



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554  
GN Docket No. 09-191  
WC Docket No. 07-52  
PUBLIC NOTICE SUBMISSION OF THE INTERNET INNOVATION ALLIANCE**

The Internet Innovation Alliance (IIA) offers this submission in response to the FCC's Public Notice issued on September 1, 2010, seeking "further inquiry into two under-developed issues in the open internet proceeding." The IIA is a broad-based coalition of businesses, non-profit organizations and trade associations that aims to ensure every American benefits from broadband Internet regardless of race, income or geography. We have long supported a comprehensive national broadband strategy to complement market efforts to achieve universal broadband availability and adoption.

We view the questions asked in this further inquiry through the prism of our central objective: achieving universal broadband access and adoption. More specifically, the IIA believes the Commission should consider the following five issues carefully in assessing the impact of possible regulation: the need for greater investment in infrastructure; network congestion, especially in mobile broadband; lack of digital literacy; a soft economy; and concern over online safety and security. To-date, we fear the new regulations proposed by the Commission risk exacerbating problems in these areas, as opposed to fostering improvements.

The IIA believes that the Commission's pursuit of new regulations is an unnecessary distraction from the more significant and needed policy initiatives in the implementation of the National Broadband Plan. The near theological debate over "net neutrality" has escalated to the point that both sides are predicting the end of the Internet rather than examining what it takes to expand its reach and usefulness. We appreciate the Commission's recognition that it must move cautiously when considering new regulations by asking these additional questions.

With respect to the questions posed in the September 1, 2010 Public Notice, we offer the following suggestions.

**I. Specialized Services Complement and Improve the Open Internet**

IIA agrees with the view expressed in the *NPRM* that specialized services "may drive additional private investment in networks and provide consumers new and valued services." We do not believe that specialized services will lead to bypassing open Internet protections, supplanting the open Internet, or anti-competitive conduct by broadband providers. Provision of services that enhance quality of service (QoS) or enable the connection of a varied array of devices (such as medical equipment, smart meters, enhanced video and voice technologies) will complement the open Internet, enhancing its speed and quality by channeling or off-loading additional traffic with special needs.



The cable industry provides an instructive example of how specialized services can coexist alongside an established subscriber-based distribution network. Today, cable viewers can subscribe to specialized movie, sports, and pay-per-view offerings in addition to their standard cable subscription. Standard cable continues to grow and thrive, even as specialized movie, sports, and pay-per-view offerings use the same distribution channels and “last mile” infrastructure. Not only do specialized services offered by cable companies allow consumers to access a broad range of offerings that are tailored to their interest, the existence of standard cable allows consumers who are not interested in such services to save money.

Broadband consumers will likewise benefit greatly from specialized services that are delivered over the same last-mile facilities used to provide broadband Internet access service. In addition to greater pricing flexibility and expanded service offerings, broadband consumers will gain choices and more innovative options. Useful managed services such as smart meters and wireless health monitors could be made more widely available to those who want them without impairing or impeding the broadband experiences of those who do not. Meanwhile the “open Internet” is, and will continue to be, the medium of choice for people seeking information or content utilizing a range of devices. Specialized services will complement the existing open Internet, not supplant it.

With regard to the Commission’s concern that broadband service providers also providing specialized services will engage in anti-competitive conduct, we believe the broadband market is sufficiently competitive to alleviate any such concerns. The current level of competition in the fixed wireline and wireless space in the United States will prevent any competitor from engaging in discriminatory conduct that could harm content, application, and service providers. If anything, allowing specialized services will create more competition as new providers of these specialized services will be drawn into the fray.

Of the six general policy approaches identified as choices for policing the impact of specialized services and behavior of those who provide them, we believe transparency/ disclosure will be the most effective and least detrimental to innovation and investment. Consumers will not tolerate limitations on their freedom of choice and constraints of their use of the Internet. Letting them know precisely what they are opting for and opting out of will guarantee the efficient allocation of resources towards those services most valued by consumers. More restrictive/punitive approaches will only serve to slow investors and deter innovators from offering new products, especially in the more bandwidth-constrained wireless markets.

## **II. Mobile Wireless Platforms Do Not Need Additional Regulations and Will Suffer From Their Imposition**

We urge particular caution when considering the application of new regulations to wireless platforms. Wireless markets are even more competitive than wire line markets, making



consumer-unfriendly behavior less likely. Wireless networks are more band-width constrained, requiring more aggressive network management techniques and efforts. And wireless networks are enjoying especially-rapid cycles of adoption and innovation. These are clearly markets that are working and driving universal broadband adoption. We should be giving investors more reason to upgrade these networks, rather than new reasons for caution.

With request to the three areas of concern identified:

### **A. Transparency**

**Q: What disclosure requirements are appropriate to ensure that consumers and content, application, service, and device providers can make informed choices regarding use of mobile broadband networks?**

**A:** Appropriate disclosure requirements will revolve around what consumers need to know in order to make fully informed decisions when deciding whether to download an application, subscribe to a service, or buy a device. Such disclosure could include the safety and data intensiveness of an application, the terms of the service being provided (cost, data limitations and costs), and the cost and capabilities of the device. Inappropriate disclosure requirements would force application, service, and device providers to divulge confidential trade secrets or business practices that might provide an unfair competitive advantage to competitors.

**Q: What information should be disclosed about device and application requirements and certification processes?**

**A:** The only information that should be disclosed about device and application requirements and certification processes is information that is necessary to fully inform the consumer of issues that are relevant to their purchase and usage decisions.

