GOVERNMENT - FRIEND OR FOE OF E-COMMERCE?

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MR. SCHULTZ: Hello. My name is Mark Schultz, and I will be moderating this panel, Government: Friend or Foe of E-Commerce? I am on the Executive Board of the Federalist Society's Intellectual Property Practice Group. I practice law at Baker & McKenzie in Chicago, in the IT and E-commerce practice group, doing corporate and commercial deals for technology and e-commerce companies all over the world, as well as advising them on regulatory issues such as the ones we will be talking about this morning.

I think I need to start by criticizing the title of this panel, Government: Friend or Foe of E-Commerce? I can make that criticism because I am the one who came up with that title. The idea of government as a friend or foe to any kind of commerce, on or offline, is really a false dichotomy. As I think many of our speakers will acknowledge today, government can be both friend or foe, depending on the issue and the moment.

Nevertheless, there is indeed some dichotomy in the discussion of government regulation of the Internet. On the one hand, some people see the Internet as a wonderful example of spontaneous order. A network was built by people acting freely without government direction, without a tremendous amount of from-the-top coordination. They built this incredible new technology, this incredible new way of doing commerce and communicating, in a very small space of time.

Of course, other people point out that this point of view is at odds with the facts. To them, the fact that "techno-libertarians" embrace the Internet is quite ironic, as it originated with Arpanet, a government-funded Department of Defense project. Thus the Internet, and e-commerce, would not exist without the government.

These points of view would seem difficult to reconcile. However, the dichotomy is resolved in some ways by recognizing that the government is never always friend or foe of any kind of commerce, because all commerce depends on the rule of law. To have good commercial relations, to have contracts between parties, to be able to do business every day, you depend on being able to enforce your contracts and on a strong social, commercial, and legal order.

So the question our panelists will actually be addressing today is how much does the government need to help? Is the current ordering sufficient—in fact, more than sufficient? Or has technology changed the landscape to such a degree that we need to have some new laws in place? Do we need more government regulation because technology threatens certain values, even freedoms, that we hold dear? Will it interfere with privacy? Will it close out the public forum for speech? Or is the government impeding the growth of e-commerce with too much regulation already, such as in the case of broadband perhaps?

I look forward to hearing our panelists talk about these issues. The order in which they will speak is Declan McCullagh; Randy May; Kent Walker; and Ted Cruz.

First we have Declan McCullagh, who is an award-winning journalist, and he is the Washington Bureau Chief of Wired News. Declan is the first Internet reporter to join the National Press Club. He participated in the first Internet reporter's White House Press Pool, and he has been a reporter for Time Digital Daily, the New Republic, Slate, the Wall Street Journal, and has published pieces in everything from Playboy to the computer trade press.

He was a programmer before he was a reporter. He is very widely read. In fact, I think I probably read more of his stuff than any other journalist because he sends me so much e-mail every day. He has a very influential e-mail list called the Politech E-Mail List. I know several people in this room are members and post to it frequently. It is such an influential list that Larry Lessig decided that he needed to devote a chapter to it in his most recent book, and the chapter had the title "What Declan Doesn't Get."

MR. MCCULLAGH: He also got the domain name and put excerpts from his book up there, which I thought was quite nice.

MR. SCHULTZ: That's right. Although you didn't include it in your bio, that's a big compliment, when one of your ideological debating partners feels a need to devote a chapter of a book to you. I am very pleased to have Declan here. Thank you.

MR. MCCULLAGH: Thanks. I am still most tickled by the domain name. I mean, how many people actually have domain names that say how stupid they are? It's high praise, I think.

To go back to the topic of the panel for a bit, we are asked if the government is a friend or a foe of e-commerce, and that is really not that interesting a question, with all due respect to my esteemed moderator, because the answer, of course, has to be both, or, put another way, it depends.

Now, I am bit biased. Unlike my colleagues, I am a reporter and a technologist. I write about these issues, the intersection of technology and politics for Wired News, which you can see online at Wired.com, of course.

I am also a programmer and a system administrator. I may be a bit rusty in some areas, but I am responsible for keeping about ten websites up and running, so that's always entertaining when I'm traveling.

Government can be a friend of e-commerce and, more broadly, technology if it has a stable but minimal presence. You hear the folks in the East Coast media -- the New York Times editorial pages are particularly bad in this respect -- railing against the Silicon Valley techno-libertarians.

