



**Free State Foundation's  
TWELFTH ANNUAL TELECOM POLICY  
CONFERENCE**

**"Broadband Beyond 2020:  
Competition, Freedom, and Privacy"**

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## "Hot Topics in Communications Policy" Panel

### MODERATOR:

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### PARTICIPANTS:

**James Assey** – *Executive Vice President, NCTA – The Internet & Television Association*

**Mary Brown** – *Senior Director for Technology and Spectrum Policy, Cisco*

**James Cicconi** – *Senior Executive Vice President, AT&T*

**Deborah Lathen** – *Chair, Policy Committee, Multicultural Media Telecom and Internet Council*

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\* 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

## PANEL DISCUSSION

MR. COOPER: Good morning and welcome everyone to our conference panel today on Competition, Freedom, and Privacy. We will be touching on all those issues and more.

As Randy mentioned, I'm Seth Cooper. Andrew Long and I will tag team co-moderate this panel this morning.

I am going to introduce part of our panel and I will start with the speakers closest to me.

James Assey is the Executive Vice President for NCTA, the Internet and Television Association, where he's involved in all aspects of NCTA's work on behalf of the cable industry, legislation, regulation, and more. Welcome back, James.

We're pleased to have for the first time here Mary Brown. She is the Senior Director for Technology and Spectrum Policy in Cisco's Washington, D.C. government affairs office. She covers a wide range of public policy issues and leads Cisco's global public policy agenda for wireless technologies and spectrum.

MR. LONG: Hi, I'm Andrew. It's my first FSF conference and it's a real pleasure to be here and to see

all of you.

I would like to introduce Jim Cicconi, who is the Senior Executive Vice President, External and Legislative Affairs, at AT&T Services, Inc. Jim retired in 2016 but he returned to AT&T in September 2019 on an interim basis to again serve in this position.

Next, I would like to introduce Deborah Lathen, who is the Chair of the Policy Committee at the Multicultural Media Telecom and Internet Council. She is also the former Chief of the FCC Cable Services Bureau. MMTC is a national nonprofit organization dedicated to promoting and preserving equal opportunity in civil rights in the mass media, telecommunications and broadband industries, and closing the digital divide.

MR. COOPER: One thing I will also mention is Valerie Green with Ligado Networks couldn't be here today.

And Maurita Coley was unable for unrelated personal reasons to attend today. But we are glad to have Deborah here in her stead.

So I think the first question I would like to turn over to you, Jim. Actually, I'm jumping ahead and I'm skipping the initial remarks segment that I asked all of you to prepare in advance.

(Laughter.)

MR. COOPER: James, we value your contributions and the fact that your last name begins with A. But for all of that, I am going to have you go last today. So, Mary, if you would like to offer your initial remarks, we'd appreciate it.

MS. BROWN: Thank you. So as the introduction noted, I cover spectrum. And I think one of the issues that we continue to wrestle with in the wireless world is we're not doing a very good job of delivering spectrum out into the marketplace, even as this natural resource gets more and more important to our future. You can look at the headlines about C-band, the lurching process that that band has been through, even now subject to potential legislation up on Capitol Hill as the FCC continues to march for an auction. You can look at the difficulties we've faced with federal government agencies not agreeing and challenging some of the decisions that have been made at the FCC about sharing and adjacent band use.

We're just not there yet. And that is an important problem that we as a community have to address, not just for our 5G future, which is critical, but generally for the U.S. How do we use spectrum, how do we decide what is

important, what needs to be served and what needs to be reallocated? How do we resolve sharing, how do we resolve adjacent band questions?

So those are important issues to Cisco. We are not just a Wi-Fi company. We are also a company that serves our service provider customers on, either side of me, and we are very concerned about the broadband future. So that's one set of concerns.

The second issue I would raise struck me just yesterday when an email came in from my colleague from the U.K. Yesterday, the U.K. announced that they're going to solve the rural broadband problem by corralling four of their mobile operators, requiring them to, or at least with consent, asking them to contribute several hundred million dollars each into a common shared fund, which the government will also contribute to, to produce a shared network to service the rural U.K. And they hope to get in a few years up to 95 percent broadband penetration in these rural areas.

And I contrast that with what Chairman Pai is doing over at the FCC with the Rural Broadband Opportunity Fund. It is a much more market-friendly approach, I think, to try setting aside universal service money and asking interested

parties to bid, both as to coverage but as to the tiering of broadband services. If that Rural Broadband Opportunity Fund auction actually pulls off the results that I suspect it will, this is going to be a huge and important innovation for our country to try to get these rural areas online. Important for Cisco too? Yes. But I think, reaching back, way back to my roots at the FCC and working on universal service issues many years ago, this would be a pretty big development.

So thank you for having me and those are my introductory remarks.

MR. COOPER: Thank you, Mary.

Jim, would you like to go next?

MR. CICCONI: Sure. First of all, it's good to be back and see so many familiar faces. I came back to AT&T, at least on an interim basis, six months ago. The interim has gone on longer than I expected. But it's been interesting to me because when I came back, I was struck by how much stasis there still was in the overarching policy debate. And I think that's finally changing.

