

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Framework for Broadband Internet Service) GN Docket No. 10-127
)
)

To: The Commission

COMMENTS OF SAMSUNG TELECOMMUNICATIONS AMERICA, LLC

By these comments, Samsung Telecommunications America, LLC (“STA”) addresses its concerns regarding the potential impact of regulatory reclassification of mobile wireless broadband Internet access service, as proposed in the *Notice of Inquiry*,¹ on the competitive provision of telecommunications devices, services and applications benefiting consumers. STA urges the Commission to mitigate the regulatory and business uncertainty created by this proceeding by carefully considering its options and relying on its legal authority under the current regulatory framework, particularly in light of apparent serious Congressional interest in addressing this issue in the wake of the *Comcast* decision.

I. INTRODUCTION – THE CURRENT BROADBAND WIRELESS REGULATORY FRAMEWORK HAS FOSTERED INVESTMENT AND INNOVATION AND IS BENEFITING CONSUMERS

In February of this year, Chairman Genachowski rightly praised the wireless industry’s broadband innovation efforts, stating that “Breakthrough new devices that put the power of a ‘PC-in-your-pocket,’ combined with billions in network investments have liberated broadband

¹ See *In the Matter of Framework for Broadband Internet Service*, Notice of Inquiry, GN Docket No. 10-127, FCC 10-114 (rel. June 17, 2010) (“*Notice of Inquiry*”).

from the desktop and made it possible to imagine a world where the Internet is available to anyone, anywhere, anytime.”² STA agrees with this assessment and is at the forefront of such innovation and efforts.

STA’s operations today directly support approximately 1000 jobs in the U.S.³ STA’s wireless handset offerings are now offered by nearly all U.S. operators, including large, mid-sized and smaller service providers, and include a range of product types, from digital wireless phones with voice and basic text capabilities, to high-end smartphones with broadband Internet access capabilities (including EV-DO, HSPA, and UMTS). Since 2009, STA has held the top U.S. market share among handset manufacturers. STA’s U.S. product offerings have increased from the introduction of Samsung’s first mobile handset model in 1997 to more than 50 models during 2009. STA is also a significant player, both as a technology developer and equipment vendor, in the market for mobile WiMAX infrastructure and next generation LTE technology.

STA’s experience alone underscores how its service provider customers and American consumers have benefited considerably from the Commission’s light regulatory touch with respect to mobile wireless broadband Internet access services through the development and deployment of a wide choice of competitive, affordable and innovative services, devices, and applications. In the *Notice of Inquiry*, the Commission seeks comment on whether it should now: (1) maintain the current information service classification for broadband Internet access;

² See Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, at the New America Foundation, Washington, DC, “*Mobile Broadband: A 21st Century Plan for U.S. Competitiveness, Innovation and Job Creation*,” at 3 (Feb. 24, 2010) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296490A1.doc.

³ STA researches, develops and markets a variety of personal and business communications products throughout North America, including handheld wireless phones, wireless communications infrastructure systems and enterprise communication systems. STA is a wholly-owned subsidiary of Samsung Electronics Co., Ltd. See www.samsungtelecom.com/.

(2) regulate broadband Internet connectivity as a telecommunications service subject to the full panoply of Title II regulation; or (3) pursue a so-called “Third Way” in which broadband connectivity is classified as telecommunications service but subjected to limited Title II regulation as a result of selective Section 10 forbearance.⁴ The Commission further asks “which of the three legal frameworks specifically discussed in this Notice, or what alternate framework, would best support the Commission’s policy goals for wireless broadband.”⁵

STA submits that the existing regulatory framework will best support those policy goals, which remain every bit as relevant today as the U.S. still struggles to emerge from its recent economic downturn.⁶ Indeed, when the Commission first clarified that wireless broadband Internet access is an information service, it found that the very alternative approaches proposed in the *Notice of Inquiry* would *undermine* those goals.⁷ Simply put, the current wireless regulatory framework for broadband devices *has* promoted the Commission’s wireless broadband objectives.

⁴ See *Notice of Inquiry* at ¶¶ 28-99.

⁵ *Id.* at ¶ 102.

⁶ The Commission sought to promote the “advanced telecommunications capability” and “vibrant and competitive free market” objectives of Sections 7 and 230(b)(2) of the Communications Act, and to “provide the regulatory certainty needed to help spur growth and deployment of these services,” among other things. See *In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, 5911 ¶ 27 (2007) (“*Wireless Broadband Declaratory Ruling*”). The Commission recently affirmed its policy objective of promoting investment in broadband wireless networks and new wireless technologies to promote innovation and consumer benefit. See *Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan For Our Future*, Notice of Inquiry, 24 FCC Rcd 11322, 11337 ¶ 48 (2009) affirming its intention to “facilitate continued innovation and investment in” wireless network infrastructure, end-user devices, and applications and services).