**Q: Are there any existing models that could provide guidance for shaping such rules?**

**A:** We recommend the self-regulatory model that was employed successfully during the formation of the Internet. The model used by Internet Engineering Task Force (IETF) is especially instructive. The IETF uses a principles-based approach to rule-making that allows it the flexibility necessary to adapt to changing circumstances. A similar model could be used in creating consumer disclosure principles and rules.

### **B. Devices**

**Q: Can adherence to industry standards for mobile wireless networks ensure non-harmful technical interoperability between mobile broadband devices and networks?**

**A:** Industry standards have successfully evolved in many areas to ensure interoperability, but often these standards evolve as the products and markets evolve. Forced imposition of standards too early in the life cycle of new products or new markets can inhibit more radical innovations that lead to “better mousetraps.” European regulators mandated GSM for their wireless networks, virtually ensuring that CDMA innovations happened elsewhere. The mobile



wireless industry, device makers and consumers may be best served allowing a trial period where device manufacturers can experiment with new devices, allowing consumers to decide if the degree of interoperability is appropriate.

**Q: Will deployment of next generation technologies (e.g. LTE) further facilitate interoperability?**

**A:** Yes. Next generation technologies could accelerate standardization, ease technology transfer and increase device compatibility.

**Q: To the extent that compliance with technical standards needs to be validated through laboratory testing, could such testing be conducted through independent authorized test centers?**

**A:** Yes. Multiple independent, authorized test centers will allow more devices to be tested in a shorter period of time, allowing innovative new devices to reach the marketplace rapidly. A single FCC testing center would be overwhelmed.

**Q: Were the Commission to require mobile providers to allow any non-harmful device to connect to their network, subject to reasonable network management, how would mobile broadband provider conduct have to change, if at all, in light of existing device certification programs?**

**A:** Such a rule might not require that much change. Mobile providers should be given the right to contest or refuse allowing a device to connect for “good cause,” such as demonstrated interference, harm to network or circumvention of necessary network management operations.

**Q: In light of usage based data pricing, to what extent do these business models mitigate concerns about congestion of scarce network capacity by third party devices?**

**A:** Usage based data pricing business models do substantially mitigate, but do not eliminate, concerns about congestion of scarce network capacity by third party devices.

### **C. Applications**

**Q: To what extent should mobile wireless providers be permitted to prevent or restrict the distribution or use of types of applications that may intensively use network capacity or that cause other network challenges?**

**A:** No user or application has the right to diminish the experience of other users. Network operations have the obligation to employ network management techniques to protect the safety and quality of service for all customers. To the extent an application uses a harmful or unsafe amount of network capacity or otherwise threatens harm to other users, mobile wireless providers should take reasonable actions to limit the harm including restriction of such applications, or relegation of them to specialized service networks. Network management actions should be transparent to users and application providers and disclosed to all parties.



**Q: Is the use of reasonable network management sufficient, by itself or in combination with usage-based pricing, to address such concerns?**

**A:** Yes.

**Q: Should mobile wireless providers have less discretion with respect to applications that compete with services the provider offers?**

**A:** No. Mobile wireless providers should retain the same level of discretion in determining which applications are suitable for its network regardless of whether the applications are proprietary or competitive with the services the provider offers. The decision the provider makes should be backed by objective facts and be reasonable in light of all relevant factors including, but not limited to, network congestion, network safety, consumer safety, consumer satisfaction, and network performance.

**Q: How should the ability of developers to load software applications onto devices for development or prototyping purposes be protected?**

**A:** It is in the interest of network operators and consumers for software developers to gain access to networks and devices for innovating and ensuring safe and compatible operations. Questions only arise when network operators perceive such experiments as potentially detrimental to existing users and applications. Such disputes are likely highly technical and rare. One option for their resolution could be a self-regulatory body made up of developers, device manufacturers, and mobile wireless service providers.

**Q: If providers were to be prohibited from denying or restricting access to applications in their capacity as network providers, should they nevertheless have discretion regarding what apps are included in app stores that they operate?**

**A:** Yes. Providers should have the right to decide what apps to include just as they make decisions regarding their own business models and growth strategies.

**Q: Are there safe-harbor criteria that, if met by a provider, would ameliorate potential concerns? For example, if a provider's customer had a choice of several app store providers that offered applications that could be downloaded onto the customer's mobile device, would that adequately mitigate concerns about potentially anti-competitive or anti-consumer effects of a provider excluding applications from its own app store?**

**A:** As stated above we have few concerns with providers denying or restricting access to applications in their capacity as network providers; therefore, we fail to see the need for safe harbor criteria.

**Q: Should a mobile provider have more discretion to restrict consumers' downloading and/or use of native applications than they should with respect to web-based applications?**

**A:** Yes, mobile providers should have more discretion to manage native applications than web-based applications because native applications present greater danger to devices and the network, and such applications are typically more data intensive than web-based applications.



### III. Conclusion

In summary, we believe (1) allowing specialized services benefits consumers, investors and innovators and the open Internet and (2) new regulation of mobile wireless platforms (such as imposing the open Internet principles) is unnecessary at this time and could undermine investment, innovation and adoption in the most thriving and successful corner of the broadband ecosystem.

Sincerely,

A handwritten signature in black ink, appearing to be 'BM', with a long horizontal flourish extending to the right.

Bruce Mehlman

A handwritten signature in black ink, appearing to be 'DS', with several overlapping loops and a long horizontal flourish extending to the right.

David Sutphen

Co-Chairmen, Internet Innovation Alliance