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## FCC Clears Last Hurdles to Creation of Economics Office

By: Jerry Ellig | October 17, 2018

The Federal Communications Commission [announced today](#) that it has received “all necessary approvals” to reorganize most of its economists into a single Office of Economics and Analytics. The commission also announced that Giulia McHenry, formerly chief economist at the National Telecommunications and Information Administration, will serve as acting chief of the new office. The new office should be set up by the end of this year.

The FCC [voted](#) to approve creation of the Office of Economics and Analytics in January 2018. The additional “necessary approvals” included consultation with the Office of Management and Budget, the House and Senate Appropriations Committees, and the labor union representing FCC employees.

But there’s more to this initiative than simply rearranging an organization chart. Today’s long-awaited announcement means the FCC remains committed to conducting higher-quality economic analysis to inform regulatory decisions.

The FCC’s January [decision](#) did not just reorganize the economists into a new office; it also rewrote the commission’s rules to give greater prominence to economic analysis. The order creating the office explicitly states that the new office will produce a rigorous benefit-cost analysis for every new rule that has an annual effect on the economy of \$100 million or more. This is the same threshold in [Executive Order 12866](#) that triggers the most rigorous benefit-cost analysis requirements for regulations from executive branch agencies.

In addition to these major rulemakings, the office will review every commission rulemaking and any other commission action that involves economic issues or data analysis. This requirement sets the stage for the FCC to conduct a level of economic analysis for less significant items concomitant with the importance of the item.

The January [order](#) also tasks the office with reviewing existing policies and conducting longer-term economic policy research, thus setting the stage for economists to conduct retrospective reviews of existing regulations and develop ideas for reforms.

It is unusual for an independent agency to make this kind of commitment to economic analysis in the absence of a statutory mandate to do so. The Securities and Exchange Commission (SEC) made a similar [commitment](#) in 2012, and the quality of its economic analysis [improved noticeably](#) in the following years. The SEC’s improvement bodes well for the FCC’s efforts. But the main impetus for the SEC’s effort was several high-profile court cases the agency lost

because of poor economic analysis. The SEC’s authorizing statute contains language that courts have interpreted as a requirement for benefit-cost analysis.

The FCC’s effort is driven by Chairman Ajit Pai’s conviction that economic analysis should play a larger role in FCC decisions. In his April 2017 [speech](#) announcing this initiative, Pai noted that the FCC made better decisions in the past when it listened to its economists. The bipartisan elephant in the room in that regard is spectrum auctions, which have generated billions of dollars of [consumer benefits](#) by unleashing innovation in mobile communications.

External pressures may also play some role here. Congress is considering [legislation](#) that would require independent agencies to conduct regulatory impact analysis of major regulations. [Legal scholars predict](#) that courts will eventually require regulatory agencies to conduct and consider economic analysis unless they are statutorily prohibited from doing so. And 16 state attorneys general and governors signed a [letter](#) to President Trump requesting that the administration issue an executive order applying the regulatory analysis and review requirements in Executive Order 12866 to independent agencies.

If any of these requirements comes to pass, the FCC’s decision will look farsighted indeed.

*Jerry Ellig served as the FCC’s chief economist from July 2017-July 2018. His [study](#) outlining a five-step process for independent agencies to improve the quality and use of economic analysis is forthcoming in the Cornell Journal of Law and Public Policy.*

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