

**Before the
Federal Communications Commission
Washington, DC 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 VERIZON AND VERIZON WIRELESS

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INTRODUCTION AND SUMMARY

The comments in response to the *Further Inquiry*¹ reinforce what was already apparent from the record in this and the companion Title II reclassification proceeding: there is no evidence of a market failure or any other problem that would justify intrusive regulation of wireless broadband services or “managed,” “specialized,” or otherwise differentiated broadband services. To the contrary, both of these types of services are hotbeds of innovation and investment that will lead to increased consumer choices and new services and capabilities. Now would be exactly the wrong time to impose regulations that would forestall this innovation and investment.

Although the same chorus of special interests continues to seek regulation of any and all broadband services, these commenters present no actual evidence of a problem that would justify such regulation. Instead, the facts placed on the record by a wide range of parties – including wireline and wireless broadband providers of all stripes, equipment manufacturers such as Alcatel-Lucent and Qualcomm, developers of software applications and IT services represented by the Association for Competitive Technology, unions, civil rights groups such as the Minority Media and Telecommunications Council, and expert groups such as the Information Technology & Innovation Foundation – unequivocally establish that such regulation is not only unnecessary but would be affirmatively harmful.

In the case of wireless broadband services, consumers are benefiting from a marketplace characterized by intense competition, substantial investment, and rapid innovation – which has resulted in unparalleled choices for services, devices, and applications. And the speeds and capabilities offered to consumers will only increase as providers make billions of dollars in

¹ *Further Inquiry Into Two Under-Developed Issues in the Open Internet Proceeding*, Public Notice, 25 FCC Rcd 12637 (2010) (“*Further Inquiry*”).

investments to roll out 4G services. This is hardly the picture of a marketplace that needs regulation. Indeed, because of the unique technical and operational constraints under which wireless broadband providers operate, regulation would be counterproductive. Even regulatory proponents concede that wireless providers face these constraints, but assert, without analysis, that whatever network management exception the Commission might adopt can address them. Yet imposing heavy-handed regulation and then relying on a vague exception is a recipe for uncertainty that will chill innovation and investment – a price that cannot be justified given the absence of any demonstrated problem that might support regulation in the first place.

As to differentiated services, virtually all commenters – including the groups that seek regulation - agree that such services are at their nascent stages and that, as a result, the Commission could not hope even to define this class of services in any meaningful way. Some regulatory proponents nonetheless urge the Commission to regulate differentiated services based on speculation about harms that might occur sometime in the future. But, far from threatening harm, the emergence of these services will only increase consumer choice and bring a myriad of benefits to consumers, putting them even more firmly in the driver's seat of the marketplace. Providers will continue to offer consumers the option of traditional, best-effort Internet access, but they also should be free to offer free of regulation any other services they develop, leaving consumers to decide for themselves whether to purchase those services in addition to, or instead of, traditional Internet access.

Rather than attempting to restrict wireless broadband or differentiated services, the Commission should focus on promoting informed consumer choice by encouraging all providers throughout the Internet ecosystem to disclose the key terms and characteristics of their services so that consumers themselves can determine what services they want to receive. The

Commission also should continue to work together with Congress, industry, and other stakeholders to develop a narrowly tailored and legally sustainable legislative solution that relies on informed consumer choice and transparency. Doing so will avoid the long obstacle course of statutory authority and constitutional hurdles that the Commission would have to run if it attempted to impose regulation of the sort described in the *Further Inquiry* – obstacles that regulatory proponents do not even begin to address in their comments.

I. THE RECORD MAKES CLEAR THAT REGULATION OF WIRELESS BROADBAND SERVICES IS UNNECESSARY AND WOULD HARM CONSUMERS.

The record demonstrates that, by every measure, wireless broadband services are a resounding success without any market failure or other problem that might justify regulation. Wireless broadband providers are subject to fierce competition, with 76% of the population having a choice of three or more mobile providers.² Moreover, with respect to broadband Internet access, wireless providers are generally the third, fourth, and fifth pipes into a home, and thus unquestionably lack market power. Wireless providers have made billions of dollars in investments – an average of \$22.8 billion per year since 2001 – and are investing billions more in rolling out fourth generation (4G) technologies. The result has been an explosion of innovation and consumer choice, including with respect to both applications and devices that are the focus of the *Further Inquiry*. (See, e.g., CTIA Comments at 12-15; MetroPCS Comments at 31-32; Sprint Comments at 14-15.) And 4G technologies, with their increased capacity and capabilities, will ignite even further innovation, opening the door to exciting and unpredictable new choices for consumers in wireless services, devices, and applications.

