

**TRANSCRIPT OF CONVERSATION BETWEEN
FCC CHAIRMAN MICHAEL K. POWELL
AND SAM DONALDSON**

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Sam Donaldson: What we were laughing about – it was my high school picture. I've never looked better. I'm delighted to be here. Preston Padden has sent me, actually, to drive out all the radicals in this room. You know who you are, so if you would just leave quietly and save me the trouble. I see. That's what I told him, "it's going to be a tough job, Preston." But, we're not here to talk about that.

We're here to talk to the Chairman of the FCC. You know Michael Powell. He is a retired Army officer. He served in the Pentagon as a special advisor. He, of course, is a lawyer who served in private practice with emphasis on telecommunications policy. He served as Chief of Staff of the Antitrust Division of the Justice Department. You know that he joined the Commission in 1997, and became Chairman this year. It sounds wonderful. But he is not a man without some critics out there. For instance, ladies and gentlemen, I give you the man who says he doesn't care if cable prices rise. I give you the man who says on-the-air broadcasting may soon go the way of the dodo bird. I give you the Chairman of the FCC, Michael Powell.

Mr. Chairman. Welcome. It's nice to see you.

Chairman Michael Powell: Thank you.

SD: We can leave the business about cable rates, I think, until later. But we've got to start with your explaining your suggestion that on-the-air broadcasting and telecasting may soon go the way of the dodo bird.

MKP: For the record, I never said dodo bird.

SD: That's right. That was my added . . .

MKP: I wouldn't be caught dead using that word. No, what you're referring to are statements I made, which I think are important when people are willing to be self-examining and pick up on persistent trends that are likely going to present challenges for them. It's one of the themes that we're being quite insistent on following at the FCC. That is, I have no idea what the future is, but I understand that I can work hard to pick up persistent and continuing trends that are going to raise significant questions for my business, in the form of regulation. I think similarly for all the businesses in the midst of

this great digital and information revolution. Each year we watch a certain percentage more Americans who are willing to pay for television. It's just a fact. I think the current fact is 80% to 84% of Americans are paying for one or the other of multichannel services. Broadcasting is an important presence there, but nonetheless that trend should have far-reaching implications for not only the regulatory paradigm, but how people will run their businesses. And I think that it's important when we see trends like that to be able to sit back at an early stage and say "well, what will we need when the day arrives, if it does, that 90% or 95% or 98% of Americans are willing to pay for their news, information and entertainment?" What will that mean for free over-the-air TV? It shouldn't mean that it's dead, necessarily. It shouldn't mean that the enormous value that broadcasting provides won't find a place in that space, as well. But I do think that it's sort of naïve not to be identifying, watching, examining and thinking long and hard about what those trends may mean in a fairly short amount of time.

SD: So, you're talking about people willing to pay, but then you're not talking about not using an over-the-air signal. Or are you? Are you saying that the internet and cable will replace the over-the-air signal?

MKP: Well, I think nothing is off the table. For example, it's not irreconcilable that people pay for things that are over-the-air, too. You know, you look at the wireless telephone industry that's rapidly pursuing internet pay services. I assure you they intend to make you pay for the use of them. But, I think that there'll be any combination of things. I don't personally believe that free over-the-air TV will ever be dead. I think there will always be a service for that form of digital broadcasting as we transition into digital. But I also think that, given the new environment, you'll have to sort of understand the new and changing behaviors of consumers and understand how you're going to serve them in digital space.

SD: Let's talk about digital. Everyone that I've talked to says there's not a chance of meeting the 2006 deadline to convert completely to digital. Bob Wright of NBC as you know has said it is out of sequence. You would never meet it. And there's the 2002 deadline to start the digital service for television stations, although I understand they'd keep their analog signal. If that's right, you're going to have to slip the deadlines, right?

MKP: Well, conceivably. First of all, let me be clear about which deadlines I own and which ones I don't. [laughter] I do not own the 2006 deadline. That's one established by Congress and one that has, in itself, a trigger that will limit the consequences it would have normally triggered – the return of the analog spectrum. Clearly, Congress set out that there would have to be an 85% penetration in terms of the number of Americans able to receive the signal, or the consequences wouldn't default. So, it has the seeds of its own modification to some degree.

