

**STATEMENT  
of  
COMMISSIONER ROBERT M. McDOWELL  
FEDERAL COMMUNICATIONS COMMISSION**

**Before the  
COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY  
AND THE INTERNET  
UNITED STATES HOUSE OF REPRESENTATIVES**

**September 17, 2009**

Mr. Chairman, Ranking Member Stearns and Members of the Subcommittee, it is a privilege to appear before you today.

The FCC is an agency with new energy and new blood, and I am honored to be serving there for another term. I look forward to working with my new colleagues, Julius Genachowski, Mignon Clyburn and Meredith Attwell Baker, as well as my friend Mike Copps.

With these new commissioners and new leadership, we have a perfect opportunity to rebuild the FCC as we address the myriad communications and economic policy challenges facing America. For some time now, I have been calling for reform of the Commission's structures and processes. To help spark discussion and progress, I wrote open letters outlining reform ideas to both Acting Chairman Copps in January and Chairman Genachowski in July. Additionally, we have shared ideas with each other from the outset.

First and foremost, the FCC should be a more open and collaborative place where all Commissioners are included in the idea formulation process early on, rather than just 21 days before a voting deadline. Towards this goal, immediately upon becoming Acting

Chairman, Mike Copps worked to make the Commission more transparent, collegial and efficient, and I commend him for his efforts. Similarly, Chairman Genachowski has started a new process of enhancing information flow and improving employee morale. A tremendous amount of FCC reform work remains to be done, however. I look forward to working with all stakeholders on this important endeavor, especially Members of this Committee. For the sake of brevity, I have attached a copy of my open letter to Chairman Genachowski as part of my testimony and I respectfully request that it be made part of today's record.

The FCC's largest initiative of the year thus far, of course, has been the digital television transition – which continues to this day. Prior to the June 12 analog cut-off date, almost three million households were estimated to be unprepared. As of August 30, however, 1.8 million of those households were ready – leaving only about 710,000 households without access to digital signals. In other words, 99.4 percent of U.S. households are getting DTV signals in some way – over the air or through subscription services like cable or satellite TV. Nevertheless, the Commission continues to work with the private sector to help the remaining consumers connect to the digital age of television. Similarly, we are working with broadcasters to resolve a few reception issues, mostly involving the higher VHF channels. Overall, while I'm reluctant to declare victory yet, the DTV transition went better than many had feared, thanks to the hard work of an uncountable number of people, including our dedicated public servants, Mike Copps and his team.

As we move forward, I cannot think of a more important time to be at the FCC. Even though the American economy has been shrinking overall, our communications

marketplace is vibrant, evolving and growing. Consumers have more choices among more communications technologies, services and providers than ever before. For instance, 157 million Americans watched more than 21 billion online videos during the month of July alone -- a figure that is growing at a double-digit rate each month.

Consumers are watching those videos on an increasing number of platforms as well. For example, nearly 15 million Americans watch video on their mobile devices, and that number is growing at 50 percent per year.

Three years ago, the discussion of a wireless-only marketplace was just beginning. Today, nearly one in five American households is wireless-only while the majority of American consumers has a choice of five wireless carriers. At the same time, 23 percent of all *businesses* are expected to be wireless-only by 2012. America's wireless broadband market is leading the world by growing more than 400 percent during the past three years.

Additionally, America has the fastest growing fiber-to-the-home market in the world – with an annual growth rate of over 120 percent. Five years ago, less than one percent of American homes had access to fiber. Today, that figure stands at 13 percent.

Since 2000, the number of high-speed lines in America has increased more than 1900 percent, from approximately 6.8 million connections at the end of 2000 to almost 133 million lines nearly nine years later. To grow that number further, American businesses will spend up to \$80 billion on new broadband infrastructure this year alone. Few, if any, business sectors can make such a claim in this economy.

