

**STATEMENT  
OF  
COMMISSIONER ROBERT M. MCDOWELL  
FEDERAL COMMUNICATIONS COMMISSION**

**BEFORE THE  
UNITED STATES SENATE  
COMMITTEE ON  
COMMERCE, SCIENCE, AND TRANSPORTATION**

**OVERSIGHT  
OF THE  
FEDERAL COMMUNICATIONS COMMISSION**

**MAY 16, 2012**

Thank you, Chairman Rockefeller, Ranking Member Hutchison, and Members of the Committee for inviting me to join you today. I have served as an FCC commissioner for nearly six years, and every day has been a privilege. Nearly four and a half years have passed since the full Commission has had the opportunity to appear before your Committee, and I am pleased to be back before you. As always, I look forward to answering any questions you may have.

Today's hearing marks the first time the five of us have appeared together as the new fully-intact FCC. Accordingly, it is a great pleasure to officially welcome our new colleagues, Commissioners Rosenworcel and Pai.

We have plenty of work to do together in the coming months and years. I believe that America's future is bright when it comes to putting the power of new communications technologies into the hands of consumers. For instance, we are in the early days of the Golden Age of mobile broadband. America has *always* led the world when it comes to wireless innovation and if we choose the correct policies we will further strengthen America's global leadership.

For example, the United States has approximately 21 percent of the world's 3G/4G subscribers and approximately 69 percent of the world's entire LTE subscribers even though the population in the United States is less than five percent of the global population.<sup>1</sup> American wireless providers are also investing more in their infrastructure than their international counterparts. In 2011, over \$25 billion was invested in United States' wireless infrastructure<sup>2</sup> versus \$18.6 billion invested in 15 European countries combined.<sup>3</sup>

Furthermore, the American mobile market enjoys more competition than most international markets. According to the most recent FCC statistics, nine out of ten American consumers have a choice of at least *five* wireless service providers.<sup>4</sup> In Europe, that number is around three.<sup>5</sup> As a result, American consumers enjoy lower prices and higher mobile usage rates as compared to consumers in the European Union

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<sup>1</sup> See INFORMA TELECOMS AND MEDIA (WCIS Database) (Dec. 2011).

<sup>2</sup> See CTIA-THE WIRELESS ASSOC., CTIA SEMI-ANNUAL WIRELESS INDUSTRY SURVEY (2012), <http://www.ctia.org/advocacy/research/index.cfm/AID/10316>; see also CTIA-THE WIRELESS ASSOC., SEMI-ANNUAL 2011 TOP-LINE SURVEY RESULTS 10 (2012) (last visited May 14, 2012), [http://files.ctia.org/pdf/CTIA\\_Survey\\_Year\\_End\\_2011\\_Graphics.pdf](http://files.ctia.org/pdf/CTIA_Survey_Year_End_2011_Graphics.pdf) (providing cumulative capital investment numbers) (last visited May 14, 2012).

<sup>3</sup> See BOA/MERRILL LYNCH EUROPEAN TELECOMS MATRIX Q112 (Mar. 30, 2012) (GLOBAL TELECOMS MATRIX Q112) (estimating €14,368 YE 2011. Conversion at \$1.2948/1€). The European countries included in the Matrix: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and UK; there are 27 members of the European Union (EU).

<sup>4</sup> Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services, WT Docket No. 10-133, *Fifteenth Report*, 26 FCC Rcd 9664, 9669 (2011).

<sup>5</sup> See GLOBAL TELECOMS MATRIX Q112.

(EU) – 4 cents per minute versus 17 cents generally in the EU.<sup>6</sup> Wireless subscriber usage on average in the United States is often three to seven times as much compared to some countries.<sup>7</sup> At the same time, American consumers pay at least one-third less than consumers in many other parts of the world.<sup>8</sup> America’s light touch regulatory policy for mobile technologies has enabled our wireless sector to flourish and lead the world. Policy makers should keep this important history in mind when contemplating the wireless industry’s regulatory future.

Combining the power of the Internet with the freedom that comes from wireless mobility has created new economic and political opportunities that were unimaginable just six years ago when I was first appointed to the FCC. Competition, private sector leadership and regulatory liberalization have wrought a wonderful explosion of entrepreneurial brilliance, economic growth and political change that is improving the human condition across the globe.

Against this backdrop, I will discuss three broad initiatives that, if pursued effectively, will encourage, rather than discourage this impressive trajectory in mobile broadband deployment and use: (1) implementing the new spectrum law enacted with an eye toward simplicity, humility, and regulatory restraint; (2) identifying and engaging in an aggressive and coordinated effort to free up spectrum held by the federal government; and (3) fostering greater spectral efficiency.

Next, I will: review the FCC’s efforts to expand broadband availability to unserved Americans through our recent reform of Universal Service Fund (USF) distributions; show how the new digital economy has rendered many media ownership regulations obsolete; discuss how reforming the Commission’s procedures would ensure greater efficiencies; and elaborate on my concerns over new global efforts to have the International Telecommunication Union (ITU) regulate the Internet.

