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Empowering the Collaborative Citizen in the Administrative State: A Case Study of the Federal Communications Commission

PETER M. SHANE*

Among the rhetorical themes of the Obama presidency, none has been more prominent than the call for open, participatory, and collaborative government. President Obama, in his first full day of office, expressed his commitment "to creating an unprecedented level of openness in Government" and directed his Chief Technology Officer, Aneesh Chopra, to coordinate the development of an Open Government Directive that would promote that end.[1] On December 8, 2009, the Director of the Office of Management and Budget (OMB) issued the Open Government Directive (OGD), echoing the philosophy of the President's memorandum:

> Transparency promotes accountability by providing the public with information about what the Government is doing. Participation allows members of the public to contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society. Collaboration improves the effectiveness of Government by encouraging partnerships and cooperation within the Federal Government, across levels of government, and

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1. Memorandum on Transparency and Open Government, 2009 DAILY COMP. PRES. DOC. 10 (Jan. 21, 2009) [hereinafter Obama Memorandum], *available at* http://www.whitehouse.gov/the_press_office/Transparency_and_Open_Government.

between the Government and private institutions.[2]

Among the specific steps called for, agencies were told, within specific time frames, to "identify and publish online in an open format at least three high-value data sets";[3] "create an Open Government Webpage . . . to serve as the gateway for agency activities related to the Open Government Directive";[4] "designate a high-level senior official to be accountable for the quality and objectivity of, and internal controls over," publicly disseminated federal spending information;[5] and "develop and publish on its Open Government Webpage an Open Government Plan that will describe how it will improve transparency and integrate public participation and collaboration into its activities."[6]

Both the President's January 21, 2009 memorandum and Director Orszag's OGD are directed to the "Heads of Executive Departments and Agencies." Anticipating the latter document, however, the President's memorandum stated: "The independent agencies should comply with the Open Government Directive."[7] As it happens, even prior to the OGD, one of the agencies that had gone furthest since the Obama inauguration in pursuing the openness-participation-collaboration theme was the Federal Communications Commission (FCC)—a fact yet more impressive given that its Obama-appointed Chairman, Julius Genachowski, was not actually confirmed until June 25, 2009.[8] In December 2009, writing to OMB on a tangentially related matter, the FCC's General Counsel and its Managing Director went on record with the following commitment: "Although the OGD does not address independent agencies, the FCC expects to comply voluntarily with its terms and, when possible, to exceed its targets."[9]

This article offers a case study of the FCC as an agency in the early throes of institutionalizing open, participatory, and collaborative government. It recounts the initiatives of its first seven months, when—as an unpaid Visiting Scholar with the agency—I had unusual access to FCC leadership and staff. In describing the FCC's challenges and opportuni-

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2. Open Government Directive 1 (Dec. 8, 2009), *available at* http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf.

3. *Id.* at 2.

4. *Id.*

5. *Id.* at 3 (footnote omitted).

6. *Id.* at 4.

7. Obama Memorandum, *supra* note 1.

8. *Senate Confirms New Chairman To Lead F.C.C.*, BLOOMBERG NEWS, June 26, 2009, *available at* http://query.nytimes.com/gst/fullpage.html?res=9B01E5DF1031F935A15755C0A96F9C8B63&scp=924&sq=cable&st=nyt.

9. Letter from Austin C. Schlick, Gen. Counsel, Fed. Commc'ns Comm'n & Steven VanRoekel, Managing Dir., Fed. Commc'ns Comm'n, to Cass R. Sunstein, Adm'r, Office of Info. & Regulatory Affairs 7 (Dec. 28, 2009) [hereinafter Schlick-VanRoekel Letter] (on file with author).

ties as they then appeared, I hope to make more concrete what the achievement of open government actually entails in terms of organizational commitment. From the standpoint of democratic theory, what is most striking about the early FCC efforts is less a matter of the administrative philosophy they embody than the ambitious model of citizenship required in all likelihood to sustain them. This is simultaneously exciting and sobering—exciting because of its aspirations, but sobering because of the magnitude of challenge posed in achieving sustainability.

Because this is a snapshot of a single moment in bureaucratic time, there is no doubt that, by the time this article appears in print, some early problems I identify will have been addressed, some exciting additional initiatives will have been undertaken, and other challenges will have arisen. I am confident, however, that future developments will not contradict my two main points: Pursuing government that is genuinely open, participatory, and collaborative turns out to be very hard work; and that work will likely be incentivized in the long term only if an ambitious model of citizenship takes root, and the public takes advantage of its new democratic opportunities.

I. The FCC Reform Agenda

When Julius Genachowski assumed the FCC Chairmanship, he brought with him a significant commitment to agency institutional reform as a policy priority. He created a position on his personal staff called Special Counsel for FCC Reform and appointed to it Mary Beth Richards, a longtime FCC career executive (with a brief stint also at the Federal Trade Commission), whom he charged with leading "a comprehensive program to provide openness and transparency at the agency."[10] Ms. Richards, in turn, has described the FCC's reform agenda as aiming to create a policymaking organization that is "data driven, transparent, timely, efficient, and effective" in accomplishing its goals.[11]

Chairman Genachowski also moved to create new media resources for advancing his reform agenda. Having chaired then-candidate Obama's Technology, Media, and Telecommunications Policy Working Group, as well as co-leading the Technology, Innovation, and Government Reform Group for the presidential transition,[12] he was persuaded

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10. *See* Staff of FCC Chairman Julius Genachowski, FCC, http://www.fcc.gov/commissioners/genachowski/staff.html (last updated Aug. 3, 2010).

11. Mary Beth Richards, *Special Counsel for FCC Reform, Fed. Commc'ns Comm'n*, Remarks at the Federal Communications Commission Workshop: Improving Disclosure of Ex Parte Contacts 3–4 (Oct. 28, 2009), *available at* http://www.fcc.gov/live/archive/2009_10_28-workshop-transcript.pdf.

