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THE FREE STATE FOUNDATION

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**The Free State Foundation's
TENTH ANNUAL TELECOM POLICY
CONFERENCE**

**“Connecting All of America:
Advancing the Gigabit and 5G Future”**

**March 27, 2018
National Press Club
Washington, DC**

Keynote Address

MODERATOR:

- **Randolph May** – President, The Free State Foundation

KEYNOTE SPEAKER:

- **Neomi Rao** – Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget

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

P R O C E E D I N G S

MR. May: It's now my pleasure to introduce to you Neomi Rao. Ms. Rao is Administrator of the Office of Information and Regulatory Affairs. That's the office in the Office of Management and Budget that is focused on regulatory review.

I hope the Administrator doesn't mind me saying this, but traditionally, that position has been referred to as the administration's "regulatory czar" because of the functions that it has within the administration in terms of overseeing regulation.

Administrator Rao has a distinguished background on the faculty of George Mason University Law School, now the Scalia Law School, and really is one of the leading scholars in administrative law. So I'm going to let you get the rest of her bio from the program, but I'll just say this.

As many of you know, I've been involved in the administrative law area for many decades, so I'm familiar with the work of Neomi Rao and how she's contributed to the scholarship on administrative law. So it's exciting

to have you here today to talk about the administration's regulatory policy. Thank you.

(Applause)

MS. RAO: Thanks so much, Randy, for that nice introduction and to the Free State Foundation for inviting me to join you for this conference. I understand that I'm now the only thing standing between you and lunch, so I'll try not to be too long-winded about administrative law.

I know this is a conference about telecommunications, but I want to just take a step back from some of the more specific topics of the panels to focus more generally on regulatory reform, and how some of the efforts of this administration are connected to economic growth and the rule of law and individual liberty.

In this first year of the administration, a little more than a year now, agencies have really been working hard to identify problems with existing regulatory frameworks. And they've eliminated or streamlined regulatory burdens that are duplicative or outdated or

just simply ineffective.

A little more than a year ago, President Trump issued Executive Order 13771, which ushered in a shift in the regulatory landscape by calling for the reduction of two regulations for each new one, and a zero regulatory cost cap for agencies.

That executive order, as well as a number of other executive orders, really focused the agencies on the drag of accumulated regulations. Across previous administrations, whether Democratic or Republican, we've seen the regulatory burden continue to increase, and we've shifted that all the way around.

Just through the end of the fiscal year last year, we eliminated 22 regulatory actions for each new one. According to my office's frankly quite conservative calculations, we've saved over \$8 billion in regulatory costs. In this coming year, agencies are working on some even more far-reaching reforms, and have committed to reducing regulatory costs even further.

From our perspective, we consider these reforms to be a very important component of promoting economic growth and prosperity, principles that I know are very

important to this organization. We believe that lifting excessive government regulation can stimulate the economy, and in the past few months we've seen a lot of economists and commentators, even the *New York Times*, point to a link between the past year's economic growth and the slowdown of regulation.

I think that's in part because the administration is really advancing regulatory policy that looks first to private market solutions, and it wants to leave individuals, farmers, businesses, as free as possible to work hard, to innovative, and to create the technology of the future.

One of the most important practical effects of our efforts has been a change in the business environment. I hear frequently from businesses and individuals that they're no longer worried about arbitrary new burdens that are being imposed by guidance documents or by substantial new costly regulations.

And so we hope that individuals and companies can proceed with confidence that we're not going to spring new regulatory requirements on them that are going to impede their growth.

These principles are especially salient in the area of emerging technologies in telecommunications and other sectors where the success of some of these very ambitious ventures will depend, at least in part, on a regulatory system that's not standing in the way of progress.

In OIRA we start with the basic idea that the government shouldn't be picking winners and losers through regulation. We don't want to regulate in a way that freezes technological development or stifles innovation through government prescription. And this year we're focused on more deep, cross-cutting reform efforts, particularly around this topic of emerging technology.

I was recently down in Florida at the Space Council, where a number of people spoke about the regulatory burdens that are impeding the development of space exploration. I know similarly at this conference many people are working to improve connectivity and advance the future of telecommunications.

With respect to telecommunications-related regulations in particular, OIRA conducts reviews in a few different ways. We review the regulatory actions of the

NTIA [National Telecommunications and Information Administration], which is within the Commerce Department, and the Rural Utility Service, which is within the USDA, the Department of Agriculture.