**THE FCC SHOULD IMPLEMENT THE NEW SPECTRUM LAW WITH SIMPLICITY, HUMILITY AND RESTRAINT.**

As noted earlier, Americans are increasingly integrating the use of sophisticated mobile devices into their daily lives. While the popularity and power of mobility has ushered in vast consumer benefits, this new reliance on wireless services has increasingly strained our spectrum capacity. As you know, Congress passed legislation in February that originated in your Committee, which, among other things, included a voluntary incentive auction for our nation’s television broadcasters.<sup>9</sup> This initiative will put new

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<sup>6</sup> Roger Entner, *The Wireless Industry: The Essential Engine of U.S. Economic Growth*, RECON ANALYTICS, at 1 (May 2012), <http://reconanalytics.com/wp-content/uploads/2012/04/Wireless-The-Ubiquitous-Engine-by-Recon-Analytics-1.pdf> ) (last visited May 14, 2012).

<sup>7</sup> See GLOBAL TELECOMS MATRIX Q112 at 71.

<sup>8</sup> See *id.*

<sup>9</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402-6404, 126 Stat. 156, 224-230 (2012).

spectrum into the hands of our nation's consumers. Congratulations on that bipartisan and historic achievement.

As a result of your work, the Commission has commenced the implementation of that law which will result in the most complicated spectrum auction, or auctions, in world history. Vital to a successful effort, we should undertake our work with an eye toward simplicity and restraint. In the past, regulatory efforts to over-engineer spectrum auctions have caused harmful, unintended consequences. I hope that we will learn from our own history so we can avoid missteps by implementing the law with regulatory humility. In doing so, new auction rules will be appropriately minimal and "future proof" and allow for uses that we cannot imagine today as technology and consumer choices evolve. For instance, new rules should include band plans that offer opportunities for small, medium and large companies to bid for and secure licenses without having to exclude *any* player from the auctions.

#### **THE FEDERAL GOVERNMENT SHOULD RELINQUISH MORE SPECTRUM FOR AUCTION.**

In addition to making television broadcast spectrum available for new and innovative service offerings, we must work together to identify opportunities to move federal government users into new spectrum bands. As our colleagues at the National Telecommunications and Information Administration (NTIA) have recently reported, various federal government operations are employing spectrum located within the 1755 – 1850 MHz range that could be made available for commercial uses.<sup>10</sup>

NTIA made a valuable contribution to this effort, especially in setting forth the issues at hand. Although I commend the team at NTIA for their thorough and thoughtful work, I look forward to further analysis on the cost and timing estimates in particular.<sup>11</sup> Greater clarity in the cost assumptions underlying the report would go a long way to create greater certainty in the marketplace as we attempt to satisfy longer-term commercial spectrum needs.

#### **THE GOVERNMENT SHOULD ADOPT POLICIES THAT WILL ALLOW FOR ACCELERATED IMPROVEMENTS IN SPECTRAL EFFICIENCY.**

While we identify and analyze the complex issues that will arise as we implement the new spectrum legislation, I will continue to call for an increased focus on technologies and strategies to improve spectral efficiency. Greater emphasis and education in this area will improve the ability of mobile service providers, engineers, application and content developers as well as consumers to take better advantage of the immediate fixes already available in the marketplace. Spectral efficiency solutions include more robust deployment of enhanced antenna systems; improved development,

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<sup>10</sup> U.S. DEPT. OF COMMERCE, AN ASSESSMENT OF THE VIABILITY OF ACCOMMODATING WIRELESS BROADBAND IN THE 1755-1850 MHz BAND (Mar. 2012) ("NTIA Report").

<sup>11</sup> The NTIA Report states that moving some commercial users could cost \$18 billion and take 10 years. *Id.* at iii.

testing and roll-out of creative technologies where appropriate, such as cognitive radios; and enhanced consideration of, and more targeted consumer education on, the use of femto cells. Each of these technological options augments capacity and coverage, which is especially important for data and multimedia transmissions. The Commission's recent workshop on receiver standards is a step in the right direction.

I am pleased that we are beginning to discuss spectrum sharing in a meaningful way. Although the term "sharing" has yet to be defined in the context of current deliberations, I have consistently encouraged FCC efforts to promote a form of sharing – for instance, I have strongly supported our work to promote unlicensed use of the "TV white spaces" within the 700 MHz Band,<sup>12</sup> the 400 MHz Band,<sup>13</sup> and the 5 GHz Band.<sup>14</sup> Although highly technical in nature, these sharing protocols, once brought to fruition, will appear seamless to consumers while they enjoy higher speeds and expanded coverage when making mobile connections. Moreover, the services offered in these bands have the potential to add many billions of dollars to the U.S. economy and to become essential components of the mobile broadband marketplace. For instance, unlicensed use of white spaces could serve as an "off ramp" for wireless traffic experiencing congestion on licensed routes just as Wi-Fi is increasingly being used to circumnavigate clogged channels.

Equally important, as policy makers, we should emphasize techniques and strategies to improve spectral efficiency. In practical terms, even if we could easily identify 500 megahertz of quality spectrum to reallocate today, we should expect the better part of a decade to transpire before consumers could enjoy the benefits. As history illustrates, it takes time to write proposed auction rules and band plans, analyze public comment, adopt rules, hold auctions, collect the proceeds, clear the bands, and watch carriers build out and turn on their networks. In the meantime, as powerful new applications consume more wireless bandwidth making it easier for innovators to create and deploy new technologies, enhancing more efficient use of the airwaves has to be a top priority for all of us.

