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**THE FREE STATE FOUNDATION**

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

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

***"The Future of the Internet: Free Market Innovation or  
Government Control?"***

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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.

## P R O C E E D I N G S

PRESIDENT MAY: We're going to get started here now so we can be able to stay on our lunch schedule. It's my pleasure to turn the mic over to my colleague Seth Cooper, Senior Fellow at the Free State Foundation. I'm just going to ask everyone to take their seats so we can stay on our lunch schedule.

And I don't want to take any more time, but I do want to say before turning the mic over to Seth that as most of you know, he's been an integral part of the Free State Foundation, an important part, for many, many years. And I'm proud that Seth is a Senior Fellow with the Foundation. His work is awfully important, and I appreciate all you do, Seth.

MR. COOPER: Well, thank you, Randy. I am a long-time attendee of Free State Foundation conferences up to the very first one. First time moderating; I feel a little bit like a ball player called in from the bullpen, having slogged his way through the Free State Foundation's minor league

system.

I'll end my baseball analogy because my dad recently reminded me of a game in which, senior Little League, I beaned five batters from the mound. And they don't let you do that. It wasn't quite an ejection, but it was kind of a head shake from the umpire. And he said something like -- you've just got to do something else now.

So I'm going to turn it over to our panel here. I'll introduce their biographies because they are quite interesting. We have an expert panel here for reactions to everything that we've heard before. We'll be discussing a host of issues.

I have James Assey right here, who is Executive Vice President of the National Cable & Telecommunications Association. As their second most senior executive, he's involved in all aspects of NCTA's work on behalf of the cable industry.

He was a long-time staff member of the Senate Committee on Commerce, Science, and Transportation. And most recently, he was senior Democratic counsel

to the committee.

We also have here Jeffrey Campbell, who is Vice President, the Americas, Global Government Affairs for Cisco. That means he leads government affairs for Cisco for a tiny area known as the Western Hemisphere.

Since 2001, he's been responsible for developing and implementing Cisco's policy with respect to telecom, trade, energy, security, technology dealing with intellectual property law, Internet regulation, energy regulation, international trade, and information technology. And prior to Cisco, Mr. Campbell headed the government affairs office for Compaq.

Next is Jot Carpenter, who is Vice President, Government Affairs, at CTIA, The Wireless Association, which he joined in 2006. He's responsible for the strategic direction and day-to-day management of the wireless industry's outreach efforts. He previously worked in the Washington, D.C., office of AT&T, and prior to that the

Telecommunications Industry Association.

And I've also got Peter Davidson, Senior Vice President, Federal Government Relations at Verizon. Mr. Davidson is responsible for federal government policy and advocacy matters affecting government relations with Congress and the Executive Branch. Before that he was general counsel at the United States Trade Representative.

And we also have with us today -- I'm quite pleased to have -- Gene Kimmelman, President and CEO of Public Knowledge, and a very distinguished background. He served as Director of Internet Freedom and Human Rights Project at the New America Function, and as Chief Counsel for the U.S. Department of Justice Antitrust Division.

He's presently Senior Fellow at the Silicon Flatirons Center for Law, Technology, and Entrepreneurship at the University of Colorado, and a Senior Associate with Global Partners Digital.

So, for those of you who may have been here at the conference and heard the previous speakers, the

Net Neutrality Title II order by the FCC has been the primary topic of discussion, but certainly not the only one. Does anyone have any reactions at the outset to anything that's been said by the prior panel?

How about this -- actually, I'll just take it from Commissioner Ohlhausen's presentation. Is there any reaction that you might have to the issue of the common carrier exception in the FTC, and who might be perhaps the most suitable entity for addressing these kinds of issues?

And perhaps that's a hedged question, but perhaps someone on the panel would like to take that. Jot, would you like to perhaps take a stab at that?

MR. CARPENTER: Sure. I'm happy to lead. At CTIA we've traditionally viewed the common carrier exemption as a useful bar against duplicative regulation.

Yes, as Commissioner Ohlhausen points out, the market is dramatically different today than when that initiative or that piece of law was enacted. We

have competition where we used to have monopoly, but because we have competition, our view is we don't need a lot of regulation.

If we're going to have a regulator at the federal level, we ought to have a regulator, not multiple regulators. And so when the FTC and others have proposed in the past removing that restriction and allowing the FTC authority over common carriers, it's been our view that if you're going to do that, you need to couple that with some consequent reduction in the scope of the authority of the FCC.

In fact, it's not even today a question of dual regulation. We have dueling three-letter agencies, and we now have this four-letter agency on the scene in the form of the CFPB that wants into the space as well.

And I don't think anybody in the space objects to having some baseline level of sensible regulation. But I don't know how you get a sensible baseline with two or three regulators. I think that just simply raises the likelihood that you'll have duplication

and overlapping conflict, and I don't think that serves anybody's interests.

MR. DAVIDSON: Seth, could I add something to what Jot said?

MR. COOPER: Sure. Go ahead.

MR. DAVIDSON: Sometimes I think everyone gets caught up in exactly which agency should be doing what. And I think in a lot of ways that wastes a lot of time and energy and heat in the wrong direction.

I think I'd like to move up a little higher -- I agree with everything Jot said -- but move up a little higher and say, okay, given that, what is the type of policy-making that should be happening? And in a dynamic economy like we have today, with technology moving as quickly as it is moving, I think regardless of who's doing it, the way that they do it is really important.

