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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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December 1, 2010

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

Dear Chairman Genachowski:

We understand that you intend to follow our recommendation and abandon proposals to reclassify broadband as an old-fashioned telephone service under Title II of the Communications Act. We congratulate you on that wise decision. As we have stated previously, treating the Internet as if it were common carriage is a mistake.

We also understand, however, that you still are considering adopting network-neutrality rules by invoking ancillary authority under Title I of the Act. There are questions as to the FCC's statutory authority to adopt these rules under Title I. The D.C. Circuit ruled in its April 2010 *Comcast* decision that the FCC had failed to demonstrate authority under Title I to regulate Internet network management.

We therefore write to request your analysis of the FCC's authority under Title I to issue the proposed rule. In the absence of clear authority, the FCC should defer to Congress in this matter.

Letter to the Honorable Julius Genachowski  
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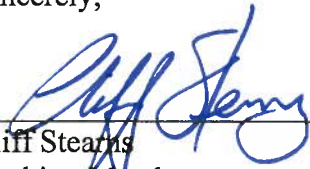
Please provide a written response to this letter by December 10, 2010. If you have any questions, please contact our Committee staff at (202) 225-3641.

Sincerely,



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Joe Barton  
Ranking Member



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Cliff Stearns  
Ranking Member  
Subcommittee on Communications,  
Technology, and the Internet

cc: The Honorable Henry A. Waxman, Chairman

The Honorable Rick Boucher, Chairman  
Subcommittee on Communications, Technology, and the Internet

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