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<sup>12</sup> See, e.g., Unlicensed Operation in the TV Broadcast Bands, ET Docket No. 04-186, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band, ET Docket No. 02-380, *Second Memorandum Opinion and Order*, 25 FCC Rcd 18661 (2010) (using unused and under-used spectrum held by licensed and unlicensed commercial incumbents for the purpose of developing new low power wireless services).

<sup>13</sup> Amendment of Parts 2 and 95 of the Commission's Rules to Provide Additional Spectrum for the Medical Device Radiocommunication Service in the 413-417 MHz Band, ET Docket No. 09-36, *Report and Order*, 26 FCC Rcd 16605 (2011) (sharing spectrum with federal government users for the purpose of developing and employing implantable medical devices that have a wide range of operations, including restoring movement to paralyzed limbs).

<sup>14</sup> See, e.g., Revision of Parts 2 and 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) devices in the 5 GHz Band, *Memorandum Opinion and Order*, ET Docket No. 03-122, 21 FCC Rcd 7672 (2006) (sharing spectrum with federal government users for the purpose of developing and employing Unlicensed National Information Infrastructure (U-NII), which provides short-range, high-speed wireless connections).

## WE MUST CONTINUE OUR WORK ON UNIVERSAL SERVICE REFORM.

Before last fall, the challenge of solving the seemingly intractable USF and intercarrier compensation puzzle had cast a shadow over the FCC for more than a decade. During my time as a commissioner, I have tried to learn about the practical realities of the program by holding productive policy discussions with multiple stakeholders not only in America's least populated and remote regions but also in urban and suburban areas where customers pay rates above costs to subsidize rural consumers. After years of fact gathering and analysis, with a unanimous vote, the Commission finally modernized the high cost portion of the USF. As a result, we bent the spending curve on a federal entitlement by imposing a strict budget on the former high cost fund for the first time in the fund's history.

Historically, the high cost fund only supported traditional telecommunications services and did not directly support the deployment of broadband. Also, the program has grown tremendously over the years without promoting efficiency. For example, the high cost fund subsidized multiple providers in the same area while other parts of our nation still remained unserved. Furthermore, the old structure allowed providers to receive subsidies to serve areas that were already served by unsubsidized competitors. In part, due to these and other inefficiencies, the high cost fund grew from \$1.69 billion in 1998 to over \$4 billion by the end of last year.<sup>15</sup>

The FCC's reform efforts last fall addressed these issues, among many others, and transformed the high cost fund into one that will support next-generation communications technologies, while also keeping a lid on spending.<sup>16</sup> Chairman Genachowski and

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<sup>15</sup> Similarly, the aggregate amount spent on all USF programs grew from \$3.66 billion in 1998 to over \$8 billion through 2011. Sources: Federal Communications Commission and Universal Service Administrative Company.

<sup>16</sup> The Commission not only has broad authority to repurpose support to advanced services but a *duty* to do so as well as handed to us by the plain language of section 254. In section 254(b), Congress specified that “[t]he Joint Board and the Commission *shall* base policies for the preservation and advancement of universal service on [certain] principles.” 47 U.S.C. § 254(b)(emphasis added). Two of those principles are particularly instructive: First, under section 254(b)(2), Congress sets forth the principle that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.” 47 U.S.C. § 254(b)(2). Second, with section 254(b)(3), Congress established the principle that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and *information services* . . .” 47 U.S.C. § 254(b)(3) (emphasis added).

Also, section 254(b)(7) instructs the Commission and Joint Board to adopt “other principles” that we “determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with” the Communications Act. In that regard, in 2010 the Federal-State Board on Universal Service recommended to the Commission that we use our authority under section 254(b)(7) to adopt a principle to “specifically find that universal service support should be directed where possible to networks that provide advanced services.”

Some contend that the definition of universal service under section 254(c)(1) muddies the water because it does not include “information service.” Instead, that provision states that “[u]niversal service is an evolving level of *telecommunications services* . . . taking into account advances in telecommunications and

Commissioners Capps (since retired) and Clyburn should be commended for this historic accomplishment.

In addition to reforming the high cost program, the Commission also reformed the USF low income program (Lifeline/Linkup) in January by restraining its spending and adopting some necessary measures to eliminate waste, fraud and abuse in that program.<sup>17</sup>

These two reform efforts were just *first steps*, however, because the Commission only addressed the distribution, or spending, side of the USF equation. Equally important is the need to fix the contribution methodology, or the “taxing” side of the ledger. In other words, how are we going to pay for all of this?

To put this issue in perspective, the USF contribution factor, a type of tax paid by telephone consumers, has risen each year from approximately 5.5 percent in 1998 to almost 18 percent in the first quarter of this year.<sup>18</sup> This trend is unacceptable because it is unsustainable. Furthermore, the cryptic language on consumers’ phone bills, combined with the skyrocketing “tax” rate, has produced a new form of “bill shock.” We must tame this wild automatic tax increase as soon as possible.

In a perfect world, the Commission would have conducted *comprehensive* reform by addressing both the spending and taxing sides at the same time. Instead, our effort was broken into pieces. Nevertheless, I was pleased that the Chairman recently launched a further notice of proposed rulemaking on contribution reform which was approved by the Commission at our last open meeting.

