



TECHNOLOGY
POLICY
INSTITUTE

2023 TPI Aspen Forum A View from Capitol Hill

Scott Wallsten:

A View from Capitol Hill. We are really fortunate to have these staff of these people with us. We have Jeffrey Lopez, who's the senior policy advisor for Senator Ben Ray Lujan in the Senate. Katie O'Connor, chief counsel, Communications and Technology Subcommittee, House Energy and Commerce. Duncan Rankin, senior advisor for Commerce, Science and Transportation committees in the Senate. And Edgar Rivas, the senior policy advisor in the office of Senator John Hickenlooper. So, he's almost home. And so Brian, take it away.

Brian Sullivan:

Thanks, Scott. Yep. Thanks everybody for sticking around. Yeah, this one will be a little more, I think meat on the bone. I'm just going to be totally honest, not my area of expertise. So, Kate, Jeffrey, hi wherever you guys are. Kate, tell the manager of the Hilton Garden Inn I said hello, wherever you might be. I'm kidding. Edgar and Duncan, you're going to have to carry this panel as well. Kate, let's start with you. What is going to be the regulatory focus when the next session we come in, where do we go? What's going to be the key focus on the stuff that matters to this audience, internet, tech, telecom, media?

Kate O'Connor:

Thanks for the question and thanks for having me here today. So, we started off the year pretty busy. We started by evaluating the state of the satellite marketplace and passed unanimously out of committee the chair SAT Streamlining Act, which is the first legislation in decades to update the satellite licensing provisions in the Communications Act. We've also been working really hard to reauthorize the FCC Spectrum Auction Authority, which we did pass an extension out of the committee and out of the House in May, which failed to pass the Senate and resulted in the FCC's Auction Authority expiring. That is one that has been a priority and remains a priority of Chairwoman Rogers, especially given that the World Radio Communication Conference is coming up this fall. We've also passed out of committee Permitting Reform. The committee passed H.R. 3557, the American Broadband Deployment Act, which was introduced by Representative Buddy Carter.

This bill would roll back many outdated laws and regulations that delay or inhibit broadband build out, which is super important to get done right now, especially given the billions of dollars that NTIA is about to start awarding with the BEAD program. Finally, the committee is continuing its efforts on holding big tech accountable. Earlier this year we had a hearing with the TikTok CEO, who made it very clear that TikTok can be a threat to our kids and our society, and the chair's committed to holding big tech accountable. So, all of that to say we've done a lot in the past seven months. The next few months we're going to have to work to try and get most of this legislation out of the House and work with our Senate colleagues to hopefully get it enacted into law.

Brian Sullivan:

Kate, you think there's a chance TikTok is ultimately ruled illegal in the United States?

Kate O'Connor:

It's possible. What do you mean illegal? The app itself or legislation?

Brian Sullivan:

Not legal.

Kate O'Connor:

Well, I think-

Brian Sullivan:

Like my daughter wakes up one day and the app is gone and it's gone. Like they're doing in some states on government devices.

Kate O'Connor:

Yeah, for state law. I don't know. I think that'll be up to the courts to determine. I'll say from our perspective, we certainly are looking at banning the app at a federal level, and it's something our boss has talked about and she talked about that at the TikTok hearing. So, it's definitely something that we're still looking at. And then just finally, and I'll turn it over, I'll be quick here and then open it up for questions or whoever else, whatever's next, but oversight is a huge priority for our committee. We've already started doing oversight of both FCC and NTIA, and given all the work that both of those agencies are doing with funding, we will continue that effort going forward.

Brian Sullivan:

Yeah, thank you, Kate. Jeffrey, you were pivotal in the Infrastructure Investment and Jobs Act three years ago. What have you done for us lately? With Senator Lujan out there in New Mexico doing a lot on... By the way, fantastic work on broadband equality, making sure people in underserved communities also have the same technology that everybody in this room does. What are your legislative priorities there for Senator Lujan?

