



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

March 7, 2011

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Upton:

Thank you for your letter of March 3. As requested, here are replies to your questions:

1. Paragraphs 11-42 of the Open Internet Order include a market analysis. *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order (rel. Dec. 23, 2010) ("Order"). This market analysis was an integral part of the Commission's efforts to develop an open Internet policy that would maximize innovation and investment throughout the broadband economy, both in broadband networks and in the content, applications, services, and devices that rely on those networks. These efforts culminated in light-touch rules of the road that preserve Internet freedom and openness, increase certainty in the marketplace, and ensure that broadband providers can reasonably manage their networks and innovate with respect to technology and business practices.

As part of its market analysis, the Open Internet Order notes that many U.S. consumers have only a single option for fixed broadband providers, that the substantial majority have at most two options, that the future of competition in residential broadband is unclear, and that switching costs may be high. *See Order paras. 32-34.* These statements echo the filings of the Department of Justice (DOJ) and the Federal Trade Commission in this proceeding. *See Order para. 42 & n.143.* As the Commission explained on page 19 of the Order, it was not necessary for the Commission to make a formal determination of whether providers of broadband Internet access service possess market power "[b]ecause broadband providers have the ability to act as gatekeepers even in the absence of market power with respect to end users."

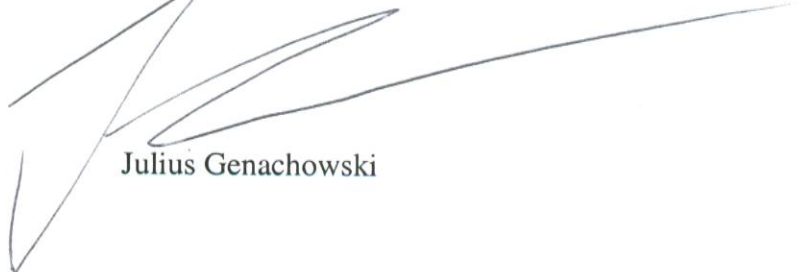
2. The Order weighs the costs and benefits of open Internet rules in paragraphs 38-42.

3. Paragraphs 13-16, 38-42, 111, and Appendix D of the Order analyze the impact of open Internet protections on jobs, investment, and the economy. Several commenters in our proceeding – including the Open Internet Coalition (which includes companies such as Amazon, eBay, Facebook, Google, Netflix, and PayPal) and broadband providers such as Clearwire – affirmed on the record that the Internet’s openness is a critical component of its contribution to economic growth,
4. One of the primary purposes of the Open Internet Order is to ensure that small businesses can rely on the open Internet to start, to innovate and launch new products and services, to achieve efficiencies, to reach customers around the world, and to grow and create jobs. The Order concludes that open Internet rules will benefit small businesses, both online and offline, in part by ensuring that barriers to innovation and entry online remain low, and that the rules will have a minimal burden on small broadband providers, based on the analysis in paragraphs 11-42, and Appendix D. A number of small businesses commented in the record in strong support of open Internet protections.
5. In paragraphs 14, 40, and 53 the Order analyzes how the open Internet rules remove barriers to infrastructure investment. The Commission’s legal authority under section 706 is discussed in paragraphs 117-123.
6. Less than a year ago, the Commission issued a Notice of Inquiry in its proceeding entitled *Framework for Broadband Internet Service*. The first sentence of that Notice explains that that document began “an open, public process to consider the adequacy of the current legal framework within which the Commission promotes investment and innovation in, and protects consumers of, broadband Internet service.” The Notice broadly seeks public comment on many questions about legal and policy issues relating to broadband, without proposing any particular agency action.

The Broadband Framework record remains open to collect information that may be helpful for the Commission’s work and that could serve as a resource for an update of the Communications Act, as many in Congress and the private sector have suggested is needed.

I appreciate your interest in this matter, and trust that this response addresses your concerns. Please let me know if I can be of further assistance.

Sincerely,



Julius Genachowski