



**The Free State Foundation's
Fifth Anniversary Celebration Lunch**

*Communications Law and Policy in the Digital Age:
The Next Five Years*

Keynote Address: Rep. Marsha Blackburn

**October 12, 2011
Mayflower Hotel
Washington, D.C.**

MODERATOR:

RANDOLPH J. MAY, President, The Free State Foundation

PARTICIPANT:

DEBORAH TAYLOR TATE, Distinguished Adjunct Senior Fellow at the Free State Foundation and former Federal Communications Commissioner

KEYNOTE SPEAKER:

CONGRESSMAN MARSHA BLACKBURN, Vice-Chair, House Energy and Commerce Committee's Subcommittee on Commerce, Manufacturing, and Trade

* 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. MAY: We are going to move right in to our next keynote speaker. I'm delighted that a colleague, Deborah Taylor Tate, is here to introduce Congressman Blackburn. So this is not going to be a long introduction of the introducer, and I'm not going to introduce Congressman Blackburn.

But I want to point out, for all of the speakers, we've got the nice brochure that hopefully you picked up on the way in. And we've got the more extensive bios. You can find out where everyone went to school and all of that type of stuff.

But I do want to just say about Debi Tate, that all of you know she had a distinguished term as an FCC commissioner, and did a lot of good things while she was there. But now in her post-FCC life, she's a Distinguished Adjunct Senior Fellow at the Free State Foundation and contributes to our work. We're proud and pleased about that.

I'll just mention two other things quickly. She's an ITU World Telecommunications Information Society laureate, which is an honor. She also has been hanging out with Geena Davis and these other Hollywood types to promote really a very good cause, the Healthy MEdia Commission.

So without further ado, Debbie is going to introduce Representative Blackburn.

MS. TATE: Thanks, Randy. And thank you for all you did while I was at the FCC to keep me on the straight and narrow.

Lest you all are concerned with the Healthy MEdia Commission being

about regulation, it's not. It's all about getting the industry to come forward with something really positive -- a blueprint for a positive and healthy media, especially as it relates to girls and women.

I was really, really excited that I was able to be here today and to introduce Congressman Marsha Blackburn. I live not far from her district so I'm really sad not to be able to say that she's my congressman. Because she, as you all know, is just incredible, whether it is regarding data security or privacy issues that are near and dear to me. And again, I'm not about regulation. But as you all know, I'm all about kids and their privacy rights.

She has been going around the country, as you may know, having roundtable discussions from New York to D.C. to Silicon Valley. She's conservative, market-oriented, principled, staunch, tenacious, and an outspoken leader on tech and telecom issues.

Many of you know that she led the fight when I was at the FCC with Robert McDowell. We were trying to stop net neutrality when it started and continued to do that for what seemed like an interminable period of time. And she is still opposing net neutrality. I'm sure she'll talk about that.

Something that you may not really realize is what a champion she is for our local economy and the songwriters and the musicians. She actually founded the Congressional Songwriters Caucus. So she's not just a thinker or a sit-and-reader, although I think she was the only one who read the entire Obama healthcare bill from cover to cover. But she is really a doer.

Just to know that, you could ask the 101st Airborne Division because she frequently flies over to Iraq to support our troops over there. That's precisely why we're so glad that she's here because she is a supporter of our freedom and the rule of law. And I'm just so proud to introduce Marsha Blackburn.

REPRESENTATIVE BLACKBURN: Thank you. I appreciate that, Debi. And I appreciate the opportunity to be with all of you and to make just a few remarks and take some questions.

Randy, I want to say congratulations to you and the Free State Foundation - five years. I think that's something to be appreciated, and we certainly appreciate that you're there reaching out to Capitol Hill and supporting free market principles. It's important to do.

I've been asked to talk a little bit about the regulatory environment in Washington and then to weigh in on why we apply and must continue to apply some conservative, deregulatory principles to the technology arena. We have seen such an explosion of regulation with this administration.

