30 billion to the economy and a million jobs. That's important. So it's important for us to maintain our lead in 5G. To do that, we need to continue two parallel tracks. One is continue the low-band spectrum. We've got the incentive auction that's going to start on March 29th, and it's pretty important. I saw Blair Levin in the room. He should be congratulated on that.

We also need high-band spectrum, as I mentioned in my opening remarks. These are two parallel tracks. High-band spectrum is the Spectrum Frontiers proceeding. If we lead the world in this, then we will lead the world in 5G. We've seen Japan, Korea, and the European Union all wanting to take our lead. It's important for us to keep it.

MR. MAY: Thank you very much. And you mentioned the incentive auction. You know, we could have some fun. We could have a little pool here just among friends. I'm going to go down the line and I want you to tell me the exact amount of proceeds that are going to be raised in the incentive auction.

(Laughter.)

MR. MAY: Anyone want to do that? I wouldn't put you on the spot.

MS. TURNER-LEE: I don't want to do that, Randy. But if it's okay, I want to say something about spectrum policy.

MR. MAY: Okay, but I think Meredith was about to give us the precise number.

MS. BAKER: I wasn't.

MR. MAY: Oh.

MS. BAKER: I was going to say, no matter what the number is, it's going to be a big number.

MR. MAY: Right.

MS. BAKER: When people talk about only in billions, it makes me scratch my head. It's going to be a big auction. People are going to show up with billions of dollars and it's important for so many reasons, but including precedent setting.

MR. MAY: That's encouraging to hear that and especially from you.

So, Nicol, you wanted to add a word about spectrum policy?

MS. TURNER-LEE: Yeah, just a quick thing on the incentive auction. I think Meredith teed this up. So a week away from the beginning bidding of this, we're all very excited about what the incentive auction is actually going to do to fill the spectrum gap, but to also generate income revenue for this country. Again I want to go back to my original conversation about diversity just real quickly.

After the repack, my friends, we also need to be cautious about minority media ownership and what that's actually going to look like in terms of the spread of channels and the localism and diversity that's going to be represented. The FCC right now has a vacant channel proposal, which is pretty controversial in terms of an unprecedented move for unlicensed over content, particularly those ones that will be selling. And we also have these opportunities which we're anticipating.

I can say the anticipation of minority media ownership and the incentive auction will probably be very little, if at all. Given that, and because of the lack of access to capital that's always very important that we need to cultivate a secondary market for transaction so that people can build capital to compete in these auctions. That

continues to be a problem, though it requires very little government intervention, very little government regulation, and very little government incentive to actually create a very healthy secondary market for minority and small businesses to actually gain the access they need to get into these kinds of things.

MR. MAY: Good. Well, thanks for adding that. I appreciate it.

Seth, why don't you ask the next question?

MR. COOPER: Okay. To my panel, since I snuck into the co-moderator sidekick podium here, I just wanted to say welcome. And I'll jump right into the set-top box question.

Last year the FCC issued its *Effective Competition Order*. And it looked at the cable market and said: "The situation has changed from years ago. We've got competition now. We can presume that cable services serve people in an effectively competitive environment." And so it granted presumptive relief from a series of rate regulations that included cable operator-provided equipment and devices. And then flash forward, the FCC has just proposed a new set of video device rules frequently still referred to as "AllVid," but it's a very different kind of proposal in some ways from 2010.

So I'd be interested in getting the panelists' take on this. Starting with you, perhaps, Michael Powell: What are one or two of the most problematic aspects of this proposal from your point of view?

MR. POWELL: Well, thank you. This will be the one proposal I'm longwinded on, so forewarning.

To me, this proceeding perfectly encapsulates the concerns about unjustified market engineering and intervention, perhaps more than any. And I think it

so systematically violates principles of regulatory restraint that have been well worked up over the course of decades. Principle one is it's intervening in a highly and well-functioning market. You cannot find one soul who doesn't recognize that there's probably no more robust tectonically shifting market than video delivery.

When this statute was passed, the cable industry had 94 percent market share of multichannel video. There was no existence of DBS in any measure. Telcos were not video providers. In the intervening period, the cable industry has lost over 50 percent in market share of that market to new entrants.

In addition, you've had the intervention through the Internet of streaming capability. This has brought in an enormous amount of competitive alternatives in streaming services, not the least of which being Netflix, who in the course of five years goes to the Consumer Electronics Show and announces their global empire with more subscribers than any cable company in the United States. This market is on fire. And even when you turn to boxes, such as they are, the proliferation of boxes, whether it be Apple TV to Amazon Fire to Roku, continues to spill out into the market unrestrained.

So it's hard to understand that anybody could find anything that looks like market failure. In fact, the Commission's own video competition report is one of the few that sings glowingly about the level of video activity. So that's a violation.

It's using an outdated law and going well beyond its original parameters. I heard Commissioner O'Rielly talk about the fact that it's equipment. This is not living constitution stuff. That is a statutory word intended for a statutory purpose.