And so having -- whether it's technology mandates in law or whether you have inflexible silos in regulations, and whether it takes 18 months to change that regulation, these are all yesterday's

news by the time we actually get to harm to consumer or harm to competition at the end of the day.

So what you have to do, and this is, I think, what Congress is supposed to do, is look at the big policy implications here and redesign the system for the Internet age in a way that puts out some general principles of consumer protection and protection of competition, and then have a relatively flexible process of bringing complaints, and then having those complaints adjudicated in a quick manner, quick and thorough manner. And then you create a common law of the Internet ecosystem, and you go from there.

So, which three-letter agency that is I leave for smarter people to determine. But I think the process needs to be more aligned with where technology and the Internet ecosystem is today.

MR. CAMPBELL: Peter makes a good point here on this, which is that we need to have one system here. But if you look at the rationale in the FCC order for why we must have such stringent rules to preserve an open Internet, almost to the extent that

in order to preserve permissionless innovation, we must ban permissionless innovation in other spaces, the rationale is that it's too difficult to do on a case-by-case basis, that we have to have bright line rules that people know in advance and whatnot. Of course, we'll enforce them on a case-by-case basis afterward.

But my point is that it's actually in direct contradiction with how the FTC goes about its ordinary operation for consumer protection and the other things that are under its jurisdiction, where it's a fact-based intensive investigation, and then you get a bunch of case-by-case decisions to put that case law together.

And so wherever you go, the rationales seem to be in great tension here to see what's going on. And I think the worst thing we could do for the industry is to have a world of, well, if I can't get you one way, I'm going to get you another way.

I think we have to have a basis that people understand how new services, new offerings that will

be brought to market are going to be reviewed by regulators, and get to an ability to have some understanding of what the rules are going to be and what people have to do.

MR. COOPER: Gene, Go ahead.

MR. KIMMELMAN: This is a great place for me to jump in because this is my best opportunity to agree with everyone. There may be more; we'll see. But this is a good starting point.

I totally agree with everything Jot and Peter said, and Jeff had some good points. I think staying high level, getting principles, it's not about which acronym it is. It's getting the right functions dealt with by government where you need government, leave it to the market where you don't need government, and make it as simple as possible. I couldn't agree more.

MR. COOPER: Now, Peter, you mentioned redesigning the system for consumer protection. But there's been part of a broader congressional effort in terms of redesigning the entire Communications

Act. And in the prior panel, of course, former Congressman Boucher brought up the possibility of a legislative compromise around 706.

So those are a couple of avenues that stand out there in terms of what's next after the Title II order. James, perhaps you could start with this. What are your thoughts on the next steps ahead in terms of either legislative compromise or the impact that the Title II order might have on getting us a reform toward a digital age Communications Act, whether that increases the need for it? Could it set things back? Give us your take.

MR. ASSEY: Well, I don't know if my take is particularly unique. On the one hand, I think at yesterday's Senate Commerce hearing I was encouraged by the number of people who seemed to recognize that a legislative path might be in everyone's best interests as we're staring into the abyss of a lot of litigation and collateral damage.

I do think there are only so many things Congress can do at one time. I think if you're

talking about a broader rewrite versus essentially fixing or codifying whatever your perspective is on the Net Neutrality open Internet principles that are currently at issue, whether that speeds up or slows down more comprehensive reform, I don't know.

But I think, to go back to the initial question, I think what we see, and what we've talked about at conferences like this for it seems like forever, is the fact that the statute is very focused on silos. It is a historical anachronism that basically used to cabin off different firms who used to not compete with one another.

And now we find that competition is rampant not only across these artificial divisions, but even upwards into the stack. It's one of the reasons that you want a single regulator to regulate all the people who are dealing with the affected information or concerns that the government is going to have.

So I think, more than Net Neutrality, whether or not that is a spur or slows down more comprehensive reform, I think at the end of the day

it's the market transformation which continues to put pressure and drive people towards a greater sensitivity to the need for a more modern framework that will reflect the state of competition and the variety of players who are currently participating within the overall ecosystem.

MR. COOPER: Peter?

MR. DAVIDSON: Can I add a thought to that, Seth? So you almost asked us whether there's something in the previous panels and presentations that struck a nerve with us. And so I want to combine that almost-question with your last question because I think what Chairman Walden said about bad process making bad policy is right.

Back in my teens, I was involved in a legislative effort called the Contract with America. And we got all ten planks of the contract through the House of Representatives in 93 days. And believe me, we cut some corners.

All the members of the House who were candidates had pledged in writing to vote on these

ten planks within a hundred days, and they did it. And we got very little bipartisan buy-in to many of the provisions, because we were obligated to follow this process, but that was not the right way to do it in terms of bringing people on board.

What you want to do is you want to have -- and sometimes the sausage-making machine of Congress is ugly and it produces not very good results at the end of the day. It's a compromise, and you might not be happy. But it does a couple things.

First of all, it exposes the authors to different points of view that they or their small circle of advisors may not have thought of. It requires you to defend that product against those same groups of people. And as you go through the vetting process, you improve that product.

And then thirdly, and most important, it creates buy-in from all of those who participate in the process. So even though it's not everything you wanted, you are now a part, you're a parent of this, and you have skin in the game, and you have buy-in.

So when I think about the process that we just went through with the Net Neutrality order and how ugly that was in a lot of ways, I think about what kind of odds Nate Silver would give to this order being intact in, say, five years. And I would have to imagine that it would be less than 20 percent.