Last year, we were still debating many of the problems in the solutions proposed, 10, 15, even 20 years before. And we were in a bit of a rut, from a policy

standpoint. And sitting here today and six months later, I think the landscape is starting to shift. The logjam is starting to break a bit. It's been driven by technology, but it's also been driven by some fresh thinking, driven by issues like 5G but also like the antitrust investigations that have been opening up.

And I do think if we're sitting here talking about hot topics, what strikes me is that the hottest of hot topics right now aren't the hundreds of other important issues that we're used to dealing with in technology, but some of these overarching issues that really have to do with government policy toward the digital economy. Across the board, we're starting to see fresh assessments of this. We're starting to see consumer groups focusing on some of the problems of regulation in the Internet space, which were not things that they were saying a few years ago.

If you looked at your phones today, you see that you have Republican and Democratic senators getting together on the Hill, raising a number of questions about market dominance that hadn't been raised previously. And so I think this is actually entering a much more exciting stage than it's been in. As we look forward, a lot of the tectonic plates are shifting here, and you're finding some



bipartisan willingness to actually take some fresh looks at these things. And they include not just antitrust investigations, frankly, but also thinking back to the advantages that government may have bestowed 20 or even 50 years ago on one part of the economy or another that perhaps today inadvertently are causing unlevel playing fields. And I'm not just talking about Section 230, for example, but I'm talking about how government allocates spectrum.

And so I think this is an exciting time. And it challenges all of us to engage in that fresh thinking ourselves and not just automatically move back to the corners with which we are most familiar in our companies. And I'll stop there.

MR. COOPER: Thank you, Jim. Deb, we'll move on to you next.

MS. LATHEN: First of all, I wanted to thank Randy and Andy and everyone for having us here. MMTC always enjoys this forum.

And since we were given instructions that we had to be under four minutes, we spent a lot of time timing this and I'm at three minutes and 56 seconds. But I'll make it less.

(Laughter.)

MS. LATHEN: So, for today's discussion, the macro principles that MMTC is concerned about are universal, nondiscriminatory service and competition. And I am going to focus my comments on three areas: Spectrum and infrastructure, consumer online privacy, and universal service.

First of all, we believe it's important to facilitate the deployment of both wired and wireless infrastructure to all communities equally, regardless of income, race, or geography. We've previously supported streamlined regulations to promote wireless and wired deployment of infrastructure such as the FCC preemption in this area. And today, we support universal, nondiscriminatory rollout in making more licensed and unlicensed spectrum available to help bridge the digital divide and create opportunities for all. And we believe that there must be a laser-like focus on hard-to-reach communities, whether urban or rural.

We also believe that competition lowers prices and drives innovation, which will help to attract and reach underserved communities. And we saw this very early on with the adoption of smartphones by communities of color,

early adopters. So we say to our fellow panelists from the industry here, if you build it and price it right, we'll come.

If you want to hear where we stand on 6 gigahertz, please join us for our Spectrum Deep Dive, Thursday, March 12, from 2:00 to 3:00. We're not going to discuss the 6 gigahertz in this forum.

Now, with respect to consumer online privacy policy, we believe that going online should not be a scary, dangerous or confusing place for us or for our children. MMTC believes that there should be a baseline federal privacy law that applies to all companies, ISP, edge providers, everybody, and in all states. And it must be based on what is being collected and not who is doing the collecting.

The EU, California, and other states have moved forward. It is now urgent for Congress to act. We simply don't need 50 different sets of regulations.

With respect to data privacy and civil rights principles, all things are not equal. When it comes to data privacy and communities of color, who are often over-surveilled and abused by data collection, technologies such as facial recognition and biased algorithms may permanently

lock them out of opportunity. Working with the National Urban League, we will release a set of data privacy protection principles that address the unique experience of communities of color.

With respect to universal service, MMTC supports universal telecommunications services for all communities, regardless of wealth or geography. We are on record for supporting reforms to improve the efficient administration of universal service programs. However, we strongly disagree with any attempt to unfairly stigmatize government programs that help poor people as being excessively inefficient because, simply put, the data does not support that supposition.

The reclassification of broadband in 2018 to a Title I information service, as you know, we supported that. And we took a lot of hits for that support. However, we believe that now the Lifeline program's ability to provide broadband to the country's most needy is in jeopardy. The court has remanded that to the FCC to provide a remedy for the provision of broadband under the Lifeline program. And we urge the FCC to immediately take action in that regard.

In conclusion, I would say that, as you know, last

year was the fiftieth anniversary of the assassination of Dr. Martin Luther King. And we ask the FCC to regulate by compassion, ensure equality, and champion opportunity. We continue to believe that these guiding principles will go a long way toward ensuring universal, nondiscriminatory service for all. Thank you.

MR. COOPER: Thank you, Deb. And James, we're on to you.

MR. ASSEY: Okay, bringing up the rear for a change.

So thank you for inviting me to participate. I want to echo some of what we've already heard. I do think, as we sit here this year, with everything that's going on around us, that there is a lot, even in these trying times, to be optimistic about. When you look back over the last several years in our industry and Jim's industry, and writ large in the communications and Internet space, we have seen really tremendous expansion of opportunity. And largely due to the industry and the imagination of folks all around the country and the significant investments that continue to be made, tens of billions of dollars each year, the Internet seems to continue to be growing, continue to be getting stronger, faster, more capable of doing many

different things that we all fill our lives with on a daily basis.

