

**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 T-MOBILE USA, INC.**

While T-Mobile USA, Inc. (“T-Mobile”) has already addressed many of the issues discussed in the comments filed regarding the Federal Communications Commission’s (“Commission’s”) *Public Notice*<sup>1</sup> in this proceeding,<sup>2</sup> T-Mobile submits these reply comments to rebut several discrete points and new proposals. The wireless device and application markets are flourishing and new “open platform” regulations are not needed; proposed new broadband labeling requirements would be unworkable and do more harm than good; and, the Commission should not regulate nascent wireless specialized services. T-Mobile urges the Commission to tread lightly in this area and recognize that any decisions shifting away from long-standing deregulatory policies could also have a significant impact on the global Internet marketplace.<sup>3</sup>

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<sup>1</sup> *Further Notice of Inquiry into Two Under-Developed Issues in the Open Internet Proceeding*, GN Docket No. 09-191, Public Notice, DA 10-1667 (rel. Sept. 1, 2010) (“*Public Notice*”). Unless otherwise noted, filings cited herein were submitted in GN Docket No. 09-191. In addition, citations labeled as “Open Internet Comments” and “Open Internet Reply Comments” were submitted in response to the Commission’s Notice of Proposed Rulemaking in this proceeding. See *Preserving the Open Internet, Broadband Industry Practices*, Notice of Proposed Rulemaking, 24 FCC Rcd 13064 (2009) (“*NPRM*”).

<sup>2</sup> See, e.g., T-Mobile Comments; T-Mobile *Ex Parte* filing (Sept. 30, 2010) (“T-Mobile September 30 *Ex Parte*”); T-Mobile *Ex Parte* filing (July 16, 2010); T-Mobile Open Internet Reply Comments; T-Mobile Open Internet Comments.

<sup>3</sup> See CTIA Open Internet Comments at 30-31 (noting the Commission’s role as a “global leader in telecommunications policy” and citing the statement of Philip L. Verveer, U.S. Coordinator for International Communications and Information Policy, that “[i]n some countries [the Commission’s proposed regulations are] being interpreted as an initiative by the United States to regulate the Internet. And we are concerned that in some countries it may be used as a justification for blocking access for

## I. COMMENTERS' NEW SUGGESTIONS SUFFER FROM THE SAME FLAWS AS PREVIOUS SUGGESTIONS

In recent comments, net neutrality advocates once again predict a “parade of horrors” to justify their requests for new restrictions on wireless providers. In these new requests, they generally rehash the same arguments, with the same erroneous assumptions and predictions that have been refuted by T-Mobile and others. These new requests should also be rejected.

*The Commission Should Reject Calls to Mandate Severing of Devices from Service.* The “Public Interest Commenters” encourage the Commission to “consider adopting requirements that would impose separation between the purchase of wireless service and purchase of a mobile device.”<sup>4</sup> Such requirements are unnecessary because T-Mobile and other wireless providers already allow consumers to purchase “stand-alone” broadband service (*i.e.*, independent of any device).<sup>5</sup> By eliminating service options that include bundled devices, the proposal would needlessly reduce competitive consumer choices and possibly increase consumer costs.

The Public Interest Commenters also overlook the extensive consumer benefits stemming from wireless service providers’ ability to offer service and devices together. As Sprint notes, after the Commission allowed cellular providers to bundle devices and service in 1992, prices for wireless service substantially decreased and many new services and features were made available to consumers.<sup>6</sup> Consequently, mobile subscribership skyrocketed and average monthly bills

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purposes of preventing unwelcome political, social, or cultural information from being disseminated to their citizens.”); *see also* GSM Association Comments at 6, 8 (same).

<sup>4</sup> Comments of Public Interest Commenters at 15 (“Public Interest Comments”).

<sup>5</sup> T-Mobile allows consumers to “bring their own device” as long as it is compatible with T-Mobile’s network, does not lock unsubsidized devices, and allows subscribers to unlock subsidized handsets after only 40-60 days, depending on the applicable service plan. *See* T-Mobile Comments at 13.

