

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Inquiry Concerning the Deployment of)
Advanced Telecommunications)
Capability to All Americans in a Reasonable) GN Docket No. 07-45
And Timely Fashion, and Possible Steps)
to Accelerate Such Deployment)
Pursuant to Section 706 of the)
Telecommunications Act of 1996)

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August 8, 2007

**Mobile Wireless “Broadband” Lines Should Adhere
To The Commission’s Four Broadband Principles**

In 2005 the Commission issued a *Policy Statement* that would “ensure that broadband networks are widely deployed, open, affordable, and accessible to all consumers.” To these ends, the Commission adopted four principles¹:

Principle 1: “To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to access the lawful Internet content of their choice.”

¹ In the Matters of *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities* (CC Docket No. 02-33); *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services* (CC Docket No. 01-337); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*; *1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements* (CC Docket Nos. 95-20, 98-10); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities – Internet Over Cable Declaratory Ruling* (GN Docket No. 00-185); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable* (CS Docket No. 02-52); FCC 05-151, Released September 23, 2005 (“Broadband Policy Statement”).

Principle 2: “To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement.”

Principle 3: “To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to connect their choice of legal devices that do not harm the network.”

Principle 4: “To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to competition among network providers, application and service providers, and content providers.”

In the *Broadband Policy Statement* the Commission stated that it would “incorporate the above principles into its ongoing policymaking activities” regarding broadband deployment and adoption. Thus it seems quite clear that the implementation of Section 706 via the Form 477 reporting requirements should be subject to adherence to these four principles.

But the mobile wireless broadband offerings of the major U.S. carriers do not adhere to *any* of the four principles. The technical limitations and terms of service restrictions placed on these products render them as distinct and separate products from the broadband offerings of cable modem and DSL providers.

Principle One is violated by the mobile wireless carriers, as their customers are forbidden from using their connections to stream audio or video files, as well as restrictions on other legitimate content access activities such as peer-to-peer file sharing.²

² There are numerous examples of content access restrictions imposed by the major U.S. mobile Internet companies. For example: Sprint (“May place restrictions on accessing certain Data Content (such as certain websites, applications, etc.), impose separate charges, limit throughput or the amount of data you can transfer, or otherwise limit or terminate Services”); Verizon Wireless (“Examples of prohibited uses include, without limitation, the following: (i) continuous uploading, downloading, or streaming of

The major carriers also violate Principle Two. For example, the much-hyped iPhone prevents users from running Java or Flash applications, which cripples the functionality of many Web sites. The carriers also prevent the use of third-party Voice Over Internet Protocol (VoIP) applications like Skype.³

The carriers certainly don't adhere to the "Carterfone" policy outlined in Principle Three. The mobile Internet devices sold by the carriers are locked, and when consumers switch carriers they are unable to take their phone with them, rendering the otherwise normally operating device completely useless. Some carriers may claim the subsidized price of some portable devices offsets this inconvenience, but the iPhone again demonstrates this is not the case. Users purchase the iPhone through Apple Computer at full price, yet are still tied to AT&T's wireless data service. If a user wishes to change

audio or video programming or games; (ii) server devices or host computer applications, including, but not limited to, Web camera posts or broadcasts, automatic data feeds, automated machine to-machine connections or peer-to-peer (P2P) file-sharing; or (iii) as a substitute or backup for private lines or dedicated data connections."); AT&T ("Unlimited plans cannot be used for uploading, downloading or streaming of video content (e.g. movies, tv) music or games").

