

Whispering Into Princes' Ears: A Empirical Descriptive Analysis of Comments and Ex Parte Meetings at the Federal Communications Commission

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**Abstract:** The Federal Communications Commission (FCC) produces most of its regulations through informal notice-and-comment rulemaking. Under this process, the FCC promulgates a proposed rule and then solicits public comments before issuing a binding regulation. Its procedures also allow commissioners and staff to meet with regulated entities and their attorneys in on-going matters, but after these private, in-person meetings, parties must submit an “ex parte letter” listing the meeting’s attendees and the matters discussed. These letters describing face-to-face meetings are filed alongside public comments in the FCC’s electronic comment filing system (ECFS). In addition, the FCC relies upon ECFS database for types of activities other than rulemaking, namely adjudications, a category that includes spectrum assignment, merger approval, and enforcement.

This paper provides an empirical analysis of the approximately 4.6 million separate submissions and filings on ECFS during the period of 2006-2016 with special attention to comments and ex parte meetings. In this largely descriptive paper, we analyze this data to answer several questions: what areas appear to dominate the FCC’s attention, as measured by number of meetings and paper submissions; what does a “typical” FCC proceeding look like; which parties, law firms, and lobbyists dominate the FCC’s attention, as measured by number of meetings and paper submissions; and, finally, what types of activity seem most correlated the FCC action.

## Introduction

The Federal Communications Commission (FCC)'s Electronic Comment Database System (ECFS) provides a comprehensive document repository for virtually all business the agency conducts. The FCC, one of the most productive of federal agencies, promulgates most of its decisions through informal notice-and-comment rulemaking pursuant to the Administrative Procedure Act (APA).<sup>1</sup> Under this process, the FCC proposes a rule, usually in the form of a Notice of Proposed Rulemaking, and then solicits comments from the public. After receiving comments, the FCC must duly consider them and then, based upon these considerations, issue final rules which have the force of law.<sup>2</sup>

FCC procedures allow commissioners and staff not only to receive written comments but meet with regulated entities in on-going matters.<sup>3</sup> In the case of face-to-face meetings, parties must submit an "ex parte letter" listing the meeting's attendees and the matters discussed.<sup>4</sup> These letters, as well as the public comments and virtually all other material interested parties submit in these proceedings are filed in ECFS.<sup>5</sup> In addition to notice-and-comment rulemaking, the FCC uses a variety of adjudications for myriad determinations from awarding spectrum or satellite orbitals to enforcing its rules or deciding consumer complaints. Many of these proceedings also use ECFS.

The FCC issues notice-and-comment regulations, which have the power of law, pursuant to a statutory grant of authority from Congress. These grants frequently give broad, even unfettered power to the FCC. To take a particularly prominent example, section 201 of the Federal Communications Commission authorizes the FCC to set long distance telephone rates, mandate network interconnects, and set terms and conditions that are "just and reasonable."<sup>6</sup> Using this authority, the FCC set long-distance telephone rates and access charges for the entire country for 70 years as well as imposed an entire system of local competitive telephony during the 1990s.

But, these vast grants of authority raise the question of democratic legitimacy. Agencies are only accountable to voters indirectly through Presidential and congressional oversight. Therefore, agencies, in order to make a reasonable claim of democratic legitimacy, must exercise their vast discretion in close consultation with the public. The notice and comment process provides the mechanism for this consultation—and the basis for FCC's claim to exercise its authority informed by the citizenry.

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<sup>1</sup> 5 U.S.C. § 551 et seq.

<sup>2</sup> 5 U.S.C. § 553 ("After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose.").

<sup>3</sup> 47 CFR Ch. I, Subch. A, Pt. 1, Subpt.—Ex Parte Communications.

<sup>4</sup> 47 C.F.R. § 1.1206 ("A person who makes an oral ex parte presentation subject to this section shall submit to the Commission's Secretary a memorandum that lists all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and summarizes all data presented and arguments made during the oral ex parte presentation.").

<sup>5</sup> 47 C.F.R. § 1.419 ("Participants that file comments and replies in electronic form need only submit one copy of those comments, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments.").

<sup>6</sup> 47 U.S.C.A. § 201.

Complicating this picture is that the FCC is an independent agency. There is no specific constitutional or statutory definition for “independence.” At its most basic, independence typically refers the statutory limit on the President’s power to remove agency heads only “for cause” as opposed presidential removal at will—the condition under which all executive agency heads serve. But, there are also a host of other features that are associated independent agencies. These include agency leadership by multimember commission or board and partisan requirements for commissioners, independent litigating authority, budgetary independence, and agenda control. (Datla and Revesz, 2013). Innovative, important work has brought rigor to the literature by setting forth quantified measures of independence. (Selin, 2015)

Of course, how or whether the rulemaking process results in rules that are, in fact, free from untoward political influence and enlightened by agencies’ subject matter expertise remain controversial questions. Defenders of the administrative process argue that notice-and-comment can mimic the democratic process, producing rules that reflect popular concerns elevated by agencies’ subject matter expertise.<sup>7</sup> Critics, such as those emerging from public choice and positive political theory, cast a colder gaze to the process, seeing politicization and/or corporate capture of agency processes.<sup>8</sup> Critics see politicization even in independent agencies that ostensibly maintain independence from the executive.<sup>9</sup>

Given that agencies’ output dwarves Congress’s legislation, whether or how agencies respond to public input is question central to our democracy. Unfortunately, very little, large scale empirical data is available to understand how agencies work. The enormity of agency output has precluded serious study of the impact of comments and ex parte meetings on agency decisions—let alone reliable statistics that gauge regulatory output. Important and serious work, of course, exists and is discussed below, but it perforce relies upon samples of enormous corpora.

Surprisingly, the most basic information: measurement of agency output (orders) and input (comment, ex partes) are largely absent. Agencies provide annual reports, but they are often incomplete, themselves, unwieldy, and can be self-serving. Similarly, the Administrative Counsel of the United States (ACUS) produces many reports but does not give a sense of where and with whom agencies spend their time.<sup>10</sup>

As a step towards providing some answers, we downloaded the entire ECFS filings records for a ten year period, 2006-2016, which includes approximately 4.6 million separate submissions and filings. Using this data, we were able to provide detailed analysis of what the FCC does with its time, i.e., the matters that occupy most of its efforts and concerns. We measured which proceedings contain the most submissions (comments, ex parte, and others) as well as FCC output in the form of orders. We believe this to be the most complete analysis of any agency’s productivity.

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<sup>7</sup> Nina A. Mendelson, Rulemaking, Democracy, and Torrents of E-Mail, 79 Geo. Wash. L. Rev. 1343 (2011) (“An agency’s public proposal of a rule and acceptance of public comment prior to issuing the final rule can help us view the agency decision as democratic and thus essentially self-legitimizing.”).

<sup>8</sup> Steven P. Croley, Theories of Regulation: Incorporating the Administrative Process, 98 Colum. L. Rev. 1, 5 (1998); Paul J. Quirk, Industry Influence in Federal Regulatory Agencies (1981).

<sup>9</sup> See, e.g., Samuel Huntington, The Marasmus of the ICC, 61 Yale Law Journal 467 (1952).

<sup>10</sup> See, e.g., <https://www.acus.gov/publications>.

We were also able to provide analysis of who works with the FCC, providing detailed analysis of which law firms (and lawyers) write the most comments and have the most ex parte meetings. In addition, we were able to determine which firms and lawyers meet the most with which commissioners.<sup>11</sup> Last, we perform some exploratory correlations examining the drivers of agency action.

## I. Existing Literature: Drivers of Decision-making at Agencies

Empirical studies of agency output center largely around voting behavior at independent agencies and the importance of political actors. For instance, it has been shown that political ideology influences FTC and NLRB commissioner decisions.<sup>12</sup> (Wood & Waterman, 1991; (Calvert, Moran, and Weingast, 1987). Devin and Lewis (2009) show how appointment procedures, in fact, block policy choices of the president. And, indeed, there is a long-standing debate as to whether the President (Meier, K.J., 1980). or Congress (Seidman, H. 1980) play a dominant role in guiding independent agency behavior.

