

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

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In the Matter of)	
)	
Framework for Broadband Internet)	GN Docket No. 10-127
Service)	
)	
Open Internet Rulemaking)	GN Docket No. 14-28
_____)	

REPLY COMMENTS OF SYNTONIC WIRELESS, INC.

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Introduction

The Commission is unquestionably correct that the Internet is “America’s most important platform for economic growth, innovation, competition, [and] free expression.”¹ From its inception, the Commission’s effort to preserve the Open Internet has stressed the need to promote dynamic competition and innovation. The Commission has also long recognized that consumer welfare should be the touchstone of these efforts: the original 2005 Internet Policy Statement emphasized that “*consumers* are entitled to access the lawful Internet content of their choice...run applications and use services of their choice...[and] connect their choice of legal device” to the network.² The goal of the Open Internet proceeding should be to protect consumers by promoting innovation that enhances

¹ Protecting and Promoting the Open Internet, Notice of Proposed Rulemaking, GN Docket No. 14-28, FCC 14-61, ¶ 1 (May 15, 2014) (hereafter “NPRM”).

² Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket No. 02-33, FCC 05-151, ¶ 4 (Sept. 23, 2005) (emphasis added).

consumers' ability to access the content and services they desire, regardless of where that innovation occurs within the Internet ecosystem.

Unfortunately, the most recent Notice of Proposed Rulemaking, and numerous filed comments, threaten to retard the consumer-beneficial competition that the Commission hopes to promote. The NPRM focuses primarily upon the largely hypothetical concern that broadband providers will interfere anticompetitively in upstream markets for Internet content and applications. But to protect competition in these upstream markets, several commenters advocate sweeping prophylactic policies that would *reduce* the ability to innovate in the broadband market. Just as consumer welfare can benefit from new Internet content and applications, consumers can also benefit from innovative new broadband offerings and partnerships between broadband and content providers.

Syntonic Wireless has built its business model upon finding innovative new ways to deliver to consumers the Internet-based content and applications that they demand. By exploring alternatives to traditional mobile broadband delivery, Syntonic helps content providers reach new customers that cannot afford or do not want traditional mobile broadband data plans. Syntonic also seeks to open new channels for dissemination of Internet-based content, such as connected automobiles and “wearables,” remote healthcare monitoring, and improved educational opportunities for our nation's students. And by experimenting with different ways to deliver and track mobile data, Syntonic helps companies promote employee connectivity in innovative and more efficient ways. Ultimately, our efforts are helping to challenge existing business models, create new markets for Internet-based content, and narrow the digital divide by reducing the consumer's cost of accessing Internet-based services.

The Commission's proposed rules, and especially the more stringent alternatives pressed by many commenters, threaten these consumer-friendly initiatives and similar efforts currently underway at other companies. The essence of common carriage is to provide the same service to all customers, which homogenizes the broadband product and eliminates a plane of dynamic competition. The philosophy underlying these recommendations is that broadband providers must provide access to all Internet content or none at all, and must treat all Internet traffic identically. But while such undifferentiated common carriage principles worked for telephone providers using one dominant and relatively static model, the technology-driven and rapidly evolving broadband market is not similarly situated and should not be treated the same. This one-size-fits-all approach to broadband delivery is increasingly at odds with a diverse population that relies on the Internet for a wide range of disparate tasks through a variety of technologies and devices.

Syntonix Wireless urges the Commission to avoid prophylactic rules that would prohibit the creation of new, potentially consumer-friendly products and services. We recognize that some broadband providers have incentives to use their market position in anticompetitive ways, and therefore some regulation may be necessary to protect the Open Internet. But the Commission should reject the call to reclassify broadband as a Title II telecommunications service subject to common carriage obligations. The flexibility and individualized negotiations that the D.C. Circuit required in the *Verizon* decision³ are not limits on the Open Internet regime; they are, rather, essential prerequisites to preserve dynamic competition and innovation in the delivery segment of an Open Internet ecosystem. Whatever rules the Commission ultimately adopts should leave room for

³ *Verizon v. FCC*, 740 F.3d 623 (DC Cir. 2014).

differentiated product offerings and innovations within the broadband market, and for pro-consumer collaborations between broadband providers and upstream providers. Finally, the Commission should continue to apply a “light touch” to mobile broadband service, as the unique technical demands of wireless communication demand increased flexibility for providers to deliver content most efficiently to consumers.

