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SUMMARY

The record in this proceeding shows that the Commission should not impose on wireless broadband services the extensive set of regulations discussed in the NPRM. Rather, as wireless broadband services are beginning to develop, the Commission should rely on the competitive marketplace and the fact that there are diverse suppliers of these services to protect consumers. Imposing heavy-handed regulation on emerging wireless broadband services would harm consumers, particularly when those services are poised to provide the first meaningful competition to wireline and cable broadband services.

The Commission should not permit the states to impose a “patchwork quilt” of regulations ostensibly designed to protect consumers of wireless broadband services. The comments demonstrate that broadband Internet access is interstate in nature and therefore outside the scope of state regulatory jurisdiction. As CTIA and others note, the balkanized requirements that would result if states and local governments are permitted to regulate national markets would hinder consumers’ access to new advanced wireless services. Allowing a multitude of disparate state regulations would frustrate the numerous benefits of a national deregulatory policy for wireless broadband.

The Commission should increase regulatory certainty in this area by asserting its plenary jurisdiction over these interstate services and preempting state regulation of wireless broadband. The Commission should not impose additional regulations on wireless broadband services in the name of consumer protection.

The Commission should permit competition to develop by ensuring that stand-alone DSL and special access services are available to wireless broadband providers from ILECs at cost-based rates and reasonable terms and conditions. By combining a national deregulatory

approach with narrowly targeted rules on ILECs designed to facilitate broadband deployment, the Commission will help ensure that wireless broadband providers will deliver the applications that consumers demand.

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

In the Matter of)

Consumer Protection in the Broadband Era)

WC Docket No. 05-271

REPLY COMMENTS OF T-MOBILE USA, INC.

I. INTRODUCTION.

T-Mobile USA Inc. (“T-Mobile”)¹ replies to the comments filed in this proceeding to underscore the need for a nationwide, competition-based approach to consumer protection for wireless broadband services.² That approach has been successful in protecting consumers and fostering competition for both wireless and information services. These issues are especially important to T-Mobile because T-Mobile already offers wireless broadband services such as high-speed mobile Internet access through its EDGE/GPRS network and its extensive deployment

¹ T-Mobile holds licenses covering more than 275 million people in 46 of the top 50 U.S. markets and currently serves more than 21.7 million customers. Through its HotSpot WiFi service, T-Mobile also provides wireless broadband Internet access in more than 6700 convenient public locations, such as Starbucks coffee houses, airports, and airline clubs, making it the largest carrier-owned WiFi network in the world.

² See *Appropriate Framework For Broadband Access To The Internet Over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (“NPRM”). All comments filed on January 17, 2006, in response to the NPRM will hereinafter be short cited.

of WiFi hotspots.³ T-Mobile is considering offering additional innovative forms of wireless broadband.

The Commission should not permit the states to impose a “patchwork quilt” of regulations ostensibly designed to protect consumers of wireless broadband services. To do so would limit the availability and usefulness of such services, contrary to the Administration’s goal of “universal, affordable access for broadband technology by the year 2007,” while giving Americans “plenty of technology choices when it comes to purchasing broadband.”⁴

Imposing heavy-handed regulation on emerging wireless broadband services would harm consumers, particularly when those services are poised to provide the first meaningful competition to wireline and cable broadband services. At the same time, the Commission should permit competition to develop by ensuring that stand-alone DSL and special access services are available to wireless broadband providers from incumbent local exchange carriers (“ILECs”) at cost-based rates and reasonable terms and conditions. By combining a national deregulatory approach with narrowly targeted rules on ILECs designed to facilitate broadband deployment, the Commission will help ensure that competitive providers will deliver the innovative broadband applications that will fuel consumer demand for broadband access.

³ See T-Mobile, About Our Technology, *available at* <http://www.t-mobile.com/company/about/technology.asp> (last visited Feb. 23, 2006).

⁴ See *Promoting Innovation and Competitiveness, President Bush’s Technology Agenda*, *available at* http://www.whitehouse.gov/infocus/technology/economic_policy200404/chap1.html (last visited Feb. 23, 2006).

II. T-MOBILE AGREES THAT THE COMMISSION SHOULD CONTINUE ITS EXISTING DEREGULATORY POLICIES GOVERNING WIRELESS BROADBAND.

A. The Commission’s Deregulatory Policies For Information Services And Wireless Services Should Apply to Wireless Broadband Services.

