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FCC AUTHORIZATION: IMPROVING COMMISSION TRANSPARENCY

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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FCC AUTHORIZATION: IMPROVING COMMISSION TRANSPARENCY

THURSDAY, APRIL 30, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:07 p.m., in room 2123, Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Present: Representatives Walden, Latta, Barton, Shimkus, Blackburn, Scalise, Lance, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Johnson, Long, Ellmers, Collins, Cramer, Eshoo, Welch, Yarmuth, Clarke, Loebsack, Matsui, McNerney, and Pallone (ex officio).

Staff Present: Ray Baum, Senior Policy Advisor for Communications and Technology; Sean Bonyun, Communications Director; Karen Christian, General Counsel; Andy Duberstein, Deputy Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Charles Ingebretson, Chief Counsel, O&I; Grace Koh, Counsel, Telecom; David Redl, Counsel, Telecom; Charlotte Savercool, Legislative Clerk; Macey Sevcik, Press Assistant; Christine Brennan, Minority Press Secretary; David Goldman, Minority Chief Counsel, Communications and Technology; Lori Maarbjerg, Minority FCC Detailee; Margaret McCarthy, Minority Senior Professional Staff Member; Tim Robinson, Minority Chief Counsel; and Ryan Skukowski, Minority Policy Analyst.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. We will call to order the subcommittee on Communications and Technology for our legislative hearing on "FCC Reauthorization: Improving Commission Transparency." I want to welcome our witnesses today. Appreciate your being here.

Our subcommittee, often on a bipartisan basis, has worked to make the Federal Communications Commission a more transparent and accountable public body for many years and under various FCC chairmen. These bills sponsored by my colleagues continue those well-meaning efforts to make even powerful bureaucrats realize that this is the public's business that is being conducted. The FCC is not some venture capital firm. The FCC is an independent agency that reports to Congress.

Commissioner O'Rielly, thank you for your well-reasoned and helpful testimony. I appreciate your insights, tone, and suggestions.

You seem to understand the proper role of the FCC and welcome the opportunity to improve how it functions so that it can better serve the public. I commend you for your views and your willingness to work with this subcommittee. You have pointed out material problems at the FCC, and you have offered constructive solutions, and I thank you for that.

Now, I wish I could say the same thing about Chairman Wheeler's testimony. If you really think that drafting, amending, and adopting rules without giving the public more opportunity to see them before they are crammed down their throats is good process, then maybe it is no wonder the public has little faith in the agencies of government.

Under the current power structure at the FCC, the Chairman has incredible authority that none of the other commissioners has because the Chairman alone controls access to FCC information. He or she can call in their own validators to get the inside track and become a well-tuned chorus of support for their pet policies. Friends of the Chairman get special perks to weigh in and access information that the rest of the public just doesn't get to see and that other commissioners can't even discuss. Commissioner O'Rielly exposes this charade for what it is in his testimony. None of us on this committee would tolerate that insult to our First Amendment rights that the commissioners at the FCC must suffer at the hands of a Chairman.

Chairman Wheeler urges us to not make the FCC subject to its own special set of rules. This is a refrain I have heard from some of my colleagues who want to expand the Commission's private discussions, a special rule that would only apply to the FCC, but oppose making the Commission's actions more public.

If the Chairman would like to subject the FCC to the same rules as the other agencies of the Federal Government, why, we can certainly make that happen. Of course, that would mean the Chairman could no longer hand pick the agency's inspector general or have the IG report to the Chairman. We would have real independence in the IG's office, and under the rules that other agencies follow, we wouldn't have this silly argument over producing cost-benefit analyses for rulemakings. The FCC would simply have to follow the law and produce them like other agencies.

Trying to behind hide the skirt of the APA and then pretend the FCC is just another Federal agency actually insults this committee. And I cannot help but respond to the nonsense that my colleagues' legislation would somehow unduly burden the FCC by requiring it to link a document that already exists to its Web site. Such a requirement wasn't considered a burden when the FCC forced broadcasters to scan their political files and make them available on the Internet. But now we are supposed to believe that a similar requirement for an agency with 1,700 employees is just too much of a burden. Really?

The FCC loves to come up to Capitol Hill and tell us how they are special because they have a public interest mandate. That mandate is a double-edged sword, which means you are stuck with both the rights and the attendant obligations. So I can't for the life of me come up with a legitimate rationale for how it is in the public

interest to operate in secret, specifically excluding the public from the rules you are considering.

My colleagues who wrote these measures and I are on the side of reforming the Washington bureaucracy. It is disappointing to see that you don't share our commitment to better government. We believe the public deserves more access to the process. We believe the public is best served by an open, transparent, and accountable government. And we will not stop in our cause and quest even if that means taking on the entrenched and powerful. We have only just begun.

I yield the remainder of my time to the vice chair of the committee, Mr. Latta, for any comments he would like to make.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Good afternoon and welcome to the Subcommittee on Communications and Technology's legislative hearing on three draft bills to improve transparency at the FCC.

Our subcommittee, often on a bipartisan basis, has worked to make the FCC a more transparent and accountable public body for many years and under various FCC chairmen. These bills, sponsored by my colleagues, continue those well-meaning efforts to make even powerful bureaucrats realize this is the public's business that's being conducted. The FCC is not some venture capital firm; the FCC is an independent agency that reports to Congress.

Commissioner O'Rielly, thank you for your well-reasoned and helpful testimony. I appreciate your insights, tone and suggestions. You seem to understand the proper role of the FCC and welcome the opportunity to improve how it functions so that it can better serve the public. I commend you for your views and your willingness to work with this committee. You have pointed out material problems at the FCC and offered constructive solutions. Thank you.

I wish I could say the same for your testimony Chairman Wheeler. If you really think that drafting, amending and adopting rules without giving the public an opportunity to see them before they are crammed down their throats is good process, then it's no wonder the public has little faith in the agencies of government.

Under the current power structure at the FCC the Chairman has incredible authority-that none of the other commissioners has- because the Chairman alone controls access to FCC information, he or she can call in their own "validators" to get the inside track and become a well tuned chorus of support for their pet policies. "Friends of the Chairman" get special perks to weigh in and access information that the rest of the public doesn't get to see, and that other commissioners can't even discuss. Commissioner O'Rielly exposes this charade for what it is in his testimony. None of us on this committee would tolerate the insult to our First Amendment rights that the commissioners at the FCC must suffer at the hands of the Chairman.

Chairman Wheeler urges us to not make the FCC subject to its own special set of rules. This is a refrain I've heard from some of my colleagues who want to expand the Commission's private discussions—a special rule that would only apply to the FCC—but oppose making the Commission's actions more public. If the Chairman would like to subject the FCC to the same rules as the other agencies of the Federal government, we can certainly make that happen.

Of course, that would mean the Chairman could no longer hand pick the agency's inspector general or have the IG report to the Chairman. We'd have real independence in the IG's office. And under the rules that other agencies follow we wouldn't have this silly argument over producing cost-benefit analyses for rulemakings. The FCC would simply have to follow the law and produce them.

Trying to hide behind the skirt of the APA and pretend that the FCC is just another Federal agency insults this committee.

And I cannot help but respond to the nonsense that my colleagues' legislation would somehow unduly burden the FCC by requiring it to link a document that already exists to its Web site.Such a requirement wasn't considered a burden when the FCC forced broadcasters to scan their political files and make them available on the Internet. But now we're supposed to believe that a similar requirement for an agency with 1,700 employees is a too much of a burden? Really?

The FCC loves to come up to Capitol Hill and tell us how they are special because they have a "public interest" mandate. That mandate is a double-edged sword, which means you are stuck with both the rights and the attendant obligations. I can't for the life of me come up with a legitimate rationale for how it is in the public interest to operate in secret, specifically excluding the public from the rules you are considering.

My colleagues who wrote these measures and I are on the side of reforming the Washington bureaucracy. It is disappointing to see that you don't share our commitment to better government, Chairman Wheeler. We believe the public deserves more access to the process. We believe the public is best served by an open, transparent and accountable government. And we will not stop in our cause and quest, even if that means taking on the entrenched and powerful. We have only just begun.

Mr. LATTA. Well, thank you, Mr. Chairman, and thank you for holding today's hearing.

As the subcommittee continues to examine the reauthorization of the FCC, I remain firm in my belief that given the Commission's integral role in our marketplace, it is critical that the agency is accountable, efficient, and transparent. Therefore, I am pleased that we have the opportunity to openly discuss the three transparency draft bills in front of us today, one of which I am the sponsor.

My discussion draft would require the FCC to identify and describe all items to be adopted by the Commission staff on delegated authority prior to action being taken. This is necessary to prevent abuse of delegated authority and to increase public awareness of the agency's day-to-day decisions.

The remaining drafts are also vital to promote effective and transparent processes at the FCC. And I look forward to hearing the Commission's view on these bills and how Congress can work with the agency to ensure a level of transparency the American people deserve.

[The discussion drafts follow:]

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To amend the Communications Act of 1934 to require the Federal Communications Commission to publish on its Internet website changes to the rules of the Commission not later than 24 hours after adoption.

IN THE HOUSE OF REPRESENTATIVES

Mrs. ELLMERS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Communications Act of 1934 to require the Federal Communications Commission to publish on its Internet website changes to the rules of the Commission not later than 24 hours after adoption.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TIMELY AVAILABILITY OF CHANGES TO RULES OF THE COMMISSION.

(a) AMENDMENT.—Section 4 of the Communications Act of 1934 (47 U.S.C. 154) is amended by adding at the end the following:

"(p) Not later than 24 hours after adopting a provision that will appear in the Code of Federal Regulations, or an amendment to or repeal of a provision that appears in the Code of Federal Regulations, the Commission shall publish on the Internet website of the Commission the text of the provision adopted or repealed, or the text indicating how the provision is being amended, as the case may be.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to a provision, or an amendment to or repeal of a provision, that is adopted after the date that is 30 days after the date of the enactment of this Act.

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To amend the Communications Act of 1934 to require the Federal Communications Commission to publish on the website of the Commission documents to be voted on by the Commission.

IN THE HOUSE OF REPRESENTATIVES

Mr. KINZINGER of Illinois (for himself and Mr. ALLEN) introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Communications Act of 1934 to require the Federal Communications Commission to publish on the website of the Commission documents to be voted on by the Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PUBLICATION OF DOCUMENTS IN ADVANCE OF FCC VOTING.

(a) IN GENERAL.—Section 4 of the Communications Act of 1934 (47 U.S.C. 154) is amended by adding at the end the following:

"(p)(1) The Commission may not adopt any order, decision, report, or action by vote of the Commission, unless the Commission publishes on the Internet website of the Commission the text of such order, decision, report, or action—

"(A) not later than 24 hours after the time such text is placed on circulation for review by the Commissioners; or

"(B) not later than 21 days before the date on which the vote is to occur.

"(2) The text published pursuant to paragraph (1) shall be the text intended at the time of the publishing to be subject to a vote. Nothing in this subsection may be construed to prevent the Commission from making good faith changes to the text after the publishing.

"(3) This subsection shall not apply to a portion of any order, decision, report, or action if the publishing of such portion is likely to lead to a result described in a paragraph of section 552b(c) of title 5, United States Code.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to an order, decision, report, or action the text of which is placed on circulation after the date that is 90 days after the date of the enactment of this Act.

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To amend the Communications Act of 1934 to require identification and description on the website of the Federal Communications Commission of items to be decided on authority delegated by the Commission.

IN THE HOUSE OF REPRESENTATIVES

Mr. LATTA introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Communications Act of 1934 to require identification and description on the website of the Federal Communications Commission of items to be decided on authority delegated by the Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. IDENTIFICATION AND DESCRIPTION OF ITEMS TO BE DECIDED ON AUTHORITY DELEGATED BY THE COMMISSION.

(a) IN GENERAL.—Section 5(c) of the Communications Act of 1934 (47 U.S.C. 155(c)) is amended by adding at the end the following:

"(10) Not later than 48 hours before the time when an order, decision, report, or action is made or taken pursuant to delegation under paragraph (1), such order, decision, report, or action shall be identified and briefly described on the Internet website of the Commission, unless the authority to which the delegation is made for good cause finds that such identification and description are likely to lead to a result described in a paragraph of section 552b(c) of title 5, United States Code. This paragraph shall not apply with respect to an order, decision, report, or action made or taken—

"(A) on authority delegated to an administrative law judge; or

"(B) to address an immediate threat to health or safety that constitutes an emergency requiring an expedited response from the Commission.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to an order, decision, report, or action made or taken after the date that is 90 days after the date of the enactment of this Act.

Mr. LATTA. And, Mr. Chairman, I yield back the balance of my time.

Mr. WALDEN. The gentleman yields back the time.

Before I recognize the gentlelady from California, I would like to enter into the record a letter from a coalition of public interest groups, including Center for Democracy and Technology, Center For Media Justice/MAGNet, Color of Change, Common Cause, Consumers Union, Demand Progress, Engine, Fight for the Future, Free Press Action Fund, National Hispanic Media Coalition, Open Technology Institute of New America, Public Knowledge, United Church of Christ, OC, Inc., Writers Guild of America, West, opposing the three bills offered by Representatives Latta, Kinzinger, and Ellmers.

[The information appears at the conclusion of the hearing.]

Mr. WALDEN. Ironically, it seems that Public Knowledge is opposed to making knowledge public.

To give you an idea what opponents of these bills are supporting, I would like to read an excerpt. This group opposes Rep. Ellmers' bill because it would, and I quote, "essentially require finalized text at the time of a vote," close quote, apparently supporting the idea that the commissioners of the FCC shouldn't have access to a final version of the item before they vote. Entered without objection.

I now recognize the gentlelady from California, my friend Ms. Eshoo, for opening remarks.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman.

And welcome to the distinguished Chairman of the FCC and to Commissioner O'Rielly. It is wonderful to see you.

Mr. Chairman, I just want to depart for a moment from what I have here to say in my opening statement. I always think of you as a gentleman. I mean, we are friends. We agree on some things. We disagree on other things. But I hope that we can just stay away from using terms like "the Chairman's charade."

These are people that have entered public service to serve the people of our country. I know that your side is adamantly opposed to what the FCC on a majority vote placed before the American people and us on net neutrality. It is a fair fight. I want to win. You want to win. We have our very specific reasons around this, and we fight hard, but we need to fight fair.

I don't agree with Commissioner Pai. He is a friend of mine. Commissioner O'Rielly I don't know all that well, but I look forward to every time I see him and building a professional relationship. In so many ways we are all in this together.

So to say that we are welcoming the Chairman and using him as a pinata, I think I would rather be on the welcoming side. And I think that you at heart would too. So let's just take a deep breath and be very respectful of one another. We can disagree. It is OK. It is all right. We are going to fight like hell for our own view.

I know today's hearing is about process reform. I don't agree with the bills that you are putting forward. I think that they are going to tie the agency in knots by undermining established Administra-

tive Procedure Act precedents, and I think that it will jeopardize regulatory certainty, and I think it is going to open the door to just a mess of legal challenges. So that is what I think.

I think if our overall goal is reform, and I can tell you that the members on my side are sincerely prepared to offer constructive reform ideas, not retribution for net neutrality and what someone's position is on it, if we are going to work on reforms, let's work on reforms.

We have, I think, two solid ones. One of them is to upgrade the FCC's multiline phone systems to provide the direct dialing to 911. This is something that Commissioner Pai has spoken to. And I think the FCC should lead on this, that the agency that regulates others, that this would set a great example, and I think that that should be done.

The other FCC process reform are the efficiencies and collaboration amongst the commissioners themselves. We have done it before. It has been bipartisan. It has been bicameral. And that is the Collaboration Act. And we will have some more ideas, Mr. Chairman, and we look forward to offering them.

Now, I have a minute and 21 seconds. I want to yield, split that between Congresswoman Matsui, so we will go women first, and then to Mr. Yarmuth.

Thank you.

Ms. MATSUI. I thank the ranking member for yielding time.

I would like to welcome both of you here today.

The issue of FCC process reform is an important one. It should also be bipartisan in nature. We can all agree that transparency and efficiency at the FCC is a good thing.

I have put forth a draft bill to make it easier for small businesses in Sacramento and across the country to engage with the FCC on policies that may impact them. The FCC oversees industries that account for one-sixth of the economy, which includes countless small businesses.

Whether it is a family business or a startup, small business can't spend scarce resources on lawyers or lobbyists to have impact on FCC reforms. We should make it as simple as possible for the small businesses to have their voices heard at the FCC.

This is a commonsense bill, and I hope my colleagues will support it. And I yield the rest of the time to my colleague.

Mr. YARMUTH. Thank you. I will elaborate on this later in the hearing if I have time. But I am very concerned about transparency at the FCC, but I am also very concerned about transparency with the ads that fill our airways every election season and even now after election season.

So I introduced today the Keeping Our Campaigns Honest Act, legislation requiring the FCC to revise their sponsorship identification rules to take in super-PACs and 501(c)(4) organizations. We need to make sure that there is sunlight on these donors until the IRS issues a clearer ruling.

So I appreciate the opportunity to just mention that that is something I want to talk about in the future with the FCC and the committee. I yield back.

Mr. WALDEN. The gentleman yields back. The gentlelady's time has expired. I recognize the vice chair of the full committee, Ms. Blackburn.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman.

And I do want to welcome our witnesses. We appreciate that you are here and that we have the opportunity to begin to look at FCC reform.

And I am also hopeful that we are going to see participation in this on a bipartisan basis. I do believe that it is time for us to look at some reforms, transparency, accountability. You have heard it from everyone who has spoken. And it is something that we think the FCC is struggling with. And therefore we want to put it on the table and have a discussion with you as we look at how we reform the way that business is done at the FCC.

Taxpayers are telling us they don't want this to be a struggle. They want you all to act in a more transparent and accountable method. And we have to realize that the rules you make do impact them. They impact the economy. They impact participation by the private sector. They also impact the tax burden that our constituents feel when they go to write that check every April.

So, yes, we are going to continue to look at these, and we are hopeful that you are going to be proactive in working with us as we bring forward some proposals that will bring about a bit more accountability and transparency.

One of the reasons that we are going about this is because of the opaque process which I think surrounded the net neutrality rules and really damaged the credibility of the Commission. That is something that is regrettable. And we should not have to see things passed in order to find out what is in them, and we want to work with you on making certain things are more transparent.

At this time, Mr. Chairman, I yield 30 seconds to you.

Mr. WALDEN. I thank the gentlelady.

And I want to just go back and read what I actually said in my statement, because this was not aimed at any particular Chairman, and I will read it again: "Under the current power structure at the FCC, the Chairman has incredible authority that none of the other commissioners has"—that is a fact—"because the chairman alone controls access to information"—that is a fact—"he or she can call in their own validators to get the inside track and become a well-tuned chorus of support" for their pet projects. That is a fact. Friends of the chairman do get special perks to weigh in and access information that the rest of the public doesn't get to see and that other commissioners can't even discuss. And it goes on from there. This was not aimed at any specific chairman, just to set the record straight.

And I do appreciate my colleagues on the other side of the aisle who are interested in working on reform efforts. As you know, our legislation from my colleagues has been posted online and available, and we are open to these discussions. I read the press release

today and saw the bills that you all have filed today. We are open to this discussion and look forward to working with you.

And just as a final point, we have actually been on this effort since I began as chairman here to try and reform the FCC, irrespective of any policy before the FCC at the time or who the chairman is. I think we can do better in Washington to bring about transparency, openness, and accountability in every agency. This is the one over which we have jurisdiction.

With that, I will yield back to the gentlelady from Tennessee.

Mrs. BLACKBURN. Thank you, Mr. Chairman, and I appreciate the clarity that you brought to that and the repetition of your statement. And at this time I yield the remainder of the time to Ms. Ellmers.

Mrs. ELLMERS. Thank you to my colleague.

I would just like to say that, absolutely, this is about transparency. This is about an open process. I think we all on both sides of the aisle are trying to see the way to that goal. And so we do have questions about the way the process is being put forward. We do have good questions about the plan of action.

I am just thankful to the chairman that we have the opportunity today to discuss these things and get them out on the table so that we can move forward on an open and transparent process, as I think all Americans believe.

Mrs. BLACKBURN. And the gentlelady yields back.

And I, Mr. Chairman, will yield back the balance of my time to you. Again, I thank the commissioners for submitting their testimony, and I look forward to bipartisan participation on reforming the FCC. Yield.

Mr. WALDEN. And I thank the gentlelady. And I just want to point out this has nothing to do with either net neutrality or the fact that Ohio State demolished my Ducks.

Now, with that I turn to the gentleman from New Jersey, Mr. Pallone.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman. I want to thank the chairman and welcome Chairman Wheeler and Commissioner O'Rielly.

I know you were sitting in these same seats just a few weeks ago, and we appreciate you coming back.

I just want to associate myself with the remarks that Ms. Eshoo made about let's be careful. I think things have calmed down a little here. But I think she was right in saying let's be careful that we don't pick apart or insult the Chairman or the FCC or any agency really, because everybody is trying to do the best they can. And I don't necessarily think agencies are better than Congress or worse than Congress or better than the President or whatever.

I appreciate your comment, Mr. Chairman, about this not being a backhanded slap at the FCC for adopting the strong network neutrality protections. A lot of us obviously are concerned that that not be the case. So it is good that you set that forth.

I am obviously supportive of having a debate about whether we should modify procedures across all agencies, but I am worried that these kinds of agency-specific procedural changes have several drawbacks.

First, they can give the public the impression that these are simply backdoor efforts to undermine popular decisions with which some Members of Congress disagree.

Secondly, legal experts have repeatedly told us that agency-specific requirements invite lawsuits. They have explained that even small changes create large conflicts with longstanding legal precedent, and these conflicts will no doubt lead to drawn-out battles in court. And as we have heard over and over in this subcommittee, litigation unsettles the market and deters investment.

But despite Democratic concerns with the Republican-specific bills, Democrats are not the party of no. And that is why, as the chairman mentioned, the Democratic members of this subcommittee have put together our own plan, one that builds on the good work Chairman Wheeler has already done to improve the FCC's processes and will keep future FCC administrations fast, efficient, and transparent. Our commonsense proposals would keep the FCC as agile as the industries it regulates without sparking years of legal uncertainty.

And our plan goes beyond the bureaucratic inner workings of the FCC. We believe that transparency should extend to the political process as well. And that is why the Democratic plan includes a way to ensure that the public knows who is paying for expensive political adds on TV. For too long megadonors have been hiding behind the innocuous and misleading titles of their super-PACs. Americans deserve to know who is using the public airwaves to influence political debate, and transparency should not stop at the doors of the FCC.

So I am hopeful that we don't see any more political tactics against the FCC and that they end today.

I have 2 minutes. I would like to yield 1 minute to Ms. Clarke and 1 minute to Mr. Loebsack, in that order.

Ms. CLARKE. Chairman Walden and Ranking Member Eshoo, thanks for convening this hearing.

And to Chairman Wheeler and Commissioner O'Rielly, thank you for appearing here today.

I would like to also thank Ranking Member Pallone for yielding time.

The FCC oversees many dynamic industry sectors that make up one-sixth of our national economy. Consequently, it is important for government to understand and act quickly to keep up with the rapid innovation and shifts affecting these industries. Whether it is application for a license or a request for new rules, the public deserves timely responses from the FCC.

There are some issues and tasks at the agency that have simply taken more priority over others, years to complete, and we must avoid these time hogs, if you will, that prohibit other business from getting done. Essentially, we need the FCC to effectively multitask while maintaining clear transparency around time lines to keep up with its broad portfolio of work. The agency's delay, for example, on the rulemaking or petition can have a negative impact on the

commenter whose next step or survival is intricately tied to the timeliness of the agency's response.

I know the Commission is working hard to speed its decision-making, but the best way to ensure that future administrations live up to this standard is to hold them accountable to the public they serve.

I will be introducing a draft bill that will make data regarding the timeliness of the business before the FCC available to the public. It would also include information about the impact of congressional investigations on the agency's ability to manage its workload. I look forward to working with my colleagues and the FCC on these issues. And I yield to Mr. Loebsack.

Mr. LOEBSACK. Thank you. And thank you, Ranking Member Pallone, for allowing me to speak briefly.

And thanks to both of you for being here today as well.

I have just joined this committee this Congress, but I know that this issue of FCC reform, namely transparency, is something that the committee has been examining for several Congresses. Unfortunately, we all know it has become a very partisan issue.

The FCC and all our Federal agencies need to be transparent. I think we can all agree on that. They need to be responsive to the American people. This really should be something that is easy for Democrats and Republicans to agree on, and I think we have seen that today already demonstrated by the comments of my colleagues.

