

**TESTIMONY OF
MICHAEL F. ALTSCHUL
SENIOR VICE PRESIDENT & GENERAL COUNSEL
CTIA – THE WIRELESS ASSOCIATION®**

BEFORE THE

**UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION**

February 14, 2006

Good morning Chairman Stevens and Co-Chairman Inouye, and distinguished members of the Committee. I am Michael Altschul, Senior Vice President and General Counsel at CTIA, The Wireless Association®. CTIA is the international organization that represents all sectors of the wireless communications industry: wireless carriers, manufacturers, and data companies. I am privileged to appear before you today to discuss the wireless industry's views on municipal networks and the role of federal, state, and local government in connection with communications regulation. While CTIA has taken no position on the issue of whether municipal-sponsored networks should be restricted, I appreciate this opportunity to discuss the appropriate role of federal, state, and local government in the digital world.

Given the clear social and economic benefits of ubiquitous broadband Internet access, we need a regulatory environment that will facilitate the continued growth of these broadband networks. Wireless broadband is poised for explosive growth. To avoid hobbling this growth, Congress must ensure that wireless broadband is subject to a federal regulatory framework that is deregulatory in scope, regardless of the technology used. Broadband providers should be subject solely to federal regulation because wireless broadband services are consumed without regard to geographic

boundaries. A balkanized regulatory framework will only burden this nascent industry, frustrate consumers and dampen the deployment of new and innovative technologies. CTIA strongly believes that broadband providers should be regulated with a light regulatory touch, if at all.

It is inappropriate to impose burdensome regulations upon wireless broadband providers at this time. The goal of broadband regulation, if needed at all, should be to facilitate the efficient deployment of broadband Internet access services and policymakers must ensure they do not discourage the deployment of wideband technologies. A uniform deregulatory framework should be adopted which will allow new and innovative broadband services to flourish. Moreover, because broadband Internet access services are inherently interstate in nature, they should be regulated only at the federal level, if regulation is deemed necessary. CTIA firmly believes that regulation of broadband services market should be limited to instances of market failure, and specific consumer protection standards should be mandated only where it is clear the market has not produced satisfactory results.

Wireless Broadband Services Are Being Deployed At a Rapid Pace

Over the past few years, wireless licensees have made significant investments to deploy next generation technologies across the country. The rise of IP-based networks and the proliferation of wireless data services has changed the dynamics of the telecommunications market. Broadband services, especially wireless broadband, are exploding across the country. Specifically,

- Verizon Wireless has launched a broadband network based on evolution data only (“EV-DO”) technology available in 171 metropolitan markets covering more than 140 million people;
- Sprint Nextel began to roll out its EV-DO technology in mid-2005 and now offers wireless broadband services in 208 markets;
- In December, Cingular Wireless announced that subscribers could access its BroadbandConnect service through Cingular’s new 3G network;
- Alltel offers its Axxess Broadband service, which provides data rates comparable to wired broadband, in nine metropolitan areas;

- In addition to its extensive network of wireless hotspots, T-Mobile offers mobile Internet access through its GPRS service; and
- According to CTIA's semi-annual wireless industry survey, as of mid-2005, half of all wireless customers had mobile devices that were capable of web-browsing.

Wireless companies are also deploying broadband technologies designed for "fixed" devices.

These developments illustrate the rapid pace at which the wireless industry is moving to expand the benefits of broadband services to all Americans:

- Clearwire and Intel have teamed to deploy devices based on Wi-MAX technology that will allow for city-wide wireless broadband Internet access; and
- Sprint and Samsung are working on next-generation wireless networks that use the IEEE 802.16e standard ("Wi-MAX").

Cable and other wireline broadband providers are deploying broadband as well:

- In the third quarter of 2005, cable modem service and wireline DSL had increases of 1.2 and 1.4 million subscribers respectively;
- In December, BellSouth introduced its new FastAccess DSL 6.0 Internet service with download speeds of up to 6 Mbps;
- Verizon is currently offering its new FiOS Internet Service over its fiber to the premises ("FTTP") network, which provides download speeds of up to 5, 15, and 30 Mbps; and
- Comcast announced a 24.2% increase to its high-speed internet subscribers in the third quarter of 2005, resulting in a 19.9% penetration rate among its cable subscribers.