12. *See* Biography of Julius Genachowski, ALLGOV, http://www.allgov.com/Official/Genachowski_Julius (last visited Aug. 5, 2010).

that new media tools were indispensable to accomplishing agency reform. He was also well positioned to recruit to the agency several new media "veterans" of the Obama campaign. He placed them under the supervision of his new managing director, Steven VanRoekel, a former Microsoft executive who had held key positions in strategy and marketing, and who was himself deeply immersed in the use of new media to build organizational identity and relationships.[13]

In the months between Chairman Genachowski's nomination and confirmation, he and VanRoekel had begun to conceptualize a web-based strategy for advancing FCC institutional reform based on three "buckets": communication, data, and participation.[14] In the communication bucket would go a variety of initiatives to open up the agency by "telling its story" more clearly and comprehensively. The data bucket would involve steps to open up to the public whatever internal agency knowledge resources could appropriately be shared. These would include what are conventionally regarded as "public records," but also potentially dozens of categories of data that the agency routinely collected about the nation's information and communication infrastructure and its performance. The participation bucket would entail efforts to infuse the agency with new voices, perspectives, and information coming from the public at large. "Participation," in the Genachowski-VanRoekel vernacular, thus actually embraced what the OGD calls both "participation" and "collaboration."

Although constructing each of these buckets involved its own specific problems, a number of challenges cut across all of them. The first, quite obviously, was resources. Accomplishing what Genachowski and VanRoekel hoped to achieve meant finding people with requisite expertise and giving them adequate resources of time, technology, and administrative support to accomplish innovative tasks. The agency technology Genachowski and VanRoekel inherited was in many ways "creaky." For example, the FCC website, which had marked a significant advance in e-government when developed under former Chairman Michael Powell, was suffering from years of neglect. Its organization was opaque, its search capacities limited, and its design befuddling.

A second challenge was that of complexity. The FCC, although relatively small as compared to, say, the Pentagon, embraces seven "bureaus" and eleven "offices," many of which deal in matters cloaked

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13. *See* John Eggerton, *Genachowski Names Former Microsoft Exec Managing Director of FCC*, BROADCASTING & CABLE (July 13, 2009, 12:31 PM), http://mobile.broadcastingcable.com/article/315024-Genachowski_Names_Former_Microsoft_Exec_Managing_Director_of_FCC.php; Interview with Steven VanRoekel, Managing Dir., Fed. Commc'ns Comm'n, in Wash., D.C. (Aug. 5, 2009).

14. Interview with Steven VanRoekel, *supra* note 13.

in technical complexity.[15] Internal management processes adopted to navigate the demands of a multimember Commission were often arcane and labyrinthine. New staff confronted a steep learning curve in understanding the FCC's existing structure, processes, and organizational culture.

A third source of challenge was the law. Although a number of the questions posed eventually turned out to have fairly straightforward answers, it often proved puzzling how to conceptualize new media practices within the framework of administrative statutes written against an outdated set of technological assumptions. To take one example, would a blog inviting members of the public to contribute ideas about some specified topic or set of topics amount to a "collection of information" subject to the Paperwork Reduction Act?[16] Or, to take another, what would be the connection of online blog comments to the administrative record of a docketed FCC proceeding, such as a rulemaking?[17]

Finally, of course, there is the challenge of inertia. Certain external forces predictably fuel inertia at the FCC. For example, law firms, especially those situated locally, which are already steeped in the practice of telecommunications law, presumably thrive on the complexity of the FCC's arcane practices—practices they have already mastered. They would be unlikely champions for simplification that would open the agency to competing influences. Meanwhile, those constituents most likely to benefit from enhanced agency openness, including those Americans currently on the wrong side of the "digital divide," suffer from a relative lack of digital empowerment that necessarily reduces their capacity to mobilize for change.

Inertia is fueled internally, as well. In the case of the 2009 FCC, where many reforms entailed the agency's robust use of the Internet, the costs of change were exacerbated by the weak state of the IT infrastructure that the Genachowski team inherited; even the FCC's Internet connections were poor.[18] Moreover, any change in institutional processes requires some people to switch to different tasks or to do the same tasks they have long done, but differently. People within the agency may thus resist change, not out of disagreements about aims or underlying principle, but because the "return on investment" from change may not be as obvious as the up-front costs. Especially where assigned tasks are time-sensitive, the start-up times entailed in doing things differently may

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15. *See* FCC, http://www.fcc.gov/ (last visited Oct. 22, 2010).

16. *See infra* notes 59–64 and accompanying text.

17. *See infra* notes 67–69 and accompanying text.

18. Telephone Interview with Steven VanRoekel, Managing Dir., Fed. Commc'ns Comm'n (Aug. 29, 2010).

seem a significant transaction cost. Unless there is belief in leadership's commitment to change over the long term, there can always be doubt whether a change in approach will be too ephemeral to justify its costs. In large part to acclimate agency staff to new ways of doing business and ease the transition to new practices, an early initiative was the creation of an internal "FCC Reboot" site, sharing perspectives and soliciting staff suggestions for agency reform. Part of its not-so-hidden agenda was to get staff accustomed to reading blogs and following comment threads as part of their daily work routines; Managing Director VanRoekel judged the experience a success once he saw that the most popular items were receiving a larger number of views than the FCC has employees, suggesting repeat visits and persistent attention to the site.[19]

Notwithstanding its multiple sources of challenge, agency reform has proceeded with regard to each of the conceptual buckets. The reform agenda, after only about seven months of a new Chairman, was plainly a work in progress. But it is possible to identify key steps taken, specific problems encountered, and opportunities already identified.

II. BUCKETS ONE AND TWO: COMMUNICATION AND DATA

As of June 2009, the FCC "told its story" to the outside world chiefly through a conventional media relations program and a website that appeared to be painfully out of date. FCC.gov was rich in content (although some bureaus were better represented than others), but exploiting those resources would have been an arduous task for a nonexpert user. Because the site was architected to track the FCC's organization chart, not user need, little about its organization was intuitive. It was textually dense, limited in its interactivity, and equipped with a search engine that often deluged the reader with poorly targeted, hard-to-sort links to an eclectic set of documents.

