Exhibit A

Letter from broadband industry to Chairman Julius Genachowski
(filed Feb. 22, 2010)
February 22, 2010

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Preserving the Open Internet, GN Docket No. 09-191; Broadband Industry Practices, WC Docket No. 07-52; A National Broadband Plan for Our Future, GN Docket No. 09-51

Dear Chairman Genachowski:

Virtually all commenters in the above-referenced proceedings share the Commission’s goal of preserving the “open” nature of the Internet. Despite ongoing, productive efforts to reach consensus on how to best effectuate this goal, certain groups advocating an extremist form of “net neutrality” regulation have now asked the Commission to steer the debate in a radical new direction. They want the Commission to reverse a long series of decisions dating all the way back to the Kennard Commission in 1998 and classify broadband Internet access service, for the first time, as a “telecommunications service” subject to legacy common carrier regulation under Title II of the Communications Act. Regulating the Internet as these parties propose would be a profound mistake with harmful and lasting consequences for consumers and our economy.

As discussed below, the proposed regulatory about-face would be untenable as a legal matter and, at a minimum, would plunge the industry into years of litigation and regulatory chaos. And it would threaten to extend common carrier regulation not just to broadband Internet access providers, but to huge swaths of the Internet at large, betraying decades of bipartisan support for keeping the Internet unregulated. This misguided regulatory overreach would thereby suppress the private innovation and investment—at both the core and the edge of the network—that have made the Internet the most powerful engine of economic growth in our time, and that are so vital to achieving your “‘100 Squared’ initiative—100 million households at 100 megabits per second” by 2020—which you identified as a core objective of the National Broadband Plan. In short, the Commission should keep this Pandora’s Box of Title II classification nailed shut.

I. The Commission’s Bipartisan Treatment Of Internet Access As A Title I Information Service Has Produced Huge Benefits For American Consumers

Through Democratic and Republican administrations alike, the Commission has ruled consistently on a key regulatory issue: the classification of Internet access as an “information service.”


service” subject to minimal regulation under Title I of the Communications Act. First, in its seminal 1998 Report to Congress, the Kennard Commission performed a thorough factual and legal analysis and found that Internet access is an integrated “information service” without a “telecommunications service” component. The Commission further concluded that a contrary finding could “seriously curtail the regulatory freedom that . . . was important to the healthy and competitive development of the enhanced-services industry.”

In reaching this conclusion, the Commission relied in part on a letter authored by a bipartisan group of Senators, which emphasized that “[n]othing in the 1996 Act or its legislative history suggests that Congress intended to alter the current classification of Internet and other information services or to expand traditional telephone regulation to new and advanced services.” As these Senators explained:

Th[e] unparalleled success [of the Internet] has emerged in the context of policies that favor market forces over government regulation—promoting the growth of innovative, cost-effective, and diverse quality services. It is this same pro-competitive mandate that is at the heart of the 1996 Act. . . . [W]ere the FCC to reverse its prior conclusions and suddenly subject some or all information service providers to telephone regulation, it seriously would chill the growth and development of advanced services to the detriment of our economic and educational well-being.

Some have argued that Congress intended that the FCC’s implementing regulations be expanded to reclassify certain information service providers, specifically Internet Service Providers (ISPs), as telecommunications carriers. Rather than expand regulation to new service providers, a critical goal of the 1996 Act was to diminish regulatory burdens as competition grew. Significantly, this goal has been the springboard for sound telecommunications policy throughout the globe and underscores U.S. leadership in this area. The FCC should not act to alter this approach.

The Commission repeatedly heeded this sound advice when examining the regulatory classification of different forms of broadband Internet access service over the ensuing decade, including cable modem service in 2002, wireline broadband in 2005, and wireless broadband in 2007. Each time, it reached the same conclusion: broadband Internet access service is a Title I

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information service; it is not a Title II telecommunications service, nor does it have a telecommunications service component. And when the Commission’s classification decisions were challenged in the courts of appeals, the Commission litigated the matter all the way to the Supreme Court and won.6

The Commission’s longstanding recognition that retail broadband Internet access is an information service, without a severable telecommunications service component, has been a key stimulant of broadband investment in recent years. Broadband providers have already invested hundreds of billions of dollars in private risk capital to deploy next-generation networks to communities across our nation.7 Indeed, in 2009 alone, they invested nearly $60 billion in broadband networks.8 These substantial investments, made in reliance on the Commission’s Title I classification decisions, have resulted in the deployment of increasingly robust networks and the emergence of new competitive options from every segment of the industry—from AT&T’s U-verse and Verizon’s FiOS, to the cable industry’s DOCSIS 3.0 services, to Clearwire’s WiMax network, to HughesNet’s and WildBlue’s satellite offerings, to 3G and soon 4G mobile wireless broadband services from multiple providers.

Moreover, broadband Internet access providers are making these investments even though some financial analysts believe they face “a dizzying challenge in earning a desirable return for shareholders,” given that “the returns of building a new network of this magnitude are unappealing.”9 Broadband providers are also making these investments despite a severe global recession. While private investment in general had fallen by about 20% as of the third quarter of 2009 compared to the prior year, broadband investment in particular fell less than 10% and is expected to return to growth within the next year or two.10 Our national recovery will depend in no small part on this continued private investment—not just because broadband build-out by itself supports tens of thousands of skilled jobs, but because a more robust and ubiquitous Internet is a powerful platform for growth, jobs, and investment throughout our economy.

Some net neutrality proponents believe that economic growth is propelled primarily by investment at the “edge” of the Internet, and not by network providers who operate the Internet’s core and access networks, but that is a dangerously flawed vision.11 Continued investment and

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6 See Brand X, supra; Time-Warner Telecom, supra.
8 Id. at 6-7 (citing Yankee Group analysis).
10 USTelecom Comments at 6-7.
11 Many of these same advocates claim that, until 2005, Internet access services had always been regulated as Title II telecommunications services as a result of the Commission’s Computer Inquiry rules. That view illogically conflates two distinct issues: the threshold classification of a retail communications
innovation by each group mutually expands opportunities for the other. The greater the ability of network operators to offer innovative, revenue-generating enhanced capabilities and features to application and content providers, the greater the ability of the network operators to expand the potential reach and robustness of those networks for consumers. And the better the network capabilities available to “edge” providers, the greater the opportunity for them to develop innovative services that increase consumer demand for broadband. The current, stable Title I regulatory environment has facilitated this “virtuous cycle” of investment and innovation at all levels of the Internet, just as the Commission expected.12

This is certainly no time to retreat from those policies. Many of our nation’s core priorities in education, health care, energy conservation, environmental protection, technological innovation, job-producing investment, and economic growth depend on the continued flow of private capital for deploying and expanding broadband networks.13 But the robust, ubiquitous broadband networks necessary to achieve these priorities will not come cheap or easy. The Commission’s staff has estimated that the cost of deploying ultra-fast broadband capability to all Americans will total some $350 billion.14 To succeed, therefore, the Broadband Plan will need

service as either an “information service” or a “telecommunications service,” and the regulatory consequences that the legacy Computer Inquiry rules attached to services classified as “information services.” Those rules, which applied only to wireline common carriers (and not cable modem service providers or wireless broadband providers), did not affect the classification of retail Internet access service as an information service. Instead, those rules required carriers offering Internet access services to also separately offer the transmission component of their Internet access services as a wholesale telecommunications service pursuant to tariff. See Wireline Broadband Order ¶¶ 23-24. See also Brand X at 996 (explaining that Computer Inquiry rules were not based on regulatory definitions, but rather policy choices stemming from historical market structure). And while the Computer Inquiry rules may have served the Commission’s policy goals in the narrowband, circuit-switched “one-wire world” for which they were initially created 40 years ago, they would be a serious impediment to broadband investment and innovation in today’s multi-platform broadband IP environment, which is why the Commission has categorically rejected applying those rules to cable, wireline and wireless broadband providers. See supra note 5.

12 See Report, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Next Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, 14 FCC Red 2398 ¶¶ 95-96 (1999) (“We think of broadband facilities as an input product, like microprocessors or memory in the computer world. For such products, a so called ‘virtuous cycle’ can develop. Successive generations of input products provide more performance for the same amount of money. The greater performance enables current applications to perform better and fuels more demand for them, and demand for new applications that were not feasible before. . . . As the cycle gains momentum and cost decreases and performance increases, we expect that companies will provide new applications and services for broadband consumers. As a result, more consumers will demand broadband, and the virtuous cycle will accelerate.”).

13 See Robert C. Atkinson & Ivy E. Schultz, Columbia Inst. for Tele-Info., Broadband in America: Where It Is and Where It Is Going, 7 (Nov. 11, 2009) (finding that under current projections, within the next three to four years, broadband service providers will deploy next-generation broadband networks capable of supporting significantly higher speeds to approximately 90% of all U.S. households.)

14 Staff Report, September 2009 Commission Meeting, at 45 (Sept. 29, 2009).
to focus on what you have described as “common sense” solutions that avoid “the danger of dogma” and that rely on “private enterprise, the indispensable engine of economic growth.” A stable, predictable regulatory environment is an indispensable component of any such common sense solutions.

