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RPTS CALHOUN

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MARKUP OF H.R. 3309, THE FEDERAL COMMUNICATIONS COMMISSION PROCESS REFORM ACT; AND

H.R. 3310, THE FEDERAL COMMUNICATIONS COMMISSION CONSOLIDATED REPORTING ACT

WEDNESDAY, NOVEMBER 16, 2011

House of Representatives,
Subcommittee on Communications
and Technology,
Committee on Energy and Commerce,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:06 a.m., in Room 2123, Rayburn House Office Building, Hon. Greg Walden [chairman of the subcommittee] presiding.

Present: Representatives Walden, Terry, Stearns, Shimkus, Bono Mack, Rogers, Blackburn, Bilbray, Bass, Gingrey, Scalise, Latta,

Guthrie, Kinzinger, Barton, Upton (ex officio), Eshoo, Markey, Doyle, Matsui, Barrow, Christensen, Towns, Pallone, Rush, DeGette, Dingell, and Waxman (ex officio).

Staff Present: Jim Barnette, General Counsel; Ray Baum, Senior Policy Advisor/Director of Coalitions; Allison Busbee, Legislative Clerk; Nicholas Degani, FCC Detailee; Kirby Howard, Legislative Clerk; Debbie Keller, Press Secretary; Peter Kielty, Senior Legislative Analyst; Jeff Mortier, Professional Staff Member; Katie Novaria, Legislative Clerk; David Redl, Counsel, Telecom; Phil Barnett, Minority Staff Director; Jen Berenholz, Minority Chief Clerk; Shawn Chang, Minority Counsel; Jeff Cohen, Minority FCC Detailee; Roger Sherman, Minority Chief Counsel, Communications and Technology; Kara van Stralen, Minority Special Assistant; and Will Wallace, Minority Policy Analyst.

Mr. Walden. The subcommittee will come to order.

The chair recognizes himself for an opening statement.

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 is exactly what the legislation before us is about: bringing transparency and accountability to the Federal Communications Commission.

The legislation we are looking at today and marking up, the FCC Process Reform Act and the FCC Consolidated Reporting Act, are the fruits of our 6-month open and transparent legislative process. In May, this subcommittee invited the commissioners to testify about improving the FCC processes, and we heard from them about what is 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 the 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 have gone through in crafting this bill and to implement some of the reforms that the House itself adopted in its rules earlier this year.

Now, some may argue the FCC is already subject to the Administrative Procedures Act and does not merit special attention. To that I simply say, hogwash. This is the agency that introduced thousands of pages into the record -- you can see them before me; this is called a "data dump" -- in the weeks before the record closed on its Universal Service Fund proceedings, some submitted just 2 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 has not 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 -- 20 days -- ago, and we still don't know what that order says.

So I ask my colleagues on both sides of the aisle, is this how you think a Federal agency should operate? 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 we should replace H.R. 3309 with the FCC Collaboration Act and that alone. Really? We see problems with transparency and accountability at the FCC and all you can say is, let them meet in secret? I don't get it.

I don't understand why the FCC should be treated so differently from every other executive agency that is subject to President Obama's Executive order that is required to survey the industry before initiating rulemaking. That Executive order requires agencies to comply with more stringent cost-benefit analysis requirements and 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 the same things from the independent agencies?

I don't understand why it is so much to ask the FCC to 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 is another argument I have heard that particularly confuses me: that we are fundamentally changing the way the Commission reviews transactions. Well, it is true that the bill would end the FCC's ability to hold up an otherwise meritorious merger until it can extract unrelated, quote/unquote, "voluntary" commitments. Former White House advisor Philip Weiser has called that practice "a recipe for ad hoc decision-making." And the former chairman of this very committee, Mr. Dingell, at one time called such a practice "extortion."

But it is just not true that we are 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 and not the exception.

Good government should not be about Republicans or Democrats. Both sides have had their share of problems while running the Commission and, frankly, the Congress. It is not about Chairman Genachowski. I have repeatedly said the current chairman has improved many of the processes at the FCC, and I applaud him for those efforts. But good government is about the American public -- what they expect and what they deserve. The American public deserves a more transparent and accountable Federal Government. And I say it is time to start that process with the FCC, over which this subcommittee has jurisdiction.

I now recognize my friend from California, Ms. Eshoo, for her opening statement.

[The prepared statement of Mr. Walden follows:]

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Ms. Eshoo. Thank you, Mr. Chairman.

And good morning to all the Members.

Modernizing the FCC to increase openness, transparency, and accountability are principles that I not only fully support, I believe every single Member does. I think that today, during this markup, the discussion and the debate is not going to be whether we are for that or not but how to accomplish it. Simply put, I think the legislation before us today will not accomplish the goals that the chairman just spoke about.

After seeking out a broad range of stakeholders, including consumer groups, academics, and those associated with the bipartisan Administrative Conference, the overwhelming consensus -- I want to say that again -- the overwhelming consensus -- and "consensus," I think, is an important word that is forgotten around here -- is that these reforms would lead to an agency that is less effective, less agile and transparent.

And let me explain why. H.R. 3309 creates new procedural requirements for the FCC's rulemaking process that benefits special interests and not consumers. Remember the consumer? Way down the bottom of the totem pole? The great consumer that businesses are all looking for? They want demand increased. Consumers are customers.

For example, as drafted, the legislation places requirements on the FCC's notice and comment process which must be met before the agency can issue any notice of proposed rulemaking or adopt any final rules. While this may appear very well intentioned in practice, these

requirements benefit large industry players with the resources to retain expensive outside counsel and consultants who can monitor and file multiple rounds of comments. How many of the little guys can do this? How many of the little guys can do this? Not very many. You don't have too much staying power if you don't have a lot of money. The FCC today has the flexibility to tailor each rulemaking to meet the needs of the issue at hand, and I see no reason for this to be changed.

Second, the legislation would fundamentally alter the FCC's ability to protect consumers during the agency's transaction review process. In practice, these changes would prohibit the FCC from imposing merger conditions that could offer a substantial public benefit, such as minimum requirements for broadband speed and low-cost retail broadband offerings. You start knocking these things out of the box, you end up hurting people as a result of it.

Finally, the legislation places a tremendous unfunded mandate on the FCC and its resources without any discernible benefits. For example, as written, the legislation requires rules establishing deadlines for all Commission actions and requires the FCC to report to Congress every 14 days if any publication deadline is not met. Now, we can't get spectrum legislation going. Our last hearing was in July. But if this were put in place, the FCC would be reporting to us every 14 days if any publication deadline is not met. So I guess that can keep Congress busy.

I intend to offer an amendment to the bill to preserve the portion

of the bill which I think serves the public interest. It includes the FCC Collaboration Act, which, as the committee members know, I introduced earlier this year with bipartisan support of the subcommittee as well as nearly every witness who testified on FCC process reform.

Regarding 3310, Mr. Chairman, I agree that there could be opportunities to streamline many of the reporting requirements Congress has placed on the FCC, but I think we need to fully understand the implications of the changes. I think it needs some more work, and I am willing to work with you in order to get there.

I think the legislation before us today could open the agency up to years of litigation -- exactly what the majority has never been for, whether it is around the FCC or any other agency. So I don't think, at the end of the day, that this is reform. I think it is gumming up the works.

We should be focusing the few remaining legislative days of this year on completing the spectrum bill, which will support new economic growth, job creation, and finally deliver a nationwide interoperable communications network for our first responders.

And, with that, I will yield back.

[The prepared statement of Ms. Eshoo follows:]

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Mr. Walden. The gentlelady's time has expired.

I recognize the chairman of the full committee, Mr. Upton, for an opening statement.

The Chairman. Well, thank you, Mr. Chairman.

The communications and technology sector is one of the largest drivers of our economy and one that continues to create high-quality jobs despite the sluggish national economy. Consistency and transparency from the FCC will not only produce better decisions, they will also help create competence and certainty that will promote increased investment, innovation, and jobs.

When we took over the majority in the House, Chairman Walden and the Republican transition team took a fresh look at how the House was run. In the past, both parties had allowed the House to fall into some bad habits, to follow poor procedure, and to let transparency become a victim of expediency. I am proud to say that the current Republican majority has led by example in showing good process, in fact, does lead to quality results.

Today's bills are the result of that good process. Chairman Walden held a hearing with the commissioners to gauge the state of the FCC, a second hearing with interested stakeholders to gather a more complete record, and has been responsive to the bipartisan debate on Capitol Hill on how this legislation would change the Commission. The process by which these bills have come to this markup is exactly the type of process this bill would demand of the FCC.

Even the FCC has recognized the need to make government processes

more transparent. The Commission recently tightened the constraints on when parties can lobby the FCC without informing the public of what was said. Now the public can better watch what private parties are doing at the Commission. But now it is time for the FCC to make itself more transparent and, in fact, more accountable. Today's bills would require the FCC to live up to the same standards that it demands of the public.

Expecting transparency and accountability from Congress and from Federal agencies should be a nonpartisan issue. I am glad to support both of these bills so that America's small businesses, entrepreneurs, and job creators can actually see what their government is doing.

And I yield the balance of my time to Mr. Scalise.

[The prepared statement of the chairman follows:]

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Mr. Scalise. I thank the chairman for yielding.

I want to also thank Chairman Walden for holding this markup and for doing the right thing by devoting our time to reforming the way the FCC does business.

Now more than almost any other time I can remember, our constituents have called upon Congress to moderate the heavy hand of government. They have called on us to rein in harmful regulations, to control spending, and scrutinize the activity of agencies that work with the private marketplace.

The FCC process reform bill accomplishes this by increasing transparency and ensuring adequate deliberation and review of action items. It also rightfully takes dead aim at transaction review procedures, which have oftentimes served as an expressway for implementing costly regulations on our small businesses and entire sectors of the economy.

On separate legislation, I want to thank the chairman and his staff for working with me on the FCC Consolidated Reporting Act and for bringing it before the committee for consideration this morning. Your staff has been immensely helpful as we have worked hard to put together a commonsense reform bill that streamlines burdensome FCC reporting requirements while strengthening the ability of the Commission to exercise discretion where appropriate.

The biennial Communications Marketplace Report will encompass, not eliminate, eight different reports that are currently released on an annual and triennial basis and will provide the FCC a platform to

report to Congress on the challenges for jobs and economic growth and the Commission's agenda to address those issues.

I have actually brought copies of all these reports. And I know Dr. Gingrey will be happy when I remove these, but if you look at all of these reports right now that the FCC is required to produce on an annual, in some cases triennial, basis, they are all stovepiped reports. They deal with individual sectors of the marketplace, and they don't encompass an entire comprehensive review that gives us the tools that we need to go and make the reforms necessary to ensure that we are doing what we need to do to allow the job creators out there to go and continue to innovate, to do the great things that they do in creating not only great jobs in our country but great new devices that allow Americans to communicate more effectively and to live their lives in a much more enjoyable way.

So the ability for us to consolidate but also to put a comprehensive report together that not only reviews individually these different aspects of the marketplace but to comprehensively review and see how they interact -- because today the marketplace works much differently than it did decades ago when many of these reports were created.

So I appreciate the chairman bringing these bills to us here today in full committee for this markup. I hope we are able to pass these out and help continue to create good jobs and get our economy back on track.

With that, I yield back.

[The prepared statement of Mr. Scalise follows:]

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Mr. Walden. The gentleman's time has expired.

I recognize the gentleman from California, Mr. Waxman.

Mr. Waxman. Thank you, Mr. Chairman.

Although I have many problems with H.R. 3309, I have three major concerns.

