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UNDER THE NEW ADMINISTRATION

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Federal Communications Commission

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P R O C E E D I N G S

MS. TURNER-LEE: Good morning, everybody. Good morning, Commissioners.

COMMISSIONER CLYBURN: Good morning.

MS. TURNER-LEE: I would say that I come from a Baptist church and we say good morning and rev it up a little bit, but I won't do that here today because I think we're going to have a pretty energized conversation.

COMMISSIONER CLYBURN: And you have an AME here, so. (Laughter)

MS. TURNER-LEE: My name is Nicol Turner-Lee. I'm a fellow here at the Brookings Governance Studies department in the Center for Technology Innovation. I'm very excited today to have this conversation with two ladies -- can we say something about the ladies in the house today? -- that represent the respected agencies of the Federal Communications Commission and the Federal Trade Commission: Commissioner Mignon Clyburn, we did color-coordinate to have some mix between the black today. (Laughter) And Commissioner Terrell McSweeney. Let's give them a round of applause for being here this morning with us. (Applause)

And this is a timely conversation for those of us here at Brookings because as we get into -- settled with regards to this new year, many of us in this room who follow media and telecom policy are trying to figure out, you know, just what should we be looking at? What is the navigation of both of these agencies around their particular agendas of each commissioner and overall, right? And we also want to know the extent to which we're coming out of a former commission where there's just been a whole lot in the news about things that are going to be done differently.

So, you know, with due respect to our newly charged leadership, we thought at Brookings, because there was a whole of changes going on, that we'd find some of the more stable commissioners that have been very vocal in their efforts. I say that particularly for this one because she's on her second round at the FCC.

And so, ladies, I want to really jump right into the conversation if you don't mind because I've got a series of questions that I think a lot of people would like to know. But before we do that, can each of you just sort of outline what you think your own agendas are for this coming administration, for this coming term? You know, what are you thinking about in terms of your agenda setting for your

respective departments.

COMMISSIONER CLYBURN: Beauty before age.

COMMISSIONER McSWEENEY: Oh, please. (Laughter) Well, thank you. That's very generous.

So first, I just want to start by thanking Brookings and thanking you both for being here this morning. And I am just incredibly honored to share the stage with my colleague at the FCC, Mignon Clyburn, who's public service track record is really just phenomenal, and so I'm really grateful to you for all of your service.

The FCC and the FTC have been important partners together, both in protecting consumers, but also in thinking about how we continue to protect people in our increasingly digital economy and hyperconnected age. So my biggest hope really is that the FCC and FTC can continue to work together. And I know that Mignon and I share that goal very strongly.

Personally, as an FTC commissioner, one of the things that I remain very focused on in this environment is making sure that as the new administration talks a lot about being against regulation, that that doesn't translate to being against consumer protection enforcement and antitrust enforcement. The FTC is primarily an enforcement agency, not a regulator. We do a job that I think most people in America actually really value, which is more or less you could think of it conceptually as standing up for the little guy, especially if the system is rigged against them. It's sort of Consumer Protection 101.

So one of the things I'm going to be very focused on is making sure that we remain an independent, bipartisan agency as we have been for more than 100 years; committed to strong antitrust law enforcement; making sure that our antitrust laws are applied equally to all and not allowing those to become tools that are used to protect incumbents or protecting competitors because those laws are designed to protect competition, not individual interests and consumers, ultimately, who benefit from that competition. And I'm going to remain really focused on our core consumer protection mission, protecting consumers in the marketplace from frauds and scams; making sure that when they are authorizing payments they understand what those payments are for; helping them when they are in situations where they have the wrong information and making sure that they can get the right information; and focusing on consumer data security and privacy.

As we think about IOT and all the wonderful innovations that are flowing from it, we really can recognize the central importance of consumer trust in this environment. And trust is not possible without security. It's not possible without privacy. So I think the FTC has a really important mission when it comes to protecting consumers in this environment.

It's a mission, though, that we share with the FCC. So I think it's really timely that we have this conversation and really think about the ways in which our missions are combined to help consumers.

MS. TURNER-LEE: Thank you, Commissioner McSweeney. And for those of you that also need to know, we are Facebook-living this event, as well, as well as doing full digital video if people are not there.

COMMISSIONER McSWEENEY: Well, and I guess I should add that obviously I'm speaking my own beliefs today and I'm not speaking on behalf of the Federal Trade Commission or my colleagues on the Commission.

MS. TURNER-LEE: Thank you for that. Thank you for that. Commissioner Clyburn, what about you?

COMMISSIONER CLYBURN: And Dr. Nicol Turner-Lee, I would like to also thank you and Brookings for allowing this conversation to take place, and, of course, my good friend Commissioner McSweeney, who from day one has been a supportive partner in our mission to connect the unconnected.

And so when I think about -- my last home was eight years at the FCC. I will say that in the months that are to follow that my mantra and focus will not change. It is about putting communities first. It is about connecting the unconnected. It is about fully embracing our universal service principles. Because I think when you look at the program and our mission, it almost says it all. It is a recognition that individuals in our communities, if they can afford to be connected, if they have access to advanced services and opportunities, then they will have the capacity or the ability or the tools needed to not only survive, but to thrive.

And so just looking at some of our universal service programs, it kind of explains it all. When you talk about, you know, the Lifeline Program, which we have reformed, we will continue improve that program, make it, you know, more comprehensive and competitive because as of December 2nd,

that program was opened up not just for voice-only service or bridging the affordability gap in terms of voice-only, but for broadband. And we know how enabling and empowering broadband is.

And so if we recognize that there's still millions of people in this country that do not have access, who have been stuck in the digital darkness for decades, who are on the wrong side of the opportunities divide, then, you know, for me the answer is simple going forward. How do we ensure that we have affordable connections? And how do we make sure that our communities have the infrastructure needed to provide that?

When you talk to a lot of companies that are providing these essential services, they say one of the biggest bottlenecks that they have at the state and local communities, that there are sighting issues, that there are issues in terms of pole attachments and affordability. And if we have these persistent disconnects in our communities about providing not only affordable service, but an affordable means to provide that service, then we're going to have disconnects going forward.

So I think for me it is really being laser-focused on the types of things that we organically do, getting rid of -- and I think we should be unapologetic about getting rid of those barriers to affordable service, and that includes inmate calling, adjusting reasonable rates for those who are currently incarcerated. That includes inclusion when it comes, you know, to media ownership and opportunities.

So all of these things are important. And if we, again, remain focused on really targeting and bridging gaps and eliminating barriers to robust participation, then I think we'll have a series of good stories to tell at the end of this term.

MS. TURNER-LEE: And I know this is not officially released, but you outlined some of these pieces, Commissioner, in the Solutions 2020 plan, right?

COMMISSIONER CLYBURN: Right. And I want to thank you for taking part in an October forum that we had that we put a challenge out to the community. We said we don't want the same old type of forum, not being critical of previous forums. What we want you to do is in three minutes or less give us a pitch of your best solutions for the most critical problems that we think technology and the communications space can be enablers in solving. And we had an incredible afternoon that a lot of people took us up on that challenge and we have outlined that. It's inclusive of what I've just said in terms of -- to include health and other types of, you know, critical challenges and opportunities we have to

enable more participation and better opportunities and wellness in this space. And we will deliver the final package, so to speak, in the coming weeks. I'm not looking at staff as I say that.

And I'm just really happy for all of you because we've got a couple of dozen replies for the draft that we released. And so I really think it will allow all of us to -- and this is not going to be grammatically correct -- be better at what we're good at. And I know I'm at Brookings and I'm supposed to clean it up in my (inaudible), but, I mean, what it really means is all of us have an opportunity to really push the needle and move the ball down the field since this is going into our Super Bowl week.

(Laughter)

And I'm just really excited about the opportunities we have because, you know, I always say that no matter how chronic or persistent the challenges we have in our communities two things I believe: I believe there's a technological solution for that and I believe it is possible to solve those problems. So I'm looking forward to continuing to engage with our partners, like the ones on this stage, to do just that.

MS. TURNER-LEE: Yes, and I was just going to tell you, you're okay at Brookings. Do what you do as my mother would say. (Laughter) We won't talk about Super Bowl here, okay? It's off limits.

COMMISSIONER CLYBURN: Off limits, I'm sorry. (Laughter)

MS. TURNER-LEE: And for those, again, that are following the conversation, we're Facebook-living this and also the Twitter hashtag is there and please link at brookings.gov.

I want to talk a little bit then about -- like switch modes a minute. I'm going to come back, Commissioner, to this whole digital divide conversation, particularly with Chairman Pai's recent interest.

Let's talk about net neutrality, okay? You can't talk about -- you know, put two commissioners up on the stage and not talk about net neutrality. The reality of it is that we will most likely, if not definitively, see some type of repeal or retraction of that rule from the books and the open Internet order will change. Right? And we can debate on what part of it will change, but the bottom line is it's essentially going to happen at some point.

How do you see, listening to both of you with this emphasis on consumer protection and people, how do you see the consumer protection piece playing out with that repeal? You know, if you

want to comment on how you feel about the general attack on net neutrality at this point I would love to here. But, you know, what will consumer enforcement look like if those rules are overturned?

COMMISSIONER McSWEENY: Well, so let me just start by saying I'm a hopeful person. I think you don't get involved in public service and government without being kind of an optimist. I'm definitely an optimist. So I guess I will take on the premise of the question just to say I'm also, as a hopeful person, hopeful that we're not going to see wholesale repeal of an open Internet order.

An open Internet is by far the status quo in our economy. It is the thing that drives innovation. It's not just to protect consumers. It protects all of this amazing innovation, the virtuous cycle that we've all heard so much about that happens on the edge, as well.

If you think about our level of connectivity these days, we have as many connected devices as people on Earth. We're on track to have three times as many in about three years. We are living in an age in which the Internet is not just a communications platform or even a marketplace or a way of having commerce, it's this like global ambient, always-on system that is absolutely essential to connecting to all of the modern conveniences of life. Okay? So the notion that we're going to get rid of basic rules to protect consumers when the ISPs are their gateways to this system seems crazy to me, to be honest.

And so I'm quite hopeful that, in fact, we'll be far more strategic about that. Because I think there are solid economics that really underpin the reasoning for why having a clear ex ante rule is valuable.

You know, most consumers in America have one choice for high-speed Internet. Some lucky few have two choices. Some people have more than two choices. It happens, and we've just been talking about the digital divide, it happens that those people are wealthy people who live predominantly in urban areas. So the only people likely to have competitive alternatives where competition could yield the benefit of having the kinds of protections that the open Internet order provides them live in super wealthy areas, in urban areas. Right? So we don't want to leave half of the country behind with no alternatives, and I think that's a really important point.

