



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

February 23, 2011

OFFICE OF
THE CHAIRMAN

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Issa:

Below I address your questions, recounted in your letters of November 13, 2009 and December 29, 2010, concerning communications between the Federal Communications Commission and the Executive Branch about proposed open Internet rules.

The Commission is an independent agency, and its "ex parte" disclosure rules apply to certain communications between Commissioners and Commission staff and members of the Administration or Congress. See 47 C.F.R. 1.1200 et seq. The Communications Act of 1934, as amended, does not prohibit communications between Commissioners and Commission staff and members of the Administration. Section 5(a) of the Communications Act specifically anticipates that the Chairman will "represent the Commission in all matters requiring conferences or communications with other governmental officers, departments or agencies." Under the Commission's procedural rules, ex parte disclosure requirements generally come into effect upon the release of a Notice of Proposed Rulemaking (NPRM). 47 C.F.R. § 1.1206(a)(1). In this instance, consistent with general agency practice, prior to the release of the *Open Internet NPRM* on October 22, 2009 the open Internet matter was an "exempt proceeding" under the ex parte rules. See *Broadband Industry Practices Notice of Inquiry*, 22 FCC Rcd 7894, 7898 at para. 12 (2007). Thus, for example, no disclosure requirements applied in September 2009. Moreover, the Commission's Office of General Counsel is not aware of any potential violations of the ex parte rules in connection with the subject matter of your letter.

We take our ex parte rules seriously, and our practice is to inform parties and the public of ex parte violations when we become aware of them. Consistent with that practice, on January 11, 2011, the Commission's Office of General Counsel issued a Notice of Prohibited Presentations (enclosed) in the open Internet proceeding.

Please let me know if I can be of further assistance.

Sincerely,



Julius Genachowski