

**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

**REPLY COMMENTS OF
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

Howard J. Symons
Michael H. Pryor
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004-2608

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Rick Chessen
Neal M. Goldberg
Michael S. Schooler
Steven F. Morris
Counsel for the National Cable &
Telecommunications Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, D.C. 20001-1431

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The National Cable & Telecommunications Association (“NCTA”) hereby submits its reply comments on the Commission’s Public Notice seeking additional comments on “Two Under-Developed Issues” in the above-captioned proceeding.

I. ANY “NET NEUTRALITY” RULES SHOULD APPLY ONLY TO A CLEARLY DEFINED BROADBAND INTERNET ACCESS SERVICE – AND NOT TO SPECIALIZED SERVICES.

Reading the comments of Free Press and other proponents of comprehensive regulation of Internet service providers, one would be hard pressed to understand how the ever-increasing range and robustness of services that characterize today’s Internet could ever have developed. When the Commission chose to classify the provision of broadband Internet access service as an information service outside the scope of Title II regulation, many of the same parties wrung their hands and predicted “the end of the Internet” as we then knew it.¹ And, in fact, the Internet *was* radically transformed in the aftermath of that decision: the Commission’s policy of “vigilant

¹ See, e.g., J. Chester, “The End of the Internet?,” *The Nation*, Feb. 1, 2006, <http://www.thenation.com/article/end-internet>; Free Press, Press Release, “House Ignores Public, Sells Out the Internet through Passage of COPE Act, Net Neutrality Advocates Look to Senate to Save Internet Freedom,” June 9, 2006, http://www.saschameinrath.com/2006jun08us_house_of_representatives_sells_out_general_public_bows_to_multi_million_dollar_telecom_lobbying_campaign (“‘Unless the Senate steps in, today’s vote marks the beginning of the end of the Internet as an engine of new competition, entrepreneurship and innovation.’ said Consumers Union Senior Policy Analyst, Jeannine Kenney.”).

restraint” helped spur tremendous investment – both in broadband networks and applications – that has led to a more plentiful, more robust and more innovative Internet than anyone could have imagined.

In particular, the critics repeatedly warned that cable operators and telephone companies would, if unregulated, surely thwart the use of the Internet to provide competitive video programming and telephone services. How does that prediction look today? Video programming and telephone services on the Internet are flourishing. Familiar programmers, including broadcast networks and major sports leagues, make video programming available on their own websites – and the number of additional websites making available video clips and programs from additional sources seems to be increasing every minute. In addition, innovative web-based sites and software and equipment-based services like Hulu, YouTube, Boxee, GoogleTV and Roku are making it easier for consumers to find and navigate to the broad array of programming available on the Internet.

Meanwhile, Internet-based telephone services are also proliferating and becoming innovative competitors of the services offered by telephone companies and cable operators. Vonage has been offering voice telephone service since 2001. Skype, an internet telephony company launched in 2003, was one of the pioneering services which allowed customers to integrate voice, video and chat functions online. Using the service, customers can chat on an instant messenger service or via webcam for free or pay a nominal per-minute fee to call any phone internationally. In 2009 Google launched a cloud-based voice service, Google Voice, which allows customers to have one number that can receive text, voice calls and voicemail across platforms – mobile, wired, online or otherwise. The application allows users to get

transcripts of their voicemail via email, search and archive all of their text messages online, and make international calls for pennies a minute.²

ISPs have not stifled this development. To the contrary, by continually upgrading the capabilities of their Internet platforms, they have *facilitated* it. They are competing vigorously with these new alternatives, to be sure. But they are competing by offering innovative video and telephone services of their own – *not* by thwarting or impairing the ability of “over-the-top” Internet competitors to reach customers.

Nevertheless, in responding to the Commission’s questions regarding the extent to which “specialized services” should be outside the scope of any “open Internet” rules, the proponents of regulation are sticking to their mantra. Free Press, for example, notes that “[t]he debate concerning future specialized services that may be offered by broadband communications service providers has reached an extraordinary level of heat and hyperbole”³ – and then proves its point through its own overheated rhetoric:

Free Press believes that any form of prioritization on open Internet services that is not purely edge-driven will, even under ideal circumstances, impose *incalculable harm* on innovation, competition, investment, consumer choice, and free speech. Control over prioritization would effectively empower ISPs to choose winners and losers among Internet content, applications, and services, *destroying what is today a competitive and innovative market* built around unrestricted consumer choice. The result would be *the end of the open Internet* that has been an engine for unanticipated and unparalleled economic growth.⁴

Free Press argues that the debate over specialized services is speculative and “hypothetical” because, for the most part, these are “future offerings or services” that do not yet

² <http://googleblog.blogspot.com/2009/03/here-comes-google-voice.html>.