As one example of the website's difficulties, nothing on the FCC homepage in spring 2009 suggested where an interested user might go to learn about how to participate in FCC rulemaking.[20] Nothing about public participation appeared on the "About the FCC" page. Using the search term "Rulemaking" would reveal the existence of an explanatory page on the rulemaking process—a page that, as of spring 2009, had

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19. *Id.*

20. Rather than engage in page-by-page redesign of the FCC website, the Office of Managing Director and New Media Team decided to build a new FCC website around the agency's policy priorities and redesigned systems, and migrate online material eventually from the old to the new site. As a result, the old site looked much the same in summer 2010, as it did in spring 2009, *see* FCC, http://fcc.gov/ (copy of the spring 2009 version on file with author), while progress continued on what is intended to become the basis for an altogether new FCC site, *see* REBOOT.FCC.GOV, http://reboot.fcc.gov/ (last visited Oct. 22, 2010).

hardly been changed since 2001.[21] Although the text of the page is highly readable, it hardly describes how the process actually works. If a user scrolled down far enough on the opening page, she would have found a link to the Electronic Comment Filing System (ECFS), but using ECFS effectively would require some prior knowledge of how the public-comment process works. The ECFS homepage does not itself explain the rulemaking process.[22]

Because the project of redesigning FCC.gov was so complex, VanRoekel and his New Media Team decided to go first after easier-to-accomplish, short-term objectives, which would signal a clear change in management philosophy towards communication. The team worked to connect the FCC to social media, including Facebook, Twitter, and You-Tube.[23] They enabled RSS feeds to dozens of categories of FCC documents, which a user might choose based upon either the organizational source (e.g., all new documents from the Wireless Telecommunications Bureau) or type of document (e.g., all rulemaking filings). The agency started streaming and archiving not only formal meetings and speeches, but informal workshops on a wide range of issues facing the FCC—all of which it began to archive at a new website, www.fcc.gov/live. Finally, the team created a couple of subject-centered portals on key issues. The first, Broadband.gov, was designed to facilitate public understanding of and interaction with agency efforts to create a national broadband plan. A second, OpenInternet.gov, was rolled out to facilitate public access to the FCC's "open networks" proceeding—the venue for agency consideration of so-called "net neutrality." A third specialized site, reboot.fcc.gov, which focuses on the overall topic of agency reform, debuted in January 2010.

To accomplish even these seemingly modest objectives, the New Media Team had to confront a series of legal and administrative issues. Legally, the Office of General Counsel had to work out terms of service for social networking tools that would enable their use by a federal agency without running afoul of federal law.[24] For example, social

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21. *See The Rulemaking Process*, FCC, http://www.fcc.gov/rules.html (copy of the Oct. 23, 2001 version on file with author). The page appears much the same today, despite some apparently minor amendments in March 2010. *See The Rulemaking Process*, FCC, http://www.fcc.gov/rules.html (last updated Mar. 22, 2010).

22. *See Welcome to the New Electronic Comment Filing System*, FCC, http://fjallfoss.fcc.gov/ecfs/ (last visited Oct. 22, 2010).

23. Interview with Haley van Dÿck, New Media Team, Office of Managing Dir., Fed. Commc'ns Comm'n & Gray Brooks, New Media Team, Office of Managing Dir., Fed. Commc'ns Comm'n, in Wash., D.C. (Sept. 3, 2009).

24. Interview with Gray Brooks, New Media Team, Office of Managing Dir., Fed. Commc'ns Comm'n, in Wash., D.C. (Nov. 5, 2009); E-mail from Joel Kaufman, Assoc. Gen. Counsel, Fed. Commc'ns Comm'n, to author (Aug. 13, 2010) (on file with author).

media contracts often contain standard terms, such as unlimited indemnity or agreements to be bound by particular state law, to which the federal government cannot agree. Agreements had to specify, moreover, that the web services contracted by the FCC would not result in commercial advertising being carried on FCC pages or persistent cookies placed on users' computers. Administratively, care had to be taken to avoid even the appearance of favoritism in the selection and use of new media tools. The Office of Managing Director decided that the FCC would use free tools only to the extent they were available free to all users and the FCC was not being given special advantages for selecting any particular tool.

In terms of its "data" ambitions, the FCC's ambitions took two paths. The first was a comprehensive review, led by the Office of Strategic Planning and Policy Analysis, of all the agency's data collection efforts.[25] Its aims, as articulated by Director Paul de Sa, were to be sure the agency was collecting the data it needed to accomplish its policymaking (and monitoring) tasks, not imposing data collection burdens that were unnecessary to fulfilling the FCC's mission, and sharing with the public whatever data the FCC possesses that would have potential public value and could be appropriately shared.[26] Because the FCC did not maintain, as of June 2009, any centralized list of its data collection efforts, this review took two months simply for fact gathering and many weeks more for analyzing its implications—a process still unfolding in January 2010.[27]

The second path was reform of the Electronic Comment Filing System.[28] Much of the FCC's work takes the form of docketed proceedings. Hence, much of the information it holds consists of documents both internally generated and independently submitted that are connected

25. Interview with Paul de Sa, Dir., Office of Strategic Planning & Policy Analysis, Fed. Commc'ns Comm'n, in Wash., D.C. (Nov. 4, 2009).

26. *Id.*

27. *Id.* In June 2010, the agency announced a Data Innovation Initiative, beginning with simultaneous, identical Public Notices from the Media, Wireline Competition, and Wireless Telecommunications bureaus, seeking comment on all aspects of how they collect, use, and disseminate data. *See* Public Notice, Pleading Cycle Established for Comments on Review of Media Bureau Data Practices, 25 FCC Rcd. 8236 (June 29, 2010), *available at* http://www.fcc. gov/Daily_Releases/Daily_Business/2010/db0629/DA-10-1195A1.pdf; Public Notice, Pleading Cycle Established for Comments on Review of Wireless Telecommunications Bureau Data Practices, 25 FCC Rcd. 8337 (June 29, 2010), *available at* http://www.fcc.gov/Daily_Releases/ Daily_Business/2010/db0629/DA-10-1223A1.pdf; Public Notice, Pleading Cycle Established for Comments on Review of Wireline Competition Bureau Data Practices, 25 FCC Rcd. 8213 (June 29, 2010), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0629/DA-10-1189A1.pdf; *see also* Greg Elin, *FCC's Data Innovation Initiative: Reinvigorating the FCC's Data Assets*, REBOOT.FCC.GOV, (June 30, 2010), http://reboot.fcc.gov/blog/?entryId.

