

The Free State Foundation

A Free Market Think Tank For Maryland...Because Ideas Matter

Annual Winter Telecom Policy Conference

**National Press Club
January 29, 2010**

Transcript of the Proceedings:

Conversation on FCC's Policies and Processes

**Edward P. Lazarus, Chief of Staff, FCC
and
Randolph J. May, President, Free State Foundation**

PARTICIPANTS:

EDWARD P. LAZARUS, Federal Communications Commission

RANDOLPH J. MAY, The Free State Foundation

PROCEEDINGS¹

MR. MAY: We're going to get started here. Thanks again to everyone for coming. Just a couple things. First, while I'm thinking about it, Susan Reichbart is the events coordinator for the Free State Foundation. I just want to thank her for everything she has done to put this conference together and make it successful. So join me in thanking Susan, please.

Now, second, my wife, Laurie. Crème brulee is her favorite dessert. So she insisted that we have crème brulee here for lunch.

Okay, well as you know, and as I've said earlier, we're just delighted to have with us Edward Lazarus, who is Chief of Staff of the FCC.

Now, I'm going to make sure that I can call you Eddie during this conversation and let others call you --

MR. LAZARUS: Only my mother calls me Edward when she's mad at me. So Eddie will be just fine, thank you.

MR. MAY: Okay, well if I slip into "Edward", you'll know what's happened. Last year, as some of you know, Blair Levin was here at the conference at about the same time and we had a conversation like this.

Many of you were here. And then Blair became broadband czar. So, who knows what will happen when we get through.

¹ 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. The editing assistance of FSF Research Assistant Cody Williams is gratefully acknowledged.

In fact, I might ask you. Would you rather be broadband czar or Chief of Staff of the FCC?

MR. LAZARUS: I think I'd just rather be Blair Levin.

MR. MAY: I can see Eddie and I are going to have a great time. This is going to be fun. I better do the straight thing here for a minute, and introduce Eddie.

Again, his bio is in your program as well, but Eddie was named Chief Of Staff in June, 2009. Previously, he was an attorney with the law firm of Akin, Gump, Strauss, Hauer & Feld LLP, where he was co-head of the firm-wide Global Litigation Practice, and a member of the firm's management committee overseeing more than 800 lawyers.

Well, that immediately raises the question to my mind. What's easier: overseeing 800 lawyers or overseeing the FCC staff? But we'll get into that later.

He's a former prosecutor, having served as an Assistant U.S. Attorney for the Central District of California. He also has served as a law clerk to Supreme Court Justice Harry Blackmun, which tells me, and I'm sure it tells most of you, that he did extraordinarily well in law school.

MR. LAZARUS: I was an excellent brown-noser.

MR. MAY: He's also served as chairman of the board of Ability First. That's a provider of housing and vocational services to people with disabilities, and also the Children's Law Center of Los Angeles, a non-profit organization representing about 25,000 dependent youth in Southern California. He received his J.D. from Yale Law School.

Okay, now this is the first time we've actually met in person, which is good, but I've heard from a lot of people that you're involved in everything significant that's going on at the FCC.

So what we want to do today is talk about the hot topic issues and about how the agency goes about its work; how it functions under Chairman Genachowski's leadership and your leadership.

So why don't you start off just by telling us pretty briefly -- and I'll do the same thing I did in there -- if either one of us runs on too long, we can stop each other. But tell us how you define your job as Chief of Staff.

MR. LAZARUS: Well before I do that, I want to thank you for having me here. I haven't come out to do that much public speaking. It's a great opportunity to see the community, and I do really appreciate it.

You've really set me at ease, actually. I don't know whether you know this, but the Chairman only wears slanted-striped ties and you have worn one. And I just want to know, are you copying the Chairman out of intellectual affinity or is this just a coincidence?

MR. MAY: Well I want you to go back and tell the Chairman this. He may remember it. Back around 1996 or so when he was at the FCC as Chief of Staff, I invited him to speak to my law school class at George Mason University. He was kind enough to do that. We were talking about spectrum policy. And I wore a slanted tie at that --

MR. LAZARUS: So he's copying you.

MR. MAY: That might be what he's doing --

MR. LAZARUS: Well let's talk about my job. I guess I've divided it into a couple of different buckets.