I am one of those who is pretty openly critical that the date, as originally envisioned, will in any way be realized. And frankly, it's quite out of sequence with, or inconsistent with, what we've seen historically with development of other technologies

and other products of similar transition. It takes a long time to transition consumers and consumers are going to be asked to bear a significant burden of this transition in terms of the cost to replace sets. Some 94% of American families have television, a lot of families average three to four televisions, that's a long transition. We have to be sure we know what we're going to give them before we ask them to do this. And there is a little chick in the egg. It'll have to be sort of a little bit here and a little bit there. But I think that one of the things you want to make sure is that we transition efficiently in a way that consumers find the value so they don't choke on the service in its initial rollout. I think, unfortunately, we're potentially setting it back even further.

The other deadline is one that we have some control over. I would note that we've had two previous deadlines already. In the top 10 markets, the first deadline some year ago. And we have another one recently in November of 1999. In each one of those, we've had some slippage, but we've had a vast majority of broadcasters required to meet those deadlines meet them. Which we're thankful for. My view is that 2002 ... just like I talked about trends, I know what the trend lines are. I know that when that date arrives we're going to have questions about whether there are stations that haven't been able to meet the obligation, whether the conditions have prevented them from doing that. We'll have to work through that as partners, as we would in any case. I also won't sit here and pronounce now that we're going to waive the deadline in advance. I think it's important to keep driving toward the objective as efficiently as we can.

SD: Well, if I understand that though, because I received an email from someone that owns two small stations to be sure and ask about this, because if . . . first of all, I don't have the money to come to the convention and second, we don't have the resources now to meet that 2002 deadline. It sounds to me like you're saying to that small station owner, "not to worry, we're not going to put you out of business, if in fact it makes sense to let you have a little more time."

MKP: Well, I would say you don't necessarily have to worry that we're going to be unreasonable when taking those kinds of things under consideration when that day comes. But I do think you have to worry because it's an expensive transition that the industry is committed to. And, ultimately, that station and everyone else are going to have find a business model, the case for the investment, the approach that's going to provide value to consumers in a way to allow them to function in a healthy way in the new digital environment. So, I think it's a real serious challenge. I think the government part is only one part of it, but trying to make sure that you find the business that's going to be adequate to sustain oneself in the digital environment is the bigger question – one to which I would say to that broadcaster, "you will need to probably do some worrying."

SD: A little worry. But let me press you some more. Because I think this is a big issue, here. You, yourself, brought up the fact that there's a marketplace out there. At the moment I don't have the figures, but it must be very low the number of sets in use that can receive digital signals. How can you ask stations, or how can they be asked to put it in the passive, to meet this kind of deadline if their customers really aren't prepared to accept the signal? And in that connection, are you exploring the possibility of

requiring manufacturers . . . it has to do with the fact that there aren't digital sets out there to receive this signal which you're going to require stations by the year 2002 be able to send.

MKP: Well, the reality is the transition has hundreds of variables – any one of them could disrupt the pace of the transition and the efficacy of it. The broadcasters have a substantial part of the responsibility, consumer set manufacturers have a significant part of the responsibility. The regulatory model has a significant part of the responsibility. Congress, consumers, whether people have carriage on cable systems or DBS systems ultimately . . . All of that is going to go into the soup of whether this transitions well or not. Part of my view is that, all of that when looked at soberly is why you understand that maybe the timelines are quite aggressive. With that said, it's a little . . . I guess we say that's the chicken and egg problem. Some people do have to drive in the form of leadership. Any in many ways it was the great work of broadcasting that invented high definition television. It took the lead. It took a leadership role with the government in driving the policy that would facilitate the transition. And I think that they sort of nobly will stay at the lead and will need to be out front in terms of being able to ensure that there's a distribution platform for content providers to write to, for consumers to tune into. And I assure you any one of those groups . . . I go to all the conventions, I can sit at the electronics show and the question will be, "Well, how can you ask us to do that if they won't do that first?" The question is, everybody has to keep moving. We have to try to keep this whole thing moving in this sort of fashion. And I think that broadcasters have always taken a leadership role. They've asked the government to have confidence in their leadership role, and I think they're going to continue to meet it.

SD: You're a great believer in the marketplace, and the marketplace forces. But in the marketplace forces that we've been talking about, there may be some losers.

