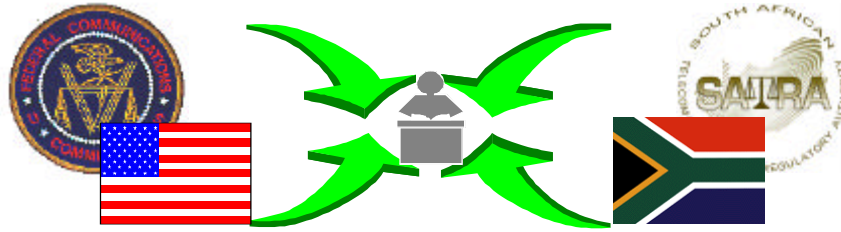




VI. THE FCC-SATRA REGULATORY WORKSHOP



Pursuant to the provisions of the FCC/SATRA Joint Work Programme, a full day telecommunications regulatory workshop was held in South Africa on August 18, 1999. Information exchanges between the two agencies prior to the workshop identified several subject areas for discussion. The subjects addressed included Universal Service, Competitive Regulatory Principles, Satellite Regulation, Agency Structure and Processes, Public Regulatory Processes and the Role of an International Bureau. (See Appendix 8.) Chairman Kennard led the training session. Other FCC staffers participating with Chairman Kennard in conducting the training session included Roderick Porter, Deputy Chief of the International Bureau, Ari Fitzgerald, Legal Advisor to Chairman Kennard, and Tracey Weisler, an advisor in the International Bureau's Satellite and Radiocommunications Division. Over 40 South African senior regulatory officials attended the workshop (Appendix 9) including SATRA Chairman Maepa, Deputy Chairman Funde, and Councillors Gosa, Mayimele-Hatashatse and Currie. The following is a brief summary of the workshop subjects covered.

UNIVERSAL SERVICE

Meeting the challenge of universal service delivery and connecting unserved and underserved areas is critical for regulators throughout the world, including regulators in South Africa. It is especially important to address these issues in the context of the new dynamic global telecom marketplace. Chairman Kennard led the discussion on Universal Service. His remarks suggested that universal access can be most effectively accomplished in a competitive market environment. He cautioned SATRA not to be enticed by the notion that a monopoly must be granted or maintained in order to expand telecommunication services, noting that competitive models for universal access have resulted in significant progress in many parts of the world.

In the United States, the notion of universal service is most commonly expressed as the belief that all households in the nation should have access to the telephone network. This is consistent with the International Telecommunication Union (ITU) suggestion that universal service be defined as a telephone in every home, while universal access, often seen as a precursor to universal service, should be defined as a telephone within a reasonable distance for everyone. The services supported by universal service mechanisms range from basic telephone service to advanced services.



Chairman Kennard noted that, whether the goal is universal access or universal service, it is important to identify short- and long-term objectives and to establish sustainable policies and regulations that will make telecommunications services available and affordable to the maximum number of people. To this end, he urged regulators to incorporate certain core principles in their universal service or universal access policies. He described the importance of the historic 1997 WTO Basic Telecom Services Agreement and highlighted the four core principles that are the foundation of the FCC's policy decisions in this area:

1. Transparency, which allows for public participation in the policymaking process and access by the public to all relevant information.
2. Non-discrimination, which ensures that the collection and distribution of universal service support is based on fair and equitable treatment among providers.
3. Competitive neutrality, which treats service providers and technologies in a fair manner.
4. Non-burdensome application, which ensures that no single entity faces an undue burden of supporting universal service.

The Chairman noted that once these principles are incorporated as the basis for universal service policy, one of the most difficult set of issues for regulators to resolve is how to raise and distribute funding for universal service. Historically, many countries have kept rates affordable and promoted universal service by cross-subsidizing local service with revenue from long distance and/or international services. As a result, long distance and international rates have been priced well above cost to include a subsidy used to keep local rates low. He stressed that, in a competitive environment, however, cross-subsidization is ineffective because the market puts downward pressure on rates that are priced significantly above cost.

Chairman Kennard then described developments in the United States, where telephone penetration has reached 94% in American households served by wireline phones. As he explained, this was achieved over time through a complex system of implicit, and to a lesser extent, explicit subsidies. These implicit subsidies shift costs from rural to urban areas, residential to business customers, and local to long distance customers. Some explicit subsidies have been used to reduce costs in high cost areas and for low-income users. He explained that this historic subsidy system, despite some historical successes, is not considered desirable in an increasingly competitive marketplace.