The empirical work on political influence at the Federal Communications Commission is somewhat limited. The existence of a “revolving door” has been studied at FCC, and it has been shown that background, exit plans, as well as presidential influences and congressional influences play a role in FCC voting.<sup>13</sup> In addition, empirical work on FCC voting from an earlier period (1953-1967) shows influence of ideological and partisan influences.<sup>14</sup> (Canon, 1969) Taratoot provides evidence that administrative law judges have an ideological component to their decision-making.<sup>15</sup> Candeub & Brown (2009) and Ho (2008) show that ideological concerns also drive voting by the FCC commission. Nixon (2017) shows that agenda setting is difficult to do by powerful interests, suggesting the primacy of political or professional concerns.

What has been less studied is the empirical effect of lobbying on agencies and, in particular, independent agencies, such as the FCC. Important work has shown that, indeed, lobbying affects final ruling in notice-and-comment rulemaking. (Yackee, 2008) But, enormous gaps exist in understanding basic aspects of lobbying in the United States—and our data speaks to these questions.

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<sup>11</sup> We note that that our downloads of ex parte notices are within 1% of the total number. Because file metadata does not always include which commissioners are involved in a particular meeting, we analyzed the text within the ex parte notice letters. Our measurement of entity names is within a high range of accuracy given the txt files in ECFS. Better results might be made possible by an independent download of the original PDFs and subsequent OCR-ing.

<sup>12</sup> Wood, B., & Waterman, R. (1991). The Dynamics of Political Control of the Bureaucracy. *American Political Science Review*, 85(3), 801-828. doi:10.2307/1963851; Calvert, Randall, Mark Moran, and Barry Weingast. 1987. “Congressional Influence over Policy Making: The Case of the FTC.” In *Congress: Structure and Policy*, edited by Mathew McCubbins, and Terry Sullivan, 493–522. New York: Cambridge University Press.

<sup>13</sup> Jeffrey E. Cohen, The Dynamics of the “Revolving Door” on the FCC, Vol. 30, No. 4 (Nov., 1986), pp. 689-708 *American Journal of Political Science*.

<sup>14</sup> Canon, Bradley C. 1969. “Voting Behavior on the FCC.” *Midwest Journal of Political Science* 13:587–612

<sup>15</sup> Cole D. Taratoot, The Politics of Administrative Law Judge Decision Making at the FCC in Comparative Licensing Cases, *Justice System Journal* Volume 38, 2017

Cameron and de Figueiredo identify three major questions confronting the scholarship on lobbying. Findings seem divided on these questions. First, it is difficult to determine whether lobbyists derive value from whom they know or what they know. For instance, Cameron & de Figueiredo (2013) develop a model based on expertise and test its implications using state level panel lobbying data. They find substantial empirical support in the intensity and targeting of lobbying for a model based on expertise. On the other hand, Blanes i Vidal et al. (2012), find a 23% decline in a lobbyist's revenue after the Senator on whose staff the lobbyist formerly served is defeated in an election or retires from Congress.

Second, it is unclear whether lobbyists focus on decisionmakers who are allied with their ideological or position or opposed to them. According to Cameron and de Figueiredo, a growing consensus in the literature is emerging that holds that lobbyists target both allied and marginal legislators on both sides of the issue. And, third, perhaps the \$64,000 question, how effective interest group lobbying is in obtaining policy or other outcomes—and whether this effectiveness can be measured.

Even though our findings are largely descriptive, the comprehensive scope of our data provides insight to all three questions, at least at the FCC. Our data gives complete data on which individuals and firms make written and oral submissions on which areas—so that we can see whether individuals and firms “specialize” on individuals or subject areas at the FCC. Our data provides insight to whether lobbyists “specialize” on commissioners from a particular party, giving strong insight into the partisan nature of lobbying. Last, the inferential findings give some insight into whether certain types of lobbying are associated with agency action.

## II. Methods: The Electronic Filing Comment System

In 1996, the Federal Communications Commission created the Electronic Filing Comment System as ECFS serves as its repository for official records in the FCC's docketed proceedings from 1992 to the present. This tool allows you to research any document in the Electronic Comment Filing System (ECFS) including non-electronic documents that have been scanned into the system.<sup>16</sup>

In addition, the FCC typically posts its orders on the system—although not always consistently; there are discrepancies between the ECFS and the Federal Communications Commission Record, which is the official promulgation of agency orders that is published in paper. In addition, not all proceedings used ECFS. For instance, it is our understanding that certain proceedings in the International Bureau and Enforcement Bureau do not use ECFS. However, at least for notice-and-comment rulemaking, save those few proceedings filed under seal, the ECFS is a complete record.

The corpus is enormous with roughly 4.6 million records during our time of study: 2006 to 2016. The ECFS is organized by proceedings, indicated by a number which reflects the calendar year it was commenced and the nature of the proceeding. For example, 14-28 indicates that the proceeding began in 2014 and is the 28<sup>th</sup> proceeding of that year. The proceedings generally

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<sup>16</sup> <https://www.fcc.gov/general/fcc-search-tools>

reflect the subject matter of the bureau in which they are filed (e.g., Wireline Competition, Wireless, Media) and, as our results, show the vast majority of proceedings have between one and four filings in the ECFS. Most have a “classic” form of a few comments, replies and then an order.

The data for the time period of 2006-2016 also reveals the rise of the “bot.” Starting in 2012, technology enabled one or several people to produce mass public comments. Up to 2014, the yearly output of ECFS data stayed relatively steady, but suddenly, the number of comments shot up. As has been discussed widely, the cause of this extraordinary public input was the opening of the so-called network neutrality proceeding, 14-28, Protecting and Promoting the Open Internet, which attracted “fake comments.”<sup>17</sup> Our results confirm this phenomenon.

Another problem with the data is that it is classified by the user. That feature introduces error into the data, i.e., person submits what he or she believes to be a “letter” but is actually a “comment.” When this data is analyzed in a statistically rigorous way, error ratios based upon sampling will have to be developed.

Using python, we downloaded all ECFS filings from 2006 to 2016. Using postgres, we constructed a database of these documents that includes metadata as well as text. Using SQL and Tableau, we built data the visualizations for this paper. For the purposes of this paper, we only included textual comments for the ex parte meetings, using the text from the ECSF interface.

### III. Results

We report our results in three main groupings. First, most generally, we want to get a more granular sense of what the FCC does with its time and effort. Second, we want to describe who are the parties, firms, and individuals who dominate the FCC’s attention. Third, we focus on ex parte (in person) meetings to get a particular sense of the individuals monopolizing the information commissioners receive as well as the partisan nature of the information exchange.

#### A. What the FCC does

Getting a sense of what the FCC does—or any agency—is difficult. Simply reviewing the number of orders in the FCC record does not show the amount of public concern, and agency focus, on any one area. For example, a proceeding that lasts a decade and generates 2.1 million comments may have very little output, perhaps issuing only one or two orders. By contrast, another proceeding may have over 4400 in-person meetings and generate 111 orders. The metrics to measure proceedings’ significance is not obvious.


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<sup>17</sup> Mike Snider, Net neutrality comments mostly came from bots and fake email addresses, Pew finds USA TODAY, (Nov. 29, 2017), *available at* <https://www.usatoday.com/story/tech/talkingtech/2017/11/29/net-neutrality-comments-mostly-came-bots-and-fake-email-addresses-pew-finds/904439001/>.


Figure 1: Top Activities, How to Determine?

