



**The Free State Foundation's
Fifth Anniversary Celebration Lunch**

*Communications Law and Policy in the Digital Age:
The Next Five Years*

Keynote Address: Senator Jim DeMint

**October 12, 2011
Mayflower Hotel
Washington, D.C.**

MODERATOR:

RANDOLPH J. MAY, President, The Free State Foundation

KEYNOTE SPEAKER:

SENATOR JIM DEMINT, Ranking Member, Subcommittee on Communications, Technology, and the Internet, Senate Committee on Commerce, Science, and Transportation

* 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: Welcome to everyone. I'm Randy May, president of the Free State Foundation. I've seen many of you at Free State Foundation events before, but I also see a lot of new faces. I'm glad you're here with us as well. This is a special milestone, of course, for the Free State Foundation, and I'm really grateful that you are here to share it with us.

I make no bones about saying that I'm proud of what the Free State Foundation has achieved in five short years, and they do seem very short in a lot of ways. On some days, though, it seems like a long, long time ago. But I think by all accounts and all measures, the Free State Foundation is one of the nation's leading free market think tanks promoting not only free markets but also property rights and rule of law principles, especially with respect to the communications, Internet, and high-tech sectors.

We could not have accomplished all that we have accomplished without the dedication of our staff; our adjunct fellows; members of our Board of Academic Advisors, some of whom you're going to meet later this morning; and, of course, our many friends and supporters.

There have been a few things that have been consistent throughout the history of the Free State Foundation. One is that when we do events -- and we've done a lot of them now -- there's about an 80 percent chance that it's going to rain that day. I've learned that. So the farmers and their groups have become some of our most loyal

supporters, constantly asking me to schedule more Free State Foundation events. But I think the rain may be holding off for a while.

In the very first blog posted on the Free State Foundation website in June 2006 -- we're actually about five and a half years old now -- I wrote this, and I'm quoting: "Winston Churchill once said nothing is so exhilarating as to be shot at without success." Fortunately, I've no firsthand experience in that regard; that is, being shot at. But it is exhilarating to engage with vigor day in and day out in the battle of ideas to promote, as we say on our website, understanding of free market, limited government, and rule of law principles.

By the way, when I went back and looked at the blog for June 2006, there were about eight blogs that we did that month. And other than the one in which I quoted Winston Churchill, about six of them were about net neutrality. So that was an issue that was with us for a long time, and still is.

So, throughout the hard work and the worries about this or that going wrong and so forth, it has indeed really been an exhilarating five years.

Despite the successes, however, there's much more work that remains to be done. It's in the nature of our governmental system that there always will be more work to be done, and this is especially so with regard to communications policy. But with the ongoing weaknesses in the nation's economy and the jobs picture, there's absolutely no doubt in my mind that the free-market-oriented policies that we advocate are needed now more than ever. This is particularly true in communications and information services and the media sectors where competition has now become the norm, not the exception.

We eagerly look forward to the next five years. And we know that every day won't bring victories. But we know -- and this is most important -- that with your support, we will continue to have many successes, continuing to influence policy in a way that is good for the country and good for American consumers. So thanks again for sharing our anniversary and for your friendship.

We're going move now right into our program, and everyone should have a brochure with the agenda. It's now my pleasure to introduce our first speaker, our opening keynote speaker. And that, of course, is Senator Jim DeMint.

Now, Senator DeMint was elected as South Carolina's 55th senator in 2004. And he's currently ranking member of the Senate's Subcommittee on Communications, Technology and the Internet, which is of special interest to many of us here because it has jurisdiction over matters relating to communications and is responsible for oversight of the FCC, the Corporation for Public Broadcasting, and NTIA.

Now, as all of you also know, apart from his expertise and leadership in the communications area, Senator DeMint is an important voice on national affairs, for example, and especially on tax spending and budgetary matters and regulatory reform matters in general. In November 2010, Senator DeMint was renamed chairman of the Senate Steering Committee, which is comprised of the majority of Republican senators and works to advance conservative legislation. And he also serves on the Senate Committee on Banking, Housing and Urban Affairs.

He received his B.S. degree from the University of Tennessee and an M.B.A. from Clemson University. And before engaging in politics, he owned a market

research firm, which is probably pretty good background and training for what he does now.

Finally, I want to add on a semi-personal note, that back in 2005 Senator DeMint introduced the Digital Age Communications Act bill. It was modeled after some legislation that I along with a bunch of colleagues put together, which we called DACA. I think many of you know this. Simply put, DACA would have changed the communications law paradigm to comport with today's competitive realities in the digital marketplace. And Senator DeMint dropped that bill back in 2005. I think that's what they say on the Hill, dropped that bill. And to me, that was just an early indication as to his farsightedness, intelligence, and understanding really, of the communications world and how it was changing. I had other early indications as well.