⁷ *Wireless Broadband Declaratory Ruling*, 22 FCC Rcd at 5914 ¶ 34 (finding that imposing common carrier obligations on “the transmission component of the service ... would disserve the goals of section 706 of the Communications Act.”).

The information service classification has supported the rapid deployment of both wireless 3G and 4G broadband infrastructure by competing network operators, and the development of dramatically innovative new applications and services that operate over, and depend upon, that infrastructure. Consumers enjoy a broad variety of wireless broadband innovations, including smart phones with bundled social networking applications; handsets with forward-facing cameras for live videoconferencing; convenient integrated “app stores” through which consumers can endlessly customize their devices; and handsets with large, bright screens that enable quality viewing of Web pages and streaming video. The Commission’s policies have fostered this innovation, and it should not jeopardize their future success.

II. RECLASSIFICATION OF MOBILE WIRELESS BROADBAND SERVICES WILL CREATE SIGNIFICANT LEGAL UNCERTAINTY THAT RISKS DETERRING INVESTMENT AND INNOVATION

American consumers have benefited enormously under the Commission’s existing regulatory framework. The alternative Title II reclassification and “Third Way” frameworks proposed in the *Notice of Inquiry*, in contrast, are untested for mobile broadband services and may have negative impact by subjecting wireless broadband services to new or potential regulations from which they have previously been exempt.⁸ Such an outcome would undermine

⁸ In the *Notice of Inquiry*, the Commission juxtaposes the timing of its 2007 *Wireless Broadband Declaratory Ruling* to the earlier (2003) introduction of 3G service. *Notice of Inquiry* at ¶ 101. To the extent that the Commission is discounting the significance of its regulatory classification in relation to the deployment of new and innovative wireless broadband services, STA respectfully submits that this is mistaken as 3G network investments were undertaken under a deregulated information services environment. The statutory term “information service” does not distinguish between wireline and wireless platforms, and the Commission established its deregulatory regime for Internet-based services – including wireless services – at least as early as the 1998 *Report to Congress*. See 47 U.S.C. § 153(20); *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, 11529 ¶ 58 (1998) (“[a]n offering that constitutes a single service from the end user’s standpoint is not subject to carrier regulation simply by virtue of the fact that it involves telecommunications components”). Congress and the Commission thus established a deregulatory approach for information services, including Internet access, long before the 2007 decision.

the very regulatory certainty the Commission sought to achieve in its *Wireless Broadband Declaratory Ruling*, and would slow investment and innovation at a time when wireless broadband is one of the few bright spots in the U.S. economy. As Internet and other data-based services increasingly become the predominant impetus for operators' new investment and innovation in wireless handset and network technology,⁹ new regulatory burdens on wireless broadband services, and the resulting business uncertainty, are inopportune.

As discussed below, this uncertainty for network operators and handset manufacturers results from interrelated factors, all of which negatively impact business activities: (1) the difficulty of applying any new regulations from a functional and technical standpoint; (2) the potential expansive scope of regulations that could apply in the future, even with forbearance; and (3) inevitable legal challenges to reclassification that could last for years.

A. Reclassification Poses Functional and Technical Implementation Challenges

Operators and vendors face practical implementation problems with respect to implementing any new obligations arising out of a Title II service reclassification. Operators would need to determine which components of a service, and which of the underlying equipment and network functionalities, fall within the regulated "Internet connectivity" service. This uncertainty deters deployment and investment. A Commission-mandated technical demarcation, based on "layers" or some other criteria,¹⁰ would also deter investment in a different way by classifying the regulatory treatment of technical architectures in a manner that would quickly

⁹ See *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, WT Docket No. 09-66, FCC 10-81, ¶¶ 181-183 (rel. May 20, 2010) (discussing the increasing significance of broadband and data services and applications in the wireless ecosystem).

¹⁰ See *Notice of Inquiry* at ¶ 60.

become obsolete in the face of rapidly changing technology. Separation presumes, moreover, that the telecommunications service component could even be segregated technically and operationally from the residual “information services” in the first place – thus creating additional market uncertainty for manufacturers and others. Broadband-enabled features and services are typically provided to, and perceived by, consumers as integrated handset features.¹¹ Producing a handset with a stand-alone Internet access feature independent of the device’s applications could be particularly burdensome on product development, and would not necessarily be responsive to consumer needs and demands.

Moreover, while the Commission asserts that reclassification would not affect applications that use broadband services,¹² as a practical matter, broadband-enabled features and services, including applications, are implemented and coordinated actively in both the network and the handset to ensure their performance and reliability. They cannot technically be separated as the Commission seems to imply. Given today’s Internet Protocol (“IP”) and forthcoming IPv6 technologies, it is difficult to imagine how such applications would *not* be effectively swept into new regulations ostensibly aimed only at the telecommunications component of Internet connectivity service. Segregating covered services from non-covered applications would be more difficult than the *Notice of Inquiry* would indicate.

