

ONE HUNDRED TWELFTH CONGRESS  
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**Statement of Rep. Henry A. Waxman**  
**Ranking Member, Committee on Energy and Commerce**  
**“FCC Process Reform”**  
**Subcommittee on Communications and Technology**  
**May 13, 2011**

I would like to welcome Chairman Genachowski as well as Commissioners Copps, McDowell, and Clyburn back to the Subcommittee on Communications and Technology. We understand how much effort goes into preparing to testify before Congress and we greatly appreciate your participation.

The topic of FCC reform is not new to this committee. As one reporter’s account of an October 28, 1999, hearing recalls: “The FCC was criticized for its slow pace of institutional reform, its handling of the e-rate and universal service, its exercise of antitrust merger review authority, its delay in completing antitrust merger reviews and its imposition of conditions on mergers.” Today’s hearing will take us back to the future as we revisit many of these issues.

At the outset, let me say that Chairman Genachowski should be commended for his significant efforts and commitment to improving agency operations and boosting employee morale.

Since he became Chairman, the agency has increased transparency, expanded opportunities for public input, and improved information sharing with other commissioners and the public. The agency now includes more details on proposed rules in notices of proposed rulemaking, makes adopted rules available to the public more quickly, and has revamped its *ex parte* rules to enhance openness and transparency. These efforts have been made better by the thoughtful bipartisan suggestions of his fellow commissioners.

And it is clear that today the FCC is a much better place to work. According to the 2010 OPM employee survey, the FCC was the most improved agency in the federal government.

I also want to commend Subcommittee Chairman Walden for looking at this issue in a nonpartisan manner. He has sought input from all of the commissioners and Republican and Democratic committee members. And he has committed to explore proposed process reforms in detail before we proceed toward possible legislation.

If the committee does develop legislation regarding FCC reform, we should be guided by a few basic questions about each proposed change to ensure that we are promoting “smart regulation.”

First, does the proposed change create an undue burden on the FCC? When we impose statutory requirements of any kind, we need to be wary of burdening the agency with compliance requirements.

Second, are we undermining agency flexibility to act quickly and efficiently in the public interest? If we put prescriptive process requirements in statute, we can end up promoting slower – not faster – decision making.

Third, are we requiring additional process for valid reasons? We must not impose procedural hurdles for their own sake.

Fourth, are we making procedural changes in an attempt to address outcomes with which we don’t agree? For example, if we limit the ability of the agency to negotiate voluntary commitments related to mergers, are we also willing to accept that certain mergers may then be rejected outright? Some might view conditions as unfair while others might see them as critical trade-offs that allow transactions that might otherwise fail go forward.

Finally, why the FCC? Are we imposing process reforms on the FCC that should apply to all federal agencies? If not, what is our basis for treating the FCC differently?

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

Thank you.