Appointment Delay for Vacancies on the Federal Communications Commission*

Confirmation politics for judicial appointees is an exhaustively studied phenomenon, but the politics of appointment for independent agencies is less well understood, because nominees are very rarely rejected and the Senate fails even to hold a recorded vote for most appointees. However, alternative evidence of conflict between the president and the Senate is available: the length of time it takes to fill a vacancy on a board or commission. An empirical assessment of FCC vacancies, based on an exponential regression model of vacancy duration, demonstrates that statutory restrictions on the partisanship of the board significantly deteriorate the efficiency of the appointment process. In addition, the appointment of minorities (though not of women) occurs only after unusually drawn-out appointments. A straightforward test of whether divided government leads to extended vacancies turns up negative.

Partisanship and Confirmation Delay

On September 19, 1952, Robert Jones, a Republican, announced his retirement from the Federal Communications Commission (FCC). Less than a month later, President Truman granted a recess appointment to Eugene Merrill, a Democrat, and forwarded the nomination to the Senate. However, the Senate never took action on Merrill’s nomination, and after Eisenhower took office the nomination was withdrawn. Eisenhower nominated John Doerfer, a Republican, to fill Jones’ seat. Following Doerfer’s confirmation in April, 1952, Merrill stepped down.

Few informed FCC observers would disagree that if Eugene Merrill had been quickly confirmed by the Senate in October 1952, FCC history would have been very different. Rather than Doerfer providing a 3–1–3 partisan parity on the commission, Eisenhower would have taken office one step behind in the appointment game, facing a 4–1–2 Democratic majority on the commission. Doerfer was eventually designated by Eisenhower as chairman of the FCC during an explosive and controversial era in broadcasting. It was Doerfer who testified before an incredulous House subcommittee that rigged quiz shows neither violated the law nor required or even merited investigation by the FCC.¹ During his interim service on the commission, Merrill played a deciding role in the controversial ABC–Paramount merger, perhaps the most important case of the decade.² Had Doerfer occupied the seat earlier, he likely would have turned the majority to establish a more hands off policy on mergers. By late 1953, Doerfer occupied the seat when the commission decided a multiple-ownership case involving Storer Broadcasting.³ While the outcome of the Storer opinion did not hinge on Doerfer’s vote, the new commissioner’s interaction with Storer led to a major conflict-of-interest scandal at the FCC, requiring Doerfer’s resignation in 1960.

Consequential appointment delay, such as the failure to fill the Jones vacancy, is actually quite common at independent agencies, where the small number of commissioners and statutory restriction on partisan membership make each seat critically important. Yet, practically no one has examined the phenomenon in depth. Under what conditions will the president and Senate fail to fill a vacancy in a timely fashion? These conditions, by definition, affect the voting and opinion-writing dynamics on independent commissions. They may also affect the efficient and effective function of such bodies. Ultimately, they may change the course of an agency by terminating one nomination in

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¹The data for this project was collected as a pilot for the National Science Foundation project SES 00-95962, and is publicly available along with the appointment and biographical data for 14 other independent agencies at http://www.gsu.edu/~wwwirc.

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favor of a very different candidate. This lack of scholarly attention is ironic, given the very broad discretion afforded to independent agencies, coupled with the near certainty among political scientists that ideological predispositions explain a great deal of the variation in votes by commissioners (Chang 1997; Moe 1982; Snyder and Weingast 2000). A politician who wins confirmation for an ideologically compatible commissioner has probably gone a long way toward ensuring the agency will establish ideologically acceptable policies. Likewise, a politician who successfully defeats an ideological opponent has probably guaranteed that the next nominee will be more acceptable. Knowing who succeeds in the appointment game goes a long way toward explaining who controls the bureaucracy—an enduring issue in the literature (Ferejohn and Shipp 1990; Hammond and Knott 1996; Moe 1982; Wood and Waterman 1994).

