15 June 2007

The Honorable Kevin Martin, Chairman

Federal Communications Commission

445 12th Street, SW

Washington, DC 20554

Dear Mr. Chairman:

This letter is in response to the FCC's "Notice of Inquiry" (i7-3 i j**)** concerning whether the Commission's 2005 Policy Statement provides adequate protections for Internet users. Specifically, the NOI asks whether the FCC "should incorporate a new principle of nondiscrimination and, if so, how would 'nondiscrimination' be defined, and how would such a principle read."

The Institute for Policy Innovation (IPI) is a free market oriented, public policy, IRS recognized 501(c)(3) non-profit organization with headquarters in Lewisville, Texas. IPI has been involved with in depth evaluation of the communications marketplace for several years. Specifically we have worked on policy development with regards to opening and injecting freedom into the markets for video, voice and Internet access.

We have found that where government at all levels – federal, state, local or other political subdivision – has engaged in reducing, streamlining or eliminating regulation that a discernable benefit to the marketplace has occurred. More specifically these actions led to an increase in capital formation, resulting in the creation of jobs; a noticeable increase in product and service development and

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deployment; a corresponding increase in consumer choice; and a reduction in overall consumer price.

These facts lead IPI to offer the following significant points in urging the Federal Communications Commission to resist the temptation to regulate the Internet through the placement of unnecessary, restrictive, yet mandatory regulations on the distribution and transmission over the Internet.

For a dynamic economy, it is vital that business be permitted to experiment with new business models. Business model experimentation is vital. This includes network operators. It is vital to our dynamic economy that the strong hand of government not prevent network operators from experimenting with new and novel business models. If their new business models succeed, the economy as a whole will benefit. But even if their new business models fail, the economy as a whole will still benefit through observation and learning from the experiment. Net neutrality regulations would definitely have the effect of preventing network operators from attempting and pursuing experimentation new business models, including never before tried models of content provision.

The wireless market in particular has been a hotbed of experimentation with new business models, including pricing plans and content marketing. Without a doubt this business model innovation in the wireless sector has occurred because of a lack of suffocating regulation, especially a lack of net neutrality regulation.

Deregulation, not regulation, promotes expansion of products and services. By requiring so-called “net neutrality,” provider costs will increase -- similar to “build-out” requirements that have been recommended in the current effort by many states to streamline the franchise requirements for the provision of video services. Almost all of the states have rejected the idea as they have moved to statewide franchising as a replacement for individual municipal franchising. As a result -- literally billions of dollars of new investment has occurred.

It is precisely the recent deregulation of communications, specifically the commitment to not subject new networks to unbundling and the recent deregulation of local video franchise regulations that has led to a recent dramatic increase in the rate of broadband rollout throughout the country. We have no indication that regulation of broadband networks will lead to increased availability or utilization, and in fact have much historical evidence to suggest that regulation will inhibit the rollout of new broadband networks.

There are already mechanisms in place to deal with broadband providers who might abuse customers or inappropriately use their networks to block access to content or to discriminate. It seems clear that if a broadband provider were to use its leverage of the network to exclude competitive content providers, that broadband provider would be subject to FCC actions, not to mention antitrust actions. It is unnecessary for the FCC to enact new regulations

So-called "network neutrality regulations" would have the unintended (or perhaps intended) consequences of preventing needed intelligence into next-generation networks. There are many technical reasons why network operators need to prioritize packets and partition bandwidth. Typical Internet traffic doesn't need the same packet priority as do video or voice packets. Emergency services and first responders should also have their traffic receive higher priority than an Internet-connected toaster. Net neutrality regulations could have the effect of requiring that packets from the Internet-connected toaster receive the same priority as voice packets from first responders.

Net neutrality regulations are an example of "anticipatory regulation"; or regulations designed in anticipation of a problem that has not yet been demonstrated. The problem with such anticipatory regulations is that they have unintended consequences in the marketplace regardless of whether or not the anticipated problem ever manifests itself. Regulations should not be propounded until it has been determined that a problem exists, or that there is a demonstrable likelihood that a problem could exist.