First, it creates a new set of procedures for the FCC. After 40 years, the Administrative Procedure Act has governed administrative agencies across the Federal Government. H.R. 3309 creates special procedural rules for the FCC alone.

I asked my staff to reach out to impartial administrative law experts, Republicans and Democrats, who used to work at the FCC and experienced communication lawyers to understand the effects of this legislation. The most common response was, why would anyone want to tie the agency up in knots like this and subject it to endless legal challenges? One expert told us industry lawyers would have, quote, "a field day" challenging and delaying FCC actions. Other experts told us it could take 15 years of litigation for the courts to clarify the meaning of the new requirements in this bill.

Second, this legislation alters fundamentally the FCC's ability to review transactions to ensure that they are in the public interest. Although DOJ and the FTC are charged with protecting competition, only the FCC is directed to protect the public interest when reviewing proposed mergers. This bill would curtail this authority significantly. What this means is that conditions to promote broadband adoption, to require minimum broadband speeds, or to ensure

broadband coverage or access in rural or low-income areas could no longer be required. Conditions to protect smaller companies from harm could also fall by the wayside.

And, finally, H.R. 3309 requires the FCC to do the regulatory analyses contained in President Obama's Executive order. I have no objection to the FCC doing these analyses; in fact, Chairman Genachowski has appropriately committed to complying with the Executive order. The problem is that this bill makes each of the analyses required by the Executive order subject to judicial review.

If AT&T or Verizon object to a regulation, they could sue the agency on the grounds that the cost-benefit analysis was deficient, the analysis of the market failure was inadequate, or the agency failed to consider alternatives to regulation. These lawsuits, which no other agency in government would face, could effectively paralyze the FCC. This is not process reform but fundamental reform of the Communications Act.

There is one part of H.R. 3309 that I support. We have suggested to Chairman Walden that we work together to pass a reform bill based on the FCC Collaboration Act sponsored by Ms. Eshoo, Mr. Shimkus, and Mr. Doyle. This is true reform because it would allow the FCC commissioners to reach better decisions and act more expeditiously by allowing them to discuss FCC business with each other.

I also support the thrust of the second bill we are considering, H.R. 3310, which seeks to streamline the FCC's reporting obligations. With some additional work and clarifications, it should be possible

to craft a bipartisan bill that streamlines the FCC reporting requirements and that could be reported unanimously out of the committee and sail through the House.

Mr. Chairman, we want to be your partners, not your opponents, but we cannot support your FCC impairment bill. And you should not ram it through the subcommittee in a partisan vote. We should work together to develop FCC reform legislation both sides can support.

I have a minute left, and I would yield it to any of my colleagues on the Democratic side that might want a minute.

Mr. Doyle, do you want the time? You are getting a minute anyway? Then I yield it back.

[The prepared statement of Mr. Waxman follows:]

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Mr. Walden. The gentleman yields back.

The chair reminds Members, pursuant to committee rules, all Members' opening statements will be made part of the record. Are there further opening statements?

Mr. Barton, you are recognized for 5 minutes.

Mr. Barton. Thank you, Mr. Chairman.

I am delighted to see this day. For years, I have talked about FCC reform. In the last Congress, myself and Congressman Stearns introduced an FCC reform package.

When you became subcommittee chairman and Mr. Upton became full committee chairman, I talked to each of you about making this a priority. You and he were gracious enough to share with me a draft of this bill back in June, and we have had some staff discussions and Member discussions about the ways I thought that it could be improved. Three of my suggestions are in the legislation, which I am very appreciative of. And the fourth I plan to offer as an amendment for discussion and perhaps withdraw based on what I hear from the chair.

I also plan to support Mr. Markey's amendment on a study on protecting privacy of minors. As I think you know, Mr. Chairman, myself and Mr. Markey have a bill on that, and, at some point in time, I hope that we can move that bill.

But I want to say that, overall, this is a good piece of legislation. It improves transparency. It improves efficiency.

And I listened carefully to what Chairman Waxman said, and some of the things he said I tend to agree with. But the thing that I

disagree with that he said is -- the big concern of outside parties appears to be that the section in this bill on cost-benefit analysis they view as problematic. And I happen to think that the section on cost-benefit analysis is one of the strong points of the bill, because for too long we have had an FCC that operated behind closed doors, where the chairman had unusual power, would not share information, would not post things for public, would not give adequate time before votes, and then would run something out to the Commission very quickly when he or she felt like the votes were there to pass it.

By putting in the statute a cost-benefit analysis for significantly economic rules, over \$100 million, we actually put some standards in place. We bring the public in to the process; we bring the stakeholders into the process. If a proposed rule actually makes sense, it won't take a long time for that to become apparent. If, on the other hand, it doesn't make sense, it shouldn't be implemented.

So, while high-priced, Gucci-wearing, loafer lawyers may think that it ties the Commission up in knots, it is actually performing a public service. So I am very supportive of that, Mr. Chairman. And I know there is going to be debate on it and probably amendments offered, but I think that is one of the strong point of the bill.

So I appreciate your openness in sharing the various drafts and your staff's openness in working with my staff. I do share Ranking Member Eshoo's comment that hopefully we can work on a bipartisan basis, and if we can't be bipartisan at subcommittee, work together so that we can at full committee.

This is a good bill. It has a great intent. It is long overdue. And I hope at some point in time we can move it through the subcommittee, full committee, and through the floor into conference with the Senate.

With that, I yield back.

Mr. Walden. Would the gentleman yield --

Mr. Barton. Sure.

Mr. Walden. -- to me for a second? Because I just want to note, I appreciate the gentleman's comments and his leadership on this issue prior to this Congress and your work and your staff's work with our staff of the full subcommittee and full committee on these issues.

I would also point out, we have tried to work with both sides of the aisle. I believe the minority staff has been engaged and involved in virtually every discussion that has taken place. We put the draft measure out there in June. We have tried to work with anybody that wanted to work with us in a very open process.

So I don't know how else to work, in terms of trying to build bipartisan agreement and work in a bipartisan way and take your suggestions. And I think you would see from the initial draft of this, when there has been rather substantial reform and improvement based on the input that we have gotten.

Mr. Barton. I agree. And I yield back, Mr. Chairman.

[The prepared statement of Mr. Barton follows:]

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Mr. Walden. The gentleman yields back.

And now we will turn to the minority, Mr. Doyle, for an opening statement.

Mr. Doyle. Thank you, Mr. Chair.

"Gucci-wearing, loafer lawyers," that is almost like a tongue twister.

Mr. Barton. It is a tongue twister for me.

Mr. Doyle. Yeah. Thank you for that, Mr. Barton. That made by day.

Mr. Chairman, like our ranking subcommittee chair and my friend, Anna Eshoo, said, I think every member of the committee shares a desire for transparency and for accountability for all our Federal agencies. But I have to tell you, I am concerned about the bill being considered by this subcommittee today.

As I see it, I think we should just call it what it is. This FCC Process Reform Act limits the power of the FCC to protect consumers. It literally ties the hands of the FCC from creating consumer protections, similar to the Net neutrality rules it adopted last year, or the public-interest conditions it placed on mergers it has approved. It is basically, I believe, an effort by some of my colleagues to create procedural roadblocks that only apply to the FCC and no other agency.

So we have gone a long time in this subcommittee this summer with no legislative activity, and I am just disappointed that we aren't focusing more on substantive issues like spectrum reform, which I think would produce great benefits to consumers, the economy, our Nation's

emergency responders. I hope this is legislation that we can address in this committee soon.

I will yield back the balance of my time.

[The prepared statement of Mr. Doyle follows:]

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Mr. Walden. The gentleman's time is yielded back.

I recognize -- Mr. Terry, do you have an opening statement?

Mr. Terry. Sure. Thank you, Mr. Chairman. I thought time was all up, so I was going to go get a cup of coffee.

These two bills before us today are about three things: transparency, modernization, and regulatory certainty. And if you believe that our government should operate in an open manner, then you should support these bills. And if you believe that regulatory agencies operating in a transparent manner will provide additional certainty to businesses that need it now more than ever, then you should support these bills.

Lastly, I would like to acknowledge the work that Chairman Genachowski has done in improving some of the processes that needed improvement and have plagued the Commission. I also want to recognize that he has probably been the most open and accessible chairman in my tenure on this committee. However, that is why it is more important than ever to make these statutory changes now, adopting many of the items -- I think probably every item that he has suggested that be part of this bill. So doing so will ensure openness and transparency for the public, while making sure that only the best practices will continue from one administration to the next.

I yield back.

[The prepared statement of Mr. Terry follows:]

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Mr. Walden. I recognize Ms. Christensen.

Dr. Christensen. Thank you, Mr. Chairman.

We have two bills before the subcommittee today. And on the first, while I support the intent of 3310, which would streamline FCC reporting requirements, there are concerns that the authority and data collection could be affected and certain reporting requirements could be inadvertently eliminated. I hope that the subcommittee can work together in a bipartisan way to improve on the bill. It is hard to support it in this form.

It would really be good if this concern about onerous reporting would extend also to the multitude of requests the committee makes to the departments and agencies in this administration.

With regard to 3309, given the great work the current FCC has done to improve transparency, accountability, and to ensure public participation in the work of the Commission, as well as to ensure that the public benefits from their work and decisions, this bill is unnecessary and unnecessarily intrusive. I think it would paralyze the FCC at a time when their oversight and regulation is very much needed. And while I will offer an amendment, I don't think that this bill can be improved, and I hope this subcommittee will reject it.

I yield back.

[The prepared statement of Dr. Christensen follows:]

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Mr. Walden. Mr. Stearns?

Mr. Stearns. Thank you, Mr. Chairman.

As you know, as chairman of the Oversight and Investigation, I have had a hearing on FCC reform. And with this hearing, we attempted to, you know, give incentives and to prod them along to eliminate regulatory uncertainty that obviously stifles businesses today and hampers particularly small businesses. So these bills we are talking about today are important. I believe, with the reforms embodied in them, we will have great opportunity to move the process forward. We will promote the goals that we need to have to eliminate uncertainty and ensure, frankly, that the FCC stays within the congressional boundaries we set for it a long time ago.

I think it is also an incontestable fact that reform is needed. I think everybody on this committee believes that.

Yesterday, Chairman Walden and I released a report summarizing the data provided to us by the FCC this summer. In it, we found thousands of petitions and licenses still pending before the agency even after 5 years. The FCC also missed important deadlines, both ones it set for itself and those that we set for it through Congress.

How can businesses create jobs and innovate when they don't know whether or not their regulators will simply approve their licenses? They are waiting. Time is money. And how can the FCC continue to regulate industries when it has failed to annually study their competitive landscape? And, of course, this is required by statute. This is not acceptable.

The problem at the FCC today is not the result of one chairman or even one commission. I think we all understand that. This problem has persisted for many years. And while the FCC chairman is working to clear some regulatory backlog, only Congress can permanently fix the problems at the FCC. And that is why I support these bills, and I commend this markup.

Thank you.

[The prepared statement of Mr. Stearns follows:]

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Mr. Walden. The gentleman yields back his time.

Anyone on the minority?

Ms. Bono Mack, do you have an opening statement?

Ms. Blackburn?

Mrs. Blackburn. Thank you, Mr. Chairman. And I thank you for bringing the bill forward. It is good process, it is good policy. And I commend you and your staff for the diligence in this process.

It is good process because you did spend the time to gather the information that was necessary. You held hearings and, I will say, did it in a bipartisan way. And it is good policy because we all know that the FCC has a little bit of a problem with overreaching their authority. And everybody agrees we need accountability, transparency at the FCC, and these bills allow us to begin needed reforms, reductions, and efficiencies for the FCC.

