

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52
_____)	

COMMENTS OF SPRINT NEXTEL CORPORATION

Charles W. McKee
*Vice President, Government Affairs
Federal and State Regulatory*
Sprint Nextel Corporation
900 7th Street, N.W., Suite 700
Washington, D.C. 20001
703-433-3786

Scott R. Freiermuth
*Counsel, Government Affairs
Federal Regulatory*
Sprint Nextel Corporation
6450 Sprint Parkway
Overland Park, KS 66251
913-315-8521

October 12, 2010

Table of Contents

Summary of Comments.....	ii
I. The Commission Should Not Take Any Steps That Might Inhibit the Rapid and Widespread Deployment of 4G Networks.....	2
II. Restrictions on the Provision of Mobile Specialized Services Would Affirmatively Harm the Public Interest.....	6
A. A Clear Definition of Broadband Internet Access Service Is Necessary	8
B. Any Concerns About the Impact of Future Specialized Services on Internet Access Services Should Be Addressed If and When Those Developments Occur.....	12
III. “Open Device” Rule Advocates Have Not Demonstrated That New Rules Are Necessary or Desirable.....	14
A. Consumers Today Can Use Any Wi-Fi and USB-enabled Devices on Sprint’s Broadband Networks With Its Tethering Options.....	16
B. Rule Proponents Have Not Demonstrated Why the Commission Should Deviate From Its Current “Open Device” Plan Before It Can Be Evaluated.. ...	17
C. Sprint and Other Major Wireless Providers Continue to Take Steps in Moving Towards a More Open Environment.....	19
IV. Conclusion.....	26

Summary of Comments

Wireless broadband is a unique and nascent industry and any rules proposed by the Federal Communications Commission should recognize this fact. Indeed, given the competitive nature of the current retail wireless broadband market, it is unclear that any new “open Internet” rules are necessary. Should the Commission pursue “open Internet” rules for wireless broadband providers, however, it should focus on issues such as transparency for consumers and avoid attempts to impose particular technological solutions or business plans on wireless carriers.

In response to the Federal Communication Commission’s Further Inquiry, Sprint focuses on two specific areas in which new regulation could have potentially negative consequences for consumers and expansion of wireless broadband services. The first is the proposed “open device” rule, which could have the unintended consequence of undermining consumer satisfaction. The second is the Commission’s distinction between “broadband Internet access services” and “specialized services” which could undermine alternative business plans that could fund further construction of broadband networks.

With respect to “open devices,” Sprint continues to bring dramatic and innovative devices to its network while making the process of certifying new types of devices as simple as possible. However, there remain very real, technical requirements that warrant wireless provider review and acceptance of new devices that use the limited and shared bandwidth of wireless transmission. Regulation must stop short of dismantling these legitimate controls – otherwise the consumer experience will undoubtedly suffer. Sprint continues to move forward with programs to on-board new, innovative devices and applications on its network and competition is driving many wireless providers towards greater device “openness.” Sprint also notes that the Commission’s C block “open device” requirement is in its early stages of implementation and may also result in new business plans for device development. Until greater standardization is reached, however, the Commission should refrain from imposition of an “open devices” requirement.

Finally, Sprint is concerned about the way in which the Commission defines or distinguishes “broadband Internet access services” and “specialized services.” The Commission should reject proposals to define “broadband Internet access service” too broadly such that the definition inhibits mobile licensees from introducing additional new innovative services to consumers and others – and a definition that prevents mobile broadband network operators from generating the revenues they need to deploy advanced 4G networks. Instead, the Commission should ensure such definitional distinctions encourage flexibility, innovation and experimentation. The Commission should evaluate the impact of specialized services on broadband Internet access services on a case-by-case basis if and when concerns arise.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-54
_____)	

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”) below responds to the Commission’s request for further comment on two subjects: the provision of “specialized” services, and the application of new “Open Internet” rules to mobile broadband Internet access services.¹ Sprint continues to believe that open Internet rules are not necessary in the currently competitive wireless broadband market, and the Commission should avoid taking any action that would undermine the deployment of advanced wireless services. If, however, the Commission pursues open Internet rules for wireless broadband providers, it should focus on issues such as transparency for consumers and avoid attempts to impose particular technologies or business plans on wireless carriers. Specifically, Sprint urges the Commission to adopt a broad definition of “specialized services” to allow carriers the flexibility to fund new networks and to avoid the imposition of an “any device” obligation given the technical implications for wireless service providers.²

¹ See Public Notice, *Further Inquiry Into Two Under-Developed Issues in the Open Internet Proceeding*, DA 10-1667 (Sept. 1, 2010), summarized in 75 Fed. Reg. 55297 (Sept. 10, 2010)(“Supplemental Public Notice”). Unless otherwise noted, all comments and reply comments cited in these comments refer to pleadings already filed in this docket.

² Sprint limits these comments to mobile broadband networks and the services offered over such networks. It does not address fixed broadband networks or services.

I. THE COMMISSION SHOULD NOT TAKE ANY STEPS THAT MIGHT INHIBIT THE RAPID AND WIDESPREAD DEPLOYMENT OF 4G NETWORKS

The National Broadband Plan established as one of our nation's core policy objectives that the U.S. "should lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation":

Mobile broadband is the next great challenge and opportunity for the United States. It is a nascent market in which the United States should lead.³

4G networks, the Chairman has observed, "can fundamentally transform our society and economy," and the potential of 4G services "is limitless."⁴ Among other things,

- 4G networks will lead to a "better mobile broadband experience" for consumers, by supporting "higher data throughput rates, lower latencies and more consistent network performance throughout a cell site":

This will increase the range of applications and devices that can benefit from mobile broadband connectivity, generating a corresponding increase in demand for mobile broadband service from consumers, businesses, public safety, health care, education, energy and other public sector users.⁵

- 4G networks will result in substantially improved spectral efficiency – by over 50 percent when compared to early 3G networks.⁶ Achieving maximum spectral efficiency is critically important given the finite amount of spectrum that is available coupled with the mushrooming demand for mobile broadband services.
- 4G networks hold "great promise and will likely play a large role in closing the broadband availability gap" in rural, insular and high-cost areas.⁷ It is because of this promise that the FCC has proposed establishing both a Connect America Fund and a Mobility Fund.⁸

³ National Broadband Plan at 25.

