Remarks of Commissioner Robert M. McDowell
Media Institute
Wednesday, January 28, 2009
The Four Seasons Hotel
Washington, D.C.

As prepared for delivery

Thank you, Patrick, for your kind introduction. I am honored to be your featured speaker this afternoon.

Before I get to the main topic, I'd like to discuss briefly the more urgent issue of the digital television transition. At this hour, it is still unclear whether Congress will extend the analog television cut-off deadline. I understand that whip counts are still being tallied in the House. As I have been preparing my remarks over the past few days, I have re-written several different sections on the DTV transition. In fact, I was just re-writing some of it in the car ride over here. But I think it is important for all of us to stay focused on February 17 regardless of what Congress does or does not do. Most broadcasters are prepared to shut off their analog signals on that date, and with good reason. Not only has the government been working with them for three years to realize this goal, but broadcasters have invested hundreds of millions of dollars in new DTV equipment in the past few years. On top of that, in some cases broadcasters must spend more than $10,000 per month in additional electric costs to broadcast in both analog and digital. I know that they are eager to go all-digital as soon as possible, and many of them already have – sometimes on a market-wide or even statewide basis. In short, if broadcasters are poised to go all-digital as soon as possible, they should be allowed to do so. At the same time, we should all be aware that many TV viewers will be left behind regardless of when the cut-off date is. As I have been saying for months now, this transition will be messy whenever it happens.

And when it comes to the DTV transition, I want to give a big "shout out" to my friend and colleague, Acting Chairman Mike Copps who is doing all that he can, with the energetic support of Commissioner Adelstein and myself, to minimize the inevitable collateral damage this transition will cause – again, regardless of when it happens. I know that the FCC will work diligently to carry out any new Congressional mandate under Acting Chairman Copps' leadership. I just hope that if Congress extends the deadline, that it would also give us the resources we will need to carry out the new mandate effectively. In the meantime, let's all stay on message: if you need a converter box, get it today and hook it up today and start enjoying the benefits of digital television today.

While DTV is the most immediate media issue facing America, a longer-simmering debate over the freedom of expression lurks in the background – and may soon jump back into the foreground. I hope my remarks today will help start a rational and thoughtful conversation about a topic that typically produces much hyper-ventilation among people of all political and ideological stripes: the possible return of the so-called "Fairness Doctrine." The mere mention of its name raises not only blood pressure but also many questions -- from all quarters: Is it returning? If so, under what name this time? Would it apply to more media platforms than before? How would it be enforced in practical terms? Would it really serve the public interest? Would the courts strike it down? Inquiring minds want to know – or at least talk show hosts want to talk about it.

It's hard to tell if current calls for its return will gain traction or not. On the one hand, recently several prominent Members of Congress have called for its restoration. Still others are strongly opposed to its revival. Frequently when I give interviews about DTV, I am asked about the Doctrine instead. So perhaps this is the perfect time to examine why it was created to begin

with, historical abuses of it by both Republicans and Democrats, practical enforcement difficulties, and the legal difficulties its restoration would create.

Let's start with how and why this rule was ever engendered to begin with. Jump back in time with me to the era of flappers, speakeasies, the Red Scare and a new controversial technology: radio. In the 1920s, the FCC's predecessor – the Federal Radio Commission – began to grapple with the problem of too many people trying to broadcast messages at the same time and at different power levels in the then-limited space of the radio dial. This spectral free-for-all caused interference that effectively undercut the ability of anyone to be heard.

My father would tell stories about growing up on a ranch along the Tex-Mex border near Del Rio, Texas. Del Rio's twin city across the Rio Grande in Mexico was Villa Acuña, the home of the infamous Dr. Brinkley and his one-million watt radio station. Dad said that Dr. Brinkley's signal was so powerful, it caused the screen doors and bed springs to act as radio receivers causing them to "talk."