MKP: There are always losers. I mean the test of your principles are when they yield results that are difficult to stomach. But principles are not designed for the moment. They're designed for the long-term general welfare of the population. I often get asked questions on television and they say well, you're for market and consumer groups say that means you're anti-consumer, and I find that to be the most ridiculous thing I've ever heard. I don't know of another economic system in the history of the world that's produced as much consumer welfare for its citizenry as American capitalism has. You name to me the state central plan system that better served the maximum consumer welfare of its citizens as the free market did in American stock capitalism? I think that's the penultimate conclusion of the end of the 20th Century that not only did democracy prevail, as a social value and political value, but the capital economy prevailed as the leading environment for the welfare of citizens and for the ferment of innovation and revolution. Bill Gates and the great innovators – many of them in this room – can only be born in this sort of environment. And I think that we sometimes are cynical about these things for the wrong reason. And you're right, sometimes markets fail and sometimes government needs to step in. I have no problem with that at all. I also think that sometimes it visits unfortunate circumstances on different parts of the population. I'm not always happy and comfortable about that. But that doesn't mean, to

my mind, that you suddenly revise the principles, change the paradigm, dramatically for what happens on the ends of the spectrum of the main effort. And I think that this area, more than any, can demonstrate its successes in the use of markets more than you can demonstrate the successes of rules that were intended to do the same.

SD: While we're talking about consumers, let's move on to that other famous quote, which I also may have mangled, but you can correct it. Which is a Powell quote that you don't really care if cable prices rise for the consumer.

MKP: Do you care? I care about a lot of things.

SD: Does your heart bleed?

MKP: But what I've learned about you is ... reporters, when they report this stuff, they never report the question. And the question to me on that statement was, "do you think they've risen to justify re-regulation?" No. Not to my mind they don't. Do you care? Yeah. You know what, I'm one of the people who pay this additional expense. I care quite a bit. But whether I think it's the order of magnitude that would justify regulatory or governmental reintervention, absolutely not. And I think that ... you know, one of the things I'm finding is that people have short memories about environments that have only recently been passed. This is not a cable show, but if one were to look back at the health of cable companies at the height of regulation, and looked at the staleness in innovation and the prices you were paying for limited services, I do not believe that you would make an objective case that that was a better environment than the one that exists today. You just couldn't make that. But we forget about that in the current time frame.

SD: Well, let me play the devil's advocate on this. A Mays, a Fritts, a Donaldson, a Powell. We can ... another few dollars a month, we can pay that. A lot of people, it may be the margin.

MKP: Let me tell you something I'm extremely proud about. At the FCC, you really do have a front seat at the revolution and our portfolio is enormous. We operate in the area of television, cable television, wireless telephony, regular telephone service, satellite service, aspects of the internet. Every one of the services which I work with is the most price-competitive of the kinds of utilities provided to Americans in the world. Whether it be free – in the form of television – average cable rates don't even come close to comparing to what you pay for gas or for electric service. My electric bill is by an order of magnitude higher than my phone bill ever is or ever will be an order of magnitude higher than my cable bill, and certainly television. Certainly, my wireless phone is cheaper than my air conditioning services. So, yes, in a market where prices are part of the fluctuation that calibrate services, there are prices where people can't pay and prices where people can. But the truth is, despite what everyone wants to talk about, by isolating a price in almost every one of my sectors that I just described, we're talking about 90+ percentage penetrations for American consumers. Here's an interesting statistic – more Americans in this country have television than have indoor plumbing.

[laughter] That's an absolute truth. Now that's saying something. . . That is value
[laughter]

SD: Let's move on to another interesting subject. Does the phrase "35% rule" mean anything to you? Read my lips.

MKP: It does to them.

SD: Yes, indeed. So, what about it? What are you going to do? You're evaluating it now a court has sort of said . . . you've got to take another look at this?

MKP: Well, at the moment I think it's in a holding pattern because the court said it's going to take another look at it, and apparently it's going to take a hard look at it. For those of you who may or may not know, the 35% national audience cap for broadcasting, which has been around for quite some time, is before the United States Court of Appeals for the DC Circuit. CBS Viacom actually sought a stay in the context of their merger for having to divest stations which would have put them over the cap. The court recently issued a stay, which means that we are prohibited from requiring them to comply with the condition until the court has the opportunity to rule on the cap. Many people see that as a grave sign for the life of the rule for two reasons. The first is not so many weeks ago the court struck down horizontal limits in the cable context – potentially signaling sort of similar skepticism about this rule. Secondly, for those lawyers in the room who do know this, others may not, but a stay, part of the condition is likelihood to prevail on the merits. So in the court's judgment, not only is the harm potentially irreparable, such that it doesn't want the action to go forward, it has made already some judgment that there is a likelihood to prevail on the merits of the petition.