That is why I am offering a discussion draft today to shine some light at least on the way the FCC makes decisions. My bill simply would require the FCC Chairman to post online the guidelines and procedures the commissioners use when considering items. Fairly simple.

Commissioner O'Rielly, you have raised this issue at the FCC, and I agree with you on this commonsense reform. Public participation, I think we all know, has never been higher when it comes to engaging the FCC. Millions of Americans reach out to the FCC, and they deserve to know how decisions are made by the agency.

So I look forward to working with my fellow colleagues here on the Energy and Commerce Committee to bring the clarity I think that we all want when it comes to what the FCC rules and regulations are and making sure that the public knows what they are as well.

So thanks again for letting me speak to all the folks here who are in leadership positions on this committee and the subcommittee. And thanks to both of you as well. And I yield back. Thank you.

Mr. WALDEN. The gentleman yields back the balance of his negative time there, but we are happy to have that.

And I would just comment—they have called votes—I would just tell Ms. Clarke, Loebsack, and Matsui, I have just seen these bills for the first time today, and I think your ideas make a lot of sense. And so we are open to having that discussion and incorporating them in or see what we can come together with. And I hope you will join me that when we do do that, bringing commissioners back, the Chairman back to give us the input once we get a draft put together. So I would like to work with you on that. It is great.

With that, I think we will recess and then hear from the Chairman and the commissioner when we return from votes. So if members could go vote and come right back.

[Recess.]

Mr. WALDEN. We will call back to order the subcommittee on Communications and Technology. And thank our witnesses again for being here and for sharing with us their expertise on these issues and their suggestions and concerns.

And with that, I now welcome the Chairman of the Federal Communications Commission.

Chairman Wheeler, thanks for being here, and we look forward to your testimony.

STATEMENTS OF THE HONORABLE TOM WHEELER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; AND THE HONORABLE MICHAEL O'RIELLY, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF TOM WHEELER

Mr. WHEELER. Thank you, Mr. Chairman.

Mr. WALDEN. Will you make sure that mic is on too, Tom.

Mr. WHEELER. Yes. Thank you.

Mr. WALDEN. There we go.

Mr. WHEELER. Unaccustomed as I am to speaking quietly, I guess.

It has been a while, but I do want you to know that I listened carefully to your opening statement and that I took the message you were delivering onboard. And I also feel very strongly that impugning the First Amendment or this committee was in no way, shape, or form any goal, and I don't believe that I did. And so I just want to state that for the record.

Mr. WALDEN. I appreciate that.

Mr. WHEELER. Long before I ever came to the Commission, I had heard of how the FCC must become more efficient and make decisions faster. It was a topic, Mr. Chairman, of our first meeting, you may recall. You prompted me to task a senior member of the Chairman's office to lead an intra-agency team to attack the problem. The result of this has been the resolution of thousands upon thousands of pending matters, the most items ever resolved in the shortest period ever. We aren't done by a long stretch.

But in regard to the issues raised by the three proposals noticed for this hearing, we should consider the following. Publishing our decisions quickly has been a priority of mine. During no other chairmanship in this century have we reported items as quickly as we have during my chairmanship, 73 percent in one business day or less; 86 percent in 2 days. But you ask: What about the other 14 percent? Well, those are 41 decisions that were typically the result of last-minute negotiation, and the staff had to work with the commissioners to bring them into shape.

But let's let the facts speak for themselves. During my chairmanship, the average time to release an order was 1.8 days. Just for comparison's sake, during the Powell Commission, the average was 8.7 days. During the Martin Commission, the average was 10.7 days.

On another topic, delegated authority, delegated authority on items for the FCC record is at a 15-year low during my chairmanship, and that is both in absolute numbers and in the ratio to overall decisions.

Now, the interesting thing is that delegated authority can be confusing as a term. Last year, there were over 950,000 items that were decided on delegated authority. That may seem like a large number, but it has actually stayed pretty constant over the years. The vast majority of delegated authority decisions are routine, although they are of great importance to the companies affected. About 0.2 of 1 percent of those delegated authority decisions are substantive enough to make it into the FCC Record, which is the compendium of Commission policy matters.

Again, the facts speak for themselves. If the goal is to reduce delegated authority decisions, in order that commissioners vote on as many items as possible, the record during my chairmanship surpasses the record of Republican administrations, affording that opportunity to minority commissioners.

And, finally, the Commission has never been more open and the public more informed of our activities. While publishing the specific language being considered and debated by the commissioners may seem to facilitate matters, it actually achieves the opposite. Doing this would turn an open, yet highly structured administrative process into something akin to the funhouse hall of mirrors where it just goes on and on and on and on. And this is because in Sprint Corporation v. FCC, the D.C. Circuit held that the Commission must respond in its decisions to every argument raised on the record. Now, there have been a lot of guffaws about a 300-page Open Internet Order accompanying 8 pages of rules, but that is why. By law, every issue raised in an extremely fulsome record had to be addressed.

We can virtually guarantee that publishing a predecisional draft will trigger an influx of new comments, raising new issues. Every imaginative lawyer on every side of an issue will dream up new interpretations, new contexts, and new issues that they will file with the Commission, to which the Commission must respond. This means there would not be a decision, but a rewrite to reflect the new record. Then it would be published again, and the whole process would begin again as we dive down the administrative rabbit hole.

But let's look for a moment at some examples. The Connect America Fund payments for rural rate of return carriers needs to be resolved. This is basically a debate among carriers who receive benefits over the best formula to calculate those payments. Some carriers will benefit from the change. Others won't. And those who feel disadvantaged will seize upon this as an opportunity to keep us from getting funds into the hands of those who can deliver broadband in rural areas.

The designated entities competitive bidding issue is a hot item on which we have heard a great deal from this committee. But if we don't have rules in place in advance of the incentive auction in Q1 of next year, the old rules will stick. Neither of us want that. Likewise, however, if we get into this kind of a constant delay situation, then the alternative becomes do we delay the auction, and

neither one of us want to do that either. And there are multiple other examples like this, including STELAR, where you asked us to do things in 12 months that would be impossible to do in this kind of situation.

So all I would say, Mr. Chairman, is from our first meeting you and I shared the same goal about improving the Commission's processes. Commissioner O'Rielly, my friend and colleague Michael O'Rielly, is also a champion of these efforts. He has made a number of very good and substantive suggestions that prompted me to create an all-offices task force to review just how the agency operates. I believe in making the FCC more efficient and nimble, and I look forward to working with you in that goal.

[The prepared statement of Mr. Wheeler follows:]

Statement of FCC Chairman Tom Wheeler

Before the
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives

Hearing on
"FCC Reauthorization: Improving Commission Transparency"
April 30, 2015

Introduction

Chairman Walden, Ranking Member Eshoo, Members of the Subcommittee, I appreciate this opportunity to join with my colleague Commissioner O'Rielly to provide a progress report on the Federal Communication Commission's efforts to improve its internal processes and increase transparency. The American people expect the Commission - and all federal agencies - to carefully consider and decide matters in a fast, fair, and effective manner. Put more simply, the public expects government to work. When procedures gum up the works of government, they should be fixed. I'm pleased to report that, thanks to the Commission's process reforms, the agency is more efficient, more transparent, and more engaged with the public. Most important, the agency is more productive, advancing multiple initiatives to spur innovation, investment, and economic growth, while protecting consumers.

When considering new process reforms, we ask if the change will improve our ability to protect consumers and the public interest, including by responding efficiently to businesses that

depend on us to decide matters efficiently. I have reviewed the legislative proposals at the center of this hearing, and have serious concerns that these proposals fail that test. They would create burden without concomitant benefit. They would single out the FCC, rather than work within the time-tested approach of the Administrative Procedure Act. In my judgment, they would hurt, not help, the Commission's work and mission. Rather than cut bureaucratic red tape, they would add new layers.

This is not to say that the Commission cannot do better. It can, and I am determined that it will. Finding the right balance between confidential deliberation and public debate can be difficult. The Commission must remain nimble and have the necessary flexibility so that we can get this delicate balance right and exercise our authorities as the conditions demand, not just for today but also for unknown circumstances that will arise in the future. I look forward to discussing how we can work together to further improve the agency's operations so we can better conduct the business of the people.

Commitment to Improving Processes and Transparency

What the FCC can accomplish flows from how we do business. That's why, since day one of my chairmanship, improving agency operations has been a top priority. One of my first acts in office was to charge a senior member of my staff with tackling process reform and providing me within 60 days with a report on opportunities and challenges at the Commission. We haven't let our foot off the gas since.

We undertook a series of efforts to create a leaner, more efficient, and more transparent organization, guided by nine working groups comprised of Commission staffers, and significant input from external stakeholders. Driving our initiative was a simple principle – make our agency faster and more effective and efficient for our constituents, whether it's a consumer concerned about robocalls or a broadcaster renewing a license.

These efforts have delivered concrete results. Every Bureau and Office with responsibility for responding to requests from external petitioners and licenses developed a backlog reduction plan, which has resulted in a 44 percent reduction in our backlogged matters since last spring.

Last year, we closed more than 1,500 dockets that were dormant. In the Enforcement Bureau nearly 8,000 cases have closed. The Wireless Telecom Bureau resolved over 2,000 applications older than 6 months, and the Media Bureau reduced by 57% its pending applications for review.

Since transparency is the focus of today's hearing, let me emphasize some of our efforts to make the Commission more open and accessible to consumers and businesses.

In early 2015, we launched a new online Consumer Help Center, which has made the FCC more user-friendly, accessible, and transparent to consumers, as described in this blog from January. The new tool replaces the Commission's previous complaint system with an easier-to-use, more consumer-friendly portal for filing and monitoring complaints. In addition, the

information collected will be smoothly integrated with our policymaking and enforcement processes, and reports analyzing the aggregated data will regularly posted on our website.

We are making significant progress on the challenge of re-working our website, FCC.gov, to enhance searchability, navigability, and accessibility, as described in a recent blog from our CIO David Bray.

To better serve the entities we regulate, we've significantly expanded online filing so that now the vast majority of licenses and other filings can be submitted electronically. Later this spring, we will complete an update of our Electronic Comment Filing System (ECFS) to upgrade the capabilities and resiliency of our online system for collecting comments and enable the electronic processing of additional types of filings.

While we have made significant progress, I am not satisfied. There are important ways that the FCC can do a better job and Commissioner O'Rielly has been an important voice on these matters. Last month I told this Committee of my intention to launch a task force staffed by representatives of all five Commissioners to review our processes. We are studying how other agencies work. We are measuring the impact of reforms on consumers. We are considering how to better the ability of Commissioners to govern together.

We are moving ahead without legislation. In fact, a number of once hot topics, which were once the subject of legislative proposals, have been addressed through non-legislative process reforms, such as posting the Commission's budget on our website, establishing minimum comment periods, and including draft rules with Notices of Proposed Rulemaking. This track record and common sense teach us that internal changes are usefully left to the discretion and

execution of the agency, not blunt legislation. For these reasons, I believe that the Commission should be given the chance to continue to do its job, including the job of bettering how it conducts the business of the people.

Thanks to an agency-wide effort, we are advancing real, lasting process reform, with specific outcomes, metrics, and dates. We're changing the culture for the better, and it is already yielding dividends.

Effective Processes Driving Effective Policies

Process reform is not an end; it is a means to more effective policymaking. Over the past year-and-a-half, the Commission has been uniquely productive in delivering policies that will protect consumers, drive competition, and promote economic growth and innovation.

At Congress's direction, we just held the highest-earning spectrum auction in American history, which will free up airwaves to improve wireless connectivity across the country, fund the first nationwide public safety broadband network, and contribute more than $20 billion to deficit reduction. This auction was made possible by unprecedented collaboration between the FCC, Congress, other agencies and industry, which made federal spectrum bands available for commercial access. At its April Open Meeting, the Commission unanimously adopted an Order to create a 150-megahertz band suitable for wireless broadband, including 100 megahertz previously unavailable for commercial use. And in 2016, the Commission will begin its historic Incentive Auction to free up beachfront spectrum for mobile use that will serve consumer

demand, promote innovation, and similarly spur more of the tremendous economic growth we have seen as a result of the mobile economy.

The Commission developed new internal guidelines for identifying and pursuing enforcement cases, resulting in a significant increase in civil penalties and restitutions in FY 2014 of over $208 million, more than the previous four years combined.

The most obvious example of a policy that was improved because of an open and transparent process is the Commission's new Open Internet Order. The Open Internet rulemaking was one of the most open and expansive processes the FCC has ever run, contrary to what some commenters have claimed. I will discuss the Open Internet proceeding in more detail later, but, for now, I will note that the net result was an open process resulting in protections that will assure the rights of consumers and innovators to use the Internet without interference from gatekeepers, while preserving the economic underpinnings for competitive infrastructure investment.

Legislative Proposals

For as long as I can remember Congress has been telling the FCC to become less bureaucratic. As a former businessman, I have taken this admonition to heart. We want fair, open, and accessible proceedings at the FCC that produce results, rather than more paperwork, more filings, and more delays. I believe that the proposals before the committee today will create additional bureaucratic requirements that will be harmful, not helpful, to consumers and to

businesses that count on the FCC to establish rules or decide matters in a timely manner.

When considering today's legislation – or any – proposals to reform the FCC's processes, the most important fact to keep in mind is that the FCC, like every independent agency, must adhere to the requirements of the Administrative Procedure Act, which are intended to keep agency processes fair and open. Over the years, within the context of the APA, the Commission's practices have evolved to provide more transparency in our decision-making process. We seek and must consider public comment. Indeed, our expertise draws in part on those public comments.

At the same time, our practices recognize that ultimately there must be a decision. The APA permits us and our sister agencies to deliberate in private so that we may exchange ideas without being locked in by public positions. This is not a hypothetical concern. The Open Internet Order changed during the three-week period leading to the February Open Meeting as a result of specific Commissioner inputs. Indeed, at our April 2015 Open Meeting, both Commissioners Pai and O'Rielly specifically thanked me for incorporating their suggestions in the 3.5 GHz Order. These are just two examples of the collaboration possible only because we were able to exchange ideas openly and freely.

We act, of course, in public. Our orders are made public. Reconsideration petitions are considered in response to the publication of our orders. And, when it occurs, litigation is a very public process (followed of course by private judicial deliberation before decision).

As I have considered the question of process reform, I ask the following questions. Will proposed reform improve the quality of our decisions, or will it threaten to bog us down in process that prevents us from protecting consumers, including by undermining our ability to defend our decisions in court? Will it help the five members of the Commission deliberate in a flexible manner or will it freeze us into premature public positions that make decision making less collegial? Will it apply to administrative processes generally, as the APA does, or is it focused on one agency?

Creating agency-specific processes has serious and negative effects. It would add additional procedural steps and would slow the decision-making process, risking paralysis when the FCC needs to be nimble to keep up with a sector that operates at Internet speed.

It would create a perverse incentive for advocates and stakeholders to withhold important ideas until the end of the process, creating uncertainty and diminishing the robust exchange of ideas that has characterized our practices to date.

It would increase litigation and disputes as parties clash over interpretation of new procedures, and take years to clarify novel procedural requirements.

It would significantly complicate judicial review if every agency had its own rulemaking procedures. Courts rely on consistent APA requirements to hold agencies accountable.

It would create uncertainty, which would deter investment and hamper the Commission's ability to act rapidly.

Let's look at some of the adverse consequences of the proposals at the center of this hearing, beginning with Rep. Kinzinger's bill to require the FCC to publish the draft of an item before it is sent to Commissioners for a vote.

Releasing the text of a draft order in advance of a Commission vote effectively re-opens the comment period. That's because, under judicial precedent, the Commission must "respond in a reasoned manner to those comments that raise significant problems," *Sprint Corp. v. FCC*, 331 F.3d 952, 960 (D.C. Cir.2003). It won't take much for a legion of lawyers to pore over the text of an order and file comments arguing that new issues are raised by its paragraphs, sentences, words, perhaps even punctuation. This means the Commission would be faced with litigation risk unless it addressed the comments received on the draft order. This would result in the production of a new draft order, which in turn could lead to another public comment period – and another if a new draft order were released in response to subsequent public comment. The end result: the threat of a never-ending story that prevents the Commission from acting – or forces it to accept undue legal risk of reversal if it ever does. This potential for extreme delay undermines the Commission's efficiency without enhancing its expertise. And it does so at the cost of the consumers and businesses that rely on Commission decisions.

Because an unprecedented release of the draft rulemaking was proposed in the recent Open Internet decision, let's look at that proceeding as an example of why such a process is

redundant, unnecessary, and works against finding a solution. Historically, some NPRMs at the Commission simply asked questions. During my tenure I have insisted that when the Commission publishes a NPRM, it must contain a specific proposal, not just ask a list of questions; this was done in the Open Internet proceeding and allowed the public to focus in on and analyze a specific thought-process and fact-set, and challenge us they did like never before.

Over the course of 287 days of comments and reply comments, six public workshops, nearly 4 million formal submissions, and over 600 on-the-record *ex parte* presentations, the Commission heard from everyone and every point of view. As with every other proceeding, it became necessary to pull all the input together into a coherent proposal and share it with the Commissioners. This is when the Commissioners focus their insights and thoughts on the proposal, including specific language suggestions – and this work must, of necessity, be among the Commissioners and not with the public. The public has expressed itself, now it becomes time for the Commissioners to do their jobs, interpret that input, and develop a majority consensus.

To release the draft at this point would only step between the Commissioners and their responsibilities. The FCC is an expert agency. Staff and Commissioners draw upon their expertise, supplemented by the input received in the notice-and-comment process, to analyze an issue. Then, based on that record, the Commissioners work to reach a majority consensus. The process began with a proposal, the public commented on that proposal, and then it falls to the Commissioners to determine how to move forward. Releasing to the public a working document designed for an internal discussion to determine a majority position on the Commission is not a step towards either greater expertise or efficiency.

The confidentiality of the Commissioners' internal deliberations is a critical part of the process, long recognized by the law. So, for example, the Freedom of Information Act (FOIA) – an additional congressional command – contains a statutory exemption protecting the internal deliberative processes of an agency. As explained by the Department of Justice in its Guide to the Freedom of Information Act:

> . . . the general purpose of [the deliberative process privilege] . . . is to "prevent injury to the quality of agency decisions." Specifically, three policy purposes consistently have been held to constitute the bases for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are actually adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action.

In other words, allowing the Commission to engage in frank, non-public discussions improves the decision-making process, just as receiving public comments boosts the Commission's expertise.

As Commissioner Clyburn said at recent Senate hearing, "There is a deliberative process that takes place among us, and I would love for that to continue. I am able to speak in an unbridled fashion. One of the things I'm worried about in terms of releasing things prematurely is that would be compromised. If I have a question or concern or want to get some feedback, I would not like for that to necessarily get out before I come to terms with the exchanges."

Consider what would have happened to the Wireless Infrastructure Order that the Commission adopted unanimously in October 2014 had this process been in place. The lawyers (representing localities opposed to efforts to streamline municipal processes that had been thwarting wireless infrastructure deployment) would have mined this proposal for the opportunity to raise new issues that would require it to be re-written and then, again, made public. The result would have been the delay of an order intended to enable wireless carriers to more rapidly deploy their wireless networks and provide better service to consumers.

In the end, this isn't about the Commission and the new burdens it would place on us, this is about those who rely on us and how they would be impaired. The agency is constantly criticized by regulated entities for taking too much time to reach decisions. Some of that is justified, but it bears recognizing that their sense of urgency comes from the fact that many of them operate in a rapidly changing environment. Delay is only in the interest of those benefitting from the status quo.

Imagine if the text of the Media Ownership Order or the Declaratory Ruling making DSL services subject to Title I (both adopted by the Commission in 2005) had been released to the public before the Commission had finished deliberating. The public interest groups that appealed the order would have had the opportunity to hold them up for months if not longer. Similarly, companies or trade associations strongly opposed to pro-consumer Commission actions such as the elimination of the sports black-out rule (September 2014) surely would have been seized upon by advocates for the non-prevailing position.

But the problems continue. The draft legislation would apply to every kind of action the Commission might take, including adjudications and enforcement actions. Adjudications are critical to the resolution of specific controversies and enforcement actions, in particular, contain serious allegations against companies. Corporate or individual reputations could be sullied on the basis of claims that have yet to be adopted by the Commission – and may never be.

Second, Representative Latta's bill would require pre-decisional notification and description of items decided on delegated authority. The proposal suggests that there is something inherently wrong with the process, that it is some rogue activity that needs to be called out. In fact it is quite the opposite; a thoughtful measure that ensures the Commission is quick and responsive.

The reality of delegated authority is that the delegation is the implementation of a decision of the Commission and any decision on delegated authority is always appealable to the Commission. Moreover, the Commission can change a delegation; the Commission's rules specifically provide that "[t]he Commission, by vote of the majority of the members then holding office, may delegate its functions either by rule or by order, and may at any time amend, modify or rescind any such rule or order." (0.201(d)). In sum, Bureaus have delegated authority because a vote of the full Commission gave it to them. It is always reviewable by the full Commission. It is not a bureaucratic frolic and detour.

Last year, there were over 950,000 delegated items issued by the Commission. The vast majority included routine wireless, radio and broadcast licensing and transfers. A notification of

the intent to decide these matters already exists. Either the Commission has specifically delegated authority to each of the relevant bureaus and offices to decide matters that do not raise new or novel issues, or the Commission in its orders has made specific delegations to the bureaus to decide certain substantive issues.

What is the practical effect of this proposal? It could delay Commission decisions by adding more time to the process when items are ready, and by creating an incentive for strategic behavior, such as saving significant arguments until very late in the process. It also raises the same risk noted above of last-minute comments and arguments that may require revisions, delay, re-notice, and so forth. This would severely hamper businesses and consumers trying to move their issues through the agency. Consider, for instance, a contested broadcast license renewal. These are normally issued on delegated authority after an investigation of the facts. When the delegated decision is announced, the question is resolved. To publish notice of an intent to announce would be like sending up a flare signaling all opponents to descend upon the Commission. No matter what the mechanism, delay is especially costly in an environment as dynamic as ours today. Now, perhaps that is the goal of the bill, but I hope not.

As I have said, I respect Commissioner O'Rielly's proposals to improve our processes. But I disagree with his view of delegated authority. He proposes that each Commissioner be able to require that a delegated item be put to the full Commission for a vote. If a majority of the Commissioners is unhappy with what a bureau does on delegated authority, then it can initiate a review on the Commission's own motion to reject it. Consider how that would work in practice. In the Open Internet Order, from which Commissioner O'Rielly dissented, the full Commission

expressly voted to delegate to the Consumer and Governmental Affairs Bureau the power to define a small-business carve-out from the new enhanced transparency requirements, after consulting with our Consumer Advisory Committee. The Commission fixed a deadline later this year for action because we determined that it is important to avoid unnecessary burden on small businesses. Under Commissioner O'Rielly's proposal, a single Commissioner could move an already decided matter back to the Commission for another vote. To me, that sounds like a veto, not majority rule, and it would not better our processes nor improve our efficiency. I believe that the effect of limiting our use of delegated authority, either directly or indirectly, would be to force re-litigation at the expense of efficient and speedy implementation of a Commission vote.

The third proposal, by Rep. Ellmers, would require the FCC to post rules adopted or repealed on its website within 24 hours. I can assure you that this is what we try to do. During my term as chairman 73 percent of the rules have been published within one business day or less. Eighty-six percent have been published within two business days. In those instances when our rules are not available the following business day, it usually reflects late negotiations among Commissioners, and the Commission staff are still drafting the exact text to implement the agreement.

Items are sent to the Commissioners three weeks in advance of a vote. The Chairman's office and the staff are ready to respond to Commissioners at that point. I understand that items are often complex and there are multiple items that must be considered. The result of this is that, especially on major items, Commissioner comments may not be received until the night before the item is to be voted on. Make no mistake about it, every Commissioner has the right to work

right up until the Commission meeting – but, when this happens, the necessary finishing detail work often can't be completed by staff quickly.

In addition, publishing the actual rules themselves, without the explanatory text and rationale that surrounds them, would be confusing and potentially misleading.

The problem is not that there is not resolve to publish an item within 24 hours, but rather that you can't make that target if changes are being made by Commissioners hours or moments before the item is called for a vote.

One barrier to better collaboration is the current so-called Sunshine Act that prevents more than two Commissioners from discussing Commission business outside of a public meeting. Though perhaps well-intentioned this prohibition prevents informal discussion and efficient negotiation among Commissioners. Modernizing this outdated law is reform that could make a real difference. I join many former FCC Commissioners from both sides of aisle, including Copps and McDowell, in hoping that Congress might move forward on this issue for all independent agencies.

Conclusion

The FCC has well-established processes that have served it well through many Administrations, which are firmly grounded in the APA, like all other administrative agencies.