² *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407, at 7 (2010).

Consumer choice in the wireless context is already extensive. Consumers can select from among over 630 devices from 32 different manufacturers and tens of thousands of applications that are customized to work with various devices and operating systems. (CTIA Comments at 5-6, 12-15.) Consumers also benefit from the ability to choose among a range of service models – from more open devices, such as the Android-based Droid devices, to more managed options such as the iPhone with Apple-prescreened applications, to more limited devices such as the Amazon Kindle. Moreover, as Verizon has explained, the wireless broadband marketplace is moving toward greater openness, as exemplified by Verizon’s Open Development program, which allows users to attach any wireless device that meets its published technical standards and to use any application on that device. In short, the wireless broadband marketplace embodies the attributes the Commission should want to encourage, and nothing about it suggests a problem that requires regulation, particularly the sweeping types of rules the Commission is apparently contemplating in this proceeding.

The record also makes clear that wireless broadband services are subject to a variety of technical and operational constraints that would make sweeping regulations particularly harmful. First, although wireless providers can and do adopt measures to make use of their existing spectrum more efficiently, they cannot readily add capacity given the dearth of available spectrum and the fact that technology is approaching peak efficiency.³ Thus, network management is essential for managing traffic congestion. Second, the mobility of subscribers makes capacity demand at a given cell site highly variable as the number and mix of subscribers change constantly, sometimes in unpredictable ways. *See* Verizon Comments at 16-17. Third,

³ Reply Comments of Verizon and Verizon Wireless, *Preserving the Open Internet, Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, at 57-58 (Apr. 26, 2010); *see also* MetroPCS Comments at 16-17.

various factors outside of a provider's control, such as RF noise, can lead to interference and other disruptions. Qualcomm Comments at 6. Fourth, unlike desktop computers, wireless devices are integral parts of wireless networks and can themselves cause interference and otherwise affect usability when they are not optimized for use on a specific network. *See* CTIA Comments at 9-11 & attached, Charles Jackson, "Wireless Terminals Are Part of the Network" (Oct.12, 2010). Fifth, there is significant uncertainty about the technical and operational challenges providers will confront – and thus what network management techniques will be necessary – as they roll out 4G services.

Regulatory proponents cannot and do not deny the reality of these challenges. Instead, they assert that they can be dealt with by applying whatever exception for network management the Commission adopts. CDT Comments at 6; DISH Comments at 21-22; Free Press Comments at 24-27; Open Internet Coalition (OIC) Comments at 7-8. But that is backwards. In an environment without any market failure and in which consumers are benefiting from a virtuous cycle of investment, innovation, and increased choice, it makes no sense to impose heavy-handed regulation, even with a vague promise of an exception that might alleviate some of its worst effects. Such an approach inevitably would create significant uncertainty and lead to repeated litigation, as providers would have little guidance as to what practices might or might not fall within that exception. That would be all the more true in today's rapidly evolving environment, where new security threats, the development of new services, and the deployment of 4G service all require new and changing network management practices determined by engineers on a real-time basis.

Regulatory proponents fare no better in their appeals to "regulatory parity." Computer & Communications Industry Association Comments at 10; OIC Comments at 6; Windstream

Comments at 15-18. Such parity may make sense when the services in question are in fact alike in relevant respects. But the constraints wireless broadband providers face as described above are unique to wireless. Wireline providers do not confront the challenges brought on by mobility, the same form of capacity constraints, or radiofrequency interference issues. In any event, to the extent parity is the concern, the more sensible approach, given the growing intermodal competition and lack of demonstrated consumer or competitive harm, would be *less* regulation for *all* forms of broadband, not unnecessary and harmful regulation of wireless broadband.

Although some commenters try to suggest that wireline carriers share these challenges, they are off the mark. Some assert that rural wireline carriers in particular also face capacity constraints. *See* Bright House Networks Comments at 34-35; Windstream Comments at 13-15. But those constraints are not inherent physical limits such as those imposed by spectrum, mobility, interference, and the like. A wireline carrier that begins to confront growth in demand in a location can meet that demand by adding facilities; in many cases, a wireless provider does not have a similar option. And capacity constraints faced by wireline carriers are not made more acute – as in the case of wireless services – by the variability resulting from mobility. Commenters are also wrong in suggesting that wireless broadband providers’ increasing use of WiFi renders them more like wireline providers. *See* Bright House Networks Comments at 32-34; Windstream Comments at 9-11. The fact that a mobile device can also access a WiFi network does not change the reality that a provider has to ensure that the same device also can be used for mobile service and therefore does nothing to alleviate the constraints described above, including the greater need for network management.

