

February 20, 2015

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Protecting and Promoting the Open Internet* (GN Dkt. No. 14-28);
Framework for Broadband Internet Service (GN Dkt. No. 10-127)

Dear Ms. Dortch:

On February 18 and 19, 2015, Meredith Attwell Baker and representatives of CTIA—The Wireless Association® met separately with representatives of the Federal Communications Commission including Commissioner Mignon Clyburn, Commissioner Ajit Pai, Commissioner Michael O’Rielly, and Ruth Milkman and Daniel Alvarez of Chairman Tom Wheeler’s office, as indicated in Attachment A, to discuss the above-captioned proceedings.

CTIA has consistently supported sensible open Internet regulation throughout this proceeding and has urged the Commission to embrace a Title I-based, mobile-specific approach. Through prior filings, CTIA has also demonstrated that any additional rules that apply to wireless must take into account the unique competitive and technical attributes of wireless service and avoid impeding the differentiated offerings and choices mobile consumers enjoy today. During these meetings, CTIA urged the Commission, as it moves to order, to deem lawful the mobile broadband practices and offerings that make up today’s competitive, differentiated, dynamic U.S. mobile broadband market.

In particular, the Commission should make clear that the practices and offerings identified below are either appropriate under the new rules or standards or do not come under them at all, thus providing certainty for mobile providers to move ahead with continued investment and innovations for the benefit of American consumers.

Any Application of New Rules and Standards to Mobile Broadband Should Take Account of Competitive Alternatives Available in the Marketplace. The Commission should clarify that as it applies new open Internet rules and standards, it will take into account the competitiveness of the mobile broadband market and the many alternative offerings available to consumers. As the Commission has recognized, mobile consumers clearly have more competitive options than fixed line users – while 82% of Americans are served by four or more mobile broadband

providers, only 15% of U.S. homes have three or more wired broadband providers.¹ And, as the Commission has found, mobile broadband consumers are able to switch providers quickly and with low (or in some cases no) transaction costs.² Any open Internet assessment of particular practices or offerings should recognize that individual consumers have a multitude of mobile broadband options and alternatives, and the offering at issue may suit specific consumer interests and needs.

Today's Differentiated Practices and Offerings are Pro-Competitive and Should be Deemed Lawful as Part of the Order. The reality of the mobile broadband market is clear: (1) consumer choice dictates that providers must design their services and practices to advance consumer interests; and (2) mobile broadband providers, in turn, need to be able to offer differentiated service plans to separate themselves from the competition. Innovation abounds as providers offer unique services to attract and retain customers. The Commission should promote this differentiation. To that end, the Commission should state that data allowances, zero rating, music freedom, and sponsored data are all pro-consumer features and should explicitly state that they are permitted under the new rules and standards, including the General Open Internet Conduct Standard. It is important for the Commission to recognize that existing pro-consumer practices are permitted under the new standard to provide some guidance as to how the standard will apply and to show good faith that future mobile innovation will continue to be encouraged.

Certain New Innovations and Offerings are Not Broadband Internet Access Service and Should be Exempt from Title II and Open Internet Regulation. The mobile broadband market is burgeoning with innovative novel services and offerings in additional market niches. These include VoLTE, LTE broadcast, connected car, mHealth, and other connected life and Internet of Things developments. Importantly,

¹ See *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless*, Seventeenth Report, DA 14-1862, ¶ 51 Chart III.A.2 (WTB rel. Dec. 18, 2014) (*Seventeenth Report*); Remarks of Tom Wheeler, Chairman, FCC, “The Facts and Future of Broadband Competition,” 1776 Headquarters, Washington, DC, at 2 (Sept. 4, 2014) (Wheeler 1776 Remarks) (indicating that “competition exists” in the mobile wireless marketplace), https://apps.fcc.gov/edocs_public/attachmatch/DOC-329161A1.pdf.

² See *Seventeenth Report* at ¶ 145, Table V.A.iv (describing Early Termination Fee buyout promotions provided by national and regional carriers that greatly reduce the costs of switching carriers); see also *id.* at ¶ 39 (observing that the advent of no-contract plans, new premium devices made available to more providers, and increased interoperability have reduced switching barriers and costs).

they do not constitute broadband Internet access.³ The Commission should make clear that these offerings are therefore not subject to Title II and any open Internet rules and standards. In doing so, the Commission should explicitly note that the wireless industry's version of managed VoIP, VoLTE, is treated in the same manner as other managed VoIP services.