As some commenters note, the Commission should use its current treatment of information service providers and commercial mobile radio service (“CMRS”) providers as models for a deregulatory approach to wireless broadband. Whether wireless broadband services are classified as information services or CMRS services, there is no reason for the Commission to impose heavy-handed regulations of any sort – including those labeled as “consumer” regulations – on these emerging services. As Verizon explains, essentially none of the consumer regulations discussed in the NPRM previously has been applied to information service providers.⁵ Similarly, in recognition of the extremely competitive wireless marketplace and the differences between wireless and wireline services, Congress and the Commission have long refrained from imposing the full panoply of common carrier regulations on CMRS providers. Cingular contends that “[i]n evaluating the broadband Internet access services provided by CMRS providers, the Commission must recognize the unique nature of CMRS, which has long involved the joint provision of telecommunications and information services.”⁶

Although parties such as the National Association of State Utility Consumer Advocates (“NASUCA”) support additional Commission regulation of broadband services generally, they

⁵ Verizon Comments at 6. *See also* letter from The Voice on the Net (VON) Coalition to President George W. Bush, at 1 (Jan. 19, 2006) (stating that “policymakers should continue their successful hands-off approach to Internet communications regulation”), *available at* <http://pulverblog.pulver.com/archives/003563.html> (last visited Feb. 27, 2006).

⁶ Cingular Comments at 13.

do not attempt to distinguish between wireless broadband services and ILEC or cable broadband services.⁷

There are critical differences between wireless broadband services and ILEC or cable broadband services. For example, unlike wireline carriers or cable operators, wireless providers rely on limited spectrum resources, and experience has shown that a pro-competitive, deregulatory framework is the best means of facilitating intensive use of the spectrum and rapid delivery of innovative wireless services to consumers. Moreover, the management of these limited spectrum resources is heavily integrated with the network control functions required of wireless providers. These functions are not uniform among wireless providers, but depend in particular on the air interface standard (e.g., GSM or CDMA) deployed by the provider. Now that the Commission has determined that wireline broadband Internet access services are information services and should be subject to a “lighter regulatory touch,”⁸ the Commission should impose even fewer regulations on competitive wireless broadband services. The Commission’s successful and longstanding application of different regulatory regimes to wireless and wireline services is strong evidence that a one-size-fits-all approach would not be appropriate with respect to wireless broadband services.

To promote growth in the wireless sector, Congress intended its 1993 amendments to the Communications Act of 1934 (the “Act”), including the addition of Section 332, to ensure that the Commission would rely primarily on market forces in its regulation of the wireless industry.⁹

⁷ See, e.g., NASUCA comments at 42-46.

⁸ See NPRM, ¶ 3.

⁹ See *Implementation of Sections 3(n) and 332 of the Communications Act*, Third Report and Order, 9 FCC Rcd 7988, ¶ 23 (1994).

In subsequently declining to impose many Title II common carrier requirements on CMRS providers, the Commission recognized the deregulatory purpose of Section 332 as seeking to ensure that “economic forces...shape the development of the CMRS marketplace.”¹⁰ The Commission and Congress recognized that “neither traditional state regulation, nor conventional regulation under Title II of the [Act], may be necessary in all cases to promote competition or protect consumers in the mobile communications marketplace.”¹¹

This rationale applies with equal force to wireless broadband services today because robust nationwide competition among multiple wireless broadband providers will result in greater consumer choice, which leads to sufficient market discipline. The Commission has determined that when competition exists, market forces restrict carriers’ ability to act against consumers’ interests by providing consumers an array of competitive choices if they are dissatisfied with a particular carrier’s quality of service.¹² Thus, competitive market forces sufficiently protect consumers against the types of harms that the regulations proposed in the NPRM are intended to combat, rendering such regulations unnecessary.

B. The Emerging Wireless Broadband Marketplace Is Competitive.

The wireless broadband marketplace is still nascent, but it is already sufficiently competitive that the Commission can rely on market forces to provide adequate safeguards to

¹⁰ *Id.*

¹¹ *See Implementation of Sections 3(n) and 332 of the Communications Act*, Second Report and Order, 9 FCC Rcd 1411, ¶ 14 (1994) (“*Mobile Services R&O*”).