³ Free Press Comments at 6.

⁴ *Id.* at 7 (emphasis added).

exist.⁵ We largely agree.⁶ The difference is that Free Press and other proponents of regulation still believe that it is best to impose a comprehensive set of restrictions *now* on such future offerings, before anyone knows what services might ultimately be developed and how they might most effectively and efficiently be offered to consumers. We (and many others), in contrast, believe that there is no reason to expect any restrictive or anticompetitive effects on the openness of the Internet and that such prophylactic regulation will only inhibit the continued investment, innovation and enhancement of consumer value that has been occurring in the absence of any such regulation. It's the same disagreement that we had when the Commission declined to classify broadband Internet access service as a telecommunications service in 2005 – except that this time, as discussed above, we have the benefit of experience.

Given that none of the adverse, much less apocalyptic, effects predicted by the proponents of regulation have come to pass, there is no reason to adopt *any* rules at this time – and, especially, no reason to adopt rules that apply broadly to largely hypothetical services other than broadband Internet access service that may be offered by Internet service providers over their broadband facilities. The latest round of comments provides further evidence that the adoption of such rules is overwhelmingly likely to do more harm than good.

It's not just virtually all the wireless and wireline ISPs who recognize, in their comments, that restricting the provision of specialized services would diminish the value of their Internet offerings to consumers. Equipment and technology providers also oppose such restrictions, understanding that the effect would be to impede and limit development of new, innovative services and technologies. ADTRAN, Inc., points out, for example, that “[t]he Commission is

⁵ *Id.* at 6.

⁶ See NCTA Comments at 6 (“At this early stage of development, *when specialized services themselves are still largely speculative and inchoate*, there is no basis for believing that they will ever adversely affect the vitality and openness of broadband Internet access service.”) (Emphasis added.).

ill-equipped to decide what services a provider should be able to offer, particularly in this fast paced and constantly evolving marketplace. Notice and comment rulemakings to determine the acceptability of a new service that take months, if not years, would bring innovation to a grinding halt.”⁷

Alcatel-Lucent similarly opposes limitations on the specialized services that may be offered. It notes that restricting permissible specialized services to those “with functionality that cannot be provided via broadband Internet service, such as a telemedicine application that requires enhanced quality of service” would “not permit the market to develop based on consumer demand and sustainable business models. Such a finite approach is simply a snapshot in time where the FCC determines what is an acceptable application for enhanced treatment.”⁸

Free Press and other proponents of regulation advance a fairly straightforward – and simplistic – rationale for broadly prohibiting ISPs from providing specialized services. In their view, such service offerings could crowd out, degrade and undermine the value and utility of broadband Internet access service, transforming that service into the equivalent of a “dirt road.”⁹ They do not, for the most part, quarrel with the premise that there might be some Internet-based services that would be of value to consumers if they were to be provided with quality of service guarantees or other enhancements that exceed what is generally available via broadband Internet access service. In their view, however, the need for such guarantees and enhancements could be eliminated if ISPs instead simply expanded their capacity so that *all* Internet-based services could reach consumers with comparable enhanced or guaranteed quality.

⁷ ADTRAN Comments at 3.

⁸ Alcatel-Lucent Comments at 9.

⁹ *See, e.g.*, Joint Statement of MoveOn.Org Civic Action, Credo Action, the Progressive Change Campaign Committee, ColorofChange.org and Free Press, Aug. 9, 2010, <http://www.freepress.net/press-release/2010/8/9/google-verizon-pact-worse-feared>.

Their arguments are wrong on both counts: As NCTA and others have shown, there is no reason to believe that the provision of specialized services will undermine the vitality and robustness of broadband Internet access service. Nor is it the case that continual expansion of capacity will obviate the need and demand for specialized services.