SD: If I may interrupt, it's even non-lawyers now who know that rule. You recall the Saturday that the Supreme Court stayed the counting in Florida . . .

MKP: Well, that's true.

SD: . . . on the likelihood that George W. Bush's petition would win on the merits. And, indeed it did, 5 to 4. Go ahead.

MKP: So, that's where we are. My own view is I think that we will need to see in a way what the specific guidance is that comes out of that ruling. Because any examination of the rule that we might do is going to need to fit within the confines of whatever the court says, just as our attempt to revalidate the cable rules are going to have to fit squarely within the context of the courts.

SD: But, if anyone looks at your record and listens to your words this morning and all of the other times you've spoken – again, as a free market guy, as someone who believes that these forces out there are the best way to have the system work – it seems to me that deep down in your heart you'd like to do away with this rule.

MKP: Well, for people who know me, too I don't pre-pronounce anything I'm going to do until I've actually examined the proceeding, have a record and have some basis to make an informed opinion, and not make it on the basis of just hyperbole and discourse over the value of rules. But I make no secret . . . I'm skeptical, generally, including of this rule, of the straight, prophylactic prohibitions on ownership or reach. My experience with them both in antitrust and in this context are that they almost always are poorly calibrated and impossible to actually calibrate. That is, they always catch people you wish they wouldn't, and they always don't catch some people you wish they would. And yet, you have this sort of absolute rule about it which I think doesn't always, as its predicted to, really average out the balances. I think it's very difficult if you talk about concentration to make broad pronouncements about how much is too much, in a rule-like sense, as opposed to more case-specific evaluations.

There's a reason, for example, that the Sherman antitrust statutes are case-by-case examinations. The antitrust division would never attempt to declare in advance that no automobile company could own more than 35% of the automobiles on the road at any given time, because even in antitrust, a monopoly is not illegal all by itself. It's what the effects of that concentration are. And so rules tend to have a tension there. I also think that, which I think is what's gotten the court's attention, when you're talking about media space, you're talking about, speaking of the First Amendment, entanglement with that value. That is, think about the way the national ownership cap is written. I know on the local level there are real reasons why people are concerned about the relief of the cap. The cap says you can't talk to any more than 35% of the national audience – you can't talk to them. You can own as many stations as you want, depending on what your reach is, but you can't talk to more than that many Americans. And there is something somewhat offensive to First Amendment values about that sort of limitation. I think that's what the court is intrigued by and I think that's going to be the substance of their examination.

Now, the third thing there . . . one – the First Amendment upper limit on what you can do, and secondly my view that rules like that are not good for concentration purposes . . . the third is the one that's the hardest, which is this value of diversity . . . the idea that we like multiple voices. We like localism. We like the things that are produced. We recognize that there's tension that if you didn't have such a rule, you might have an increasing nationalization of broadcasting outlets. And that's something we have to think about and reconcile. On the other hand, you have some dimensions of that already with larger and larger radio groups, larger and larger television groups who then themselves have new kinds of market power. All of that's to say that's why we will look at it. That's why we'll get a record and see what we can do.

SD: Well, Congress has now lifted the cap on radio ownership. Do we have enough experience yet to know whether that's made any difference? Radio really . . . the bulk of stations come down to two large companies anyway, without that.

MKP: That's interesting. I don't know if we do or don't. It depends on what we're focusing on. I think that you could objectively examine what the effects are on advertising rates and markets to see whether you think, in an antitrust sort of sense, the markets become too concentrated. And I think that that's principally the efforts of the antitrust division of the FTC in examining. Secondly, though, whether it has an effect on the diversity of the medium is really the question that most occupies the Commission, I think. And here's where it really just gets hard. We don't know, exactly, and we've never had an effective way to exactly measure that. I could say somebody has so many stations, but does that mean, on its face, its less diverse? I think we have enough experience to say, no, not necessarily. Just like . . . not necessarily . . . if each and every station was owned by very different owners, it doesn't necessarily mean, from the perspective of the consumer, that there's actual diverse choice either. I think that people argue about what kind of diversity they like. The only kind to me that seems to make sense and has a legitimate role in government is the kind that consumers perceive. I don't have as much interest as some as to whether this wealth class or that wealth class gets to own property, in and of itself. But I do think there are values associated with who they are and how much they're concentrated from a consumer's perspective. There are even theories that suggest that with some level of concentration, you get more diversity given that an owner who is trying to maximize eyeballs or maximize years will try to program in a way that captures the most amount of those interests as possible.