### Important FCC Metrics: Orders, In-Person Meetings, Comments


Proceeding	Proceeding Description	Orders	In-Person Meetings	Comments
14-28	Protecting and Promoting the Open Internet	3	839	2177788
10-90	In the Matter of Connect America Fund A National Broadband Plan for Our Future High-Cost Universal Service Support.	111	4416	28227
02-6	In the Matter of Schools and Libraries Universal Service Support Mechanism	130	306	1914



Many  
Orders



Many  
In-Person  
Meetings



Many  
Comments

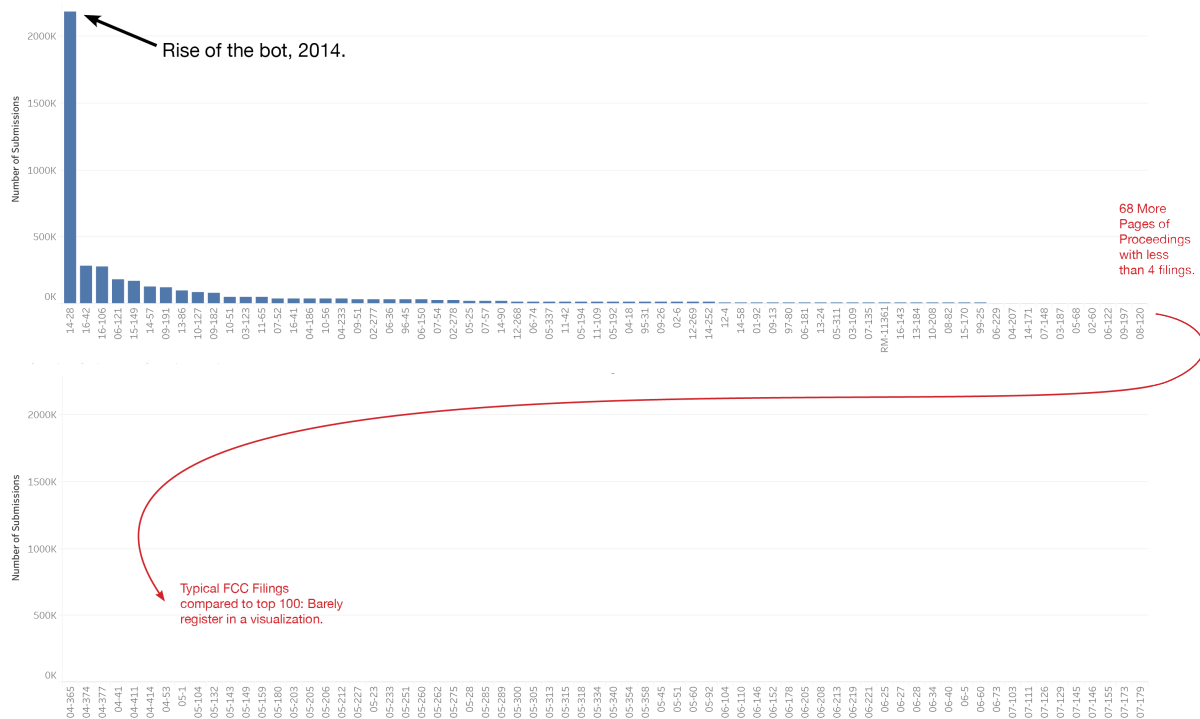
Consider the proceedings in Figure 1. By comments, the network neutrality proceeding, the 2014 “Protecting and Promoting the Open Internet” wins. Of course, that proceeding resulted in an enormous output of comments—but it was the broadband plan that produced the most ex parte meetings. Meanwhile, a proceeding on the universal service e-rate for schools produced the most orders.

To lay down a foundation for our study, we started with a gross count of filings of any sorts per proceeding. Specifically, we wanted to know the largest proceedings and their subject area. In using the raw measurement of all filings within a proceedings, we show that the FCC attention is dominated by a handful of large proceedings. Interestingly, for the vast majority of proceedings, the median number of filings is only 4.

Figure 2: The Heavy Hitters vs. The Long Tail

### Long Tail of Filings by Proceeding

Note that half of all proceedings have less than 4 filing records. These filings show no data on the x-axis compared with the massive amount of public comments on proceeding 14-28, "Protecting and Promoting the Open Internet," which has over two million filings.



The top 20 proceedings represent 85% of all filings. The top 100 proceedings represent 96% of all filings. Without Protecting and Promoting the Open Internet, GN Doc. No. 14-28, the so-called network neutrality order, which generated millions of comments, the top 20 proceedings represent 74% of all filings and the top 100 represent 94% of all filings.

The data allows us to make certain generalization about the nature of FCC proceedings. In the vast number of the 4593 proceedings in our sample, a few documents conclude the matter; these 4300 or so “average proceedings” can be called “The Long Tail.” However, as shown in the head of the graph, the top 100 proceedings have much more filings.

Merely looking at the top proceedings overgeneralizes administrative work. The “Bureau” is an important concept in the FCC agency structure. Each bureau concentrates on a different subject matter and, therefore, functions in a very different regulatory environment. For the purposes of this paper, we grouped the Bureaus in this manner:



Bureau	Type of Activity
Mass Media Bureau	Cable Regulation, Radio and Television Broadcast
Enforcement Bureau	Complaints, Violations
General Bureau	Matters of interest to many bureaus
Wireless Telecom Bureau	Cellphones
Wireline Competition Bureau	Telephones and internet access
Everything Else	International, Consumer Protection, Engineering, etc.

Breaking down by bureau, it appears as though by pure filings, the Mass Media Bureau pulls ahead of the other bureaus in FCC activity. Mass Media attracts the most amount of comment from the public probably because of the public's interest in cable, television and radio (Figure 3). Still, by Bureau, outside the top 100 proceedings, the number of filings per proceeding is generally small, in the range of 1-15 filings (Figures 3 & 4).

Figure 3: Size of Proceedings Broken Down by Bureau

Box and Whisker, Overall Filings per Proceeding by Bureau

Here we see the Mass Media Bureau is the dominant bureau in overall filings per proceeding. A few outliers, in 2016, pull the y-axis up to 300K, far outside the top whisker in Mass Media, which lies at 83,000.

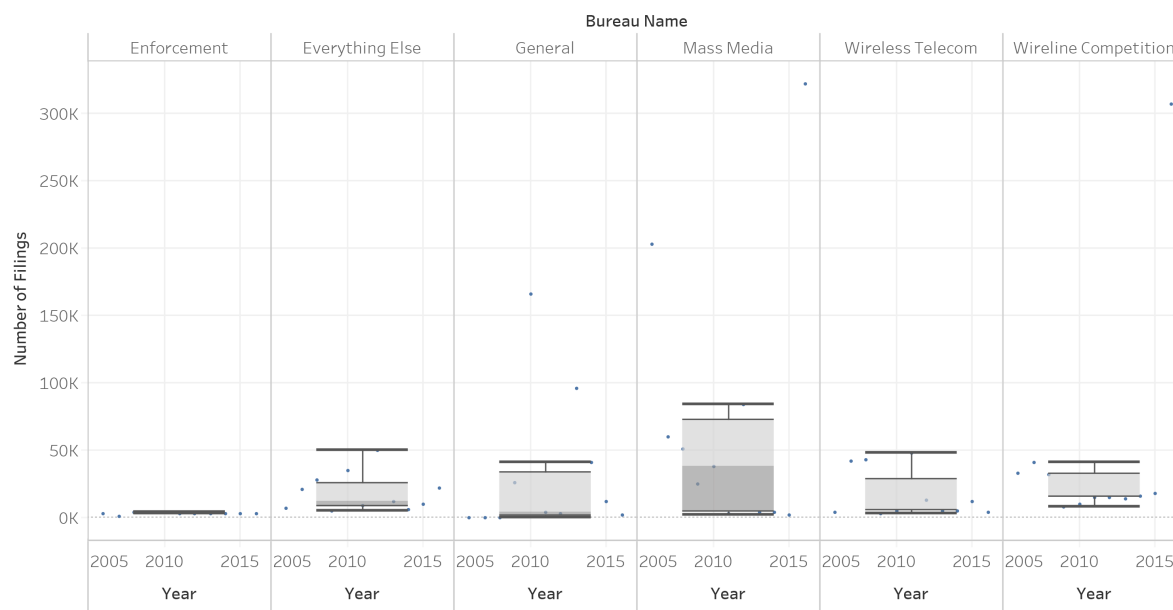
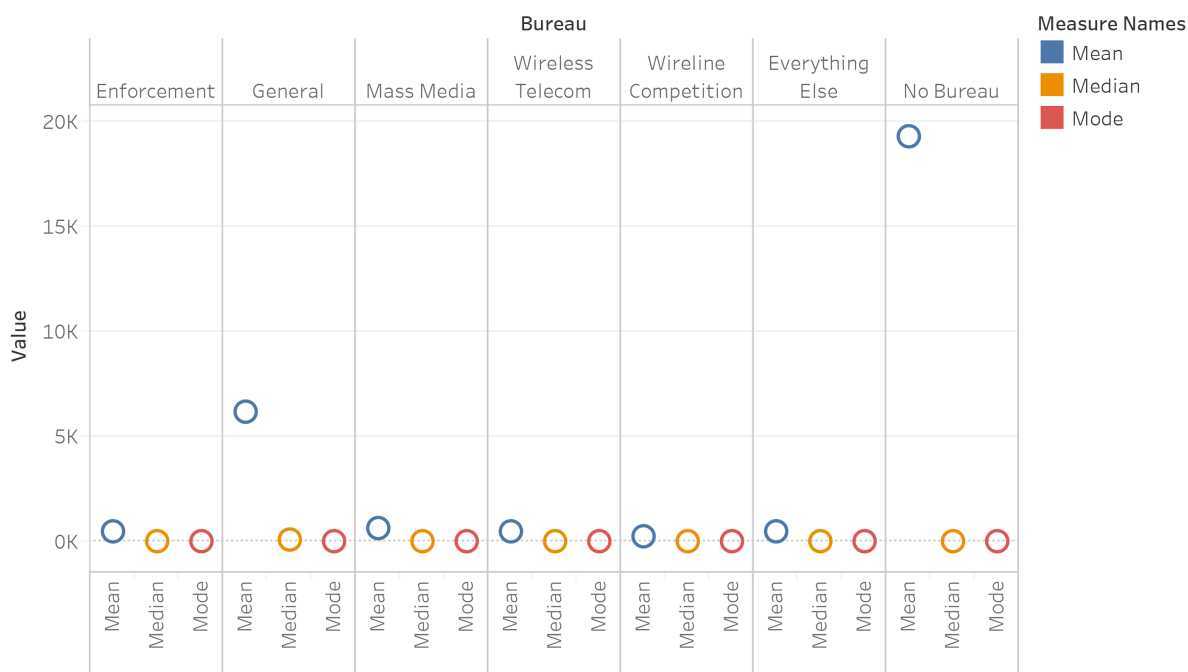