So there is certainly a positive. And we see if 2020 is the year of anything, it certainly seems to be the year of streaming entertainment. And every day, whether it's ESPN Plus or HBO Now or Peacock or Netflix or Hulu or any of the entertainment options that cross our Internet connection, it seems to me that consumers are getting exactly what they bargained for in these investments, which is continual innovation, adaptation. That is, without question, an unparalleled good for consumers. But it's also obviously very disruptive for industries that know traditional ways of doing things and industries will have to adapt, and they are adapting.

As channels are replaced by libraries, the way in which we interact with content changes. But at the end of the day, the consumer remains the winner.

That's not to say that part and parcel of this expansion has also uncovered some new questions for us to consider and that Jim references when you're talking about the rise of digital platforms and the effect and the impact that they have on the daily lives of consumers and how they are used and the responsibilities of those platforms vis-à-

vis what they were five, even 10 years ago bears consideration, examination. Certainly, it's attracted the interest of policymakers at every level of government, both domestically and internationally, and really brought into relief and challenged some of the assumptions about the debates that we've had over the past five or 10 years. Those debates seem rather pedestrian compared to the debates that we're having today and the effect of technology and both positive and negative on people's everyday lives.

So that's not to say there's always going to be work, which I'm sure many in the audience are glad about, in this space. But the nature of that work is changing and the questions that are being asked, I think, are different and significantly so. And the good news is we don't seem to be seeing any signs of slowing. As we move in the cable industry from kind of the gigabit networks that are built today to the 10-gigabit networks of the future, we still see a lot of opportunity, both for the consumer, for small businesses and for a whole host of industries that exist today and that have not yet even been imagined. So I think we have an optimistic future and I choose to end on that.

MR. COOPER: Thank you. And just so there's no

confusion here, James from NCTA, you're going to be "James" when I refer to someone on this panel; and Jim from AT&T, you are "Jim" today for this panel, lest there be any confusion. That just struck me. I view you as completely separate people, of course, but I just realized that could lead to confusion.

So we're going to probably spend a lot of time talking, when it comes to spectrum, about the FCC today. But I'll start off, Jim, asking you something that's a little more focused on Congress.

In terms of spectrum in the 116th Congress, is there anything that Congress can do now or any priority they should put in terms of spectrum policy and moving us forward and making more available for commercial use?

MR. CICCONI: Of course, they seem to be spending most of their time on C-band and trying to sort that out. And I certainly wish them luck on that.

The issue that cries out for some congressional policy attention is the amount of spectrum still held by the government. We can't be looking at 5G and the needs for spectrum going forward and not be examining ways of accessing, making available or somehow sharing Defense Department spectrum.



If we're to move forward, we also need to be taking a fresh look at some of the previous allocations of spectrum, including the allocation of spectrum to broadcasters, for example. Most broadcast television today, about 90 percent or more of viewership, is over MVPDs. It's not using that spectrum, it's certainly not using it effectively, and it's not using anywhere near the volume of it that they have. And so we ought to take a look at whether that spectrum is still needed by the broadcast industry or whether it's better used in other areas.

I think broadcasters have concluded they certainly make a lot more money from gathering fees from MVPDs rather than committing to free over-the-air broadcasting. But there was a social compact back in the '50s about how that spectrum was going to be used when it was handed over. And much of it is sitting there fallow today.

And that's just one example. But we ought to be taking fresh looks at all of this.

MR. COOPER: Thank you, Jim. I mean, I appreciate your point on what you're saying about broadcast TV. When I turn it on at home and it comes in HD and it's great. But when you start flipping the dials and you get way up

there, or some of the multistreams, you kind of go: "Is anybody out there watching this stuff?"

Deb, do you have any response? I mean, as far as the broadcast side of things. Okay.

(Laughter.)

MR. COOPER: All right. Scratch that.

MS. LATHEN: I think it's an interesting concept, for sure. I also think, though, that there are other areas where spectrum is available. Like Jim, as you mentioned, Defense is sitting on a lot of spectrum. That should also be looked at. I can safely say that that is something that should be considered.

And of course, you have that bigger issue of, once you free it up, who gets it, how to share it. And we also very much support using spectrum to reach rural America. We think that that's essential, and to reach all of rural America. And the question then, of course, breaks down to the policy issue of how the gigahertz are divided up and between whom.

MR. CICCONI: Right. I would add one other point, too. It doesn't help the government's position on spectrum when you have this revolving door at NTIA. They are supposed to be the lead in terms of government spectrum

policy, especially policy with regard to the use of government spectrum. We've had three years of dysfunction in that area. It ought to be a simple thing for the government to address. But sadly, at least until recent developments, it hasn't been addressed.

MR. LONG: Kind of a follow-up question, and I encourage others to weigh in on this as well. But when it comes to spectrum, rightfully so, people have a legitimate expectation that a license will be renewed, absent some sort of bad behavior. But that means that people can tend to sit on spectrum. The C-band proposal that the FCC recently voted on was a great achievement and compromise that hopefully will sustain legal challenge.

