

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of)	
)	
)	GN Docket No. 14-28
)	
Open Internet Remand)	

COMMENTS OF VERIZON AND VERIZON WIRELESS

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I. Introduction and Summary

The Internet is flourishing and continues to provide a robust and dynamic platform for competition and innovation. No problems threatening competition or consumers’ enjoyment of the Open Internet have emerged. To the contrary, the market and industry have moved on with the continued development of new services and capabilities, and there is little call for regulators to intervene in this working marketplace. At the same time, Verizon and other major players have made clear that they support an Open Internet and have publicly committed to ensuring that customers can access any lawful content, services, and applications, regardless of their source.

Under these circumstances, rather than once again attempting to adopt prescriptive rules aimed at preventing theoretical problems, the Commission should instead rely primarily on consumer choice, competition, transparency, and effective multi-stakeholder processes to guide the development of the Internet. Prescriptive rules are particularly ill-suited for a dynamic marketplace like the Internet and would likely be outdated and counter-productive as soon as they are adopted. That is particularly the case with respect to wireless broadband services, where providers continue to make billions of dollars in investments, innovation is occurring rapidly,

¹ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. (collectively, “Verizon”).

competition is heated, and flexibility in network management is critical to providing high quality service to consumers.

Rather than pursuing an unnecessary and distracting prescriptive regulatory path that will discourage the innovation and investment that is prevalent in all parts of the Internet ecosystem, the Commission should wait to exercise its authority over broadband services as needed on a case-by-case basis to address particular practices that demonstrably harm consumers and competition. In the meantime, the Commission should focus on what it can do to further encourage broadband deployment and development of new services, such as facilitating the transition to IP-based networks and bringing more spectrum to market. Such actions will do far more to benefit consumers than another prolonged struggle over net neutrality rules.

II. Verizon Supports the Open Internet

As Chairman Wheeler observed in opening this docket, “[m]ajor Internet service providers have indicated that they will continue to honor the safeguards articulated in the 2010 Open Internet Order,” and those commitments already “provide protection for the Open Internet.”² Indeed, these very commitments demonstrate the absence of any need for new prescriptive net neutrality rules at this time.

Verizon and other broadband Internet access providers have committed publicly to an Open Internet. As Verizon has explained to its customers, “[o]n any of our Internet access services, wireline or wireless, you and other users of our service can access and use the legal content, applications, and services of your choice, regardless of their source. You can also

² Statement by FCC Chairman Thomas Wheeler on the FCC’s Open Internet Rules (Feb. 19, 2014), *available at* <http://www.fcc.gov/document/statement-fcc-chairman-tom-wheeler-fccs-open-internet-rules>.

connect your choice of technically compatible devices.”³ Moreover, Verizon has pledged to “continue to offer you high quality and reliable Open Internet access services over both our wireline and wireless networks, even as we continue to innovate and create new services to meet your needs.” *Id.* Verizon has taken concrete actions that demonstrate its support of the Open Internet. In the past six years alone, it has invested over \$100 billion in its networks, including its FiOS fiber-optic and LTE mobile broadband networks. Verizon has encouraged innovation throughout the broadband ecosystem through initiatives such as the LTE Innovation Center—an “incubator” to assist third-party device and application developers to create innovative new products and services for 4G networks—and the Application Innovation Center, which developers are free to use to develop applications for wireless consumers with the assistance of experts from Verizon. Just recently, Verizon became the first major communications service provider to join the Open Invention Network, which promotes innovation in open source software. In addition to Verizon, other major broadband Internet access providers have similarly committed to support the Open Internet.⁴

³ Verizon’s Commitment to Our Broadband Internet Access Customers, *available at* <http://responsibility.verizon.com/broadband-commitment/>.

⁴ CTIA, for example, noted that the “court decision does nothing to temper CTIA members’ long-standing commitment to an open Internet and a vibrant wireless ecosystem because that’s what wireless customers demand.” CTIA-The Wireless Association, *CTIA Statement on the D.C. Circuit’s Decision on Net Neutrality* (Jan. 14, 2014), *available at* <http://www.ctia.org/resource-library/press-releases/archive/ctia-net-neutrality>. Comcast explained that “we have not - and will not - block our customers’ ability to access lawful Internet content, applications, or services. Comcast’s customers want an open and vibrant Internet, and we are absolutely committed to deliver that experience.” Josh Lowensohn, *The Verge*, *Comcast, Verizon, and Others Promise Net Neutrality Ruling Won’t Hurt Consumers*, (follow <http://www.theverge.com/policy/archives> to Jan. 14, 2014). AT&T stated that it “has been committed to the open Internet since our endorsement of the FCC’s statement of Internet freedoms in 2004 AT&T can assure all of our customers and stakeholders that our commitment to protect and maintain an open Internet will not change” as a result of the D.C. Circuit decision. *AT&T Statement on the U.S. Court of Appeals D.C. Circuit Open Internet*

Verizon and other providers have made these commitments for good reason—an Open Internet benefits consumers and the Internet ecosystem generally. Consumers clearly benefit because they can access whatever lawful content, applications, and services they choose. And ensuring such access makes sense for broadband Internet access providers because that is what consumers expect and demand. A broadband provider that blocked lawful content, applications, or services would quickly harm its reputation in the marketplace and lose customers.