So, Senator DeMint, I'm very pleased to have you here today to open the agenda.

SENATOR DEMINT: Thank you, Randy. So when I take your idea and introduce it, that makes me pretty smart, right? Okay. We'll try that again.

Well, thanks for being here and good morning to everyone. I'm excited to be with any group that's out there fighting for freedom and the rule of law and free markets. So I appreciate this critical mass of brains, and hopefully action, to help us in this fight because there really is a fight. And I want to talk to you a little bit about that today.

My background is communication. My B.S. from Tennessee was in communication. I spent most of my life in advertising, marketing, working with the media, but this was old-school communication. Today, it's totally different. I do want to

focus on communication but also on some of the other principles that you stand for.

We've been thinking a lot about Steve Jobs in the last week. There are not too many people here old enough to realize, he did not just create the iPod and the iPad and the iPhone. He helped create the personal computer, in effect, the individual computer.

When I was finishing up college at the University of Tennessee, there was one computer on campus that filled a whole basement about this size. If you wanted to enter data -- I see some of you smiling -- you went and spent several hours typing in each data point on a card, and then you put this whole stack of cards in this feeder. It fed in, and then it would print out the results. One dangling chad could screw up the whole thing, and you had to go back through the cards and find out. I mean, it was terrible. Only PhDs could operate them, and only huge companies could have them.

When I started my career, we didn't even have word processing. We were in advertising. All of us had typewriters. After a few years, we got one word processor. And if you wanted anything typed in and had some memory that could be changed, you had to go and wait in line for this one person to type it in.

But Steve Jobs changed the whole idea from an institutional communications or computing paradigm to one that was very personal. He helped create an individual market where millions of people were making their own decisions about buying and operating. Eventually, we had hundreds of competitors competing for their business, and it changed the paradigm of the industry.

And that came along side the deregulation of the telephone industry. We had the same black phone sitting in our house for 20 years with almost no changes. Once

it was deregulated, the changes occurred almost immediately.

This conference is very timely. Today, what we have is an incredibly individualized communications market that's going to change rapidly over the next five years. As you look ahead to the next five years, what will be the communications law? I can guarantee you, it's going to be the fight of the century as to which way we go, whether it is, in effect, a government-managed competition or a free market competition where you just have rules and regulations as a framework instead of an operative management force. And that's really what we're dealing with now as we look forward.

The telecom industry, the communications industry, what we see on the Internet and iPhones, and all this other technology, are really a showcase of how free enterprise works, how innovation and entrepreneurship flourish when you have people developing ideas for millions of people who can make their own individual decisions. And when you've got competitors and millions of people making their own decisions, that's what creates vibrant economies. That's what the American economy is all about.

But the American economy is what is in jeopardy today as we look at a new regulatory structure, different paradigms, and different beliefs altogether in Washington about how this country should be operated. It's really not partisan as far as Republican and Democrat. It's really about polar opposite views of the role of government and the role of a free society. That's what we're dealing with now.

And that's why your role is going to be critically important to be advocates for free market principles over the next five years. Because if you sit in some of those hearings as I do, you realize that some of the people talking see communications as a

government utility, something the government should operate, something the government should manage. There is a real bent towards managed competition and managed economics, not only in this committee but in just about every committee, and sitting in the White House today. It is a real belief that the government can macro and micro manage economic functions.

You don't have to look too far back in history to realize that government has never operated any economic function efficiently or effectively. And that is the threat right now as we look at how they want to regulate this industry as well as many others. Most of the companies and businesses that walk through my office today come in with their first complaint related to regulation and the lack of certainty, lack of predictability, and the cost of new regulations. Of course, the EPA is the main culprit. But the FCC is clearly a threat.

We have to decide, as a country, which way we're going to go. Is it going to be a managed economy? Or are we going to set up a structure where we can have free market competition? The DACA [Digital Age Communications Act] bill was a template, an example of how we need to operate the regulatory structure. It was not an attempt to manage economic functions within a particular industry but an attempt to, in effect, be a watchdog. If there is damage or harm done, or if there is any anticompetitive activity going on, we go in and address it rather than create a structure that's so rigid that it's very difficult, expensive, and very punitive to operate.

That's what we have now. We don't have a regulatory structure that's designed to help companies operate, but one to penalize you because you just can't follow

the multiple rules and regulations that exist right now. We need to take this idea of free market competition and continue to push it over the next five years because if you think about it, we can't even conceive of what the communications industry is going to look like in five years.