I look forward to working with my colleagues and all stakeholders to craft a pragmatic and fair solution to lower the tax rate while broadening the base in a manner that is within the authority granted to us by Congress. It is my hope that we will do so no later than this fall.

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information technologies and services.” But, it is also relevant that the term “telecommunications service” is qualified by the adjective “evolving.” Even if section 254 were viewed as ambiguous, pursuant to the well established principle of *Chevron* deference, the courts would likely uphold the FCC’s interpretation as a reasonable and permissible one. See *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

As part of this USF order approved last fall, the Commission agreed with the Joint Board recommendation and adopted “support for advanced services” as an additional principle. Moreover, even if any of the statutory language in section 254 appears to be ambiguous, the Commission’s reasonable interpretation would receive deference from the courts under *Chevron*.

<sup>17</sup> Funding for the Lifeline/Linkup program has steadily increased over the years. In, 1998, the total support for the program was \$464 million, and in 2010, the total support was over \$1.3 billion. See UNIVERSAL SERVICE MONITORING REPORT, CC Docket No. 98-202, Table 2.2 (2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-311775A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311775A1.pdf).

<sup>18</sup> See Proposed First Quarter 2012 Universal Service Contribution Factor, CC Docket No. 96-45, *Public Notice*, 26 FCC Rcd 16814 (OMD 2011).

Finally, given the breadth and magnitude of the various USF reforms we have accomplished so far, many of the effects - both positive and negative - may not be apparent in the near term. That said, USF reform is an iterative process and we will constantly monitor its implementation, listen to concerns, and quickly make adjustments, if necessary.

### **OUR MEDIA OWNERSHIP PROCEEDING GIVES US AN OPPORTUNITY TO MODERNIZE OUTDATED RULES.**

In the upcoming months, the Commission is likely to vote on the quadrennial media ownership review. In December, I concurred to the majority of the December 2011 notice of proposed rulemaking, because the Commission appears to be prepared to accept a regulatory *status quo*. I remain hopeful that the Commission will modernize its rules to reflect the economic realities of the marketplace. Maintaining decades-old industrial policy in this age of competition, mobility and new media is not in the public interest. Moreover, we have a statutory obligation to eliminate unnecessary mandates and bring all of our media ownership rules into line with today's competitive environment.<sup>19</sup>

The factual record from the FCC's 2006-2007 review, coupled with the weight of the evidence that has poured in thus far during our current review, would likely support a conclusion that the 1975 vintage newspaper-broadcast cross-ownership ban should be largely eliminated. Although the Commission has offered up a relaxation of the ban on newspaper-television ownership for the largest markets and considers eliminating restrictions on newspaper-radio combinations, these proposals are anemic and do not reflect marketplace realities. Particularly, in the past decade, broadcast stations and daily newspapers have grappled with falling audience and circulation numbers, diminishing advertising revenues, and resulting staff reductions, as online sources gain in popularity. Although some sectors of the news industry have experienced a slight resurgence,<sup>20</sup>

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<sup>19</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 111-12 § 202(h) (1996); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) (amending Section 202(h) of the 1996 Act). Section 202(h) states:

The Commission shall review its rules adopted pursuant to this section and all of its ownership rules quadrennially . . . and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

Telecommunications Act of 1996 § 202(h).

<sup>20</sup> In 2011, network and local news viewership increased for the first time years; however, local TV station advertising revenues still experienced a decline. See PEW RESEARCH CTR'S PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2012, KEY FINDINGS, <http://stateofthemediamedia.org/2012/overview-4/key-findings/> (last visited Mar 14, 2012) ("THE STATE OF THE NEWS MEDIA 2012") (stating that news viewership increased for local stations and networks for the first time in five and ten years, respectively); THE STATE OF THE NEWS MEDIA 2012, LOCAL TV, <http://stateofthemediamedia.org/2012/overview-4/key-findings/> (explaining that some of this loss is due to a reduction of political and automotive advertising from 2010 and that these revenues will rebound during a busy election cycle).

newspapers continue to face decline with both advertising and circulation revenues continuing on a downward path.<sup>21</sup>

Since 2007, a number of the nation's most prominent daily newspapers have gone into bankruptcy and many papers have moved to online-only formats. Furthermore, over the past five years, an average of 15 daily papers, or about 1 percent of the industry, have shuttered their doors *each year*.<sup>22</sup> This is probably a response, in part, to the challenging economic climate, but also may be a consequence of the emergence of competition from new media platforms such as the Web and the FCC's failure to modernize our rules adequately.

Regardless of any rule changes, however, traditional media owners are choosing to invest in new, *unregulated* digital outlets rather than acquire more heavily-regulated traditional media assets. Although newspaper circulation numbers continue to decline, the number of unique visitors to newspaper websites has been increasing.<sup>23</sup> In fact, the White House's Council of Economic Advisors has found that newspapers are one of America's fastest-shrinking industries<sup>24</sup> losing approximately 28.4 percent of its workforce between 2007 and 2011. Online publishing job growth, on the other hand, increased by more than 20 percent in the same time period.<sup>25</sup> Currently, 172 newspapers have launched online subscription plans or placed content behind a paywall.<sup>26</sup> This represents a 15 percent increase since January alone and more papers are expected to follow suit in the coming months.<sup>27</sup> In the last year, we have also witnessed a trend of traditional news media partnering with online distributors. For instance, Reuters is

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<sup>21</sup> THE STATE OF THE NEWS MEDIA 2012, OVERVIEW, <http://stateofthemediamedia.org/2012/overview-4/>; THE STATE OF THE NEWS MEDIA 2012, KEY FINDINGS, <http://stateofthemediamedia.org/2012/overview-4/key-findings/>.

