

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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April 21, 2010

0664

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Genachowski:

Thank you for appearing before the Subcommittee on Communications, Technology, and the Internet on March 25, 2010, at the hearing entitled "Oversight of the Federal Communications Commission: The National Broadband Plan."

Pursuant to the Committee's Rules, attached are written questions for the record directed to you from certain Members of the Committee. In preparing your answers, please address your response to the Member who submitted the questions.

Please provide your responses by May 5, 2010, to Earley Green, Chief Clerk, via e-mail to Earley.Green@mail.house.gov. Please contact Earley Green or Jennifer Berenholz at (202) 225-2927 if you have any questions.

Sincerely,



Henry A. Waxman
Chairman

Attachment

JOHN D. DINGELL
15TH DISTRICT, MICHIGAN
CHAIRMAN EMERITUS
COMMITTEE ON
ENERGY AND COMMERCE
CO-CHAIR
HOUSE GREAT LAKES
TASK FORCE
MEMBER
MIGRATORY BIRD
CONSERVATION COMMISSION

Congress of the United States
House of Representatives
Washington, DC 20515-2215

April 6, 2010

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The Honorable Julius Genachowski
Chairman
U.S. Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20544

Dear Chairman Genachowski:

Thank you for appearing at the Energy and Commerce Subcommittee on Communications, Technology, and the Internet's March 25, 2010, hearing on the Federal Communications Commission's recently released National Broadband Plan. I wish to commend the Commission for completing a roadmap to ensure broadband reaches every corner of the United States. As I stated at the Subcommittee's hearing, I believe the core elements of this effort should be the promotion of broadband adoption and establishing a support mechanism for broadband's expansion into high-cost areas of the United States.

All the same, I have great concerns about several of the plan's recommendations about spectrum reallocation and competition-related issues. I consider these matters ancillary to the Congress's intent to expand national broadband access. With regard to the former, a further loss of spectrum may have an adverse effect on the public by limiting consumer choice and weakening the long-cherished principles of localism and diversity in broadcasting. Concerning the latter, I remain skeptical that the Commission has the statutory authority with which to unbundle broadband networks and therefore urge it not to pursue such a course of action for fear of its deleterious effect on further private investment in broadband infrastructure.

So that I may better understand your position on the matters referenced above, as well as others, I respectfully request you provide answers to the following questions. As ordered by Subcommittee Chairman Boucher, this letter, your responses, and the responses of your fellow commissioners will be included in the record for the Energy and Commerce Subcommittee on Communications, Technology, and the Internet's March 25, 2010, hearing on the National Broadband Plan. Please provide your responses to these questions **no later than the close of business on Friday, April 16, 2010.**

1. On page 92, the National Broadband Plan states, "If the FCC does not receive authorization to conduct incentive auctions, or if the incentive auctions do not yield a significant amount of spectrum, the FCC should pursue other mechanisms." Will these "other mechanisms" be completely voluntary, as the

- plan makes patently clear will be the case for spectrum incentive auctions? Please explain your response.
2. Does the Commission possess the authority, whether under the Communications Act of 1934, the Telecommunications Act of 1996, or otherwise, with which to require broadband network owners to unbundle access to their networks? Please explain your response, including relevant citations of statute if you believe the Commission does indeed possess the authority required to unbundle access to broadband networks.
 3. Do you believe unbundling access to broadband networks will have a chilling effect on further private investments in broadband infrastructure? Please explain your response.
 4. Does the Commission eventually intend to require unbundled access to broadband networks? Please explain your response.
 5. Chapter Five of the National Broadband Plan mentions Wireless Communications Services (WCS) band as a source of new spectrum. On February 16, 2010, I sent a letter to the Commission highlighting my concern that opening this spectrum for mobile broadband services may result in interference with satellite radio signals, which reflects a 1997 declaration by Commission engineers that this would likely be the case. Please indicate unequivocally (“yes” or “no”) whether there will be interference with satellite radio signals if WCS spectrum is opened for use by mobile broadband devices. Further, please describe what specific actions the Commission will take to ensure there is no interference, including the safeguards the Commission will require to stop any interference that may arise.
 6. Will the Commission provide advance notice of the WCS rules, publish them, and allow for public comment prior to their implementation?
 7. As you may be aware, I am a long-time supporter of public broadcasting, or what the National Broadband Plan refers to as “public media.” As such, I appreciate the plan’s acknowledgement that public media play a vital and unique role in our democracy. On page 92, however, the plan calls for “a trust fund for digital public media that is endowed by the revenues from a voluntary auction of spectrum licensed to public television,” which I believe is something that cannot be done without an act of Congress. I would imagine our country’s public television stations would be cautious about this approach. If no public television station volunteers for this proposed auction, will the Commission reallocate spectrum anyway? Please explain your response.
 8. The National Broadband Plan also notes that public media are at a crossroads with respect to content delivery. Though there is a plethora of digitally distributed content, our public media system is structured predominantly around broadcast-based communications. To implement the National Broadband Plan, will the