¹² *See, e.g., id.* ¶ 173 (stating that market forces in competitive markets “are generally sufficient to ensure the lawfulness of . . . terms and conditions of service set by carriers who lack market power” and noting that “non-dominant carriers are unlikely to behave anti-competitively...because they recognize that such behavior would result in the loss of customers”), *see also id.* ¶ 182 (stating that the Section 214 discontinuance notification requirement was designed “to prevent a dominant carrier from discontinuing needed services where an adequate substitute is unavailable”).

protect consumers. The Commission has found that extensive competition and product differentiation exist among wireless providers in their data and broadband service offerings,¹³ in part because of their use of different technologies.¹⁴ Many of these services and products rely on broadband Internet access provided through third-generation wireless platforms.¹⁵

Similarly, in 2005 the Commission's Wireless Broadband Access Task Force observed nationwide competition between mobile wireless broadband service providers.¹⁶ The Task Force reported that multiple carriers had commenced deployment of significantly faster broadband technologies on their mobile wireless networks, and had announced plans to further expand their deployment.¹⁷ This trend has continued. As CTIA notes, "[b]roadband services, especially wireless broadband, are exploding across the country."¹⁸ The level of competition among at least four national wireless broadband providers and numerous regional and other wireless broadband providers renders unnecessary additional consumer protection regulations for wireless broadband services. The Commission should not saddle wireless broadband providers with unneeded

¹³ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Tenth Report, 20 FCC Rcd 15908, ¶ 97 (2005).

¹⁴ *Id.* ¶ 107.

¹⁵ See generally *id.* ¶¶ 139-144.

¹⁶ Report by the Wireless Broadband Access Task Force, Federal Communications Commission, *Connected & On the Go: Broadband Goes Wireless*, at 24-26 (Feb. 2005), available at <http://www.fcc.gov/wbatf/Welcome.html>.

¹⁷ See *id.*

¹⁸ See CTIA Comments at 2, citing *Tenth CMRS Competition Report* ¶ 119 ("CDMA 1xRTT and/or 1xEVDO technologies have been launched in areas of the country covering 278 million people or roughly 97 percent of the U.S. population, while GPRS, EDGE, and/or UMTS has been launched in areas covering 267 million, or about 94 percent of the U.S. population.").

regulation just as they are poised to provide consumers with competitive alternatives to the wired broadband services of the ILECs and cable companies.

III. A NATIONAL APPROACH TO WIRELESS BROADBAND SERVICES IS NEEDED TO PREVENT A PATCHWORK OF BURDENSOME AND CONFLICTING STATE REQUIREMENTS.

The Commission should preempt states from imposing the types of regulations discussed in the NPRM as they might apply to wireless broadband services. Although parties such as the National Association of Regulatory Utility Commissioners (“NARUC”) advocate a greater state role in regulating broadband services,¹⁹ the record in this proceeding does not support this position. The comments demonstrate that broadband Internet access is interstate in nature and therefore outside the scope of state regulatory jurisdiction.²⁰ The Commission should increase regulatory certainty in this area by asserting its plenary jurisdiction over these interstate services and preempting state regulation.

The federal deregulatory policy aimed at promoting broadband deployment requires preemption of state attempts to impose regulations identified in the NPRM.²¹ As with other wireless services, a patchwork quilt of such regulations at the state level would hinder deployment and development of these innovative wireless services, to the detriment of consumers.

¹⁹ See NARUC Comments at 8-9.

²⁰ See CTIA Comments at 4-6; AT&T Comments at 22; Cingular Comments at 16-17.

²¹ Verizon Comments at 25-28; CTIA Comments at 5-6.

In contrast, light regulatory treatment of wireless broadband services at the federal level would benefit consumers for the same reasons that the Commission's deregulatory approaches to information services and CMRS have proven effective.²²

As CTIA notes, the balkanized requirements that would result if states and local governments are permitted to regulate national markets would hinder consumers' access to new advanced wireless services through increased costs associated with pricing, advertising, and regulatory compliance.²³ Moreover, a multitude of differing state regulations would almost certainly conflict with one another. Allowing disparate state regulation of broadband wireless services would frustrate the numerous benefits of a national deregulatory policy for broadband, including increased investment in and deployment of broadband facilities; increased innovation in products, services, and commercial arrangements; improved efficiency; and lower prices.²⁴ The Commission should preempt state regulation of broadband Internet services because these services are inherently interstate in nature and should extend the successful deregulatory approach applied CMRS to broadband services provided over wireless platforms.

IV. THE RECORD SHOWS THAT ADDITIONAL CONSUMER PROTECTION RULES ARE UNWARRANTED IN THE HIGHLY COMPETITIVE WIRELESS BROADBAND MARKET.

The Commission should not impose additional regulations on wireless broadband services in the name of consumer protection. As shown above, robust and increasing

²² Indeed, Congress's 1993 addition of Section 332 to the Act was intended to ensure that the wireless industry would be governed by a uniform, *federal* regulatory regime, as well as authorizing the Commission to rely primarily on market forces in regulating the wireless industry. *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993).

²³ *See* CTIA Comments at 6.

²⁴ Verizon Comments at 27.

competition for these services is sufficient to protect consumers and mitigate the need for any new regulation, especially because the proposed regulations could undermine the benefits of pro-competitive treatment of wireless broadband services.