Finally, regulation of devices and applications in particular would cause particular harms to consumers. An “any device” rule, for example, would lead to homogenization and lower service quality. *See* Verizon Comments at 22.) Each provider is best situated to determine the technical standards to which a device operating on its network must conform to optimize performance and quality of service and to minimize interference and other harms. Consumers benefit when providers work with device manufacturers to optimize the device for the network, build new features, and find other means to differentiate their offerings. There is no basis for barring such differentiation, particularly given that the marketplace has already developed avenues, such as Verizon’s Open Development program, that allow third parties to develop devices for use on providers’ networks. If consumers prefer homogeneous wireless devices, then developers have the ability to offer such devices to them. Thus, consumers today already get the best of both worlds, and there is no justification for imposing regulatory mandates that would decrease flexibility and consumer choice, particularly given the absence of any problem that needs to be solved.

The same is true with respect to applications, for which again the marketplace has moved toward greater openness and consumer choice. Consumers have a wide and growing range of choices for applications. Using devices with more open models, such as Android phones, consumers can obtain whatever application they want through the Android app store, a provider’s app store, or on the Internet more generally. At the same time, the market has made clear that some consumers prefer a more managed model for applications, such as the Apple app store or a provider’s app store, because they can be comfortable that the applications they download will not create security or other issues and are optimized for the network. *See* Information Technology and Innovation Foundation (ITIF) Comments at 17-18. While

consumers are benefitting from this competitive and dynamic marketplace, including their ability to select and use the apps of their choice, it would be a mistake at this point to preemptively foreclose providers' flexibility to address particular applications that could adversely affect their networks or users. *See Verizon Comments at 32-38; MetroPCS Comments at 33-35.* A mandate requiring providers to permit all applications would harm consumers both by limiting their choices and potentially subjecting them to harm. By contrast, today's diversity of offerings enhances consumer welfare by allowing them to make the choice.

At bottom the record establishes that the wireless broadband marketplace – both generally and specifically with respect to devices and applications – is a success story. There is no reason for the Commission to step in and impose regulatory mandates that would threaten the innovation, investment, and increased consumer choice that has characterized the marketplace in the past and will continue to do so with the rollout of 4G services. That is all the more true given the unique technical and operational circumstances of the wireless broadband marketplace, which would make heavy-handed regulation especially harmful. Instead of taking that counter-productive step, the Commission should continue to allow informed consumer choice and market forces to drive the development of wireless broadband services, devices, and applications.

As explained in our opening comments, if the Commission nonetheless decides that standards are needed notwithstanding the harm that would flow from new requirements in this area (which it should not), it should ensure that providers are subject to a single, common set of standards and that no provider is subject to redundant, and potentially conflicting, standards. Likewise, any such requirements should be limited to the 4G services that will compete most directly with wireline broadband services, rather than requiring providers to reconfigure and retrofit their 3G services for new requirements. For example, the Commission has in place one

set of rules that it adopted for the Upper 700 MHz C-Block, 47 C.F.R. § 27.16, that incorporates the key concepts advocated by proponents of interoperability or certification standards, such as open technical standards and no handset locking.⁴ Therefore, to the extent the Commission decides to adopt any standards, it should either extend these C-Block rules to all providers of 4G wireless service, or if it adopts standards that differ from those rules, it should apply the same standards to all providers and remove the C-Block rules. But under no circumstances should a provider be subject to multiple redundant or differing and potentially conflicting requirements.

II. THE COMMISSION SHOULD ENCOURAGE THE DEVELOPMENT OF DIFFERENTIATED SERVICES SO AS TO INCREASE CONSUMER CHOICE.

As long as consumers have the choice of a traditional, best-effort broadband Internet access service, a broadband provider should be free to offer consumers any other type of service that it wishes, and consumers should be allowed to decide for themselves whether they want to purchase those services in addition to or instead of a provider's traditional Internet access offering. The record unequivocally establishes that managed, specialized, or otherwise differentiated services can meet new demands and increase available choices for consumers. For instance, a differentiated service might provide access to a limited set of web sites or applications aimed at children or some other particularized audience. It might be optimized for certain uses such as gaming or video. It might be focused on a specific subject matter, such as health monitoring or smart grid. The potential list is virtually limitless. Restricting such new services