One aspect of my job is to be the Chairman's consigliere; someone who he can shut the door with and we can sit down, just the two of us, and sometimes we might be behind those doors just calling our spouses and pretending to be having a conference. But some of the time, it's an opportunity to have a quiet conversation.

I've known the Chairman for a long time. We've been friends for 15 years. We have, I think, similar backgrounds, perhaps similar analytic approaches to a fair number of things and I think that's a very important role for the Chief of Staff to play, the confidential advisor.

The next bucket I would think about is to be the leader of the team in the Chairman's office. We have an extreme collection of talent in our office and in the top staff of the agency.

Bruce Gottlieb, who had been with Commissioner Copps, is just an exceptional lawyer in every sense and Colin Crowell is a delightful person, colorful, wrote half the statutes that he had to deal with when he was working on the Hill, or certainly drafted large parts of them. He knows the history behind the history behind the history behind the history behind the history and that is an incredible resource.

Priya Aiyar and Sherrese Smith, our two legal advisors, bring really interesting private sector experience to bear on their responsibilities.

We've added Paul De Sa and Austin Schlick and all the other people. I'm leaving a lot of talent out, but part of my job is to make their jobs easier; to coordinate

things in a way that they can work most efficiently, most effectively.

And then, frankly, with someone who has almost no experience in telecom law, to be the dumb guy in the room asking questions that maybe other people wouldn't ask because they're so steeped in the history of certain disputes that every once in a while the obvious disappears when you've lost perspective.

So, I think that's the role I play. And then there are the traditional Chief of Staff functions at any agency just involving the management of the organization as a whole.

We have roughly 1,800 employees. There are quite a few offices and bureaus as you know. And we don't always have a structure that's perfectly suited to dealing with the kinds of issues that come up. Many of the issues involve more than one bureau. You know, that requires a degree of coordination trying to figure out how to work the system.

And there are ethics questions, pay questions, and other things that filter up through the Office of the Managing Director that are important, and need to be resolved. Steve VanRoekel handles most of that. Mary Beth Richards has been with the agency for a long, long time, and handles a lot of that for me. But at the end of the day, the buck, at least some of those things, stops on my desk and I have to make the judgment call.

MR. MAY: Okay, that was a really useful way of getting into the subject and you just confirmed what I said before that you're a player, as they say here in Washington. So you've now talked about your role.

Tell me this, how do you think that Chairman Genachowski's view of his

role as Chairman differs from that of Chairman Martin, or of any other previous Chairman.

MR. LAZARUS: Well, I can't speak to the Martin era. I was literally in Los Angeles doing nothing having to do with the Commission.

MR. MAY: You'd heard about it?

MR. LAZARUS: I have heard a few things. But I think the key thing about how Chairman Genachowski operates is the fact that, first of all, he's been at the FCC before. He was there under Reed Hunt. That gives him some insight into the building into a number of those issues that were there then, and are still there in some form or another now. And so that shapes some of how he approaches the job.

Second, he's a businessman. You know, he worked his way up in the Barry Diller organization as it grew and grew and grew and those who followed his career know that he was one of the best business executives in the United States.

And that's no small feat in a country with a lot of very talented business executives, but Julius was a superstar, and he brings to the agency, to what is really a CEO position, a key understanding of how a CEO needs to operate - with no false modesty.

But he has helped me do my job because he knows how to do for others what I am trying to do for him and the way he talks about setting up processes to drive decision making. I've learned an enormous amount from him. He brings that observation of business, participation in business, the understanding of business bottom lines that, I think, is a little different from many other chairmen at the FCC.

He also brings his venture capital experience. Immediately before coming to the agency, that's what he was doing. And so looking at new business plans, thinking

about innovation, understanding what causes investment decisions or decisions not to invest is something he has firsthand experience with.

And again, I think that's an unusual perspective for someone to be Chairman of the FCC, and a very useful one at this particular time. So aside from the fact that anybody who knows him knows he is a generous and lovely person, and extraordinarily smart.

I think when you look at him, you have to look at that range of government and business experience as to what will characterize his tenure.