28. *See Welcome to the New Electronic Comment Filing System, supra* note 22.

with those proceedings. ECFS was a web application originally designed to allow the aggregation and processing of rulemaking documents and to simplify the filing of documents for all docketed proceedings. ECFS 2.0, which went online in late October 2009, is intended not only to simplify the process further, but—arguably more important—to make ECFS an invaluable research tool.[29]

For comment filers, ECFS 2.0 makes life easier by allowing a single document to be posted to multiple proceedings and to allow the importation of input from multiple sources.[30] For researchers, however—whether lawyers, journalists, graduate students, or just concerned citizens—ECFS 2.0 now allows a full-text search of all the documents it contains, the flexible sorting of search results, and the batch printing and exporting of documents.[31] It is also possible to subscribe to ECFS by docket, thus having newly filed documents in a proceeding of interest automatically forwarded to every interested user.[32]

For an agency determined to share its story and its internal knowledge more effectively with the outside world, this menu of activities marks an impressive start. For example, it appears the FCC will soon be among the top 400 most popular feeds on Twitter; among federal agencies, only the White House and the Centers for Disease Control and Prevention have more followers.[33] The FCC's new subject sites have created a significant web presence, eliciting widespread coverage and discussion on numerous other sites.[34] The roster of early activities, however, tackles only what is arguably a fraction of the openness and transparency challenges and opportunities that confront the FCC. This is not a criticism, merely acknowledgement of a daunting reality.

For example, the redesign of the overall FCC website remains a large and complex task. As of this writing, the New Media Team has seven members,[35] but—as early successes generate enthusiasm for new initiatives through the agency—the limited in-house design and imple-

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29. Interview with Bill Cline, Chief, Reference Info. Ctr., Consumer & Governmental Affairs Bureau, Fed. Commc'ns Comm'n, in Wash., D.C. (Oct. 1, 2009); *see also Welcome to the New Electronic Comment Filing System, supra* note 22.

30. *See Welcome to the New Electronic Comment Filing System, supra* note 22.

31. *See id.*

32. *See id.*

33. *See Twitter Tools: Twitter Traffic Stats,* TWITTER TRAFFIC STATS, http://www.twitter trafficstats.com/ (last visited Oct. 22, 2010).

34. *See, e.g.,* Chloe Albanesius, *Broadband.gov, Workshops Kick Off Rollout,* PCMAG.COM (July 2, 2009), http://www.pcmag.com/article2/0,2817,2349698,00.asp; Glyn Moody, *Do We Need an OpenInternet.gov.uk or OpenInternet.eu?,* ComputerworldUK (Sept. 22, 2009, 4:08 PM), http://blogs.computerworlduk.com/open-enterprise/2009/09/do-we-need-an-openinternetgovuk-or-openinterneteu/index.htm.

35. E-mail from Gray Brooks, New Media Team, Office of Managing Dir., Fed. Commc'ns Comm'n, to author (on file with author).

mentation capacity will require difficult ongoing prioritization. Specific implementation challenges remain and range from the large and obvious—such as how to generate public awareness and usage of the FCC's new web resources, while also reaching out to non-adopters to avoid making the digital divide an FCC communication divide—to the mundane, such as changing agency processes to facilitate new media. A small but powerful change would be making all agency portable document format (PDF) files machine readable, which would thus make their full text searchable and subject to easy word processing.[36] The agency must endeavor to achieve disability compliance for all of its web initiatives, as well as to make its output accessible on a multilingual basis. It will also need good data regarding the public uptake of its web initiatives, so that it can continually adjust its communication strategy to elicit the maximum public engagement.

Re-architecting the website is also only one part of rendering the agency open and transparent. FCC.gov/live ought to be just the beginning of creating webinars and other forms of multimedia online education regarding the mission and processes of the FCC. Proactive efforts should aim to make FCC documents not merely searchable, but comprehensible to nonexperts. Visitors to FCC.gov should be enabled to create "My FCC"-type pages that would aggregate multiple features of the website of particular interest. Special social networking strategies might be tailored for specific offices, such as engaging the Office of Communications Business Opportunities with LinkedIn and other business-oriented sites. The work of individual commissioners could be made more transparent by putting their meeting calendars online. There ought to be a "Virtual Public Reading Room," in which it is easy to find all materials for which the Freedom of Information Act (FOIA)[37] requires some form of public access. And, of course, there should be mobile versions for all of these applications.

A significant public records issue for the FCC was posed by the phenomenon of "docketing." Docketing is a process by which matters anticipating attention by the whole Commission are given a tracking number that makes their "paper trail" easy to follow. Because of docketing, ECFS is able to give access to seven million pages of FCC proceedings and 1.5 million filings.[38] Matters, however, that the Office of the Chairman might send for handling to an individual office or bureau or which are directed to the bureaus and offices under the FCC's delegated

36. Interview with Gray Brooks, *supra* note 24.
37. 5 U.S.C. § 552 (2006).
38. Interview with Bill Cline, *supra* note 29.

authority rules[39] might never result in a docketed proceeding, thus making them unavailable on the ECFS. If the ECFS is to achieve its full potential as a research tool—both inside and outside the agency—it needs to reach all matters subject to official resolution, at whatever level. It also needs to provide access to the non-text files that are increasingly common submissions in agency proceedings.[40]

In addition to the fairly granular challenges of designing new and improved systems, the agency also faced some large and basic questions of resource allocation and policy. For example, the data inventory exercise headed by the Office of Strategic Planning and Policy Analysis found that the agency prepares eighteen annual reports to Congress and engages in 410 collections of information approved by the Office of Management and Budget under the Paperwork Reduction Act (PRA).[41] Yet, the number of in-house staff available to conduct actual data analysis is quite limited.[42] In a similar vein, the FCC handles about 550 to 750 requests per year for records under FOIA.[43] Yet, no one is employed as a fulltime searcher, although internal FOIA searches are processed by hand.[44]

The large policy issues, unsurprisingly, require consideration of the appropriate tradeoffs between transparency and competing values. For example, the pre-Genachowski FCC purchased few of the industry data sets regarded as fundamental and universally possessed by the firms that the FCC regulates.[45] Purchasing more proprietary information might improve the effectiveness of policymaking, but it might also reduce public access to key data.

On an arguably even more consequential front, it is quite likely that private firms, facing hot-button FCC regulatory controversies, will often stake out positions in public that are more extreme and less flexible than positions they are willing to share with the FCC confidentially. Making agency conversations with private entities more public could increase agency accountability, but it might also reduce the effectiveness of internal and external negotiations in achieving good outcomes in the public interest.[46]

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39. *See* 47 C.F.R. § 0.204 (2009).

40. A notice of proposed rulemaking to expand the ECFS beyond docketed proceedings is now pending. *See* Amendment of Certain of the Commission's Rules of Practice and Procedure and Rules of Commission Organization, 75 Fed. Reg. 14,401 (proposed Mar. 25, 2010) (to be codified at 47 C.F.R pt. 0, 1).

