March 25, 2010

The Honorable Julius Genachowski
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

RE: Consumer View of "Net Neutrality" Debate

Dear Chairman Genachowski:

On behalf of the Construction Industry Round Table (CIRT) and its members' interests as business consumers of internet services, we would like to have our views considered with respect to policy initiatives related to access – in particular the so called "net neutrality" debate.[*]

It is not CIRT's purpose to recount the technical issues related to internet access nor is it our purpose to attempt to predict the revolutionary breakthroughs that will inevitably occur in this rapidly changing high tech field. **Instead, as internet service consumers, we wish to raise and emphasize the importance of market forces and the need to support open competition and consumer choice.**

DISCUSSION

Greater broadband deployment and adoption creates innovations that ultimately benefit both individual consumers and business consumers. Such growth and development is fostered in the *current* Federal Communications Commission (FCC) framework where broadband principles provide sufficient government oversight, competition, and incentives – without attempting to "pick winners and losers."

The Government (and by extension the FCC) should seek to support through investment, jobs, and new technologies, the opportunity for Americans to have broadband access not to mandate the terms of that access as if the Internet is a government program.[**]

As service consumers in an industry (design/construction) that relies heavily on broadband capability to stay competitive in a global market, we need and expect our government to support an open market where:

- Broadband service providers can use any number of pricing methodologies – and even differing methods for different customers depending upon their needs and bandwidth demands.

[*] While the FCC released a national broadband plan on 03/16/10, it indicated that a separate rule-making process on net-neutrality was scheduled for a later date.

[**] Court precedent appears to limit Commission authority under Title I to that "reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities;" and it's unclear whether Congress even intended to allow for the Commission to regulate broadband services as proposed.

- As in other countries (e.g., U.K., Australia, and Canada) pricing freedom is allowed so as to be an effective bandwidth capacity management tool.

- All users, regardless of how much they consume, are able to use broadband services in a way that gives them, and everyone else, maximum satisfaction to the extent they are willing to pay.

- "Nondiscriminatory pricing" is about ensuring *similarly* situated consumers are treated the same and are charged the same; and NOT that differently situated consumers, such as individual or inefficient users should be treated in the same fashion or subsidized by a majority of more efficient users.

- Regulations such as "net neutrality" should be rejected on the basis of unintended consequences whereby economic regulation of internet access could very well *increase* prices for all consumers.

- Free speech, including business consumer speech, is highly protected and should not be regulated without carrying a heavy burden of justification – which is not met by the proposed "net neutrality" rule.[*]

Clearly, all consumers want broadband capacity to increase, in part, through affordable pricing, as well as investment, innovation, and technological advances. Anything that jeopardizes this progress or increases costs should be rejected.

Simply stated – the proposal on "net neutrality" fails this test and should not be adopted by the FCC because it envisions *every* consumer being treated the same regardless of usage, forcing prices to rise to compensate for the costs imposed. (This effect is especially true for shared networks such as wireless and cable where consumers share bandwidth).

CONCLUSION

Modern day "information services" have *never* been regulated as common carriage. After examining the broadband market, the Commission wisely concluded that it was far different from other 20th century services under the 1934 Act—and as such determined that broadband should be classified as a less regulated information service under Title I.

The wisdom and support for that conclusion still exist today with respect to broadband – and as such form the foundation upon which to reject any "net neutrality" concepts or rules.

Sincerely,

Mark A. Casso, Esq.
President

[*] More importantly, will competitors use litigation under the new regime as a competitive weapon in lieu of investing in better products and services for consumers?