

- Sections 1, 2(a) and 301 of the Communications Act of 1934 give the Commission jurisdiction to license and regulate all radio stations. *See* 47 U.S.C. §§ 151, 152(a), 301. The Commission’s jurisdiction extends to all forms of electrical communication by radio. *See United States v. Southwestern Cable Co.*, 392 U.S. 157, 168 (1968).
 - All CMRS licensees that provide wireless broadband internet access service do so pursuant to a license issued under § 301 of the Act and are subject to the Commission’s jurisdiction under Titles I and III.
 - The transmission component of a mobile wireless broadband internet access service provided by CMRS licensees uses radio equipment transmitting on frequencies allocated and licensed to provide CMRS. All CMRS licensees must provide a mobile service that is operated for profit, interconnected, and available to the public. *See* 47 U.S.C. § 332(d)(1); 47 C.F.R. § 20.3. A permissible use of the licensed CMRS spectrum can be considered an ancillary service and treated as common carriage and regulated as CMRS. *See* 47 C.F.R. § 20.9.
 - The Commission can treat any CMRS licensee that is providing a mobile wireless broadband internet access service using its licensed transmitting facilities as having elected to provide the information service as a common carrier service subject to Title II. *See Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, 22 FCC Rcd 5901, 5913-14 (2007).
 - A CMRS licensee that has elected to provide a mobile wireless broadband internet access service as a common carrier service must be regulated as such because it is “engaged” in the provision of CMRS. 47 U.S.C. § 332(c)(1)(A).
 - The Commission has jurisdiction under §§ 201(a) and 332(c)(1)(A) of the Act to extend the automatic roaming requirement to CMRS licensees that provide a mobile wireless broadband internet access service on an ancillary basis using their licensed CMRS facilities.
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- The foregoing does not conflict with *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005). The Supreme Court upheld the Commission’s holding that cable modem service is not a telecommunications service because, as seen from the consumer’s point of view, it is not a stand-alone transparent offering of telecommunications. *See id.* at 989. The Court held that the Commission reasonably found that “the high-speed transmission used to provide cable modem service is a functionally integrated component of that service because it transmits data only in connection with the further processing of information and is necessary to provide Internet service.” *Id.* at 998.
 - The high-speed transmission over the licensed CMRS spectrum that is used to provide mobile wireless broadband internet access is also a functionally integrated component of

the primary CMRS and it transmits data in connection with that service. Thus, the transmission component of the CMRS licensee's service is necessary to provide CMRS and internet access service. Thus, the provision of mobile wireless broadband internet access service by a CMRS licensee cannot be considered a stand-alone transparent offering of information service.