The second point I would make is, you know, consumer protection really depends sometimes on narrowly tailored, clear, ex ante rules followed by enforcement. Right? The FTC has an

important role to play as an ex post consumer protection enforcer. Obviously, we have a huge gap in our statute, so if you repeal open Internet, and we'll get to privacy in a minute, but if you repeal that, then it's possible that the FTC can't simply step in with consumer protection authority to protect consumers. So you might end up with a situation where there are no protections at all. It doesn't seem like a very good alternative to me. And so I think there's some kind of fix that really would need to be put in place in our statute in order to have the FTC be able to step in and continue to protect consumers.

You know, I think that this notion that ex post enforcement is sufficient to really protect consumers and small innovators and entrepreneurs in our hyperconnected environment is a bit disingenuous, to be honest, because ex post enforcement might be able to come up with some antitrust theories occasionally for how this behavior could be harmful. But I think it will be problematic to detect all of the behavior. I think it will require lengthy investigation. And I think you'd be at the end of the process without necessarily a good remedy for the harms that have already occurred.

So if an innovator can't get to marketplace because they can't get onto the Internet and they can't reach consumers, there isn't really a fix for that at the end of the day. So I think that's really a real weakness in this argument.

And then I think there have been several points that have been made about really how critical -- there's a critical noneconomic element here, which is speech, right, which is engagement, which is access to information. And that issue, I think, is incredibly important to all of us, especially in a democracy, as well.

So I think we really can't protect Internet openness for the little guy against all these giant interests without some clear ex ante rules. My hope is that, in fact, that will be recognized, that we don't rush to some kind of judgment to repeal those rules. They are well thought out. There's an extensive record -- I'm looking at John Salit (phonetic) sitting here in the front row -- that has been defended in court with a very thoughtful opinion upholding it. And so I hope we will have a process here that really takes into consideration all aspects of why these rules are important.

I know we're get to privacy. I want to get to that next because there's a huge privacy implication for consumers, as well.

MS. TURNER-LEE: Yeah, I have another question I want you to speak on this,

Commissioner Clyburn, as well, around this concept of wholesale repeal, too, so I'll come back to that. Because it appears to me in what we're talking about, you know, does it have to be an all or nothing repeal? Is it really a focus on the Title 2 reclassification portion as opposed to the title rule? So just if you want to speak on that, you're speaking, but your comments, Commissioner, brought up this thought that I'd like you both to delve into.

COMMISSIONER CLYBURN: You know, one of the things when I hear these conversations I chuckle a bit, a nervous chuckle, because I think that part of the reason we are having this debate is because we have been so successful through high-level rules of the road. The most enabling, democratizing, inclusive platform of our time has been the Internet, has been access, has been that openness that the Internet has enabled.

I can think of no tool that you can go anywhere in the world where there is connectivity and availability and an access, that lives have been improved. I mentioned to you where I traveled in some of the most economically challenged places, in this case West Africa, where I've seen hope in women who had no hope because at the click of a mouse or even with a simple flip phone and access that they are able to not only whatever their talent and their skill and their product is, that they're able to get rid of the middle person and go directly to market, enriching their lives and uplifting their families.

This is the most powerful tool of our time that allows us access to information where we might not have it in our schools and in our homes and our communities. It has allowed a businessperson to speak directly, you know, without barriers to a person in need of that service. It has allowed the person in the most remote part of Alaska to have connectivity with a medical professional if they are in distress. And if there are disruptions along those pathways, along those on-ramps, if someone is allowed to favor traffic, if an entity is allowed to say you use this device and not that, then that, I think, will short-circuit all of the advances and opportunities and successes and innovations that we've seen.

So we must be very careful to know that the very thing that has made this platform most successful has been at one point, you know, principles that everybody agreed to follow and, in the last couple of years, rules of the road that make it clear for consumers as well as Internet service providers that we are going to have openness, transparency when it comes to this liberating, inclusive, and engaging and opportunistic platform. And that is the most important -- you know, those are the most

important principles that I think that we should be mindful of. And any tinkering around the edges will have a ripple effect that I think could have the potential of being stifling when it comes to, you know, innovation and opportunity and access.

So if you want your Internet service provider -- if you think that they have your best interests at heart, you'll be fine with some of the proposed changes. If you want someone else to decide what you want to visit or what apps are best or dictate to you that you have the privilege of visiting this place or this application or this site or that, then you might be okay with some of the proposed changes.

I think most of us who are used to having the freedoms that we hold dear would be hesitant about making any significant changes to a platform that is transformative.

MS. TURNER-LEE: So, I mean, given that, we kind of know what side you're both on, right, with regards to that, and you made it clear. But Congress is talking about legislative solution, so I'm just curious as we talk about the Congress' role and how you're going to interact as each agency will interact with Congress, to avoid the ultra partisanship is there a possibility to go towards a legislative solution? Do both of you see promise there? Because that seems like to be on the table.

COMMISSIONER CLYBURN: And I'm like the commissioner, I am hopeful that people will see what the benefits have been. In the 700+ pages that we've produced, is every footnote, every line perfect? I would say, you know, with John Salit even sitting here, I would say maybe not. But the broad strokes and the contours and the principles that were the drivers for these things I think are as near perfect as we can get.