Jeff Lopez:

Pivotal is a strong term there, Brian, but I appreciate the question. Senator Lujan was active during the bipartisan negotiations in the Senate that led to the bipartisan infrastructure law. He succeeded in making some pretty historic changes to law when it came to transportation safety and broadband. What's next? I think something Kate brought up is critical here, reauthorization of the FCC Spectrum Auction Authority. This is the first time since the FCC was granted this authority that we allowed it to lapse. The House has done its work. It's time for the Senate to get it done and make sure that the FCC has this critical capability restored. Next steps for broadband. I would say Senator Lujan's focus is both making sure that those that are unconnected get connected and those that are already connected are safe online. The Senate, on its last day in session, the Senate Commerce Committee passed the Kids Online Safety Act and the Children and Teens Online Privacy Protection Act.

Those are two bills that make pretty significant changes to ensuring that families have the tools that they need to keep kids online safe. Senator Lujan's priority, he was an original co-sponsor for introduction in this Congress and he wanted to make sure that bill made sense for families that don't speak English at home. That's just an example where there are these huge significant changes for technology in the United States right now, but we got to make sure that people don't slip through the cracks. So, non-English language speakers, we got to make sure that algorithms are trained off of non-English languages, that they're not just scraping non-English language

data off the internet and not accounting for the cultural changes, the cultural differences that could really impact people's lives when it comes to implementing, either keeping kids online safe on online platforms or large language models, another critical component here. So, there's those two, the Kids Online Safety Act, Children and Teens Online Privacy Act. We have to pass that on the Senate floor. And like I said, Spectrum. So, I'd say those are the top three for my boss, Brian.

Brian Sullivan:

Thank you. Edgar, right, home state? All right. Thanks for being here, by the way. Senator Hickenlooper, what would you add are his priorities and is one of those to investigate why the St. Regis charges 5.99 for high-speed internet? For a thousand bucks a night, we shouldn't have to pay for internet that's not slow. Am I right? Will you make that your number one legislative priority?

Edgar Rivas:

Well, thanks for the question, Brian. And I will say we did have a hearing in the Senate subcommittee on consumer protection on fee transparency back in June. So, relevant topic. We'll continue pressing that ball, but-

Brian Sullivan:

That was a nice pivot. I tip my hat.

Edgar Rivas:

No. So, thanks for having me and TPI Aspen, thanks for hosting this event. I'd say our top three priorities we're really focused on, as has been mentioned before, all these broadband programs that are coming online now. I think our particular focus is on the supply chain. So, both the availability of fiber antennas, different components you need to build networks, but also that transition to open ran and secure network equipment. That's a really big priority here in Colorado, as you know, with the Secure and Trusted Communications, basically the rip and replace Huawei shortfall, is really acute here in Colorado. So, that's something that we've been really focused on in the last few months. Another big thing, Colorado, again, the Colorado Privacy Act just went into effect last month. And so with Senator Hickenlooper's role chairing the Consumer Protection Product Safety and Data Security subcommittee, we're really focused on seeing the state models inform how Congress develops comprehensive federal privacy legislation.

We feel really strongly about the Colorado Privacy Act and law, all the provisions that really do protect consumers, but also let businesses operate to the best of their ability. So, that's another conversation that we're actively engaged on. And I think that builds on what Jeff mentioned, which was some recent action in the Senate on the kids' privacy legislation as well. So, that's been a really, really encouraging development and I think that'll continue when we go into September. And then as has been discussed, Al. I think with our subcommittee, you can expect us to have the first commerce committee hearing sometime in early September focusing on consumer transparency, but also figuring out how we can be very precise about these new rules for the road. And I think, as has been discussed in the previous panel, we want to have the broader education process play out before we start putting pen and paper on really, really tight rules.

Brian Sullivan:

Duncan, you've had a lot of time to think, my man.

Duncan Rankin:

Oh, what? Me?

Brian Sullivan:

Yeah, same questions. You're down there. You're in Texas, Senator Cruz. What are going to be the priorities here on tech, telecom and media side?

Duncan Rankin:

Sure. Well, I think folks have hit on a lot of them already. FCC Spectrum Auction Authority. I'll just make a slight correction to Kate. The House-passed bill didn't fail, it just hasn't been considered yet. So, we are very open to extending auction authority. We're happy to do it. There's extraneous matters that are tied into that that create broader complications. So, I don't want it to sound like we're just standing in the way. In terms of priorities, I think privacy is going to be a big one. Kids Online Safety, COPPA 2.0. I think those are broad priorities for most members, and then more comprehensive federal privacy legislation. On telecom, I think our focus is twofold, Oversight of many of the programs that are out there right now, many of which are just flush with cash, and ensuring that they are allocating those funds responsibly and in the most efficient manner.