MR. MAY: Now, I want to read you a quotation, actually from Chairman Kennard. I think the Chairman was there when Bill Kennard was Chairman, or he actually --

MR. LAZARUS: He was -- I believe he started when Bill Kennard was the General Counsel, working for Bill Kennard in that office and then moved up to Reed Hunt's office afterwards.

MR. LAZARUS: Well, I want to read you something that Chairman Kennard said in 1999 and get you to react to this. This was in a paper that he released called, "The FCC: A Model Agency For The Digital Age."

It said, "In five years, we expect U.S. communications markets to be characterized predominantly by vigorous competition that will greatly reduce the need for direct regulation. The advent of Internet-based and other new technology driven communication services will continue to erode the traditional regulatory distinctions between different sectors of communications industry.

“As a result, over the next five years, the FCC must wisely manage the transition from an industry regulator to a market facilitator. The FCC, as we know it today, will be very different in both structure and mission.”

Now, unfortunately, I’m so old that I was around the FCC in 1979, in 1989, and in 1999 when Bill Kennard said that. And to be candid, I don’t think the FCC is very different in structure and mission since then. So my question to you, if you agree, or if you disagree, tell me why, or why not?

MR. LAZARUS: Well, first of all, I just want to say Bill Kennard is a genius. In five years we will have all that.

MR. MAY: And he’s going to beat me on the jokes there --

MR. LAZARUS: Well, let’s start on the structure side of things and I think obviously one of the things that Chairman -- now Ambassador -- Kennard was saying is, how is this agency going to wrap its hand around convergence?

I’ll get to the other part of his quote in a second, but that remains a very important and difficult challenge for the agency. I think we have inherited a "siloe" organization in a world where, to some extent, those silos don’t necessarily make sense anymore. And they’ll probably continue to make a little bit less and less sense as time goes on.

So I think from a managerial point of view, you face two options. One is to undergo some major reorganization, which I believe would require a congressional statute. And separate from that, would take up an enormous amount of energy in every corner of the agency. So that’s one option.

The other option is to try, with the management style and processes that you've put in place, to work around and cure the silo problem another way. I think that's really where the Chairman has been headed. You know, exhibit A on that would be the broadband team itself.

There's nothing that's more crosscutting than broadband, and so on the one hand we have had the opportunity, thanks to some extra money, to bring in a lot of outside experts to help us with that. But we've also tried very hard to use that as a tool to integrate a lot of different bureaus into a single process. And we're going to be doing more and more of that.

Just last week, much to Rick Whitt's consternation, we formed the Consumer Task Force that with their first act sent out some letters on ETS. But the idea behind the Consumer Task Force is that consumer interests have to be front and center in the work of all the bureaus. There shouldn't just be a consumer bureau. That's part of our mission across the board in every respect, and so we have that Task Force.

We have a number of other task forces that are going to get up and running. The purpose of those is going to be to try and build teams within the agency working within the structure we have today. So that is part of what Bill Kennard said -- it is important.

It's a work in progress, but we are very aware of it, and we're trying to do a lot of things to internally bridge across -- to solve the convergence problem. On the question of competition versus regulation, I don't think there is much disagreement that there is a relationship between better competition, less regulation.

But, in 1999, there was a company called AT&T that's not exactly the same company that it is today. Verizon didn't look much like it does today. There were CLECs that don't exist anymore. There were a whole host of competitors that are not on the landscape we face today.

There are also things out there that are very competitive that also didn't exist. Who would have imagined the iPhones and the Nexus One and all the rest of the things that are coming about which are the result of incredible competition in certain markets.

So, some things that people had hoped for didn't happen. Some things maybe people didn't expect did happen, and this is just going to be a dynamic that continues as one observes the actual state of competition and the need for regulation.

MR. MAY: So are you saying Chairman Kennard was wrong? I mean he said the markets were going to be characterized predominately by vigorous competition. Do you agree that that's the case now or not?

MR. LAZARUS: I think that it is --

MR. MAY: But that was in five years, in 2004.

MR. LAZARUS: I would say that Chairman Kennard would not mind admitting that he probably didn't know what was going to happen in the year 2000 and that just makes him about as good a prognosticator as every other person in the space.

So I don't think I impugn his intelligence or integrity by saying it didn't work out quite that way.

MR. MAY: Okay, now we're going to come back in a moment to talk more

about these competition issues, but just wrap up a little bit on some of the process questions. I know GAO released this report, maybe a week ago concerning the Commission's management.

