

Statement of the Honorable Greg Walden
Subcommittee on Communications and Technology
Markup of H.R. 3309 and H.R. 3310
November 16, 2011
(As Prepared for Deliver)

The communications and technology sector is the most competitive, innovative, and open sector of our economy, creating new devices, new services, and new jobs despite the economic doldrums our country is caught in. Communications and technology companies deserve the most transparent and responsive government agency, and that's exactly what the legislation before us is about: bringing transparency and accountability to the Federal Communications Commission.

The legislation we are looking at today—the FCC Process Reform Act and the FCC Consolidated Reporting Act—is the fruits of our own six-month, open and transparent legislative process. In May, we invited the Commissioners to testify about improving the FCC's processes, and we heard from them about what's working and what isn't. In June, subcommittee staff released a discussion draft, and we held a legislative hearing with a diverse panel of experts—representing industry, think tanks, consumer groups, academia, and the states. In response to the views presented at the hearing, as well as additional input from stakeholders and colleagues on both sides of the aisle, we refined the draft legislation to create the two bills before us today. In large part, this legislation asks the FCC to go through a process similar to what we've gone through in crafting this bill and to implement some of the reforms that the House itself adopted just this year.

Now some may argue that the FCC is already subject to the Administrative Procedure Act and doesn't merit special attention. Hogwash. This is the agency that introduced thousands of pages into the record in the weeks before the record closed in its Universal Service Fund proceeding—some submitted just two days before that record closed. This is the agency that had a backlog of 5,328 petitions, 4,185 license applications, and more than a million consumer complaints just this summer. This is the agency that hasn't produced an annual Satellite Competition Report or an annual Video Competition Report in years, but claims that it doesn't need to survey the industry before adopting new regulations for these providers. This is the agency that adopted industry-changing rules for universal service just 20 days ago—and we still don't know what the order says.

I ask my colleagues on both sides of the aisle: is this how you think a federal agency should be run? Should small businesses simply wait years for the agency to make a decision with no guidance on when it is coming? Should taxpayers just trust the agency to spend billions of federal funds on programs without any performance measures to assure accountability?

Some have argued that we should replace H.R. 3309 with the FCC Collaboration Act. Really? We see problems with transparency and accountability at the FCC, and all you can say is "Let'em meet in private?"

I don't get it. I don't understand why the FCC should be treated so differently from every executive agency that is subject to President Obama's Executive Order, that is required to survey the industry before initiating rulemakings, that is required to comply with more stringent cost-benefit analysis requirements, and that must receive approval from the Office of Management and Budget before issuing new major rules. If President Obama demands

these things from the executive agencies, why shouldn't Congress demand them of the independent agencies?

I don't understand why it is so much to ask that the FCC establish performance measures for programs like the \$8.5 billion Universal Service Fund when the Government Accountability Office has faulted the FCC time and again for not doing so.

And, I don't understand why my colleagues would turn a deaf ear to the pleas of longtime Commissioners like Michael Copps and Robert McDowell who have explained the abuses of previous chairmen and the need for institutional reform.

There's another argument I've heard that particularly confuses me—that we're fundamentally changing the way the Commission reviews transactions. It's true that the bill would end the FCC's ability to hold up an otherwise meritorious merger until it can extract unrelated "voluntary commitments." Former White House Advisor Philip Weiser has called that practice a recipe for ad hoc decision making; former Chairman of the Energy and Commerce Committee John Dingell has called it extortion.

But it's just not true that we're changing the public interest standard that the FCC uses to approve or deny a merger. In the context of broadcast licenses, for example, the FCC has looked beyond competition to values like localism and a diversity of voices. The FCC can still protect these values under this legislation; it just can't make the last-minute side deals that it does today.

In the end, the legislation we look at today is about increasing transparency and accountability at one agency that should be at the forefront of open government. Transparency and predictability in the regulatory process should be the rule, not the exception.

Good government should not be about Republicans or Democrats. Both sides have had their share of problems while running the Commission. It's not about Chairman Genachowski. I have repeatedly said the current chairman has improved many of the processes at the FCC.

But good government is about the American public—what they expect and what they deserve. The American public deserves a transparent and accountable federal government. I say, let's start here.

###