

October 22, 2009

The Honorable Julius Genachowski
Chairman, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Genachowski:

The undersigned are a diverse group of academic researchers who study Internet policy. We applaud the Federal Communications Commission for launching the Open Internet proceeding. It is an essential step forward in the ongoing public debate over the future of the Internet. A notice and comment rulemaking proceeding is an appropriate and much needed forum for discussion about the complex issues involved.

This proceeding builds upon previous FCC actions to preserve a free and open Internet. For many years, the FCC has taken steps, such as the *Carterfone* rules on network attachments and the *Computer Inquiry* rules on enhanced services, to prevent gatekeepers from choking off the potential for innovation on top of communications networks. These actions allowed the Internet we know today to emerge. The FCC's Internet Policy Statement, issued unanimously in 2005, articulated the basic principles that network operators should not prevent users from accessing sites, using devices, or running applications of their choosing.

In your speech on September 21, you emphasized the overarching public policy goal of sustaining the Internet as "a free and open platform that promotes innovation, investment, competition, and users' interests." You made clear that this goal supports many important social values, including *market values* such as economic prosperity and growth, as well as *nonmarket values* such as "speech, democratic engagement, and a culture that prizes creative new ways of approaching old problems." It is essential that the Internet continue to support both sets of values.

We believe the NPRM is a laudatory next step. First, from a legal perspective, it is the appropriate regulatory mechanism to evaluate the central substantive and procedural issues regarding discrimination, network management, innovation dynamics, transparency, implementation mechanisms, and so forth.

Second, and more generally, it is an appropriate public forum to gather and evaluate competing claims and relevant evidence. The public debate on these issues often is poorly framed and polluted with broad hyperbolic claims lacking theoretical or empirical support. A notice and comment rule making process is a useful forum to sort fact from fiction. The FCC has already launched a website and blog to promote discussion and comment on these important issues. It has also initiated a series of public workshops on questions about broadband deployment. The FCC deserves credit for initiating such open and participatory processes, which this proceeding builds upon.

Third, sound regulatory policy in this area depends critically on expertise from different disciplines. There is a tendency in public debates about regulation to gravitate toward antitrust and regulatory economics, to the exclusion of other factors. There are strong reasons to resist that pull in this debate. The issues being debated are not only legal or economic or technical or social. In the Internet context, the interdependence of legal, economic, technical, and social factors has produced the powerful market and non-market benefits of open infrastructure.

The future of the Internet is a matter of intense public concern. We support the FCC's efforts to create a public process to develop the best policies to promote continued openness and innovation across the Internet.

Sincerely,

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