Within the context of the APA, the FCC's practices have evolved under both Democrats and Republicans to provide significant transparency in our decision-making process.

I've been supportive of increased transparency along with other internal process reforms from the day I took office. I welcome engagement with my fellow commissioners and Congress on this topic; we may not agree on all details, but I'm absolutely open to discussion.

But as we move forward with this discussion, I believe that legislation to create process requirements that apply only to the FCC, and depart from the framework of the APA, is the wrong way to go. If we start down this path, the inevitable consequence will be a whole new crop of procedural disputes that will tie the agency into knots. Lobbyists and litigators will have a field day. Consumer, investors and innovators will not. And the FCC's ability to carry out our substantive agenda to grow our networks, promote economic growth and protect consumers will be caught in a cycle of procedural gridlock and delay.

Thank you for this opportunity to testify on the importance of the FCC's efforts to improve transparency. Transparency is not just a word – it is a purpose, an ideal, a concept that ensures the people own the government and not the other way around. It is also a shared value, and I look forward to working with you to find common ground and answer any questions that you have about our efforts, successes, and future endeavors.

Mr. WALDEN. I appreciate that. And I thank you for your testimony and your comments and your leadership at the FCC.

Let's go now to Commissioner O'Rielly. We appreciate you being here and your testimony and comments, sir. And please go ahead.

STATEMENT OF MICHAEL O'RIELLY

Mr. O'RIELLY. Thank you, Mr. Chairman, Ranking Member Eshoo, and members of the subcommittee. Thank you for the opportunity to discuss this important topic before you today.

Having served at the FCC for nearly 18 months, I have experienced FCC procedures and assessed their effects firsthand. Over the years, I have also had the opportunity to speak with stakeholders about areas for improvement. Consequently, I believe that a number of FCC practices are in need of review and reform.

My pursuit of greater Commission transparency is not related to any particular issue, such as net neutrality. My interest is in improving our overall processes far preceded that specific order, and the areas I have highlighted are recurring problems that have been developing over some time, not specific to this particular Commission.

Some people have interest in comparing the procedures of other independent Federal agencies. I am not sure that process will be very enlightening because each agency comes with its own operating statute, and it can differ tremendously for numerous reasons. The standard for considering any proposed change should be, in my mind, what is in the best interest of the American people and the communications marketplace.

I also disagree that the APA requires practices to be the same across all agencies. That is not the case today and cannot justify inaction. Likewise, it is no excuse that new procedures may take time to implement. The agency routinely reviews and updates its rules for regulatees, and we can do the same for our own processes.

Since you invited me to testify before you, I will say that I am in favor of the legislative efforts underlying the three draft bills that are under discussion. Vice Chairman Latta's bill would ensure that commissioners and the public know when items are being decided under delegated authority. Today, I am given up to 48-hour notices in some cases, but in most instances no notice at all, which is harmful for purposes of following and acting on related issues.

This fix is not something to be feared. And the argument made by some opposing the bill that such a list would prevent the Commission from slipping out items unnoticed is problematic from my viewpoint.

I also disagree with the notion that parties aggrieved by a bureau decision can simply seek Commission review. There is no timing required for the Commission to act on an application for review. A number of them have been pending for years, meaning I get no involvement.

In regards to Congresswoman Ellmers' bill, posting the adopted rules within 24 hours would allow the public and stakeholders access to the bottom lines, instead of having to wait, in some cases weeks, for the item to be completed. Such delay hinders their preparation either to comply or challenge the item in court, meaning additional time for market uncertainty.

Congressman Kinzinger's bill would greatly improve the ex parte meetings at the Commission by allowing outside parties to know what is actually being contemplated so they can target their areas of concern. It is frustrating, so frustrating to sit in a meeting unable to actually engage with parties or talk about what changes I am seeking to an item or how best to fix a particular problem.

More transparency would not reopen the comment period or interfere with the deliberative process. Parties already file ex parte during the circulation period. This simply ensures that their comments are on point and that our deliberations are informed by their views.

In rare instances it may take some additional time, while still under the sunshine period, to finalize an item, but that would not create an undue delay and may ultimately save time by avoiding the need to reconsider or litigate decisions that were not fully baked.

I know discussion of reform has generated some concern that minority commissioners might grind the Commission to a halt. Not only is that not my intent, I do not believe it is any way accurate. Additionally, these changes would not undermine the discussions or interfere with negotiations between commissioners' offices.

In addition to the three bills under discussion, my written testimony provides additional areas that I hope will be considered by the subcommittee. These include selectively elevating delegated authority items to the full Commission upon request, the editorial privileges process, the pre-adoption process, testimony provided by outside witnesses at Commission open meetings, the role of advisory committees, compliance with the Paperwork Reduction Act and Regulatory Flexibility Act, accounting for Enforcement Bureau-assessed penalties, and codifying all FCC procedures.

In sum, I believe the changes should be made to the Commission's proceedings in order to improve its efficiency, transparency, and accountability. And I thank you very much.

[The prepared statement of Mr. O'Rielly follows:]

Statement of Michael O'Rielly, FCC Commissioner
Before the Subcommittee on Communications and Technology
House Energy and Commerce Committee
"FCC Reauthorization: Improving Commission Transparency"
April 30, 2015

Thank you, Mr. Chairman, Ranking Member Eshoo and the Members of the Subcommittee for the opportunity to discuss this important topic before you today. I commend the Subcommittee for its continued focus on improving FCC processes, and I recommit to making myself available as a resource if I can be of any assistance to the Subcommittee on this or any other issue in the future.

Reforming Commission procedures is something that I have worked on for quite a while. In fact, I participated in at least two major legislative efforts during my Congressional staff tenure to reauthorize the FCC, with each containing mechanisms to improve the FCC's process. None of that was enacted into law. Moreover, having served at the FCC for nearly 18 months, I have had the chance to experience FCC procedures firsthand. Over the years, and certainly during my time at the Commission, I've also had the opportunity to speak with a number of stakeholders about areas that could be improved. Based on these interactions and my personal experiences, I believe that a number of FCC practices are in need of review and reform. I have used my public blog to highlight a number of these issues, and I plan to continue this as needed or as problems come to light.

I am also pleased to work with the Chairman, my fellow Commissioners and staff on process reform. During my time, I have applauded the Chairman for efforts to improve the internal workings of the Commission through the efforts of Diane Cornell and other Commission staff, in areas such as reducing backlogs, closing dormant proceedings and expanding electronic filing opportunities. I am hopeful that the Commission can make the same meaningful improvements to the overall process for items considered by the Commissioners (the so-called "Eighth Floor" process). The Chairman has initiated a new Process Review Task Force to examine these procedures and I am anxiously awaiting the pro-active reform proposals that may result. Nonetheless, we take our guidance from Congress and our effort should not undermine or circumvent any legislative effort you may pursue. To the extent that we can implement reforms prior to Congressional action, it would still be helpful for Congress to codify any changes into law.

I hope to caution anyone who may view my pursuit as related to any particular item considered by the Commission. In fact, some have posited that reforming the FCC procedures is somehow tied to the outcome of the recent Net Neutrality proceeding. While it is accurate that I did not agree with its direction or content, my interest in improving our overall processes far preceded that specific item. For instance, my blog post recommending that items be made publicly available at the same time they are circulated to Commissioners was published in August 2014. Moreover, every process lesson that could be learned from the Net Neutrality proceeding can be gathered from other, unrelated items. In other words, these are not one-time problems but repeating themes. And, the practices that I believe should be altered are not exclusive to the current Commission but have been developing over some time.

I know some people, including the Chairman, have interest in reviewing the practices of other independent federal agencies. This is commendable, but I am not sure it is all that enlightening because each agency comes with its own operating statute that can differ tremendously for numerous reasons. Moreover, our federal agencies are overseen by different Congressional committees, reflecting different responsibilities and thus practices. Even in those instances where agencies are overseen by one

committee, such as the Energy and Commerce Committee, there are differences in their procedures. For example, unlike the FCC, the Federal Trade Commission assigns items to different Commissioners, even those in the minority, to take the lead. I would suggest that the standard to be used in considering any proposed change be based on what is in the best interest of the American people and the communications marketplace, not what is common with our brethren federal agencies. It would seem to be unreasonable to set a premise that the only changes that can be made are those that mimic the procedural practices of other agencies. It is also hard to fathom that the only time FCC procedures can be changed is when all other similarly situated agencies are changed as well.

In terms of the specific legislative proposals before the Subcommittee, I generally refrain from commenting on legislation. Since you have invited me to testify before you, I will say that I appreciate the ideas being discussed by the Subcommittee, which would address the transparency of FCC actions and its extensive use of delegated authority, and I am prepared to offer technical assistance. In general, I believe that the proposed changes, as well as others, would improve the functionality of the FCC and improve access to information by consumers and the companies that do business before the FCC.

Publication of Draft Commission Items

As you may know, one of the most frustrating aspects of FCC rulemakings, from both an internal and external perspective, is that the notices and orders voted on by the FCC are not made public until after the vote, and sometimes not for days or weeks after a decision is made. As a former Congressional staffer accustomed to seeing drafts circulated publicly in advance of legislative hearings and markups, this FCC process struck me as particularly problematic.

Currently, Commissioners receive official draft "meeting items" three weeks before they are considered at an Open Meeting. On the same date, the Chairman typically announces the tentative agenda. The announcement is often accompanied by a blog posting or fact sheet that selectively summarizes and promotes the items. However, the actual notices or orders are not made available to the public. Moreover, Commissioners are barred by rule from disclosing any additional information about the items. Only the Chairman and staff with the Chairman's written authorization may do so.

I've highlighted several problems with this approach. First, because the public is unable to obtain a complete picture of what is in a pending item, there is often confusion over what is at stake. While some favored parties may get special briefings from staff and other parties may accumulate select information, it is usually too late to make a difference. Moreover, the general public is not included at all.

Second, Commissioners meet with outside parties to discuss proposed items, but the current rules significantly diminish the value of these meetings. Because Commissioners are not allowed to discuss the details, we can't engage in a meaningful dialogue with affected parties, correct inaccurate information, or get feedback on our proposed edits. I am actually prohibited from discussing any changes that I may be seeking to the item as this could reveal information about the original text. For example, I believe that the Commission would have benefited tremendously if our recent 3.5 GHz item was made publicly available in advance. During its consideration, there was significant misunderstanding by outside parties over the Contained Access Facilities provisions, the proposed auction procedures for the Priority Access Licenses, and other aspects.

Third, the current process leaves items vulnerable to challenge. It is ironic that the main objection to publishing items in advance is that it would be harder to comply with the Administrative Procedure Act (APA), because we would have to respond to substantive feedback received about the draft text. But that is the very purpose of a rulemaking proceeding: to generate concrete suggestions about proposals to ensure that any rules are technically and legally sound. It is a feature, not a bug. I would suggest that it is the current process, which limits the ability of the public to provide thoughtful comments on what's actually being considered, that exposes our items to legal challenges.

Accordingly, I have suggested that FCC meeting items be posted on the FCC website at the same time they are circulated to the Commissioners, which is the approach taken in the draft legislation. Doing so shouldn't delay item consideration since there is a full week of sunshine to perfect the document pursuant to edits by Commissioners. And since that is the only draft that would be made available, I am also not persuaded by those that argue that we would be headed down a slippery slope when it comes to the Freedom of Information Act. The fact that we would disclose one version in one instance may make it harder, but by no means impossible, to justify withholding other versions in other instances.

In addition, while I have focused on Open Meeting items, I commend Representative Kinzinger in his draft legislation for examining the process for "circulation items" that are not voted on at meetings. Many of the same transparency concerns apply to these items, although the solutions may differ given that many circulation items do not have a natural voting deadline and there is no built-in quiet period to enable staff to review the record and finalize the item.

Delegated Authority

Even those who regularly follow FCC proceedings can find it difficult to keep track of all of the items the FCC releases at the Bureau or Office level. Imagine my surprise when I discovered that it is just as hard for a Commissioner inside the agency. Commissioners are not notified of the vast majority of items that are decided and issued on delegated authority. Like everyone else, we must read the Daily Digest and search the dockets and Federal Register.

For select items, a Bureau or Office may provide Commissioners with a 48-hour notice, 24-hour notice, or "courtesy heads up". But the practice is inconsistent across the Commission as these decisions are often made in an ad hoc manner. In some cases, there are memos or emails memorializing agreements, but they are not provided to new Commissioners unless they know to ask.

Moreover, delegation to the staff seems to be increasing, particularly for controversial items. In those cases, it is common to send all remaining issues to the staff for resolution rather than deal with the possibility of further dissents. Even worse, these decisions endure, meaning new Commissioners are bound by delegations of prior Commissions. In fact, they may not even be aware that they exist because there is no master list or inventory of agency delegations.

I understand that there are some routine matters that can and should be handled at the Bureau level, such as certain equipment authorizations and uncontested licensing actions. However, we are seeing actual rulemaking functions assigned to staff. For example, in the December E-rate order, the Bureau was delegated authority to, among other things, determine what are reasonably comparable broadband offerings. That is a step too far. Some have argued that delegating issues to staff will expedite proceedings, but I stand ready to act quickly on all items circulated to me for consideration. Typically, if

I have not voted on an item, it is because we are waiting on answers to questions or on others to complete their work.

To remedy these problems, I suggest that the Commission needs to reassess, in a holistic manner, what items or proceedings should be done at the Commission level versus the Bureau level, and the default should be Commission level. For the narrow set of decisions that will be released at the Bureau level, Commissioners should be notified no later than 48 hours in advance, as provided for in the draft legislation. Moreover, in some recent instances, the leadership has refused to elevate a delegated item to the full Commission at the request of two Commissioners. Allowing Commissioners to bring a Bureau-level item to the full Commission would serve as an essential check and balance on delegated authority and should be codified immediately.

Editorial Privileges and Publication of Voted Items

I have also raised concerns about "editorial privileges", which is the uncodified practice of allowing staff to make changes to an item after the Commission votes on the text at a meeting. In the past, these post-adoption changes were limited to updating citations and correcting typos. In Congressional terms, these would have been known as technical and conforming edits.

At the FCC, however, staff can do substantial, substantive editing post adoption. The changes include adding lengthy responses to ex parte arguments that had not been incorporated into the draft prior to the vote. Indeed, there are no limits on what may be changed, so staff can make fundamental revisions well after the votes have been cast. In my view, if the item is not ready in time for the vote, then the Commission should simply delay the vote by a month or two rather than vote on an unfinished product.

In addition, staff invoke editorial privileges to further rebut dissenting Commissioners' statements. This isn't necessary. Commissioners that disagree with an item in whole or in part typically make their concerns known well in advance, so there should be time to respond before the vote. Instead, I've witnessed the vicious cycle of revising drafts to respond to statements and revising statements to respond to drafts, well after a vote has already taken place. To highlight just a couple of the many examples, this happened last year on both the April and December Connect America Fund items, and it impacted Commissioners from both parties.

Therefore, I have suggested that post-adoption changes be limited to those that are absolutely necessary to comply with the APA. Moreover, it should be the Commissioners, not staff, who propose such changes. And all Commissioners should be able to opine on those edits, not just those who voted to approve or concur to the original text as is the case today.

Publishing the text of the official rules as voted on by the Commissioners on the day of the vote, as Representative Ellmers' draft legislation contemplates, is certainly an improvement. It wouldn't necessarily bar subsequent edits to the supporting documentation, but it might help limit unnecessary and problematic post-adoption revisions.

Pre-adoption Processes

The process leading up to a Commission vote is another source of concern. As described above, Commissioners receive draft meeting items three weeks in advance of an Open Meeting. That time is

intended to be used by the Eighth Floor to consider the proposed items, engage with stakeholders, work with other Offices, and suggest edits to the items.

Unfortunately, it has become common practice for Bureau and Office staff to continue to make edits to items throughout the three week period. Again, these aren't technical or conforming edits, but substantive changes. In fact, our good staff sometimes use the time to cut deals with outside parties. And these negotiations and revisions can and do happen right up until hours before the vote. For instance, leading up to the vote on the location accuracy order, negotiations with industry continued until the very last minute. Although the industry compromise was better than what was in the circulated draft, these negotiations and industry input should have occurred before the item came to the Eighth Floor.

At times, Commissioners have been criticized for not engaging early enough in the process. I personally endeavor to read items and ask questions or provide feedback promptly. However, I would observe that it is hard to engage, and not a particularly productive use of time, when items are moving targets. On many occasions, I have read a very lengthy document within a day or two of circulation taking meticulous notes only to toss it all out when I receive an entirely new document a week or two later that is also not the final word on the matter.

Although there is a process – using official email chains – to record edits to items, staff revisions are not documented or described on these chains in any meaningful way. Therefore, Commissioners are left to wonder why changes were made and at whose behest. In the past, I understand that staff was required to attribute every substantive edit to a Commissioner office, or to a Bureau or Office. That is no longer the practice.

Therefore, I have suggested several improvements. First, the circulation date should mean that a document has transferred to the Commissioners for their consideration. Staff should not be allowed negotiate with outside parties or revise the document without advance notice to all Commissioners and the consent of at least three offices. Additionally, if further negotiations are necessary, and they may be in rare instances, an item can always be delayed to a later meeting. Second, all changes must be detailed on the official email chain, including the reasoning and justifications for the proposed revisions. Third, a final version reflecting only the edits set forth on the chain must be provided to the Commissioner offices no later than 24 hours before the start of an Open Meeting.

Testimony Provided by Outside Witnesses at Commission Open Meetings

Commission meetings used to be working sessions, but over time they have become more theater-like since the outcome is determined before the meeting actually begins. Recently, outside witnesses have been invited to speak at Open Meetings, particularly when controversial items will be voted, solely to further the messaging efforts for the items.

I suggest that if the Commission is interested in hearing from outside parties, it could designate certain meetings for taking testimony, akin to hearings. These meetings could supplement, not supplant, agenda meetings where the Commission considers and votes on meeting items. That way we could separate the hearing portion from the Open Meeting.

Assuming the practice of inviting witnesses continues, however, I have recommended changes to ensure that the process is more balanced and fair. Minority Commissioners, whoever they are on any given

issue, should be able to invite their own witnesses to provide a countervailing viewpoint. That means that all Commissioners should be informed well in advance if witnesses will be invited so that they have time to invite their own. Moreover, all Commissioners should receive testimony from all witnesses at least 48 hours in advance so that they know what to expect and prepare any questions. Indeed, anyone at the presentation table, both guests – regardless of whether they are speaking or not – and Commission staff, should be prepared to answer questions from Commissioners.

Role of FCC Advisory Committees

Designed correctly, Advisory Committees can provide the Commission with valuable technical expertise and practical insights. It makes abundant sense to hear from the actual people that develop, deploy, or use the technologies that fall within the Commission's purview. That is why I always encourage interested parties to participate in our proceedings.

Unfortunately, several flaws in the current structure diminish the value of FCC Advisory Committees. In particular, I am concerned that participation on Advisory Committees is not entirely voluntary – membership is the only way to try to protect your interests – and that Commission leadership has undue influence over the agenda and recommendations of the Committees. As a result, Advisory Committees frequently seem compelled to support an outcome that is preordained by Commission leadership only to see their acquiescence used as an excuse to further regulate the participants.

Instead, consistent with the FCC's own internal directive, Advisory Committees must be able to offer independent, unbiased recommendations on the issues they consider. Membership should reflect a range of viewpoints and all participants should be empowered to speak openly without fear of reprisal. Moreover, Advisory Committees should be free to recommend that no regulatory action is required if that is their own considered conclusion.

Paperwork Reduction Act and Regulatory Flexibility Act Compliance

The Paperwork Reduction Act requires the FCC to seek OMB approval before asking entities to fill out forms, maintain records, or disclose information to others. The intent was to require agencies to carefully consider the need for additional information before collecting it, thereby minimizing burdens.

I was dismayed to learn the extent of the FCC's information collection efforts. Moreover, they do not appear to be well-coordinated across the agency and seem disproportionately costly. In fact, I have heard from small rural telephone companies that have to make close to 100 filings with the FCC each year. That's a significant amount of time and resources that is being diverted away from delivering service to consumers.

To put the problem into context, my staff compared the FCC's collections against other those of other federal agencies. According to OMB, the FCC has 414 active collections demanding 474,540,069 responses each year requiring a total of 83,941,428 hours to complete at a total cost of $827,267,851. That total cost is well above the cost figures of several other major agencies, as seen below.

Agency	Total Cost of Active Information Collections
Department of Education	$145,304
Department of Housing & Urban Development	$1,135,506
Department of Energy	$9,925,925

Department of the Interior	$118,230,881
Department of Transportation	$271,000,797
Department of Agriculture	$297,027,904
Department of Health & Human Services	$654,249,795
FCC	**$827,267,851**

While I support data driven decision making, I have to question how much of this cost is truly justified. I've observed that every new FCC policy seems to require a brand new data collection. The agency needs to complete a data review to determine which collections remain necessary, look at ways to streamline those collections, and eliminate those that are unnecessary.

In addition, the FCC does not adequately account for the effects of its rules and data collections on small businesses. The Regulatory Flexibility Act (RFA) requires federal agencies to review regulations for their impact on small businesses and consider less burdensome alternatives. In order after order, however, the FCC's analysis is plainly deficient. At most, the FCC makes a few token changes while reiterating the importance of applying the rules to all carriers. For example, the FCC recently applied Title II and the Net Neutrality rules to small broadband providers without any analysis or calculations of the burdens this would impose. Its only concession was to provide *temporary* relief from a few of the new transparency requirements. Wherever any person is on the overarching substance of that item, it would seem reasonable that small providers would have a more appropriately tailored structure to reflect their costs of operations and their influence in the marketplace.

At the same time that the FCC reviews its data collections, it should specifically analyze the impact on small businesses. Additionally, as the agency conducts rulemakings, small business concerns should be at the forefront, not an afterthought or a box to be checked with a minor tweak. In the RFA analysis that accompanies each item, the FCC should be able to point to meaningful adjustments that were made to reduce burdens.

Accounting for Enforcement Bureau's Assessed Penalties

The FCC's Enforcement Bureau has been making headlines lately for the sizeable penalties proposed against entities that apparently violated FCC rules. Given the attention paid to these proposed fines, I was surprised to discover that the FCC does not have a system in place to readily track whether and to what extent those penalties are eventually collected. The FCC needs to fix this disconnect.

To get the entire picture, the FCC would need to work with other agencies that are part of the collections process, namely the Departments of Justice and Treasury. Obtaining this information would have a number of benefits. First, it would assure the industry and the public that rule violations are taken seriously and dealt with to the fullest extent possible. Second, demonstrating that the FCC follows through on violations should have a deterrent effect on other would-be bad actors. Third, it could inform future enforcement actions, penalties, and settlements. If the agency is consistently under-collecting penalties from certain type of providers or for certain rule violations, it may need to change its approach.

Codify All FCC Procedures

To further increase transparency, the FCC should codify all of its procedures and practices. Today, a select few can be found in the Code of Federal Regulation, such as procedures for announcing and

conducting Open Meetings. Many more, including the processes for distributing, voting, and releasing items, are contained in an internal "Commissioner's Guide to the Agenda Process". And still others, such as editorial privileges, are not contained in any document whatsoever.

The Commission is accountable to the public and to Congress for its actions, and those actions should be understood by all. Interested parties should not have to guess about how the Commission processes items. Codifying the Commission's procedures will enable the Commission to give everyone the same awareness about our procedures and the ability to suggest improvements that can and should be made to benefit everyone involved.

In sum, I believe that the ideas and specific proposals provided above would improve the efficiency, transparency and accountability of the Commission. To be clear, I have additional areas to add to this list but I may need some more time to further develop potential solutions, and would be happy to provide more information as that occurs.

Mr. WALDEN. Commissioner O'Rielly, thank you for your testimony as well.

I want to follow up with you on the part of your written testimony discussing the delegated authority piece, because it seems shocking to me when you say: Even those who regularly follow FCC proceedings can find it difficult to keep track of all the items that the FCC releases at the bureau or office level. Imagine my surprise when I discovered you can do it as a commissioner.

Obviously, nobody is saying every item should come up to a vote in the Commission. The Chairman has eloquently said there are too many, basically.

Mr. O'RIELLY. Yes.

Mr. WALDEN. And I got that. That is ministerial and management and all that.

Tell me what you are trying to get at here. What is the issue?

Mr. O'RIELLY. So in my written testimony, I highlighted a couple of categories. I don't want to get into equipment authorization or routine licensing. I think that would reduce the vast number of 950,000 I think the Chairman mentioned.

Mr. WALDEN. Right.

