

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

0299

March 3, 2011

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

Dear Chairman Genachowski:

Thank you for testifying at our February 16, 2011, subcommittee hearing on your rules regulating the Internet. We wish to follow up on some of the issues discussed. Please provide written replies to the following requests for information by close of business, March 7, 2011:

1. You said at the hearing that you would find for us the market analysis the Federal Communications Commission (FCC) conducted justifying government intervention. Please point us to the specific paragraphs and language in the order providing that analysis.
2. President Obama said in a January 18, 2011, Executive Order that agencies should base regulations on a reasoned determination that their benefits justify their costs. While the Executive Order does not apply to independent agencies, the President urged such agencies to follow it, and you have indicated that you plan to do so. Please point us to the specific paragraphs and language in the order containing the FCC's cost-benefit analysis justifying your intervention.
3. President Obama has said that it is important in the current fiscal environment to focus on promoting the economy and creating jobs. Please point us to the specific paragraphs and language in the order analyzing the impact of your rules on the economy and the creation or loss of jobs.
4. The order concludes that its rules will have "minimal" burden on small businesses. Please point us to the specific paragraphs and language in the order providing the analysis to back up that conclusion.
5. The FCC cites section 706 of the Telecommunications Act of 1996 as legal justification for its action in the net neutrality order. While we dispute the Commission's prior

finding that broadband is not being deployed in a “reasonable and timely manner,” section 706 states that in the event the Commission finds such a shortcoming, it is empowered to take action “to accelerate deployment of such capability by removing barriers to infrastructure investment.” Please point us to the specific paragraphs and language in the order providing the analysis of how the rules remove barriers to infrastructure investment.

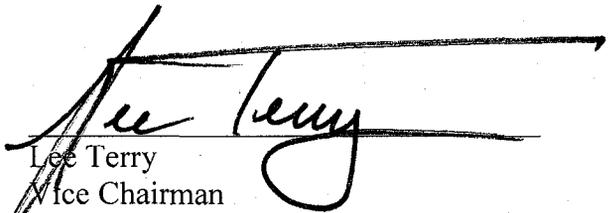
6. The FCC has regulatory docket GN 10-127 open that presents alternative approaches to the net neutrality rules adopted last December. Now that the Commission has adopted an order, will you terminate the open proceeding on Title II regulation of the Internet and your “Third Way” proposal? If not, what purpose does retaining an open docket in those proceedings serve?

Regulation of the Internet and the impact of these regulations on the economy, jobs, innovation, and the American people are of critical concern to this committee. We look forward to your prompt response. If you have any questions, please contact Committee staff Neil Fried and David Redl at 225-2927.

Sincerely,



Fred Upton
Chairman

Greg Walden
Chairman
Subcommittee on Communications and Technology

Lee Terry
Vice Chairman
Subcommittee on Communications and Technology

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology

Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 7, 2011

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden:

Thank you for your letter of March 3. As requested, here are replies to your questions:

1. Paragraphs 11-42 of the Open Internet Order include a market analysis. *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order (rel. Dec. 23, 2010) ("Order"). This market analysis was an integral part of the Commission's efforts to develop an open Internet policy that would maximize innovation and investment throughout the broadband economy, both in broadband networks and in the content, applications, services, and devices that rely on those networks. These efforts culminated in light-touch rules of the road that preserve Internet freedom and openness, increase certainty in the marketplace, and ensure that broadband providers can reasonably manage their networks and innovate with respect to technology and business practices.

As part of its market analysis, the Open Internet Order notes that many U.S. consumers have only a single option for fixed broadband providers, that the substantial majority have at most two options, that the future of competition in residential broadband is unclear, and that switching costs may be high. *See* Order paras. 32-34. These statements echo the filings of the Department of Justice (DOJ) and the Federal Trade Commission in this proceeding. *See* Order para. 42 & n.143. As the Commission explained on page 19 of the Order, it was not necessary for the Commission to make a formal determination of whether providers of broadband Internet access service possess market power "[b]ecause broadband providers have the ability to act as gatekeepers even in the absence of market power with respect to end users."