B. Reclassification Would Dramatically Expand the Potential Scope of Regulation of Mobile Wireless Broadband and Litigation Would Likely Prolong the Resulting Uncertainty

The Commission has now raised the possibility, even the likelihood, that some component(s) of broadband Internet access service – i.e., “Internet connectivity” – will be

¹¹ See *Notice of Inquiry* at ¶¶ 56-57 (seeking comment on consumer perception and marketing of services).

¹² *Id.* at ¶ 107.

subject to new regulation under Title II of the Act.¹³ Even the narrow scope of Title II regulations to which the Commission proposes to confine itself, by forbearing from other regulations, could include unprecedented new obligations that the Commission had previously indicated not only that it would not impose on information services, but *could not* impose.¹⁴ Reclassification would thus result in a tectonic shift in the regulatory environment governing Internet-based services.

While any Commission Order is potentially subject to appeal and litigation, if history is any guide the Commission's proposed alternative approaches, and any subsequent exercises of forbearance authority, portend a near absolute certainty of years of appellate litigation given the fundamental change to the long-standing regulatory status of and impact on services.¹⁵ Such

¹³ It is worth noting that even the scope of potentially reclassified services is uncertain. The Commission describes this service broadly as one that "allows users to communicate with others who have Internet connections, send and receive content, and run applications online" yet it seeks comment on the full scope of the characteristics, functionality, elements, and endpoints of the service. *See id.* at ¶ 63.

¹⁴ The Commission itself concedes that the scope of regulation could expand in the future, even under a forbearance regime. *See id.* at ¶¶ 98-99. For wireless broadband in particular, the Commission has posited that it might exercise authority under Title III as well, apparently irrespective of what action it might take for wireline services. *See id.* at ¶ 103.

¹⁵ *See In re Inquiry Concerning High Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798, 4851 (2002), *rev'd sub. nom.*, *Brand X Internet Services v. FCC*, 345 F.3d 1120 (9th Cir. 2003), *rev'd sub. nom. NCTA v. Brand X*, 545 U.S. 967 (2005) (classification of cable modem Internet access service); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, 20 FCC Rcd 14853 (2005), *aff'd sub. nom. Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007) (classification of LEC-provisioned Internet access service); *Petition of Core Communications, Inc. for Forbearance Under 47 USC §160(c) from Application of the ISP Remand Order*, 19 FCC Rcd 20179, 20181, ¶6 (2004), *aff'd sub nom. In re: Core Communications, Inc.*, 455 F.3d 267 (D.C. Cir. 2006) (appeal of section 10 forbearance denial); *Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, 17 FCC Rcd 14972, 14973 (2002), *denied in part and dismissed in part sub nom. CTIA v. FCC*, 330 F.3d 502 (D.C. Cir. 2003) (same); *Petition of Qwest Corporation for Forbearance Pursuant to 47 USC §160(c) in the Omaha Metropolitan Statistical Area*, 20 FCC Rcd 19415 (2005), *aff'd sub. nom.*, *Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007) (same).

litigation, in turn, will prolong the business uncertainty resulting from any reclassification actions that arise out of this *Notice of Inquiry*. Again, the Commission's reclassification of wireless broadband Internet access service will likely hinder investment and innovation, contrary to stated Commission goals, and to the detriment of consumers.

III. THE COMMISSION SHOULD CAREFULLY EXAMINE OPTIONS UNDER THE CURRENT FRAMEWORK AND ENABLE CONGRESS TO ACT DELIBERATIVELY

The Commission states that the court's *Comcast* decision has placed into doubt its ability to achieve its policy objectives under the existing statutory framework.¹⁶ This concern, however, does not present a public interest or statutory basis for the Commission to rush into the dramatic paradigm shift contemplated in the *Notice of Inquiry*. As discussed above, reclassification constitutes a blunt instrument, even if tempered by forbearance.

The Commission should therefore first carefully evaluate all options that could further its policy goals under the current Title I-based regulatory framework. This approach is particularly warranted in light of significant Congressional interest in resolving the issues that have arisen in the wake of the *Comcast* decision.

IV. CONCLUSION

STA urges the Commission not to impose a Title II regulatory regime on mobile broadband Internet services. Less than a year ago, Chairman Genachowski stated that "No sector of the communications industry holds greater potential to enhance America's economic competitiveness, spur job creation, and improve the quality of our lives."¹⁷ STA wholeheartedly

¹⁶ See *Notice of Inquiry* at ¶ 31 (citing *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010)).

¹⁷ See Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, at International CTIA WIRELESS I.T. & Entertainment, San Diego, California, (continued on next page)

agrees, yet the Commission's proposed action has already resulted in marketplace uncertainty jeopardizing that potential. Further action to implement these proposals and reclassify services could exacerbate the impact, with harmful spillover effects on device manufacturers, application developers and, most importantly, consumers.

Respectfully submitted,

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"America's Mobile Broadband Future," at 2 (Oct. 7, 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293891A1.doc.