

## **FHH Telecom Law September 2005**

### **FCC DOES NOTHING!!!**

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A roommate of ours in college had a poster that quoted an old Mississippi bluesman sitting on a stool. “Sometimes I sits and thinks,” the quote went, “and sometimes I just sits.” Of late, constant readers of this publication may have noticed a relative dearth of activity on the part of the FCC, suggesting that perhaps the agency has adopted the credo of the old bluesman as its guiding principle. To be sure, it is a common mistake for legislators and administrative agencies alike to confuse activity with progress. “Let’s do something!” may not be the best course of action if doing something just makes matters worse – yet “doing something” has the virtue of justifying the jobs of the people doing it. This is one of the reasons the Code of Federal Regulations and the United States Code always get bigger, never smaller. Was it John Locke (or Ronald Reagan) who said: “that government governs best which governs least?” So we are certainly sympathetic to the argument that inaction is often the wisest course. That may not be true, however, at the present moment in telecommunications history.

The FCC has had major policy decisions on its plate for some years now. These include reform of the intercarrier compensation scheme, restructuring of the broadcast ownership rules, and devising a regulatory framework for the internet age. The FCC has been punting on these issues for years, and it continues to do so. Meanwhile, contested cases sit for years, placing a cloud on the licenses involved. New administrations in government often sweep into office with a burst of energy before settling into the familiar torpor. By contrast, the Martin administration at the FCC crept into office cautiously. The Chairman’s first act was to stop all activity whatsoever for a few weeks until he got his arms around the agency. While routine application processing eventually resumed, the pace of action at the Commission has been slow indeed. Open meetings of the Commissioners are brief and deal with non-controversial items, while the big issues languish. Maybe this means that the Chairman plans to reverse the usual course and pick up speed as he progresses into his term.

Chairman Martin is clearly hampered by the lack of a clear majority on the Commission – since the departure of Michael Powell, the Commission has been short a member and its four members may be deadlocked on some issues. In addition, it is reliably rumored that the Chairman is contemplating a major reorganization of the agency. While that is being pondered, however, key Bureau chiefdoms remain unfilled or manned by acting personnel, which affects processing of everything down the line. Surely a professor of management somewhere has done a thesis on the reorganization cycle: every few years a bureaucracy (or business) is reorganized so as to run more efficiently, and then a few years later it is reorganized back to roughly the way it was before, also so as to run more efficiently. This cycle repeats endlessly as new management always believes that

shifting the pieces around on the board will improve things. In any event, the FCC is biding its time, and we can only hope that while it is sitting, it is also thinking.