Mr. O'RIELLY. There are some instances, though, where it becomes an issue where it would help the Commission, in my opinion, to have the Commission itself vote on an item versus delegated authority.

Today delegated authority, though the good-meaning staff—and I mean no disrespect to them, I have great colleagues that I work with—they make decisions and I actually don't know what is being decided. It is late in the game by the time that I know what is actually being decided. It might be out the door before I know what just happened.

My staff will say: Did you know we just released this?

And it is like: Oh, goodness gracious. OK. What does that mean for these five other things we have been working on?

Well, we have got to go back and try and piece those together.

When is an instance of delegation going to be notified for us?

So there are problems with how it works today. And I have sought a couple of different things. One is some kind of notification of timing, and I think that Congressman Latta is trying to get to that, how soon we would be notified when delegation is going to be used. But then I have also been advocating a mechanism where, on important matters, the commissioner has an opportunity to pull it up to the Commission level.

And no disrespect to the Chairman, my Chairman, not to you, but no disrespect to my Chairman, in his testimony he highlighted, and I think it just might have been misinterpreted on my part, but he highlighted that I was looking for some type of veto over the delegated authority, that somehow I was pulling the item up and I would able to veto it. I am fully aware that I am in the minority and I will lose almost 100 percent of the time when it comes to it. I have looked at the former votes and I don't win that often, and that is OK, I respect the process, and that is completely understandable.

So when I ask to pull it up, I want to be able to vote on the issue myself. I am comfortable voting. I am comfortable voting quickly.

I have not been a delay. I do not believe I have been a delay at the Commission. So I think it is something so important to do.

Mr. WALDEN. All right.

So, Chairman Wheeler, maybe you can help us understand this then. If the bureaus are drafted in order to be adopted on delegated authority, what role do the other commissioners' offices have? And, again, take the personalities out of this.

Mr. WHEELER. Sure.

Mr. WALDEN. I have been dealing with this for multiple chairs. What role? Do they get to weigh in with the bureau on the order? Do they get drafts and get to comment through that drafting process? Do some drafts, others, have to wait until the order is released by the bureau? How does this——

Mr. WHEELER. Well, thank you, Congressman. These matters are typically the carrying out of a previous decision that the Commission has made. So the Commission says, "We are going to decide thus and so and we leave the details to the bureau of whomever to work it out."

Mr. WALDEN. To the staff.

Mr. WHEELER. And the bureau does that and moves ahead and releases it.

On controversial items—controversial is not the right way—on items of specific note, because we can tell the difference between housekeeping and big deals——

Mr. WALDEN. Sure.

Mr. WHEELER [continuing]. We try to do 48 hours notice, as Commissioner O'Rielly indicated, so that the commissioners can engage in: OK, this is what is going on.

Mr. WALDEN. So, I guess that is my question. I sense from Commissioner O'Rielly that there is not some formal notice process, and so they may not know until it is over. Is that what you are getting at?

Mr. O'RIELLY. Right. And I said this before. Some items are given 48 hours notice, some 24 hours, and many none at all. And as I said in my testimony in the Senate recently, I have actually been sent an email that said, "As a courtesy, we are letting you know this is happening." And I was kind of insulted. It was like: Thanks for letting me know what is happening at the Commission where I work.

So there is no uniform structure in terms of how much time we are allowed.

Mr. WHEELER. But as I said in response, Mike has raised a lot of very good procedural issues.

Mr. O'RIELLY. I got some more coming too.

Mr. WALDEN. We are all ears.

Mr. WHEELER. Why does that not surprise me?

But as you know, we put together this group, and we are going to all roll up our sleeves and we are going to make decisions as a Commission on, OK, what should the rules be. Because you are right, Mike and I walked into the door the same day, and we both got handed the same book of Commission procedures.

Mr. WALDEN. One got a gavel.

Mr. WHEELER. There was dust on that book.

Mr. WALDEN. Yes. No, I get that.

Mr. WHEELER. Mike has got a really good point, we are going to roll up our sleeves and deal with it as a Commission.

Mr. WALDEN. And I told a predecessor of yours once removed, Chairman Genachowski, we have seen different chairs operate different ways, different times, some better than others, some very reform minded. You have put reforms in, Chairman.

What I am trying to do is from the legislative body, say, let's get in statute clear transparency and reform so it is irrespective of a chairman that comes along that doesn't want to participate.

Mr. WHEELER. And, I guess, Mr. Chairman, my only comment on that is that we are in violent agreement on some basic concepts. The question is: How do you accomplish them? And I think that using our process we can present a series of reforms that you will impressed with. You may not agree with all of them.

Mr. WALDEN. Yes. Sure.

Mr. WHEELER. Mike won't agree with all of them. I probably won't agree with all of them. But I said to you in our first meeting I was serious about process reform.

Mr. WALDEN. No, I know. I know. And I think I concurred that we are too. And we actually get to legislate too.

So Mr. O'Rielly, then I have used up my time.

Mr. O'RIELLY. I will make one last point. And I am participating in the chairman's new task force and look forward to that going forward. But I don't want that to supplement or supplant the work that you may do. We take our direction from the subcommittee. If you legislate, then we will follow that direction.

Mr. WALDEN. Thank you.

Mr. O'RIELLY. In any event, at the end, even if we are able to do everything and I win everyday in our task force, there is still a role, as you highlighted, to codify those rule changes because we don't want to see them change over time.

Mr. WALDEN. Yes. There should be clear, understandable, available procedures internally at the Commission, so regardless who is in charge, which party, there is a process that everybody has great confidence in.

With that, I will recognize my colleague and friend from California, Ms. Eshoo, for questions.

Ms. ESHOO. Thank you, Mr. Chairman.

Thank you, again, to both of you for being here, and it is good to listen to the answers of the questions that have already been posed.

Let me ask this, because I think there is a lot of attention being given to this whole issue of delegated authority. Do the FCC rules today already explicitly outline what types of items can be delegated? Or is it just at the call of the chair?

Mr. WHEELER. So there are multiple. They are based on Commission policy. So there are, as I said, in those 950,000——

Ms. ESHOO. So those are the number that fall under that can be dealt with that way.

Mr. WHEELER. Every decision under those 950,000 has to be based on a decision previously made by the Commission. Now, on some experimental licenses, it was a decision made 20 years ago, but those move through in a process.

Ms. ESHOO. So——

Mr. WHEELER. Under 0.2 of 1 percent. Yes. Excuse me.

Ms. ESHOO. No, that is all right.

In thinking about this issue, it sounded as if delegated authority—well, the term means that it has been given over to someone, someone else is carrying it out—and the implication is, is that the Commission—and Commissioner O'Rielly just kind of fortified that thought—that as a commissioner, he doesn't know.

You are saying it starts with the Commission to delegate and then that authority takes place and is carried out by whatever bureau.

Mr. WHEELER. Yes, ma'am. Let me read you what delegated authority——

Ms. ESHOO. So, yes, but let me just ask Commissioner O'Rielly something.

Since you are able to vote on whether something is delegated or not—I don't know how else to put this, but I mean it respectfully—what is the beef? You don't like the decision that the delegated authority then comes up with?

Mr. O'RIELLY. So to be fair, and the Chairman is right, we have a whole host of items that have already been delegated long before I got here. I actually don't know the scope.

Ms. ESHOO. Oh, so it is the previous one.

Mr. O'RIELLY. I don't know the scope of what has been delegated. We have no inventory.

Ms. ESHOO. But can't you go back and read about those?

Ms. O'RIELLY. We have no inventory to know what all has been delegated.

Ms. ESHOO. I see.

Mr. O'RIELLY. Like, there are a whole host of things that go out the door that I don't even know, they were delegated long before. And the Chairman and I have had some good success. He has sometimes proposed delegation, and I have struck it in some of the proposals, and sometimes I win and sometimes I lose. But I have tried to take it out of——

Ms. ESHOO. Well, let me ask you this.

Mr. WHEELER. No, but that is a really important point. I mean, Commissioner O'Rielly has been very forthcoming and very involved in saying, "In this item, I don't want you to give delegated authority, I want to strike that." So it is only in instances where the Commission has, in a majority, voted for that delegated authority to exist.

Ms. ESHOO. So there are two beefs here, legitimate ones. And I completely identify with your description of being in the minority. Number one, you weren't there when the Commission decided to delegate the authority, because that is the original starting point. Correct?

Mr. O'RIELLY. That is definitely part of it, yes. That is a part of it.

Ms. ESHOO. That is where it starts.

Mr. WHEELER. Issue one.

Ms. ESHOO. And you don't have the opportunity to go back at that?

Mr. O'RIELLY. That is right.

Ms. ESHOO. So of the ones over 18 months, give us an idea of how many of those delegated authorities that previous Commissions delegated would you have bumped back up to the Commission level?

Mr. O'RIELLY. There are so many that I wouldn't know the scope of how many we are talking about. But in general——

Ms. ESHOO. Of the ones that you don't like or agree with.

Mr. O'RIELLY. I think I understand your question. If I don't, please correct me.

But I would say that I win probably three-quarters of the times when I want it struck from items. There have been a number of big items that have gone out during my 18 months where I have lost because I have been in the minority.

Mr. WHEELER. You win three-quarters of the time? I am too soft.

Mr. O'RIELLY. I mean, on delegated authority.

Ms. ESHOO. I have got 33 seconds left now.

I don't really we know how we get at this, and I am not sure what is broken. If, in fact, that snapshot of very powerful people in a given area, section of the FCC just go off and make decisions on their own and there isn't any accountability, there isn't any transparency, I think we all would take issue with that. But it is my understanding that it originates with the Commission.

Now, I know how you feel about decisions that have been made before you arrived. There are over 200 years of decisions that were made by the time I arrived. So I either have to work to change it or I may not get my way. But I don't think it is as broken as I originally thought this is.

I know what I wanted to ask you, Mr. Chairman. When are you going to finish your examination together and then give us ideas?

Mr. WHEELER. I would hope that by the time you all get back from your August recess that we would have results to share with you.

Ms. ESHOO. Good. If you could get it done before that, it would be—well, you know what, we won't take action because we will be getting ready to go away in August.

So I look forward to receiving them. But I think you have got a good flavor of what members really care about. And I am not so sure whether the legislation that is being proposed really addresses, after you both have explained, how delegated authority works.

So I don't have any time to yield back. I appreciate the additional time I was given.

What?

Oh. Oh. That is right. My staff is reminding me. Mr. Chairman, I would like to ask for unanimous consent to place in the record a letter to myself, Mr. Walden, Mr. Pallone, and Chairman Upton from Reed Hunt, former FCC commissioner, dated April 30, 2015.

Mr. LATTA [presiding]. Without objection.

[The information appears at the conclusion of the hearing.]

Ms. ESHOO. Thank you very much.

Mr. LATTA. The chair now recognizes the gentlelady from Tennessee, the vice chair of the full committee, for 5 minutes.

Mrs. BLACKBURN. Thank you, Mr. Chairman.

Commissioner O'Rielly, I want to start with you, if I may. And I have your blog post from August 7, 2014. It is titled, "Post text

of meeting items in advance." And you discuss the need to post on the FCC's Web site the actual text of items to be considered at open meetings at the same time they are provided to commissioners.

And describing the current system, you say this, and I am quoting you, "...understand the need to protect internal deliberations, there has to be a better way." End quote. And I would love for you to elaborate on that and how exactly it would improve the rulemaking process at the FCC. Walk me through this.

Mr. O'RIELLY. Sure. So I started to do this in my opening statement. It is so frustrating. When an item is circulated for an open meeting it is called white copy, 3 weeks before the open meeting. We have items that are circulated today for our next meeting. At that time period, I get more requests from outside parties to meet. They will file ex partes on what happened during that discussion.

The difficulty is, when you meet with them, they have no idea what is in the item itself. So you have a combination of different people that come in. Some people know a lot what is in the item because maybe they have a friend at the Commission or they are a pretty decent lobbyist and they know what——

Mrs. BLACKBURN. So they are relying on somebody to feed them that information, not on what is publicly available.

Mr. O'RIELLY. Some people are very well educated. Some people are well attuned to what is happening. There is a middle crowd which knows a little bit, and a little bit is dangerous because they don't know what exactly is in play. And then you have a whole host of people that come in, they don't know anything about what is in the item, and that includes the general public.

And so we have this mixture, and I am not allowed under the current rules to tell them anything that is in the item or any changes that I am seeking to the item. I have read it. I read all of the items.

Mrs. BLACKBURN. OK. How much of your time does that type of interaction take with people?

Mr. O'RIELLY. Sure. So in 2 weeks I will meet 6, 7 meetings a day, probably.

Mrs. BLACKBURN. OK. So you are utilizing a lot of your time to answer questions that come from inequity of access to information.

Mr. O'RIELLY. Yes. I am not allowed to answer any questions.

Mrs. BLACKBURN. OK.

Mr. O'RIELLY. They come in and pitch me on what they would like to see changed based on their knowledge base.

Mrs. BLACKBURN. Got it.

Mr. O'RIELLY. And I am saying it is inequitable in what they know and they want to see changed.

Mrs. BLACKBURN. OK.

Mr. O'RIELLY. And that is problematic for trying to have a good dialogue. There are things that I would like to do and I am not allowed to tell them, like: I was thinking about doing this to the item. What would you think of that? Is that a possibility? It is almost like you were testing out an amendment with somebody and say: What do you think with this?

I am not allowed to do that. I am not allowed to tell anybody what I am seeking in terms of changes. And I can't even tell them

if they are wrong. I can't say, like: Gee, you have been spending so much time on this issue.

And this came up in a meeting I had with wireless microphones. Did 2 meetings in 1 day. In the morning meeting, I couldn't tell them that they were completely wrong. They went and met with a bunch of people at the Commission, came back later in the afternoon, and they were mostly wrong. But I couldn't tell them that they are mostly wrong, that we had moved past in some other concerns and others they were just——

Mrs. BLACKBURN. So to fix it, what you are saying is provide everybody the same set of information in a transparent process where the information is easily accessible?

Mr. O'RIELLY. Yes. I am saying we post the one document.

Mrs. BLACKBURN. One. OK.

Mr. O'RIELLY. Just the one document. Not continuing to repeat the public comment period.

Mrs. BLACKBURN. Got it.

Mr. O'RIELLY. One document that is the one circulated with us. And then we will get more pointed comments, more particular, specific areas that they would like to see addressed.

Mrs. BLACKBURN. And it would be a fairness issue and an efficiency issue?

Mr. O'RIELLY. Yes, ma'am.

Mrs. BLACKBURN. OK. Very good.

I have got about a minute and a half left. Commissioner Wheeler, very quickly, if you have any response to that, and then I have got one more question for you, sir.

Mr. WHEELER. Thank you. Thank you, Congresswoman.

I mean, I think there are several things here. The first is that the last 3 weeks isn't the only time we hear from people, by the way. There is a lot of discussion that goes in. And ex partes, all kinds of ex partes.

The issue is how do we get to a position where we can pull up and shoot. And if we are in a situation where there are constantly new ideas—I mean, somebody goes in, you publish the item, it gets fly spec'd by really sharp lawyers, who then start filing things that require us to respond, which requires us, then, to pull and rewrite in order to——

Mrs. BLACKBURN. Would giving everybody the same information take care of that?

Mr. WHEELER. No. The difficulty is what they then do, because——

Mrs. BLACKBURN. OK. Well, we can't address that.

Let me move on to the other question. I have got about 30 seconds now.

I was looking at your press release that came out yesterday on the Connect America Fund, and I had gone back and looked at this March 30 Wireline Bureau with the order that was there on the subsidized broadband buildout.

The question is: Did you properly notice what appears to be an arbitrary distinction, whether or not the incumbent provider had a customer in the area as opposed to whether the provider offers service to the area?

Mr. WHEELER. Thank you. I believe we have properly noticed it. And as a matter of fact, it was out to an extent that people could file and say: No, he is wrong.

Mrs. BLACKBURN. OK.

Commissioner O'Rielly, do you have anything on that.

Mr. O'RIELLY. So there is that challenge process the Chairman references. There is going to be disagreement on whether the challenge was properly executed by the staff. And I am sure there will some process for us to review that.

Mrs. BLACKBURN. OK. My time is up. Thank you all.

Mr. LATTA. Mr. Yarmuth is recognized for 5 minutes.

Mr. YARMUTH. Thank you very much, Mr. Chairman.

I thank the witnesses for their testimony and for this discussion.

I am going to return during my time to the subject that I was talking about earlier during opening remarks and that is campaign finance disclosure. Because while transparency at the FCC is very important, as it is in every agency, I am much more concerned about the dark money that is used to flood the Nation's airwaves with anonymous ads, not just during election season, although now election season is year-round, it seems, but throughout the year.

And the Communications Act already requires the disclosure of the true identity of anyone paying for an ad, whether it is billionaires or basically anyone who can afford to run ads, shouldn't be able to hide behind innocently named front groups. That is why I introduced a bill earlier today that directs the FCC to use its existing authority to require disclosure of the actual donors behind these ads.

I don't think disclosure should be a partisan issue. According to Chief Justice Roberts in the McCutcheon opinion, he said: Disclosure often represents a less restrictive alternative to flat bans on certain types or quantities of speech. With modern technology, disclosure now offers a particularly effective means of arming the voting public with information.

And then I would like to quote another high-ranking Republican official from various points in his career. 2001: What we ought to have is disclosure. In 1997: Public disclosure of campaign contributions and spending should be expedited so voters can judge for themselves what is appropriate. These are the reforms which respect the Constitution and would enhance our democracy. 1997: We could do disclosure more frequently. I think disclosure is the best disinfectant. I think it gives our constituents an opportunity to decide whether or not we are in the clutches of some particular interest group and whether or not that is a voting issue for them. I am certainly in favor of enhanced disclosure. In 1990: We would eliminate PACs altogether. It will be interesting to see whether our colleagues on the other side of the aisle would be willing to eliminate PACs altogether. We would have the money come from small individuals. And so forth.

That is Senator Mitch McConnell, the majority leader of the Senate. And while I doubt that he would say the same thing today, I think he has moved on from those positions, I think that the validity of his remarks and of Chief Justice Roberts are very, very sound and solid.

We have seen the amount of money escalate dramatically, according to the Center for Responsive Politics. In 2012 election cycle, there were about $300 million from these anonymous organizations. Six years prior to that, it was only $5 million. I am sure, looking ahead to 2016, that we are probably talking about a billion dollars or more in these types of anonymous ads.

So I think it is very critical that the FCC use the authority it has to require disclosure. Again, I think this is not a Republican or Democratic notion, and the abuses of super-PAC and the 501(c)(4) designation are not limited to one part of the philosophical spectrum. It is across the spectrum. I know that some people in the labor union movement would probably not want to do this just as much as the Koch brothers probably wouldn't to do that.

But, again, I think the American people are crying out for this, and I would hope that this bill would get attention. And if it is not successful, this legislation, then I would hope that the FCC would look carefully at what it can do within its existing authority to provide more transparency in the election cycle.

So I don't have a question. Thank you for your attention. I will yield to the ranking member.

Ms. ESHOO. I thank the gentleman for this what I think is really a very important piece of legislation, and I want to associate myself with everything that he said.

The second most often question of me by my constituents is: What are we going to do about this whole issue about campaigns, how they are financed? And now, on the heels of Citizens United and the McCutcheon decision, what are you going to do about it? We have to do something about it. They are sickened by it. They are sickened by it.

In the California case, let me just tell you about something that is very powerful relative to the airwaves. A handful of years ago there was a measure on our ballot statewide to roll back the stringent measures that the State legislature had passed relative to clean air, and there were ads to roll it back. But at the end of that ad, as required by law in California, is there is a voiceover that said: This ad was paid for by—and it named the oil companies that had paid for the ad, whomever they were. I don't remember. I don't want to say their names because I may not be recalling the correct ones.

You know what? Once Californians heard who paid for that ad, it sunk the effort. That is how powerful it is. So that transparency and that sunshine, I think, is something that we need to take up on.

Thank you. Thanks for yielding.

Mr. LATTA. The gentlemen's time has expired. And at this time, the chair will recognize himself for 5 minutes.

Interesting enough, I am going to go back to the delegated authority, oddly enough, since it is my piece of the legislation within the discussion draft.

Commissioner O'Rielly, if I could go back to some of the questions that have been asked and some of your answers. One of the questions I would like to ask is: What is wrong with more trans-

parency? What is wrong with the 48 hours that folks out there would get more information to them?

Mr. O'RIELLY. I am very sympathetic to that, and I think that would be favorable, and I have written on that point exactly.

Mr. LATTA. And when you have written on that, what is harmful to consumers or other businesses out there for that 48 hours in your research and your writing?

Mr. O'RIELLY. It has been interesting because the critique of your bill that I have read, it is interesting because there has been a concern that if you expose these items 48 hours in advance then you will have a rush to file all these arguments at one time, you are putting up a flare. But we actually do that today on our items that are circulated.

This is something I printed out today from our list. It is on our Web site, and it tells everything that is on our circulation. These are predecisional items. So everyone knows what is actually happening, and this is pretty similar to what you were seeking in your bill, if I read it correctly.

We talked about the Chairman's task force earlier, his previous task force, or his previous review effort, and one of the things he was seeking in the task force was actually to take this list and expand it to tell people how Commissioners had voted already. So you would have, like, partial votes, like, two people might have voted and a couple people haven't voted yet. He obviously votes first. So he is actually expanding that.

So I don't understand why the list that you are proposing on delegation would be problematic. It seems just copacetic with things we already do.

Mr. WHEELER. I think you and I were together on that one, right, and we got outvoted.

Mr. O'RIELLY. Yes. I am comfortable with that.

Mr. LATTA. OK. Let me go on, Commissioner O'Rielly. As I understand, the advisory committees operating at the FCC must abide by the Federal Advisory Committee Act, FACA, which contemplates that such committees will furnish expert advice, ideas, and diverse opinions to the Commission.

To that end, the rules implementing FACA direct agencies to develop procedures to assure that the advice or recommendations of advisory committees will not be inappropriately influenced by the appointing authority or by any special interests, but will instead be the result of the advisory committee's independent judgment.

So the question: What steps has the FCC taken to assure that the advisory committees can exercise their own independent judgment about what issues are important and the conclusions they draw?

Mr. O'RIELLY. So we do have an internal memorandum that deals with some of this, and it calls for balance in terms of makeup of an advisory committee. But I will say I do have some concerns with our advisory committees that operate today. I do worry, and I am working on a piece on this, and there are a number of concerns that come to mind, including that influence issue you just raised. Is there too much influence coming from a bureau?

We actually have bureau chiefs sitting on advisory committees, even though there is an official designee from the Commission sit-

ting on it, we have bureau chiefs sitting there dictating how the committee is supposed to function. And I just think that is problematic for how this independent body is supposed to operate and provide advice to us. I think that we are leading them in a direction that is problematic. There are a host of issues I am working on and I think we just need to take a second look at how we do advisory committees.

One of the problems I have on advisory committees is—and no disrespect to the Chairman—but all of the authority on advisory committees, everything is in the Chairman's hands. He picks everybody. He picks all the issues. I am sometimes invited to say nice, kind things, and I do, and they are nice enough to invite me and that is great. But there is a problem with that structure where everything is in his hands and I don't have any say in the structure of an advisory committee.

Mr. LATTA. Let me follow up and let me ask you on some concerns that have to do with the Downloadable Security Technical Advisory Committee. Are you familiar with that one?

Mr. O'RIELLY. I am. I will say only that the statute, that one actually doesn't provide me any authority. That is a statutory decision the committee made and that is all the Chairman's. So I haven't had any involvement in that one.

Mr. LATTA. You say you are not?

Mr. O'RIELLY. I am not involved.

Mr. LATTA. OK.

Mr. WHEELER. Mr. Chairman, could I try something on that please?

Mr. LATTA. Yes.

Mr. WHEELER. I actually was the chairman of an advisory committee and have a little experience on this issue on both sides of the table, if you will. And the committees are carefully balanced to begin with, both with expertise and with interests. And I can assure you that they have their own mind, and they have to have a vote to make their recommendations to the Commission.

Mr. LATTA. Let me just follow up. I know my time is up.

But, Commissioner O'Rielly, in your opinion, do you think that the D–S-T–A-C, the DSTAC, has operated in an independent manner?

Mr. O'RIELLY. And again, I don't know as much about that one, the downloadable security committee. That is in the statute and that is the Chairman's prerogative.

On the other advisory committees, I would say that I do believe they are being led in a direction by the staff that is not independent, and we need to improve the independence of the advisory committees.

Mr. LATTA. Thank you. My time has expired. And moving on, the chair recognizes the gentleman from Texas, Mr. Olson, for 5 minutes.

Mr. OLSON. I thank the chair.