⁴ Prepared Remarks of Chairman Genachowski, *Mobile Broadband: A 21st Century Plan for U.S. Competitiveness, Innovation and Job Creation*, at 3 and 4 (Feb. 24, 2010) ("New America Foundation Speech").

⁵ National Broadband Plan at 22 and 77.

⁶ See National Broadband Plan at 22.

⁷ National Broadband Plan at 155.

⁸ See *id.* at 163-64.

- 4G networks have the potential to “revolutionize emergency response wireless communications.”⁹
- 4G mobile networks offer the potential to compete vigorously with fixed wireline broadband networks, thereby busting the current duopoly.

Our nation is in the “early innings” of 4G network deployment and the “mobile communications revolution.”¹⁰ Two years ago, Sprint became the first national carrier to launch a wireless 4G network,¹¹ and the Sprint/Clearwire WiMax network is currently available in 56 markets covering 66 million Americans.¹² Last month, MetroPCS introduced 4G using LTE technology in the Las Vegas market.¹³ Verizon Wireless confirmed recently that its plans to launch its 4G network later this year remain on track,¹⁴ and other licensees are scheduled to roll out their 4G networks next year.¹⁵

But much work remains, given that most Americans today do not have access to any 4G mobile services – much less access to multiple 4G networks so they have choices in mobile broadband providers. Sprint agrees with the Chairman that the Commission’s “first focus” should be on “extending broadband access, with the goal of universal availability”.¹⁶

⁹ National Broadband Plan at 314.

¹⁰ See Prepared Remarks of Chairman Genachowski, *Innovation in a Broadband World*, at 7 (Dec. 1, 2009).

¹¹ See Sprint News Release, *XOHM WiMAX Broadband Service Debuts in Baltimore* (Sept. 29, 2008), available at http://newsroom.sprint.com/article_display.cfm?article_id=746.

¹² See Clearwire Press Release, *Twin Cities Now One Big Hot-Spot with CLEAR 4G* (Sept. 30 2010), available at <http://newsroom.clearwire.com/phoenix.zhtml?c=214419&p=irol-newsArticle&ID=1477462&highlight=>.

¹³ See MetroPCS News Release, *MetroPCS Launches First 4G LTE Services in the United States* (Sept. 21, 2010), available at <http://www.metropcs.com/presscenter/articles/mpcs-news-20100921.aspx>.

¹⁴ See COMMUNICATIONS DAILY, *Verizon, Profit Down on Layoffs, Looks to LTE Launch* (July 26, 2010). See also Verizon Wireless Ex Parte, GN Docket No. 09-51 (Sept. 20, 2010).

¹⁵ See National Broadband Plan at 22 and 77.

¹⁶ Prepared Remarks of Chairman Genachowski, *ICT: Global Opportunities and Challenges*, at 3 (Nov. 10, 2009).

We have a lot of work to do on deployment – ensuring that broadband connectivity is available everywhere in the U.S., including our small towns and rural areas.¹⁷

Some of the Open Internet proposals have little or no relevance to 4G deployment, and it is perhaps unsurprising there is little wireless industry resistance to these proposals. For example, Sprint supports a properly crafted transparency rule so there can be confidence that all consumers will know what they are getting in buying broadband Internet access service from a particular provider. Sprint also has no interest in inhibiting the ability of consumers to access and use the content, applications and services they choose – and accordingly, does not oppose rules in this area either. After all, if customers cannot get what they want from their current 4G services provider, they will simply switch to a provider that meets their needs.

Other rule proposals, however, almost certainly would have a direct – and potentially, negative – effect on the pace and scope of 4G network deployment. For instance, some parties want the FCC to impose restrictions that would limit the type or amount of “specialized” services mobile licensees could offer on their new 4G networks – even though the extra revenues generated by such services are critical to funding the rapid and widespread deployment of 4G networks.

Some parties further want the FCC to impose new “open device” rules that would radically change the way mobile radio licensees have operated for the past 25 years. These proposals are made even though the National Broadband Plan recognizes the “significant competition” and “robust innovation” that exists in today’s mobile device space,¹⁸ with Chairman Genachowski

¹⁷ Prepared Remarks of Chairman Genachowski, *Connecting the Nation: A National Broadband Plan*, at 3 (Nov. 24, 2009).

¹⁸ See National Broadband Plan at 19.

observing that mobile services providers are introducing devices that are “remarkable,” “extraordinary and innovative.”¹⁹

New rules in this area, especially at this point in time, are neither warranted nor appropriate. The Commission has already developed a plan for an “open device” environment in the mobile space (the 700 MHz C block), and rule advocates have not demonstrated why the FCC should now deviate from that plan before it can be completed and evaluated. The Commission has further recognized that Sprint and other major wireless providers have “each developed programs to allow for third-party devices and/or applications on their networks” and have further made “significant progress toward the open platform model.”²⁰ Finally, rule proponents have not, to date, meaningfully addressed the significant impacts their proposal would have on consumers. This is an area where the Commission needs to move very cautiously.

Congress has directed the FCC to “encourage” the deployment of broadband networks “on a reasonable and timely basis . . . to all Americans,” adding that the Commission should utilize “regulatory forbearance” and other methods that “remove barriers to infrastructure investment” to achieve this objective.²¹ Indeed, one of the principal purposes of the National Broadband Plan was to examine ways to facilitate the deployment of 4G and other broadband networks.

The Commission has noted some predictions that 4G network coverage may reach 94 percent of all Americans as early as 2013.²² This estimate is aggressive, and it can be achieved

¹⁹ See Chairman’s Separate Statement, *Fostering Wireless Innovation and Investment*, 24 FCC Rcd 11322, 11347 (2009).

²⁰ *Open Internet NPRM*, 24 FCC Rcd at 13121 n.283; *Thirteenth Wireless Competition Report*, 24 FCC Rcd 6185, 6266 ¶ 167 (2009).

²¹ PUB. LAW NO. 103-104, Title VII, § 706(a) (Feb. 8, 1996), *codified as note to* 47 U.S.C. § 157.