T-Mobile comments on specific proposed consumer-protection regulations as follows:

- **Slamming:** In its NPRM, the Commission questions whether “slamming could actually occur from a technical perspective” with respect to broadband Internet access service. In fact, slamming in the wireless broadband market appears to be extremely difficult, given that subscriber equipment used to obtain service must be specifically configured to access a particular wireless broadband network or its roaming partners.²⁵ Thus, rules to prevent slamming in the wireless broadband market are unnecessary at this time.
- **Truth-in-Billing:** Consistent with T-Mobile’s position in the pending proceeding on truth-in-billing regulations, these requirements are unnecessary for developing wireless broadband services. In any event, the Commission should ensure that all state regulation of the form or content of wireless bills or point-of-sale disclosures – including putative “enforcement” of existing or future federal statutes and rules – is preempted by the federal scheme of wireless regulation.²⁶
- **Network Outage Reporting:** CMRS carriers are already subject to network outage reporting requirements for their telecommunications services. Thus, no additional requirement is necessary at this time for broadband services provided over the same wireless networks that also offer telecommunications services.²⁷
- **Section 214 Discontinuance:** The Commission has already declined to impose Section 214 requirements on CMRS carriers, and it has never imposed these requirements on information service providers.²⁸ With multiple wireless broadband providers, customers will have alternatives if a provider stops offering service. Extending these requirements to wireless broadband and other information service providers is unnecessary.²⁹

²⁵ See BellSouth Comments at 12; AT&T Comments at 7-8; Comcast Comments at 15.

²⁶ See Comments of T-Mobile USA, Inc. in CC Docket No. 98-170, filed on June 24, 2005.

²⁷ See Cingular Comments at 10.

²⁸ See *Mobile Services R&O*, ¶ 182 (“We will also forbear from exercising our Section 214 authority”).

²⁹ See NCTA Comments at 14.

- **Section 254(g) Rate Averaging:** Rate averaging and rate integration requirements are forms of rate regulation. As such they are unnecessary and cause distortions in competitive environments,³⁰ such as those for information services and wireless service.³¹ The Commission should not impose these requirements on wireless broadband services.

V. THE COMMISSION SHOULD ENCOURAGE BROADBAND DEPLOYMENT AND BENEFIT CONSUMERS BY REQUIRING ILECS TO PROVIDE REASONABLE ACCESS TO THEIR NETWORKS.

For consumers to obtain the full benefit of wireless broadband services, the Commission should ensure that ILECs make broadband services and facilities available to end users and wholesale customers at cost-based prices. Doing so will foster increased competition and provide consumers with additional wireless broadband options. In particular, the lack of stand-alone or “naked” DSL limits the development of innovative wireless services, as T-Mobile has demonstrated in responding to the Notice of Inquiry on this issue.³² The Commission has ample authority to remedy the competitive harms caused by ILEC tying of voice services and DSL and should act promptly to make cost-based prices for naked DSL available.

Moreover, ILECs are the predominant source of special access services necessary for T-Mobile and others to offer wireless services, including wireless broadband services. Therefore, the Commission should subject the ILECs’ special access services to meaningful price cap regulation and should limit pricing flexibility for such services, as detailed in T-Mobile’s filings in the Commission’s special access rulemaking.³³ The Commission should extend effective

³⁰ See BellSouth Comments at 23-24.

³¹ See AT&T Comments at 15.

³² See T-Mobile Reply Comments, WC Docket No. 03-251 (filed July 12, 2005).

³³ See T-Mobile Comments, CC Docket No. 05-25 (filed June 13, 2005); T-Mobile Reply Comments, CC Docket No. 05-25 (filed July 29, 2005).

regulation of special access services to the newer broadband services that are replacing traditional special access offerings. Doing so will ensure the ability of independent wireless providers such as T-Mobile to compete in the provision of broadband services.

The carrier-specific conditions regarding naked DSL and special access that the Commission imposed in the recent major wireline merger proceedings are limited and short-term.³⁴ Accordingly, the Commission should adopt nationwide rules on these topics applicable to all ILECs to ensure a competitive broadband marketplace over the long term.

VI. CONCLUSION.

The Commission should not subject wireless broadband services to heavy-handed regulation. It should preempt the states from adopting such regulations. The ILECs must be

³⁴ See *Verizon Communications Inc. and MCI, Inc.*, 20 FCC Rcd 18433, App. G (2005); *SBC Communications, Inc. and AT&T Corp.*, 20 FCC Rcd 18290, App. F (2005).

required to make available to independent wireless providers and others the broadband pipes that are essential for the development of new wireless broadband services.

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