

Congress of the United States
House of Representatives
Washington, D.C. 20515

February 4, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20515

Dear Chairman Genachowski:

We are concerned that you may be moving forward with a proposal to impose data roaming obligations on mobile broadband service providers without having adequately answered our previous inquiry into your authority to do so. Please take no additional action on this matter until you have provided us with a more full written analysis and we have had an opportunity to evaluate the efficacy of your response.

We asked in our November 23, 2010, letter that you "[p]lease identify what *provisions* in the Communications Act give the Commission the statutory authority to regulate data roaming and provide a basis on which the Commission can move forward with an Order" (emphasis added). In your December 13 response to us, however, you failed to adequately explain the authority upon which the Commission could impose data roaming obligations. Instead, you did little more than broadly assert authority under various *titles* of the Act and summarize arguments made by parties in the pending proceeding.

As we noted, section 153(44) of the Communications Act provides that "[a] telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services." Mandatory roaming, as the Commission has acknowledged, is a common carrier obligation. Conversely, the Commission determined in 2007 that mobile broadband services are information services, not telecommunications services. Please explain, with specificity, how a common carrier obligation can be imposed upon the provision of a non-telecommunications service.

In addition, Section 332(c)(2) of the Communications Act provides that "[a] person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier *for any purpose under this Act*" (emphasis added). Please explain how the Commission has the authority to circumvent this provision with respect to mobile broadband services, which is private mobile service.

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We ask for a prompt response to this letter. Please outline your views, not the views of others, and include as part of your analysis references to specific provisions of the Communications Act. If you have any questions, don't hesitate to contact the Republican staff of the Committee on Energy and Commerce at (202) 225-2927.

Sincerely,

Frank Lautner

Chris Berman

Mary Bow Mark

Marsha Blackburn

Steve Scalise

Phil Kingrey

Ed Whitfield

Lee Terry

Ralph M. Hall

John Shadegg ^{SC-19}

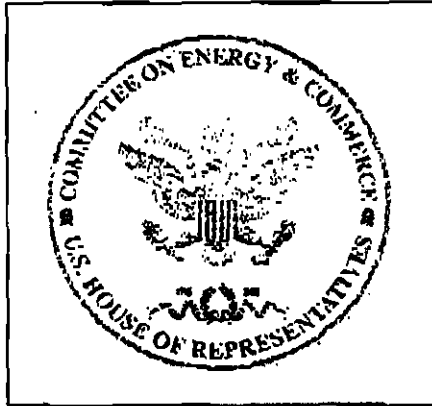
Tim Murphy

Joe Barton

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cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Anna Eshoo, Jr., Ranking Member
Subcommittee on Communications



***Committee on Energy and Commerce
Republican Office***

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To: Ms. Terri Glaze, Director of Legislative Affairs, Federal Communications Commission for
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From: Rep. Fred Upton, Chairman, Committee on Energy and Commerce

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Date: February 4, 2011

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Pages: 4 (Including cover)

Notes: