

**The Honorable Henry Waxman**

1. Section 13(a)(1)(A) of the draft legislation requires the FCC to issue a Notice of Inquiry (NOI) for every new rulemaking.

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

**Answer:** I think there are some situations, perhaps most likely involving some very straightforward proposal to change a technical rule, where an NOI may be unlikely to confer a benefit. But I do not agree that the example given necessarily falls into that category, at least as I understand the question. This is because changing a certain spectrum designation from "voice," which may be offered over both narrowband and broadband wireless platforms, to broadband only may not be without complexities that would benefit from an NOI.

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

**Answer:** Of course, there is often disagreement concerning whether a matter is or is not "routine." Nevertheless, there certainly are some matters that, by most accounts, might be considered routine, or where the FCC is simply refreshing a record in which comments already have been submitted. As I understand it, the discussion draft provides that, upon a showing of good cause, a notice of inquiry is not required if it is impractical, unnecessary, or contrary to the public interest." This provision would appear to provide a way for the FCC to avoid issuing an NOI for routine matters, or if it simply wishes to request parties to refresh a record.

2. You have previously stated in response to questions from the Committee that you have concerns about requiring the FCC to seek comment on a NOI/NPRM/petition for rulemaking on the same or substantially similar subject before issuing a NPRM because it has the potential to unduly delay the adoption of rules. Do you still hold the same criticism about the bill we are considering today?

**Answer:** I do still have some concerns that that an NOI requirement potentially may delay the adoption of some rules, although as I said in my response to the Committee in 2011, I also have a concern that, at present, too many of the FCC's

NPRM's are too unfocused. Too often, the NPRMs consist of far too many questions in an unending series without providing interested parties a meaningful sense of the real alternatives the agency is considering, and why it is doing so. If the Commission were to change the way it presently drafts many NPRMs, so that they were more focused on realistic alternatives the agency is considering, then the need for NOIs would be mitigated. In any event, the provision in the discussion draft appears to allow the Commission to avoid the NOI requirement upon a showing of good cause if an NOI is impractical, unnecessary, or contrary to the public interest. This provides the agency with some leeway if those standards are met. Finally, I wish to reiterate that in many instances, especially regarding non-routine matters, issuing an NOI before an NPRM can provide the agency with valuable information that will enable it to formulate a much better NPRM that will ultimately lead to a sounder rule.