⁴ Compare Comments of New American Foundation, et al., *Preserving the Open Internet, Broadband Industry Practices*, GN Docket 09-191, WC Docket No. 07-52, at Appendix A, Andrew Afflerbach and Mathew DeHaven, "Any Device and Any Application on Wireless Networks: A Technical Strategy for Evolution," at 26,35 (Jan. 14, 2010) ("NAF Report") with 47 C.F.R. § 27.16(c) (open technical standards); compare NAF Report, at 33-34 with 47 C.F.R. § 27.16(e) (handset locking prohibited).

in favor of one-size-fits-all, best-effort Internet access services would sharply decrease consumer choice and chill innovation. *See* Verizon Comments at 43-51.

Because the potential of differentiated services to benefit consumers and spur additional innovation and competition is clear, the Commission should encourage their development and rely on informed consumer choice to direct the continued evolution of the broadband marketplace. Saddling such services with heavy-handed regulations such as the proposed net neutrality rules or banning some of them altogether, as some of the approaches discussed in the *Further Inquiry* suggest, would have the opposite effect. As the utility Southern Company Services explains, for example, net neutrality regulations could effectively prevent the rollout of smart grid services using the public Internet by precluding the quality of service guarantees such services require. *See* Southern Company Services Comments at 3-6.) Indeed, that will be even more true as broadband networks become increasingly integral to more sensitive uses – such as real-time heart monitoring or managing traffic grids in real-time.⁵ In addition, many of the proposals by regulatory proponents would appear to bar many possible differentiated services that may use the Internet or provide access to certain content available on the Internet, but that are not traditional, open Internet access services. For example, Verizon’s FiOS TV includes “Widgets” that access selected Internet content. A service directed to a particular audience – such as children or seniors – might likewise offer access only to selected sites on the Internet. Yet such services would be inconsistent with a rule that required a service to provide access to all lawful content on the Internet. Thus, if consumers are to benefit from those additional

⁵ *See, e.g.*, ITIF Comments at 12 (“Specialized Services are necessary for applications that require better than best-efforts transport.”); Alcatel-Lucent Comments at 5 (“[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.”).

choices, such services must fall outside the scope of any net neutrality regulations in order to avoid reducing customer choice and harming consumer welfare.

Even regulatory proponents generally *agree* that the Commission should not attempt to define the scope of differentiated services for purposes of regulating them. For example, the Public Interest Commenters concede that “the Commission should not define or classify specialized services in this proceeding.” Comments of Benton Foundation, Center for Media Justice, Consumers Union, Media Access Project (PIC) Comments at 6. Virtually all commenters also acknowledge that differentiated services are in a nascent stage – a fact that would make any attempt to define them for purposes of regulation a hopeless task. The folly of such a course is illustrated by Free Press’s suggestion that the Commission impose “a narrow categorical limit of public interest purposes for specialized services, such as permitting only services that function for telemedicine or public safety.” Free Press Comments at 11. But, of course, telemedicine and public safety are only two of the innumerable types of services that providers might offer and that customers might choose. Any attempt to codify in regulation the types of possible services would inevitably freeze innovation and harm consumers. And it also would raise questions of content-based regulation of differentiated services under the First Amendment insofar as the Commission categorized permissible types of service based on their subject matter.

Despite the general agreement that the Commission should not define a regulatory category of differentiated services – and the broader concession by the Open Internet Coalition that “the Commission should not address the issue of specialized or prioritized services in this proceeding”⁶ – a few commenters nonetheless seek to have the Commission regulate such

⁶ OIC Comments at 5.

services. DISH goes so far as to argue that the Commission should ban broadband providers from offering any service over a “separate or dedicated channel on a broadband provider’s network”⁷ – a prohibition that would deprive consumers of popular existing differentiated services such as video on demand.

Other commenters seek to regulate differentiated services through the backdoor by adopting an overbroad definition of broadband Internet access. Much like the *Further Notice*, they suggest that any new net neutrality rules should apply to any service that “replicates functionality currently [available] over the open Internet,” such as video streaming services. Free Press Comments at 10-11; PIC Comments at 11. But subjecting all services that provided access to some content or functionality on the Internet to all of the regulations that the Commission is considering for traditional Internet access services would effectively eliminate most differentiated services and stifle innovation and customer choice. For example, as noted above, services such as the Widgets incorporated into Verizon’s FiOS TV service access content from endpoints on the Internet. So too would an Internet service optimized to support HD video or gaming, or a simplified Internet service designed to appeal to seniors. Such services by definition involve providing access only to some sites, prioritization or other quality of service measures, and other attributes that might be impermissible under the rules the Commission is contemplating. Thus, defining the services subject to those rules broadly to encompass services that provide even partial access to the Internet or that “replicate[]” its functionality would have the practical effect of barring such differentiated services altogether.

