

Arent Fox

July 28, 2010

VIA ELECTRONIC COMMENT FILING SYSTEM

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Stephanie A. Joyce

Attorney
202.857.6081 DIRECT
202.857.6395 FAX
joyce.stephanie@arentfox.com

Re: GN Docket No. 10-127, Framework for Broadband Internet Service

Dear Ms. Dortch:

Yesterday the Computer & Communications Industry Association (“CCIA”), represented by Catherine R. Sloan, Vice President of Government Relations, and its undersigned counsel, along with CCIA members XO Communications, represented by Lisa R. Youngers, Vice President of Federal Affairs, and Donna N. Lampert, its counsel, and DISH Network LLC, represented by Alison Minea, Corporate Counsel, met with Edward R. Lazarus, Chief of Staff to Chairman Julius Genachowski, to discuss matters related to the above-named proceeding.

Specifically, the parties discussed the sound legal basis on which the Commission would rest in holding that the transmission component of retail broadband Internet access service is a telecommunications service governed by Title II of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. As CCIA has articulated in its July 15, 2010 comments in this docket, Title II routinely has applied to the transmission component of broadband services, and present market circumstances support applying the same classification to broadband Internet access. This action would ensure that the Commission can implement the National Broadband Plan.

The parties also discussed the fact that applying some provisions of Title II to these services, particularly the six provisions identified in the Notice of Inquiry, will help promote investment in network infrastructure and services by providing the certainty and clarity that will encourage the continued deployment and innovation of broadband. The attached document was provided to Mr. Lazarus during the meeting.

This disclosure is made pursuant to 47 C.F.R. § 1.1206.

Please do not hesitate to contact me with any questions or concerns.

Arent Fox

Sincerely,



Stephanie A. Joyce

*Counsel for the Computer & Communications
Industry Association*

Attachment

cc: Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commission Meredith Attwell-Baker
Mr. Edward Lazarus, Chief of Staff to the Chairman
Ms. Jennifer Schneider, Legal Advisor to Commissioner Copps
Christine Kurth, Legal Advisor to Commissioner McDowell
Angela Kronenburg, Acting Chief of Staff and Legal Advisor to Commissioner
Clyburn
Christi Shewman, Legal Advisor to Commissioner Attwell-Baker
Mr. Austin Schlick, General Counsel of the Commission

(All via electronic mail)

Companies Support FCC's Middle-Ground Approach to Broadband Oversight

The Federal Communications Commission recently announced a "Third Way" approach to broadband oversight to preserve the agency's authority after it was called into question by Comcast in the *Comcast v FCC case*. This approach would re-establish the status quo and ensure the FCC's ability to protect consumers, promote choice, preserve the open Internet, and carry out key elements of the agency's National Broadband Plan, such as accelerating broadband buildout to rural and low-income Americans.

In the wake of the FCC's announcement, unsubstantiated and misleading claims about the proposal's impact on investment have become rampant. Yet statements by

many industry executives have made clear that these companies are spreading misinformation in D.C. about the impact that the FCC's decision will have on their businesses, while telling investors an entirely different story.

Internet service providers are telling Wall Street that this move is, in fact, the light regulatory approach that the FCC claims it to be, and that it will not affect investment or broadband build-out. To set the record straight, below are quotes from top industry executives that clearly refute any rumors and worries about the FCC's move to protect consumers in the broadband marketplace.

From the Mouths of Industry Executives

Time Warner Cable COO Landel Hobbs' comments regarding the FCC's proposal during an investor conference on May 19, 2010:

"It is a light regulatory touch that their focus is really to put them in a position where they can execute around their national broadband plan, not to rate regulate or crush investment in our sector. That's not at all what we believe. So, I want you to take away as, yes, we will continue to invest, yes, we will participate in the Notice of Inquiries and we will have an open, healthy dialogue with the FCC throughout the whole process."¹

Sprint Senior Vice President of Government Affairs Vonya B. McCann's statement on May 6, 2010, regarding the FCC's plans:

"Sprint appreciates the FCC's statement that any regulation it may assert would be through a light regulatory touch. ... **Sprint commends the FCC for the cautious approach it is taking toward this complex subject.** [emphasis added] The FCC can and should foster similar growth in broadband by focusing its energies on protecting consumers by promoting competition and placing checks and balances on providers with market power."²

¹ JPMorgan Global Technology, Media and Telecom Conference: Time Warner Cable, Inc. Management Discussion, May 19, 2010. <http://ofccolo.snt.com/Cache/CAD08F30A69575083.pdf>

² Sprint Nextel Corp. statement on the Federal Communications Commission's proposed broadband framework, May 6, 2010. <<http://finance.yahoo.com/news/Sprint-Statement-on-Federal-bw-1270126185.html?x=0&v=1>>

Comcast Chairman and CEO Brian Roberts discussed the issue at the 2010 Cable Show in Los Angeles on May 12, 2010, according to SNL Financial, a business news source:

"I honestly don't believe the government is trying to turn the clock back," Roberts said, adding that "the government is not a big worry."

Regarding the potential impact of reclassification on broadband pricing, Roberts said he expects the industry to continue to invest and innovate.³

Windstream Corp. President and CEO Jeff Gardner's comments about FCC broadband oversight during an investor conference, May 18, 2010:

Gardner said there has been "a bit of an overreaction" to the FCC's proposal, as he believes FCC Chairman Julius Genachowski understands the importance of a light regulatory touch in overseeing broadband networks.

"I don't think that there is tremendous financial risk out there with respect to this ... issue. We would prefer less regulation, but as I said, I am confident that the chairman understands the issue."⁴

Verizon Wireless Chief Executive Lowell McAdam was reported by the *Wall Street Journal* as saying that Verizon is continuing to invest in its wireless LTE network and that the company has no plans to slow investment in its wireless broadband network as a result of the FCC's move.

Tech Company Support for the FCC's Middle-Ground Approach

Thirteen leading Internet and technology companies, including Amazon, Netflix and Skype, joined in support of the FCC's proposal to protect consumers online and promote broadband buildout.

In a letter to FCC Chairman Julius Genachowski, the companies wrote: "We applaud the middle ground approach that you have proposed. We share your belief that this course will create a legally sound, light touch regulatory framework that benefits consumers, technology companies, and broadband Internet access providers.

"This framework will ensure that consumers have access to an open Internet, one that would preserve a level playing field for all participants. And it does so without regulating the Internet, but only applying basic rules of the road to the transmission services that provide access to the Internet."⁵

Amazon.com
DISH Network
Data Foundry
EarthLink
EchoStar Corporation

eBay, Inc.
Google Inc.
IAC
Netflix
Skype

Sling Media
Sony Electronics, Inc.
XO Communications

³ Michelle Ovi, "Top MSOs Weigh In on Reclassification," SNL Financial, May 12, 2010. <<http://ofccofc.snl.com/Cache/C6068FD3249570271.pdf>>

⁴ Tim Doyle, "Windstream CEO: USF Reform Fine, Title II Fight an 'Overreaction'" SNL Financial, May 19, 2010. <<http://www.snl.com/InteractiveX/article.aspx?id=112177948&KPLT=4>>

⁵ Letter from Amazon et al. to Julius Genachowski, chairman, FCC, Docket No. 09-51, 09-191, 07-52 (filed May 6, 2010) <http://www.openinternetcoalition.com/files/Ltr_Supporting_Chairman_Genachowski.pdf>