41. Interview with Paul de Sa, *supra* note 25.

42. *Id.*

43. Interview with Bill Cline, *supra* note 29.

44. *Id.*

45. Interview with Paul de Sa, *supra* note 25.

46. For example, even as this article is being written, a substantial controversy exists because

Such policy questions are not necessarily easy to address in an organizational culture steeped in pre-transparency norms. For example, the way in which the agency now tracks ex parte contacts with Commission members is to require whoever is visiting a Commissioner to prepare and file a summary of the meeting.[47] No one checks, however, to see whether these summaries are accurate—or even filed.[48] An easy safety mechanism would be to make Commissioners' calendars public, thus enabling the public to track whether ex parte summaries are available for all ex parte contacts on the calendars. This would, however, mark a significant change in how Commissioners operate.

Overcoming old routines will be a factor also in reshaping the FCC's orientation towards data. Agency staff tasked to create new forms of data processing are being requested, in effect, to give greater weight to data accessibility—making it possible, for example, to do easy record matching and to synthesize databases—rather than to programming elegance. Bureau staffs charged with helping to develop proposed FCC policy are being asked to work more closely with the Office of Strategic Planning and Policy Analysis to build planning for data collection into the processes of writing notices of inquiry and notices of proposed rulemaking.[49] Such seemingly subtle changes can make a big difference in terms of whether agency insiders see "knowledge management" as an integral part of effective policymaking or as a sideline—nothing beyond whatever eventually happens to occur in the collection, storage, and dissemination of information.

In short, building openness and transparency into FCC communications and data sharing practices are not just matters of high-level political philosophy or fine-grained technical practices, although plenty of both are at issue. An agency that conceives of itself as involved with the public in collaborative governance is really being asked to understand itself quite differently from an agency that is doing all the "governing," while the public is merely in the business of "complying." Coping with the consequences for both management and policymaking requires a serious, ongoing commitment from agency leadership at all levels.

FCC leadership is conducting confidential talks with representatives of industry and consumer groups concerning the FCC's proposal to reclassify broadband services as "telecommunications," rather than "information" services, thus potentially subjecting Internet service providers to FCC regulations intended to maintain "open networks." *See, e.g.*, Cecilia Kang, *FCC Ends Talks for Deal on Net Neutrality*, WASH. POST, Aug. 6, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/08/05/AR2010080502423.html.

47. *See* 47 C.F.R. § 1.1206(b) (2009).

48. A notice of proposed rulemaking to reform FCC ex parte rules is now pending. *See* Amendment of Certain of the Commission's Ex Parte Rules and Other Procedural Rules, 75 Fed. Reg. 14,409 (proposed Mar. 25, 2010) (to be codified at 47 C.F.R pt. 1).

49. Interview with Paul de Sa, *supra* note 25.

III. Bucket Three: Participation

As grand as the FCC's aims for communications and data may be, implementing the agency's commitment to .participation is arguably even more complex. A variety of avenues for public interchange with the agency preexisted the FCC's current leadership, but they were typically either episodic or simply unconnected. That is, members of the public could communicate to the agency through letters, fax, e-mail, or telephone; its website facilitated both formal pleadings and informal complaints about a variety of matters within the agency's regulatory jurisdiction. The ECFS facilitated public comments during agency rulemaking proceedings. (Documents, including filings, could also be reviewed online, although they were not searchable by text.) On high-profile matters, the Commission would hold occasional public hearings around the country. It constituted a few advisory committees, comprising outside experts and occasional public representatives.

Yet it would have been hard to view these activities as amounting to a strategically conceived participation program. Communications to. the public would be "processed," but—except for formal filings to. agency proceedings—I infer that they were not treated as constituting a body of knowledge from which the agency could extract ideas. Concerned citizens were not placed into dialogue with one another via the web, and except with regard to rulemaking submissions, the body of informal .public communications with the agency was generally not treated as an ongoing resource for agency policymaking. By way of contrast, by my own observation the first seven months of the Genachowski era witnessed several major advances towards institutionalizing an ethos of public participation at the FCC. These included staging workshops and meetings both inside and outside Washington, D.C., in a way that facilitated broad and geographically dispersed access, connecting the agency to key social media, and using the subject-centered portals noted above—on broadband policy, the open Internet, and FCC reform—as venues for significant idea-sharing. According to the Managing Director, these initiatives were conceptualized together as a program, whose aim was—and is—to create a new sense of public engagement with the agency.[50]

OpenInternet.gov dramatically illustrates the different quality of public participation that the new approach was intended to facilitate.[51] As a communications venue, OpenInternet.gov offers easy recourse to accessible explanations of the agency's notice of inquiry on the open

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50. Interview with Steven VanRoekel, *supra* note 13.

51. *See* Fed. Commc'ns Comm'n, OpenInternet.gov, http://www.openinternet.gov/ (last visited Nov. 6, 2010).

Internet,[52] as well as all of the various Commissioners' public speeches on the subject.[53] It is also a video portal for public workshops on key aspects of the open Internet rulemaking.[54] Not only can these be viewed in real time, but viewers anywhere may submit questions for the various panels via e-mail and Twitter.[55] A toll-free number makes it possible to listen in to each workshop via telephone, and hearing- or vision-impaired users can click onto the Accessible Event service to make the content more readily available.[56] Following each workshop, videos of the event and all distributed materials became permanently archived.

Finally, the site links to the IdeaScale application, making it possible for members of the public to submit ideas, comment on the ideas of others, and vote their approval of various contributions.[57] The "About" page posted for OpenInternet.gov explains that these communications will be treated as part of the rulemaking record,[58] meaning that interested participants truly need to know nothing about the formalities of administrative participation in order to get their views in front of the Commission and its staff. The fact that public commenters are effectively in dialogue with one another, as well as with the agency, brings an entirely new dimension to the agency's public outreach.

Perhaps unsurprisingly, using even a social media tool as elementary as a blog for facilitating public outreach raised a host of legal questions regarding administrative process. For example, what is the status of a blog or an application like IdeaScale under the Paperwork Reduction Act? Under the PRA, a federal agency is ordinarily required to get approval from the Office of Management and Budget before it engages in the "collection of information," defined as "obtaining, . . . facts or opinions . . . for an agency . . . calling for . . . answers to identical questions posed to . . . ten or more persons, other than agencies, instru-

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52. *See* Fed. Commc'ns Comm'n, *Get Informed About the Open Internet*, OPENINTERNET.GOV, http://www.openinternet.gov/about-the-nprm.html (last visited Nov. 6, 2010).

