

FCC Reform



An FCC For the Internet Age Recommendations for Reforming the Federal Communications Commission

March 5, 2010

by
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On January 5, 2009, Public Knowledge and the Silicon Flatirons Center for Law, Technology and Entrepreneurship held a conference exploring strategies for institutional reform at the Federal Communications Commission, presenting a paper by Phil Weiser (*FCC Reform and the Future of Telecommunications Policy*) and a number of shorter papers. The papers and accompanying discussion can be found at <http://fcc-reform.org/>.² This paper sets out the key conclusions from the conference as to how the FCC can operate in a more transparent and effective manner. From these conclusions we have drafted an FCC reform report card that can be used to gauge how well the conclusions have been implemented.

In the fourteen months since the conference, the FCC has taken concrete steps towards addressing many of the changes outlined below. Initiatives such as Reboot.Fcc.gov and the adoption of a Notice of Proposed Rulemaking on modifying the ex parte rules and another that would streamline and make more efficient some of the FCC's procedures evidence a welcome willingness to reform and modernize the FCC. However, at this stage it is too early to judge the agency's progress on overall institutional reform.

For the FCC to operate effectively, the agency will need a "shock to the system," which can come from a Chair who embraces real reform and change. In almost all cases, the types of reforms we suggest will involve a surrender of discretion by FCC leadership and a move away from unpredictable and *ad hoc* decisionmaking. As a superficial matter, such a step will appear to surrender power from the Chair and may be resisted. On a more fundamental level, such steps are essential to enabling the agency to operate more effectively. In this memo, we divide these steps into four categories: (1) strategic planning, independent research, and prioritization; (2) management of rulemakings; (3) communication with the public; and (4) agency structure and culture.

I. Strategic Planning, Independent Research, and Prioritization

Strategic Planning and Prioritization

¹ The authors wish to acknowledge the contribution of Phil Weiser to this paper and the overall effort to reform the FCC.

² Although topics were often discussed by a number of panelists and contributors, footnotes to individual papers or particularly relevant discussions are provided throughout this report.

It is time for the FCC to recognize that its position has fundamentally changed in the past decade. The FCC no longer regulates a world of structured monopolies in which large players, usually with decades of experience before the Commission, are the only parties directly impacted by Commission decisionmaking. Today FCC decisions impact a world full of innovators, political outsiders, and, as they always have, the public at large.³ Companies developing new Internet-based applications or mobile technologies do not necessarily have a rich understanding of how the FCC works, or how to communicate their needs to the Commission. In its strategic planning, the FCC can no longer assume the all impacted parties will have an opportunity to present their side on issues important to them. In many cases, these parties will not realize that the Commission is making decisions that impact them until well after the decision has been made. Simply being aware that these individuals and groups exist should help the Commission refocus its efforts.

Since the areas regulated by the FCC have changed so significantly in recent years, the Chair must clearly identify and prioritize core objectives.⁴ These objectives will help guide policymaking and create consistency in rulemaking. Without a clearly articulated core set of principles, it will be too easy for the FCC to drift from issue to issue without a coherent framework to provide guidance on complex issues.

Although it is important to identify core objectives, the Chair must also recognize that he has limited control over issues considered by the FCC. Decisions made by prior Chairmen, unforeseen crises, and priorities imposed by Congress or the Administration can force action on unforeseen issues.⁵ As a result, the Chair must be prepared to balance long term and strategic priorities with issues that demand immediate attention.

Independent Research

Once priorities have been identified and set, the Chair must encourage independent analysis of the issues.⁶ A number of panelists expressed concern that, in the past, independent staff analysis that appeared to contradict the established positions of Commissioners was suppressed and the authors faced negative repercussions.⁷ Once the FCC has decided to consider an issue, it must delegate that issue to knowledgeable staff for analysis. The staff should be

³ Phil Weiser, *Comments During Panel I: The Future of the FCC as an Institution*.

⁴ Phil Weiser, *FCC Reform and the Future of Telecommunications Policy* [“Weiser Paper”].

