

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

November 28, 2011

The Honorable Julius Genachowski  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Dear Chairman Genachowski:

The Energy and Commerce Subcommittee on Communications and Technology has made reform of the Federal Communications Commission's (FCC or Commission) processes a priority for the 112<sup>th</sup> Congress. At several hearings, Members have expressed their concerns that the work of the FCC Commissioners occurs without sufficient transparency. Given the keen interest of Congress in seeing the FCC's internal procedures subjected to public scrutiny, we are particularly concerned with the Commission's recent conduct with respect to the universal service item adopted at the Commission's October open agenda meeting.

Some of the Commission's actions in this proceeding have reaffirmed our concerns about process. For example, the Subcommittee has previously noted that the Commission should give the public adequate time to review and respond to all materials in the record before the Commission's sunshine rules bar public efforts to influence Commissioners and staff. Some have explicitly cited the last-minute "data dump" in the net neutrality proceeding, where the Commission entered into the record over 1,900 pages of documents in the two days before that record closed. We are disappointed to see that the Commission used the same tactic in the universal service docket. In the weeks before—and even just two days before—the record closed in the universal service proceeding, the Commission placed 114 documents, which amounted to thousands of pages of data, into the public record as information the Commission "may consider as part of this proceeding." Regardless of whether these disclosures were "over and above legal notice requirements" as the Commission claimed, they cause real concern for stakeholders who must read, process, and react to such large volumes of information with minimal opportunity for response. They cause even more concern for the public at large that could not possibly review this information in the timeframe provided.

Another process concern has been ensuring that Commissioners have adequate time to review items they are expected to vote on, and keeping the public informed on what Commissioners are in fact voting. The practice of negotiating up to, and sometimes after, the Commission's open agenda meeting appears to have reached an apex in the universal service proceeding. On October 27, the day of the open meeting, the Commission released a seven-page executive summary that provided high-level talking points on the reforms adopted. It did not release the adopted order, but press reports suggest that the adopted order was about 400 pages long. More than three weeks later, the Commission finally released the universal service reform order, and the size of the order ballooned to 759 pages. The length of this delay and the increasing girth of the order suggest that the delayed release resulted not from the editorial privileges normally reserved for staff but from continued negotiations, negotiations that occurred after the sunshine period had expired and the public understood the negotiations to be concluded.

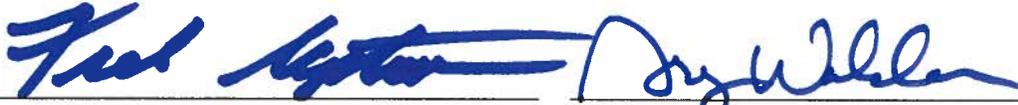
In light of these concerns, please submit responses to the following:

1. Please provide a copy of the universal service item as considered and adopted at the Commission's October 27, 2011, open meeting.
2. What substantive changes, if any, were made to the universal service item between the time of adoption and release? If there were substantive changes made after adoption, why were these changes made after adoption and not before?
3. Please provide a redlined version that shows all changes made to the universal service item after the Commission's October 27, 2011, open meeting.
4. The Commission's sunshine rules state that prohibitions on outside party contact remain in place until the Commission "releases the text of a decision . . . relating to the matter." The Commission released an executive summary related to the universal service proceeding on October 27, but did not release the text of the order itself until November 18. Please explain how the sunshine rules applied during this period, and include a list of any and all ex parte communications that occurred during this period.

Please respond no later than Monday, December 12, 2011.

As this Committee works to bring changes to the FCC's processes, we expect the Commission to act in a manner that is indicative of the responsibility it has to openly and transparently conduct its business. While we hope that the material requested shows otherwise, it appears that in this case, the Commission has failed to live up to that responsibility.

Sincerely,



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Fred Upton  
Chairman

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Greg Walden  
Chairman  
Subcommittee on Communications and  
Technology

cc: The Honorable Henry A. Waxman, Ranking Member  
Committee on Energy and Commerce

The Honorable Anna G. Eshoo, Ranking Member  
Subcommittee on Communications and Technology