

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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November 30, 2011

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Greg Walden  
Chairman  
Subcommittee on Communications and Technology  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Upton and Chairman Walden:

We are writing you to request that you postpone the Subcommittee markup scheduled for Thursday, December 1. We make this request for two reasons. First, Chairman Walden released new legislative text on Tuesday, so a delay will give members and stakeholders more time to understand the new language. Second, we were engaged in constructive negotiations toward a bipartisan bill that were abruptly ended in early October. A delay would provide an opportunity for us to resume these negotiations and to share relevant information we have learned since then.

The new language moves us closer together on a key issue: the allocation of the D-block spectrum to public safety. We commend you for taking this step and are encouraged by the signal it sends. In at least three other areas, however, the new language retains significant flaws or is even a step backwards from where we had previously made progress together: (1) its diffuse governance provisions for the public safety network; (2) its prohibition on allocating spectrum from incentive auctions for unlicensed use; and (3) its limitations on the FCC's authority to craft auction rules in the public interest.

The Honorable Fred Upton  
The Honorable Greg Walden  
November 30, 2011  
Page 2

We also have questions about other provisions. For example, the new language provides broadcasters with a \$3 billion fund to cover relocation expenses. This is three times larger than the amount CBO has advised would be necessary to cover broadcasters' reasonable expenses. We do not understand why this broadcaster fund is so generous, especially when the new language provides just \$5 billion for building the new public safety network, which is less than half the funds provided in the bipartisan Senate legislation and our proposal.

After you ended our negotiations in early October to pursue discussions in the Super Committee, we used the break in the negotiations to gather new information about the governance issues. Through this process, we have learned new facts that we would like to have the opportunity to share with you.

One of the issues that divides us is whether the new public safety network should be built by the 50 states, as you propose, or by a national nonprofit corporation, as we propose. We consulted with state and local officials, including the National Governor's Association, the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors, as well as leading public safety officials. They consistently told us they wanted "a single national network" or "interconnected regional networks," not a patchwork of 50 separate state networks. They advocated for a national network overseen by a "national body" to avoid the interoperability problems that would inevitably arise over time if each state were responsible for building and upgrading its own network. They also urged – and we agree – that there should be significant state and local representation on the national body.

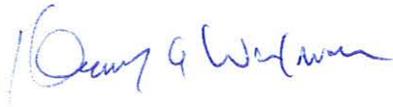
Another issue we need to resolve is whether the legislation should mandate that significant authority over the deployment of the public safety network be contracted out to a private company. Your legislation directs that the FCC give the license for the public safety network to a private contractor. Under your legislation, states would need to seek the approval of the private contractor before entering into their separate contracts with commercial partners to deploy networks using the public safety spectrum. Your concept seems to be that the private contractor would be able to use this approval authority to ensure that the 50 separate state networks meet minimum interoperability requirements. Your staff explained to us that this model is based on the ongoing 800 MHz reconfiguration program, which is currently administered by Deloitte.

We have concerns about the accountability of a private contractor and the costs to the taxpayer. Under the 800 MHz reconfiguration program, Sprint has been required to pay the costs of the contract with Deloitte, and they have been high. Although Deloitte's responsibilities are not as extensive as those envisioned in your bill, Deloitte and its predecessor have already been paid over \$140 million. That is nearly three times the amount the Administration has said a nonprofit corporation would need before it would become self-sustaining.

The Honorable Fred Upton  
The Honorable Greg Walden  
November 30, 2011  
Page 3

We believe the differences between us can be resolved and we have some new ideas for bridging our differences that we would like to discuss with you. We hope you will agree to postpone the markup so we can work with you to produce a bipartisan bill that all members can support.

Sincerely,



Henry A. Waxman  
Ranking Member



Anna G. Eshoo  
Ranking Member  
Subcommittee on Communications  
and Technology