

January 14, 2010

Julius Genachowski  
Chairman  
Federal Communications Commission  
Washington, D.C. 20554

**RE: Notice of Proposed Rulemaking - GN Docket No. 09-191, WC Docket No. 07-52**

Dear Chairman Genachowski and Commissioners,

We at the American Legislative Exchange Council (ALEC) are writing to express our views concerning the Commission's *Notice of Proposed Rulemaking*. These draft rules imposing network neutrality regulation mark an unprecedented foray into government control of private networks and the Internet. If adopted, extensive regulatory control and uncertainties will harm innovation, stifle investment, and curtail job growth. We believe that unintended consequences stemming from the draft rules will be detrimental to our states' economies and forestall marketplace recovery.

ALEC represents more than 1,800 state legislative members. It is the nation's largest nonpartisan, individual membership association of state legislators. Approximately one-third of all state legislators belong to ALEC. The 91 undersigned members from 36 states are state legislators who chose to reiterate their serious reservations about further government entanglement in private management of broadband networks.

ALEC has carefully considered public policy issues surrounding broadband networks and has adopted a *Resolution on Network Neutrality*. In its *Resolution*, "ALEC recognizes the unprecedented advances a free and open Internet has fostered across all aspects of end user customers' lives," and maintains that "the exponential growth of the Internet has flourished as a result of the government's 'hands off' approach, ever increasing competition, as well as fierce consumer interest."

ALEC has reviewed the Commission's *Notice*. Unfortunately, the draft rules raise profound problems that will lead to significant unintended consequences for our states' economies. Our concerns include:

\* *The proposed regulation will harm innovation.* Currently, competing broadband network operators have freedom to pursue innovative new ways to deliver high-speed data services to their customers and maximize end users' experiences. However, the draft rules threaten to interfere with the innovative process that benefits consumers. Under the draft rules, network innovation must take place in the shadow of the Commission's multi-part "reasonable network management" standard or its undefined "nondiscriminatory" prohibition. Innovative edge is blunted whenever engineering complexities and trade-offs have to be designed to meet ambiguous government specs.

\* *The proposed regulation will stifle investment.* Continued capital investment is crucial to expanding broadband service coverage, to providing ever-improving broadband service, and to sustaining and reviving our states' overall economic well-being. There is a strong correlation between investment and innovation. Competing broadband network operators make their innovative solutions a reality for consumers through their investments in broadband infrastructure. Regulation that harms innovation corresponds to reduced investment in new products or services. Moreover, regulatory uncertainty posed by the draft rules undermines the certainty of broadband network operators to gain the return on their investment. Since the draft rules would empower the

Commission to accept or reject network management practices on a case-by-case basis, network broadband providers would face the possibility of having innovation and investment plans disrupted by regulatory reversal.

\* *The proposed regulation will curtail job growth.* Broadband innovation and investment create jobs, both within the advanced telecommunications sector and in businesses that rely on such technologies to gain greater efficiency. As state elected officials, we are acutely aware of the high unemployment that impacts our states' economies. ALEC believes that pro-growth policies, not increased regulation, are crucial to reviving the economic climates of the fifty states. Unfortunately, the additional layers of regulation and bureaucratic control suggested by the draft rules are not job-friendly. Network neutrality regulation will not create sustainable jobs.

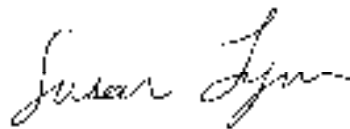
In addition, ALEC believes the competitiveness of the broadband marketplace obviates the need for the intrusive network management regulation contained in the draft rules. A problem should first be established before a regulatory solution should be imposed. But nothing in the Commission's *Notice* or in the entirety of the *Broadband Industry Practices Proceeding* points to any kind of market power possessed by broadband network operators that would justify regulatory action. In fact, recent studies have concluded that no such market power exists. For instance, the June 2007 staff report of the Federal Trade Commission (whose findings were unanimously adopted by the members of that Commission), concluded that the broadband Internet access was moving in the direction of more, not less, competition. The Commission has suggested nothing to indicate any serious change in the broadband marketplace since mid-2007 that would justify the sweeping departure from the government's "hands off" approach that characterizes the Commission's draft rules.

Accordingly, ALEC urges the Commission to refrain from imposing the network neutrality regulation contained in the draft rules. ALEC supports a free and open Internet, which the Commission can best ensure by bringing sunlight to alleged abuses under its existing *Internet Policy Statement* and by pursuing alternatives other than intrusive regulation of broadband networks that will put innovation, investment, and jobs at risk.

Cordially,



**Representative William A. Hamzy**  
Connecticut House of Representatives  
*Chair, ALEC Telecommunications &  
Information Technology Task Force*



**Representative Susan M. Lynn**  
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*Chair, ALEC Commerce, Insurance, &  
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