To the extent that the Commission does adopt new requirements that apply to a provider’s traditional broadband Internet access offering, it should clearly define the service to

⁷ DISH Comments at 6, 11-12.

which those rules apply and make sure not to sweep in differentiated services. As AT&T explains, traditional Internet access services should be defined to encompass, at most, only those services that offer open-ended connectivity to “all or substantially all endpoints that have a unique IANA-assigned Internet address that is publicly announced and globally reachable (either directly or through a proxy).” AT&T Comments at 13-16. The Commission should also make clear that all services a provider offers other than its traditional Internet access service are not subject to any net neutrality rules or any other regulation, such as the various approaches discussed in the *Further Inquiry*. Thus, for example, a provider should be able to offer an Internet service that prioritizes streaming of sports and movies as long as a customer also has the choice of obtaining traditional Internet access service (subject to any net neutrality rules the Commission may adopt), even if that prioritized service also offers access to all endpoints on the Internet. That approach will give the consumer more choices and allow the evolution of Internet services to be driven by consumer demand rather than regulatory fiat.

The Commission should also reject suggestions by a few commenters that it impose legacy regulations, such as the *Computer Inquiry* requirements, on differentiated services. See Free Press Comments at 8; PIC Comments at 10. Those obligations were imposed on monopoly wireline telephone companies but not on wireless or cable companies. It would make no sense to reach back and recycle these requirements for purposes of competitive differentiated services. Far from being a monopoly, these services are just emerging and subject to intense cross-platform competition. As the record makes clear, there is no market problem that could possibly justify regulating differentiated services, let alone imposing outdated rules intended for monopoly common carrier telephone service. The only result of such a step would be to stifle incentives to innovate and limit consumer choice.

Ultimately, calls for regulation of differentiated services simply ignore the fundamental reality that there is *no* evidence of any practices involving differentiation that have harmed consumers or competition in any way. That is hardly surprising given that such services are only at their initial stages and just emerging, and that all the “concerns” cited in the *Further Inquiry* are highly conditional and speculative. Given the clear costs of restricting or prohibiting these services, regulation could be justified – if at all – only by a compelling showing that unregulated offerings of these services are causing significant consumer harm. *See* Verizon Comments at 6-7; Time Warner Cable at 8-9; TIA Comments at 8-9. No such evidence exists. Instead, proponents are left to speculate about harm that such services *might* cause. But such speculation falls far short of what is needed to justify the intrusive regulation these proponents advocate.

In point of fact, the speculation is itself wrongheaded. For example, the assertions by some commenters that permitting providers to offer differentiated services free of regulation will cause them to reduce the capacity available for traditional broadband Internet access services gets the economic incentives backwards. As an initial matter, as Verizon has explained, a provider that allocated insufficient capacity for traditional public Internet access would lose customers to competitors and thus the associated revenues that are critical to earning a return on their investment. As in other industries that offer multiple levels of service, providers have incentives to compete on all levels and to ensure high quality.

Further, regulatory proponents gloss over the fact that the ability to develop and offer additional differentiated services is critical to justify continued investment to *expand* capacity, which can then be used both for such services and traditional Internet access. The revenues from traditional Internet access are not sufficient in and of themselves to justify the massive investments needed to deploy fiber or other next-generation networks and to increase capacity.

Rather, the opportunity to compete for additional revenue streams from differentiated services is necessary to support the business case for broadband deployment. In the case of Verizon, for example, the ability to offer FiOS TV and other services was a necessary predicate to justify the deployment of fiber to the home. Of course, the effect of that fiber deployment was also to increase the capacity available for traditional Internet access. Thus, the speculative hypothesis of regulatory proponents that the flexibility to offer differentiated services will lead to decreased capacity for traditional Internet access is contrary to actual experience.

Regulatory proponents are equally wrong in suggesting that the Commission require providers to dedicate or guarantee certain capacity to traditional Internet access services. (PIC Comments at 11; Free Press Comments at 12-14.) As an initial matter, the idea that particular capacity should be allocated to individual services is based on the flawed premise that capacity is inevitably allocated by the provider in some fixed fashion for each service. In fact, a consumer may be able to choose to use his network connection and capacity for a specialized service one moment and then switch to a traditional internet access service the next using the same last-mile capacity. That clearly is more efficient than dedicating some of that capacity to one service since, if that service is not being used at a given time, it will sit idle instead of being available to increase the available capacity for another service that is being used. In any case, the speculative concern that providers will devote insufficient capacity to traditional broadband Internet services after introducing differentiated services is wrong. As Verizon has explained, a provider that took that course would lose customers – and essential revenues – to competitors.

