

# “Change at the FCC: How Will It Impact Your Business?”

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# Overview

- FCC Structure and Makeup
- Recent Problems
- New Appointments
- Likely Areas of Action in 2009

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*2*

## FCC Structure

- Bureaus by topic area:
  - Enforcement
  - International
  - Media
  - Wireless Telecom
  - Public Safety & Homeland Security
  - Wireline Competition
- Five Commissioners
- President & Congress
- 5-year Terms
- Strong Chair, President appoints

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*3*

## Current Commissioners

- Acting Chair Michael J. Copps, runs through June, 2010, Democrat
- Commissioner Jonathan S. Adelstein, runs through December 2009, Democrat
- Commissioner Robert M. McDowell, runs through June, 2009, Republican

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4

Tiffany - USDC Nevada, July 1, 1999 - scanning a copyrighted photo into a computer for graphic manipulation and insertion into a new work constitutes copyright infringement, even though the digitizing may have only the briefest existence in a computer's memory. Used a precursor photo of the Vegas strip to create in part a new image of various places on the Strip. The scanned image was a copy under the Act, a *MAI*.

## 2008 Election

- November 14, 2008
- President-Elect Obama selected Susan P. Crawford and Kevin Werbach to lead a review of the FCC
- “ensure that senior appointees have the information necessary to complete the confirmation process, lead their departments, and begin implementing signature policy initiatives immediately after they are sworn in.”

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*5*

## Chair-Designee

- March 3, 2009
- President Obama nominated Julius Genachowski as the new chairman
- Initial approval from range of lobbying and industry groups
- Had been mentioned for technology czar position in the Administration

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*6*

## Background

- Harvard with President Obama
- Clerked for Supreme Court justices
- Senior counsel to FCC Chair Hundt
- Counsel at search and media company IAC/InterActiveCorp
- One of Obama's top technology advisors
- Raised a reported \$500,000 for the 2008 campaign

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*7*

## Other Potential Appointments

- Chance to completely re-staff the Commission
- Other names getting attention:
  - Susan Crawford
  - Kevin Werbach
  - Julia Johnson
  - Mignon Clyburn
  - Don Gips

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8

Susan Crawford, who teaches internet law and communications law at the University of Michigan Law School; she was on the board of ICANN and founded OneWebDay. Another (although this

Kevin Werbach is an assistant professor of legal studies at Wharton, the founder of the Supernova tech conference and a former FCC counsel for new technology

Julia Johnson, a Florida consultant who chairs Video Access Alliance, an advocacy and advisory group for independent, emerging, and minority networks and Internet content providers. A second is Mignon Clyburn, a commissioner for the Public Service Commission of South Carolina since 1998. After earning a bachelor's degree in banking finance and economics from the University of South Carolina, she worked as a newspaper editor and was general manager and publisher for the local "Coastal Times." She is a daughter of House Majority Whip Jim Clyburn, South Carolina's most prominent black politician.

Don Gips, who succeeded Harris as chief of the FCC's International Bureau. A Harvard University graduate, Gips later served as chief domestic policy adviser to former Vice President Al Gore and is currently a vice president at Level 3, a fiber-optic network operator.

Henry Rivera, a longtime radical leftist, lawyer and former FCC commissioner,

## Mignon L. Clyburn

- South Carolina PSC since 1998
- Chair of Washington Action Program at NARUC
- Daughter of Majority Whip Jim Clyburn (D- SC)
- Ran *The Coastal Times*, a small, weekly African-American newspaper in Charleston

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9

## Problem Areas

- Personalities
- Transparency
- Chair's Control of Process
- Unfinished Business

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*10*

## Former Chair Martin

- December 3, 2007 – Dingell to Martin:
  - “I am rapidly losing confidence that the commission has been conducting its affairs in an appropriate manner.”
  - “larger concerns as to the inclination and ability of the commission to perform its core mission: the implementation of federal law to serve the public interest.”
- December 9, 2008 - a congressional report:
  - “Chairman Martin’s heavy-handed, opaque, and non-collegial management style has created distrust, suspicion, and turmoil among the five current commissioners.”

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*11*

Martin is under investigation for a lack of transparency in FCC proceedings as well as an abuse of his power in relation to cable industry regulations. He has also been accused of keeping his fellow commissioners in the dark in an attempt to push through policy.

## Likely Actions in 2009

- Broadband policies
- Reform of current telecom policies
- Media Diversity
- Broadcasting
- Radio
- Content and Privacy

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*12*

## Broadband

- Net Neutrality: Genachowski seen as pro-open internet and network neutrality
- Devices and applications
- Bandwidth caps and throttling-self interest?
- Extension of wireless broadband – “free”?
- Cross-ownership of content and conduits

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*13*

## Broadband (con't)

- April 8 Notice of Inquiry
- Asks how FCC can make high-speed broadband available and affordable to citizens and businesses across US
- Hoping to hear from traditional and non-traditional stakeholders
- Stimulus funds - \$7.2 billion

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*14*

## Reform of Telecom Policies

- Access Charges – system prone to fraud and out of step with IP-based telephony
  - Com'r Pugh to Joint Board
- Universal Service Fund – declining base of funding and increasing demands
- QOS for wireless – frustration with current quality and contracts

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*15*

## Media Diversity

- Genachowski and Copps seen as supportive of media diversity
- Growing concern with concentration of ownership – getting better data
- Newspapers, radio, and TV in the same market
- New media outlets for diverse viewpoints
- Public interest obligations of broadcasters

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*16*

## Broadcasting

- DTV transition: new FCC has to pick up the pieces of the process
- Education and funding
- Genachowski seen as supporting policies that:
  - rely on the market
  - ensure competition
  - preserve and promote the public interest

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*17*

## Return of the Fairness Doctrine?

- Repealed in 1986
- Resurfacing as a “civil rights issue”
- Henry Rivera – Obama advisor and supporter
- Conservatives pointing to potential effects on talk radio and political speech

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*18*

## Radio

- FCC wanted to use DTV returned spectrum for nationwide public safety
- D-Block to require public sharing
- Didn't clear bid level
- Copps has FCC staff looking at alternatives

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*19*

## Content and Privacy

- Protect children while preserving the First Amendment
  - give parents tools and information to control what their children see on TV and Internet
  - tough penalties & increased enforcement for people who abuse the Internet to try to exploit children
- Safeguard right to privacy:
  - strengthen privacy protections for the digital age
  - hold government and business accountable for violations of personal privacy.

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20

From “*Science, Technology and Innovation for a New Generation*” white paper from Obama/Biden campaign

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21