Figure 4: Mean, Median, Mode of filings by Bureau

### Mean, Median, Mode for Filings Across Bureaus

Note that the Median and Mode for all proceedings across Bureaus is extremely low, in the range of 1-12 filings. So the typical proceeding generates little documentation. Net Neutrality proceedings, on the other hand, generated vast public comments, causing the "General" and "No Bureau" areas of the FCC average to soar. We believe that "No Bureau" is the result of some form of filing quirk in the public solicitation form.



### B. Who makes comments and other written submissions to the FCC

The question of who submits to the FCC illuminates the source and nature of the information that the agency uses to make decisions. Administrative theory maintains that agency decisions gain democratic legitimacy when they consult with and solicit comment from a broad swath of society. Thus, the FCC should receive comment from a broad swath of groups of individuals and groups.

To some degree, data supports this notion. Certainly, the FCC receives massive amounts of comments. Even excluding the network neutrality proceedings, there are over 2.45 million submissions for the period under study. Further, the FCC does receive comments from a broad swath of individuals. The comments on "Protecting and Promoting the Open Internet," GN 14-28, reflect this myriad input.

Sample Comments from the public:

*“Compromizing [sic] internet neutrality is ridiculously outrageous and grotesque, you must be kidding” — Massoud Stephane, June, 17, 2014*

*“The internet isn't broken, it is phenominal. Don't ruin something so incredible, preserve net neutrality!” — Alex Baker, June, 13, 2014*

*“Just who does Tom Wheeler [FCC Commissioner] work for? The American people? Or the big internet providers? I always thought it was for we, the American people, who use and rely on the "internet's availability! Apparently I was misinformed. Or was I just duped?” — John Andes, June, 15, 2014*

Contrast the raw feelings of many public comments with the polished writing from corporate filers with professional authors and law firms:

*“On August 5, 2015, NTCA filed comments in this proceeding urging the Commission to make permanent the small company exemption from enhanced reporting requirements that were adopted in the 2015 Open Internet Order” — Joshua Seidemann, NTCA-The Rural Broadband Association, September 8, 2015*

*“Akamai continues to support the Commission’s goal of finding the best approach to protecting and promoting Internet openness. On whatever legal theories the Commission ultimately proceeds, the Open Internet Order should protect consumers and innovation at the edges without stifling or reversing important technological improvements in the Internet’s “middle mile” that have reduced congestion and benefited all Internet participants.” — Scott Blake Harris, Harris, Wiltshire & Grannis LLP, filing for Akamai Technologies, Inc., February 9, 2015*

Again, excluding the network neutrality comments, only 5% of all filings have a law firm attached. This undercuts the notion that elite cadre of law firms dominate the FCC’s attention. Indeed, top 20 law firm filers are only 1% of all filings total—i.e., the elite comments are dwarfed by the comments from the masses. Similarly, the top 20 Filers with a bureau are 2% of all filings, and the top 100 Filers with a bureau are 5% of all filings

Yet, despite a broad group of submitters, submissions appear to follow a power law with a long brord tail but with certain players dominating at the highest ends. In other words, just as with proceedings, there is a very long tail for filers and law firms, with a few filers and law firms at the top make disproportionate contributions.

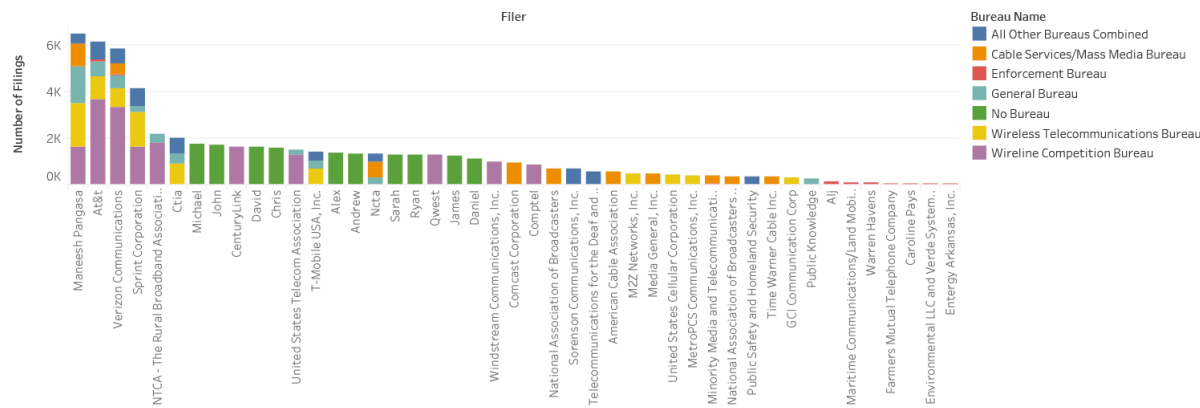
Not surprisingly, slightly different patterns emerge at the bureau level than at the FCC-wide level. Consider Figures 5 and 6. Figure 6 contains the top filers during the period studied. The network neutrality proceeding of course introduced numerous filers, such as Alex, Ryan, and David, who are probably bots or consumer activists.

Figure 4

#### FCC Top Filers, Both Corporate and Individual

10 Year Filing Period, 2006-2016

Note the rise of the public comments, indicated by green, or "No Bureau." In 2014, these filers began to fill the FCC's database at an unprecedented rate. Additionally, one individual, Maneesh Pangasa, released a blast of comments in 2012 that targeted many FCC Bureaus, making him the top Filer of the decade.