And it's really going to the necessary places in communities. Someone was talking about BEAD earlier. I'm sort of tickled. Government gets in its way a lot and puts restrictions on things that end up basically forcing us to do less for more. And I think you see this duplicated across a number of programs, whether it's the preferencing for fiber and BEAD to the detriment of novel technologies like satellite-based internet that we're really focused on removing those barriers to make it easier for technological deployment. And then I guess finally is, I'll throw some cold water on some things. I've heard a lot of, "We got to regulate the hell out of whatever the technology is," whether it's AI. "We've got to go in and bust up the media truss." Saying, "Congress never met a problem that we couldn't make worse." I say, "Thank God the farriers didn't have a stronger union when the Model-T came out because we'd still be going around in horse-drawn buggies because oh, safety, new technology."

The market largely figures a lot of these things out, and I think it's incumbent upon us in Congress, yes, we need to set up the kind of structural playing field that is level and fair and allows new entrants, but we don't enable the rent-seeking of the big entrenched entities. And I think a lot of this push for regulation, whether explicitly or intentionally or not, ends up being a form of rent-seeking. We really need to take a step back and be cautious and regulate only when there's a clear nexus for doing so and in a way that has as few externalities as possible.

Brian Sullivan:

Well, the government needs money all the time, so it needs the rent-seeking behavior. I get it. Kate, I'll allow you to respond to that. You said it failed, but maybe not bringing it up is a form of failure. To your point, if it's not coming up, that's kind of a failure.

Kate O'Connor:

Yeah. I don't disagree with Duncan. What Duncan said is accurate. I think it was frustrating that we had bipartisan agreement on... Especially in the House, it was big bipartisan vote that passed a clean extension to prevent the FCC's auction authority from expiring. So, it has been frustrating. I know we've had many conversations with our counterparts on the minority and in

the Senate in trying to move a broader package and make sure that this gets reauthorized for a longer term extension.

Brian Sullivan:

All right. What do you think, Jeffrey? Is there going to be a window in this session? I only heard, but there's an election next year apparently. Is there going to be a window of opportunity to pass anything big or is it just going to be a bunch of bolt-ons, add-ons, smaller bills?

Jeff Lopez:

I think there's some optimism. It's always a challenge to pass anything big in the Senate, as Duncan indicated. There's a lot of consequences. The regular order process in Congress is established to consider a lot of those consequences. We need bills to go through legislative hearings. We need markups. We need floor activity to consider these things in a full and effective way. Unfortunately, there's a lot of priorities. The Senate is also doing a lot of work on AI right now led by Leader Schumer with some information sessions right now for senators at the senator level. And I think a lot of the efforts right now is trying to, again, set that groundwork for hopeful Senate passage and hopefully signing something into law. But there are a lot of competing priorities. I think everybody here on the panel said three top priorities that were a little bit different, and that's really representative of how big the challenge is to do anything on tech and telecom in the current Congress. So, I'm not a betting person, but I would say something's going to happen. I don't know how big it's going to be.

Edgar Rivas:

And if I could just jump in, I think one thing that... Brian, you asked the question, "What new big bills or laws can Congress pass?" I also think it's important, and I think Duncan mentioned this earlier, that Congress does do its job in oversight. We passed the CHIPS and Science Act last year, infrastructure investment and jobs act not too long ago. And I think as we talk about AI or all these other things like spectrum, cybersecurity, privacy, all these bills have some tangential impact on those topics. And I think especially with AI, there's so much research and development investments we made just in the last year through NSF, through NIST, and giving a shout-out to their Boulder lab down here, just down the street.

There's so much work that we need to be doing in the research domain and I think seeing those processes play out I think is being really important for Congress these next few months and years because I couldn't imagine Congress passing the CHIPS and Science Act in today's age with the rise of AI and the media attention it's grabbed. Because just a year ago we weren't really talking about AI the way we are today. And so I think that dynamic has really shifted, but I think making sure that we have the oversight to continue that research investment that we committed to, I think is going to be really key as well.

