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March 12, 2010

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

Dear Chairman Genachowski:

On the eve of the national broadband plan that the American Recovery and Reinvestment Act required, I am encouraged by early reports from you and the Commission staff. All indications suggest that the report will confirm what I have been saying for quite some time: Our country's broadband deployment and adoption numbers are far better than suggested by the special interest groups that stand to benefit from counterproductive regulation. For example, a number of the public briefings coming from the Commission have indicated that only about 7 million households lack access to broadband. That means that providers already make broadband available to approximately 95 percent of the country. I also understand the report will indicate that approximately two-thirds of households have already adopted broadband.

This indicates the success of the national broadband plan we have already had in place as a statutory matter since 1996, and as a regulatory matter since 1999: a free-market, deregulatory policy for the Internet and broadband that promotes investment in facilities-based competition. It also supports the points that Blair Levin, the executive director of the FCC's broadband initiative, made in his December 2009 interview on C-Span's *The Communicators*. As Mr. Levin so aptly put it, "broadband is primarily a function of private investment." Only in those few parts of the country where it would otherwise be uneconomic for the private sector to provide service might it be appropriate for the government to step in.

He also described as "not very productive" the calls by Public Knowledge and Free Press to force carriers to provide access to competitors by unbundling their networks or mandating they serve a separate wholesaling function. The reason, he explained, is that the Commission is "not that terribly interested in moving toward things which will just freeze capital investment and have long, complicated court battles." More importantly, he observed, these suggestions "fail to look at what's really going on in the market." The

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broadband market is growing and evolving rapidly, and it is “not appropriate to be looking at those kinds of major things when there is such uncertainty about the market.”

I could not agree more. And as the facts support Mr. Levin’s statements, I expect that the text of the broadband plan will be rooted in these observations and not littered with hidden agendas—such as placeholders for network neutrality, old-style, Title II common carrier regulations, or the type of spectrum conditions advocated by M2Z and others in the past that have hobbled auctions. Whether described in clear language or cloaked in veiled references, mandates such as these will only exacerbate the uncertainty and hinder the investment that Mr. Levin spoke so eloquently about. The presence of such mandates would also indicate that the national broadband plan has become a political document, not the honest, fact-based inquiry that I know you and I have both hoped the plan would be.

While I am encouraged that the data in your report will support a free-market, pro-investment approach, I cannot help but wonder how many resources and how much money we have spent to reiterate what existing evidence already showed and many of us have known for so long. Accordingly, please respond to the following questions by March 22, 2010.

1. Why, specifically, was it necessary to delay release of the plan to March 17 from the statutorily required deadline of February 17?
2. What was done between February 17 and March 17?
3. How much money have you spent in preparing the plan? Please provide a total figure as well as a breakdown, including figures for categories such as the total amount paid to existing employees for time spent on the plan, the total amount paid to new employees for time spent on the plan, amount spent on studies and reports, amount spent on travel, amount spent on workshops, and amount spent on printing and production.
4. How many staff people were hired specifically to work on the plan? From where were they typically hired? What is the employment classification of these staffers? How many of them had a background in communications law as opposed to a general consulting background? Were they hired through the same process other FCC employees who do not work on the plan are typically hired?
5. The Administration has emphasized its policies to limit the hiring of, or communication with, private sector employees in connection with government generally and the American Recovery and Reinvestment Act in particular. While I am not convinced that such interaction between the public and private sectors is problematic, I am concerned if a double standard is being applied. How is it consistent with the Administrations’ overall position on the interaction between the private and public sectors the FCC used private sector consultants, on a limited-term basis, many of whom may return to the private sector?

6. How did the FCC review potential conflicts of interest among employees hired from the private sector? Does the FCC plan to make available in publicly reviewable form any potential conflicts so that the American people can be assured that the plan was put together in an objective manner?
7. How soon will an electronic, searchable copy of the plan be available to help facilitate review of the plan by congressional staff and the public?
8. Please answer yes or no to each of the following questions: If the D.C. Circuit rules that the FCC lacks jurisdiction under Title I to impose network neutrality regulations, will you, as Chairman, propose that the FCC classify broadband services under Title II? Might you make such a proposal even if the D.C. Circuit does not so rule and, if so, why?
9. What is your personal opinion on whether broadband services should be classified under Title II?

Thank you for your consideration. If you have any questions, please feel free to contact me. I look forward to your responses.

With kind regards, I am

Sincerely,



Cliff Stearns, Ranking Member
Subcommittee on Communications, Technology,
and the Internet
House Energy and Commerce Committee

cc: Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker