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**The Free State Foundation's
Policy Seminar**

***"THINKING THE UNTHINKABLE:
IMPOSING THE 'UTILITY MODEL' ON INTERNET
PROVIDERS"***

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MODERATOR:

RANDOLPH J. MAY – President, The Free State Foundation

PANEL PARTICIPANTS:

ROBERT CRANDALL – Nonresident Senior Fellow, Economic Studies Program, Brookings Institution, and member of FSF's Board of Academic Advisors

GERALD FAULHABER – Professor Emeritus of Business Economics and Public Policy at the Wharton School at the University of Pennsylvania, and former Chief Economist, FCC

DEBORAH TAYLOR TATE – FSF Distinguished Adjunct Senior Fellow and former FCC Commissioner

MICHAEL WEINBERG – Vice President, Public Knowledge

* 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

MR. WEINBERG: So, first of all, thank you so much, Randy, for having me. I always appreciate invitations to your events and the writ of safe passage that I get to come here and talk to people. I am going to be presumptuous and assume that if you came out at 8:30 or 9:00 in the morning for this event, you at least have heard of Public Knowledge, so I won't give you the spiel.

I want to talk a little bit about Net Neutrality and how we think about this. We're going to get into the details in this panel. And so, as an initial matter, I want to go back to first principles for a little bit and talk about why we're engaged with this policy conversation, and why we are advocating what we are advocating.

First principles really are pretty basic. I can't speak for all Net Neutrality advocates, but as a representative I will do my best. We are concerned about ISP gatekeeper power. Our concern is that ISPs have the ability and the incentive to inject themselves into the Internet experience, inject themselves into the conversation, and manipulate success or failure of services and sites online. That's true in a commercial, innovation sense, which is a very important part of this conversation.

And it can also have side effects on all of the non-commercial activity that really gives the Internet its richness.

We talk a lot about the commercial, innovative part of this, and we're going to talk about that a lot. I think that's really important. But it is worth taking a moment and stepping back and thinking about everyone's own private Internet experience.

We all use big-name services, we go to *Politico* or *New York Times* or these sites, but a lot of people also have these online communities that are not commercial. They are different for everyone, but they really give richness to the experience. Some of these communities some are commercial, some of them not. The reason they exist is because of this open nature of the Internet. And that's what they're fighting to do. That's why we've seen all these start-ups. We've seen four million comments, I believe the vast majority of which are calling for very strong rules. That's what they're really motivated by.

So once you start from there, and you say, "Okay, what does that mean, in terms of rules?" It means bright-line rules that make it clear. It means things like no blocking, things like no discrimination, that have clear

lines.

And then you say to yourself, if you are then sitting in Washington and in the policy fight, "Okay. What have we learned? What have we learned from history? What have we learned from the D.C. Circuit this year about what's necessary to really have those bright-line rules?" The take-away, certainly from the D.C. Circuit decision, is that if you want clear, bright-line rules, you have to ground FCC authority in Title II. You can have other rules that are not grounded in Title II authority. But if you are serious about really robust open Internet rules, that's where you have to go.

Now, I wish that that were not the case, honestly.

If it were possible to have strong Net Neutrality rules under a 706 authority, we probably wouldn't be having this event. We would have all moved on with our lives, and we would be doing other things. But for better or worse, where we are right now is, if you really want clear, bright-line rules that strongly protect an open Internet, you have to go with Title II authority.

That's why we were very encouraged that President Obama came out and said that. We were very encouraged. We were a little bit concerned when Chairman Wheeler expressed

concern about President Obama's position. We were encouraged that later on in the week the FCC walked that concern back a little bit. And we hope now that they are taking a very serious look at Title II options.

And we recognize that any rulemaking proceeding under 706, under Title II, or under hybrid, there are questions to be answered. We think we have answered those questions. But we will not pretend that there is simply nothing that anyone could worry about.

That's just an overview of where we're coming from. So can we start from a place where we want to maintain a free and open Internet? That requires bright-line rules that makes it clear to everyone involved where the lines are, where the rules are. And, in order to do that, you need to ground that in Title II authority.

With that, I will be quiet for a little while.

MR. MAY: Thank you very much, Michael. And you will have a chance to be unquiet again.

MR. WEINBERG: I always take those chances.

MR. MAY: So, now what I'm going to do, as I said, is we're going to go down the line. And so I'm going to ask Bob to take five minutes or so, and then we'll move down the line.

Bob?

MR. CRANDALL: As Randy pointed out, I'm a non-resident senior fellow at Brookings. I am also, by the way, a non-resident senior fellow at Tom Lenard's Technology Policy Institute.

MR. MAY: He doesn't have a residence in the place.

(Laughter.)

MR. CRANDALL: No. I'm non-resident because I moved up to northern New Hampshire, thinking there was nothing left to do in regulation of telecom.

(Laughter.)

MR. CRANDALL: And after listening to Commissioners Pai and O'Rielly, I'm convinced, except for one thing. They continue to talk about the expansion of high-cost universal service and the E-rate program. There is absolutely no evidence that either one of those programs has had any beneficial effect on anyone. And they should be eliminated. So they could just say "No," and we could move ahead. That's not an argument against Net Neutrality regulation.

I was surprised at the evolution of the Net Neutrality debate to this paid prioritization notion, and

the notion that somehow termination of incoming Internet traffic by broadband distributors should always be priced at zero. This is a two-sided market. The distributors can collect revenues from their subscribers, or from the incoming traffic. I know of no empirical evidence that suggests that setting the termination rate at zero is beneficial, is welfare maximizing. I will let Gerry Faulhaber address this, too, if he wants. He's a better economic theorist, perhaps, than I am.

I know of no such evidence. You can speculate about why that might be the case. But I doubt that you can find parameters that will work to tell you that that is the right price.

Secondly, there is no need to be worried about the distributors excluding marginally valuable content from innovative providers at the edge of the Internet. They have no incentive to do so. Indeed, if they have market power, they will erect discriminatory tariffs, and charge those guys very little, while charging very high prices to those people who distribute through Netflix and the like products that are produced in Hollywood with huge rents.

And I predict that the effect of doing so would be not to reduce the market value of Netflix, not to increase

the cost to subscribers, but rather, to reduce the rents of Tom Cruise and his brethren in Hollywood. That is because there are huge rents being earned in the production of those products that Netflix is distributing. Maybe that's the reason why President Obama decided to get active in this, because a large number of those people are obviously Democratic supporters.

(Laughter.)

MR. CRANDALL: Third, imposing Title II is going to create enormous problems.

I don't see how any hearing on what the appropriate termination rates should be is going to result in any easy resolution that they should be zero for all incoming Internet traffic through now Title II-regulated distributors. In fact, I have colleagues in the economics profession who are already trying to scare up business in Europe, because they figure this is going to be a great excuse for loading on substantial fees for Google and the like in Europe.

I don't see how going this direction is likely to lead to the result that the advocates want: that is, zero prices on the terminating side of Internet traffic coming in to the distributors.

But, more importantly, I think the two commissioners understated the problems here. The FCC has never regulated individual tariffs through a cost-based proceeding. Or at least the times they have tried, they failed to come up with a solution.

For the most part, Title II regulations imposed before the break-up of AT&T involved a process by which a state and federal regulators divvied up the cost of the Bell operating systems, and decided how much should go to the state jurisdiction, how much to the federal jurisdiction, and they didn't regulate individual rates.

Once they admitted entry into long distance services, they had to begin to regulate, because AT&T started offering different private line prices to business customers, and a TelPac proceeding began in which the Commission had to determine whether the rates were discriminatory or not.

This started in 1961. The TelPac proceeding terminated in 1981 without any result. That is, the FCC never approved a single TelPac tariff. That's history that many of you don't know anything about, probably. But today the special access proceeding is going down the same road.

We're approaching year 10 in the special access

proceeding, and we're just beginning to collect data. Needless to say, once you get the data, given the pervasive nature of joint and common costs in telecom platforms now that deliver video, voice, and data services, the attempt to tease out what is the cost of special access is going to be involved in just enormous controversy, no matter what data, or which econometricians are used to try to do it.

Remember the old cable regulation and the '92 Cable Act, how well that went? So I think that this is going to just embroil us in a nightmare of very long proceedings, which will not be easily resolved, and no one will have much certainty about. And I don't think that's the way you want to go about regulating the Internet to make sure that you get innovative, new, wonderful products coming from the edge of the Internet to subscribers.

MR. MAY: Bob, thank you very much. Appreciate that. And now I am going to turn to Gerry, please.

MR. FAULHABER: Thank you. First of all, whether you agreed with our commissioners who spoke before, I think you probably all join me in thinking that we have a couple of guys on this Commission that understand what the issues are. These are smart guys. I was very pleased with that.

Let me talk about Network Neutrality really

quickly. This is supposed to be the issue here, Network Neutrality. One of the things that came out of the FCC order that eventually got overturned was the fact that, in 10 years of broadband ISPs, we had exactly two incidents that could demonstrably and provably violate Network Neutrality. One was the Madison River Telephone Company and the other was Comcast blocking a BitTorrent.

Two events out of a decade of industry history seems to be a reason that you should commend the industry, not the reason you should bring them under regulation. In fact, the FCC indicated that they were adopting these regulations simply to make sure nothing happened that might happen but hadn't actually been proven to happen.

And I think Bob Crandall put it very well: These guys are in business to carry traffic. They are not in the business to stop it. And the evidence that we have strongly suggests that's what they were doing.

Okay. So, to me, the impact of the Internet order was actually zero. And the FCC did the right thing. They said, "We're going to adopt what is current industry practice," okay? And that's what they did, and nothing happened.

The intermediate impact of Internet regulation, I

think, is somewhat negative in forbidding ISPs from offering differentiated services. "Paid prioritization" seems to get people really riled up, and I just think it's silly.

I usually come down here from Philadelphia on the Acela, which is called a fast-track railroad.

(Laughter.)

MR. FAULHABER: It's a utility, a public utility, common carrier. And so I guess we're going to have to do without the Acela from now on.

Also, I get notices from people via the Post Office by Express Mail, which is the fast-track mail. Talk about something that's regulated, it's the Post Office. But generally speaking, come on. We do this in every part of our lives, and we do it with regulated utilities and common carriers. It's just a standard practice of the way we all live. Why are we so upset about this? What's going on?

Another thing is imposing Title II restrictions now to keep the Internet as is. Come on. This worked for telephone in 1930, when it was a mature technology. This is not a mature technology. It's not even close to it. And saying, "Okay, we're going to freeze it the way it is,

this is it. We don't need any more innovation, do we? We don't want to let this thing evolve, for God's sake, that's terrible."

But that's the intermediate term. The long-term impact of regulation is really disastrous. Now, be clear.

The FCC has started to regulate the Internet after 40 years of hands off. After being very proud of hands off. Do you remember the term "unregulate," back in the '90s and 2000's? It was said, "The reason it's so successful is we're not regulating it." When did we change our mind here?

What does history tell us about regulation? Now, we have heard a lot about that today. But there are two general principles I want you to think about, and think about what you've heard about today.

The first thing is that regulation, when it's introduced into an industry, will eventually expand to the entire industry. You may say, "Oh, it's just ISPs today."

Woops, now it's ISPs and how they interact with peering networks.

Netflix doesn't realize this yet, but pretty soon they're going to be regulated. Google, I think, has kind of gotten on to the fact. They were very strong advocates

of Network Neutrality and regulation. I'm beginning to believe they understand eventually they will be regulated.

That will happen. If you look at the history of regulation, this is what goes on.

The second thing, it provides opportunities for "rent seeking." That is the economics phrase that is basically saying people who are in this business now no longer go to customers to get their competitive advantage.

They go to regulators. They go to regulators to say, "Put some restrictions on my competitors. Give me special treatment."

So, competitive success comes from going to Washington, to the regulator's office. And we've already seen this. We've seen it with LightSquared, we've seen it with Level 3, we've seen it with Nextel, we've seen it with Cogent. That's what goes on. It's well underway.

Network Neutrality, which started off to be just about ISPs and customers, became the opening wedge for bringing interconnection with peering networks and others under the FCC's wing after 30 years of, basically, very successful private markets working. Interconnection amongst networks just worked fine, it all worked with contracts. Now, all of a sudden, we've expanded it.

Now, this has been pointed out before. You want to see what this looks like? Look at the EU. Okay, let's name all the great innovations in the Internet that have come out of the EU.

(Laughter.)

MR. FAULHABER: Right. That's what's going to happen. If Jeff Pulver were here today, he would tell you this. He went to the FCC and said "If you want Voiceover IP to be under Title II, guess what? We're not doing it, and nobody else will." And they issued the Pulver Order, which said VoIP is an information service. He was very clear about it, and he's very clear today, as you will see.

Okay, Title II versus Section 6. Let's make it clear.

MR. MAY: 706, you mean.

MR. FAULHABER: What did I say?

MR. MAY: Six.

MR. FAULHABER: Oh, 706. Okay.

MR. CRANDALL: I knew what you were talking about.

(Laughter.)

MR. FAULHABER: Okay. Let's make it clear. We're going down the regulatory rat hole. It's a rat hole. And that's where we're going.

We've heard about Title II and how we're going to forebear from stuff. The only difference with 706 is how fast we go down the rat hole. We will go down faster with Title II. But we're going down the regulatory rat hole, whether it's two years or five years, that's where we're going. That's where we're going.

Now, I don't even want to talk about Obama's intervention. That was just embarrassing at every possible public policy level.

I do want to mention wireless. And this came out, too, in some of the talks: "If we had a lot of wireless out there, so we had a lot of wireless broadband providers we would not have any problem like this, because people are willing to enter wireless broadband and because we'd have a competitive broadband market."

Guess who hasn't put the spectrum out there to give us competitive wireless broadband? It's the FCC, the NTIA. There is spectrum out there, there is a lot of it. It's not getting out there. It's taking them an age to get stuff out. And they just seem to think this can take a couple of decades, and it's okay. Well, if we had a lot of wireless out there, we'd have a competitive broadband market. And we don't have that. Go back to the FCC.

Thank you.

MR. MAY: All right, thank you, Gerry. So now I'm going to turn to Commissioner Tate. And then, Michael, I'm going to ask you to come back after Commissioner Tate.

COMMISSIONER TATE: Thank you. And thank you, Randy. I thought the discussion so far was great. And, Michael, I want you to know, often when I was here, I was David in the lion's den, too. So we welcome you. We're thankful that you're here to provide some other remarks.

There are a couple of things that I wanted to say. And Gerald set this up nicely for me, so I thought I would be the Karl Rove of the Free State Foundation today. So, I dropped my pen over there that should also have Madison River on it. But some of you may not remember that this goes all the way back to the original blocking. It was Verizon and NARAL. They weren't sending text messages, I think, about right of choice or something. This was before I got to the FCC, when I was still in the state commission. Then Madison River. And then, of course, BitTorrent.

My question is, "Where is the beef?" Unless and until we really have a true complaint at the FCC, it's hard for me to understand what the exact problem is. That's what I kept saying while I was at the FCC. And not some

hypothetical "what if," but what is the real problem that occurred? You could then create a rule that would address that very real problem. To borrow from Commissioner Pai, "A clear and present danger," if you will.

And so, I thought that Commissioner O'Rielly did a spectacular job of analyzing Title II and the impact on that. One of the things that Michael probably doesn't know is that I was a state commissioner and the chairman of our state PUC.

Back to some of the issues that both Robert and Gerald brought up, to think about going back to the stacks of dockets that I have seen over the past 10, 15, 20 years now being applied to ISPs is just absolutely unbelievable for me. Now, on the other hand, it's great for everybody in this room. Look, you have 20 more years of really productive, billable hours coming.

(Laughter.)

COMMISSIONER TATE: But that is concerning, as well. So, where is the beef? At this point, the beef is zero.

And then, something is rotten in not Denmark, although we could talk about Denmark and all their regulation, as well. Something is rotten in Silicon

Valley. Sometimes, when you're at the FCC, you actually wonder: Why is somebody here, asking to be regulated? Right?

I've always found it very interesting that these are the same folks that I found so difficult to try to get a meeting with. I could see that their products and their infrastructure and their competitive services at one day would intersect with consumers, with all of us, and possibly with the FCC. So, I really wanted to try to build a relationship.

As you all remember, really, no one from Silicon Valley even had an office in Washington. Nor did they think they needed one. It's interesting that now they are the biggest provider of lobbying services in D.C.

Under the regulatory regime that we have now, we all see the explosion, the transformation, the unbelievable opportunities that are right here, at the touch of a fingertip.

So they really don't want to pay for what they use, right? They want us to both provide all of our data, which they then sell to advertisers, and now they're also wanting price regulation. As you all heard, even Tim Wu, who is a huge Net Neutrality proponent, said, "The consumer

always pays."

The third point I wanted to make is a cost benefit analysis. This is something that Commissioner O'Rielly brought up, as well. Will the Commission actually look at what the cost of regulation is, what the cost of compliance will be? You heard a whole list of what Title II could possibly mean to everyone in this ecosystem: the potential filings, the data capture, the FCC's constant request for information, having to appear before the FCC.

And then, I was so thrilled that both commissioners got into the additional cost of USF. I really don't know. Silicon Valley folks, or all of the Net Neutrality advocates, have you really thought about the cost that's going to be imposed when you, indeed, have to contribute to this USF program that, as one of the FCC commissioners says, is now at 16 percent? Have you really about how the FCC is getting ready to go on a spending spree? I think that's how Commissioner O'Rielly articulated it.

I really share Congressman Latta's concerns. Many of you all know that I do have a role as it relates to children with the International Telecommunications Union. I'm very proud of that. But our actions speak louder than

our words. And I've said this before, I'm very proud that the FCC truly is looked at as the gold standard.

I went to many countries. One of the reasons that we were out there was to talk about having an independent regulator, so that an autocrat just didn't choose their cousin or their brother to run the ministries of telecom and information. And so it is very important about our actions speaking louder than our words. We cannot go out and tell the world not to censor and not to regulate certain content, when we ourselves possibly may be doing just that. So, I share that concern.

Finally, Randy May, did you talk about your meeting that you joined Jesse Jackson? Because it's also interesting to see some of the people who have come out for the 706 pathway, if you want to go down the road of regulation at all. And that includes 50 civil rights organizations. They are much more concerned about the investment and the infrastructure, about reaching the underserved and the unserved, about reaching the millions of children that are not connected in their homes today. I share those concerns, as well. Thank you.

MR. MAY: Thank you, Debi. Some of you have heard me say this before, but I'll say it again, that, as Debi

alluded to briefly, since leaving the Commission, and that's been a while now, she has devoted a lot of her time to advocating for children, and especially, you know, the things that go on the Internet, and generally proposing and advocating market-based solutions, and not regulation. And more information, and more parent involvement, and so forth.

It's not the heart of what we do at the Free State Foundation, but I'm always proud to have her associated with FSF.

COMMISSIONER TATE: Thank you. Randy told me I couldn't talk about that, so I'm so glad you just did an ad.

MR. MAY: I said this was not that program, right.

(Laughter.)

MR. MAY: But I am proud of it.

Now, here is what we're going to do. I like to keep everyone apprised. I'm going to give Dan the mic, because I'm sorry Jeff Pulver isn't here. And Gerry alluded to it, and you don't get the full minutes, I just want you to take just a minute to make a comment about what Jeff wanted to say.

DAN BERNINGER: Yeah, just one minute. Jeff

really wanted to be here, and I will pass all your good wishes on to him.

I want to say why Jeff Pulver has conviction about arguing against Title II. I met Jeff 20 years ago, in 1995, when I was at Bell Laboratories. This random guy came up and was working on something called Voice over IP. And we started a project that would connect PC-to-PC to the telephone network.

This is before the '96 Act. And so we've talked a lot about hypothetical versus real. Jeff had the real experience of Title II in communications. The moment he connected VoIP as PC-to-PC to the PSTN, he heard nothing but: "That is illegal. You need to go ask permission of the FCC to do that."

Now, the thing that Jeff reminds us is that this is really all about communications in the end. Jeff looks at the regulatory, he looks at the technology. He says, "This is just a black box to me." All he cares about, as a super-communicator, is, "What is the communications capacity that I'm getting"? And so he will sit here today and he'll say, "Well, in 1996, before all this started, communication was, you know, a \$.40 long-distance phone call, and taking an airplane flight somewhere so you could

go talk to someone."

Today we have many, many more ways of communicating, and that's what Jeff wants to protect. And also, Jeff had his sleepless nights. In those days, in 1995, he didn't want to be a law-breaker. And so, we told Jeff, "Well, if you make it free, Jeff, and call it free-world dial-up, they can't get you." But it still took 10 years to get the *Pulver Order* and to get the FCC to admit that, "Well, okay, it's not Title II." A 10-year process.

Jeff left for 10 years, came back this summer, and all the sudden it's back again. But that's it.

MR. MAY: It's good to have that historical perspective that some people might not be aware of. Thank you, Dan.

As I suggested, I'm going to turn the mic back over to Mike, Michael, for a few minutes. Then I'm going to ask the others on the panel to react in any way you want to anything that's been said. And then we're going to get to some questions from the audience. But I want the panel to interact with each other.

Michael, in your reactions, you can also respond.

Both Bob and Gerry, to some extent, talked about the paid prioritization issue, which seems to really be at the heart

of a lot of this debate, when you get to the core of it. I know you mentioned free expression, and whatever. But realistically, we don't really see blocking or expect to see blocking of websites.

Bob made a point, I thought, quite convincingly, as economics can do with his experience. Bob basically talked about the two-sided markets. He said the ISPs aren't going to have an incentive to really discriminate against the smaller guys or new entrants. As I understand, he was saying that if they had some discretion, if anything, they would be trying to seek more from the Googles and whatever. And the ultimate point of that is it would work out that way, and that would be better for consumers, overall.

Maybe, in your responses, you can address that. And then we'll go back and forth.

MR. WEINBERG: Take about 40 minutes to do all those things.

(Laughter.)

MR. WEINBERG: That work for everyone? Yeah. So, let me kind of try and wrap all of this together, and see if I can do it.

On the paid prioritization front, I think there

are, broadly speaking, two harms or concerns. One is this concern that it increases friction for new entrants, for start-ups. On the list of things you need to do to build a new company, for example, in addition to coming up with an idea and executing the idea, you then have to potentially fly around the country and play golf with people at ISPs, You have to find a way to cut deals with ISPs, and that's going to cost you time, it's going to cost you money.

We've heard from very high-profile venture capitalists that if that additional barrier exists for start-ups, it will greatly decrease their interest in investing. We could talk for hours about that category of concern.