On the surface, appointments to independent agencies appear almost entirely consensual. Roughly half of all commissioners, when their terms are due to expire, are renominated and easily confirmed. Informal negotiating mechanisms and the lack of senatorial courtesy for most agency appointments make contested roll call votes for confirmation extremely rare. Presidents have obtained confirmation for their formal nominees in well over 95 percent of cases. Much of the conflict over appointments occurs behind the scenes during informal negotiations.

The backlog of appointment vacancies under the Clinton administration generated an unprecedented degree of attention, and it was widespread across institutions. As the media coverage attested, Clinton and the Senate had difficulty agreeing on appointees for ambassadorial posts, independent commission seats, lower court judgeships, and even executive posts. Indeed, media attention to appointments, televised hearings, and rising interest group involvement in the confirmation process have all been identified as possible causes of the appointment “crisis.” Other plausible explanations include a growing recognition of the political importance of federal appointees and increased partisanship in Washington. Divided government and presidential aspirations of crucial legislative players are the most often-cited explanations in journalistic accounts.

While studies of independent-agency confirmation are limited, there is a wealth of qualitative and quantitative literature on judicial confirmation politics—especially at the Supreme Court level. Studies of the Clarence Thomas confirmation battle, for example, are literally too numerous to list. While the focus of their argument was minority constituency effects in the Thomas case, Overby et al. (1992) clearly demonstrate that the confirmation votes of individual senators were primarily determined by partisanship. Partisanship and ideology have been shown to be the dominant factors in confirmation votes cast by senators for the entire collection of Supreme Court nominees (Cameron, Cover, and Segal 1990; Segal, Cameron, and Cover 1992), as well as for a wider array of prominent nominations between 1965 and 1994 (Krutz, Fleisher, and Bond 1998).

Building on this finding, there is evidence that delay of the confirmation vote is explicitly pursued by the president’s opponents in the Senate, both for Supreme Court (Cameron and Segal 1998) and executive-agency nominations (McCarty and Razaghian 1999). Cameron and Segal examine Supreme Court confirmation duration with regard to the politics surrounding scandals. They measure the duration of confirmation, presence of scandal, and roll call margins for all Supreme Court nominations for 1877–1994. Regardless of the basis for opposition to a president’s nominee, the principal tactic of opponents was to delay and search for possible scandals in the nominee’s background. Furthermore, although scandals did degrade support for the president’s nominee among the president’s allies, the most significant effect of an uncovered scandal was to galvanize opposition among the president’s partisan opponents. In rare instances, delay tactics were sufficient to defeat the nomination. The authors demonstrate that the degree to which the Senate effectively delays the confirmation process, as indicated by the length of time a nominee remains unconfirmed, is significantly related to the size of the president’s opposition in the Senate.

McCarty and Razaghian (1999) demonstrate that delay of confirmation for appointments to executive agencies is significantly related to the size of the president’s opposition in the Senate and the degree of ideological polarization in the chamber. A descriptive account of FTC and FCC appointment politics also highlights the role of partisanship (Graham and Kramer 1976). By contrast, Krutz, Fleisher, and Bond (1998) demonstrate that the president’s opponents in the Senate are no less able to “expand the scope of the conflict” (which often involves delay) during unified government than during divided government. Examinations of lower federal court appointment also suggest that lower court vacancy duration is unrelated to divided government (Allison 1996; Hartley and Holmes 1997; Nixon and Goss 2001).

No empirical studies of vacancies on independent commissions have been conducted. The prior literature on appointments to the judicial branch and executive agencies provides a framework for exploring appointments to independent regulatory agencies, but the findings do not present a uniform set of results, and the techniques vary. With fixed (but not unlimited) terms of service following their appointment, independent commissioners fall in between the extremes of independent federal judges and subservient cabinet agents of the president. A study specifically geared toward independent agencies may shed light on the some-
times contradictory findings in these literatures. An empirical approach allows a determination of the independent contributions of many plausible delay factors simultaneously. For example, several seats remained vacant over a protracted period in the mid-1990s. To what degree were the delays a result of partisan conflict between the president and Congress, and to what extent were they the result of Clinton’s unusually forceful efforts to appoint more women and minorities? Only a multivariate model can untangle these plausible explanations.

Data and Statistical Methods

A number of intermediate dates could be used to examine the length of time it takes to fill a commission seat. For example, two separate durations might be examined—the time from the beginning of a vacancy until the president names a nominee, and the time from nomination to confirmation. Cameron and Segal (1998) and Kemper and Van Winkle (1999) begin their analyses of judicial vacancies using this convention, with nominees serving as the unit of analysis.

For independent agencies, designs based on nominations make delineation of the universe of observations difficult, and perhaps impossible. Nominees are occasionally rejected or withdrawn, and a single commission vacancy may involve several iterations of the nomination/confirmation process, all of which are difficult to document, and many of which are informal. In addition, there may be significant periods of time during which there is no formal nominee, even though discussions about a specific candidate occur in the exact same manner as they would if the candidate were officially nominated.

For example, James Fly was nominated to succeed himself on the FCC in 1942, and he served under a recess appointment until 1944. However, Fly was never confirmed, and before his nomination was withdrawn, Paul Porter’s name surfaced as a candidate (Flannery 1995). Porter was the eventual appointee. George Payne was nominated by FDR in 1943 to succeed himself, but the nomination was withdrawn the very next day for undisclosed reasons. Payne was eventually succeeded by Ewell Jett, but not for 230 days—in part because FDR had stumbled with the Payne nomination. Andrew Barrett was confirmed to the FCC in 1989, only after Bradley Holmes’s nomination languished in the Senate and was eventually withdrawn.

Should informal candidates such as Holmes be examined alongside the formal nominees? What about the unnamed potential candidates who are doubtlessly discussed informally in the White House or Senate chambers? What justification is there for excluding nominees who fail to be confirmed? When a nomination clearly seems doomed, should it be considered terminated? Does a short stint as a nominee indicate unusually good relations between the president and Senate, or unusually bad relations? None of these questions has a compelling answer, and they suggest that nominations are not where we should be looking to study appointment bargaining.

The process of finding a replacement for Kenneth Cox in 1970 presents a clear demonstration of the pitfalls of trying to identify all the relevant nominees during an appointment cycle. In a published interview two weeks before the expiration of his term, Cox, a Democrat, expressed “bitterness” about a rumor he had heard that Nixon would nominate Republican John Snyder, state treasurer of Indiana, as his replacement on the FCC. Snyder had had no previous experience in the communications field, but Nixon was indebted to him for dropping out of the race for the Republican Senate nomination, at Nixon’s request (Nixon had favored a competing Senate candidate). Nixon may very well have promised an FCC nomination to Snyder, but he was never formally nominated to the commission. The “trial nomination” cannot be said to have begun or ended at any particular point. The same problem occurs for every “trial balloon”—an increasingly common White House tactic in appointment politics. Shortly after Cox’s term expired, Nixon nominated another Republican, Sherman Unger, but the nomination was withdrawn in December. Thomas J. Houser, a Republican from Illinois, was eventually nominated and confirmed as Cox’s replacement. The vacancy persisted for 189 days because there was no candidate who was clearly acceptable to all involved.

Based on the aforementioned theoretical and practical limitations, the total amount of time a seat remains vacant is the most encompassing measure of presidential—Senate appointment negotiation difficulties (Nixon and Goss 2001). Other measures geared toward delay of the nominating process or delay of the confirmation process have been used in related literatures (Allison 1996; Cameron and Segal 1998; Hartley and Holmes 1997; McCarty and Razaghian 1999). But delay during specific subintervals is very likely interrelated in complex ways. The more encompassing measure adopted here captures negotiation difficulties in their entirety. From the standpoint of staffing for the FCC and potential changes in FCC decisions, the total vacancy delay is all that matters. Vacancy, in this design, is the unit of analysis, rather than the nominee.

