

To: The President, Senate Republicans and Senate Democrats
Date: April 23, 2013

As you consider whom to appoint and confirm to lead the Federal Trade Commission and Federal Communications Commission – two of the principal agencies that regulate the Internet, telecommunications and emerging digital technologies – we urge you to look foremost for *humility* as both a guiding principle and a personal characteristic of the candidates you consider.

Many of those who follow Internet policy assume simply that we need more tech-savvy regulators – in other words, better *technocrats*. Tech-savvy is important, but not as important as appreciating that even the smartest among us don't know what the future will look like or how to get there – as if "there" were a single place. Beware those who talk about "steering" technological change, "comprehensive" approaches, or "pulling policy levers." These technocratic buzzwords reveal a fundamental misconception: that a better future can be engineered from the top down.

Instead, the first rule for policymakers should be: *First, do no harm*. We need regulators who can resist the frequent urge to "do something" about problems that are rapidly mooted by technological change anyway. Often, government's best response is to do nothing. Competition, innovation and criticism from civil society tend to resolve problems better, and faster, than government can and the best kind of law evolves from the bottom up – through the messy "multi-stakeholder" interaction among civil society groups, media watchdogs, companies and consumers themselves. Holding companies to the promises that emerge from that ongoing process should be government's primary role.

Where that fails, regulators should intervene only to protect consumers from real harms, with economically sound rules that are flexible and predictable enough to accommodate (and occasionally even encourage) technological progress – they must reject complex regulations and embrace simple rules.

We urge you to seek out Commissioners who are committed above all to enacting long-overdue reforms to ensure that their agencies' regulations and enforcement decisions are more transparent, less political and more technologically neutral. Unfortunately, the most essential reforms are more controversial: Both agencies must be more rigorous in demonstrating that the benefits of their regulations outweigh the costs. They must do more to explain the legal and economic basis for their interventions. And they must never exceed the boundaries of their statutory authority or regulate through informal means and without judicial discipline. All of these threaten to retard economic growth, harm consumers, undermine Internet freedom, and erode the rule of law.

As you consider the nominees, we hope these principles will be first and foremost in your minds, in theirs, and in the discussions during the confirmation proceedings.

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Digital Liberty
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American Commitment
Less Government
American Legislative Exchange Council, Communications & Technology Task Force
Virginia Postrel, author of *The Future and Its Enemies*
Larry Downes, Internet industry analyst and author
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Paul Rubin, Professor of Law and Economics, Emory University
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Henry G. Manne, Dean Emeritus, George Mason University School of Law
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Thom Lambert, Professor of Law, University of Missouri School of Law
Michael Schrage, Research Fellow, MIT Center for Digital Business