MS. TURNER-LEE: So you don't think that -- and this is my last question on this so it doesn't suck the oxygen out of this conversation, right -- that Title 2 in and of itself, if that was dismissed, that we still could maintain the values of an open Internet? Just curious. If you don't want to answer, that's fine, too.

COMMISSIONER McSWEENEY: Well, I differ to Commissioner Clyburn since Title 2 is her statute and not mine. You know, again, I would also differ to the extensive process that concluded that that was the best means forward.

Again, first principles matter. If we can come up with an alternative solution, I think that, you know, after a thoughtful and bipartisan process, one in which everybody is included, then, you know,

everything is worth looking at.

COMMISSIONER CLYBURN: You know, absolutely. I believe that if there are a series of better mousetraps that we could come up with that will be building blocks on the principles on which we stand, I would be open for that. But anything that will take away consumer choice and, you know, the opportunity for others to thrive in this space I think would be problematic. And I think those 4 million people who weighed in on this proceeding at the FCC, I think we will hear from them and more if we tinker with something and possibly break it.

COMMISSIONER McSWEENEY: Right.

MS. TURNER-LEE: Well, and that goes back to privacy, right?

COMMISSIONER McSWEENEY: Exactly.

MS. TURNER-LEE: Because if you strip away that part, I mean, sort of this is like the cycle that's being created which we're all curious as to how this is going to unravel. Right? Privacy, right, if Title 2 and the order is unraveled, it will affect privacy. How do you all respond to that, as well? Because that seems to be the next hot button issue.

COMMISSIONER McSWEENEY: Well, privacy, to be clear, is always an issue, I think especially in a hyperconnected environment. You know, I was looking at the Pew survey data the other day that suggested that 91 percent of Americans feel like they have lost control of their personal data. Well, is that any surprise really in this environment?

As our connections become more intimate, as we connect more things on our bodies and in our cars and in our homes to the Internet and to each other, we are shedding data all the time. We're more vulnerable to hacks. All of these things are sort of the consequences of some of this amazing innovation.

Now, I don't think we want to stop the innovation. These innovations are bringing extraordinary conveniences into our lives. I mean, I for one am a person who can't wait to have an autonomous vehicle. I would love to send it to pick up my kids from school, you know --

MS. TURNER-LEE: Right, phenomenal.

COMMISSIONER McSWEENEY: -- if I had that innovation. So I think we want to make sure that we can bring the innovations into the marketplace. But we have to be really mindful of the fact

that we have a serious consumer trust problem and it's been really persistent over time. It's not really getting better and it's only going to continue as long as people feel really vulnerable and like their data is sort of out of control.

So one of the things the FTC has been doing really over the last 25 years, we started because we were really interested in making sure that consumers could feel confident buying things on a thing that was relatively new. It was called the World Wide Web and consumers were really leery about sharing their credit card information on it. And, you know, with good reason. So we started looking at, well, what are the kinds of things that we can do to assure consumers that they have some control here and some choice and some transparency?

Over time, our mission has really evolved from protecting consumers in a brick-and-mortar world to protecting them where they consume and, of course, they consume in a digital world, as well as a brick-and-mortar world right now, as well.

We have a gap in our statute. We really have a gap when it comes to the activities of common carriers. So in order for us to protect consumer privacy in the same way that the FCC can now do through its rulemaking, that would need to be fixed. And I think that we don't want to leave consumers with a gaping hole here, especially when they don't have a lot of choices when it comes to their cable and broadband service providers. So I think that's one thing to be really mindful of.

But this notion that in this hyperconnected world in which consumer trust is actually really important to the viability and adoption of IOT products and all of this phenomenal innovation, we're going to back away from providing consumers with real choices over what's happening to their information seems crazy to me. Right? So, you know, I think that what we want to do is provide people with clear information, with some ability to make choices, especially when there's new research showing that even if traffic is encrypted, you can infer pretty easily from looking at the traffic patterns what's going on in your house. Right? Where you are in the house, depending on if the LUXA (phonetic) is sending information, you know, or the lights are on, all these things are now connected or will be connected. So there's a huge amount of really intimate information that I think, you know, we are shedding onto our connection. So giving people some sense that they can make that choice I think is incredibly important.

Now, you know, in addition, I would just add we recently released the Cross-Device

Tracking Report at the Federal Trade Commission. And one of the things that really jumped out to me here is that, you know, again, there's some really good reasons for this technology to work the way it is. I, for example, love listening to audio books. I love it particularly when I can move from my phone to my tablet to, you know, my home device and the book moves, knows where I am, right, across those devices. That is fantastic. But I have a direct relationship with that app, so I know that I'm sharing and telling it to track me across those different devices.

A huge amount of this tracking and compiling now happens without people really knowing it, without a first party relationship with the people that are compiling the information. So that can result in consumers having sort of surprising interactions, say, on their work computer with information that they thought they were keeping at home on their personal devices. So, you know, I think we have to be mindful that we don't want to chill things like cross-device tracking, but the way to get the balance right here is to also be able to have people interact or provide some kind of notice and consent or choices when that's happening.

Moreover, and the FTC's enforcement program I hope will remain strong in this area with bipartisan commitment on it, you know, when it comes to privacy choices on IOT or on apps or on our phones, those choices need to be honored. So technology that actually defeats those choices I think is really problematic.