And, you know, I'll be the first to admit that with regard to a lot of those GAO reports, I myself don't always put much stock in them to be honest with you. But, I want to ask you about two specific points and you can just respond. I think one of the things, and I didn't read the whole thing through, but they had some criticisms about the FCC ex parte process.

And for the last couple years, that has been a topic of considerable interest. Just tell me, fairly succinctly if you can. One of the criticisms is that we always hear and all you have to do is look at some of them. They're pretty vague, there's not a lot of reading -- or maybe there is a lot of reading, but between the lines.

But what would you say about the ex parte process, because I think the Commission's about to do something that.

MR. LAZARUS: Sure, happy to. My ex parte for today would be chatted with Randy.

MR. MAY: Right.

MR. LAZARUS: No, it isn't always a great process. So as those of you who follow the Commission know, Mary Beth Richards is leading our reform efforts. We picked her because she's effective.

She knows the agency really well and thought she'd be an excellent guide together with Steve VanRoekel, Paul De Sa, and some other people to think about these

issues and, as you know, at the February meeting, there's going to be some small cleanup items, including on the ex parte rules, and this is going to be a rolling process.

We want to have a transparent and effective agency and the ex parte process just isn't like other agencies of government. I don't know any other agency where people come in and have ex partes to the degree that it happens at the FCC. It's just part of the culture.

Not sure if, frankly, as an outsider, whether it's a good or a bad part of the culture, but it is part of the culture. But we're trying to do that in a way that is best designed to both be transparent and to drive effective, thoughtful decisionmaking. That is our goal, and I do expect us to be tweaking the system as we move forward.

MR. MAY: Okay, let's talk about some of the substantive issues a bit and possibly we might come back to process in doing that. But we may get to the point where we have time for questions from the audience.

So you can think of those as we go along, if you have any. I want to talk about net neutrality, but just as a prelude to do this, because it would be relevant to special access, or whatever.

You know, I've heard a lot that the Commission wants to be data driven and maybe that's what you're alluding to in part when you talked about Chairman Genachowski's approach to issues. And most people would say that's all well and good. But my question is: How do you know, and how do you think about this when a market is sufficiently competitive that you don't want to regulate it?

In other words, people can look at the same data and they might come out of

it with different conclusions. So how do you think about this issue of competition, and knowing when the costs of regulation outweigh the benefits?

MR. LAZARUS: Well, to quote a famous Supreme Court case, I know it when I see it. Bad joke. But look, it isn't really a matter of when do I know that a market does or does not need additional regulation.

There's a whole agency that's set up to drive from the bottom up a set of decisions and to do their jobs right. You need to have the data to give the expert economists, the expert engineers, the expert analysts, the expert business people to be thinking about these things.

I'm sure you've heard Chairman Genachowski talk about this many times. But his goal for the agency is to be a magnet for talent from all the disciplines that are required to look at markets effectively, to drive into the agency the data necessary to make those analyses.

MR. MAY: But I'm stipulating all of that. Excuse me for interrupting, but I'll stipulate all that. My question goes to the next level because some people might look at a market that has four participants and say that's competitive. Maybe others would say not.

Some people look at things like is this a dynamic market that's changing a lot. Others would say that not. So I think there's a point at which you've got to go beyond just saying we're going to look at all the data and people are going to want to know what is what perspective or regulatory approach do you bring to the data.

And I'd probably like to be asking about Chairman Genachowski as well as

you. So that's what I'm trying to get at if you're able to --

MR. LAZARUS: Well, I don't really know exactly how to answer that question, because when I think about the problems that face us, they're not all related to a market like that. Right? So the government controls quite a few inputs.

So when I think about what's the number one priority at the agency right now, it's the Broadband Plan. When you speak about the Broadband Plan, you have to think, for example, about spectrum and the country's desperate need for spectrum. That is a government-controlled, government-owned input.

So it's not really a question of markets when you think about what policies to adopt with respect to spectrum.

Now, to drive an efficient spectrum market, once it's out there and allowing for secondary uses, and whether you should be able to resell, and all the rest of that, I think, obviously, we are market-driven in the sense that we want greater efficiency and greater, more efficient uses of spectrum.