Equipment is one thing and the cable industry acknowledges that there's a role for third-party equipment. What the Commission is doing is not creating competition in equipment. It's creating an entirely new video service using the inputs

and resources owned and belonging to others, violating a third principle, which is the respect for private property and intellectual property. To allow somebody as formidable and as wealthy as Google to access the intellectual property of others for free as opposed to negotiate for it in order to build a creative video service is just a rent transfer, pure and simple and not for public purposes, for commercial purposes of one over the other. And I think that is also an ill of this proceeding. It really does pick winners and losers.

Let me just tie that to privacy. It's astounding to me to listen to the Commission talk about how important it is to do all of this privacy stuff. Video distributors today are subject to privacy protections that include not disclosing consumer data without prior written consent of our subscribers and ensuring that they have a right to contest even government requests for their information, including providing them a federal right of action in court to protect those interests. But if that content gets ported over to a Google box, those privacy protections vanish. And the Commission seems untroubled by that fact. So change your input and you will completely change your privacy protections and expectations. There's no other explanation of that than favoring one for the other.

And then, Randy, just to wrap up, if you expect cost-benefit analysis, a simple application here would show that the costs so dramatically exceed the chimerical illusory benefits that the Commission has proffered. It will be expensive. It requires network engineering. It will require consumers to have a new device. All those costs will be borne by them and it won't even come to fruition for five or six years, at which time this market will have blown long past these dated and rearward looking ideas.

MR. MAY: Okay. Well, thanks for that. I just have a quick follow-up.

What do you really think about the Chairman's proposal?

(Laughter.)

MR. MAY: No, don't. No, thanks for that because it does raise a number of issues.

I'm going to pass on any more comment on that because I think Michael covered a lot of ground there and I want to cover just a couple more issues. I'm going to ask the next question. And then, Seth, maybe you can tee up one more after that and we'll maybe try and get a question from the audience to stay fairly close to schedule.

You may have been here when I was talking about the rule of law with Commissioners O'Rielly and Clyburn. It's something I've been writing about really over the past year, year-and-a-half, because it did seem to me that a number of proceedings of the Commission and the way they were handled raised issues with respect to what I call rule of law norms or principles. You can find those somewhere.

Here's the question I just want to ask because it's an important part of this Open Internet proceeding/appeal. And thank God the decision wasn't handed down today so that all of you'd be reading on your devices. The question of the President's involvement through the video and the statement is one that's been much discussed. It was part of the argument in the D.C. Circuit. I think Judge Tatel asked a question basically in connection with how there seemed to be an abrupt switch or a switch in the direction the Commission was going to take. And he was asking about the role of the President. What I want to ask you is similar to what I asked the Commissioners.

Michael, you, of course, were Chair of the Commission and a commissioner. I just want you to talk about the process. Stay away from completely the substance ultimately of where they came out. Did the President's involvement and

then what happened at the FCC in connection with it, raise rule of law concerns that are serious and not frivolous – or not really?

You want to start, Michael? And I'm going to ask everyone to be pretty brief on this.

MR. POWELL: Well, I'll try to be quick. In my own opinion, it does because the FCC, as an independent agency, has to abide by one central administrative legal principle, which is their decision is premised and premised solely on the substantial evidence of a whole of the record that's before them.

When the President expresses an opinion, which of course he's entitled to do, but to do it by YouTube video – and by the way, that's not all it included. It included visitations to the Commission by the chief economic advisors to the President after the record was closed without any opportunity for other participants to respond to any of the arguments that were presented. It is naïve in the extreme to pretend that commissioners who are politically appointed aren't unduly influenced by the President of the United States taking such a dramatic and focused direction on a particular proceeding, particularly given the timing of that proceeding.

Yes, the Administration often expresses its view. It usually expresses that view through a filing, put in record by the Commerce Department or the Antitrust Division of the Justice Department, written and on the record and subject to review.

MR. MAY: Did you not get any videos when you were Chairman of the Commission?

MR. POWELL: Never ever got a video and I can honestly tell you I never got a phone call. So, look, even if it didn't do it, it certainly created a taint.

By the way, I think that if you want any evidence of that: Judge Tatel's

questioning of Jonathan Sallet about, "What made you change your mind, what made you change your mind?" The NPRM proposed something very different. The Chairman's own blogs and statements had suggested a completely different direction and only after the intervention did we get a different result. And even the court raised questions about why that happened.

I think, unfortunately, it sets a bad precedent and I think the gloves are off in the future. Any administration will feel that political forces can intervene in the White House, and try to bring political pressure on the Commission in that way. And that raises questions about the independent virtue of having an administrative agency in the first place. We might as well have a Secretary of Communication and let everything be done by the administration.

MR. MAY: Okay. Well, thanks for that answer. So it's an important question. I'm just going to ask whether any of the other panelists have something succinct they want to add to what Michael said, pro or con, plus or minus. Anyone else want to say anything?

Don't take too long to decide. Just if you want to. Just quick.

MS. TURNER-LEE: Yeah, I was going to say quickly, in respect to our President, of which we have the highest utmost respect for his actions generally, it does give the appearance of a degraded public engagement process. Just recently with the Lifeline proposals that were issued by the FCC, no more than two hours later or the next day, the White House issued a statement affirming that decision and basically told many of the stakeholders that they had gone through a public engagement process of which all the groups that I'm aligned with were not invited.