⁵ Kyle Dixon, *Comments During Panel II: The Past As Prologue: Lessons From History on the Road to Reform*.

⁶ Kathleen Abernathy, *Managing the FCC: Style, Substance, and Institutional Reform* [“Abernathy Paper”]; Weiser Paper.

⁷ Panel II Discussion.

encouraged to engage in fact-based analysis and to come to conclusions that the facts support – even if those conclusions contradict the initial conclusions of Commissioners or the Chair.

The FCC’s Chief Economist and Chief Technologist should be empowered to conduct independent investigations of issues, and encouraged to come to independent conclusions. The value of these high level experts is significantly diminished if they are discouraged from having an independent voice in policymaking. While it is not necessary to defer to their findings, it is important to grant some weight to their opinions.

FCC staff should not be expected to possess complete expertise on every issue before the Commission. In recognition of this, the staff should be encouraged to build relationships outside of the FCC. This process can begin by developing relationships with other federal agencies with relevant expertise.⁸ The SEC is much better equipped to verify financial claims made by companies before the FCC. The FTC has consumer protection expertise that will be informative in a number of areas, and along with the DOJ has a nuanced understanding of antitrust issues. These links can begin with more meetings and collaborations, but may evolve into a program that supports staff rotations between agencies.

Building links with outside groups should not stop with other federal agencies. The FCC should also consult non-interested parties, and ask them to provide analysis and present conclusions. These non-interested parties should include the academic community, both by seeking out support on novel technical policy issues and by encouraging staff to regularly read academic research and related trade journals.⁹ Links can be fostered with the reinvigoration of the dormant Technological Advisory Council.¹⁰

Institutional History

The current Commissioners are not the FCC’s first Commissioners, nor will they be the last. As a result, the Chair should take steps to make the history of the FCC a living history that remains relevant and informs decisionmaking. In order to keep the legacy of past FCC action from detrimentally impacting innovation in the future, the FCC should institute a regular dialogue with industry, academia, and public interest groups with the goal of identifying out-of-

⁸ Abernathy Paper, Ben Golant, *Several Suggestions for Improving the FCC: Notes From a Former Staffer* (available in the fcc-reform.org suggestions section) [“Golant”], Weiser Paper.

⁹ Media Access Project, Common Cause, & Econometric Research and Analysis, *Putting the Public Back in Public Interest: Painless Reforms to Improve the FCC*, (available in the fcc-reform.org suggestions section) [“MAP”].

¹⁰ Michael J. Marcus, *Comments and Observations on Weiser’s “FCC Reform and the Future of Telecommunications Policy”* [“Marcus Paper”].

date rules.¹¹ This dialogue should be paired with a mechanism that allows rules to evolve over time. It could focus on ending unnecessary reports, streamlining necessary reports, and purging outdated rules and requirements from the Code of Federal Regulations.

As a service to future Commissioners, the Chair should take steps to improve the FCC's institutional memory. While it is always tempting to document successes, it is especially important to document the problems and failures of the FCC in order to avoid similar mistakes in the future.¹²

II. Management of Rulemakings In a Transparent, Collegial, Effective, and Data Driven Manner

A. Regulatory Transparency

1. Notice and Hearings

The FCC's conduct of its rulemakings came under attack as difficult to follow and often based on superficial analysis. For starters, there was wide agreement that commencing a rulemaking with the issuance of model rules—or the issuance of a Further Notice of Proposed Rulemaking with such rules—was a critical step in facilitating meaningful discussion. Such a step would also necessarily involve the entire Commission in discussions about the goal of any particular proceeding. This would help avoid an eleventh hour effort to coalesce around rules that, given the nature of such a process, may lead to unintended and unexamined consequences.

In a related matter, panelists repeatedly highlighted the importance of issuing written decisions contemporaneously with agency votes on an issue. The practice of post-adoption edits and issuing written decisions well after a vote has been taken undermines confidence in the integrity of the decisionmaking process. The delay has caused many to feel that “real” negotiations on an issue do not begin until after the vote. This further obscures how policy is set and implemented from the public and from objective review.