The results in later sections employ an exponential regression using the duration of a vacancy as the dependent variable. Some prior literature examines duration data using an exponential model (King et al. 1990). The Cox model might be used instead, for it is less sensitive to distributional assumptions (Cox and Oakes 1984), but it is inappropriate for data exhibiting a large number of “tied” observations. Instead, robust standard errors are calculated.
for the exponential regression, which controls for possible
distributional violations in this small dataset (Box-
Steffensmeier and Jones 1997).

Once a commission seat becomes vacant, either because
the term has expired or because the occupant has left of-
tice, the time taken to fill the slot (in days) defines the
vacancy duration. In this formulation, the time taken to fill
a seat is a function of some plausible explanatory factors,
ranging from innocuous controls to strategic interaction
between the Senate and the president. An exponential model
allows a suitable regression to examine the effects of the
hypothesized factors.

The dataset was designed as follows: I collected one
observation for each FCC vacancy that arose from the in-
cepition of the agency in 1935 to January 1, 1999. For
each observation, the date the seat became vacant, either
due to expiration of the term or exit by a sitting commis-
sioner, was recorded. The number of days from the begin-
ning of the vacancy until the seat was filled by the presi-
dent (by signing the commission to fill the seat) serves as
the dependent variable. Characteristics of the eventual ap-
pointees, their predecessors, and the political context at
the beginning of the vacancy were recorded as potential
independent variables. Virtually all of the data were de-
derived from various annual reports of the FCC.

Figure 1 presents a historical depiction of vacancy du-
urations for seats on the Federal Communications Com-
mission. All told, 90 vacancies arose on the FCC since 1935.
Normally, only one term expires each year, but many other
vacancies may arise during unexpired terms, due to death
or resignation. The durations of vacancies ranged from a
single day to nearly two and a half years. Because vacancy
durations vary dramatically from one incident to the next,
a moving-average smoothing function is superimposed in
figure 1 to illustrate the longitudinal trends. There was a
period of unusual appointment difficulty in the mid-1940s,
followed by a period of calm in the 1950s. After 1960,
vacancy durations on the FCC increased tenfold. The 1940s
are more difficult to explain, but the modern rise in va-
cancy duration is sensible in light of the modern Senate’s
more activist view of its confirmation role (Graham and
Kramer 1976).

Model of Vacancy Duration

The literature indicates a number of political and non-
political factors that may affect the time it takes the Senate
and president to cooperate sufficiently to fill a vacant com-
mission seat. Deering (1987) notes a number of factors
leading to steadily increasing vacancy durations for all
presidential appointees. Presidents have been forced in re-
cent years to run detailed checks of potential nominees
long before a name is forwarded to the Senate. The Senate
Commerce Committee conducts increasingly rigorous in-
vestigations of nominees. Senators themselves seem more
interested in voicing their policy opinions during the con-
firmation process, perhaps because of increased media pres-
ence, which inevitably lengthens vacancies. A number of
policy-oriented interests are playing an important role in
the appointment process. The growing number of appoint-
ive positions increases the workload for all involved ac-
tors. I included a linear trend over time to capture the ris-
ing level of scrutiny that all manner of political actors
employ during the appointment process. This control guar-
antees that other results are not driven by unrelated trends
in the appointment process.

Appointment dynamics seem to be driven by a combi-
nation of institutional factors, which have little to do with
candidate characteristics, and symbolic factors, which are
very much tied to specific characteristics of specific nomi-
nees. Institutionally, partisanship and the search for parti-
san advantage seem to structure a great deal of the nego-
tiations. For example, the president seems less inclined to
nominate replacements, and the Senate seems less inclined
to confirm them, as the presidential administration wears
on (Barrow, Grysli, and Zuk 1996). The president pre-
sumably has more difficulty finding reliable candidates
(Havvilesky and Gilda 1992), and the president’s oppo-
nents have increased hopes of a change in White House
control. On occasions when White House control has
changed, the president’s Senate opponents have reaped the
rewards of dramatically different appointees. When the
Senate failed to confirm Democrat Eugene Merrill in 1952,
Eisenhower and the Republicans achieved a significant
victory because the seat ended up being filled by John Doerfer, a Republican. In tandem with his difficulties filling judicial vacancies in 1992, Bush failed to win confirmations to fill two FCC vacancies near the end of his term; Clinton subsequently filled the seats with his own nominees. I included a linear indicator of the time (in years) since the most recent presidential election as an explanatory factor. Vacancies arising later in a presidential administration are hypothesized to remain vacant longer.