But the initial question of do we need more spectrum, and what policies do we need to adopt to get more spectrum into the market, is not really a question of competition or regulation.

When we think about government rights, we're not thinking about the question: Is there an efficient market in that? That's the government-owned stuff. How are we going to remove barriers to allow companies to build out broadband more effectively by lowering the cost of input?

There are all kinds of things the agency does that do not bear a direct

correlation to the question of how many players are there in the wireless market, et cetera, et cetera.

In fact, most of the issues we've taken on, I would say, are not directly related to that. Do we think more competition is good? We think more competition is good. But the Chairman has pretty clearly enunciated what the touchstone principles will be for all his decisionmaking.

That's going to be: What is going to drive investment? What's going to drive innovation? What's going to drive competition, and what is going to be in the best interests or to empower consumers? And those all won't always be in sync.

Sometimes there are going to be conflicts in those principles and you'll have to make some hard choices. But that's really the underlying template against which all of the decisionmaking in the Chairman's office is made.

MR. MAY: Well, go from there to net neutrality and maybe try and apply some of those thoughts or principles. And I'm going to start this way.

It seems to me that by its own terms, the FCC's rulemaking notice doesn't try to suggest or at least establish in any way that sometimes the agency does when it wants to make a case. It doesn't try to establish that there are widespread consumer abuses. In fact, it just names those two cases.

We're all familiar with the Madison River Telephone Company, and the Comcast incident, and the NPRM doesn't really try to establish there's a market failure. Even the way the notice is captioned, it talks about "Preserving the Open Internet" so that one is left with the impression that we presently don't have something that needs

correcting, or a closed Internet, but that we want to preserve it.

So my question to you is, before adopting new regulations, because regulations always have costs, I think you'll concede that along with other factors. We'll see. Would it be better to wait and see whether the marketplace really develops any of these problems that the Chairman and others have concerns about rather than moving forward now with the cost? And then I'm thinking about things like inhibiting innovation and investment and so forth. That was a question.

MR. LAZARUS: I was trying -- I was just trying to figure out which question I was being asked, but look --

MR. MAY: Would it be better to wait?

MR. LAZARUS: I don't think it would be better to wait, otherwise we wouldn't have launched.

You know, there's something a little surreal about the conversation that goes on around net neutrality and also around the abstract discussion of regulation versus deregulation.

On the abstract discussion of regulation versus deregulation, I do think the last eighteen months has been a bit of a cautionary tale in the financial markets about the idea of, oh, if you see a bunch of competition out there, there's no need for regulation.

The financial services market was pretty competitive, I think, by most people's standards. No barriers to entry, but there were lots of asymmetries hidden beneath the surface, and our economy blew up.

So I don't think that it's always the case that you ought to wait for problems

to arise before you establish some rules. But that doesn't mean that what you want is a set of highly prescriptive rules in an area of rapidly changing technology, and all the rest of it. I think the Chairman has been very, very clear.

First of all, the companies have been living under the four principles for a while now, and there hasn't been a drop in investment. There hasn't been a problem. Nobody seems to be arguing about the transparency principle.

Everybody actually seems to welcome the transparency principle and I think earlier today you mentioned that.

MR. MAY: Yes.

MR. LAZARUS: We think the transparency principle is really what is going to drive most of what goes on.

MR. MAY: Why don't you just stop there if that's going to drive most of --

MR. LAZARUS: Because it's going to drive most of it. There's nothing wrong with having some high level principles in place to make clear that certain outlying conduct is not going to be allowed, and to provide an avenue for people to figure out the gray areas.

Now, there are lots of different mechanisms that might get set up to try and figure out how to do that. One of the things that I pushed in our office when our team was meeting about this is getting the engineers together.

And I think most of the companies would agree that that's been a very healthy process where we try and move some of this out the theoretical, out of the fraught political discussion that has gone on for years, and to the engineering level where what

reasonable network management really looks like can be decided in a sensible way.

The principles that the Chairman has enunciated are -- because predictability is actually a good thing in this world -- we want to make sure that there's reasonable network management to allow the people to manage their networks as necessary and also to allow for some business innovation in business models.