Public hearings are central in any attempt to increase regulatory transparency. These meetings force Commissioners and staff to discuss issues in the open, and at the very least make the public aware of the major issues before the FCC. In addition to regular public meetings at the Commissioner level, monthly open meetings for every bureau would help outsiders understand what is going on at the FCC.¹³

¹¹ Golant, Marcus Paper.

¹² Marcus Paper.

¹³ Golant.

While there is a list of orders currently in circulation among Commissioners freely available on the FCC's website, there should also be a centralized list of items that have been delegated to each bureau. This will help the public address topic-specific concerns to the correct bureau. Additionally, it will show issues that have been awaiting bureau action for an unnecessarily long time.¹⁴

2. *Ex Parte Reform*

There was broad consensus that the current *ex parte* process is not achieving its goals. Notably, conferees highlighted two critical concerns—that the agency tolerates firms engaging in last-minute lobbying without disclosing the content of the discussions, and that the agency occasionally relies on *ex parte* filings (sometimes with little or no time for discussion) in developing its rulings. Additionally, too often *ex parte* letters are merely *pro forma* acknowledgements that a meeting occurred between two parties. It is impossible for individuals or groups who were not at the meeting to determine what was discussed at these meetings by reading the *ex parte* letters.

Fixing the process will require two steps. The first is to revise who is required to file *ex parte* letters. Today's letters from those meeting with the Commission have proven to be inadequate. Although moving the responsibility for *ex parte* letters from the visiting party to the staffer might increase the amount of information available to the public, it is still vulnerable to the chronic brevity that currently plagues *ex parte* filings. One solution is to require both sides to file *ex parte* letters. This would disincentivize omissions by either party and create a richer record for those not included.

The second step is to regularly enforce *ex parte* rules. Although the current *ex parte* rules are partially responsible for the system's shortcomings, the failure to enforce existing helpful rules has contributed significantly. Without rule enforcement there are no consequences for failing to disclose important topics discussed in private meetings.

B. *Fact-Based Decisionmaking*

The importance of developing evidence-based analyses calls for a new model of FCC rulemaking. In particular, the agency could use Administrative Law Judges (ALJs) and traditional tools of adjudication (evidence under oath, cross examination, etc.) to develop a

¹⁴ Golant.

factual record that could inform legal policymaking.¹⁵ The FCC is much more likely to receive accurate information from an adversarial process than from today's unverified filings.

In a related suggestion, the agency could also require those filing comments to sign those comments and affirm that all statements made therein are true to the best of their knowledge. Commenters could face sanctions of not being allowed to practice before the Commission if the affiant was not truthful in that regard. This requirement should also include a continuing obligation to update filed information as circumstances change.¹⁶

Fact-based decisionmaking requires the collection of data, and that data should be made available to the public. The FCC is in a unique position to collect and present data on the industries it regulates, and it should take advantage of that fact. Instead of merely relying on testimony, the FCC should send staffers into the field to actually investigate issues and collect data first-hand.¹⁷ As it is unrealistic to expect the FCC to collect every relevant piece of data on every company that might be involved in communications, it should take advantage of data collected by other related agencies. For example, the SEC collects extensive information about public companies that could inform policy making at the FCC.

While it is critical that the FCC take advantage of as many data sources as possible, the Commission should avoid relying on private data sets. If the FCC does rely on private data sets, it must do so cognizant of the costs and limitations involved.¹⁸ First and foremost, private data sets are often inaccessible to the public. Beyond significantly reducing transparency, this also limits the ability of the public to verify that data used by policymakers is valid. The public cannot effectively challenge a decision if it does not have access to the underlying data, and should not be forced to put its blind faith in private data sources used to set public policy.

Beyond verification and access issues, private data sets are often incomplete. The voluntary nature of any private data source will necessarily undermine its value. Unlike the FCC, private data collectors cannot force companies to reply to data requests. Additionally, private data sets are usually developed for commercial markets. As a result, they tend to have gaps in the types of underserved or otherwise commercially uninteresting areas that do not appeal to private industry but are central to government policymaking.