The other category of concern, which also deals with the smaller entrants, is that in order to create a situation where the paid prioritization option, the paid option, is an attractive one, you have to have the non-paid option to be not that good. We can define that as a degradation of service, or an increase in the paid prioritization service, or whatever it is. There has to be a differentiation between the unpaid and the paid services.

And the concern is that there will be an incentive because you make additional money for the paid

prioritization to make sure that that sort of standard level of service is subpar enough to justify the increased cost. If you don't, then no one is going to pay for the prioritization.

I don't think that ISPs are sitting around thinking about ways to kind of like destroy small services, or make sure that publicknowledge.org loads slowly. Maybe public knowledge loads slowly, but small services, websites, load slowly. In a lot of ways, to use a cliché, that long tail of the Internet, it's just the cost of setting up the prioritization.

But those are the two categorical things. I know this seems to be frustrating for the people on the panel, but we can talk about them more.

In terms of kind of actual things that were mentioned, I will try and make this quick. A lot of times people talk about how we haven't had neutrality rules, historically. That's a little bit short-sighted. We had the Internet principles for a long time. We had some large ISPs, like AT&T and now Comcast, operating under Net Neutrality, or Net Neutrality-style rules, as a result of merger conditions. We had the 2010 rules.

And then we also have had this regulatory cloud,

this process cloud, hanging over ISPs for at least seven or eight years, where everyone is operating in an environment where the FCC is either in the process of thinking about doing Net Neutrality, doing Net Neutrality, or having done Net Neutrality. On some level, I believe this has disciplined the market. You may disagree with that, but I think that saying there is only a small period of time where there were Net Neutrality rules is a little bit of a narrow reading.

Even in only a small period of time, you would think that we wouldn't see many Network Neutrality violations, because there are either rules or threat of rules or reasons to be on best behavior. But even in that time, we saw Madison River, we saw the BitTorrent blocking.

We also saw AT&T discriminating against Facetime. We saw Comcast throttling or exempting its own online video service, and making sure that competitive services don't get to pay for prioritization.

We saw Netflix. We can debate whether or not it's technically a Net Neutrality violation, but Netflix wasn't working very well. And then they paid a bunch of money to an ISP, a lot of ISPs, and suddenly they worked pretty well. We see AT&T roll out sponsored data schemes, whereby

people pay for prioritization of data. We've seen Verizon tell courts, but for Net Neutrality rules, they would be looking to expand these. We see T-Mobile exempting various services from its data cap. So we are actually seeing a high level of interest and motivation from ISPs to directly inject themselves into the relationship between their customers and edge providers.

When you think about customers and differentiated pricing, we're all for differentiated pricing. I have written reams and reams on differentiated pricing. I could pay more for a faster connection, I could pay less for a slower connection, just like I have sometimes paid more for the XLS. Sometimes I regret it, sometimes I don't. But it's certainly an option.

But, I mean, when you took the Acela here, Randy, you didn't pay an extra fee to make sure that he got actually delivered here.

MR. MAY: I might be; I'm not sure.

(Laughter.)

MR. WEINBERG: You may have paid for the ticket. But, I mean you think about that prioritization. Yeah, if I'm a consumer, I want to pay for a fast connection. But when I pay for whatever level of connection that I want, I

want to get everything that I paid for, regardless of what relationship the site I want has with my ISP.

On the USF front, a lot of this sounds like criticism of the USF system, which is a different conversation. If there are problems with the USF, there are problems with the USF, regardless if broadband is involved or not.

Finally, on the international front, we do a lot of work with ITU as well, to make sure that ITU does not get involved with broadband Internet access. I understand the argument that setting an example is important. But I think that, even in this hands-off regulatory structure we've had, there are plenty of countries that are totally happy to do all sorts of things that are problematic with the Internet.

And when we're talking about Net Neutrality and broadband Internet access, we're talking about the companies that connect you to the Internet getting involved, not the governments that regulate the country that you're in being involved. And those are fundamentally different things.

So, sorry, that's a bunch of things; I will stop there.

MR. MAY: No, that was a lot you put on the table, and I appreciate it.

You're probably aware that, on the international front, that when Phil Verveer was over at the State Department in a position as counselor, and even during the last go-around, that proposal, he made a statement that if this country adopted Net Neutrality regulations, that would be problematic for the U.S. defending the position that other countries didn't do it. But I know he's occupying a different position now.

Boy, there are times when I wished I was just sitting down there and could respond. I'm going to defer right now to these guys. I see Gerry's got fingers up. So you can go first. But then I want Bob to have a chance. And Debi, just respond to anyone and keep it fairly brief, so we can keep it going. I want to have the audience involved.

Go ahead, Gerry.

MR. FAULHABER: I just had this -- this thing is on YouTube, it's John Oliver at HBO -- he had a long thing about the Internet. And he led it off by saying, "The Internet, in its current form, is not broken. And the FCC is currently taking steps to fix that."

(Laughter.)

MR. FAULHABER: There we are. I loved Michael's characterization that we've really had Network Neutrality regulation for a long time, because it's always been there as a threat. We haven't actually had it, but it's been there as a threat. And if that's the story, then I would suggest we continue it as a threat, and let's not actually have it, and just have it as a threat in the background. I think all of us would be happy with that.

MR. MAY: Bob, do you want to say anything?

MR. CRANDALL: Most of the discussion about how there is this threat of ISPs, broadband distributors, carriers, discriminating against content is extremely superficial and lacks any sort of empirical substance.

Let me suggest to you, though, that there is some empirical substance to the notion it's not very great.

First of all, Time Warner spun off its Time Warner Cable unit many years ago. If there is a tremendous advantage to favoring your own content, and making money from doing that, they wouldn't have done it. Disney doesn't own distributors.