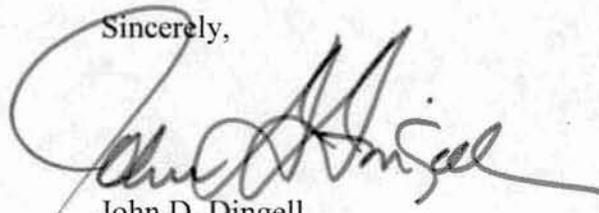
Commission propose amendments to the Public Broadcasting Act? If so, please provide those amendments and detailed explanations of them, including why they are necessary.

9. What is the exact number of recommendations the National Broadband Plan makes to the Congress? Please provide a complete list of those recommendations. In addition, please provide a complete list of the items in the plan that require congressional action or additional authority from the Congress, including an explanation of such action and/or additional authority.

Thank you for your kind attention to my request. I believe your responses will be invaluable to shaping congressional and public discourse on the National Broadband Plan. Should you have any questions about this or other matters, please feel free to contact me directly or have a member of your staff contact Andrew Woelfling in my office at 202-225-4071.

With every good wish,

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell". The signature is fluid and cursive, with a large initial "J" and "D".

John D. Dingell
Member of Congress

cc: The Honorable Henry A. Waxman, Chairman
Committee on Energy and Commerce

The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Rick Boucher, Chairman
Subcommittee on Communications, Technology, and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Communications, Technology, and the Internet

The Honorable Anna G. Eshoo

1. AWS-3 Spectrum Deployment

The Commission and its staff have demonstrated a sense of urgency in drafting this Report. I'm convinced, based on the testimony presented here, that the Commission recognizes the need for speed. But I continue to have some concerns, especially when it comes to spurring competition with new and innovative uses of the spectrum. Too many entrenched interests seem to be able to stop new ideas from taking root through delaying tactics that keep spectrum concentrated in the hands of larger carriers.

The Commission has to work together in an expeditious fashion to deploy already available spectrum. If we're going to see that 100 megabits reach 100 million homes the FCC has to begin to complete rulemakings faster so that we see immediate action. I am disappointed that the Advanced Wireless Spectrum (3) was not recommended for immediate deployment – that's a proceeding that was teed up years ago. Businesses can't be expected to participate in a hackneyed process that leaves them wondering and losing money for years.

Also, I have heard that the Department of Defense's (DOD) 1755-1780 MHz spectrum band that the National Broadband Plan is considering pairing with AWS-3 is currently jam packed with vital systems including drones for air strikes in Afghanistan and Pakistan and border security here at home, and that the systems in that band cost over \$100 billion and cannot be relocated until 2030. Could you comment on this matter?

2. Since there is no evidence or data in the National Broadband Plan supporting this possible pairing, did anyone at the Commission contact DOD officials to get the real picture on reallocating DOD's spectrum during the preparation of the National Broadband Plan?

If so, please make available to me and my colleagues the data from the DoD or the Administration suggesting the possibility of reallocating federal spectrum to pair with the AWS-3 band.

3. I want to know what you will do individually to move us forward. If you don't find paired spectrum by the October deadline outlined in the report, will you actually auction the spectrum and put it in use as soon as possible?
4. With this in mind, I did not see any immediate, specific recommended actions in the Plan that would have the FCC create new broadband competition through the use of spectrum. What specific actions will you be taking in the short term, say in the next 3 months, that will provide spectrum so we can help create new entrants to the broadband market?