53. *See* Fed. Commc'ns Comm'n, *Speeches*, OPENINTERNET.GOV, http://www.openinternet. gov/read-speech.html (last visited Nov. 6, 2010).

54. *See* Fed. Commc'ns Comm'n, *Open Internet Workshops*, OPENINTERNET.GOV, http:// www.openinternet.gov/workshops/ (last visited Nov. 6, 2010).

55. *See id.*

56. *See id.*

57. *See* Fed. Commc'ns Comm'n, *Join the Discussion*, OPENINTERNET.GOV, http://open internet.ideascale.com/ (last visited Nov. 6, 2010).

58. *See* Fed. Commc'ns Comm'n, *About OpenInternet.gov*, OPENINTERNET.GOV, http://www. openinternet.gov/about-open-internet.html (last visited Nov. 6, 2010) ("Your input is valued at every stage in the process. In addition to the usual methods for filing electronic comments, the Commission is allowing comments, reply comments, and ex parte comments in this proceeding to be filed by posting comments on http://blog.openinternet.gov and http://openinternet.ideascale. com. Accordingly, persons wishing to examine the record in this proceeding should examine the record on ECFS, http://blog.openinternet.gov and http://openinternet.ideascale.com.").

mentalities, or employees of the United States."[59] If an online consultation falls within this definition, the agency cannot move forward without such clearance.[60]

Fortunately, under OMB regulations "information," for PRA purposes, is defined generally to exclude

> [f]acts or opinions submitted in response to general solicitations of comments from the public, *published in the Federal Register or other publications, regardless of the form or format thereof,* provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment.[61]

Because FCC postings on its blogs and other websites that request public comment are general solicitations of comments from the public published in an electronic format, the General Counsel was able to conclude that blogs and online discussion forms do not constitute "information collections" requiring OMB preclearance, which could have significantly delayed their rollout.[62] This conclusion was ultimately verified in an April 7, 2010, memorandum issued by OMB's Office of Information Regulatory Affairs (OIRA).[63] That memo also confirmed that a variety of interactive tools, such as blogs, wikis, and message boards, would be exempt from PRA review because they are the online equivalent of "public meetings," which are also exempt.[64]

Somewhat oddly, however, the April 7 OIRA memo did not exempt from PRA review any form of voluntary survey, no matter how innocuous.[65] As agencies expand their web strategies, they would undoubtedly benefit from public feedback on the quality of web pages. Short, voluntary online surveys are commonplace private-sector tools for that purpose. It presumably makes more sense to encourage agencies to do such surveys than to divert government employees in each agency to test usability. As the FCC pointed out in comments to OIRA in response to a request for government-wide input, such efforts

59. 44 U.S.C. § 3502(3) (2006).

60. *See id.* § 3507.

61. 5 C.F.R. § 1320.3(h)(4) (2010) (emphasis added).

62. *See* Schlick-VanRoekel Letter, *supra* note 9, at 7.

63. *See* Memorandum on Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act 3 (Apr. 7, 2010) [hereinafter Sunstein Memorandum], *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance_040720 10.pdf.

64. *See id.* at 5.

65. *See id.* at 4 ("If an agency asks the public to respond to a series of specific questions or a series of specific prompts that gather information (e.g., for purposes of aggregation or survey) about whether, for example, a particular program is or is not effective, the collection of information is subject to the PRA.").

would cut into other tasks and result in input from a skewed set of
users who already are versed in the agency website and the relevant
subject matter. Creating offline usability tests for public users would
entail considerable expense and inconvenience. In contrast, short,
online surveys can be readily employed and accumulate much more
feedback within a helpful time frame. Their use—and the deployment
of online consultations generally—would advance one of Congress's
key purposes in enacting the PRA, namely, to "minimize the cost to
the Federal Government of the creation, collection, maintenance, use,
dissemination, and disposition of information."[66]

OIRA's response, which is not explained in the April 7 memo, leaves
agencies considerable flexibility in the use of social media, but little
flexibility—without additional bureaucratic review—in asking users
focused questions about the quality of their online experience.

Another set of legal issues posed for the agency concerned the sta-
tus of informal comment submissions via blogs and similar applications
with regard to the "record" of docketed proceedings. The Administrative
Procedure Act (APA) requires the FCC, for most significant proposed
rules, to provide opportunities for public comment.[67] Agencies that fail
to take account of substantial issues brought to their attention through
public feedback run the risk of having their rules set aside on judicial
review.[68] With social media potentially expanding the number and range
of public comments to an exponential degree, questions plainly exist as
whether and in what way the agency is to account for those comments in
analyzing a policymaking record. In its first forays into this area, the
FCC has decided to notify users that web-posted comments relevant to
open-docketed proceedings *will* be considered part of the record, requir-
ing the agency to designate staff to analyze, organize, and summarize
those comments for further consideration.[69] It is probable that, eventu-
ally, good automated tools will become available to assist in that work—
although, at present, there is no statutory provision or case law assuring
the agency that its good-faith use of automated tools to analyze what
may be an enormous volume of comments will prove sufficient to meet
its obligation of non-arbitrary policymaking.

Of course, blogs, online surveys, public hearings, and text-based
deliberation applications like IdeaScale only scratch the surface of the
kinds of public interaction an agency like the FCC could facilitate
through the Internet. Online focus groups and expert forums could give

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66. *See* Schlick-VanRoekel Letter, *supra* note 9, at 8 (quoting 44 U.S.C. § 3501(5) (2006)).

67. *See* 5 U.S.C. § 553(c) (2006).

68. *See, e.g.,* United States v. N.S. Food Prods. Corp., 568 F.2d 240 (2d Cir. 1977); Auto.
Parts & Accessories Ass'n v. Boyd, 407 F.2d 330 (D.C. Cir. 1968).

69. Interview with Bill Cline, *supra* note 29.

the agency access to a far greater range of input, and at less expense, than is possible through exclusive reliance on face-to-face deliberations. Structured forms of representative opinion sampling, like Deliberative Polls,[70] can be organized online. Geographical information systems (GIS) applications—which enable the acquisition and analysis of geospatial data—can be deployed systematically to aggregate public knowledge, for example, to help determine whether regulatory policies adopted by the FCC are working as anticipated in particular locations.

