25th Anniversary 1978-2003

October 13, 2004

John A Rogovin
Designated Agency Ethics Official
Federal Communications Commission
Suite 8-C723
445 12th Street, SW
Washington, DC 20554

Dear Mr Rogovin·

The Office of Government Ethics (OGE) has completed a review of the Federal Communications Commission's (FCC) ethics program Our objective was to determine the program's compliance with applicable laws and regulations We also evaluated FCC's systems and procedures for ensuring that ethics violations do not occur The review was conducted in June and July 2004 The following summarizes our findings

HIGHLIGHTS

FCC's ethics program continues to be sound and well managed Again, we were impressed with ethics officials' commitment to providing high quality services to employees Since our last review in 1997, ethics officials have sustained strong financial disclosure systems, an exemplary counseling and advice services program, and ongoing training initiatives of employee awareness of the ethics laws and regulations

PROGRAM STRUCTURE

The level of staffing dedicated to administering the ethics program appears to be appropriate considering the broad spectrum of ethical issues that could arise during most of the year However, because of the vast number of confidential reports, you agreed to request additional assistance for the annual confidential financial reporting cycle

For the over 2,000 FCC employees who are located in headquarters in Washington, DC and in field and regional offices around the country, you, as FCC's General Counsel, serve as the Designated Agency Ethics Official (DAEO) The Assistant General Counsel (Ethics), who serves as Alternate DAEO, coordinates and manages the day-to-day functions of FCC's ethics program To assist the Alternate DAEO in performing the required functions, the ethics program staffing also consists of a Senior Ethics Counsel, an Ethics Counsel, an Ethics Program Specialist, and a Program Analyst (Ethics) Attorneys are primarily responsible for providing advice and ethics training, the ethics program specialist principally administers the financial disclosure systems, and the program analyst approves the acceptance of certain gifts

FCC'S SUPPLEMENTAL REGULATION

With concurrence from our Office, FCC issued supplements to both the standards of conduct and the financial disclosure requirements FCC's supplement to the standards of conduct, at 5 C F R part 3901, requires professional employees to obtain approval before engaging in certain outside activities The supplemental financial disclosure requirement, at 5 C F R part 3902, applies to all employees required to file either a public or confidential financial disclosure report and requires that they also file a supplemental report--FCC Form A54A The purpose of the FCC Form A54A is to require disclosure of income and interests in property and assets valued below the minimum reporting thresholds for the SF 278 and OGE Form 450, to ensure that FCC employees comply with the prohibitions in section 4(b)(2)(A) of the Communications Act (the Act), at 47 U S C § 154(b) [1] Among other things, employees are prohibited by section 4(b)(2)(A)(iv) from being employed by, holding any official relation to, or owning any stocks, bonds, or other securities of any company significantly regulated by FCC

FCC ADVISORY COMMITTEES

The ethics officials informed us that the members of FCC's seven committees created under the Federal Advisory Committee Act are not special Government employees Therefore, the members are not required to file a financial disclosure report The Government Accountability Office is currently reviewing the FCC designations of advisory committee members, and will report their findings later this year

FINANCIAL DISCLOSURE SYSTEMS

FCC's public and confidential systems are generally well managed and maintained Their comprehensive written procedures document how the financial disclosure systems are administered We examined all of the over 1,400 public reports (excluding those filed by Presidentially-appointed, Senate-confirmed (PAS) employees and by you) and confidential reports, including most of the supplemental reports, required to be filed in 2003 We found that they appeared to contain no conflicts of interest nor violations of section 4(b)(2)(A) of the Act Although the public reports were filed and reviewed timely, many of the confidential reports were filed late and a few were reviewed

[1] We noted that ownership of certain holdings may be transferred to employees' spouses or dependent children for purposes of FCC's organic act that applies FCC is responsible for administering the Act, not OGE

late The public reports filed by the PAS employees, the four Commissioners, were filed, reviewed, and forwarded to OGE timely [2]

We discussed with ethics officials some possible solutions to more effectively administer FCC's centralized financial disclosure systems which, in addition to the public and confidential reports, require from filers the same number of supplemental reports The ethics officials agreed, as the solution for receiving reports and information timely, to seek the assistance from the employees' managers early in the collection and review process They also agreed, as the solution for reviewing the reports timely, to acquire additional staff during the peak confidential reporting cycle to assist in the collection and technical review of the reports

Public Financial Disclosure System

Our examination of the 87 public reports, excluding the Commissioners' reports, consisted of 66 incumbent reports filed in 2003, and 14 new entrant and 7 termination reports filed in 2003 until the time of our review We also examined 64 of the 80 supplemental reports (terminating employees are not required to file the supplemental report) The reviewing official advised us that there were no corresponding prior outside activity approvals required for the activities listed on the reports, since the activities did not involve the outside practice of the same profession as that of the employees' official positions (5 C F R § 3901 102(a))

Confidential Financial Disclosure System

Our examination of over 1,300 confidential reports filed in 2003 consisted of 1,300 incumbent and 13 new entrant reports At the beginning of our fieldwork, 13 employees had not yet filed a report, but all had filed by the end of our fieldwork However, only 85 percent of the employees had filed supplemental reports Thirty-eight confidential reports were not reviewed timely A few notices to employees to divest of or transfer to their spouse or dependent child, prohibited securities in communications companies were sent more than 90 days after the reports were filed Moreover, at the beginning of our fieldwork, ethics officials were waiting for additional information from 39 filers, which had been reduced to 9 filers by the end of our fieldwork We discussed with ethics officials the late filing and review of confidential reports They agreed to resolve these problems by assigning additional staff during the peak of the annual confidential filing cycle to assist in the collection and technical review of the reports so that the reviewing official could focus on the more substantive issues

