October 12, 2010

Chairman Julius Genachowski
Commissioner Meredith Attwell Baker
Commissioner Mignon Clyburn
Commissioner Michael J. Copps
Commissioner Robert M. McDowell

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: GN Docket No. 09-191
WC Docket No. 07-52

Dear Chairman Genachowski and Commissioners:

In response to the Commission's request for further inquiry in the matter of the Open Internet proceeding, we, the undersigned wish to share our thoughts regarding the relationship between open Internet protections and managed services and the application of open Internet rules to mobile wireless Internet access services.

Our organizations support the Commission's efforts to resolve these complex questions, and we appreciate the opportunity to share our unique perspective – a viewpoint that we feel has been somewhat overlooked in the discussions to date. As organizations representing women's economic interests, we have a vested interest in helping the Commission clarify these important issues and find common ground because we believe that resolving these issues will allow the Commission and other stakeholders, including the individuals we represent, to focus on broadband deployment, increased innovation and private sector development. More broadly, we also recognize that the outcome of both this inquiry and the broader Open Internet proceeding will have a direct impact on the future of broadband, small business growth, and America's overall economic recovery.

Women and women business owners, in particular, are a powerful economic force. In 2008, women accounted for more nearly forty-seven percent of the labor force in the United States and women-owned business contributed to more than $1 trillion in estimated labor income.[1]

[1] National Women's Business Council Fact Sheet

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Additionally, as of 2008, there were an estimated 1.9 million privately-held firms that were majority-owned by women of color, making up more than a quarter of all majority women-owned businesses.[2]

As one of the fastest growing business sectors in the U.S., it is no surprise that women-owned businesses are showing increase awareness about broadband technology.
According to a recent survey by one of our organizations, WIPP, eighty-seven percent of surveyed women business owners monitor technology developments and innovations in order to incorporate them into their companies. The same survey found that two-thirds of survey respondents believe that network providers should be able to manage their own network traffic.[3]

Thus, it is our shared belief that the best overall approach to the Commission's questions outlined in the Public Notice and the broader Open Internet discussion is one that is in accordance with the light-touch regulatory framework that allowed broadband technology to become an example of innovative excellence and the future of our digital society.

I. A Brief Overview

The issue of how Internet service providers manage data traffic on their networks has been a sensitive subject and a source of contention since the early 2000s. However, as the Internet has evolved to become necessary facet of our everyday lives, the debate surrounding network management has become increasingly prominent. And while the network neutrality debate has, at times, been contentious, recent developments suggest that stakeholders have begun to reach a general consensus concerning certain aspects of the network management debate.[4]

However, as the Commission acknowledged in its Public Notice, although the discussion has "narrowed disagreement on many elements of the framework in the NPRM," there are still two complex issues "that merit further inquiry" – specialized services and the application of open Internet principles to mobile wireless platforms.[5]

II. Specialized Services

Regarding the question of specialized services, the Commission identifies three general areas of concern:

1. Bypassing Open Internet Protections
2. Supplanting the Open Internet
3. Anti-competitive Conduct

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http://www.nwbc.gov/idc/groups/public/documents/nwbc/wbo_firms_factsheet2010.pdf

[2] Center for Women's Business Research (CWBR). *Biennial Update 2008*: *Businesses Owned by Women in the United States*. 2008.

[3] Women Impacting Public Policy Comments at 1.

[4] Gruenwald, Juliana. "Groups Want Closure On Net Neutrality Debate." *Tech Daily Dose.* NationalJournal.com. 09 Sept. 2010. Web. 29 Sept. 2010. http://techdailydose.nationaljournal.com/2010/09/groups-want-closure-on-net-neu.php

[5] *Preserving the Open Internet*; *Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Public Notice, pg. 1-2.

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In general, the underlying issue with these three areas seems to be a fear that specialized services and accompanying paid prioritization will undermine investment and innovation in traditional broadband Internet access service. However, we deem that fear to be unsubstantiated.