Inclusion of a dummy measure for second presidential administration tests for an alternative, but related hypothesis: that vacancies persist longer when they arise during a president’s last term of office. Research on federal bench retirements indicates that vacancies arising during second presidential terms are significantly harder to fill quickly, probably because the White House is more likely to change hands (Hagle 1993; Nixon and Haskin 2000; Spriggs and Wahlbeck 1995).

Perhaps the most obvious partisan hypothesis is that, under conditions of divided government, vacancies will remain open significantly longer because the president’s opponents control the oversight committees and other reins of power in the Senate. Previous descriptions have suggested that divided government does not result in delay of referral by the Judiciary Committee (Allison 1996; Hartley and Holmes 1997), nor in less confirmation success for high-profile executive appointments (Krutz, Fleisher, and Bond 1998). However, because the hypothesis has not been tested with respect to independent agencies, and because popular accounts almost universally suggest that divided government is important, the variable should be included.

Ruckman’s (1993) “critical nominations” hypothesis, supported by analysis of Supreme Court appointments, suggests that when an appointment will change the median partisan on a multimember panel, the losing party will fight the nomination tenaciously. For the seven-member FCC, the median partisan changes when, and only when, a specific seat changes party hands. This has occurred 10 times in FCC history. I included a dummy measure of such critical switches to test and control for this factor.

In addition to partisan and institutional factors, the symbolic value of appointments should not be discounted. For example, the judicial literature presents compelling statistics describing the different emphasis recent presidents have placed on appointing minorities and women to the federal bench (Goldman 1995; Goldman and Sarsonson 1994; Goldman and Slotnick 1997; Nixon and Goss 2001; Slotnick 1983, 1984). The same dynamics are evident on the FCC. Specific opposition to nominees by Senators based on racial or gender considerations is always a possibility. Shortly after William Kennard was nominated to be the FCC’s first African-American chairman, Jesse Helms (R-NC) publicly voiced opposition to the confirmation and delayed the vote in the Senate. Delay rooted in less pernicious motivations can also occur, and is not impossible in the White House, either. Bush eventually filled Mark Fowler’s seat (a white conservative Republican) with Andrew Barrett (a black conservative Republican), but only after a very protracted search for just such a candidate. Because there is a smaller pool of potential nominees, or because there is more opposition to appointment of such commissioners, it is reasonable to hypothesize that when the president and Senate eventually agree on female or minority appointees, the process takes longer.

Finally, the institutional rules for independent agencies introduce some unique factors into the appointment process. Unlike federal judges or executive-agency personnel, FCC commissioners serve fixed terms of service that expire regardless of whether the president wishes it. Reappointment of the sitting commissioner to a new term is common. Because such vacancies are being filled through a replay of a previous confirmation, the delay tends to be minimal. Inclusion of a dummy variable, indicating whether a renomination was sought, serves as a control for this phenomenon.

Perhaps most important, unlike federal judges or executive-agency personnel, some FCC appointees cannot be members of the president’s party, by law. The charter statutes of virtually every independent agency restrict the number of copartisans who may serve on the commission. In the case of the seven-member FCC, no more than four members may belong to the same party. This means that in a substantial number of cases, the president is not free to nominate someone from his own party. A dummy measure for these instances was included in the regression. It seems reasonable to expect such vacancies to persist longer because the president has neither the incentive nor the ability to quickly locate cross-party nominees, and the president’s opponents in the Senate have less incentive to confirm whatever cross-party nominee the president identifies.

