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Congress of the United States

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May 18, 2011

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0624
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The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Dear Chairman Genachowski:

As you are aware, Commissioner Meredith Atwell Baker recently announced that she will soon depart the Federal Communications Commission (FCC) to join Comcast Corporation (Comcast).¹ This announcement has generated questions surrounding the transition, especially in light of the recent FCC decisions related to her future employer. According to both the FCC and Commissioner Baker, however, she has managed her interest in this position in accordance with established laws and procedures in close coordination with the General Counsel of the FCC. I understand that Commissioner Baker, whose term expires in June, immediately contacted the General Counsel of the FCC when this position became available in mid-April 2011, as it was of interest to her. She subsequently recused herself from all matters relating to Comcast and NBCUniversal and has not "participated or voted any item, not just those related to Comcast or NBCUniversal, since entering discussions about an offer of potential employment."²

Based on the public statements of both Commissioner Baker and the FCC, it does not appear that she violated any of her legal or ethical obligations in accepting a position with Comcast. Nevertheless, because only a short time has passed since the Comcast-NBC Universal merger, it is imperative that the public can trust the integrity of the process. To that extent, we seek to gain a better understanding of the rules that govern Commissioner Baker's departure and the steps that the Commission took to ensure that they were followed. Therefore, please provide answers to the following questions no later than 5:00 p.m. on May 31, 2011:

1. What regulations and FCC policies/procedures apply to Commissioner Baker's departure?

¹ Press Release, Meredith Atwell Baker, FCC Commissioner, to Join Comcast as Senior Vice President of Government Affairs, NBCUniversal (May 11, 2011), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=1082>.

² Federal Communications Commission, Statement of Commissioner Meredith Atwell Baker (May 13, 2011), available at <http://www.fcc.gov/document/statement-commissioner-meredith-attwell-baker>.

The Honorable Julius Genachowski
May 18, 2011
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2. What actions did Commissioner Baker and the FCC take to ensure these rules were followed?
3. On what date did Commissioner Baker notify the FCC General Counsel's office that she was engaged in communications with Comcast about a possible job opportunity?
4. On what date did Commissioner Baker begin to recuse herself from matters and/or proceedings before the FCC?
5. For which matters/proceedings currently pending before the FCC has Commissioner Baker recused herself?

Additionally, please make arrangements by May 24, 2011 to brief Committee staff on these issues.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Please contact John Ohly or Kristin Nelson of the Committee staff at (202) 225-5074 with any questions about this request. We appreciate your attention to this matter and look forward to your continued cooperation.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah Cummings, Ranking Minority Member

Austin Schlick, Esquire, General Counsel
Federal Communications Commission



OFFICE OF
THE CHAIRMAN

Federal Communications Commission
Washington, D.C.

May 26, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

Thank you for your letter of May 18, 2011, regarding Commissioner Meredith Attwell Baker's recent announcement that she will be leaving the Commission to join Comcast as Senior Vice President of Government Affairs, NBCUniversal. I am glad to respond to the questions you pose, by providing the attached responses prepared by the Commission's General Counsel.

Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julius Genachowski". The signature is stylized and fluid, with a long horizontal stroke extending to the right.

Julius Genachowski

cc: The Honorable Elijah Cummings, Ranking Minority Member

Enclosure

General Counsel's Responses

Question 1: What regulations and FCC policies/procedures apply to Commissioner Baker's departure?

Under the federal conflicts of interest statute, 18 U.S.C. § 208, a federal employee is required to refrain from personal and substantial participation in particular matters that would have a direct and predictable financial impact on an entity with which the employee is negotiating for employment. The Office of Government Ethics (OGE) is the agency charged with implementing Section 208. OGE regulations provide that disqualification or recusal is accomplished by the employee's not participating in the particular matter in question. 5 C.F.R. § 2640.103(d). While OGE has not established particular recusal procedures, the employee "should take whatever steps are necessary to ensure that he does not participate personally and substantially in the matter from which he is disqualified." 5 C.F.R. § 2635.604.

Once she leaves the FCC, Commissioner Baker will be subject to a number of post-employment restrictions. As a departing senior-level appointee of the Obama Administration, she will be prohibited from making any communication to or appearance before an employee of the FCC on behalf of another party for two years after separating from the Commission, if that communication or appearance is for the purpose of influencing the agency employee in the performance of his or her official duty. *See* 18 U.S.C. § 207(c); Executive Order 13490, 74 Fed. Reg. 4673 (Jan. 21, 2009) at para. 4. She also will not be permitted to lobby any covered Executive Branch official or non-career Senior Executive Service appointee for the remainder of the Obama Administration. Exec. Order 13490 at para. 5.

Pursuant to 18 U.S.C. § 207(a)(1), Commissioner Baker will not be permitted to represent anyone before any officer or employee of any Federal department, agency, court or court-martial in connection with any particular matter involving specific parties (*e.g.*, an adjudicatory-type matter) in which the United States is a party or has a direct and substantial interest and in which she was personally and substantially involved while in public service. This restriction lasts for the lifetime of the matter.

Finally, 18 U.S.C. § 207(a)(2) prohibits Commissioner Baker from representing anyone else before any officer or employee of any Federal department, agency, court or court-martial in connection with any particular matter involving specific parties in which the United States is a party or has a direct and substantial interest, if the matter was pending under the official's responsibility during her final year of Government service. This restriction lasts for two years after separation from government service.

Question 2: What actions did Commissioner Baker and the FCC take to ensure these rules were followed?

As described below, Commissioner Baker contacted the FCC General Counsel, as Designated Agency Ethics Official, to make him aware that she was considering exploration of a potential job opportunity and to seek guidance regarding what steps she should take to ensure

compliance with applicable ethics statutes and regulations. After further discussing the matter with staff of the Office of General Counsel, the Commissioner informed that Office by email that she was about to begin discussing employment with NBCUniversal. She stated that in accordance with OGE regulations, she would recuse herself from matters that would have a direct and predictable effect on NBCUniversal or Comcast.

Question 3: On what date did Commissioner Baker notify the FCC General Counsel's office that she was engaged in communications with Comcast about a possible job opportunity?

Commissioner Baker initially contacted the General Counsel's Office on Wednesday, April 13, 2011, to discuss the procedures that she should follow if she subsequently entered into exploration of employment with NBCUniversal.

Question 4: On what date did Commissioner Baker begin to recuse herself from matters and/or proceedings before the FCC?

On Monday, April 18, 2011, Commissioner Baker informed the General Counsel in writing that she would be recusing herself on account of her intent to begin exploratory conversations with NBCUniversal about potential employment.

Question 5: For which matters/proceedings currently pending before the FCC has Commissioner Baker recused herself?

On April 18, 2011, Commissioner Baker informed the General Counsel that she would be recusing herself from matters that would have a direct and predictable effect on either NBCUniversal or Comcast. Commissioner Baker indicated in a statement released on May 13, 2011, that she had not "participated or voted any item, not just those related to Comcast or NBCUniversal, since entering discussions about an offer [of employment]."