One thing I do reject is that I don't think that there isn't a commercial motivation for diversity. I believe pretty strongly in diversity. I just reject the idea that the only way you get it is by government fiat, or that a programmer or a station owner themselves don't have a bottom-line, selfish, greedy, Adam Smith invisible hand reason to serve consumer interests. And I don't know that I think television or radio would look that different with the rule or with market dynamics. And I just think we have to be ready to test those propositions.

SD: All right. Let's talk about low power FM radio. A lot broadcasters don't want to see these stations take away from them, particularly if they're in the margin, some listeners. What's going to be the bottom line?

MKP: Well, right now the bottom line has been established by Congress which is we have been required by statute to conduct a pretty exhaustive technical examination of low power FM. That, as the statute seems to be written, would require real world experiences. That is, not just laboratory testing of the potential interferences, but some actual demonstration in the context of real and operating stations. Congress also reversed the Commission's judgment about what level of spacing protection will be required and so licenses that are issued will be issued with third adjacency protection instead of second, which was the original determination. The ultimate effect of that, as everyone knows, is that there will be many fewer of them that are possible to license in that context. So, in many ways, we're just going to follow through on what we've been told to do. Which is, right now we are in the process of completing the letting of the contracts for purposes of the technical examinations. Filing windows have been opened on the

service, and we will ultimately have stations that are in operation to which the Congressionally mandated test can be applied. And we'll see where we end up.

SD: Let's talk about the internet and broadband – two interrelated subjects – but perhaps some separate questions there, too. The internet, at the moment, is proceeding in an almost completely unregulated fashion. You don't even charge sales tax on it. Do you see the day when the Commission will step in and begin trying to make regulations concerning activities on the internet? And, what about the off-shore quality of this medium?

MKP: That's a great question. Let me speak not as the FCC, but "the Government," the way I think it will roll out. The first is, it's a mischaracterization in some ways to say the internet is not regulated. The internet rides on an infrastructure that I assure you is very heavily regulated. The telephone line that you use to dial up your local ISP with 56K is heavily, heavily regulated. The terms and conditions of compensation between your internet service provider and the telephone company is heavily part of the regulatory environment. The backbones on which long-haul internet traffic is transported is in the hands of the largest long-haul telephone companies, in essence, with the U-Net, PCINet, Sprint's network, AT&T's network, the global network – all are a part. And architecture matters in the new environment. That is, the regulatory conditions over architecture have a direct impact on the kind of services that will ride over the top of the layer.

What isn't regulated is content, in essence. And I think that that's the thing that should always stay unregulated or the burden should be extraordinarily high as to why to regulate it. I make the same argument just as passionately about television, or any other medium that has a platform that puts content over the top of it. Yes, the difference there is sort of the internet is the golden regulatory child. Which is, Congressmen and regulators are falling over themselves to prove that they're the most committed to not regulating the internet which, in effect, really is not just less regulation it's actually an implicit subsidy an implicit subsidization of internet commerce. When you say that other goods in the society are taxed but those on the internet don't, I wouldn't call that unregulated. That's actually, in a way, a subsidization of this growth. You're not subjecting it to the rules of other similarly situated things. Many of our rules that govern compensation could be characterized as implicitly subsidizing ISP growth and services.

I think that that will largely stay the same because I think the economics of internet architecture are very price aggressive. That is, in their normal operation in the market, there are services that get driven to cost very aggressively. See NASDAQ. And sometimes they get driven under. But the economics are very, very good in the internet space. I mean, without any government price subsidies, like we do in telephones, you know the average person pays anywhere from \$9.95 to \$19.95 for unlimited internet access, even getting on anytime, any where. And, in some cases, you even have free access. So that's pretty price-competitive. As long as the economics, I think, maximize consumer welfare in that way, the government won't be overly invited to intervene.

But here's the part we shouldn't lose sight of. The revolution may have changed digitalization and technology, but it didn't change the human machine that much. That is, your eyes have the same band width level, our human relationships are similar, the way we hear is similar. The internet will be all of these wonderful things, but it's also going to be all of the bad things we don't like in society. It's not just going to be a library, it's going to be a crime scene. And it's going to be a place where pornography is transited. It's going to be a place where people are defrauded and their money is stolen. I assure you, as this service becomes more ubiquitous, and people become increasingly dependent and trusting in it to their liability, they will cry out to their governments and others when these things happen to them. If your bank account vanishes one night, I assure you you're not going to want to hear me say, "well, let the markets work. It's all okay." "Sorry."