In summary, vacancy duration for FCC seats was modeled as a function of the following independent variables:

- Date the vacancy began (1935–1997)
- Years since the most recent presidential election at the time the vacancy began (0.019–3.995)
- Second presidential term at the time the vacancy began (0=no, 1=yes)
- Divided government at time vacancy began (0=no, 1=yes)
- Critical vacancies (1=party control of FCC seat changed, 0=no change in party control of FCC seat)
- Gender of confirmed appointee (0=male, 1=female)
- Race of confirmed appointee (0=white, 1=black, Hispanic, or Asian)

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Sitting commissioner nominated to succeed self (0=no, 1=yes)
Statutory requirement that the appointee come from the party opposite the president (0=not required, 1=required)

Table 1: Exponential Regression Model of FCC Vacancy Duration

<table>
<thead>
<tr>
<th>Independent variables</th>
<th>Coefficients [robust standard errors]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>3.26 [.993]**</td>
</tr>
<tr>
<td>Date vacancy began</td>
<td>.011 (.012)</td>
</tr>
<tr>
<td>Years since last presidential election</td>
<td>-.017 (.147)</td>
</tr>
<tr>
<td>Second presidential administration</td>
<td>1.66 (.459)**</td>
</tr>
<tr>
<td>Divided government</td>
<td>-.105 (.347)</td>
</tr>
<tr>
<td>Party change of seat control</td>
<td>.567 (.429)</td>
</tr>
<tr>
<td>Female appointee</td>
<td>-.092 (.371)</td>
</tr>
<tr>
<td>Minority appointee</td>
<td>.728 (.465)</td>
</tr>
<tr>
<td>Renomination</td>
<td>-.165 (.741)**</td>
</tr>
<tr>
<td>Cross-party nomination requirement</td>
<td>.940 (.336)**</td>
</tr>
</tbody>
</table>

N 90
LogL 212.1
$\chi^2$ 36.4**

* p < .05, one tailed test
** p < .05, two tailed test
*** p < .01, two tailed test

Results

Table 1 presents the exponential regression results.

The regression coefficients are interpreted in a straightforward manner, at least with respect to direction. For example, the coefficient for the year the vacancy began is positive, indicating that vacancy duration has grown significantly longer over time. For this type of regression, the exponential of a coefficient indicates the percentage change in the predicted duration for a one-unit change in the independent variable. Thus, each year has seen about $e^{0.017}=1.11$ percent increase in vacancy duration.

While a minor effect from one year to the next, this steady increase has resulted in a lengthening of predicted durations twentyfold since 1935. The coefficient for reappointments is significantly different from zero, in the expected direction. When presidents attempt to fill a vacancy by renominating the sitting commissioner, the vacancy is filled much more quickly (such vacancies persist only about 20 percent as long).

Only two institutional variables are clearly and significantly related to vacancy duration. The model estimates indicate that vacancies are significantly longer when they arise during a president’s second term. Vacancies are also significantly longer when statutory restrictions require a cross-party nomination. It turns out that Ruckman’s critical-vacancy hypothesis is confirmed by the direction and magnitude of the coefficient (critical vacancies are predicted to take 75 percent longer to fill), but the finding is not statistically robust. The coefficient for divided government is close to zero, both from a substantive and statistical standpoint, and has the wrong sign.

The vacancy durations when women and minorities are chosen to fill them are 91 percent and 207 percent larger than men and whites, respectively. This effect for minorities is illustrated by a nonparametric Kaplan–Meier survival curve (figure 2).