In addition to the public commitments by broadband Internet access providers and the clear marketplace incentives to meet consumer demands for an Open Internet, the Commission’s transparency rule remains in place and requires providers to affirmatively disclose to consumers, policymakers, and the public at large information about their network management practices. To the extent that a provider fails to live up to its promises or provides deceptive disclosures about its practices, numerous existing laws, such as federal and state consumer protection and advertising laws, also provide remedies for consumers. Thus, consumers will continue to have unblocked access to all that the Internet has to offer even in the absence of any new regulation by the Commission. The Commission can and should wait to see how the marketplace evolves and whether actual problems develop before promulgating rules that could flash freeze innovation and the development of new business models.

III. The Internet Ecosystem Is Dynamic and Competitive

The Internet ecosystem is thriving today. Consumers have multiple choices for obtaining broadband Internet access. Traditional telephone companies and cable companies have engaged in fierce competition to retain existing subscribers and attract new ones. Verizon has invested

Decision (Jan. 14, 2014), available at <http://www.attpublicpolicy.com/fcc/att-statement-on-the-u-s-court-of-appeals-d-c-circuit-open-internet-decision/>.

billions of dollars in its all-fiber FiOS network, and other companies have also deployed fiber-based broadband networks. Cable companies likewise have upgraded their networks to DOCSIS 3.0 technology. As a result, as of December 2012, 97 percent of households in the United States were located in census tracts with two or more residential fixed-line broadband connections.⁵ At the same time, the race among providers to deploy wireless LTE services has brought even more competition to the broadband marketplace. The ultimate beneficiaries of this investment and competition have been consumers, who can take advantage of greater speeds and capabilities offered at lower effective prices. Indeed, as of December 2012, 99 percent of households in the United States were located in census tracts with access to broadband Internet access service of at least 10 Mbps downstream,⁶ and increasing numbers of consumers (including the millions served by Verizon’s FiOS network) can subscribe to services offering up to 500 Mbps. There is simply no evidence of a problem for which prescriptive rules are needed.

There certainly is no call to single out broadband Internet access providers for regulation when they are only one of many sets of overlapping actors who cooperate and compete with one another in a dynamic marketplace. Focusing in isolation on traditional network providers misses the bigger picture. The Internet ecosystem consists of a large range of interrelated actors who cooperate and compete with one another in myriad ways to meet consumers’ needs—device manufacturers, application providers, over-the-top VoIP and video providers, search engines, CDNs, network providers, and many others. Moreover, the lines between these various types of actors have become increasingly blurred. For example, many “edge” providers such as Google,

⁵ See *Internet Access Services: Status as of December 31, 2012*, Industry Analysis and Technology Division, Wireline Competition Bureau, at 9 (Dec. 24, 2013), http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1224/DOC-324884A1.pdf.

⁶ *Id.* at 10.

Facebook, Amazon, and Netflix, have their own extensive broadband networks that carry their traffic around the world. Others achieve the same effect by relying on CDNs such as Akamai and EdgeCast. Offerings such as the iPhone and Kindle are not only devices, but also are pre-loaded with applications, including video and voice services that perform functions that previously had been handled by traditional network providers.

In this environment, prescriptive rules that single out only broadband Internet access providers for regulation would distort the market and harm consumers. Players throughout the Internet ecosystem all could have *theoretical* incentives or abilities to restrict consumer choices. This is not to say that the Commission should expansively regulate all these entities. It should not. Indeed, as with broadband Internet access providers, competitive constraints, consumer demands, and transparency are likely to continue to stop anyone from acting on these hypothetical incentives. But there is no justification for treating one class of competitors differently from everyone else by imposing prescriptive rules only on broadband Internet access service providers.

IV. The Commission Should Refrain from Enacting Prescriptive Rules and Instead Focus on Steps to Encourage Continued Broadband Investment and Innovation

Rather than wading into an unnecessary regulatory battle over prescriptive rules that would inhibit innovation and investment and would inevitably have the Commission pick winners and losers, the Commission should take a more restrained approach and encourage experimentation. The Commission can act as the backstop, if needed, to step in and address real-world developments that harm competition or consumers on the Internet. In this way, the Commission can strike the right balance between protecting consumers and competition and fostering innovation and growth.

