

HENRY A. WAXMAN, CALIFORNIA
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
EDOLPHUS TOWNS, NEW YORK
FRANK PALLONE, Jr., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
ALBERT R. WYNN, MARYLAND
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
TOM ALLEN, MAINE
JAN SCHAKOWSKY, ILLINOIS
HILDA L. SOLIS, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS
DARLENE HOOLEY, OREGON
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G.K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARON P. HILL, INDIANA

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER
RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
BARBARA CUBIN, WYOMING
JOHN SHIMKUS, ILLINOIS
HEATHER WILSON, NEW MEXICO
JOHN B. SHADEGG, ARIZONA
CHARLES W. "CHIP" PICKERING, MISSISSIPPI
VITO FOSSELLA, NEW YORK
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE FERGUSON, NEW JERSEY
MIKE ROGERS, MICHIGAN
SUE MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE

March 12, 2008

DENNIS B. FITZGIBBONS, CHIEF OF STAFF
GREGG A. ROTHSCHILD, CHIEF COUNSEL

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Martin:

Thank you for your continued cooperation with our ongoing investigation of management practices and the rulemaking process at the Federal Communications Commission (FCC).

As stated in our letter to you dated January 8, 2008, the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating allegations from current and former FCC employees and other sources, which we have reason to believe are credible. These allegations relate to management practices that may adversely affect the Commission's ability both to discharge effectively its statutory duties and to guard against waste, fraud, and abuse. While the sources are believed to be credible, the Committee will require additional information and records to determine whether these allegations can be substantiated.

Accordingly, under Rules X and XI of the Rules of U.S. House of Representatives we request that you provide to the Committee, within two weeks of the date of this letter, all e-mail communication (and attachments), memoranda, electronic and handwritten notes, records of telephone conversations, talking points, and meeting schedules since January 2005 relating to:

1. Delay or postponement in preparing and transmitting Congressionally-mandated reports, placing items on circulation, setting items for open meetings, commencing open meetings, and putting adopted orders in the Federal Register;
2. Any guidelines, protocols, instructions, or directives concerning intra-agency communications, including any limitations or restrictions imposed upon FCC employees' ability to communicate with each other concerning official agency business;

3. Any guidelines, protocols, instructions, or directives relating to the routine practices and processes of bureaus, divisions, and offices within the FCC, including FCC guidance or instruction concerning compliance with the Administrative Procedure Act and the FCC's administrative rules;
4. The FCC's policy on nature and scope of permissible communications between FCC personnel and outside entities, including but not limited to, the public, industry representatives, and Congress and its staff;
5. Personnel reassignments and/or details of FCC employees that are GS-13 staff and above, including employees that are classified as Senior Executive Service;
6. Any decision or discussion concerning when and whether or not the FCC should audit telecommunications carriers, including audits relating to number portability, payphones, nondiscriminatory access to unbundled network elements, unauthorized changes of telecommunication services (slamming), and the National Exchange Carrier Association, and FCC decisions as to how to allocate FCC resources concerning auditing of telecommunications carriers, how current audit personnel are assigned, the scope of work assigned, and whether any audit function has been assigned to contractors;
7. The decision to discard or change the conclusions reached in the November 18, 2004, report prepared by Media Bureau staff entitled the "Report on the Packaging and Sale of Video Programming Services to the Public," the decision to direct some FCC staff to prepare a Further Report on the same matter, the identity of those staff that did prepare the Further Report, and the decisions concerning peer review of the Further Report;
8. The decision to withdraw all or part of a report generated by "Focus Group 1: Enhanced 911" (Subcommittee 1 B) of the Network Reliability and Interoperability Council (NRIC VII), including any information relating to alleged "factual errors" in the final Subcommittee report;
9. The FCC's decision concerning compensation rates for video relay services, the use of a tiered-rate system for such services, the actual incurred costs and profit made by providers of such services, and the decision to change the rate-setting schedule from a one-year cycle to a three-year cycle;
10. The 10 recent media ownership studies, including documents and communications relating to contractors, study data, and peer reviews, and the decision not to modify the radio/television cross-ownership rule, the local television ownership rule, the local radio ownership rule, the dual network rule, and the UHF discount;