By late 1996, as part of its legislation designed to spur competition in the local U.S. telecom markets, the U.S. Congress directed the FCC to restructure universal service support mechanisms to ensure that affordable telecommunications services could be delivered to all Americans in an increasingly competitive marketplace. The premise behind the FCC's effort is that competition will significantly expand access. Where market forces alone cannot ensure access, however, some subsidies are still needed to facilitate service to difficult-to-reach areas. However, he stressed to SATRA that



neither a de jure monopoly regime nor a contractual exclusivity period is an efficient means of promoting universal service, and that the subsidy system must be supported by all telecom carriers, not simply a select few.

He continued by explaining that, in the United States today, all telecommunications carriers that provide interstate telecommunications services, including those that provide service on a non-common carrier basis, and payphone aggregators, must contribute to universal service. Internet, on-line service providers, and cable companies, however, do not contribute to universal support mechanisms unless they provide interstate telecommunications services.

Carriers that provide only international telecommunications services are not required to contribute to universal service. Only if an international carrier also provides domestic interstate service would it be required to contribute to universal service in the United States. Contributions for high cost and low income support mechanisms are assessed against interstate end-user revenues -- *i.e.*, the carrier's total revenues from telecommunications services including the revenues from subscriber line charges. (For a further discussion of universal service financing mechanisms, see Chapter VI, *Connecting the Globe: A Regulator's Guide to Building A Global Information Community.*, <http://www.fcc.gov/connectglobe/>)

COMPETITIVE REGULATORY PRINCIPLES

International Telecommunications Regulation—The Chairman was followed by Ari Fitzgerald, Legal Advisor to the Chairman, who spoke about the Section 214 process for authorizing carriers to provide international service and the concept of open-entry for service providers. He also presented a detailed history of the Commission's award of the Personal Communications Service (PCS) licenses, how the small, minority and women-owned business component of the PCS auction was structured, and the consequences of the FCC's methodology. He explained that the FCC's actions could be used as an illustrative case study that could inform SATRA as to how it might proceed with the award of South Africa's third cellular license. He concluded with a short discussion of the international 3rd Generation Wireless debate and the need to sustain the deployment of competitive services. This led to a substantive, open discussion with participants on the upcoming issuance of South Africa's third cellular license and an evaluation of the merits of different financing mechanisms open to the agency.

Mr. Fitzgerald gave an overview of the benefits of competition. He underscored that in this environment of rapid change, a competitive marketplace will tap the potential of the telecommunications sector to serve the economic and social well-being of South Africa's citizens. Specifically, he pointed out that free and open competition can benefit individual consumers by ensuring lower prices, new and better products and services, and greater consumer choice than occurs under monopoly conditions. In an open market, producers compete to win customers by lowering prices and developing new services that best meet the needs of customers. A competitive market can also promote innovation by rewarding producers that invent, develop, and introduce new and innovative products and production processes.

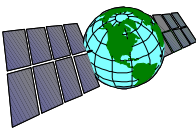


He also stated that international telecommunications services can be particularly important to the development of a stable and robust economy. In this regard, he noted that, in several countries, the addition of new providers of international and domestic telecommunications services has led to lower international settlement rates in many cases which, in turn, has lowered calling prices for consumers. He also suggested that competition in international telecommunications produces benefits throughout a country's economy. Similarly, he stated that in many countries private investment and competition in the provision of terrestrial wireless telecommunications infrastructure have led to declining prices for, and widespread use of, wireless telephone service.



Terrestrial Wireless Regulation – Mr. Fitzgerald stressed that wireless communications will play an increasingly vital role in enabling people to communicate, especially in rural and underserved areas. He noted that, as a result of innovations in technology, wireless communications are furthering competition in the marketplace and bringing greater choices to consumers.

