

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

In the Matter of )  
 )  
Broadband Industry Practices ) WC Docket No. 07-52  
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**COMMENTS OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint Nextel”) submits the following comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Inquiry (“NOI”) seeking information on “the nature of the market for broadband and related services, whether network platform providers and others favor or disfavor particular content, how consumers are affected by these policies, and whether consumer choice of broadband providers is sufficient to ensure that all such policies ultimately benefit consumers.”<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

Consumer demand for broadband services has been increasing at a breathtaking rate and service providers are responding. Carriers are racing to invest in broadband networks using multiple platforms – wireless, DSL, cable, satellite and power line.<sup>2</sup> Consumers have been the beneficiaries of this investment as data speeds have steadily increased and pricing per megabit has fallen. Market pressure has also ensured that carriers provide consumers with the access they desire. There is no evidence that any

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<sup>1</sup> *In the Matter of Broadband Industry Practices*, Notice of Inquiry, WC Docket 07-52, FCC 07-31 (adopted March 22, 2007; released April 16, 2007).

<sup>2</sup> See generally *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act*, Sprint Nextel Corporation Comments, GN Docket No. 07-45, (filed May 16, 2007) at p. 4-8 (attached as Appendix A) (hereinafter “*Sprint Nextel 706 Comments*”).

broadband service provider is engaging in improper leverage of their networks to prevent internet access to consumers.

Wireless carriers in particular have become a significant factor in the broadband market place. Not only do multiple wireless carriers compete to provide mobile broadband services, they are deploying multiple alternative technologies. Sprint Nextel in particular has been a leader in the deployment of broadband service with the launch of its Code Division Multiple Access (“CDMA”) Evolution Data Optimized (“EvDO”) technology and the announced construction of an even faster Worldwide Interoperability for Microwave Access (“WiMAX”) network that will reach 100 million consumers by the end of 2008.

Given the state of the broadband internet access market, the Commission should not impose new regulatory obligations, whether through enforcement of the broadband policy statement or an expansion of those principles into rules. Additional mandates which attempt to direct how competitive carriers must manage their networks will stifle investment, not encourage it. This is particularly true for newer entrants, such as wireless carriers, who are still in the early stages of broadband technology development and deployment. If the government wishes to encourage broadband competition, then these new entrants must be given the greatest flexibility possible to design business plans they believe will be successful.

The existence of multiple providers of broadband internet access services is the best means of ensuring that consumers continue to obtain the access they desire. Accordingly, the Commission should focus its attention on those issues which either impede entry into the broadband market or which threaten to undermine the ability of

current market participants to compete on a level playing field. Specifically, the Commission should quickly address the current market failure in the area of special access services, one of the key inputs to the provision of any broadband service, whether wireless or wireline.

## **II. THE CONSUMER BROADBAND MARKET, PARTICULARLY THE WIRELESS MARKET, IS EXPANDING RAPIDLY**

Consumer demand for broadband service is exploding and telecommunications carriers, cable companies, power companies, satellite providers, and commercial mobile radio service (“CMRS”) providers are responding. Facilities based companies are investing tens of billions of dollars into cable modem access, digital subscriber lines (“DSL”), fiber to the curb (“FTTC”), broadband over power lines (“BPL”), unlicensed Wi-Fi, satellite and multiple mobile wireless technologies. The wireless market in particular has become fiercely competitive.<sup>3</sup> Every major wireless carrier and many regional carriers are deploying wireless broadband platforms.

Sprint Nextel is keenly aware of this competition as one of the leading investors in wireless broadband technology. Sprint Nextel launched its EvDO service in a few limited markets during the summer of 2005 with data speeds of 400 Kbps to 700 Kbps. Sprint Nextel’s EvDO footprint now covers more than 207 million people and continues to expand rapidly. In October of 2006, Sprint Nextel became the first carrier to commercially deploy EvDO Rev. A, producing data speeds of 600 Kbps to 1.4 Mbps with peak speeds of 3.1 Mbps. Sprint Nextel’s EvDO Rev. A network now reaches 197 million people and is expected to reach more than 230 million people by year end.

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<sup>3</sup> However, as Sprint Nextel has stated on numerous occasions, this competition could be greatly enhanced by appropriate regulation of monopoly controlled special access facilities. *See* Testimony of Barry West, Chief Technology Officer and President, 4G Mobile Broadband, Sprint Nextel Corporation, Before the House Subcommittee on Telecommunications and the Internet, April 19, 2007.

