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June 23, 2006

Honorable Ted Stevens, Chairman
Committee on Commerce, Science and Transportation
United States Senate
522 Hart Senate Office Building
Washington, DC 20510-6125

Honorable Daniel K. Inouye, Ranking Member
Committee on Commerce, Science and Transportation
United States Senate
722 Hart Senate Office Building
Washington, D.C. 20510-6125

Re: Net Neutrality Legislation

Dear Senators Stevens and Inouye,

As you know, the subject of "net neutrality" is one of pressing public interest. I write to urge you, in considering legislation currently before the Senate Commerce Committee, to support provisions, such as those contained in S. 2917, The Internet Freedom Preservation Act, which will preserve neutral, open and nondiscriminatory access to the Internet. I also urge you to oppose any provision in pending legislation that would threaten this fundamental attribute of the Internet.

Net neutrality embodies the principle of open access and nondiscriminatory treatment of all Internet users and content providers. Net neutrality has made the Internet a powerful promoter of public discourse and commercial exchange, affording to users throughout all parts of the nation and the world an unlimited array of information, news, opinion, and entertainment. Net neutrality has also fostered robust competition by content providers, without regard to ownership of the backbone facilities over which Internet traffic travels.

Recent concentration in the communications industry places net neutrality in jeopardy. As a result of the mergers of SBC with AT&T and Verizon with MCI, two companies now own half of the nation's Internet backbone facilities. These two companies are also vertically integrated businesses that dominate data and voice telecommunications, and provide a large and

growing share of broadband Internet access to customers of all sizes. The companies recently received Department of Justice consent to merge, over the opposition of my office and many others, but the proposed consent decrees have not yet to receive federal court approval. Yet AT&T and Verizon have wasted no time in stating their plans to abandon nondiscriminatory treatment of Internet traffic in favor of giving priority to content supplied by their own subsidiaries and affiliates, and charging unaffiliated Internet content providers a premium if they wish to receive the same treatment.¹

Such unprecedented discriminatory policies would create "fast lanes" for content offered by larger, well-funded businesses and "slow lanes" for all others. It would restrict the unfettered flow of information that has made the Internet so invaluable to our open democratic society, and it would threaten to disrupt the Internet's robust e-commerce.

Congress must not give a green light to these plans, nor should it apply fig leaf solutions to such a serious threat. Instead, Congress must take steps to ensure that the Internet remains an open and nondiscriminatory platform so that no company can use its dominance of the Internet backbone in discriminatory and anticompetitive ways.

I urge Congress to incorporate in its legislative package of telecommunications reforms strong provisions that preserve net neutrality. In particular, legislation should provide that Internet backbone and service providers:

- must not block, degrade, or otherwise discriminate against any person's ability to offer, receive or use lawful content or services via the Internet;
- must continue to be able to protect consumers from unwanted or harmful content.
- must not bar use of any equipment to access the Internet, unless it will harm the network;
- must allow content offered over the Internet without discriminating as to quality of service, speed, access or bandwidth, and without prioritizing or otherwise favoring content offered by the backbone or service provider, or its own affiliates;

¹ For example, The Wall Street Journal reported that "[t]he phone companies envision a system whereby Internet companies would agree to pay a fee for their content to receive priority treatment." *Wall Street Journal, Phone Companies Set Off A Battle Over Internet Fees - Content Providers May Face Charges For Fast Access*, Jan. 6, 2006 (discussing comments by Ivan Seidenberg, CEO of Verizon Communications, Inc.). Edward E. Whitacre Jr., Chairman of SBC Communications, Inc., stated that it would be "nuts" for the internet backbone providers not to charge a premium for use of their "pipes." *Washington Post, SBC Head Ignites Access Debate*, Nov. 4, 2005.

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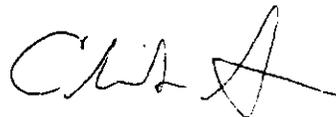
- must not affect the rate at which Internet packets travel based on the willingness of content providers to pay; and
- must not, as a condition of the purchase of broadband service, require a subscriber to purchase any other service.

Additionally, the Federal Communications Commission should be authorized to enforce these provisions through compliance orders, including stiff penalties, and awarding damages to competitors, consumers and Internet users who are harmed by an Internet backbone or service provider's illegal actions. State Attorneys General and private parties should also be authorized to bring civil actions in any U.S. District Court to enforce these provisions.

Congress must not permit the ongoing consolidation of the telecommunications industry to work radical and perhaps irrevocable change in the free and neutral nature of the Internet. The provisions of S.2917, sponsored by Senator Olympia Snowe and Senator Byron L. Dorgan, most closely embody the essential protections needed and should be included in any ultimate legislation. Other, lesser measures being considered are inadequate to address the issue and do not sufficiently protect consumers, commerce, or our democratic society's investment in an open Internet.

Thank you for considering my views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eliot Spitzer', with a stylized flourish at the end.

ELIOT SPITZER

cc: Honorable Olympia J. Snowe
Honorable Byron L. Dorgan