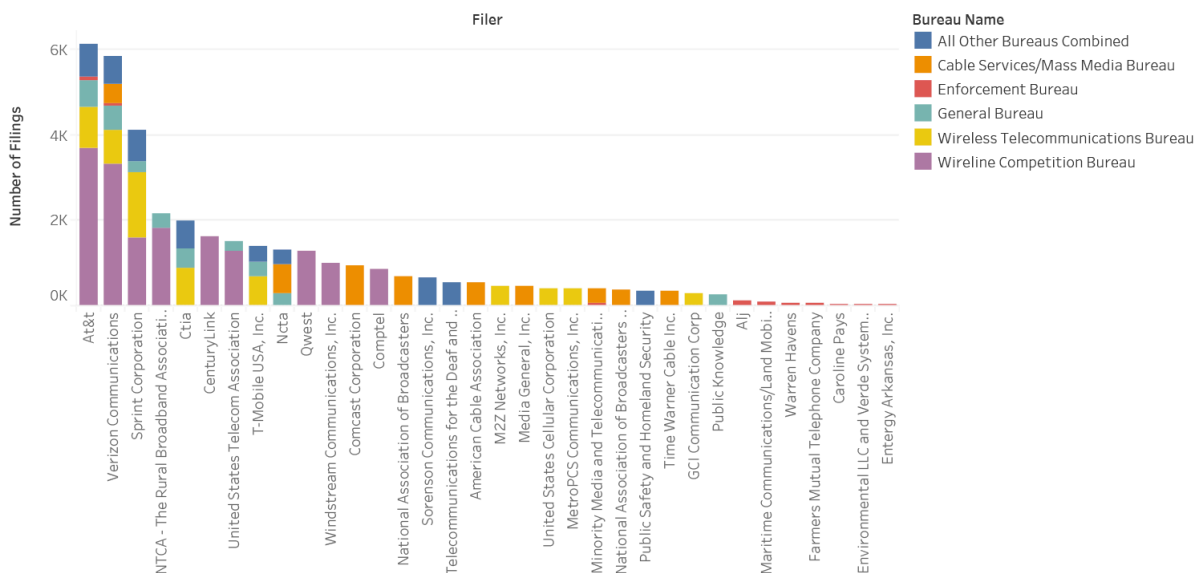


Once, however, the network neutrality proceeding, 14-28, is excluded these unusual commenters disappear.

Figure 5

#### FCC Top Corporate Filers

10 Year Filing Period, 2006-2016



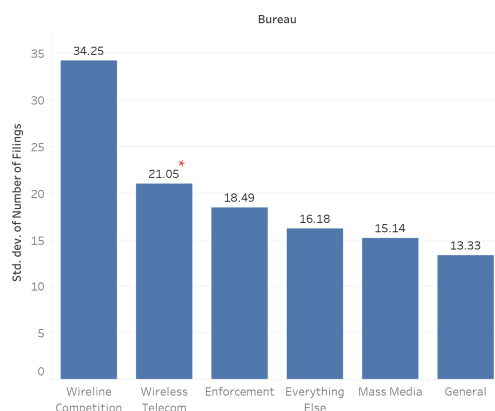
And, again, there seems to be a power law at play with the big players making highly disproportionate contributions with a thick tail of small, but still significant files. Also notice in Figure 5 that some firms, like AT&T, are present on various bureaus, most parties have more narrow regulatory concerns and only file with one bureau.

Drilling down into the data, one sees similar patterns for law firms on a bureau-level basis that we saw on an FCC-wide basis. Consider the Wireless Bureau. Figure 6 and 7 show how a handful of firms dominate law firm filings in the Wireless Bureau. Most law firms submit only a handful of filings with a handful of “superstars” that are, as with Lukas Nace at the wireless bureau., 59 times the standard deviations above mean.

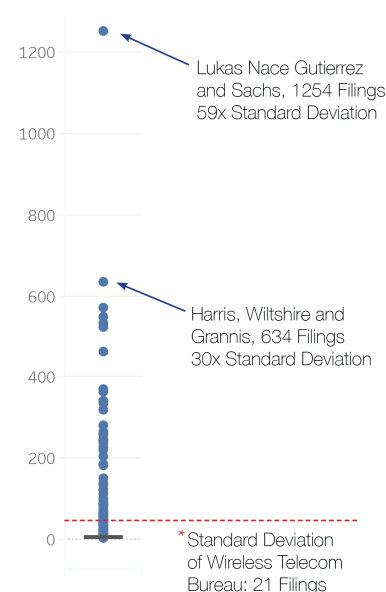
Figure 6

Some Lawfirms Far Exceed Others in Filings and Influence at the FCC Bureaus

Standard Deviation of Filings by Lawfirms to Bureau  
One can see from the bar chart below that the standard deviation of the number of filings to the FCC per lawfirm is fairly low, with the highest being around 34 for the Wireline Competition Bureau. Thus, there is a long tail of firms that file only a few times.



Wireless Telecom Bureau, Top Lawfirms Compared to All Lawfirms, 2006-2016



The top players do not vary over time—with the exception being the citizen activists of the network neutrality proceeding. Rather, the top filers and law firms remain consistent over time on the bureau level as Figures 7 to 11 demonstrate.

Figure 7

FCC Mass Media Bureau, Top 10 Filers  
Number of Filings over Time, 2006-2016

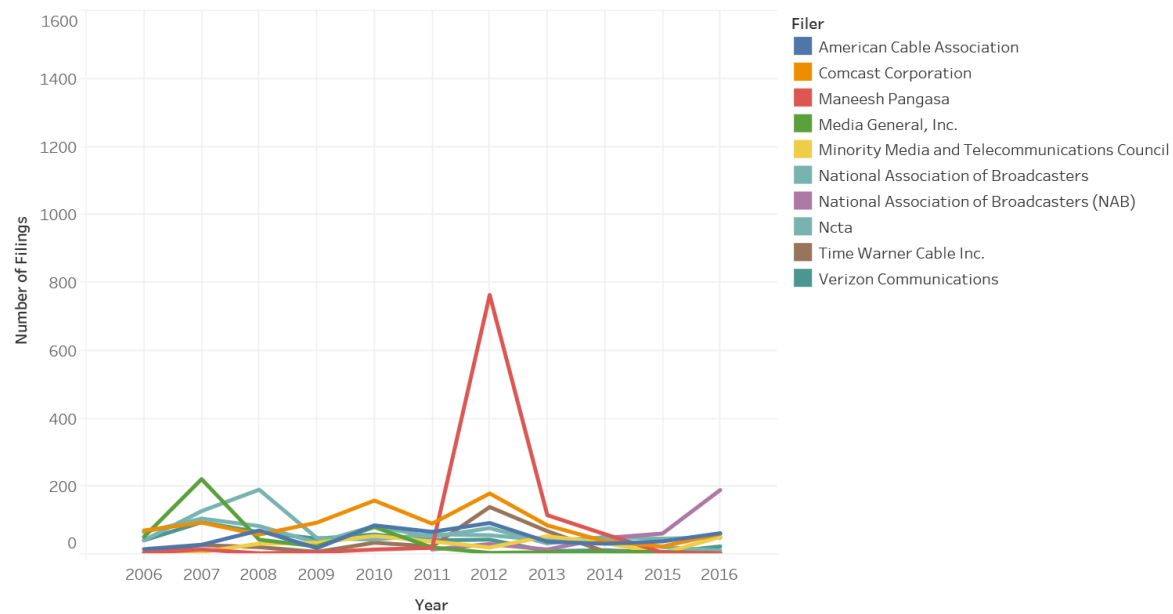


Figure 8

FCC Wireline Competition Bureau, Top 10 Filers  
Number of Filings over Time, 2006-2016

