

Testimony of FCC Commissioner Mignon L. Clyburn

Subcommittee on Communications and Technology
Committee on Energy and Commerce
May 13, 2011

SUMMARY

- The FCC is a complex environment; with innumerable requirements, proceedings, and moving parts that don't easily lend themselves to rocket docketing and express reviews.
- However, we strive to be as expeditious as possible with the items under consideration, but part of the reason why many of our deliberations take so much time is because of our robust and all-inclusive public comment mechanism.
- Through the FCC's website, our external advisory committees, our public forums, and the FCC's numerous workshops, we welcome, expect, and, quite frankly, need voices and opinions from outside of our walls, to provide feedback, criticism, and counsel.
- Any changes to the FCC's procedures should be conducted with an eye toward not restricting our deliberative process and our ability to take the time that we need to consider and resolve the complex items that come before us.
- We're working hard to reducing our backlog of applications, appeals, and complaints, and will continue to do so as expeditiously as possible.
- Regarding the possible reform of our Sunshine rules, I would ask that any potential language address the ability of three FCC Commissioners to participate on the Joint Boards and Joint Conference. It is crucial that as we consider how to reform FCC process, that we also think about how to improve our Joint Board and Joint Conference process.

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FCC Process Reform

Friday, May 13, 2011

House Committee on Energy and Commerce
Subcommittee on Communications and Technology

Thank you, Mr. Chairman, for inviting me to participate in today's hearing. It is a pleasure to see you, Ms. Eshoo, and the other Members of the subcommittee. I am looking forward to our exchange today.

The five of us work in a complex environment; with innumerable requirements, proceedings, and moving parts. As with any federal agency, there are safeguards—checks and balances in place, and the regulations and decisions we consider and adopt receive thorough consideration and incredible scrutiny. The commission staff works diligently on each item, with the objective of delivering a finished product that is cogent, precise, and effective.

Such complexity often does not lend itself to rocket dockets and express reviews; however, over the years, the Commission has streamlined its processing of many items, such as certain merger reviews, where there is no competitive overlap. Other proceedings, however, require significant examination that takes time and numerous staff resources, and thus our consideration of many rulemakings and adjudications can endure over weeks, months, and in some instances, years.

We strive to be as expeditious as possible with the items under consideration, but part of the reason why many of our deliberations take so much time is because of our robust and all-inclusive public comment mechanism. During our consideration of a rulemaking item, the Commission listens to any and all comers: petitioners, adverse parties, interested participants, the public, and so on. Like so many other entities, the FCC has embraced the use of social media, and the fact that we were the first federal agency to use it to gather comments for the public record is a tremendous milestone.

The criticisms about the FCC being sealed-off from the public are inaccurate from where I sit, and I am proud of our process and the number of public comments that stem from it. Through Reboot.fcc.gov, our external advisory committees, our public forums, and the FCC's numerous workshops, we welcome, expect, and, quite frankly, *need* voices and opinions from outside of our walls to provide feedback, criticism, and counsel.

We have made huge strides in putting a bigger public face on the Commission under Chairman Genachowski's leadership. Public meetings, workshops, and other FCC gatherings can be viewed live online, and the "reimagined" fcc.gov website is demonstrably more user-friendly and easier on the eyes. This is definitely not your grandfather's FCC.

The Commission has also taken steps to streamline and improve the everyday procedures and guidelines that govern various FCC interactions. We've increased transparency through reform of our *ex parte* procedures via the requirement for more

substantive filings. This Commission has also been attuned to prior complaints that our Orders are not released in a timely fashion, and has thus been focused on the quick release of orders following their adoption. We also have made strides in identifying and eliminating unnecessary and outdated regulations. We're working hard to reducing our backlog of applications, appeals, and complaints. For example our Media Bureau has greatly picked up the pace on clearing numerous pending broadcast applications, and that shows no sign of slowing.

With regard to our merger review process, I believe that the FCC's duty to examine proposed transactions under the public interest standard found in the Communications Act is proper and well-grounded. If a proposed marriage between two companies will enhance public interest goals like localism, competition, and diversity, it should receive the Commission's stamp of approval. This is a mandate that I take very seriously, and one that should be preserved. Our merger review process is structured to ensure that the combination of two companies does not result in harms to the public interest and, if it does, we may issue narrowly-tailored conditions toward improving the provisions of the merger. This is our statutory authority, and it is sound.

Regarding our much-maligned Sunshine rules, I have a particular interest in potential tailor-made revisions to the way in which we interact.