He also touched on spectrum management issues. In particular, he described how, over the last two decades, the United States has undergone a transformation from extensive regulatory planning in its spectrum management to a dynamic, market-based approach. He explained that in the past, the FCC had relied on comparative hearings and lotteries to assign spectrum in the award of a license. Hearings often proved to be time-consuming, however, and lotteries often led to speculative acquisition of licenses that would later be re-sold at a significant profit to the initial licensee. He noted that the FCC therefore evaluated competitive bidding mechanisms as a way to ensure that licenses were assigned quickly and in a way that would recover the market value of the spectrum resource. Over the past 5 years, Mr. Fitzgerald stated, the FCC has conducted twenty-one auctions of domestically-allocated spectrum for wireless services offered within the United States. Although auctions are not appropriate in all circumstances, he stated that where they have been applied, the FCC has carefully balanced a reliance on market forces and the need to safeguard the public interest, especially in areas of public safety and national security.



SATELLITE REGULATORY PRINCIPLES

Satellite Regulation--- Ms. Tracey Weisler, Advisor in the FCC's International Bureau's Satellite Division, explained that, in the early 1980's, the FCC adopted a regulatory approach in the satellite service sector to ensure the efficient use of the radio spectrum and orbit resources and maximum flexibility for operators and service providers to meet market demands with minimal regulation. This approach is commonly termed the Commission's "Open Skies Policy." She stressed the idea that the rules are designed to allow prospective and future licensees to adjust to a dynamic market-driven environment while taking into account public interest considerations. Except for limitations created by insufficient amounts of available spectrum, the FCC avoids imposing limits on the number of commercial operators or the types of services they offer.



She then outlined the FCC's three-step space station licensing process: allocating available spectrum for the proposed satellite service, developing service rules, and granting licenses to qualified applicants. All U.S. satellite licensees are required to coordinate on a domestic, regional or international basis, as needed. While this coordination takes place among the affected parties, the FCC may be asked to resolve any outstanding disputes.

Ms. Weisler continued by describing the FCC's earth station licensing process. As she explained, any commercial entity proposing to operate a transmitting earth station in the United States must first obtain a license to operate from the FCC. These commercial earth station licenses are generally granted for a period of 10 years. Earth stations must meet certain technical requirements before they can be authorized. These technical parameters include antenna performance standards, antenna size, and environmental impacts, among others. To maximize efficiency, the FCC also issues a single "blanket" license for a large number of technically identical earth stations such as VSATs or Mobile Earth Terminals.

She closed by reiterating the notion that the Commission's "Open Skies Policy" is a regulatory framework that fosters technological innovation, infrastructure development and new services. Both the U.S. satellite industry and consumers have benefited from the effects of greater competition in the satellite sector in the form of more consumer choices, more innovative services and lower prices for consumers.

GMPCS MoU Implementation—Ms. Weisler continued her presentation with an overview of the genesis and implementation of the GMPCS MoU. She began by stating that, from the beginning, it has been clear that the ultimate success of the new satellite-delivered communication services, Global Mobile Personal Communications by Satellite (GMPCS), rests on the users' ability to carry a mobile terminal around the world and receive service on a real-time, ubiquitous basis.

She explained that regulators and companies began to consider the need for a new international regulatory paradigm for these truly global services and systems at the first ITU World Telecommunication Policy Forum held in Geneva in the fall of 1996. At the close of the Forum, the delegates adopted five draft opinions. Opinion 4, "Establishment of a Memorandum of Understanding (MoU)," included as an annex a draft Memorandum of Understanding designed to facilitate the free circulation of GMPCS user terminals. The MoU required interested parties and signatories to assemble in the spring of 1997 to sign the MoU and proceed to draft specific arrangements concerning the licensing, type approval, marking, provision of traffic data and customs treatment of GMPCS terminals.

Ms. Weisler reported that, to date, over 100 Administrations and private sector entities have signed the MoU. The Arrangements associated with the MoU were finalized in October 1997, and in May, 1998, the ITU Council approved the use of the mark "GMPCS-MoU ITU REGISTRY" to be placed on terminals that have been registered in the ITU database. This globally-recognized mark will be placed on GMPCS terminals to signify they have been type-approved by at least one Administration and that the actual licensing, type approval, and marking "requirements" noted in the



GMPCS-MoU Arrangements have been duly registered with the ITU, allowing the terminals to circulate without confiscation, duty, or tariff.

