

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

June 22, 2011

The Honorable Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, N.W.
Washington, D.C. 20503

Dear Mr. Sunstein:

Thank you for appearing before the Subcommittee on Oversight and Investigations on June 3, 2011, to update the Committee on implementation of Executive Order 13563. We held this hearing in part to learn more about the preliminary regulatory review plans agencies have submitted. It was a source of consternation among Members on the Committee that only one independent agency has submitted a plan to periodically review its significant regulations.

In recent correspondence with the Federal Communications Commission (FCC), the Committee has stressed the importance of eliminating burdensome regulations that no longer serve the public interest. A thorough review of FCC and other independent agency regulations and the repeal of outdated rules will unleash private-sector investment, spur growth, and create jobs for the American people. While independent agencies like the FCC are not required to conduct a regulatory review under the terms of the Executive Order, you testified that you hoped they would voluntarily agree to do so.

Recently, the FCC responded to our request and directed its staff to “conduct a full analysis of current regulations within their areas of responsibility.” A copy of this letter is attached.

So that we can ensure the FCC and other independent agencies are appropriately communicating with the Office of Information and Regulatory Affairs (OIRA) regarding their regulatory review plans, please answer the following questions:

1. What efforts has OIRA made to inform independent agencies of the goals and principles stated in Executive Order 13563? Are any other agencies submitting

regulatory review plans? What efforts has OIRA taken to persuade independent agencies of the importance of these plans?

2. What communications have you had with the FCC regarding its regulatory review? How will you work with the FCC to ensure that its regulatory review is consistent with Executive Order 13563?
3. For each independent agency OIRA has had communications with about regulatory reviews, please describe the process by which each agency intends to conduct its regulatory review (if it intends to conduct such a review).

We request your response to these questions in writing within two weeks of the date of this letter, followed by a briefing from your staff.

An attachment to this letter provides additional information on how to respond to the Committee's request. If you have any questions regarding this request, please contact Stacy Cline with the Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations



Greg Walden
Chairman
Subcommittee on Communications and Technology

Attachments

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Anna G. Eshoo, Ranking Member
Subcommittee on Communications and Technology

Chairman Julius Genachowski
Commissioner Mignon Clyburn
Commissioner Michael Copps
Commissioner Robert McDowell



FEDERAL COMMUNICATIONS COMMISSION

June 6, 2011

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

As I stated at my confirmation hearing and on numerous subsequent occasions, I oppose the Fairness Doctrine, which has been a dead letter at the Commission for more than two decades. In my view, the Fairness Doctrine holds the potential to chill free speech and the free flow of ideas and, accordingly, was properly abandoned. The General Counsel has advised me that the FCC's abandonment of the Fairness Doctrine had the legal effect that the Commission intended, and that the Fairness Doctrine is unenforceable without an affirmative rulemaking proceeding and vote of the Commission to revive it. I have publicly stated many times that I would not initiate any effort to reinstate the Fairness Doctrine.

As your note indicates, I have initiated a significant effort within the Agency to identify and eliminate antiquated and outmoded rules that unnecessarily burden business, stifle investment and innovation, or confuse consumers and licensees. To this end, as I testified during the Subcommittee's May 13th hearing, the Commission already has eliminated 49 outdated regulations. We also have targeted 25 sets of unnecessary data collections for elimination.

These review efforts are ongoing and include a directive to the Commission's staff to conduct a full analysis of current regulations within their areas of responsibility. To date, this undertaking has focused on rules that still actively govern licensees and thus have a practical affect. I expect that staff will also recommend the deletion of 47 C.F.R. §§ 73.1910, 76.209, 76.1612 and 76.1613, pertaining to the Fairness Doctrine and related provisions. I fully support deleting the Fairness Doctrine and related provisions from the Code of Federal Regulations, so that there can be no mistake that what has been a dead letter is truly dead. I look forward to effectuating this change when acting on the staff's recommendations and anticipate that the process can be completed in the near future.

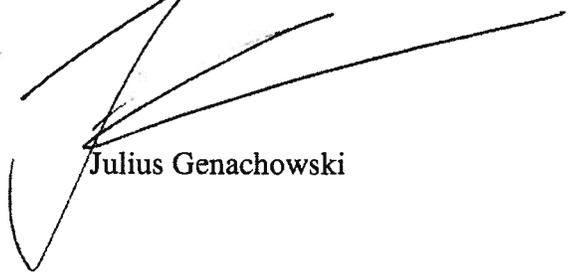
As part of our work to eliminate unnecessary rules and regulations, the Commission's Office of General Counsel reviewed existing statutory provisions to determine if any appear appropriate for repeal or revision. For your consideration, I have attached a list of possible

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amendments to the Communications Act that would remove these statutory mandates, which appear unnecessary.

Please feel free to contact me if you have additional questions or concerns.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping, sweeping lines that form a stylized, somewhat abstract shape. The signature is positioned above the printed name Julius Genachowski.

Julius Genachowski

Enclosure

**Potential Conforming and Updating Amendments to Communications Act
(Compiled as of June 3, 2011)**

1. 47 U.S.C. § 154(g)(2) – The provisions of this paragraph expired in 1994.
2. 47 U.S.C. § 156(a)-(c) – Obsolete funding authorization.
3. 47 U.S.C. § 158(g) – Outdated application fee schedule. Proposed Amendment would bring this section into conformity with section 9 regulatory fee process, under which the Commission proposes fees yearly and adopts rules reflecting those fees. Failure to update the schedule since 1991 has resulted in the inequitable collection of fees. Services not in existence in 1991 are not obligated to pay for their application processing, while other services must bear an unfair share of the burden.
4. 47 U.S.C. § 159(b)(1)(A) – Outdated language refers to nonexistent bureaus and should be updated to provide flexibility during Commission reorganizations. Suggested language amendment would delete specific bureaus from text and instead refer to “the Commission’s Bureaus and Offices.”
5. 47 U.S.C. § 204(a)(2)(B) – This section refers to action taken within a specified time of enactment (November 3, 1988) and is no longer relevant.
6. 47 U.S.C. § 208(b)(2) – This section refers to action taken within a specified time of enactment (November 3, 1988) and is no longer relevant.
7. 47 U.S.C. § 275(a)(1) – This provision restricted Bell companies and their affiliates from providing alarm monitoring services before a date five years after February 8, 1996. This section is no longer relevant..
8. 47 U.S.C. § 309(j)(8)(E)(iii) – This provision required a one-time transfer of funds on September 30, 2009. This section is no longer relevant.
9. 47 U.S.C. § 351(a)(2), 352(d), 354, 354(h), and 354(i) – References to radio direction finding apparatus (RDFA) should be removed. RDFA is an obsolete technology that has been replaced by the Global Maritime Distress Safety System (GMDSS). RDFA equipment is no longer available.
10. 47 U.S.C. § 391 – Obsolete funding authorization referencing fiscal years 1992, 1993 and 1994.
11. 47 U.S.C. § 394(h) – Obsolete funding authorization referencing fiscal years 1992, 1993 and 1994.
- 12.
13. 47 U.S.C. § 395(k) – Obsolete funding authorization referencing fiscal years 1979, 1980 and 1981.

14. 47 U.S.C. § 396(k)(1)(B) – Obsolete funding authorization referencing fiscal years 1979, 1980 and 1981.
15. 47 U.S.C. § 561 – In United States v. Playboy Entertainment Group, Inc., 529 U.S. 803 (2000), the Supreme Court struck down this section as violating of the First Amendment.

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each

other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a privilege log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" mean and refers to

For government recipients:

"You" or "your" means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.