Certainly, our communications marketplace is far from perfect, and more must be done to help make new technologies and services available to more Americans at

affordable prices. As we prepare our congressionally mandated national broadband plan, however, we should not just examine our shortcomings, but we should learn from what we have done *right* as well. The information and communications technology (“ICT”) sector is poised to lead our country out of the recession and into an era of sustained economic prosperity, higher paying jobs and untold consumer benefits *if* the government does not adopt policies that inhibit economic freedom and investment. America’s year-over-year private sector investments in broadband dwarf any government-funded broadband efforts throughout the globe. In recent years, the Commission has promised that new broadband technologies would come to fruition as a result of our actions to put into the hands of consumers the power of previously unavailable spectrum, such as the 700 MHz band. Market players, both large and small, will need even more capital to build out the infrastructure needed to make that promise a reality. With this fact in mind, whatever policies we adopt should help *attract* more private sector capital, not deter it. Encouraging the flow of capital is the spark needed to restart America’s economic engine.

As the broadband plan takes shape, it is my hope that the plan not take a heavy-handed, top-down, command-and-control industrial policy approach in an attempt to promote more broadband access and usage. Instead, I hope that it will be imaginative, pragmatic, flexible and the next step in an open and iterative process that will make helping *unserved* America its top priority. Our policies should encourage abundance and competition to give consumers more choices, life-changing innovations and lower prices, all while obviating the need for regulation and rationing. If we are truly committed to

being data driven, and avoid cherry picking data to justify a predetermined outcome, we can produce a useful template to produce constructive public policy.

In addition to reform and the broadband plan, the Commission faces a number of other challenges. We are confronted with a skyrocketing Universal Service cost structure that is unsustainable. We preside over an inefficient and outdated intercarrier compensation regime. We should quickly gather more granular data to better analyze the special access market. More than 1.3 million broadcast indecency complaints, some of which are older than my children, lie ossifying in our headquarters. The Communications Act requires us to review our rules governing media ownership again next year. And during that review, as with *all* of our endeavors, we must be faithful to the First Amendment and defend the freedom of speech. We still have work to do to ensure technologies that operate in the unused television “white spaces” can come to market and into the hands of consumers as quickly as possible. Likewise, we must work with Congress to devise a solution for resolving the communications challenges faced by our nation’s emergency response providers. And the list goes on.

In conclusion, America’s ICT sector is at a critical juncture. Our technological and economic future could be brilliant if we, as policy makers, have the courage to make the right choices. I look forward to working with Congress, Chairman Genachowski and my Commission colleagues on important new policies that will encourage job-creating investment, empower consumers and make America stronger and more competitive.

Mr. Chairman, Ranking Member Stearns and Members of the Subcommittee, thank you again for the opportunity to appear before you today. This concludes my statement, and I look forward to answering your questions.



Office of Commissioner Robert M. McDowell  
Federal Communications Commission  
Washington, D.C. 20554

July 20, 2009

The Honorable Julius Genachowski  
Chairman  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

*Julius*  
Dear Mr. Chairman:

Once again, congratulations on your nomination and confirmation as Chairman. I am greatly encouraged and energized to know that you, Commissioner Copps and I will be working together on a plethora of communications policy challenges facing the economy and American consumers. Although you have only been here for three weeks, I applaud the steps you have already taken to reform the agency. Your recent statements regarding boosting employee morale, promoting greater transparency, and creating a more informed, collaborative and considerate decision-making process are heartening. Anything we could do to advance the timely and orderly resolution of Commission business would be constructive. I am confident that you will agree that the preliminary steps Mike took during his interim chairmanship have provided a sound footing upon which to build.

Accordingly, in the collaborative and transparent spirit of my January 29, 2009, letter to Mike, I offer below a number of suggestions on achieving the important public interest objectives of reforming this agency. As you and I have already discussed, these thoughts are intended as a starting point for a more public discussion that should examine a larger constellation of ideas for moving forward together to improve the public's ability to participate in our work, as well as our overall decision-making abilities. Many of these ideas have been discussed by many people for a long period of time, and if we don't care who gets the credit we can accomplish a great deal.