Well, it was similar scenarios that led to the solution of government licensing of frequencies to specific users. And that quickly led to questions about what duties licensees owed to the general public. The idea behind such regulation was that only a finite amount of spectrum existed and it was a natural resource belonging to the public. Yet a licensee was allowed to use his or her radio frequency to the exclusion of others. In short, licensees had the power to air their point-of-view and no one else's. In fact, back then few stations ever aired regular "letters to the editor" features, and even fewer were subjected to major defamation suits. With only the print media as its competitor, and a mere 623 radio stations on-air by 1935, this new medium seemed to many to be a powerful political threat. Thus was borne the concept of "spectrum scarcity" –

the underpinning of the regulation of speech, including even core First Amendment-protected political speech, broadcast over the airwaves.

As early as 1929, the old Federal Radio Commission decided that it would hear complaints from those denied the right to express their views over a broadcast station. The FRC was concerned that some licensees might be running "propaganda stations" rather than facilities that provided "ample play for the free and fair competition of opposing views." Of course, the "propaganda" of concern back then emanated from budding socialist and Communist movements in the U.S. And interestingly, to the FRC, "propaganda" also included quacks like Dr. Brinkley who offered false cures for cancer.

By 1940, fascism had trumped communism to become the more immediate threat to western democracies. Controversies around radio editorials for and against the rise of fascism convinced the FCC to ban broadcast editorializing altogether. But, after we had defeated fascism during World War II, in 1949 the agency backed away from that extreme stance. Instead, the Commission framed what later was dubbed the "Fairness Doctrine": a two-pronged obligation requiring broadcasters to, first, air coverage of "controversial issues of public importance" in the station's community; and, second, afford a reasonable opportunity for the presentation of contrasting viewpoints on such issues. In short, government was requiring viewpoint neutrality. While intending to build a shield against hostile political ideas, the FCC also created a political weapon.

The Fairness Doctrine, also called the "Censorship Doctrine" and "Forced Political Speech Doctrine" by some (but which I will try to refer to only as "the Doctrine," to be fair) has been abused by Democrats and Republicans alike as a weapon against political dissenters. One

of the best sources of the Doctrine's political history is Fred Friendly's 1976 book *The Good Guys, the Bad Guys and First Amendment: Free Speech vs. Fairness in Broadcasting*. Friendly, a former CBS News president, and by then a professor at Columbia University, interviewed several members and reviewed the papers of the Kennedy, Johnson and Nixon administrations about White House efforts to use the FCC's power against their perceived media opponents. Kennedy aides told Friendly that the JFK White House first explored the potential political uses of the Doctrine in 1963, when the President's advocacy of a nuclear test ban treaty with the Soviet Union was under attack by conservative radio commentators. The aides advised political allies on how to demand reply time on those stations under the Doctrine.

That success led another Kennedy aide to begin monitoring conservative radio broadcasts from the basement of his home in Bethesda – an operation that moved, with Democratic Party financial support, to a more professionally run outside entity during the Johnson Administration. Then that organization helped to direct what became, in the words of a former Kennedy Administration official, a "massive strategy … to challenge and harass right-wing broadcasters and hope that the challenges would be so costly to them that they would be inhibited, and decide it was too expensive to continue." The effort included the establishment of the "National Council for Civic Responsibility," what Friendly called "a bipartisan front organization" to run print ads critical of conservative broadcasters and provide training to assist in the filing of Fairness Doctrine complaints.

The action didn't stop with the establishment of the LBJ-era "National Council." Once Richard Nixon took office, Republicans reportedly also were attracted to the promise of the Doctrine – or the FCC more generally – as a political weapon. A 1969 memo from Jeb Magruder to H.R. Halderman details "approximately 21 requests from the President in the last 30

days requesting specific action relating to what could be considered unfair news coverage." Magruder recommended establishing "an official monitoring system through the FCC…. If the monitoring system proves our point, we have then legitimate and legal rights to … make official complaints from the FCC." Magruder went on to "liken this to the Kennedy Administration in that they had no qualms about using the power available to them to achieve their objectives. On the other hand, we seem to march on tip-toe into the political situation and are unwilling to use the power at hand to achieve our long-term goals…." The FCC's 1985 Fairness Doctrine Report, however, notes that there is no evidence indicating that a Nixon-era Fairness Doctrine "monitoring program" was ever established – even though the Nixon Administration eventually dispensed with the subtleties of "tip-toeing" during its political pursuits.