That said, there has to be an irreducible minimum of a free and open Internet, and those ought to be basic principles that anybody can get along with because, frankly, for the last few years that's what people have been living with. It's just in a legal regime that as we all know is --

MR. MAY: Let's drill down further because one new principle that the Commission is proposing is a nondiscrimination principle, and actually one that would be a strict nondiscrimination principle.

MR. LAZARUS: That's your word, not mine.

MR. MAY: Okay, and in addition to the transparency principle, and I think that discrimination principle is really problematic because of the difficulty in understanding what it means.

But when we were touching on this a bit in the previous panel, and I don't want to read that whole quote, but I just want to sort of hone in on this issue of discrimination.

Because if you get it wrong, it seems to me that the effects on the network providers can be very substantial in this Internet ecosystem.

So the Commission said -- to its credit, it acknowledged there's good

discrimination and there's bad discrimination. It said that. And then it said the key issue we face is distinguishing socially beneficial discrimination from socially harmful discrimination, in a workable manner.

Well, I think that's true, but frankly, having watched the Commission for 30 years and having been over there, myself, for three years at the Commission as Associate General Counsel, my own sense is that despite the best of intentions, which I grant, of course, that it's sort of been the nature of the bureaucratic imperative to err on the side of regulating rather than not regulating. I mean I just believe that's true again with the best of intentions. You say this is the key issue: How are you going to distinguish?

Just tell us pretty succinctly between the socially beneficial discrimination and the harmful discrimination.

MR. LAZARUS: Well, that's what the rule making process is for and that's why the technical advisory is there and frankly, in the Comcast decision itself, you said we had a strict rule that indeed the standard that was applied in Comcast is not necessarily the standard that we're going to apply going forward.

MR. MAY: No, but as I understand, I mean correct me if I'm wrong. But, I mean the record will correct itself.

But I think that at least the proposal and not the decision -- we haven't gotten there, but was not to adopt the old sort of regulation -- the discrimination, but the reasonableness, but to not use that in a more strict standard. So that's all I meant to imply by that.

MR. LAZARUS: Well, so whether there is a difference between the Section

201/202 standard and the approach that we've outlined in the draft rule? That is, we thought it was good government to put something out there for people to look at, argue about, run a process on, and then come to find our rules and whether there is a material difference between those two that would entirely depend on the definition of two things.

One definition is "reasonable network management," and the second is "managed services." We're running the process where now we've gotten, I can't remember how many thousands of pages of comments that we're going through now, trying to figure out what is the right framework for approaching the problem.

And we don't know exactly what the mechanism's going to be. But one of the things that we obviously want to do is be informed deeply not by bureaucrats, but by technical experts on how networks actually operate.

And that's why we're trying to bring more talent into the agency on the engineering side and why we're also calling on outside experts to advise on exactly what reasonable network management techniques would be like.

And the last thing we want to do is actually adopt a set of rules for the technology that exists today, and six months from now we'll be operating in a different world.

We understand the need for flexibility. I don't share your skepticism that an agency always errs on the side of excessive regulation. I don't think history bears that out.

MR. MAY: You're not as old as I am.

MR. LAZARUS: Either that or I just like to get up every morning and go to

work.

MR. MAY: All right, well let me ask --

MR. LAZARUS: But I would say, I thought the last part of it was very interesting and I thought that -- I think it was Rob Atkinson said that there's a tendency toward an intellectual laziness about saying, "Oh, you know, you won't be able to manage your networks at all," and from the critics or from the other side, "Well, actually, there should be no discrimination whatsoever."

The answer is somewhere in that middle. We've got to search for it the smartest way we can and in the comments there are a lot of very constructive suggestions about how to get to a sensible framework and we're going to keep pushing on it.

MR. MAY: Now, remember Bill Kennard, one of my favorite chairs. I'm going to read you something he said back in 1999. That was really a good year for Chairman Kennard, as far as I'm concerned.

And it had to do with exactly what we're talking about, and it was in the context of he was being really pushed hard to adopt what was then called an open access principle for the early cable broadband systems. He was being pushed hard on that and ultimately the Commission did not adopt this open access regime.

And so Bill Kennard said in '99: "It's easy to say that a government should write a regulation to say that as a broad statement of principle that a cable operator should not discriminate against unaffiliated Internet service providers on the cable platform.