Again, however, as with its communication and data sharing initiatives, the FCC will be required to deal with a host of recurring issues—some managerial, some strategic, some philosophical—if it is to derive the greatest possible benefit from a move towards collaborative governance. As suggested above, one obvious set of managerial issues relates to the processing of a vastly larger potential volume of public input. If the agency is to appear genuinely receptive to public input, it must have ways of effectively channeling informal communications to correct venues for response. Migrating e-mail and new media comments to the records of relevant docketed matters will be key.

The most important strategic issue for the agency is figuring out how to generate public interest in and demand for new interaction opportunities. My informal conversations with agency staff surfaced recurrent expressions of a hope for some effective public voice to serve as a counterbalance, or at least a reality check, on the voices of industry and inside-the-beltway insiders, who hardly need new media to make their views effectively known within the agency. The question is how to alert potential contributors that the FCC is prepared to listen to their input.

The agency does have some significant resources in this respect. First, the Consumer and Governmental Affairs Bureau is substantially involved in responding to consumer complaints;[71] it might prove a logical hub for activities aimed at recruiting members of the public to participate more broadly in FCC deliberations. Second, the Office of Communications Business Opportunities is already in the practice of "translating" agency policy documents into accessible form for the benefit of small business.[72] Such communication efforts might well be disseminated yet more broadly as a way of alerting the general public as to

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70. *See generally* JAMES S. FISHKIN, WHEN THE PEOPLE SPEAK: DELIBERATIVE DEMOCRACY AND PUBLIC CONSULTATION (2009) (describing methodology and offering case studies of Deliberative Polls).

71. Interview with Cathy Seidel, Former Chief, Consumer & Governmental Affairs Bureau, Fed. Commc'ns Comm'n, in Wash., D.C. (Aug. 24, 2009).

72. Interview with Thomas Reed, Dir., Office of Commc'ns Bus. Opportunities, Fed. Commc'ns Comm'n, in Wash., D.C. (Sep. 9, 2009).

issues confronting the agency on which input would be welcome. The FCC might also reach out to community groups around the country that are already mobilized around telecommunications issues or even launch efforts to demonstrate to community groups more generally that telecom-related issues are relevant to their missions in ways that they might not yet have identified.

Persuading agency leadership and staff of the wisdom of such outreach, however, touches on perhaps the most important issue of governance philosophy underpinning these efforts: What exactly is the role of public input in an expert agency? Agencies are required to make regulatory judgments that, in APA terms, are neither "arbitrary," nor "capricious."[73] Key agency decision makers are presumably appointed with an eye towards their expertise and qualifications regarding frequently complex subjects. Given how decision makers are chosen and that the relevant standard of judicial review requires agencies to defend the substantive rationality of their decision making, it seems obvious what public input *cannot* be. It cannot serve as some sort of plebiscite that will determine the agency's judgment.[74] If public comments, however, are not simply votes to be counted, that re-raises the question of their relevance and utility. The role of what may typically be anecdotal public comments in reaching agency decisions based on general social and economic conditions may not be obvious. The FCC staff and leadership to whom I spoke seemed uniformly willing to weigh public input according to its inherent thoughtfulness, analytic rigor, or empirical verifiability. How that is to be ensured, however, and how such a commitment is to be effectively conveyed to the public are challenging issues.

IV.   REFLECTIONS ON THE FUTURE OF COLLABORATIVE GOVERNANCE

There are a great many ways to assess, at least in principle, the success of government efforts to enlist public participation in administrative policymaking. One could look to see whether such input affected the substance of an agency's decision making agenda, whether it produced identifiable outcomes different from what otherwise might have

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73. 5 U.S.C. § 706(2)(A) (2006).

74. In what surely seems an overabundance of caution, OIRA recently cautioned executive agencies not to give decision making weight to "social media tools that allow the public to rate, rank, vote on, flag, tag, label, or similarly assess the value of ideas, solutions, suggestions, questions, and comments posted by website users." Sunstein Memorandum, *supra* note 63, at 6 ("[A]gency use of the information generated by these tools should be limited to organizing, ranking, and sorting comments. Because, in general, the results of online rankings, ratings, and tagging (e.g., number of votes or top rank) are not statistically generalizable, they should not be used as the basis for policy or planning.").

been expected, or whether it improved the quality of agency implementation regarding initiatives to which it was already committed. Surveys might demonstrate that agency receptivity to public input engendered more public interest in the agency, knowledge of its mission or initiatives, or satisfaction with its performance. Members of the agency itself might find that public input factors significantly into their thinking, even if it affects the articulation of policy in only subtle ways. Perhaps collaborative government initiatives have the capacity to promote the public's sense of civic involvement more generally or to promote the kind of civic trust that counts as social capital.

It is too early to know any of these things with regard to the Obama Administration's openness initiatives generally or those of the FCC in particular. A survey of the FCC's openness, transparency, and participation initiatives in the first seven months of new leadership, however, is more than adequate to prove one threshold point: Openness, transparency, and participation work is hard for an agency. It entails real costs in terms of time, attention, and material resources. In the case of the Genachowski FCC, there is a seamless fit between President Obama's call for greater openness, transparency, and collaboration and the publicly articulated personal value commitments of the current Chairman and his leadership team. But, given the undeniable costs of doing this work and the somewhat speculative returns on investment, the question is obviously posed as to the necessary political circumstances that would render those commitments, and the consequent initiatives, sustainable. Just as Chairman Michael Powell's enthusiasm for the Internet was not enough, by itself, to generate subsequent chairmen's interest in keeping the FCC website user-friendly, it does not follow that Chairman Genachowski's enthusiasms will put the FCC on a permanent path to greater openness. Indeed, one should be all the more cautious in one's hopes for the future because agency "insiders"—large industry firms and the law firms and lobbyists who represent them—do not need new tools of openness. They have mastered the old routines and are unlikely to see the benefits of more proverbial "seats at the table." Incentives for the ongoing institutionalization of open government will presumably have to come from elsewhere.

One possibility, of course, is that support for continued openness will come from within the agency itself.[75] If agency decision makers, whether leadership or staff, find that greater openness and more participatory government produce better results or more widespread public

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75. For some expressions of skepticism from agency administrators generally about the value of electronic rulemaking to administrative policymaking, see Jeffrey S. Lubbers, *A Survey of Federal Agency Rulemakers' Attitudes About E-Rulemaking*, 62 ADMIN. L. REV. 451 (2010).

support for the agency's mission, they will form a constituency for more openness. Such changes, however, are unlikely to appear overnight. The agency presumably needs to experience some conspicuous "wins" in terms of improved policymaking or more positive public attention to persuade career insiders or future political leadership that openness is worth the work it engenders.