2. The Order weighs the costs and benefits of open Internet rules in paragraphs 38-42.

3. Paragraphs 13-16, 38-42, 111, and Appendix D of the Order analyze the impact of open Internet protections on jobs, investment, and the economy. Several commenters in our proceeding – including the Open Internet Coalition (which includes companies such as Amazon, eBay, Facebook, Google, Netflix, and PayPal) and broadband providers such as Clearwire – affirmed on the record that the Internet’s openness is a critical component of its contribution to economic growth,
4. One of the primary purposes of the Open Internet Order is to ensure that small businesses can rely on the open Internet to start, to innovate and launch new products and services, to achieve efficiencies, to reach customers around the world, and to grow and create jobs. The Order concludes that open Internet rules will benefit small businesses, both online and offline, in part by ensuring that barriers to innovation and entry online remain low, and that the rules will have a minimal burden on small broadband providers, based on the analysis in paragraphs 11-42, and Appendix D. A number of small businesses commented in the record in strong support of open Internet protections.
5. In paragraphs 14, 40, and 53 the Order analyzes how the open Internet rules remove barriers to infrastructure investment. The Commission’s legal authority under section 706 is discussed in paragraphs 117-123.
6. Less than a year ago, the Commission issued a Notice of Inquiry in its proceeding entitled *Framework for Broadband Internet Service*. The first sentence of that Notice explains that that document began “an open, public process to consider the adequacy of the current legal framework within which the Commission promotes investment and innovation in, and protects consumers of, broadband Internet service.” The Notice broadly seeks public comment on many questions about legal and policy issues relating to broadband, without proposing any particular agency action.

The Broadband Framework record remains open to collect information that may be helpful for the Commission’s work and that could serve as a resource for an update of the Communications Act, as many in Congress and the private sector have suggested is needed.

I appreciate your interest in this matter, and trust that this response addresses your concerns. Please let me know if I can be of further assistance.

Sincerely,

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Julius Genachowski



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 7, 2011

The Honorable Lee Terry
Vice Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Vice Chairman Terry:

Thank you for your letter of March 3. As requested, here are replies to your questions:

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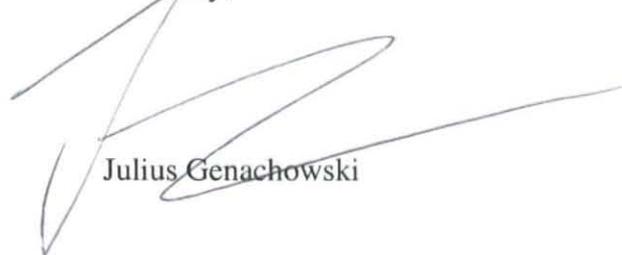
Clearwire – affirmed on the record that the Internet’s openness is a critical component of its contribution to economic growth,

4. One of the primary purposes of the Open Internet Order is to ensure that small businesses can rely on the open Internet to start, to innovate and launch new products and services, to achieve efficiencies, to reach customers around the world, and to grow and create jobs. The Order concludes that open Internet rules will benefit small businesses, both online and offline, in part by ensuring that barriers to innovation and entry online remain low, and that the rules will have a minimal burden on small broadband providers, based on the analysis in paragraphs 11-42, and Appendix D. A number of small businesses commented in the record in strong support of open Internet protections.
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The Broadband Framework record remains open to collect information that may be helpful for the Commission’s work and that could serve as a resource for an update of the Communications Act, as many in Congress and the private sector have suggested is needed.

I appreciate your interest in this matter, and trust that this response addresses your concerns. Please let me know if I can be of further assistance.

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Julius Genachowski



FEDERAL COMMUNICATIONS COMMISSION
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OFFICE OF
THE CHAIRMAN

March 7, 2011

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

Thank you for your letter of March 3. As requested, here are replies to your questions:

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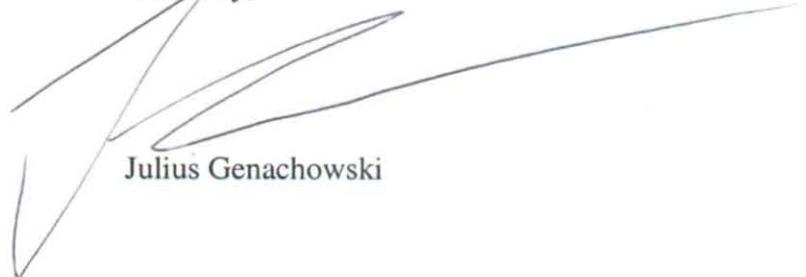
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