This is the successful approach that has been taken with regard to Internet taxation. When Internet taxation was first proposed, it was decided to keep the taxation hand of government away from the Internet until such time as it could be determined that economic harm or disruption was being caused by this policy. There was much hue and cry about all the harm that would come to the economy if we failed to tax Internet transactions. But now, 8 years later, there is no evidence of harm caused by the lack of taxation of Internet transactions. The anticipated problem has as of yet not materialized.

Every legislative body that has considered net neutrality regulation thus far has declined to act. This includes the states of Michigan, Maryland, and Maine, as well as the U.S. Congress itself. In each of these cases, legislatures have heard the arguments for and against net neutrality regulations, and have decided that no action was necessary.

Many of those calling for net neutrality regulations are seeking to impose regulations on the broadband industry that they would reject for their own industries. It is well known that both Ebay and Yahoo have engaged in exclusive contracts, both for the featuring of content on their websites, and for the offering of their content on other websites. Yet they hypocritically argue that network providers should not be able to enter into contracts to feature particular content.

This is an example of advocating regulation for competitive, rather than for policy, reasons.

The FCC's experiment with forced unbundling of voice networks was a demonstrated failure, resulting in a dramatic drop in telecom investment and a virtual recession in the telecom sector. It would be tragic for the FCC to not recognize the lessons of that failed experiment and to begin placing new regulatory mandates and burdens on the providers of new broadband networks.

Some suggest that the falsely named "net neutrality" will be the remedy for the so-called digital divide. They promote the idea that heaping new regulations on Internet providers will bring more people into the network. But experience suggests that a curative for lack of access is not in a regulatory straightjacket but rather in incentives. Commonly, states and political subdivisions offer tax breaks in the form of exemptions, deductions and other abatements to create investment opportunities when underserved areas or consumer classes need the prime pumped.

In rural areas, alternative technologies have sprung up to take the place of deficient service provision. In the rural west where cable television was not financially viable, satellite provided an alternative at a cost that was competitive with cable service and without the infrastructure costs associated with high cost provision of service. In addition, some states have offered deep discounts to certain industries as a way of spurring economic development or redevelopment.

The other digital divide suggestion is that protected classes such as minorities or that low-income consumers are not gaining access to technology. Yet, the data seems to indicate that the reverse is true in video and Internet service. Take for example a recent Pew Research study that found between 2005 and 2006 the high-speed adoption rate among African-Americans increased 120 percent and overall home broadband adoption increased 40 percent.

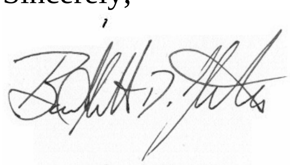
In some lower socio-economic areas video and data connectivity is the preferred alternative to entertainment in information that is more expensive to engage. For a low-income family of four a video, or Internet subscription, is clearly more cost effective than purchasing tickets to a professional sporting event for example. All socio-economic classes are making the choice to connect without any government meddling. In fact, so called net neutrality Internet regulations may likely reverse the competitive forces that expand deployment and adjust pricing to meet consumer need.

Net neutrality controlled and mandated through a governmental regulatory structure would plant the unwanted seeds of censorship. Once a regulatory structure is created the opportunity to regulating the content as well as the distribution and transmission exists. Regulatory control of broadcast television over the years has in fact created a very real level of censorship. Overt government regulation of our most predominant means of communications – the Internet – is a poor idea especially in a time of other forms of communication becoming less regulated, in part, to allow true freedom of expression and speech.

Clearly the regulatory process creates the possibility of unintended consequences and unforeseen circumstances. By any calculation it would mean impediments to the expanding improvements on the existing infrastructure.

In summation, while the FCC should certainly pay attention to any possible complaints about discriminatory behavior by broadband network providers, there would seem to be very little substantive reason for the FCC to implement new regulations intended to prevent problems that have as of yet not been demonstrated. The harm caused by the likely unintended consequences of such regulations at this point would outweigh any potential or assumed benefit of such regulations.

Sincerely,



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