And welcome to Chairman Wheeler and Commissioner O'Rielly.

When Chairman Wheeler became the Chairman in November 2013, he ordered what is called an all-agency task force review. It was completed in February of 2014.

My first question is to you, Commissioner O'Rielly. How much of that report has been acted on, percentage? What is outstanding, in your opinion?

Mr. O'RIELLY. So I don't have a good number. We have been getting a number of updates. But I think a fair amount has been adopted. There are some, definitely, points that are still in the works and some that probably won't make it to see the light of day. Is that fair?

Mr. WHEELER. I think that is a fair analysis.

Mr. OLSON. Chairman, do you have any idea how much has been completed?

Mr. WHEELER. We wiped out 1,500 backlogs, 8,000 Enforcement Bureaus, 57 percent of the backlog in the Media Bureau, 2,500 that were longer than 6 months in the Wireless Bureau. I am trying to pull some others out. There has never been so much done in such a short period of time on literally thousands and thousands of items.

Mr. OLSON. Good to hear.

Again, Commissioner O'Rielly, I want to talk about the Paper Reduction Act and the Regulatory Flexibility Act, the PRA and the RFA. Do you think the FCC takes their responsibility seriously with these two initiatives?

Mr. O'RIELLY. I think the agency takes its responsibility seriously. I think the work that is done is insufficient to meet the statutory obligations. In some instances, I have had to go back to staff and say: This doesn't actually match up exactly with the subject matter that we are talking about.

I think it is really disappointing, and I have tried to go at that and get that improved, I am actually working on something on it, because I think it is really problematic what we do to address the statute enacted by Congress.

In some instances, in Regulatory Flex, an item deals with small businesses and we cursorily pass over that issue. On paperwork reduction, we actually inflict a significant number of burdens with regard to reporting, and that especially applies to small providers. I mean, dealing with rate of return carriers recently and talking to them and the reporting burdens that they have and how much the cost is for them, it is pretty significant. And I think we have to go back and consider that, fix our reforms on both PRA and Regulatory Flexibility.

Mr. OLSON. Thank you.

How about the biennial review of regulations, has that been taken seriously as well, the obligation of that review, in your humble opinion?

Mr. O'RIELLY. I have seen it in my past employment, not in this current role. I think in my past experience I would suggest that there probably could be improvements. It hasn't occurred under the current Chairman, so I am looking forward to an opportunity to aggressively use that section.

Mr. OLSON. What can the Commission do to get rid of the fat and clear it up?

Mr. O'RIELLY. The Chairman has outlined a number of things that we have already done. I am outlining a number of things that would improve the process. I think that in some regards it is main-

taining aggressive attitude, I think, the Chairman and I both share. And I try to congratulate him when I can, and we have reduced the backlogs in many different areas.

So I think he is committed to that. I am too. But we have a lot of work left to do. And I have been talking to a number of staff internally, and they will suggest: Gee, have you thought about this? This would make a good blog too.

There are just really good ideas that are coming forward on things that they would be happy to scrap in the rules themselves. So things like that we really have to move forward on.

Mr. OLSON. What can we do in Congress to help you with your mission? Get out of the way?

Mr. O'RIELLY. Well, no. I think it is being very aggressive in oversight and making sure that when we do biennial review, that you have a very thorough look at what we are doing and making sure that you are looking at every corner and nook and cranny of the Commission's authority.

Mr. OLSON. And that is our job per this document, the Constitution of the United States.

Mr. WHEELER. Can I follow up on that?

Mr. OLSON. Yes, sir. You are up.

Mr. WHEELER. I wildly agree with what Commissioner O'Rielly has just said insofar as the oversight role. And I also agree with what he said about he and I have been working together. We don't always agree on things, but we have been making some serious progress. And this new task force that I have formed, you get to be the judge as to whether it is meaningful or not.

I also think that the oversight role actually has more flexibility than the legislative role because the difficulty with legislation is it tends to be pretty black and white and the way things seem at that moment rather than have things evolve. And I think you ought to hold our feet to the fire.

Mr. OLSON. And that is our job.

So one final question about the regulation that all decisions should be made within 30 days of the adoption, at the latest, of some new rule. Has that been complied with, yes or no, Commissioner O'Rielly, as a general rule?

Mr. O'RIELLY. There have been some items during my time that have not met that. They have not been met on the day that we voted on them. Whether it has gone 30 days, I actually haven't matched up the timeframe.

Mr. WHEELER. I don't think there have been any 30-day.

Mr. O'RIELLY. I don't know how long after we have missed some, but there have been a number of them that have not been done on the day that we——

Mr. OLSON. Missed it more or missed it less? I mean, Chairman Wheeler, do you think you have hit the target more often than you have missed it?

Mr. WHEELER. Well, 86 percent of all our decisions are done and published within 2 business days.

Mr. OLSON. OK. I am out of time. I yield back the balance of my time. Thank you.

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

The chair recognizes the gentleman from New Jersey, Mr. Lance, for 5 minutes.

Mr. LANCE. Thank you, Mr. Chairman.

First to Commissioner O'Rielly. As you mentioned in your testimony, the chief argument against publishing items in advance is that it would be harder to comply with the Administrative Procedure Act's provision that requires the Commission to respond to every comment submitted. Can you recommend changes that would offset this issue?

Mr. O'RIELLY. What I have suggested, and I think it is contained in Congressman Kinzinger's bill, is that there be one document that is actually published, in addition to what we already make available, and we would still be able to respond during that 3-week period to any new arguments that are raised. Most of the arguments are going to be old and already worked on and already addressed. So it is really only new arguments.

There are 2 weeks where we have that process, and then we have a week of sunshine where we just kind of talk amongst ourselves. No one is allowed to lobby us or to talk with us. That is plenty of time to deal with any new issue that could be raised.

What I have said, in rare instances, very rare instances, it may take a little bit more time in the most complicated situations where we may need to address those issues, and that means that the item may need to be bumped by a week or maybe a full month at most. But during that entire time, we are still under sunshine and no one can lobby us.

So in that case the staff would have 4 weeks to address any new arguments that came forth. That should be plenty. I have worked with these staff members. They are capable of addressing any new arguments that come in and that shouldn't be problematic.

Mr. LANCE. Thank you very much.

And to you, Mr. Chairman, you have indicated in your testimony that there have been over 950,000 delegated items issued by the Commission. And I believe, to quote you, the vast majority included routine wireless, radio, and broadcasting licensing and transfers. And I certainly agree that you couldn't possibly review all of those matters.

As I understand the purpose of delegation, it is to allow the FCC to act on routine matters for the sake of expediency, and I agree with that. But I am concerned about the fact that, as I understand it, the AWS–3 geographic coordination zones adopted by the FCC back in March was done in this manner. And I would like your comments on that, if possible, Mr. Chairman.

Mr. WHEELER. Thank you, Congressman. I am glad you asked.

The reality in the issuance of the public notice on AWS–3 was we were actually in a race to meet the auction deadline, because you all told us we have to have an auction done by this point in time.

The topic was how the coordination zones work. We are sharing spectrum with the Department of Defense. How those zones work was essential to the bidders for them to know enough in advance so that they could bid.

The Republicans on the Commission wanted to see the maps. The maps were actually still being worked on by the Defense De-

partment. But the maps were irrelevant because the issue in the PN was the coordination inside whatever those maps may be, and the geography involved was irrelevant.

We put this on circulation. And after 2 weeks of there being a majority of the Commission that had voted in favor of it and the Republicans saying that they were not going to vote, while everything was tick, tick, tick, ticking up in and the bidders needed to have this information, I said, "Hey, look, guys, if you can vote it quickly, let's do it. If not, I am going to pull it off and put it on delegated authority, because there is delegated authority, because this is information, not policy." And that was what ended up happening.

Mr. LANCE. Thank you.

Mr. O'Rielly, would you like to comment on that?

Mr. O'RIELLY. I feel a need to respond only in the sense that I am defending my colleague who is not here. Commissioner Pai actually had the bigger concerns on this issue.

Mr. LANCE. As I understand, yes.

Mr. O'RIELLY. I think he has the right to define what is sufficient for him to make a decision. So when the Chairman says the maps are irrelevant, I think my colleague is the one who gets to pick what he thinks is the information necessary for him to make a decision. I don't think it is appropriate for us to say: No, you don't get to look at that, you don't need to see that for purposes of making a decision, and, by the way, we want your vote at X time.

Mr. WHEELER. But the important thing is, the important thing, Mike, is that because it is on circulation it just sits there and nothing happens. If you don't like it, if there is not enough information to vote, vote no.

But the fact of the matter is that a majority of the Commission had voted. And what we could not move, the will of the majority was being thwarted by exploiting the procedural rules of the Commission by not voting. And that is the kind of thing that would be harmful to the auction, was harmful to those who would be bidding in the auction. And since this was information, not policy, I said, "OK, if you are not going to vote, then we will put it on delegated authority."

Mr. O'RIELLY. I would only respond. Again, Commissioner Pai had stronger views on this. And I would be happy to vote no if that is the case.

But I would say the Chairman leaves out one detail: That in that circumstance where three votes have actually been cast, it does trigger "must vote." And therefore we have a time period under our rules where we must vote or it goes forward.

So if the three majority Commissioners have already voted, must vote has already been triggered and therefore there was a specific end date.

Mr. LANCE. Thank you. My time has expired.

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

The chair now recognizes for 5 minutes the gentleman from Kansas, Mr. Pompeo.

Mr. POMPEO. Thank you, Mr. Chairman.

I have a series of yes-or-no questions. But before I do, when we started this hearing today Chairman Walden made some comments

that some folks on the minority side said they were concerned that they were attacking the Chairman, who is a public servant. I agree with that. They then proceeded to talk about a bill that attacks a private citizen. They introduced a bill called the Keeping Our Elections Clean Act, the acronym for Koch Industries. So I guess it is better to attack a private citizen who is going about his business trying to make money than to attack someone who has entered public life. I just find the hypocrisy quite remarkable.

Ms. ESHOO. If the gentleman yields?

Mr. POMPEO. No.

Ms. ESHOO. No?

Mr. POMPEO. Not now. You have had ample time.

Mr. Chairman, I have a series of questions. I would hope that you could answer each of them yes or no.

Back on March 4, I asked your managing director for a series of interim reports produced by the consultant you hired with regard to your proposal to close offices. A few days later, my staff was told by FCC personnel that they could not provide us with the final report.

Last week, on the 23rd of April, I, along with Chairman Upton, subcommittee Chairman Walden and Murphy, requested all internal and external FCC documents be provided about that decision to shutter 16 of the Commission's 24 field offices. We are now a couple of months after our initial requests. All we have received is a 2-page memo and 35 slides. Will you provide the committee those documents.

Mr. WHEELER. What we are in the process of doing right now, sir, is making sure that personally identifiable information is removed so that they will be available to the committee.

Mr. POMPEO. Great. So once you get the PI gone, we will receive those documents? Is that a yes?

Mr. WHEELER. Yes.

Mr. POMPEO. Thank you.

Did you hold a competitive bidding process to select the consultants who analyzed the Enforcement Bureau's field offices and produced the report that recommended closing most of those offices?

Mr. WHEELER. We did it through establish procurement procedures, which include competitive bidding.

Mr. POMPEO. That would be no? My question was, yes or no, did you have a competitive bidding process?

Mr. WHEELER. I don't know whether there were competitive bids for this. I can find that answer and get it for you.

Mr. POMPEO. So I am 0 for 2 in getting yes-or-no answers. I am going to keep plugging away.

Will the closure of 16 of 24 field offices negatively affect your commitment that a 99 percent response rate can be preserved on complaints for interference of public safety?

Mr. WHEELER. No.

Mr. POMPEO. There we go, one for three.

Mr. WHEELER. Thank you.

Mr. POMPEO. Do you believe that there are any circumstances under which a designated entity should be able to use bidding credits to win spectrum at an auction and then lease 100 percent of that spectrum to a nationwide wireless carrier?

Mr. WHEELER. It depends on what the designated entity rules are, and today they permit that.

Mr. POMPEO. So you think the answer to that question is yes?

Mr. WHEELER. What I am saying is the rules, as they exist today, that the answer is yes on the rules today. As you know, we are going through the process of reviewing those rules.

Mr. POMPEO. Have there been any instances during your chairmanship when two or more commissioners have asked that you all commissioners an opportunity to cast an up-or-down vote on an item but you chose instead to direct a bureau to release the item?

Mr. WHEELER. There is probably something that you have in your notes there that I can't recall off the top of my head. I don't know the answer to that, sir.

Mr. POMPEO. On March 11, 2014, there was a Public Safety and Homeland Security Bureau release. A public notice to commissioners requested a Commission-level vote on the item and you instead directed the bureau to release that. Does that ring a bell?

Mr. WHEELER. It doesn't ring a bell, but I will be happy to look into that.

Mr. POMPEO. I would appreciate that.

It is my understanding that that is unprecedented, that that had not happened before, when one or more commissioners had asked for a Commission-level vote and yet hadn't received one.

Mr. WHEELER. Well, that I can answer no to.

Mr. POMPEO. So that has happened before?

Mr. WHEELER. But it is precedent.

Mr. POMPEO. I would appreciate you providing the examples when that has happened previously because we were unable to find them.

Mr. WHEELER. Sure. Happy to.

Mr. POMPEO. On November 10 in 2014 did you circulate an order to your fellow commissioners regarding the Comcast-Time Warner Cable and AT&T–DirecTV merger proceedings and tell your fellow commissioners that if they did not cast their votes by the end of that day, that third parties would be provided with access to those contracts?

Mr. WHEELER. I am not sure I understand your——

Mr. POMPEO. So the question is, there were a series of contracts, it is my understanding that you told your fellow commissioners that if they did not cast their votes by the end of the day on an issue, that you would release these contracts——

Mr. WHEELER. On what issue? I am not sure——

Mr. POMPEO. I don't know the issue. I will submit it for the record.

Mr. WHEELER. If you can get me, I will be happy to give you a yes or no——

Mr. POMPEO. I would be happy to. I don't know the substance of that issue.

Mr. Chairman, I yield back the remaining 2 seconds.

Mr. LATTA. The gentleman yields back his last 2 seconds.

The Chair now recognizes and apologizes to the gentleman from Kentucky, recognized for 5 minutes.

Mr. GUTHRIE. No problem at all, Mr. Chairman. Thank you for the time.

Chairman Wheeler, I will ask you this question first. In your explanation of the workings of delegated authority you state that, quote: "Either the Commission has specifically delegated authority to each of the relevant bureaus and offices to decide matters that do not raise new or novel issues or the Commission in its orders has made specific delegations to the bureaus to decide certain substantive issues." That is unquote.

So it seems to me that if a matter raises issues that are new or novel, they need to be deliberated among the full Commission. Correct?

Mr. WHEELER. The answer is the Commission votes on an issue and directs the bureaus to implement that issue, not to go make policy themselves.

Mr. GUTHRIE So anything that is new or novel has to be the full Commission?

So my next question for Commissioner O'Rielly. Last year, you and Commissioner Pai criticized the Chairman's decision to direct the Wireless Telecommunications Bureau to adopt the Commission's annual wireless competition report on delegated authority. Can you elaborate on why you disagreed with that decision?

Mr. O'RIELLY. It is my understanding that this is a report required by Congress that has been typically, in most instances, voted on by the full Commission. Here we were delegating it to the staff, which made no sense to me. And I thought I am comfortable voting on it, what is the problem with that? But it was removed from my ability to vote. So I think that is problematic.

We look at other reports that we have, and the Congress has a requirement on video competition. In there it says the Commission shall report. And there we have typically actually had the Commissioners all vote on those issues. So, to me, it seemed like there was a direction we were going on this report that I thought was problematic, and I think that we should have had the opportunity to vote on that report.

Mr. GUTHRIE. Do you care to comment?

Mr. WHEELER. Yes, sir.

Mr. Guthrie. OK.

Mr. WHEELER. Thank you, Congressman.

The reality was that it was on circulation. There were three votes that had voted for it on circulation. And one commissioner demanded that we include a data roaming decision in this vote. And I said: OK, we will include data roaming if you will promise not to delay the circulation. Because remember the discussion we had, you may not have been here, a minute ago.

Mr. GUTHRIE. Yes. I saw it.

Mr. WHEELER. The problem is that it could just lie there. And, yes, Commissioner O'Rielly is correct that there comes a must-vote situation, but must-vote is kind of a laugh because it just triggers something that is weeks away.

And there was no assurance. I said, "Look, let's vote. There is a majority that has decided. You can't just sit on this. If you will give me the assurance you will vote, I will put the other item in there as well and we will vote on everything." And he would not give me that assurance. I said, "OK, I will move it on delegated authority."

Now, the interesting thing is that this is the same thing that Chairman Martin did throughout his tenure during the Bush years.

Mr. GUTHRIE. I want to ask you one more question.

Mr. WHEELER. He moved it on delegated authority.

Mr. GUTHRIE. OK. So I have another question I want to ask you. I understand in the open Internet proceeding the Commission granted temporary small business exemption from the order's transparency obligations. The order says that the Consumer and Governmental Affairs Bureau, the CGB, will issue an order regarding whether the exemption will be permanent by December 15.

So my questions are: When should small providers expect to see a notice issued that will give them opportunity to comment on the need for the exemption to be made permanent?

Mr. WHEELER. Thank you, Congressman.

I can't give you an exact date. The order hasn't even gone into effect now. But clearly we have to have a notice on that that will fire people up to say: Hey, this is what is going on. And we fully intend to do that.

Mr. GUTHRIE. OK. And do you intend to do this on delegated authority? Do you think it will be a Commission vote?

Mr. WHEELER. Well, the Commission delegated the authority to the CGB to do that.

Mr. GUTHRIE. Would you care to comment, Mr. O'Rielly?

Mr. O'RIELLY. Well, I would only comment, that as everyone knows, I didn't vote for the item, but that gets to the point earlier that I now no longer have any involvement in that delegation. That issue is gone. And so my ability to weigh in on that item, whether it should be extended for small business, I don't have any say. It is problematic.

That is what we are trying to get at in terms of delegation, both the reforms in terms of the timing of what is happening, but also the ability to pull something back up so I have a chance to actually help out small business. In the current structure, that will be decided by the Consumer and Governmental Affairs Bureau.

Mr. WHEELER. And for the purpose of something that the Commission has already voted on to say we should do it. And I think that this is just a question then how do you go forward with that, Mike.

Mr. O'RIELLY. No, no, I understand how it has worked out. I just say I no longer have any say in the matter.

Mr. GUTHRIE. Thank you.

And I only have a few seconds. I have one more question, but I will submit it for the record. Thank you, Mr. Chairman. I yield back.

Mr. LATTA. Thank you very much. The gentlemen yields back.

The chair now recognizes the gentleman from Florida, Mr. Bilirakis, for 5 minutes.

Mr. BILIRAKIS. Thank you.

I was troubled to learn about the extent to which FCC staff has editorial privilege to substantially change and modify items after they are adopted. This strikes me as fundamentally flawed and opens the door for unaccountable changes. Representative Ellmers' proposal attempts to hold this practice accountable.

Commissioner O'Rielly, can you elaborate a bit more on this practice and how the draft legislation could add more certainty and accountability to the process?

Mr. O'RIELLY. Yes sir, absolutely. In the items that are done at our open meetings there are a number of instances where staff has made changes after we voted, so we have decided some matter one way or the other; and then staff has gone forward and made substantial changes to the substance of the document, sometimes into the rules themselves, sometimes to the justification part of the equation.

And I have had problems with that for a couple of reasons because they are sometimes addressing ex partes; they are addressing other issues. And even in some instances they are addressing dissents that have been filed. In a couple items that I have dealt with on the Connect America Fund they were addressing in a pretty disparaging way critiques done by my colleagues on an issue. So they voted; they dissented. They said, I don't like this item. I don't like part of this item. And the staff was writing out why they were wrong and actually doing it in a very negative way, and I had to pull back and say, wait a second here. This is not working very well where the changes are happening after we have all voted. We are making changes to the substance, and you are making disparaging comments to and about my colleagues. I just can't——

And those are instances where I have actually voted in favor of the item. So I have tried to pull back on some of that. And I think that the editorial privileges process, and I have written about this, is pretty problematic. The editorial privilege itself does not exist in our rules, and that is why I now vote against it every time that we come to an open meeting because it is granting authority that doesn't exist in any of our rules; and, you know, in fairness to the Congressman's question earlier, or to her statement, most of our rules are not actually codified. Most of them just exist in the ether.

When I walked in the door my first day, they gave me a small binder on exactly what the rules are, subject to change at any given moment. So that is extremely problematic. Editorial privilege does not exist today, and I think that what is being done in that time period by staff is just inappropriate.

Mr. WHEELER. So Congressman, can I try that because there is an important point. First of all, if there were disparaging comments, Mike, I am stunned. I am shocked, and nobody should tolerate it.

Mr. BILIRAKIS. OK, now let me—I have got another question here——

Mr. WHEELER. There is an issue here——

Mr. BILIRAKIS. Briefly. Briefly.

Mr. WHEELER. What he was talking about was he was responding to a dissent. We are required by the D.C. Circuit to respond specifically to dissents that are filed. So we can't just, the Court will not allow us to say, here is a decision; here is Mike O'Rielly's dissent. We then have to incorporate what he said in his dissent into our order——

Mr. BILIRAKIS. OK, thank you, Commissioner——

Mr. WHEELER. By order of the court and that is where this editorial——

Mr. BILIRAKIS. I appreciate that. Thank you very much. I want to move on. Commissioner O'Rielly, could you please elaborate on the flaws in the current advisory commission. I know you touched on this, on the structure of the advisory committee, but if you could elaborate a little bit. How do you believe these important opportunities for ideas and evaluation can be improved? And you mentioned a hearing-like meeting proposal to gather independent testimony. Is that the best option for improvement in your opinion?

Mr. O'RIELLY. Our open meeting process is not structured and it is flexible, so we are now inviting witnesses depending on the chairman's desire. We will have witnesses come and provide testimony in favor of an item. They just basically sit there. They give their testimony, and that is the end of the discussion, but I didn't know they were coming in most instances. I might get notice the night before. I don't get any testimony of what they are actually going to say, and I don't have the opportunity to question them. So I have problems with having witnesses who are going to affirm the majority's decisions; sometimes in the majority, sometimes in the minority, depends on the item.

But we are diluting the minority's view by letting them invite witnesses, and the minority is not allowed to invite any witnesses. So I think that our open meeting process needs to be fixed. If we are going to have a transparent structure at open meetings, I think that we need to seriously reconsider having any testimony from expert witnesses, or at least balance the conversation. I think it doesn't work very well today.

Mr. BILIRAKIS. All right, very good. Thank you very much. I yield back, Mr. Chairman. Thank you.

Mr. LATTA [presiding]. The gentleman yields back the balance of his time. The gentleman from Illinois is recognized for 5 minutes.

Mr. KINZINGER. Thank you, Mr. Chairman. And thank you all for being here and spending your afternoon with us. I know that is what you look forward to; but it is very helpful for us. And again, I appreciate your service to your country and being willing to do what you do. Even if we don't always agree on every issue, I respect you willing to step forward.

You know, we talked about reforming certain processes at the FCC, and I often hear from those opposed that we shouldn't be changing the procedures of just one agency while not looking at all the agencies. Commissioner O'Rielly, do all the agencies follow the exact same procedure in regards to issuing, circulating, and publishing the text of proposed orders or rules?

Mr. O'RIELLY. Absolutely not. Most agencies, and I have had a great deal of experience with not only agencies that you oversee, but also those overseen by other committees in the Senate. There are vast differences in how they operate in terms of—and I'll give you an example——

Mr. KINZINGER. Yes, give us some examples.

Mr. O'RIELLY. Examples that are different not just in terms of how they dispose of items, but I will give you an example from the FTC, something this committee knows very well about. There are two procedures, very interesting. One, the Commissioners of the FTC are actually, when the items come in they are actually assigned, including to minority members. You are an expert in this

space. Now you get this issue. That doesn't happen at the FCC. All the power—everything is decided through the chairman.

Two, they have the authority, and I have talked to FTC Commissioners on this—they have the authority that if three Commissioners vote together, they can ban the staff from working on an issue. So if they decide, gee, you know what? We think you are working on this, and that is completely wrong, and we don't want you working on it any more. The FCC doesn't have the same kind of thing. So that just gives you two flavors of how our agencies are totally different. And so the idea that we can't change anything within our agency; we have to do it uniformly across the board, is inaccurate because the agencies do not operate uniformly today. There is so much difference in how they operate and how their structures are done; and lot of it is because of their operating statutes.