But these techno-libertarians you hear about aren't lawless anarchists, they don't want to get rid of government, they just differ from many folks in Congress and in the Federal bureaucracy over what the extent of government involvement in the economy should be. I don't know anyone who says the government should not exist to provide a court system to address wrongs, punish fraud, prosecute those who steal property or commit acts of violence and so on.

Now, this would have been a really good argument maybe, you know, four or five years ago to make. But since then, we have had these unfortunate people like, Larry Ellison and Scott McNealy, who are sort of straying from this path that I've described, and so it's a reasonable objection to say aren't these Silicon Valley chieftains coming whining to government whenever they want something? These folks aren't exactly techno-libertarians.

Well, Scott McNealy lobbied hard for the Microsoft antitrust suit. Larry Ellison of Oracle, to his shame and the industry's shame, is doing his best to promote a national ID card that would run -- surprise -- on Oracle databases. We'll give it to you for free, but if you want the support contract, you better pay.

But these are, thank goodness, still rare exceptions, and the mindset of the Valley still remains largely non-interventionists. You won't hear anyone out there, even the McNealys and Ellisons of the world, calling for a Federal Software Regulatory Commission or something of the sort.

We were asked in preparing for this panel what sort of government regulation furthers e-commerce. Well, beyond those areas that I mentioned, like a court system providing a way to enforce contracts and so on, I am not sure that any government regulation furthers e-commerce.

Regulation imposes additional costs on those who are regulated, becomes so institutionalized often that it helps incumbent firms, and drives out new entrants to the market. It's especially important in the technology industry to keep barriers to entry low because it is often these five-person firms that are hell-bent on, and often succeed in, changing the world.

It also, most unfortunately, creates a situation where firms compete in the political marketplace rather than where they should be competing in the marketplace of ideas and technologies.

We were also asked if the government does not regulate e-commerce, will de facto control pass to those who, through computer code and the language of the program, develop the architecture of the Internet? Well, the reality, of course, is that the private sector already develops the architecture of the Internet.

Let me give you an example. There is this amazing group of technologists called the Internet Engineering Task Force. They have been around since the 1980s, they're not a product of this dot-com craze, and you can see their website at IETF.org.

Now, IETF meetings are a complex example of anarchy in action -- not a lack of rules, because they actually have a complex set of them, just like a church or an Elk Club or something might. But it's a standard-setting body that uses the mantra of "rough consensus in working code." These are folks that gather by the thousands at every IETF meeting that happens every few months, and they develop the protocols that keep the Internet humping -- POP, Telnet, FTP, SMTP, SSH. All these things that you might see when you are downloading mail, you know, connecting the POP server, well, that's the "post office protocol." They do it in an absence of government direction.

The one time that I know of that the government tried to strong-arm the IETF into doing what it, the U.S. Government, wanted, the IETF realized: "you know, we're an international body, we meet all over the world, we're not a U.S. Government creation. If we do what the U.S. Government wants, well, we have no moral basis to stand on when the next government comes along." The example I'm talking about was two years ago. The FBI approached the IETF and said, "you know, wouldn't it be nice if you built in back doors for lawful government surveillance with a court order, maybe put back doors in your protocols, and so maybe the encryption would include some sort of key escrow scheme." The IETF . . . rejected the request.

Moving on to privacy for a moment, . . . who can be against this idea of privacy? Certainly Americans, at least before September 11, said that they were really concerned about it. You heard polls and surveys: Eighty-one percent of net users concerned about threats to privacy online. Seventy-two percent of Americans, according to the annual Georgia Tech Survey, say there should be, quote, "new Internet privacy laws."

Well, don't get me wrong, it's natural to be a little nervous about privacy online now, but nobody except the government can force you against your will to hand over your personal information. If you don't feel comfortable giving information to a website, you've got other options. Don't type it in, don't go there anymore, hunt for a competitor, sign up with a service like Anonymizer.com, or lie.

Moving on to security. There has been this uneasy balance that we have struck in Congress, at least, between privacy and security, and in the wake of the September 11th attacks, it swung dramatically towards security.

A year ago, the House Judiciary Committee actually voted for increased judicial scrutiny of Internet eavesdropping. They said, okay, you are going to have to meet a higher legal standard. The bill didn't go anywhere, but at least this shows that folks, very partisan folks on the Judiciary Committee, thought that privacy was so important they made this recommendation.