²² See National Broadband Plan at 146.

only if the mobile industry can stay focused on 4G network deployment and can generate as much service revenues as possible to fund this deployment.

One key fact should not be lost in the “Open Internet rules” debate. The Open Internet environment the Commission wants to promote and preserve has meaning only if robust broadband networks, including mobile 4G networks, are widely deployed throughout the nation. Sprint submits that the Commission’s first order of business should be to take steps to promote this deployment and that it should be wary of imposing, especially at this time, any new prescriptive requirements that might inhibit 4G network deployment. Importantly, the Commission, with its annual wireless competition and Section 706 reports, has the means to detect quickly any development that may pose a threat to the Open Internet – and if a potential threat ever arises, the Commission can then address the matter with the benefit of concrete facts.

II. RESTRICTIONS ON THE PROVISION OF MOBILE SPECIALIZED SERVICES WOULD AFFIRMATIVELY HARM THE PUBLIC INTEREST

The Commission has recognized the “importance . . . of preserving and protecting the ability of broadband providers to experiment with technologies and business models to help drive deployment of open, robust, and profitable broadband networks across the nation”:

Broadband providers’ ability to innovate and develop valuable new services must co-exist with the preservation of the free and open Internet.²³

Broadband providers’ provision of a robust set of specialized services would affirmatively promote the public interest in many ways, as Sprint has previously explained.²⁴ But perhaps the most important function of specialized services, in addition to providing consumers and others with innovative new services and capabilities, is to enable network operators to generate the

²³ *Open Internet NPRM*, 24 FCC Rcd at 13067 ¶ 9.

²⁴ *See* Sprint Reply Comments at 3-6.

sizable revenues they need to build 4G networks – especially if such networks are to be deployed rapidly and widely.

Building-out and operating a 4G network is enormously expensive. Consider the situation with “new” Clearwire, which was formed in November 2008. Since the “new” Clearwire was formed,

- Sprint and other investors have contributed capital and assets of over \$3.2 billion to build a 4G network that currently covers approximately 20 percent of the population and is expected to serve another 20 percent of the population in the near future;²⁵
- Clearwire has reported over \$1.8 billion in initial operating losses as it has built its 4G network;²⁶ and
- Additional billions in new capital will be required, and additional losses will be incurred, to expand this 4G network to new areas.

Several conclusions can be drawn from this financial data. One, it will take time and creativity to establish the revenues necessary to cover current operations expense, much less provide a return to investors that would encourage further investment. Two, additional investment will require the flexibility to provide the broadest array of services, including specialized services, to maximize the revenues they need to operate and build 4G networks.

In short, the flexibility to provide a robust set of specialized services is essential to the rapid and widespread deployment of 4G networks and any limits on the ability of a mobile broadband provider to offer particular IP-based services necessarily will inhibit the ability of the licensee to expand rapidly and widely the coverage of its 4G network.

²⁵ See, Clearwire 10-K for the Fiscal Year Ending December 31, 2009, available at http://www.faq.s.org/sec-filings/100224/Clearwire-Corp-DE_10-K/#110.

²⁶ *Id.*

A. A CLEAR DEFINITION OF BROADBAND INTERNET ACCESS SERVICE IS NECESSARY

Sprint agrees with the Commission that broadband Internet access services must be defined “clearly.”²⁷ After all, broadband service providers, when planning new services, need to know whether a particular service would be subject to the Open Internet rules or some other set of rules – and, depending on the particular definition adopted, determine whether they are even permitted to provide a particular service.

Sprint further agrees with the Chairman that the government’s intervention into the Internet should be “no greater than [is] necessary to achieve the core goal of preserving a free and open Internet.”²⁸ Thus, the definition of broadband Internet access service should be broad enough to encompass the characteristics of today’s Internet that the Commission wants to preserve – and no more.

The Commission has stated its objective is to “preserv[e] a free and open Internet, however it is accessed.”²⁹ This Internet uses “an end-to-end, open architecture, in which network operators use their ‘best effort’ to deliver packets to their intended destinations without quality-of-service guarantees.”³⁰ Accordingly, the “free and open Internet” the Commission wants to preserve appears to have four components:

1. Consumers can access all (or substantially all) of the content, applications and services that are generally available on the public Internet;³¹
2. Providers of content, applications or services do not pay any fees to broadband service providers to send to consumers their content, applications or services;³²

²⁷ See Supplemental Public Notice at 3. It is not realistic, at least at this time, to attempt to define the term “specialized services,” given the wide diversity of services that will be developed in the future.

²⁸ Separate Statement of Chairman Julius Genachowski, 24 FCC Rcd at 13156.

²⁹ *Open Internet NPRM*, 24 FCC Rcd at 13068 ¶ 16.

³⁰ *Id.* at 13086 ¶ 56.

³¹ See Proposed Rules 8.5 and 8.7.

3. Broadband service providers use their “best effort” to deliver packets to their intended destination without quality-of-service guarantees;³³ and
4. Broadband service providers do not unreasonably discriminate among providers of content, applications or services.³⁴

With these definitional components in place, a specialized service would then encompass any service that is outside of these parameters. Thus, a specialized service would include among other things:

- Any service provided to a business (or “enterprise”) customer;
- Services that include some type of quality of service guarantee or some delivery method other than traditional best efforts; or
- Services that restrict the content, applications or services that can be accessed by the user.

Sprint submits that the definition of Internet access service must be tailored to ensure that a free and open Internet will be preserved, while concurrently giving broadband service providers room to develop innovative new services that consumers and others might find of value. In short, the definition should achieve the “balanced framework” the Commission is attempting to establish by preserving “the Internet’s openness without imposing conditions that might diminish innovation or network investment.”³⁵

The Commission has asked whether the definition of Internet access service should “perhaps” be defined “broadly.”³⁶ The Commission must be careful not to adopt too “broad” defini-

³² See *Open Internet NPRM*, 24 FCC Rcd at 13069 ¶ 17 (“[B]roadband Internet access service providers today will not charge [an entrepreneur] for the right to reach specific users, beyond the fee for connecting to the Internet.”).