First, as Alcatel-Lucent points out, specialized services are not only wholly compatible with a vibrant broadband Internet access service; they will *bolster* and *promote* the vitality of broadband Internet access service:

[T]he deployment of Specialized Services will provide increased network capacity for best efforts broadband Internet access services. . . . [W]hen an ISP offers a Specialized Service with guaranteed performance levels it will primarily attract users of real-time applications that are highly sensitive to jitter. By migrating these high-bandwidth applications to the Specialized Services channel, additional capacity for the best effort broadband Internet access service will be made available. Moreover, as the ISP realizes additional revenue from the Specialized Services, the ISP will invest a portion of this revenue in expanding network capacity, which will benefit both classes of services.¹⁰

As the comments of many ISPs show, this prediction is not merely theoretical. It is confirmed by the behavior of cable operators and telephone companies, which, as Bright House Networks points out, “is not remotely consistent with the concern . . . that retail network operators have some plan, desire, or incentive to constrain or restrict the capacity made available to broadband Internet access service.”¹¹ In particular, while cable operators and telephone companies provide video programming and telephone service over their physical plant with guaranteed quality of service and enhancements that may not be generally available to services provided via broadband Internet access service, this has hardly had a constraining effect on

¹⁰ Alcatel-Lucent Comments at 5.

¹¹ Bright House Comments at 8.

investment in and improvement of the quality of broadband Internet access service. As AT&T points out:

[N]one of these providers is cannibalizing Internet capacity or creating an Internet “dirt road” to protect specialized services over a shared transmission platform. To the contrary, they are offering ever-faster Internet access services at the same time they are rolling out those specialized – and, in the case of IPTV and VoIP, “prioritized” – services.¹²

To those commenting parties who actually have to compete in the marketplace for customers, it is no mystery why this is the case – it is a “response to consumer demand and competitive pressure.”¹³ Moreover, as Bright House explains:

Broadband Internet access service is increasingly purchased as part of a bundle, combined with our video and/or voice services. If customers find our broadband Internet access service insufficient compared to that offered by Verizon, AT&T, or other competitors, we run the risk of losing the customer for *all* of the bundled services. . . . This provides an added spur to ensure that our broadband Internet access service meets end user expectations.¹⁴

Second, the proponents of regulation suggest that all the benefits of specialized services can be made available to consumers and to content and application providers if ISPs simply deployed sufficient additional capacity on their facilities, which, in their view, would eliminate the need for Quality of Service guarantees, prioritization, or other delivery enhancements. Even if it were true that expansion of capacity could provide the same benefits as the provision of “specialized services,” the cost and inefficiency of deploying such additional capacity to guarantee the same quality of service to *all* Internet content and application providers as those

¹² AT&T Comments at 19.

¹³ Bright House Comments at 8.

¹⁴ *Id.* at 9 (emphasis in original) (footnote omitted).

that might need such enhanced or guaranteed quality would be hugely inefficient and drive up broadband subscription rates at a time when adoption is an urgent national priority.¹⁵

In any event, expansion of capacity is not a functional substitute for specialized services. As the Information Technology and Information Council (ITFC) explains, many Internet applications (such as, for example peer-to-peer file sharing applications) are designed to consume and occupy as much bandwidth as is available at any given time – a characteristic that can create a potential problem for services that require guaranteed quality of service (*e.g.*, minimum latency or jitter) or prioritized delivery. It is “a mistaken idea”¹⁶ that this problem can be solved by “simply adding bandwidth” because these “content applications will always take the lion’s share of any capacity increase.”¹⁷

Thus, restricting the ability of ISPs to offer specialized services would serve no public policy purpose and would only diminish the potential value of the Internet to consumers. Whether they consist of wholly unique services or services that offer enhanced-quality alternatives to services accessible via broadband Internet access service, specialized services can enrich the array of content and applications available to consumers. There is no evidence that the offering of such services will impair the quality, robustness and viability of broadband Internet access service. And the costly, inefficient and ineffective alternative of simply expanding capacity as a substitute for the offering of specialized services is no solution at all.

¹⁵ *See, e.g.*, Verizon Comments at 63-65.

¹⁶ ITIF Comments at 2.

¹⁷ *Id.* at 8.

II. THERE IS NO REASON – AND CERTAINLY NO LEGAL REQUIREMENT – TO EXEMPT WIRELESS COMPANIES FROM ANY RULES THAT MAY BE ADOPTED IN THIS PROCEEDING.

The comments submitted by wireless companies largely restate their previous arguments that wireless broadband services have unique characteristics that warrant exemption from “net neutrality” rules. As NCTA has explained, there is no need to codify such rules with respect to *any* broadband platform.¹⁸ But if rules were to be adopted, there is no basis for excluding wireless ISPs from their coverage.

A. There Are No Technological Distinctions Between Wireline and Wireless ISPs That Justify Exempting Wireless Providers From Rules That Apply to Their Wireline Competitors.