Duncan Rankin:

Well, since I'm in Colorado, I guess I got to give a Dumb and Dumber plug. You asked, "Is something going to happen?" So, you're saying there's a chance. Anything's possible. I do think in terms of regular order, I would like to see more of it and just the machine level work of grinding out on issues, putting forth products and letting the legislative process work its will on things as they move forward without the machinations of maybe leadership interests on hot topics. But I do think on the big ticket items, there's a decent amount of bipartisan agreement that it is a nascent issue, it's important, we should be looking at it. It's the action piece that always gets people into a bit of trouble. But I don't think we've done near the legwork on just

those first three buckets. So, let's roll up our sleeves and do our due diligence before we jump into half-baked proposals on what to ban and when and where.

Brian Sullivan:

I think it's a good point. And I brought this up in the earlier panel and it's a little bit of an indelicate question, but I think if you don't ask it you're blind or you're just afraid to ask it. And I'm not, so I'm going to ask it. Duncan or anybody who wants this, does the advanced age of some of the key players in Congress make it a little more difficult to explain the speed of... Don't laugh. I get caught. I'm 52 years old. People are like, "Well, you don't understand the internet." I'm like, "Bro, I ran a bulletin board on a 2,400 bot modem." Like Gen X, I'm trying to explain basic things to my father and my father's not writing regulation. And he's an extremely smart guy. It's got to be a tricky balancing point, I think.

Duncan Rankin:

Yes and no. So, sure, the Senate is a geriatrics club. Just take a look at it. But even on the more youthful lawmakers, of which my boss is one, but you look at in the House side, the young bucks, a lot of them end up fearmongering about these same new novel technologies and how it's going to destroy jobs or wreck this sector of the economy and how we've got to put genie back in the bottle. So, I don't know that that is the defining feature here, that if they weren't all just so old they could understand technology better. It creates a challenge. But look, these are smart people.

Brian Sullivan:

I want to be clear. I'm not saying understand technology, Jeffrey, I'm talking about fine, fine nuances of regulation, which I know they're not touching all the time. I get that. But if we're talking about AI as the biggest thing to change in the economy since the internet was invented, which arguably it is to Laura's point in the previous panel, you guys got to get it right.

Jeff Lopez:

Congress is a human institution. I think we're still very well situated to address many of these problems. Representative government is critical here. It's not just technology. It's not just technology problems and technology solutions that we're talking about today. A lot of these have pretty broad and deep social impacts. A lot of the problems we see today are rising from the technical experts maybe not considering the downstream impacts, how these technologies impact communities that previously weren't connected with these technologies or have no experience or are left behind. So, I think Congress has a part to play. Yes, Congress is not an expert agency. It's not the body implementing any laws that it passes.

It's very important to get the feedback both from the agencies doing the regulatory work and then the industries themselves that do the critical important work on the ground. But you can establish, again, regular order in the Senate and the laws themselves in such a way where it is able to incorporate that expert feedback at every state, making sure that they address the actual problems, find solutions that are effective, analyze the impact, and then feedback into either a new law or a new regulation at every step of the way. So, Congress has been an institution for a long time. It's still trying to account for a lot of the changes with technology today, but I think it's still one of the best institutions we have to address many of the social impacts that we're talking about at Aspen today.

Brian Sullivan:

Yeah. I think, not to be a Monday morning quarterback, Kate, but I think we look back, and not going into the politics of COVID or the lockdowns or whatever that may be, that's not what we're here to discuss, but we learned that there's millions of families in America that don't have access to good internet and then their kids can't go to school and they're trying to learn from home and four kids are trying to learn around one very slow iPad. We learned where the holes were and in the wrong possible way. So, I think it's critical to get these right going forward. On a different side, how do you, how does anybody, Senator Sullivan, whatever, view the FTC, Lina Khan, extremely aggressive, very hungry? What's the view on Lina Khan and her work so far at the FTC?