Now, earlier this month, after September 11th, the House Judiciary Committee abruptly reversed its stand. They voted to allow Internet eavesdropping. Forget higher standards -- they lowered the standards dramatically and said, in some circumstances, you can do online surveillance without a court order. Now, maybe we can argue about whether this is justified or not, but at least let's have this debate in the open.

I don't know how many of you have been following the USA PATRIOT Act and some of the other antiterrorism legislation, but if you look at what happened in Congress last week, and I have been writing -- I've been writing like three articles a day on it; it's driving me insane --

MR. MAY: I think it's more like 15, isn't it?

MR. MCCULLAGH: It certainly feels like it.

MR. SCHULTZ: I get those e-mails, too.

MR. MCCULLAGH: Sorry about that.

You have compromises, you have meetings happening behind closed doors. Like the House Rules Committee met early last Friday and decided without any public debate that they're going to abruptly have the Senate bill. Maybe they're going to have an expiration date of some of the additional wiretapping and eavesdropping rules. Maybe not.

This is the way it is moving through Congress. It is not moving especially quickly, but it is moving without much scrutiny.

Congress is also considering interfering with the private sector in the area of security standards. This is really a new thing for Congress to be debating, but they're worried about the threat of cyberterrorism.

Let me give you an example from a hearing yesterday. House Science Committee chairman said, quote, "Market forces have given most in private industry little incentive to invest in computer security even as their reliance on the Internet grows."

Virginia Governor Gilmore, a Republican, the chairman of the Republican Party and someone who, because AOL has large operations there and because he chaired the Internet Tax Commission -- he is known as an expert on matters technological. He went a step further, saying it was, quote, "necessary to have an entity to develop and implement plans to improve network security."

Well, what does network security mean? I mean, if you look at the way network security on the Internet runs, there is no Federal regulation, there is no Federal bureaucracy; it is basically private-sector firms employing smart geeks to try to go through their security system and eliminate holes. They buy firewalls, they upgrade their servers, they install patches. It is entirely unclear what the Federal Government can do in this area that makes any sense at all.

I will leave it at that and turn it over to my next panelist.

MR. SCHULTZ: Thank you.

Next up, we have Randolph May. Randy May is a Senior Fellow and Director of Communications Policy Studies at the Progress in Freedom Foundation.

The Communications Policy Studies program examines regulation of the telecom industry and its implications for competition. He is a frequent commentator and contributor of comments to new FCC policies. He is also a monthly columnist for the Legal Times newspaper, writing about regulatory issues.

Prior to joining Progress in Freedom Foundation, he was a partner at the law firm of Sutherland, Asbill and Brennan, specializing in telecom law, and prior to that, he was Associate General Counsel and Assistant General Counsel of the FCC.

He is a graduate of Duke University, having received both his JD and BA there, and he is a frequent speaker and author on topics related to technology and communications policy.

Thank you.

MR. MAY: Thank you, Mark.

When I listened to your introduction, I was amazed that I couldn't have puffed up my resume more than that.

I want to say that Declan's e-mail list is a terrific list and it always amazes me how you stay on top of things in sort of an up-to-the-minute fashion. You do a terrific job.

"Government: Friend or Foe of E-Commerce," I thought the title was actually quite nice. And in sort of a lawyerlike fashion, at the top of my notes, I wrote out my little answer precisely. I said, "at times and in particular ways, government can be a friend of e-commerce, but in general, there is the greater danger it will be the foe." So there

is this dichotomy, of course. It's not one or the other. But I think we need to be cognizant that often government intervention can do more harm than good.

You know, there has been a reference made to Larry Lessig and his naming of a chapter "What Declan Doesn't Get." There is this wonderful debate that is taking place in the law reviews and so forth between Larry Lessig and David Post concerning the appropriate government regulation of cyberspace where these two have gone back and forth. Lessig argues, and Post concedes this, that in cyberspace, code or what we might consider to be the protocols that govern the electronic space, that these codes can displace the law. In other words, the codes imbedded in the software establish constraints on how we behave in cyberspace and we can all think of examples as to how that's true, whether it's with regard to privacy or something else.

So Lessig posits a world in which, and I'm quoting, "Effective regulatory power shifts from law to code, from sovereign to software." Again, I would say to some extent, I would agree with that, but then Lessig's view is that it is important and appropriate for government then to regulate the code or the architecture of the Internet rather than leaving this task to what he refers to as the forces of commerce. In fact, he worries that the forces of commerce potentially encompass perhaps increasingly a small number of large companies.