A second possibility also exists that is, at once, arguably both more ambitious and yet easier to picture. In tracing this possibility, I am following on the work of Professor Stephen Coleman of the University of Leeds, a noted scholar of political communication and one of the world's foremost experts on both the theory and practice of "e-democracy." In a forthcoming essay, Coleman argues that different normative conceptions of citizenship seem to fit comfortably with very different models of using the online world for political community.[76] It is not that a particular technology automatically produces a certain kind of citizen or that advanced technologies are necessary to achieve robust forms of citizenship, but rather that different technological approaches and different conceptions of citizenship seem to resonate with and thus reinforce one another.

Coleman calls one such normative conception "info-lite" citizenship. He recounts the "widespread belief that the most that can be reasonably hoped for in a functioning democracy is for citizens to vote occasionally, trust elites to look after their interests and protest when directly injured."[77] This view of citizenship implies a high level of citizen uninterest in political information:

> According to this standard conception, citizens acquire rudimentary information about the world around them. They do not involve themselves in detailed comparisons between sources of information and have little interest in analyzing degrees of truth. They are utilitarians, wanting to know just enough about the world around them to get by, without having to devote long hours or deep thought to nuances of political messages.[78]

According to Coleman, a government catering to this model of citizenship would most likely be expected to use the web as an extension of unidirectional broadcasting.[79] The point would be to try to tell the government's story in a favorable light, unperturbed by actual journalism. Agencies might present opportunities for citizens to "write back," but

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76. *See* Stephen Coleman, *Making the E-Citizen: A Socio-Technical Approach to Democracy*, *in* CONNECTING DEMOCRACY: ONLINE CONSULTATION AND THE FUTURE OF POLITICAL COMMUNICATION (forthcoming 2011) (on file with author).

77. *Id.* (manuscript at 3).

78. *Id.*

79. *Id.* (manuscript at 4).

these communications would generally go nowhere, since they would not be integrated in any way into government decision making.

Coleman next identifies a conception of what he calls the "push-button citizen."[80] This is a model of citizenship in which members of the public, as individuals, are encouraged to petition the government, vote on both candidates and officials, and express their opinions in a variety of referenda. Citizens of this stripe are perhaps less passive than info-lite citizens, but the democracy they constitute is merely a "crude mechanism for majoritarian head-counting."[81] Governments catering to this model of citizenship might have all manner of online petitioning or referendum sites, but would regard the web more as a venue for the "aggregation of raw, uninformed and unrehearsed mass opinion rather than a means of cultivating the kind of civic debate that could result in more thoughtful policymaking."[82]

Coleman calls his most ambitious normative view "actualizing citizenship," in which the citizen is "a social actor characterized by multiple connections, weak ties, a reflexive approach to identity and belonging, a post-deferential attitude towards authority and a sense that political communication is a two-way street, entailing more than a flow of top-down messages from rulers to ruled."[83] Quoting Lance Bennett, Coleman explains that actualizing citizens accept responsibility "for the production and management of their own social and political identities"[84] and regard themselves as empowered to be fully present in the processes of government decision making. According to Coleman, "[G]overnments wanting to engage actualizing citizens in the coproduction of policy would be likely to focus upon three principal uses of the Internet: to share experiences, create opportunities for collaborative reflection and to promote ways of exposing ideas to public reason."[85]

What Coleman thus describes comes pretty close to an exact description of the FCC's furthest-reaching aspirations for facilitating participatory governance. Through blogs, rating and discussion applications, online workshops, and the like, the FCC is explicitly inviting the public to share experiences, engage in collaborative reflection, and critique ideas proposed both by the agency and by other citizens. Moreover, in making this discourse part of the official record, the agency is making the implicit promise that, to the extent justified by the persua-

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80. *Id.* (manuscript at 6).

81. *Id.* (manuscript at 8).

82. *Id.*

83. *Id.* (manuscript at 10).

84. *Id.* (quoting W. Lance Bennett, *Changing Citizenship in the Digital Age, in* Civic Life Online: Learning How Digital Media Can Engage Youth 1, 13 (W. Lance Bennett ed., 2008)).

85. *Id.* (manuscript at 12).

siveness of what citizens put forward, they will not only be heard, but integrated into the policy process.

If there is to be a critical mass of political support for a long-term FCC commitment to openness, transparency, and participation, then it would most likely come from members of the public who either now regard themselves in the way Coleman envisions or who are encouraged to develop that self-understanding by their experience of participatory governance. The agency would presumably face both the "carrot" of this constituency's political support and the "stick" of their outrage should the agency regress in its commitments. These are citizens, one would expect, who would communicate their views not only to the agency and to one another, but to members of Congress who hold agency purse strings and determine the scope of the agency's statutory authorities.

Coleman acknowledges that "a wealth of data show[ ] how little interest the public seems to have in political affairs."[86] In light of such data, it is tempting to regard his model of the "actualizing citizen" as the product of overoptimistic thinking. It is not difficult, however, to see evidence that large numbers of Americans—especially younger Americans—embrace something like this view of themselves, and many are deeply engaged in forms of political and cultural expression facilitated by the Internet. What is most intriguing about this development, from an FCC perspective, is that such citizens form a kind of natural constituency for the FCC because the agency is engaged directly in the protection and regulation of the very media of communication they regard as most central to their cultural identity. Getting the technologically enabled to pay attention to the FCC ought to be an easier job than getting them to attend to, say, the Department of Agriculture, although it would not be hard to make out a normative case that they ought to attend to both. If these Americans were activated as a watchful constituency to champion participatory governance at the FCC, their vigilance could be decisive in sustaining the agency ethos that Chairman Genachowski currently espouses.

The key point here is straightforward. Openness and transparency sound like easy things to achieve, collaboration perhaps only slightly more complex. Why not simply disestablish the practices that "close" government and that exclude Americans from engaging in policy deliberation? It turns out, however, that government always entails management, and managing open, participatory government is in some ways more complex and more costly than doing business less democratically. Numerous opportunities exist—and many are now being pursued—for the Genachowski FCC to proceed even more ambitiously down the road

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86. *Id.* (manuscript at 3).

towards the collaborative governance it is seeking to pioneer. Whether resources will be found to support those initiatives, and whether they are likely to extend to different administrations under different FCC leadership, depend not just on whether government openness and collaboration are right in principle. They will also depend on whether enough of the public cares to make any other way of doing business unacceptable.