11. The decision as to which Commissioner would attend and represent the FCC at the most recent World Radiocommunication Conference in Geneva, Switzerland; and
12. The FCC's analysis of the so-called 70/70 test, as set forth in the November 2007 Report issued in MB Docket 06-189, including all communications related to the 70/70 test, the decision not to include or rely upon data used in previous reports other than the Warren Communications (Warren) data, including some of the FCC's own data, such as from FCC Form 325, comments provided by Warren on use of the Warren data and the way it was compiled, and any directive or instructions given to FCC employees concerning staff's ability to discuss with any of the four Commissioners or their staffs the existence or substance of other data sources upon which analysis of the 70/70 test might have been made.

Finally, we request that you also provide the following specific records, since January 2005, to the Committee within two weeks of the date of this letter:

1. A list of all new hires and personnel reassignments and details from March 2005 to present indicating the name of the employee, date of hire/reassignment/detail, former and reassigned/detailed position, and the rationale for the reassignment, and all email communications relating to new hires, personnel reassignments and details and telecommuting arrangements (GS-13 and above and Senior Executive Service);
2. The complete, un-redacted investigative case file relating to the Office of Inspector General's October 4, 2007, report entitled "Report of Investigation into Allegations that Senior Management Ordered Research Suppressed or Destroyed";
3. The individual meeting schedules of official business, and paper and electronic calendars of official business, in the possession of the following FCC employees or in the possession and control of staff responsible for their schedules:
 - Kevin J. Martin, Chairman
 - Daniel Gonzalez, Chief of Staff
 - Michael J. Copps, Commissioner
 - Jonathan S. Adelstein, Commissioner
 - Deborah Taylor Tate, Commissioner
 - Robert M. McDowell, Commissioner
 - Anthony Dale, Managing Director
 - Kent Nilsson, Inspector General
 - All bureau chiefs

4. The official travel records of the following FCC employees:

- Kevin J. Martin, Chairman
- Michael J. Copps, Commissioner
- Jonathan S. Adelstein, Commissioner
- Deborah Taylor Tate, Commissioner
- Robert M. McDowell, Commissioner
- Derek Poarch, Chief, Public Safety and Homeland Security Bureau

In responding to this and all other requests for documents, please be advised that the terms “record” and “relating” should be interpreted in accordance with the attachment to this letter. We only request that you provide responsive records that are not publicly available on the FCC’s Web site. All e-mail correspondence should be provided in an electronic format. Paper records should be Bates Stamped and produced in boxes with numbering that corresponds to the numbered items in this letter.

In addition, no records, documents, data, or information called for by this request shall be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee. Please prepare and transmit two copies of your production—the first should be sent to the Committee’s Majority staff at 316 Ford House Office Building (Attn: Steven Rangel), and the second to the Minority staff at 564 Ford House Office Building (Attn: Peter Spencer).

We ask that you make a copy of this letter available to each and every employee and contractor that works at FCC headquarters and satellite offices. In addition, those employees and contractors should be told that they can contact Committee investigators directly at fccinvestigation@mail.house.gov, or they can submit anonymous information and allegations related to our investigation using the feedback form on the Committee’s Web site at: http://energycommerce.house.gov/membios/contact_form.shtml, which will be forwarded to our investigators. Alternatively, FCC employees and contractors may send the Committee letters via fax at (202) 225-5288.

Thank you for your prompt attention to this important investigation. Should you have questions regarding this investigation, you may contact us or have your staff contact Steven Rangel of the Majority Committee staff at (202) 225-2927 or Peter Spencer of the Minority Committee staff at (202) 225-3641.

The Honorable Kevin J. Martin
Page 5

Sincerely,



John D. Dingell
Chairman



Joe Barton
Ranking Member



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations



John Shinkus
Ranking Member
Subcommittee on Oversight and Investigations

Attachment

ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," or "relate" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.