***Operational, financial and ethics audit.***

I would first recommend that we commence a thorough operational, financial and ethics audit of the Commission and its related entities, such as the Universal Service Administrative Company, the National Exchange Carrier Association and the federal advisory committees. Just as you recently articulated in your June 30 request for information on the Commission's safety preparedness, I would envision this audit as an examination akin to a due diligence review of a company as part of a proposed merger or acquisition, or after a change in top management. I would not envision the process taking a lot of time; yet, upon completion, we would be better positioned to identify and assess the current condition of the FCC and its related entities, as well as how they operate.

This undertaking would be a meaningful first step on the road to improving the agency. As with all FCC reform endeavors, I hope that all of the commissioners would be involved in this process, including its development and initiation. We should seek comment from the public and the Commission staff, and we should provide Commission employees with additional opportunities to submit comments anonymously. I also propose that we hold a series of "town hall" meetings at the FCC's Washington headquarters, at a few field offices, as well as in a few locations around the country to allow our fellow citizens to attend and voice their opinions directly to us.

As part of a financial review, it is crucially important that we examine the Commission's contracting process, as well as the processes relating to the collection and distribution of administrative and regulatory fees currently conducted exclusively by the Office of Managing Director. For instance, we should consider whether the full Commission should receive notice prior to the finalization of significant contracts or other large transactions.

In the same vein, it is time to examine the Commission's assessment of fees. Regulatory fees are the primary means by which the Commission funds its operations. You may be aware that the FCC actually makes money for the tax payers. As Mike has also noted, our methodology for collecting these fees may be imperfect. At first blush, it appears that we may have over-collected by more than \$10 million for each of the last two years. Some have raised questions regarding how the fee burden is allocated. Our recent further notice of proposed rulemaking could lead to a methodology that lowers regulatory fees and levies them in a more nondiscriminatory and competitively neutral manner.

We should also work with Congress to examine Section 8 of the Act and the Commission's duty to collect administrative fees. I am hopeful that we will examine why we continue to levy a tax of sorts of allegedly \$25 million or so per year on industry, after the Commission has fully funded its operations through regulatory fees. As you may know, that money goes straight to the Treasury and is not used to fund the agency. Every year, we increase those fees to stay current with the Consumer Price Index. At the same time, our regulatees pass along those costs to consumers and they are the ones who ultimately pay higher prices for telecommunications services.

Further, given the significant concerns raised about the numbers and the way the audits have been conducted, I recommend that we examine the financial management of the universal service fund. You may know that the Commission's Inspector General reported last year that the estimated erroneous payment rate for the High Cost program between July 2006 and June 2007 was 23.3 percent, with total estimated erroneous payments of \$971.2 million. While I am pleased that the OIG identified this error, it is time that we get to the bottom of this matter and remedy it.

In the same spirit, an ethics audit should ensure that all of our protocols, rules and conduct are up to the highest standards of government best practices. Faith in the ethics of government officials has, in some cases, eroded over the years and we should make sure that we are doing all that we can to maintain the public's trust.

***Update and republish the FCC strategic plan.***

Also in connection with this review, I hope that we can work together to update and republish the Commission's strategic plan. Like me, you may find that, as we toil on day-to-day tasks, it can be easy to lose sight of our strategic direction. Completing this task would create a solid framework for future actions and demonstrate our commitment to transparency and orderliness, each of which is critical to effective decision making.

***Potential restructuring of the agency.***

The findings of our review, combined with our work to develop a new strategic plan, would provide us with the information and ideas necessary for considering a potential restructuring of the agency. As you know, the Commission has been reorganized over the years – for instance, the creation of the Enforcement Bureau under Chairman Kennard and the Public Safety and Homeland Security Bureau under Chairman Martin. Close coordination among the staff in pursuit of functional commonality historically has improved the Commission's effectiveness. Nonetheless, the time is coming again to reconsider this option.