Administrative Functions and non-ISP Functions Should Remain Outside the Scope of Any Open Internet Regime. The Commission should acknowledge that mobile broadband providers perform many functions that simply fall outside of any open Internet legal or regulatory framework. These include pure administrative functions, such as back-up, updates, and billing,⁴ as well as non-ISP functions such as app stores and pre-loading apps.⁵ The order should make clear that new rules or standards do not attach to such functions.

Reasonable Network Management and Transparency Rules Should Not Be Overly Prescriptive in Light of Mobile Broadband's Fast-Changing and Evolving Technology. These rules should provide mobile broadband providers the flexibility to account for their unique circumstances. Any effort to apply a more rigid, detailed or prescriptive network management approach would result in rules that diminish quality of service for mobile broadband consumers. Such an approach would also be immediately outdated, harming innovation and investment in the next wave of advanced mobile broadband networks. With respect to transparency, the order should refrain from adopting more granular or real-time reporting or require providers to disclose guaranteed minimum levels of service. Given the dynamic nature of mobile

³ For example, the 2010 Open Internet Order expressly found that “some broadband providers’ existing facilities-based VoIP and Internet Protocol-video offerings” – like a VoLTE offering – “differ from broadband Internet access service” and should be deemed a “specialized service.” See *Preserving the Open Internet; Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905 ¶ 112 (2010) (“*Open Internet Order*”), *aff’d in part, vacated and remanded in part sub nom. Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014). See also *id.* at ¶ 47 (finding that broadband likely “does not include services offering connectivity to one or a small number of Internet endpoints for a particular device, e.g., connectivity bundled with e-readers, heart monitors, or energy consumption sensors, to the extent the service relates to the functionality of the device.”).

⁴ See e.g., *id.* at ¶ 47 (“Nor does broadband Internet access service include ... hosting or data storage services”).

⁵ See e.g., *id.* at ¶ 102 (“In operating app stores, broadband providers compete directly with other types of entities, including device manufacturers and operating system developers, and we do not intend to limit mobile broadband providers’ flexibility to curate their app stores similar to app store operators that are not subject to these rules.”).

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broadband network management and new offerings, such technical detail would be difficult (and in some cases impossible) to collect and disclose, especially in the proposed timeframes, and would not provide meaningful information to consumers.

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Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this letter is being electronically filed via ECFS with your office. Please direct any questions to the undersigned.

Sincerely,

/s/ Scott K. Bergmann
Scott K. Bergmann

cc: Commissioner Mignon Clyburn
Commissioner Michael O'Rielly
Commissioner Ajit Pai
Ruth Milkman (Office of Chairman Wheeler)
Daniel Alvarez (Office of Chairman Wheeler)

ATTACHMENT A

Office of Chairman Wheeler – February 18, 2015 Meeting Participants

Ruth Milkman, FCC, Office of Chairman Wheeler
Daniel Alvarez, FCC, Office of Chairman Wheeler
Meredith Attwell Baker, CTIA
Brad Gillen, CTIA
Scott Bergmann, CTIA

Office of Commissioner Clyburn – February 18, 2015 Meeting Participants

Commissioner Mignon Clyburn
Louis Peraertz, FCC, Office of Commissioner Clyburn
Rebekah Goodheart, FCC, Office of Commissioner Clyburn
Meredith Attwell Baker, CTIA
Scott Bergmann, CTIA

Office of Commissioner Rosenworcel – February 19, 2015 Meeting Participants

Commissioner Jessica Rosenworcel
Valery Galasso, FCC, Office of Commissioner Rosenworcel
Meredith Attwell Baker, CTIA
Brad Gillen, CTIA
Scott Bergmann, CTIA

Office of Commissioner O’Rielly – February 19, 2015 Meeting Participants

Commissioner Michael O’Reilly
Robin Colwell, FCC, Office of Commissioner O’Rielly
Amy Bender, FCC, Office of Commissioner O’Rielly
Meredith Attwell Baker, CTIA
Jaime Hjort, CTIA
Scott Bergmann, CTIA

Office of Commissioner Pai – February 19, 2015 Meeting Participants

Commissioner Ajit Pai **
Meredith Attwell Baker, CTIA **

** - participated via teleconference.