But just when regulatory certainty is most needed to keep the private-enterprise engine running in high gear, some parties advocate abandoning the current Title I model in favor of public-utility-type regulation under Title II. Robert McChesney, the co-founder of Free Press and a current member of its Board, articulated that group’s radical agenda in an interview with the Socialist Project:

What we want to have in the U.S. and in every society is an Internet that is not private property, but a public utility. We want an Internet where . . . you don’t pay a penny to use. . . . In the realm of Internet service provision, the telephone and cable companies play a parasitic and negative role. They do nothing positive. . . . Our struggle [is] to make the Internet into a public utility[.]

Consistent with this agenda, Free Press, Public Knowledge, and a handful of others are urging the Commission to classify broadband Internet access, either in whole or in part, as a Title II “telecommunications service” so that it can impose common carrier rules, designed for the monopoly telephone companies of 1934, on the competitive broadband industry of today. As discussed below, that classification would inflict burdensome obligations not just on those providers, but on a wide variety of other Internet-based companies that have generally operated outside the Commission’s purview. It is difficult to imagine a proposal more at odds with the Commission’s historical commitment to keeping the Internet unregulated, to our national prospects for economic recovery, and to your own commitment to “common sense” solutions and to “private enterprise, the indispensable engine of economic growth.”

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16 “Media Capitalism, the State and 21st Century Media Democracy Struggles: An Interview with Robert McChesney,” The Bullet, Socialist Project E-Bulletin No. 246 (Aug. 9, 2009), available at http://www.socialistproject.ca/bullet/246.php. McChesney also condemns the advertising-based business models prevalent in today’s broadband Internet marketplace, notwithstanding the fact that Google and others consider advertising to be the “lifeblood of the digital economy.” See id. (“Advertising is commercial propaganda. . . . Advertising is the voice of capital. We need to do whatever we can to limit capitalist propaganda, regulate it, minimize it, and perhaps even eliminate it.”); Susan Wojcicki, Making Ads More Interesting, The Official Google Blog, Mar. 11, 2009, available at http://googleblog.blogspot.com/2009/03/making-ads-more-interesting.html (“Advertising is the lifeblood of the digital economy: it helps support the content and services we all enjoy for free online today, including much of our news, search, email, video and social networks.”).

17 See Free Press Comments, WC Dkt. 09-51, at 5 (June 8, 2009) (“The FCC should reverse the foundational mistake of its broadband policy framework by reclassifying broadband as a telecommunications service.”); PK Reply Comments at 4 (“the Commission may reclassify broadband as a Title II service simply because it finds that Title II classification would better serve the goals of the National Broadband Plan than the current Title I classification.”)
Indeed, the Commission cannot seriously think that layering a 75-year-old regulatory structure on modern broadband facilities will not harm current and future levels of broadband investment. This concern is especially acute given that this antiquated regulatory structure would require all providers to divert time and resources from deploying broadband networks so that they can design and implement the myriad systems and processes necessary to comply with a bevy of newly imposed Title II obligations and requirements. At best, this would lead to major market uncertainties that will hamper each company's ability to raise and deploy capital efficiently. At worst, it would seriously undermine the value of broadband investments already made and disincent new ones. In either case, the Title II classification proposal would dampen broadband investment and job-producing economic growth at the worst possible time. To run such risks now, when the nation is counting on the technology sector to help lead the U.S. out of the worst recession in generations, would not be a responsible course of action for this Commission.

II. There Is No Factual Or Legal Basis For Classifying Broadband Internet Access Service As A Title II Telecommunications Service

As noted, a long line of Commission precedent from 1998 to 2007, along with a Supreme Court decision, confirm that broadband Internet access service is a Title I “information service” without a Title II “telecommunications service” component. Free Press and Public Knowledge now suggest that the Commission should reverse this well-established precedent and conclude that broadband Internet access is (or contains) a Title II “telecommunications service” subject to legacy common carrier regulation. As discussed below, any such decision would likely be invalidated in court, but only after years of industry-destabilizing regulatory uncertainty.

In relevant part, a “telecommunications service” subject to Title II common carrier regulation is defined as “the offering of telecommunications for a fee directly to the public . . . regardless of the facilities used,” and “telecommunications” in turn is defined as “the transmission . . . of information of the user’s choosing, without change in the form or content of the information as sent and received.” In contrast, an “information service,” which lies outside the scope of Title II, is the “offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.” After performing an exhaustive analysis of the 1996 Act, the Commission found that the term “offer” in the definition of “telecommunications service” means a stand-alone offering of telecommunications that transparently transmits information chosen by the user, which, from the user’s perspective, is different in kind from the provision of data processing capabilities integrated with transmission capability that is the hallmark of an

18 See infra at 10.
19 See Tom Lydon, Home-grown rebound, MarketWatch (Jan. 4, 2010) (“Emerging markets may unquestionably be leading the way out of the global recession, but on our own soil, there’s mounting evidence that the U.S. technology sector is driving growth at home.”), available at http://www.marketwatch.com/story/technology-ets-will-lead-us-out-of-the-recession-2009-01-04.
21 Id. § 153(20) (emphasis added).
“information service.” According to the Commission, “Congress intended the categories of ‘telecommunications service’ and ‘information service’ to be mutually exclusive,” which ensures that “information service providers are not subject to regulation as common carriers merely because they provide their services ‘via telecommunications.’”

Under this statutory framework, the Commission concluded that broadband Internet access is properly construed as the offering of an integrated “information service” because it contains a range of integrated data-processing functions, including “DNS look-up” and often content caching. As the Supreme Court explained in Brand X, “[t]he entire question is whether the broadband Internet access products here are functionally integrated (like the components of a car) or functionally separate (like pets and leashes). That question turns not on the language of the Act, but on the factual particulars of how Internet technology works and how it is provided, questions Chevron leaves to the Commission to resolve in the first instance.” In other words, the Commission may reverse its longstanding statutory interpretation only if it has a factual basis to determine that—less than three years after it last examined this question—broadband Internet access is no longer offered as a “functionally integrated” information service, but rather as a stand-alone, naked transmission service.

The Commission could have no such basis because the relevant “factual particulars” of broadband Internet access services have not changed. Based on the dubious premise that consumers no longer rely on their ISPs for email and certain other functionalities, Public Knowledge concludes that the data-processing and transmission components of broadband Internet access are no longer “integrated.” But the premise is false and would not support the conclusion even if it were true. To begin with, tens of millions of consumers continue to view ISP-provided email and similar applications as integral components of the broadband Internet access services offered to them, and Public Knowledge offers no basis for concluding otherwise. More important, as the Commission itself has concluded, Internet access services are integrated information services “regardless of whether subscribers use all of the functions provided as part of the service, such as e-mail or web-hosting, and regardless of whether every cable modem service provider offers each function that could be included in the service.” That is because, as the Commission found and the Supreme Court highlighted, Internet access service inherently involves information processing and interaction with stored data—functions that are the hallmarks of information services. As the Supreme Court put it:

22 See 1998 Report to Congress, ¶¶ 13, 33-48. See also Brand X, 545 U.S. at 990 (“One might well say that a car dealership ‘offers’ cars, but does not ‘offer’ the integrated major inputs that make purchasing the car valuable, such as the engine or the chassis. It would, in fact, be odd to describe a car dealership as ‘offering’ consumers the car’s components in addition to the car itself.”).

23 1998 Report to Congress, ¶ 13. See also id. ¶ 43.

24 Brand X, 545 U.S. at 991.

25 Indeed, Public Knowledge itself concedes (at 8) that broadband providers do include “enhanced services such as email accounts and home pages” within the broadband Internet access services offered to consumers.

26 Cable Modem Order, ¶ 38 (emphasis added).
A user cannot reach a third-party’s Web site without DNS, which (among other things) matches the Web site address the end user types into his browser . . . with the IP address of the Web page’s host server. See P. Albitz & C. Liu, DNS and BIND 10 (4th ed. 2001) (For an Internet user, “DNS is a must. . . . [N]early all of the Internet’s network services use DNS. That includes the World Wide Web, electronic mail, remote terminal access, and file transfer”). . . . Similarly, the Internet service provided by cable companies facilitates access to third-party Web pages by offering consumers the ability to store, or “cache,” popular content on local computer servers. . . . In other words, subscribers can reach third-party Web sites via “the World Wide Web, and browse their contents, only because their service provider offers the ‘capability for . . . acquiring, [storing] . . . retrieving [and] utilizing . . . information.’” “The service that Internet access providers offer to members of the public is Internet access,” not a transparent ability (from the end user’s perspective) to transmit information.”