5. Next Generation 911

I was pleased to see a specific reference to funding for Next Generation 911. As you know, I joined with my colleague, John Shimkus, the Co-Chair of the E911 Caucus, to offer bipartisan, bicameral legislation to renew grants for 9-1-1 call center technology, and to move that technology into the next developmental phase. Have you had the opportunity to review the legislation and could you give me your opinion about the need for H.R. 4829?

6. Special Access

I was glad to see that the Plan includes several references to making sure that special access rates are just and reasonable. As we all know, these circuits provide critical connections for wireless services – including backhaul for wireless providers to small businesses using ATM's, to the largest retail chains placing orders with their vendors. I have LONG advocated that the Commission look into the pricing and competition of special access services and I'm glad to see that it is a priority. Are you confident that you have the legal authority to move ahead?

7. Affordability

The National Broadband Plan doesn't provide specifics on how to achieve bringing more broadband connectivity to low income and rural homes in this country, other than through use of the Universal Service Fund. Will the FCC work more closely with HUD to expand this needed technology?

8. I'm concerned that low income homes will get hooked up, but the residents will be unable to maintain monthly payments. Once low income and rural households do acquire broadband technology, what can be done to assure that the monthly service charge is kept to a minimum so that the service may be maintained?

9. Competition Questions

The National Broadband Plan observes that there is not a coherent and effective framework governing the Commission's wholesale competition regulations, including wireless roaming policies. Indeed, the FCC's current wireless roaming rule expressly permits the nation's largest wireless carriers to discriminate or exclude large geographic areas altogether in providing wholesale roaming services to their competitors. As the Plan notes, such conduct undermines longstanding competition policy objectives by limiting the ability of smaller carriers to gain access to the necessary inputs to compete. How do you intend to address this important wholesale competition issue in the context of wireless roaming services?

10. The National Broadband Plan acknowledges the importance of data roaming to entry and competition for mobile broadband services. But the FCC's present voice roaming rule contains an "in-market" exclusion that expressly permits carriers to deny roaming service to their competitors' customers in large portions of their licensed territories. This exclusion, if replicated in the data roaming context, would appear to severely undercut the Commission's stated goal in the Plan of achieving "wide,

seamless and competitive coverage." How does the Commission intend to address this problem?

11. Public Television – Broadcast Spectrum Issue

As you know, public television stations are very different from commercial television stations with respect to their funding, their programming, their mission and the efficient manner in which they use spectrum to serve the public interest. Public television stations also have been confronting extraordinary fiscal challenges during the past 18 months. As the Commission looks ahead to rulemakings announced in the National Broadband Plan to reclaim 120 MHz of spectrum from broadcasters, can you give us assurances that public television stations will be protected from involuntary reallocations of spectrum?

12. Would you elaborate on the sequencing of the rulemakings for reclaiming the broadcast spectrum and the creation of incentive auctions in the National Broadband Plan? As you know, only the Congress can authorize the creation of incentive spectrum auctions in which the contributors of spectrum could receive some of the proceeds. I am particularly interested in the proposal for the creation of a digital media trust fund to be created from the proceeds of incentive auctions of spectrum contributed by public television stations. If Congress does not authorize such incentive auctions, will these other rulemakings go forward in any event?