We don't formally review rules from the FCC because it is an independent agency, but we do work with the FCC in a number of ways. For example, we review their agenda of regulatory and deregulatory actions. We must also review and approve their information collections.

Under the Paperwork Reduction Act, one of the things OIRA does is review all of the forms that agencies put out on the public. So we work with the agency to make sure that they're minimizing the reporting and disclosure requirements they're imposing on the public.

I think it's also interesting that FCC Chairman Pai, who was a law school classmate of mine at the University of Chicago, is working at creating this Office of Economic Analysis. We anticipate that this office is going to build on some of the longstanding economic principles that are used in regulatory review.

We want to make sure that agencies regulate only to solve an actual problem, such as a substantial market

failure. As part of good regulatory practices, we want agencies to identify and consider alternative regulatory approaches and to analyze the costs and benefits of those alternatives.

At OIRA we also work with many agencies to make sure they have a robust and fair analysis of the costs and benefits of their rules, taking into account the public comments and stakeholder input.

So I think this is going to be a really important step for the FCC to improve the economic analysis of their regulatory process. And at OIRA, one of the things we do with many of the agencies, independent and executive branch agencies, is serve as a resource for advancing their market-based regulatory reforms.

As an administration, we are very focused on pulling back these regulatory burdens. But we really are trying to do this in a very responsible and beneficial way. We are not in the business of dismantling important health and safety regulations, and we're proceeding with deregulation carefully.

We apply the same cost-benefit standards to regulatory and deregulatory actions, which means, in

essence, that for deregulatory action, the benefits have to outweigh the costs. So we're only deregulating where that results in net benefits to the public.

Sometimes people have said to me, "Well, isn't this deregulation just about helping big businesses?" From my perspective, oftentimes these regulatory frameworks are actually put in place by big business or by powerful interest groups, and they in turn then create barriers to entry for smaller businesses.

These regulations limit competition. And of course, as a result then raise substantially the costs of goods and services for all of us. So we're really focused on lifting burdens that are just no longer working.

Let me say a little about why I think some of these reforms are also so important to the rule of law. We are very concerned that regulatory policy in general follows clear legal principles, which allows the public to have notice of their regulatory obligations and provides a clear and stable framework for planning.

We do this in a few different ways. One of the first questions we ask an agency that's looking to regulate or deregulate is to make sure that what they're

doing is consistent with law. So we work with agencies to make sure that they're interpreting statutes to mean what they say, and we want to respect the lawmaking power of Congress by not expanding the authority of the executive branch.

Many of the statutes under which agencies regulate, of course, are very open-ended. But we want to make sure agencies are not acting as though they have a blank check from Congress to make law.

And even when an agency has legal authority, one of the things we have focused on a great deal is these notions of fair notice and due process. Something we've been working on with the White House Counsel's Office is to make sure agencies are not imposing new requirements through guidance documents or speeches or FAQs.

We're really working to change the regulatory culture so that when an agency issues guidance, it's in fact just "guidance" and they're not using it as a back door for imposing new regulatory requirements without the type of administrative process and accountability that's necessary for a legitimate regulatory system.

Many agencies have taken this to heart and are

working on a kind of elaborate project to identify and to catalog all of their guidance documents. It's much harder than it even sounds. Some agency officials have said to me, "We don't even have any idea what guidance we have or how many guidance documents we have. We don't know where they all are." So it seems like for public notice, it's a good idea at least that the public knows what guidance documents are still being applied to their respective businesses.

I also think, from my perspective as a professor of structural constitutional law, that regulatory reform also promotes more constitutional government. I think the centralized review process that OIRA imposes provides for greater accountability for regulatory policy, which in turn promotes democratic values.

We ensure that agencies are promoting presidential priorities, and that regulatory policy uses consistent methods and provides consistent emphasis across the government. And of course, in this particular administration, one of our primary focuses has been on reducing the overall regulatory burden, and that's an initiative that OIRA works on with all of the agencies.

And, just finally, the connection between regulatory reform and individual liberty: I think reform promotes economic growth. I think it promotes rule of law values. But perhaps most important, lifting many of these unnecessary burdens results in greater individual liberty.

Government regulation, of course, sometimes can serve important health and safety goals, and Congress has already ensured that we live in a highly regulated society. But we want to make sure that when the government is acting, it serves a purpose. We don't want regulation to be a solution in search of a problem.

There are just so many regulations on the books that are duplicative or outdated, and the regulations just keep piling on top of regulations. Getting the government out of the way and lifting regulatory burdens restores more freedom to individuals and families and businesses.