Related to the problem of FCC reliance on commercial databases obscured from public access is the FCC's growing habit of reflexively complying with private industry requests to

¹⁵ Weiser Paper.

¹⁶ Golant.

¹⁷ MAP.

¹⁸ Joe Karaganis and Phil Napoli, *Addressing Critical Gaps in Quality of and Access to Data*, (available in the fcc-reform.org suggestions section) [Karaganis].

avoid publicly disclosing “commercially sensitive” information. While there are certainly instances where such designations are legitimate, the FCC has grown far too permissive in categorizing information as protected and private. As a step towards improving this balance, at the very least the FCC should adopt a policy that assesses claims of commercial sensitivity against the availability of the same information in a commercial database at any price.¹⁹ If information collected by the FCC is available to competitors, even at a high cost, there can be no competitive justification for keeping it from the public. It merely prevents the public from effectively understanding, and potentially challenging, decisionmaking.

Finally, there is no point to the FCC collecting facts if Commissioners do not use those facts in decisionmaking. To encourage fact-based decisionmaking, all Commissioners should be entitled to request briefings on issues of their choice from all of the FCC’s bureaus.²⁰

C. Timely Decisionmaking

With the exception of the occasional Congressional mandate, the FCC is relatively free of action forcing events and hard deadlines. This can lead to decisions on complicated and/or controversial issues being delayed indefinitely.²¹ Since it is often these complicated, controversial issues that have the potential for the greatest impact on both the public and private investment, this delay can significantly damage innovation. Funding cycles and market plans, oftentimes in industries unrelated to the communications sector, can be irrevocably damaged while parties wait for some sort of final decision from the FCC that never comes.

In recognition of this reality, it is critical that the FCC impose deadlines on itself. Just as important, these deadlines must have meaningful consequences if they are not met. The FCC should adopt a standard “shot clock” for issues. The remaining time for each issue should be well publicized. If an issue runs out of time, the FCC should be forced to either reset the clock or announce that it is denying the requested relief. In either case, a formal written explanation of FCC actions (or perhaps a report to Congress) would help the public understand why the deadline was not met. The threat of explaining a missed deadline should also motivate timely FCC action.

D. Implementation

Even the most fact-based and timely decision, reached by way of an open and transparent process, is of limited value if it is not implemented in a fair and consistent manner. Panelists

¹⁹ Karaganis.

²⁰ Weiser Paper.

²¹ Kathleen Abernathy, *Comments During Panel II: The Past As Prologue: Lessons From History on the Road to Reform*.

were concerned that a number of rules, both procedural and substantive, had been enforced inconsistently.

If a rule serves a legitimate purpose it should be implemented universally. The past practice of using merger conditions to impose restrictions on certain players in an industry, and then implying that the restrictions should also apply to other players in that industry, undermines the FCC's credibility as an impartial regulator.²² So too does the practice of making policy by regularly waiving its rules.

The FCC must also recognize that silo specific regulation merely sets traps on the path towards convergence. While it may have been useful in the past to see different regulated areas as essentially unrelated to each other, the utility of that vision is rapidly diminishing. If an issue impacts a number of different bureaus or industries, the FCC should strive to find a universal and consistent solution.

Rules must also be enforced in a fair and consistent manner. The uneven and irregular enforcement of, for example, *ex parte* and disclosure rules has served to erode each of them. Parties cannot be expected to comply with rules that are not consistently enforced.

III. Effective Communication with the Public

A. Modernize the Website

The FCC's communication and engagement with the public was also held up as a grave concern. Its website was regarded as seriously out-of-date and functionally limited. Many highlighted that 1) basic questions could not easily be answered; 2) search tools were painfully limited; and 3) access to data that could enable others to engage in their own analysis and Web 2.0 activity (*i.e.*, remix it and use it in conjunction with other pieces of information) was limited if not nonexistent.