If we try to manage industry, if we try to standardize technologies, if we try to say this is how this part of the spectrum has to be used, or what technologies to use, we're going to get ourselves so knotted up that we're going to miss opportunities. If we continue to expand the Universal Service Fund where we're picking winners and losers and we're funding bad business models, if we continue down that road, we're going to stifle the opportunities that are out there.

If you look at cable and DirecTV, we have advocates now who want to write a law that mandates that consumers can buy *a la carte* programming. But by the time we get that passed and the rules written and regulations, people could probably get any program they want on an iPhone anywhere in the world anytime they want. And we're probably going to see the whole broadcast industry completely change as people are going to be able to order whatever programs they want anytime. It's going to be streamed not from cable or DirecTV but over their Internet, and that's just one idea of many that we're going to see the industry totally change.

We cannot predict the future. But if we try to do that and create a structure for what we know today, we're not going to have the innovation and the competition that we could have in this industry. And I hope the industry will continue to be a showcase for many others of how to keep the market operating in a free enterprise fashion, where

millions of people are making their own decisions and you've got lots of competitors competing for that business, and where the government is not picking winners and losers and giving grants to one company and not the other, trying to prop up bad business models. We have to again decide as a country: Do we want to let freedom operate, protect property rights, protect people's right to innovate and do business?

But what we've got now in power in Washington is totally different. We've got a National Labor Relations Board that's trying to decide where companies can locate and that you can't build a plane in South Carolina if it's a right to work state. And we're invading almost all areas of the economy, picking winners and losers with Solyndra and others. This when we've got a solar industry that's developing and growing based on market demand. But we come in and try to supersede that with government wisdom.

So, what I'm here to ask you today is to help us to advocate for a free market model where we don't say regulations are bad, but what we need is a predictable framework of law and regulations that companies can compete in. We're not picking winners and losers. We're not saying what kind of technology has to be used here. We're not trying to control networks or content, within reason, obviously. But we're going the opposite direction from what is now in government.

So that's what I'm fighting to change. And if we could continue to hold up the picture of the industry and how it's succeeded because it's gone so fast, we couldn't regulate it. We couldn't figure out where it was going, and by the time we tried to grab it and write rules for it, it would be somewhere else. And that's the only reason it's survived the heavy hand of regulatory structure.

So, Randy, thank you. I really appreciate the work you've done to help us with DACA and the Freedom for Consumer Choice Act, which we call the FCC Act, and with the other things that we're working on. I'm hopeful we can minimize the damage over the next year and a half, get a new majority in the Senate and maybe a president that can really open up this industry with the opportunity that we really have.

So why don't we take some questions and comments? Anything is game.

MR. MAY: Senator DeMint, thank you very much. We appreciate your comments. I'll just reiterate what I said before for any of the latecomers. We appreciate the work you're doing to advocate the same type of free market policies and rule of law principles that we are advocating at the Free State Foundation. I hope you'll keep convincing more and more of your colleagues as we go along, and we'll be trying to do our part.

So Senator DeMint has kindly invited questions or even comments, I heard him say. We've got a mic in the audience. If you have a question or a comment, raise your hand.

I see Adam Bender from "Communications Daily" has already grabbed the mic, and that's a good thing. By the way, he's one of the crack reporters there at *Communications Daily*, and we always appreciate his reporting. Adam, it's yours.

MR. BENDER: Thanks, I will try to ask a good question.

Senator DeMint, you're a cosponsor of the joint resolution of disapproval under the Congressional Review Act to fight the net neutrality rules that the FCC set up. Could you just tell us a little bit about what the next steps are for that and also if you think

you can convince enough Democrats to come aboard to pass that resolution?

SENATOR DEMINT: I'm not optimistic we can get the Democrats to help us here. Unfortunately, we have some players in the industry who are advocating for net neutrality, and that's a great example of how we're misusing the regulatory structure. We really don't have any harm that's been done. They say there might be one case, and that was dealt with.

But they're trying to use what might happen as an excuse to regulate the networks themselves. And I just don't think too many of the folks I work with really understand what that does to the investments that are actually going on once the government starts controlling them.

So I'm not optimistic we're going to get Democrats to help us. Frankly, they are all about central control and central power. There may be a few who talk a good game. But when it comes to voting, they're not there.

We're going to continue to try to convince them, and there are some in maybe more conservative states up for election that might help us. We're going to try, but I'm just frankly not optimistic because I've had so many conversations where I thought we've got someone with us and they go talk to their leadership and they come back and something just zips them up.

But the bigger problem is centralized control. A lot of that has to do with some of the other supporters of the Democratic Party right now. I don't want to be overly partisan, but there is a polar opposite view of how America should work. And people say, "Well, go cooperate, compromise and work with the other side." And that would be like a

coach telling a football team to go out and work with the other players, try to compromise with them, see if you can help them out because they have opposite goals. Our goals are free markets, free people. Right now the other side wants centralized power. And that has a lot to do with the support groups that are behind them.