³³ See *Open Internet NPRM*, 24 FCC Rcd at 13086 ¶ 56 (“The Internet has traditionally relied an end-to-end, open architecture, in which network operators use their ‘best effort’ to deliver packets to their intended destinations without quality-of-service guarantees.”).

³⁴ See Proposed Rule 8.13.

³⁵ *Open Internet NPRM*, 24 FCC Rcd at 13068 ¶ 14.

³⁶ See Supplemental Public Notice at 3.

tion that may unintentionally snare additional services and capabilities that would normally not be considered to be a traditional Internet access service. In short, an overly broad definition of Internet access services would have devastating effects on consumers and on the other participants in the broadband Internet ecosystem:

- Since the FCC wants to preserve today’s “best efforts” system, a broad definition would preclude broadband providers from even offering to consumers any option that includes delivery methods other than “best efforts” – even though these optional services may better meet the needs of certain consumers;
- Since the FCC wants to preserve today’s system whereby providers of content, applications and services (“CAS”) pay nothing for delivery of their CAS to consumers, a broad definition would preclude broadband providers from even offering to CAS providers any options that would include some quality of service guarantee – even though CAS providers may determine these additional options may better meet their needs; and
- By precluding broadband providers from providing certain services or capabilities altogether, broadband providers necessarily would generate less revenues from their network, thereby imposing additional risk in network investment and delaying the widespread deployment of robust broadband networks.

Sprint and others have demonstrated that the definition the Commission proposed in the NPRM is exceedingly broad.³⁷ This is because this definition would sweep within its scope services that have nothing to do with an open Internet – a result that would cripple the very ability of broadband providers to offer innovative specialized services that consumers and others might desire.

Specifically, under the NPRM’s proposal, Internet access service would be defined to include any “data transmission” between an end-user device and any “endpoint reachable, directly or through a proxy, via a globally unique Internet address assigned by the Internet Assigned

³⁷ See, e.g., Sprint Reply Comments at 16-18; Verizon Comments at 79; AT&T Comments at 96-101.

Numbers Authority.” Under this proposal, if a service enables a consumer to reach, directly or indirectly, even one end point with a public IP address, that service apparently would be classified as an Internet access service – and according, could not be a specialized service. It appears that under the NPRM’s proposal, mobile broadband providers would be precluded from offering consumers the option to enjoy VoIP services with quality-of-service guarantees if any possible endpoint happens to use a public IP address.

Sprint submits that use of public IP addresses is not a reasonable basis for distinguishing specialized services from Internet access services. Specialized and Internet access services share the same “last mile” connection, and this connection uses the IP protocol. It should therefore not be surprising that services using this broadband network connection – whether an Internet access service or a specialized service – enable persons to reach destinations with public IP address. No purpose would be served by requiring potential customers of specialized services to establish, as a condition to using a desired specialized service, new private IP addresses for all possible destinations that might be used with the service. There are fundamental differences between an access service to an open Internet and specialized IP-based services, but those differences have nothing to do with the addressing scheme utilized to reach those destinations.

It is difficult, if not impossible, to develop a comprehensive definition of specialized services, as they are in their infancy. As such, Sprint recommends that the Commission refrain from defining specialized services beyond recognizing that specialized services are all services that are not “broadband Internet access service” and that specialized services are not subject to Open Internet rules.

The Commission has recognized that specialized services can “drive additional private investment and networks and provide consumers new and valued services.”³⁸ What is more, if the Commission applies Open Internet rules to mobile broadband providers, specialized services may become one of the principal areas where mobile services providers would be able to continue to differentiate themselves. This nation has been well served by the innovation that competition in the mobile sector has generated, and Sprint submits it is important this competition be continued.

B. ANY CONCERNS ABOUT THE IMPACT OF FUTURE SPECIALIZED SERVICES ON INTERNET ACCESS SERVICES SHOULD BE ADDRESSED IF AND WHEN THOSE DEVELOPMENTS OCCUR

As noted above, it is quite costly to deploy and operate a 4G network and licensees must have the flexibility to offer a variety of services over their new networks in order to generate the revenues needed to sustain network build-out and improvements. Some parties have nevertheless expressed concern over mobile broadband providers offering specialized services – in addition to basic Internet access services. Sprint maintains that giving a variety of customers (consumer, business and providers of content) a variety of choices is in the public interest. The Commission asks how it should address these concerns, noting correctly there are two, very different approaches that can be taken:

1. Address the concerns on a case-by-case basis if and when they arise, so the FCC can act with the benefit of concrete facts; *or*
2. Adopt now prescriptive and prophylactic rules, such as allowing broadband providers to offer “only a limited set of specialized services” or requiring them to “expand[] network capacity allocated to broadband Internet access service.”³⁹

³⁸ Supplemental Public Notice at 2.

³⁹ See Supplemental Public Notice at 3-4.

Sprint submits that the case-by-case approach is the far superior choice and the only approach that is viable.

It is important to emphasize that the concerns raised in connection with specialized services share one point in common – namely, they are based on speculation only. In fact, parties wanting the FCC to restrict the provision of specialized services ask the Commission to adopt such restrictions based on double speculation. Specifically the concern is that broadband providers (a) “may” engage in a particular activity, *and further* (b) “if” they do, this activity “may” negatively impact the open Internet.⁴⁰ In other words, these rule proponents want the Commission to restrict (or ban outright) certain specialized services even though they acknowledge these future services yet to be developed may not negatively impact Internet access services in any way.

Sprint submits it is poor public policy for a regulatory agency to limit innovation and variety in the marketplace by imposing regulatory disincentives on firms that provide certain additional services that the public might find attractive. This is particularly the case for the mobile broadband sector. The Commission recognized in the National Broadband Plan that the market for mobile broadband services is “nascent” and that at present, it is impossible to predict how this market will evolve because “[t]echnologies, costs and consumer preferences are changing too quickly in this dynamic part of the economy to make accurate predictions:”

Mobile broadband services are relatively new and their competitive dynamics are changing rapidly.⁴¹

Adopting now prescriptive or prophylactic rules for the mobile broadband space almost certainly would stifle the very innovation that is now occurring in this space.

⁴⁰ See Supplemental Public Notice at 2-3.

⁴¹ National Broadband Plan at 9, 40 and 42.