1. Internal Corrections

a. Create APIs for Databases and Notifications

This might be the single most productive change that the Commission could make to turn its website into a powerful public resource. Currently, the Commission makes a commendably broad amount of information available to the public. This includes reports, decisions, and notices from the Commission itself as well as comments filed by interested parties on any number of issues and questions. Unfortunately, this information is currently locked in outdated, hard to use databases.

²² Peter de Vries, *Notes on Reforming the Federal Communications Commission*. [“de Vries Paper”].

By implementing free and open API/database access, the FCC would allow third parties to build applications to harness the power of this information. Similar APIs for services such as Google Maps, Facebook, and Flickr, not to mention Data.gov, have allowed third parties to build new and useful applications that would never have existed had the information been locked away. Obvious applications might be those that make it easier to comment on proceedings and be notified when information changes. However, one of the most powerful aspects of APIs is their tendency to be used to create services that were never imagined when they were first implemented. Once the information is freely and easily available to the public, there is no limit to what can be created.

The design and implementation of an API for database access could also directly benefit the Commission. In order to effectively design and implement an API, it is critical to enforce a set of best practices on data that enters the database. The Commission could take this opportunity to reassess internal requirements for documents and update these requirements to assure that the documents are as integrated as possible. These best practices could optimize documents to be accessed online, including demanding that all documentation is available in machine-readable text (not just images in PDF files). Although many FCC documents are still used in paper form, increasingly both practitioners and the general public use them online. In creating best practices that recognize an “Internet First” usability principle, the Commission could help lead the way for the migration of federal agencies from paper-based filing to web accessible, always on availability.

b. Build Applications That Make it Easier to Track the Business of the Commission.

There is no reason that the public should have to guess what the Commission is doing and who Commissioners and staff members are meeting with. The Commission's site should have accessible and up to date information about all proceedings. This goal can be advanced in a number of different ways:

- Public Calendar

A publicly accessible, interactive calendar should list with whom various commissioners and bureaus are meeting and what they are discussing. This calendar should include relevant links to notices and comments, as well as *ex parte* letters once the meeting is over.

- Web 2.0 Search

The Commission's current search system contains no less than seven discrete systems that a user must choose between before even beginning a search. Assuming the user chooses correctly, they are then asked to provide obscure docket numbers, proceeding numbers, or FCC numbers. While this system is functional for professional practitioners looking for specific

information, it presents a significant barrier to access for the average user. A simple search for a topic such as “white spaces” produces over one thousand results, none of which clearly link to a description of the issue or an easy way to access publications or comments filed.

In order for the search to be useful to non-practitioners, it must behave like other search tools. This means that users must be able to refine their search with a high level of granularity, as well as be confident that the results will contain the most recent information.

- Alerts

Users should be able to subscribe to alerts. These alerts could notify them when new notices are published, comments have been filed, or other events that a user might want to know about. There is no reason to limit the form that these events could take; users could elect to receive them by email, text message, or even tweet. For example, a user could elect to receive a daily email of all comments filed in a specific docket. Allowing users to define what they want to know and how they wish to receive it will greatly increase the accessibility of the Commission. Additionally, examining which issues are most popular may help the Commission understand where public interest is focused and may help improve future site and system design.

- Revision Control

In recognition of how easy it is to quickly and seamlessly alter documents that exist primarily on the Internet, the Commission should maintain and make available previous versions of all of its website pages. This would allow the public to track and understand what has changed and why. In doing so, transparency and accountability would be increased.²³

2. External Corrections

While modernizing the way in which data is structured and made available to the public will greatly increase transparency, redesigning the current website is key to increasing the public's ability to interact with the FCC.

a. Revise the Home Page

The current Commission website, as the site of the federal agency involved with regulating the nation’s communications system, is subpar. While the agency now has several new related websites like Broadband.gov, [Open Internet.gov](http://OpenInternet.gov) and Reboot.fcc.gov, the FCC’s main site, FCC.gov, has not changed substantially in nearly 15 years. As the first thing that greets

²³ Tim O’Reilly, *Put Change.gov Under Revision Control!*, (Nov. 28, 2008) at <http://radar.oreilly.com/2008/11/change-gov-revision-control.html>.

visitors, the Commission website must instill confidence that the information will be up to date and the site will be usable.