SD: What about content? Let me stop you right there. Have you logged on to nakednews.com?

MKP: I have not.

SD: Well, I just wondered.

MKP: I just read about it.

SD: I wonder what the Commission's position would be if they suddenly got a raft of letters from a particular community saying an over-the-air telecaster was doing naked news, in which the news starts with a young lady completely clothed, but by the end the young lady . . . I have logged on only for research purposes. . . [laughter] At the end, the young lady standing frontally nude to the camera, making no lewd gestures, but standing there frontally nude and finishes reading the news. What would the Commission say about that? Let all flowers bloom? [laughter]

MKP: I know your ratings are low, but don't go there. [laughter]

SD: As I said to a group yesterday, even in my prime, it would have been a terrible site. But, it's a serious question. You just said you're going to have deal with it if my bank account vanishes. What if I'm horrified when my children see this. Because you've just said on the internet all these things are happening, maybe at some point people would cry out to government.

MKP: I don't think the Commission probably, given who they would be at that time, would like that. I don't think Congress would like that. I'm not so sure the public would like that. But here's the interesting thing, which is, I think as we move forward and have a proliferation of medium where people can go for news, entertainment and information, who have very different regulatory environments. . . and by the way, this is where I get most passionate about the First Amendment, different First Amendments . . . if I wanted to do something about this on broadcasting, the First Amendment and its jurisprudence might let me. If I tried to stop this on cable, it probably wouldn't let me, or

it would be a close call. If you tried to stop it on the internet, you would lose. The Supreme Court of the United States, the very one that sometimes seeks to sanction the greater intrusion in broadcasting, voted 9 to 0, without question, on the communication indecency act when it moves to the internet. There is a phenomenal sort of tension between the firebreak they have drawn on the First Amendment rights on the internet space and what they've historically done in the context of broadcasting, I have a whole theory about it's the clerks who are internet savvy who write the opinions.

You know, the great cases of the 70's, when the court was dealing with obscenity, you know the whole story about these folks going down to watch dirty movies and the clerks, you know. . . but this really is – this is something the court has staked a flag and said “We're going to master the internet. We're going to guard it.” When the government starts playing around and what comes over and we're going to be pretty aggressive. I mean 9 to 0 liberals and conservatives alike. So, but you know, my 12 year-old increasingly . . . his world is a seamless world. I mean, I hate to tell you this, but I don't think any of my children would know what broadcast is versus anything else they watch. I don't think that they even make that many distinctions between their Nintendo and the computer. They're just experiences to them. And they are becoming fluent in how to achieve them. And I've watched my child get on Napster and I've watched them go to . . . you know, the thing that I like watching is they buy the video games, then they go on the internet to find how to cheat on the video games. You all know this. My 6 year-old searches the internet for all the codes to break the game so he can play at the levels. And to him, that's all part of the sort of seamless way he's entertaining himself. And the TV is on at the same time. So, as a parent and as a regulator and as a government policy . . . I can talk about drawing these firebreaks. Like this world we'll keep clean. The reality is that society, you understand, has to start to adapt to the fact that, just like I wish I could, but I can't, my child walks out into the real world every morning. And you know what? I'm not capable of keeping him from the multitudes of ways he learns things. What I find is, me trying to draw that break is not what works. It's getting in touch with his life, knowing what he does and being able to be a trusted voice to him so that when I say “not this one,” he'll believe me. Trust me, I've listened to more Dr. Dre rap than I care to, trying to know what attracts him. And I have to yield on things I wouldn't want to yield on. Not because I don't like them, but he does and I've got to have some credibility. It's not so different in regulation, really.

There are times where I think as a society we're going to want outrage. We're going to say, “that's enough.” But I think that if we want the moral high ground and credibility to do that, we can't nit-pick at things that are silly, because you know someone can just do the exact same thing with no transition possible. And so, volume matters. And where you make your noise and where you take your stand matters. Nakednews – I don't know.

SD: Recently you know that a man was arrested in Paris suspected of shooting Dr. Schlepkin, one of the doctors at an abortion clinic in upstate New York. And concurrent with that, not in the same day, the Ninth Circuit Court ruled against the idea that a website which targets these doctors puts a “Wanted” sign under their picture and

that they are committing crimes against humanity and should be brought to justice. That's free speech, according to the Ninth Circuit. I guess as a preamble to listening to what you say, Mr. Chairman, about today's fast-paced life and mores, the courts and how they have, and the Congress, looking at this with heavy emphasis on the First Amendment. That that old faded blue book, which talked about the public interest convenience and necessity and Red Lion Case and all of that. I should just tear that up – hmmm?

