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

*Anna G. Eshoo  
Fourteenth District  
California*

February 18, 2011

The Honorable Julius Genachowski, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Dear Chairman Genachowski,

Thank you for testifying before the Subcommittee on Communications and Technology on February 16, 2011.

I'm enclosing post-hearing questions which I would like you to address under the Rules of the Committee. I ask you to provide your response by March 4, 2011, and thank you in advance for your cooperation.

Most gratefully,

Anna G. Eshoo  
Member of Congress

Enclosure

**Post Hearing Questions for the Record**  
**Submitted to FCC Chairman Julius Genachowski**  
**From Representative Anna G. Eshoo**

Subcommittee on Communications and Technology  
House Committee on Energy and Commerce

“Network Neutrality and Internet Regulation: Warranted or More Economic Harm than Good?”  
February 16, 2011

- It is my understanding that Comcast voluntarily agreed to Open Internet rules as part of the Commission’s approval of the Comcast-NBCU transaction.
  - Did Comcast in fact, voluntarily agree to abide by open Internet rules as part of the Commission’s review process?
  - Are the open Internet rules included in the transaction, binding and fully enforceable by the Commission?
  - What was the role of each Commissioner in evaluating and approving any conditions or commitments?
  - Did each Commissioner have an opportunity to dissent in part, if they objected to any of the conditions or commitments proposed in the transaction?
  - Are the Open Internet rules still binding and enforceable against Comcast, even if a Court were to strike down the FCC’s Open Internet order?
  
- As Congress examines opportunities to expand wireless broadband and support the build-out of a national, public safety broadband network, we must have a clear understanding of any unused or underutilized spectrum held by commercial and government entities. A spectrum inventory conducted by the FCC and NTIA should include the information called for in H.R. 3125, the Radio Spectrum Inventory Act, which passed the House last Congress. Does the Commission have a timeframe for completing such an inventory?
  
- The FCC’s National Broadband Plan recommends the Commission “move forward promptly in the open proceeding on data roaming.” It appears the Commission has received substantial support from both industry and public interest stakeholders.
  - Are you prepared to adopt an order on data roaming?
  - When does the Commission plan to bring up this issue for a vote?

- As I understand, the Commission is engaged in a thorough data collection process related to “special access.” Ensuring a competitive market for these high-capacity broadband lines is critical to the business community.
  - Are there roadblocks the Commission faces in moving this issue forward?
  - When does the Commission plan to vote on “special access” reform?

**Post Hearing Questions for the Record  
Submitted to FCC Chairman Julius Genachowski  
From Representative Anna G. Eshoo**

Subcommittee on Communications and Technology  
House Committee on Energy and Commerce

“Network Neutrality and Internet Regulation: Warranted or More Economic Harm than  
Good?”

February 16, 2011

- It is my understanding that Comcast voluntarily agreed to Open Internet rules as part of the Commission’s approval of the Comcast-NBCU transaction.

- Did Comcast in fact, voluntarily agree to abide by open Internet rules as part of the Commission’s review process?

**RESPONSE:** Yes.

- Are the open Internet rules included in the transaction, binding and fully enforceable by the Commission?

**RESPONSE:** Yes.

- What was the role of each Commissioner in evaluating and approving any conditions or commitments?

**RESPONSE:** Each Commissioner had the ability and opportunity to evaluate the conditions and legally binding commitments in the proposed Order—and approve or disapprove of them—as part of his or her review and vote on the matter. The proposed Order was circulated to the Commissioners approximately four weeks before the Commission’s vote. Senior Commission staff also met with each Commissioner to discuss the Order both before and after it was circulated. As a result of this process, changes were made to the Order to reflect input from the Commissioners, including modifications to provisions dealing with Open Internet issues.

- Did each Commissioner have an opportunity to dissent in part, if they objected to any of the conditions or commitments proposed in the transaction?

**RESPONSE:** Yes.

- Are the Open Internet rules still binding and enforceable against Comcast, even if a Court were to strike down the FCC’s Open Internet order?

