

# United States Senate

WASHINGTON, DC 20510-2102

November 4, 2011

## Protect the Open Internet, Oppose the CRA

Dear Colleague:

Next week, the Senate will consider a Congressional Review Act proposal to overturn the Open Internet protections that the Federal Communications Commission put into place last year. If that effort is successful, it will stifle innovation and discourage investment in the next potential Google or Amazon. And it will set the precedent that this Congress is prepared to deny independent regulators their ability to execute the law. That would put at risk health and safety rules, environmental protections, worker rights, and every other public protection that our agencies enforce that some in Congress do not like. I urge you to vote against the CRA on network neutrality.

The Open Internet order established rules built on principles everyone should support – promoting transparency of broadband service operations; preventing blocking of legal content and websites; and prohibiting discrimination of individuals, applications, and other websites. Establishing those principles in regulation has brought certainty and predictability to the broadband economy and insures that anyone can create a website and deliver a service with the certainty that it will be made available to everyone else on the Internet. Innovators now know that they will not have to ask a big telephone or cable company internet service provider (ISP) for permission to enter the market nor fear that their service will suffer discriminatory treatment. That freedom to innovate is what has made the Internet the platform for economic and social development it is today.

Some have made the false argument that network neutrality rules regulate the Internet or impose a condition on innovators to have to ask the government permission to innovate. The network neutrality rules govern not the Internet but rather the behavior of firms owning and operating the gateways to the Internet – the wires and airwaves that carry the information that connects you to everyone else on the Internet. The rules state that those gateways should not be used to favor some voices over others or some firms over others on the Internet. The only “Mother may I” restriction is on the question of whether or not telephone and cable ISPs can pick winners and losers on the Internet. And the answer is no. If the rules are overturned, every innovator on the Internet will be exposed to the risk that before they innovate that they would have to ask “Mother may I” to the companies that control access to the users on the other end of the line.

In the time since the FCC voted on the rule to preserve the open architecture of the Internet, we have seen continued investment and innovation in the sector and expressions of support for the FCC’s action to put in to place sensible rules of the road for the fair transport of information on the Internet. After adoption of the rules, investments in networks that support wired and wireless broadband was more than 10% higher in the first half of 2011 than in the same period the year

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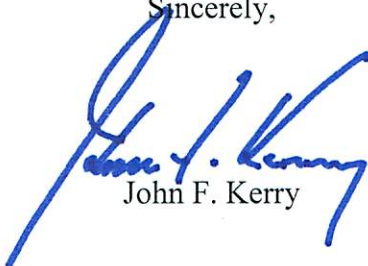
before. And venture capital investments in Internet-specific companies surged with \$2.3 billion going into 275 companies in the second quarter of 2011. That, along with the likelihood that 2011 will be the biggest year for tech IPOs in more than a decade, indicates strong investor confidence in companies that rely on an open Internet.

Supporters of the Open Internet order include some of the most prominent names in technology and the Internet, from Eric Shmidt to Mark Zuckerberg. They include venture capitalist from John Doerr to Ron Conway. And they include advocates from the Communications Workers of America to the largest and most influential civil rights organizations in the country. Together, the communities of people who support the network neutrality rules include significant representation from those who work on the Internet, fund its development, and use it.

Some have argued that the FCC acted outside its legal authority in protecting the free flow of communication on the Internet. A court will make that decision. But Congress created the Federal Communications Commission to regulate communications by wire and radio. It granted the agency the authority in the Telecommunications Act to “make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary for its functions.” And under Title II, III, and VI of that Act it encourages the FCC to protect the public interest and encourage just and reasonable rates through competition. Last, under Title VII, the FCC is mandated to take immediate action to remove barriers to infrastructure investment and promote competition in the telecommunications market if advanced telecommunications is not being deployed in a reasonable and timely fashion. In July 2010, the Commission concluded that broadband deployment is not reasonable and timely, and as a result, not only has the authority to protect the Open Internet, but the responsibility to do so.

Because of the enormous demands on your time, I wanted to make the case ahead of the vote for standing up for the Open Internet and rejecting the CRA move to overturn its preservation.

Sincerely,



John F. Kerry