As a number of groups have outlined in various filings in the Commission's Open Internet docket, many network service providers have been offering various enhanced service options for a number of years without any demonstrated harm to consumers, other businesses or organizations.[6] In fact, specialized services are frequently utilized by women- and minority-owned businesses and can assist in delivering services of social benefit.

For example, telemedicine and remote health monitoring applications use specialized services and traffic prioritization because the activities involve sensitive patient data, which necessitates timely delivery on a secure network. Similarly, distance learning programs require Internet access services that deliver video, voice and data in real-time.

Other areas that benefit from specialized services and traffic prioritization include: energy efficiency efforts and smart grid applications; entertainment and gaming offerings; and telecommuting opportunities that help working mothers maintain a work-life balance and enable businesses owners and employees to stay connected while on the road. These instances are just a sampling of the many benefits resulting from specialized services.

Furthermore, while paid prioritization for specialized services is not a recent invention, it is a continually evolving aspect of the broadband ecosystem, and we fear that if the Commission were to adopt certain policy approaches as outlined in the Public Notice[7], it could result in a stifling impact on broadband innovation, which would be extremely detrimental to small business owners and consumers alike.

We do agree, however, with the Commission's position that "sunlight is the best disinfectant," and we do believe that the best policy approach to these concerns is one that puts the power in the hands of customers – which can be achieved through consumer-oriented transparency efforts.[8]

Specifically, this approach would be most similar to the actions outlined in the Disclosure section of the Commission's Public Notice.[9] An approach based on consumer-oriented transparency principles is the preferable approach to these concerns because it balances consumer projections with the flexibility needed for the developing broadband technology sector. Moreover, we believe that this approach will ensure that private investors continue to have incentives to invest in broadband technology and deploy innovative specialized services like the examples mentioned above.

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[6] See, e.g., Reply Comment of the National Organization at 8-11, Preserving the Open Internet, GN Docket No. 09-191. 26 April 2010.
http://fjallfoss.fcc.gov/ecfs/document/view?id=7020651544

[7] *Preserving the Open Internet*; *Broadband Industry Practices*, Public Notice at 3-4.

[8] Open Internet NPRM at 118.

[9] *Preserving the Open Internet*; *Broadband Industry Practices*, Public Notice at 3.

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Our organizations would also like to note that if the Commission chooses to adopt the transparency policy approach, we believe the agency should to apply this approach to both service providers and content and application providers because consumers will benefit if everyone is required to follow the same rules of the road.[10]

III. Application of Open Internet Principles to Mobile Wireless Platforms

As the Commission aptly described in the National Broadband Plan, "mobile broadband is the next great challenge and opportunity for the United States."[11] Our organizations agree, and it is why we believe that the Commission should continue to exercise regulatory restraint in this matter and revisit the question at a later date.

Our rationale behind this opinion is threefold.

1. The wireless sector is widely-acknowledged to be a model of innovative success.
2. Wireless networks are technically different than wired broadband networks.
3. The sector is in the midst of a transition to next-generation technologies.

First, we support a viewpoint, shared by many, that the wireless sector is model of American technological innovation and that this innovation is fueled by dynamic competition and driven by consumer demand.[12] This innovation is evident in all sectors of the mobile ecosystem, but, perhaps, the best evidence of this innovation is seen in how individuals use the technology.

In only twenty years, wireless technology evolved from a niche service to a technology utilized by more than 285 million American consumers.[13] Today, Americans can use mobile technology to do almost anything including - make calls, send texts, check email, stream movies, monitor heart rates, get directions, and countless other activities and applications. These sundry capabilities are especially appealing to women in business and working moms because it helps them better manage their work-life balance while on-the-go.

As a study released earlier this year by the Pew Internet and American Life Project found, "Nearly half of all adults (47%) go online with a laptop using a Wi-Fi connection or mobile broadband card" and "40% of adults use the internet, email or instant messaging on a mobile phone."[14] One of the most exciting aspects of this innovation is that these advances in mobile services are not resulting in dramatic increases in cost. In fact, "consumers are getting more wireless services (such as more voice minutes of use) for lower costs than they were 10 years," according to a recent United States Government Accountability Office report.[15]

Our organizations believe that much of this aforementioned innovation is partially attributable to a light-touch regulatory framework that refrained from onerous government intervention, which

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[10] Verizon & Google Comments at 3.
[11] FCC, *Connecting America: The National Broadband Plan*. March 2010
[12] *See, e.g.*, Comments of CTIA—The Wireless Association, WT Docket No. 10-133 (July 30, 2010).
[13] CTIA – The Wireless Association, U.S. Wireless Quick Facts. 2010 http://www.ctia.org/media/industry_info/index.cfm/AID/10323
[14] Pew Internet & American Life Project. *Mobile Access 2010*. 7 July 2010.
[15] United States Government Accountability Office at 28.

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allowed and enabled businesses to respond to consumer demands. We are, thus, concerned that a shift to a heavy regulatory environment for wireless will impose additional regulations that will adversely impact small businesses and derail future innovation.

Second, as the Commission recognizes in the Open Internet NPRM, that while wired and wireless broadband share many of the same consumer benefits, there a number of fundamental differences and "These differences may require differences in how, to what extent, and when principles apply." [16]

A report issued earlier this year by Peter Rysavy, a wireless engineering expert, explores some of these fundamental differences and details why certain aspects of the Open Internet principles could be detrimental to future wireless innovation.[17] As Rysavy points out in his paper, wireless networks have significant capacity constraints and "current broadband adoption trends combined with trends in mobile computing point to potential exhaustion of this capacity in the relatively near future." His assessment from an engineering and operational perspective concludes that "the imposition of the propose network neutrality framework is fraught with systematic uncertainty."

This uncertainty could lead to unintended consequences and difficulties for consumers and businesses as well as increased costs for services, which would be extremely detrimental to underserved areas, minority consumers and efforts to bridge the digital divide. As pointed out in the Comments of National Organizations, "minorities and low-income groups would be impacted disproportionately by an increase in the cost of broadband. Owing to the deep and persistent racial wealth gap and to racial disparities in income and unemployment status, these groups are particularly sensitive to price changes." Therefore, we wish to urge the Commission to carefully consider any policies that could result in increased costs in broadband services, both wired and wireless.

Third, our final concern is one that is also acknowledged by the Commission in the National Broadband Plan – namely, mobile technology's transition to next-generation networks. As the Commission points out in the Plan, many operators have announced plans to upgrade networks to provide 4G services.[18] This transition is expected to result in a better mobile broadband experience for consumers. However, it is unknown how consumers will respond to these next-generation networks and how much increased demands will be placed on these networks.

We believe that because this transition is currently in progress and given the fact that the application of Open Internet principles to wireless broadband access platforms would result in drastic changes to network management practices, the most prudent course of action would be to revisit these questions after the transition to next-generation networks is complete.

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[16] Open Internet NPRM at para. 13.

[17] Rysavy, Peter. *Net Neutrality Regulatory Proposals: Operational and Engineering Implications for Wireless Networks and the Consumers They Serve*. 2010.

[18] FCC, *Connecting America: The National Broadband Plan*. March 2010

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IV. Conclusion

The evolution of broadband technology is one of the greatest technological advancements of the twentieth century and as the Commission recognized in the National Broadband Plan expanding access to this transformative technology is and will be "a great infrastructure challenge of the early 21st century."[19]

As the Commission moves forward with these complex questions and attempts to address this great infrastructure challenge, we hope the agency will take note of the viewpoints, concerns, and recommendations outlined in the filing. Like the Commission, our organizations share the desire to "promote innovation, investment, competition, and free expression, and to protect and empower consumers" – we just don't believe that much of the regulation proposed furthers these aforementioned goals.

We thank the Commission for its consideration and eagerly await a resolution to this debate – hopefully, it will be one that allows for complete participation in our nation's broadband future.

Respectfully submitted,

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[19] National Broadband Plan, Executive Summary, p.xi

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