

Regulatory Humility, Net Neutrality, Video Content and More

An eye-opening BBP interview with new FCC Commissioner Deborah Taylor Tate

By Hilda Gay Legg ■ *Legg Strategies*

As I wandered the lobby of the Marriott Hotel in beautiful San Francisco, amid a sea of mostly dark suits attending the National Association of Regulatory Utility Commissioners meeting in July, it was easy to pick out one of this year's Bush appointed members of the Federal Communications Commission. There was a gaggle of folks listening attentively to a rather small woman, dressed in a cream-colored suit and talking with a kind voice about a letter she had received from a mother of diabetic children.

It seems a recent ruling by the FCC approving a medical device and a telecommunication company's deployment of broadband had given a mother the opportunity to test her children's blood sugar level without pricking their skin daily. The mother was appreciative and the FCC member touched.

The voice was kind and spirited, and the appearance soft and approachable, but from the look on the listeners' faces, the speaker was making booming impact.

Regulators often seem like nerds, smart but always leery as to what the well financed telecommunications companies may be trying to pull over the public's eye, thus requiring more rules in order for there



Hilda Legg (left) and FCC Commissioner Deborah Tate sit down to talk at NARUC.

to be fairness in the world.

But this regulator seems different. You will notice that she uses words like “regulatory humility,” “parental control,” and “good corporate citizens” in her conversations. You would never know she has a background full of accomplishments. She was a founder of a home for addicted women and their children, a leader in revamping her home state of Ten-

nessee's mental health laws, and senior advisor to a governor – all in addition to being a practicing attorney and six-year veteran of the Tennessee Regulatory Authority.

I had the opportunity to sit down with this fairly new member of the FCC this summer to chat about her ideas, her goals, and her priorities for her tenure at the FCC. In the end you will find that her goals are

Legg: “I know that you understand the special significance of the impact that broadband has on our small rural communities. What do you plan to do in your role at the FCC to bring that critical infrastructure to all of rural America?”

really focused on America’s families. I hope Broadband Properties Magazine readers enjoy the chat I had with Commissioner Deborah Taylor Tate as much as I did.

Legg – On behalf of Broadband Properties magazine, we’d like to thank you for talking to us today about your views on some of the many important issues facing the FCC and the American population about telecommunications. But first, tell me, are you having fun at the FCC?

Tate – Absolutely. It is especially exciting to learn about rapidly evolving industries, like media, that I have not worked closely with before now. It is also wonderful staying very involved in industries like telecom with which I was heavily involved at the state level. While many of the issues are very similar, there are many issues that are both new and fascinating to me and I know these issues are critically important for America, too.

It’s also been wonderful to gain a national and even international perspective as we continue into the new digital age. It’s not just about how one state measures up to another. It’s about really making sure our nation remains competitive in a global environment including not only technology and industry, but also in terms of consumer welfare, education, and health care.

Legg – Being from Kentucky and knowing you’re from the neighboring state of Tennessee, another rural

state, I know that feeling about going to Washington. Going to the big city is exciting but I’m sure at the same time you feel you bring a perspective that is unique to the national debate. I know that you understand the special significance of the impact that broadband has on our small rural communities. What do you plan to do in your role at the FCC to bring that critical infrastructure to all of rural America?

Tate – First and foremost the President has set an ambitious goal of deploying broadband across the country as a national priority. So we at the FCC under Kevin Martin’s leadership and our five-year strategic plan have recognized the importance of deploying that broadband. I continue to talk about how crucial broadband is for our nation’s future. It’s not just crucial for the technology itself. Broadband enhances our nation’s financial, educational and healthcare institutions -- and we can talk a little about rural telemedicine.

What is important is that our whole nation improves. If you choose to live in a beautiful rural area for quality of life, you should still have the excellent opportunities both for

your children in terms of education, and for yourself in terms of a job.

Legg – Absolutely. Let’s talk about your medical interests in terms of telemedicine. You’ve been very active in that field in a not-for-profit perspective, including mental health work in Tennessee. What role do you see for the FCC in terms of telemedicine applications?