That, of course, remains the essence of Internet access service. Nothing has changed to justify abandoning that judgment, which the Commission last reaffirmed in 2007. Broadband Internet access services are, if anything, even more integrated with enhanced functionality today. For example, even apart from such core functionalities as DNS look-up, which by themselves suffice to support an information service classification, broadband Internet access providers often include some or all of the following as part and parcel of their residential Internet access service: security screening, spam protection, anti-virus and anti-botnet technologies, pop-up blockers, parental controls, online email and photo storage, instant messaging, and the ability to create a customized browser and personalized home page that automatically retrieves games, weather, news and other information selected by the user—all of which involve “generating, acquiring, storing, transforming, processing, retrieving [and/or] utilizing” information. In addition, a

27 Brand X, 545 U.S. at 999-1000 (citations and some internal brackets omitted) (quoting Report to Congress, at ¶¶ 76-79); see also id. at 987 (the Commission concluded that cable modem service is an information service “because it provides consumers with a comprehensive capability for manipulating information using the Internet via high-speed telecommunications. That service enables users, for example, to browse the World Wide Web, to transfer files from file archives available on the Internet via the ‘File Transfer Protocol,’ and to access e-mail and Usenet newsgroups.”); Cable Modem Order, ¶ 38 n. 153 (explaining that even if users do not use email and other cable modem service offerings, “[n]early every cable modem service subscriber . . . accesses the DNS that is provided as part of the service.”). Although Public Knowledge suggests in passing that consumers can theoretically obtain access to third-party DNS look-up services, virtually all consumers today rely on broadband providers to offer that functionality as an integral part of broadband Internet access service, and Public Knowledge does not suggest otherwise. Indeed, if broadband Internet access providers suddenly chose to disable DNS functionality, Internet access services would be essentially useless to virtually all of the tens of millions of broadband Internet access customers in the U.S. today. In any event, the fact that competitors may offer their own service says nothing at all about the appropriate classification of integrated services offered to consumers.

significant and growing number of providers offer their Internet access services with a variety of network-oriented, security-related information processing capabilities that are used to address broader threats against their Internet access service and customers. These include processing Internet access traffic flows to check for telltale patterns of worms, viruses, botnets, denial of service attacks and the like; scrubbing email traffic to remove spam; and other techniques that involve interaction with stored information (e.g., databases of known computer threats) to address security concerns. In many cases, these network security-related features are fully integrated with the Internet access service offering; a consumer cannot utilize the service without also receiving the functionality provided by these security mechanisms.29

Given the range of information processing capabilities that are integrated with modern broadband Internet access services, a reviewing court would view any Title II classification decision as a bald, ends-based effort to achieve the Commission’s regulatory agenda, without regard to the facts on the ground or the logic of its prior determinations. While the Commission is certainly free to make reasoned changes in policy to the extent the governing statute allows, it is not free to ignore facts in order to shoehorn its policy preferences into the existing legal framework.30 This is particularly so here, given the Commission’s unequivocal conclusion that “the language and legislative history” of the 1996 Act “make explicit the intention of the drafters of both the House and Senate bills that the two categories [information services and telecommunications services] be separate and distinct, and that information service providers not


29 The Commission’s Network Reliability and Interoperability Council (NRIC) website catalogues more than 200 cybersecurity best practices for network operators to implement within their networks. See NRIC Best Practices website, available at https://www.fcc.gov/nors/outage/bestpractice/BestPractice.cfm. Among other things, these best practices address surveillance of the network (Detailed Information for the Best Practice: 7-7-0401, available at https://www.fcc.gov/nors/outage/bestpractice/DetailedBestPractice.cfm?number=7-7-0401), protection against denial of service attacks (Detailed Information for the Best Practice: 7-6-8047, available at https://www.fcc.gov/nors/outage/bestpractice/DetailedBestPractice.cfm?number=7-6-8047), and protection of the domain name system from poisoning (Detailed Information for the Best Practice: 7-6-8048, available at https://www.fcc.gov/nors/outage/bestpractice/DetailedBestPractice.cfm?number=7-6-8048).

30 See Motor Vehicle Mfrs. Assn. v. State Farm Mut. Automobile Ins. Co., 463 U.S. 29, 43 (1983); see also County of L.A. v. Shalala, 192 F.3d 1005, 1021 (D.C. Cir. 1999) (announcing that “[w]here the agency has failed to provide a reasoned explanation, or where the record belies the agency’s conclusion, [the court] must undo its action”) (internal quotation marks omitted). As the Supreme Court recently explained, an agency must “provide a more detailed justification than what would suffice for a new policy created on a blank slate” when “its new policy rests upon factual findings that contradict those which underlay its prior policy” or “when its prior policy has engendered serious reliance interests that must be taken into account.” FCC v. Fox Television Stations, Inc., 129 S. Ct. 1800, 1810-1811 (2009). Here, the Commission could not reclassify broadband Internet access service without both (1) “contradict[ing]” the still-unchanged facts (such as the pervasive use of DNS look-up) that it has correctly deemed sufficient to characterize broadband Internet access as a unitary “information service,” and (2) defeating the “serious reliance interests” the industry has developed in the maintenance of the existing regime.
be subject to telecommunications regulation.”31 Indeed, in the absence of any new statutory directive from Congress, the Commission could have no plausible basis for reversing its conclusive analysis of Congressional intent regarding the Title I classification of Internet access service.

III. Classifying Internet Access As A Title II Telecommunications Service Would Have Negative Consequences Across The Entire Internet Ecosystem

Quite apart from the many factual and legal impediments to changing the classification of the service broadband Internet access providers “offer” to customers, the Commission should be equally concerned about the far-reaching and destructive policy consequences that would inexorably flow from any decision to “reinterpret” this statutory scheme to encompass broadband Internet access within the scope of Title II “telecommunications services.” While some parties have suggested that “[c]lassification of broadband access as a Title II service need not entail any new regulation on providers,”32 the Commission provided a far more accurate description of the dramatic consequences of such a decision in its certiorari petition to the Supreme Court in the Brand X case:

If allowed to stand, the Ninth Circuit’s decision would fundamentally change the regulatory environment in which cable modem services are offered. It would require the Commission (and the courts, see 47 U.S.C. 206, 207, 401) to regulate cable modem providers for the first time as telecommunications common carriers under Title II of the Communications Act, 47 U.S.C. 201 et. seq. Service providers would be under a new federal duty to furnish “communication service upon reasonable request therefore”; to charge “just and reasonable” rates; to refrain from engaging in “unjust or unreasonable discrimination”; to comply with FCC requirements for filing and abiding by written tariffs; and to interconnect with other carriers. See 47 U.S.C. 201(a) and (b), 202(a), 203, 251(a). They would be required to contribute to federal universal service support mechanisms, 47 U.S.C. 254(d), as well as to other funds that support telephone number portability and telephone relay services for the hearing impaired. See 47 C.F.R. 52.17, 64.604(c)(5)(iii). . . . The effect of the increased regulatory burdens could lead cable operators to raise their prices and postpone or forego plans to deploy new broadband infrastructure, particularly in rural or other underserved areas.33

The Commission’s bleak assessment is, of course, as applicable to other forms of broadband Internet access as it is to cable modem service, and it is reason enough to reject Title II regulation. But the Commission should be under no illusion that it can confine any such decision to broadband Internet access providers. In the Supreme Court’s words, if the Communications Act were construed to “classif[y] as telecommunications carriers all entities that use telecommunications inputs to provide information service,” as the losing side in Brand X

31 1998 Report to Congress, ¶ 43. See also id. ¶ 82.
32 PK Reply Comments at 1.
contended, the Act “would subject to mandatory common-carrier regulation all information-service providers that use telecommunications as an input to provide information service to the public.”34 Indeed, this approach could extend Title II common carrier regulation not only to broadband Internet access providers, but to the farthest reaches of the Internet, including the millions of application and content providers that “use telecommunications as an input to provide information service to the public.”35

For example, Internet transport companies like Level 3, Akamai, and Limeligh, which offer backbone and content-delivery services to thousands of large and small business customers by means of facilities they either own or lease, could find themselves subject to regulation. Indeed, in a single stroke, the Commission could subject the core of the Internet ecosystem, including all traditionally unregulated Internet peering arrangements, to common carrier regulation designed for the legacy telephone network. The same is true for providers of other services that incorporate a transmission element, including:

- Providers of on-line video services like YouTube, Netflix, and Hulu that self-provide or lease transmission capacity to offer video content on the Internet.
- Providers of cloud computing services, like Amazon.com, that enable the transmission of customer data to and from cloud computing server farms.
- Providers of eReaders, like Amazon.com (the Kindle) and Barnes & Noble (the Nook), that include 3G connectivity in the purchase price of their devices.
- Providers of machine-to-machine services, such as smart utility meters, wireless heart monitors and myriad other products, which incorporate wireless or wired transmission capability in their service offerings.
- Providers of Internet search advertising services, like Google, Microsoft and Yahoo, that use Internet connections to transmit their customers’ advertising messages to end users.

Internet-based companies could not avoid the consequences of that Title II classification decision by arguing that they do not themselves own last-mile facilities—or, indeed, any transmission facilities. As the Brand X Court explained, because “the relevant definitions do not distinguish facilities-based and non-facilities-based carriers,”36 reinterpreting the statutory scheme to place broadband Internet access services within the “telecommunications service” category would “subject to common-carrier regulation non-facilities-based ISPs that own no transmission facilities.”37 This holding comports with decades of telecommunications regulations, under which non-facilities-based resellers of long-distance services to the public (such as calling card providers) have always been regulated under Title II.

34 Brand X, 545 U.S. at 994 (emphasis added).
35 Id.
36 Id. at 997.
37 Id. at 994.
Accordingly, as the Commission itself acknowledged and the Supreme Court reiterated, if the Commission “interpreted the statute as breaking down the distinction between information services and telecommunications services, so that some information services were classed as telecommunications services, it would be difficult to devise a sustainable rationale under which all, or essentially all, information services did not fall into the telecommunications service category.” Thus, any “reinterpretation” of this statutory scheme could extend full-blown common-carrier regulation to every corner of the Internet ecosystem. At best, it would indisputably mire all aspects of the Internet in years of investment-deterring, innovation-stunting legal uncertainty while the Commission and the courts sort through a new generation of mind-glazing statutory characterization disputes. That should not be this Administration’s legacy for American technology policy.