Nothing about wireless technology or the role of wireless in the broadband marketplace is so unique as to warrant the complete exemption of wireless providers from rules that may be adopted. Instead, as a broad array of commenters point out, many broadband platforms face diverse and distinct technological challenges.¹⁹ Technological distinctions exist not only between wireline and wireless-based broadband services, but also between various wireline broadband technologies. Copper-based DSL, fiber to the home, and cable modem technologies each face challenges in managing their networks to minimize congestion.²⁰ The appropriate

¹⁸ See, e.g., Comments of NCTA, GN Docket Nos. 09-191 *passim* (filed Jan. 14, 2010); Reply Comments of NCTA, GN Docket No. 09-191 *passim* (filed April 26, 2010).

¹⁹ See, e.g., Comments of Time Warner Cable, Inc. at 33-34 (“Time Warner Cable Comments”); Comments of Free Press at 24-27; Comments of Bright House Networks at 34-35 (“whatever technical differences may characterize a traditional ‘wireless’ network as opposed to other retail broadband Internet access networks, those differences are irrelevant to the policy concerns now before the Commission”) (“Bright House Comments”); Comments of Windstream Communications, Inc. at 12-15 (“Windstream Comments”); Comments of Vonage Holdings Corp. at 16-17; Comments of the Public Interest Commenters at 18-19 (“Insofar as a network is defined by the technologies it utilizes and the fashion in which those technologies are applied, any attempt to differentiate broadly between wireless and wireline systems with respect to Open Internet rules would be tantamount to bifurcating the infrastructure into two completely separate spheres.”).

²⁰ See, e.g., Comments of Free Press at 24-25 (“what’s reasonable for one wireline network might not be reasonable for another one: the shared nature of the cable plant introduces problems distinct from the more limited, but unshared, DSL line, itself distinct from the relatively powerful FTTH connection”).

means for addressing these technological limitations in any “net neutrality” rules is to accord all providers flexibility in meeting those rules, rather than granting a wholesale exemption to one particular technology.²¹

As in previous filings, the wireless companies claim that they have distinct technological challenges because they must continually manage shared access to limited spectrum on a real time basis as usage fluctuates within and between cell sites.²² These technological distinctions are matters of degree not kind. As explained by Time Warner Cable:

[C]able operators, no less than wireless carriers, operate using a finite amount of capacity, as the Commission has previously recognized. Cable operators have service groups that share the available bandwidth on a node-by-node basis. As in the wireless context, network performance within each node depends entirely on the number of users and the types of applications they are running. Excessive usage by one customer thus can have a dramatic impact on the performance experienced by other users within the same node.²³

More fundamentally, as wireline and wireless technologies continue to converge and overlap, a substantial amount of “wireless” broadband traffic is, in fact, carried by wireline networks.²⁴ Wireline broadband connections to the home typically have a wireless component,

²¹ See, e.g., Comments of Qwest Communications International at 13-19 (at most, technological distinctions may warrant flexibility in applying network management practices based on the limitations of different technological platforms); Comments of the Open Internet Coalition at 7-8 (technological distinctions may result in slightly different applications, but “there is simply no need to exclude wireless networks from the proposed rules altogether”).

²² Comments of Verizon and Verizon Wireless, at 16-20 (“Verizon Comments”); Comments of AT&T, Inc., at 59-60 (“AT&T Comments”). Verizon’s claims that net neutrality rules should not be applied to wireless networks is belied by its willingness to accept the openness requirements attached to the 700 MHz C block spectrum that Verizon acquired. See 700 MHz Service Rules, 22 FCC Rcd 15289, 15364 ¶ 205 (2007).

²³ Time Warner Cable Comments at 33-34 (footnotes omitted). See also, Bright House Comments at 34-35 (“[T]he challenges Bright House Networks and other ‘wireline’ providers face when confronting rapidly increasing consumer demand are directly parallel to those facing traditional ‘wireless’ networks confronting the same situation.”).