Tate – The FCC has a far broader role in health care than most Americans think. My very first vote at the FCC was to authorize a device to help people with diabetes monitor their blood sugar without having to take a blood sample. Just to give you an idea about what this means: I got a letter from a mother who has three children with childhood diabetes. She wrote to say thank you for what the FCC did because now she doesn’t have to prick her children six, seven, eight times a day. That touched me so much.

Previously, the FCC had already voted on an item that provided a similar device for monitoring cardiac patients. These are actually implanted under the skin. This is technology that is helping real people in real places all across America so certainly I want to do whatever I can to champion this type of innovation.

With regard to mental health, I have been able to see first-hand how telecommunications, especially broadband, is improving access to mental health treatment for folks in the most rural and isolated parts of

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our nation. In Alaska, for instance, I was able to see telepsychiatry, which was just amazing because you are in a wilderness that is only reachable by snowcat or plane. Rather than remove people from their little village and transport them thousands of miles to a major psychiatric hospital, in some cases the psychiatrists are able to conduct an initial review by videoconferencing. They can monitor a patient, prescribe appropriate medication, actually talk to family members, and observe them in a regular setting.

Legg – What we really don’t think about on a day-to-day basis is the overall impact this will have on Americans health. It will improve productivity and will improve the economics of our country. It’s like a snowball, once you get it started the significance grows exponentially. But having those improved devices, ubiquitous broadband becomes critical doesn’t it?

Tate – Absolutely. It does. It was so exciting because I was able to see how new technologies enable everything from remote surgery, telepsychiatry, and teledentistry. I witnessed how the technology at both the city hospital and the remote community work together to not only improve people’s health and lives, but also to close the distance between isolated communities.

Legg – Sitting with us today is Aaron Goldberger, one of your key legal advisors. He came from the wireless side the FCC. We were wondering at the magazine if this signifies an additional emphasis from you on wireless. Or is it just that everyone knows that Aaron is a very bright guy?

Tate – Well obviously, Aaron has been a wonderful addition to my legal team. When I came to the FCC I thought about all of the convergence of technology and how our rules and regulations were originally developed just as the industry developed – in silos. Today, we must think in technology neutral ways across landlines, wireless, or media. As we all know, convergence is happening with all those different devices. Your phone is now a movie theater and a television. Your television can now be the monitor for your Internet access. So for these reasons I hope we’re going to continue to think on a broader policy basis.

Tate: “First and foremost I want to continue to take a light regulatory approach. Sometimes I refer to this as regulatory humility. When there are new, nascent technologies we must be careful so we encourage investment in them, so that we are able to watch them grow and see what services become available.”

As to the importance of wireless, for instance we’re having one of the largest [spectrum] auctions in history, the Advanced Wireless Services (AWS) auction. The auction has since taken place; see News & Views this month. We hope this will spur a lot of rural broadband development across the country. So it’s a good time to have someone like Aaron join me from the wireless bureau. He’s also worked in the chairman’s office and has had broad responsibilities at the FCC, so he comes with much greater knowledge than just the wireless bureau. However, the wireless industry and new potential for broadband will be a major focus for our office.

Legg – How would you describe your position on VoIP regulation especially as it relates to the Universal Service Fund? We all know how important that is when we look to the rural communities. Any thoughts on reforming USF to aim it more toward rural America? In California, for instance, college students and others can self-define themselves as poor and get USF aid. What are your challenges there? What do you hope to do?

Tate – First and foremost I want to continue to take a light regulatory approach. Sometimes I refer to this as regulatory humility. When there are new, nascent technologies we must be careful so we encourage in-

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At the same time, regarding VoIP specifically, I was one of the first state commissioners to host a VoIP forum, all the way back in 2002. We had legislators and other policy makers from inside and outside the government come and hear about VoIP. At that point in time VoIP services had not even been rolled out in Tennessee. We were beginning to see a few ads like “call Paris for two cents a minute,” but that was it. So I thought it was important for us to hear from the key providers and talk to them about what they thought their responsibilities were.