I. Overview of Syntonic Wireless

Syntonic Wireless is a technology platform provider enabling new commercial models for anytime, anywhere Internet connectivity on mobile devices. Our proprietary technology allows Internet content providers to provide application-specific bandwidth to mobile devices. Our company was founded in 2012 by a team of high-tech veterans with expertise in mobile computing, architecting large-scale multi-platform client-service solutions, and implementing innovative business-to-business and business-to-consumer commercial models.

The heart of the company is Syntonic’s Connected Services Platform. This cloud-based system couples specific applications with 3G or 4G connectivity over the nation’s wireless broadband networks and is designed to work with any mobile application, on-line service, or content. Through the Connected Services Platform, content providers can reach any customer with a mobile device regardless of whether the consumer has a data plan. Simply put, it allows consumers to access content without incurring hefty data plans or overage charges that they neither want nor can afford. As discussed in greater detail below, the Connected Services Platform is an invaluable tool for content providers to reach new customers on traditional mobile devices, but also offers opportunities to expand mobile

content delivery into innovative new markets such as automobiles, “wearables”, healthcare, education, and enterprise services.

II. The Open Internet Proceeding Should Promote Consumer-Friendly Innovation Throughout the Internet Ecosystem

The Commission’s long-standing commitment to an Open Internet originated in its commitment to consumer welfare. As the NPRM notes,⁴ former Chairman Michael Powell first articulated the Commission’s basic guiding principles at a 2004 Silicon Flatirons speech which focused on “empowering consumers.”⁵ He explained that “ensuring that consumers can obtain and use the content, applications, and devices they want[] is critical to unlocking the vast potential of the broadband Internet.”⁶ The following year, the Commission adopted the Internet Policy Statement, which similarly sounded in consumer welfare terms: “[t]o encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, *consumers* are entitled to access the lawful Internet content of their choice...run applications and user services of their choice...[and] connect their choice of legal devices that do not harm the network.”⁷ From the beginning, maintaining an Open Internet has been inextricably intertwined with maximization of consumer choice and welfare.

The Commission also stressed the importance of innovation and competition. The Internet Policy Statement emphasized that in addition to the three freedoms listed above, “consumers are entitled to competition among network providers, application and service

⁴ NPRM ¶ 12.

⁵ Michael K. Powell, Chairman, Federal Communications Commission, Preserving Internet Freedom: Guiding Principles for the Industry 3, Remarks at the Silicon Flatirons Symposium (Feb. 8, 2004), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-243556A1.pdf.

⁶ *Id.*

⁷ Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket No. 02-33, FCC 05-151, ¶ 4 (Sept. 23, 2005) (emphasis added).

providers, and content providers.”⁸ The Commission saw promotion of dynamic competition—throughout the Internet ecosystem—as key to promoting broadband deployment as required by Section 706 of the Act and as a tool to maintain an open Internet.

But when codifying these principles, the Commission has shifted away from these broad goals and toward a more narrow effort to protect edge providers. The Commission’s primary concern in the Open Internet proceedings has been the potential threat that broadband Internet providers would interfere anticompetitively in upstream markets for Internet-based content and applications. But to preserve competition in this part of the Internet ecosystem, the 2010 rules and, to a lesser extent, the current proposed rules have significantly reduced the opportunities for innovation in the broadband service market. Both proposals consist primarily of structural rules that limit broadband providers’ ability to offer differentiated services and reduce opportunities for partnerships with upstream purveyors of Internet content and applications.

Embedded in these structural rules is an unjustified bias in favor of existing broadband service models. The 2010 rules made this quite explicit: “These rules are generally consistent with, and should not require significant changes to, broadband providers’ current practices, and are also consistent with the common understanding of broadband Internet access service as a service that enables one to go where one wants on the Internet and communicate with anyone else online.”⁹ While the present NPRM makes some concessions toward the “development of new business arrangements in the market

⁸ *Id.*

⁹ *Preserving the Open Internet: Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd. 17905 ¶ 43 (2010) (hereafter “2010 Rules”).

between broadband providers and edge providers,”¹⁰ the proposed rules still exhibit a bias in favor of existing broadband service practices.