But what do you think about the Emerging Technologies framework? It's kind of the limits baked into the Emerging Technologies framework on providing market-based incentives to people to relinquish spectrum and how much latitude does the FCC have to stretch the Emerging Technologies framework any further? Do you think that the C-band proposal is a good model going forward? Is it going to scale to future applications? Or do you think Congress needs to weigh in here and give the FCC more latitude to share some of this wealth with outgoing spectrum holders?

MS. BROWN: All right, well, I'll jump into that rat's nest.

MR. LONG: Please.

(Laughter.)

MS. BROWN: I think we are going to need to be patient here and see if the FCC's paradigm takes us all the way to a happy conclusion at the end of the year on C-band and see if we have any legal challenges. I would like to think that the FCC has crafted something on the C-band that's going to stand up to the current policy debates, to any legal challenges that happen, and we'll find out where that is. That's going to be an important precedent.

As these airwaves get more crowded, you do hit these scenarios, and it's true in the C-band, where it's very tough to clear the band. It's a very complicated economic problem. And if you don't provide incentives for people to act, for the incumbents to act, you will get foot dragging.

While it doesn't apply in every single band clearing case, this is going to be an important test of the FCC's ability to encourage incumbents to move forward more quickly than they otherwise would. I'm looking forward to seeing what happens and I'm rooting for the FCC order.

MR. CICCONI: We think Chairman Pai has done a really terrific job on the C-band in a very difficult situation. And I know he's probably up there testifying right now, defending the plan. If the objective is to get spectrum deployed, especially for 5G, he came up with a way of doing it.

I don't think it's necessarily a model; this may be more of a one off, just because of the unique characteristics here and the unique ownership. And I suspect, this being an election year, that it's going to get a lot more attention when you consider the amount of money going to a set of foreign companies here. But overall, I think his proposal serves the national good well and it's probably the best of the options that we've seen out there and we wish him success on it.

MR. COOPER: Now, in some of the discussion that we've had, there have been some interesting points made about Department of Defense spectrum and functionality at NTIA. Kind of tying in perhaps with both of these, we've seen in recent spectrum proceedings in different bands, there's been the issue of the involvement of IRAC, the Intergovernmental Radio Advisory Committee. And that's the entity whose job is to get different federal agencies

together, looking at proposed uses that touch in federal use in some way.

Maybe I will just put this one to you again, Jim, and I welcome any response. But do you think there needs to be, perhaps, a look at reform of this process? Or do you think perhaps this could be resolved with NTIA leadership? Because there has been some concern about this process. They go through a five-year thing where they look at proposed uses of spectrum. You think it's done and then you have certain agencies going public suddenly, seemingly at the last minute or after the last minute, raising objections they at least claim are new. And it becomes very confusing for all of us that are trying to follow this. So at least from the process standpoint, do you have any views on perhaps a way toward reform? Is that necessary or is this more of a personnel issue?

MR. CICCONI: I'm going to defer to Mary on that one.

(Laughter.)

MR. CICCONI: I'm going to hide behind the interim label on that one.

But I would reiterate that, look, you can't expect any process to work if the person who's supposed to be

leading the process is absent or you have a series of people acting in the position, or a situation where someone that does not have the responsibility nor is Senate confirmed is trying to make the calls on that. I think it has been, at least from the outside, seemed fairly dysfunctional on these.

Any interagency process requires people from the agencies to participate. And when you don't have any degree of continuity or, frankly, a Senate-confirmed person with authority in that position, it's sure hard to make policy.

MS. BROWN: I agree with all of that. I am going to make one point in defense of our friends at NTIA and throughout the federal government, which is, we tend to forget this, but it is absolutely true, I see it every day in my job, engineering decisions, major engineering decisions are always made in a consensus process. And where you don't have consensus, decisions don't get made.

And I think some of what we've seen in terms of continued objections when we thought we had a decision is just the absence of consensus, right? You have some set of engineers who's taking a more conservative view of whether an interference, harmful interference will occur, you have

another set of engineers that is satisfied that a different set of criteria will meet the concern, but there hasn't been consensus inside the federal government. That is a tough problem in the current governance structure of NTIA, who is more of a coordinator than some of us would like, right?

It would be great if NTIA would have the same kind of authority that the FCC has over commercial spectrum, where the FCC is the decider. But I think that's a continuing concern.

I know, I sit on the CSMAC, the Commerce Spectrum Management Advisory Committee. One of the questions this year that we're looking at, we've been asked to look at by NTIA, is this governance question. How do we move forward to get that kind of certainty? Because, as I said in my opening remarks, lurching toward spectrum decisions, which is what we've seen increasingly, whether it's on the government side or on the commercial side with C-band, is not a great way to proceed. So I hope for better days ahead. I'll stay optimistic, like my friend, Mr. Assey, I will stay optimistic and say I hope for better days ahead.

MR. LONG: Thank you. This next question I am going to first direct to Deborah and James. You may all



want to weigh in.

I want to ask broadly about licensed versus unlicensed spectrum. We've got a couple proceedings ongoing now, 5.9 gigahertz, 6 gigahertz, where unlicensed spectrum uses are being considered. You don't have the benefit of an auction and the marketplace weighing in to say: "Yes, this is valuable." But we've got people certainly advocating for more unlicensed use.

But at the same time, a spectrum licensing regime is critical, it manages a limited resource, it avoids problems of the commons, and it provides licensees with the certainty that they need to make the significant investments in infrastructure.