Almost all the carriers said, “we want to be good corporate citizens. We know that we will need to contribute to the Universal Service Fund.” So I didn’t look at this so much as a regulatory approach. They were new businesses coming to my state and they had a responsibility to be good corporate citizens. For the most part they have been doing that.

The other point is that if you are holding yourself out as a phone service, you have to provide services which are required by law and expected by consumers. On many of their Websites they look very much like a phone service. They say they are a phone service. The word “phone” is there numerous times. So most consumers seeing that must think this is a traditional phone service. Accordingly, they should be subject to some

of the same responsibilities, whether that is providing E911 services as the FCC has required them to do, or as you mentioned contributing to the USF, which we are also requiring them to do.

The new USF rules issued this summer are merely an interim measure, but we did feel it was important that they share this responsibility because at some point that VOIP call is probably connected to the public switched network.

Something we need to continue to do at the state and federal level is to provide consumer outreach: “What are the questions you need to ask of your provider when you’re considering subscribing to one of these services?” I think it is critical that consumers have the tools necessary to engage the marketplace choices as we move forward into the evolving market of new technologies.

Legg – You have been noted as being strong on digital copyright is-

ues, DRM or Digital Rights Management. Do you see any role for the FCC or will the market forces be strong enough to advance them? Can we grow IPTV without regulatory changes?

Tate – As you can imagine being from Nashville, “Music City,” the digital copyright issues are extremely important to me whether it’s music or video. All of this is part of our cultural heritage. Certainly it’s important that we not only preserve the music and the movies and television that we have but also to encourage new artists. Regulatory humility doesn’t necessarily mean that you don’t act even in the face of a problem.

I think we’re going to be more involved in those matters, and certainly I’m watching what’s happening on the Hill. Congress is considering more legislation. It will be interesting to see if any new legislation passes and if we’ll have additional responsibilities at the FCC.

Legg – So how can we encourage new artists and at the same time understand that technology takes us into a new way of thinking about copyright and fair use?

Tate – Unfortunately, we didn’t do a very good job of educating my kids’

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generation – the college generation. They saw technology and realized they could get all of this information for “free” on the Internet. They didn’t appreciate making copies, sharing with friends, even sending around the world in terms of “stealing.” Yet you wouldn’t walk in and take a piece of art. So we have some more work to do. The FCC, the electronics industry, the music industry are working toward solutions regarding how we do a better job with media literacy, with music literacy, and just teaching children to value music as an art and a treasure.

Legg – There’s obviously a lot of discussion about the Telecommunications Act of 1996. Many people think it isn’t working. What is your opinion about what you think might need to be changed and what you think the ideal legislation might look like.

Tate – The 1996 Act has in some ways been criticized a little unfairly when competition was at its very heart. Sometimes competition may not evolve in the way it was intended for it to evolve. But look at all we have: the fact that wireless phones outnumber wireline phones, for example.

Thus, in so many ways the 1996 Act did spur exactly what it was intended to do – innovation and lots of competition. Unfortunately many parts of the Act because of the specificity of the language, might not be very practical – again because of new technology and the convergence. Some of the regulatory frameworks that were set up, such as inter-carrier compensation, are based on traditional wireline technology but the marketplace has since significantly changed.

Legg – It’s such a dynamic industry,

changing so rapidly. If you could wave a magic wand and could make the 1996 act stronger, what might that look like?

Tate – I think we should keep consumers and competition at its heart so the law basically tracks what is good for consumers. And by that I mean consumers everywhere. That brings us back to rural communications, and to those persons with disabilities, people who have low incomes. So we keep some of those principals and philosophies, like those behind the Universal Service Fund. We hopefully can create a living document that can evolve as the technology evolves.

When you’re in a world where you’re trying to regulate something that changes at a lightning pace you need a regulatory agency that can be nimble. If there is a problem in the marketplace the agency can step in because if we’re only going to have a major law written every 20 years, you need an agency that is able to act quickly. I would hope that Congress – and I think in many cases it has done this – would cede much of the authority to the FCC to come up with the specifics as to how to implement these larger national goals. That said, an ideal law would also encourage the type of regulatory humility I discussed earlier to prevent overreaching regulations.