The site of another independent regulatory agency, the Environmental Protection Agency (EPA), stands in stark contrast to the Commission's site. Unlike the Commission's site, EPA.gov provides a clean, modern interface for users. The home page contains a number of interest items to appeal to different constituencies. There are also multiple entry points for different types of users. In addition, on the front page alone users can sign up for email alerts, download widgets and podcasts, sign up for RSS feeds, and view the EPA mobile site. Most of these options are unavailable on the FCC homepage, if they are available at all.

b. Issue Specific Pages

In addition to reinventing its home page, the Commission should create issue specific landing pages for consumers. Each docket should have its own page with a permanent link. This page should have a brief (non-legal) summary of the major docket issues. Additionally, there should be links to relevant documentation, such as Notices of Proposed Rulemaking, Notices of Inquiry, final decisions, and filed comments, as well as a straightforward way to file new comments. Deadlines, meetings, and other information about the issue should be centralized and easily viewed on the site.

Giving issues a home page achieves a number of related goals. First, it gives members of the public a “one stop shop” where they can go to learn about issues that might impact them. Instead of being forced to cobble together relevant documentation through existing media accounts and search systems, the public could go to a single site with all of the relevant and up-to-date information on the topic. Second, a home page gives interested parties a place to rally supporters. Instead of blindly linking members to a blank comment page or to the Commission's home page, advocacy organizations can point supporters or opponents to the issue home page where they can learn more and have the opportunity to file an informed comment.

c. Internet-Centered Design of Communications

The Consumer and Governmental Affairs Bureau has a number of very helpful resources available on their site. However, the resources are not designed to take advantage of the Internet. Instead, the resources are merely press releases placed on a web page. The Commission should strive to take advantage of the Internet and design consumer resources as rich, interactive experiences. While there may have been a time where the majority of the public interacted with the Commission via press release, it is no longer safe to assume that is the case. The Commission should assume that most members of the public access information via the Internet and design best practices to take advantage of that fact.

d. Public Input into Agenda Setting

Although it is important for the Commission to maintain control over its meeting agendas, it could be useful to allow public input. President Obama has held Internet town hall meetings where questions were proposed and voted on by the public. It would be an interesting experiment if the Commission reserved a one topic per meeting for an issue chosen by the public.

3. Video

a. Availability

While the Commission does make some videos available to the public, the process is far from ideal. Most glaringly, videos as recent as 2007 have been moved off-line “because of the large amount of computer memory required to store audio/video recordings.” This is no longer a valid excuse. Just as the Commission finds money to purchase a computer for every employee, it should be able to purchase the storage and bandwidth necessary to make videos available to the public. Additionally, the Commission should not rely on third parties to store and present the videos. A number of the videos currently “provided by a third party” are no longer available. There is no reason the Commission should be unable to make archived streaming video available at a high quality to the public.

b. Transcripts

FCC meetings are transcribed live and embedded in video as closed captions. These transcripts should be made available to the public as time-stamped documents separate from the videos themselves. This would help users search for topics in meetings and more efficiently research the Commission's actions. Integrating these transcripts into the website search function as well as the API would greatly increase the value of the meetings.

c. Downloads

In addition to live streaming, all videos should be made available as high quality downloads in open, non-proprietary, and commonly used formats. The Commission might also embrace Peer-to-Peer/torrent technology if there are concerns about bandwidth efficiency.

d. Licensing

Videos of Commission meetings should be considered in the public domain to the extent they are produced by the FCC. Otherwise, video recordings of meetings should be available via the FCC website free of charge under a non-restrictive license such as a Public Domain Dedication or Creative Commons Attribution license, which permits any use, commercial or noncommercial, so long as attribution is preserved. This will encourage commentary and discussion about meetings without fear of being accused of copyright violation.

e. Increase the Number of Public Hearings

A number of panelists highlighted that the FCC's engagement with the public needed to happen in real space as well as on the Internet, with public hearings becoming a more regular part of the agency's practice. The FCC should strive to hold hearings outside of Washington, DC in order to collect information from people living across the country.