Sprint Nextel has also committed to the first national deployment of a fourth generation (“4G”) wireless broadband network using the WiMAX standard (IEEE 802.16e). Sprint Nextel expects to launch initial markets (Chicago, Baltimore and Washington, D.C.) by year end 2007 and provide service to 100 million people by year end 2008. WiMAX will provide data speeds of 2 to 4 Mbps and will revolutionize the concept of mobile broadband access, enabling the types of video streaming and other services never before thought possible in a mobile environment.

Other wireless carriers have followed in Sprint Nextel’s wake. Verizon Wireless has now also deployed an EvDO network that competes for customers with Sprint Nextel. Although not as fast as Sprint Nextel’s broadband service, AT&T wireless services has deployed EDGE technology over much of its footprint and provides broadband data in some select markets.<sup>4</sup> T-Mobile has deployed an extensive Wi-Fi network and is expected to deploy broadband services over its newly acquired AWS spectrum.<sup>5</sup> Similarly, smaller niche players are developing their own varieties of wireless broadband service. Clearwire, for example, has deployed wireless broadband services in many markets and has announced plans to expand their coverage.<sup>6</sup>

The number of carriers entering this market, along with substantial investments in new technology, indicates that the current consumer broadband market, particularly the wireless market, is highly competitive.<sup>7</sup> Given the increasing number of market participants, rapidly advancing technology and substantial investment in broadband

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<sup>4</sup> See <http://business.cingular.com/businesscenter/plans/connections-coverage.jsp>

<sup>5</sup> See [http://www.t-mobile.com/shop/addons/services/information.aspx?osid=4745E503-3612-4E0F-9044-DE881A7F91CC&tp=Svc\\_Tab\\_HotSpot](http://www.t-mobile.com/shop/addons/services/information.aspx?osid=4745E503-3612-4E0F-9044-DE881A7F91CC&tp=Svc_Tab_HotSpot)

<sup>6</sup> See <http://www.clearwire.com/wireless-broadband/overview.php>.

<sup>7</sup> See generally, *In the Matter of Skype Communications S.A.R.L. Petition to Confirm a Consumer’s Right to Use Internet Communications Software and Attach Devices to Wireless Networks*, Comments of Sprint Nextel Corporation, RM 11361 (filed April 30, 2007) (attached as Appendix B)(“*Sprint Nextel Carterfone Comments*”).

service, the Commission should abide by the maxim: “Do no harm.” So long as multiple facilities based providers are available to the public, consumers will continue to have the market power to demand the products and services they desire.

### **III. GOVERNMENT REGULATION OF BROADBAND SERVICES IS NOT NECESSARY**

There is no evidence that broadband carriers are engaging in inappropriate market behavior or that consumers are not obtaining the products and services they desire. On the contrary, as the number of market participants increases, the pricing of broadband services has steadily declined and speeds have increased. Customers continue to have access to the services and internet content of their choice. So long as consumers have a choice of providers, market forces will ensure that these products and services continue to be available in response to consumer demand.

Accordingly, the Commission should not impose new regulatory obligations on broadband internet access providers, whether through enforcement of the broadband policy statement or an expansion of those principles into rules. Regulations limiting the methods carriers may use to manage capacity on their networks, specifying the types of services and products carriers must offer or attempting to define discrimination within the context of the multiple networks that create the internet, would be complex by necessity and would inevitably result in disputes and litigation.

Adding such complexity to the broadband market will stifle investment, not encourage it. This is particularly true for newer entrants, such as wireless carriers, who are still in the early stages of broadband technology development and deployment. If the government wishes to encourage additional market entry, then these new entrants must be given the greatest flexibility possible.

Rather than creating new regulations for broadband providers, the Commission should focus on those steps it can take to encourage broadband market entry and increased choice for consumers. One impediment to increased competition in the broadband market has been the monopoly control over one of the necessary inputs to broadband service, special access.<sup>8</sup> Currently, two carriers control 82% of the special access market. This control over a critical input to broadband services is a significant impediment to increased competition and potentially to the number of broadband market providers.