Now, some might ask, How do we undo some of the damage and the overreach that has been there? An example is that the FCC has reportedly begun work on a new order that would require broadband providers to report on service outages. But where does the FCC allegedly derive its authority to impose such a requirement? They say under Title II of the Communications Act. Does that sound familiar? It should, because that is how the FCC tried to justify their so-called Net neutrality rules.

We see example after example of the FCC attempting to regulate without authority, and it shows why hardworking taxpayers, innovators, and job creators want to hold the FCC more accountable. So let's move

the agency away from pursuing social outcomes to being grounded in regulatory humility and statutory obedience, to conducting cost-benefit analysis and simple rulemaking reforms, call on the FCC to improve its deliberation process, seek public review, do online publications, put in place time frames for proceedings, have review standards, scorecards, and provide the industry some much-needed certainty.

I think we are on the right track, and I yield back.

[The prepared statement of Mrs. Blackburn follows:]

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Mr. Walden. The chair recognizes the gentleman from Georgia, Mr. Gingrey, for 2 minutes.

Dr. Gingrey. Mr. Chairman, I want to thank you for calling today's markup of two bills that are designed to improve the way in which the FCC operates. I commend your leadership on these initiatives to streamline the work of the FCC.

H.R. 3309, the FCC Process Reform Act, will make commonsense reforms to the rulemaking procedures. This important legislation will change sunshine requirements to allow for a bipartisan group of commissioners to collaborate on issues of agreement before meetings. Additionally, H.R. 3309 will require the FCC to establish shot clocks to set timelines to compel the Commission to act, while also requiring it to report to Congress whenever it misses an established deadline.

Mr. Chairman, similarly, H.R. 3310, the FCC Consolidated Reporting Act, will make the FCC more efficient by eliminating a number of duplicative, repealed, or outdated reports that are still listed in statute. For example, in the 21st century, is it necessary for the FCC to provide the report on competition between wire telephone and wire telegraph providers? I think not.

By making the FCC work in a more efficient manner, these bills will create more regulatory certainty in the telecommunications industry. This will inevitably reduce the burden for job creators, particularly our small-business men and women that have been impacted by inconsistencies at the FCC. Both H.R. 3309 and H.R. 3310 call for

the standards of accountability and transparency that the FCC has been desperately lacking for a very long time under both Republicans and Democrats.

Both bills represent good government policies, and I urge all of my colleagues on the subcommittee to support both of the bills.

And I yield back 8 seconds.

[The prepared statement of Dr. Gingrey follows:]

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Mr. Walden. The gentleman yields back his time.

Mr. Latta, do you have an opening statement?

Mr. Latta. Thank you, Mr. Chairman. And thank you for holding the markup today on the FCC Process Reform Act and the FCC Consolidated Reporting Act.

First, I commend Chairman Walden for holding multiple hearings to examine the FCC process. We have all learned a great deal from the Commission and a wide array of witnesses. I believe that the bills before us today are commonsense reform measures that will bring transparency and accountability to the FCC. Furthermore, the changes to the FCC in H.R. 3309 will bring regulatory certainty to the telecommunications marketplace that can lead to investment, innovation, and job creation.

The cost of regulation to American businesses and, hence, our economy is too great to ignore. With the telecommunications industry driving a significant portion of the economic growth in our country during this economic downturn, as Members of Congress we should make sure that the FCC does not produce regulations that will hamper this sector of the economy, especially if they are made behind closed doors without publication in the Federal Register for lawmakers, industry, and consumers to review.

Earlier this year, I introduced H.R. 2289, the FCC Analysis of Benefits and Costs Act of 2011, which will require the FCC to conduct a cost-benefits analysis at the time of the proposed rule and again at the time of the final rule. I thank the chairman for including a

cost-benefit analysis requirement for rulemaking in Section 13(a) of H.R. 3309.

Every business, and family for that matter, must make tough decisions based on these calculations, and so should the agency that oversees telecommunications in the United States. Our constituents demand and deserve a transparent and fully accountable government at every level. I support H.R. 3309 and H.R. 3310, which will streamline and statutorily codify best practices at the FCC.

Thank you, Mr. Chairman, and I yield back the balance of my time.

[The prepared statement of Mr. Latta follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentleman yield back his time.

The chair recognizes the gentleman from Illinois, if he has an opening statement, Mr. Rush. Do you have an opening statement?

Mr. Rush. Mr. Chairman, considering the time element, I will pass on an opening statement.

[The prepared statement of Mr. Rush follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentleman passes. Thank you, Mr. Rush.

I recognize the gentleman from Illinois, Mr. Kinzinger.

Mr. Kinzinger. Thank you, Mr. Chairman.

I want to thank Chairman Walden for giving me the opportunity to help bring forward the bill on FCC process reform. I feel it is vitally important as a piece of legislation.

Since the start of these hearings, I have been continually stating my belief that many agencies, including at times the FCC, often come up with solutions in search of problems. In the case of the FCC, they sometimes do so without following a standard set of procedures, statutory law, or regulatory guidelines.

I commend Chairman Genachowski for great efforts toward streamlining some of these processes, but the fact of the matter is all of these advances have been done at the chairman's discretion and are not, in fact, set in law and could be thrown out basically with the next chairman.

That is why I am happy to take part in bringing about FCC legislation in order to improve the predictability, efficiency, and transparency of the FCC. Statutory and regulatory authority should be what moves the decision-making processes at the FCC. And I believe the efforts of this bill will put the FCC in line with the intent of Congress and will make permanent the changes and the efforts of Chairman Genachowski.

I am also pleased to see us marking up the commonsense Consolidated Reporting Act. The FCC seems to be in need of some

reporting reforms, and this legislation will help us to ease some of the burdens they currently face. This is just another example of good government legislation that I hope to see favorably reported from this committee.

Again, I thank the chairman for the time, and I yield back.

[The prepared statement of Mr. Kinzinger follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentleman yields back his time.

Anyone else seeking time for an opening statement?

Seeing none, the chair now calls up H.R. 3309 and asks the clerk to report.

The Clerk. H.R. 3309, to amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission.

[The bill follows:]

***** INSERT 1-1 *****

Mr. Walden. And, without objection, the first reading of the bill is dispensed with, and the bill will be open for amendment at any point.

So ordered.

Are there any bipartisan amendments to the bill?

Seeing none, are there other amendments to the bill?

Mr. Rush. Mr. Chairman?

Mr. Walden. I recognize the -- we are going to go to this side.

Mr. Stearns?

Mr. Stearns. Mr. Chairman, I have an amendment at the desk.

Mr. Walden. The clerk will report the amendment.

Can you tell us which --

Mr. Stearns. It is a bipartisan amendment. I am sorry?

Mr. Walden. Just tell us which amendment it is.

Mr. Stearns. Let's see, it is --

Mr. Walden. Or the clerk. The clerk knows.

Mr. Stearns. I think you got it.

Mr. Walden. We are good.

The Clerk. Amendment to H.R. 3309, offered by Mr. Stearns of Florida.

[The amendment of Mr. Stearns follows:]

***** INSERT 1-2 *****

Mr. Walden. Mr. Stearns, you are recognized to speak on your amendment.

Mr. Stearns. All right. Thank you.

Today's markup of H.R. 3309 and H.R. 3310 obviously is about ensuring good government, and that is exactly what this amendment seeks to do.

Despite today's challenging times, the Federal Communications Commission, the FCC, regulates one of the few industries in our economy that continues to grow and to innovate. Therefore, it is especially vital and important that the agency provide as much certainty and transparency as possible to both the company and, of course, to consumers.

During our May 13, 2011, legislative hearing on today's bill, I was struck by something FCC Commissioner McDowell said. He said, quote, "We could take a cue from other agencies, such as the Federal Trade Commission, by posting our annual budget, performance, and accountability reports on the FCC Web site," end quote. Therefore, Mr. Chairman, I am simply offering an amendment that does just that.

This straightforward amendment requires that the FCC provide direct access from the homepage of its Web site to the Commission's annual budget, annual performance and accountability reports, annual appropriations, and detailed information regarding the Commission's total number of full-time equivalent employees.

The practice embodied in this amendment is already followed at agencies like the Federal Trade Commission and the Securities and

Exchange Commission. So, my colleagues, there is no reason why the FCC can't follow it just as well as these other agencies.

Ms. Eshoo. Would the gentleman yield?

Mr. Stearns. I would be glad to yield.

Ms. Eshoo. We support the amendment. This information is already posted, it is my understanding, on the managing director's Web site, and it should be bumped up and posted the way it is described in the amendment. And we are happy to support it.

Mr. Stearns. I thank my colleague.

Let me just finish my opening statement, then we will end.

While the FCC does --

Ms. Eshoo. I figured we would trim it down a little bit by saying we support it. Quit while you are ahead.

Mr. Stearns. That is a good point. I ask unanimous consent --

Mr. Walden. His full statement will be entered in the record.

Mr. Stearns. -- unanimous consent, Mr. Chairman, that the rest of my opening statement be part of the record.

Mr. Walden. I don't think anyone will object to that unanimous-consent request.

Mr. Stearns. And I thank my distinguished colleague for supporting my amendment.

Mr. Walden. The gentleman's statement will be entered in the record.

[The prepared statement of Mr. Stearns follows:]

***** COMMITTEE INSERT *****

Mr. Walden. Is there further discussion on that amendment?

Is there any objection to that amendment?

There is no objection; the amendment is approved.

Are there additional amendments to be offered?

Mr. Dingell. Mr. Chairman, I seek recognition for purposes of striking the requisite number of words.

Mr. Walden. The chair recognizes the chairman emeritus.

Mr. Dingell. To you, Mr. Chairman, and Mr. Scalise, I offer my compliments and great personal respect. I wish you to know that this is a bad piece of legislation. It probably explains why the Congress is in trouble.

I have a longer statement which I will ask unanimous consent to be put in the record --

Mr. Walden. Without objection.

Mr. Dingell. -- but there are some things here that need to be looked at.

First of all, there were virtually no hearings. Second of all, there is virtually no record. Third of all, there is virtually no justification. Fourth of all, there is virtually no adequate identification of faults and failures at the FCC that require a reform.

Now, having said that, I will tell you that I think that this is an agency that is desperately in need of reform, but it is desperately in need of reform for real reasons and after careful and thoughtful consideration.

Now, what does the bill do? First of all, it changes the

public-interest test. It adds a lot of things that we don't know exactly what they will do. It says "harm." But the hard fact of the matter is, the public-interest test has been there for years. It covers everything. This bill changes it, and we don't know what the result is going to be or what the courts are going to say when they come to a definition or determination of what that change might mean or be.

It changes the administration and the application of APA. It probably takes the FCC out from under the Administrative Procedure Act. Now, this is very subtle jurisprudence. So, all of a sudden, we are going to have a complete change of the jurisprudence at the FCC and how appeals and filings of papers and all the other things that go into the complex activities of a Federal regulatory agency are going to be thrown into doubt.

It imposes new duties on the FCC, but it doesn't give them any resources. Now, we have an agency that is not functioning, an agency that is clogged, an agency that can't do its job and doesn't do its job, and, all of a sudden, guess what? We are going to give them more to do, but we are not going to give them resources. Now, that is probably a good idea, but I hardly think that is going to serve much purposes in the case of the FCC.

Now, having said this, it goes on and it complicates the proceedings before the FCC so that nobody is going to know how things are being done down there, including the members of the Commission. It complicates the proceedings in extraordinary way, and we are going

to have to have no end of litigation to find out what all this means.