These hearings should not merely serve as opportunities for the public to "vent" to the FCC. The FCC should make it a practice of incorporating information gathered from public hearings into its decisionmaking.²⁴ When the public sees that complaints raised during these meetings actually impact policymaking, it will encourage meaningful participation.

f. Collect and Distribute Information Useful to the Public

As mentioned elsewhere in this report, the FCC is uniquely able to collect information that will assist consumers. Instead of seeing itself as merely a regulatory agency, the FCC should strive to become a resource for consumers making communications-related decisions.²⁵ Consumers should see the FCC as a resource that can provide accurate information on issues such as cellular network coverage, broadband alternatives and pricing, and Multichannel Video Provider (MVPD) availability.

g. Spectrum Registry

The FCC sets spectrum policy, but it can be incredibly hard for the public to understand which private or public entity controls actual frequencies. This is especially problematic for emerging technologies that rely on spectrum access to function. Currently, there is no simple way for an upstart outsider to understand how to gain access to spectrum.

The FCC should create a central spectrum registry.²⁶ At a minimum, this registry should identify the different spectrum bands and establish a contact person for each band. The registry should also contain the terms for licensing access to identified spectrum bands. This would allow a company or individual developing a technology that relies on spectrum to understand what is available, who to contact in order to access that spectrum, and what type of licensing terms to expect once that person has been contacted.

VI. Agency Structure, Organization, and Staff

²⁴ MAP.

²⁵ Jessica Rosenworcel, *Comments During Panel I: The Future of the FCC as an Institution*.

²⁶ Weiser Paper.

Many panelists discussed a number of potential reforms to the agency's structure and operations. A number of these reforms simply require a cultural change to empower agency staff to attend conferences, hire interns, and speak their mind without first asking permission of the Chair's staff. The notion of rotating employees to other bureaus and related agencies also fits with the concern about tunnel vision in policymaking. Rotating employees would also help to address agency capture and "revolving door" problems.

Additionally, panelists discussed increasing the breadth and/or length of post-agency employment bans. Combining this change with a revised and enforced set of disqualifying recusal thresholds for incoming employees has the potential to significantly reduce the impact of the revolving door problem.²⁷ When agency staff can move easily in and out of careers with companies the agency regulates and the law firms that represent them, the problem of agency capture is exacerbated.

A related problem is the lack of transparency with regard to staff recusals. Currently, an FCC staffer seeking employment with an interested party is under no obligation to submit a written notification that she is recusing herself from pending matters affecting that party. Staff should not only be required to provide a written notice, the notice should be posted prominently on the FCC's website.

Commenters suggested that reintroducing the FCC University program,²⁸ in addition to increasing transparency in staff awards,²⁹ would increase staff morale and encourage more employees to view the FCC as a long-term career. Another mechanism to encourage careers at the FCC would be to implement senior civil servant policies.³⁰ These could include leaving the Federal GS pay scale as well as implementing a student loan repayment program for employees with five or more years at the FCC.

One final step towards improving FCC functioning would be to appoint and empower an outsider as Inspector General.³¹ An outsider would have the ability to investigate problems at the FCC without becoming entangled in existing loyalties or relationships.

Conclusion

The large number of recommendations in this document is largely due to the length of

²⁷ Panel I Discussion.

²⁸ Golant.

²⁹ Marcus Paper.

³⁰ Marcus Paper.

³¹ Marcus Paper.

time since the FCC last instituted a serious review of itself and its procedures. There is no doubt the recommendations are broad, and that they will take some time to implement. By reconsidering the way it plans, develops policy, structures itself, and communicates with the public, the FCC can begin the process of transforming itself into the modern regulator that our rapidly changing communications sector demands.

We are encouraged by the eagerness demonstrated so far by Chairman Genachowski and his staff to address the shortcomings that have developed over time at the agency. Their efforts thus far indicate a true commitment to reform. However, more important than any individual recommendation is a commitment to continuous reexamination and recalibration at the FCC. We hope that this document will aid in those efforts.