So I think you have to really be careful of toeing this line as an

independent agency where you want sufficient input before decisions are made. You need sufficient query and deliberations before you go to a rulemaking. And that's something that we continue to see back up from the White House.

MR. MAY: Did you want to add anything, Meredith?

MS. BAKER: I was just going to say that we're really focused on working with Congress on a framework that's going to work, bipartisan, on investment and innovation. And we need a bipartisan solution. We need Congress to act and we're focused on looking forward.

MR. MAY: Okay. Because I said so earlier, I'm going to ask Seth to ask one final question, if he has one. Then what I'm going to do, because we always do it when we can, it's our tradition, we're going to go to the audience for a question or two. And, by the way, it's a terrific crowd here. I think our staff ordered some more lunches. Behind that wall, if you've been here before, we have a very nice buffet lunch. It's probably almost as nice – don't repeat this – but as what we had at my daughter's wedding.

(Laughter.)

MR. MAY: No, that's not true. But anyway, it's behind that wall.

(Laughter.)

MR. MAY: And Michael mentioned Jon Sallet. You should stay because I'm going to ask him during my lunch conversation about some of these things, of course. So we're going to finish up here. Then Commissioner Ohlhausen is here. Maureen, we appreciate it. She's going to give us a privacy thing and I've got to keep adhering to time. Then we're going to have lunch at that buffet and then I'm going to have a conversation with Jon Sallet.

So with that, Seth, do you have a final question?

MR. COOPER: Yes, I do. The FCC's *Municipal Broadband Order* swept away North Carolina and Tennessee laws concerning where and under what conditions its own municipal governments could become providers of broadband Internet services. So those states have challenged that order in court. And it's been argued before the Sixth Circuit, where it's been claimed the FCC lacks authority under Section 706 to preempt the states on that.

Brad, I wanted to get your take on that. What's NARUC's position on this matter and do you have any perspective on the oral argument at the Sixth Circuit?

MR. RAMSAY: I can go straight to the oral argument. It was pretty clear that one judge understood. One judge didn't say anything. And the other judge, I wasn't exactly sure the direction she was going. I still would be very surprised if any three judges or any circuit would want to uphold the FCC in these circumstances given the precedent from the Supreme Court in *Nixon*.

I looked at this case. This is basically the FCC telling the state whether or not it's going to get into the broadband business and where. The problem with the FCC's analysis is that it treats the state and the state organs as two separate entities. Basically it says, "State, this subdivision of the state is not really part of you, it's an independent entity and you can't tell it what to do."

It's completely flawed analysis. I don't think, if it does go to the Supreme Court, that they'll ever get to the 10th Amendment issue. But I did a memo on 10th Amendment issues about 20 years ago and the only thing that's left is you can't tell the state what they're going to do. You can offer them money, but you can't.

So I'll be very surprised if this gets upheld at the Sixth Circuit. And if it

does, I predict, with as much confidence as I have in the federal judiciary, which, granted, is not a lot, it'll go to the Supreme Court and get reversed if they do.

MR. MAY: Okay. Well, that's straight from the horse's mouth, someone that's been doing this state representation and issues of state sovereignty for over a quarter of a century, as I said earlier.

So what I want to do is take maybe one question. Raise your hand. While we're doing this, the lady with the microphone back there is Kathee Baker and she's our events coordinator. So would you join me and give her a quick round of applause?

(Applause.)

MR. MAY: Kathee, make sure we have enough food. No, I know we do.

Okay. Does anyone have a question here? Okay, this gentleman, state your name and affiliation and just ask a question.

MR. SHOCKEY: My name is Rich Shockey. I'm a voiceover IP engineer. I'd like to go back to the question of Lifeline and high cost issues. What I would like to know, and I think a lot of people in this room want to know, is how are you going to pay for it? The existing system for funding Lifeline in high cost areas is based on long distance voice and we all know what that problem is.

MR. MAY: Okay. That's a good question. I guess the Commissioners have departed here now, but who wants to take a stab at that?

MR. RAMSAY: Well, I'm on the Federal-State Joint Board staff anyway.

MR. MAY: Okay.

MR. RAMSAY: And of course we're obviously looking at comprehensive reform of the funding mechanism. If you've been paying attention to the press, Commissioner Rosenworcel has indicated we'll wait at least until the net neutrality

decision comes out, which hopefully will be soon. There are others that are suspicious that it might take a little bit longer than that. But the Joint Board is actually meeting and we are discussing the issues.

MR. MAY: Okay. This has been terrific. I wish we had more time, but we'll do it again. As soon as this panel departs, Commissioner Ohlhausen is going to come up immediately and speak for about 15 or 20 minutes at most. Then we're going to have lunch. Again, we're going to open the buffet and I'm going to have some fun during that lunch conversation with Jon Sallet, I expect. So I hope you'll be here for that. Join me now in thanking this distinguished panel if you would.

(Applause.)