Prescriptive or prophylactic rules would be especially crippling for the mobile services industry. As noted above, our industry is in the early stages of 4G network deployment, and government policy should be directed towards encouraging this deployment. Importantly, allowing broadband providers to continue to innovate in the specialized services spaces poses no realistic threat to the Open Internet the Commission wants to preserve. Between its annual wireless competition and Section 706 reports, the Commission can detect quickly any development that may pose a threat to the Open Internet. If a concern is ever raised by a particular specialized service that has been introduced into the marketplace, the Commission can address that service with the benefit of concrete facts so it can make a proper decision.

This is the very approach the Commission proposed adopting in the NPRM.⁴² And, as the Commission has correctly observed, there exists widespread support for the Commission's case-by-case proposal as being "the better policy choice":

[I]n light of rapid technological and market change, enforcing high-level rules of the road through case-by-case adjudication, informed by engineering expertise, is a better policy approach than promulgating detailed, prescriptive rules that may have consequences that are difficult for foresee.⁴³

III. "OPEN DEVICE" RULE ADVOCATES HAVE NOT DEMONSTRATED THAT NEW RULES ARE NECESSARY OR DESIRABLE

Mobile services providers, Chairman Genachowski has observed, are introducing devices that are "remarkable," "extraordinary and innovative."⁴⁴ The National Broadband Plan recog-

⁴² See *Open Internet NPRM*, 24 FCC Rcd at 13113 ¶ 134. See also *id.* at 13100 ¶ 89 (With a case-by-case approach, "we will be able to generate over time a body of law that develops as technology and the market place evolve.").

⁴³ Supplemental Public Notice at 1-2.

⁴⁴ See Chairman's Separate Statement, *Fostering Wireless Innovation and Investment*, 24 FCC Rcd 11322, 11347 (2009).

nizes the “significant competition” and “robust innovation” that exists in today’s mobile device space:

There were more than 850 different certified mobile products in the United States in 2009. In that same year, approximately 172 million mobile phones were sold in the United States. Of these, 27% were Internet-capable smartphones manufactured by a wide variety of firms⁴⁵

Nevertheless, some parties assert the mobile product market is broken and that new “any device” rules are necessary to “promote consumer choice, competition, and innovation.”⁴⁶ The Commission, in response, seeks comment on ways to “facilitate non-harmful attachment of third-party devices to mobile wireless networks.”⁴⁷

Sprint submits these rule proponents have not demonstrated that new device rules are appropriate, or even desirable, at this time. As discussed below, the Commission has already developed a plan for “open devices,” that plan has not yet been completed, and rule advocates have not explained why that plan should be scrapped and replaced with a different plan. Also, competition and the opportunity to generate additional usage (and revenues) are already inducing mobile broadband providers to move towards a more “open device” environment by certifying third-party devices. Finally, a blanket “open device” requirement may have the perverse effect of decreasing consumer satisfaction with their wireless service by limiting a carrier’s ability to resolve problems with third party devices.

⁴⁵ National Broadband Plan at 18. In stark contrast, only 18 years ago consumers had a choice of only 28 different wireless devices. See *Cellular Service/Device Bundling Order*, 7 FCC Rcd 4028, 4029 ¶ 9 (1992). CTIA proudly told the FCC at the time that over the eight-year period, 1984 to 1992, the average price of a handset fell 83 percent (from \$2,400 to \$400). *Id.* By way of comparison, Sprint’s sophisticated HTC EVO™ 4G smartphone is today available for \$199.99 with a two-year contract.

⁴⁶ Free Press Reply Comments at 29.

⁴⁷ Supplemental Public Notice at 5.

A. CONSUMERS TODAY CAN USE WI-FI AND USB-ENABLED DEVICES ON SPRINT'S BROADBAND NETWORKS WITH ITS TETHERING OPTIONS

The “any device” environment desired by some parties – whereby any wireless device could be used on any wireless network – is not feasible in the foreseeable future.⁴⁸ This is largely due to two reasons:

1. Different radio licensees use different air interfaces, and a device designed to work on an LTE network, for example, will not work on a WiMax network (and *vice versa*); and
2. There exist dozens of different spectrum bands (between 700 MHz and 2.6 GHz) that have been allocated to mobile services, and each licensee has a different collection of bands that it uses in the provision of its services. The current debate over whether all 700 MHz phones should be capable of operating on all 700 MHz bands reflects both the interest and limitations of introducing devices that are capable of operating on more networks using different spectrum bands – and this debate doesn't even consider having 700 MHz devices that would also work on other spectrum bands, such as cellular, PCS, AWS and BRS.

For example, Sprint's popular HTC EVO™ 4G smartphone has six different antennas and filters so it can work on six different bands (two WiMAX antennas in the 2.5 GHz band, one, PCS in 1900 GHz band, one PCS in 800 MHz band, one Wi-Fi, and one Bluetooth/GPS).

While an “any device” environment is not practically feasible at present, Sprint has introduced several tethering options that expand exponentially the number and type of devices that consumers can use on its broadband networks. Sprint currently offers two different dual-mode 3G/4G modems that can connect any laptop or any other device with a USB port to Sprint's broadband networks:

- The Sprint 3G/4G USB Modem 250U by Sierra Wireless; and
- The Sprint 3G/4G USB U600 modem.

⁴⁸ It is for this reason that use of the phrase, “open devices,” may more accurately reflect the current discussion over the use of non-licensee-branded devices.

In addition, through its Open Device Initiative (discussed below), Sprint has certified dozens of chipsets that computer manufacturers have developed so consumers who purchase their laptops have the option to access “out of the box” – and without use of a separate modem – Sprint’s mobile broadband networks.

Sprint also currently offers three different dual-mode 3G/4G mobile hotspot devices that can provide Internet connections to multiple different Wi-Fi devices, whether the device is a laptop, game station, camera, music player, video player or other Wi-Fi device – including Wi-Fi enabled phones sold by Sprint’s GSM competitors:

- The popular HTC EVO™ 4G smartphone, which can provide Internet connections for up to eight different Wi-Fi devices;
- Sprint’s newest 3G/4G smartphone, the Samsung Epic™ 4G, which is capable of supporting Internet connections for up to five different Wi-Fi devices; and
- The Sierra Wireless Overdrive™ 3G/4G Mobile Hotspot, which can connect up to five different Wi-Fi devices.