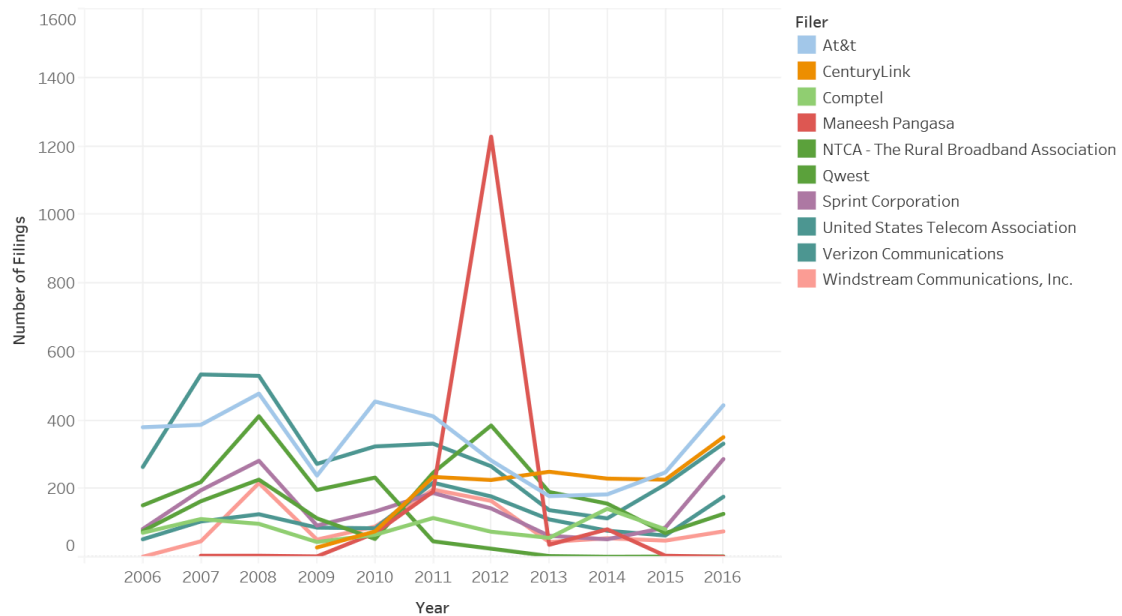


Figure 9

FCC Wireless Telecom Bureau, Top 10 Lawfirms  
Number of Filings over Time, 2006-2016

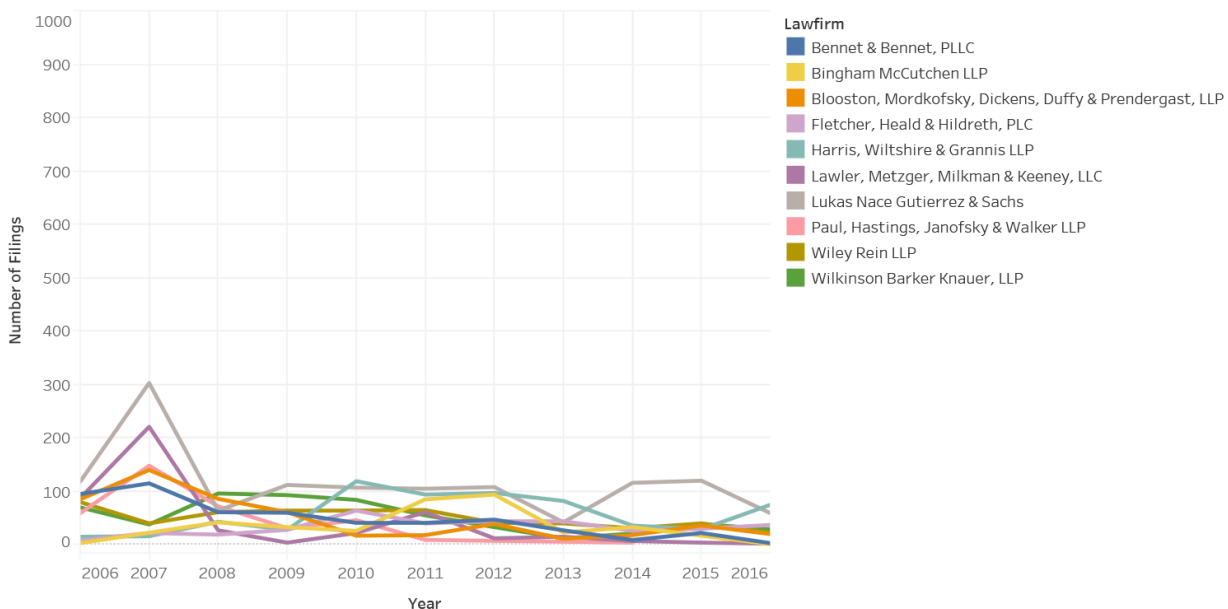


Figure 10

FCC Mass Media Bureau, Top 10 Lawfirms  
Number of Filings over Time, 2006-2016

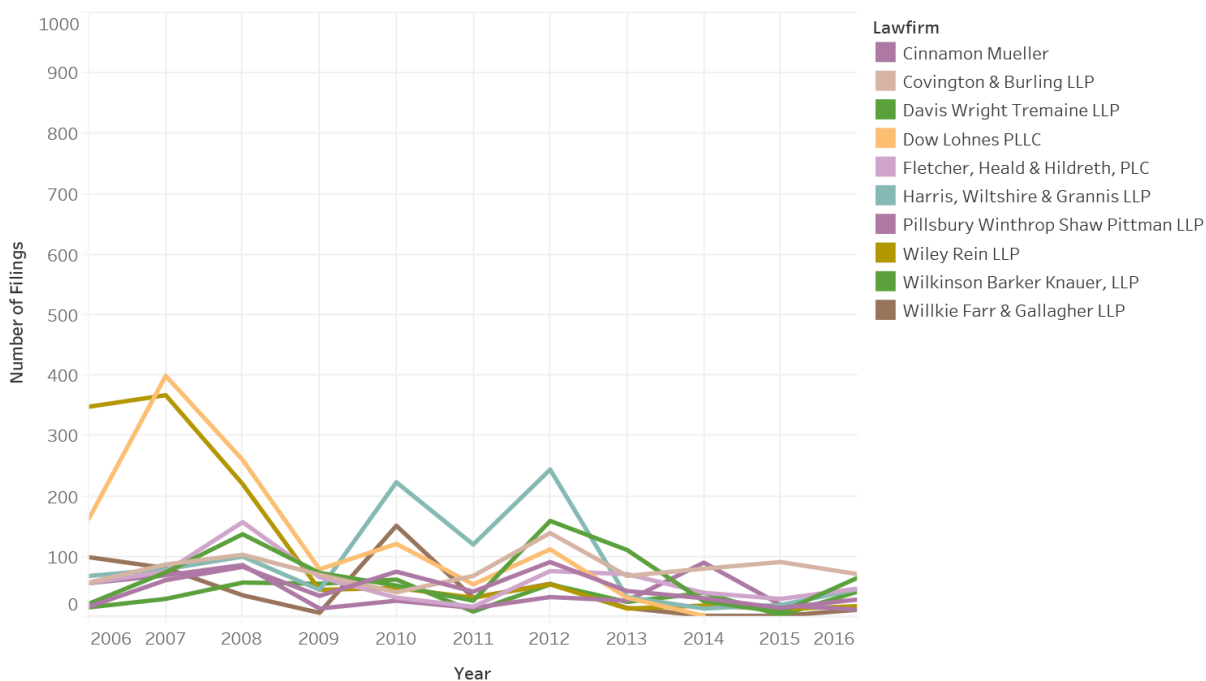
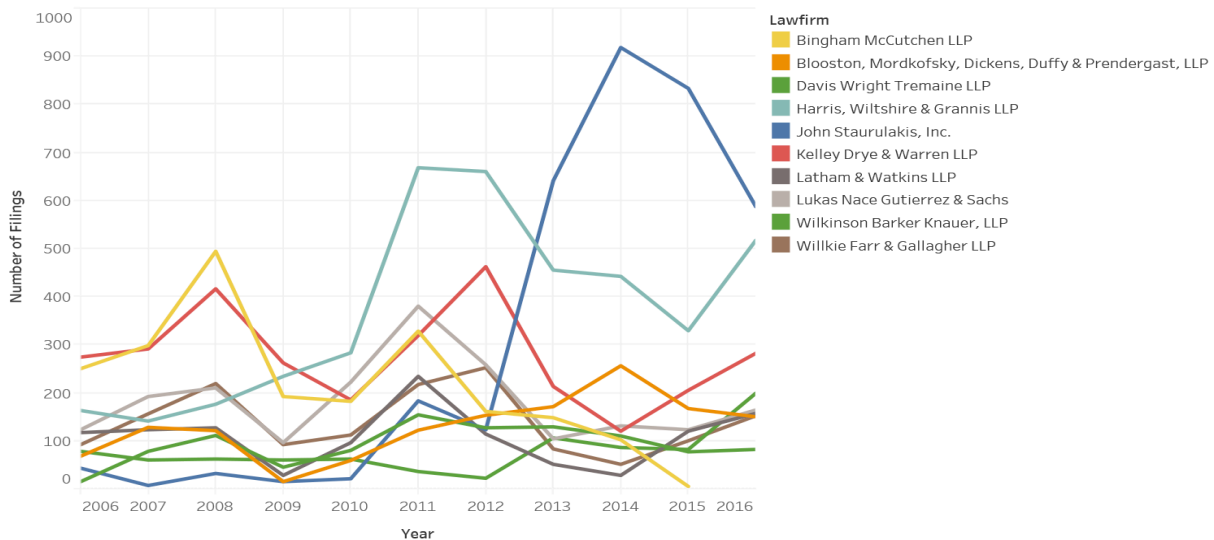