The next thing it does is it gives no certainty to the market or to the industry. Now, the FCC has a prodigious backlog. So we are complicating their business, giving them no resources, and a complicated new procedure. If you want a fine snarl made out of a magnificent snarl, this is the way to do it.

Now, in addition to that, it has universal opposition of the public interest groups. It clogs the mill so that the FCC, which is largely unworkable now and can best be described as a fine example of governmental confusion and bureaucracy, is going to be even more unworkable and even less capable of carrying out its function.

I do thank you, Mr. Chairman, for your courtesy. And while I cannot be with you today, I would be happy to work with you and my colleagues on the committee to write a decent piece of legislation based on consensus that will create jobs, protect consumers, and promote efficient, competent, and functional government, something which we do not have at the FCC.

But that is going to require that this committee be willing to do a bit of work, to hold some hearings, find out what is going on, to get the public views, see what the people want, see what their complaint is, look and see why the FCC fails, see whether the basic rules in the Administrative Procedure Act are failing us or whether it is just a failure of administration at the FCC.

So I thank you for your courtesy and --

Mr. Walden. Would the gentleman yield?

Mr. Dingell. Yes, of course.

Mr. Walden. I just want to make sure the gentleman understands, we actually did do a subcommittee hearing on the overall texture of the issue and a legislative hearing on the draft bill in the subcommittee.

Mr. Dingell. Mr. Chairman, I know you had two hearings on the matter.

Mr. Walden. Thank you.

Mr. Dingell. And I think that is a grand idea. But those hearings did little more than scratch the surface. And everybody said what they thought they wanted to say and have heard, but there was no thoughtful analysis of the testimony or nor was there any careful staff work to see what was done.

I have been working on this FCC for a long time, and I have probably been more savagely critical of that agency than anybody on this committee, and usually with good reason and with carefully thought-out dialogue.

Now, again, Mr. Chairman, I respect you greatly, and I express that respect. And I do the same thing for Mr. Scalise and the others who are interested in this legislation. But this is a bad way to proceed. It is not going to accomplish anything. And on top of that, I thankfully report to you that, probably, the thing is going to die and not pass the Senate.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Dingell follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentleman's time has expired.

I recognize the gentlewoman from California. I believe you had -- did you have an amendment, Anna?

Ms. Eshoo. I do. Mr. Chairman, thank you. I do have an amendment at the desk.

The Clerk. Ms. Eshoo, is it Amendment No. 14?

Ms. Eshoo. Yes.

Mr. Walden. The clerk will report the amendment.

The Clerk. Amendment to H.R. 3309, offered by Ms. Eshoo of California.

[The amendment of Ms. Eshoo follows:]

***** INSERT 1-3 *****

Mr. Walden. Without objection, the reading of the amendment is dispensed with.

And the gentlelady is recognized for 5 minutes in support of the amendment.

Ms. Eshoo. Thank you, Mr. Chairman.

My amendment would preserve the Federal Communications Commission Collaboration Act, which was incorporated into this bill. And I think all of the bipartisan sponsors are grateful for that. The bill was introduced earlier this year and is supported by Representatives Shimkus, Doyle, Matsui, and Mr. Barton.

It promotes greater collaboration by allowing three or more commissioners to talk to each other outside of an official public meeting. The amendment would ensure the FCC provides Congress with a progress report on the agency's compliance with Executive Order 13579, as well as semiannual updates on whether the Commission is publishing orders, actions, and the specific language of a proposed rule or amendment in a timely manner.

The amendment also adopts recommendations offered by the Administrative Conference, which I think is important because that body is comprised of administrative law experts who have specialized in improving Federal agency procedures without unduly tying their hands. These changes are designed to increase opportunities for public participation and enhance the quality of information received by Federal agencies like the FCC.

So I think that this is an idea that has been discussed, debated,

examined. Many stakeholders have come in and around it. It has solid bipartisan support. And I urge my colleagues to support this while rejecting the portions of 3309 that the chairman emeritus of the committee, I think really quite eloquently, just now outlined the reasons for rejecting it and hindering the FCC's ability to act in the public interest.

And, with that, I will yield back.

Mr. Walden. The gentlelady yields back the balance of her time.

I would recognize myself for 5 minutes in opposition to the amendment.

Adoption of this amendment -- the gentlelady from California is right -- would eviscerate H.R. 3309. A vote for this amendment is a vote against requiring good process at the FCC and a vote for the status quo at the FCC, with one exception: that then FCC commissioners can meet and deliberate in private. To me, while that is a valuable part of a reform package, the notion that somehow greater accountability and transparency are enhanced by private meetings seems to be a little convoluted.

As part of a bigger package, I can support the legislation that we put into H.R. 3309. I think requiring the FCC itself to adopt the reforms in 3309 is not a radical concept. It is the transparency, predictability, and accountability we should expect from government.

While the FCC is governed by the APA, it also has exceptions to the APA. Independent agencies have those exceptions. We think there are ways to improve upon the FCC's processes. That is why we held a

legislative hearing on this, why I have met individually with each of the commissioners. We had all the commissioners come before the subcommittee. And it is why we put a draft of the legislation out for full public discussion, disclosure, participation. And we got a lot of very positive impact back -- a lot of input back, positive and negative. And we made a lot of adjustments.

The last thing I wanted to do was tie the hands of the FCC or micromanage it. So a lot of this legislation that we are working on would mean that the FCC sets its own rules, makes them public, and decides how best to inform us in terms of meeting those rules. And I think those requirements are essential.

But I would recognize the gentleman from Louisiana, Mr. Scalise, if he would like to speak on this amendment -- actually, Mr. Stearns, I believe.

Mr. Stearns. Mr. Chairman, I agree with you. I would just say simply that the way, I think, on this side of the aisle, I would say to the gentlelady from California, is you are replacing real benchmarks, which -- I think the chairman has alluded to the fact that he has reached out, he has tried to establish realistic benchmarks here, and you are replacing it with reports.

And then I guess the question is, are these reports in compliance with any kind of rules? Are these reports just made up? Are these reports that eventually the FCC could say, gee, we don't even have to comply because there is no obligation, there is no legal obligation to comply?

So I think the amendment is essentially asking the FCC to decide if it should be transparent -- and I don't think that is our intent -- and how it should comply with the transparency mandate. And I think the chairman has worked hard on this bill to come up with benchmarks, and so I urge the defeat of this amendment.

Mr. Walden. The gentleman yields back his time.

Other discussion on the amendment?

If there is no other discussion on the amendment, the vote will occur on the amendment.

All those in favor of the amendment will say "aye."

Ms. Eshoo. Could we have a rollcall vote, Mr. Chairman?

Mr. Walden. Yes, but I will finish.

All those not in favor shall signify by saying "nay."

The amendment is not agreed to. And a request for a rollcall vote is made, and we will have a rollcall --

Mr. Rush. Mr. Chairman? Mr. Chairman, a point of order. I don't think we on this side of the room really understand the sequence of the votes. I don't know whether or not we had an opportunity to voice our votes on this side, so --

Mr. Walden. Well, you will have it now in the recorded rollcall. And we will do a better job on the script on the next one. How is that?

Mr. Rush. Well, thank you very much, Mr. Chairman. I appreciate your cooperation.

Mr. Walden. The clerk will call the roll.

RPTS KESTERSON

DCMN MAGMER

[11:04 a.m.]

The Clerk. Mr. Terry.

Mr. Terry. No.

The Clerk. Mr. Terry votes no.

Mr. Stearns.

Mr. Stearns. No.

The Clerk. Mr. Stearns votes no.

Mr. Shimkus.

[No response.]

The Clerk. Mrs. Bono Mack.

Mrs. Bono Mack. No.

The Clerk. Mrs. Bono Mack votes no.

Mr. Rogers.

[No response.]

The Clerk. Mrs. Blackburn.

Mrs. Blackburn. No.

The Clerk. Mrs. Blackburn votes no.

Mr. Bilbray.

Mr. Bilbray. No.

The Clerk. Mr. Bilbray votes no.

Mr. Bass.

Mr. Bass. No.

The Clerk. Mr. Bass votes no.

Mr. Gingrey.

Dr. Gingrey. No.

The Clerk. Mr. Gingrey votes no.

Mr. Scalise.

Mr. Scalise. No.

The Clerk. Mr. Scalise votes no.

Mr. Latta.

Mr. Latta. No.

The Clerk. Mr. Latta votes no.

Mr. Guthrie.

Mr. Guthrie. No.

The Clerk. Mr. Guthrie votes no.

Mr. Kinzinger.

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger votes no.

Mr. Barton.

Mr. Barton. No.

The Clerk. Mr. Barton votes no.

Mr. Upton.

[No response.]

The Clerk. Ms. Eshoo.

Ms. Eshoo. Aye.

The Clerk. Ms. Eshoo votes aye.

Mr. Markey.

[No response.]

The Clerk. Mr. Doyle.

Mr. Doyle. Yes.

The Clerk. Mr. Doyle votes aye.

Ms. Matsui.

Ms. Matsui. Aye.

The Clerk. Ms. Matsui votes aye.

Mr. Barrow.

[No response.]

The Clerk. Mrs. Christensen.

Dr. Christensen. Aye.

The Clerk. Mrs. Christensen votes aye.

Mr. Towns.

[No response.]

The Clerk. Mr. Pallone.

[No response.]

The Clerk. Mr. Rush.

Mr. Rush. Aye.

The Clerk. Mr. Rush votes aye.

Ms. DeGette.

Ms. DeGette. Aye.

The Clerk. Ms. DeGette votes aye.

Mr. Waxman.

Mr. Waxman. Aye.

The Clerk. Mr. Waxman votes aye.

Chairman Walden.

Mr. Walden. Walden votes no.

The Clerk. Chairman Walden votes no.

Mr. Walden. Are there other members wishing to be recorded?

Mr. Shimkus.

Mr. Shimkus. No.

The Clerk. Mr. Shimkus votes no.

Mr. Walden. The clerk will report the tally.

The Clerk. Mr. Chairman, on that vote there were seven --

Mr. Walden. Mr. Towns, how do you vote?

Mr. Towns. Aye.

Mr. Walden. Mr. Towns votes aye.

The Clerk. Mr. Towns votes aye.

Mr. Chairman, on that vote, there were 8 yeas --

Mr. Walden. Mr. Pallone?

Mr. Pallone. Yes.

Mr. Walden. Mr. Barrow?

Mr. Barrow. Votes aye.

Mr. Walden. The clerk will report the tally.

The Clerk. Mr. Chairman, on that vote, there were 10 yeas, 14 nays.

Mr. Walden. The amendment is not adopted.

I recognize the gentleman from Texas for an amendment.

Mr. Barton. Mr. Chairman, I have an amendment at the desk.

Mr. Walden. The clerk will report the title of the amendment.

The Clerk. Amendment to H.R. 3309 offered by Mr. Barton of Texas.

Mr. Walden. Without objection, the reading of the amendment is dispensed with.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentleman is recognized for 5 minutes on his amendment.

Mr. Barton. Thank you, Mr. Chairman.

I have had the distinction of serving on this committee for a quarter of a century. I have served under six chairmen, Mr. Dingell twice. I have offered amendments requiring the reading of the entire bill. I have offered amendments against my chairman, Mr. Bliley, that would have passed if he hadn't suspended the markup. I have engaged in some of the most contentious amendments on cap and trade and health care. Mr. Chairman, this amendment is not one of those amendments.

Mr. Walden. I wondered what you were leading up to.

