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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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July 5, 2011

Mr. Julius Genachowski  
Chairman  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Dear Chairman Genachowski:

On April 27, 2011, I sent you a letter asking for documents regarding the Federal Communication Commission's (FCC) communications with LightSquared, Harbinger Capital, Mr. Phillip Falcone, and the White House. I requested a response by May 10, 2011. On May 31, 2011, over one month after my initial request, you responded with a letter that did not respond to any of my questions and offered a general defense of the FCC's expedited procedure regarding LightSquared.

When my staff followed up with your legislative affairs office to seek an explanation for your failure to be responsive, my staff was told that the FCC chose to intentionally ignore the document requests in my letter. FCC staff asserted that, as a general matter, the FCC does not respond to Congressional document requests unless they are made by the Chairmen of the House Committee on Energy and Commerce or the Senate Committee on Commerce, Science, and Transportation. In a subsequent conversation, your legislative affairs staff asserted that if a Freedom of Information Act (FOIA) request for the same information were made, the FCC could draw out the process for approximately two years and that any documents eventually provided would be heavily redacted.

As none of this information was contained in the letter you sent to me, I am writing to see if it is in fact accurate and if so, explore the FCC's apparent decision to take an extreme position against transparency, which would stifle congressional oversight and public scrutiny in direct contradiction to President Obama's stated policies and instructions on open government. In the interest of providing a full and complete answer to the questions I raised on April 27, 2011, I respectfully request that you answer the following questions. In addition, when replying to this letter, please number your answers in accordance with my questions.

1. Does the FCC plan to respond to the document request I made on April 27, 2011?
  - a. If so, when will the FCC provide these documents?

- b. If not, why not?
- 2. Is it the FCC's position that Congressional document requests are to be ignored unless they come from the Chairmen of the House Committee on Energy and Commerce or the Senate Committee on Commerce, Science, and Transportation?
  - a. If not, please cite examples between January 1, 2000 and the present when the FCC has responded to document requests made by Senators and Members of Congress who do not chair committees of jurisdiction over the FCC.
  - b. If so, is the FCC concerned that this position inhibits congressional oversight (please explain why or why not)?
  - c. If so, why does the FCC not simply treat such requests as FOIA requests and process them accordingly rather than ignore them altogether?
  - d. If so, is this a written policy?
    - i. If so, please provide the policy and state how long it has been in place.
    - ii. If not, please provide any written evidence indicating that this policy was in place prior to my letter regarding LightSquared.
- 3. Was your legislative affairs staff correct in stating that a FOIA request regarding all the documents I requested in my April 27, 2011 could take approximately two years?
  - a. If so, why would it take so long and how is that consistent with statutory obligations under FOIA?
  - b. If not, approximately how long would it take to fulfill a FOIA request regarding these documents?
- 4. What is the average length of time the FCC has taken to respond to FOIA requests from January 1, 2006 to the present?
- 5. In my initial letter I noted that Mr. Phillip Falcone is being investigated by the Securities and Exchange Commission (SEC) for obtaining a \$113 million loan from his hedge fund, Harbinger Capital, to pay his taxes, without the consent of his investors. Since then, it has come to light that Mr. Falcone and his firm are also the subject of additional SEC investigations that include allegations of "market manipulation" and violations of the "short sale rule" involving three separate stocks.<sup>1</sup> According to published reports, Mr. Falcone's hedge fund, Harbinger Capital, controls roughly 80% of LightSquared's shares.<sup>2</sup> In continuing to support, "the opportunity presented by

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<sup>1</sup> Reuters, Svea Herbst-Bayliss and Matthew Goldstein, Harbinger's Falcone gives details on SEC probes. Available at: <http://www.reuters.com/article/2011/04/28/us-hedgefunds-harbinger-idUSTRE73R6G920110428>

<sup>2</sup> *Id.*

LightSquared” is the FCC concerned regarding these multiple investigations of Mr. Falcone?<sup>3</sup>

6. Does the FCC have any safeguards to ensure that valuable spectrum allocations are not made to serial violators of our nation’s securities laws?
  - a. If so, what are those safeguards?
  - b. If not, why does the FCC not have such a policy?

Thank you for your cooperating and attention in this matter. I would appreciate a written response by July 20, 2011. If you have any questions, please do not hesitate to contact Chris Lucas on my staff at 224-5225.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Judiciary

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<sup>3</sup> Letter, FCC Chairman Julius Genachowski to Ranking Member Charles E. Grassley, May 31, 2011.