"It is quite another thing to write that rule, to make it real and then enforce it. You have to define what discrimination means. You have to define the terms and

conditions of access. You have to have issues of pricing that inevitably get drawn into these issues of nondiscrimination.

“And then once you write all these rules, you have to have the means to enforce them in a meaningful way. I have been there. I have been on the telephone side.

“So if we have the hope of facilitating a market-based solution here, we should do it because the alternative is go to the telephone world” -- that’s like that Title II world that was mentioned earlier -- “a world that we are trying to deregulate and just pick up this whole morass of regulation and dump it wholesale on the cable pipe.

“That is not good for America.” What say you?

MR. LAZARUS: I’m just going to defer to Kyle on that one.

MR. MAY: Yes, I know. But I mean the point he was making is that it’s easy to say these things, but it’s harder to enforce them, and you’ve addressed some of that --

MR. LAZARUS: Listen, there’s nothing easy about the job of the FCC. That doesn’t mean it’s not a job that has to be done.

MR. MAY: Okay, now we’re going to a couple of lightning round. This is where it’s fun, like we’re on a Sunday talk show.

I’m going to try and do it quickly and then if anybody has a question, they can come to the mic. USF and intercarrier service reform is something that I’ve talked about for a long time, as have many others -- including people at the Commission.

Commissioner Tate is here and of course she chaired the Federal State Joint Board that made some recommendations a couple years ago now and they were good. So

my question is -- and I understand politically it's a different issue. They talk about the square states and all that. But, you guys are supposed to be the expert agency. Why is this so hard to get done and are you going to reform Universal Service soon? Just tell us what's going to happen, and how soon. And this is a lightning round.

MR. LAZARUS: I was going to say, everybody can wake up now. So I'm not going to give a preview here of the Broadband Plan, but I will say that the Broadband Plan will talk about USF reform in a serious way.

It will certainly have meaningful suggestions about how the program should be reformed; that we have to act on this. We were talking about government inputs into the program, and the high cost fund is the single biggest government input out there. And I think most people would largely agree that it is inefficiently directed for a broadband world.

We need to, over time, figure out a way to transition, to handle this in a smarter way, because we can't have something like \$4.7 billion, that every year is not efficiently allocated towards the buildout of the next generation technology, as opposed to supporting the last generation.

Albeit, you can't do this in a flash cut. It's got to be a plan. So that's where we're headed. At the same time, you can't have the contribution rate going through the ceiling.

So it is difficult, but we are going to get a start on it -- hopefully a real jumpstart on it -- in the Plan and then we'll have to run series of NPRMs to get it done. The Plan is not going to be self-effectuating.

But this has been a can that's been kicked down the street for quite a few years before we got here and we're going to try and pick that can up and do something with it.

MR. MAY: Okay, great. So I have another question or two, but does anyone in the audience have a question? If you do, I will entertain it now. If you're still thinking of one, I'm going to ask another question. But go ahead, Scott. Just identify yourself.

QUESTION: Scott Cleland, Netcompetition.Org. Your first comment on Chairman Kennard's view of working the future about seeing competition, do you think we have a competitive broadband market or is it market failure?

MR. LAZARUS: I don't have an answer to that question. I don't think that's a yes/no answer, and it's also a question not of what the market looks like today, but what's it going to look like in a year and what do you think it's going to look like in three years.

So we want to increase competition wherever we see difficulties and if we don't see difficulties we'll stay out of it.

MR. MAY: Okay, any other questions from the audience? Okay, well I just want to close then with just a couple questions and these will be the last ones

MR. LAZARUS: They're always the tricks. I know this.

MR. MAY: No, there's no trick, but I want to say this. If you didn't do communications law before you got here, which I know you said you didn't, you were managing an 800 person law firm. I'm really impressed with how much you've absorbed so quickly and how much you know, and that's a real tribute to you. I know it's probably

taken some hard work to absorb a lot in a short time.

MR. LAZARUS: Well, I --

MR. MAY: I mean it took me years and years and years.

MR. LAZARUS: I appreciate your saying that and I will ask people, if you have things that you think I ought to read, I mean I just try to digest another article every day because I am in the steep part of the learning curve.

