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15TH DISTRICT, MICHIGAN

CHAIRMAN EMERITUS
COMMITTEE ON
ENERGY AND COMMERCE

CO-CHAIR
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MEMBER
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CONSERVATION COMMISSION

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

November 19, 2010

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The Honorable Julius Genachowski
Chairman
U.S. Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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Dear Chairman Genachowski:

I understand that the Commission may vote to adopt data roaming rules during its forthcoming December meeting. While we share the common goal of enhancing consumer protection, and I applaud your leadership of the Commission in this area, I remain concerned that you continue to over-interpret the statutory authority granted to the Commission by the Congress. Further consultation with the Congress on this and other matters is desperately needed to avoid a glorious mess of litigation.

In brief, I am concerned that the Commission lacks sufficient statutory authority by which to enforce the data roaming rules proposed in its April 21, 2010, Order on Reconsideration and Second Further Notice of Proposed Rulemaking. As you are well aware, private mobile services provide data services to consumers and are, under section 332(c)(2) of the Communications Act of 1934, exempt from common carrier regulation.

The aforementioned Commission proposal seeks in essence to apply common carrier restrictions to mobile data roaming, thus treating what has heretofore been considered an information service as a telecommunications offering. As our correspondence of earlier this year indicates, I had – and continue to have – grave doubts about the Commission's statutory authority to classify broadband Internet access services as a telecommunications service, therefore subject to common carrier regulation under Title II of the Act. I fear the legal underpinnings of the Commission's proposal concerning mobile data roaming bear unfortunate analogy to those of its broadband access services proceeding.

Similarly, just as Title II regulation of broadband access services may restrict the expansion of communications infrastructure in this country, so, too, may common carrier regulation of mobile data roaming. I suspect the imposition of price controls on data roaming, consistent with sections 201 and 203 of the Act, may serve as a disincentive to mobile providers to expand or improve upon their existing infrastructure in favor of using arbitrarily priced roaming agreements with other carriers to expand their areas of service. This, as you may wisely agree, runs counter to the explicit goals of the

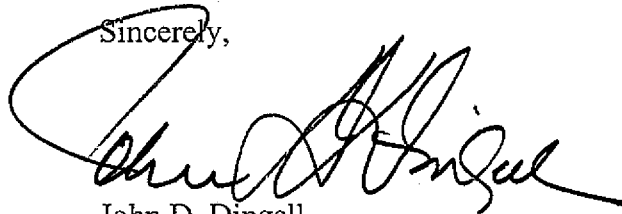
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Telecommunications Act of 1996 and the National Broadband Plan of promoting wireless competition and expanding U.S. telecommunications infrastructure, respectively.

While I share the Commission's laudable goal of enhancing consumer protection, I believe the Commission must first consult with the Congress concerning its statutory ability to achieve this worthy end. Consequently, I hope the Commission, in contemplating further regulation of data roaming, will bear in mind the views I have expressed above. It is in the best interest of consumers that actions taken by the Commission be within the limits of its statutory authority in order to avoid litigation and uncertainty in industry. Should you have questions concerning 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", written over a large, stylized circular flourish.

John D. Dingell
Member of Congress

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

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

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

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

The Honorable Michael Copps, Commissioner
U.S. Federal Communications Commission

The Honorable Robert McDowell, Commissioner
U.S. Federal Communications Commission

The Honorable Mignon Clyburn, Commissioner
U.S. Federal Communications Commission

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The Honorable Meredith Atwell Baker, Commissioner
U.S. Federal Communications Commission