As part of our examination we raised specific questions regarding outside activities and possible holdings in prohibited communications stocks The reviewing official advised us that only 1 of the 13 outside activities questioned needed approval, which was found on file, and 2 of the 35 holdings questioned needed to be divested or transferred to the filer's spouse or dependent child

[2] An annual report was not required in 2003 for the fifth Commissioner, since he worked less than 60 days in 2002

One holding was divested and the other was transferred to a spouse or dependent child Neither holding posed an actual conflict of interest

To determine whether confidential filers had any actual 18 U S C § 208 violations, we provided the ethics officials with a list of 37 filers' names along with the communication stocks held in a spouse's or dependent child's name The ethics officials confirmed that there were no violations In fact, the ethics officials informed us that only a few of the stock holdings were above the de minimis exemptions at 5 C F R § 2640 202

EDUCATION AND TRAINING

New employees primarily are provided the required initial ethics orientation materials by the personnel office [3] However, new commissioners and their staff receive in-person ethics training from ethics officials Additionally, when there are groups of employees hired, for instance summer interns, ethics officials hold new employee orientation sessions These orientation sessions include an ethics briefing and handouts of ethics materials

All but one public filer and all confidential filers received annual ethics training in 2003 Most public filers attended one of four annual ethics training sessions Since all covered employees were provided verbal ethics training during CY 2002, only public filers were required to receive verbal ethics training in 2003 Each of the four sessions, which started on October 30 and ended on December 10, 2003, was conducted by a qualified instructor and lasted 90 minutes Additionally, ethics officials also provided in-person sessions to two of the Commissioners and their staff, as requested Public filers who did not attend one of the aforementioned sessions were required to view a 60-minute videotape of a previous ethics session Confidential filers were permitted to attend the verbal sessions and were provided written training via quarterly "Ethicsgrams," which all FCC employees receive Topics of the 2003 Ethicsgrams included participation in outside organizations, reimbursable travel, criminal restrictions on financial interests, letters of recommendation, outside teaching, volunteer legal services, and holiday gifts and invitations

As documented in FCC's 2004 annual training plan, FCC plans to provide verbal ethics briefings to its public filers and distribute written materials to its confidential filers in 2004

COUNSELING AND ADVICE

Ethics officials provide an extensive amount of counseling and advice to FCC employees both orally and in writing We were impressed with the efforts taken to dispense and document the advice rendered In addition to attorneys' personal files, your well-maintained subject matter filing system allows for easy retrieval of documents, which helps to ensure that consistent advice is provided when similar issues or questions arise Also, your chronological file allows you to track the quantity of ethics questions asked by employees We examined a sample of 50 pieces of written

[3] New employees at the field and regional offices are mailed the ethics materials

advice from the subject matter files for the 2003-2004 timeframe, as well as 72 pieces of written advice from the chronological file for the June 1-June 25, 2004 timeframe They appeared to be accurate, comprehensive, and timely Our examination of the subject matter files included gifts, impartiality concerns, endorsements, outside activities, seeking employment, misuse of position, and post employment Our examination of the chronological file disclosed that 41 employees received approval to attend a widely attended gathering either as a speaker or a participant

ETHICS AGREEMENTS

FCC granted three 18 U S C 208 (b)(1) waivers, one in 2003 and two in 2004 The waivers indicated that OGE was consulted with informally and was forwarded a copy of the waivers

According to ethics officials, avoidance of conflicts of interest is stressed from the time an employee starts working for FCC and throughout the employee's career Managers generally do not ask employees whether they have potential conflicts before assigning work It is the employee alone who is held accountable for disqualifying him or herself from acting on matters where he or she has a financial interest

GIFTS OF TRAVEL PAYMENTS

The process of approval of the acceptance of gifts of travel from non-Federal sources under 31 U S C. § 1353 appears effective However, we found that FCC is not using Standard Form (SF) 326, in accordance with 41 C F R § 304-6 4, to report semiannually to OGE payments of more than $250 per event On August 2, 2004, FCC requested permission from OGE to use a form other than the SF 326, which was subsequently denied

We examined FCC's last semiannual report for the period October 1, 2003-March 31, 2004 We found that payments appeared to be appropriately accepted for meetings or similar functions The types of travel consisted of attendance at conferences, conventions, expos, forums, meetings, panels, seminars, shows, summits, symposiums, and workshops

ENFORCEMENT

Prompt and effective administrative actions were taken for violations of the standards of conduct We were informed by the Labor Relations Specialist, Labor Relations and Performance Management Service Center, Office of Managing Director (Labor Relations) that during the period from January 2003 through January 2004 two employees received suspensions for misuse of Government property (computer and credit card) We suggested that ethics officials contact Labor Relations to determine whether to add an enforcement component to the ethics training program

Effective communications exists between ethics and Office of the Inspector General (OIG) officials Although there have been no recent alleged criminal conflicts of interest violations, we were assured that, if needed, OGE would be concurrently notified of matters referred to the Department of Justice by OIG

In closing, we wish to thank you and your staff for your efforts on behalf of the ethics program Since no improvements to your program were recommended, we will not need to conduct a six-month follow-up review A copy of this report is also being sent to FCC's Inspector General Please contact Jean Hoff at 202-482-9246 if we may be of further assistance

Sincerely,

Jack Covaleski

Jack Covaleski
Deputy Director
Office of Agency Programs

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