



FEDERAL COMMUNICATIONS COMMISSION

October 28, 2011

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

I received your letter of September 8, 2011, and hope that this response clears up some apparent misconceptions about Commission policy regarding information requests coming from individual members of Congress rather than from Congressional committees.

The Commission's policy, as described in my letter to you of July 26, 2010, is not unique to the Commission or of recent vintage. Over a quarter century ago, in 1984, the Justice Department noted that congressional access to agency documents is traditionally limited precisely along the lines of the FCC's policy – differentiating between requests from congressional committees and requests from individual members.¹ Both before and since the Justice Department issued its guidance, courts have consistently distinguished between information requests from Congressional committees and requests made by individual members.² The FCC is following this time-honored approach.

I share your concerns regarding national security, public safety and good government. More specifically here, I reiterate to you my previous assurances that the Commission will not make any decisions regarding LightSquared that jeopardize national security, public safety or the important services the GPS industry provides the American public. I have provided the same assurances on the record to the House Armed Services Committee's Subcommittee on Strategic Forces. I am attaching a copy of the letter that was entered into the record at that hearing. That

¹ U.S. Dep't of Justice, Office of Information Policy, FOIA Update, vol. V, no. 1 (1984) (available at http://www.justice.gov/oip/foia_updates/Vol_V_1/page3.htm).

² See, e.g., *Committee on the Judiciary v. Miers*, 558 F. Supp.2d 53, 67-68 (D.D.C. 2008) (House Judiciary Committee had power to enforce congressional subpoena; case distinguished from suits brought by individual members of Congress); *Walker v. Chaney*, 230 F. Supp.2d 51, 68 (D.D.C. 2002) (Comptroller General denied access to Energy Task Force records. "The record reflects that Congress as a whole has undertaken no effort to obtain the documents at issue, that no committee has requested the documents, and that no subpoena has been issued. Thus, an injury with respect to any congressional right to information remains wholly conjectural or hypothetical."); *Leach v. RTC*, 860 F. Supp. 868, 874 (D.D.C. 1984) (Ranking Member of House Banking Committee denied access to requested Resolution Trust Corporation files); *Lee v. Kelley*, 99 F.R.D. 340, 342 (D.D.C. 1983) (Senator Helms denied access to FBI's file on Martin Luther King). See also *Raines v. Byrd*, 521 U.S. 811, 829-30 (individual members of Congress do not have standing to bring an action to challenge constitutionality of Line Item Veto Act).

letter provides extensive background information and addresses several of the procedural questions that you have raised, including FCC coordination with other government agencies throughout the process.

In addition, as outlined in the attached letter for the record, the FCC has coordinated with other federal agencies throughout this process, pursuant to the terms of a memorandum of understanding (MOU) with the NTIA, which represents federal spectrum users, including the Department of Defense, Department of Transportation, Department of Energy, and NASA. Such coordination with other agencies has been FCC policy since the inception of the FCC under the Communications Act of 1934. This coordination permits technical experts to review engineering issues and resolve spectrum interference problems in a collaborative, inclusive and fact-based manner. That is exactly the process that is being run in the LightSquared matter.

Finally, I would like to note that I answered questions about LightSquared during the hearing before the House Appropriations Subcommittee on Financial Services on the FCC's appropriations for fiscal year 2012, and I later responded to several written questions for the record on this matter. Moreover, Julius Knapp, Chief of the Commission's Office of Engineering and Technology, testified before the House Armed Services Strategic Forces Subcommittee on September 15, 2011, and reiterated the FCC's commitment that the agency will not make any decisions regarding LightSquared that jeopardize national security, public safety, or the important services the GPS industry provides to the public.

These hearings and written exchanges have provided ample opportunity to address the national security, public safety and good government issues you have raised directly with me in your letters and through our staff-to-staff contacts. They also have afforded Congress the opportunity to hear from a broad cross-section of interested parties and stakeholders.

I appreciate the concerns you have raised, and emphasize that the FCC has worked hard – both through coordination with our federal partners and with all interested stakeholders – to assure that those concerns are taken into account through a fact-based and engineering-driven process. I am committed to ensuring that is how this process continues to be structured moving forward. I will continue to make staff available to discuss this matter further with you and your staff at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julius Genachowski', with a long horizontal flourish extending to the right.

Julius Genachowski

Enclosure