Mr. Barton. Mr. Chairman, this amendment is probably the most inoffensive, innocuous amendment that I have ever offered. If you look on page 6, line 17 of the pending bill, it uses the language "the commissioners must be made aware of the options available". Options, to my mind, is too all inclusive. Is that a thousand options? Is that a million options? So my simple amendment changes that to reasonable options.

Ms. Eshoo. Would the gentleman yield?

Mr. Barton. Yes.

Ms. Eshoo. I don't have any problem with what you are supporting.

Mr. Barton. I was about to read --

Ms. Eshoo. I know that you wanted to finish the rest of your State of the Union on this, but --

Mr. Barton. I am overwhelmed with gratitude by the support of

the ranking member.

Ms. Eshoo. It is the little things in life that count.

Mr. Barton. If the chairman also agrees, I would love to have this accepted. If it is too contentious, Mr. Chairman, I am willing to withdraw it with the understanding that it be worked on at full committee.

Mr. Walden. I appreciate that and would accept that.

Mr. Barton. Do I withdraw it?

Mr. Walden. If you would like. No, I am just kidding.

I do have one question for the offerer of the amendment, and that is related to the portion of striking "all". Because if I am reading this correctly on line 17, the use of the word all is before all commissioners, not all options.

Mr. Barton. Well, I will yield to your judgment on that. I didn't actually read my amendment. I just authorized that it be prepared.

Mr. Walden. Could I ask counsel if he would like to comment on this?

The reasonable part I am all for. The all may be fine and inconsequential, but I am just curious.

Mr. Barnette. Yes, sir. I believe it is supposed to replace "the" with "a reasonable number of options". Not all.

Mr. Walden. Okay. Then the amendment needs to be corrected. We can correct that on the way through, I would assume.

Mr. Barton. Don't worry. I am at the service of the chairman

and the ranking member.

Mr. Walden. Okay. Without objection, the staff will make that technical change, if that is all right with the committee.

Mr. Waxman.

Mr. Barton. I yield back or yield to Mr. Waxman.

Mr. Walden. Okay. Anything else on this one then?

Mr. Barton. If I am victorious, I am very happy.

Mr. Walden. All those in favor will say aye. All those opposed, nay.

The ayes have it, and the amendment is agreed to.

Another bipartisan amendment, Mr. Barton. Thank you, sir.

I recognize the gentleman from California.

Mr. Waxman. Thank you, Mr. Chairman.

I have an amendment at the desk. It is labeled EJS10.

Mr. Walden. The clerk will report the amendment.

The Clerk. Amendment to H.R. 3309 offered by Mr. Waxman of California.

Mr. Walden. Without objection, the reading of the amendment is dispensed with.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentleman is recognized for 5 minutes in support of his amendment.

Mr. Waxman. The amendment would require the FCC, while evaluating and processing consumer complaints concerning wireline, wireless, broadband, broadcast, cable, and satellite services, to present such complaints in a publicly available and searchable database on its Web site. The database would include information on the topics of the complaint and the names of the service providers. The FCC would have the flexibility to exclude duplicative complaints regarding the content of a particular broadcast.

This amendment is consistent with the goal of increasing transparency at the FCC. Currently, the FCC makes available online aggregated data on a quarterly basis regarding consumer complaints, but these quarterly reports do not reveal the names of the service providers about whom the complaints are filed and is not in a format that can be readily used and sorted by the public.

This amendment would simply direct the FCC to make the data they already collect more accessible to consumers. Consumers have a right to know which providers are subject to the most complaints and for what reasons and without having to file a Freedom of Information Act request. If a particular provider is the subject of numerous complaints about unfair billing practices, consumers should be able to have access to such information.

At the same time, the amendment would provide the FCC with the ability to exclude duplicative complaints regarding a particular

broadcast which can be very numerous, such as for complaints about broadcast indecency. As the report released yesterday by the Republican staff illustrates, the Commission is overwhelmed with broadcast indecency complaints. This is a pro-consumer, pro-transparency amendment; and I urge my colleagues to support its adoption.

I yield back the balance of my time.

Mr. Walden. The gentleman yields back the balance of his time.

The chair recognizes himself regarding the amendment and has a question for counsel on the amendment which I hope we can work out. I would just point out I just saw this amendment this morning for the first time.

If we were to change this amendment on line 3 to delete "after complaints" and pick it back up on line 6 with "the Commission", would that have any effect in terms of changing the authority of the Commission or what is trying to be accomplished here without having to be specific on all of these individual entities?

Mr. Barnette. No, sir.

Mr. Walden. All right. Then I would suggest to the maker of the amendment that I believe our side would be willing to accept this amendment if we could strike the words on line 3 after complaints through line 6 --

Ms. Eshoo. Would you yield for just a moment?

Mr. Walden. I would be glad to yield to the gentlelady.

Ms. Eshoo. Why do you want to strike those? What is the purpose

of it? I say this sincerely. I don't know. It is something that is spelled out, and why do you want to strike the specifics out: wireline, wireless, broadband, broadcast, cable, satellite services and other such services?

Mr. Walden. Well, I think there are two reasons. One, we don't want to alter in any way the Commission's authority; and, two, going forward, if this legislation becomes law, you might have other technologies that emerge. I mean, we are dealing with a 1934 Communications Act, and this would be open then to any without delineation.

Ms. Eshoo. It says --

Mr. Walden. And --

Ms. Eshoo. I don't know. I just was curious as to why.

Mr. Walden. There would have to be a determination on the other services by the Commission. It wouldn't be a matter of law. I don't think this does any violence to the amendment.

Ms. Eshoo. No.

Mr. Walden. If the gentleman from California would be willing to accept that change --

Mr. Waxman. Mr. Chairman, I think we should work together on it, and I think we are getting close. Why don't I withdraw the amendment and see if we can agree to it, work out an agreement.

Mr. Walden. Okay. Without objection, the gentleman withdraws the amendment.

We would be happy to work with you. I don't think this is a major

matter we can't resolve between here and full. So I thank the gentleman for his corporation.

I will turn to this side. Mr. Kinzinger for an amendment.

Mr. Kinzinger. Mr. Chairman, I have an amendment at the desk.

Mr. Walden. The clerk will report the amendment.

The Clerk. Amendment to H.R. 3309 offered by Mr. Kinzinger of Illinois.

Mr. Walden. Without objection, the reading of the amendment is dispensed with.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentleman from Illinois is recognized for 5 minutes in support of the amendment.

Mr. Kinzinger. Thank you, Mr. Chairman.

I am offering an amendment to put into law something which I believe is fairly simple and is, in fact, something Chairman Genachowski has been able to do for the most part to do at the FCC.

My amendment simply states that the FCC must complete all actions necessary to submit to the Federal Register any amendment or adopted rule within 45 days of its adoption, just to submit to the Federal registry. The deadline does not necessarily mean that such an order would become effective in that amount of time, but it is a reasonable period of time for the Commission to submit such a document.

This straightforward and simple amendment is another example of good government which will put into law what Chairman Genachowski has been able to accomplish for some time now, as it is my understanding that the average length of time for these publications currently stands at just over 37 days. Again, my amendment would simply require the FCC to complete all actions necessary for such a document to be published in the Federal Register.

And with that, Mr. Chairman, I yield back.

Mr. Walden. The gentleman yields back his time.

Is there discussion on this amendment?

Mr. Doyle.

Mr. Doyle. Yeah. I want to strike the last word, Mr. Chairman.

I wonder if the author of the amendment could just answer some

questions to clarify his amendment. I want to ask you for the purpose of clarification that this amendment does not hold the FCC accountable for delays in other area of process. For example, if OMB is slow or if the Federal Register office is backed up, it just means that the FCC needs to do its part within the deadline; is that correct?

Mr. Kinzinger. Yeah, that is correct.

Mr. Doyle. Secondly, your amendment ties the FCC action to adoption. But all FCC activity is tied to the actual release of an item, not the adoption of the item. My hope is that we can work together between now and full committee so that the deadline is tied to the release date and not the date of adoption so we can be consistent.

Mr. Kinzinger. Mr. Doyle, I appreciate that. And I will -- given that we have an opportunity I think to work together for this, I will respectfully withdraw my amendment in anticipation of working with the other side.

Mr. Doyle. I thank you very much and look forward to working --

Mr. Walden. Is there any objection to the gentleman withdrawing his amendment?

If not, it is withdrawn; and we will try and work this issue out as well as we go into full committee markup.

Someone on the minority side. Ms. Matsui is recognized.

Ms. Matsui. Thank you, Mr. Chairman.

I have an amendment at the desk.

Mr. Walden. The clerk will report the amendment.

The Clerk. Is it amendment No. 8?

Ms. Matsui. Yes.

The Clerk. Amendment to H.R. 3309 offered by Ms. Matsui of California.

Mr. Walden. Without objection, the reading of the amendment is dispensed with.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentlelady is recognized for 5 minutes in support of the amendment.

Ms. Matsui. Thank you, Mr. Chairman.

I do have this amendment, and I plan to offer it and withdraw it.

While I certainly support reforming specific aspects of the FCC, I do believe spectrum reform is our current reality which will create not only jobs but also put in place a nationwide interoperable network that America's first responders have been seeking since the tragic acts of 9/11. It is my hope that if the supercommittee includes any spectrum proposal that it is one based on sound policy, in particular, a strong, good governance provision for the public safety network. Also, preserving unlicensed spectrum is also a critical issue for America's innovators.

Earlier this year, I introduced H.R. 2520, the Spectrum for Innovation Act, which this amendment resembles. The amendment would simply require NTIA and the FCC in consultation with the Department of Transportation to conduct a study concerning the need for allocating additional spectrum for unlicensed devices in the 5 gigahertz band.

Mr. Chairman, there is no doubt that America's Wi-Fi industry is rapidly growing and has become an increasingly important part of how we communicate. It is critical that we preserve spectrum to meet future demand. By 2015, the United States will have 2 billion network devices, up from 1 billion in 2010. Most of those will be portable, and most will offer Wi-Fi connectivity.

As we know, Wi-Fi is used for broadband Internet access at home

and work, but it is also becoming a platform for other uses. Many of these examples are Wi-Fi video conferencing, allowing people to communicate face to face even from opposite ends of the world. Wi-Fi technology makes it possible for homeowners to control thermostats and appliances or monitor security systems while away from home. Health care monitoring devices enable the Wi-Fi to send patient information to a remote provider monitoring system allowing for direct realtime connectivity between patients and health care professionals.

Mr. Chairman, this is the future; and we must ensure innovative devices continue to be developed and produced here in this country.

Again, as I said, I am withdrawing this amendment. However, I strongly believe this is a bipartisan issue; and I look forward to continue working with my colleagues on both sides of the aisle to ensure that we preserve unlicensed spectrum for American innovators. It is also my hope that the supercommittee includes this proposal in their final recommendations if spectrum is indeed included.

I yield back at balance of my time.

Mr. Walden. The gentlelady yields back the balance of her time. Withdraws her amendment.

I would just say we look forward to working with the gentlelady on this issue. We share a lot of the concerns she has expressed. This is an area for tremendous opportunity for growth and jobs in America.

I recognize the gentlelady from California, Ms. Eshoo.

Ms. Eshoo. Thank you, Mr. Chairman.

I want to applaud Congresswoman Matsui's -- not only her

legislation but what she just spoke to. This is one of the --

Mr. Walden. Could I just -- are you striking the last word?

Ms. Eshoo. I am. I am. Thank you.

This is one of the most futuristic areas that the committee needs to not only appreciate but act on. When she said this is all about the future, she is absolutely right.

You know, Mr. Chairman, that I sent to you a letter some weeks ago about unlicensed spectrum and the multiplicity of uses, and it does represent the area where the most innovation, so much innovation is taking place. So, again, I want to thank Congresswoman Matsui for her legislation, for raising this, withdrawing it, but having it part of the record of today's markup.