Aren't these tales alarming? History proves that abuses of power brought forth by the Doctrine are not partisan. Both right-leaning and left-leaning broadcasters have been attacked and intimidated. With that in mind, if the Doctrine is reimposed in any form, how do we know that it will not be used to silence political adversaries? Justice William O. Douglas made that point in the 1973 case of *Columbia Broadcasting System v. Democratic National Committee*, in his concurrence, where he said that he would have invalidated the Doctrine outright. He elaborated, "the regime of … federal supervision under the Fairness Doctrine is contrary to our constitutional mandate … and makes the broadcast licensee an easy victim of political pressures and reduces him to a timid or submissive segment of the press whose measure of the public interest will now be echoes of the dominant political voice that emerges after every election."

But let's get back to the era of free love, Woodstock and burning draft cards: the 1960s. While all of these political shenanigans under the Doctrine were playing out, the courts delicately upheld it. The seminal case was the Supreme Court's *Red Lion* decision. The facts

pitted a small, politically conservative, religious station against an investigative reporter who had written a book critical of Barry Goldwater. Shortly after the 1964 election, the station aired a syndicated program by Rev. Billy James Hargis attacking the reporter, Fred J. Cook, as "a professional mudslinger" who was dishonest and alleged he supported Alger Hiss to boot. Cook and Hargis had a history of hating each other and openly expressed their mutual disdain. After the November 1964 broadcast, Cook, the reporter, fired off queries to more than 200 stations under a corollary of the Fairness Doctrine called the "personal attack rule," asking whether they aired the Hargis program and, if so, demanding response time. Radio station WGCB, in Red Lion, Pennsylvania, refused to cooperate and thus thrust itself into constitutional history. As a result of WGCB's defiance, Mr. Cook filed a complaint at the FCC.

Eventually Mr. Cook pressed his case to the Supreme Court and won, thereby helping to enshrine into law the principle that broadcasting deserves less First Amendment protection than other media. The Court's decision was not premised on the power of broadcasting to shape public opinion but, rather, on the "spectrum scarcity" rationale, which has become the foundation of much broadcast content regulation beyond the Doctrine. Nonetheless, the Court went out of its way to emphasize that its decision was based on the scarcity of broadcast frequencies "in the present state of commercially acceptable technology as of 1969." The Court added, "if the experience with the administration of those doctrines indicates that they have the net effect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications."

So let's fast-forward to the time of big hair, the Talking Heads and Ronald Reagan: the 1980s. Accepting the Court's invitation to "reconsider" the state of the marketplace is exactly what the FCC did with its 1985 Fairness Doctrine Report. In short, the Commission's study

found that administration of the Doctrine created a danger of politically motivated intimidation of broadcasters by government officials. The FCC also concluded that broadcasters would rather shelve plans to air political opinion – or even cover some controversial issues in their news reporting - rather than be subjected to possible license revocation. In sum, the FCC found that the Doctrine:

- Lessened the "amount of diverse views;"
- Inhibited "expression of unorthodox opinions;"
- Placed "government into [the] intrusive and constitutionally disfavored role of scrutinizing content;"
- Imposed "unnecessary economic costs on broadcasters and the Commission;" and
- Was not needed "in light of [the] increased number and type of information sources."

Anticipating repeal of the Doctrine by the Commission, both houses of Congress passed the Fairness in Broadcasting Act of 1987, which would have required not only broadcasters but, for the first time, cable operators to abide by the Doctrine's political speech regulation. The bill was met by a swift veto from President Reagan.