The Commission also could not avoid the many unintended consequences of this proposed Title II classification simply through selective application of its forbearance authority, as some have argued. This, too, is an argument the Commission considered and rejected more than a decade ago:

An approach in which a broad range of information service providers are simultaneously classed as telecommunications carriers, and thus presumptively subject to the broad range of Title II constraints, could seriously curtail the regulatory freedom . . . important to the healthy and competitive development of the enhanced-services industry. In response to this concern, Senators Stevens and Burns maintain that the Commission could rely on its forbearance authority under Section 10 of the Act to resolve any such problems. . . . Notwithstanding the possibility of forbearance, we are concerned that including information service providers within the “telecommunications carrier” classification would effectively impose a presumption in favor of Title II regulation of such providers. Such a

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38 1998 Report to Congress, ¶ 57; see also note 11, supra (addressing arguments that illogically conflate the threshold classification of communications services with the legacy regulatory consequences of classifying such a service as an “information service”). Moreover, any attempt by the Commission to somehow limit the reach of such a policy to only certain players in the Internet ecosystem (e.g., only facilities-based providers) not only would be legally invalid, but also would raise serious policy concerns in that it might leave out parties that have just as big a role to play in the “openness” of the Internet as facilities-based providers of broadband Internet access service. In addition to being underinclusive, such an approach also would be devastating in terms of the uncertainty and disruption of settled expectations for companies that are making the investments necessary to create the underlying broadband networks upon which they and third parties rely to deliver increasingly bandwidth-intensive content, services, and applications.

39 Indeed, the Commission has taken years to resolve questions about the proper classification of prepaid calling cards, enhanced prepaid calling cards, IP-in-the-middle voice services, IP-to-IP telephony services, and—after more than a dozen years—it still has not provided any guidance on the classification of interconnected VoIP.

40 See Remarks of FCC Acting Chairman Michael J. Copps, FCBA Seminar: The Communications Act and the FCC at 75, at 3 (Feb. 24, 2009) (“Our agency must also cultivate the virtue of predictability. Nobody says ‘FCC’ and ‘predictability’ in the same breath any more. . . . Thunderbolts from above are not the way for an independent agency to make policy or to discharge its public interest obligations.”).
presumption would be inconsistent with the deregulatory and procompetitive goals of the 1996 Act. In addition, uncertainty about whether the Commission would forbear from applying specific provisions could chill innovation.\(^{41}\)

Subsequent experience has validated the Commission’s concerns about relying too heavily on forbearance to mitigate the harms of Title II regulation. Although the Commission has used its forbearance authority to exempt non-dominant common carriers from the most onerous aspects of Title II regulation, such as the tariffing obligations of Section 203, the Commission stated that it will not forbear from Sections 201, 202, and 208.\(^{42}\) Those provisions alone, however, would subject a vast range of Internet companies to unaccustomed, unnecessary, and innovation-deterring regulatory scrutiny about whether the rates, terms, and conditions of their diverse services are “unjust and unreasonable” or “unreasonably discriminatory.”

Moreover, forbearance petitions are fiercely contested before the Commission and routinely appealed to the courts. No matter what the outcome of any given forbearance fight, the inevitable regulatory uncertainty during the interim would, as the 1998 Report warned, “chill innovation.”\(^{43}\) In Commissioner McDowell’s words, this would not be the kind of “environment needed to attract up to $350 billion in private risk capital to build out America’s broadband infrastructure.”\(^{44}\) And even once the Commission made the requisite findings needed to forbear from the application of particular rules to particular Internet-based providers, its decisions would be context-specific and highly subjective, and would thus be prone to reversal by subsequent Commissions. No issue would ever be settled, and the Internet would forever bear a legacy of deep regulatory uncertainty, all attributable to a single misguided decision to change the classification of broadband Internet access service.

* * *

Congress, the Administration, and the public are all counting on this Commission to produce a pragmatic broadband plan that brings all Americans fully into the 21st century. The Commission would betray those expectations if it re-exposed this industry to years of

\(^{41}\) 1998 Report to Congress, ¶¶ 46-47 (emphasis added). See also FCC Petition for Certiorari at 28 (“Forbearance proceedings would be time-consuming and hotly contested and would assuredly lead to new rounds of litigation, and there is no way to predict in advance the ultimate outcome of such proceedings. Moreover, the speculative possibility of eventual freedom from regulation under Section 10 would not relieve the industry or regulators of the immediate burdens and uncertainties that would be created by imposing common carrier obligations on cable modem providers. In short, the FCC’s forbearance authority is not in this context an effective means of ‘remov[ing] regulatory uncertainty that in itself may discourage investment and innovation.’”).


\(^{43}\) 1998 Report to Congress, ¶ 47.

investment-deterring uncertainty and litigation by re-opening a long-settled debate over arcane regulatory classifications.\textsuperscript{45} Instead, the Commission should focus on preserving the stable regulatory environment needed to encourage massive job-producing private-sector investment that is vital to ensuring “all people of the United States have access to broadband capability,” as Congress intended.

Sincerely,

Kyle E. McSlarrow
National Cable & Telecommunications Association

Steve Largent
CTIA – The Wireless Association

Walter B. McCormick, Jr.
United States Telecom Association

Grant Seiffert
Telecommunications Industry Association

Curt Stamp
Independent Telephone and Telecommunications Alliance

Thomas J. Tauke
Verizon

James W. Cicconi
AT&T Inc.

Gail MacKinnon
Time Warner Cable

Steve Davis
Qwest

\textsuperscript{45} See Remarks of FCC Acting Chairman Michael J. Copps, Pike & Fischer’s Broadband Policy Summit V, at 3 (June 18, 2009) (cautioning the Commission against engaging in debates that have “too frequently deflected us from the real issues of broadband because we spent so much time parsing arcane language rather than confronting real-world challenges.”).
Exhibit B

Letter from USTA to Chairman Julius Genachowski
(filed Apr. 28, 2010)
April 28, 2010

Julius Genachowski, Chairman
Federal Communications Commission
445 Twelfth St., SW
Washington, DC 20554

Re:  A National Broadband Plan for Our Future, GN Docket No. 09-51; Preserving the Open Internet, GN 09-191; Broadband Industry Practices, WC Docket No. 07-52

Dear Chairman Genachowski:

I submit these views in response to reports that the Commission is considering a “reclassification” of broadband Internet access services within Title II of the Communications Act of 1934.

Five years ago, the federal government represented to the United States Supreme Court that treating cable modem broadband Internet access as a Title II “telecommunications service” subject to traditional common carrier regulation would be “impossible to square with the deregulatory purposes of the Telecommunications Act of 1996.”¹ That statement reflected both the factual realities of how broadband access is provided and the Federal Communications Commission’s long-held interpretation of the 1996 Act. The Commission has never classified any form of broadband Internet access as a Title II “telecommunications service” in whole or in part, and it has classified all forms of that retail service as integrated “information services” subject only to a light-touch regulatory approach under Title I. These statutory determinations are one reason why the Clinton Administration rejected proposals to impose “open access” obligations on cable companies when they began providing broadband Internet access in the late 1990s, even though they then held a commanding share of the market.² The Internet has thrived under this approach.³

Recently, some have encouraged the Commission to reverse this settled view and treat broadband Internet access providers as offering both an “information service” and a “telecommunications service” subject to Title II regulation. Embarking on that course would bring an enormous sector of the economy within the ambit of public-utility-style common carrier

regulation. Yet these transformative proposals are not driven by any relevant changes in either the law or the facts bearing on the relevant statutory definitions. Rather, advocates of this shift are motivated by doubts about the extent of the Commission’s “ancillary” authority to regulate broadband service providers under Title I in light of the D.C. Circuit’s recent Comcast decision, which rejected some (but not all) of the potential Title I rationales the Commission could attempt to invoke to regulate network management practices.4 These advocates have cited that decision as a basis for urging the Commission to advance an industry-transforming regulatory agenda. Title II classification, if adopted, could thus revolutionize government regulation of a vast sector of the economy without any warrant from Congress, all for the evident purpose of evading the consequences of a court decision limiting the Commission’s authority. In the words of the Washington Post editorial staff, it would be perceived as “a legal sleight of hand” and “a naked power grab.”5

Given the obviousness of these motives and the absence of any change in circumstances to justify the results, the Commission’s assertion of authority to regulate broadband Internet access as a “telecommunications service” under Title II would be fundamentally at odds with principled agency decisionmaking and with the proper role of administrative agencies within our constitutional system. It would surely be met with skepticism by a reviewing court, and the odds of appellate reversal would be high—particularly given significant industry reliance on the Commission’s prior, deregulatory interpretation of the same statutory scheme. Administrative agencies are charged with implementing the law, not with assuming for themselves the legislative authority that the Constitution vests in Congress. Unlike the local competition rules that the Commission enacted on the heels of the 1996 Act and that I defended in the Supreme Court,6 this is not a case where the Commission would simply be responding to a major legislative innovation by Congress or engaging in a mere gap-filling exercise. Instead, the Commission would be—for the first time ever and with no action by Congress—extending a common carrier regime, designed for the monopolist telephone market of the early twentieth century, to a dynamic Internet marketplace that you recently called “the foundation for our new economy.”7 Such a significant and consequential policy choice should be made, if at all, by Congress.