Comcast bought NBC. And, if you look carefully at what's happened to the market cap of Comcast, relative to

other cable companies and other media companies, I would argue that, probably, they have lost money on that transaction so far. That is, the purchase price of about \$30 billion for NBC was probably not worth it, because Comcast owning NBC confers no advantage on NBC, because they can't use that content in any advantageous way that they couldn't do through licensing the content themselves.

In fact, there is very little evidence that there is the potential for discrimination that would increase the value of NBC. So we see lots of empirical evidence that the threat is not very great. And this anecdotal stuff may work in Washington, but I don't think it works in the real world.

MR. MAY: Are you trying to suggest that facts actually matter here? Is that what you were doing?

(Laughter.)

MR. CRANDALL: Well, I'm in Washington, so I'm not sure I should do that.

(Laughter.)

MR. WEINBERG: These things that I'm mentioning haven't occurred in the real world, but they're only happening in Washington?

MR. CRANDALL: I'm suggesting to you that you have

a few anecdotes, but it is not empirical evidence that there is a systematic tendency for these distributors to be able to, much less have the incentive to, discriminate and make money from doing it.

Just as I suggested earlier, that the Netflix negotiating these paid prioritization agreements did not reduce the value of Netflix's stock, and the reason is, to the extent they have to pay more to get decent distribution of Hollywood films, they will pay less for the Hollywood films.

MR. MAY: Okay. Debi, I am going to give you a chance in just a minute. but I want to pose -- here is a real world, if we want to talk about the real-world example that Michael brought up, that I think illustrates to me a consequence of what may happen if we have this type of regulation. Because if we just pose the question -- you know, and let's be honest about it, most of those comments that we talk about filed at the FCC, the millions, they said we are -- you know, in favor of an open Internet, I suppose. A lot of them did. There were about 800,000 that no one mentions -- maybe you guys -- 800,000 that said they were against this regulation.

Michael mentioned the T-Mobile plan, the zero-

rated plans. And he and I have had this discussion. But let's have it a little bit here. T-Mobile, has introduced a plan whereby you can go to certain music sites -- only music sites, you know, not poetry sites, you know, which I like.

(Laughter.)

MR. MAY: But you go to those music sites, and the access is not counted towards your cap for those sites. And Sprint -- you know, and these are the two -- you know, what they call the upstarts, you know, the upstarts that are backed by giant companies that happen to be overseas.

Sprint has a plan, as you may know, that, for \$10 per month, you can access Facebook, but not other Internet sites. And then, for another \$5, you can add Twitter, another \$5 you can add another site, you know, or something like that.

So, a couple things. It would seem to me that these sites would be attractive to consumers, and especially low-income consumers, who might find that an attractive entry point to the mobile broadband world for \$10. And I think it's being proven true. But the second thing is they obviously discriminate, because you can't go to MySpace for that \$5. You can go to Facebook.

So they discriminate. Therefore, Michael and others that are the Title II advocates are opposed to these plans. I have been hammering with this for a couple months. Maybe now he's not so opposed to it.

MR. WEINBERG: Well, T-Mobile, yes. But Sprint is a different animal.

MR. MAY: Okay. The point is that most consumers, overall, at least appreciate having the option of having these plans, and they're not harmful. Most Title II advocates oppose these plans. But maybe you're changing.

So, that's the real-world example, whereas, you know, if you're -- are you in favor of the open Internet? Well, maybe not, if it means that T-Mobile can't offer that plan in Sprint.

So, I know Debi has always been concerned about low-income consumers in other contexts, and maybe she will want to speak to that. And then Michael. You two can address that.

COMMISSIONER TATE: Okay. Well, I wanted to share a quote first. Back around '06, Senator Dorgan said, "New services like Google couldn't get started in a system with price discrimination." Obviously, they have had no problem getting started, right?

And so, I was glad that Michael did bring up the principles. The FCC has had those Internet principles. And, actually, in some of these cases, the threat is a chairman picking up the telephone and calling and saying, "We may have to open a proceeding."

Part of this is about when there is a very real and present danger that is definable, that is a true complaint, where a consumer or a group of consumers have been harmed, and then the FCC could look at that. In every case, basically, something has either gotten agreed to, or whatever the issue was has absolutely stopped.

The one thing that we haven't talked about, and I've got to bring up, is this whole concept of transparency, which Michael has brought up. I think it's really important. I was excited to hear all of these choices. I didn't even know they were out there.

The concept of transparency brings up the AT&T throttling case that the FTC has been investigating. If Title II goes into effect, then the FTC will not be able to do those investigations. They are our nation's expert agency for every sector, across all sectors. And so it's really important that, in terms of the advertising, and what consumers are being told they are going to get, and

whether or not there are deceptive practices, that that needs to stay at the FTC, which is another repercussion, if you will, of Title II regulation.

MR. MAY: Right. And I think what Debi is referring to is, if there is a classification of the ISPs as carriers, then it's thought by most people that that would divest the FTC of jurisdiction.

Now, is what I want to do. I am actually trying to be generous. That's fine. So maybe that will give us an opportunity now to see whether the audience has questions. I'm going to ask you to identify yourself, say who you're with, direct your question.

First, you will be next. This gentleman put his hand up first. And Kathee Baker is going to give you the mic.

Now, look. Here is the rule on questions, though. Don't, please, make a long statement, because several people have questions. Just ask a question. And if you need to make a statement, put it very quickly in that question.

QUESTION: Right. Quick statement and quick question, then. Bruno Basalisco from Copenhagen Economics, and that's not Copenhagen, New York, it's actually

Copenhagen, Denmark.

COMMISSIONER TATE: I'm sorry for saying anything about Denmark.

(Laughter.)

QUESTION: We are a small, specialized economic consultancy working across the world, but based in Northern Europe. And, actually, Northern Europe is more free-market and enterprising than you think about it. At least it's more free market and enterprising than the French. But that's easy.

(Laughter.)