With the rapid pace of technological developments, business model changes, and evolving consumer needs, developing rules that attempt to prejudge which forms of differentiation may take place and their effects on consumer welfare is a counterproductive task. Such rules would inevitably become outdated before the ink dries and would lock in a one-size-fits-all model that would diminish innovation and investment. The Commission should instead embrace an approach that relies primarily on consumer choice, competition, and effective multi-stakeholder processes to protect consumers, guide the evolution of technology and services, and address emerging issues or market failures. Consumers will benefit from such a framework because it will encourage experimentation, innovation, and increased consumer choices.⁷ The Commission can still play a backstop role and step in as needed to protect competition and consumers when and if real problems arise. Even today the Commission could do this by enforcing its transparency rule, to the extent providers' actions do not conform to the representations that they make to their customers. This type of case-by-case, enforcement-based approach will provide the flexibility necessary to encourage the experimentation and innovation

⁷ While some parties can be expected to again argue that the Commission should expand the scope of any rules to still more parts of the Internet, it should not do so. The Commission rightly rejected that course in its prior order, concluding that “content delivery network services, . . . hosting or data storage services, or Internet backbone services,” among other things, were outside of the scope of its rules. *Preserving the Open Internet; Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905, ¶ 47 (2010); *see also id.* ¶ 67 n. 209. There is no reason for any different conclusion today. As the Commission is aware, peering, transit, content delivery networks, and other arrangements concerning the interconnection of Internet networks and the exchange of Internet traffic have always been the province of voluntary, commercially-negotiated arrangements. The flexibility enabled by that approach has allowed the Internet to evolve over time to support changes in the way that users connect to and use the Internet, even as demand has skyrocketed. This approach has also provided incentives for all parties to seek out efficient ways to deliver and exchange traffic and encouraged the investments needed to allow Internet networks to keep pace with consumer demand. Applying prescriptive regulation in this complex and dynamic part of the Internet ecosystem is unnecessary and would have serious adverse consequences.

that has made the Internet such a major force for economic growth, while still allowing the Commission to intervene and address practices that demonstrably harm consumers or competition.

In the meantime, the Commission can focus its energy on steps to further encourage robust competition, investment, and innovation in the Internet ecosystem. For example, increasing the supply of spectrum for providers will be essential for wireless broadband to reach its full potential. Thus, the Commission could do far more to bring broadband benefits to consumers by ensuring a successful incentive auction, working to free up additional governmental spectrum, and similar steps than by attempting to write rules to solve a non-existent problem. The Commission should focus its attention on these proactive measures, while remaining available to address on a case-by-case basis any net neutrality problems that develop.

V. Prescriptive Rules Would Be Particularly Harmful and Unnecessary in the Case of Wireless Broadband Services

While prescriptive rules are unnecessary as a general matter, they would be particularly harmful if extended to encompass wireless broadband Internet access services.

First, competition among wireless providers—particularly with respect to their broadband offerings—is intense, and thus market incentives ensure that providers will not act in ways that harm consumers. According to the Commission’s last wireless competition report, 91.6% of the U.S. population is served by three or more mobile wireless broadband providers, and 82% is served by four or more providers.⁸ The United States now has more facilities-based wireless service providers that own and manage network equipment – with 180 – than any other nation in

⁸ See *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Sixteenth Report, 28 FCC Rcd 3700, at Table 9 (2013) (“*Sixteenth Mobile Competition Report*”).

the world.⁹ The competitiveness of the wireless marketplace is evident from the plummeting prices for wireless data, which dropped from 46 cents per megabyte to only 3 cents per megabyte from 2008 to 2012.¹⁰ From December 2005 to January 2014, the wireless Consumer Price Index fell 10 percent, while the overall CPI for all items increased 18.9 percent.¹¹ The competition extends to all parts of the wireless broadband ecosystem. As of 2012, more than 20 different device manufacturers offered close to 300 different handsets; consumers also have a wide set of options for tablets and other mobile devices.¹² The U.S. applications market is the global leader, and the number and type of applications available to those consumers have increased at a staggering rate. In 2012, consumers had access to more than 20 independent non-carrier mobile application stores, offering over 3.5 million apps for fourteen different mobile device operating systems.¹³ There is no cause for the Commission to impose prescriptive regulations in such a competitive marketplace.

Second, wireless broadband services are the subject of extraordinary investment and innovation, which have conferred immense benefits to consumers. Prescriptive regulations would create disincentives for continued investment and innovation. In 2013, America's

⁹ See *Local Telephone Competition: Status as of December 31, 2012*, Industry Analysis and Technology Division, Wireline Competition Bureau, at Table 18 (Nov. 26, 2013), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-324413A1.pdf.