GMPCS MoU Signatories are now urged to implement the provisions of the Arrangements into their domestic regulatory regimes as rapidly as possible. She explained that in the wake of the final Arrangements, the FCC quickly instituted an interim equipment certification procedure for GMPCS terminals, in order to enable GMPCS terminal manufacturers to obtain the FCC and new ITU GMPCS-MoU Registry marks on their equipment. The FCC intends to implement the Arrangements domestically through a formal rule-making proceeding in early 2000. Finally, Ms. Weisler stressed that South Africa's leadership in implementing the proper satellite licensing and regulatory framework is essential for the rapid deployment of GMPCS services in South Africa and the region. Clearly, national implementation of the GMPCS MoU and Arrangements is important to ensure that global satellite services are continuously available to consumers.

AGENCY STRUCTURE AND PROCESSES

Structure of an Independent Agency--- Mr. Fitzgerald opened the afternoon session with a discussion of the need for an independent regulator and how this could be achieved. He noted that, while the environment and situation of most developing countries is quite different from that in the United States, some basic steps – privatizing, establishing an independent regulator, and developing open transparent procedures – can produce great benefits. He stated that telecommunications regulators can play a pivotal role in ensuring that their country maximizes its resources to build a strong and inclusive telecommunications and information infrastructure. Here he noted that principled decision-making not only will benefit consumers and industry in the domestic market, but also will enrich the global information community.

He also stated that establishing an independent regulatory authority is a crucial factor in the success of any country's effort to attract investors, to introduce competition and to privatize and liberalize the telecommunications sector. He stated that once the decision has been made to establish a pro-competitive, liberalized, and privatized regime, it is essential to establish an impartial referee to create the rules and processes that will be used to regulate the industry and provide service to the public.

He went on to add that regulatory agencies have taken many forms. Some countries have regulatory departments within a government ministry. Other countries have regulatory bodies that are separate, yet accountable to a ministry. Still others have regulatory agencies that are separate from, and not accountable to, any government ministry. A few countries have no regulatory bodies and regulate telecommunications providers through the country's antitrust or consumer-protection laws.

He stated his view that an effective regulator should be independent from those it regulates, protected from political pressure, and given the full ability to regulate the market by making policy and enforcement decisions. The regulator should have the authority and jurisdiction to carry out its regulatory and enforcement functions effectively and unambiguously. And the regulator must be adequately funded from



reliable and predictable revenue sources. While there may not be one regulatory framework that suits every country, some models have proven to be more successful than others in fostering liberalized, privatized, and competitive telecommunications markets.

Mr. Fitzgerald continued by describing the U.S. system of regulating telecommunications. In the United States, several agencies of the federal government, in addition to regulatory agencies of the fifty states, have important roles to play in determining regulatory policy. The American model for regulating telecommunications is derived from the powers vested in the federal and state governments by the U.S. Constitution. As a means of regulating interstate and foreign commerce in wire and radio communication, the United States Congress passed the Communications Act of 1934 (Communications Act), and created the Federal Communications Commission (FCC).

The President of the United States nominates all five FCC Commissioners for staggered five-year terms, and these nominations are subject to confirmation by the U.S. Senate. No more than three Commissioners can be of the same political party. The President designates one of the Commissioners to serve as Chairman. The Chairman presides over all Commission meetings. The Chairman coordinates and organizes the work of the Commission and represents the agency in legislative matters and in relations with other government departments and agencies. The responsibility for the agency's substantive policy and other decisions rests with the five Commissioners.

The FCC's Internal Processes-- Generally, he explained, each of the five FCC Commissioners has a staff of three Advisors, in addition to one or two administrative assistants. The Chairman's staff is slightly larger. The advisors play a key role in aiding the Commissioners in developing their policy positions and in helping to build a consensus for final decisions made by the Commission as a whole. They meet regularly with staff, and where appropriate, members of the private sector, and inform themselves about issues as a prelude to their discussions with the Commissioners.

In terms of structure, the FCC has seven operating bureaus whose mandates reflect broad day-to-day divisions of FCC responsibility delegated to them by the Commissioners. These are the Cable Services, Common Carrier, Consumer Information, Mass Media, Wireless Telecommunications, Enforcement and International Bureaus.

Mr. Fitzgerald explained various aspects of the Commission's regulatory process. In addition to the Communications Act, the FCC conducts its business pursuant to the Administrative Procedure Act and the Government in the Sunshine Act. Both of these laws apply to federal agencies involved in policymaking. These statutes ensure a high degree of fairness and transparency in the government decision making process.