Because it is a very, very important area; and I hope that both sides can come together around it. Because there are so many businesses that are absolutely dependent on it, and we want to bolster that. And, when we do, we will recognize the importance of it.

So thank you, and I yield back.

Mr. Walden. The gentlelady yields back.

Are there further amendments?

Dr. Christensen.

Dr. Christensen. Thank you, Mr. Chairman. I have an amendment at the desk.

Mr. Walden. The clerk will report the amendment.

The Clerk. Which number is your amendment?

Dr. Christensen. Seven.

The Clerk. Amendment to H.R. 3309 offered by Ms. Christensen.
Mr. Walden. Without objection, the reading of the amendment is
dispensed with.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentlelady is recognized for 5 minutes in support of her amendment.

Dr. Christensen. Thank you, Mr. Chairman; and I won't be that long.

The amendment would really effectively set the date of the bill's requirements at 6 months. It would change the effective date from 6 months after enactment to February 1, 2013; and the purpose of this amendment is to ensure that the new requirements imposed by this bill are applied in a neutral manner, not targeted at a particular administration. Thus, by making the effective date to be February 1, 2013, we will ensure that the new requirements are imposed beginning with the next administration.

I want to just point out -- to say for the record that I am very confident that President Obama will be re-elected, but I know that others, the proponents of this legislation, may think otherwise. So I don't really think they should have any objection to just having the effective date of the legislation to be in 2013.

That would also give the FCC the time to define some of the terms like "burden on industry", "consumers", "actual consumer harm", "specific market failure", and all of the other new and untested terms of art included in H.R. 3309, as well as give them time to put in place some of the other provisions without slowing down their work to a near halt.

I want to reiterate, though, that the bill is not only unnecessary but I think it is harmful to the FCC process, especially since under

Chairman Genachowski many of the reforms that the Republicans indicate they want to fix have already been addressed.

And with that I will yield back the balance of my time.

Mr. Walden. The gentlelady yields back the balance of her time.

The chair recognizes himself in opposition to the amendment.

I would just say that we are trying to move transparency and accountability and better due process along. We are trying to actually have this agency comply with similar standards to what President Obama suggested other non-independent agencies comply with. That is the purpose of this legislation, And so I would oppose delaying its implementation.

I concur with the gentlelady, however, that Chairman Genachowski has made substantive reforms. I want to see those sorts of reforms and the ones proposed in this legislation transcend every administration and every chairman. Because, frankly, we have seen under other chairmen and other parties problems in that Commission.

It shouldn't be dependent on a chairman who happens to run the Commission in a certain way. This is about all of the people. It is their business. It is their money. They should have the opportunity to see what is being proposed. We should know what the rules are that the commissioners are voting on, not wait after the vote has occurred dozens of days or longer than that to figure out what it is they voted on. This is not the way to do the public's business.

It can be improved, and this agency can lead in that approval process, and we can help them with this legislation. And if we act

expeditiously, which I know many of my colleagues would like us to do on this and other matters, we hope the Senate would as well, and the FCC should have a year's time to put all this in place.

So I would object to the gentlelady's amendment and yield back the balance of my time.

Are there other members seeking recognition?

If not, we will call a vote on this amendment. All those in favor of the amendment will say aye. Those opposed will say no.

The amendment did not pass.

Are there further amendments?

Mr. Rush. Mr. Chairman.

Mr. Walden. The gentleman from Illinois is recognized.

Mr. Rush. Mr. Chairman, I have an amendment at the desk. And before the clerk reads the amendment, I would ask unanimous consent that this amendment -- and it might not be the appropriate time to hear this amendment -- but the amendment was mislabeled as assigned to H.R. 3309, and the amendment actually applies to H.R. 3310. So I ask for unanimous consent that the amendment be relabeled as applying to H.R. 3310 and not H.R. 3309.

Mr. Walden. Mr. Rush, we will be happy to do that. We are actually not in H.R. 3310 yet.

Mr. Rush. I do understand.

Mr. Walden. We will preserve your right to offer that amendment when H.R. 3310 comes up.

Mr. Rush. Thank you, Mr. Chairman.

Mr. Walden. Are there other members seeking recognize to offer other amendments?

If not, then we will go to a vote on the bill if no other members are seeking recognition. All those in favor of passage, as amended, H.R. 3309 will say aye. Those opposed will say no. The clerk will call the roll.

The Clerk. Mr. Terry.

Mr. Terry. Aye.

The Clerk. Mr. Terry votes aye.

Mr. Stearns.

[No response.]

The Clerk. Mr. Shimkus.

[No response.]

The Clerk. Mrs. Bono Mack.

Mrs. Bono Mack. Aye.

The Clerk. Mrs. Bono Mack votes aye.

Mr. Rogers.

[No response.]

The Clerk. Mrs. Blackburn.

Mrs. Blackburn. Aye.

The Clerk. Mrs. Blackburn votes aye.

Mr. Bilbray.

Mr. Bilbray. Aye.

The Clerk. Mr. Bilbray votes aye.

Mr. Bass.

Mr. Bass. Aye.

The Clerk. Mr. Bass votes aye.

Mr. Gingrey.

Dr. Gingrey. Aye.

The Clerk. Mr. Gingrey votes aye.

Mr. Scalise.

Mr. Scalise. Aye.

The Clerk. Mr. Scalise votes aye.

Mr. Latta.

Mr. Latta. Aye.

The Clerk. Mr. Latta votes aye.

Mr. Guthrie.

Mr. Guthrie. Aye.

The Clerk. Mr. Guthrie votes aye.

Mr. Kinzinger.

Mr. Kinzinger. Aye.

The Clerk. Mr. Kinzinger votes aye.

Mr. Barton.

Mr. Barton. Aye.

The Clerk. Mr. Barton votes aye.

Mr. Upton.

[No response.]

The Clerk. Ms. Eshoo.

Ms. Eshoo. No.

The Clerk. Ms. Eshoo votes no.

Mr. Markey.

[No response.]

The Clerk. Mr. Doyle.

Mr. Doyle. No.

The Clerk. Mr. Doyle votes no.

Ms. Matsui.

Ms. Matsui. No.

The Clerk. Ms. Matsui votes no.

Mr. Barrow. No.

The Clerk. Mr. Barrow votes no.

Ms. Christensen.

Dr. Christensen. No.

The Clerk. Ms. Christensen votes no.

Mr. Towns.

[No response.]

The Clerk. Mr. Pallone.

[No response.]

The Clerk. Mr. Rush.

Mr. Rush. No.

The Clerk. Mr. Rush votes no.

Ms. DeGette.

Ms. DeGette. No.

The Clerk. Ms. DeGette votes no.

Mr. Waxman.

Mr. Waxman. No.

The Clerk. Mr. Waxman votes no.

Chairman Walden.

Mr. Walden. Chairman Walden will vote yes.

The Clerk. Chairman Walden votes aye.

Mr. Walden. Are there further members who are not recorded?

Mr. Shimkus.

Mr. Shimkus. Yes.

The Clerk. Mr. Shimkus votes aye.

Mr. Walden. Mr. Rogers.

Mr. Rogers. Votes aye.

The Clerk. Mr. Rogers votes aye.

Mr. Walden. Mr. Pallone.

Mr. Pallone. No.

The Clerk. Mr. Pallone votes no.

Mr. Walden. Are there other members wishing to vote or not recorded?

If not, then the clerk will report the tally.

The Clerk. Mr. Chairman, on that vote there were 14 yeas, 9 nays.

Mr. Walden. Fourteen yeas and nine nays.

The Clerk. Correct.

Mr. Walden. The yeas have it, and the bill is favorably reported.

The chair now calls up H.R. 3310.

The Clerk. H.R. 3310, to amend the Communications Act of 1934 to consolidate the reporting obligations of the Federal Communications Commission in order to improve congressional oversight and reduce

reporting burdens.

Mr. Walden. Without objection, the first reading of the bill is dispensed with.

[The information follows:]

***** INSERT 2-1 *****

Mr. Walden. The bill will be open for amendment at any point.
So ordered.

Are there any bipartisan amendments to H.R. 3310?

Seeing none, are there people seeking recognition to offer amendments?

Mr. Scalise is recognized. Mr. Scalise.

Mr. Scalise. Thank you, Mr. Chairman. I do have an amendment at the desk, and hopefully this will be a bipartisan amendment dealing with small businesses.

Mr. Walden. The clerk will report the amendment.

The Clerk. Can we please have the number of the amendment?

Mr. Walden. It would be majority 2.

Mr. Scalise. Majority 2.

The Clerk. Amendment to H.R. 3310 offered by Mr. Scalise of Louisiana.

Mr. Walden. Without objection, first reading of the bill is dispensed with.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentleman from Louisiana is recognized for 5 minutes to speak on his amendment.

Mr. Scalise. Thank you, Mr. Chairman.

What this amendment does is just makes it abundantly clear that the FCC should continue to identify and eliminate market entry barriers for our entrepreneurs, for our small businesses in the communications marketplace that are currently required under section 257 of the Communications Act to do this.

It was always the intent of the legislation, and we just wanted to make sure by explicitly placing this in the bill that this marketplace report will encourage the consideration of small businesses. Of course, the heart and soul of our growth and our economy is going to come from our small businesses, and we want to make sure they have a role in this marketplace.

And the gentleman will be happy to yield.

Ms. Eshoo. We don't have any problem with the amendment.

Mr. Scalise. Well, then I yield back the balance of my time.

Mr. Walden. The gentleman yields back the balance of his time.

Any others wishing to speak on this amendment?

Seeing none, is there any objection to this amendment?

Hearing none, the amendment is agreed to.

Are there other amendments to H.R. 3310?

The gentleman from California is recognized. Mr. Waxman.

Mr. Waxman. Mr. Chairman, I have an amendment at the desk that is labeled EJS05.

Mr. Walden. The clerk will report the title of the amendment.

The Clerk. Amendment to H.R. 3310 offered by Mr. Waxman of California.

Mr. Walden. Without objection, the reading of the amendment is dispensed with.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentleman is recognized for 5 minutes in support of his amendment.

Mr. Waxman. This amendment would provide the FCC with authority to collect information from those subject to the communications marketplace reporting requirement. The FCC would have to establish procedures and make written requests for such information and is obligated to protect the confidentiality of nonpublic information it obtains.

The amendment would also authorize the FCC to purchase commercially available reports.

This is a commonsense amendment that would ensure the FCC has the authority to collect the data necessary to provide meaningful and complete reports as required by this legislation. To properly assess the state of competition in the communications marketplace and the state of deployment of communications capabilities, including advanced telecommunications capabilities, the Commission will need the best available data regarding the services which it does not currently collect.

However, H.R. 3310 could be read to restrict the Commission's ability to obtain the data needed or at least cast doubt on the Commission's ability that would likely require resolution in the courts. Either way, this uncertainty will lead to less effective reports.

Specifically, the bill states that, quote, nothing in this Act shall be construed to expand or contract the authority of the Federal

Communications Commission, end quote.

Typically, the FCC has sufficient existing authority to collect data for statutorily required reports. Yet, with this language, it could be argued that H.R. 3310, in fact, would deny the Commission its ordinary data collection authority with respect to the bill's new substantive reporting requirement.

Accordingly, the amendment makes it clear that the FCC's ongoing authority to collect data is not affected by this legislation and that the Commission can continue to purchase commercially available reports to assist the agency in preparation of the reports required by H.R. 3310.