QUESTION: We wrote the report on comparing the U.S. and Europe last year, so come talk to me if you're interested in that. And we did find out that there are concerns, indeed, about what regulation does to investment incentives in Europe. And it's always fruitful, I think, when we compare different systems, because I think there is always room for learning from each other's own advantages and disadvantages.

And I note that Title II, from the European perspective, feels like a sledgehammer, perhaps. A sledgehammer comes to mind, given the problems you may or may not be discussing here. The point is that the beef in

Europe, when we think about the regulatory regime and telecommunications and broadband in Europe, the beef ends up being not so much about Net Neutrality, but more about resale and the price setting. This is where the whole of the energy of the regulators is invested on. As a former chief economist team member in Ofcom, one of the largest regulators in Europe, that is where we have seen the action.

And my question to the panel is the following. We observe in Europe that, even where the regulator thinks that it would be justified to forebear or allow price increases, in many cases regulation has a life of its own, there is a stakeholder that has an interest in regulation, so it is almost impossible for the regulator to take back what was given.

MR. MAY: Okay.

QUESTION: So it doesn't feel like an experiment, it feels like an irreversible decision.

MR. MAY: Okay.

QUESTION: Would the same happen in the U.S. if the FCC goes down this way? That's my question.

MR. MAY: Okay. Who wants to take it? Bob?

MR. CRANDALL: The European situation is very

different from the U.S. one. First of all, the European Commission has now admitted that it has done a very bad job in leading the regulatory process in Europe. But it's done an equally bad job of resolving how to fix it. It has done absolutely nothing in that regard.

As a result, it hasn't even, apparently, enforced its own regulations on member countries. I believe that in Spain and Portugal the regulators have overtly decided to deregulate fiber, allowing both telephonic and telecom to begin to deploy fiber. They are two of the few ILECs in Europe that are doing so.

So -- and Europe is really a federation, the way the federal society would like to see it here, where the Central Government is becoming less and less powerful in teleco.

COMMISSIONER TATE: Excuse me. One of the facts that I found when Randy called me about being here was that the EU cookie rate -- the cookie rule that the EU has promulgated -- has ended up costing over \$2 billion. I don't know if you have any idea about that.

And then, also, I want to congratulate Denmark because you do not -- you don't show up on my throttling slide that I wanted to show, where the U.S. is actually

down at 29th -- I think that's 29 -- and the countries that we think of as the most innovative, forward-thinking -- at least in terms of technology and devices -- South Korea, Malaysia, Singapore, Japan, Philippines -- are all throttling at this amount. So I just wanted you to know what a great job we are doing here, in the U.S. And Denmark doesn't even show up.

(Laughter.)

MR. MAY: Michael, did you want to say anything about Europe?

MR. WEINBERG: No, I mean it's -- you know, it's fine.

MR. MAY: Okay. So did you still have a question here? Wait just a minute for the mic.

QUESTION: Hello. My name is Deborah Latham. Hi, Gerry.

MR. FAULHABER: Hi, Deborah.

QUESTION: I was at the FCC during the -- if you all remember -- the open access days. I am now currently running my own consulting practice, and I have a question for Michael, and then for the panel. So I'll go quickly.

Michael, I'd like for you to just talk a little bit about the argument that is made that there will be no

investment if Title II happens. And, clearly, the Silicon Valley companies will want the broadband providers to invest. So, I'd like for you to address that, and also to address the question of let's assume that the two mergers -- AT&T and Comcast -- were approved. Would it be sufficient if the Net Neutrality principles are placed in those mergers, and therefore the FCC could sort of let the Net Neutrality rulemaking -- put it to the side, since the two major broadband providers -- the country will be covered by that?

And then, for the panel, my question is this. Verizon sort of opened a Pandora box with their victory in court, and the President sort of put the FCC in a box -- I mean in a bind. So my question to the panel is, given the fact -- I mean how does the FCC get out of this box that it's in, actually being required to classify Net -- to classify broadband services, because they're caught between the Verizon decision and the President?

MR. MAY: Okay. Well, those are big, big questions. And, you know, we'll just have to tackle them briefly, probably.

Michael, you can go first.

MR. WEINBERG: Right. Yes. No, no.

(Laughter.)

MR. WEINBERG: So, on the merger condition question, I think, look, merger conditions are not a substitute for categorical rules. So that's that.

As for the investment question, I mean, look. We see threats to stop investment from ISPs, from regulated entities, generally, outside the telecommunication space, all the time. I'm not convinced that we're actually going to see any of the follow-through, for whatever that's worth.

My colleagues at Free Press have done studies that certainly strong Net Neutrality rules have not deterred investment by ISPs. And I think the FCC's theory of the virtual cycle is a reasonable one, which is what you see is, with strong Net Neutrality rules, you see development of new services, which drives demand for better, faster broadband connections, which drives investment, which drives the creation of new services. And so, there is not a reason to think, right now, that we wouldn't continue to see that.

I recognize that AT&T announced that they were pausing their fiber deployment. A lot of people had considered that fiber deployment to the press release.

AT&T doesn't tell me what their internal plans are. I know, that's a shock. I don't know exactly what it is, but that was not something that made us pause and say, "Well, we need to rethink this entire enterprise."

MR. CRANDALL: I would be happy to talk about that issue. As to how Tom Wheeler gets out of his current problem, I have no idea. I don't have a JD degree, nor am I sitting close to political power.

But as for the effect of regulation on investment, more and more serious economic studies are coming out showing a severe effect of various forms of telecom regulation, adverse effect, on investment. I have no reason to believe that, if we go down this road, it won't have some effect. Fortunately for the advocates, it will take 10 years for the data to arrive, and for the econometricians to go to work on it. So you've got a 10-year lull here before the evidence becomes clear that what you've done is to reduce network investment in the United States.

MR. MAY: Gerry?

