United States Senate

WASHINGTON, DC 20510

May 04, 2010

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

Dear Chairman Genachowski:

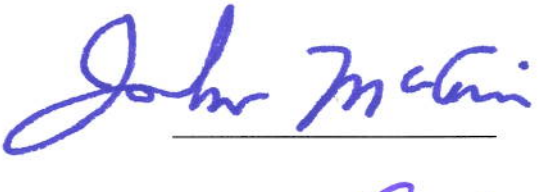
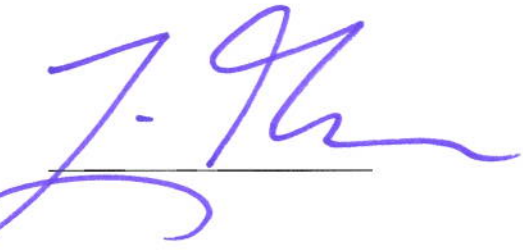
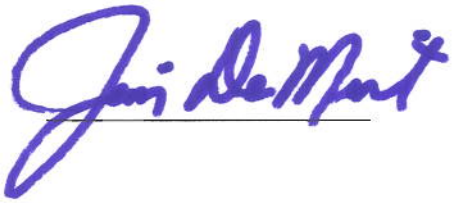
We are deeply disappointed by your recent announcement that you intend to reclassify broadband Internet access services as telecommunications services subject to Title II of the Communications Act of 1934. This move will deter further private sector investment in broadband networks, will negatively impact innovation, and ultimately harm consumers. We strongly encourage you to abandon this drastic action, and to continue the successful policy of leaving the Internet free from common carrier regulations.

We reject your assertion that this so-called "third-way" is a reasonable consensus approach to protect consumers and increase broadband penetration. The reality is that what you are seeking is a major shift in FCC policy that is highly controversial and has been previously rejected by Congress and both Democratic and Republican administrations. Imposing burdensome Title II regulations on broadband services will not aid in our shared goal of achieving ubiquitous broadband deployment; it will instead have a chilling effect on investment as well as network construction and enhancements in unserved areas. Turning 21st century broadband networks into "dumb pipes" is not what will draw investment to grow jobs in the communications sector and bring high-speed broadband to every home in America.

You have previously indicated that you would rely on fact-based analysis for future rulemakings. However, in your effort to reclassify broadband services as telecommunications services, you appear to be solely relying on the unsubstantiated fear that broadband service providers may harm consumers at some future date. It also appears that you are operating under the misguided notion that there is a lack of competition among broadband service providers.

The FCC concluded in 2002, 2005, 2006, and 2007 that broadband competition was robust and further regulations were unnecessary. If anything, the market is more competitive today, and you have offered no detailed evidence to the contrary. There is scant evidence that the broadband market lacks competition or that consumers have been harmed in a manner that would warrant the heavy-handed 19th century regulations that you seek to impose on a highly competitive 21st century communications marketplace.

Furthermore, your proposal faces an insurmountable hurdle based upon the Supreme Court's opinion in *FCC v. Fox Television Stations, Inc.*, before the agency can completely abandon its previous conclusions that broadband services are information services. A reclassification of broadband services would have to "rest[] upon factual findings that contradict those which underlay [the FCC's] prior policy," and the previous decisions "ha[ve] engendered serious reliance interests that must be taken into account." The manner in which broadband services are offered and consumed has not changed during the past twelve years in a manner that would warrant a reversal in the previous conclusions that broadband services are information services. And tens, if not hundreds, of billions of dollars have been invested in broadband networks in reliance on the classification of broadband services as information services.

It is inconceivable for the Commission to impose industry-wide rules based upon unjustified speculation about what may occur in the future, or that the Comcast-BitTorrent dispute in itself (or even in combination with the 2004 Madison River case) justify such rules. It is not too late for you to change course and recognize that now is not the time for new unprecedented regulations on broadband services. We strongly urge you to abandon your effort to regulate the Internet.

Sincerely,