I. Agencies Have Discretion To Fill Gaps Left By Congress, Not To Create Law Beyond What Congress Has Enacted

Administrative agencies authorized to exercise substantial power are an accepted and necessary feature of modern governance. But as Justice Kennedy recently reminded us, “the amorphous character of the administrative agency in the constitutional system” requires that

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4 See Comcast Corp. v. FCC, ___ F.3d ___, No. 08-1291, 2010 WL 1286658 (D.C. Cir. Apr. 6, 2010). The D.C. Circuit declined to consider the merits of several Title I arguments that the Commission had developed on appeal but not in the underlying administrative order. See id., slip op. at 33-36 (citing SEC v. Chenery Corp., 318 U.S. 80, 87-88 (1943)).


agency discretion cannot be unbounded. Hence, agency action must reasonably heed the statutory boundaries enacted by Congress, and agency decisionmaking must also be adequately justified in light of the relevant facts. These limitations and procedural requirements leave agencies with significant authority, yet they are meaningful: along with other principles of constitutional and administrative law, observance of these limits serves to secure the legitimacy of administrative agency power within the constitutional order. Federal courts play an important role in enforcing these constraints on agency action, but the members of this Commission also carry an independent obligation to observe these limits on their discretion.

Under the *Chevron* doctrine, ambiguity in a federal statute is understood as an implicit delegation by Congress to the administering agency of authority to make a policy choice within the bounds of that ambiguity, and courts will defer to that choice so long as it is reasonable. Where Congress leaves ambiguity in statutory meaning, it is the agency—armed with unique experience, expertise, and fact-finding ability—that has the right and the responsibility to interpret that ambiguity in a rational manner. In exercising that discretion, it may be appropriate for an agency to reconsider the wisdom of its existing policies or to reverse those policies or undertake new regulation when circumstances change.

But this rationale only goes so far. The *Chevron* doctrine protects normal exercises of agency discretion to fill gaps—to make policy in the interstices that Congress has left in its legislation. Because, as Justice Breyer once wrote, “Congress is more likely to have focused upon, and answered, major questions, while leaving interstitial matters to answer themselves in the course of the statute’s daily administration,” it is generally plausible that gaps created by

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9. Acknowledging the “significant antidemocratic implications” of governance by administrative action, Judge Friendly observed that enforcement of procedural requirements is “necessary” if administrative action “is to be consistent with the democratic process.” Henry J. Friendly, *The Federal Administrative Agencies: The Need for Better Definition of Standards*, 75 Harv. L. Rev. 863, 880 (1962). Professor Jaffe similarly suggested that while judicial doctrines disfavoring delegation of legislative power to agencies threatened to hamper the administrative state, enforcement of procedural requirements and limits on legislative delegations could both improve the operation of administrative authority and “safeguard … its legitimate exercise.” Louis L. Jaffe, *Judicial Control of Administrative Action* 85-86 (1965). Jaffe thus wrote that while delegations of power to administrative agencies “may be exceptionally broad and may, indeed should, be taken to grant enormous room for the improvisation and consolidation of policy,” a delegation nonetheless necessarily “implies some limit.” *Id.* at 320. “Action beyond that limit is not legitimate.” *Id.*


11. See, e.g., *Brand X*, 545 U.S. at 981-982; *Smiley*, 517 U.S. at 742; *Chevron*, 467 U.S. at 863-864.

12. See *Chevron*, 467 U.S. at 843 (“The power of an administrative agency to administer a congressionally created … program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.” (quoting *Morton v. Ruiz*, 415 U.S. 199, 231 (1974))).
ambiguity in statutory terms should be construed as a delegation of authority for the agency to make policy—particularly given the agency’s comparative advantages in doing so.13

The Chevron doctrine is rooted in and delimited by this presumption about Congress’s delegatory intent. Where an agency takes action that tests these boundaries, the Supreme Court has cautioned that “there may be reason to hesitate before concluding that Congress has intended … an implicit delegation.”14 Particularly where an agency asserts broad new authority in an important area without a clear statutory basis, or makes a fundamental change in its implementation of a statute that upsets settled practices and reliance interests, the agency should not assume that its determinations will enjoy the ordinary degree of deference. Rather, as Professor Sunstein has observed, “it would be a major error to treat all ambiguities as delegations,” and deference may be reduced where an “agency is seeking to extend its legal power to an entire category of cases, rather than disposing of certain cases in a certain way or acting in one or a few cases.”15 Courts properly show less deference to such actions due to the strain they place on the checks and balances that otherwise make the role of administrative agencies reconcilable with our constitutional system.16

Of particular relevance here, where agencies cite supposed “ambiguities” in a statute to effectuate major shifts in federal policy or assert aggressive new regulatory authority over broad subject areas, courts have refused deference on the ground that the cited ambiguity cannot plausibly be thought to delegate such enormous discretion. One instructive case is FDA v. Brown & Williamson Tobacco Corp.17 In that case, after many years of proceeding otherwise, the FDA undertook an exhaustive rulemaking and concluded that cigarettes were subject to regulation under the federal Food, Drug, and Cosmetic Act. Although the literal statutory language supported the agency’s conclusion, the Supreme Court rejected the FDA’s interpretation. The Court expressed doubt that the rationale of Chevron should apply where, as in that case, the “breadth of the authority” the agency had asserted made it less plausible that Congress would have intended an implicit delegation of such broad discretion.18 However pliable the relevant statutory terms might be, the Court was “confident that Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion.”19

16 See Breyer, supra note 13, at 370 (degree of deference may vary depending on “whether the legal question is an important one”); see also Sunstein, supra note 15, at 2100; Cass R. Sunstein, Chevron Step Zero, 92 Va. L. Rev. 187, 231-242 (2006) (discussing cases in which the Supreme Court has shown less deference to agency resolutions of major questions).
18 See id. at 159-160.
19 Id. at 160. The FDA was similarly rebuffed when the Supreme Court rejected the FDA’s position that state tort suits against drug manufacturers alleging failure to warn should be preempted because they interfere with the purposes and administration of the federal drug regulatory regime. See Wyeth v. Levine, 129 S. Ct. 1187 (2009). The Court held that the FDA’s position merited no deference in part because it “reverse[d] the FDA’s own longstanding
The Supreme Court’s decision in *Gonzales v. Oregon* reflects a similar principle.\(^{20}\) There, the Attorney General had asserted authority to define legitimate medical practice and prohibit doctors from participating in medically assisted suicide in accordance with state law. Although the Attorney General asserted this authority under the guise of enforcing the federal Controlled Substances Act, the Court again rejected the notion that ambiguity in that statute could be read as a broad delegation of the “extraordinary authority” claimed by the Attorney General: “The idea that Congress gave the Attorney General such broad and unusual authority through an implicit delegation … is not sustainable. ‘Congress … does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.’”\(^{21}\)

Decisions of the federal appeals courts provide similar examples. For instance, in *American Bar Association v. FTC*,\(^{22}\) the FTC had cited an ambiguity in a statutory definition as a basis for asserting authority to regulate attorneys engaged in the practice of law as “financial institutions” subject to the privacy provisions of the Gramm-Leach-Bliley Act. But the D.C. Circuit invalidated that decision on the ground that the existence of ambiguity alone did not support the conclusion that Congress intended to delegate authority of the nature the FTC had asserted. In light of other features of the statute, the court found it “difficult to believe that Congress, by any remaining ambiguity, intended to undertake the regulation of the profession of law” when that profession was not mentioned in the statute and had never before been seen to fall within the statute’s reach.\(^{23}\) Similar considerations drove the court of appeals to invalidate this Commission’s action in *American Library Association v. FCC*, in which the court criticized the Commission for attempting to justify a claim of “sweeping authority” it had “never before asserted.”\(^{24}\)

**II. Classifying Broadband Internet Access As A Common Carrier Telecommunications Service Would Be An Extraordinary Assertion Of Broad New Authority, Not A Gap-Filling Measure**

Whether resolved on the ground that the agency had acted outside its delegated authority, that Congress had spoken directly to the issue, or that the agency’s position was unreasonable,

\(^{21}\) Id. at 267 (quoting *Whitman v. American Trucking Ass’ns, Inc.*, 531 U.S. 457, 468 (2001)).
\(^{22}\) 430 F.3d 457, 469 (D.C. Cir. 2005).
\(^{23}\) Id.
\(^{24}\) See 406 F.3d 689, 691, 704, 708 (D.C. Cir. 2005). While this and the other examples discussed each involved judicial disapproval of agency assertions of regulatory authority, similar reluctance to construe statutory ambiguity as license for agencies to undertake a fundamental shift in a regulatory scheme also influenced the Supreme Court to reject this Commission’s surrender of regulatory authority in *MCI Telecommunications Corp. v. AT&T Co.*, 512 U.S. 218 (1994). There, the Court held that the Commission’s authority to “modify” any tariffing requirement of 47 U.S.C. § 203 did not authorize the Commission to make tariff filing optional for all nondominant long-distance carriers. The Court found it “highly unlikely that Congress would leave the determination of whether an industry will be entirely, or even substantially, rate-regulated to agency discretion.” Id. at 231.
these cases illustrate courts’ appropriate reluctance to infer from statutory ambiguity a delegation of agency discretion to assert broad regulatory authority over a whole new category of issues. A decision by the Commission to extend common carrier regulation to broadband Internet services, based on nothing more than alleged ambiguity in the definitional terms of the Act, would fall in the same category. It would be just another case in which an agency had reversed itself and seized broad new authority to pursue a favored regulatory agenda despite the absence of any clear congressional authority—indeed, despite the agency’s own prior conclusion that Congress had affirmatively withheld such authority.