The Honorable Cliff Stearns

1. Does the broadband plan lay out any cost-benefit analyses? How many dollars should we spend for each additional broadband subscriber we create and each additional megabit-per-second we provide? \$1,000? \$10,000? \$100,000? Will you commit to providing these sort of cost-benefit analysis before adopting any item in the plan?
2. The broadband plan proposes expanding the E-rate program, but the GAO found in 1998, 1999, 2005, and 2009 that the FCC has not developed adequate performance goals and measures for the E-rate program, despite GAO's repeated requests. If we cannot tell how effective and efficient past E-rate spending has been, how can we be assured expansion will be done properly or is even a good idea in the first place? Will you commit to submitting E-rate performance measures and goals to GAO and to us for approval before anyone considers expanding the program?
3. The broadband plan recommends providing more spectrum for unlicensed use. A 2008 paper by the FCC's Office of Strategic Planning and Policy Analysis indicates that the most efficient way to allocate spectrum for unlicensed use would be to do so by auction. If the sum of the bids of those seeking unlicensed use exceeds the bid of the highest bidder seeking licensed use, the spectrum would go to the unlicensed use. This would not only ensure the spectrum is allocated efficiently, it could raise substantial revenue. Will you commit to seeking comment on the use of auctions in any proceeding regarding potential distribution of additional unlicensed spectrum?
4. Some questions were raised at the hearing that spectrum that might otherwise be paired with the AWS-III spectrum for commercial mobile broadband use may be needed for use with military drones. But didn't a Department of Defense report released to the public in 2009 indicate that most current and future high-capacity spectrum used domestically and abroad for drone flights over about 150 km is on frequencies far from the spectrum that could be paired with the AWS-III spectrum? Won't they mainly use the X-Band from 8 to 12 MHz, the Ku-Band from 11.5 to 14.5 GHz, and the Ka Band from 26.5 to 40 GHz for mission critical operations? Aren't there also line-of-sight and other issues for most non-satellite spectrum under 3 GHz that limits its use for most drone missions? And if, other than for testing, the drones are mainly used overseas, will there really be much of an interference issue with commercial use here?

The Honorable Fred Upton

1. I appreciated your comment at the hearing that the FCC would make sure that any changes in the Wireless Communications System rules do not result in interference to satellite radio consumers. My understanding, however, is that the FCC engineering staff is proposing rules that will allow for at least some interference with satellite radio. What specific actions will the Commission take to ensure that level of interference is not unacceptable to consumers?

The Honorable John Shadegg

1. The National Broadband plan mentions special access circuits and analyzing competition in the middle mile – do you anticipate going forward with a request for data soon so we can address this issue?

The Honorable Steve Buyer

1. Broadband providers have invested hundreds of billions of dollars in recent years to build and improve their infrastructure and creating jobs at a time when the job market has been in trouble. The broadband industry is projecting to invest additional billion of dollars in the coming year – again providing an engine of economic growth. As one of the few industries of strength and investment, past decisions at the FCC to not saddle the Internet with heavy regulation clearly demonstrate that a less regulatory environment is working. Why are you proposing that the FCC now pivot away from these policies and impose 19th-century common carrier monopoly regulation on a 21st century competitive industry, disrupting the virtuous cycle that currently exists? If it's not broken, why fix it?
2. Recommendation 4.7 implies that the FCC should mandate the unbundling of fiber. Why? It is my understanding from previous testimony by the FCC that this issue was settled. Such a recommendation makes no sense because fiber deployment has gone up dramatically in recent years since the FCC confirmed that it was not subject to unbundling in the Triennial Review Order of 2003, which deregulated some of those components. Can you explain the legal basis on which the FCC could undertake to reverse itself on this matter? What findings/analysis would be required? What decisions would need to be reversed?
3. Do you think that there would be the same level of fiber deployment today if the FCC had not decided in 2003 to end the mandatory unbundling of such facilities?
4. If the FCC is going to revisit its decision not to require unbundling of packet and fiber facilities, a decision that I think would severely damage broadband investment, do you believe that packet/fiber unbundling should apply only to ILECs, or to cable operators as well? I'm not arguing for more regulation – but I am trying to get a sense for whether you will commit not to disadvantage one technology, business model, or competitor in future rulemakings.
5. For years I have been an advocate of encouraging and providing incentives for companies to take risks by developing and investing their own infrastructure. The NBP appears to take a step back on many fronts, including special access. Evidence shows that plenty of competition exists and prices have decreased – showing the market is working. Rolling back pricing flexibility – thereby lowering rates through further regulation – would only encourage less competition and less innovation. Why does this FCC leadership insist on providing less competition to the marketplace?
6. The telecommunications industry has been a significant leader in America's economic engine in both times of economic strength and times of challenge. Why does the NBP open the door to reclassifying broadband back to the old monopoly era phone service which will stifle investment and growth of the industry and innovation?
7. Many people, including Commissioner Clyburn, have raised concerns that the FCC's plan to reallocate broadcast spectrum to wireless broadband could have a disproportionately negative impact on minority and female-owned stations. Drafters of the broadband plan admit that

“the reallocation mechanisms could impact the number and diversity of ‘voices’ in a community or market” and recommend simply that the FCC “study” this potential impact. Do you think that the purported benefits of more expansive wireless broadband outweigh the benefits of a diversified local media?