MKP: I think they tore it up already.

SD: As a regulatory issue.

MKP: I don't want to get too philosophical. One, it still does exist in the regulatory structure. Not the blue book, but to be candid, we still have rules that go to indecency and obscenity. We still have rules that go to things that are inappropriate in television. We still have policies that we advance that are designed to create a wholesome balance of programming for children and in other contexts. We don't . . . we're not in this nearly as intrusively as the Commission once was. I think that's a good thing, frankly. Because I don't know that three of five unelected representatives with no direct accountability to the people should subject the world to their value choices just because they hold the stick.

But the First Amendment, and in a free society, this stuff gets tricky. You know, when I was in Moscow I was also deeply hurt that the Klan can march in the street in Mississippi and that's the First Amendment. Well you know what? To me, that's the most offensive thing, the most scary thing, that I ever have to witness. But my Constitution says they get to do it. Or the Nazi marches in Skokie and the First Amendment says they get to do it.

Now, what I've always understood the framers' brilliance to be is the First Amendment will have, like any rule, will be over-inclusive and under-inclusive. There'll be times when you wish you'd make an exception. But we will tolerate those things in exchange for the enormous value and the enormous benefits to society of the rest being permitted. And I could play this game all day. I can find plenty of things that I will be outraged by.

But then, as a rulemaker, what I'm always frustrated by is I'm the guy who's got to go back and put the pen to paper. I'm the one who . . . you know, I can be a critic too, but at the end of the day, what's it supposed to say? And how do I not catch stuff that shouldn't get caught. At the end of the day, one of the reasons that I restored my faith in the First Amendment, because I'll be honest with you – a month ago I hated it – it's an irony you know. In the other context of First Amendment theory, there's a liberal notion. Somehow in TV the liberal notion's been the exact opposite. It's okay for Skokie, but it's not okay to let a broadcaster show what they want.

But at the end of the day we have to be careful. Because I don't think that it's easy to draw that line, and you have to remember who is doing the drawing, that when your government starts telling you about which messages it prefers you see and which ones you don't, I think that's what kept Thomas Jefferson up at night.

SD: You clearly stand with the late Justice Marshall who said, "The First Amendment says no. It doesn't say no but, no maybe, no sometimes. It says no." Let's talk about spectrum. You've got an auction coming up . . . one of many and once delayed. Gonna make some money? Gonna auction off the spectrum? Still using it, but it's all right. How are you going to handle that?

MKP: How are we going to make the money?

SD: Well, no.

MKP: You know, spectrum is enormously challenging. I think this is the area that probably gives me a headache much more than any because, particularly in this period of extraordinary intervention and technological advancement that increasingly is making really robust and reliable use of airwaves as a platform, the demand is dramatically higher than the supply and supply being only constrained, in essence, not by the technology, in my opinion, but by the commitment to protect against people's uses and interference. Just like the LPFM example. At third adjacency, this many. At second adjacency, that many. I mean, where you draw the technical interference standards are critical to whether you can satisfy demand and whether everybody is happy with their services.

Let me say something about auctions. I believe deeply and strongly, though I don't know if everyone agrees, auctions have nothing to do with money, in my opinion, for the government. I pretty much reject the notion that you should intertangle budget policy and monetary policy with communication policy. Auctions are outstanding because they're an excellent way to efficiently distribute licenses and airways to people who value them the most. As the government, I'm not a business. I don't really care that much if I get \$5 for it or \$17 billion for it. I know the budgeters do. But, that to me is not a principle consideration in the way I look at spectrum issues. Because I think when you start entangling that objective with policy, you can cause real problems. For example, we are going to wrestle with Congressional mandates to auction spectrum that people in this room own. We're going to auction encumbered spectrum. How valuable do you think that's going to be to people? And, even if they buy it, there's going to be some period of uncertainty about who is going to use it, and how they're going to work out these arrangements. That problem is a consequence of looking to these things as a way of increasing revenue – not because they're the smart communication policy. And to give you another example, Europe is going to crush itself over what it paid for third generation wireless spectrum. And it paid too much and it wanted the money. And a company like British Telecom is sitting on \$35 billion of debt with no service and no customers and it's not clear whether some of these huge companies are going to come out. Somebody pointed out to me how dramatic that was. For the same amount of

money you could have wired every home in England with fiberoptic cable. So, when the money, when the billions, becomes the stars in your eyes of communication policy, that can be a big mistake. One that I try to hope that we avoid.