Sprint currently offers unlimited plans for data usage on its networks⁴⁹, and consumers like the simplicity of these plans. Because these five- and eight-connection mobile hotspots can generate so much additional data, Sprint understandably charges an extra fee (currently \$29.99/monthly) to activate this mobile hotspot capability. These innovative plans and devices demonstrate how Sprint has embraced the use of other devices on our network.

B. RULE PROONENTS HAVE NOT DEMONSTRATED WHY THE COMMISSION SHOULD DEVIATE FROM ITS CURRENT “OPEN DEVICE” PLAN BEFORE IT CAN BE EVALUATED

Three years ago, several parties urged the Commission to adopt “open platform” rules for the entire upper 700 MHz band. The Commission determined this proposal was not in the public

⁴⁹ Data use is unlimited while using a handset on Sprint’s network; there are limitations on data card and roaming usage.

interest, in part because such a requirement “may have unanticipated drawbacks.”⁵⁰ It did believe a more “measured approach” was appropriate, and it adopted “open platform for devices and applications” rules for the large (22 MHz) C block.⁵¹ Under these requirements, C block licenses must “allow customers, device manufacturers, third-party application developers, and others to use devices and applications of their choice, subject to certain conditions.”⁵²

The Commission explained it adopted this “measured approach” so it and industry would have the opportunity to “observe the real-world effects of such a requirement.”⁵³ The Commission recognized this “real-world” experience in the C block would be invaluable in evaluating, among other things, consumer demand for an “open device” environment. Indeed, the Commission observed that if this development demonstrated strong interest in this open environment, additional “open device” rules applicable to other bands may be unnecessary:

[T]o the extent the results of our C Block requirements prove attractive to consumers, we would anticipate that providers in other 700 MHz Band blocks and other bands will have competitive incentives to offer similar choices.⁵⁴

Such additional rules may also be unnecessary if consumers exhibit little interest in this “open device” initiative. But in the end, and regardless of whether this C block experiment is deemed successful or not, the results of this trial will provide valuable data to the Commission and industry regarding what works and what doesn’t work.

Verizon Wireless was the winning bidder for a nationwide C block footprint (excluding Alaska).⁵⁵ Under the buildout rules for the C block, Verizon’s new broadband network using

⁵⁰ *Second Upper 700 MHz Service Rules Order*, 22 FCC Rcd 15289, 15361 ¶¶ 195, 15364 ¶ 205 (2007).

⁵¹ *See id.*

⁵² *Id.* at 15294 ¶ 7.

⁵³ *Id.* at 15364 ¶ 205.

⁵⁴ *Id.* at 15364-65 ¶ 205.

this band must, by early 2013, serve by 40 percent of the nation's population (except Alaska).⁵⁶ Verizon recently confirmed its intent to deploy its 4G LTE network "in 25 to 30 markets by the end of this year."⁵⁷ Thus, the "real world" experiment that the Commission established three years ago is only about to begin.

Those parties urging immediate adoption of "open device" rules to all mobile services bands and all licensees effectively want the Commission to deviate from its C block/open platform plan by imposing new rules before the results of the C block plan become available.⁵⁸ Sprint submits this proposal makes no sense – especially now that we are on the eve of getting "real world" data that will test the assumptions underlying the rule advocates proposal. Notably, rule advocates never explain why new rules should be adopted now when they do not challenge the Commission's observation that its C block plan may render such rules unnecessary.

C. SPRINT AND OTHER MAJOR WIRELESS PROVIDERS CONTINUE TO TAKE STEPS IN MOVING TOWARDS A MORE OPEN ENVIRONMENT

The need for new rules at this time is further undermined by the fact that the wireless industry, as a result of competitive market forces and the need to generate new revenues to recoup the investment in new 4G networks, is already transitioning to a more open device environment. The Commission has recognized that Sprint and other major wireless providers have "each de-

⁵⁵ It is Sprint's understanding that Verizon recently petitioned the FCC for authority to acquire the Alaska C block license that Triad 700 LLC had acquired in March 2008.

⁵⁶ See 47 C.F.R. § 27.14(h).

⁵⁷ See Verizon News Release, *Verizon Reports Strong Wireless, FIOS Customer Growth; Increased Enterprise Revenues; Strong Cash Flow in 2Q* (July 23, 2010), available at <http://news.vzw.com/news/2010/07/pr2010-07-23.html>.

⁵⁸ As a practical matter, these rule advocates effectively want the FCC to reconsider its 2007 decision not to apply its "open device" rules to spectrum bands other than the 700 MHz C block. *But see Te- leport Application for Review*, 11 FCC Rcd 11662, 11672-73 ¶ 23 (1996)(FCC declines to "revisit" earlier orders when petitioners failed to file reconsideration petitions in response to those earlier orders).

veloped programs to allow for third-party devices and/or applications on their networks” and have further made “significant progress toward the open platform model.”⁵⁹

Sprint, in particular, has been especially active in this area as it wants to increase usage on its broadband networks and thus maximize its return on this sizable investment. Indeed, in two weeks, Sprint will host its *Tenth* Annual Open Developer Conference.⁶⁰ Below are some of the components of Sprint’s efforts in this rapidly evolving area.

1. Sprint’s Open Device Initiative. The National Broadband Plan recognizes that machine-to-machine (“M2M”) and similar devices will give rise to the “Internet of Things” and that this Internet “will likely create whole new classes of devices that connect to broadband.”⁶¹ Sprint launched its Open Device Initiative (“ODI”) precisely to help create this nascent “Internet of Things.”⁶² Sprint’s ODI focuses principally on M2M devices and RF chipsets that are embedded in a host of devices such as laptops, e-readers, *etc.* The ODI provides a framework to guide and the tools to implement new third-party devices from idea/creation, to testing, to certification, and ultimately, to activation on Sprint’s networks – and thereby transform an entrepreneur’s vision into reality.

