TESTIMONY OF
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U.S. HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
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HEARING ON "FCC PROCESS REFORM"
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Good morning Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee. Thank you for inviting me to appear before you today and to share my perspective on reform at the Federal Communications Commission.

I've been privileged to serve at the Federal Communications Commission for ten years as of this month. In so many ways, we are worlds beyond where we were in May of 2001 in terms of technology, mind-boggling innovation and new services for consumers. For someone who can remember traipsing around the Upper Peninsula of Michigan as a kid and using an old crank phone in the town's general store to call my parents back home, it's been quite a ride. But some things remain the same—namely, the need for policies that will continue to spur innovation, promote competition, and ensure that every American shares in the benefits of advanced telecommunications and world-class media.

Many members of this Subcommittee know that the concept of the public interest has been my guiding lodestar during my tenure at the FCC. It is at the core of my own philosophy of government. But, much more importantly, it is at the heart of the statutes the Commission is charged with implementing. By my rough count, the term "public interest" appears 112 times in the Communications Act. So the Commission has not merely the discretion to consider the public interest in its decisions—it has the statutory obligation to take only actions that are in the public interest. I believe Congress made it abundantly clear that this is the prism through which we must look as we make our decisions.

I know there are many ideas and proposals we will be discussing today, and I am happy to comment on any you may wish, but in my brief time now, I want to mention a few that I find especially important.

First and foremost, I applaud Congresswoman Anna Eshoo, Congressman John Shimkus, and Congressman Mike Doyle for the introduction of the FCC Collaboration Act. Their proposed legislation is a modest, common-sense and much-needed reform to modify the Closed Meeting Rule that prohibits more than two Commissioners from ever talking with one another outside of a public meeting. I have spoken about the need for this reform for many years and in countless appearances before the Congress. I am hopeful this will be the year when legislation is finally enacted.

I have seen first-hand the pernicious and unintended consequences of this prohibition—stifling collaborative discussions among colleagues, delaying timely

decision-making, discouraging collegiality and short-changing consumers and the public interest. Elected representatives, cabinet officials, judges and just about everyone else have the opportunity for face-to-face discussion before deciding public issues. I see no reason why Commissioners of the FCC should not have the same opportunity to reason together—especially when balanced, as this legislation is, with specific safeguards designed to preserve transparency. Reaching agreement on the complex issues pending before us is difficult enough in the best of circumstances, but is infinitely more so when we cannot even talk about them among ourselves. Each of the five Commissioners brings to the FCC special experiences and unique talents that we cannot fully leverage without communicating directly with each other. The FCC Collaboration Act is a prudent, balanced proposal that recognizes the benefits of permitting the Commission to do its business collectively while maintaining full transparency of the process. Enactment of this legislation would, in my mind, constitute as major a reform of Commission procedures as any I can contemplate. It doesn't just protect the public interest—it advances the public interest. It's first on my list.

This Commission has made many important strides to increase transparency and work collaboratively with all stakeholders—but there is always more to be done on this score. When I was serving as Acting Chairman of the FCC, we began the process of reforming the Commission's *ex parte* rules to improve the openness and credibility of our work. Now, parties making oral *ex parte* presentations must file a summary for <u>every</u> *ex parte* presentation (not just those that involve new information or arguments). The summary must state who made the presentation and who participated in the meeting, and describe <u>all</u> data presented and arguments made (not just new material). And these rules have teeth – our Enforcement Bureau is now authorized to levy forfeitures for *ex parte* violations. Strong *ex parte* rules are critical to ensuring that everyone has a fair opportunity to respond to arguments made in oral communications with the Commission. The new rules are just going into effect and I believe that with vigilant enforcement at the outset, they will serve the public interest by bringing more transparency and credibility to our processes.

