Insight

Full Steam Ahead on The FCC's Office of Economics and Analytics

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Efforts to internally reform the Federal Communications Commission (FCC) are picking up steam. In a draft recommendation that will be voted upon later this month, FCC leadership proposed the creation of an Office of Economics and Analytics (OEA). The FCC needs to be a data-first organization, and the creation of such an office could help reorient the agency toward more empirically grounded analysis. It could also put economic analysis on an equal footing with legal analysis within the FCC. In doing so, it could begin a shift in focus away from prescriptive regulation and towards antitrust, where a company's competitive effects are the focus.

To form the OEA, functions from throughout the agency would be combined to provide economic analysis for rulemakings, transactions, auctions, and other FCC actions. The current Office of Strategic Planning and Policy (OSP) would be subsumed into the new office to provide long-term planning. The Industry Analysis Division will be created by shifting the functions of the current Industry Analysis and Technology Division, which is currently housed in the Wireless Competition Bureau. In a similar fashion, the Auctions and Spectrum Access Division in the Wireless Telecommunications Bureau will be reallocated to create an Auctions Division. By centralizing these divisions of the FCC under one office, the hope is that economic reasoning will be consistently incorporated in the agency's normal operations. Two new divisions are also being considered: the Economic Analysis Division and the Data Division. The Economic Analysis Division would provide analytical and quantitative support to the other FCC bureaus and offices, while the Data Division would develop and implement best practices for data management, which is a growing concern.

This change comes in response to an overarching problem: The FCC's rules typically aren't supported by economic reasoning. The pressure to create a new office is specifically a result of the long debate over the Open Internet Order of 2015 and lack of empirical economics in the final regulation. At the time, Chief Economist Tim Brennan called the order an "economics-free zone," clarifying that "a fair amount of the economics was wrong, unsupported, or irrelevant." AAF's comments on the 2015 Order reflected that sentiment, which was widely accepted among economists.

The lack of economic analysis has been a problem at FCC for years, and this problem is reflected in the composition of the FCC staff. Economists defend competition and consumer welfare, adding a critical voice in policy generation that is concerned with the costs of regulation. Yet, this voice has been marginalized at the FCC. Indeed, the FCC staff is dominated by attorneys, while lacking in economists. A recent study found that the FCC had more lawyers than its counterparts in Europe. As that report noted, "The European countries have 20 to 43 percent lawyers, while the U.S. has 63 percent. The European countries have 20 to 51 percent economists, while the U.S. has 6 percent."

In the long term, the FCC needs to transition away from this proscriptive sector-specific regulatory model, and toward a model based on consumer welfare. Ensuring that economists have a more prominent role within the agency by giving them a dedicated department within it will help to create the pressure to shift the agency's focus internally.

To be clear, this reorganization isn't about the Open Internet Order. Instead, it is about ensuring every new regulation receives serious economic review. Hopefully, this shift will begin a transition within the FCC from an economics-free zone to an economics-receptive zone.