To date, Sprint has certified well over 300 third-party devices. The use of these devices is virtually limitless. Sprint, through its ODI program, has collaborated and partnered with numerous parties to certify new devices and to provide them with the broadband connectivity and

⁵⁹ *Open Internet NPRM*, 24 FCC Rcd at 13121 n.283; *Thirteenth Wireless Competition Report*, 24 FCC Rcd 6185, 6266 ¶ 167 (2009).

⁶⁰ News Release, *Sprint to Host 10th Annual Open Developer Conference, Oct. 26-28 in Santa Clara, Calif; Opportunity for Developers to Learn about 4G, M2M Solutions and More* (June 15, 2010), available at http://newsroom.sprint.com/article_display.cfm?article_id=1555. See generally http://developer.sprint.com/site/global/community/events/2010devcon/2010_conference_home.jsp.

⁶¹ National Broadband Plan at 18.

⁶² See generally <http://m2m.sprint.com/?ECID=vanity:m2m>.

network capabilities they need to introduce their innovative solutions to the marketplace, including:

- Omnilink uses Sprint's location capabilities so it can provide to law enforcement agencies the ability to monitor and track, in real time and on a 24/7 basis, the location of parolees, sex offenders, domestic violence offenders, pretrial detainees and the like.⁶³ Agencies can monitor an offender's location from any Internet access point, and the system is designed to send instant alerts when an offender enters an exclusion zone. This system permits government to reduce its costs by enabling it to release more low risk offenders from jail and to reduce recidivism and the related costs.⁶⁴
- Omnilink has since expanded its innovative systems for use in other settings. For example, the Alzheimer's Association uses this web-based, remote monitoring M2M technology system with persons with Alzheimer's.⁶⁵ The Association's Comfort ZoneTM service gives people with Alzheimer's more independence while enabling their caregivers to know the locations of their family member at all times and to receive instant alerts when the person travels in or out of a zone.
- Feeney Wireless uses its Sprint-certified devices to provide new options to public safety.⁶⁶ For example, its Fire/EMS products, when installed in an ambulance, provide real-time access to critical applications such as emergency dispatch, patient information systems, medical diagnostics, and hospital emergency services.⁶⁷
- Working with Sprint, Silver Spring Networks has developed a communications module, which Sprint has certified, in order to support smart grid applications.⁶⁸ This module, when installed in gas and electric meters, provides a connection into the utility's smart grid network with another connection to the consumer's home area network.

⁶³ See <http://www.omnilink.com/>.

⁶⁴ Omnilink's VP of Business Development and Strategy chose Sprint because it was "willing to take the risk on by creating a business model to support us – whereas other carriers were less willing to open up their location platforms for these industries. . . . Because of Sprint, we were able to accelerate our time to market with a competitive advantage. . . . [Sprint's location capabilities] changed the game because we got the reliability that judges were demanding thanks to the availability of real-time information." See http://www.poweryourideas.com/media/6630/omnilink_sprint_casestudyrd8.pdf.

⁶⁵ See <http://www.alz.org/comfortzone/>.

⁶⁶ See <http://feeneywireless.com/>.

⁶⁷ See http://feeneywireless.com/solutions/fire_ems/.

⁶⁸ See <http://www.silverspringnet.com/>.

- Sprint has also certified devices that Media Tile uses to provide a robust set of digital signage solutions based on wireless networking.⁶⁹ For example, Dominican Hospital, which serves the Monterey Bay area, uses this system to improve communications with patients and between all of the different offices and departments on its campus. The portal enables hospital administrators to schedule fresh content or to update it instantly, which is important for urgent messages such as an “H1N1” advisory.⁷⁰

2. Sprint’s Applications Developers Program (“ADP”).⁷¹ Sprint created this industry-leading program nearly ten years ago when it hosted its first Open Developer Conference in 2000. Since that time Sprint has expanded and improved the program – injecting it with new ideas including a recently launched, developer-friendly web site⁷² – but the core mission of the program has not changed. It is to provide developers information and collaborative tools to leverage Sprint’s network and back office systems in an effort to create and bring to market rich and varied products and services.

There are many facets to this program, and Sprint will here mention a few of them.

- Sprint provides the information and tools applications developers need to experiment and create. It provides developers with a plethora of information including device specifications, mobile software specifications, application programming interfaces (“APIs”) for devices, software development kits, and network APIs.⁷³ As Sprint has previously explained,⁷⁴ with access to its location-based services and geo-location APIs, TeleNav, Inc. and Turnpike were able to create the TeleNav Vehicle ManagerTM service for the trucking industry.

⁶⁹ See <http://www.mediatile.com/>.

⁷⁰ See <http://www.mediatile.com/solutions/healthcare>.

⁷¹ See http://developer.sprint.com/site/global/services/p_ssf.jsp.

⁷² See http://developer.sprint.com/site/global/home/p_home.jsp

⁷³ As an example, Sprint, with permission from device manufacturers, provides device APIs related to accelerometers, GPS, camera, calendar, touch screen, address book, microphone, screen sizes, and network speeds.

⁷⁴ See Sprint Comments at 8 (Jan. 14, 2010); News Release, *TeleNav Debuts All-in-One Fleet Management Service with GPS, Vehicle Diagnostics and Automated IFTA Tax Filing* (Feb. 10, 2009), available at <http://www.telenav.com/about/pr/pr-20090210.html>.

- Sprint's Developer Sandbox is essentially a mini version of the ADP where developers can obtain free access to "play" with a set of Sprint's core enabling capabilities and APIs.⁷⁵
- Sprint's Smartphone Certification Program within its ADP enables established, smartphone-focused developers the ability to access, quickly and easily to Sprint's application certification process.⁷⁶
- Sprint Virtual Developer Lab. Sprint has partnered with DeviceAnywhere to provide this service, which offers real-time, virtual access to Sprint devices connected to all of Sprint's network.
- Platform and Service Enablers. For those developers who wish to go beyond the Sandbox and deeper into Sprint's core capabilities and network APIs, developers have the choice of partnering directly with Sprint – through Sprint's Professional Developers Program – or working through a third party enabler. These enablers are third parties with whom Sprint has an existing, trusted relationship. Enablers, as the name implies, help developers through all stages of the ADP process with the ultimate goal of putting a new app or service on the market.
- Sprint Apps Pitch Box - once a developer has finished creating an app or service, Sprint has established an Apps Pitch Box – a promotional tool that provides developers a chance to get discovered in the crowded apps market. A developer can simply submit information to Sprint describing the mobile app. Sprint is looking for stellar apps with inspiring simplicity and usefulness that make connection, productivity, and entertainment indispensable to Sprint subscribers. Each app is scored based on its ability to bring customers value, achieve business goals and stand out from the crowd. Once an app is accepted, it will be promoted in a range of Sprint distribution channels which may include device, online, advertising, and communications campaigns.

