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Opening Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
“Reforming FCC Process”
Subcommittee on Communications and Technology
June 22, 2011

Today the Subcommittee will return to the topic of FCC reform. I commend Chairman Walden for working with us to put together a balanced panel of expert witnesses. We need to hear from diverse voices, and Chairman Walden has worked closely with Democrats to assemble balanced witness panels.

I wish I could also commend Chairman Walden for the draft legislation we will be considering today. Unfortunately, it has serious defects and would make the FCC less efficient and more bureaucratic – the exact opposite of what we should be doing.

I am a proponent of strong congressional oversight over the agencies within our jurisdiction. An engaged Congress can help agencies perform at a higher level and serve the American public better. In some instances it is appropriate for Congress to legislatively modify the authority or practices of an agency to enhance agency operations and the public interest.

At our first hearing on this topic, I asked basic questions that will guide me in determining whether we are promoting “smart regulation.” The bill does not provide reassuring answers.

The first problem is that this legislation will create an undue burden on the FCC. It requires that the Commission perform a cost-benefit analysis for every rule that might impose a “burden” on industry. This will be costly and time-consuming. Cost-benefit analyses might be appropriate for a limited set of major rules, but in no circumstances should they become a basis for years of litigation in court.

Second, the legislation undermines the flexibility of the agency to act quickly and efficiently in the public interest. If we put new prescriptive process requirements in statute, we can end up promoting slower – not faster – decision making. For example, the requirement that the FCC conduct a Notice of Inquiry prior to moving to rulemaking could restrict the agency’s ability to move more quickly in the public interest.

Third, some of the requirements in the draft legislation appear to be about process for the sake of process. Provisions in the rulemaking reform section and the transparency reform section impose practices that the Commission already follows. Chairman Genachowski's tenure has been marked by greater transparency, expanded opportunities for public input, and improved information sharing with other commissioners and the public. He has shown that the FCC can reform itself, without the need for action by Congress.

Finally, I am concerned that we are making procedural changes in an attempt to address outcomes with which we don't agree. Chairman Walden and others have criticized the voluntary commitments Comcast agreed to during review of its combination with NBC-Universal. That appears to be why the current draft legislation radically alters the FCC's authority under the Communications Act and could eviscerate the public interest standard. Before we take steps that could prevent combinations like Comcast-NBC, we need to examine whether they are in the interest of promoting public benefits or even in the interest of the companies they are intended to protect.

There are some promising aspects in the legislation. In particular, I support the provisions that allow commissioners to collaborate more directly. But overall, I cannot support the draft in its current form.

Chairman Walden has said he wants to work together in a bipartisan way to improve this bill. I hope we do that and produce a bill that earns broad bipartisan support.

I look forward to hearing our panel address these issues and to receiving their advice about how to improve the FCC.

Thank you.