Well, you know, I don't think any system is perfect, as Winston Churchill said, but in this debate between Lessig and Post, I tend to agree with Post, and that influences the way that I think about the issues that we are going to be talking about today.

Post said, "The invisible hand may have many deficiencies, but one thing it does best, far better than any alternatives of which I'm aware, is to place before members of the public a diverse set of offerings in response to the diverse needs and preferences of the public."

Post, actually, if you are able to look at some of his materials, draws a lot of his inspiration from what he claims to be the Jeffersonian view and what Thomas Jefferson would think about these issues if he were thinking about them today, which I think is quite interesting.

So how do you apply this Jeffersonian view to some specific situations relating to e-commerce? I just want to touch on a few things in the time that I have in the opening presentation. The first is, and this is a little outside of the context of what I suspect that we may talk about more this morning or that I think we will talk about more, but that is an issue that Mark alluded to concerning what I will call broadband deregulation.

In order for e-commerce to flourish, of course, in the future, there has to be an infrastructure that is going to support the growth of e-commerce. To state it succinctly, we are going to need ever-increasing bandwidth, more high-capacity highways in order to support the applications that will develop in the future for e-commerce and other types of Internet applications.

In my view, for this to happen, the FCC needs to deregulate the provision of broadband services regardless of the technology that is used to provide the service.

That is not the case now. The FCC regulates telephone company-provided broadband services in a way that's different and, quite frankly, much more regulatory than with regard to other types of broadband provided, such as cable, although it actually has a proceeding open now in which it's considering, under the rubric of open access requirements, whether to regulate cable in the traditional public utility style that it regulates telephone. And basically what that implies is rate regulation and sharing obligations and non-discrimination obligations and the like.

In my view, it will be very helpful to the more rapid deployment of broadband services if the FCC would deregulate -- and it has already said that these broadband services are competitive. It has made that determination a number of times. You have cable operators providing service, satellite providers to some extent -- obviously not as much -- telephone DSL. You've got some wireless services and fixed wireless services.

So in this environment that the FCC itself has called competitive, if the FCC did move to a more deregulatory posture and did it rather soon, then that would spur more investment in broadband and that would be a good thing for e-commerce.

On privacy, I tend to be in the corner of my friend Declan. I think it's not useful to rush in and regulate privacy, and I tend to think of these issues in this way. It works for privacy and it works for some of the other ones, too.

The way I would think about it is this: Number one, are there failures in the market for personal information? If the market failures exist, how do they adversely affect consumers? Can such failures be remedied by government regulation? Would the benefits of government regulation exceed the cost?

In the privacy area, I think we could say, if we have time to talk about it, both consumers and advertisers benefit from a free flow of information. When you also think about it, there really haven't been even very many anecdotal reports of incidents where there have been failures in systems, where there have been disclosures of information in some very large way in which privacy has been breached. So the current systems seem to be working pretty well.

I guess another point I would make, since we're sitting here at the National Press Club, that is often not thought about very much in the context of privacy and the Internet is that there are First Amendment implications when you suggest that there ought to be new privacy restrictions and new restrictions on the disclosure of information.

Eugene Volokh, who, as many of you know, is a well known First Amendment scholar, has written a long law review article on this. The nub of it, Eugene says, is that "The right to information privacy -- my right to control your communication of personally identifiable information about me -- is a right to have the government stop you from

speaking about me. We already have a code of fair information practices, and it is the First Amendment, which generally bars the government from controlling the communication of information either by direct regulation or through the authorization of private lawsuits whether the communication is fair or not."

So when we talk about privacy, I think it is interesting to me that a lot of the same community and a lot of the same people are in other contexts very strong First Amendment advocates if we're talking about the dissemination of adult content or whatever -- and I am a First Amendment advocate in those areas as well— but, for example, our friends at the American Library Association are leaders in that regard. But when it comes to privacy restrictions, they don't seem to make the connection that there are First Amendment interests implicated as well there.

My time is almost out, but I just want to mention another issue that maybe we will have a chance to talk about because I think it is important in the e-commerce context as well, and it is a different type of issue. We have to be concerned about government displacement of private enterprise where there are things going on in the private sector and the e-commerce world where it's tempting for the government to want to get into those businesses.