<sup>22</sup> THE STATE OF THE NEWS MEDIA 2012, MAJOR TRENDS, <http://stateofthemediamedia.org/2012/overview-4/major-trends/>.

<sup>23</sup> *Newspaper Web Audience*, NEWSPAPER ASSOC. OF AM. (Apr. 25, 2012), <http://www.naa.org/Trends-and-Numbers/Newspaper-Websites/Newspaper-Web-Audience.aspx>.

<sup>24</sup> ECONOMIC REPORT OF THE PRESIDENT TOGETHER WITH THE ANNUAL REPORT OF THE COUNCIL OF ECONOMIC ADVISORS 188 (February 2012) (citing a LinkedIn study), *available at* [http://www.whitehouse.gov/sites/default/files/docs/erp\\_2012\\_complete.pdf](http://www.whitehouse.gov/sites/default/files/docs/erp_2012_complete.pdf).

<sup>25</sup> Derek Thompson, *Newspapers are America's Fastest-Shrinking Industry*, THE ATLANTIC (Mar. 11, 2012), <http://www.theatlantic.com/business/archive/2012/03/newspapers-are-americas-fastest-shrinking-industry/254307/>); Matt Rosoff, *Newspapers Are The Fastest Shrinking Industry In The U.S.*, BUSINESS INSIDER (Mar. 8, 2012), [http://articles.businessinsider.com/2012-03-08/tech/31135175\\_1\\_linkedin-job-growth-newspapers#ixzz1us0z9Urf](http://articles.businessinsider.com/2012-03-08/tech/31135175_1_linkedin-job-growth-newspapers#ixzz1us0z9Urf); Andrew Edgecliffe-Johnson, *Bleak Outlook for US Papers*, FINANCIAL TIMES (Mar. 16, 2012), <http://www.ft.com/intl/cms/s/0/3eef0bc4-6f73-11e1-9c57-00144feab49a.html#axzz1uryNf9hc>.

<sup>26</sup> Papers with Digital Subscriber Plans/Paywalls, NEWS & TECH (May 10, 2012), [http://www.newsandtech.com/stats/article\\_22ac1efa-2466-11e1-9c29-0019bb2963f4.html](http://www.newsandtech.com/stats/article_22ac1efa-2466-11e1-9c29-0019bb2963f4.html) (last visited May 14, 2012).

<sup>27</sup> *Compare id.*, with THE STATE OF THE NEWS MEDIA 2012, NEWSPAPERS, <http://stateofthemediamedia.org/2012/newspapers-building-digital-revenues-proves-painfully-slow/> (stating that roughly 150 newspapers have instituted a "metered model").

producing original news shows for YouTube; Facebook has entered into partnerships with *The Washington Post*, *The Wall Street Journal* and *The Guardian*; and Yahoo! paired with ABC News to be its sole provider of news video.<sup>28</sup>

In today's robust and dynamic online and mobile marketplace, government should not limit the options of broadcasters and the newspaper community to attract investment, increase efficiencies, and share the costs of news production. Even in today's competitive online environment, the medium of newspaper has an important role to play. Although business models are evolving, government policies should not distort market trends.

Ironically, based on the evidence in the record thus far, the newspaper-broadcast cross-ownership rule is likely undermining its own ostensible goal of promoting a diversity of voices in the media marketplace. The rule may indeed be exacerbating the diminution of journalism. Further, the record thus far demonstrates that in-market combinations do not negatively affect viewpoint diversity<sup>29</sup> and actually increase the quantity and quality of local news and information provided by commonly-owned outlets to benefit the American consumer.<sup>30</sup> For these reasons, and many others, with the weight of the evidence before us it appears that the newspaper-broadcast cross-ownership rule could be counter-productive, not in the public interest and should be largely eliminated.

#### **OPPORTUNITIES ABOUND FOR FURTHER FCC REFORM.**

Congress has recently shown interest in identifying opportunities for the streamlining and improving Commission procedures and to ensure that unnecessary, outdated or harmful rules are repealed.<sup>31</sup> I agree. Although some FCC reforms require

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<sup>28</sup> THE STATE OF THE NEWS MEDIA 2012, OVERVIEW, <http://stateofthemedias.org/2012/overview-4/>.

<sup>29</sup> See, e.g., Newspaper Association of America, Comments, MB Docket No. 09-182, at 18-20 (Mar. 5, 2012) ("NAA Comments"); Adam D. Renhoff and Kenneth C. Wilbur, Local Media Ownership and Viewpoint Diversity in Local Television News, at 3, 15 (June 12, 2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-308596A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308596A1.pdf) ("[T]hese findings show that under the proposed definition of viewpoint diversity, variation in television station co-ownership and cross-ownership is generally found to [have] negligible effects on viewpoint diversity. However, it is important to note that the data are limited to the degree of media co-ownership and cross-ownership currently allowed under FCC rules.").