<sup>6</sup> *See* Sprint Nextel Comments at 24-25.

declined.<sup>7</sup> There is no basis for the Commission to reverse course now, especially when such restrictions would be based entirely on unsubstantiated speculation.<sup>8</sup>

*Limiting the Flexibility of Service Providers to Congestion Prevention Measures Only Is Harmful to Consumers and Networks.* The Open Internet Coalition erroneously suggests that the only flexibility wireless providers need to adequately protect their networks is the flexibility to avoid congestion.<sup>9</sup> In reality, wireless providers also need flexibility for a host of other legitimate reasons, including protecting against network security threats and unforeseen vulnerabilities; network integrity, “noise” concerns, and other technical challenges; consumer privacy concerns; and unexpected usage patterns that degrade service irrespective of the bandwidth used.<sup>10</sup> If left unaddressed, these current and emerging network challenges can harm consumers and substantially degrade service quality.

*The Commission Should Not Impose Mandatory Network Interface Rules.* The Public Interest Commenters also request that the Commission create “a standard interface for mobile networks” (analogous to a phone jack) and impose “interoperability standards.”<sup>11</sup> This proposal suffers from the same flaws – and is as equally untenable – as prior proposals to base “any device” access on the establishment of wireless industry interoperability standards. A standards-

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<sup>7</sup> See *id.* at 24 (citing Fourteenth Wireless Competition Report, WT Docket No. 09-66, FCC 10-81, Table C-1 (May 20, 2010)).

<sup>8</sup> See *id.* at 24-25.

<sup>9</sup> Open Internet Coalition Comments at 8-9.

<sup>10</sup> See, e.g., T-Mobile Comments at 14-17; AT&T Comments at 50-52. Consistent with the need for active network management to protect consumers and ensure the highest quality of innovative wireless broadband services, T-Mobile has established procedures for “short codes” that are transmitted across its network. Contrary to accusations from the Mobile Internet Content Coalition (“MICC”), however, T-Mobile does not engage in content-based blocking or impose additional fees on content provided by aggregators. See Mobile Internet Content Coalition Comments at 8. T-Mobile previously addressed MICC’s erroneous misrepresentations in detail in this proceeding. See T-Mobile September 30 *Ex Parte*.

<sup>11</sup> Public Interest Comments at 15-16.

based approach alone cannot adequately account for the unique technical and operational attributes of wireless networks that make them more or less compatible with certain devices or applications.<sup>12</sup> Nor would a standards-based approach be flexible or robust enough to incorporate all of the service features constantly introduced today that reflect competitive carrier choices and consumer needs.<sup>13</sup> Under a uniform network interface approach (assuming one could be developed), consumers would be left with the “lowest common denominator” selection of devices, applications, content, and service features.<sup>14</sup> The Commission should reject this proposal.

## **II. PRESCRIPTIVE, ONEROUS BROADBAND LABELING REQUIREMENTS WOULD BE UNWORKABLE AND DO MORE HARM THAN GOOD**

T-Mobile has long been an industry innovator in and proponent of providing consumers with the information they need to make informed decisions about their mobile service.<sup>15</sup> However, onerous requirements such as those in New America Foundation’s (“NAF’s”) “Broadband Truth-in-Labeling” proposal, endorsed by the Public Interest Commenters,<sup>16</sup> are unworkable for wireless broadband networks and would be of little practical use. NAF would

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<sup>12</sup> See T-Mobile Comments at 18.

<sup>13</sup> See *id.*

<sup>14</sup> Moreover, the Public Interest Commenters’ attempt to compare their proposal to the Commission’s *Carterfone* policies is entirely misguided. Whereas the Commission created the *Carterfone* regime to spur innovation and competition in a monopoly environment, the Public Interest Commenters’ proposal would thwart existing innovation and competition. Because consumers hold appreciable leverage over wireless providers, the providers already have significant incentives to make their networks as open as possible and to avoid needlessly or arbitrarily denying access to mobile devices or applications. See, e.g., T-Mobile Reply Comments, GN Docket No. 10-127 (Aug. 12, 2010) at 13-14. Consumers also have relationships with numerous members of the wireless ecosystem (e.g., service providers, device manufacturers, content providers), further increasing the pressure on service providers to be highly responsive to consumer demands. See *id.* at 14; CTIA Comments, GN Docket No. 10-127 (July 15, 2010) at 17.

<sup>15</sup> See T-Mobile Comments at 3-4.