So the FTC with its long history has a huge role to play here. I think it should continue to play that role. I think that we should actually convene interagency groups to make sure that we're all on the same page. The FCC really followed very closely the comments that the FTC made when it came to promulgating their privacy rules, so I feel confident that we are using a very similar approach.

And I think that if we're going to be in a situation where the FCC's privacy rules are withdrawn, and I think that would be very sad for consumers, but if we were there, then there would need to be a serious conversation about how we are going to provide enough protection for consumers.

COMMISSIONER CLYBURN: We use a lot of words, and I usually pick a word for the day, but we drop a lot of words here and they seem very logical, but I think we don't take a step back oftentimes and say what does this mean when it comes to your relationship with your voice or Internet service provider and your regulator? So we talk about convergence, you know. We talk about how our

legacy telephone company has now morphed into, you know, an entity that might provide triple or quadruple or whatever the next series of plays are.

But the common core, the common denominator for all of this for me is these companies have our most intimate, personal information. They've got our Social Security number. We're only going to get one, you know. If the companies or Internet service provider, you know, they're the on/off ramps in terms of your access to the Internet, so they know, as you mentioned, you know, where you're visiting, how long you're there, specific geolocational information, all of this information, your financial information, your personal -- your medical information, you know, how many kids you have. All of this information these providers have.

Now, that's sacred. And if 91 percent of the consumers say that they believe that they've lost control of that information, I don't think they're saying that and they're saying they're happy about it. They want control over how that information is used. And what the FCC did when it harmonized the rules in terms of its privacy rules, harmonized what has been over a decade, the rules of Section 222 applied for voice. And they harmonized when it came to broadband Internet access service with the provider. It recognized that this is the communication tool of the day. This is an entity that has access to our moving and interactions of our everyday lives. And the consumers, not the companies, should have meaningful choice when it comes to this. They should have greater transparency when it comes to this interaction. And yes, they should have strong privacy or security protections.

And so to me it is overwhelmingly clear that consumers want to be in the driver's seat when it comes to their information. And what the FCC has done is allowed them to be in the driver's seat. So we have opt-in and opt-out and other types of opportunities for consumers to be in control, particularly when it comes to their most sensitive information.

And I think the public, by and large, if you were to poll them once again as to who they want to be in charge of their information and what checks and balances they would want for that sensitive information, I think that history will prove us right.

MS. TURNER-LEE: So it's actually -- go ahead.

COMMISSIONER McSWEENY: If I could just add to that point. I mean, to me it's not about the sharing of information that I would expect when I'm in a contract with a cable provider. You

know, sure, I could easily imagine a scenario in which I know they have my information, they're obviously billing me, I'm paying them, that makes sense. And, oh, yeah, okay, so it's very useful for me to get some recommendations from them about programming and things like that, that's fine.

What we're talking about here is kind of the third party sharing of information, right? What we're talking about, you know, in this country we passed a law that said you couldn't turn over people's records about their video rentals, right, because, in fact, video rentals can explain some very intimate personal preferences. And so when we're thinking about the things that we're viewing or the kinds of websites we're visiting or the types of IOT products that we're using in our homes, this information can actually be used to compile a very intimate portrait of us. And so when that's actually being turned over to other people, but we have no knowledge of who it goes to, I think that's where some of the trust issues really arise.

COMMISSIONER CLYBURN: And when it comes to this item, 275,000 submissions came into the FCC and they voiced concern about these very same issues, that consumers want to be in control and the FCC, I think -- I know has allowed them to do that with the right types of balance for other provisions so companies can do their types of, you know, businesses in terms of network management and the other types of obligations that they have to be good stewards of our interests. But at the end of the day, consumers want control, they deserve control, and they deserve protections.

MS. TURNER-LEE: Right. No, I appreciate actually your transparency for this audience to kind of figure out where you stand on this issue. And obviously, it's one of those issues that's going to consume some time as the FCC looks at the open Internet order, et cetera.

But you all bring up a really important question I think many of us are interested in actually talking about, which is this jurisdictional question, right, between the FCC and the FTC. The new administration has talked about modernizing the FCC, bringing some responsibilities of enforcement over to the FTC. Clearly, if that was the case, it would affect this entire conversation that we just had, right? But it also affects antitrust matters, as well.

So I'm just curious your response so far, because there's not been a full proposal at least that's been laid out to the public, as to what that looks like, but what would that look like in terms of the two agencies distinct jurisdictional control? Is it a good thing, a bad thing? Is it something we need to be

watchful or mindful of, particularly around antitrust, I would just say?

COMMISSIONER CLYBURN: So for me in terms of -- and just looking at the public and our interactions, the word "distinct" kind of bothers me in this context and let me say why. We have, I think, complementary and oftentimes overlapping jurisdiction. And I believe that that's a positive thing.

You mentioned earlier about how it would be best -- and this is my interpretation of what you said -- how it would be best for all of us if there is not a clear, distinctive regulatory break between the two entities. That's why we have memoranda of understanding and that's why we work collaboratively because the consumers expect protections from entities like ours. You know, it's post, ante -- wherever it lies, they expect clear rules of the road and they expect a cop on the beach if something goes wrong.

And so I believe the transparency and the collaboration -- and we have worked together for a number of years to ensure that the public is as seamlessly protected as possible. And again, I think, you know, honing in on these clear silo distinctions as if we live in a clear siloed world, as if we consume in a clear siloed way, I think would be a little bit too narrow and not take into account this converged and ever-complex ecosystem that we reside.