So Rick Boucher's point about the leverage, that Republicans and Democrats right now hold kind of an equilibrium of leverage or lack of leverage, however you look at that, so this actually is the right time for them to look at this process and create a good process.

And I think so far there's some back-and-forth on this, but I think there's been a thoughtful process of the white papers in the House. We're doing roundtable meetings in the Senate that are going on now. And I think that that kind of careful process could result in some kind of bipartisan policy that Nate Silver would give more of an 80 or 90 percent chance of being around in five years rather than a 20 percent chance.

MR. COOPER: Jeff, did you have a response on that, or did I misunderstand you? I have a different question for you, though, and that will wait.

How about this, that we move on to -- just sticking with the order itself. There's this process that it sets up for advisory opinions, and we had some discussion on this earlier, and I would like someone on the panel to opine on that.

And that is what they might think this process of getting new services and things cleared through an advisory opinion, optional advisory opinion, you could go to the FCC as part of the rules. What impact might that have on innovation?

We've seen the term permissionless innovation come into use a lot lately. I don't know if Adam Thier did it; he at least gets bonus points for raising it. That's the term that sticks to my mind when I think of that process, even if it has an unintended consequence. Anyone care to opine on that?

MR. CAMPBELL: Sure. I'll start. I'm not

going to knock the idea of advisory opinions. It's better than not having it as an option, and that might actually be some improvement here. But I think the reality of how technology is developed and deployed and rolled out will demonstrate that it's mostly cold comfort on this front.

To get to a point of fully understanding how a service might be offered and operated, you have to go through developing the technology. You have to develop the equipment, the software, and all the things that are going to support that technology.

You have to then figure out what your business case is for it, what consumers want and what people might be willing to pay for it because things aren't magic; they don't happen for free. And at that point in time, you could go and get an advisory opinion on it.

But the bulk of the investment of what it takes to offer that new service is already going to have been spent long before you're in a position to know what question you want to ask the FCC. Can I do

this? Can I do that?

So I'm not really sure that the advisory opinion process is really going to help a lot for this problem. And I think what we've done in this order, and it's something that I think is important for the Congress to be thinking about, too, as they look at this issue, is in one sector we have said that there will be no permissionless innovation. And in fact, you had better watch anything you do in this section, which is providing services as an Internet access provider, doing things inside the network, in the technology itself.

And we're going to watch everything you do. We're suspicious of anything that you do. And we're probably going to tell you that you can't do it at the end of the day. And I think we've removed this whole sector of what drives the Internet economy and said, no innovation here because we're worried that there might be problems with innovation elsewhere.

And I think it's an enormous overreaction that's going to impact R&D spending and where people

are going to put their energy and the desire of people who run networks to bring new services to market because it costs a lot of money to do this, and if you hit a point where somebody says you just can't do it, all of those costs become sunk costs.

MR. CARPENTER: I think that's a great answer. I would add, certainly in the wireless space -- which is vibrantly competitive, and I think that's apparent to everybody who works outside the Portals, at least -- if you look at the last six months of last year, the number of plan and service and feature offering changes that came to market as competitors responded to each other in order to try to win share was tremendous.

And it was all aimed at - how do I capture consumers' attention? How do I convince someone to spend money on my network with my plan, with my device, with my features? And the idea now that somehow you're supposed to go and seek, in essence, prior approval from the Commission before you think about making those kinds of changes is exactly at

odds with the way a competitive market is supposed to work.

It just baffles me to think that in the face of very clear evidence that the market is vibrant and innovative and delivering really good results to consumers, we now want to set up a process that says, go ask, "Mother, may I?" before you bring new plans to market.

I just don't think that's a good idea. I don't think it's something that most members at CTIA are going to want to avail themselves of. And I think it will inevitably slow the process down.

MR. ASSEY: I think one other thing. And advisory opinions, I certainly think, have merits in the right context. And if you read the order, I think, and you read through the footnotes in that section, which I'll admit I've skimmed through, it's pretty clear that they're trying to set up some type of parallel analogous process to the business letters that people go and get before Justice.

But I think what that highlights is the

advisory opinion or the business letter is really only as good as the standard that you're trying to enforce. And at least in the antitrust context we have guidelines. We have a host of precedent that tells us basically whether or not we're within the zone of wanting to go in and get confirmation.

I don't know what to make of the general conduct standard. It's exceedingly difficult, I think, for anyone, as Jot says, to know what way the FCC is going to come out on any particular practice or service innovation that may come along. And that's leads to this concern about this "Mother, may I?" approach to innovation.

So whether or not folks would avail themselves of it, I don't know. But I think we're unlikely to see the benefits of advisory opinions bear fruit unless we get a standard that gives us some greater predictability about what's in and what's out of the zone of reasonableness.

MR. CARPENTER: Like the IRS process, you'll probably see the stories in the next couple of weeks

because you see them every year about constituents who call the IRS with a tax question. And you can call ten times and you get nine different answers because the answer is highly dependent on who you get on the other end of the line.

I don't know how you get consistency in this process. Is there risk that a business plan is okay if competitor A brings it forward, but if competitor B brings it forward, it's not okay? How are you going to work through that process?

MR. COOPER: All right. Now, James mentioned the general conduct standard of the Title II order. So keeping that in mind, and as well the prohibitions on paid prioritization, I'm going to bring Gene in on this and ask, Gene, in light of the provisions on the general conduct standard and the no paid prioritization, what's the future of zero-rating plans under this? Where should those fall?