<sup>16</sup> See Public Interest Comments at 12.

have network operators provide “minimum assurances” on a variety of metrics.<sup>17</sup> Any drop below those minimums would be “an important service outage” entitling customers to refunds.<sup>18</sup>

Even if such a scheme were workable for wireline networks, it would be inappropriate for wireless networks, where performance depends on multiple factors beyond the control of the network operator. The actual data transfer rates that wireless consumers experience vary considerably based on browser capabilities,<sup>19</sup> the number of users in a sector, terrain, weather, distance from a base station, and other factors impacting RF propagation.<sup>20</sup> Customers attempting to use their wireless devices from the basement of a building should not be entitled to a refund if they cannot obtain the same performance as at street level. The NAF proposal would effectively become a “worst case scenario” disclosure requirement. To protect themselves from liability, wireless providers would be compelled to list such low minimum levels – reflecting performance under the most adverse conditions – that the information would become meaningless for consumers. Also, providers would have no practical means of verifying customer complaints,<sup>21</sup> and parties may disagree regarding the measuring methodologies used.<sup>22</sup>

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<sup>17</sup> See New America Foundation (“NAF”), “Broadband Truth-in Labeling,” *available at* [http://www.newamerica.net/publications/policy/broadband\\_truth\\_in\\_labeling](http://www.newamerica.net/publications/policy/broadband_truth_in_labeling). The proposal calls for guaranteed minimums for network speed, minimum uptime, and maximum round-trip latency.

<sup>18</sup> *Id.*

<sup>19</sup> Requiring wireless providers to guarantee certain performance levels when a customer brings her own device, which may not be optimized for the provider’s network, would be especially unreasonable.

<sup>20</sup> See T-Mobile Comments, CG Docket No. 09-158 (July 8, 2010) at 4 (“T-Mobile Broadband Measurement Comments”).

<sup>21</sup> Even if it were technically possible, it would not be economically feasible to create a system whereby customer service representatives had access to history logs of customer locations and whether there were any network performance issues in a given sector for the reported time period.

<sup>22</sup> See T-Mobile Broadband Measurement Comments at 2 (noting challenges in taking measurements in the mobile broadband context, especially given the nascent state of speed measuring techniques for next generation technologies).

NAF's proposal would also require wireless providers to "list all traffic management techniques."<sup>23</sup> This requirement would prevent wireless providers from deploying real-time fixes to unexpected situations because they would first have to notify customers before responding.<sup>24</sup> Such detailed disclosures would also endanger network security by providing a roadmap to hackers and others intent on harming or exploiting the network.<sup>25</sup> In short, NAF's proposal is seriously flawed, especially if applied to wireless networks, and should be rejected.

### **III. THE COMMISSION SHOULD NOT REGULATE WIRELESS SPECIALIZED SERVICES**

T-Mobile agrees with commenters that wireless specialized services should be allowed to flourish without regulation.<sup>26</sup> Although the market for wireless specialized services is extremely nascent, all of the services mentioned in the *NPRM* as capable of being characterized as specialized services (telemedicine, smart grid and eLearning)<sup>27</sup> are already, or will soon likely be, provided extensively over wireless networks.<sup>28</sup> Moreover, numerous other innovative services, including machine-to-machine ("M2M"), public safety and homeland security, smart transportation, advanced telematics, and many others, also fall into the specialized services category. Many specialized services are essential to achieving important social policy goals

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<sup>23</sup> See NAF "Broadband Truth-in Labeling," *supra* at n.17.

<sup>24</sup> See T-Mobile Comments at 7.

<sup>25</sup> *Id.* at 9.

<sup>26</sup> See, e.g., QUALCOMM Comments at 3 (stating that the Commission "should not burden specialized services with regulation" and should instead "allow specialized wireless broadband services and applications to serve as incubators of innovation for potential mass market deployment"); Cricket Comments at 2-3 ("to encourage continued innovation of services, pricing and devices, the Commission should not impose restrictive mandates on wireless platforms and specialized services"); CTIA Comments at 16-18 (discussing the "pitfalls" of regulating wireless specialized services).

<sup>27</sup> See *NPRM* at ¶ 150.