According to many of its proponents, authority for Title II classification would supposedly derive from alleged ambiguities in the statutory definitions of “telecommunications service” and “information service.” But as history makes clear, Title II classification would require far more than an interstitial implementation of these terms. Broadband Internet access service has never been regulated under Title II. From the advent of the Internet, the Commission has instead treated broadband Internet access as an “information service” without a separate “telecommunications service” component, subject only to the Commission’s ancillary authority under Title I.

The Commission’s 1998 Report to Congress articulated the key interpretations of the 1996 Act that have formed the basis of that consistent treatment of broadband Internet access. The Commission determined there that Congress specifically intended that “telecommunications services” and “information services” be construed as mutually exclusive categories, and that application of these statutory terms required examination of how service is “offer[ed]” to the end user. Thus, the Commission explained that an “information service” offered to end users as a functionally integrated whole should not simultaneously be treated as a “telecommunications service,” even though by definition it includes a telecommunications component.

These conclusions in turn built upon a framework that pre-dated the 1996 Act. In the Computer Inquiry proceedings, as traditional communications common carriers moved into the nascent field of computer data processing, the Commission distinguished between “basic services” (defined as the offering of “a pure transmission capability”) and “enhanced services,” which combined basic services with computer processing applications. Critically, the Commission determined that “enhanced services” were not within the scope of its Title II jurisdiction, but rather were subject only to the Commission’s ancillary authority under Title I.
In its 1998 Report to Congress, the Commission concluded that Congress intended the terms “telecommunications service” and “information service” in the 1996 Act to build upon the “basic” and “enhanced” service distinction the Commission had previously drawn, and it construed the terms to be mutually exclusive in light of Congress’s evident intent to maintain a regime in which information service providers are not subject to regulation as common carriers merely because they provide their services “via telecommunications.” The Commission thus concluded that “when an entity offers transmission incorporating the ‘capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information,’ it does not offer telecommunications. Rather, it offers an ‘information service’ even though it uses telecommunications to do so.”

In later orders classifying various broadband Internet access technologies, the Commission straightforwardly applied this same statutory framework it had adopted in 1998. In the 2002 Cable Modem Declaratory Ruling, for example, the Commission concluded that cable modem service is provided to the end user as a single, integrated service, with a telecommunications component that is not separable from the computer processing, information provision, and computer interactivity functions. Applying the approach articulated in the 1998 Report to Congress, the Commission found, and the Supreme Court later agreed, that the service does not include an offering of telecommunications service. Since 2002—and as recently as 2007—the Commission has repeatedly applied the same approach to find that even though it includes a transmission component, broadband Internet access service as provided through other technologies likewise constitutes an “information service” without a stand-alone offering of telecommunications service, and thus is subject only to the Commission’s ancillary authority under Title I.

In short, from their inception in the 1990s, broadband Internet access services have always been “information services” with no separate “telecommunications service” component,
and they have never been subject to regulation under Title II. The Commission has applied this position consistently, defended it successfully in litigation all the way to the Supreme Court, and repeatedly professed that it best reflects Congress’s intent and the broad objectives of federal Internet policy.35

Against this backdrop, any decision to reclassify broadband as a “telecommunications service” under Title II would be a startling about-face. After years of concluding that Congress wished to insulate broadband Internet access services from common carrier regulation in order to protect the healthy and competitive development of the Internet,36 the Commission would abruptly reverse itself—and contradict its own account of congressional intent—by saddling those services with the burdens of a regulatory model that was developed for the monopoly public utilities of the last century. As in other cases, it would be irrational to presume that Congress wished to delegate authority to make a “decision of such economic and political significance”37 and “alter the fundamental details of [the] regulatory scheme”38 that had long applied in the industry, merely by including a supposed definitional ambiguity in the terms “telecommunications service” or “information service.”

Proponents of Title II classification of broadband Internet access have cited the Supreme Court’s decision in Brand X as providing carte blanche authority for the Commission to reverse itself and assert unprecedented authority to regulate the Internet, but that decision does not support any such presumption. The Court was not faced in that case with a seizure of broad new authority or a major policy shift of the type that is contemplated here; indeed, as discussed above, just the opposite was true. The Court’s decision thus does not endorse the kind of anything-goes discretion the Commission would have to invoke to classify broadband Internet access as a Title II “telecommunications service.” Moreover, the only question before the Court was whether the Commission’s position that cable modem broadband Internet access service constituted an “information service” without a separate “telecommunications service” was “at least reasonable.”39 The Court held that it was, and that the statute did not “unambiguously require” the conclusion that cable modem broadband service providers “offer[ed]” telecommunications.40 In doing so, the Court had no occasion to go further and decide whether, in addition, the statute might compel the Commission’s interpretation and preclude the opposite outcome that the challengers had proposed there and that the advocates of reclassification

36 See supra note 35.
37 Brown & Williamson, 529 U.S. at 160.
38 Gonzales, 546 U.S. at 267.
39 545 U.S. at 990 (emphasis added).
40 Id. at 989-990.
propose now. The opinion, however, suggests that the Court would not readily accept a reversal by the Commission on the regulatory classification of broadband service providers.41

Nor does the legislative record support an inference that Congress intended any statutory ambiguity to authorize a reversal of this magnitude. Indeed, to the extent the statutory scheme addresses the topic of Internet regulation, it indicates a strong congressional preference for keeping the Internet unregulated.42 When an agency adheres consistently to a particular view of statutory meaning, and Congress is aware of the agency’s interpretation and takes no action to correct it, Congress’s inaction is persuasive evidence that the interpretation is the one intended by Congress.43 Here, Congress has known of the Commission’s approach since the Commission presented it in the 1998 Report to Congress, applied it in the 2002 Cable Modem Order, and showcased it in the Government’s Brand X arguments to the Supreme Court. During the ensuing years, Congress has never signaled disapproval of the Commission’s current statutory interpretation or taken any action to overturn it—a strong indicator that the Commission’s approach thus far has been the one intended by Congress. Indeed, while Congress has taken up several bills designed to authorize the Commission to regulate some aspects of broadband Internet access, it has not sought to accomplish this by redefining that service as (or as containing) a Title II telecommunications service.44

Thus, rather than filling a gap in a manner consistent with congressional intent, the proposed Title II classification would occur solely on the Commission’s say-so. Citing the Supreme Court’s recent decision in Fox Television, some advocates of Title II classification have suggested that this say-so is all that is required, so long as the Commission cites a good reason.45 That assertion is incorrect. To the contrary, Fox Television reaffirmed that when an agency changes course, it must provide a “more detailed justification [for the change] than what would suffice for a new policy created on a blank slate” if—as would be true in this case—its “new policy rests upon factual findings that contradict those which underlay its prior policy” or its

41 See, e.g., id. at 990 (“it would, in fact, be odd” to adopt a reading of the statute under which cable modem providers “offer” the discrete transmission components of the “integrated finished product” offered to consumers); id. at 989, 990 (Commission’s interpretation of “offer” best reflected “common” and “ordinary” usage); id. at 995 (expressing “doubt” that Congress intended the “abrupt shift in Commission policy” that would be required under the statutory interpretation offered by the advocates of Title II regulation). Cf. Cuomo v. The Clearing House Ass’n L.L.C., 129 S. Ct. 2710, 2715 (2009) (presence of “some ambiguity as to the meaning” of relevant statutory terms “does not expand Chevron deference to cover virtually any interpretation”).


44 See, e.g., Internet Freedom Preservation Act of 2008, H.R. 5353, 110th Cong. (2008) (bill would have charged Commission to undertake study and report to Congress on issues pertaining to broadband Internet access service); Internet Non-Discrimination Act of 2006, S. 2360, 109th Cong. (2006) (bill would have imposed obligations on network operators without reference to Title II and authorized Commission to adjudicate violations).

45 See, e.g., Reply Comments – NBP Public Notice # 30, Comments of Public Knowledge, GN Docket No. 09-47, 09-51, 09-137, at 4 (filed Jan. 26, 2010) (citing Fox Television as license for the Commission to declare broadband Internet access a “telecommunications service” so long as the Commission concludes that doing so would better serve the Commission’s policy goals).
“prior policy has engendered serious reliance interests that must be taken into account.”

Failure to do so, the Court reaffirmed, requires judicial invalidation.

Here, there is no reasoned explanation the Commission could give for rejecting the considerations that underlay its own longstanding treatment of broadband service. Rather, Title II classification would appear to come as a direct and obvious response to the D.C. Circuit’s recent Comcast decision limiting the Commission’s authority to regulate the Internet under Title I. That this assertion of significant new regulatory authority would serve solely as a means to an end—as an effort to “provide a sounder legal basis” for a particular regulatory agenda in the wake of a court loss—would not satisfy Fox Television’s requirements for reasoned decisionmaking and would lessen the case for judicial deference further still. In short, this is not gap-filling of the sort Chevron contemplated, and it is not an appropriate undertaking for this Commission.

* * *

By classifying broadband Internet access as a “telecommunications service” under Title II, the Commission would essentially be making new law for a major sector of the economy. It would do so not to accommodate an improved understanding of statutory meaning or to account for new factual circumstances bearing on the relevant legal criteria, but solely in reaction to a court decision rejecting its prior assertion of regulatory power. As stewards of a critical national industry and of the Commission’s proper place in the governmental structure, the members of this Commission should pause before embarking on that course. The Commission’s discretion to tailor federal telecommunications policy to fit the changing needs of an evolving industry is cabined by the boundaries set by Congress and by the requirements of reasoned decisionmaking, and the proposed reversal on Title II falls outside those limits. Any sea change in the Commission’s overall regulatory framework should come from Congress, not from the Commission itself.