COMMISSIONER McSWEENEY: So I'll pick up on that point and I think, you know, what Commissioner Clyburn is talking about is right here, which is there's convergence and harmonization between agencies with slightly different authorities. Now, as a person who believes strongly in the fact that we need to have good government -- good government means not inconsistent government or inconsistent requirements or even sort of confusing or nontransparent requirements, right -- the marketplace needs to understand what the regulators and enforcers are doing with their authorities.

If we had a situation in which these two agencies had been sort of wildly inconsistent or making different requirements of different people or reaching different conclusions, well, I would say, well, that's a problem that needs to be fixed. But I don't see that problem.

So first and foremost, I think when it comes to writing laws in this country you have to be very clear about what the problem is you're trying to fix. And if there isn't a clear problem, then one of the first rules of legislating can be violated, which is do no harm. Right?

So obviously, you introduce some -- so whenever you're changing legal authorities around agencies you introduce some new, unknown elements about how those new authorities will be

used and then the marketplace has to react to that. So that actually doesn't necessarily provide more transparency and clarity to people. It can actually provide more confusion in the marketplace. So I think that's a challenge, as well.

So, first of all, I think this is kind of one of those solutions in search of a problem, so it makes me a little bit skeptical. If we are going to go down that road, we want to make sure that the FTC has adequate resources to take on an expanded mission, which it does not, so we would have to have some clarity in our statute and also some resources available to us to undertake that.

But I think we would really be -- I think it would be a huge mistake to lose the expertise that resides in the Federal Communications Commission from consumer protection enforcement, right, which is why I wouldn't take away authority from the FCC, which has a huge amount of network expertise, because I think that's really valuable. We see a lot of expert regulators that are trying to adapt and evolve their mission to a new connected world. Right? We see regulators that have expertise in car safety, regulators that have expertise in air safety. Right? They all need to bring that expertise to bear on these really complicated problems.

So I don't see a solution here as one where we sort of segment out the areas of expertise away from things like privacy and data security. We actually have to marry those up together. So siloing the agencies and forcing them work less together I think is problematic when it comes to antitrust enforcement, which to get back to your question.

I mean, I think you can look at the track record of the agencies, primarily the Department of Justice Antitrust Division and the FCC, which are more involved in the antitrust side than the FTC is, and see that they have actually collaborated incredibly well together on these transactions. Again, if they were reaching wildly different conclusions, then maybe I would be concerned, but they aren't. And so really what you're talking about there is then taking away the FCC's broader public interest authority from competition and antitrust consideration in the communications space, and I really wonder if in this environment where we already have so much concentration and consolidation if that's a good idea.

MS. TURNER-LEE: Mm-hmm. Commissioner?

COMMISSIONER CLYBURN: Well, I don't think I could have said it better. You know, when you talk about ex post or ex ante regulation, you need both in order to have a viable, robust

marketplace. The consumers, the customers, you know, those in the American public, they expect both. It is not good enough to have -- you know, I always think about this in terms of traffic signals. If we did not have any traffic signals, I can't imagine. But if you've got signals allowing people to know who should yield, who should stop, and who should go, and what that means, and you've got a marketplace and you've got an ecosystem that works as well as it can be expected.

And it takes people at the front end setting out and being the cop on the beat when it comes to rules and to have the proper oversight and authority. And you need people on the back end if those rules weren't followed. If by chance we have a marketplace that is not fully functional, that there would be some type of enforcement, you know, mechanism in place. All of those things are needed in order for people to feel comfortable and engaged.

Because, at the end of the day, it is about the consumer. If I am not comfortable with how my information is handled, if I am not fully embraced in terms of the relationship that I have with my -- if I don't feel empowered with the tools that are in front of me, then I'm going to be less likely to use it, I'm going to be less likely to go online, I'm going to be less likely to engage. And none of us benefit from that.

So when you talk about regulatory certainty, to me it's about certainty all along the ecosystem. The consumer needs certainty from the regulator, as well as the company, and the company, I think, needs regulatory certainty, so that we can have the type of investment and innovation needed. And if we do not have, you know, all of those cylinders working in the proper manner, then we're going to have disruptions and rust along the way and we don't want any rust.

MS. TURNER-LEE: Yeah, I mean, I was going to say --

COMMISSIONER CLYBURN: Even though I'm wearing rust.

MS. TURNER-LEE: Right. Well, and I'm going to bring out a point. We're actually going to take one or two questions, time permitting.

We're going into an Executive Branch that is going to be a whole lot different, but somewhat similar, to what we actually experienced in the previous administration. You know, the Obama administration came at the tail end and influenced rulemakings. This administration may come in at the front end and influence everything that we're talking about here. Right?

So I'm curious as independent agencies, before I turn it over to questions, how do you all

feel your respective agencies will navigate this shift? Will you be influenced as an independent regulatory agency by the Executive Branch at all?

COMMISSIONER CLYBURN: I always joke and say that we're independent with a small "I," you know, when it comes to our agencies. We are influenced by the Executive Branch, we're influenced by the Legislative Branch, and, yes, most importantly, we're influenced by the American public. So at the end of the day, I think it's important for us to keep consumers' interests first.

