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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
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December 23, 2009

Chairman Julius Genachowski  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Mr. Chairman,

We are writing as part of an ongoing effort to promote robust broadband competition that we believe will benefit millions of Americans. It is our belief that, in recent years, the policies of the Federal Communications Commission may have been able to do more in the broadband arena to foster competition in the interest of U.S. consumers. As you begin your term at the head of the FCC, we believe there are new opportunities for improvement in this area.

It is clear that, in virtually every industry, vigorous competition serves the public interest. That being as true with regard to telecommunications markets as any others, communications mergers should receive adequate scrutiny to ensure they will not harm competition. In addition we believe that regulators should be discouraged from imposing barriers on new competitors in these markets. Indeed, both the Communications Act and our nation's antitrust laws were designed to foster such competition in order to better serve consumers in the marketplace.

Rather than leaving it to the Department of Justice to address market failures after the fact, we believe the FCC should readily use its ample authority to promote new entry and increased competition in the broadband market. In particular, as the new FCC Chairman, you have an opportunity to allocate spectrum in a manner that promotes increased broadband competition, which we believe will subsequently lead to increased affordability for broadband customers. By promoting broadband competition, we can avoid the need for a more heavy-handed regulatory approach as additional competition will do far more to discipline the marketplace than new FCC mandates.

Specifically, page 74 of the interim report from the FCC staff working on the National Broadband Plan identifies three specific spectrum bands that are in the FCC's inventory but have not yet been allocated or assigned. Although the demand for additional spectrum is growing and the National Broadband Plan is charged with developing a comprehensive plan for identifying future allocations of broadband spectrum, we believe that spectrum already in the hands of the FCC should be quickly put into service in order to benefit the maximum amount of consumers. Therefore, we ask that you provide information as to how and when the FCC plans to put these particular bands to use. For the reasons enumerated above, we also ask you to consider how all

future spectrum allocations can be used to promote new entry and increased broadband competition.

Thank you for your attention regarding this matter.

Sincerely,



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HERB KOHL  
Chairman, Subcommittee on Antitrust  
Competition Policy, and Consumer Rights



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ORRIN G. HATCH  
Ranking Member, Subcommittee on  
Antitrust, Competition Policy, and  
Competition Rights