And we believe that a more lawful, fair, and limited regulatory system allows the economy to grow and innovation to flourish. It helps all Americans by trusting them to make decisions that will result in greater prosperity and happiness, and less reliance on the government.

So in telecommunications and elsewhere, we're implementing regulatory policy for the American people based on freedom and free markets. Thanks very much for your attention.

(Applause)

MR. MAY: Well, thanks so much, Neomi. That was terrific. And in years past, we've often had someone here to talk more generally about regulatory policy in addition to the telecom focus, including some of your predecessors in your position. So it's wonderful to have you here.

We've got time for maybe one or two questions before we break for lunch, and Administrator Rao graciously agreed to answer some. But I'm going to ask you this one.

And by the way, I should have mentioned that Neomi clerked on the Supreme Court for Justice Thomas. But when we were putting together your bio, I confess that when we got to the sentence that said, "Rao is a former professor of structural constitutional law," one of our proofreaders told me that that must be wrong because she had never heard of structural constitutional law.

And you just mentioned that. I think I have an

idea about what that might mean. But maybe, in just a sentence or two, tell us why that course is called structural constitutional law.

MS. RAO: I guess it's to distinguish it from some of the other constitutional law courses. The structure of the Constitution relates to thinking about how the text and structure of the Constitution set forth the powers of the three branches of the government.

We focus on Article I, legislative powers, Article II, the executive powers, and of course Article III, the judicial power, and how they interact with each other. That's something I've been very interested in.

I've worked in all three branches of the government, and I think one of the most important things is to make sure that there's a balance between all three branches of the government and that they're all exercising their respective powers, but within their boundaries.

MR. MAY: Right. Okay. I'm going to ask whether there are any questions for the Administrator. We've got microphones here in the audience. Do we have any questions?

(No response.)

MR. MAY: Well, I'm going to ask one more, then, and then we will break.

You initially mentioned the two-for-one effort that President Trump announced very early on. And I remember a couple months ago there was a White House ceremony in which there was some recounting of what had been accomplished.

But as someone who was in government himself over at the FCC and has observed for a long time, it seems like that's a very noble but incredibly difficult goal to achieve. So tell us how you're measuring that and keeping track of it, and keeping on the agencies to try and meet that goal, if you would.

MS. RAO: Sure. I think it is a difficult and ambitious goal. And I have to be honest -- we've worked really hard to exceed even what the President set out in the executive order, but it's been a lot of hard work on the part of the agencies, on the part of my office.

(Microphone stops working.)

I think that one of the things that the executive order did is it really focused agencies on this idea of slowing down the imposition of new regulatory burdens and

really thinking about what regulatory burdens can be pulled back.

And I think part of the reason it's worked is because we've issued a number of guidance documents on how this is supposed to be implemented. But we're asking agencies to look for regulatory burdens in whatever form they may be reduced, so that could be through guidance documents, paperwork burdens, and of course also regulations.

All of the information about how we're doing this is on our website. So we've been pretty transparent about the regulatory and deregulatory actions.

The President cares about this issue. He talks about it at Cabinet meetings, and he talks about it in his speeches. And that has made it easier for us to make sure that agencies are meeting their deregulatory burdens.

There's a lot of scope for regulatory reform. And if agencies aren't being forward-leaning, we have lots of ideas for them. Through the process of the regulatory agenda and our regular interaction with agencies, we've kept up the pressure to make sure this is working.

MR. MAY: Well, before I thank Administrator Rao

one more time, I just want to mention to Neomi, that earlier this morning when your administration colleague was here, David Redl from NTIA, I told him I wanted to present him with a small token of appreciation for being here. I emphasized it was really small because it's basically this pen that I have here.

But look. Here's something to make you feel better about that. Back when I was chair in 2004-2005 of the ABA's Section of Administrative Law and Regulatory Practice, as our tokens of appreciation that year, we had these little cubes that had enclosed in them supposedly APAs -- the Administrative Procedure Act, that little cube.

I think this little pen from the Free State Foundation is worth every bit as much as that little cube with an APA inside.

(Laughter.)

MR. MAY: And it does have the unique ability -- you'll find this out -- when you use it, every time you write "regulatory reform," it comes out automatically in all caps and in red letters. So that should be good.

(Laughter.)

MR. MAY: Okay. With that, I want you to join me
in thanking Neomi Rao.

(Applause)

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