<sup>30</sup> See, e.g., 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182, *Notice of Proposed Rulemaking*, 26 FCC Rcd 17489, 17519 ¶ 85, n.185 (2011); NAA Comments at 15-18; Diversity and Competition Supporters, Initial Comments, MB Docket No. 09-182, at 40-43 (Mar. 5, 2012); Adam D. Renhoff and Kenneth C. Wilbur, Local Media Ownership and Media Quality, at 3, 15 (June 12, 2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-308504A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308504A1.pdf); Jack Erb, Local Information Programming and the Structure of Television Markets, at 4, 27-28, 40-41 (May 20, 2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-308508A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308508A1.pdf).

<sup>31</sup> Fifty years ago, there were only 463 pages in the FCC's portion of the Code of Federal Regulations ("CFR"). During this period, Americans only had a choice of three TV networks and one phone company. Today, over-the-air TV, cable TV, satellite TV and radio, and the millions of content suppliers on the Internet, offer consumers with an abundance of choices. In other words, the American communications economy was far less competitive in 1961 than it is today, yet it operated under fewer rules.

Congressional action, others may be achieved internally. For instance, the Chairman has enacted some of my suggestions, including ensuring that notices of proposed rulemaking contain actual proposed rules. I applaud his efforts in this area. In 2009, I outlined additional suggestions regarding reform of the FCC to Acting-Chairman Michael Copps and subsequently to Chairman Genachowski. For your convenience, I have attached copies of these letters. (*See Exhibit A*).

### **WE SHOULD REMAIN UNIFIED IN OUR OPPOSITION TO UN/ITU REGULATION OF THE INTERNET.**

Finally, all of us should be concerned with a well-organized international effort to secure intergovernmental control of Internet governance. Since being privatized in the early 1990's, the Internet has historically flourished within a deregulatory regime not only within our country but internationally as well. In fact, the long-standing international consensus has been to keep governments from regulating core functions of the Internet's ecosystem.

Unfortunately, some nations, such as China, Russia, India, Iran and Saudi Arabia, have been pushing to reverse this consensus by giving the International Telecommunication Union (ITU) regulatory jurisdiction over Internet governance. The ITU is a treaty-based organization under the auspices of the United Nations.<sup>32</sup> As Russian Prime Minister Vladimir Putin said last June, the goal of this effort is to establish "international control over the Internet using the monitoring and supervisory capabilities of the [ITU]."<sup>33</sup>

In 1988, delegates from 114 countries gathered in Australia to agree to a treaty that set the stage for dramatic liberalization of international telecommunications.<sup>34</sup> As a

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In contrast, by late 1995, the FCC's portion of the CFR had grown to 2,933 pages – up from 463 pages 34 years earlier. As of the most recent printing of the CFR last October, it contained a mind-numbing 3,746 pages of rules. Even after Congress codified deregulatory mandates with the landmark Telecommunications Act of 1996, the FCC still managed to *add* hundreds more pages of rules. In fact, the FCC has added 86 pages of rules since 2008.

To put it another way, the FCC's rules, measured in pages, have grown by almost 710 percent over the course of 50 years, all while the communications marketplace has enjoyed more competition. During this same period of regulatory growth, America's GDP grew by a substantially smaller number: 360 percent. In short, this is one metric illustrating government growth outpacing economic growth.

To be fair, some of those rules were written due to various congressional mandates. And sometimes the FCC does remove regulations on its own accord, or forbear from applying various mandates in response to forbearance petitions. But all in all, the FCC's regulatory reach has grown despite congressional attempts to reverse that trend.

<sup>32</sup> History, ITU, <http://www.itu.int/en/about/Pages/history.aspx> (last visited May 14, 2012).

<sup>33</sup> Vladimir Putin, Prime Minister of the Russian Federation, Working Day, GOV'T OF THE RUSSIAN FED'N, <http://premier.gov.ru/eng/events/news/15601/> (June 15, 2011) (last visited May 14, 2012).

<sup>34</sup> *See* International Telecommunication Union, Final Acts of the World Administrative Telegraphy and Telephone Conference, Melbourne, 1988: International Telecommunication Regulations (Geneva 1989), available at [http://www.itu.int/osg/csd/wtpf/wtpf2009/documents/ITU\\_ITRs\\_88.pdf](http://www.itu.int/osg/csd/wtpf/wtpf2009/documents/ITU_ITRs_88.pdf) (last visited May 14, 2012).

result, the Internet was insulated from government control and quickly became the greatest deregulatory success story of all time.

Today, however, several countries within the 193 member states of the ITU<sup>35</sup> want to renegotiate the 1988 treaty to expand its reach into previously unregulated areas. A few specifics are as follows:

- Subject cyber security and data privacy to international control;
- Allow foreign phone companies to charge fees for "international" Internet traffic, perhaps even on a "per-click" basis for certain Web destinations, with the goal of generating revenue for state-owned phone companies and government treasuries;
- Impose unprecedented economic regulations such as mandates for rates, terms and conditions for currently unregulated traffic-swapping agreements known as "peering;"
- Establish for the first time ITU dominion over important functions of multi-stakeholder Internet governance entities such as the Internet Corporation for Assigned Names and Numbers, the nonprofit entity that coordinates the .com and .org Web addresses of the world;
- Subsume under intergovernmental control many functions of the Internet Engineering Task Force, the Internet Society and other multi-stakeholder groups that establish the engineering and technical standards that allow the Internet to work; and
- Regulate international mobile roaming rates and practices.

