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<http://www.house.gov/pallone>

FRANK PALLONE, JR.
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Congress of the United States

House of Representatives

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May 28, 2010

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The Honorable Julius Genachowski
Chairman
The Federal Communications Commission
445 Twelfth Street, SW
Suite 8B201
Washington, DC 20554

Dear Mr. Chairman:

I am writing to you with respect to the Federal Communication Commission's (FCC) recent decision to issue a Notice of Inquiry with respect to the regulatory classification of broadband Internet access services.

Let me state at the outset that I support efforts to keep the Internet open and accessible. In fact, in 2006 when the House Energy and Commerce Committee considered an amendment to make a bill's existing neutrality provisions stricter, I voted in favor. I strongly believe consumers have long enjoyed free and unfettered access to the Internet, which has led to a revolution in how Americans communicate with each other and to economic development and job creation across the Internet ecosystem. In addition, I want to commend the work of the FCC on the National Broadband Plan. This is the nation's blueprint for 21st century communications and it is the first step in addressing a variety of issues critical to the expansion of affordable broadband communications.

As you may be aware, I am the Chairman of the Subcommittee on Health of the House Energy and Commerce Committee. In that capacity I am increasingly sensitive about the tendency of Government agencies, and in particular independent agencies, to arrogate to themselves policy-making authority that is properly exercised solely by Congress. It is in that regard that I am writing to you today.

Independent agencies such as the FCC appear nowhere in the Constitution. They exercise authority delegated by the Congress, and remain independent of the Executive Branch of Government. They are thus creatures of the Congress that must heed the boundaries established by laws passed by Congress, or they run the risk of behaving in decidedly undemocratic ways. While questions involving an agency exceeding the authority granted to it by Congress are decided in the courts, an agency ought to be mindful of the limits on its authority.

Classifying broadband Internet access services as telecommunications services that are subject to the provisions of Title II of the Communications Act may have far reaching

implications. In fact, I am concerned that a near-term effect of your announced proposal to (re)classify these services is to create uncertainty - something that is sure to adversely affect investment decisions and job creation, both of which are in short supply right now.

If you believe the Agency's legal authority to implement network neutrality rules or provisions of the National Broadband Plan are in question, it is appropriate for you to come to Congress and seek the authority you need. This is a job for Congress, and in fact the relevant Chairmen in the House and Senate have recently announced their intention begin updating the Communications Act.

I encourage you to be mindful of exceeding the authority delegated to you by Congress. Instead, it is my hope that you will choose to work with Congress to pursue policies that will both protect the open Internet and promote broadband deployment, and thereby create good jobs for ordinary Americans.

Thank you for your consideration. I look forward to hearing from you soon.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone" followed by a stylized flourish.

FRANK PALLONE, R.
Member of Congress