In addition, perhaps even arrangements between, say, cable providers and third party video devices such as Comcast Xbox, where the data streamed

to the Xbox wouldn't otherwise count on the service plans. How do you see those kinds of services?

What's the future of those kinds of standards, or what do you think it should be?

MR. KIMMELMAN: Well, I think that we don't know. And if we were talking about the description that Rick Boucher gave of 706, I would say we don't know. If we were talking about what was the law of the land for the last ten years, I would say we don't know.

And I can go back further because each one of these, in any one of those frameworks, has been very fact-specific in some instances, particularly on the antitrust side as it relates to whether it's someone exercising market power or not and how concentrated the market is. On the FCC side, there have been a variety of other factors that have played in.

But my guess, just purely conjectural, is that there is no absolute answer on whether it's zero-rating or any one of the relationships you've described. I think it's going to play out probably

more similarly than differently than what it has during much of the last ten years.

The words are somewhat different, but a lot of what we've been operating under has been either a precise set of parameters of what discrimination is or a set of concerns about regulators likely to step in if someone goes too far this way or that way.

So I seriously doubt it's going to be very different.

MR. DAVIDSON: Seth, can I just -- so Gene, just take as an example, and I know we don't have all the facts around this. So say you have Netflix's zero-rating plan that they're rolling out in Australia now.

And I don't know what the business deal is there, but basically, a couple weeks after they'd filed all of their petitions on the Net Neutrality order in favor of Title II and they went out and said that, then their CFO came and said, no. They really don't like Title II.

But then they came back and said, well, I

guess we were wrong. He misspoke. We do. And then the last thing they did was do a zero-rating deal in Australia and said, well, never mind that. That's not what we're talking about.

But if they were to do that in the United States, should they be treated differently than, say, Bright House Communications or Amazon or T-Mobile that has a zero-rating music streaming service? How would this rule apply to those different situations, and how do we determine who can do zero-rating and who can't?

MR. CARPENTER: And is it hemisphere-specific?

MR. KIMMELMAN: Well, the one thing I know I can certainly answer is Australia has nothing to do with it, so I think it is hemisphere-specific. Again, what happens in other countries based on other legal frameworks, constitutional and statutory, is a whole different ball game. We could do India. We could do a whole lot of countries that way.

MR. DAVIDSON: What if they did it here?

MR. KIMMELMAN: Look. I think the Commission

has laid out a framework. And I think it will be the same analysis whether it's Amazon, Netflix, Verizon, or Comcast as probably what you would have seen with something that was 706-based or what you would have seen in applying Kevin Martin's principles and Michael Powell's principles.

It might be applied somewhat differently; we've seen that through the ages, with different Commissions having different interpretations. But I think the fundamental factors are going to be the same thing.

What is reasonable discrimination in the marketplace that is acceptable? We have loss leaders. We have discounting. We have a lot of different things throughout our marketplace. We've had it throughout telecommunications for as long as I've been doing it. I don't think the Internet is going to be that different.

I think it's going to be a question of whether there are some unique attributes about it that are more like the kinds of concerns about blocking and

throttling and harm to competition that I think are the central features whether you're doing Title II or you were doing 706 everyone was looking at.

MR. COOPER: I'm going to direct this question to you, Jeff, and I'll want your take on this as well, Gene.

Moving off from Net Neutrality and Title II for a little bit, one of the things that we've seen in the last year is Congress putting an end to the FCC's integration ban on video devices -- in other words, the regulation that even prohibited video devices from downloading security without at least getting a waiver from the FCC.

So that's been done away with. And now the FCC has set up the Downloadable Security Technology Committee. What is it you hope to see out of that committee? I know it has a report that it's supposed to come out with in the next several months.

In terms of the future of video device regulation, we're in sort of a post-cableCARD world, or at least going to be moving to something like

that, perhaps. What would you like to see?

MR. CAMPBELL: Well, I think we have to recognize where we are and where we're going and what the technology and market developments are in this space. To some extent, whatever your view on cableCARD was or is, it did achieve what it was intended to achieve in its implementation, which is that it's a method by which third party devices can connect to cable systems and other multi-channel video systems and give the content security that it requires and make it available to third party devices.

It has dramatically changed the equipment market in that space. It has also dramatically reduced the cost of equipment in that space. All of that has been accomplished, and all of those obligations still sit on all of the same companies. And that continues regardless.

But the reality is that technology has gone far beyond this, and we're looking at a much more application-centric and software-centric world in

which consumers are no longer just consuming based on linear video delivery. They're not consuming based upon one TV kind of device or two TV kind of devices, but multiple devices connected through multiple ways sharing content across different platforms.

And so the good news is that all these technology advancements actually bring software- and app-based systems into this world where we can do downloadable security, including multiple types of security, multiple types of devices that can actually provide better security because you have more renewable systems. You'll have methods of both allowing different kinds of devices to access the content and better security for the content itself.

So if the committee focuses on its task that Congress has assigned to it - to figure out a report on how to move to that world, I think we'll have a pretty good result out of this.

But the result is going to look less like what the cableCARD world was, which was one solution for everybody everywhere, into a world where with

downloadable security and different kinds of software, you can have multiple systems that are interoperable with multiple systems, which is where the world is going.

MR. COOPER: Gene?

MR. KIMMELMAN: I think Jeff makes great points on that. And I think of this one the same way Peter described legislation. What are the principles we're trying to get at? So security is one key element of it.

