Before the Federal Communications Commission
Washington DC.

Docket 09-51
National Broadband Plan, Net Neutrality.

Subject: Wireless Internet Bandwidth Caps, the Consumer, and the Constitution.

June 8, 2010

The FCC has adopted a blueprint for a National Broadband Plan and has submitted it to Congress in order for Congress to give it certain additional authority for implementation of parts of it, given the evolving nature of telecommunications, and the fact that in order for transparency and clarity of intent, amendments to the Telecommunications Act of 1934 need to be made in order for certain actions to take place to preserve Constitutionally-protected access to the Internet. This is especially important given the fact that the Federal Government was one of the key parties in developing the Internet in the first place, particularly the Department of Defense.

Docket 09-51, the Notice of Inquiry, has so far received a lot of comments about various aspects of the National Broadband Plan, but recent developments in the last week are casting a shadow on the development of it because certain large corporations are still seeking to stifle innovation and access to lawful content based on format. This as a result of recent developments in the Comcast case and other matters, including news stories that aired following the April meeting of the CTIA, where it was mentioned that a number of carriers were going to drop plans offered to customers that provided unlimited Internet access via their CMRS devices, the type affected is what is known in the public media as 'Smartphones', they include devices made by Apple ('iPhone'), various companies ('Android'), Research in Motion ('Blackberry'), and Palm ('Palm Pre').

The following describes the seriousness of the caps as a blog known as 'Radio Survivor' put it very recently after AT&T made their announcement: It was lifed from an RTF email, as I received it via a mailing list, so any underlined words in this PDF will not work.

Radio Survivor stories

New AT&T data plans threaten to stunt the growth of mobile internet radio

Posted: 06 Jun 2010 03:54 PM PDT

Last week AT&T announced that new smartphone customers will no longer be eligible for the unlimited data plans that current customers enjoy. Instead, two somewhat less expensive plans will be available. For $15 new customers may download 200 MB of data per month, with a charge of $15 for every additional 200 GB over the limit. 2 GB per month will cost $25, plus another $10 for each 1 GB after that. Current data plan customers pay $30 for unlimited data. For its part AT&T says that either of these new plans provides enough data to satisfy 98% of their customers.

While it may be true that the vast majority of AT&T customers use less than 2 GB of data in a month, I would argue that's because data-hungry mobile streaming media is just starting to take off. But the these new caps threaten to stunt that growth just as mobile internet radio is gaining steam.

The 200 MB of data offered by the least expensive plan covers only about 200 minutes of streaming stereo music at the common bitrate of 128kbps. And that's without any other data usage for email, web browsing or anything else. Even listening to a lower-quality mono talk station at 32 kbps will only stretch listening to 800 minutes, or 13 hours.

The 2 GB plan will cover about 34 hours of stereo music and as much as 136 hours of low-bitrate mono talk. At first blush that seems like a fair amount of listening time, but how does it measure up against real-world radio listening? Someone whose commute lasts about an hour each way will easily listen to over 40 hours of radio in a month. If that commuter wants to use her iPhone or Blackberry to listen to Pandora, last.fm or another streaming music station she'll be over her limit by the last week of the month.

Without access to hard statistics on how many hours the average mobile Pandora or last.fm user listens it's hard to say for sure how many new AT&T customers are likely to be affected. However, I do think it's fair to say that these limits will make many smartphone users cautious about how much time they'll spend listening to internet radio on the go, especially in order to avoid overage fees.

Of course, AT&T is not the only wireless data carrier in the US. As long as you don't have your heart set on an iPhone there are lots of other carriers to choose from who still offer unlimited data plans. But for how much longer? Computerworld quotes several analysts who predict that Verizon, the nation's second largest carrier, will set caps in as soon as six months. While there may be some pricing competition on these plans, I'm guessing they'll offer pretty similar amounts of data for prices that only vary by a few dollars a month.

