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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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January 8, 2008

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GREGG A. ROTHSCHILD, CHIEF COUNSEL

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Martin:

In furtherance of the concerns expressed in the letter to you dated December 3, 2007, we are writing to advise you that the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations have initiated a formal investigation into Federal Communications Commission (FCC) regulatory procedures to determine if they are being conducted in a fair, open, efficient, and transparent manner. This investigation will also address a growing number of allegations received by the Committee relating to management practices that may adversely affect the agency's operation.

In conducting this investigation, we expect to issue a comprehensive document request in the near future. Additionally, at our direction, Committee investigators will interview FCC employees and other witnesses in preparation for an oversight hearing this year. We intend to conduct this investigation so as to cause minimal disruption to the orderly function of the FCC and the important work of its employees. At the outset of this investigation, however, the Committee believes that added steps should be taken to ensure the full cooperation of all FCC employees who may have information critical to our inquiry.

Accordingly, the Committee requests that you immediately notify all FCC employees of their right to communicate with Congress and that it is against the law to deny or interfere with their rights to furnish information to Congress. Specifically, 5 U.S.C. § 7211, provides that:

“The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”

We would also request that you remind all Commission officials that, pursuant to 5 U.S.C. 2302(b)(8), it is a violation of Federal law to retaliate against whistleblowers. That law states:

“Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority... take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,...

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation....”

In addition, pursuant to 18 U.S.C. § 1505, it is against Federal law to interfere with a Congressional inquiry:

“Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress....”

Finally, as an added precaution and solely as a temporary measure, we request that you immediately preserve **all electronic records, including work e-mail and personal e-mail communications relating to official work of the Commission, and calendars and schedules of all employees** (and paper copies and versions of those records) in the possession or under the control of the Commission or its staff or employees, until the transmittal of our formal records request. At that time, we plan to limit the scope of the preservation notice to reflect the more limited scope of the records request. To be clear, no such records shall be destroyed, modified, altered, deleted, removed, relocated, or otherwise negligently or intentionally handled so as to

make them inaccessible to the Committee. Please note that if the practices of your agency involve the routine destruction, deletion, recycling, relocation, alteration, or removal of such materials, such practices should be halted immediately and all records should be preserved.

We ask that you provide unedited and unredacted copies of this letter to all employees and contractors of the FCC. Furthermore, we request that you confirm that these documents have been promptly transmitted to all Commission employees and contractors as we have requested.

If there are any questions regarding this investigation, please have your staff contact Steven Rangel with the Majority Committee staff at (202) 226-2424 or Peter Spencer with the Minority Committee staff at (202) 225-3641.

Sincerely,



John D. Dingell
Chairman



Joe Barton
Ranking Member



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations



John Shimkus
Ranking Member
Subcommittee on Oversight and Investigations