If any of you haven't looked at the U.S. Postal Service website recently, which, by the way, is now USPS.com, if you take a look at it, you will see that it seems as if they are very ambitiously in the mode of wanting to move into things like bill-paying. I've read some things that suggest that they might want to get into online tax preparation services, things which are being done in the private sector.

I think that e-commerce will flourish better if we leave things that can be done to the private sector to the private sector and not have the government competing.

MR. SCHULTZ: Thank you. Next up, we have Kent Walker, who is Senior Vice President and General Counsel for Liberate Technologies. Liberate Technologies is a publicly held interactive television company that licenses and sells this technology throughout the world.

Prior to his joining Liberate, he was Associate General Counsel at America Online where he had responsibility for Netscape Communications after it was purchased by AOL. Prior to that, he was Senior Counsel to Airtouch, and before that, he was at the Department of Justice , where he was in charge of computer crime enforcement—it wasn't cybercrime because nobody was using that term yet. He was definitely cutting-edge. He is also a graduate of Stanford Law School.

We are delighted to have you. Thank you, Kent.

MR. WALKER: Thank you very much. I think I am the token regulatee on the panel today.

Some people perceive that the folks demonstrating in the streets against new technologies and globalization perhaps could find more constructive ways of engaging in the political process, but we let ourselves off the hook too lightly if we focus just on that small minority.

My larger concern is really with the mainstream public perception of new technologies and how we should be approaching them. As an example, I would argue that the advocates of change have failed pretty badly in making the case to the public about the advantages of genetically modified food. As a result, the public debate is not about golden rice making lives better for millions of kids in Third World countries, but about so-called Frankenfoods.

In the privacy debate, the public discussion has focused not on the benefits of information exchange, personalization, and new services, but on largely theoretical abuses of personal information.

That skewing of the debate creates a public climate receptive to government regulation and new initiatives. After all, who is opposed to privacy in the abstract? When presented with overwhelming polling numbers, Congress is going to want to regulate, to act. That's what they do for a living.

So I think the challenge falls to the advocates of change to do a better job of making the case. Now, that's a hard challenge, it's an uphill challenge. We have in some cases let the debate get away from us. It's inevitably the case, here as elsewhere, that the forces displaced by change vigorously oppose it and the many who benefit mildly favor it. We have to overcome that dynamic.

Plus, we have to overcome the technophobia, dystopian concerns, and nightmare scenarios in which fears outpace hope. And you have to overcome the temptation to do something at any cost. Sometimes the right answer is "don't just do something, stand there."

People worry about technology outpacing the law. I am concerned that in some situations, the law is outpacing the technology. We have just come up this first stair step of the Internet and are really getting a lot of the imperfections out of our system of information exchange. At the same time, we are looking to regulate the phenomena before it's really played out in the marketplace, before we have really seen how this freer form of information exchange is really going to change the way that businesses and consumers and citizens work with each other.

So the answer, as far as I'm concerned, and I speak not as an opponent of government regulation, but rather as an opponent of poor government regulation, is to adopt the approach set forth by Timothy Muris, chair of the FTC, which is to address real problems, physical harm, financial security, and the like. If we focus on those kinds of problems, then we have a real road map to some specific policy changes, but also an awareness that many existing laws, if appropriately enforced, are quite sufficient to address the problems identified.

I'm not ruling out the possibility of new harms that may be out there that can't be handled by existing criminal and civil law. Some new regulations may be needed, but we need to recognize that such regulations carry hidden costs. For example, the Gramm-Leach-Bliley Act, the recent financial reform, required notices from every

financial institution in the country and resulted in a blizzard of incomprehensible notices, what I've called digital mattress tags. Studies showed that virtually all of these notices went unread. The result was thus a terrific waste of resources.

Similarly, even well-intentioned initiatives, like COPPA, the Children's Online Privacy Protection Act, can go astray. Everyone in the room presumably supports the notion of not having children's privacy violated or having children molested or accosted online or offline. Unfortunately, COPPA and its implementing regulations created significant notice and tracking costs for any online interchange with children. As a result, the costs of compliance were so high that many websites essentially went out of the business of providing content to children, even completely innocuous or beneficial, educational content.

The result, I'm afraid, was to have fewer constructive and beneficial resources available to kids. Government regulation is almost inevitably fairly broad brush, and we have to be very careful about the unintended or longer-term implications.

Thus, I support a number of the proposals that have been made in Congress to study the implementation of the regulation of new technologies for some period of time in order to examine the potential second-order effects that Washington sometimes overlooks.