SD: See, I don't know enough about the issue to even ask a follow-up question on this. I'm sure . . .

MKP: I tried to take it that way.

SD: He's cleared very smoothly over what you guys really want to hear about. I said, when we talked about the Internet, we talked about one side and broadband was another side, although they are interrelated. The Telecom Act now, you believe, has opened the floodgates to now an increased speed and rapidity of going to broadband. What is your prediction, looking into the future as far as human eye can see?

MKP: I don't like to talk about it, frankly, in terms of broadband or not broadband. They are all relative terms. What we're talking about is whether you'll be able to be delivered using certain protocol, voice, video, entertainment, at a level that is perceptible to your senses as real time.

SD: It's watchable, if I may, sir.

MKP: It's watchable. And what's interesting is . . . I think this is fascinating because a lot of people don't think about something as simple as how fast can your eye calculate visual images. It turns out that that is a demonstrable number. But some people would have you believe you need extraordinary amounts of bandwidth that the eye will never be able to take advantage of anyway in a given strain. The ears can only hear at certain kilohertz, at the range limitations. Getting back to first principles, like flesh and blood, what people can, and will do is really going to be critical as to how much these services, . . . it's the Gutenberg bible or it's a fancy experiment for a technophile. But I think we get really euphoric about the technology for its own sake, without thinking long and hard about what it means for people and how they change your life. Which is really the only factor that will determine the robustness and the value of its future.

Now that said, I think it is here to stay. And when I say "here," I think it's a confluence of two extraordinary revolutions that have finally come together and gotten married. One is the communication revolution that was begun with the telegraph and telephone and the basic use of electromagnetic spectrum to transmit images and messages. And that has grown and matured. The phone system is the most extraordinary engineering experiment in the history of the world with beautiful reliability and it's extraordinary. But it's very mature. It's really sophisticated tin cans and string, just the way it was when it was first introduced. But the other revolution is a microprocessing revolution, with the silicon chip and the transistor and Intel's production of fast processors on silicon wafers. And then Microsoft operating systems software. These two things have sort of been coming at each other for the better part of the century and they've slammed into each other – finally. And processing power, now being brought to

bear on information, can then actually process information. So I can call you and now maybe I can call you in English and it comes out French. Because the computer can be involved in the communications.

And this coming together is embodied in what I think the Internet is. The Internet is the first explosion of a product that took processing power and transmission power and blocked them together in this enormously powerful thing. I think we are not even in the first inning of what that means. But that's going to mean average consumers on a mass market level being somehow able to access communication medium at rates, enough not to take advantage of it, ... Broadband. That's coming. It's going to come. It is unstoppable, in my opinion. The only question is how long will it take and what will it look like. Because even in the almost three and a half, four years, I've been at the Commission, I've watched things people told me couldn't be done already commercially deployed. Oh you can't do broadband over satellites, ever. Except companies are now offering that service to consumers. You couldn't do . . . the wireless technology will never be an effective substitute for telephone service, except kids are rapidly getting cell phones and putting away their . . . and then there's . . . I haven't said this in a while. There's the thing we haven't been introduced to yet, while we're sitting here having breakfast, somebody's in some garage making. That's maybe the thing that makes this thing explode and we haven't even had the slightest inkling of it. That's the mushy part that's exciting. You couldn't have . . . you know, I'm a student of technology history and what amazes me is that the great inventors are always the heretics. The first time Einstein sat on a stage and talked about quantum mechanics, he was booed off the stage by the leading scientists of the age, except he was right. There's a tendency for us, as Gilder would say, to tilt at monsters. These things, when they first come, look like heretics. They're disrupting the paradigm. You put them back in the box and get rid of them. But I think you haven't seen that fourth thing yet. I think that fourth thing is probably what's going to take this thing into the mainstream of people's lives. And it's not my generation. It's no one in this room's generation. It's our little kids. And my 6 year-old already freaks me out with the degree to which . . . this is just his world. He was laughing about me because he saw my record player the other day and had no idea what it was.

SD: On that note . . . Chairman Powell, we're out of time. This has been a great conversation. We thank you.

MKP: Thank you, Sam.