

ANSWERS TO QUESTIONS FOR THE RECORD BY

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Before the  
**COMMITTEE ON ENERGY AND COMMERCE**  
**SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY**  
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**UNITED STATES HOUSE OF REPRESENTATIVES**

on the  
*FEDERAL COMMUNICATIONS COMMISSION PROCESS REFORM ACT OF 2013*  
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Answers to Questions from the Honorable Henry Waxman

1) Can you think of situations in which an NOI confers no benefit and unnecessarily leads to delay? For example, if the FCC is looking to update technical rules that would re-designate certain spectrum from voice to broadband services, would the requirement for the FCC to issue an NOI really contribute to the process?

I can think of many situations in which a notice of inquiry (NOI) confers no benefit and unnecessarily leads to delay. Let me begin by emphasizing that the term “notice of inquiry” appears nowhere in the Administrative Procedure Act (APA), and only once in the United States Code. NOIs make sense when an agency does not have sufficient information to propose a regulation. For instance, on broad questions like the circumstances under which licensed uses might be more attractive than unlicensed and vice-versa, the Commission may want to formally seek information through an NOI (rather than rely on its usual information-gathering processes) because it wants to cast its net particularly widely and to encourage commenters to think broadly about telecommunications policy before the Commission puts forward a concrete proposal. Or there may be so much uncertainty about the different ways private companies might want to implement a new technology that the FCC wants to gather information about plans to implement that technology before proposing regulations of its use. But there will be many situations in which an agency has already gathered sufficient information that it can follow the APA’s process and issue a notice of proposed rulemaking (NPRM) without first issuing an NOI. After all, agencies gather lots of information from private companies, interested parties, their own staff, etc., and frequently that information will be more than sufficient for the agency to issue an NPRM. In such circumstances, an NOI would confer little or no benefit and would unnecessarily delay the rulemaking process. The example you give of technical rules that would

re-designate spectrum from voice to broadband services is just one of many. When the Commission is considering, for example, power limits for a particular service in a specified band, its staff can gather the relevant information by performing tests and having discussions with the entities that plan to offer the service. An NOI would add nothing, and would greatly slow down the process.

2) What happens when the FCC has to address routine matters, such as fee proceedings, or refresh the record in an already open proceeding? Would an NOI still be necessary in such instances?

I cannot fathom why NOIs would make sense for such routine matters. Refreshing the record with an NOI in an already open proceeding for a routine matter seems particularly wasteful. If the most recent version of the pending legislation has such a requirement, it would impose costs with no meaningful corresponding benefit.