**Opening Statement of the Honorable Greg Walden**
**Subcommittee on Communications and Technology**
**Hearing on "Oversight of the Federal Communications Commission"**
**May 20, 2014**

*(As Prepared for Delivery)*

Six month ago, this subcommittee met for the first time with the current complement of FCC Commissioners and welcomed Mr. Wheeler as the new chairman. Today – and let me welcome Chairman Wheeler back – we meet to review the record of action and selective inaction that the commission has taken under the first six months of his leadership. Unfortunately, given some of the most recent actions out of the commission, I fear that we may be heading into rough waters.

When we last met I offered two pieces of advice to Chairman Wheeler and his colleagues. First, I urged them to heed the words of Congress where it has spoken and reject calls to act in ways contrary to Congressional intent. Second, I urged them to bear in mind that even seemingly small changes in the FCC's rules can have significant impact on the market. I called upon all the members of the commission to discharge their duties with transparency, accountability, and a long view of the technological landscape. In sum, my advice was that they must approach their duties with humility and restraint.

Unfortunately, recent actions have hinted that my advice was ignored. In December we had yet to know that the D.C. Circuit Court of Appeals would once again reject the commission's attempt to regulate the Internet; and could only speculate as to whether the commission under Chairman Wheeler's lead would mount a third attempt. Sadly, we now know the answer. Not only is Chairman Wheeler leading us down this path again, the item the commission adopted last week tees up the long dead idea that the Internet is a common carrier. This reinvigorated willingness to consider regulating the Internet under Title II of the Communications Act – rules that find their roots in 19th century railroad regulation and were designed to regulate the world of a telephone monopoly – harken back to a world in which a twisted copper was the only portal for consumers to the communications network and voice was the only service.

The modern communications landscape bears no resemblance to the world Title II was meant to regulate and application of Title II to the Internet is, at best, a poor fit. Worse still, the practical consequences of reclassification are to give the bureaucrats at the FCC the authority to second-guess business decisions and to regulate every possible aspect of the Internet. We should all pause and consider the prospect of the FCC as a rate-setting authority over Internet access and what that meant for innovation in the telephone network of yesteryear. We should also be aware that this path opens the door for states to regulate the Internet.

Contrary to any intended effect, the reclassification of broadband service under Title II will harm consumers, halt job creation, curtail innovation and stifle investment. In sum, at a time when the commission – at Congress's direction – is taking steps toward even greater growth and innovation across Internet access platforms, the commission is simultaneously contemplating rules that undermine those very efforts and compromise the fundamental approaches of both the Clinton and Bush administration that laid the foundation for the Internet we know today.

As troubling as some of the actions taken under Chairman Wheeler's watch, the selective inaction of the FCC is equally troubling. Although required under the Telecommunications Act, the FCC has failed to complete its quadrennial review of the limitations on ownership of broadcast properties. It has been six years since the commission last fulfilled this statutory mandate. Rather than focus on ensuring that the rules reflect reality, however, Chairman Wheeler announced that the commission would essentially scrap the 2010 quadrennial review, and "begin in earnest" its 2014 quadrennial review. Notwithstanding this stale record, the FCC also moved forward to make major changes to the regulations that govern media ownership anyway. The adopted changes to its "attribution rules" that determine how to count stations toward the local television ownership rule. The FCC also stated that it would begin counting certain shared service arrangements toward the local ownership cap.

In order to comply with local ownership rules, these pronouncements will likely force broadcasters to divest stations and unwind shared service agreements that are beneficial to ensuring local content in smaller markets. These changes do not bring benefits to the communities served by these broadcasters drawing into question how this change could serve the public interest.

Finally, FCC process reform has been an ongoing priority of the subcommittee. It is an issue that my colleagues and I are deeply invested in as demonstrated by the unanimous passage in the House of the bipartisan Federal Communications Commission Process Reform Act on March 11th of this year. Unfortunately, after the events of the past few months, I am sad to say I continue to be troubled by the FCC's seemingly flawed processes.

In March, the FCC chose to restrict license transfers involving certain shared service agreements, which had long been blessed implicitly by the commission. This action was not debated by the commissioners, nor was it subject to a vote of any kind. Rather, it was announced by the Chief of the Media Bureau as a fait accompli.

Recent press reports also allege that the Chairman's Office withheld presentation of revisions to the Open Internet Notice of Proposed Rulemaking from Republicans for as long as 24 hours after providing the material to the Democratic commissioners and to the press during the run up to the May 15th FCC Open Meeting. The concern raised by these reports is only compounded by revelations that a substantially revised draft of another item scheduled for vote at the Open Meeting was not presented to other offices until the closing minutes of the evening before. According to Commissioner Pai's dissent from the commission's Mobile Spectrum Holdings item, his office received the revised item fewer than 12 hours before the Open Meeting and the item contained more than 3,000 revisions.

I find myself channeling commissioner Rosenworcel who said of the Open Internet NPRM that "the process that got us to this rulemaking today is flawed." The committee has opined in the past that withholding of a revised draft item from other members of the commission until the eleventh hour precludes the scrutiny and analysis necessary for reasoned decision-making. It is my hope that these occurrences were anomalies. Perhaps Chairman Wheeler will commit today to providing his fellow commissioners with adequate and equal time to review proposed orders and rules.

The transformative impact of the evolution of technology from analog to digital, from narrowband to broadband has forever altered our lives. That evolution continues and the commission has before it the issues I just mentioned and many more, all significant in their impacts on our lives and the economy. You stated in your written testimony that you are eager to build on the progress of the last six months going forward. I hope, working together, we can move forward in a direction that protects the success this critical sector of the economy has enjoyed and facilitates its continued growth and job creation unencumbered by regulatory overreach.

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