Sincerely yours,

/s/ Seth P. Waxman
Seth P. Waxman
Counsel for the United States
Telecom Association

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46 Fox Television, 129 S. Ct. at 1811.
47 Id.; see also id. at 1811 (Kennedy, J., concurring in part and concurring in the judgment) (an “agency cannot simply disregard contrary or inconvenient factual determinations that it made in the past”).
48 Broadband Plan 337; see also, e.g., Notice of Oral Ex Parte Communication of Free Press, GN Docket No. 09-51, GN 09-191, WC Docket No. 07-52 (Apr. 9, 2010) (urging reclassification of broadband Internet access service under Title II in direct response to Comcast v. FCC).
Exhibit C

Letter from broadband industry to Chairman Julius Genachowski
(filed Apr. 29, 2010)
April 29, 2010

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Preserving the Open Internet, GN Docket No. 09-191; Broadband Industry Practices, WC Docket No. 07-52; A National Broadband Plan for Our Future, GN Docket No. 09-51

Dear Chairman Genachowski:

In recent weeks, certain advocates for government regulation of the Internet have relied on alarmist rhetoric in arguing that the D.C. Circuit’s ruling in the Comcast case rendered the Commission “unable to implement the National Broadband Plan” and unable to preserve the Internet’s “openness,” thus leaving the agency in “an existential crisis.” They claim that the cure for this supposed crisis is to remove broadband Internet access service from its long-standing status as a Title I information service and “reclassify” it as a Title II telecommunications service, where they allege it resided before the “previous two Commissions” took the “misguided” step of moving it into Title I. This, in their view, would further the public interest by enabling the Commission to invoke common carrier “policies that date from the Taft administration” in order to regulate today’s broadband Internet “just like the railroads” and “telegraphs” in the early part of the last century. As discussed below, this proposal to encumber the modern Internet with hundred-year-old rules designed for franchised monopoly public utilities would mark a radical and unlawful departure from the “light touch” Internet policies embraced by both Democratic and Republican Administrations for the past fifteen years.

We have already explained why Title II “reclassification” is both deeply flawed and entirely unnecessary to preserve the openness of the Internet. Several members of our group


3 Wu Article at 2.

4 Letter from NCTA, CTIA, US Telecom, TIA, ITTA, Verizon, AT&T Inc., Time Warner Cable, and Qwest to Julius Genachowski, FCC, GN Docket No. 09-191 (Feb. 22, 2010) (“Industry Letter”). See Statement of NCTA President and CEO Kyle McSlarrow Regarding the D.C. Circuit Court Decision in Comcast v. FCC, NCTA Press Release (April 6, 2010) (“We cannot state strongly enough that this decision will change nothing about the cable industry’s longstanding commitment to provide consumers the best possible broadband experience. Nor does the ruling alter the government’s current ability to protect consumers. We continue to embrace a free and open Internet as the right policy and will continue...”)
have also explained why reclassification is not needed to implement the centerpiece of the National Broadband Plan – universal access to the broadband Internet for all Americans.\(^5\)

Because the proponents of Internet regulation continue to mislead the Commission, Congress and the public about “reclassification,” however, we take this opportunity to set the record straight: \textit{The Commission has never classified any kind of Internet access service (wireline, cable, wireless, powerline, dial-up or otherwise) as a Title II telecommunications service, nor has it ever regulated the rates, terms and conditions of that service -- Internet access service has always been treated as a Title I information service.}

The Commission is not free to change that classification simply because some parties might now prefer a different outcome.\(^6\) Any assertions to the contrary misstate regulatory history, misread the law and ignore many of the necessary byproducts of any such reclassification. Indeed, the United States Supreme Court has observed that the logic of such a decision would almost surely subject large portions of the Internet ecosystem – including non-facilities based information service providers “that own no transmission facilities” – to “mandatory common carrier regulation.”\(^7\) It should come as no surprise, then, that leading financial analysts and technology commentators have questioned this path.\(^8\) Thus, it is hard to

to work with the Commission and other policymakers and stakeholders to find a sound way of preserving that goal.”); \textit{USTelecom Statement on Comcast Court Ruling,} USTelecom Press Release (April 6, 2010) (“Today’s narrow court ruling will have no impact on our industry’s commitment to provide the optimum Internet experience to consumers. Our companies will continue to ensure that consumers can access any lawful content they wish, run any application, and attach any device of their choice, consistent with the FCC’s longstanding policy principles that we pledged to support several years ago.”); \textit{AT&T Statement on the Comcast vs. FCC Decision,} AT&T Press Release (April 6, 2010) (“AT&T made a commitment to abide by the FCC’s Open Internet Principles when they were first formulated in 2005, and we will continue to do so.”); \textit{Appeals Court Decision on Comcast v. FCC Will Have No Impact on Consumers,} Verizon General Counsel Says, Verizon Press Release (April 6, 2010) (“Today’s decision in Comcast vs. FCC will have no impact on the experience of Internet users. Consumers are in the driver’s seat in today’s market-driven Internet ecosystem, and their interests remain fully protected. . . . The FCC’s authority supplements the various other consumer protection and competition laws that apply to all members of the Internet ecosystem.”). \textit{See also} Letter from Brendan Kasper, Vonage, to Marlene Doritch, FCC, GN Docket No. 09-191, at 1 (“there is no need for such a reclassification”).

5 Letter from Kyle McSlarrow, NCTA, to Julius Genachowski, FCC, GN Docket No. 09-51 (March 1, 2010); Reply Comments of USTelecom, WC Docket No. 09-191 (April 26, 2010); Letter from Gary Phillips, AT&T, to Marlene Doritch, FCC, GN Docket No. 09-51 (April 12, 2010); Verizon Reply Comments, GN Docket No. 09-191, WC Docket No. 07-52 (April 26, 2010) (noting potential FCC authority under both Section 254 and 706(b) to address universal service funding for broadband).


Imagine a regulatory policy more at odds with this Commission’s goal of encouraging “private investment and market-driven innovation.” Consistent with the Commission’s commitment to be “candid” about “government policies [that] hinder innovation and investment in broadband,” the Commission should categorically reject any proposal to “reclassify” broadband Internet access as a Title II service.

**Internet Access Service Has Never Been Subject to Title II Regulation.** Some advocates of Internet regulation contend that during the previous Administration the Commission:

Declared that high-speed Internet access would no longer be considered a ‘telecommunications service’ but rather an ‘information service.’ This removed all high-speed Internet access services – phone as well as cable – from regulation under the common-carrier section of the Communications Act.

These assertions are simply wrong. The Commission, under then-Chairman William Kennard, first addressed the regulatory status of Internet access service in its seminal Report to Congress in 1998. The Commission began by examining the relevant statutory terms “telecommunications service” and “information service” and concluded that the two terms are “mutually exclusive,” in that an integrated information service cannot simultaneously be said to contain a “telecommunications service,” even though it has “telecommunications” components. Then, after conducting a thorough examination of the features and functionalities that are part and parcel of Internet access service, the Commission concluded that it is an integrated “information service” and is not (nor does it contain) a “telecommunications service.” Subsequent Commissions reached these same fundamental conclusions when examining specific forms of broadband Internet access service in 2002 (cable), 2005 (wireline), 2006 (powerline) and 2007 (wireless). And when the Commission’s approach to broadband Internet access classification was challenged in court, the Commission defended its conclusions all the way to the Supreme Court and won.

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10 Id. at 4.
11 Even apart from the profound substantive flaws associated with “reclassification” proposals, these proposals are also procedurally defective because they incorrectly assume the Commission could effectuate such a recategorization without issuing a new Notice of Proposed Rulemaking that properly raises the prospect of such a sea change and enables development of an appropriate record pursuant to the Administrative Procedure Act. See 5 U.S.C. § 553. In any such proceeding, the APA would prevent the Commission from changing the regulatory classification of broadband Internet access services merely to establish its jurisdiction over such services. See Waxman Letter.
12 Crawford Op-Ed (emphasis added). See also Wu Article.
13 See Industry Letter at 1-3 (discussing Report to Congress).
14 See id. at 2.
15 *Brand X*, 545 U.S. 967. While a 6-3 majority voted to uphold the Commission’s decision, the Open Internet Coalition (OIC) now suggests the Commission should adopt the arguments in Justice Scalia’s dissent in order to support “reclassification.” See Alice Straight, *Coalition Urges FCC to Reclassify Broadband*, TMCnet.com (April 14, 2010) ("The Open Internet Coalition is asking the FCC to say that
Although these facts are beyond dispute, proponents of Internet regulation insist that “until August 2005, high-speed access to the Internet over telephone lines via DSL technology was regulated under Title II of the Telecommunications Act as a common carrier, telecommunications service.” As proof of this supposed regulatory regime, they cite the Commission’s *GTE ADSL Order*, in which the Commission held that GTE’s “DSL Solutions-ADSL Service” was an interstate telecommunications service that should be tariffed at the federal level. But the *GTE ADSL Order* is entirely inapposite, and their reliance on it only underscores the flaw in their arguments. The proponents of Internet regulation have conflated the status of retail broadband Internet access service sold by Internet Service Providers (ISPs) -- which, as discussed above, has always been treated as an information service -- with the status of certain bare transmission services that phone companies, but not other providers, were required to make available to competing ISPs pursuant to *Computer Inquiry* rules dating from the 1970s. The *GTE ADSL Order* is irrelevant because it involved the latter, not the former. More specifically, it involved the status of a bare transmission service offered by GTE that, in the words of the Commission, “is designed to be used by ISPs as part of their end-to-end Internet access service.” That transmission service did not include Internet access, which was then and is now an integrated information service under the terms of the statute. It did not offer end users the ability to surf the web, transmit email, download music, watch videos or engage in any other activities typically associated with Internet access service. In short, the *GTE ADSL Order* has no bearing on the regulatory status of broadband Internet access service.