So as we look at Wi-Fi versus licensed use, we look at Wi-Fi 6 versus 5G, what principles, were you the decider, would you apply when trying to evaluate what's the better use for this particular slice of spectrum, unlicensed or licensed? And how do we make sure that the race to 5G is fueled with adequate midband spectrum while at the same time Wi-Fi 6 is given the 160 megahertz channels it needs to really flourish?

MR. ASSEY: Yeah, I'll take a shot. The answer is, obviously, that we need both and that we need a balanced

spectrum policy that will respond to the needs of licensed spectrum holders but also that recognizes the tremendous value in unlicensed spectrum. And whatever advantages unlicensed may lack, I do believe it has the advantage of history and the tremendous innovation that was unleashed by the government when it created the U-NII and 5 gigahertz that has revolutionized how people use devices and connect to the Internet.

In fact, I don't think people even distinguish between Wi-Fi and the Internet. To them, Wi-Fi is the Internet. And let me tell you, as the number of devices in our home continue to proliferate, that feeling is only going to increase. So all of these technologies are flavors of ice cream in a certain sense. We are going to need sufficient spectrum, not only for licensed users, but also to support unlicensed and gigabit Wi-Fi because that is really the end jumping-off point for all of the tremendous investment that is going into 10G networks and 5G networks and more fiber across America. That is what will serve as the backbone for our economic strength and security in the future.

So, it's easy to pose these as either-or propositions. But in reality we have to figure out how to

do both. And when you're talking about 6 gigahertz and 5.9, those are just tremendous opportunities to bring new spectrum online for unlicensed users. We haven't had a new unlicensed allocation since the iPhone was created. So, given the tremendous explosion in growth that we've seen, the tremendous utility that we continue to see every day in Wi-Fi spectrum, a balanced approach is the right policy.

I take comfort in the fact that Congress appears to recognize that in the bills that have passed Congress, I think of MOBILE NOW and Chairman Thune recognized the need for a balanced spectrum policy. And I think it's incumbent upon all policymakers to try to follow that path.

MR. COOPER: Deborah.

MS. LATHEN: Yeah, I think in large part, we would agree with what James, not Jim, has just said. That doesn't mean that I disagree with you, Jim.

But I find it exciting, the idea that we're talking about releasing spectrum so we can have much more innovation. That should be done as soon as possible. But I think the big fight is going to come, once it is released, who gets to use it and for what. And we are in the process. We have been holding meetings with various constituents to actually discuss the usage of spectrum,

getting input from companies.

We understand that the cable industry probably would like more spectrum so you can do more content streaming, things like that. We also understand from the Congressional Black Caucus and others that they really want spectrum to reach the rural communities.

And so as James has said, this is really a balancing act. But we believe in the end that all consumers are going to benefit from this when the government gets it right.

MR. COOPER: And James, particularly over the 6 gigahertz band, actually I want to ask, and I want to hear your take on this, Jim, as well, there's this proposal that has come out as well to make it available for licensed use. And wireless carriers have come in, suggesting that perhaps a portion of this could be licensed and the remainder unlicensed. So what's your response?

MR. ASSEY: My response?

MR. COOPER: Yes.

MR. ASSEY: I agree with the Chairman's proposal to make it available for unlicensed use. Largely, when you look around the world community, I think only China and those who follow it are the ones that are pushing for a

licensed allocation in this band. We have significant incumbent interests in that band as well that I think we are able to work around when it comes to the use of unlicensed spectrum. And we have other bands like C-band and elsewhere where we can focus on licensed users. So that's our position.

MR. COOPER: Jim, I'm interested in your take as well.

MR. CICCONI: Sure. I agree with what James said earlier, we need a balanced approach. Licensed and unlicensed are both vitally important. If we disagree, it's probably on the 6 gigahertz band. This is a huge amount of spectrum and there's more than enough there to serve both needs. And so we'd argue again for that same type of balanced approach on the 6 gigahertz there so we could get some spectrum out and licensed, the government gets some revenue. This would assist in 5G builds. At the same time, it would provide a good chunk of spectrum out there for unlicensed.

MR. COOPER: Oh, Mary.

MS. BROWN: Not surprising, Cisco has a view on this as well. And I would just start with a technology point about broadband in America. So James told you that

Wi-Fi hasn't had any new spectrum since the iPhone was invented. Actually, four years before the iPhone came out was our last allocation of spectrum. We have been innovating like crazy to try to make do with the spectrum that we already have, and we're at an end. In order to keep up with DOCSIS 3.1 and eventually DOCSIS 4, which is on the drawing boards, and in order to keep up with the fiber speeds that AT&T and others are putting in their fixed networks, if we don't have more spectrum than Wi-Fi in your home and office is going to become a chokepoint. And I don't think people want that. I don't think Chairman Pai wants that, I don't think anybody wants that.

So the point of opening up the 6 gigahertz band is that there is an unlicensed underlay underneath a lot of fixed links and mobile services that are already there. There are over 200,000 fixed links in that band today. And the question is: Can you, from an engineering basis, put an unlicensed underlay in there without disturbing any of that environment, allowing the common carriers and others who are using the band to continue to build their fixed links while keeping unlicensed in the band? That's critically important to the industry's future.