Never forget, no matter where the political winds may blow, that we are accountable for those 320+ million people in the United States who have certain expectations of regulators. They want to be included. They want, you know, the freedoms and opportunities to be able to navigate in this space. And we have a responsibility, you know, I have a responsibility as a regulator to ensure that their rights are looked after. And at the end of the day, that won't change for me. And if we allow ourselves to be in some type of political or regulatory bubble, we will pay a price that I don't think needs to happen.

MS. TURNER-LEE: And Commissioner McSweeney, before you answer, I just want to ask you a question, and Commissioner Clyburn. You see yourself working with Chairman Pai then on that infrastructure stuff, some infrastructure and rural broadband deployment efforts?

COMMISSIONER CLYBURN: Absolutely. When we talk about -- when the President talked about infrastructure, I am hopeful that infrastructure includes technology infrastructure --

MS. TURNER-LEE: Right, we all are.

COMMISSIONER CLYBURN: -- the broadband, and the like.

MS. TURNER-LEE: We all are.

COMMISSIONER CLYBURN: Because, again, we're not really talking about, you know, connecting and improving and building communities if that is not a part of the equation.

MS. TURNER-LEE: Yeah, and if you haven't read the Solutions 2020, there is remarks about infrastructure. And the chairman just recently gave out money to rural broadband deployment in New York state, which I know, again, hopefully we'll see some partisanship or some bipartisan consensus around some of those issues.

I want to get to questions. At Brookings we do want to answer your questions. I want to just give Commissioner McSweeney time and then we'll pass the microphone around.

COMMISSIONER McSWEENEY: Sure. Well, I'll be super brief.

MS. TURNER-LEE: Influenced by the Executive office?

COMMISSIONER McSWEENEY: I mean, as I said at the outset, the FTC is primarily an enforcement agency, which means that generally what we're doing is looking at our legal authority, considering a set of facts, making a decision that is a law enforcement decision based on the set of facts, and pursuing a case or not pursuing a case. So we have a 100-year history of being a relatively bipartisan agency.

I firmly believe that that commitment to bipartisanship -- and I should add under the modern Commission I think if you looked at the cases and the way the Democrats and Republicans on the Commission have voted, 90 percent of the time or even more we have agreed on bringing the cases. That's because keeping the marketplaces functioning free of anti-competitive practices, free of fraud and scams, is actually an incredibly bipartisan issue. And so I think of our mission as a very pro-markets mission, pro-consumer mission for sure.

It's not always a pro-business mission. Right? And I think what's important is to distinguish between being sort of a referee in the marketplace and being clear about our uses of our law enforcement authority versus really favoring individual incumbents.

So one of the things that I really hope we continue to do on a bipartisan basis is apply our laws equally; I expect that we will do that. To make sure that we're vigorous in enforcing antitrust laws and consumer protection laws, I hope we will do that, too. We have a bipartisan track record of doing that. To continue to study the marketplace, something the FTC does quite a lot of it, I think is really valuable and I think, again, is really important in helping inform people of what's happening in the markets, but also in informing our enforcement mission, as well.

And finally, I think, you know, really making sure that we are bringing enough expertise into the agency to make sure that we're making sensible decisions. Obviously, providing clear guidance is equally important. None of these aspects of our mission are controversial at all.

I think it's incredibly important that we remain independent. So I'm skating a little bit around the idea of political interference here. Historically, we really haven't experienced a lot of interference. You know, I think we are separate from the Executive Branch. And I would hope that, as

Commissioner Clyburn points out, we don't operate in a vacuum, but I would hope that our individual law enforcement decisions remained decisions that are free from political influence.

MS. TURNER-LEE: And we see that the Honorable Ramirez will be stepping down replaced by the Honorable Ohlhausen. Question for you before we go to questions. This is my last burning question. Are we going to still see some of that great big data research come out around algorithmic bias and other things that are actually popping up now in the (inaudible) economy?

MS. TURNER-LEE: Well, as you point out, we are at a moment of change at the Commission. Chairwoman Ramirez, a remarkably successful chairwoman, is stepping down next week. Commissioner Ohlhausen will assume -- has actually already assumed the chairmanship as our acting chairman. And it's been just an incredible privilege for me to work with both of them.

Commissioner Ohlhausen has more years of public service than I do. I feel like I've been in government for a long time. She's been in government more than 20 years, most of those years at the Federal Trade Commission, if not all of them, so she's deeply knowledgeable about our agency.

And again, as I point out, our mission is really a bipartisan mission. It's to protect the marketplace. So I think that she will continue a lot of the work that the FTC has been doing. I really enjoy working with her. And I think she's really interested in our role in studying the marketplace in order to help facilitate innovators and entrants in their entry into the marketplace. We can advocate on behalf of disrupters, and we frequently do, so we're very pro entrepreneurs at the FTC.

And our study of these issues I think is about facilitating a dialogue with industry in order to develop self-promulgated regulation, which is a thing that I think we can all get behind. You know, we've talked about privacy by design and security by design in this space for a while and there are several elements to that, but essentially it means building these values into products early in their life cycle.

And I think we really need to start to having a conversation about governance by design and ethics by design because as the data and the machine learning and the AI operating on the data become more complicated, we really need a conversation that industry will benefit from, as well as the public, in thinking about what are the systems that you need to have in place in order to make sure that as this technology is deployed and used in the marketplace, people's humanity and decision-making is

protected.