Figure 11

FCC Wireline Competition Bureau, Top 10 Lawfirms  
Number of Filings over Time, 2006-2016



The power law-like nature of the distribution of filers is demonstrated again by looking at the average number of filings per filer. While the figures above show that the “heavy hitters” can make well over 1000 submissions in one year, most submitters make closer to one a year. Figure 12 shows that consistent over bureaus the mean and medians of filings per filers is close to one.

Figure 12

Mean, Median, and Standard Deviation for Filers to Bureaus

Note that the average and median number of filings per filer is extremely low, under 2. The standard deviation maxes out at 6. Thus, Corporate Filers in the range of 1600 filings in a year are “high rollers” in the FCC game.





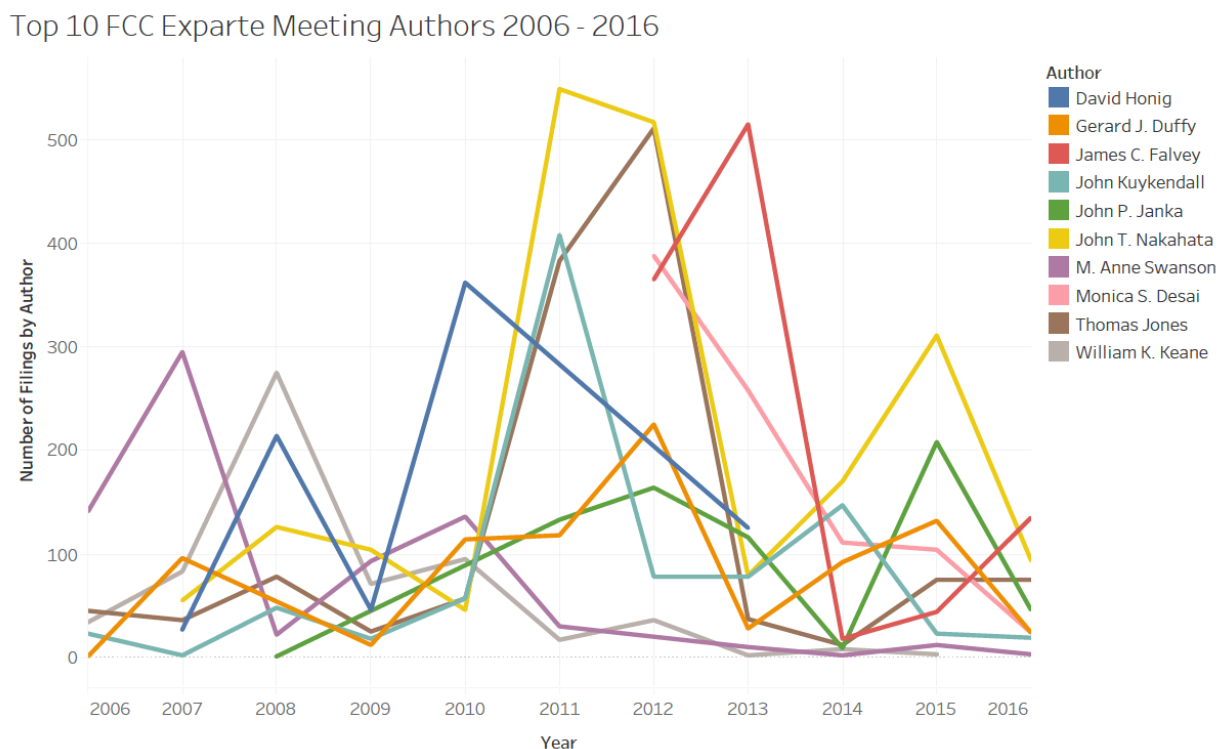
### C. Ex Parte Submissions

An analysis of the ex parte submissions brings a powerful lens through which to view who influences the FCC. As discussed above, the FCC operates for rulemaking under a so-called “permit but disclose” model where commissioners and staff may meet face-to-face with interested parties provided the meeting is noted in a letter to the Commission, which is filed on ECFS. Obtaining meeting, of course, reflects a significant investment of time and money—and reflects to some degree the ability of the meeting obtainer to manipulate inside contacts.

What we observe is that unlike comments in general ex parte meetings appear to be a more elite process. There were over 87,000 ex parte meetings between 2006-2016. Of these in-person meetings, 43% were filed with attorney representation. The top 100 law firms comprised 87% of such filings, meaning that the top law firms dominate the face-to-face interactions with FCC Commissioners.

Not surprisingly, the filers follow a similar path. Of the 87,000 in-person meetings, 99% recorded a filer. The top 100 filers comprised 42% of such meetings. To understand the power of such filers, consider a filer like Verizon, who filed over 4400 times with the FCC and had over 2600 in-person meetings. Now compare Verizon to a persistent individual filer, like Maneesh Pangasa, an archetypal citizen activist, who filed over 7000 submission in a two-year period, but managed just 22 in-person meetings.

Figure 13



The effectiveness of ex partes is of course a causal issue beyond the scope of a descriptive paper. Nonetheless, ex partes are most strongly correlated with agency action, and are much more strongly correlated than any other single type of submission. To obtain meaningful results, however, we must make distinctions among the types of proceedings, specifically between rulemaking and adjudications. In most adjudications, such as spectrum allocation or merger approval, the FCC must act and ex partes are generally not allowed. In contrast, action is generally discretionary for rulemaking and ex partes are permitted.

Figure 14: Adjudications

Adjudication Correlation					
	<i>all_count</i>	<i>adjud_count</i>	<i>adjud_action_count</i>	<i>congress_count</i>	<i>misc_count</i>
<i>all_count</i>	1				
<i>adjud_count</i>	0.085452428	1			
<i>adjud_action_count</i>	0.029222681	0.483065562	1		
<i>congress_count</i>	-0.102414531	-0.043143973	-0.05610364	1	
<i>misc_count</i>	0.050643268	0.688984535	0.363647344	-0.045281511	1

All count is a measure of all filings in the docket, with *adjud\_count* a measure of documents associated with adjudications and *adjudication\_count* being FCC actions in a docket. And, not surprisingly there is a strong correlation between adjudication filing and FCC adjudication actions.

Figure 15: Rulemaking

	<i>all_count</i>	<i>congress_count</i>	<i>misc_count</i>	<i>exparte_count</i>	<i>rules_count</i>	<i>rules_action_count</i>
<i>all_count</i>	1					
<i>congress_count</i>	-0.102414531	1				
<i>misc_count</i>	0.050643268	-0.045281511	1			
<i>exparte_count</i>	0.125413473	-0.057414819	0.451272308	1		
<i>rules_count</i>	0.999849702	-0.091282487	0.031766812	0.112167379	1	
<i>rules_action_count</i>	0.029222681	-0.05610364	0.363647344	0.575243877	0.015355291	1

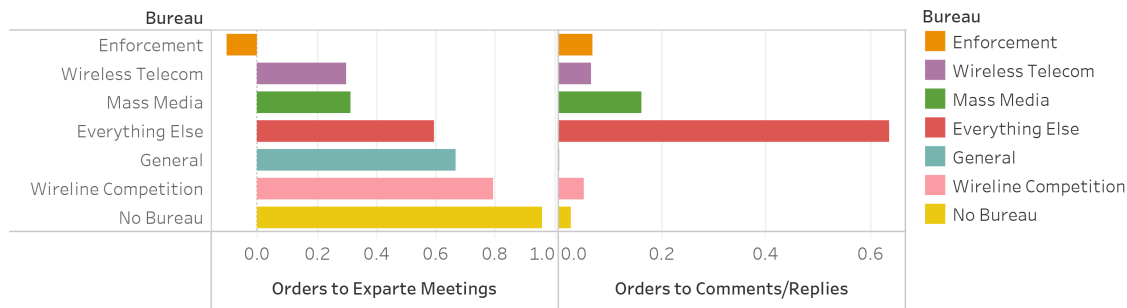
In rulemaking, there is a fairly weak correlations between rulemaking submissions (*rules\_count*) and FCC's rulemaking actions. But, there is a *very* strong correlation between ex partes and FCC rulemaking actions.