These efforts could ultimately partition the Internet between countries that on the one hand opt out of today's highly successful, non-governmental, multi-stakeholder model to live under an intergovernmental regulatory regime, and on the other hand, those member states that decide to keep the current system. Such a legal structure would be devastating to global free trade, rising living standards and the spread of political freedom. It would also create an engineering morass.

These latest attempts to regulate Internet governance have rallied opposition on a bipartisan basis. Chairman Genachowski has also been working to raise awareness on this important issue as have key members of the Obama Administration.

For your convenience, I have attached a copy of a recent *Wall Street Journal* op-ed that I wrote which provides more detail on the issue. (See Exhibit B).

## **CONCLUSION**

In sum, it has been an honor to serve as a commissioner at the FCC. During my service, my focus has been to support policies that promote consumer choice offered through abundance and competition rather than regulation and its unintended

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<sup>35</sup> Overview, ITU, <http://www.itu.int/en/about/Pages/overview.aspx> (last visited May 14, 2012).

consequences, whenever possible. In the absence of market failure, unnecessary regulation in the name of serving the public interest can have the perverse effect of harming consumers by inhibiting the constructive risk-taking that produces investment, innovation, competition, lower prices and jobs. I will continue to examine the FCC's public policy challenges through this lens, and I look forward to continue working with all of you to ensure that America maintains its foothold as the leader in the communications marketplace.

Thank you again for the opportunity to appear before you today. I look forward to your questions.

## **Exhibit A**

Robert M. McDowell, *The UN Threat to Internet Freedom*, WALL ST. J., Feb. 21, 2012, at A19, available at <http://online.wsj.com/article/SB10001424052970204792404577229074023195322.html>.

# THE WALL STREET JOURNAL.

TUESDAY, FEBRUARY 21, 2012

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## The U.N. Threat to Internet Freedom

By **ROBERT M. McDOWELL**

**O**n Feb. 27, a diplomatic process will begin in Geneva that could result in a new treaty giving the United Nations unprecedented powers over the Internet. Dozens of countries, including Russia and China, are pushing hard to reach this goal by year's end. As Russian Prime Minister Vladimir Putin said last June, his goal and that of his allies is to establish "international control over the Internet" through the International Telecommunication Union (ITU), a treaty-based organization under U.N. auspices.

If successful, these new regulatory proposals would upend the Internet's flourishing regime, which has been in place since 1988. That year, delegates from 114 countries gathered in Australia to agree to a treaty that set the stage for dramatic liberalization of international telecommunications. This insulated the Internet from economic and technical regulation and quickly became the greatest deregulatory success story of all time.

Since the Net's inception, engineers, academics, user groups and others have convened in bottom-up nongovernmental organizations to keep it operating and thriving through what is known as a "multi-stakeholder" governance model. This consensus-driven private-sector approach has been the key to the Net's phenomenal success.

In 1995, shortly after it was privatized, only 16 million people used the Internet world-wide. By 2011, more than two billion were online—and that number is growing by as much as half a million every day. This explosive growth is the direct result of governments generally keeping their hands off the Internet sphere.

Net access, especially through mobile devices, is improving the human condition more quickly—and more fundamentally—than any other technology in history. Nowhere is this more true than in the developing world, where

unfettered Internet technologies are expanding economies and raising living standards.

Farmers who live far from markets are now able to find buyers for their crops through their Internet-connected mobile devices without assuming the risks and expenses of traveling with their goods. Worried parents are able to go online to locate medicine for their sick children. And proponents of political freedom are better able to share information and organize support to break down the walls of tyranny.

The Internet has also been a net job creator. A recent McKinsey study found that for every job disrupted by Internet connectivity, 2.6 new jobs are created. It is no coincidence that these wonderful developments blossomed as the Internet migrated further away from government control.

Today, however, Russia, China and their allies within the 193 member states of the ITU want to renegotiate the 1988 treaty to expand its reach into previously unregulated areas. Reading even a partial list of proposals that could be codified into international law next December at a conference in Dubai is chilling:

- Subject cyber security and data privacy to international control;

- Allow foreign phone companies to charge fees for "international" Internet traffic, perhaps even on a "per-click" basis for certain Web destinations, with the goal of generating revenue for state-owned phone companies and government treasuries;

- Impose unprecedented economic regulations such as mandates for rates, terms and conditions for currently unregulated traffic-swapping agreements known as "peering."

- Establish for the first time ITU dominion over important functions of multi-stakeholder Internet governance entities such as the Internet Corporation for Assigned Names and Numbers, the nonprofit entity that coordinates the .com and .org Web addresses of the world;

- Subsume under intergovernmental control many functions of the Internet Engineering Task Force, the Internet Society and other multi-stakeholder groups that establish the engineering and technical standards that allow the Internet to work;

- Regulate international mobile roaming rates and practices.

Many countries in the developing world, including India and Brazil, are particularly intrigued by these ideas. Even though Internet-based technologies are improving billions of lives everywhere, some governments feel excluded and want more control.

And let's face it, strong-arm regimes are threatened by popular outcries for political freedom that are empowered by unfettered Internet connectivity. They have formed impressive coalitions, and their efforts have progressed significantly.

