

United States Senate

WASHINGTON, DC 20510-2102

June 15, 2010

The Honorable Dan Inouye
Chairman
U.S. Senate Committee on Appropriations
Room S 128, The Capitol
Washington, D.C. 20510

The Honorable Thad Cochran
Ranking Member
U.S. Senate Committee on Appropriations
Room S 128, The Capitol
Washington, D.C. 20510

Dear Chairman Inouye and Ranking Member Cochran:

We are writing to oppose any effort to use the appropriations process to block the Federal Communications Commission (FCC) from using its existing legal authority to preserve an open Internet, protect consumers, and provide rural residents and Americans with disabilities with access to today's broadband Internet services. A U.S. Court of Appeals' recent decision on the FCC's authority has created consumer and legal uncertainty. And while the proper authorizing committees have announced efforts to update and clarify the law, it is the agency's responsibility to ensure it has the proper regulatory structure in place to execute its responsibilities under existing law. Preempting that process through an appropriations rider would be inappropriate.

On June 17, 2010 the Commission will vote on a proposal to conduct an open, public process to consider possible legal frameworks within its existing authority for broadband Internet services. More specifically, the FCC is examining how it can continue to promote innovation and investment, protect and empower consumers, preserve an open Internet, and ensure that Americans are not isolated or disconnected from our broadband infrastructure. Until the recent decision of the U.S. Court of Appeals for the D.C. Circuit in *Comcast Corp. v. FCC*, the Commission's approach to broadband Internet service first under Chairman Kennard and later under Chairmen Powell and Martin combined limited regulation with meaningful agency oversight in a manner consistent with the Communications Act. But at no point did the agency argue that the delivery of broadband service was outside its oversight jurisdiction.

We understand that the Chairman has provided his fellow Commissioners with a draft Notice of Inquiry that would seek public comment on possible legal frameworks the Commission might consider for broadband Internet service. Among other approaches, Chairman Genachowski has offered and is asking for public comment on a possible "third way" between no oversight or regulation over broadband and the full application to it of rules governing telephone service. Under this proposal, the Commission would reaffirm that the Internet itself remains unregulated and Internet-based information services remain generally unregulated under Title I of the Communications Act. Additionally, the Commission would identify the Internet connectivity service that is offered as part of wired broadband Internet service as a telecommunications service. Finally, the Commission would forbear under Section 10 of the Act from applying all provisions of Title II other than the small number that are needed to implement fundamental universal service, ensure competition and market entry, and consumer protection policies. The Chairman has also proposed seeking comment on maintaining the current legal

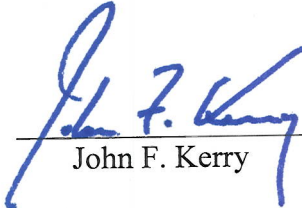
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framework, and on factual and market developments that may counsel in favor of a particular approach.

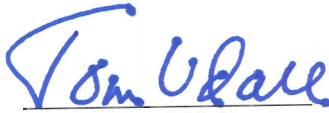
Seeking public comment on all available approaches is a reasonable and responsible way to move forward and we should give it increased clarity and definition through the legislative process. Congress should not block its consideration. The Communications Act articulates and gives life to the idea that our communications networks should be open, accessible, ubiquitous, and affordable. Those values did not die with the invention of the Internet nor did the Commission's responsibility to act on them.

We are committed to providing a bipartisan forum for all concerns regarding FCC authority and are in the process of reaching out to our colleagues on the most productive legislative path forward. There is lots of work to do and a fight over an appropriations rider would only serve as a distraction from substantive exploration of the issue.

Sincerely,


John F. Kerry


Maria Cantwell


Tom Udall


Ron Wyden