**RESPONSE:** Yes.

- As Congress examines opportunities to expand wireless broadband and support the build-out of a national, public safety broadband network, we must have a clear understanding of any unused or underutilized spectrum held by commercial and government entities. A spectrum inventory conducted by the FCC and NTIA should include the information called for in H.R. 3125, the Radio Spectrum Inventory Act, which passed the House last Congress. Does the Commission have a timeframe for completing such an inventory?

**RESPONSE:** The Commission has conducted and now completed a baseline spectrum inventory to better understand the overall spectrum landscape. While conducting a spectrum inventory is inherently an iterative process, it is possible to take a detailed snapshot of how spectrum is currently used, who licenses spectrum and where spectrum is available. Thus, in conjunction with the National Telecommunication and Information Administration (NTIA), we have been working diligently over the past year to understand the range of non-Federal and Federal uses of spectrum.

Our baseline inventory is one of the most substantial and comprehensive evaluations of spectrum in the Commission's history. The Commission has developed two tools – LicenseView and the Spectrum Dashboard – that reflect our understanding of where the most significant spectrum opportunities lie. The recently-unveiled LicenseView is a comprehensive online portal to information about each spectrum license; it presents data from multiple FCC systems in a searchable, user-friendly manner. The Spectrum Dashboard, released last year, identifies how non-Federal spectrum is currently being used, who holds spectrum licenses and where spectrum is available. The Commission will release an upgraded version of the Spectrum Dashboard later this month – 2.0 – which will provide more granular information about spectrum holdings, including the ability to determine the extent of licensing within counties and on tribal lands and offer additional insights on the secondary market in spectrum licenses through the addition of leasing information.

I also support your suggestion that we explore ways to more comprehensively measure actual uses of spectrum. That process may help inform our work on stimulating secondary markets and dynamic spectrum use. The key policy choice we will have to make, however, is whether to allocate the amount of money necessary for such an undertaking – in the tens of millions of dollars – and to allot the amount of time it requires – at least several years.

- The FCC's National Broadband Plan recommends the Commission "move forward promptly in the open proceeding on data roaming." It appears the Commission has received substantial support from both industry and public interest stakeholders.
  - Are you prepared to adopt an order on data roaming?

**RESPONSE:** Last April, the Commission strengthened its voice roaming rule and sought comment on whether to impose similar roaming obligations on providers of mobile data services. We are currently in the process of examining the record to determine whether, and the extent to which, there are serious challenges to the ability of competitive providers to offer seamless, nationwide data coverage, and if so, how best to address those problems. This matter is under active consideration.

When does the Commission plan to bring up this issue for a vote?

**RESPONSE:** We continue to evaluate the record as noted in the previous question and will act accordingly.

- As I understand, the Commission is engaged in a thorough data collection process related to “special access.” Ensuring a competitive market for these high-capacity broadband lines is critical to the business community.

- Are there roadblocks the Commission faces in moving this issue forward?

**RESPONSE:** A detailed response is provided in the next question.

- When does the Commission plan to vote on “special access” reform?

**RESPONSE:** Special access is a critical input to broadband availability, particularly for wireless and competitive broadband providers that need to purchase these services at reasonable wholesale rates in order to serve their end users. The Commission has a proceeding underway to determine whether our special access rules are ensuring that the rates, terms, and conditions for special access are just and reasonable. To date, we’ve taken a number of steps, including:

- In March 2010, the National Broadband Plan recommended that the “FCC should ensure that special access rates, terms and conditions are just and reasonable.”
- In July 2010, we held a workshop to initiate an evaluation of the analytical framework proposals raised in the record and any associated data collection that would be required to implement those proposals.
- In October 2010, we issued a public notice requesting that carriers submit detailed data on the nature and location of their facilities to help us assess the amount of actual and potential competition in the special access market. Last month, more than 20 companies provided data in response to that request, which Commission staff is currently analyzing.

We anticipate one more Public Notice with a separate data request, followed by additional steps to answer the important questions raised in the special access proceeding, many of which require detailed data to adequately answer. We are

committed to a data-driven process that ensures we have the information needed to evaluate existing special access policies and to make any necessary changes.