The design of new technologies clearly matters. But that doesn't compel the conclusion that the government should control that design. How fast you drive your car depends on the design of your engine, but also on the speed limit, road conditions, automotive etiquette, and even a sense of morality in not wanting to endanger others. That constellation of physics, law, etiquette, and morality doesn't mean that the government should take over the design of cars in Detroit. Rather, it suggests that government has *a* role but not *the* role to play.

Before rushing in to take control, let's see how the design evolves. If there is a demonstrable privacy problem, perhaps there is a role for government.

By way of context, George Gilder has suggested that we're in a brief period of urban anonymity, coming between small-town life where everyone knew everything about others and a coming technology era in which everything about you is accessible via technology.

I would point to the recent discussion of national identity cards as an example of this issue. The concept has been advanced by not only Larry Ellison, but some members of the U.S. Senate and the Attorney General and, surprisingly, been apparently welcomed by Alan Dershowitz on the theory that the identity card affords a portable reputation that avoids the need for other more intrusive security measures.

Credit cards serve some of the same purpose. You can get credit anywhere you go even though they know nothing about you because of the reputation built into your credit card. The notion of having some other kinds of authentication that serves similar purposes is an intriguing one, obviously raising some civil liberties issues but perhaps preferable to some of the alternatives that are being discussed -- profiling, biometrics, facial recognition, and other proposals intended to deal with our recent security concerns. I think this debate offers a nice example of the trade-offs between privacy and security, between civil liberties and other kinds of public advantages. And it may ultimately be an area in which the government has a role in back-stopping or providing some additional infrastructure to support a need for security and authentication in both the civic world and the commercial world.

MR. SCHULTZ: Thank you.

Ted Cruz is the Director of the Office of Policy Planning at the FTC. Before that, he was Associate Deputy Attorney General at DOJ. In that capacity, he was responsible for developing and coordinating policy initiatives.

He was the DOJ coordinator for the Bush-Cheney transition team. He was on the Bush-Cheney legal team during the Florida dispute last November, December, and helped assemble the legal team and played a key role in that battle. Before that, he was Domestic Policy Advisor to the Bush campaign.

He has had a steady job at one point in his life. He was an Associate at Cooper & Carvin here in D.C., working on appellate and Supreme Court cases, and he also was a law clerk to Chief Justice Rehnquist and J. Michael Luttig on the U.S. Court of Appeals for the Fourth Circuit.

Welcome.

MR. CRUZ: Thank you, Mark. I very much appreciate the opportunity to be here and appreciate Leonard's and Mark's inviting me to be part of this panel this morning.

I would like to focus on a slightly different aspect of the intersection of government and technology than that addressed by some of the previous speakers.

As we sit here today during what I think all of us would agree are pretty trying times, many of us have turned a bit contemplative, contemplative about what it is in America that makes America great and what it is that makes so many in the world hate and resent us.

I think there are many things you can point to, but one of the most salient miracles of America has been the discovery and birth of real freedom. And it is that freedom, and the capacity that goes with freedom, the capacity to control one's dreams and one's hopes, to forge one's destiny that is so incredibly powerful and infectious and contagious – which, I suspect, at the end of the day, is why so many tyrants fear that their people want the same thing.

One of the manifestations of that freedom has been in the economic world, and in particular, in the unprecedented, unbelievable prosperity that has come from unchained human liberty, from the ability to innovate and explore and to set out and create your own enterprise in the world.

Government in America is an interesting inversion, because for most of the history of mankind, government has been the concerted enemy of freedom. Government has been the most consistent limit upon innovation, upon individual expression. And one of the great miracles, one of the great idea revolutions of the American Framing was to move government out of the way and to unchain that freedom.

That being said, old habits -- having government unfairly restrain freedom -- die hard, and throughout U.S. history we've seen lots of instances of government stepping in on behalf of some players in the marketplace at the expense of others.

In the 1850s boat companies in the Mississippi River engaged in extensive lobbying to restrict the expansion of railroads, to stop what they called ruinous competition, because they knew what to do on the Mississippi River and no one else should be allowed to compete with them.

In 1919, the Horse Association of America -- one of my favorites -- along with the Master Horseshoers National Protection Association and the National Hay Association campaigned against this new-fangled invention called the automobile, and in the '20s, they were successful in a lot of places passing laws banning parking cars on the public streets. Because everyone knows that's where horses belong.