**M**erely saying "no" to any changes to the current structure of Internet governance is likely to be a losing proposition. A more successful strategy would be for proponents of Internet freedom and prosperity within every nation to encourage a dialogue among all interested parties, including governments and the ITU, to broaden the multi-stakeholder umbrella with the goal of reaching consensus to address reasonable concerns. As part of this conversation, we should underscore the tremendous benefits that the Internet has yielded for the developing world through the multi-stakeholder model.

Upending this model with a new regulatory treaty is likely to partition the Internet as some countries would inevitably choose to opt out. A balkanized Internet would be devastating to global free trade and national sovereignty. It would impair Internet growth most severely in the developing world but also globally as technologists are forced to seek bureaucratic permission to innovate and invest. This would also undermine the proliferation of new cross-border technologies, such as cloud computing.

A top-down, centralized, international regulatory overlay is antithetical to the architecture of the Net, which is a global network of networks without borders. No government, let alone an intergovernmental body, can make engineering and economic decisions in lightning-fast Internet time. Productivity, rising living standards and the spread of freedom everywhere, but especially in the developing world, would grind to a halt as engineering and business decisions become politically paralyzed within a global regulatory body.

Any attempts to expand intergovernmental powers over the Internet—no matter how incremental or seemingly innocuous—should be turned back. Modernization and reform can be constructive, but not if the end result is a new global bureaucracy that departs from the multi-stakeholder model. Enlightened nations should draw a line in the sand against new regulations while welcoming reform that could include a nonregulatory role for the ITU.

Pro-regulation forces are, thus far, much more energized and organized than those who favor the multi-stakeholder approach. Regulation proponents only need to secure a simple majority of the 193 member states to codify their radical and counterproductive agenda. Unlike the U.N. Security Council, no country can wield a veto in ITU proceedings. With this in mind, some estimate that approximately 90 countries could be supporting intergovernmental Net regulation—a mere seven short of a majority.

While precious time ticks away, the U.S. has not named a leader for the treaty negotiation. We must awake from our slumber and engage before it is too late. Not only do these developments have the potential to affect the daily lives of all Americans, they also threaten freedom and prosperity across the globe.

*Mr. McDowell is a commissioner of the Federal Communications Commission.*

**Exhibit B**

Letter from FCC Commissioner Robert M. McDowell to FCC Acting Chairman Michael Copps (January 27, 2009).

Letter from FCC Commissioner Robert M. McDowell to FCC Chairman Julius Genachowski (July 20, 2009).



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

January 27, 2009

The Honorable Michael J. Copps  
Acting Chairman  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Dear Mike:

Once again, congratulations on being named Acting Chairman. Additionally, thank you for your dedication and commitment to public service and the Commission. It goes without saying that I am looking forward to continuing to work with you.

I am greatly encouraged and energized to know that you, Commissioner Adelstein and I will be working together toward the goals of boosting employee morale, promoting greater transparency, as well as creating a more informed, collaborative and considerate decision-making process, all aimed toward advancing the timely and orderly resolution of Commission business. Thank you for addressing these and many other issues within minutes of becoming Acting Chairman. I certainly appreciate the new atmosphere you are creating at the Commission, and I know that the FCC's talented and dedicated career employees appreciate your efforts as well. Accordingly, with the utmost respect for you, the Commission staff and the new Obama Administration, I offer below several preliminary suggestions on achieving the important public interest objectives of reforming this agency. My letter is intended to continue a thoughtful dialogue on moving forward together to improve the public's ability to participate in our work, as well as our overall decision-making abilities. Our collaborative efforts to rebuild the agency should not be limited to the thoughts outlined in this brief letter. As you and I have discussed many of these ideas already, let this merely serve as a starting point for a more public discussion that should examine a larger constellation of ideas.

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 and the Federal Advisory Committees. As with all FCC reform endeavors, I hope that all of the commissioners will 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 an opportunity to submit comments anonymously.

I would also suggest that we work to update and republish the Commission's strategic plan. 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.

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. I am not suggesting that we make change for the sake of change. After all, we agree that the agency needs to be flexible and must be responsive to its myriad stakeholders, most importantly American consumers. There are, however, steps we likely would want to implement to increase our efficiency. For example, as you have already stated, delegating some authority back to upper and mid-level management, filling many of the numerous open positions with highly-qualified applicants and making more efficient use of non-attorney professionals come to mind.

As we have also discussed previously, we need to improve our external communications regarding FCC processes and actions. As an immediate first step, I suggest that we 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.

Also, we agree that we need to overhaul our internal information flow, collaboration and processes. I am eager to continue to work with you and Commissioner Adelstein to identify and implement 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.

As part of these communications improvements, I share your desire to update the Commission's IT and web systems. They are in dire need of an overhaul. Clear, concise and well-organized information systems will ensure that all public information is available, easily located and understandable.

Finally, 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.

In closing, Mike, I again extend my warmest congratulations on your designation as Acting Chairman. I look forward to working together with you and Commissioner Adelstein to improve our agency during the coming days and weeks.

Sincerely,

A handwritten signature in black ink that reads "Robert M. McDowell". The signature is written in a cursive style with a large, sweeping initial 'R'.

Robert M. McDowell

cc: The Honorable Jonathan S. Adelstein



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 fluid and cursive, with a large initial "R" and a stylized "M".

Robert M. McDowell

cc: The Honorable Michael J. Copps