²⁰Examples of restricting consumer access to applications and services include: Sprint ("we may place restrictions on accessing certain Data Content (such as certain websites, applications, etc.), impose separate charges, limit throughput or the amount of data you can transfer, or otherwise limit or terminate Services"); Verizon Wireless ("Examples of prohibited uses include, without limitation, the following: (i) continuous uploading, downloading, or streaming of audio or video programming or games; (ii) server devices or host computer applications, including, but not limited to, Web camera posts or broadcasts, automatic data feeds, automated machine to-machine connections or peer-to-peer (P2P) file-sharing; or (iii) as a substitute or backup for private lines or dedicated data connections."); AT&T ("Prohibited uses include, but are not limited to, using services: (I) with server devices or with host computer applications, including, without limitation, web camera posts or broadcasts, continuous jpeg file transfers, automatic data feeds, telemetry applications, peer-to-peer (P2P) file sharing, automated functions or any other machine-to-machine applications; (II) as substitute or backup for private lines or dedicated data connections; (III) for voice over IP; (IV) in conjunction with WWAN or other applications or devices which aggregate usage from multiple sources prior to transmission").

providers, the iPhone becomes inoperable -- even if the new carrier's network is compatible with the GSM standard. It is clear that the wireless data carriers are engaging in anticompetitive behavior to reduce customer "churn".

Principle Four is violated in numerous ways in the wireless data industry. Carriers "tie" consumers to their networks by crippling portable devices (as indicated above). Carriers also force consumers into long-term two-year contracts that have exorbitant "early termination" fees (\$175 and higher). These practices impose high switching costs and reduce the normal amount of customer "churn" that would occur in a truly competitive market. There are other examples of Principle Four violations. Some carriers force users to use their preferred content, crippling similar content obtained from other vendors. For example, users of Verizon's mobile data service portable handheld devices who wish to download video files must use Verizon's "V-Cast" service, as video files obtained by other means won't work on Verizon's device.⁴

It is clear that the mobile wireless data services offered by the U.S. carriers are in no way comparable to the more open broadband connections offered by the traditional wireline DSL and cable modem providers. Setting aside for the moment the issue of how

⁴ In their terms of service, Verizon Wireless states "Examples of prohibited uses include, without limitation, the following: (i) continuous uploading, downloading or streaming of audio or video programming or games". For an additional fee of between \$13 and \$25 per month, Verizon's V Cast service allows a customer the ability to view Verizon approved video. Similarly, AT&T states, "Except for content formatted in accordance with AT&T's wireless content standards, unlimited plans cannot be used for uploading, downloading or streaming of video content (e.g. Movies, TV), music or games". AT&T has begun to offer AT&T Video. At an additional cost of \$20 per month, a user has the capability of accessing AT&T approved content. Most of the content available through these services could be viewed at no cost were mobile wireless customers provided access to an open Internet. See <http://www.wireless.att.com/learn/messaging-internet/media-entertainment/video.jsp> and <http://getitnow.vzwshop.com/index.aspx?id=mobileTV#overview>.

to count a wireless phone that is merely *capable* of 200 kbps speeds (but not necessarily used to access the Internet)⁵, it is clear that these services do not adhere to the four principles of the *Broadband Policy Statement* and therefore should not be included in the totals reported by the Commission in its Form 477 data reports. Nor should these connections be considered when the Commission evaluates the state of reasonable and timely deployment of advanced telecommunication services in its pending Section 706 report.

We echo the comments of industry analyst David Isenberg, who recently stated, “the FCC shouldn't have it both ways. If wireless broadband services are to be included as broadband services, they should be subject to the Policy Statement. On the other hand, if they're not held to the Policy Statement's principles, such crippled, attenuated [connections] should not be included in the FCC's broadband statistical report.”⁶

Respectfully submitted,

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⁵ We believe the Commission’s current mobile wireless reporting methodology likely overstates the true level of residential broadband adoption, as the overwhelming majority of users with 3G capable mobile phones likely are using their data capabilities as a complimentary service to their home DSL or cable modem connections. Likewise, the users of business mobile wireless data connections (which account for 90 percent of all mobile wireless high-speed lines) also are certain to use the device as a compliment to their wired office DSL, wireline, or cable modem connection.

⁶ <http://isen.com/blog/2007/07/my-comment-on-fcc-network-neutrality.html>.