Mr. KINZINGER. Yes, that has got to be frustrating and, I mean, especially, with all the jurisdiction you have and everything. And again, And I like to remind people that it is definitely not going to be President Obama in a year and a half. It may be Republicans in charge in a year and a half, and I hope that we can press forward with opening up the agency as we are talking about here too.

You talked about FTC. What is a good kind of model that you would point us to when it comes to other agencies that you have seen? If you don't have a great example, that is fine.

Mr. O'RIELLY. I don't know that I have a favorite. I spent a great deal of time examining problems that they have had in my past life. So I don't know that I have——

Mr. KINZINGER. You have favorite practices.

Mr. O'RIELLY. Yes, there are definitely some practices that I liked, and I have highlighted two that I think would be interesting if we were to adopt at our agency. But separate from that, there are definitely some very expansive authorities that I probably would disagree with.

Mr. KINZINGER. Let me ask you, too, do you believe that the publication of a white copied order would prevent private deliberation and exchange of ideas among the Commission offices?

Mr. O'RIELLY. No, I do not. And I appreciate your legislation, or draft legislation, on this issue. There are two issues that people generally raise about this idea that I originated and you also have talked about, and that is, the APA, which we have talked about a little bit here today, and then they also raise the question of FOIA. And would FOIA be triggered and would we be required to release our internal deliberations? And the answer is no. All of that is still protected under the exemption under FOIA. None of that would change. Our deliberations between offices would still continue the same way they operate today. We would have no change to that. There would be no information that would be more available in that circumstance. The only thing I am asking, and I think you said in your legislation is that one document be available, the white copy document be available——

Mr. KINZINGER. Do you think that would harmfully impact the way stakeholders exchange information with the Commission?

Mr. O'RIELLY. I think it would actually really improve the process. I think the stakeholders would be able to home in on exactly

what might be an issue, what may be a problem with the document itself. We had an issue in our 3.5 item just adopted recently. And in that item I was trying to get more information on what is called CAF, or Contained Access Facility, I believe it was called. And I couldn't get anyone to explain to me what exactly it meant. Finally somebody came in and they could talk to me a little bit, but I couldn't tell them what was actually in play. At the end of the day I said we need to get rid of this provision because we have no idea whether it is actually functional, whether it is violating, whether it is actually favorable to landowners or to building owners. I just didn't know what it was. I couldn't ask them questions about what I already knew. It was very problematic.

Mr. WHEELER. And did we?

Mr. O'RIELLY. We did get rid of it.

Mr. WHEELER. At your request?

Mr. O'RIELLY. Yes, yes, yes. I am——

Mr. KINZINGER. I don't want this to be a debate between you two. I haven't yielded time. I have 30 seconds left is all.

Mr. O'RIELLY. I think it might be a good idea, because I can't feel comfortable voting for something that I don't what it is and there is only one advocate for it, and I can't get a good explanation.

Mr. KINZINGER. I only have 15 seconds left, and unfortunately I want to say this. So it is sad when members of a commission feel completely disfranchised and feel like they don't have the tools to do their job. And I think we are not here, putting you, sir, on the hot seat. And I am sure you are on the hot seat. But we are not trying to be, attack, attack. But it is just there is concerns we have which is, look, we are all about transparency. And when we here members of the Commission saying, Look, sometimes I don't feel like I have the tools to do my job, that is a concern. With that I am going to yield back, and I appreciate again you guys both being here. Thank you.

Mr. LATTA. The gentleman's time has expired. And the chair now recognizes the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman. And, gentlemen, thank you both for being here today as well. Chairman Wheeler, in a response to one of our inquiries regarding process and delegated authority, you told us that a bureau or office may seek guidance from your office on whether an item should be voted on by the full commission even when it was within the scope of the bureau or office's delegated authority. So does the reverse ring true? When a bureau or office opines that an action should be done at a commission level, can the chairman's office direct that it be done at the bureau level anyway?

Mr. WHEELER. No. What we try to do is make sure that we are following the instructions of the Commission vote, and I think the record speaks for itself since we——

Mr. JOHNSON. But we are not talking about a commission vote. We are talking about when a decision is to be made and the bureau or the office says that the action should be taken at the commission level, you have delegated authority, and the bureau or the office opines that it should be taken at the commission level, can you direct as the chairman that it be done at the bureau level anyway; yes or no? Do you have the authority to do that?

Mr. WHEELER. I presume, under section 5 that I could, but the record is clear that we have the lowest number of delegated authority decisions in my tenure.

Mr. JOHNSON. Mr. O'Rielly, since the decision to use delegated authority is a legal one, do you have an opinion? Shouldn't the bureaus and offices go directly to the general counsel's office rather than to the commissioner's office for guidance on whether delegated authority should be used or not?

Mr. O'RIELLY. I would think that is the most appropriate place, yes.

Mr. WHEELER. And I would assure you, sir——

Mr. JOHNSON. I am talking to O'Rielly right now.

Mr. WHEELER. I don't want to have——

Mr. JOHNSON. Mr. Chairman, this is not your opportunity to pontificate.

Mr. WHEELER. I would not do something——

Mr. JOHNSON. The American people have asked us to ask you the questions. I am asking Mr. O'Rielly a question right now. So, Mr. O'Rielly, you think that that would be the appropriate place to do that.

Mr. O'RIELLY. Yes.

Mr. JOHNSON. Mr. Wheeler, in response to one of our committee's inquiries, you provided us with the information regarding the number of enforcement actions taken by the field and the number of enforcement actions overall. For example, in 2011, 88 percent of the actions were taken by the field. In 2012, 76 percent of the enforcement actions were taken by the field. In 2013, 89 percent of the actions were taken by the field.

So let me get this right. You want to close more than half of the field offices. Just looking at the impact in terms of bureau productivity, how do you intend to continue that level of enforcement activity from the few remaining offices? If I were to read between the lines, aren't you really talking about a wholesale retreat from the type of enforcement actions undertaken by the field like interference resolution and abandonment of the proactive enforcement work the field performs like tower inspections? And are the staff slots that are being opened by releasing the field staff from Federal service being moved to FCC headquarters? And I know you probably don't have off the top of your head the answer to all those questions, but could you update the committee and provide this type of data for fiscal year 2014 as well?

Mr. WHEELER. Thank you, Congressman, and the answer is yes and we are doing this to get——

Mr. JOHNSON. Yes, you will provide the data for 2014?

Mr. WHEELER. I am going to give you some data right now. And we are doing it to get better efficiency. We have too many field offices where we have good people, but they are not effectively applied.

Mr. JOHNSON. I am just asking you if you are going to provide the data. That is all.

Mr. WHEELER. I am giving you some data. When we look at a——

Mr. JOHNSON. Let me ask you another question because I have only got a minute left. You have testified as part of your claim that

things are improving at the FCC, that the enforcement bureau closed nearly 8,000 cases. Now, that gives me some pause because that seems like a big number. Were they closed because the FCC took enforcement action? Were they closed because the statute of limitations ran out and you couldn't take action? What are the numbers for those actions closed by positive FCC actions versus the ones closed by the statute of limitations running out? Were any of them closed because the enforcement bureau just said never mind?

So can you provide us with a detailed analysis of the nearly 8,000 cases, identifying the type of alleged violation, the type of action taken, if any, and the reason that you closed the case?

Mr. WHEELER. I can tell you about them right now.

Mr. JOHNSON. Can you take that for the record? Can you provide us in written——

Mr. WHEELER. I can tell you, the vast majority of those 8,000 were indecency cases that Commissioner O'Rielly and I worked together to solve and worked with the various parent groups and others.

Mr. JOHNSON. We would like a written response for the committee.

Mr. WHEELER. I would be happy to give you, but it was thousands and thousands and thousands of cases we are holding up broadcast licenses.

Mr. JOHNSON. My time has expired. We would like to see that if you would provide it to the committee.

Mr. LATTA. The gentleman's time is expired, and the chair now recognizes the chairman emeritus of the committee, Mr. Barton from Texas.

Mr. BARTON. I thank the chairman, and I apologize to Mr. Cramer and Ms. Ellmers for going ahead of them since I haven't been here all afternoon, but I think I have a pretty good feel for what we are a trying to do here. And I want to say on the record, Mr. Chairman, I support the three bills that we are having the hearing on. I think they are all reformative, and I think they are positive, and they are transparent; and I think the more of that the better.

I want to ask the chairman of the FCC what you would think if we operated the Congress like the FCC is operating. In other words, we are about to have a vote on the budget agreement with the Senate sometime this evening. That budget is on the Internet. Every Member of Congress will show up, and I am assuming there is going to be a roll call vote where we vote yes or no. We don't delegate it to staff. We don't delegate it to anybody. It is open; it is transparent, and it is immediate. How would you feel as a citizen if we didn't do that?

Mr. WHEELER. I think it is a really good point, Mr. Barton, and I recognize that you then turn around and delegate things to us, and we are talking about how do we deal with that delegation from the Congress. And I believe that we work fulsomely to try and adhere to what the statute tells us that we ought to be doing as you make your delegation, and that also includes how we make our delegation.

Mr. BARTON. Well, you are in the executive branch. You are supposed to implement the laws.

Mr. WHEELER. We are independent. Please, don't throw me in the executive branch.

Mr. BARTON. Well, you are appointed by the President of the United States. You are confirmed by the Senate.

Mr. WHEELER. Confirmed by the Senate.

Mr. BARTON. You are not a part of another agency, but you are an executive Federal agency. You implement the communication laws of the United States, not you personally, but the Commission that you are the chairman of. There is nothing in statute that says the FCC should operate, to put it as positively as possible, semi-secretly.

Now, I have been in the offices of the chairman of the FCC under a different administration and watched that particular chairman have a discussion and then push a button voting on an order. And I was told at the time as soon as a majority of the Commission pushed the same button, it was passed. Do you still do that? I don't even know what that is called.

Mr. WHEELER. No, it doesn't. That is called voting on circulation. And there is an electronic system. You are absolutely right, and you are welcome to come visit any day, sir, and I hope you would. The difficulty with that is that when you get to three, majority does not rule, and one of the discussions we were having here previously is how the other two can sit on an item and keep the decision from being made and that that can extend for weeks and weeks and weeks under our processes. So you are absolutely right as to the process, and everybody pushes a button.

Mr. BARTON. My point is, and I am not as technically up to speed on the reform bill as the full committee, subcommittee chairman and some of the Members that have spoken and have these bills before us; but it would seem to me that we should operate our executive branch agencies as closely as possible to the way we operate the House and the Senate, especially the House, which is the people's body. We are instantaneously transparent on every vote in the committee if it is a roll call vote. Now, not all are roll call. Some of them are voice votes, but if it is a roll call vote, it is live over the Internet. Not everybody watches it, but we know what we are voting on. The public knows what we are voting on. The public knows how we vote as soon as we vote. And in many cases they have access to the material we are voting on almost the same time that we do.

I support these three bills. I would hope, Mr. Chairman, that you would change your mind. Transparency is a good thing. There is no harm that is going to be done by letting the public know and the stakeholders know what you guys and you men and women are thinking about and what you are going to vote on and how you vote when you vote. And with that, Mr. Chairman, I support the bills, and I yield back.

Mr. LATTA. The gentleman yields back the balance of his time. The chair now recognizes the gentleman from Missouri, Mr. Long, for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman. And Chairman Wheeler, do you think that your management is kind of top heavy, or do you think that you have streamlined it as far as management of the agency?

Mr. WHEELER. I am not sure what you mean by top heavy, sir.

Mr. LONG. Well, back last time, I think it was the last time you were here, you said that it appeared that staff slots, if they left from the field office closings, they are not being moved to the headquarters; and now according to the Web site back in 2009, there were 8 people in the front office of the enforcement bureau, and now there is 16. And that is the type of thing that I am asking about, if there is not being people moved to the office, why do you need to double it?

Mr. WHEELER. I am not trying to double it. There is nothing in the field office that is involved in increasing the headquarters office, with the exception of we would move one field manager there, so you have overall control. The goal of——

Mr. LONG. I am talking about the people assigned to the front office of the enforcement bureau.

Mr. WHEELER. Pardon me?

Mr. LONG. The people that are assigned to the front office of the enforcement bureau.

Mr. WHEELER. Yes, sir.

Mr. LONG. That is what I am referring to.

Mr. WHEELER. I don't know how many there are. I can get you the answer. But the goal, what we are trying to do in the field office reorganization is to put together a structure that is much more efficient in the way in which we do our job. I mean, the difficulty is that, yes, you have got a Denver office, but the problem is in Tulsa, and, or it is in some small town, and you have to go to that.

Mr. LONG. Well if you close an office in Kansas City, and the broadcasters and people now have to go to either Chicago or Dallas to have frequency questions answered or things, that doesn't seem efficient to me. I know that you have had a lot of things going on today and a lot of things the last few times you have been here, so I wouldn't expect you to know definitely. But again, according to the Web site, the FCC Web site, in 2009 there were 8, and now there is 16 people in the front office.

Mr. WHEELER. But that is unrelated to this. Let me talk about the Kansas City office because you deserve to know.

Mr. LONG. OK. I am from Missouri. You got to show me.

Mr. WHEELER. We have four full-time execs, four FTEs, two of whom are EEs, electrical engineers. We are spending $1,000 per person per square foot, per person, for rent on that. The average that we spend in Washington is $272. So we have space in all of these offices that is off the chart in terms of what we are having to pay for operating expenses. And in Kansas City, we have the second least number of radio frequencies of the entire country.

Mr. LONG. How does that—on the thousand dollar per square foot or whatever, how does that correlate to your total office expense for Kansas City compared to Washington?

Mr. WHEELER. You have $658,000 that we spend on four people in Kansas City, and there is in the Kansas City office 0.15 RF matter handled per week.

Mr. LONG. Could you be more specific on that?

Mr. WHEELER. All I am saying is that is the process that we had to go through. This is a question of where do you put your bodies, because the problems are out there, and the problems aren't solved

any better because you have 24 offices. How do you reduce the cost so that you can increase and always have double Es who are on the case and restructure the offices so that you are either an hour and a half drive or less than a two hour plane flight to get to cover the United States? Because we want to keep it out there.

Mr. LONG. How does the Kansas City office per square foot compare to Chicago or Dallas where people in my neck of the woods will have to go now?

Mr. WHEELER. I can tell you the Houston office is $620 per square foot per employee. The Portland office is $2,000 per square foot.

Mr. LONG. Chicago, do you have Chicago?

Mr. WHEELER. I don't have Chicago. I can get it for you.

Mr. LONG. OK. If you will, I appreciate it.

Thank you, and with that, Mr. Chairman, I yield back.

Mr. LATTA. Thank you very much. The gentlemen yields back, and the chair now recognizes the gentlelady from North Carolina, Ms. Ellmers, for 5 minutes.

Mrs. ELLMERS. Thank you, Mr. Chairman. Hi, Mr. O'Rielly, I have a question for you, and I also have a question for Mr. Wheeler.

Commissioner O'Rielly, I think it has been discussed already. Apparently you kind of stirred things up back in February at a meeting, and so I don't need to go into the details. You were there. You lived it. But I am interested in the claims of deliberative process privilege, and I know that has already been brought up here. Meaning that a document is privileged because it contains advisory opinions, recommendations and deliberations that would be a normal part of the process by which government decisions and policies are formulated.

I understand that the whole point is to allow policymakers to engage in open, frank discussion on policy matters. This is what needs to happen in an open, honest fashion. But isn't the Commission done with substance of policymaking by the time a vote occurs?

Mr. O'RIELLY. I believe it should, and that is why I am in favor of the bill that you are contemplating and drafting. I think that it should be done, most of it should be done by the day that we vote. To add a lot of substantive content after the time period creates a number of problems that I have articulated already, and I just think that that is the way it should be done.

Mrs. ELLMERS. So you, and there again, just to reiterate your comments and your position, you believe that it should be an open process, before, during, and after?

Mr. O'RIELLY. Yes. There are definitely going to be moments when we talk to internally that are not going to be public, and that is acceptable, but in terms of the document that we vote on, I am very comfortable making that available. I think we should vote on that, and then it should be released. Your bill gets to the rules themselves, and I think that is a good idea.

Mrs. ELLMERS. Because I think transparency is obviously the way to go on any of these issues. So Commissioner Wheeler, with that, I understand that after the documents have been cleaned up for publication, which is, I understand, after editorial privileges

have been exercised, the commissioners who voted yes are permitted to review the approved documents, but those who have voted no do not have that privilege. Is that correct?

Mr. WHEELER. That is correct.

Mrs. ELLMERS. And why is this? Why do you believe that if someone has voted no, that they no longer have that privilege?

Mr. WHEELER. The majority has made the decision, those who voted no are against the concept, and so as you refine that concept, it is the majority that has ruled.

Mrs. ELLMERS. But we are all adults, so if something goes forward, even if you have a no vote—you still should have a say so. I just want to point something out. A couple of times now during the subcommittee hearing, you have interjected your comments even though they weren't directed to you as a question.

So what you are doing is so incredibly hypocritical to this process. You say that someone who votes no therefore has no more say so in the issue, and yet here today when challenged on an issue, you have interjected yourself; so you obviously believe that there should be further conversation. So I find that a little curious. As we move forward, we get a chance to talk about the issues, even if we aren't necessarily behind the issue. This is something that I want to see happen with the FCC as well. And I will just finish, Commissioner O'Rielly.

Mr. WHEELER. Do you want me to respond to that?

Mrs. ELLMERS. No. Actually I was making an observation.

Mr. WHEELER. There is an error in your logic——

Mr. LATTA. The lady has the time.

Mrs. ELLMERS. Commissioner O'Rielly, in your opinion, how do you believe a dissenting opinion should be treated after the fact?

Mr. O'RIELLY. I can only correct one thing from the chairman. We do actually see the item. We just don't have any input into it if we——

Mrs. ELLMERS. You can't comment on it.

Mr. O'RIELLY. I do see it. I don't want to give anyone a misimpression. We do see it. I believe that even dissenters would have valuable input into the process. When I was in the majority when I worked here, we would always talk to the minority and say we know you voted no, but do you have a good idea? Is there something we missed here——

Mrs. ELLMERS. Right. And help us to understand where you are on the issue.

Mr. O'RIELLY. They would have really good ideas during the time. You know what; you didn't think of this. Even though I voted no, I want to make it a good document. And so I always thought that was helpful. We don't have that opportunity.

Mrs. ELLMERS. Mr. O'Rielly, I just want to say that I certainly associate myself with your position on this, and I am very much looking forward to our bills, all three of our bills moving forward.

Ms. ESHOO. Would the gentlewoman just yield for a few seconds?

Mrs. ELLMERS. That is fine. I have 15 seconds left.

Mr. LATTA. Did the gentlelady yield?

Mrs. ELLMERS. That is fine, yes.

Mr. LATTA. Ten seconds.

Ms. ESHOO. Thank you. I appreciate it. I just want to insert maybe some pragmatism here. You know, we voted on bills today and I believe yesterday in the full committee. I don't have any opportunity to change those bills after I have voted no.

Mrs. ELLMERS. We are over time, so I am going to pull back. But we are not talking about changing votes. We are just talking about——

Ms. ESHOO. We are changing the substance of the no vote. I can't go back and change the language. There is no such thing.

Mr. LATTA. The lady's time is expired.

Mrs. ELLMERS. Yes, my time has expired.

Mr. LATTA. The chair now recognizes the gentleman from New York, Mr. Collins, for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman. My question is directed to Commissioner O'Rielly. How are you doing?

Mr. O'RIELLY. Good.

Mr. COLLINS. Do you watch the Buffalo Bills here to see how they are drafting?

Mr. O'RIELLY. We don't have a draft pick for a little bit.

Mr. COLLINS. No they are working on that.

My question also deals with the transparency issue, and in the Title 2 order, the FCC delegated unprecedented authority to its enforcement bureau to investigate and fine companies, even in situations where the FCC hasn't yet decided what rules are going to apply to broadband services. So specifically, the Title 2 order applies Section 222 of the Communications Act to Broadband Services, which I imposes duties on providers to protect certain customer information. But Section 222 itself is by design not specific, and nobody knows what it is, what it is not, just by reading it.

The order says Section 222 applies right now to broadband and at the same time forebears from the specific rules the FCC has on the books that implement Section 222. And this week the FCC held a workshop to figure out what all this means. Isn't this backwards? And how is anyone supposed to know what the FCC expects if the Commission just turns the enforcement bureau loose on them with no rules to actually enforce.

Mr. O'RIELLY. I would only caution by saying I don't want to get too far afield on this one issue because it obviously is a hot button issue for many people, and our reform effort is broader in my opinion. But to answer your specific questions, there are deep concerns I have regarding how the Commission has approached Section 222. Separate from our Title 2 discussion, we have already done a couple items that I have dissented on in this space. We are using some of that precedent to go forward, which is problematic in my opinion. There are actually NALs versus a final decision; we are using that precedent to go forward.

But to separate it out I would say I don't know exactly what is planned for in this instance. We did have a workshop. I am really worried that this provision will extend pretty extensively into the field not only on broadband providers, but it will continue to creep up the chain, up the virtuous circle that people talk about, to other providers. I was there at the time that 222 was drafted, so I can tell you it was a very narrow provision, and I think it is being mis-

applied as it currently is, and I think it will be misapplied going forward.

Mr. WHEELER. But we don't have a rule on it.

Mr. O'RIELLY. That is right.

Mr. WHEELER. We are going to have a rulemaking proceeding on just what you do with Section 222; and in that rulemaking proceeding, I am sure Commissioner O'Rielly and all five commissioners will be actively involved.

Mr. COLLINS. So it is my understanding that last year the FCC proposed a $12 million fine against two companies for violating Section 222. In the notice of apparent liability issued against TerraCom and YourTel, the FCC announced a duty to keep certain information confidential and to provide notices to customers under Section 222 and at the very same time enforced that duty against the companies without warning and with no rules. Again, this seems backwards. Mr. O'Rielly?

Mr. O'RIELLY. Yes, I dissented on that item. The arguments you just presented were at the forefront of my discussion. I think it is extremely problematic what we did, not only the process that we went through, and you highlighted it there, but also the outcome. I think they have misapplied the statute. I think that it is far beyond what Congress implied, and that is why your question is so valuable.

Mr. COLLINS. I would agree. Mr. Chairman, I know we are getting ready to vote, so I will yield back the balance of my time.

Mr. LATTA. The gentleman yields back, and the chair now recognizes the gentleman from North Dakota, Mr. Cramer, for 5 minutes.

Mr. CRAMER. Thank you, Mr. Chairman and the ranking member for sticking around so long for me. Thanks to both of our witnesses, our distinguished public servants. Thank you both for being here.

I often start my inquiry with the reminder that I spent 10 years as a regulator in North Dakota on the elected North Dakota Public Service Commission. Our nice little three-member elected body, I have to admit that the sunshine of North Dakota and the transparency of North Dakota's Government at first seemed very clumsy to me. In fact, I kind of liked the idea of the old stories I heard about a couple commissioners get in a room, kick the door shut, decide the thing, and then come out and tell everybody what the decision is. But it did not take long for me to find the safety in the transparency.

And when I ran for this job, I said I want to do for the United States what we have been able to do for North Dakota, lest the United States do to North Dakota what they have done to the rest of the country. And this transparency issue is a big deal to me, and I think it was those years on the commission where we never, I mean no two of us talked about anything in the men's room without appropriate notice and the length of notice, at least for the opportunity to have a hearing if not the notice of a hearing. And we had a lot to do. And we had a lot to do. When you have the fastest growing economy in the world, and we are sort of at the epicenter of most of it, including a lot of telecom, I might add.

And never did efficiency trump transparency because transparency leads to trust. And there are many things about Congress

and what I have learned here and several of the agencies where I feel good about being able to go back home and say, you know what; it is not as bad as you think. This is one situation where it is worse than people could imagine, in my view, at least by comparison to my experience as a regulator. The people in our State would never have tolerated this, and certainly the businesses wouldn't have.

Let me just ask this. Do you ever see or think there could or should be an opportunity where at least on some issues, major issues, there could be an actual hearing where all of the members would be there and they would ask questions of witnesses much like we are doing now, or, you know, a more legal format, discovery, evidentiary hearing? Could we get to that point? Is there any reason that we could, or is there any reason why we shouldn't get to that point on more issues? And I would start with the chairman and——

Mr. WHEELER. Yes, and we use both. We have discovery capabilities. And in the recent Comcast decision for instance, we used our discovery. We can hold hearings. We have been of late holding workshops, though, to get more involvement so it is less of this and more of getting informed people informing us. And, you know, for instance, Commissioner O'Rielly and I were the only commissioners who sat through six day-long sessions discussing the open Internet rule, you know, ways that we make sure that we have, you know, a fulsome discussion and record in that. So I think your points are very well taken, Congressman.

