



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

October 21, 2009

OFFICE OF
THE CHAIRMAN

The Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
284 Russell Senate Office Building
Washington, DC 20510

Dear Senator Hutchison:

Thank you for your letter regarding the draft Commission item to develop rules to preserve an open Internet through an open, participatory public process. I believe we share the same goal -- safeguarding the open Internet as an enduring engine for innovation, investment, economic growth, and the free flow of information. To this important end, you have my pledge to continue working with you and your staff in an ongoing, constructive dialogue with respect to this crucial infrastructure.

Many of the specific questions you posed in your letter will be more fully addressed in the Notice of Proposed Rulemaking (NPRM) that the Commission will consider on Thursday. I will make sure that you and your staff receive a copy of that NPRM as soon as it is public after the Commission's meeting. In addition, I will also instruct the Commission staff to fully brief your staff on the details of the NPRM as soon as can be arranged.

In your letter, you state that your concerns are focused upon the necessity of intervention, impact on investment, unintended consequences, and fair process. Let me address each of these concerns.

With respect to the necessity for intervention, I believe that preserving the open Internet and giving all stakeholders greater predictability about the Commission's policy is furthered by taking action at this time. Through the NPRM, the Commission will be seeking comment on an Internet policy that is a continuation of an effort begun many years earlier. Over the last several years, for example, the Commission has considered the question of how to safeguard the free and open Internet in more than 10 different proceedings, building a record of over 100,000 pages of comments, submitted by approximately 40,000 companies, organizations, and members of the public. Moreover, in 2005, a unanimous Commission issued the *Internet Policy Statement*, affirming the agency's "duty to preserve and promote the vibrant and open character of the Internet." In the intervening years, the Commission has enforced these principles on a bipartisan basis and imposed openness requirements several major mergers. Two years ago, the Commission issued a broad-ranging *Notice of Inquiry* that sought comment on many of the issues addressed in today's decision, including the topics of non-discrimination and transparency.

Notwithstanding these actions, we have continued to see problems in the marketplace, though very likely not as many as we would have seen absent Commission action. And, no less important, the openness principles that the Commission adopted in 2005 are under attack precisely because they did not emerge from the kind of public, participatory rule-making the NPRM would launch. I firmly believe that our nation's innovation and investment goals are advanced if the marketplace is clear about Commission policy with respect to the Internet and I believe removing ambiguity – legal or otherwise - will allow businesses small and large to implement business plans with greater confidence.

With respect to the impact on investment, I fully concur with you that the "Commission's Internet Policy Statement and the underlying openness principles have been in place for a number of years and under this framework companies have made billions of dollars of investment in wired and wireless communications networks, spurring innovation and access." The free and open Internet has been an unparalleled platform for economic growth and investment. Many well-known Internet companies began with little more than a bright idea and a strong work ethic. In addition, there are some 600,000 Americans who rely upon the free and open Internet to run small businesses through Ebay, for example. Moreover, Internet service providers have made many billions of dollars of investment in networks and infrastructure, responding in part to the strong demand from consumers for higher speed service to access the lawful content, applications, and services of their choice on the Internet. I fully acknowledge the importance of infrastructure investments and it is imperative that we have ongoing investment. I welcome input from all stakeholders on how best to maximize investment across the broadband ecosystem, including how to promote network investment in rural areas. The NPRM also seeks input on how a category of "specialized" or "managed" services can be encompassed as part of a larger broadband policy in a manner that welcomes innovation from ISPs and experimentation in business models.

With respect to unintended consequences, we are keenly aware of this risk and it is why I have emphasized that open Internet rules should provide flexible, high level guidance rather than heavy-handed prescription. One way I am seeking to avoid unintended consequences is to invite robust public input over a multi-month process on the array of issues involved. In addition, as requested by many stakeholders and advocates of reform of FCC processes, I am asking my fellow Commissioners to join me in putting out draft, proposed rules for all participants to see, comment on, and help the agency refine from the very start of the process.

With respect to fair process, in addition to including draft, proposed rules, we will seek broad input both through traditional sources, such as public comments, but also, as with our efforts to develop a national broadband strategy, through less traditional means, such as through public workshops. The rulemaking process will be methodical, fair, and transparent for all interests

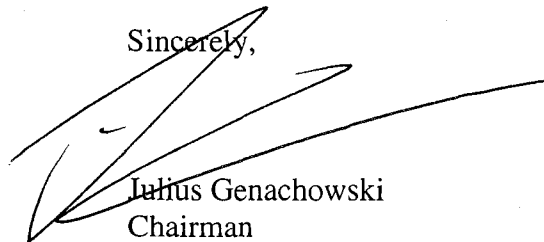
In short, the goal of the NPRM is to preserve the free and open Internet and its extraordinary benefits, including the ability of entrepreneurs, small businesses as well as network operators to innovate without seeking permission from any central authority, public or private. The NPRM is

intended to launch a process by which all viewpoints and concerns, including questions about rural investment and wireless services, will be reviewed and examined.

Let me also add that I believe that our policy must encompass the ability of broadband Internet access providers to reasonably manage their networks. Moreover, although I believe that the principles should apply to all modes of accessing the Internet, the NPRM will seek input on how, when, and to what extent the principles should apply to different access platforms – such as mobile wireless services. There are meaningful differences between wireline and current wireless networks, and our policy should reflect such distinctions. Finally, our overall policy must also welcome ongoing innovation and I believe that specialized or managed services can bring supplemental innovation and applications to consumers without endangering the free and open Internet we seek to preserve for all users.

The goal of the proposals I have outlined is to preserve the free and open Internet, to provide greater predictability for the marketplace, and to foster continued innovation and investment. Any final rules will be the result of a fair and open process. Again, I look forward to a constructive dialogue with you on these issues. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julius Genachowski', written over a horizontal line.

Julius Genachowski
Chairman