I am not suggesting that we make change for the sake of change. After all, we would agree that the agency needs to be flexible and must be responsive to its myriad stakeholders, most importantly American consumers. There are, however, additional improvements we can make to increase our efficiency. As Mike emphasized, the Commission's most precious resource, really our *only* resource, are its people. Many of our most valued team members are nearing retirement age. We need to do more to recruit and retain highly-qualified professionals to fill their large shoes. I hope our next budget will give us adequate resources to address this growing challenge.

Next, I would encourage consideration of filling many of the numerous open positions with highly-qualified applicants and making more efficient use of non-attorney professionals. For example, there is no reason why we cannot use engineers to help investigate complaints and petitions that involve technical and engineering questions. This would be especially useful as we continue to consider matters pertaining to network management. Similarly, our economists could be better used to help assess the economic effects of our proposed actions.

***Improve external communication.***

As you and I have also discussed, we need to improve our external communications regarding FCC processes and actions. I greatly appreciate Mike's promptness in posting the Open Meeting dates covering his tenure. I am hopeful that we will swiftly establish and publish Open Meeting dates for the entire 2009 calendar year. The public, not to mention the staff, would also greatly benefit if we would provide at least six months' notice on meeting dates for 2010 and beyond.

As part of these communications improvements, I look forward providing input as to updating the Commission's IT and web systems. I applaud your commitment to this endeavor and Mike's success in securing additional funding toward this end. Clear, concise and well-organized information systems will ensure that all public information is available, easily located and understandable. I also recommend that we update the General Counsel's part of the website to include litigation calendars, as well as access to pleadings filed by all the parties. Additionally, I suspect that our customers would prefer that licenses of all stripes be housed in one database, rather than separate databases spread across the stovepipes of our several bureaus. We should seek comment on this, and other similar administrative reform matters.

In addition, I propose that we create, publish on the website and update regularly an easy-to-read matrix setting forth a listing of all pending proceedings and the status of each. This matrix would include those matters being addressed on delegated authority. The taxpayers should know what they are paying for.

Similarly, I suggest that we establish and release a schedule for the production of all statistical reports and analyses regularly conducted by the Commission, and publish annual updates of that schedule. This would include, for example: the *Wireless Competition Report*, which has traditionally been released each September; the *Video Competition Report*, which until recently, was released at the end of each year; and the *High-Speed Services Report*, which, at one point, was released biannually. Similarly, quite some time before your arrival, I went on record calling for giving the American public the opportunity to view and comment on at least a draft or outline of the National Broadband Plan. I look forward to working with you to increase public awareness regarding the status and substance of our work on this plan. The goal here would be not only to ensure that the public is fully aware of what we are working on and when, but also to give these valuable analyses to their owners – the American people – with regularity.

In the same vein, Congress, the American public and consumers, among other stakeholders – not to mention your fellow commissioners – would greatly appreciate it if notices of proposed rulemakings actually contained *proposed rules*.

### ***Improve internal communication.***

Also, we need to overhaul our internal information flow, collaboration and processes. I am eager to work with you, Mike, and our future colleagues, to identify and implement additional measures to increase coordination among the commissioner offices, between commissioner offices and the staff, as well as among the staff. It is important that we cooperate with each other to foster open and thoughtful consideration of potential actions well before jumping into the drafting process. The bottom line is simple: No commissioner should learn of official actions through the trade press.

An effective FCC would be one where, for instance, Commissioner offices would receive options memoranda and briefing materials long before votes need to be cast. For example, for all rulemakings, within 30 days of a comment period closing, perhaps all commissioners could

receive identical comment summaries. Also, within a fixed timeframe after receiving comment summaries, say 60 to 90 days, all commissioners could receive options memos complete with policy, legal, technical and economic analyses. In preparation for legislative hearings, it would be helpful if all commissioners received briefing materials, including witness lists, at least five business days prior to the hearing date. For FCC *en banc* hearings or meetings, we should aim to distribute briefing materials to all commissioners at least one week prior to the event date. The details here are less important than the upshot: all commissioners should have unfettered access to the agency's experts, and receive the benefit of their work. Again, I am grateful to Mike for his preliminary efforts in this regard.