With a cost between 75 cents and $4.50 and hour, listening to mobile internet radio on an AT&T smartphone starts to look pretty uncompetitive compared to traditional broadcast, which is free, or satellite radio which offers unlimited listening for $10 – $20 a month. While it may be inevitable that the days of unlimited data plans will come to an end, I hope that the metered pricing quickly becomes more reasonable, permitting a reasonable amount of streaming radio listening. If not, this vibrant new way of listening to radio might be stunted before it has a chance to blossom.

This has potential to adversely affect FCC licensees who choose to stream, along with many pureplay Internet only radio services such as Accuradio.com, Pandora, Slacker, and others that exist now or may

exist in the future, a good number of FCC licensees stream on the Internet at various bitrates including a few that stream at higher rates than those mentioned in the 'Radio Survivor' article above. Some licensees stream both their analog and in the case of some FM stations, their HD (IBOC) channels, some of which are very unique and provide service to unserved and underserved listeners in many areas, and provide a diversity of programming not otherwise available over the air. Pureplay Internet radio stations often provide very tight niche formats not otherwise possible on stations operated by FCC licensees. One good place to see which FCC licensees stream and which do not, although not totally accurate due to changes from time to time that have not been noted, is the website radio-locator.com. Enter a city or market name and you will find the stations in that market, and a red electric bolt indicates which ones may be streaming, although some data may be out of date, most of it is accurate.

Websites that allow anyone to upload video content, along with sites that stream selected content that in some cases is also aired on Comission licensees, will be especially hard-hit based on what the 'Radio Survivor' article above says will take to view content. Examples of such sites includes Youtube, Vimeo, Hulu, and some smaller ones. A large video file, such as of President Obama's speeches, may be hundreds of megabytes in size, or at least many tens of megabytes, meaning one can eat through the 2GB bandwidth limit in just a couple of hours. What AT&T has done therefore, is to cut a very large number of their subscribers, and other providers that were to follow suit, away from access to lawfully available content, and would also turn the American public into a two-caste system, those that do have the money to pay for access to miltimedia content on the Web via their smartphones, because they can afford the bandwidth, and those who do not. If the FCC were to uphold bandwidth caps, they would be guilty of not protecting the citizenry of the United States in this matter, because they would not be following their oaths of office which they affirmed they would do the day they were sworn in as Commissioners.

Bandwidth caps are also unconstitutional under the First Amendment to the Consstitution, since there are many sites that provide audio and video programming and content that air material of a nature that is protected by the First Amendment, such as political programming, news, public safety information, weather, religious, or other things. Bandwidth caps are unconstitutional as they would violate the rights of nearly all Americans who want to use smartphones as a result of the diversity of content on the net, as nearly all at some point or another use the Web to check up on the news, if practicing a religion, find out what is going on at a local church, watch or listen to a service or lecture, or about things in their religion overall, find out about the stock market, view public school pages for needed information, use other school and college pages for educational matters, many run by state and local governments generally, and where done, listen to or view an archived local or even national government meeting such as those provided by C-SPAN on c-span.org, including many that they have no time to actually broadcast, whether it be on WCSP (FM) Washington, or on the cable channel.

So the Wireless Competition Bureau should work with the commission, who in turn should work with Congress to provide both amendments to the applicable parts of the Code of Federal Regulations to ensure low-cost smartphone service that includes unlimited data bandwidth, at the highest speed rates possible both now and in the future, and codify that into the United States Code, in 47 CFR and 47 U.S.C., respectively, and establish procedures for complaints without delay and without further argument, allowing the parties who would promote bandwidth caps, namely the wireless providers themselves, an opportunity to respond as to why they should not be prohibited from capping any users bandwidth usage at a certain amount, and if necessary, set a ceiling at which the wireless provider may not charge above, to ensure the viability of mobile broadband for all Americans, and do so without delay as well and solicit comment in a rulemaking proceeding as soon as one can be drawn up to clear

the air on this whole matter.

Sincerely,

/s/

James W. Anderson