Because radio waves don't stop at a state border, and because packets race through the Internet without regard to the geographic end points of the communication, wireless broadband services are provided to consumers without regard to geographic boundaries, and are, therefore, inherently interstate in nature. A deregulatory national framework will allow for the facilitation of consistent protections for consumers of broadband services, thus maximizing the benefits for customers.

IP networks are not typically configured to identify the originating or terminating point of a data packet. Broadband services offer end users the benefit of mobility and the ability to utilize a

service or application from any point on the public Internet. Consumers are able to access information from servers and computers that often are in other states and countries. Additionally, IP networks generally do not send data packets over the same routes; rather the information is sent over multiple paths and compiled at the end-point.

Where it is impractical or impossible to identify traffic as interstate or intrastate, Congress and the FCC may regulate such services as interstate. In the past, the FCC found that traffic bound for information service providers is properly classified as interstate because the intrastate component cannot be separated from the interstate. The same rationale applies to broadband Internet access traffic, particularly CMRS broadband traffic.

National CMRS carriers have announced plans to introduce dual mode CMRS/WiFi devices and services. For example, Qualcomm has announced that it is teaming up with networking silicon vendor Atheros Communications on a reference design for dual-mode cell and WiFi phones. T-Mobile is also launching two styles of WiFi phones: the SDA and the MDA. Both devices offer speeds around 70 to 135 kilobits per second, have Bluetooth connectivity, a 1.3 megapixel camera and MP3 players, and both use the Windows Mobile 5.0 operating system. In this hybrid environment, consumers will not know, or care, whether their wireless applications are being provided over a licensed CMRS network, or an unlicensed WiFi or WiMax link to the Internet. Just as broadband services will be provided seamlessly to wireless users, consumers need a seamless regulatory structure that provides uniform rights and expectations regardless of whether their broadband application was delivered over licensed or unlicensed spectrum.

A Deregulatory National Framework Will Facilitate Consistent Consumer Protection

For services such as broadband that operate without regard to jurisdictional boundaries, exclusive federal regulation makes the most economic sense. This is best illustrated by federal

regulation of the CMRS industry. Under a deregulatory federal framework the wireless industry has experienced explosive growth. Since 1985, the total number of CMRS subscribers has increased from roughly 200,000 to over 200 million while the average monthly bill has dropped from \$95 to under \$50. This growth and resulting consumer benefits have occurred in an environment free from cumbersome and inconsistent state-by-state regulations.

Professor of Law & Economics, Thomas W. Hazlett has said that decentralized regulations are not effective “[w]hen economic realities dictate that production of goods is efficiently done across jurisdictions (i.e., economies of scale stretch beyond state borders).” Allowing states and local governments to regulate national markets increases the costs associated with advertising, pricing, and regulatory compliance. Thus, a balkanized regulatory framework increases the costs of deploying new and innovative services and can hinder consumers’ access to the benefits of technical advancements.

In order for America to remain competitive in an increasingly global economy, the United States must work to promote the deployment of broadband services across a multiplicity of technological platforms. Broadband penetration in the United States is growing, but that growth would be threatened by an uncertain regulatory regime, especially a regulatory regime with multiple state regulations or state interpretation of federal regulations. Congress can best facilitate the advancement of emerging broadband technologies by facilitating the development of a consistent national framework for broadband Internet access services.

The Broadband Market Should Be Regulated With a Light Regulatory Touch

Consumers have multiple choices for their broadband needs. They may choose to obtain access to the IP network over DSL lines, cable modem service, or wireless providers that have deployed a variety of technologies in both licensed and unlicensed spectrum bands. The ability of consumers to choose their broadband provider from a variety of technology platforms and from different carriers

within those platforms has provided the appropriate competitive incentives for broadband providers and facilitated the deployment of broadband services. Although there is a legitimate interest in protecting consumers, sound public policy requires that intervention is necessary only where the market has not sufficiently protected consumers.