The FCC's Rulemaking Process and Judicial Review -- He noted that, under the Administrative Procedure Act, the FCC and other federal agencies are required to make decisions public and to explain the rationale for their decisions. These decisions are subject to judicial review and can be reversed on various grounds, for example if they are found to be "arbitrary and capricious." Final FCC decisions are developed first by issuing a Notice of Proposed Rulemaking (NPRM) that is designed to offer proposals for public comment. Final decisions are rendered in the form of a Report and Order (R&O). The R&O explains the FCC's decision and its rationale.

He explained that NPRMs and R&Os generally are adopted at open meetings of the Commission. After the FCC has released a R&O, interested parties who disagree with the decision have 30 days to file a petition for reconsideration, asking the FCC to reconsider all or part of its decision. The FCC seeks comment on such petitions and then renders its decision. The FCC can grant reconsideration petitions in whole or in part, thus modifying the original decision, or deny them. A party still not satisfied with the FCC's decision may appeal to the U.S. court system.

He described the Government in the Sunshine Act which stipulates that meetings among a quorum, or majority (3), of the Commissioners must be open and public. While many FCC decisions are made at open meetings, some decisions are voted on separately by each Commissioner. These latter decisions are said to be made "on circulation," a procedure whereby a document is submitted simultaneously to each Commissioner for official action.

Further, he explained that under the Communications Act, the FCC's regulatory responsibilities must be implemented in a way that promotes the public interest. Given this broad mandate, and in order to promote the public interest in telecommunications, the FCC has authority to adopt rules and regulations, to adjudicate disputes, to grant and revoke licenses, and to impose penalties and fines for violations of law.

Mr. Fitzgerald stressed that, while the FCC has broad authority to act on telecommunications matters, that authority is not without substantial checks and balances. The FCC is subject to congressional oversight of its activities. Congress also decides the size of the agency's annual budget and can restrict the FCC's use of appropriated funds to certain purposes. Federal courts, as part of the judicial branch of government, have jurisdiction over appeals from FCC decisions filed by aggrieved parties.

Other Entities -- He explained that there are other entities that share responsibility for oversight of domestic and international telecommunications policies. The U.S. Department of Commerce also has an important function in telecommunications regulation. Primarily through the National Telecommunications and Information Administration (NTIA), the Department of Commerce serves as the President's expert advisor on telecommunications matters and policy. NTIA is charged with reviewing policy options on behalf of the Executive Branch and communicating proposed policy decisions to the Congress and filing comments in FCC proceedings on behalf of the Executive branch. NTIA also manages and administers the portion of the radio



frequency spectrum that has been set aside for exclusive use by the United States Government.

Next, he focused on highlighting the role of the U.S. State Department in the telecommunications arena. Specifically, he noted that the State Department is the Executive Branch's primary representative on foreign policy matters. Through its Economics Bureau Office of International Communications and Information Policy, the State Department represents the United States in international telecommunications forums, including bilateral and multilateral negotiations, and before international organizations. Through the U.S. Agency for International Development, the United States provides economic development assistance to foreign countries, including assistance intended for telecommunications reform and projects.

Lastly, Mr. Fitzgerald added that the Office of the U.S. Trade Representative (USTR) represents the United States in trade negotiations, coordinates trade policy, and administers foreign bilateral and multilateral trade agreements. As telecommunications services and equipment have increased as a percentage of U.S. foreign trade, so has the role of USTR in international telecommunications trade decisions and disputes.

PUBLIC REGULATORY PROCESSES

Conflict of Interest Provisions--- Mr. Roderick Porter, Deputy Chief of the Commission's International Bureau closed the workshop by addressing the ethical rules and requirements which pertain to FCC Commissioners and staff. He opened by summarizing the fundamental precepts of the Commission's standards of conduct. First, in order to ensure the integrity and independence of the FCC's official actions, employees are not permitted to act in any matter in which they have an official stake. Second, unless they have received advance permission from the FCC's legal officials to do so, employees of the FCC are prohibited from participating in an official capacity in any matter--whether it is a specific adjudication of an issue between particular parties or a general industry-wide rulemaking-- in which they, or certain other persons whose interests are imputed to them, have a financial interest, if the matter will have a direct and predictable effect on that financial interest. The interests of a spouse, minor child or general business partner, for example, would be imputed to an employee, under the standards of conduct.