²⁴ See, e.g., Public Interest Commenters Comments at 17-18 (noting that “wireless and wireline networks continue rapidly to converge, and that any claimed necessity for applying different management standards to the two types of networks bears little relation to any physical differences between these systems, which differences will continue rapidly to decrease over time”).

in the form of wireless router, used to share bandwidth among laptops and other devices.²⁵ The overlap between wired and wireless networks will only increase as carriers deploy femtocells, which are small base stations that provide enhanced wireless coverage of the customer's premises and plug into the customer's wired broadband connection.²⁶

Increasingly, wireless devices such as smartphones are capable of switching between mobile services networks and Wi-Fi hotspots, where traffic is handed off to a cable or fiber network for routing to the Internet.²⁷ Windstream notes, for example, that wireless handsets now account for 35% of all Wi-Fi hot spot connections and that about 40 percent of iPhone traffic is transmitted via Wi-Fi connections supported by a wired connection.²⁸ In other words, as wireless devices offer the capability to switch between the wireless carriers' network or Wi-Fi hotspots, an increasingly larger share of broadband connectivity offered by the wireless carriers is being offloaded to wireline broadband networks and broadband connectivity occurs wholly outside of the wireless carrier's own network. Exempting "wireless" providers from net neutrality rules while applying the rules to wireline networks that carry a large share of the wireless customers' traffic would be both inequitable and impracticable – and lead to consumer confusion.

Apart from the alleged significance of the technological distinctions between wireless and wireline broadband networks, the wireless companies argue that the market for wireless broadband services is highly competitive alleviating the need to impose any "net neutrality" rules

²⁵ Bright House Comments at 32-33.

²⁶ Windstream Comments at 9.

²⁷ *Id.* at 9-10.

²⁸ *Id.* at 10. *See also* Bright House Comments at 32-33.

on wireless providers.²⁹ But wireless broadband is just one element of a vibrant broadband marketplace that includes cable companies, telecommunications companies, satellite carriers and new wireless entrants such as Clearwire – as well as the traditional CMRS providers like AT&T and Verizon.³⁰ Wireless and wireline broadband services are increasingly viewed as substitutes, a trend that will only accelerate as wireless providers roll out 4G networks that offer speeds equal to or exceeding some wireline broadband connections.³¹

As NCTA has previously noted, wireless broadband services “are fully capable of providing e-mail and web browsing functionality and are considered indispensable by millions of consumers. And just as consumers are substituting wireless voice services for wireline services, wireless broadband services increasingly are providing another option for consumers as speeds and functionality continue to increase and providers begin bundling their data services with netbooks and other devices beyond today’s smartphones.”³² The competitiveness of the broadband marketplace is an argument for refraining from imposing new regulations on *any* broadband provider, not just with respect to wireless broadband providers. As NCTA has

²⁹ See, e.g., Verizon Comments at 12-16; AT&T Comments at 39-40; Comments of CTIA –The Wireless Association, at 1-2.

³⁰ NCTA Comments, WC Docket No. 07-52 at 2 (filed June 15, 2007) (“Consumers today can choose from a broad array of providers using a variety of different technologies, including cable operators, telephone companies, wireless carriers and satellite providers.”).

³¹ See, e.g., Free Press Comments at 27 (noting Verizon’s 4G LTE network will offer speeds of 5-12 Mbps whereas Qwest recently announced that there is no business case to increase broadband speeds beyond their 1.5 to 3 Mbps ADSL offering in 20-30 percent of its footprint). Clearwire advertises download speeds of 3-6 Mbps with bursts exceeding 100 Mbps. See, <http://www.clearwirelessinternet.com/how-clear-wimax-works.html>. The FCC’s just released *Spectrum Study* notes that the average monthly usage of Clearwire’s wireless broadband service, “which many consumers use as a substitute for wired broadband, is already 7 GB.” OBI Technical Paper No. 6, Mobile Broadband: The Benefits of Additional Spectrum, Oct. 2010, at 5. “Clearwire has announced that by the end of 2010, its 4G WiMAX network is expected to be available in more than 80 markets covering up to 120 million people.” Comments of Clearwire Corp. at 4.

³² NCTA Comments, GN Docket 10-127, at 25-26, (filed July 15, 2010).

explained, “[i]n this competitive environment” net neutrality rules are unnecessary and counterproductive as they “would freeze innovation and investment in place.”³³

B. The Arguments of the Wireless Carriers That the FCC Lacks Authority To Regulate Them Are Without Merit.

Although outside the ambit of questions posed in the further Public Notice, wireless carriers reiterate their argument that the Commission is without legal authority to impose net neutrality obligations on wireless broadband services because such obligations would amount to the prohibited imposition of common carrier requirements on what they claim is a private mobile radio service.³⁴ NCTA agrees that there are numerous legal infirmities to the Commission’s proposal to impose “net neutrality” rules on *any* segment of the broadband industry, and has described these infirmities in detail.³⁵ But as commenters have previously explained, the wireless broadband providers’ claim of unique legal immunity is without merit.³⁶ Wireless broadband, like all other broadband offerings, is an information service,³⁷ and as such is no more or less within the FCC’s authority to impose net neutrality requirements as any other broadband information service.