The introduction of the Federal Communications Commission Collaboration Act (H.R. 1009) would be a significant improvement in our deliberative process, and I thank Ms. Eshoo, Mr. Shimkus, and Mr. Doyle for its introduction. Recently, the National

Association of Regulatory Utility Commissioners (NARUC)—the national body representing state commissioners—praised the introduction of this legislation and offered its support for it. I would like to bring to your attention, however, the fact that NARUC did note the need for one minor change to the legislation in order to improve its effectiveness with respect to the federal Commissioners' participation on the federal-state Joint Boards and the Joint Conference.

The Joint Boards and Joint Conference both have federal and state representation, and each is involved in the Commission's policymaking process with respect to their subject matter focus in the areas of universal service, jurisdictional separations, and advanced services. Under current law, three or more Commissioners may not participate in a Joint Board or Joint Conference meeting unless they are open to the public and have been properly noticed. Currently, federal Commissioners must take turns participating in our in-person and conference call meetings.

This has made it extremely difficult for constructive and efficient deliberations when it comes to Joint Board Recommended Decisions. NARUC's letter makes this same observation, and I join in my support of its request that H.R. 1009 include language to extend the proposed Sunshine Act exemption to cover FCC Commissioners who participate on the Joint Boards and Conference. It is crucial that as we consider how to reform FCC process, we also think about how to improve our Joint Board and Joint Conference rules.

I believe that it is critical that the FCC collaborate with the states on telecommunications and broadband policy through the Joint Boards and Joint Conference process. Members of the state Commissions know their individual states' needs, and their input is key to our much-valued deliberative engagement. It is my belief that the expertise and understanding of local issues must be fully considered, and when I came to this Commission, my primary goal was to improve the communications and collaboration between our agency and the states. Fortunately, Chairman Genachowski offered me the position to chair all the Joint Boards and the Joint Conference, and with his support, I believe we have revitalized and strengthened the relationships with the states through these bodies.

In May of last year, for example, the Commission referred to The Joint Board on Universal Service a series of issues dealing with the reforming of the Lifeline program, which provides subsidized telephone service for low-income consumers. For six months, both federal and state members of the Joint Board and our respective staffs met regularly to discuss the record and to cooperatively draft a Recommended Decision, which it delivered for the Commission's consideration in November. The Commission has now issued a Notice of Proposed Rulemaking concerning the Joint Board's recommendations for reforming and modernizing Lifeline.

Likewise, the Joint Board on Separations has been meeting regularly to consider issues the Commission referred to it, and the Commission hosted a workshop on separations issues allowing both state and federal Commissioners of that Joint Board to hear directly from interested parties.

Similarly, in our Notice of Proposed Rulemaking on universal service and intercarrier compensation reform issued earlier this year, the Commission specifically requested state input on the issues we raised. We also offered state members of the Joint Board on Universal Service their own opportunity to submit comments in the proceeding, which they filed last week, and we hosted a workshop at FCC headquarters for them in February so that they could receive input from interested parties on the proposed reforms.

The Commission is holding a series of workshops on universal service and intercarrier compensation reform. State Commissioners have participated on panels in our two previous workshops, and next week the Commission will continue collaborating with the states in our final workshop that we are taking on the road to Omaha, Nebraska—the home of Commissioner Anne Boyle, one of our state members of the Joint Board on Universal Service. During the Omaha workshop, the Commission will focus on the federal-state roles in addition to long-term reform. I am proud that we have made great strides in strengthening our relationships with the states; that this agency is actively seeking input from the states; and that we are seeking to further collaborate with them. Of course, we could not have accomplished these improvements without the dedication and support of Chairman Genachowski, my fellow Commissioners, and the FCC staff, to whom I am very grateful.

As you consider FCC process reform, I would encourage you to also consider looking at the Paperwork Reduction Act, and how it could be improved to take into

account how agencies now engage with citizens. Like so many consumers today, agencies are also taking advantage of the technological revolution. For example, as I mentioned earlier, the FCC is using its website to inform consumers and industry of our proceedings and is providing facts on communications issues and tips on how consumers can resolve any problems they may encounter. Yet, to obtain voluntary feedback on our website, its usefulness, and how it should be improved, the PRA requires OMB approval to do so.

As a result, the Commission cannot be as nimble and responsive to users without engaging in a lengthy OMB approval process. Moreover, in order to delete questions from FCC forms or to add an electronic filing feature for a form, OMB approval is required. So even when we lessen the collection burden or add an electronic filing option, OMB approval must be sought. The PRA's purpose to measure the burden imposed on government collections and ensure that they comply with the PRA is an important goal; however, it's time to consider how it should be reformed and modernized to take into account how government interacts with its citizens today.

Thank you again, Mr. Chairman for another opportunity to appear before the subcommittee. I hope that today's discussions will highlight any areas of concern that Members of this subcommittee may have, be they process systems, agency rules, or any other methods of practice we use. I look forward to the chance to address any issues you care to discuss.