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Scalia was correct in his dissent . . . .”). Of course, to the extent that the six-Justice majority has already rejected Justice Scalia’s arguments, those arguments are now unavailable to the Commission for that reason alone. Moreover, Justice Scalia’s opinion could not support the proposed reclassification because, in several fundamental respects, it appears to misconstrue the technical and functional nature of broadband Internet access service. For example, in one passage, it asserts that consumers who purchase DSL-based broadband Internet access “will not be able to use the Internet unless they get both someone to provide them with a physical connection and someone to provide them with applications and functions such as e-mail and Web access.” See, e.g., *Brand X*, 545 U.S. at 1009 (Scalia, J., dissenting). In fact, as Justice Scalia’s opinion also acknowledged, even “[i]n the DSL context, the physical connection is generally resold to the consumer by an ISP.” *Id.* at 1009 n.3. Thus, even if some small number of consumers may have obtained transmission and Internet access from different providers at one point in time, the overwhelming commercial reality for over a decade is that consumers purchase only one broadband service from a given provider: an integrated broadband Internet access service. Justice Scalia also did not address the significant network-based security functionalities that are an increasingly integrated component of today’s broadband Internet access services. See *Industry Letter* at 8-9. In all events, the existence of a separate transmission service would not provide a foundation for imposing net neutrality regulation on broadband Internet access service. See infra at 5.


18 *GTE ADSL Order* ¶ 21 (emphasis added).
More generally, neither do the Computer Inquiry rules, the resurrection of which would be unlawful in all events.\textsuperscript{19} While the Computer Inquiry rules required phone companies to offer ISPs the transmission components of their information services, those rules had no impact on the phone companies’ retail information services, which were sold as integrated offerings of transmission and information processing. Indeed, neither the Computer Inquiry rules nor the Communications Act ever required that retail information services be sold to consumers as separate, unbundled components.

For similar reasons, reimposition of the Computer Inquiry rules would not provide a foundation for imposing net neutrality regulation on broadband Internet access services, nor would any effort to extract a “telecommunications service” from broadband Internet access service through “reclassification.” For example, neither the Computer Inquiry rules nor reclassification would have prevented the oft-cited Madison River incident (in which an ISP allegedly blocked VoIP calls) or the Comcast case (in which an ISP sent TCP reset packets to disrupt P2P traffic). In both cases, the ISP’s behavior occurred at a level above the “Layer 2” transmission component of the Internet access service (i.e., the putative “telecommunications service” envisioned by some advocates), and that behavior thus would not have been subject to any common carrier regulations that might have applied to the transmission component. To address the ISP’s conduct, the Commission would need to do something it has never done before—apply Title II common carrier regulation to ISPs and their Internet access services. But, as discussed below, that would drag the Commission down a very slippery slope to broad-based Internet regulation.

\textit{“Reclassification” Would Threaten to Inflict Common Carrier Regulation on All Internet Based Information Service Providers.} In February, AT&T, Verizon, Time Warner Cable, Qwest, TIA, ITTA, US Telecom, CTIA and NCTA filed a joint letter expressing serious concerns about the far-reaching and destructive consequences for the Internet that would result from any decision to reinterpret the Communications Act to classify broadband Internet access service as a Title II telecommunications service.\textsuperscript{20} As the letter explained, if, as some have suggested, the Act were construed so that an information service provider is deemed to be simultaneously providing a “telecommunications service” to its customers whenever it offers an

\textsuperscript{19} Even if those rules served the Commission’s policy goals in the narrowband, circuit-switched “one-wire world” for which they were originally created four decades ago (primarily to address cross-subsidization concerns under rate-of-return regulation), the Commission has repeatedly found that they would be a serious impediment to broadband investment and innovation in the modern, multi-platform broadband IP environment. \textit{See Industry Letter} at 2. Indeed, the broadband Internet access market looks nothing like the “one-wire world” of the 1970s and, in fact, it is even \textit{more} competitive today than it was in 2002, 2005 or 2007 when the Commission rejected applying the Computer Inquiry rules to cable, wireline and wireless broadband services, respectively. \textit{See High-Speed Services for Internet Access: Status as of December 31, 2008}, FCC Wireline Competition Bureau, at Table 13 (Feb. 2010) (confirming that 91.9 percent of U.S. census tracts have at least two fixed broadband providers—specifically, aDSL, cable modem, or FTTP service—and 57.2 percent have at least three); \textit{Connecting America: The National Broadband Plan}, FCC at 22 (2010) (as of November 2009, “approximately 77% of the U.S. population lived in an area served by three or more 3G service providers”). Thus, any attempt to revive the Computer Inquiry rules now would be a textbook example of arbitrary and capricious decisionmaking. \textit{See Wisconsin Valley Improvement Co. v. FERC}, 236 F.3d 738, 748 (D.C. Cir. 2001) (departures from established precedent without “a reasoned explanation . . . will be vacated as arbitrary and capricious”).

\textsuperscript{20} \textit{Industry Letter} at 10-13.
information service with a telecommunications component, then the Act would subject many Internet-based information service providers who use telecommunications in their offerings to mandatory common carriage regulation. Indeed, the Supreme Court itself highlighted this unintended but inexorable outcome in its Brand X decision.

The only party that has purported to offer a substantive response to these concerns was Free Press, but that response is easily dismissed. In a clear misreading of the Supreme Court’s decision, Free Press suggests that the Court “explicitly rejected” the argument that the statutory construction described above would lead to regulation of many Internet providers,21 including those that, in the Supreme Court’s words, “own no transmission facilities.”22 That is the complete opposite of what the Court held. The Supreme Court made clear that, if the Commission had classified broadband Internet access services as containing a “telecommunications service”—as respondent MCI had proposed there and Free Press proposes here—it would logically follow that Title II would apply to “all” facilities-based and non-facilities-based ISPs.23 The Court cited that logical consequence, and its inconsistency with longstanding federal policy to keep the Internet unregulated, as a basis for upholding the Commission’s conclusion not to classify broadband Internet access as a Title II service, which Free Press proposes here.24

In an even less persuasive argument, Free Press claims that because Internet-based information service providers like Netflix and Akamai purchase some telecommunications services as inputs for their own retail information services and are not regulated as Title II carriers today, they would therefore not be regulated as Title II carriers after reclassification.25 But the whole reason Akamai, Netflix and others are classified as information service providers today is because under the Commission’s well-established, judicially affirmed precedent, retail information services are not deemed to include the provision of a telecommunications service. And if that determination were to be reversed so that broadband Internet access services were deemed to include the provision of a telecommunications service, as Free Press, Public Knowledge and others propose, the result would compel a reclassification of the information services that Akamai and Netflix provide as well. That is why Free Press’s position should set off alarm bells in Silicon Valley, on Wall Street, and everywhere in between.

* * *

The Commission has just released an impressive and ambitious broadband agenda for our nation – one that would extend the benefits of broadband to millions of Americans to whom it is not available today, while unleashing the potential of broadband as an engine of economic growth and job creation, and other national goals, including public safety, homeland security, health care delivery, and energy independence. By the Commission’s own account, successfully

22 Brand X, 545 U.S. at 994.
23 Id. at 993-95.
24 Id. at 995.
implementing this agenda will require billions upon billions of dollars in private investment. Thus, as the Commission begins the task of turning the National Broadband Plan’s encouraging words into concrete actions, it should heed the sage advice that former Chairman Bill Kennard offered to policymakers at the dawn of the broadband era:

We sometimes get so caught up in the policy debates about broadband -- the latest court case, the latest proposed legislation -- that we forget what we need to do to serve the American public... We have to get these pipes built. But how do we do it? We let the marketplace do it. If we've learned anything about the Internet in government over the last 15 years, it's that it thrived quite nicely without the intervention of government. In fact, the best decision government ever made with respect to the Internet was the decision that the FCC made 15 years ago NOT to impose regulation on it. This was not a dodge; it was a decision NOT to act. It was intentional restraint born of humility. Humility that we can't predict where this market is going... In a market developing at these speeds, the FCC must follow a piece of advice as old as Western Civilization itself: first, do no harm. Call it a high-tech Hippocratic Oath.26

We urge the Commission to reaffirm this oath by rejecting ill-conceived proposals to “reclassify” broadband Internet access as a Title II telecommunications service, and instead continuing its unbroken tradition of classifying that service as a Title I information service.

Sincerely,

Kyle E. McSlarrow
National Cable & Telecommunications Association

Steve Largent
CTIA – The Wireless Association

Walter B. McCormick, Jr.
United States Telecom Association

Grant Seiffert
Telecommunications Industry Association

Curt Stamp
Independent Telephone and Telecommunications Alliance

Thomas J. Tauke
Verizon

James W. Cicconi
AT&T Inc.

Gail MacKinnon
Time Warner Cable