



April 6, 2011

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Ranking Member Waxman:

On behalf of Netflix, Inc., the world's leading Internet subscription service for enjoying movies and TV shows, I write to express our concern with the House of Representative's proposal to utilize the Congressional Review Act (the "CRA") to vacate the Federal Communications Commission's Open Internet order.

We do not believe that the CRA is the appropriate vehicle to address concerns Congress may have with the FCC's actions as utilizing the CRA would, in essence, strip the FCC of any power to preserve an open Internet. Instead, we would support the Committee working on comprehensive legislation that provides a common-sense structure for our 21st Century media and communications platforms -- legislation that assures consumer choice and innovation while preserving incentives for broadband network operators to continue to invest in their infrastructure.

We have been supportive of open access to the Internet and believe that the FCC's Open Internet order was a step in the right direction. Its focus, however, was on fair play *within* an ISP's network. The order did not expressly deal with *entry* into an ISP's network.

Today, some ISPs charge to let bits onto their networks, despite these bits having been requested by their own consumers. As long as we pay for getting the bits to the regional interchanges of the ISPs' choosing, we don't think ISPs should be able to use their exclusive control of their residential customers to force us to pay them to let in the data their customers desire. The ISPs' customers already pay the ISPs to deliver the bits on their network, and requiring us to pay even though we deliver the bits to their network is an inappropriate reflection of their last mile exclusive control of their residential customers.

Netflix also believes that access to high speed Internet will be very important to our society on a number of levels - from political discourse to commercial activity. Moves by wired ISPs to shift consumers to pay-per-gigabyte models instead of the current unlimited-up-to-a-large-cap approach, threatens to stifle the Internet. We hope this doesn't happen, and will do what we can to promote the unlimited-up-to-a-large-cap model. Wired ISPs have large fixed costs of building and maintaining their last mile network of residential cable and fiber. The ISPs' costs, however, to deliver a marginal gigabyte from one of our regional interchange points over their last mile wired network to the consumer is less than a penny, and falling, so there is no

reason that pay-per-gigabyte is economically necessary. Moreover, at \$1 per gigabyte over wired networks, it would be grossly overpriced.

While we certainly aren't in favor of legislation or regulation in all of the foregoing, we do think it is important for the Committee to examine all the issues associated with preserving an open, vibrant and high speed Internet. Transparency into costs, the competitive landscape, and technological changes will help the Committee chart a wise course. We don't believe that using the CRA to throw out the FCC's actions, thereby creating a legal vacuum, meaningfully advances discussion over these very important issues.

Thank you for considering our views. We look forward to working with you and the rest of the Committee.

Sincerely,

A handwritten signature in black ink, appearing to be 'RH', written in a cursive style.

Reed Hastings
Chief Executive Officer,
President & Co-founder