We do not think that it's Wi-Fi versus 5G. We

think that, very much like Chairman Pai has said in his 5G Fast Plan, that unlicensed is part of our 5G future. Not only is there going to continue to be an awful lot of offloading to Wi-Fi as we move to 5G, but we need it because our broadband speeds are increasing. So we don't see it as "either-or"; we see it as "and." Thank you.

MR. LONG: Thanks, Mary. A quick follow-up. Earlier, you mentioned actually deploying spectrum and getting it into the hands of users and network operators. The 5.9 gigahertz band promises the first unencumbered by technology and interference protecting measures, a 160-megahertz channel. That was a mouthful. But 160 megahertz, to fulfill the early promise of Wi-Fi 6. Do you see that coming online quickly and do you see a single wideband channel being effective in delivering Wi-Fi 6 and what it can offer to the masses?

MS. BROWN: So the 5.9 band is a difficult problem. It will be interesting to see how the FCC cuts the Gordian knot. And by that, I mean, they are proposing to continue in the band a silo for the intelligent transportation services that would be presumably used for safety of life. So they propose a cellular v2x channel 20 megahertz wide. It's going to be used to help prevent accidents which is, I

would think, a good thing. We would all like to have less accidents.

However, radio being untidy, if you're going to protect that 20 megahertz, that means you have to have rules about the adjacent channel use. And how the FCC solves that problem is going to be critically important. Obviously, the cable interests would love to see the unlicensed use at the bottom part of the band unconstrained like U-NII-3.

As a technology matter, I'm not sure that happens if you say that you have to protect that 20 megahertz for ITS use. So these are tough problems. Will the FCC resolve them quickly? They certainly can, I don't know if they will.

MR. LONG: Okay.

MR. ASSEY: I'd just say I may be a little bit more optimistic. And I think we have to go back from the premise that, for the last 15 years, we've been dealing with essentially a vacant lot when it comes to spectrum in 5.9. We have made decisions going close to two decades ago about how much spectrum we would need for what particular technology. And they turned out to be completely wrong.

So kudos for Chairman Pai and the Commission for



agreeing to revisit this, to look at it, to recognize the proximity of this spectrum to other Wi-Fi, really giving us the capability, on a near-term basis, to create a new gigabit Wi-Fi channel. And I don't disagree with the need to figure out some of these adjacent channel interference questions. You had the same issue with respect to the U-NII-3 band and the 70 megahertz of DSRC now. And so, it's not like that is a new issue.

But I'm confident that the engineers will be able to figure this out and that some accommodation can be made. And again, we all want to ensure that we have capabilities that will be able to be used for safety of life and crash avoidance.

But I do believe there is a way for engineers to work this out and for us to figure it out in a way that will, again, put the spectrum to work.

MR. COOPER: All right, I think we've exhausted spectrum here for the time being. We'll move on.

MS. BROWN: Their eyes are glazing over.

MR. COOPER: I want to direct a question again to you, James, and it has to do within the video policy arena. The FCC has proposed to update its cable leased access regulation. For those who may not be familiar, it's a set

of rules that requires cable operators to lease channels or channel capacity to independent or third-party entities or programmers with maximum rates set by the government. So the FCC is going through a process now it's proposed to update those rules.

And an interesting thing it pointed out in its notice, that it believed that First Amendment free speech constraints required it to update its rules and should guide that process. That might strike people as a bit counterintuitive or at least as odd. We're talking about cable operators and they're making channels available.

So can you explain and unpack that, the First Amendment view that you would have in this regard of the cable leased access?

MR. ASSEY: When you're talking about the premises of scarcity and the control of cable operators over content that flows over networks, that seems pretty antiquated in a world, as I mentioned at the outset, where anybody with an Internet connection has the ability to post, to send information at rapid speed to as many people as they want, it seems.

So I think folks generally recognize that we're still probably living under the vestiges of a time when

First Amendment jurisprudence applied differently to cable operators, and I think that time is certainly coming to an end. And I believe that the concerns that were raised by the Commission with respect to the constitutionality are certainly valid and will increasingly be explored.

MR. COOPER: Okay, really quickly just before we wrap up video and move on to privacy, Jim, in Congress we've seen the appropriations bill had to deal with broadcast TV and some of these rules that touch on satellite. That maybe wasn't as much of an interest to AT&T previously as it is now, at least hearing AT&T's voice on these issues.

Do you see any next steps as far as dealing with some of the legacy regulation that's out there regarding broadcast, retransmission consent, some of those rules out there? Or what would you see as a priority of reform?

MR. CICCONI: Oh, my favorite topic. There has certainly been a lot of efforts to take a fresh look at retrans. I put some of this in the category of legacy rules and regulations that go back 20 or even 50 years that just cry out for a fresh look.

You have competitive markets now. The streaming services certainly are proving that on a daily basis. It's

time we took a fresh look at some of the advantages that were given to broadcasters as part of that social compact I mentioned earlier, whether it's spectrum or other things.

The status quo, I don't think, is sustainable. Because the constant blackouts, and there were hundreds and hundreds last year, and certainly beyond that the threats of blackouts to stations, have ticked off customers, understandably. They are leaving the MVPDs for streaming services. At the same time, the situation we find ourselves in in blackouts is that the leverage all goes one way.