MR. MAY: Okay. Another question, I see Lynn Stanton from *TR Daily*. So while she's waiting for the mic, I should say she is every bit the Cracker Jack reporter for *TR Daily* that Adam Bender is for *Communications Daily*. So, Lynn, thanks for being here.

MS. STANTON: Thank you.

You're having a hearing this afternoon on universal service in the Senate Commerce Committee. What are you looking to hear from them given that the FCC is already poised to take action? What are you going to hear? What kind of activity can you affect to influence it at this point?

SENATOR DEMINT: I don't know what to anticipate. We just want to continue to bring up the issues that we're concerned about and try to get FCC and others in the administration on the record about what they're going to do and not do to try to create some certainty and predictability.

But the only way to slow down the regulatory process right now may be just to try to shame them into stopping what they're doing, to try to get them to stop and think. We know they generally see communications networks as a public utility and it's their job to manage it. Not regulate it, but manage it.

So I don't know what to expect. We'll just be working on our questions, and

I don't know how many will be there. There are several hearings today. There's one on the EPA that Rand Paul is doing as well that has some property right issues involved there.

I know that's not a very specific answer, but we're not sure of the outcome. We just want to get those issues out in front.

MR. MAY: Okay. Yes, this gentleman, just wait for the mic. If you'll identify yourself, please, for the record. We're transcribing this.

MR. HAGERSON: Eric Hagerson, T-Mobile.

Senator, you were talking about how communications will change so you can download or downstream videos to your iPhone. A lot of that is going to require additional spectrum. Many stakeholders are decrying a spectrum crisis, and the National Broadband Plan put together by the FCC identified the need for 300 megahertz in five years and 500 in 10 years. It's been about a year and a half since that was announced, and not one single megahertz of new spectrum has been introduced to the market. And quite frankly, I don't think we're going to see 300 in the next couple of years, maybe in the next 10 years.

So, A, what are your thoughts about the need to get new spectrum out there? And, B, what do you think needs to be done to be able to get it out there quickly enough?

SENATOR DEMINT: First of all, the use of spectrum has got to be kept flexible. We can't say that certain types of technology or certain uses in different spectrum should be used because we've got to allow that to grow and change. Certainly, there need to be some set-asides for emergency and first responders. But I think we can do that

within private sector ownership if we're smart about it and keep more updated networks for first responders to use.

I think you will see more spectrum auctions. And the reason is that we're in such dire financial straits as a country. We're seeing that as a "pay-for" in a lot of the proposed legislation is to sell spectrum. But what we have to make sure of is that there are not so many strings attached. Again, as the government sells it, they see it as their property. They're looking at it as leases, and it becomes a government utility.

And that's what we have to avoid. If we're going to sell it, we have to create freedom for its use and make sure that we don't allow the spectrum to be sold where we're picking winners and losers in the market and deciding on technology.

But I think you'll see some spectrum sold, particularly after the next election. You're going to see some changes in Congress and hopefully a different view of what we should be doing.

MR. MAY: I saw Congressman Blackburn poke her head in so maybe if it's okay with Senator DeMint, we'll take one more question.

SENATOR DEMINT: That sounds good.

MR. MAY: And I'll go to this gentleman in the back.

MR. KLINE: Thank you, sir. Mal Kline, Accuracy in Academia. This might sound like a comment, but it's actually a question. You said the solar industry is growing through market demand. Is it really? Is it free of government props or anything else?

SENATOR DEMINT: I'm just basing that on some conversations I've had

with people who have been in the solar industry for years. And basically, what they told me was if the government would stay out of it, the industry would continue to progress as the market develops. But when the government comes in and gives an incredible amount of money to a company with a business plan that's not sustainable, it disrupts those companies that have been in the business for a while and are growing it.

So I'm not suggesting I'm an expert on the solar industry. But just based on people who've been in it, they see it growing and developing where there's a real demand for it and as technology improves. If we go in and try to speed that up with incredible amounts of spending, we're going to have more of the Solyndra-type outcomes because you can't create a market that quickly. We can't subsidize it enough.

So, Randy, again, thank you. Thanks for all of your interest. We need outside support and advocacy. We need a lot of noise on the outside for what it is that has to be done in Congress. And, again, it gets back to freedom and individualized markets and just a reasonable, light touch regulatory structure that deals when harm is done by the actors out there. So thanks for your advocacy, and we look forward to continue to work with you. Thank you.

MR. MAY: Join with me in thanking Senator DeMint.

(Applause.)

MR. MAY: Again, thanks, Senator DeMint, for getting us off to such a good start.