One of the real disappointments from a consumer side has been that a lot of the experience in the evolution of the cable industry has been way too much like that black phone up there, where it was that set-top box. You had to have that box. That was the box. You needed it. It was like the old black phone. And we're not in that technological era, and I'm hoping this committee can address that.

I think what consumers want is the ability to choose as many devices as possible that serve the functions and needs they have that can work on the

transmission coming in, and open this market to more competition. It would be a wonderful thing.

MR. COOPER: Gene -- okay.

MR. DAVIDSON: Could I add just one comment on that, too? I agree with Gene. I think this is kind of yesterday's news. We're solving a problem that I think consumers have long passed by. And so I hope it's not fighting yesterday's wars.

I think everyone's already choosing all kinds of different delivery devices, and their over-the-top video is exploding. And so I'm not sure that it's worth a whole lot of time figuring out how to figure out the old technology.

What's really happening in a lot of ways now, the gating factors are not the old black boxes sitting on top of the one way you can get video. It's access to content. It's the price of content. It's getting content to as many different places on as many different devices as we can.

So those are some of the issues as we become an over-the-top provider. And that's really where

we're looking at doing a lot of our video delivery, is finding it very difficult to aggregate the content, whether it's property rights or whether it's the actual costs of the content. That's going to stop innovation in this space, and that's going to hurt consumers a lot more than anything else.

So I'm not arguing for a technology mandate in any way here. I think those are bad, and those freeze in policies for today's or yesterday's problems and not tomorrow's. But I think policy-makers should be looking at those set of issues to make sure that consumers are able to access as much content as they can wherever they want.

MR. COOPER: Yes. Well, sticking with the over-the-top video for a second, Gene, I know Public Knowledge has been very interested in the FCC's now underway proceeding to redefine MVPD, multi video programming distributors, to include certain over-the-top video subscriptions.

Where is that going to take us exactly? This is a system that was set up with program access and

those things that had a specific, at least at the beginning, cable model in mind, the '92 Cable Act and those things. And this is a very different world.

What is it you're looking for here in this proceeding? What makes Public Knowledge look forward to this?

MR. KIMMELMAN: It's incremental change. It doesn't get at the deeper issues. Because I again agree with Peter. One of the first statements was, we shouldn't be doing technology mandates. We shouldn't be doing things technology-specific.

One of our problems is that Title VI of the Communications Act is loaded with that because that's what we did in 1992. We thought about satellite delivery. We thought about cable delivery. And we were way too specific in drafting law.

So I think this is a very small step. It's trying to make the programming more available for a form of distribution that we wouldn't have known of in the early '90s but that is very similar. But it doesn't get at the fundamental problem of what this

marketplace should be looking like in 2015.

MR. DAVIDSON: Also, Randy, as you interview Congressman Scalise over lunch, you might want to ask him this exact question because he has been the lead sponsor in Congress on video reform legislation that is looking at the whole system in a more modern way.

What are the issues that are around today? Trying to get rid of the silos and deal with some of the gating issues that I talked about before. Interestingly, as we talk about bipartisanship, Congressman Scalise and Congresswoman Anna Eshoo were exploring ways that they could work together.

I think both of them saw the problems that are going to be facing consumers with the siloed video system. I don't know that they actually found a unified way to deal with them, but I think they both agreed that there was a problem, and in the last Congress were exploring ways to move legislation.

So when we talk about broad modernization legislation in Congress, I don't know if this is a chapter of that or if this is a separate bill that

moves through Congress. But it's definitely worthy of policy-makers' attention.

MR. COOPER: James?

MR. ASSEY: I think one thing -- and Seth, I'd probably be remiss if I didn't also just note the work that you and Randy have done on pointing out some of the problems with the cableCARD and finally seeing that provision in the law sunset.

But whether you're talking about the sunset of that obligation or the DSTAC report or the MVPD item, I think all of this is dredging up, I think, what Gene mentioned, that in 1992, cable was it when it came to pay TV video, pretty much.

And we don't live in that world. You can't go back through the paper in the last week without seeing an article about Sony launching its over-the-top service, or Apple coming out with its over-the-top service. And that's great, from a consumer perspective.

But I think all that does is hang a lantern on what are going to be the rights and responsibilities

of people who are providing those types of services because the title that we have in Title VI now doesn't treat everyone equally. So I think all of these issues highlight that.

I was at least encouraged, I think, by the action that was taken as part of STELA because to the DSTAC report, Congress directed the FCC to focus on technologically neutral and platform-agnostic solutions to downloadable security.

And I do think they have a very short window to accomplish something. But we're hopeful that if we stay focused and we stay on track, the report that the panel produces will at least be informative, I think, of the developments that are taking place in the marketplace today.

MR. COOPER: Jot, I want to take it over to you and ask you about the spectrum auctions.

MR. CARPENTER: Reform.

MR. COOPER: And particularly the broadcast incentive auction that we have ongoing. What are, in your mind, the critical policy decisions that need to

be made in the very, very short term to see this thing through?

MR. CARPENTER: I think in that respect, I want to associate myself with the comments that Ajit made when he was here earlier. If you listened to Commissioner Pai talk about the incentive auction, he talked about the real need to make sure that both the participants in the reverse auction and in the forward auction have as much information about the way the FCC's going to conduct these proceedings as possible.

The broadcasters need it because they've never been through a process like this before. Wireless providers have a fair degree of experience in dealing with auctions and auction policy. This is a first for the broadcasters. They've got to feel comfortable because if there's not a successful reverse auction, there is no forward auction opportunity.

