

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
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Wireless Broadband Access)	GN Docket No. 04-163
Task Force Report)	
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REPLY COMMENTS OF CISCO SYSTEMS, INC.

I. Introduction and Summary

Cisco Systems, Inc. (“Cisco”) is pleased to submit reply comments supporting the Wireless Broadband Access Task Force Report (“Report”).¹ Cisco is the world’s leading manufacturer of Internet Protocol (“IP”) networking equipment and IP telephony hardware and software. Since the company’s inception, Cisco’s engineers have been leaders in the development of IP networking technologies. The company’s tradition of IP innovation continues with industry-leading products in its core areas of routing and switching, as well as advanced technologies in IP telephony, other IP-enabled services, and wireless broadband equipment. As a result of its core focus on IP-networking, Cisco is greatly interested in fostering broadband deployment that will allow business and

¹ Public Notice, Wireless Broadband Access Task Force Seeks Comment on Task Force Report, GN 04-163, released March 8, 2005.

residential users to take full advantage of the innovation and efficiencies that IP-based services deliver.

The staff's Wireless Broadband Report provides a comprehensive overview of wireless broadband technology, services, and the public policy challenges that the Commission faces in fostering the availability of wireless broadband connections to the Internet. In Cisco's view, the Commission has earned high marks to date in moving wireless broadband issues to the top of the public policy agenda, and has achieved significant results with its policies and decisions. But as the Report reflects, more work is needed if the U.S. is to obtain the full benefits that spectrum-based broadband technologies offer.

Cisco urges the Commission to take up the recommendations of the Wireless Broadband Task Force and either resolve issues pending in open proceedings or include recommendations in future rulemaking dockets or in other types of proceedings, as appropriate. Among the approximately 24 recommendations included in the Report, Cisco additionally wishes to offer its endorsement of four staff recommendations: (1) consider classifying wireless broadband as an "information service" consistent with its prior decision on cable modem services; (2) consider whether wireless broadband constitutes an "interstate service"; (3) expedite the transition to Digital Television ("DTV") to open up new spectrum opportunities for wireless broadband; and (4) continue to work with industry to foster an innovative, competitive environment for license-exempt services.

II. The Commission Should Create A Consistent Broadband Regulatory Framework That Treats Wireless Broadband Internet Access As An “Information Service”

The Report recommends that the Commission consider applying a deregulatory framework to wireless broadband services, just as the Commission has begun to do with wired broadband services.² In addition, the Report recommends classifying wireless broadband Internet access as an “information service.”³

Cisco has previously argued that IP-based services should be classified as information services, as opposed to treating those services as Title II telecommunications services.⁴ Cisco has also argued that, as information services, the Commission’s Title I ancillary jurisdiction is limited to regulations which are “necessary” to achieve statutory objectives.⁵ In addition, Cisco has supported the High Tech Broadband Coalition’s advocacy that new wireline broadband networks should not be subject to legacy telecommunications rules that would require incumbent local exchange carriers to unbundled broadband functionality for use by competitors.⁶ Cisco

² Report at 66-68.

³ Report at 68-70.

⁴ Comments of Cisco Systems, Inc., In the Matter of IP-Enabled Services, WC Docket No. 04-36, filed 28, 2004.

⁵ Id.

⁶ Letter from the High Tech Broadband Coalition to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Jan. 28, 2003.

has also actively supported the Commission's efforts to sustain its *Cable Modem* ruling at the Supreme Court.⁷

Cisco strongly supports treating wireless broadband services no differently than broadband services provided on wired networks. While wireless networks will need to be regulated pursuant to the Commission's Title III jurisdiction in that the networks use spectrum, broadband services that ride on those networks should be treated the same as other broadband services. The Commission should articulate this policy at the earliest opportunity.

As the Report itself notes, applying a clearly-articulated, consistent framework to all broadband services ensures that, to the maximum extent possible, market discipline can drive broadband innovation and deployment. This is particularly important for broadband, where new applications are driving demand for ever-increasing bandwidth, and where new technologies are rapidly evolving to meet consumer demand.

In the absence of a clearly articulated policy decision from the Commission, providers of wireless broadband services must consider the business risks of failing to comply with telecommunications regulations. One

⁷ Brief of Amicus Curiae Telecommunications Industry Association, filed in *National Cable Television Ass'n v. Brand X Internet Servs.*, Nos. 04-277 and 04-281, January 18, 2005. *See generally* Declaratory Ruling and Notice of Proposed Rulemaking, Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities, 17 FCC Rcd 3019 (2002) (Cable Modem Order), rev'd sub nom. *Brand X Internet Servs. v. FCC*, 345 F.3d 1120 (9th Cir. 2003), appeal pending, *National Cable Television Ass'n v. Brand X Internet Servs.*, Nos. 04-277 and 04-281.

might argue that the risk is small, given the Commission's consistent, albeit incomplete, efforts to avoid application of legacy regulation to broadband networks. Moreover, Title III mobile services are not subject to the full panoply of common carrier regulations, such as tariffing requirements. But common carrier regulatory requirements nevertheless exist that could be applied to wireless carriers, and especially to those offering fixed or nomadic services. Even mobile services are only exempt from a few sections of Title II.⁸

The risks are substantially enlarged if one considers that some state commissions use the absence of a clear pronouncement to treat broadband as telecommunications and regulate it pursuant to state law. Moreover, the record in this proceeding makes clear that some states are increasingly interested in applying state "terms and conditions" rules to mobile services, citing their consumer protection authority. Whatever policy reasons state commissions are citing as a rationale for asserting additional regulations on mobile voice services, state-specific regulations cannot and should not be applied to nascent wireless broadband services. In sum, the absence of a pronouncement by the Commission on wireless broadband leaves uncertainty and the likely prospect of state regulation.