As we were working on some hearings this week, we realized that in the past six months, just this year, the federal government has completed an astounding, get this, 1,827 rulemaking proceedings. Unprecedented, absolutely unprecedented. Every new rule, mandate, regulatory edict, whether good or bad, is one more obstacle for our small business owners, entrepreneurs, for the job creators that are out there.

Every time government moves forward with a rule, we are posing four questions in our oversight in the Energy and Commerce Committee: What's it going to

cost? Is it going to create or destroy jobs? Will this cost business money to implement? Is this rule a regulatory tank designed to kill an ant-sized problem? So that is the approach that we are taking.

We as conservatives know that government's default position is to regulate now and then think about it later. We have seen that happen time and again. And we also know that this administration truly believes that they know what is best for us. But we know that what they're sending out to the marketplace is not only costly, it is dangerously arrogant in the manner in which they are approaching things.

The total cost of regulations has increased to \$1.75 trillion a year. That's nearly twice what the IRS collects in taxes, nearly twice. For firms with fewer than 20 employees, the per employee cost is now set at \$10,500 per employee. And it's dangerous because the future success of our free market economy has an inverse relationship to the size of government. You can look at any economy on the face of the earth. History teaches us the bigger the government, the smaller the private sector.

And that holds especially true and is of special concern for our dynamic and competitive tech industry. We all care about the future of this innovative industry, so before we drive a regulatory tank into a thriving American industry, I think that we all need to take a deep breath.

Most people don't realize that the FCC's reach extends to one-sixth of our economy. We hear that stat a lot about healthcare: "Well, it's a sixth of our economy, so we need to be careful what we do." Technology is one-sixth of our economy also. So, therefore, we should be careful.

When you look at the last 50 years, many of us haven't stopped to think about FCC rules. Measured in pages, they have grown 800 percent over the last 50 years. The FCC's sister agency, the FTC, now has its fingers deep into the privacy debate, data security, and control over advertising practices, just to name a few things. Looking at dual tracks, at FCC and FTC, but just like in all sectors, excessive regulation kills regardless of who your regulator is.

What drives the tech industry? We all know that it is constant change, rapid innovation, creative destruction, and revolutionary products that consumers are wanting to see in the marketplace. Government, home of the dysfunctional U.S. Postal Service, fundamentally misunderstands this industry. Government is not driven by change, by rapid anything. The fact of the matter is we don't know where this industry is going.

When we talk about technology, we don't know how technologies will converge. We don't know what competition is going to look like in six years, much less six months, and we don't know what products consumers are going to want in the future. What we do know is that they want the next, better, faster.

It comes home to me when my two-year-old grandchild looks at me and says, "Marshie, you need an iPhone."

Government knows so little, reacts so slowly and reacts so poorly, that government should stop pretending that it has all the answers and knows how best to regulate.

One of my very favorite economists ever, F.A. Hayek, wrote "The Road to Serfdom." As I recently told a college graduate, that is s-e-r-f, not s-u-r-f. But listen to

this quote. I think it's great. "The curious task of economics is to demonstrate to men how little they really know about what they imagine they can design," end quote.

Look at the law of unintended consequences, and be thinking through to the end. I think that we would all agree that Obama's bureaucrats argue that their rules are going to help protect, preserve and sustain the technology sector. But nothing could be further from the truth. They probably are not thinking all the way through to the end of the problem, nor are they looking at the unintended consequences.

The technology sector moves 500 times faster than the detached delusions that dominate the executive agencies spread around Washington, D.C. Sadly, Obama's bureaucrats are willing to justify all regulations under the banner of public interest. Their political ends justify whatever regulatory means they enact.

In fact, to justify their purpose, they invent new problems and regulatory responses to everything from green energy to the incandescent light bulbs, lead in four-wheelers, privacy settings on mobile devices, marketing of athletic toning shoes, and what we're covering today -- advertising for children's cereals.