Instead of using different devices for different voice, data, or video services, many consumers increasingly demand one-stop access to voice, data, and video services of their choice over the same device or a set of integrated devices utilizing the best available network infrastructure – whether that is, for example, mobile wireless or WiFi connectivity. The growth of these hybrid converged services highlights the need for a deregulatory national framework for all broadband services. Where a service provider offers a converged service that allows customers changing locations to access the network over a variety of technology platforms, consumers should be allowed a seamless experience by a policy of “regulating down” to the least regulated element of that service. This approach will minimize consumer confusion about the rights and responsibilities that attach to services they purchase. From the consumer’s perspective, the technology utilized to offer service does not make a difference. Thus, seamless regulation across multiple broadband platforms should be allowed.

For example, if a consumer were to use a handset with CMRS voice capabilities along with WiFi technology, that handset could work seamlessly between the consumer’s cellular or PCS service and a broadband service provided over a wireless router and a wireline broadband connection in the home. From the consumer’s perspective, as he or she steps five feet from the house, and switches from a WiFi network to a cellular network, there is no difference in the service that is being offered. Consumer electronic manufacturers are working to develop such technologies, which will allow for customer equipment to use the most efficient system available to provide service. The adopting of a “regulate down” framework will facilitate the rapid deployment of these devices. CTIA firmly

believes that regulating a converged service on the basis of the more heavily regulated technology will often burden and deter the development and deployment of seamless, efficient services.

Competition Is Providing the Incentives for Broadband Providers to Meet Consumers' Needs

A competitive market is the best tool for promoting social policy goals, and the broadband industry is poised for an explosive increase of competition among and between technology platforms. Robert W. Crandall of The Brookings Institution has said that competition between cable companies and incumbent telephone companies “has a statistically significant positive effect on overall broadband penetration in the United States.” Added to this, wireless broadband services, whether fixed, mobile, or satellite, are emerging as viable competitors for broadband subscribers. Telephone companies are investing heavily in fiber to the home (“FTTH”). At the same time, the wireless industry is investing in new technologies such as Orthogonal Frequency Division Multiplexing (“OFDM”), Wideband Code Division Multiple Access (“WCDMA”), EV-DO and others, to increase the potential for new and beneficial services for consumers.

Heavy handed regulation of the broadband market will deter investment in new technologies and thus delay the consumer benefits that flow from innovative services and technologies. Analysts have estimated the benefits of universal broadband to Americans to be as high as \$300 billion a year. Beyond the every day benefits, ubiquitous broadband services have great potential to help the elderly and those with disabilities. If the deployment of broadband services are delayed or reduced by burdensome regulations, the benefits of universal broadband service will be drastically reduced.

Congress has established that it is the policy of the United States to promote the development of the Internet and preserve the “vibrant and competitive” Internet market. The FCC has recognized that it can best serve the public interest by allowing market conditions to drive the development of the broadband industry. CTIA has urged the FCC, and urges Congress to continue to promote a

competitive market for Internet services by developing a deregulatory national framework for broadband Internet access services.

There are many benefits that competition brings to the protection of consumer interests. The deregulatory approach Congress and the FCC established for the CMRS industry has promoted competition and benefited consumers. A light regulatory framework for the broadband industry could achieve similar results. Like the wireless industry, the broadband industry is a nascent market and highly competitive, within and across multiple technology platforms. Although growth of broadband services in the United States has been impressive, there remains significant room for additional growth in the coming years. Just as with the CMRS experience, broadband service growth has occurred in an environment of minimal regulation. Now is not the time for cumbersome and overlapping regulatory mandates. A light regulatory touch will spur competition and best ensure that consumers will continue to have a variety of carriers and innovative new services to choose from in the expanding broadband marketplace.

Conclusion

CTIA and the wireless industry support a uniform national deregulatory framework for all broadband Internet access services, regardless of the underlying technology. This legislative and regulatory approach will ensure the continued deployment of new and innovative services utilizing the most efficient technologies available. Thank you for this opportunity to discuss the effects of federal and state regulation on broadband networks and the potential impact on competition and consumers.