MR. FAULHABER: I think Tom Wheeler is going to do what every politician has to do, which is to say, "Wait." Okay? Eventually, Obama is going to go away. This whole

thing about letters to the FCC is going to subside. And the FCC is going to take an action. It's probably going to be less than a year from now, but certainly no sooner than six months. That's what you have to do in this. You've got to wait until the heat goes down, and that's what he's got to do.

I would also say, Deborah Latham and I were at the FCC, and we were working a case. Do you remember the AOL Time Warner case? Yeah, that's what we were working, okay? And we were in the chairman's office.

(Laughter.)

MR. FAULHABER: Understand, okay. And at one point someone -- I won't say who -- mentioned that, in order to accomplish an objective of the FCC, we should put a condition on this merger. And Deborah perked up and said, "Wait a minute. That condition is not merger-specific." The other person said, "Yeah? Well, this is something we want."

(Laughter.)

MR. FAULHABER: And you can believe Deborah didn't take that lying down. Okay? And I would suggest the same thing here. This does not sound like a merger-specific proposal to do. So, I am actually surprised that you

raised this, Deborah.

Okay, well, that's my answer.

MR. MAY: That's what they call a rhetorical question, or something like that.

MR. CRANDALL: The AOL Time Warner merger is a very interesting example. I won't mention the name, but I had a meeting with the CEO of a Silicon Valley firm whose net worth today is greater than the sum, probably, of all the people in this room, squared. And he was of the opinion that, if something wasn't done about that merger, AOL Time Warner was going to take over the entire space of media and communications in the United States.

Think how silly that sounds today. And all this sort of anecdotal speculation about what might occur, but for Title II regulation of the Internet, I think, is going to go the same way.

MR. MAY: Well, I've got a collection of those. I mean, actually, they put out a press release with Michael's predecessor firm, and Media Access Project, and Consumers Union, and Consumer Federation of America. And I think there may have been one more. But talking about the unthinkable. You thought the world was going to end if that merger were allowed to go through.

Of course, the whole theme was that this merged company would control both the transmission and the content, if that were allowed to go through. And you know what? I've got that. You can still find it. It's getting harder on the Web, if you search for it. But you would have thought that, if that merger were approved, that that was the end of the Internet, as we know it, as some people like to talk about. But, thankfully, that didn't occur then.

COMMISSIONER TATE: Randy? So, most everybody knows I was not a fan of merger conditions. But, yes, I ended up voting for a few.

Comcast, the behemoth of our nation, is under the Net Neutrality condition until 2018. So, to Gerry's point, the chairman could just push it off. And I think that, if I were the chairman, I would talk about these three figures: \$1.3 trillion of investment, \$75 billion in 2013 alone; and 11 million jobs. That would be my mantra.

MR. MAY: Okay. Well, I think we've got time for just one more question, because this Press Club does discriminate in price. I have at least until 11:00. But at some point I might get a higher bill. So I am going to turn to Anna-Maria. If she asks a very quick question, I -

- and a quick answer -- I might give you a chance, but not necessarily.

QUESTION: Okay. I'm Anna-Maria Kovacs, and I'm with the Georgetown Center for Business and Public Policy. My question, like so many others, is for Michael.

You talked at length about why you don't want paid prioritization. One can agree or disagree with you. But not only Commissioners O'Rielly and Pai, but the Chairman have all said that the Title II does not prevent paid prioritization. So what's the point of this whole exercise?

MR. WEINBERG: This is kind of a great panel; I get to talk all the time.

(Laughter.)

MR. WEINBERG: Yeah. So I think that there is an important -- briefly.

MR. MAY: Go ahead. I will pay a little extra. I've been waiting for this one.

MR. WEINBERG: I don't want to run up the bill. So, yeah, I think there is an important distinction between thinking of Title II as an end, and Title II as a means. Right? Title II is not sort of a self-executing decision that then takes care of all of

this. And it's absolutely true that, under Title II, the FCC has plenty of leeway to write horrible Net Neutrality rules that do nothing that we're advocating for, right, that allow all sorts of paid prioritization, and all these things.

The reason, the purpose of the exercise, the reason that we're pushing so hard for Title II is that we believe that, under Title II, the FCC then has the ability to declare certain activity by ISPs categorically unjust and unreasonable in a way that they cannot do under 706, under the D.C. Circuit's opinion.

And so, the purpose of the exercise to advocate around Title II isn't because we get Title II and then we can kind of go home. The purpose of the exercise is to then enable the Commission in a legally sound way to make the kind of categorical rules against blocking, against throttling, against discrimination that we are urging. But I will absolutely concede the point immediately and over and over that Title II, in and of itself, does not guarantee that outcome.

MR. MAY: Okay.

MR. CRANDALL: I would like to just add to that, regardless of what Chairman Wheeler says about whether paid

prioritization is legal or not, it's not going to be in his ballpark to determine. That will be future commissions and the courts.

And what we can be sure of is whatever comes out of this is going to take years. It isn't going to be something that just the FCC chairman is going to say, "This is okay, let's go ahead." It's going to be after another 5, 10, 15 years of litigation and carriers petitioning for getting higher rates for termination, and so forth.

So I don't think its any solace that Wheeler says that paid prioritization could be legal under Title II.

MR. MAY: Okay. I think what we're going to do now is end it. And I want to -- Michael, since you spoke next to last, I want to thank you for coming.

As you probably know, or you may know, I think, that before your former colleague Gigi Sohn went to the FCC, she was a frequent participant in the Free State Foundation events. In fact, I asked her, too, as well, for this one. But I'm glad that you came. I think everyone here will agree we had a terrific discussion, I think very informative, very enlightening. I thank Bob, Gerry, and Debi. And I guess, on Bob's note, I guess I have to say we will probably do it again sometime.

(Laughter.)

MR. MAY: Join me in thanking them.

(Applause.)

(The seminar was concluded at 11:11 a.m.)