Two months later, the FCC repealed the Doctrine. But Congress has tried several times to revive it. Should it return again, as several current Members of Congress have called for, I doubt it would wear the same label. That's just Marketing 101: if your brand is controversial, make a new brand. The Doctrine could be intertwined into other communications policy initiatives that are more certain to move through the system, such as localism, diversity or net neutrality. According to some, the premise of any of these initiatives is similar to the philosophical underpinnings of the Doctrine: the government must keep electronic conduits of information viewpoint neutral. But policy makers must ask: would such a policy really best

serve the public interest? How would the government implement such policy? What are the practical implications of enforcement?

History teaches us that the government is a poor arbiter of editorial decisions, all constitutional implications aside. After the *Red Lion* case, the courts started to recognize that practical application of the Doctrine was problematic, at best. For instance, the D.C. Circuit shot down the FCC's 1973 attempt to use the Doctrine to second guess NBC's editorial decisions when producing an expose of pension mismanagement. The court concluded, "[i]n general, … the evils of communications controlled by a nerve center of Government loom larger than the evils of editorial abuse by multiple licensees who are not only governed by the standards of their profession but aware that their interest lies in [the] long-term confidence" of their audiences.

If the Doctrine were to return in some form or another, does anyone think that the Commission is any better equipped today than it was in 1973 to untangle the knotty problems of enforcement by assuming the role of editor-at-large for the entire country? The *Pensions* case illustrates that Doctrine disputes were centered *not* on inaccuracies or defamation but, rather, on tone, balance and other aspects of the editorial process. Even if the FCC had a large number of people to devote to such reviews, which it doesn't, and even if the prospect of government regulators scrutinizing individual editorial choices were not so constitutionally unsavory, which it is, in practical terms enforcement of the Doctrine presents intellectually thorny challenges. Once Doctrine complaints were filed, unelected bureaucrats would be put in the position of determining: (1) what the opposing view, or views, might be; (2) which of several potential speakers should get a chance to voice them; and (3) when and how such opposing views should be presented.

In the real world, then, should a challenged station be obligated only to carry *some* opposing views – meaning that the broadcaster has discretion to choose? Or should the station be required to air the most opposed views – meaning the broadcaster would have to take the hard-core advocate but not the proponent of some compromise alternative? Or should the station be made to air the most popular rival views? All rival views? All the seemingly-credible rival views? How should the Commission decide this?

If the station has discretion about which views to choose, what if the broadcaster deliberately chooses the most extreme speakers who are just inarticulate or foolish – to present the contrary views? Would this be "unfair" because it might undermine the persuasiveness of the opposing position? Would the KKK have to be given time to respond to the views of the racially tolerant? Would jihadists have to be given time to respond to critical statements made against al Qaeda?

And how much time must the station devote to presenting contrary views? As much time as was given to the original views, or less time? Or maybe more? And must the opposing views be presented in the same program series, or would the same daypart be good enough? How about airing opposing views at 3 a.m.? These are questions that cannot be answered in anyone's law review article, committee hearing, reply comments or appellate brief. It would be more constructive if such discourse were left to America's free market of ideas, and the decision of whether to respond left to individuals, not to the state. And I think the courts would ultimately agree in this New Media Age.

In the meantime, let's rewind the tape for a minute to the *Red Lion* case. There, the Court explicitly recognized that the spectrum scarcity rationale depended on "the present state of

commercially acceptable technology as of 1969" – and, therefore, could be rendered invalid by technological developments. And over the last 30 years, an impressive array of "new" media that would have been considered outrageous science fiction in 1969 has become an established fact in modern American life: cable and satellite television (with its hundreds of channels); satellite radio (with its hundreds of channels); and, of course, the Internet (with its millions of low-cost or free outlets for speech). Add on top of that a plethora of new delivery platforms, such as over 271 million wireless handsets through which Americans can - and are - accessing more and more audio and video content. After just a short while, it becomes obvious that we are awash in not only more sources of information, but more conduits to deliver that data than ever before.