<sup>28</sup> See also AT&T Open Internet Reply Comments at 9 (stating that "the market is . . . exploding with new [s]mart [g]rid, healthcare, emergency-response, and a variety of other services that should qualify as 'managed' services").

delineated in the National Broadband Plan (“NBP”), and imposing limits on their use would stifle innovation and the obvious public benefits from the services.<sup>29</sup>

Concerns of some commenters that specialized services could be offered in a manner that somehow degrades “best efforts” broadband Internet access services<sup>30</sup> are nothing more than mere conjecture. No problems have occurred thus far that provide a basis for regulation or suggest that the provision of wireless specialized services will be anti-competitive or otherwise harmful to the public interest.<sup>31</sup> Moreover, these concerns “fundamentally misapprehend” the role of specialized services;<sup>32</sup> these services are “an asset, not a threat, to the well being of the Internet,” and they facilitate continued investment in and upgrades to broadband networks (including capacity upgrades for “traditional” Internet access services).<sup>33</sup> In any event, the competitive marketplace and consumer demand will ensure that wireless providers do not allow specialized services to degrade their popular Internet access service offerings.<sup>34</sup>

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<sup>29</sup> See, e.g., T-Mobile Reply Comments, GN Docket No. 10-127, 14 (Aug. 12, 2010) (noting the Commission’s “ambitious agenda” for ensuring that broadband provides wide-ranging benefits for health care, education, energy and the environment, disabilities access, civic engagement, public safety and other important social and economic sectors); QUALCOMM Comments at 11 (stating that “by fostering a wide variety of mobile broadband data options, the FCC will help achieve the core goals of the Plan”).

<sup>30</sup> See Comments of the Center for Democracy & Technology at 1-2 (“CDT Comments”); Public Interest Comments at 11; Free Press Comments at 9-10; DISH Network Comments at 5-10.

<sup>31</sup> See, e.g., MetroPCS Comments at 37-38 (noting that the *Public Notice* points only to completely ephemeral harms from specialized services and fails to identify a single example of specialized services being used for anti-competitive purposes); Ericsson Comments at 6 (“Speculation that anticompetitive actions may occur, without any evidence of significant harm due to such acts in reality, is no basis for regulation.”); Clearwire Comments at 13 (stating that absent “anticompetitive intent,” the Commission should not interfere with arms-length contractual arrangements among carriers and their customers); Cricket Comments at 12-13; Comments of Verizon and Verizon Wireless at 52-55 (“Verizon Comments”); Alcatel-Lucent Comments at 6.

<sup>32</sup> AT&T Comments at 36-37.

<sup>33</sup> See, e.g., Alcatel-Lucent Comments at 4-5 (stating that providers will use revenues from specialized services to increase network investment that will benefit all classes of service and that capacity for best efforts service will also be increased as many high-bandwidth applications migrate to specialized services).

<sup>34</sup> See, e.g., Verizon Comments at 52-55.

Furthermore, other new proposals from some commenters, including guaranteed capacity level thresholds, benchmarks, and safe harbors for wireless broadband Internet access,<sup>35</sup> are technically and economically infeasible and would thwart the achievement of the Commission's NBP goals by crowding out efficient, innovative uses of technology.<sup>36</sup> First, and as Chairman Genachowski has recently reaffirmed, wireless providers face practical limits on their ability to increase network capacity in the absence of additional licensed spectrum.<sup>37</sup> Second, notwithstanding this limitation, wireless providers already have substantial incentives to continue devoting sufficient capacity to broadband Internet access services because the best efforts broadband platform is where new revenue-enhancing applications and services are developed and launched.<sup>38</sup> Moreover, if wireless broadband providers do not maintain sufficient capacity for best efforts service, they risk losing not only their customers' wireless Internet business to competitors, but their customers' wireless voice business as well. Imposing new regulations on specialized services would also hinder wireless providers' ability to meet consumer demand for differentiated and higher-quality services (including healthcare and smart grid applications), and to engage in the network management activities necessary to ensure adequate security,

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<sup>35</sup> See Computer & Communications Industry Association Comments at 8-9; CDT Comments at 3-5; Public Interest Comments at 11; DISH Network Comments at 14-16.

<sup>36</sup> See Clearwire Comments at 12 (stating that guaranteed capacity for broadband Internet access services would "turn the debate on its head by setting QoS-like criteria for the offering of 'best efforts' broadband Internet access service").