If anything, wireless providers are *more* at risk of being made subject to such requirements than are wireline providers. As the Commission affirmed in the *Wireless Broadband Order*, it retains its general authority over radio communications to enforce various

³³ NCTA Comments, WC Docket No. 07-52, at 2 (filed June 15, 2007).

³⁴ AT&T Comments at 68-70 (“A provider engaged in any non-‘commercial’ (*i.e.*, ‘private’) mobile radio services ‘shall *not*, insofar as such person is so engaged, be treated as a common carrier for any purpose under this [Act].”) (Quoting 47 U.S.C. § 332(c)(2) (emphasis added by AT&T); Verizon Comments at 66-67.

³⁵ *See, e.g.*, NCTA Comments, GN Docket No. 10-127 (filed July 15, 2010).

³⁶ *See, e.g.*, Cablevision Reply Comments, GN Docket 10-127, at 24-26 (filed Aug. 12, 2010); Windstream Reply Comments, GN Docket 10-127, at 14-22 (filed Aug. 12, 2010); Qwest Reply Comments, GN Docket 10-127, at 20-21 (filed Aug. 12, 2010); Free Press Reply Comments, GN Docket No. 10-127, at 24-25 (filed Aug. 12, 2010).

³⁷ *Wireless Broadband Order*, 22 FCC Rcd 5901, 5910-11, ¶¶ 25-26.

Title III requirements on wireless broadband services, including crafting rules regarding the use of spectrum and to make such rules “as may be necessary to carry out the provisions of the Act.”³⁸ That is arguably true even with respect to the imposition of common carrier-like requirements on wireless carriers. Section 332 defines common carrier commercial service to include “the functional equivalent” of such service even if that functional equivalent would not itself satisfy the definition of a “commercial mobile service.”³⁹

AT&T also contends that imposing net neutrality rules on wireless broadband services would violate the Commission’s previous determination to impose such requirements only on the C block of the 700 MHz spectrum auctioned in 2007.⁴⁰ It claims that imposing such requirements now on other spectrum blocks would devalue its investment in those other blocks and raise serious due process, Administrative Procedure Act and Takings Clause issues.⁴¹ These arguments provide no justification for exempting wireless services from any net neutrality rules that the Commission may adopt and apply to other ISPs. The Commission has similarly decided repeatedly in the past that regulating cable and other wireline ISPs would not be in the public interest. To the extent that previous decisions not to impose net neutrality regulations created investment-backed expectations that would be impermissibly undermined and devalued by a reversal of course, such constraints would apply at least as strongly, if not more so, to regulation of wireline ISPs as to wireless ISPs.

³⁸ *Id.* at 5914-15, ¶ 36.

³⁹ *See* 47 U.S.C. § 332(c)(1), (d)(3); 47 C.F.R. § 20.9(a)(14) (a mobile service that does not meet the definition of a commercial service is only “presumed” to be a private mobile service – a presumption that may be overcome).

⁴⁰ AT&T Comments at 66-67.

⁴¹ *Id.* at 67. Verizon also raises a number of constitutional arguments that would apply equally to wireline broadband providers. *See* Verizon Comments at 67-75 (raising First and Fifth Amendment issues and contravention of the non-delegation doctrine).

Neither wireline nor wireless broadband services should be subject to codified “net neutrality” rules but clearly the worst of all worlds would be the consumer and competitive disparities that would result from a decision to impose such rules on one set of competitors and not the other.

CONCLUSION

As the record in this proceeding makes clear, there continues to be no evidence of any harm that justifies regulating broadband Internet access service at this time. For the foregoing reasons and for the reasons set forth in our previously filed comments, if the Commission were nevertheless to adopt rules in this proceeding, they should apply only to a narrowly defined broadband Internet access service. And, in any event, any such rules should apply to *all* providers of such service, whether wireline or wireless.

Respectfully submitted,

/s/ Rick Chessen

Howard J. Symons
Michael H. Pryor
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004-2608

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Rick Chessen
Neal M. Goldberg
Michael S. Schooler
Steven F. Morris
Counsel for the National Cable &
Telecommunications Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, D.C. 20001-1431