Also along these lines, I hope that your team will reestablish the practice of regular meetings among the senior legal advisors for the purpose of discussing "big picture" policy matters, administrative issues, as well as to plan events and meetings that involve all of the offices. Given the numerous tasks we have before us, I trust you will agree that regular meetings among this group will improve our efficiencies, and go a long way toward lessening, if not eliminating, unpleasant surprises.

Just as important would be to hold regular meetings among the substantive advisors and relevant staff, including the Office of General Counsel. Having ample opportunity to review and discuss pending proceedings and the various options at the early stages of, and throughout the drafting process would allow us to capitalize on our in-house expertise early and often. Taking such precautions might also bolster the Commission's track record on appeal. Indeed, this type of close collaboration might lead to more logical, clear and concise policy outcomes that better serve the public interest.

Another idea is to update and rewrite our guide to the Commission's internal procedures, currently entitled *Commissioner's Guide to the Agenda Process*. For instance, just as Mike has done with respect to the distribution of our daily press clips, I propose that we undertake a thorough review of the physical circulation process, including identifying and making changes to reduce the amount of paper unnecessarily distributed throughout the agency. Current procedures require that each office receive about eight copies of every document on circulation when one or two would suffice. I also wonder why our procedures mandate delivery of 30 paper copies of released Commission documents to our press office. The overwhelming majority of reporters who cover our agency pull the materials they need from our website. Perhaps this is another area where we could save money and help the environment all at the same time.

### *Coordinate with other facets of government.*

Finally, on a more "macro" level, I propose that the commissioners work together to build an ongoing and meaningful rapport with other facets of government, especially in the consumer protection, homeland security, and technology areas. I am confident that close collaboration with our government colleagues with similar or overlapping responsibilities would greatly benefit the constituencies we serve.

July 20, 2009

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In closing, I again extend my warmest congratulations on your new position as Chairman. You are to be commended for the steps you have taken thus far toward rebuilding this agency. I look forward to working together with you, Mike and our new colleagues upon their confirmation to do even more.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert M. McDowell". The signature is written in a cursive, flowing style.

Robert M. McDowell

cc: The Honorable Michael J. Copps

Committee on Energy and Commerce  
 U.S. House of Representatives  
 Witness Disclosure Requirement - "Truth in Testimony"  
 Required by House Rule XI, Clause 2(g)

Your Name:		
1. Are you testifying on behalf of a Federal, State, or local Government entity?	Yes <input checked="" type="checkbox"/>	No
2. Are you testifying on behalf of an entity that is not a Government entity?	Yes	No <input checked="" type="checkbox"/>
3. Please list any Federal grants or contracts (including subgrants or subcontracts) that you personally have received on or after October 1, 2006: <i>nila</i>		
4. Other than yourself, please list which entity or entities you are representing: <i>Federal Communications Commission</i>		
5. If your answer to the question in item 2 in this form is 'yes,' please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in the question in item 4:		
6. If your answer to the question in item 2 is 'yes,' do any of the entities disclosed in item 4 have parent organizations, subsidiaries, or partnerships that you are not representing in your testimony?	Yes	No <input checked="" type="checkbox"/>
7. If the answer to the question in item 2 is 'yes,' please list any Federal grants or contracts (including subgrants or subcontracts) that were received by the entities listed under the question in item 4 on or after October 1, 2006, that exceed 10 percent of the revenue of the entities in the year received, including the source and amount of each grant or contract to be listed: <i>nila</i>		

Signature: *Robert M. Howell*

Date: *9-14-09*