The importance of the ex partes relative to comments is found when the data is broken down by bureau.

Figure 16

## Correlation Between Orders, Exparte Meetings and Public Comments

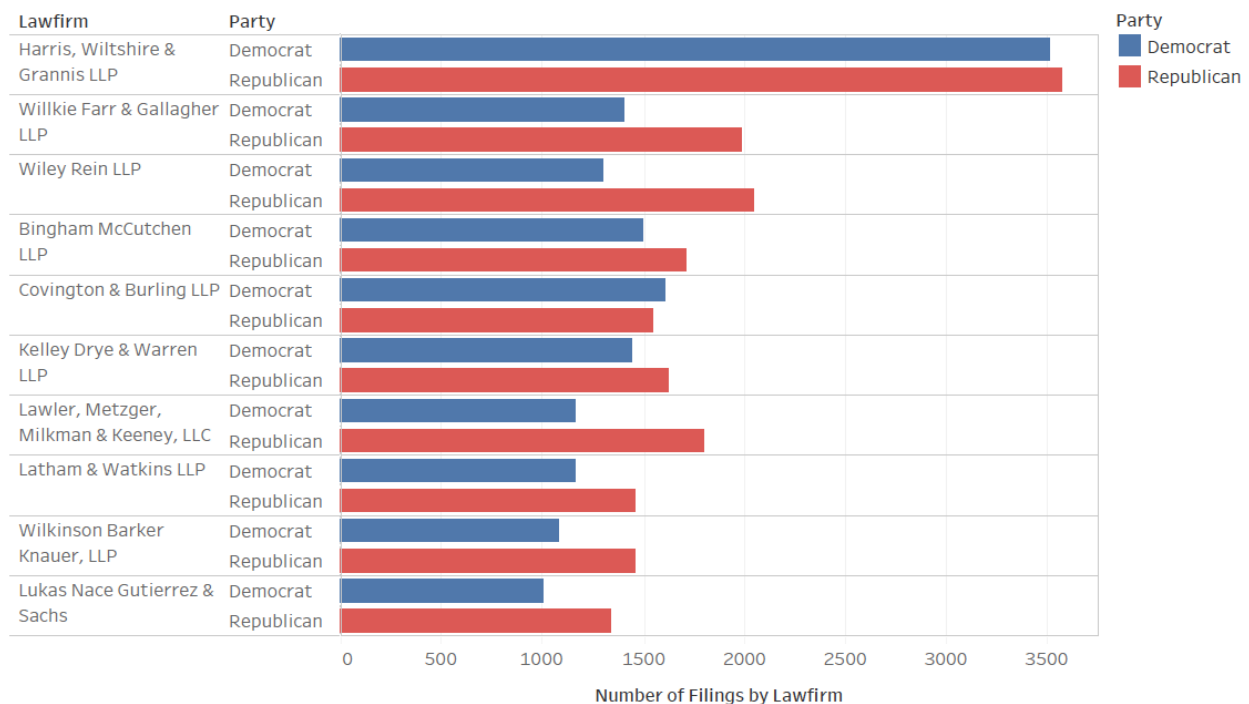
Some bureaus have a high correlation between exparte (in-person) meetings and orders issued, with the exception of the Enforcement Bureau. On the other hand, public comments and replies seem to have little correlation to output in the most prolific bureaus. The smaller bureaus, when lumped together, correlate more strongly to public comment.



We do not see a partisan specializing in ex parte meetings. The high-flier FCC supplicants appear rather non-partisan.

Figure 17

## Top 10 Lawfirms Conducting Exparte Meetings with FCC Commissioners by Commissioner's Political Party



Last, the data shows that there appears to be evidence of a real revolving door. Of the top 40 filers of ex parte letters, 57% had former employment with the government and 50% with the FCC.

rank	Ex Parte Filer	Current Employer	rank	Ex Parte Filer	Current Employer
1	John T. Nakahata	Harris	16	Mitchell F. Brecher	Greenberg Traurig
2	Michael R. Romano	NCTA	17	Trey Hanbury	Hogan Lovells
3	Thomas Jones	Willkie	18	Harold Feld	Consumers Unions
4	Jonathan Banks	USTelecom	19	Matthew A. Brill	Latham Watkins
5	John Kuykendall	JSI	20	Jeffrey S. Lanning	CenturyLink
6	Karen Brinkmann	solo	21	M. Anne Swanson	Wilkinson Barker
7	John P. Janka	Latham	22	Gerard J. Duffy	Bloonstein
8	David LaFuria	Lukas, LaFuria	23	Paul Margie	Harris Wiltshire
9	Michele C. Farquhar	Hogan Lovell	24	Melissa E. Newman	Wilkinson Barker
10	Daniel Mitchell	Chesapeake Regional	25	Glenn Reynolds	Telcordia
11	David Honig	MMTC	26	Monica S. Desai	Facebook
12	Tamar E. Finn	Morgan Lewis	27	Rebecca Murphy Thompson	CCA
13	Thomas Cohen	Kelley Drye	28	William M. Wiltshire	Harris Wiltshire
14	Karen Reidy	INCompass	29	John J. Heitmann	Kelley Drye
15	James C. Falvey	Eckert Seams	30	Michael D. Saperstein, Jr.	Fronter

Former FCC employer

former non-FCC gov't employer

#### IV. Discussion

This largely descriptive paper first asks what does the FCC do with its time and effort. This is a question for which there are few detailed answers in the empirical literature largely because of the complexity and enormity of the administrative process. Unlike a court which resolves cases or Congress which passes statutes, it is difficult to come up with measures of agency activity.

The paper used various approaches: total submissions per proceedings, comments/replies in rulemakings, ex parte meetings, as well as FCC orders filed on ECFS. While none of these measures is, of course, perfect, they do correlate with each other suggesting that they are acceptable proxies. Using these measurements, we can make certain conclusions about what the FCC does.

As far as subject matter, the FCC is largely concerned with wireline/ internet issues. If one excludes “network neutrality” concerns, a more balanced picture emerges, with media and wireless matters taking a more equal part. Nonetheless, it is fair to conclude that the FCC spends most of its “effort” on wireline, media, and wireless issues.

The empirical portrait shows that certain large, important proceedings dominate its attention. As we show, a small number of proceedings dominate FCC attention in terms of ex parte meetings and written submissions. We also have insight into what constitutes a “normal” proceeding—with the vast majority of the 4300 proceedings in time understanding having under 10 filings of any sort.

Second, the paper asks what types of groups dominate the FCC’s attention as defined by comment-writing and in person meetings. And, what emerges is an agency whose attention, as measured by comments received and meetings taken, in which a relatively small number of parties and an elite cadre of lawyers and lobbyist dominate. While there is a “long tail,” the distribution for parties and law firms, and individuals meeting with Commissioners seems to follow a power law—with a relatively small number of filers and lawyers having a highly disproportionate impact.

Third, of all of the measurements of FCC activity: ex partes, comments, and all other submissions, it appears that ex parte activity correlates most closely to FCC activity. And, ex parte activity is most dominated by insider parties and law firms. While not making any claims about the direction of causality, ex parte activity is predictive of FCC action. That suggests either that insider face-to-face meetings are driving FCC action—or that insiders are highly attuned to what the FCC will do. Neither scenario is completely consistent with democratically informed agency decision making.