The broadcasters still have a geographic monopoly. Does that make any sense today? It's not really a free market if they black us out and we can't contract with another broadcaster to bring in a distant signal so somebody can watch Monday Night Football or NCIS.

So I'm not terribly sympathetic when broadcasters say: "It's a free market, right to contract." Well, that's fine. But you've got a geographic monopoly bestowed by the government. And it's time we took a fresh look at that.

The other aspect that should bring about a fresh look is that local broadcasting is not what it once was. These stations are not owned by locals nearly to the extent

they were 50 years ago. They are being bought up by conglomerates and, frankly, hedge funds, for the sole purpose of profiting from retransmission fees.

And so you have this dynamic where consumers are caught in the middle and they're the losers, okay? They get blacked out. If the ransom is paid, then the consumers end up with a higher bill. And then they cut the cord, and everybody is a loser at the end of the day.

So when I talk about level playing field in these areas, I truly think that the government, legally, put its thumb on the scale years ago with the broadcasting industry and it needs to take a fresh look at whether the policy of preferences that they gave back then are still justified.

I'd argue the same thing when it comes to digital platforms and the preferences that they were given in the '90s. It might have made sense at one point to provide the Section 230 safe harbor to digital platforms when the Internet was nascent. It makes very little sense today when you have dominant platforms under antitrust investigation that have massive advantages vis-à-vis their bricks-and-mortar competitors. Again, that cries out for a congressional reexamination, which we are pleased is actually being undertaken right now.

MS. LATHEN: I know you're supposed to ask the questions.

MR. COOPER: No, go ahead, Deb. Please, yes.

MS. LATHEN: I first have one for Jim. And first let me say, I have aged with retransmission consent. I mean, it was there when I was at the FCC and it seems again to be like a net neutrality issue.

But my question really would be, with respect to retransmission consent, in the ideal world, in your opinion, what should it look like?

And then, additionally, we have only like six or seven minority broadcaster stations that are around now. And to a certain extent, they depend upon the revenue, the dollars from retransmission consent. They're a vital part of their budgets.

So in your super world where you have the perfect retransmission consent regime, what would it look like? And what if anything would be done to protect these small broadcasters?

MR. CICONI: Well, I think the major threat to these small broadcasters right now isn't any policy undertaken by AT&T; I think it's the fact that they're being bought up by these conglomerates that are by and

large not minority owned. And so, the degree to which they face a threat, or they may be going away, it's not because of retransmission. If anything, the revenues we pay them are helping sustain their operations and at least giving them an alternative.

In terms of what a broader retrans reform would look like, I think it's encouraging we've got some legislation up there on a bipartisan basis that's being debated. And we've not laid out a particular plan. Frankly, I'd be happy if we'd at least start with some form of anti-blackout legislation that would discourage stations from doing this and holding consumers hostage. At least some way to level up the playing field so if somebody did, for example, decide to pull the rip cord and black out a station to make their point, we'd have the opportunity to contract with another provider. You might not get your local news and sports, although there are usually three or four other channels that can provide that on top of the Internet, but you would be able to see the Monday Night Football and NCIS.

And so rather than hold consumers hostage, rather than talk about a free market and right to contract and preach on those subjects, let's have a free market. Okay?

If you want to black out, fine. Okay? But give us the contractual capability to bring in a distant signal. That's a free market.

MS. LATHEN: Well, right now, currently, I mean small consolation, but during sweeps they can't black you out. I know it's a small consolation. Thank you.

MR. CICCONI: Small.

MR. LONG: I'm sure we could talk about this more. But I think we want to get in a couple questions about privacy.

Commissioner Wilson earlier laid out six principles that she would like to see in federal privacy legislation. But it's an election year and, according to Chairman Wicker last week, he didn't see a whole lot of progress being made in the Senate Commerce Committee on privacy legislation.

Legislation in the House has addressed her points five and six, which are federal preemption and private right of action by leaving those sections blank. That's how they've been able to make progress. A long windup.

How likely do you think it is that the privacy legislation might move forward this year? And given the CCPA and its tortured history now -- it's been in effect since January, but the rules hopefully will be done by the



deadline in July -- how urgent do you think it is? How big of a stick do you need other than the CCPA to pass federal legislation? And if not now, when?

Deborah, let's start with you.

MS. LATHEN: Well, first of all, it is clearly obvious it is urgent. And it should be now. But we live in Washington and we know how the Hill has been dysfunctional for a very long time. Last time, they said the first thing on their agenda was to pass a privacy act, in the last Congress. And they didn't.

So I am not hopeful that it is going to be passed in this Congress. But I find it very, very upsetting. Because we see more and more violations of consumers' rights. And they're getting more and more egregious.

And as I earlier said, the minority communities are the most surveilled communities. Okay? And I'm talking about privacy and data, data collection, at the same time.

MR. LONG: Sure.

MS. LATHEN: The longer that it takes, the more violations we're going to have that will be long-term damaging to our democracy. And the only thing that's going to change that is going to be the 2020 election and who gets in office, essentially.

MR. LONG: Anyone else want to weigh in on that?

MR. CICCONI: I'll take a little shot at it.

Deborah is probably right, and you are, in terms of the political difficulty of doing this in an election year. At the same time, I do think you're seeing an ongoing effort on the part of members on the Hill to pull this together.