Mr. CRAMER. Mr. O'Rielly.

Mr. O'RIELLY. I would only add that—and I wrote about this recently—I do think that there can be an opportunity to have hearings with the five commissioners and explore issues. I would be open to that. It is an alternative to having people and witnesses at our open meetings where I think that is not a very effective use of time. Actually if we want to have a hearing, I think there could be an exploratory way to go about doing so, and I think that that something that might be valuable.

Mr. COLLINS. I would just wrap up my time by saying when I was on the commission, we were a three-member, all Republican commission. We could have passed out any rule we wanted. We had two-thirds of the majority of our party in both chambers of the legislature. I never once thought it would be a good idea to be less transparent. Because, frankly, once I got used to the concept, I found great safe harbor in transparency, really.

So I just want to tell you, and maybe with the remaining seconds, Commissioner O'Rielly, if Republicans became the majority and you became the chairman, would your position be any different than it is today?

Mr. O'RIELLY. I should caution and say I don't plan to be chairman. I probably will never be chairman. I don't sit there and dream about it, but I will tell you and give you my word, and you can mark this down, if that were to ever happen, I believe I will support every change that I have already proposed and all the changes I am going to suggest going forward to be implemented immediately at the commission.

Mr. COLLINS. Thank you both for your service and your patience. And my time is expired.

Mr. LATTA. Well thank you very much. The gentleman's time has expired and to the committee right now I see that the good gentleman from Vermont, Mr. Welch has come, and we have 5 minutes of allotted time.

Mr. WELCH. Well, I appreciate that. I was doing committee business, Mr. Chair. I was with Mr. McKinley, and we were over at the White House getting a bill signed that this committee passed. So I gave them your regards.

Mr. Chairman, I note that our ranking member, Ms. Eshoo, has been really working on our committee to try to find things that will be helpful to the reform of the agency you are in charge of, so I want to be cooperative in that effort.

You were asked to some extent, the question in this hearing is it about trying to give the FCC the opportunity to make reforms, or is it an opportunity for us to beat up on the FCC for doing its job? So I hope we can make some reforms. You have been asked some specific questions, so I just want to give you a chance to answer. You were asked about the disposition of 8,000 enforcement decisions. Can you tell us what types of decisions those were.

Mr. WHEELER. The vast, vast majority, thousands and thousands of them, were indecency complaints that were actually holding up license renewals for broadcast stations. And so when we were able to deal with those, which again, Commissioner O'Rielly and I worked together on this, because this is a sticky issue. OK. And that not only cleared off the enforcement agenda, but also then immediately let broadcast licenses go forward that were being held up if for no other reason than somebody had filed against them. OK.

Mr. O'RIELLY. If I can comment on that, and I completely agree with——

Mr. WHEELER. Sure. Go ahead.

Mr. O'RIELLY. In reducing some of the backlog, cases were being dismissed because of Statute of Limitations, so we were trying to get away from that and reduce the backlog. But also in reducing the backlog, it provided us an opportunity to focus on those cases that do need to be addressed by the Commission, so it was both parts. We were actually just having this entire role being addressed, constantly going back and retooling agreements, and it was just taking forever——

Mr. WELCH. Sounds sensible to me.

Mr. O'RIELLY. Right. So then we were able to prosecute or move forward——

Mr. WHEELER. In a wildly bipartisan manner.

Mr. WELCH. Great. You were asked about how the editing process works after the Commission votes on an order. Can you explain that process? By the way, an editing process is employed by courts like the Supreme Court. That is sort of standard practice, but how does it work in the FCC?

Mr. WHEELER. Thank you, Congressman. That after a vote, if there are dissents, then it is required by the Court that we conform the order with the dissents just like happens in court, as you just indicated. The interesting thing is, and the topic that has been left out entirely of the discussion today, is that our rules also provide

an opportunity for reconsideration. And that a final decision really isn't the final decision because an affected party can file and say, no, here is new data that you need to have, and therefore you need to reconsider. A commissioner or commissioners can file on their own motion for reconsideration, and so that has kind of been overlooked in this process today that this so-called final still has an opportunity for review, and that is, of course, even before it goes to court. And again——

Mr. WELCH. Has that been a longstanding practice at the FCC?

Mr. WHEELER. Yes, sir.

Mr. WELCH. The other thing, Mr. Latta and I, as you know, are working together on a rural working group. Are there any suggestions you have now that you have been in your job for a while that would require congressional legislation to give you some additional room, with not necessarily more money, to be more flexible in personnel that you may need?

I remember a discussion I think you had with Mr. Latta and I at the rural working group when you were explaining how it is pretty easy to hire a lawyer but pretty hard to hire an engineer. And I am a lawyer, but I think you need an engineer more than you need somebody like me.

Mr. WHEELER. Thank you, Congressman. I think you just hit the nail on the head. We need economists and engineers, and it is difficult to hire them, and the process for hiring lawyers is much easier. And the bigger question here is that our budget is constantly being cut, and we are losing, we are now and we will be next year even lower, at the lowest number of FTEs in the history of the agency, the modern history of the agency.

Mr. WELCH. So in addition to the budget pressures, are there also some rule issues that are making it more difficult to hire engineers and economists versus lawyers?

Mr. WHEELER. Yes, sir.

Mr. WELCH. And I would be glad to see those, and perhaps we could work together on trying to straighten that out.

Mr. O'RIELLY. Could I mention just one?

Mr. WELCH. Yes.

Mr. O'RIELLY. And that only to suggest that in some of the rule issues that we are trying to deal with now, one big issue that the chairman and I are trying to work together on is rate of return carriers. And part of the problem we have had is that the good staff has been, for a number of different reasons, migrating to the enforcement bureau; and so we are losing people from some of the substantive bureaus where we need them, and we have very few people left in some of the bureaus that actually work on these big-ticket items.

Small handfuls of people are working on certain things. You would think out of 1,500 or 1,700 people, we would have had a bunch of people working on them. We don't. We have been growing enforcement and shrinking other places. I think that is problematic.

Mr. WELCH. OK. Thank you very much. I yield back.

Mr. LATTA. The gentleman's time has expired, and seeing no other Members present to ask questions, on behalf the chairman and the ranking member, I want to thank you, Mr. Chairman, and

you, Mr. Commissioner, for appearing before us today and for your testimony and your answers to the questions. And seeing no further business to come before the committee, the subcommittee will stand adjourned.

Ms. ESHOO. Mr. Chairman, and do members have X number of days to submit questions to the witnesses that they were, either didn't have the time to ask or were not here to ask?

Mr. LATTA. So ordered. Thank you very much.

Ms. ESHOO. Thank you.

Mr. LATTA. Thank you very much.

[Whereupon, at 5:18 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Transparency at all levels of government is critical to keeping the public trust. And as policymakers, whether on this committee, in Congress, or in government, we must embrace transparency with open arms at every opportunity. Today, we will have that chance with three bills that put the public's interest first.

Transparency at the Federal Communications Commission has been an area ripe for improvement for quite some time. At issue today is not the content of the commission's actions, but the process by which their rules and orders are developed, considered, and implemented.

I'd like to thank my three colleagues—Subcommittee Vice Chairman Latta and Representatives. Kinzinger and Ellmers—for stepping up to offer these thoughtful ideas to improve transparency and promote participation in the FCC's process. Their proposals will improve the FCC's accountability to the public and provide a real means for their participation in the commission's policy-making process and I fully support their efforts. They are policies we should all be able to get behind.

We are not asking the FCC to do something that the Congress doesn't already do. Our bills are posted publicly, debated publicly, amended publicly, and voted publicly. These bills take meaningful steps toward bringing accountability to a commission comprised of those unaccountable to the electorate.

Access to commission information and decision makers today is largely a function of proximity to our nation's capital. These proposals will turn that paradigm around and ensure that every American has the access to information that will meaningfully impact any part of their increasingly connected life. We should encourage more dialogue, not less—and that is what these draft bills will accomplish.

We have talked at length about FCC process reform. I hope these bills can gain the bipartisan support they deserve, so we can help build a better agency that the public can rely on.

April 30, 2015

The Honorable Greg Walden
Chairman, Communications and Technology Subcommittee
Energy and Commerce Committee
U.S. House of Representatives
2185 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member, Communications and Technology Subcommittee
Energy and Commerce Committee
U.S. House of Representatives
241 Cannon House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

The undersigned organizations write to express our strong concerns about the discussion drafts proposed by Representatives Adam Kinzinger, Renee Ellmers, and Bob Latta that would change internal processes at the Federal Communications Commission (FCC). While the undersigned organizations believe that transparency is imperative for sound public policymaking, and many have expressed interest in reforms to the FCC's rulemaking process, we all share concerns about the negative impact that these bills could have on the Commission's ability to effectively implement needed policy reforms.

FCC procedures largely flow from two statutes: the Administrative Procedure Act (APA) and the Communications Act (the Act). While the APA broadly requires basic transparency and fact-based findings, the Act directs the FCC to follow explicit procedures for rulemaking. Unlike some other agencies that follow APA procedures, the FCC has specific jurisdiction over our communications networks, and is governed by a five-person commission instead of a single administrator. The unique importance of communications networks to commerce, public safety, free expression, employment, education, and civic engagement, demands that the FCC make expert decisions with relative expediency on behalf of the public interest. At the same time, a five-member commission also requires a degree of negotiation and dialogue among commissioners in order to arrive at a final decision. There has been bipartisan support for the importance of negotiation and dialogue for years, through bills such as the FCC Collaboration Act (H.R. 1396), led by Representatives Anna Eshoo and John Shimkus.

The record of the FCC is dominated by unanimous 5-0 decisions. According to Chairman Wheeler's recent testimony, the full Commission acts by unanimous decision about 90 percent of the time. Given the diverse views and political backgrounds of commissioners, these unanimous decisions are often attributed by commissioners to the willingness of their colleagues to work together and bring insightful comments and revisions to circulated decisions. This month's FCC Open Meeting provides a notable example. In that meeting's vote on rules for commercial operations in the 3.5 MHz spectrum band, Commissioner Ajit Pai thanked his colleagues for their "willingness to accommodate" his suggestions, which

helped lead to a unanimous vote. Such comments are a sign of healthy deliberation, which should be valued alongside transparency.

The FCC's rulemaking authority is one of its strengths. While this authority has been criticized in the context of the FCC's 2015 Open Internet proceeding, the FCC's rulemaking process, as it was used in the proceeding, is an example of unprecedented public engagement with over 4 million people submitting comments to the FCC. Although some in Congress may disagree with the substance of the Open Internet decision, the FCC should not be singled out for process changes based on one decision that was a model of public engagement.

Rep. Kinzinger's draft bill is the most harmful of the proposed bills. It creates the potential for an endless cycle of edits and public postings due to substantive changes to circulated, proposed decisions. Moreover, it adds the vague standard of "good faith" to the editing process, which could open up FCC decisions to greater litigation based solely on process concerns. The Kinzinger bill also assumes that a system of white copy circulation three weeks prior to a vote is required in all decisions. While this is a practice that has been followed by the FCC for years, there may be scenarios where the Chair must call a vote to meet a deadline dictated by statute or a court. The inflexible timeline in the proposal could create insurmountable hurdles if a single commissioner attempts to override the will of the majority of the commission through a stalling tactic.

Rep. Ellmers' draft bill also fails to balance the needs for transparency with the need for negotiation and deliberation among commissioners. The bill would limit negotiation and essentially require finalized text at the time of a vote. Most FCC decision text is available within one week of a vote, complete with full dissents. Rep. Ellmers' bill would only marginally improve transparency, at the expense of a significant reduction in negotiation and deliberation among commissioners. It would also artificially reduce the time that both the majority and dissenters have to explain fully the legal and policy arguments behind their decisions.

While Rep. Latta's draft bill provides greater transparency around decisions made on delegated authority, it is not clear for what additional benefit. The FCC process already allows for such decisions to be appealed to the full commission. Publication of descriptions of actions taken by delegated authority 48 hours prior to their becoming official does not allow for adequate comment by the public whose right of appeal remains intact once any final decision is published.

The concerns posed by these discussion drafts demonstrate the importance of considering Communications Act reforms in a comprehensive manner rather than in small legislative bites. These draft bills as proposed could harm the FCC's ability to work efficiently. We support the goal of maximizing transparency and openness at the FCC, but not at the expense of the Commission's ability to function effectively and efficiently in the public interest. For these reasons we encourage members of the Committee to set these bills aside and work towards reforms that form a better balance between the FCC's role as an expert agency and the flexibility needed by commissioners to reach maximum consensus in their decisions.

Sincerely,

Center for Democracy and Technology
Center for Media Justice/MAG-Net
Color of Change
Common Cause
Consumers Union
Demand Progress
Engine
Fight for the Future
Free Press Action Fund
National Hispanic Media Coalition
Open Technology Institute at New America
Public Knowledge
United Church of Christ, OC Inc.
Writers Guild of America-West

Reed E. Hundt
One CityCenter
850 10th St., NW
Washington, D.C. 20001

April 30, 2015

Rep. Fred Upton Chair Energy & Commerce Committee 2125 Rayburn House Office Bldg. Washington, DC 20510	Rep. Frank Pallone Ranking Member Energy & Commerce Committee 2322A Rayburn House Office Bldg. Washington, DC 20510
Rep. Greg Walden Chair Subcommittee on Communications & Technology 2125 Rayburn House Office Bldg. Washington, DC 20510	Rep. Anna Eshoo Ranking Member Subcommittee on Communications & Technology 2322A Rayburn House Office Bldg. Washington, DC 20510

Dear Chairmen Upton and Walden and Ranking Members Pallone and Eshoo:

The purpose of this letter is to comment on the general topic of improving the process of administrative agencies and on the specific topic of the three proposals to amend the Communications Act of 1934. I write as a former chair of the Federal Communications Commission in 1993-97. In addition, I have been CEO and board members of companies in the private sector.

As a fundamental point, although improving the operations of administrative agencies is always a worthwhile goal, I respectfully suggest that goal is best pursued at a pan-government level, across all

independent agencies. The Administrative Procedures Act provides the right framework for those reforms. A "siloed" approach to reforming an independent agency is no better than a siloed approach to rulemaking, which is a frequent (and frequently on-target) criticism from the private sector towards independent agencies. Congress should learn from this criticism and not pursue a narrow approach. A pan-government review process means that policymakers can learn what are the best practices across different agencies and ensure they are followed by all agencies. It also ensures consistency in administrative law, which helps the private sector by providing greater predictability about outcomes of administrative litigation and reducing litigation risk.

Now I turn to the three bills that are before the Committee. They would require the Commission to:

- identify publicly and in advance the thousands of delegated decisions a year made by the agency's bureau chiefs without agency vote, even though all Commissioners and all affected parties know all about these matters, a disappointed party can appeal any Bureau decision to the full Commission, and the 48-hour disclosure requirement will necessarily delay release of a final decision;
- disclose publicly the draft of decisions to be debated and voted by Commissioners, before the Commissioners have had an opportunity to study, confer, debate and finally decide the matter; and
- publish the text of new Commission rules within a day after they are voted, without the explanatory text, although dissents may not have been finished or reviewed, or solecisms corrected.

Taken as a whole, the trio will not help the FCC act in an expeditious manner on its business, will not add to transparency, and will sow more confusion than clarity for the private sector. In addition, these bills will hamper the ability of the Chairman of the Federal Communications Commission to discharge in a collegial, expeditious and practical manner the myriad duties delegated to the agency by Congress, as explained below. Overall, this sort of blinkered legislation would contribute to the dysfunction that has caused public approval of government in general to fall to alarmingly low levels. Instead of micromanaging institutions necessary to effectuate Congressional intent, Congress would do well to hold agency heads responsible, in public, for their policy decisions, while giving them funds and discretion to manage as efficiently as any CEO of a public company should do.

Regardless of whether agencies are run by Republican or Democratic chairs, and no matter what multi-commissioner agency is under scrutiny, their ideal practices are generally followed and widely understood. The Chair sets the agenda. He or she sorts out the relative handful of major issues that all commissioners want to vote on. These votes will be either in public, at open meetings, or on circulation.

Every FCC Chairman has delegated vast numbers of matters to bureau chiefs for a decision. Thousands of official agency actions annually are taken in this way, and that has been true for many decades. That is done to meet a common complaint: government decisions takes too long. Simply put, bureau decisions take less time than Commission-level decisions. Importantly, all bureau-level decisions can be appealed by affected parties to the Commission. Congress would be hard-pressed to find members of the communications bar who find the three levels of decision-making – open meeting, vote on circulation, bureau delegation with appeal to the Commission – to be unfair, inefficient, or burdensome. Probably all

practitioners wish that agencies would make decisions more quickly, but Congress has not funded agencies adequately, by and large, and depleted staffs can only handle so much work.

At best, only unnecessary bureaucracy and delay can come from requiring the Chair to write and publish a description of bureau-level decisions before they are taken. Indeed, how can the Chair describe a decision before it is made? So if the description is written only after the decision has been made, then the only effect of the legislation would be to delay release of a final decision by 48 hours. How does that artificial delay of a settled decision benefit anyone?

If an item is to be voted by commissioners, the Chair should have staff brief everyone on the questions presented and the response to those questions. The commissioners and their staffs can decide what meetings they want to hold with private parties, who in Congress they will confer with, what private or public discussions they want to have about the matter. After ample deliberation with all stakeholders, the commissioners can give the staff their reaction. Then they will receive the Chairman's draft. This document they study and debate with the Chairman before the vote. Perhaps unintentionally, disclosure of the draft order actually disempowers the other Commissioners in relation to the Chair. While Chairmen have the ability to take as much time as they like in private, the Commissioners' decision making will be exposed to the public even before they have had a chance to read the draft. Thus, it is critical to good deliberation that this phase be confidential.

An agency is not a college debate or a cable TV show, much less a mirror of an election or a Congressional floor speech. It focuses on issues with dense details, and in my experience the details of the Commission's decisions change during this iterative process among the

Commissioners with a draft order. This decision making process requires expertise and thoughtful exchange of views for commissioners to produce, as a whole, the decision that a majority believe best serves the public interest. Everyone has ample time before a draft is presented for public discussion and of course all voting is public. But in order to create an atmosphere of sincere debate the Chairman's draft must be confidential and its discussion among commissioners should be off-the-record, just as it is, for example, on any appellate court, at the Supreme Court, or in closed door meetings on the Hill where elected officials are supposed to reach the compromises necessary to do the people's business.

Commissions sometimes make their final collective decisions in the late night hours before a vote. Sometimes votes are delayed from morning until afternoon so as to permit every commissioner to conclude deliberations. Although votes at open meetings obviously are public, on occasion commissioners may not have had adequate time to write concurring or dissenting public statements by the time of the vote. For this reason, wise Chairs allow more time after the vote for commissioners to finish their written statements. This healthy process sometimes leads to technical changes in rules; that is, amendments important to effectuate the intent of a vote but consistent with the vote. Requiring the Chair to curtail this process only a day after the vote does not contribute to better results. Perhaps unintentionally, this proposal would deny a dissenting or concurring Commissioner any possibility of changing in even minor ways the text of a new rule with a cogent point made in a draft opinion.

In general, Congress acts prudently when it enacts legislation that conveys clear direction and appropriately broad authority to the rule-writing agency with the jurisdiction suited to the particular law. If the

agency deviates from Congressional intent in its regulatory actions, Congress has various ways to pass laws that overturn regulation.

The goal of improving the work of independent agencies is sound, but it should be pursued across the government, and not focused on micromanaging one agency's procedures, especially with the effect, if unintended, of hamstringing the agency. That sort of intrusion on well-established decision-making processes, used by Republican and Democratic Chairman alike for decades, does not promote this goal. Boards of public companies eschew this kind of micro-management and this Committee should follow their lead.

Very truly yours,

/s/

Reed E. Hundt

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225-2927
Minority (202) 225-3641

June 1, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Wheeler:

Thank you for appearing before the Subcommittee on Communications and Technology on April 30, 2015, to testify at the hearing entitled "FCC Reauthorization: Improving Commission Transparency."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Monday, June 15, 2015. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachments

Federal Communications Commission
Office of Legislative Affairs
Washington, D.C.20554

Office of the Director

July 23, 2015

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

Enclosed please find responses to Questions for the Record submitted for Chairman Tom Wheeler regarding his appearance before the Subcommittee on Communications and Technology on April 30, 2015 at the hearing entitled "FCC Reauthorization: Improving Commission Transparency."

If you have further questions, please contact me at (202) 418-0095.

Sincerely,

Michael Dabbs
Director

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Enclosures

Attachment 1—Additional Questions for the Record

The Honorable Marsha Blackburn

1. On March 30th, the Wireline Bureau issued an order that subsidizes broadband build out in areas where existing providers are already offering high speed service. Did the FCC properly notice what appears to be an arbitrary distinction whether or not the incumbent provider had a customer in the area as opposed to whether the provider offers service to an area? And how does the FCC justify that distinction?

Response: In the 2011 *USF/ICC Transformation Order*, the Commission established Connect America Phase II, which will provide ongoing support to promote the deployment of voice and broadband-capable networks in high-cost areas in price cap territories. The Commission recognized that ongoing support was appropriate in high-cost areas where the incumbent provider already may have deployed broadband. The Commission specified that Phase II support would not be provided in areas served by an unsubsidized competitor – a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support – and it delegated to the Wireline Competition Bureau (Bureau) the responsibility of determining those areas. The Commission also specified that there be a process by which parties could challenge that initial determination of whether or not an area is unserved by an unsubsidized competitor.

The Bureau subsequently established standards and a process for determining whether an entity would be considered an unsubsidized competitor. *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060, 15076-80, paras. 39-47 (Wireline Comp. Bur. 2013); *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013). Prior to commencing the challenge process, the Bureau issued guidance outlining the three elements that a party must truthfully certify to and satisfy in order to show that it serves a particular census block: (1) the provider actually offers voice and broadband service in the census block, (2) the provider has physical assets in or adjacent to the census block, and (3) the provider currently has or previously had voice or broadband customers in the census block. *Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 7505 (Wireline Comp. Bur. 2014). No party sought reconsideration of those standards, or guidance.

On June 30, 2014, the Bureau commenced the Phase II challenge process, releasing a public notice with a list of census blocks that were deemed initially eligible for the offer of Phase II model-based support. *Wireline Competition Bureau Commences Connect America Phase II Challenge Process*, WC Docket Nos. 14-93, 10-90, Public Notice, 29 FCC Rcd 7986 (Wireline Comp. Bur. 2014). In the subsequent Phase II challenge process, a number of parties sought waiver of the requirement that there be at least one actual or former customer in a census block for it to be considered served. The Bureau evaluated the grounds for waiver submitted by various parties, granting waiver for some and denying waiver for others. The Bureau examined the merits of each waiver request individually, considering whether they provided concrete and verifiable evidence supporting their claim. Only three parties filed for reconsideration of the Bureau's conclusions, and we are currently reviewing those filings.

The Honorable Brett Guthrie

1. When you say that our bills would "create burden without concomitant benefit," do you mean that they would burden the FCC without helping the FCC?

Response: Yes, but the more important issue is that this lack of benefit also would apply to the public and stakeholders. As I noted in my testimony, these bills would single out the FCC for additional layers of administrative procedures, leading to regulatory uncertainty, delay and additional litigation risks. As the Administrative Conference of the United States (ACUS) has recommended, "statutory requirements going beyond those of section 553 [of the Administrative Procedure Act] should not be imposed in absence of special reasons for doing so, because the propriety of additional procedures is usually best determined by the agency in the light of the needs of particular rulemaking proceedings." See Recommendation 72-5. Procedures for the Adoption of Rules of General Applicability, 38 FR 19792(1973). Instead, I believe that we should identify and develop methods for enhancing transparency within the four corners of the Administrative Procedure Act. For instance, better communication through the use of improved Information Technology and related resource deployment would give the public greater access to our work and increase public knowledge of our processes.

2. Do you think that stakeholders and the public at large would not benefit significantly from being able to review the text of the Orders and rules?

Response: The public and stakeholders have long benefitted from the well-tested and rigorous transparency requirements of the Administrative Procedure Act and the Commission's own rules regarding the process for adopting rules, orders, and other administrative actions. The Commission is required to provide notice and comment prior to adopting any rules. It is not uncommon to adopt a final rule that varies from the initial proposed rule. But re-publishing "final" rules immediately before a decision is ready for a vote creates a never-ending process of comment and rebuttal. Releasing the text of a draft order in advance of a Commission vote effectively re-opens the comment period, which means that the Commission would be legally bound to address the comments received on the newer draft order before adoption. This situation will lead to increased regulatory uncertainty and potentially significant delays, which is a result that would not be viewed favorably by the stakeholders who rely on the Commission for effective and timely decision making.