Special access circuits will become increasingly important as broadband providers handle increasing capacity volumes. Consumer demand for streaming video and other bandwidth intensive services will require more and larger facilities to cell sites and supporting networks. If broadband competitors continue to pay monopoly rents for this essential input, however, broadband deployment cannot flourish as it should. Not only are these high prices anticompetitive, but the more carriers are forced to subsidize their competitors via high access prices, the less capital they have to spend on their own advanced networks. Sprint urges the Commission to quickly address this market failure in special access.

#### **IV. THE BROADBAND PRINCIPLES ARE INAPPROPRIATE FOR THE WIRELESS MARKET**

There is no evidence that there is a need for new rules based upon the broadband principles for either wireless or wireline broadband access services. The application of the broadband principles is particularly problematic, however, in the wireless space. Wireless broadband networks were only just beginning to be deployed at the time the

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<sup>8</sup> *Sprint Nextel 706 Comments* at p. 8-13.

broadband principles were promulgated and the Commission did not address how its principles could be met in the context wireless networks using multiple technologies and facing very different technical constraints.<sup>9</sup> Wireless networks, because they rely upon shared spectrum resources and are not constructed using a uniform technology, must address unique issues with respect to device attachment and the impact of various applications on quality of service.

Certain of the broadband principles simply do not make sense in the wireless context and could undermine the very ability of wireless carriers to provide broadband services. For example, the principle that “consumers are entitled to connect their choice of legal devices that do not harm the network” is extremely problematic in the wireless context. As discussed in greater detail in the *Carterfone* proceeding, wireless networks are shared resources which require extremely strict network controls to maintain quality of service, including the technical specifications of the devices used on the network.<sup>10</sup>

Even those entities which supported application of the broadband policy statement to wireless services in the *Carterfone* proceeding acknowledged that this would be difficult in the wireless context as a practical matter:

CEA recognizes that there are a number of marketplace restraints and technical issues, including network management that could potentially impact consumers’ ability to attach devices of their choice to wireless broadband Internet access services.... For this reason, we believe that it is premature to issue a declaratory ruling in this instance to apply the *Carterphone* [sic] decision to wireless networks.<sup>11</sup>

Likewise, the Information Technology Industry Council notes the technical distinctions between wireless and wireline:

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<sup>9</sup> *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Policy Statement, 20 FCC Rcd 14986, CC Docket 02-33 (adopted August 5, 2005).

<sup>10</sup> *Sprint Nextel Carterfone Comments* at p. 7-19.

<sup>11</sup> Comments of the Consumer Electronics Association at p. 2-3.

ITI ... recognizes that wireless network operators have: (1) technical network management issues that are unique to wireless networks, (2) security requirements, including critical infrastructure protection, and (3) dynamic capacity constraints due to usage levels, available spectrum, and the particular technology being used. For example, the right to attach non-harmful devices to one particular wireless broadband network may necessarily be affected by the different air interface technologies, spectrum bands, and other technical requirements of that particular network.<sup>12</sup>

Similarly, the VON Coalition “recognizes that [broadband] consumer rights are affected by the need of carriers to manage and prevent harm to their networks, and that such network management and technological concerns may be very different for wireless networks compared to wireline.”<sup>13</sup> The VON Coalition goes on to observe that “shared spectrum and bandwidth among customers, which make more acute the need for network management” and “E911 and hearing aid compatibility requirements” would make application of the broadband principles to wireless carriers problematic.<sup>14</sup>

Although wireless broadband services are becoming widely available and the speed of carrier deployment is increasing, these services are still in their nascent state. Technology continues to develop at a rapid pace and carriers are still attempting to find the appropriate balance between network management and consumer demand for ever larger bandwidth. In this stage of rapid growth and development, the Commission should refrain from disrupting the market and reject efforts to establish a new regulatory regime based upon the broadband principles.

## CONCLUSION

Sprint Nextel urges the Commission to increase the incentives for deployment of broadband networks and reject calls to impose additional regulatory burdens. Only by

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<sup>12</sup> ITI Comments at p. 4-5.

<sup>13</sup> Comments of the VON Coalition at p. 7.

<sup>14</sup> *Id.* at p. 8.

encouraging and maintaining competition in the broadband market will consumers obtain the full benefits of the internet. Accordingly, Sprint Nextel encourages the Commission to address the barriers to broadband deployment, such as concentration of the special access market, and reject calls to establish a new regulatory regime based upon the broadband principles.

Respectfully submitted,

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