Mr. Porter explained that, in addition to the standards of ethical conduct discussed above, employees of the FCC and the rest of the federal government are subject to various conflict of interest statutes found in the United States Code. These statutes prohibit anyone from offering a government employee money or anything else of value in exchange for performing any official act. Likewise, government employees are prohibited from requesting any payment or gift in exchange for performing or failing to perform any official act. Moreover, two additional statutes prohibit federal employees, other than in their official capacities, from representing anyone before any department or agency of the U.S. Government in any matter in which the United States is a party or has a direct and substantial interest. He further explained that yet another statute imposes certain restrictions on the activities in which former employees can engage for



a period after leaving government service. In particular, representational activities before the government on matters in which the former employees participated or which were under their official responsibilities while in government service are limited by this statute.

Finally, he noted that there is a statute that forms the basis for the regulatory prohibition on conflicting financial interests. It prohibits FCC employees from participating in their official capacity in any matter in which they or certain others whose interests are imputed to them have a financial interest if that matter will have a direct and substantial effect on that interest. Under certain circumstances this prohibition can be waived.

Public Notice and Participation in Agency Action ---Mr. Porter expanded on the previous discussion of the agency's regulatory procedures and processes. He reviewed the Administrative Procedure Act which governs the manner in which an agency makes its decisions. This Act requires public notice of proposed rules and opportunities for any interested member of the public to comment. He reiterated that when the FCC wishes to develop or change a policy, it adopts a Notice of Proposed Rulemaking (NPRM) describing the proposed changes. The NPRM is publicly available, placed on the FCC website, and is summarized in the Federal Register. A deadline is specified for comments and reply comments. He explained that though these procedures may seem cumbersome, there are significant benefits, i.e., the comment and reply comment periods enable commenters to express their views and to critique the initial presentations of other commenters. Because FCC proceedings frequently attract participation from opposing commercial interests, the agency is able to deliberate with full understanding of the industry's various positions, objections and suggestions. Moreover, public interest groups, another important component of the telecom community, also participate in these proceedings.

He closed by explaining that all comments and reply comments filed in a proceeding are made a part of the public record of the proceeding. In very limited circumstances, the FCC permits parties to its proceedings to submit confidential material. Interested parties may visit FCC commissioners and staff to express views in a proceeding, but they must file an "ex parte" letter in the public record of the proceeding, detailing whom they visited and what they discussed. This creates transparency in the decision-making process so that all interested parties can monitor issues raised in a proceeding.

ROLE OF AN INTERNATIONAL BUREAU

Mr. Porter provided an overview of the FCC's International Bureau (the Bureau). First, he stated the Bureau's objectives: to promote innovative, efficient, reasonably priced, widely available, reliable, timely and high quality international and global communications services. He explained that the Bureau develops, recommends and administers policies and programs to authorize and regulate international telecommunications facilities and services, and licenses domestic and international satellite systems. He noted that the Bureau advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, on the



development and administration of international telecommunications policies and programs. Additionally, he noted that the Bureau develops FCC proposals to World Radiocommunication Conferences (WRCs) and other multilateral and international conferences, meetings and assemblies and works directly with the State Department and other agencies in developing U.S. policy positions.

He concluded by stating that the Bureau plays an important role in developing policies in a complex multilateral environment. In an era where the deployment of global telecommunications is increasingly dependent on sound spectrum management, efficient licensing, and effective bilateral negotiations, he pointed out that it is critical to recruit and train talented staff to perform these functions.

WORKSHOP DISCUSSION

Following these topical presentations, FCC staff responded to questions from SATRA officials on a variety of topics. SATRA personnel were interested in discussing several policy areas, including: various financing mechanisms for provision of universal service; conduct of spectrum auctions; the specifics of satellite licensing; future applications of GMPCS technology; how an agency's organizational composition and structure inform its decision-making processes; particular examples of prohibited conduct by employees, and, finally, the specific policy and management divisions that comprise the FCC's International Bureau. As a result of this question and answer period, FCC staff was able to begin coordinating detailed requests for information and assistance by SATRA officials with the FCC technical experts in these areas.