But those numbers don't even begin to capture the explosion of new competition *within* traditional media itself since the *Red Lion* decision. The number of full-power broadcast stations has more than doubled since 1969 – growing from 6,197 radio stations and 851 TV stations back then, to 14,124 radio and 1,758 TV stations in 2008. These stations also now have access to "multicasting" technology, which allows each TV and radio station to broadcast multiple programming channels at the same time. And let's not overlook low-power broadcast stations. Since 1969, we should add another 851 LPFM radio, 550 Class A TV and 2,272 LPTV stations. That takes total broadcast facility numbers up to 19,555, nearly a three-fold increase since 1969. And it's a more than 30-fold increase over the 623 radio stations on the air in 1935, when the Doctrine was emerging. Furthermore, if one takes into account the fact that our spectral efficiency doubles every two and a half years and that, as a result, we are one trillion times more spectrally efficient than when radio was first invented, it becomes obvious that the concept of "spectrum scarcity" is an anachronism.

The FCC in recent years has recognized that the expansion of media outlets has eroded the position of traditional broadcasters, and reviewing courts have agreed. Even as it remanded the Commission's controversial 2002 media ownership decision back to the agency, the Third Circuit in the *Prometheus Radio* case agreed that the FCC's relaxation of the broadcast ownership limits in the light of modern marketplace realities was reasonable and justified. The court simply disagreed with how the Commission justified drawing its ownership lines at that time. Today, a court reviewing a reinstituted Doctrine would have to recognize today's "present state of commercially acceptable technology" – to quote the *Red Lion* Court - in determining whether to give the government the same deference it enjoyed three decades ago to restrict broadcaster speech.

Actually, in a string of media cases stretching back over more than 20 years, various judges on the D.C. Circuit – both Democratic and Republican appointees – have suggested that it is time for the Supreme Court to rethink the concept of spectrum scarcity as a justification for limiting broadcasters' First Amendment rights. A revived Doctrine would provide a big, bright bulls-eye for those who wish to make that happen. That development would have implications far beyond the Doctrine itself. Much of our content regulation of broadcasters – including most of the FCC's existing localism rules and the regulations requiring three hours a week of children's programming – rest on the spectrum scarcity rationale. If that rationale is invalidated, serious legal challenges to all those other content rules may follow.

The Court in *Red Lion* also suggested another inherent limitation in its decision. It stated that "if experience with the administration of [the Fairness Doctrine] indicates that [it has] the net effect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications." I'm willing to bet that the courts will

take judicial notice of the fact that, by any objective measure, America enjoys more news and opinion today than in 1969. A return to the days of the Doctrine may also be a return to the days when broadcasters would prefer to air no controversial content rather than risk losing their licenses.

To proponents of the Doctrine who contend that the Doctrine is needed because radio has become the sole domain of conservative commentators, I ask: have you actually listened to the radio recently? Have you especially listened to FM radio? FM is home to major news, commentary and talk radio, too, and proponents of the doctrine who are most concerned about the "fairness" of conservative talk shows should pause to consider the widespread popularity – and potential vulnerability – of public radio programs to Doctrine complaints. National Public Radio, the largest nationwide distributor of noncommercial radio content, attracted only about two million listeners in the mid-1980s. Today, NPR serves 26 million listeners across the nation, making it a vibrant force in radio news and public affairs. It airs some of the most listened-to radio news programming – in the form of the "Morning Edition" and "All Things Considered" – and an array of afternoon talk shows, such as "Talk of the Nation" and "Fresh Air." It should go without saying that NPR does not hesitate to tackle controversial subjects. In fact, NPR and many individual public stations either cut back or eliminated classical music programming in favor of news and public affairs.