The FCC must protect confidential information it collects, and this amendment directs the FCC to take appropriate steps to protect the confidentiality of nonpublic information it obtains pursuant to this amendment.

I urge support for the amendment and yield back the balance of my time.

Mr. Walden. The gentleman yields back the balance of his time.

The chair recognizes himself in objection to the amendment, in opposition.

This would allow the FCC to collect any data it chooses from service providers, including on-line communication companies like Google and Yahoo and Huloo without almost any safeguards. It would dramatically expand the authority of the FCC over broadband and Internet based companies.

Our analysis by counsel this morning when we saw this amendment, we believe that it avoids any due process and Fourth Amendment protections since the FCC would only be subject to its own procedures for collecting such data, gives the FCC a warrant without a judge. It would let the FCC look into corporate books, legal document, internal memorandum with no explicit limits. This is the ultimate fishing trip. The administrative affirmatively authorizes the FCC to purchase commercially available reports, and we believe that it is unnecessary because the FCC already has the ability to collect data in appropriate circumstances, and I would oppose this amendment and yield back the balance of my time.

Are there other members seeking recognition?

Seeing none, we will call a vote on the amendment. Those in support of the amendment will vote aye. Those opposed, no.

The clerk will call the roll.

Okay. I will back up a bit. I just assumed we would end up in a roll call.

So those in support of the amendment will say aye. Those opposed will say no.

The noes would appear to have it. The noes have it, and the amendment is defeated.

Are there other members seeking recognition?

Mr. Rush. Mr. Chairman.

Mr. Walden. Mr. Rush.

I am sorry. Mr. Scalise. That is right. We need to come to

this side. Mr. Scalise.

Mr. Scalise. Thank you, Mr. Chairman.

The amendment that I have at the desk, majority 1 --

Mr. Walden. The clerk needs to report the amendment.

The Clerk. Amendment to H.R. 3310 offered by Mr. Scalise of Louisiana.

Mr. Walden. Without objection, the first reading of the amendment is dispensed with.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentleman from Louisiana is recognized to speak on his amendment for 5 minutes.

Mr. Scalise. Thank you, Mr. Chairman.

This amendment just addresses a technical correction and a drafting error with the bill. It relates to a Federal Register report that the FCC currently provides. We want them to continue to provide it; and this just makes clear that, while a report that was repealed years ago will be stricken from the books, the requirement to put data into the Federal Register will still be maintained. So again addressing a technical drafting area. That is all this amendment does. Hopefully, it would have bipartisan support.

And I would yield back the balance of my time.

Mr. Walden. The gentleman yields back the balance of his time. Anyone else seeking recognition?

The gentlelady from California is recognized on the amendment.

Ms. Eshoo. Mr. Chairman, we support this. In fact, it is my understanding that our staff pointed this out and appreciate Mr. Scalise offering this to make the correction.

Mr. Walden. Are there others seeking recognition?

If not, all those in favor of the amendment will say aye. Those opposed, nay.

The ayes have it, and the amendment is agreed to.

Are there others seeking recognition?

Ms. Eshoo.

Mr. Rush. Mr. Chairman.

Ms. Eshoo. Thank you, Mr. Chairman.

I have an amendment at the desk.

Mr. Walden. The clerk --

Ms. Eshoo. I am sorry. Go ahead.

Mr. Walden. Which amendment?

Ms. Eshoo. It is --

Mr. Walden. Fifteen, I believe.

Ms. Eshoo. Fifteen.

Mr. Walden. The clerk will report the amendment, number 15.

The Clerk. Amendment to H.R. 3310 offered by Ms. Eshoo of California.

Mr. Walden. Without objection, the first reading of the amendment is dispensed with.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentlelady from California is recognized for 5 minutes on her amendment.

Ms. Eshoo. Thank you, Mr. Chairman.

With the growing convergence of communications and media platforms, I agree that streamlining the FCC's reporting requirements could lead to a better assessment on the state of competition in the communications marketplace. My amendment clarifies that the FCC is not limited by the types of competition specifically listed in H.R. 3010. The amendment ensures that when assessing the state of competition that the FCC can consider all forms of competition, including examining a particular submarket like wireless or satellite.

My amendment also ensures that the FCC's reports look at local markets using factors such as the degree of concentration, whether such concentration is increasing or decreasing, and which firms have significant market power. And I think this is very important because some companies will put out statistics, and they are national figures and they purposefully will not use the regional market figures because it would not hold up the case essentially that they are trying to make.

So I think that this is more than reasonable. I think it is smart to go this way; and I think that as we have, as I said, the growing convergence of communications and media platforms that we really need to measure better the assessment of the state of competition in the communications marketplace.

So I urge my colleagues to support my amendment, which I think will strengthen the legislation, the underlying legislation, while

preserving its intent to consolidate many of the FCC's reporting requirements.

And with that I will yield back.

Mr. Walden. The gentlelady yields back the balance of her time.

The gentleman from Nebraska is recognized on the amendment.

Mr. Terry. I am in opposition of the amendment.

Here to date, the FCC's role in antitrust enforcement is limited to times when companies are actually seeking a merger or acquisition or new spectrum licenses, and it would significantly change the FCC's antitrust role from being reactive research and change the character to go out, search. I think it leads to nefarious or possible nefarious agendas of going after companies that you may disagree with based on whether or not you think -- it may be perceived as too big or too large, i.e., significant market powers at its discretion.

The role of the FCC is not to alter the communications marketplace on a market-by-market basis as it sees fit. This expansion would give the FCC the abilities to dictate the terms of market participation under the guise of reporting requirements.

I would also suggest that there may be issues of germaneness to this committee of whether or not we can even force reports on antitrust issues.

So I would urge its defeat.

Mr. Walden. The gentleman yields back the balance of his time.

Anyone else seeking recognition?

Ms. Matsui? Mr. Doyle?

Mr. Doyle. On the amendment?

Mr. Walden. Right. Okay.

Without objection, the gentlelady from California is recognized.

Ms. Eshoo. Thank you, Mr. Chairman.

There are a lot of ways that we can describe each other's amendments and thoughts and efforts, but I have to tell you -- and I think the world of the gentleman -- nefarious is -- I don't really think belongs in this. You know, we are --

Mr. Terry. Will the gentlelady yield?

Ms. Eshoo. Just a second.

We are grownups. We are adults here. We may not see eye to eye with one another, but I think that that is low, and I don't think that you really intended that. So I want to say that to begin with.

My second point is the following, and that is that in an examination of competition you have to take in different markets. If you were in a business, you had a national business in the country, you wouldn't only use your national sales numbers. You would be examining the various markets to see which one is stronger than another and why, if your competitors are beating your socks off. But you have to have the numbers.

And so that is why I am offering this, and I do it absolutely in a professional -- with professional intent, and I think that it would improve the bill, the underlying bill. I wouldn't be afraid of it.

I mean, what is so -- you are saying -- the majority has said and the minority has said today that the FCC needs to have better yardsticks

in order to come up with information. So that is why I am offering this amendment.

It is an assessment on the state of competition in the communications marketplace. This is growing. It is growing, and it is converging between communications and media platforms. So I think that this is a business tool, most simply put; and I am being very sincere and clear and professional about that.

So I would -- I don't know if the gentleman wants to say something about the word that he used.

Mr. Terry. Yes. I have asked you to yield.

Ms. Eshoo. I don't think that you intended to use it, because it doesn't belong in this hearing room or in this committee. And with that, I would be happy to --

Mr. Terry. I thank the gentlelady for bringing that to my attention.

The statement that I made, I stick by in the sense that this gives a power to the FCC that if --

Ms. Eshoo. Excuse me. Do you think that my amendment is nefarious?

Mr. Terry. I did not say it was nefarious. I said it gives the opportunity for nefarious actions such as the head of the FCC, because maybe Microsoft rejected some demand, that now they will go after Microsoft. I am just throwing that out there. I think that is nefarious, and that is what I said. I didn't say your amendment was nefarious or you.

Ms. Eshoo. I am going to reclaim my time.

I think that is unfortunate. I think it is really a bad read of the amendment. It is very clear. If, in fact, you know, the majority doesn't think we need to streamline the FCC's reporting requirements that would lead to a better examination on the state of competition in our country, then I rest my case, and I yield back.

Mr. Walden. The gentlelady yields back the balance of her time.

Are there others seeking recognition on the amendment?

If not, we will have a vote on the amendment. All those in favor of the amendment will say aye. Those opposed, no.

The noes appear to have it. The noes have it, and the amendment is defeated.

I recognize the gentleman from Illinois, Mr. Rush.

Mr. Rush. Well, thank you, Mr. Chairman.

Mr. Chairman, notwithstanding the passage of Mr. Scalise's --

Mr. Walden. Is the gentleman offering an amendment?

Mr. Rush. I have an amendment at the desk.

Mr. Walden. The clerk will report the title of the amendment.

The Clerk. Amendment to H.R. 3310 offered by Mr. Rush of Illinois.

Mr. Walden. Without objection, the first reading of the amendment is dispensed with.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentleman from Illinois is recognized for 5 minutes on his amendment.

Mr. Rush. I want to thank you, Mr. Chairman.

Again, Mr. Chairman, notwithstanding the passage of Mr. Scalise's amendment, my amendment deserves a stand-alone status in that it addresses the very important issue of diversity in media ownership; and its goal is to define and determine what market barriers exist to deny or circumvent fair access to the telecommunications marketplace.

Mr. Chairman, in the 1996 Act, Section 257 was added to that to help identify and eliminate market entry barriers for entrepreneurs and other small businesses. Section 257 was acted out of a recognition and concern that other provisions in the Act might lead to greater consolidation of the telecommunications industry without concern for diversity in media ownership or media content.

The FCC is directed by this very statute -- this very section to engage in a two-step process to identify market entry barriers in providing and owning telecommunications and information services and to report its findings and its recommendations thereon to the Congress once every 3 years. Section 257(c) is the very same statutory section that would require the FCC to submit triennial reviews and reports to the Congress.

H.R. 3310 contains a provision, Section 3(f), that would eliminate Section 257's Section C. Section 3 of H.R. 3310 is titled The Consolidation of Redundant Reports and Conforming Amendments, the

Section 257 report. And it aims have nothing to do at all with any of the other reports that may have been cued up for elimination or consolidation in a majority rule, whether it is the Audit Reporting Act or any other Act.

The amendment that is at the desk and that I am offering today would strike lines 3 through 7 from page 6 of H.R. 3310. Mr. Chairman, the effect of my amendment would be to retain the freestanding triennial reporting requirement on barriers to entry for minorities and small businesses and not collect this very, very critical and important area of concern into a consolidated report with other unrelated reports.

Mr. Chairman, I just feel as though my amendment deserves careful deliberation and deserves to be passed by this committee because it speaks to a long-standing problem that we have endured in this Nation much too long. And it just directs the FCC to look at the barriers, simply note the barriers and to help design what might prevent in the future barriers for minority and women owned businesses in the telecommunications area.

Mr. Chairman, in order to consolidate into this bill, it would lose its prominence, and I think that its prominence is warranted, and therefore the problem will go unnoticed and unresolved and this continual -- continual obstacles and barriers will continue to exist, and I think that we are worse off because we don't have this study and we don't have this information.

I yield back.

Mr. Walden. I thank the gentleman for his amendment.

Before I go to Mr. Scalise, I just want to inform members, as you know, we moved the markup an hour forward to accommodate the Democrats who had a caucus this morning, a conference this morning at Mr. Waxman's request. My intent is, if we are not complete with the markup by right around noon, to recess for about an hour and then resume. And everyone would have their opportunity to offer amendments.