The allocation of capacity among services is a complex task ill-suited for government mandates, which inevitably would lead to substantial inefficiencies in the use of network capacity. Moreover, given that no one even knows what differentiated services will emerge and

how consumers will respond to those additional choices, any restrictions related to capacity would be inherently arbitrary. The better approach is to allow consumers to decide what services they want so that informed consumer choice drives development. Finally, as Verizon has explained, in addition to being bad policy, restrictions on capacity allocation would be unlawful: the Commission lacks authority to tell providers how to allocate capacity on their own networks, and attempting to do so would also raise substantial constitutional concerns. *See Verizon Comments at 65-66, 70-71, 77-78.*

Regulatory proponents also cannot justify their calls for the Commission to bar providers from bundling traditional Internet access service with one or more differentiated services. *See PIC Comments at 10; Free Press Comments at 10.* Such a rule would be enormously disruptive to today's marketplace – after all, bundles of differentiated video services such as FiOS with Internet access are ubiquitous and popular with consumers. Moreover, such a rule would amount to little more than a thinly disguised form of rate regulation. Vonage makes that explicit, calling for a requirement that a provider sell “a broadband [Internet access] service – *and only a broadband service* – from that network operator at a reasonable rate that does not effectively compel the purchase of accompanying bundled services (such as telephone or cable television).” *Vonage Comments at 8 (emphasis in original).* The Commission has no policy justification or legal basis to begin rate regulation of nascent differentiated services.

Instead of heavy-handed regulations that would restrict or even prohibit differentiated services and thereby reduce innovation and customer choice, the Commission should focus on encouraging providers throughout the Internet ecosystem to make available to consumers meaningful information about both their traditional Internet access offerings and the capabilities of any differentiated services they offer. That will enable consumers to make informed choices

about whether they wish to purchase differentiated services in addition to, or instead of, traditional Internet access. By focusing on informed consumer choice – rather than artificial regulatory restrictions that limit differentiation or lock in place particular business or service models – the Commission would maintain the appropriate incentives for continued investment and innovation and better serve consumers’ interests. The goal should be to empower consumers with choices in the modern broadband era, not, through prescriptive government regulation, to cripple or even prohibit innovation and thus trap consumers in a particular model of service preferred by regulators.

III. HEAVYHANDED REGULATION OF WIRELESS OR DIFFERENTIATED SERVICES WOULD BE UNLAWFUL.

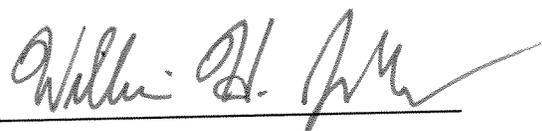
Finally, proponents of intrusive regulation for wireless or differentiated broadband services completely ignore the fundamental legal problems raised by their proposals. As we have explained in our previous filings, the Commission lacks statutory authority to subject wireless broadband services or any other differentiated broadband services to the types of sweeping prescriptive regulations propounded by certain parties here, to impose outdated Title II regulation, or to adopt various prescriptive approaches asked about in the *Further Inquiry*. *See, e.g.,* Verizon Comments at 65-67. Indeed, the statute affirmatively prohibits such regulation, which is (or is tantamount to) common carriage regulation. *Id.* Even more fundamentally, such regulations – with their restrictions on the types of services broadband providers may offer, on the speech in which providers may permissibly engage, and on the manner in which providers may operate and use their networks – would raise serious problems, and ultimately contravene, the First and Fifth Amendments to the Constitution, as well as the non-delegation doctrine. *See id.* at 67-79. The proponents of regulation provide no meaningful response to these fundamental legal and constitutional problems because there is none. Accordingly, in addition to being

unwise and counterproductive as a policy matter, the types of regulation being considered in this proceeding, including the various approaches on which the Commission sought comment in the *Further Inquiry*, would be unlawful.

CONCLUSION

In the case of both wireless broadband services and other differentiated broadband services, the Commission should continue to allow informed consumer choice to drive the continued development of the broadband services, and the Commission should reject any policies that would limit consumer choice or restrict the resulting evolution of broadband.

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