Public broadcast stations would be prime targets under a revived Doctrine. Noncommercial licensees were subject to the rules before, and they could not constitutionally be carved out of any revival now. Public broadcasting's content and alleged slant, coupled with taxpayer funding of the Corporation for Public Broadcasting, have long been a bane of conservative critics. There is no reason why motivated critics would ignore the new

opportunities provided by a resurrected Doctrine. Such attacks happened to arguably "mainstream" commercial networks, so why wouldn't allegedly left-of-center public broadcasters be attacked under the Doctrine as well?

But a resurrected Doctrine would have to survive more than just the constitutional arguments previewed in the *Red Lion* case. The history of political abuses would likely give any appellate court great concern. Would the current Supreme Court, for instance, wish to "bless" a rule that has been (and could once again be) used as a tool for government censorship of core political speech? There is nothing theoretical about what happened in the past – and it happened on a bipartisan basis. At least some of those involved had the grace to be embarrassed about it afterward. A public relations professional involved the in the "National Council for Civic Responsibility" effort later told Fred Friendly that "[i]f we did in 1974 what we did in 1964, we'd be answering questions before a congressional committee." Another involved in the same operation said, "[L]et's face it, we decided to use the Fairness Doctrine to harass the [our opponents]. In light of Watergate, it was wrong. We felt the ends justified the means. They never do." Regret is good, but will the regrets of so long ago be remembered should the Doctrine gain new life?

At the same time, if proponents of a revived Doctrine managed to get around all of these constitutional hurdles, they would face another First Amendment obstacle that was not well developed at the time of *Red Lion*. In the last couple of decades, courts have struck down speech restraints for being "underinclusive" – meaning that a restriction cannot survive if it burdens some speakers but not others who contribute significantly to the same issue that the restraint is supposed to address. The lawyers among you may remember that the FCC itself ran afoul of this line of jurisprudence ten years ago in the *Greater New Orleans Broadcasting* case. There, the

Supreme Court struck down a federal rule that barred broadcasters from airing ads for casinos – largely because that ban had been riddled over the years with exceptions for on-air promotion of other forms of gambling, state lotteries and charitable bingo games. The Court found that the exceptions were so broad that the remaining ban could not actually work to tamp down the public's interest in gambling activities.

It's not hard at all to see how this precedent would apply to a new Doctrine. If the government's goal in resurrecting such rules is a broad one – such as ensuring "fairness" in the presentation of opposing viewpoints on important issues – then limiting them to broadcasting simply will not work. Some supporters of the Doctrine understand this. Don't forget that the bill President Reagan vetoed in 1987 would have extended the Doctrine to cable TV, the "new media" of the day. And recently one Member of Congress has been quoted as saying that a reconstituted Doctrine would have to apply to cable and satellite media, as well as broadcasting.

It is not clear how the imposition of the Doctrine on cable and satellite could survive constitutional attack, given the higher degree of First Amendment protection afforded to these subscription-based media. For that matter, could a new Doctrine stop at broadcasting, cable and satellite and still be effective enough to avoid being struck down as underinclusive? The underlying infrastructure of the Internet also is subject to federal regulatory control, as is some of the content carried on it. Certain legal commentators have suggested that a new corollary of the Doctrine should be fashioned for the Internet, on the theory that web surfers should be exposed to topics and views that they have not chosen for themselves. I am not making this up. These thinkers are concerned about the fragmented "pull" rather than "push" nature of new media. Alarmed by the potentially negative effect that self-selected, and self-satisfying, web grazing may have on the functioning of our democracy – or so their thinking goes – commenters, such as

a prominent Harvard law professor who will be joining the Obama Administration, has broached the idea of encouraging – or maybe even requiring – that partisan websites provide neutrally presented links to opposing points of view. UCLA Law Professor Noah Zatz, analogizing to the First Amendment doctrine of "public forum" law, has gone even further: He speculates about establishing "sidewalks in cyberspace" that, triggered by a web surfer's search, could bring up an advocacy group's website when the surfer meant to tap into something else.