Legg – You have noted that the FCC has trouble regulating programming, but called on the cable industry to self-regulate. You’ve suggested that IPTV might make programming a moot issue because households could choose all their programming à la carte. Is it still your thinking that à la carte offerings are really a part of what we think is evolving in the IPTV industry and are being offered by the RBOCs? I know you’ve

always been a huge proponent of parental roles and responsibilities relative to children in the home. Does this give them a true role in choosing what their children are exposed to on television?

Tate – I think that once again there is no silver bullet, no one solution. First and foremost I fully support and will enforce the law prohibiting indecent programming. However, parents need to take responsibility and learn what tools they do have – everything from television ratings to the schedule of programs – to use the parental controls that their particular cable provider or satellite provider may have available to them. The industry has made great strides and it has been listening and responding. But they must do more.

In addition, I think there are a lot of other people who need to take responsibility and this goes all the way back to the program and content creators, the writers, the producers, the CEOs of all the companies. This is because in essence the cable providers have now become the content owners. My fear, and one of the issues I’ve talked about as companies are rolling out IPTV, is that I hope they don’t fall into the same mold and that they will find some other independent programming – not just purchase the packages that cable has available now.

But more to your specific point, one of the phrases I’ve been using is that IPTV is actually going to be channel-on-demand, so in many ways technology may provide more answers for parents. We just don’t know what’s going to be next. But right now with some IPTV you pull down the channel you want to show in your house, unlike the cable package that is pushed into your home due to the nature of tiered pricing. So I’m really hoping the new IPTV

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providers will think long and hard about how they will package and they will have some truly child-friendly programming options. I know in Japan there are mini-packages. They might have just five channels each. You could put those together so you could be able to buy a family mini pack and you could buy a sports mini pack. We might be able to look at what’s going on in other countries as well, and maybe come up with some other options.

Legg – Tipper Gore, from the other side politically but from Tennessee, was obviously very big on this. Have you had a chance to talk to her about that?

Tate – I attended one of the first forums where they discussed the V-chip and how the industry had come forward [at the U.S. Cable Convention in Nashville, Tennessee in 1997]. Once again, I think it’s the responsibility for industry to come forward with options and then part of this has to be the responsibility of parents. This is an issue that crosses the line of partisan politics.

Legg – There is criticism at the FCC that the net neutrality principals are vague in the Stevens version of the telecommunications bill. As an attorney, do you share the concern that

this may open the door to lengthy litigation that leaves the industry in a state of flux, which we all know there’s been enough of lately.

Tate – Well, when anyone comes in to talk about net neutrality with me in my office, my first question usually is, “so what is your definition of net neutrality?” Sometimes in Washington a phrase like à la carte or net neutrality becomes a lightning rod, and it becomes very polarizing. At the same time I thought the actions by the FCC to adopt its four Internet Policy principals was probably the right regulatory stance.

Aside from a single decision made at the Bureau level a year and a half ago, I don’t remember another [neutrality] action or problem or complaint filed at the FCC. So it’s difficult to craft a solution when you don’t even know what the problem might be. If it is about blocking, I think there’s much incentive to prevent blocking. I don’t think consumers would stand for it. So I think we have a lot of economic check and balances in the market. Right now we’re watching this carefully and I know Congress, too, is weighing carefully how it might intervene.

Many of us who believe in regulatory humility don’t walk in until there is actually a problem. The four principals have given some definition

to the issues so the FCC has said we will be watching and also to provide an expectation to the industry.

Legg – As head of the Rural Utility Service I was always asked where broadband exists in the U.S. and where it does not. Unfortunately we were never able to provide a good answer to that with concrete data. We look at the FCC as the depository of that data. But because of the timeliness of reporting, there are shortcomings in the FCC data, as well as who reports, and location of those reporting. What can be done to improve this data collection process?

