July 28, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20515

Dear Chairman Genachowski:

Pursuant to Rules X and XI of the United States House of Representatives, the Energy and Commerce Committee is investigating the manner in which the Federal Communications Commission (FCC) developed the Network Neutrality Rules approved at the Commission's December 21, 2010, open meeting.

A month before the Commission voted to regulate the Internet for the first time, Communications Daily reported in its November 26, 2010, issue that "FCC Chief of Staff Eddie Lazarus has told some net neutrality rule foes that if they don't agree not to oppose such requirements under the current Title I broadband regime of the Communications Act, the commission may proceed under Title II."

We have also learned that you and Mr. Lazarus attended a number of meetings at the White House during the period in which "net neutrality" rules were being debated. More recently, a FOIA investigation conducted by Judicial Watch has revealed coordination between Commissioner Copps's staff and the advocacy group, Free Press, one of the leading advocates supporting the President's campaign commitment to advance network neutrality regulations.

Agency decisions should be based on law and policy. These allegations suggest the FCC's network neutrality proceeding was designed to fulfill a presidential campaign slogan, when it should have been based on an analysis of statutory authority, an economic analysis of the Internet service market, and an examination of the record. If true, it seems the FCC failed to

1 http://www.govexec.com/dailyfed/0311/0312511-issa-fcc.htm
2 http://m.washingtonexaminer.com/dcexam/db_8607/contentdetail.htm?contentguid=r1DLhbM1&detailindex=6&pn=0&ps=10&full=true
3 http://www.savetheinternet.com/obama
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develop an independent conclusion derived from a balanced fact-based record, which is incompatible with proper rule-making.

In light of these reports, we ask that you provide us with responses to the following document requests by August 12, 2011:

1. Please provide all communications (including, but not limited to, emails) from the period June 25, 2009, to December 21, 2010, between or among any FCC Parties relating to the Obama Administration position regarding (a) potential Commission action in the Network Neutrality Dockets or (b) Commission adoption or enforcement of Network Neutrality Rules.

2. Please provide all communications (including, but not limited to, emails) from the period June 25, 2009, to December 21, 2010, between (a) any FCC Parties and (b) any Executive Parties, relating to the Obama Administration position regarding (i) potential Commission action in the Network Neutrality Dockets or (ii) Commission adoption or enforcement of Network Neutrality Rules.

3. Please provide all memos, analyses, and reports in the possession of any FCC Parties from the period June 25, 2009, to December 21, 2010, that discuss or relate to the legal basis for adopting or enforcing Network Neutrality Rules.

4. Please provide all communications (including, but not limited to, emails) from the period June 25, 2009, to December 21, 2010, between or among any FCC Parties that discuss or relate to reclassifying broadband Internet access service as a telecommunications service under the Communications Act of 1934, including, but not limited to, any communications that discuss or relate to the factual findings or policy statements needed to justify such reclassification.

5. Please provide all communications from the period June 25, 2009, to December 21, 2010, between (a) any FCC Parties and (b) any Third Parties that discuss or relate to potential Third Party support for or opposition to (i) potential Commission action in the Network Neutrality Dockets, (ii) Commission adoption or enforcement of Network Neutrality Rules, or (iii) reclassifying broadband Internet access service as a telecommunications service under the Communications Act of 1934.

6. Please provide all communications between or among any FCC Parties that discuss or relate to conditions or voluntary commitments to observe provisions of the December 21, 2010, Open Internet Order in the Comcast-NBC merger.

7. Please provide all communications between (a) any FCC Parties and (b) any Third Parties or Executive Parties that discuss or relate to conditions or voluntary commitments to observe provisions of the December 21, 2010, Open Internet Order in the Comcast-NBC merger.

In responding to this document request, please do not include ex parte filings that are available in the Commission's Electronic Comment Filing System (ECFS).
For purposes of this document request, the following definitions apply:

"Executive Parties" means any person or entity employed by or acting as an agent of the Executive Office of the President, the Executive Office of the Vice President, the Office of Science and Technology Policy, and the Council of Economic Advisors.

"FCC Parties" means anyone in the Office of the Chairman; Office of Strategic Planning; Office of the General Counsel; Wireless Telecommunications Bureau, Office of the Bureau Chief; and Wireline Competition Bureau, Office of the Bureau Chief.


"Network Neutrality Rules" means rules or policies (1) that limit the ability of Internet service providers or other data transmission providers (a) to manage, control, or otherwise differentiate among traffic on their networks, (b) to control or restrict what devices may be attached to their networks, (c) to manage, control, or otherwise differentiate among data accessed or transmitted over their networks, or (d) to offer priority or other specialized access or service to their networks for consideration of any kind; or (2) that are the same or substantially similar to (a) the rules adopted in the December 21, 2010, Open Internet Order, (b) the policies described by the August 5, 2005, Internet Policy Statement, or (c) the policies enforced in the August 1, 2008, Comcast/BitTorrent Order.

"Third Parties" or "Third Party" means any person or entity not employed by or acting as an agent of the Federal government.

An attachment to this letter provides additional information on how to respond to the Committee's request. We would like to highlight that the attachment requests a certification from you or your agent that the request has been complied with thoroughly and truthfully. If you have any questions regarding this request, please contact Todd Harrison or Neil Fried with the Majority Committee staff at (202) 225-2927.

Sincerely,

Fred Upton
Chairman

Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

Greg Walden
Chairman
Subcommittee on Communications and Technology
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Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

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

Commissioner Mignon Clyburn
Commissioner Michael Copps
Commissioner Robert McDowell
RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.

2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.

4. Each document should be produced in a form that may be copied by standard copying machines.

5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.

6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.

7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.

8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.

9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.
10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

   a. how the document was disposed of;
   b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
   c. the date of disposition;
   d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each
other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, “claim of privilege” includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee’s request or in anticipation of receiving the Committee’s request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a privilege log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term “document” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term “document” also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" mean and refers to

For government recipients:

"You" or "your" means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.