And at the same time, we've learned through the last couple of big spectrum auctions that have

benefitted CTIA's members and others that the more information the government can push out on the front end of the auction, the more informed judgments would-be bidders can make about bidding strategy, about participation strategy.

And so I think those questions need to be asked and answered. And I'm a little dismayed that they haven't already been dealt with. Again, Commissioner Pai made the point that he hoped with muni broadband and Net Neutrality, at least for them, in rear view mirror -- maybe in the front windshield for others of us, but in the rear mirror for them -- they can turn more attention to the incentive auction proceeding.

And I'm a little dismayed that we got out of order there because the incentive auction was a statutorily directed process. The other two projects, I would suggest, were optional. I'm hopeful that the Commission can get back to a laser focus on the incentive auction. There's a ton of work to do if we're going to hit Tom Wheeler's stated

goal of first quarter 2016. And so they really need to get busy.

MR. COOPER: Well, we're going to be taking questions from the audience in just a bit, but --

MR. DAVIDSON: Could I add just one thing onto Jot's --

MR. COOPER: Sure. So be thinking of them for now, and I'll turn to Peter.

MR. DAVIDSON: I'll give you time to think because I think this auction question -- Jot's exactly right on this upcoming auction. But this is a very unique auction. I'd like to make a couple points.

One, I think there's going to be a tremendous need for more spectrum going forward for quite some time, so another aspect of whatever the modernization legislation in Congress should be is some kind of spectrum modernization provision that deals with identifying more government-owned spectrum and finding ways to get that out, licensed, unlicensed, WiFi, whatever.

We should have a ten-year pipeline or a fifteen-year pipeline of spectrum that we can identify. And with advances in technology, that shouldn't be that hard to do. And I'm all in favor of trying to identify some kind of government incentive program because I think people work best with incentives, and I think there are some ways to do that.

Secondly, when you're talking about auctions going forward and not just this one, I think it's very important that policy-makers design these auctions in a way that is competitor neutral. What we've seen with the Dish DE debacle this last time which is -- who knows how long that's going to take to unwind what's going on there -- you've had many instances of manipulation of the rules to favor one bidder over another, sometimes for the best of purposes. But it always ends up being a disaster.

And I think that going forward, if Congress is looking at this, they should write out some clear rules for how those auctions should be run. And the

FCC should, on their own, be looking at rules to not manipulate the outcomes for one or another because unintended consequences always end up messing things up.

And then we have spectrum that should be used for consumers' benefit that's lying fallow, and you get taxpayers who are missing out on billions of dollars of money that should be flowing back to the Treasury. And it's just a lose/lose/lose situation when there's that kind of manipulation of the auctions.

MR. COOPER: Right before I get to questions here, I just want to sneak in one more question, and I'll pose this to Gene.

You talked about incremental changes earlier, and put this in the context of the IP transition or the technology transition that's taking place. What kind of incremental changes policy-wise at the federal and state level would you like to see continue or begin to further that process?

MR. KIMMELMAN: Well, I think that the

Commission's going down a good path here. I think laying out the principles they're trying to accomplish is always the starting point because the technology is not something they should be delving into the details of. It should be as neutral as possible. It should be identifying what needs to be done.

The things that jump out to us that we think need to be resolved are: What are the elements of the traditional network that we've come to rely on? Emergency services? Making sure your fax machine works if you're still using a fax machine. Just these basic transitional things that one would expect a telecommunications network to be able to handle that we think is good for the society.

It's really the nuts and bolts of that that I think are most fundamental here, that we experiment with new technologies, let the industry grow and compete as it best can, that we're not losing some of the fundamental principles and goals that we believe a commonly-used network should sustain.

MR. COOPER: All right. We'll turn this over to the audience if you have questions. We have microphones. My colleague Kathee is holding one of them right there, and it looks like we have a question here.

QUESTION: I'm still Gary Arlen from Arlen Communications, and I'd like to add two words to the future of the Internet of Things, or Jeff, as your company calls it, the Internet of everything. Certainly there's a lot of policy issues related to where that's going, FTC's recent report.

Can you guys talk at all about where you think the policy hot buttons are going to be and what kind of outlook we have for activity on this? I think Cisco just predicted that we're going to go from 15 billion to 50 billion Internet of things devices, everything devices, in the next five years.

MR. CAMPBELL: Yes. I think Internet of Things -- or as we like to think of it, Internet of Everything, because it's actually more than things; it's people interacting with things -- is going to be

a huge driver in the technology space going forward. It's going to affect all aspects of it and create a lot of new markets and new features and opportunities.

From a policy perspective, I actually think thinking of it as a policy space is the wrong way to look at it. You should actually recognize that it's just another way of doing things that we have done before. And so the policy issues largely don't change.

So if you're working with medical devices, there are lots of concerns there about efficacy, safety that the traditional medical world has always dealt with. And those things will still apply there. Privacy, obviously, is going to be a big concern in this area.

But it's not just something you can say, how do you deal with privacy in the Internet of things? It depends what you're doing. If I'm plowing chips into the fields of North Dakota to measure pesticide, fertilizer, and moisture levels, I don't think

there's a big privacy issue with that kind of application; versus if someone has a home healthcare monitoring system that's communicating that.

So I think the key policy thing to think of here is that we shouldn't think about creating new. We should think about how do we deal with the specific applications that people are creating in this area, and whether there are policy implications and appropriate safeguards for consumers that need to be implemented.

And if we think about it that way, we'll actually be much more effective at addressing the policy concerns. But we'll also do it in a way that allows the business to flourish and grow.