Tate – I think your home state of Kentucky, thru ConnectKentucky, has done a really outstanding job of trying to collect the information about both where broadband is and where it is not. I think there are many states and localities that have been doing just that. So I think we at the FCC should see who is collecting the data and how they are collecting it, what year is it based on so we can possibly compile all of that so it might be more useful on a national basis.

At the FCC, we do collect data on broadband deployment. I know last week the FCC released its bi-annual Report on broadband deployment that indicates well over 50 million lines are in service in the nation. That was an 18 percent increase in the six months prior to that. And so obviously these numbers signal that there is an increasing demand and that broadband is pushing out there.

We are currently evaluating how to improve our broadband data collection efforts so that we can make sure we are using all of our resources in the best possible and efficient way. As the expert agency, we always need to evaluate how to improve on broadband data collection and reporting

efforts. We have invited comments as to how to improve.

Legg – Along those lines I've been involved in several conversations recently trying to figure out where the dark fiber is out there. This is proprietary information so no one knows who owns it or they aren't willing to tell. Some opponents of broadband say "why should we be doing this" because there is all this dark fiber not being used. Could the FCC play a role in a national registry or something along those lines where we could see where that unused fiber is located and how it might be used?

Tate – Historically the Commission has allowed new competitive intercity networks to develop in a largely unregulated manner because you would expect that those fiber network builders have every incentive to get as many users as possible. You would think the market would be working in that way. At the same time I think your thought is an interesting one. I'm not sure exactly who might be the best depository of this survey of fiber networks. But certainly that's something we could discuss if it would significantly spur broadband deployment.

One of the observations when I was a state commissioner was also that some of these dark fiber networks are linking large educational institutions. So if you are running one of those huge pipes, for instance between the University of Tennessee down to the NASA space center in Huntsville Alabama, it would be helpful if all along that way some of the communities that don't have access to this type of broadband could somehow have a little spur. I never dealt with that at the state level; maybe now that's something in which I can re-involve myself.

Legg – Commissioner, you've been

very kind and generous with your time and I personally thank you for that. But I'd like to ask what else you'd like to talk about? What are your other priorities and what else do you hope to promote at the FCC?

Tate – We've touched on several already: Encouraging the growth of broadband, whether for telemedicine or education or the jobs of tomorrow and making sure we're the global leader.

Most of my life has been focused on making children and families stronger and healthier, and while some people might think it's a stretch I want to use the time that I have at the FCC to not just talk about the legal issues like indecency but to try to move those discussions to the more positive, to talk about decency and civility and positive programming. I have already and plan to continue to work with the media and broadcasters and advertisers and food companies to use this incredible technology for really positive purposes.

As we've already discussed, let's try to harness technology to have more diverse programming, more localized programming for community building, to encourage more healthy and active lifestyles.

One of the most important things any of us can do is to try to help solve problems. Childhood obesity has become epidemic in this country. When we were growing up there was no type 2 diabetes in children and now we are just finding this more and more prevalent. So I'm hoping that joining all of these technologies together can influence all of our lives so much that we can have a more positive impact – that we can actually cure childhood obesity and help in terms of some of the long-term health problems, cardiac or orthopedic or even some of the self-esteem and psychological problems that are caused by obesity at any age.

In the end we can help save our entire healthcare system. So much money is spent from this entire generation that is growing up in an unhealthy lifestyle.

Another issue that we haven't had a chance to talk about is the opportunity to assist developing countries as well as those that are getting more independent and competitive. Technology can be such a tool for developing their economy, encouraging capitalism and in the end building democracy.

Legg – Wow. When we're in Washington we can easily get caught up in the pressing issue we spent some time on this morning. You've taken it to another level. You're taking it all the way to the very personal, the nucleus of our society, which is the family and how to make that family stronger and healthier – and the role technology can play in doing that – to the overarching federal issue about helping spread democracy around the globe.

There is a long continuum from families and the role technology plays enriching and strengthening them to stretching toward the role America plays as the leader of the free world and her leadership responsibilities to other countries and future generations.

Thank you again Commissioner Tate for your thoughtful and insightful remarks. I believe you will be a valuable player in moving us down that most important road to travel. **BBP**

About the Author

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