The predicted survival curves, evaluated at the means for all other independent variables and at two values for race (0 and 1), illustrate the dramatic impact of this factor on vacancy duration. At any given moment, the likelihood of confirming a minority is only about half that of confirming a white nominee. A similar demonstration for gender indicates that vacancies filled by women are slightly shorter than average, which runs contrary to expectations. For example, Truman nominated the first woman to the FCC during the summer of 1948—an election year; Ford nominated a woman during the summer of 1976, another election year. Each was easily confirmed prior to the election. In the absence of information about FCC appointment delay, one might think that by nominating nontraditional nominees, Truman and Ford ran the risk of confirmation delay and loss of the appointment. It turns out, though, that nominating women to the FCC does not result in observable delay, and neither president heightened the risk to his party. These findings are both consistent and inconsistent with patterns of judicial appointment, where both race and gender are salient and contentious aspects of appointment (Goldman 1995; Goldman and Saronson 1994; Goldman and Slotnick 1997; Nixon and Goss 2001; Slotnick 1983, 1984).
Figure 3 illustrates, again with Kaplan–Meier survival curves, the effect of cross-party appointment requirements on vacancy duration. Vacancies requiring cross-party nomination are predicted to last over twice as long as unrestricted seat vacancies. Thus, the ability or willingness of the president and the Senate to negotiate an acceptable compromise in such situations appears seriously degraded. Two examples illustrate the consequences of statutory partisan restrictions. Dennis Patrick, a Republican, resigned from the FCC on August 7, 1989. Bush and the Democratic Senate settled on a replacement, Sherrie Marshall (also a Republican) in only 14 days (the predicted vacancy duration was 57 days). By contrast, Patricia Dennis, a Democrat from New Mexico, resigned from the FCC just one month later, on September 29, 1989. Nothing had changed politically, except that the maximum number of Republican seats had been filled—Bush and the Senate had to agree on a Democrat. Bush did not even nominate a replacement until late November and when he did, he chose Ervin Duggan, a conservative Democrat from Georgia. The Senate did not schedule a hearing on Duggan’s nomination until February 1990, though Duggan was quickly confirmed thereafter. All told, it took 152 days to fill Dennis’s seat (the predicted vacancy duration was 160 days). If a cross-party nomination had not been required, the model estimates indicate a replacement for Dennis could have been established in little more than a month.

**Conclusion**

The Constitution provides an opportunity and incentive for the president and Senate to conflict over appointments to independent commissions. The political science literature has examined appointments to the judiciary and executive agencies. This study is the first empirical exami-
1. Testimony to the House Committee on Interstate and Foreign Commerce (U.S. Congress 1959).


5. White House transition difficulties, along with a myriad of idiosyncratic factors, may contaminate this particular measure by indicating delay that has nothing to do with presidential–Senate bargaining. It is reasonable to expect that most of these idiosyncrasies will be nonsystematic, and therefore legitimately treated as “white noise.” Transition difficulties probably are related to electoral cycles, but they cannot be observationally distinguished from bargaining difficulties. In addition, any transition difficulties should mute the “honeymoon” effect reported later, so the reported findings are, if anything, even stronger.

6. In this article, Senate recesses have not been subtracted from the time interval, which differs from the previous literature (Allison 1996; Hartley and Holmes 1997). Senate recesses are probably a part of the bargaining process, so they have been included. That is, all actors know of upcoming Senate recesses, and when a seat remains vacant during a recess, it is because one or the other side wished it so.

7. Of the 90 vacancies, 27 (30 percent) were filled immediately (coded as one day). This violates the 5 percent rule of thumb that Yamaguchi (1991) suggests as the maximum number of ties when employing the Cox regression.

8. In recent years, an informal practice has evolved in which a commissioner may be permitted to serve beyond the end of his or her term until a replacement can be found. Normally, this arrangement requires the approval of the Senate Communications Subcommittee. This presents a measurement problem not encountered for other appointive offices. I deemed such seats vacant on the day the term expired, relying on the view that an agreement continues to elude the president and Senate during this period.

9. In the case of unexpired terms, I deemed the seat vacant beginning on the date the preceding commissioner left office, regardless of whether a retirement had been announced earlier. Retirement announcements are impossible to document reliably. Indeed, some retirement announcements have even been rescinded, such as R.E. Lee’s announcement in the spring of 1967. In all cases, I deemed the seat filled on the day the new commissioner was sworn in.