I appreciate all the counsel I've gotten from a number of people in this room over coffee and dinner and in my office, because I am learning this space. I am brand new to it. Well, six months into it now, but I appreciate any thoughts about things I ought to be reading and ideas I ought to be considering.

I'm very open to that.

MR. MAY: Have you heard of this book, "New Directions in Communications Policy?"

MR. LAZARUS: I've tried to download it to my Kindle. I'm not sure whether I've succeeded.

MR. MAY: You really should take a good look at it. Okay, so let's wrap up on merger review policy because this is another one of those things that over the years I've done a lot of writing about. These questions have absolutely nothing to do with any pending merger.

In fact, we don't need to mention it.

But it just seems to me, it's an area that's ripe for some Commission reform because, number one, no one will argue there's not some level of duplication between the

Department of Justice and the FCC, even though I understand their different stance on everything.

So this is a matter of good government. There's quite a bit of duplication, but --

MR. LAZARUS: If DOJ just wants to hand it over to us, this is okay.

MR. MAY: Let's just focus on this particular part of it. It seems to have increased in recent years, but there's always been a bit of it, but it's reached new heights.

The Commission is acting under the public interest authority, which is part of what I just referred to, and is a pretty indeterminate standard, obviously.

Say you have a merger pending before you, you're going to understand technically it's not the merger that's pending before you, but the transfer of licenses. But, a lot of different groups come in suggesting all types of conditions and they'll say, well, it's in the public interest.

Now, what's increasingly happened is that number one, a lot of times the Commission will impose conditions that are extraneous to the particular circumstances of the merger, even as they claim them. Sometimes they'll claim it's related, but then you have to make some judgments.

And the Commission will end up in this process where the day before or sometimes the night before, there'll be an ex parte like we were talking about before that was to be filed, and, oh, the Commission is proposing voluntarily to adopt -- maybe you haven't encountered this yet.

MR. LAZARUS: I've heard about it.

MR. MAY: I mean the company's going to volunteer these conditions at 9:00 the next morning, and at 10:00 p.m., boom, the Commission -- well, the company volunteered this condition.

I think it's gotten to be a really, and to be honest with you and as someone who really treasured his service at the Commission, kind of an unseemly process.

Now, having said that, I was really encouraged that earlier this year, I think, when you guys approved the AT&T Centennial merger.

And there was the same issue of conditions, and there was this statement that was in that Order, despite that it made a distinction between your authority and the DOJ's, that generally the Commission has held that it will impose conditions only to remedy harms that arise from transaction-specific harms, and that are related to the Commission's responsibilities under the Communications Act and related statutes.

Thus, the Commission generally will not impose conditions to remedy preexisting harms or harms that are unrelated to the transition. And that moved me to write a blog praising Chairman Genachowski.

I think that you really ought to be able to reform this merger review process at the Commission. Is that something that there is an interest in doing and will the Commission do that and sort of go down this road that it seemed to be going down in this earlier order?

MR. LAZARUS: Well, as you know, as of yesterday, we have a very large transaction pending in front of us. So I'm going to be quite careful about what I say about this, but let me make a couple of points.

One has to do with the internal processes at the Commission. And this goes back to the point we were discussing at the beginning about convergence.

Deals now often have implications that go beyond a single bureau, and so one thing I'm drawing together inside the agency is going to be a dedicated deal team to deal with large transactions, because I think it's important for the agency to organize itself in a way that frankly places the emphasis on a transaction, certainly a large transaction that deserves it.

And the second is, and I know Kathy's here, that I have given my personal pledge, for whatever that's worth, to the parties that they will get a thorough, fair, and as expeditious as possible, consistent with being thorough, review.

MR. MAY: I meant to mention expedition. I'm glad you brought that up.

MR. LAZARUS: You know, we will handle all transactions in that way and that does, it seems to me, have some meaning. And beyond that I don't think I'll venture to say anything more, but I know that I was speaking for the Chairman when I said those words to the parties, and that's what they'll get.

MR. MAY: Okay, well I think it was absolutely terrific for you to come here. It's been very enjoyable for me. I hope for you as well.

MR. LAZARUS: Indeed.

MR. MAY: It's been very informative. So everyone please join me in thanking Mr. Lazarus. And with that, we're adjourned.

(Whereupon, at 2:10 p.m., the conference was concluded.)