8. The National Broadband Plan recommends that Congress grant the FCC and NTIA authority to impose spectrum fees on spectrum not licensed for flexible use. The Plan quotes the Government Accountability Office, which says that “these fees mimic the functions of the market.” In your view, do spectrum fees “mimic the market,” or is this a manipulation of the market by the government and a way to force certain licensees off the band? Please explain your views.
9. How do the FCC’s reallocation mechanisms affect low-power TV stations and translators? In many western TV markets, as many as 30 percent of over-the-air viewers rely on TV translators or boosters for their service. Would a broadcast “repack” negatively impact these viewers? Why or why not?
10. Verizon CEO Ivan Seidenberg recently said that he “does not buy into the idea” that broadcast spectrum should be reallocated for wireless broadband and that “technology will tend to solve” any possible spectrum shortage. This seems to contradict the National Broadband Plan findings that a spectrum shortage is inevitable. Is it possible, in your view, that advances in wireless technology can keep pace with demand and that more spectrum may not be the primary answer?
11. It is important to ensure our first responders have an uninterrupted safety network. First responders currently work with broadcasters who utilize their spectrum to deliver emergency messages and information to their local communities. The NBP outlines the taking of spectrum from some entities, like broadcasters, when there has not yet been a complete inventory of spectrum allocation, as posed in H.R. 3125, the Radio Spectrum Inventory Act. Why is the NBP getting ahead of the game by allocating spectrum when we don't have a clear understanding of what exactly there is to allocate?

The Honorable Mike Rogers

1. A group of cable and satellite companies recently weighed in with Congress and the FCC complaining about the so-called retransmission consent process. Congress established retransmission consent as a free market negotiation between distributors and broadcasters.

These distributors are asking for the government to meddle in these negotiations with broadcasters.

It is concerning for me to hear appeals for the Federal government to intervene and affect potential progress at the negotiation table. Government intervention can make it much more difficult for private parties to determine the fair-market value of the property in question.

- a. Do you share my concern about the unintended consequences of the government even considering intervention in the marketplace?
 - b. Do you believe you that the Communications Act grants the Commission the authority to intervene in these private negotiations?
2. As we all know, broadband is central to our economic recovery and we are grateful to have the benefit of a plan to guide us. While the Plan recognizes the strides we have made in deploying broadband to Americans, it also discusses areas that the Commission believes is impeding that deployment. In particular, the broadband plan discusses the special access market.
 - a. Would you please discuss your vision on the way forward with the special access market?
 - b. When discussing the wire line competition recommendations in Chapter 4 of the National Broadband plan, did you have in mind any specific type of customer?
 - c. Does Chapter 4 of the National Broadband plan impose any restrictions or limitations as to the class of customer for which these services would be made available?

The Honorable Marsha Blackburn

1. I note in your testimony that this is a plan that is in beta form and that it should change in light of new developments. As you may know, the core copyright industries contributed close to one-quarter of the real growth achieved by the U.S. economy as a whole in 2006-07. How do we ensure both robust broadband deployment and the protection of the intellectual property of those copyright industries which contribute greatly to our growth of our economy?
2. The National Broadband Plan notes that, “piracy is still present in the broadband ecosystem.” But the Plan also recommends that Congress take legislative action to “encourage copyright holders to grant educational digital rights of use, without prejudicing their other rights.” As you know, this is a very complicated area of intellectual property law that clearly falls outside the jurisdiction of the FCC. Are there other recommendations in the FCC Plan could impact U.S. Copyright Policy? Also, can you give me your assurances that the FCC will not make any recommendations for modification to U.S. copyright law without the involvement of the two expert agencies that have primary jurisdiction over copyright issues, namely the PTO and Copyright Office?
3. Did the FCC analyze the impact of broadband expansion on copyright piracy in other countries, like South Korea, and other than noting that “piracy is still present in the broadband ecosystem,” does the Plan have any recommendations for making sure that broadband expansion does not increase the amount of piracy of US copyrighted works?