3. Do you think that stakeholders who cannot afford to have regulatory lawyers in Washington, D.C., should also have the same access that other stakeholders have?

Response: Yes, everyone should have equal access to the Commission's personnel and resources. That is one reason why we need sufficient funds to complete our Information Technology modernization: to ensure that stakeholders and members of the public nationwide have user-friendly access to the appropriate technology to submit comments for the record and otherwise interact with Commission staff. Although the Commission lacks funding for routine field hearings and similar activities, we do our best using IT tools to ensure that our stakeholders

and consumers nationwide are able to participate in the FCC's proceedings through webinars and similar programs. Given that four million people participated in the Open Internet proceeding, this method appears to be successful, but with the proper level of resources, we could continue to further enhance transparency.

The Honorable Mike Pompeo

1. The commission has represented to Congress and the American people that it will "preserve the integrity of public safety communications infrastructure by taking action on 99% of complaints of interference to public safety communications within one day." Yet this proposal seems to fly in the face of this statement and have a negative impact on the commission's public interest goal.

- **Will the closure of 16 of 24 field offices negatively affect the 99% response rate you have committed to preserve?**

Response: I have attached as "Appendix A" the Commission Order adopted and released on July 16, 2015, detailing the Enforcement Bureau Field Office reorganization. Over the last few months as the Commission evaluated staff recommendations to restructure the bureau's field organization, we have worked hard to forge solutions to the various issues identified by stakeholders and develop a plan that is acceptable to all Commissioners. Under the adopted order, the Commission is closing 11 of its 24 field offices, as well as maintaining a field presence with contractors and equipment in Puerto Rico and Alaska. As part of this restructuring, the Commission committed to maintaining the performance metric that public safety interference complaints receive an initial response within one day. In addition, I have directed the Enforcement Bureau to study the field issues related to public safety and develop a targeted escalation process to deal with these complaints.

2. Your staff has indicated that these closures will lead to a reduction of 58 full time employees and that your FY16 budget request does not seek more FTEs and actually has a net reduction of 37 employees.

Response: Please again refer to the attached Order at "Appendix A" for current figures. The restructuring will lead to a reduction of 44 field positions. It's relevant to note that the FCC's Fiscal Year 2016 budget request was developed several months prior to the field modernization proposal being sent to the Commissioners.

- **Will you state for the record that the intent of closing these field offices was not to free up full time employee positions that could be shifted to increase staff within the enforcement division to carry out actions under your recent order to regulate the internet under Title II?**

Response: Yes. The purpose of this reorganization was to improve our field office efficiency while realizing cost avoidance and cost savings. These goals are in keeping with the Commission's overall management improvement process. Moreover, the Commission's order states that the net savings will not be used to increase the number of full-time non-field-related employees in the headquarters office of the Enforcement Bureau.

- **Does your FY16 budget request reduce the total number of FCC full time employee's by 58 positions in comparison to FY15?**

Response: No. The Commission has projected that for Fiscal Year 2016, it will reduce overall FTEs from 1,708 to 1,671 – a total of 37 positions. The FCC's Fiscal Year 2016 budget request was developed several months prior to the recommendations on the field restructuring.

As indicated in the Commission's Order attached at "Appendix A," the actual field office reduction has been calculated to be 44 positions. The Commission is at its lowest FTE level in 30 years, and we have worked to reduce FTEs to even lower levels in the Fiscal Year 2016 budget request. FTE positions are being continually re-evaluated and deployed to ensure that all Commission offices are properly staffed.

- **Can you state for the record today that there will be no staff increase to the enforcement division?**

Response: The Commission's order states that the net savings will not be used to increase the number of full-time non-field-related employees in the headquarters office of the Enforcement Bureau.

- **I would also ask that you provide the committee all information on where the commission intends to move these 58 open positions.**

Response: The elimination of 44 field positions will free up funding for mission-critical objectives throughout the Commission, including field modernization, such as technology upgrades. The Fiscal Year 2017 budget request will re-evaluate FTE levels and assignments for the next fiscal year.

3. Chairman Wheeler, the Chief of the FCC's Enforcement Bureau recently made the following statement: "Generally speaking, I've found that most companies want to do the right thing, and when it's clear that something is impermissible, they generally don't do it. So when you're in enforcement, you're almost always working in a gray area."

- **Does this mean that the Enforcement Bureau is investigating activities that are not clearly illegal?**
- **Is that a legitimate role for the bureau?**

Response: When the Enforcement Bureau has clear evidence of a violation, they often have no need for further investigation. Unfortunately, due to the nature of their work, they often begin with mere allegations or incomplete evidence, requiring an investigation to ensure that all relevant facts have been gathered and confirmed. If the investigation shows that no rules or laws were broken, the investigation is closed. It is only when the investigation reveals potential violations that the Bureau and the Commission take action against a company. And of course, with all Enforcement actions, any company has the right to litigate in federal court.

4. Do you believe that a designated entity should be able to use bidding credits to win spectrum at an auction and then lease 100% of that spectrum to a nationwide wireless carrier?

Response: On July 16, the Commission adopted a Report and Order updating the Commission's competitive bidding rules. The Report and Order enhances the integrity of the FCC's auctions process and ensures that only *bona fide* small businesses and eligible rural service providers are eligible for bidding credits. Recognizing the changes in the wireless marketplace since the rules were last updated in 2006, the Report and Order also updates the Commission's rules regarding the relationship between designated entities, their investors, and their lessees in a manner that better reflects the current business environment.

In place of outdated rules that prevented an entity from qualifying as a DE if leased a certain amount of spectrum to large companies, the Commission will now take a case-by-case approach where it will make a determination about the extent of control a lessee has over the designated entity. This will allow a small business to make decisions about how to use its spectrum without automatically disqualifying it as a designated entity. By updating these rules, the Commission provides small businesses with the flexibility they need to gain experience in operations and investment, and provides small businesses the opportunity to make rational, business-based decisions on how best to utilize their spectrum capacity.

The Report and Order also adopts a new rule limiting the amount of spectrum that a small business or rural service provider may lease to its non-controlling investors during the five-year unjust enrichment period.

Among the reforms adopted to ensure the integrity of the designated entity program, the Report and Order establishes the first-ever cap on the total amount of bidding credits available to an auction participant, minimizing an incentive for large corporations to try to take advantage of relationships with small businesses.

5. Did you circulate an order to your fellow Commissioners on the afternoon of November 10, 2014, regarding third-party access to sensitive programming contracts in the Comcast-Time Warner Cable and AT&T/DIRECTV merger proceedings and tell your fellow Commissioners that if they did not cast their votes by the end of that day, third parties would immediately be provided with access to those contracts?

Response: The Commission reviewed and adopted an order on November 10, 2014, affirming the Media Bureau's decision to allow certain third-party access to specific information in programming contracts. Prior to gaining access, parties were required to acknowledge under penalty of the law that they would comply with the terms of the protective orders regarding use and disclosure of such information. Given the sensitivities of the issues pending at the time, I asked for prompt review and approval of the Application for Review.

6. Since you've become Chairman, have any Enforcement Bureau field agents been instructed not to give pirate radio cases a high priority or not to issue Notices of Apparent Liability to the majority of pirate radio operators?

Response: The Commission is committed to the strong enforcement of the rules prohibiting unauthorized radio broadcasting. The Office of the Chairman and the Enforcement Bureau (EB) have not given guidance or instruction to Commission staff to not enforce the statute or Commission rules with regard to unlawful operation. Indeed, earlier this year, EB conducted "pulse enforcement" initiatives in two of the cities with the worst pirate radio problems – Miami and New York. Over several weeks, EB field agents issued 23 enforcement actions against pirate radio operators and the landlords housing their operations and conducted nine on-site station shut downs. This fiscal year, the Bureau has issued more than 100 enforcement actions related to pirate radio activity.

The Commission's resources are limited, however, and field agents handle many other important issues, including radiofrequency interference problems affecting thousands of consumers or public safety. Indeed, in the current flat budget environment where the Commission's staffing is at its lowest in 30 years, pirate enforcement presents a particular challenge because of the heightened resources required to investigate these cases. Many pirate investigations require overtime pay because the pirate operators only broadcast on weekends or overnight. In addition, some pirate operators broadcast from high-crime neighborhoods, thereby requiring field agents to go out in pairs or obtain support from local law enforcement.

Accordingly, in mid-2014 in recognition of the budgetary and personnel constraints on EB, the entire Bureau began an effort to prioritize its work to focus on the most egregious violations of the Communications Act and the Commission's rules. With regard to pirate radio enforcement, field offices focused their pirate enforcement efforts on the most egregious pirate operators, such as those operating at high power, causing interference, or running advertisements. Through this focused effort, the Bureau has targeted its resources in the most efficient way towards keeping the worst violators off the air. Further, this fiscal year, the Chairman's Office has launched an intra-Commission effort to identify new policy and enforcement solutions to pirate radio. In recognition that pirate radio cannot be solved exclusively through enforcement, the Commission has also worked with outside stakeholders, including the National Association of Broadcasters (NAB), to develop policy options to respond to pirate broadcasting. Indeed, on June 29, 2015, the Commission held a Pirate Radio Roundtable with NAB and other broadcaster representatives to discuss pirate radio enforcement and policy ideas.

Question 7: Did the Tennessee General Assembly and Tennessee Senate pass by unanimous votes the geographic restrictions on broadband projects by municipal Tennessee utilities that the FCC recently preempted on a party-line vote?

Question 8: Did the FCC recently preempt a provision of North Carolina law requiring a city's voters to approve the construction of a municipal broadband project if such a project would cause a city to incur debt?

Response to 7 and 8: In Section 706 of the Telecommunications Act of 1996, Congress directed the Commission to encourage broadband deployment and take immediate action to remove barriers to infrastructure investment and promote competition when advanced broadband is not being deployed to all Americans in a reasonable and timely fashion.

In our February 26, 2015 decision regarding certain state laws in North Carolina and Tennessee, the Commission found that certain provisions in the North Carolina and Tennessee statutes constituted barriers to broadband infrastructure investment and competition, and we preempted those provisions pursuant to our authority under section 706. This action was taken in response to petitions for preemption filed by the City of Wilson, North Carolina (Wilson) and the Electric Power Board of Chattanooga, Tennessee (EPB).

The Commission's decision to preempt does not preempt laws with respect to municipal broadband in other states. However, the decision does establish a precedent for reviewing similar laws in other states, and the *Order* stated that the agency would not hesitate to preempt other, similar state laws if those laws constitute barriers to broadband deployment.

9. Under your chairmanship, have there been more party-line votes at FCC meetings than there were under Chairmen Martin, Copps, Genachowski, and Clyburn combined?

Response: The FCC is an independent regulatory agency and, as such, does not categorize its actions as related to party affiliation. In the interest of being responsive to your inquiry, however, I asked the Commission's Office of the Secretary to compile statistics to compare the percentage of unanimous decisions by Commissioners. The raw data shows the following percentage of unanimous votes for all voted items under each FCC Chairman since 2001: Powell (92 percent); Martin (96 percent); Copps (98 percent); Genachowski (97 percent); Clyburn (96 percent) and Wheeler (89 percent). Some of those votes that were not unanimous were not voted along party lines.

It is important to note that FCC votes are not the same as "up or down" legislative votes. Instead, Commission decisions often include concurring decisions or statements that provide an opportunity for commissioners to explain their votes, much like a judicial panel decision. Also, there are variations in the number of votes taken per Chairman attributable in part to the period of time served by that Chairman or the individual Chairman's ability to obtain enough overall votes to move some more controversial items. These differences and variations would necessarily affect a statistical analysis of the voting patterns.

10. Have there been any instances during your Chairmanship when two or more commissioners have asked that you give all Commissioners an opportunity to cast an up or down vote on an item but you chose instead to direct a bureau to release the item?

Response: Yes. After review and advice by the Office of General Counsel to ensure legal compliance, decisions have been made to handle legally appropriate items under delegated authority, especially where a predecessor item has been handled similarly, where there is no new or novel substantive or procedural issue, and/or the matter had to be handled expeditiously to meet a time-sensitive timelines.

The Honorable Frank Pallone

1. At the April 30 hearing you were asked about a final consultants' report related to the closing of several FCC field offices. When did you first provide this report to the Committee?

Response: The Commission delivered copies of the report to the Committee on April 2, 2015. On May 13, 2015, the Commission provided the Committee with the consultant's pre-decisional data package.

2. I would like to clarify a statement you made in regard to the FCC's designated entity rules. Do current rules permit designated entities who are awarded bidding credits to lease 100% of spectrum won at auction? What changes, if any, is the FCC considering to these rules?

Response:

On July 16, the Commission adopted a Report and Order updating the Commission's competitive bidding rules. The Report and Order will enhance the integrity of the FCC's auctions process and ensure that only *bona fide* small businesses and eligible rural service providers are eligible for bidding credits. Recognizing the changes in the wireless marketplace since the rules were last updated in 2006, the Report and Order also updates the Commission's rules regarding the relationship between designated entities, their investors, and their lessees in a manner that better reflects the current business environment.

Prior to the adoption of the Report and Order, the previous rules required designated entities who leased 25 percent or more of their spectrum capacity on any individual license to attribute the revenues of the lessee(s) regardless of whether the designated entity remained in control of its operations or the spectrum. This rigid rule hamstrung small businesses – they had to make a choice between a rational business decision and being able to compete effectively in future spectrum auctions. The Report and Order changed this rule in two respects. First, it adopted a two phase approach in which the Commission will now look at a designated entity's eligibility for bidding credits on a case-by-case basis to determine whether the designated entity remains in control of its business. Second, it adopted a new limitation on the ability of a designated entity to lease its spectrum to non-controlling investors over the five year unjust enrichment period.

This will allow small businesses to make decisions about how to use their spectrum without automatically disqualifying them as a designated entity. By updating these rules, the Commission provides small businesses with the flexibility they need to gain experience in operations and investment, and provides small businesses the opportunity to make rational, decisions on how best to utilize their spectrum capacity.

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Mike Pompeo

1. I, along with Chairman Upton, subcommittee Chairman Walden and Murphy, requested all internal and external FCC documents be provided about that decision to shutter 16 of the Commission's 24 field offices. We are now a couple of months after our initial requests. All we have received is a 2-page memo and 25 slides. Will you provide the committee those documents?

Response: The Commission delivered copies of the consultant's final report to the Committee on April 2, 2015. On May 13, 2015, the Commission provided the Committee with the consultant's pre-decisional data package.

2. Did you hold a competitive bidding process to select the consultants who analyzed the Enforcement Bureau's field offices and produced the report that recommended closing most of those offices?

Response: No. The contract was a directed source contract under the SBA 8(a) Small Business Development Program.

3. On March 11, 2014, there was a Public Safety and Homeland Security Bureau release. A public notice to commissioners requested a Commission-level vote on the item and you instead directed the bureau to release that. It is my understanding that this is unprecedented, that that had not happened before, when one or more Commissions had asked for a Commission-level vote and yet hadn't received one. I would appreciate you providing the examples when that has happened previously because we were unable to find them.

Response: I do not believe that this incident was unprecedented, but we do not maintain records of internal discussions from previous Commissions to either verify or refute this statement. With respect to the specific public notice referenced in your question, the Office of General Counsel determined that the decision to move forward with the item on delegated authority was properly handled under the Commission's Delegated Authority procedures.

The Honorable Billy Long

1. Please provide the Subcommittee with the costs for the Chicago field office square foot per employee.

Response: Based on the most recent rental statement from GSA for the Park Ridge field office location (Chicago field office), the charge basis is 7,064 square feet (this includes the covered parking) at $18,521 per month. With five staffers, that would be $44,450 per person per year for 7,064 square feet. As I have noted previously, one of the efficiency issues identified with regard to the smaller field offices was the need for office space out of proportion to the number of staffers.

The Honorable Bill Johnson

1. You have testified as part of your claim that things are improving at the FCC, that the enforcement bureau closed nearly 8,000 cases. Now, that gives me some pause because that seems like a big number. Were they closed because the FCC took enforcement action? Were they closed because the Statute of Limitations ran out and you couldn't take action? What are the numbers for those actions closed by positive FCC actions versus the ones closed by the statute of limitations running out? Were any of them closed because the enforcement bureau just said "never mind"?

2. Can you provide us with a detailed analysis of the nearly 8,000 cases, identifying the type of alleged violation, the type of action taken, if any, and the reason that you closed the case?

Response to 1 and 2:

Below is a chart depicting categories of cases and dispositions for the 10,504 cases closed by the Enforcement Bureau between April 1, 2013, and May 14, 2015.

Category	Sample Subject Areas	Total Cases Closed	Monetary Penalty Issued	Non-monetary Penalty Issued	No Published Action Issued*
Broadcast/Media	Public Inspection File, Indecency, Fencing, Operating at Variance with Authorization, Contest, Payola & News Distortion	7792	76	297	7419
Competition Enforcement	Broadband, Merger Conditions, Toll Free Numbering	11	4	1	6
Consumer Protection	Consumer Rates, CPNI & Privacy, Junk Fax, Do-Not-Call	99	30	21	48
Disability Issues	Wireless Hearing Aid Compatibility, Closed	71	24	17	30

	Captioning, TRS/Section 225				
Emergency Information Accessibility, Network Outage & 911	Network Outage, PSAP Connectivity & 911	9	4	1	4
Equipment Marketing	Marketing & Sale of Illegal Equipment	85	15	44	26
Hearings	ALJ Hearing to Revoke License	1	1	0	0
Interference	Interference to licensed and unlicensed operating spectrum bands	713	15	615	83
Licensee & Regulatee Investigations/Inspections	Amateur, Aviation, Failure to file required forms, Licensee Unauthorized Operation, Monitoring Station Activity, Tower Safety	899	62	639	198
Unauthorized Operation	CB Radio, Land Mobile, Jammer, Part 15 Device, Pirate Broadcast	444	42	341	61
USF	Universal Service Fund Filing and Payment Compliance	380	26	305	49
TOTAL		**10504**	**299**	**2281**	**7924**

*The category of no published action issued includes cases that were closed due to prosecutorial discretion, lack of jurisdiction, lack of violation, insufficient evidence, resolved via the investigative process, enforcement target insolvency, referred to another Bureau or agency, or referred to the Enforcement Bureau too long after the date of the violation to pursue meaningful enforcement action.

3. Chairman Wheeler, in a response to one of our inquiries regarding process and delegated authority you told us that a Bureau or Office may seek guidance from your office on whether an item should be votes on by the full Commission even when it was within the scope of the Bureau or Office's delegated authority.

- **Does the reverse ring true? When a Bureau or Office opines that an action should be done at the Commission level can the Chairman's office direct that it be done at the Bureau level anyway?**

Response: I am not aware of this scenario ever happening, but if such a case were to occur, the Office of General Counsel (OGC) would be consulted prior to determining the appropriate course of action in order to ensure that the Commission's delegated authority is properly applied.

- **Since the decision to use delegated authority is a legal one – shouldn't the Bureaus and Offices go directly to the General Counsel's office rather than your office for guidance?**

Response: Indeed the bureaus and offices routinely consult with the General Counsel's office, which provides guidance on all delegated authority issues, and normally coordination with OGC happens before a matter is brought to the Chairman's Office.

4. Mr. Wheeler, in response to one of our committee's inquiries, you provided us with the information regarding the number of enforcement actions taken by the field and the number of enforcement actions overall. For example, in 2011, 88 percent of the actions were taken by the field. In 2012, 76 percent of the enforcement actions were taken by the field. In 2013, 89 percent of the actions were taken by the field.

So let me get this right. You want to close more than half of the field offices. Just looking at the impact in terms of bureau productivity, how do you intend to continue that level of enforcement activity from the few remaining offices? If I were to read between the lines, aren't you really talking about a wholesale retreat from the type of enforcement actions undertaken by the field like interference resolution and abandonment of the proactive enforcement work the field performs like tower inspections? And are the staff slots that are being opened by releasing the field staff from Federal service being moved to FCC headquarters? And I know you probably don't have off the top of your head the answer to all those questions, but could you update the committee and provide this type of data for fiscal year 2014 as well?

Response: The Fiscal Year 2014 data you request show that 89 percent of the Enforcement Bureau's actions were taken by the field. You will find at "Appendix A" the July 16, 2015, Commission Order reorganizing the Enforcement Bureau Field Offices. Your question relies upon data from the initial recommendation, not the Commission's final decision. In the final order, we are closing 11, not 16, offices, and maintaining a presence in two other locations, as well as providing a regional team approach for general enforcement activities that covers all regions. The purpose of this reorganization was to improve our field office efficiency while realizing cost avoidance and cost savings. These goals are in keeping with the Commission's overall management improvement process.

Not only will this Order provide for more efficient, cost-effective field operations, but cost savings will be applied to modernizing the equipment that supports these operations. Moreover, the Order ensures that all field agents have an electrical engineering degree to facilitate more comprehensive and technical field work. FTE positions will be re-evaluated and deployed to ensure that all Commission offices are properly staffed. However, the Commission's order states that the net savings will not be used to increase the number of full-time non-field-related employees in the headquarters office of the Enforcement Bureau. Finally, we are undertaking a review of public safety and pirate radio issues in the field and will move ahead to facilitate improved support methods and mechanisms in these areas.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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Majority (202) 225-2927
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June 1, 2015

The Honorable Mike O'Rielly
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner O'Rielly:

Thank you for appearing before the Subcommittee on Communications and Technology on April 30, 2015, to testify at the hearing entitled "FCC Reauthorization: Improving Commission Transparency."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Monday, June 15, 2015. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachments

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

Mike O'Rielly
Commissioner

June 30, 2015

Charlotte Savercool
Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Re: Additional Questions for the Record

Dear Ms. Savercool:

Please find enclosed my responses to the questions for the record in connection with my testimony at the April 30, 2015 Hearing entitled "FCC Reauthorization: Improving Commission Transparency."

A copy of this letter and responses are also being sent to you today via email at Charlotte.Savercool@mail.house.gov.

Thank you and please do not hesitate to contact me if you should have any questions.

Sincerely,

Michael O'Rielly
Commissioner

Enclosure
cc w/enc: Charlotte Savercool *(via email)*

Additional Questions for the Record – House Committee on Energy & Commerce

The Honorable Marsha Blackburn

1. On March 30th, the Wireline Bureau issued an order that subsidizes broadband build out in areas where existing providers are already offering high speed service. Did the FCC properly notice what appears to be an arbitrary distinction whether or not the incumbent provider had a customer in the area as opposed to whether the provider offers service to an area? And how does the FCC justify that distinction?

I appreciate the concerns you raise in your questions. This situation also highlights the issues that can arise when substantive decisions are delegated to Bureau staff instead of being decided by the full Commission. A small number of entities have now undertaken the added expense of filing petitions for reconsideration and applications for review of certain decisions by the Bureau in the challenge process. In particular, some entities argue that the Bureau improperly ignored their service offerings in some areas. Alternatively, other entities argue that the Bureau did not conduct due diligence to determine the veracity of claims of service offerings in other areas. I am hopeful that the Commission will soon consider – and modify as necessary – any inaccuracies, to the extent any exist, in its challenge process. Others, including some that raised concerns about whether the standard was properly noticed, chose not to seek review of the Bureau's order and will, therefore, be bound by the Bureau's standard and ensuing decisions.

The Honorable Brett Guthrie

1. Do you believe these bills would create bureaucratic red tape as the Chairman suggests in his testimony?

I strenuously disagree with the Chairman that the proposed FCC process reform legislation would create additional bureaucracy or harm the ability of the Commission to conduct its work. These bills are common sense efforts to improve the work and product of the Commission. They would also lead to greater transparency regarding Commission actions for the American people. Beyond misreading the specific provisions of the bills, the Chairman seems to ignore the positive effects that these bills, if enacted, would have.

The Honorable Mike Pompeo

1. The Chief of the FCC's Enforcement Bureau recently made the following statement: "Generally speaking, I've found that most companies want to do the right thing, and when it's clear that something is impermissible, they generally don't do it. So when you're in enforcement, you're almost always working in a gray area."

- Commissioner O'Rielly, do you think the Enforcement Bureau should be operating "in a gray area," or should it be focused on clear violations of the Commission's rules?

I support vigorous enforcement actions against entities that violate the communications law or Commission rules. However, in order to have an effective enforcement regime, everyone must be notified of what practices are impermissible and subject to enforcement. To the extent that

there are so-called "gray areas," it is the obligation of the Commission to provide clarity to regulatees so they are not subject to fines and penalties without proper notice. Considering that there are plenty of areas in which violations are not gray but have been improperly ignored, such as pirate radio, I would support efforts by the Commission to focus its immediate attention on these matters.

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