MS. TURNER-LEE: Thank you. We have time for not all these questions, but I'll pass it to this young man right here because you had your hand up. I saw you. And then I'll pick the gentleman back there with the suit on.

MR. McCRAY: Chris McCray --

MS. TURNER-LEE: If you can keep it to a question and keep it short, it'd be good.

MR. McCRAY: Chris McCray (phonetic), McCray Foundation. I'd like to go back to that original question of yours, which I took to be how can one use the Internet, community broadband, to create jobs, small enterprises, especially in disconnected communities? Because you started off with some extraordinary community broadband experiments, if I remember correctly, but I was interviewing a lot of Historically Black University college presidents and none of them knew of any of that. Compare that situation with somewhere like China, where someone like Jack Ma is both the most popular businessman and the most popular educator.

So how did the disconnect -- or what more could have happened to really get the jobs going from community broadband?

MS. TURNER-LEE: Uh-huh. And (inaudible).

COMMISSIONER CLYBURN: Yes. Well, from where I sit I have been from day one a proponent of the states' abilities and communities' abilities to create their own networks. There have been a number of laws, as you know, that have prohibited or made that hurdle very high, but municipal broadband and other types of -- the powers that communities could have could really facilitate that.

And we heard about initiatives a couple of years ago about Gig U and AIR U, initiatives that attempted to go to the colleges, including some of the HBCUs, many that are in rural communities that have significant digital divide challenges. And so we're still working through -- I'm still hopeful that many of these things will be facilitated.

And our continued reforming of our Connect America Fund, I'm hoping that the New York example that she mentioned where the state has weighed in with some serious economic sweat equity and the monies that were returned, because Verizon opted out, I'm hoping that we'll see more projects that would emanate from -- and things like that, maybe a revitalization of Gig U and AIR U and a push for

municipal broadband or having communities having the autonomy to really own networks if investments have not been made. I just think we have to double down on those issues.

MS. TURNER-LEE: Yeah, I know, and that's going to be another one of those third issues. We'll have to have them back again once we get settled to talk about the infrastructure question.

This gentleman back here.

SPEAKER: Good morning. Thanks for coming on and thanks to Brookings.

The digital divide, you're talking about 20 years when that was a term that was being used on the Hill and saying what are we going to do about the digital divide? And the fact that we're still hearing the word, from a social impact industry mindset what's the best way to work with the FCC or be able to work with a socioeconomic development plan that the FCC has?

Because when we're onsite in like areas outside of the Gold Coast what we call, we don't have that access to the WiFi or, you know, the platform that they're going to need or for the teachers that -- you know, we can use teachers from here, but we need to get them out there on a virtual platform, for example. Who would be the best person to work with in the agency to really -- from a commissioner's perspective, to show a one-page sample of what is going on, so we can start getting plugged in?

COMMISSIONER CLYBURN: Well, you know, we've got a new chairman, Ajit Pai, as you know. We've got a head -- the person that is basically over the Universal Service Fund would be the head of the Wireless Bureau, is the lead connected person. But the chairman has also announced a new Broadband Advisory Board, so that might be a place, honestly, for you to look at. And what's going to happen, he's going to treat it like any other board. It'll have 15 members, and maybe there's a seat at the table for you, so keep on the lookout when requests for, you know, persons to serve. Because those are the types -- we need to be pushing in terms of the types of, you know, ideas that are still out there. Because I point to that New York idea as something new and innovative and that really challenged us to do something different. And I say you will have multiple opportunities to weigh in, including on that panel. So you can see me afterwards, but there are -- yes, so, okay, we'll take that back and send that off to two entities that I think -- but look for that federal advisory council to be populated. I think that would be a good place for more of your ideas to flow.

MS. TURNER-LEE: Right. And we plan on doing some stuff here at Brookings on the

digital divide and sort of looking at what we've seen I think over the last commission, which is this intersection between public and private sector partnerships, local community-based efforts, and the fact that the people that we're really trying to serve right now live in those areas where rural deployment has been hard -- they've been hard to reach.

COMMISSIONER CLYBURN: And now we're talking 5G.

MS. TURNER-LEE: Yeah, and now we're talking 5G in spectrum, right.

COMMISSIONER CLYBURN: And so when you talk of 5G, not only there are concerns, you know, environmental and RF (phonetic) and other issues that we need to talk about, but what does that mean for rural communities? And are they ever going to get the 5G? Because you've got a number of places and a number of -- you've got about 50- or 60,000 people still living a 2G experience. And so when we're talking 5G, I don't think we should be satisfied with platinum pockets of 5G and then everybody else is in a 2- or 3G reality. That's unacceptable.

MS. TURNER-LEE: That's right. And that's, Commissioner, what you said, right? Working on some of those low-hanging fruits, like pole attachments, et cetera, to help facilitate that expansion.

We've run out of time, but I think I want to just say to both of you thank you for your transparency. I mean, it's always good to hear from any respected official that sits on a regulatory agency to give us a glide path of what we should expect. You've got a long road ahead. These issues are tough and there will be a lot of public conversation about them, but it's very clear today that both of you are going to stand your ground on what you've actually put out in terms of your track records.

So thank you. Let's give them a round of applause. Thank you very much for being here. (Applause)

And we at Brookings, we look forward to entertaining many more of these conversations in a variety of areas. Thank you for coming. Follow us at Brookings Governance Department, @BrookingsGov, and look for more of these conversations to come. Thank you very much.

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