<sup>37</sup> See "Unleashing America's Invisible Infrastructure," Prepared Remarks of Chairman Julius Genachowski, Commission Spectrum Summit (Oct. 21, 2010) at 3-4; "America's Mobile Broadband Future," Prepared Remarks of Chairman Julius Genachowski, International CTIA Wireless I.T. & Entertainment (Oct. 7, 2009) at 4-5.

<sup>38</sup> See Alcatel-Lucent Comments at 4-5 ("Essentially, the 'next best thing' is going to develop via the broadband Internet access service channel, whereas the Specialized Service channel will work with more established application developers that can enter into a different business model.").

efficiency, and reliability, among other consumer benefits.<sup>39</sup> Additional capital will be needed to finance the network and service enhancements required to deliver specialized services, and this capital will not be forthcoming if the power to develop, market, and operate specialized services is tightly constrained by government.<sup>40</sup>

For the reasons discussed above, wireless specialized services should not be subject to network neutrality regulation. And even if the Commission goes forward and imposes new regulations on the provision of wireless broadband Internet access, it should clarify in the same decision that specialized services are exempted. Contrary to the suggestion of some commenters,<sup>41</sup> there is no need to launch a new proceeding and yet another comment round before reaching a conclusion on an exemption. In addition to the questions in the *Public Notice*, last year's *NPRM* sought extensive comment on the subject and even signaled that "it may be inappropriate to apply the rules proposed here to managed or specialized services."<sup>42</sup> Deferring action would chill the development of specialized services, as providers wait for the Commission's decision on the regulatory regime that will ultimately apply to such services.

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<sup>39</sup> See, e.g., Clearwire Comments at 12-13 (noting that wireless service providers "would be hobbled by a regime that inhibits their ability to engage in reasonable network management techniques simply because they have chosen to offer a mix of specialized and broadband Internet access services"); see also Verizon Comments at 63-65 (stating "[t]he allocation of capacity between and among services is a complex task best left to network operators who have to respond to consumer demand"); T-Mobile Comments at 14-17 (discussing need for wireless service providers to ensure adequate security, efficiency, and reliability); T-Mobile Open Internet Reply Comments at 16-23 (addressing need wireless for service providers to manage their networks); T-Mobile Open Internet Comments at 15-32 (same). Moreover, wireless providers would essentially be "punished" for offering a mix of innovative specialized services and broadband Internet access services rather than offering only access services.

<sup>40</sup> See M. Mandel, "The Coming Communications Boom?: Jobs, Innovation and Countercyclical Regulatory Policy," at 5-7 (Progressive Policy Institute, Jul. 2010). As economist Michael Mandel warns, "the incipient communications boom may be potentially undermined by a threat of aggressive federal rulemaking." *Id.* at 7.

<sup>41</sup> See Open Internet Coalition Comments at 5; Public Interest Comments at 9.

<sup>42</sup> *NPRM* at ¶ 149; see also *id.* at ¶ 151 (specifically seeking comment on the appropriate definition of specialized services).

Lastly, in creating an exemption, T-Mobile agrees with Clearwire that the Commission should adopt a definition of specialized services that is “adaptable” enough to encompass future services.<sup>43</sup> As the National Organizations explain, because it is impossible to know what types of specialized services may be needed to support future welfare-enhancing applications, the Commission would threaten innovation and investment if it were to artificially limit the definition of specialized services based on its knowledge of currently available technologies.<sup>44</sup> For this reason, Free Press’ recommendation to limit specialized services to telemedicine and public safety services should be rejected.<sup>45</sup>

#### IV. CONCLUSION

For all of the forgoing reasons, T-Mobile respectfully requests that the Commission refrain from regulating wireless broadband Internet access or specialized services at this time.

Respectfully submitted,

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<sup>43</sup> Clearwire Comments at 10.

<sup>44</sup> National Organizations Comments at ii; *see also id.* at 3-4 (strongly urging the Commission not to limit broadband providers to a pre-determined set of specialized service offerings); Alcatel-Lucent Comments at 9 (warning against establishing “a finite list of acceptable Specialized Services that may prove obsolete in a short period of time”).

<sup>45</sup> Free Press Comments at 11.