The FCC's so-called net neutrality decision was a hyper-reactive example of what happens when government creates a problem and then invents a solution that they think will someday fix it. What is it really? It is a freedom-destroying Internet iron curtain.

In response to a question I asked at a recent hearing, Commissioner McDowell said the so-called net neutrality rules were indeed outcome driven. It's time for government to stop pursuing social outcomes through the regulatory process. It's time that

they stop the arrogance. It's time that they take a breath and embrace a little bit of regulatory humility. And we would appreciate some statutory obedience along the way, also.

So how do we respond to this? First, the government's default position, especially when you're looking at the potential for jobs growth, should be do no harm, just do no harm. When we look at the private sector, we must oppose any government solutions that hinder innovation and job creation. In addition, we must ensure that bureaucrats in the agencies don't regulate and make rules outside of their authority.

Moreover, we need to put jobs at the forefront of the regulatory debate. The country wants us to focus on innovation and job creation, but activist bureaucrats have truly bolted a restrictor plate to our economic engine. And they are pushing jobs growth further and further off the tracks.

Here's an example. A five percent reduction in the regulatory budget is estimated to result in about \$75 billion in expanded private sector GDP each year with an increase in employment by 1.2 million jobs annually. Just a five percent reduction. This is what lack of certainty is costing the economy on average. Eliminating the job of a single regulator grows the American economy by \$6.2 million and nearly 100 private sector jobs annually.

Second, government needs to respect private industry. A conservative vision concerning tech issues assumes the imperfection of mankind and a preference for markets, not politics, to drive the outcomes. I would suggest that if politicians and regulators were ineffective at engineering society before the digital age, they might not be

the best at keeping pace in this new era of U.S. technological progress.

Job creators are rapid responders, and they make decisions. On the other hand, down at 1600 Pennsylvania Avenue, the popular opinion is: let's committee this to death. How long can we keep this thing in committee? How long can we keep it in the agency?

Now, Debi mentioned net neutrality. That's a great example of how long they can keep this under their wraps and work it through their process. Their notice of proposed rulemaking, the comment period, OMB signoff, publication in the *Federal Register*, and enforcement began, remember, two days before Christmas, and they're going to finish this process four days before Thanksgiving.

Now, as we have watched this and talked about it all year, I have decided the FCC is operating on some kind of turkey time. They thought that this was going to be the Christmas gift to all of us last year. And this year, they want us to thank them for their protections that they have brought our way.

The tech industry is infinitely more responsive and better equipped to meet consumers' needs, wants, demands, interests, and desires than the federal government. Further, we need a new way of doing business that flips the government's regulatory presumption on its head. New rules should complement market regulation only when true harms and market failures are identified.

Third, we need to streamline government rules and regulations to better reflect the competitive and dynamic characteristics that define the tech industry. Times have changed. This is not a 1950s economy. It is not an industrial economy. That means

Congress must take the lead in getting the regulatory agencies away from duplicative regulation. Congress must insist on the repeal of outdated and unnecessary rules.

We've got to pick up the pace to address legacy regulations and examine the ways to make the FCC more relevant to today's competitive realities, leveling the playing field for everyone so that they can operate and compete all under the same set of rules. Government should neither pick winners and losers on the front end, nor practice selective and excessive enforcement on the back end.

Thankfully, the Free State Foundation has led the conservative battle cry for deregulation. In the end, you don't change your playbook when you're winning in the fourth quarter. America's playbook for economic prosperity is very straightforward. Let the American people and the American workers and American job creators do what they do best. Get government out of the way, and allow them to create, to innovate, to dream big dreams of what the next best thing is going to be.

Let's embrace what has always made America great, our ability to define and solve problems in the marketplace. To revolutionize industries and to meet the needs of consumers, those should be the principles that govern any new legislation. We're fighting for those principles in Congress, and we are delighted that Free State Foundation is there to help us in that fight.