Although we hear often from the big interests with their armies of lawyers and lobbyists, we hear much less from what I call our "non-traditional stakeholders"—all those consumers and citizens who don't have a lobbyist or lawyer in town to represent their concerns before the FCC, even though they are the overwhelming majority of folks who must live with the consequences of what we do in Washington. I have devoted considerable effort during my years at the Commission to open our doors to the full panoply of American stakeholders, including minorities, rural Americans, the various disabilities communities, members of Native Americans, consumer and advocacy organizations and also educational institutions. Thanks to the leadership of this Committee, and Representative Ed Markey in particular, the Commission has been hard at work since the passage of the Twenty-First Century Communications and Video Accessibility Act to implement this historic new civil rights law. I'm thrilled that we are working to make the tools of the digital age accessible to all Americans, cognizant of the fact that fulfilling this mandate from Congress requires close collaboration not only with industry and standards setting organizations but also the disabilities community. The

Commission has also made great progress to collaborate and engage with Native Nations—who have so often been on the wrong side of the digital divide. Last August, the Commission created the Office of Native Affairs and Policy and we have beefed up, by orders of magnitude, the FCC's resources dedicated to building a better trust relationship with Tribal Governments. Solving these generations-long and deep-rooted problems, however, requires sustained commitment and resources on the part of our agency to get the job done. And as regards educational institutions, rarely do I attend a public event or town hall meeting outside Washington, DC where someone from a nearby college or university doesn't call to my attention ongoing research that could better inform our decision-making at the FCC if only we knew about it. There is much more outreach and collaboration the Commission could be doing in this area as in so many others.

Our deliberations would also surely and greatly benefit from taking the FCC outside Beltway and put it on the road so it could hear directly from average Americans. The Commission holds an Open Meeting each month and I see no reason why, for at least a few months out of the year, we couldn't conduct our open meetings in places like Bend or Benton Harbor or Boston or Austin or Mountain View. In communications, every American is a stakeholder, and each of us is affected in so many important ways by our media policies, spectrum allocations, and mechanisms to support Universal Service—just to name a few big ticket items on the FCC agenda. The idea here is not just that people would see the Commission, but that the Commission would see the people and gain a greater understanding of the impact of our decisions on American consumers. It's just better communications and, after all, Communications is our middle name.

Another area where we need to see more progress and partnering is in the federal-state-local governmental relationship. I believe this kind of cooperation was envisioned and encouraged by the Telecommunications Act of 1996. As we embark upon the formative stages of revamping Universal Service and Intercarrier Compensation, it is vitally important that we are sharing data, sharing ideas and sharing responsibility with our colleagues in other governmental jurisdictions. I commend the Chairman for moving us forward in this regard and also my colleague Commission Clyburn for the excellent work she has done to reinvigorate our partnerships with the states as Chair of the Federal-State Joint Boards. We need always to be thinking about how to build upon the experiences and knowledge that exist in such abundance at all levels of government.

Sound communications policies depend also on private sector-public sector partnerships. Here's one example: we have a long and successful history of infrastructure-building in this country—and more often than not, we met our challenges by industry and government working together. Private enterprise certainly leads the way but it works best when there is a sense and a public vision of where the country is headed. I often reference our country's history building roads and bridges, railroads and interstate highways, nationwide electricity grids and plain old telephone service. We also harnessed this kind of collaboration during the final count-down to the digital television transition, while I was Acting Chairman of the Commission. This involved unprecedented coordination between government and industry, and among government agencies, to

minimize disruptions for consumers and broadcasters. If we can apply this kind of spirit to the challenges ahead of us, I believe the Commission—and the country—can accomplish a whole lot. One final thought on partnering: our advisory committees provide expert forums for working together to develop solutions to sometimes very technical problems. In the fast-changing world we live in, new and novel problems seem constantly to present themselves. I believe the Federal Advisory Committee (FACA) process needs to be streamlined to allow the easier and more expeditious convening of expert groups to tackle these kinds of problems. The process now is slow, cumbersome and not sufficiently considerate of advisory committee members.

Thank you for convening this conversation and I look forward to your comments and suggestions for the betterment of the Good Ship FCC.