10. The first five appointments (transfers, actually, from the defunct Federal Radio Commission) are excluded. Each of these commissions occurred on the exact same day, the first day they were authorized, and the politics of confirmation were likely quite distinct from later appointments. Two vacancies in the 1980s were excluded because they were resolved through extraordinary means—the commission was reduced to five members, and the seats were abolished. Re-appointments, even though nearly all are authorized immediately, are not excluded because it is possible for such nominations to be rejected. This follows the convention of Snyder and Weingast (2000). Indeed, some reappointment nominations ultimately failed, and the seat was deemed vacant from the end of the term until a replacement was confirmed. When a vacant seat was filled by a transfer of a sitting commissioner, with a subsequent appointment of a new commissioner, the original vacancy was treated as if it had been filled by the new appointee, and the intervening vacancy was ignored.

11. Recess appointments, which circumvent the normal confirmation process, have been ignored. Such tactics might appear to foreshorten a vacancy, but they do so through means entirely distinct from the normal appointment process. As with Subcommittee-approved “informal recess appointments” (see endnote 8), agreement evidently eludes the president and Senate during these periods. In such cases, the vacancy was not deemed filled until Senate confirmation of the nomination.

12. FDR’s third term and the beginning of his fourth term are coded as second terms, following Hagle’s (1993) convention. Even though second terms were not constitutionally prohibited for the entire time frame of this study, a two-term limit established by Washington has been a very strong norm (Hagle 1993) and probably structured the political calculations with respect to expiring nominations and vacancies.

13. For this analysis, I coded divided government as a dummy variable, based on control of the White House and Senate only. This seemed the more direct indicator of delay mechanisms. The more traditional indicator of unified government—whether the White House, Senate, and House were all three controlled by the same party—could be substituted, but turns up not significant.

14. An alternative indicator of the ability of the president’s opponents to delay might be based on whether the party holds a filibuster-proof majority in the Senate. Subsequent analysis demonstrates that this hypothesis is not supported. Like the finding for divided government, the coefficient is in the wrong direction (close to zero) and is not statistically significant. The same null result is evident for a more nuanced measure of Senate delay incentive—the proportion of the chamber occupied by the president’s partisan opponents.

15. New York Times, October 30, 1997. To be fair, Helms’s delay may not have been rooted in explicit race baiting. Ostensibly, Helms was seeking to extract a concession from Kennard over a pending radio permit in Asheville, North Carolina.

16. The characteristics of predecessors may be the determining factor, as politicians struggle over replacing females with females and minorities with minorities. There is clear evi-
idence of politicians jockeying over at least one “female seat,” “Hispanic seat,” and “black seat” in recent FCC politics. Exploration of the manner in which these factors enter into vacancy delay is ongoing.

17. Reappointment of commissioners when their term expired has been attempted in 29 of 55 instances (53 percent) at the FCC. Such nominations were successful, typically in very short order, in all but three cases.

18. The FCC was reduced to five members in 1987.

19. Interestingly, such cross-party requirements have only sprung up in 25 percent of all FCC vacancies. A random distribution of retirements should produce such a scenario 42 percent of the time. This disparity is preliminary evidence that FCC commissioners strategically choose the time of their retirement to increase the chance of their seat being filled by a president of their own party.

20. A test for an interaction between presidential term and years since the most recent presidential election turns up not significant ($\chi^2(1) = 1.4$). That is, the effect for electoral cycles is not significantly different between presidential terms.

21. The $t$-test for the minority effect does not satisfy the traditional significance criterion, but it is very close (p=.06, one tailed test). In this small dataset, the standard error may be inflated by collinearity. Furthermore, the coefficient estimate is substantively very large. Overall, the minority effect does seem to be an important aspect of FCC appointment.

22. This effect for minorities persists even after controlling for broadcasting experience. That is, minorities are not less likely to be confirmed simply because the minority candidates that have been chosen are objectively less qualified or less well suited for service on the commission.

23. Duggan was perceived as socially conservative and likely to push for stricter decency standards (Flannery 1995).

References