Does this seem far-fetched? Does anyone think that this would not be intrusive and unconstitutional? At a minimum such pop-ups would be extremely annoying; but conceptually Professor Zatz's idea is not much different from some proposals before the Commission right now. Consider the idea of mandatory "community advisory boards," which is teed up in our Localism docket. I support the use of such boards as a voluntary measure by broadcasters who want to use them as a way of staying in close touch with their communities. It is good business to do so and broadcasters have every economic incentive to keep their local communities happy, especially these days. But such advisory boards should not be required. All Americans should be very troubled by any new rules that might give community board members a legal right to dictate broadcast content decisions. Would not such a policy be akin to reimposition of the Doctrine, albeit under a different name and sales pitch?

Furthermore, it is important for proponents of the Doctrine's restoration and expansion to understand that they have opponents from across the political spectrum, including prominent liberals. In a recent *Wall Street Journal* op-ed, Jon Sinton, the founding president of the liberal Air America Radio network, wrote that although he disagrees strongly with conservative talk radio hosts on just about everything, when it comes to the Doctrine he wrote, "I couldn't agree with them more. The Fairness Doctrine is an anachronistic policy that, with the abundance of

choices on radio today, is entirely unnecessary." In helping to found the left-leaning radio network, Sinton went on to say, "[i]t never occurred to me to argue for reimposing the Fairness Doctrine. Instead, I sought to capitalize on the other side of a market already built."

Similarly, Marvin Ammori, a law professor at the University of Nebraska and counsel to the advocacy group Free Press, recently called the Fairness Doctrine "a flawed means to attain a noble goal." While characterizing the current discussion, at least on talk radio, as "a partisan wedge" designed to "detract from more pressing and timely media policy issues," Ammori in a recent law review article took pains to explain that a revived Doctrine could be applied to "Ed Schultz, Democracy Now, Pacifica, and Air America no less than it would to Rush Limbaugh, Sean Hannity, and Michael Savage." He also detailed how difficult the doctrine would be to enforce.

Is there not also a generational divide here? Plenty of empirical data – including the Commission's most recent media ownership studies - reveal that the older you are, the more likely it is that you read a daily newspaper and/or listen regularly to local broadcast news. Younger Americans simply do not turn to broadcasting and newspapers for their news, information and commentary; they look to the web. New market data emerging every day confirms that the rise of new media has eroded the mainstream media's old "gatekeeping" and "agenda-setting" power when it comes to the dissemination of information and ideas. Just look at the sites in the Net Roots realm like the Daily Kos or, on the other side, the Drudge Report. But older generation people some of whom are now in charge of policy-making are still thinking in Old World and Old Media terms. What they don't understand is that the media market place has passed them by and the factual basis for a Doctrine restoration does not exist.

I am hopeful that our new President may understand this new media paradigm. As I watched his inaugural address last week, I was struck by the relevance of the debate over the Doctrine to a section of his speech where he said, "To those who cling to power through corruption and deceit and the *silencing of dissent*, know that you are on the wrong side of history …." (Emphasis added.) I am encouraged that President Obama can, once and for all, end the speculation of whether something akin to the Doctrine will come back to life during his term. During the campaign, a spokesperson for candidate Obama told *Broadcasting & Cable* that he, "'does not support reimposing the Fairness Doctrine on broadcasters,' calling the debate over the doctrine 'a distraction from the conversation we should be having about opening up the airwaves and modern communications to as many diverse viewpoints as possible.'" Although that statement is not entirely clear, the new Administration has a terrific opportunity to enunciate its strong opposition to anything resembling the Doctrine.

I hope that those who either agree or disagree with my observations will do so in a thoughtful and rational way. But even if you do not, I will fight for your First Amendment right to disagree with me unreasonably without unnecessary interference from the government.

Thank you again for inviting me here today, and I am happy to take a few questions.