Thank you for allowing me to be with you today. And, Randy, I'll be more than happy to take any questions.

MR. MAY: Thank you. We appreciate those remarks very much. And I'm glad you mentioned Hayek because we usually try and make sure sometime during a Free

State Foundation program that someone does. You did that. We appreciate it, and when Senator DeMint was here, he talked about creative destruction, referring to Schumpeter's famous phrase. So we've got those bases covered, which we believe is very important, and thank you for that.

One other thought came to mind while you were speaking. You were talking about the FCC's processes and how they're slow in today's rapidly changing technology environment. That reminded me of something Michael Powell said back in 2000, right before he became chair. He was giving a speech at an event that we were hosting, and he said, quote, "Our bureaucratic process is too slow to respond to the challenges of Internet time."

That was a quote, and it's even more true now.

Well, we have time for a few questions, so we've got a mic. If you'll raise your hand, identify yourself for the record.

MR. HYMAN: Thank you. Mark Hyman, Sinclair Broadcast Group, including Nashville's Fox 17, and I want to continue the theme that was asked of Senator DeMint. There's a movement underway on Capitol Hill to perhaps provide authority to the FCC to auction some portion of the spectrum, purportedly to make it available to the wireless industry.

Just in the last couple weeks, Citigroup released a detailed analysis claiming that the wireless industry has accessed 838 megahertz of spectrum, is only using 192 megahertz and is not using that efficiently. Having said that, would you agree it makes sense that before the FCC does anything with spectrum, auction, sell, reassign or what

have you, that first NTIA and FCC should conduct detailed audits to determine where spectrum is being used, unused, underutilized and lies fallow?

REPRESENTATIVE BLACKBURN: I have been on record for quite a while of supporting a spectrum inventory to see where we are. What we want to make certain is that the spectrum that is out there is used appropriately.

It is absolutely amazing when you look at where we'll be at the end of the decade. You've got a trillion wireless devices that are out there. As you look at the developments that are taking place with mobile TV, I used the example of my two-year-old grandson that's frustrated with my BlackBerry and wanted me to have an iPhone. The iPad is something that these two grandchildren, a two-year-old and a three-year-old, use all the time. They like taking this with them.

So if we've got a trillion devices, if we've got a generation of children who are primarily going to learn from educational assignments, books, access on a mobile device, I think that it requires us to be very good stewards of that spectrum and how that spectrum is used.

At the same time, I just do not like what I've read in the FCC's net neutrality order. Whether it's data security, whether it's privacy, whether it's Paragraph 84 of the net neutrality order, I don't want innovators when they have an idea, a bright idea, to have to go file with the FCC. I think it's counterproductive. It is counterintuitive to a way an innovator works.

MR. MAY: Do we have another question? Okay. It's Adam Bender. I said earlier he was such a Cracker Jack reporter that I guess he gets unlimited questions

here from "Comm Daily." Adam, go ahead.

MR. BENDER: Thanks.

You were talking about spectrum. What's the status of the spectrum talks in the committee, which I believe were bipartisan? And when do you expect the committee will get to a markup of legislation on that?

REPRESENTATIVE BLACKBURN: That would be a great question for Chairman Walden. And I'm certain that after he and Chairman Upton talk, he probably will be able to tell you how the Subcommittee on Telecommunications and the Internet is going to move forward with that. Thank you.

MR. MAY: Please join me once again in thanking Congressman Blackburn.

REPRESENTATIVE BLACKBURN: Thank you so much. Good to be with you. Thank you.

(Applause.)

MR. MAY: Commissioner Tate, ask Congressman Blackburn whether she can take one of those Free State Foundation bags in accordance with House rules that are in my blue bag right behind you there?

Congressman Blackburn, are you able to take that? It's \$8. Well, I don't want to get anyone in trouble so don't do it if you don't know for sure.

I know when I get to our academic scholars that they can do it because the ethics rules at the universities are much looser now than they are on the Hill.