

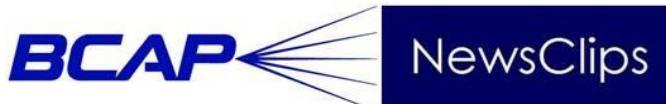
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December 31, 2020

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As the Biden administration and the Senate wrangle over the next nominee to chair the Federal Communications Commission (FCC), they will likely debate the nominee's views on contentious policy issues such as net neutrality and Section 230 of the Communications Decency Act. But a key element of current Chairman Ajit Pai's legacy is a commitment to improved rulemaking processes and quality. That commitment is evident in changes to the structure and processes of the FCC made to ensure that quality economic analysis informs policy decisions.

First, the FCC created the Office of Economics and Analytics (OEA). Prior to late 2018, most FCC economists were dispersed among the FCC's policymaking bureaus, where attorneys not only developed policy but also managed the economists. In OEA, economists are managed by other economists who are not only better equipped to support and guide their work, but also may help maintain the independence of economic analyses from the policy objectives of the chairman, commissioner or any FCC employee. This centralization of the economists aligns with the structure adopted by other independent agencies such as the Federal Trade Commission, Surface Transportation Board, Commodity Futures Trading Commission and Securities and Exchange Commission (SEC).

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Second, the FCC has tasked the new OEA to provide the commissioners with complete economic analysis of benefits, costs and other economic impacts of significant proposed rules. This change again aligns the FCC with the best economic practices instituted by other executive and independent agencies. As set forth in an important FCC memo, the FCC commits to the principles and analytical practices outlined in President Clinton's Executive Order 12866, which governs regulatory analysis and review in the executive branch, and to the Office of Management and Budget's Circular A-4, which outlines best practices for regulatory impact analysis. Of course, the executive order and circular do not bind the FCC since it is an independent agency, but the FCC seeks to follow these principles and practices simply because they are good public policy.

The FCC's new emphasis on quality economic analysis represents a significant cultural change. One FCC economist noted, "My job used to be to support the policy decisions made in the chairman's office. Now I'm much freer to speak my own mind." This economist's outlook is not atypical; it comports with our general impression of staff sentiment over our collective tenures at the agency. In our experience, FCC economists tend to be realists; they understand economics may not always be the driver of a commission decision but value an environment where they are heard consistently and unfiltered.

Decisionmakers of all political stripes should welcome objective and dispassionate assessment of the economic effects of proposed regulations. Indeed, courts increasingly expect regulatory agencies to consider these impacts, and there is evidence that courts may be less likely to overturn regulation that includes economic analysis and support. And like the courts, regulatory experts of all political backgrounds recognize the potential value of the FCC's changes. Cass Sunstein, a noted scholar and administrator of the Office of Information and Regulatory Affairs under President Obama, tweeted in 2018 that [the OEA] was a "promising idea." Susan Dudley, his predecessor under President Bush, suggested that, by providing transparent analysis, the new office should help reduce special-interest influence on regulatory decisions.

Given the importance of dispassionate economic analysis, it is no surprise that the Administrative Conference of the United States recommended in 2019 that regulatory agencies should assess whether their economists are organized and managed in a way that produces optimal economic analysis and communicates the results to decision-makers. The FCC was ahead of the curve on that issue, and that's where it should stay. - *The Hill*