The Commission needs to step into this void and specify that wireless broadband is an information service under the Communications Act.

⁸ 47 U.S.C. § 332(c).

“Information services” offer the “capability” for “generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”⁹ The Commission concluded in its *Cable Modem* decision that broadband over cable constituted the delivery of Internet access, a service which the Commission had previously concluded fell squarely within the definition of “information services.” Wireless broadband is no different. Wireless broadband will also be used to deliver the same kinds of Internet applications that end users receive from cable modem services, such as World Wide Web access and e-mail. In addition, the “transmission” component of wireless broadband services cannot be separated from its data-processing capabilities. The Commission should announce as soon as possible that it considers wireless broadband to be an information service.

III. Wireless Broadband Is An Interstate Service Not Subject to State Jurisdiction

The Report notes that the Commission has previously found both cable modem services and ADSL services used to provide Internet access to be “interstate” services to some degree.¹⁰ The Report also cites the recent *Vonage* decision for the proposition that voice over IP (“VoIP”) services cannot practically be separated into interstate and intrastate components, and

⁹ 47 U.S.C. §153(20).

¹⁰ Report at 71.

therefore state regulation must be preempted.¹¹ In addition, the Report recites that the jurisdictional issue has been raised in the pending IP-Enabled Services docket.¹² The Report then recommends that the Commission examine whether wireless broadband services are inherently interstate in nature. We endorse the Report's recommendation that the jurisdictional issue be reviewed by the Commission and urge it to treat wireless broadband no differently from cable modem or VoIP.

As an initial matter, Cisco believes, as stated above, that wireless broadband is correctly identified as an information service which would be exempt from state regulation. On the issue of whether wireless broadband delivers interstate or intrastate service, Cisco believes that the correct answer is that wireless broadband is inherently interstate.¹³ As in the *Vonage* decision, many wireless devices will not permit identification of a user's geographic location. For example, customers who use laptops to connect to Wireless Internet Service Providers (WISP) when at home can access their e-mail from anywhere in the world using only an IP address to identify them. The *Vonage* analysis will produce no different outcome when applied to wireless broadband devices generally. Even if some cellphone

¹¹ Report at 70. *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, Memorandum Opinion and Order, 19 FCC 22404 (2004), appeal pending* Ninth Circuit Court of Appeals.

¹² *Id.*

¹³ Comments of Cisco Systems, Inc., In the Matter of IP-Enabled Services, WC Docket No. 04-36, filed 28, 2004 at 3-6.

devices that are broadband-capable can provide user location, there is no policy-based reason to treat some wireless broadband technology platforms differently, and the Commission can further rely on its Section 706 authority to foster advanced services to create a uniform regulatory category for all wireless broadband.

Cisco notes that the Report also mentions an alternative legal theory under which the Commission could apply Section 332(c) of the Act to avoid state regulation. However, Section 332(c) only applies to mobile services. Some wireless broadband technologies that are emerging will be fixed or nomadic services. As a result, Cisco believes that Section 332(c) presents only a limited opportunity to clarify jurisdictional questions.

IV. The Commission Should Move Quickly To Complete the DTV Transition

Among its many recommendations, the Report states that the Commission should take action to expedite the DTV transition.¹⁴ The reason for this recommendation is simple – for wireless broadband to realize its full potential, it needs spectrum. While the Commission is moving quickly, along with its colleagues at the National Telecommunications and Information Administration, to secure spectrum for 3G services, other new wireless broadband technologies such as WiMax will need spectrum that is different from 3G allocations. As the Report notes, the 700 MHz spectrum is currently

¹⁴ Report at 62-63.

occupied by TV licensees, who could be re-located to the 600 MHz band once television transmissions are all-digital.

Cisco commends the Commission for its work to date in resolving the multitude of issues needed to manage the transition from analog to digital television broadcasting. Cisco agrees that setting a hard deadline for the transition is the most important next step that policy-makers can take. First, it will signal to technology markets that a new opportunity is available, enabling the production of equipment. Second, it will cause the consumer electronics sector to educate consumers about the coming changes, maximizing the number of people who buy television sets equipped with digital tuners, or, digital set top boxes. Third and most importantly, it will speed the day when consumers have new broadband alternatives to obtain Internet access, and in particular, new alternatives that do not require a consumer to be tethered to a wall by a wired connection.

Cisco believes that anything less than a national hard date for transition will fail to deliver these benefits. Wireless broadband providers will need access to national markets to make investments in 700 MHz equipment.

V. The Commission Should Continue To Work With Industry To Enable An Innovative And Successful License-Exempt Industry

The staff's Report correctly notes that the Commission has taken a leadership role in fostering unlicensed wireless broadband technology. From

making additional spectrum available at 5 GHz, at 3650 MHz, and allowing unlicensed devices to be used in licensed public safety services at 4.9 GHz, to streamlining and modernizing its equipment certification rules, the Commission has played a key role in creating opportunities for unlicensed devices to play a critical role in delivering wireless broadband services to millions of Americans. The Commission's efforts have paid unexpected and unexpectedly large dividends, such as the proliferation of rural WISPs who are providing broadband services where wired service is unavailable. Perhaps even more importantly, the unlicensed industry has numerous manufacturers competing to sell equipment, an interoperability forum, and standards-based innovation that is moving ahead at a rapid pace. Cisco strongly urges the Commission to embrace the Report's recommendations to continue to work with industry to ensure that the license-exempt segment can continue to play an important role in wireless broadband delivery in the future.

VI. Conclusion

Cisco urges the Commission to embrace the recommendations set forth in the Wireless Broadband Report, and to take action through rulemaking or other appropriate proceedings to implement the Report's recommendations.

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