

Congress of the United States

Washington, DC 20515

May 28, 2010

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

Dear Chairman Genachowski:

We write to encourage you not to proceed down your announced path to reclassify broadband service as a phone service under Title II of the Communications Act. Such a significant interpretive change to the Communications Act should be made by Congress.

The Act defines a Title II “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public,” and defines “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” By contrast, the Act defines an “information service” as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”

Based on these definitions, the FCC concluded on a number of occasions, under both Democrat- and Republican-led Commissions, that broadband is not a telecommunications service but an information service outside the reach of the Title II common carrier rules. The U.S. Supreme Court affirmed that view in its 2005 *Brand X* decision. Moreover, the policy consequences of reclassifying broadband and regulating it under Title II could be severe: reduced broadband investment, less economic stimulation, and fewer jobs.

In the Comcast-BitTorrent case, the D.C. Circuit explained that “statements of congressional policy can help delineate the contours of statutory authority.” Congress issued just such a policy statement in 1996 when it added section 230 to the Communications Act. That section makes it the policy of the United States “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.” Whether the country should stray from that legislated posture—

which has produced 200 million broadband subscribers in the last ten years—is a matter best left to Congress.

Please include a copy of this letter in GN Docket No. 09-191 and WC Docket No. 07-52.

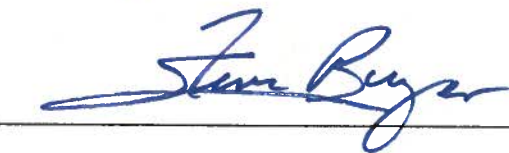
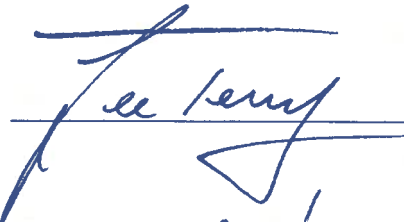
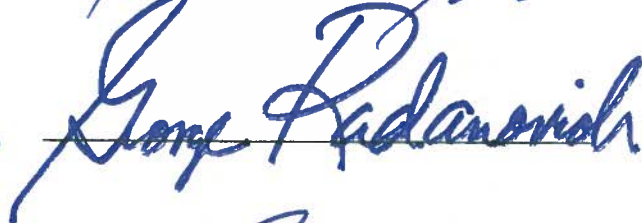
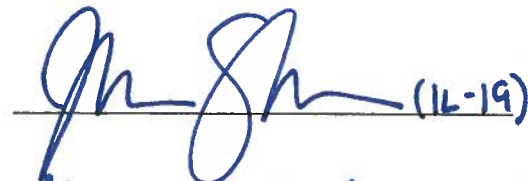
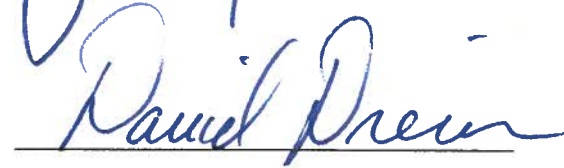
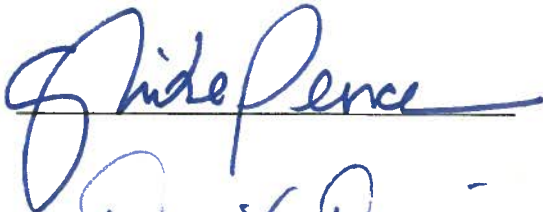
Sincerely,



Joe Barton
Ranking Member
Committee on Energy and Commerce



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



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