

Congress of the United States
Washington, DC 20515

October 20, 2009

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

Dear Chairman Genachowski:

The Federal Communications Commission's Open Meeting scheduled for Thursday, October 22, 2009 is an important opportunity to initiate a *Notice of Proposed Rulemaking* with long-term benefits for worldwide communications, commerce, innovation and competitiveness. We commend your decision to schedule this review of the network neutrality regulatory structure and for your efforts to eliminate business practices that stifle an open and unfettered Internet.

The importance of the Internet cannot be underestimated – it is one of the most universal and vital communications tools ever invented. It brings the power of communications to remote regions and creates an unprecedented opportunity for cultural advancement and the acquisition of knowledge. The continued success of the Internet is dependent upon an open architecture that allows anyone with a good idea or innovative product to compete on a global scale. Even now, the Internet is facilitating new ideas to help solve health care and energy issues, and enabling businesses in all sectors of our economy to create efficiencies and cut costs.

The FCC has often imposed rules that ensure that communications networks operate in a neutral, nondiscriminatory manner. Indeed, the principle of nondiscrimination guided the Internet at its inception and enabled it to develop as a robust engine of economic growth. Any rules that stem from the *NPRM* should focus on adherence to the public interest and discourage attempts to strangle the free-flow of online information. These rules should provide certainty both for entrepreneurs and Internet users. We believe your proposed rules are designed to preserve openness and unfettered access for all lawful content, applications and services for American consumers. Indeed, that is precisely the kind of regulatory predictability that markets require.

In addition, your proposal to add two new baseline principles, namely non-discrimination and transparency, is critically needed. Non-discrimination for underlying communications networks was the law for most of the Internet's history, yet it was overturned in 2005. Even since then, major carriers have continued to conduct business under non-discrimination requirements imposed through merger agreements or auction requirements, with no detrimental impact, and with the full ability to reasonably manage their networks. A common-sense non-discrimination requirement will ensure that in the future, an efficient marketplace exists where businesses and consumers – not network providers – decide the winners and losers in the Internet ecosystem.

We also applaud your stated intention to carefully consider how to give network operators appropriate flexibility to engage in reasonable network management practices to handle traffic congestion, the unlawful distribution of copyrighted works, obscene material, or unwanted content like spam. Given such flexibility, it is even more important that consumers understand how these techniques will affect the service they buy. We welcome your intention to require that network operators provide transparency about their network management practices, so that consumers can have confidence that such practices do not become a pretext for discrimination.

Finally, we are pleased with your decision to conduct an open rulemaking that places an emphasis on transparency and encourages participation among all stakeholders, including the general public, through such activities as public workshops and use of the Internet to encourage widespread participation in the process. We believe this is the right approach to ensure that the Commission's rules will protect all stakeholders in the Internet ecosystem and preserve the Internet as an open and competitive platform for all applications and services. The proper balance will result in a "win-win" scenario for everyone.

We look forward to working with you and the other Commissioners as the Commission moves forward with its common-sense approach to preserving the Internet's success now and in the future.

Sincerely,


Edward J. Markey


Anna G. Eshoo