Dec. 2, 2013

via electronic mail

Diane Cornell, Special Counsel
Office of Chairman Wheeler

David Bray, Chief Information Officer
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: A Call for Input: Improving Government Efficiency at the FCC
Making FCC Materials Accessible During Website Outages via FDsys and LOCKSS-USDOCS

Dear Ms. Cornell and Mr. Bray,

In response to Chairman Wheeler’s call for public input on improving the
Commission’s processes, the Samuelson-Glushko Technology Law and Policy Clinic
(TLPC), the American Association of Law Libraries (AALL), the American Library
Association (ALA), the Association of Research Libraries (ARL), the Special Libraries
Association (SLA), and librarians Susan Nevelow Mart and Jane Thompson of Colorado
Law* and James Jacobs of Free Government Information (FGI)* encourage the
Commission to make primary legal materials and publicly available comments hosted
exclusively on the Commission’s website additionally available through the Federal
Digital System (FDsys) of the U.S. Government Printing Office (GPO) to facilitate
continued public access in the event of a government shutdown or other circumstances
that force the Commission’s website offline.1 In doing so, the Commission stands not only
to improve the public’s access to official government information and ability to

* Affiliations listed for identification purposes only.
participate in critical governmental processes during periods of crisis, but serve as a model for other agencies to implement the principles of President Obama’s Open Government Initiative.²

As you are no doubt aware, the U.S. government shut down for more than 16 days in October of this year; during that time, numerous federal agency websites, including the Commission’s, were shut down as well. Legitimate concerns such as the inability to protect against cyberattacks with limited personnel undoubtedly animated the decisions to shut down many agency websites.³

However, the shutdown also denied the public access to primary legal materials available exclusively on the Commission’s website, such as orders not yet published in the FCC Record, as well as public comments available exclusively on the Commission’s Electronic Comment Filing System (ECFS) and other Commission systems. Similar problems occurred across other agencies, stymieing the efforts of attorneys, librarians, students, and members of the public to conduct research and prepare filings.⁴

Fortunately, the Commission can address this problem by partnering with the U.S. Government Printing Office (GPO) to make primary legal materials and comments accessible through the GPO’s Federal Digital System (FDsys).⁵ FDsys stayed accessible during the shutdown, affording the public access to authentic government information such as the Congressional Record, the Federal Register, and bills and laws.⁶

² See http://www.whitehouse.gov/open.
³ E.g., Howard Buskirk, Clyburn Not Surprised at Threatened Legal Challenges to Prison Calling Order, Communications Daily (Nov. 4, 2013) ("[Commissioner] Clyburn acknowledged [frustration] that the [Commission] shuttered its website during the shutdown, but no one was available to monitor the site and guard against cyberthreats.").
⁵ See id.
⁶ Id.
Moreover, the GPO partners with the LOCKSS-USDOCS program, a private LOCKSS (“Lots of Copies Keep Stuff Safe”) network, which replicates content to various geographic locations. LOCKSS-USDOCS affords an additional redundant mechanism for making information publicly accessible in the event of a shutdown.

While we recognize and support the Commission’s critical and primary responsibility in making its materials available to the public, providing additional means of access will ensure that the public can stay informed and continue to participate in the democratic process in times of crisis. Thus, we encourage the Commission to undertake this process to become a model of openness and transparency for other agencies to follow. We stand ready to assist the Commission in any way that we can; please don’t hesitate to contact us if you have any questions or concerns.

Best regards,

/s/

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