¹⁰ See Maeghan Ouimet, "Infographic: The Staggeringly Huge Future Of Mobility," <http://visagemobile.com/mobilityblog/2012/09/06/infographic-the-staggeringly-huge-future-of-mobility/> (Sept. 6, 2012).

¹¹ U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index: All Urban Consumers – (CPI U), U.S. City Averages, Wireless Telephone Services (Series ID CUUR0000SEED03) and Consumer Price Index: All Urban Consumers – (CPI-U), U.S. City Averages.

¹² *Sixteenth Mobile Competition Report*, ¶ 343.

¹³ See Letter from Scott K. Bergmann, CTIA to The Honorable Thomas E. Wheeler, *et al.*, GN Docket No. 09-51, WT Docket No. 13-135, at 2 (Nov. 13, 2013).

wireless carriers invested more than \$34 billion in their networks.¹⁴ This level of investment is, on average, four times more per subscriber than anywhere else in the world (about \$104/subscriber versus \$26/subscriber).¹⁵ Since 2001, wireless carriers have made nearly \$300 billion in sustained capital investment in the United States, not including investments made in spectrum.¹⁶ The Wireless Infrastructure Association recently released a study showing that projected capital investment in U.S. wireless infrastructure over the next five years will generate more than \$1 trillion in economic growth and create 1.2 million new jobs.¹⁷

The wireless broadband marketplace has also been a hotbed of innovation. Providers are currently in the midst of rolling out LTE networks throughout the country. In fact, Verizon's LTE build already matches the coverage area of its previous 3G services, reaching over 97% of Americans, and all of the other major providers are racing to catch up. As they do so, providers are already investigating the next generation of enhancements, such as the deployment of LTE Advanced. The result is increased speeds and capabilities, which in turn is creating massive amounts of disruption and ripple effects across industries, creating new opportunities for productivity and growth. Mobile technologies are transforming the transportation, finance, energy, and agriculture sectors. Smart grids, smart cars, smart homes, and smart fields all take

¹⁴ Didier Scemama, *et al.*, *2014 wireless capex: BRICs & Europe to pick up the slack*, Bank of America Merrill Lynch, Global Telecom Equipment, Table 2 (Jan. 13, 2014). *See also* Glen Campbell, *2014: The year ahead*, Bank of America Merrill Lynch, Global Wireless Matrix 4Q13, Tables 1 and 2 (Jan. 8, 2014).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See* PCIA, *Wireless Infrastructure Investment Will Generate \$1.2 Trillion In Economic Activity And Create 1.2 Million Jobs* (Sept. 19, 2013), available at <http://www.pcia.com/pcia-press-releases/601-wireless-infrastructure-investment-will-generate-1-2-trillion-in-economic-activity-and-create-1-2-million-jobs>.

advantage of wireless technology. These mobile platforms are also helping to address some of our nation's most pressing challenges, such as provision of high-quality, affordable health care and access to world-class educational resources. All of this of course redounds to the benefit of consumers and the economy more generally. It would make particularly little sense to risk the significant harms to, and potential disruption of, this innovation that would result from prescriptive rules at this juncture in the wireless industry's development.

Third, wireless broadband services face unique technological and operational constraints that make efficient network management practices particularly critical. Prescriptive rules would inevitably create uncertainty and confusion as to whether particular network management practices were permissible, and thus the costs of applying such rules to wireless broadband would be particularly high. For example, mobile broadband communications require complex and dynamic management of spectrum as a varying number and mix of users being served by a cell site changes in sometimes highly unpredictable ways. Moreover, these complexities are compounded by the limited spectrum resources each provider has, which imposes constraints on the ability to increase capacity to meet subscriber needs and provide the quality of service they expect. Given these characteristics of wireless services, imposing prescriptive rules would be particularly unworkable.

VI. Conclusion

Given the huge consumer benefits being delivered by today's dynamic and evolving broadband Internet and the widespread agreement concerning the importance of the Open Internet, the Commission should not at this time adopt prescriptive rules. Such rules inevitably will become quickly outdated in the face of rapid technological and marketplace changes and stand as a barrier to the development of new services and business models that will benefit

consumers and increase competition. That is especially true in the case of wireless broadband services, for which the pace of innovation, investment, and competition make rules particularly unnecessary and harmful. Instead of adopting prescriptive rules, the Commission should monitor the competitive broadband marketplace as it continues to evolve and only step in, if necessary, on an ex post basis to address the particular practices that harm competition or consumers if and when they develop. This will allow for continued experimentation, investment, and innovation that benefit consumers and provide them with more choices, while still allowing the Commission to play a role if needed.

Respectfully submitted,

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