Kate O'Connor:

I actually want to respond to just the previous question before I move on. There's a lot of talk about regular order and I think that's really important. I think one of the things that's frustrating is sure, oversight is priority. We can agree on it. But all of the things that I listed that we've moved out of committee earlier this year, it has gone through regular order. And I think it's frustrating that something like Permitting Reform, the SAT Streamlining Act, if those bills don't get passed soon, the BEAD program money is actually at risk of getting wasted and being tied up in regulatory delay. I know I'm the only House person on the panel, so I just wanted to add that regular order can happen. It's a lot of work. We've been moving really quickly, but I also think we've produced pretty good policies that can move and need to happen soon. On FTC, I'm actually going to defer to most of my other colleagues because that is not my area of expertise. So, I'll let the Senate take it from here.

Brian Sullivan:

My guess is Duncan has a view.

Duncan Rankin:

Yeah. I got a view on everything.

Brian Sullivan:

So does your boss.

Duncan Rankin:

We're well suited in that respect. At least I'm not on Twitter. So, to Kate's point, I want to just clarify. The regular order quip was not a dig at y'all. We're in the minority in the Senate and we do not set the agenda. We don't control floor time. We would prefer that Senate leadership give things a regular hearing. This is not particularly relevant to this group, but the FAA bill has largely been stalled because of the machinations of leadership. We have the votes in committee to pass the thing, but leadership has reached down and exercised its puppet strings. That's not regular order. That's not representative government. That's not really even that democratic. But I digress. You brought up COVID learning. I just want to make one point because I think this often goes under-discussed. When Congress enacts a policy, we do a thing. We throw a bunch of money at closing the digital divide and building out broadband for families because everyone's learning from home.

What do we inadvertently do? We inadvertently subsidize school closures. And what do we learn subsequently? That one of the most detrimental things to youth in this country was being out of schools. And many, many, many of them could have been back in schools much, much, much, much sooner. But because we subsidized devices and broadband and the like, we made

it easier for schools to close. So, whenever Congress enacts a policy, yes, there's the stated goal, but there's also the unintended consequence which sometimes can be much more severe than whatever the problem we were trying to target was. But FTC. What's there to say about a nightmare hellscape? It's the wrath of Khan. You've got three Democrat commissioners over there. You had the last Republican commissioner resign out of frustration. My boss worked at the FTC during the Bush administration.

Brian Sullivan:

So, the view is that it's too aggressive, particularly with an Amazon.

Duncan Rankin:

The view is it's toxic. It is toxic. And she's trying to wield the powers of the commission in a way that they were never intended to be wielded and has created partisan divides within the building and within the normal functionings of the industry/regulator relationship that have become paralyzing. Now, that is the chairwoman's worldview. That's how she sees things. But the way this reflects itself in the actual consumer impact is largely to their detriment. The abandonment of the consumer welfare standard, the siloing off of agenda items. No one always got along in the building at the commission, but you look at federal employment surveys of happiness of the workforce and they have just fallen off a cliff at the FTC. Why? Because she's made this place impossible to work at because she's tried to weaponize it towards her own individual ends, not towards the statutory mission that Congress gave her.

Edgar Rivas:

If I could respond to this too, because I think the FTC gets a lot of differences of opinion, I think obviously, and I think the FTC falls under my boss's subcommittee, and I think if we're going to talk about the FTC, if we're going to talk about the agenda and priorities of the agency, I think that's a very fair conversation to have. At the same time, I think we should also be eager and jumping out of our seats to consider the two Republican nominees who were brought forward to the FTC just recently. So, that's Andrew Ferguson and Melissa Holyoak. And I would expect and hope that that's, if not at the top, near the top of our priority list in September when we return. Because I think if we're going to talk about an agency, I think it's easy to make a chairperson look a certain way when there's no minority views on the commission represented.

So, I think that's something that I think, irrespective of ideology, irrespective of orders, dissenting views, et cetera, we need to have a fully seated FTC and FCC. And so I think those nominees are things that we should be also focused on in September. Again, I'm not going to speak to Lina Khan and what caused certain commissioners to want to leave the agency because I think you could make the same argument in previous FTCs on the Republican administrations as well. So, I think the pendulum swings both ways and I think that's the nature of a lot of agency turnover in Washington. But let's get a fully seated FTC. Let's have those dissenting minority views represented because I think that would make the commission operate more effectively too.