More recently, we've seen gas station employees in the past couple of decades lobbying against self-service pumps . . . milk producers lobbying against the sale of yellow margarine . . . and farmers suing public universities for doing research on technologies that might end up displacing human labor in agriculture.

This is a pattern that has gone on through most of our economic history. It is a tried and true formula, and a lot of times it has been successful. Which brings us to the modern era and to the Internet.

All of us here today are truly excited by the tremendous potential of the Internet. Many have compared it to a new industrial revolution, with immeasurable potential to transform society.

One aspect of the Internet that I think is particularly appealing to many of us who are skeptical of the heavy hand of government is the incredible freedom found on the Internet, the incredible freedom to innovate, the incredible freedom of self-expression.

Now, there are limits. There are ongoing discussions about what government should do on the Internet, especially in the areas of taxation and privacy, both of which have been addressed here today. But, other than those specific areas, most of us, I think, view the Internet right now as some sort of libertarian Utopia, with problems, perhaps, but with unlimited exploration and innovation.

Interestingly, however, that is not exactly the case. Indeed, upon further examination, we should not be surprised to discover that the same old pattern, the pattern of those on the losing side of competition going to government and trying to get a helping hand, has been manifesting itself on the Internet, and, as a result, we are seeing more and more barriers to commerce on the Internet growing up at the state level. It is one of the more curious things, that few people seem to acknowledge or be aware of the barriers, and that far too few people are discussing that these barriers are even there.

One sector of the economy seems particularly interested in erecting these barriers: those who serve right now as middlemen to ordinary commercial transactions.

It is one of the joys of modern life that anyone who brings buyer and seller together always takes a slice of the pie, and one of the tremendous potentials of the Internet is to facilitate such transactions with great and instantaneous efficiency. Of course, that efficiency can pose a pretty deep threat to many of the current bricks-and-mortar middlemen. And, as Kent mentioned earlier, a lot of folks who are displaced by new inventions are not entirely happy about it.

In particular, it seems that displaced competitors have sought to deal with this through two principal means. The first has been through traditional anti-competitive behavior, things that the antitrust laws have long addressed, such as concerted boycotts and refusals to deal. For example, in 1998, the FTC filed an administrative complaint against a series of Chrysler dealers in the Northwest who had banded together and said they were going to boycott Chrysler if Chrysler did not stop selling too many automobiles to another dealer that was competing and selling cars really cheaply on the Internet. Ultimately, that case ended up being resolved in a consent decree.

There have also been lawsuits against optometrists, again for concerted refusals to deal with selling contacts on the Internet, and there have been reports of threats of boycotts in golf equipment, shoes, makeup, perfume, clothing, sailboats and bicycles.

A second approach has been to use existing regulatory bodies to prevent new competition from the Internet. Thus, we've seen state regulatory regimes restricting sales of cars on the Internet, beer and wine on the Internet, real estate, mortgage sales, auctions, contact lenses, all sorts of areas where existing regimes have been used to try to keep out the new competition from the Internet.

Now, what does the FTC have to do with any of this? The FTC obviously has a role responding to direct boycotts and traditional anti-competitive behavior, but beyond that, the FTC also has a long history of what's called competition advocacy, which is where the FTC enters the arena and advocates before governmental bodies on behalf of competition, on behalf of freedom. We've done so at the federal level, at the state level, and at the local level, and in

particular, we've sought to advocate for increased competition and against allowing one competitor to use government to keep out another competitor.

At the direction of Chairman Muris, the FTC has recently created an Internet Task Force, headed by the Office of Policy Planning. That task force is attempting to understand and to address these growing barriers to commerce on the Internet, both through law enforcement and advocacy. We're actively analyzing the impact of laws, regulations, and anticompetitive business practices that disproportionately disadvantage electronic commerce in order to help ensure that e-commerce can compete fairly and that unnecessarily burdensome restraints do not impede the future growth of commerce on the Internet.

And so one of the things I want to encourage people here today to do, is to tell us about such barriers. We're very much learning and studying right now, and we're trying to assess which barriers are in fact most significant to the future expansion of e-commerce. To that end, we've set up an e-mail address, consumerchoice@ftc.gov. This is not for ordinary consumer complaints to the FTC – we've got separate channels for those – but for those in the Internet world who are discovering significant regulatory barriers to commerce on the Internet to tell us about them. We're certainly eager to hear what you have to say.

With that, my time is up, so thank you.