MR. DAVIDSON: I'll just add one more thing. On the privacy point, I think the FCC's recent Net Neutrality order specifically includes Section 222 on privacy issues, and they have a workshop that's going on.

And so I think it's yet to be seen, to the extent that these rules are applied by the FCC, the

old rules are applied to new technologies. Whether it be Internet of things or edge services is something that I think edge providers and Internet of everything people should be paying very close attention to because those old rules could be -- they could be attempting to retrofit them to anyone who operates in the Internet ecosystem.

MR. COOPER: I think we have a question over here at the press table.

QUESTION: Thank you. Lydia Beyoud with Bloomberg BNA. To your remarks, Congressman Pallone just released a bill to require the FCC to modify and update its competitive bidding processes. I think it's safe to assume that that's aimed at Dish's use of designated entities.

Can any of you comment on how you would like to see the competitive bidding processes, and specifically the DE program, modified ahead of the upcoming auctions?

MR. CARPENTER: Peter, since I've got members big, small, and in between who have a variety of

thoughts on that, I'm going to let you go first.

MR. DAVIDSON: Profiles in courage, Jot.

MR. CARPENTER: I'm with my members every step of the way, right behind them.

MR. DAVIDSON: Right. Well, I think Congressman Pallone has been part of a chorus of members of Congress over the last couple days that I think have been alarmed at what happened in the most recent auction, and particularly the Dish manipulation of the DE process for its own purposes - - Senator McCaskill yesterday, Senator Ayotte, Congressman Pallone. Commissioner Pai has been particularly eloquent in describing the issues here.

So I think we know what not to do. How they deal with that situation is a whole other question. But I don't have a specific recommendation on how to do it. I think Congress needs to look into it.

And as I said earlier, I think this could be a part of a broader reform that's dealing with spectrum issues more broadly and that creates some more bright line rules for how auctions should be implemented so

that we actually get the spectrum in use to consumers efficiently, and we return the highest amount of revenues to the Treasury for the taxpayers.

And those are all win/win situations. And if there's some way to do some incentives along the way, then that might be useful for government agencies to spur them along to identify more spectrum that they control as well.

So I think this is one area of all the issues we're talking about where it truly is a win/win/win scenario if Congress can step in and figure out how to make this work better.

MR. KIMMELMAN: Can I just say that's a big "if" there at the end, Peter, because what we always come back to whenever this comes up is, it's not just money for the Treasury. It is: are you also doing competition policy through auctions? And this has always been the debate that has led to a lot of complexity around this issue.

So it's fundamentally, what are you trying to accomplish in the auction? And if you're trying to

drive more competition, then we get into -- or you're trying to drive more diversity of ownership -- you get into all these complexities in one way or another. So I think the key there is, what is the overarching goal that Congress is trying to achieve?

MR. COOPER: We have a question over here.

QUESTION: Thank you. Kristal High with Politic 365. I think this is apropos that this is the industry panel. Right? So I think a lot of what happened around the Net Neutrality battle and where we ended up with the rule really had to do with popularity when you start thinking about consumer sentiment.

Knowing that, and understanding that a lot of people who were vocal advocates for a hard Title II route have no idea what Title II actually means or does, what role do you think the FCC ought to play going forward in terms of really making sure people are educated about the issues and understanding weighing appropriately, okay, these people don't really know what they're talking about, or there's a

misconception about the issues?

If we're talking about FCC reform, how can the Commission do a better job of educating people so that it's an informed decision-making process?

MR. DAVIDSON: That's a great question.

MR. CARPENTER: It's a tough question. Part of it is reminding the FCC, as I suspect Chairman Walden is probably right about now, that proceedings are supposed to be explorations of the Commission's statutory authority, not popularity contests.

And it doesn't matter whether they got two comments or four million comments. This wasn't supposed to be about volume of comments. It's supposed to be about what are the bounds of their statutory limits. And I think it's certainly arguable that some people forgot that central mooring post.

Now, it doesn't mean that people who don't know what they're talking about shouldn't be able to weigh in. It's an inherent part of a free and open society that we let everybody participate in the

system. But you'd hope that the expert agency would filter through those comments and discern the serious from the unserious and the informed from the perhaps less informed.

MR. KIMMELMAN: Can I just add I agree with Jot. It shouldn't be the number of comments. But two other things, just to point out.

If you look at people who participated somehow in this proceeding and yelled out "Title II" or yelled out anything, I would just like to point out there are an awful lot of people who believe they are thoroughly schooled in Title II who I'm not sure know what Title II means. So it goes both ways there in terms of the "very expert" versus the people who have never maybe read the Communications Act.

But I think on a more serious note, the important thing there is not what words they said. It's what were they trying to express? And I think that whether it's a lot of individual commenters or a lot of the experts in the proceeding, there is a fundamental consensus in this society that there are

certain kinds of discrimination we should not have in networks, and then there's ambiguity about what the dividing line is.

And I think that's fundamental to not forget here, that there's probably a lot more agreement than disagreement besides the way it was expressed in this proceeding that really does serve as a baseline for how the markets have worked and I think how they will work in the coming years.

MR. DAVIDSON: I'd just add to that, too, I think it's a great question. But I actually think it kind of brings us back again to the legislative arena, too, because there has been, I think, a very good process so far.

Going back probably a year ago, the House started the white paper exercise, asking for comments on, I think, seven or eight they've had now. The Senate's going through the roundtable discussions with various parts of industry, consumer advocates, and others to try to figure out what is the problem.