If you think you can move through the amendments faster than that and want to get done, we can stay a little bit past noon. But, otherwise, we can --

Ms. Eshoo. Mr. Chairman, how many other amendments are being --

Mr. Walden. There are several I know that want --

Ms. Eshoo. We have two more on our side -- three.

Mr. Walden. Then we will come back after the noon hour.

Mr. Scalise, you are recognized for 5 minutes on Mr. Rush's amendment.

Mr. Scalise. Thank you, Mr. Chairman.

I appreciate the comments of the gentleman from Illinois. I would object to the amendment, because what we are trying to do with this comprehensive report is to get us an assessment of the entire communications marketplace and to do it on a biennial basis. And in fact if you look at all of the documents that are required by the FCC, many they are not even able to make on the timelines that they are currently scheduled to make them on because they have so much that they are required to report on and, by the time we get it, it is outdated. So we are trying to put it all in a comprehensive basis.

Because one of the problems that we have seen is that the reports that they have are produced in a silo effect, and we all know the problems that that all creates if you are only looking at one aspect of the industry, you are only looking at satellite or if you are only looking at broadband. We are bringing this together in a comprehensive format on a biennial basis.

And, in fact, the report that the gentleman from Illinois is talking about is a report that is produced once every 3 years. So the report that you are bringing up regarding small businesses currently is required to be reported by the FCC every 3 years. Under this bill, we are actually moving it up so that it is reported every 2 years; and it is done in the context of this comprehensive marketplace assessment that looks at the entire marketplace, all broadband, satellite, cable, mobile, all of the different platforms.

And it specifically mentions small business with the amendment that I brought forward earlier that was adopted by this committee unanimously. It encompasses the review of small businesses under Section 257 of the Communications Act in a comprehensive way, looking at the entire marketplace every 2 years instead of every 3 as currently is required and would be required if your amendment were to be passed.

I think it actually improves the ability for us and for the FCC specifically to look at the marketplace in a comprehensive way and as it relates to possible barriers to entry for small businesses. In this report that we are going to be doing now with this bill comprehensively actually makes it work a lot better for the FCC but especially for those

small businesses you are referring to.

So I would reject -- I would ask that we reject this amendment and allow the FCC to look at this comprehensively.

And I would yield back the balance of my time.

Mr. Walden. The gentleman yields back his time.

Further discussion on the amendment?

Seeing none, all those in favor of the amendment will vote aye.

Those opposed will vote no.

Mr. Rush. Roll call.

Mr. Walden. We will ask for a roll call vote. The clerk will call the vote.

The Clerk. Mr. Terry.

Mr. Terry. No.

The Clerk. Mr. Terry votes no.

Mr. Stearns.

[No response.]

The Clerk. Mr. Shimkus.

[No response.]

The Clerk. Mrs. Bono Mack.

[No response.]

The Clerk. Mr. Rogers.

Mr. Rogers. No.

The Clerk. Mr. Rogers votes no.

Mrs. Blackburn.

[No response.]

The Clerk. Mr. Bilbray.

[No response.]

The Clerk. Mr. Bass.

Mr. Bass. No.

The Clerk. Mr. Bass votes no.

Mr. Gingrey.

[No response.]

The Clerk. Mr. Scalise.

Mr. Scalise. No.

The Clerk. Mr. Scalise votes no.

Mr. Latta.

Mr. Latta. No.

The Clerk. Mr. Latta votes aye. Oh, Mr. Latta votes nay.

Mr. Guthrie.

Mr. Guthrie. No.

The Clerk. Mr. Guthrie votes no.

Mr. Kinzinger.

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger votes no.

Mr. Barton.

[No response.]

The Clerk. Mr. Upton.

[No response.]

The Clerk. Ms. Eshoo.

Ms. Eshoo. Aye.

The Clerk. Ms. Eshoo votes aye.

Mr. Markey.

[No response.]

The Clerk. Mr. Doyle.

Mr. Doyle. Yes.

The Clerk. Mr. Doyle votes aye.

Ms. Matsui.

Ms. Matsui. Aye.

The Clerk. Ms. Matsui votes aye.

Mr. Barrow. Aye.

The Clerk. Mr. Barrow votes aye.

Ms. Christensen.

Dr. Christensen. Aye.

The Clerk. Ms. Christensen votes aye.

Mr. Towns.

[No response.]

The Clerk. Mr. Pallone.

[No response.]

The Clerk. Mr. Rush.

Mr. Rush. Aye.

The Clerk. Mr. Rush votes aye.

Ms. DeGette.

Ms. DeGette. Aye.

The Clerk. Ms. DeGette votes aye.

Mr. Waxman.

[No response.]

The Clerk. Chairman Walden.

Mr. Walden. Walden votes no.

The Clerk. Mr. Walden votes no.

Mr. Walden. Are there other members seeking recognition?

Mr. Gingrey.

Dr. Gingrey. Votes no.

The Clerk. Mr. Gingrey votes no.

Mr. Walden. Mrs. Bono Mack.

Mrs. Bono Mack. No.

The Clerk. Mrs. Bono Mack votes no.

Mr. Walden. Mr. Towns.

Mr. Towns. Aye.

The Clerk. Mr. Towns votes aye.

Mr. Walden. Mr. Shimkus.

Mr. Shimkus. No.

The Clerk. Mr. Shimkus votes no.

Mr. Walden. Mr. Markey.

Mr. Markey. Votes aye.

The Clerk. Mr. Markey votes aye.

Mr. Walden. Mr. Pallone.

Mr. Pallone. Aye.

The Clerk. Mr. Pallone votes aye.

Mr. Walden. Mr. Bilbray.

Mr. Bilbray. No.

The Clerk. Mr. Bilbray votes no.

Mr. Walden. Are there other members wishing to be recorded?

The clerk will report the tally.

The Clerk. Mr. Chairman, on that vote there were 10 ayes, 12 nays.

Mr. Walden. The amendment is not approved.

Now, how many members still have amendments they wish to offer?

So one, two --

Mr. Markey, are you planning to offer an amendment?

Ms. Eshoo. We are trying to decide whether --

Mr. Walden. Okay. Ms. Matsui is -- for what purpose does the gentlewoman seek recognition?

Ms. Matsui. I have an amendment at the desk.

Mr. Walden. The clerk will report the title of amendment.

The Clerk. Amendment to H.R. 3310 offered by Ms. Matsui of California.

Mr. Walden. Without objection, the first reading of the amendment is dispensed with.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The gentlewoman is recognized for her amendment.

Ms. Matsui. Thank you, Mr. Chairman.

My amendment would simply require the FCC to report to Congress on how the absence of a centralized national governance structure concerning public safety communications has led to the lack of interoperability, high equipment costs, and the deployment of incompatible communication networks.

One of the main reasons that even 10 years after the attacks of 9/11 our first responders still lack the ability to seamlessly interoperate with each other is the fact that the use of public safety spectrum is governed at State and local levels. The localized nature of governance has led to police departments being unable to communicate with fire departments serving the same community, much less first responders travelling from out of State to assist another jurisdiction recovering from a natural or manmade disaster.

That must change, and we must provide public safety with interoperable capabilities they need and deserve to protect our Nation during challenging times. America's first responders deserve nothing short of that.

A strong nationwide governance structure will also provide the accountability necessary to ensure that taxpayers' monies are spent properly and ensuring the success of any nationwide network for first responders. The report which my amendment calls on the FCC to conduct will help illustrate the need for a centralized governance structure to achieve a nationwide level of interoperability for public safety.

Mr. Chairman, I urge my colleagues to support this commonsense public safety amendment, and I yield back the balance of my time.

Mr. Walden. The gentlewoman yields back the balance of her time.

The chairman recognizes Mr. Scalise for 5 minutes or less.

Mr. Scalise. Thank you, Mr. Chairman; and it will be less.

I would just object to the amendment because right now the whole issue of interoperability is something that is being discussed in a broader context, not just in the form of a report but actually potential action from Congress, which, frankly, is what is needed, what is being considered in relation to the broader issue of spectrum. So this isn't really an issue when we talk about interoperability. It is not an issue that needs more study as much as it is an issue that needs real action from Congress, not the FCC; and in fact Congress is doing that diligence right now as it relates to spectrum, which we may be seeing legislation to address.

And so, rather than having a report that just assesses whether or not a national governance is the requirement -- and, frankly, the jury is out on that -- but what we do know is that interoperability needs to be addressed and it needs to be addressed by Congress, not a report from the FCC where it is not related to the action that we are working on right now as it relates to spectrum which is where it belongs.

So I would object to the amendment and encourage us to continue the diligence that we are doing.

RPTS CALHOUN

DCMN HOFSTAD

[12:02 p.m.]

Mr. Walden. The gentleman yields back the balance of his time.

Is there anyone else who really needs to speak on this?

If not, we will go to a vote.

All those in favor, say, "aye."

Those opposed, "no."

The nays appear to have it. The nays have it. The amendment is defeated.

I recognize the gentlewoman from Virgin Islands, Dr. Christensen.

Dr. Christensen. Thank you, Mr. Chairman. I have an amendment at the desk. It is EJS_06.

Mr. Walden. The clerk will report the title of the amendment.

The Clerk. Amendment to H.R. 3310, offered by Ms. Christensen of the Virgin Islands.

[The amendment of Dr. Christensen follows:]

***** COMMITTEE INSERT *****

Mr. Walden. The first reading of the amendment is dispensed with, with unanimous consent.

The gentlelady from Virgin Islands is recognized for 5 minutes or less on her amendment.

Dr. Christensen. It will be less. Thank you, Mr. Chairman.

And, you know, it is not clear in this legislation when this consolidation is to be effective, so my amendment adds an effective date.

I support the intent of the legislation. I am sure there are many reporting requirements that are outdated, and streamlining is a good thing. But the consolidation of reporting under H.R. 3310 may do exactly what it purports not to do. It is not clear to me that it will not contract or in some way limit the authority of the Federal Communications Commission. And so this bill needs more time, and I hope it will be held until the subcommittee can come together in a bill that everyone can support.

But if not and if it is going to be passed today, which I expect it will, I again would like to amend the bill so that it becomes effective on February 1, 2013. This will ensure that the new requirements imposed by this bill are applied in a neutral manner and not targeted to a particular administration.

And I yield back my time.

Mr. Walden. The gentlelady yields back the balance of her time.

I would recognize myself for 5 minutes regarding the amendment.

And I would ask counsel, is there an effective date in the

legislation already?

Mr. Barnette. There is not a specific clause in the legislation, which, by law, means it would become effective when it is enacted.

Mr. Walden. All right. With that, I would object to the amendment and yield back the balance of my time.

Anyone else seek recognition on this amendment?

If not, those in favor of the amendment will vote "aye."

Those opposed, "no."

The noes appear to have it. The noes have it. The amendment is defeated.

Are there further amendments?

If not -- Mr. Rush?

Mr. Rush. Mr. Chairman, I have an amendment at the desk.

Mr. Walden. Mr. Rush, we are going to have to resume at 1 o'clock. My understanding was we had only two amendments left, and I have made commitments to others that we would actually recess at noon.

Mr. Rush. Well, Mr. Chairman, I will withdraw the amendment.

Mr. Walden. I appreciate that, Mr. Rush.

Then we will go to final passage on the bill, as amended.

Those in favor will say "aye."

Those opposed will say "no."

The ayes appear to have it. The ayes have it. The bill is passed, as amended, to the full committee.

I thank the committee members for their participation in the drafting work on both of these bills and look forward to continuing

our discussions between now and full committee on the amendments that we discussed.

With that, the committee is adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]