The ADP and ODI programs demonstrate that Sprint has embraced an "open" philosophy as a means to attract customers and usage on its network. These programs strike a balance between opening Sprint's networks to collaboration and innovation while protecting the integrity of Sprint's network through business arrangements and processes designed to on-board new devices and services for the benefit of Sprint customers.

⁷⁵ See http://developer.sprint.com/site/global/services/p_ssf.jsp.

⁷⁶ *Id.*

* * *

Eighteen years ago, the Commission reversed course by permitting cellular carriers to bundle devices with their services, finding that such bundling would result in “significant public interest benefits.”⁷⁷ Some parties opposed this change, noting the mobile services market at the time was a duopoly and asserting this duopoly, in turn, “create[d] the *potential* of anticompetitive abuse.”⁷⁸ The Commission declined to adopt proposed “safeguards” or to let its decision be influenced by such speculation:

[W]e do not believe the potential for cellular carriers to engage in anticompetitive conduct provides a strong reason to prohibit bundling *per se*. . . . [T]he theoretical potential for this or other anticompetitive behavior is outweighed by the public interest benefits of permitting bundling.⁷⁹

The Commission explained the proposed safeguards were “not warranted because there is no evidence in the record before us revealing that the anticompetitive abuses which ICDMA is addressing are presently occurring,” adding: “If such evidence were presented, however, we would consider adopting safeguards similar to those proposed by ICDMA.”⁸⁰

The results of this decision were dramatic – if not revolutionary:

- In 1992, there were a total of 11 million mobile subscribers.⁸¹ But with this bundling order, wireless service became more affordable to more Americans so by 2000, this subscription number jumped to 109 million and by 2008, this number soared to 270 million;⁸²

⁷⁷ See *Cellular Service/Device Bundling Order*, 7 FCC Rcd 4028, 4030 ¶ 19 (1992). Initially, in developing service rules for cellular service, the FCC decided to apply the same CPE unbundling rules that it can applied to incumbent LECs.

⁷⁸ *Id.* at 4030 ¶ 16 (italics added).

⁷⁹ *Id.* at 4032 ¶ 30.

⁸⁰ *Id.* at 030 ¶ 17.

⁸¹ See *Fourteenth Wireless Competition Report*, WT Docket No. 09-66, FCC 10-81, Table C-1 (May 20, 2010).

⁸² See *id.*

- In 1992, the average monthly mobile services bill for 1G service was \$68.60; in 2008, the average bill for 2G/3G service fell to \$50.07;⁸³
- With Sprint's Everything Data – with Any Mobile, AnytimeSM plan, for \$69.99/monthly, a customer today receives 450 anytime minutes (more than were available in 1992); unlimited night and weekend calling (unavailable in 1992); unlimited mobile-to-mobile voice calls (also unavailable in 1992); unlimited text messaging (also unavailable in 1992); and unlimited broadband data services, including web surfing, email and GPS navigation (none of which was available in 1992).

The mobile service market is no longer a duopoly, with the Commission finding recently that:

- 91 percent of all Americans are served by at least four, facilities-based mobile voice providers, with 74 percent of the population served by at least five such providers;⁸⁴ and
- 76 percent of all Americans are served by at least three facilities-based mobile broadband providers,” and with 58 percent of the population having a choice of four or more mobile broadband providers.⁸⁵

Nevertheless, 18 years later, the Commission is again being asked to adopt certain “safeguards” because of “the potential of anticompetitive abuse.” Sprint submits the Commission should again decline to impose new rules based on speculation only.

Specifically, the Commission should decline at this time to adopt any new “open device” rules. It has correctly recognized that there exists “significant competition” and “robust innovation” in the device space.⁸⁶ No one can credibly claim that new prescriptive, “one-size-fits-all” rules would somehow result in more innovation in a space that requires an unique approach to each proposed solution. To the contrary, the bigger risk is that new rules would stifle the very

⁸³ See *id.*

⁸⁴ See *id.* at 37, Tables 4 and 5.

⁸⁵ See *id.* at 39, Table 7.

⁸⁶ See National Broadband Plan at 18.

flexibility everyone in the device ecosystem – including entrepreneurs, device manufacturers, developers – needs to continue to introduce innovative new devices “at a dizzying pace.”⁸⁷

IV. CONCLUSION

Sprint maintains that wireless broadband is unique and that competition is the best protection for consumers. While transparency and protection of a consumers’ ability to access legal, non-harmful content are worthy goals, Sprint cautions the Commission that “open Internet” principles should not be extended to devices as they remain a key portion of the wireless broadband network, and carriers must maintain the ability to manage the devices present on their respective networks. The Commission should likewise reject proposals to define “broadband Internet access service” so broadly that that the definition inhibits mobile licensees from introducing yet additional new innovative services to consumers and others – and a definition that that prevents mobile broadband network operators from generating the revenues they need to deploy advanced 4G networks.

⁸⁷ See Chairman Genachowski, *Preserving a Free and Open Internet: a Platform for Innovation, Opportunity, and Prosperity* (Sept. 21, 2009)(“Brookings Institution Speech).

Respectfully submitted,

SPRINT NEXTEL CORPORATION

/s/ Charles W. McKee

Charles W. McKee
Vice President, Government Affairs
Federal and State Regulatory
Sprint Nextel Corporation
900 7th Street, N.W., Suite 700
Washington, D.C. 20001
703-433-3786

Scott R. Freiermuth
Counsel, Government Affairs
Federal Regulatory
Sprint Nextel Corporation
6450 Sprint Parkway
Overland Park, KS 66251
913-315-8521

October 12, 2010