So I actually agree with Gene, that although

there's kind of a demonstrable lack of evidence of existing problems, as I think the congressional hearings over the last couple days have demonstrated, there really isn't a lot of evidence of harm today. But clearly there is concern about harm in the future, and I think there's some free-floating anxiety about what might happen. But it is there.

And so I think Congress can undertake a thoughtful legislative process that pulls in comments from everybody, that has a transparent, serious legislative effort to craft legislation that answers those concerns with specificity, but that also is going to have to be flexible enough going forward to account for unknown problems if there are bad actors doing things that we don't know about today.

The rules have to be flexible enough to deal with that. And that's the issue. So the Republicans have put down four specific areas that they're willing to go forward on, and the Democrats have said that's not enough because we need to have some kind of flexibility going forward to deal with unknown

issues today.

And so that's where the discussion is going to be in Congress. And I hope that over the next year they can undertake that exercise and that at the end of it, that four million people or 300 million people are satisfied that we have an Internet governance regime in place that will not stifle innovation and investment but that will also deal with bad actors in the Internet space.

MR. CAMPBELL: I think one of the problems here, too, is that when you reduce the debate to bumper sticker slogans, whether it's Title II -- I'll pick a different one than the Title II one. I'll pick paid prioritization.

That became a bumper sticker as well. And it was both analyzed by almost everyone, including many people who consider themselves to be experts, technologically wrong, people who do not understand how the networks actually work.

Every time I heard the phrase "fast lanes and slow lanes," I wanted to scream because that is not

technically now the Internet works. Yet FCC commissioners, who all knew better, kept using that phrase over and over and over again.

And so we took something that is a situation that has a lot of ambiguity in it. I can see many instances where paid prioritization can cause a lot of consumer harm and can impact competition. And I can also see a lot of instances where paid prioritization can provide for a new and innovative service.

And we bumper stickered it, and it had to either be good or bad. And the Commission came to the conclusion that it was bad instead of realizing that there's a lot of shades of grey in all of this. And I think we really lost the Commission's job of being an expert agency in this process of discerning the shades of grey.

MR. COOPER: Yes? We have a question right here in the middle in the back.

QUESTION: John Blake. I was very interested in Mr. Carpenter's comment that unless first auction

involving broadcasters surrendering spectrum works, there won't be a second auction. And one of the things that's always puzzled me is, what is the incentive in an incentive auction?

It doesn't seem to me that a television station that's worth \$10 million has an incentive to put its spectrum up for auction if the limit that they can get is \$10 million. And one of the problems you pointed out is the fact that the Commission hasn't really spelled out how that's going to work.

You have this statute that says that the proceeds can go to the Treasury. It can go to the broadcast station. And then it'll go to compensating the Commission for expenses it's incurred in connection with conducting the auction.

And the point that that hasn't been resolved, it seems to me, leaves this unclear to the broadcaster of whether they want to participate or not. And I wonder whether there isn't a possibility here of those who have interest in both ends of the spectrum can't get together in order to persuade the

Commission to resolve those issues so that the stepping stone that you outlined can go forward effectively.

MR. CARPENTER: I think there's actually a lot of that going on right now. NAB and CTIA and the Expanding Opportunities for Broadcasters Coalition and other interested parties have been spending a lot of time together trying to work through whether there are areas of mutual agreement.

Where there are, we've tried to go to the Commission to put those on the record, urge the Commission to take yes for an answer. Where you have industry agreement, there's a road map forward because we recognize very clearly that if there aren't broadcasters willing to part with spectrum, then there's no spectrum for our members to go and acquire.

Now, the incentive, it's money. It's opportunity. They recognize, I think, at a macro level that they have a dramatically changing marketplace in their space. At the same time, they

want to be able to monetize those assets. And that's what the incentive auction is supposed to enable them to do.

And so, as I said, the Commission has got a heck of a lot of work to do in the next six to twelve months if they're going to come anywhere close to hitting that stated calendar target. We'd like them to hit the target. On the other hand, they get a single shot at this. It is more important to do it right than it is to do it fast.

QUESTION: Does the Commission understand this concern?

MR. CARPENTER: That's a good question for the Commission. I'll bet they're getting that right now on the Hill.

PRESIDENT MAY: John, thanks for that question. And someone like John has been a leading light in the communications bar for so many years. And we appreciate you and people like you for being here and asking questions like that.

So to stay on schedule -- but we did get in

some questions, which we always try and do -- I want to thank these panel members. And I want to especially say -- they're all friends, but Gene Kimmelman down at the end of the table there, he's an old friend in both the sense of being a friend for a long time, but as you can see by our white hair, I'll just say we're relatively older than these youngsters here.

And I'm glad you were here. Your predecessor, Gigi Sohn at Public Knowledge, she has actually, I think, been -- not I think, I went back and looked -- she's been a panelist at Free State Foundation events more than any of these gentlemen up here. So we were glad that you were with us today.

Now, what we're going to do once I tell you to thank these gentlemen again, the buffet is ready right next door. It's a super buffet. I want you to get your lunch, and then we're going to be starting with Whip Scalise about the time that you're ready for your dessert.

So get your lunch. I know Peter Davidson

suggested a question for me. If you have other questions you want me to ask, you're welcome to tell me about them.

But join me in thanking this panel up here, please.

(Applause)

PRESIDENT MAY: And I should add, Seth Cooper as well.

(Whereupon, at 12:34 p.m., a luncheon recess was taken.)