I guess the conventional wisdom du jour is that the state attorneys general are weighing in to such an extent that that may jam things up. And it's certainly possible with an election year.

At the same time, we have, and the Congress has, historically been able to deal with their issues of preemption in very complicated areas. In fact, some areas, like environmental, far more complicated than this. So I continue to believe there's a pony in there somewhere. And whether we're able to pass something this year versus use this year to try to build a consensus for the new Congress, I am fairly optimistic that something does get done.

It is a serious problem for the economy if companies across the board, whether they're digital or bricks and mortar, have to comply with 50 different regimes. I would also add that an additional argument for federal legislation is I'm not sure CCPA got it right. And

I don't say that because we have any particular problem with it or with complying.

But the notion of basing much of privacy law on the sale of information, I think, misses and has missed a larger point: Several of the most dominant platforms really don't need to sell information because they control it end to end. And it actually ends up perversely enhancing their dominance against competitors who, if they're going to compete, have to start out with the sale of information or to monetize their data.

And so the danger of CCPA in my mind in models like that is that it could inadvertently entrench platforms that are very dominant today and in not just controlling information end to end but, frankly, on a daily basis being called out by the government for the abuses inherent in that. And yet, we're sitting here considering a regulatory and legal structure that says that's okay as long as you don't sell it. That, to me at least, calls for at least some reassessment as we consider federal legislation.

MR. ASSEY: Yeah, I'd just agree with Jim. I hope there's a pony in there, too. But what makes this incredibly difficult is not just the schedule. What industry is not touched by this issue? It really is going

to cut across the entirety of commerce and in ways that are going to make a lot of people concerned. The shame of it all is we spend so little time these days talking about what the right framework is and more time on who's going to enforce it, whether the agency should do it, or whether or not we should have private rights of action. We're missing the boat on whether we can create new consumer norms of behavior that will provide constructive protections. This isn't probably going to be the be all and end all, the last privacy bill that will ever be considered.

But I think that, from a consumer perspective as well as from a company perspective, getting greater consistency on the books and some operational certainty for companies that are going to have to comply with this can create a win-win strategy if we're courageous enough to go find it.

MS. COOPER: All right. Are there any members of the press that have any questions that they would like to pose to the panel before we wrap up here?

QUESTION: Hi. My name is Monica Hogan. I'm with Communications Daily. And I was hoping that you could expand on some of the dangers or pitfalls of too much surveillance, especially as it relates to minority

communities?

MS. LATHEN: Sure. I could probably spend the afternoon talking to you about it. But I won't.

Look, we've seen one company in particular, a platform company, they decided that, in fact, the 1965 Civil Rights Act didn't even apply to them. They've now since rescinded that decision. And we saw that occur with the advertising on that platform with respect to housing. And we all know that they had to enter into a consent decree with the government but that they were not going to use algorithms that were biased against minorities in terms of renting.

But we also see it, I think, in public housing, where they started to put surveillance cameras up and they were taking pictures of everyone who entered the building as guests. And there have been some actions taken to at least stop that in public housing.

What's the danger of that? They use facial recognition. As has been noted, many times facial recognition does not work with people who have my hue. They are not very good at identifying people of color. But also a lot of this information ends up being turned over to government agencies, particularly enforcement agencies,

that may not use it appropriately. In the sense that, when I went to law school, we still had a Fourth Amendment that dealt with search and seizure and we still had First Amendment rights.

And I'll give another example. It doesn't even -- this is not just a minority issue. I mean, it's broader, in terms of we are a surveilled society. And I was reading, I think it was in the *New York Times*, which I still consider to be news, an article recently that was about a guy, he's just riding his bicycle. He's riding his bicycle and he has a Fitbit. He gets contacted by his ISP, saying: "The police want me to provide your name and information because you were spotted riding a bicycle." This guy is just going out for a bike ride.

And then he learned that the whole area is being swept by the police, based on Fitbit and other kinds of information that individuals have. This man is now saying, I've got to hire a lawyer to help me to figure out how to respond to this, when all I did was take a bike ride and have a Fitbit on.

We live in a society, I think it's common knowledge that African-Americans are stopped in traffic incidents more frequently than anybody else. So if you take and

misuse technology in that regard, how do we protect the hard fought for rights under the Civil Rights Act, the rights that we are guaranteed under the Fourth Amendment and the First Amendment?

And, I'm sorry, that's a long answer to your question. But I'm pretty passionate on the surveillance issue.

MR. COOPER: Thank you. Thank you, Deborah.

And we have time, very quickly. One question left for members of the press before we close this.

A question for a quick answer.

QUESTION: Gary Allan from *Broadcasting & Cable Multichannel News*, and I'll write for something else, too.

But mainly for Mr. Cicconi, broadcast spectrum. Now with all the broadcasters' plans maybe for ATSC 3.0, which puts them into some other very competitive fields, where is that going to play out? What kind of future regulation or legislation do you or anybody see for the broadcasters getting into a different business?

MR. CICCONI: You asked for a short answer. My short answer would be, I don't really know.

(Laughter.)

MR. COOPER: All right, well, thank you. That

concludes today's panel. I want to thank all the panel participants. And please give them your thanks as well.

(Applause.)

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