Brian Sullivan:

Duncan, comment? And then a final question to Jeffrey.

Duncan Rankin:

Yeah, I guess I just, for the party that came into the executive branch on restoring norms, there's an awful lot of norm violation happening at the FTC. Even between Commissioner Bedoya and

the chairwoman, you look at the ex parte filings he made where he's basically being harassed by these outside progressive groups because he won't completely cave into her insistence that she has an authority that she clearly doesn't have under statute. So, yeah, there's normal churn and burn at agencies, but this is beyond the pale. It's different. It's new. It is norm-breaking. Now, you want to have a conversation about whether that's what the new statutory mission of the FTC should be, fair enough. But that's not what the commission is and that's not what they're authorized for. And this sort of like, "Well, you didn't say we couldn't, so we're just going to take it to the absolute extreme," it's offends the sensibilities.

Brian Sullivan:

Jeffrey, reason to be optimistic at this legislative session, and if you want to respond to anything you heard?

Jeff Lopez:

I think there are some opportunities here. Two things I want to talk about. One, broadband affordability. There's been some discussion over the past 30 minutes on BEAD, the broadband infrastructure program through NTIA to build out a lot of these connections. And we need to also make sure that those connections are affordable for everybody. The internet is essential. You can't leave people behind because it means access to work, access to healthcare, access to school. So, we both need the connections to every house and we need to make sure that the families in the household can afford to pay for it. So, we need to look at the future of the Affordable Connectivity Program, which is set to run out at the beginning of next year, run out of funds.

One way is the future of Universal Service. The FCC oversees the Universal Service programs. That's programs for education, another program for affordability, for high cost build-out. The bipartisan infrastructure bill didn't make any changes to those programs, but the bill itself, the bipartisan infrastructure bill, is impacting them. Some of the programs might be duplicative. Some of them might be able to be combined. So, we need to create these permanent considerations for broadband to make sure that both, again, we build the broadband itself, that families are able to afford to pay for it and that people are safe online. That there are some consumer protections where they are critical, where families get left behind, and making sure that everybody has a level playing field on access to online resources. So, that's where I'm optimistic. I'm optimistic that we can resolve some of these things. I think there is a lot of agreement between the House and the Senate. It's great to work on tech telecom because it doesn't fall into a lot of the traditional partisan divides. And I think the future is bright in a lot of these debates.

Brian Sullivan:

I want to leave it there on that. I like that. We ended on the future is bright, and that's a good way to end it. We had a good bipartisan discussion, which by the way does exist. And just not to be... Because old Steven on the previous panel plugged [inaudible] about 40 times. I'm just going to say this. My show on CNBC, 7:00 PM. Obviously I'm not there tonight. Pending United's on time record, I should be there tomorrow night. Unless somebody has a plane that's going east, I might be able to hop on that. I want to have more of these in the media where we can have these discussions that are intelligent, both sides respectful, and maybe even a little bit fun. And I think that's what's missing in the media side. So, we're trying to do it at my show.

It's a cheap plug. I'm not paid to be here, by the way. And that was my pay was just to plug that. I'd urge your representatives, Senator Cruz, anybody is welcome on the program for a fair interview watch. I did a 30-minute sit-down with Governor DeSantis on Monday. The full thing's

available, no editing. Go check it out. And anybody reps, any reps, they're welcome on my show and CNBC anytime for a fair and substantive discussion. And if you believe that... I'm kidding.

Duncan Rankin:

We're usually Squawk Box people.

Brian Sullivan:

I know. I know that. That was a plugin. No offense. I love Joe and Becky and Andrew. He's talking about Squawk Box. But I do live in Princeton and you may know somebody that went there.

Duncan Rankin:

I do, actually, as a matter of fact.

Brian Sullivan:

You actually know somebody who did go there. So, go Tigers. Anyway, Scott, is there another panel up?

Scott Wallsten:

Yes, there is.

Brian Sullivan:

All right. And then there's another panel and then they're going to feed you. I thank you guys. Duncan, Edgar, Jeffrey, Kate out there in the ether. Thank you very much, guys. Appreciate that. Short break, next panel, then lunch. That was great. Thank...