But placing the Commission’s imprimatur of approval on “current practices” at one moment in time is myopic, particularly given the evolution of consumer behavior online. Consumers are using the Internet in new and different ways, meaning that a one-size-fits-all access model is unlikely to serve consumers efficiently.¹¹ As the market becomes saturated, providers must innovate to deliver increasing value to this disparate array of consumers.¹² Companies often test new business models without a definitive understanding of the model’s benefits. Instead they rely on a trial-and-error process to identify better methods of delivering value to consumers.¹³ To protect consumer welfare in the Internet ecosystem, it is insufficient to promote innovation simply among edge providers; the Commission must recognize the value of innovation in broadband service markets as well.

Syntonic Wireless’s business model is predicated upon developing novel ways to bring consumers the content and applications that they desire. We do so by bringing together content providers and wireless broadband network operators in ways that differ, sometimes significantly, from the traditional broadband model favored by the Open Internet rules. But our intent, and our results, unquestionably enhance consumer welfare. Our innovative practices can reduce consumers’ cost of acquiring Internet-based content, expand the universe of available Internet-based services, and provide improved service to

¹⁰ NPRM ¶ 38; *id.* ¶ 116 (proposing to allow “commercially reasonable” practices).

¹¹ Comments of Christopher S. Yoo, In re Preserving the Open Internet: Broadband Industry Practices, GN Docket No. 09-191, WC Docket No. 07-52, at 13.

¹² *Id.*

¹³ *Id.* at 33.

niche players and those on the wrong side of the digital divide whose needs are not well served by traditional broadband access models.

Syntonic Wireless and similar companies are challenging the notion that broadband innovation should be limited and that cooperation between broadband providers and edge providers should inherently be suspect. Numerous scholars, regulators, and even the Commission's own Open Internet Advisory Committee¹⁴ have recognized the potential value to consumers of experimenting with new and alternative broadband business models.

Speaking about the 2010 rules, FTC Commissioner Joshua Wright explained that

What the theoretical literature and empirical evidence demonstrates... is that vertical contracts, including those captured by the Neutrality Order, are not always anticompetitive and in most cases are procompetitive. This is a critical observation for answering the question: "what kind of regulatory regime and legal rules governing this behavior will best serve consumers?"¹⁵

Commissioner Wright's comments provide important guidance to this proceeding. The Commission's goal should not be the protection of edge providers. Instead, harkening back to the original 2005 Policy Statement, the goal should be to protect *consumers*, by promoting innovation that enhances consumers' ability to access the content and services they desire—no matter where in the Internet ecosystem this innovation occurs.

III. Today's Broadband Marketplace Exhibits Innovative, Consumer-Friendly Offerings that are Threatened by Open Internet Principles

¹⁴ Open Internet Advisory Committee 2013 Annual Report 58, available at <http://transition.fcc.gov/cgb/oiac/oiac-2013-annual-report.pdf> (discussing the potential benefits to consumers of allowing two-sided markets to develop in mobile broadband).

¹⁵ Joshua D. Wright, *Broadband Policy & Consumer Welfare: The Case for an Antitrust Approach to Net Neutrality Issues*, Remarks of Joshua D. Wright, Commissioner, Federal Trade Commission, at the Information Economy Project's Conference on US Broadband Markets, 12 (2013), available at http://www.ftc.gov/sites/default/files/documents/public_statements/broadband-policy-consumer-welfare-case-antitrust-approach-net-neutrality-issues/130423wright_nn_posting_final.pdf.

In the United States and around the world, numerous companies are working to deliver alternatives to traditional broadband consumption models. Syntonic Wireless is a leading pioneer in the effort to develop innovative new ways to bring Internet content and application to consumers—through consumer-friendly initiatives whose futures may be jeopardized by this proceeding.

A. Syntonic Wireless Product Offerings

1. Syntonic Sponsored Content Store and other Consumer Initiatives

In August 2014, Syntonic Wireless launched the Freeway™ application, a sponsored content store for AT&T mobile subscribers. Powered by the Syntonic Connected Services Platform, Freeway provides a one-stop shop for AT&T mobile customers to access free or premium mobile content without incurring data charges. The cost of connectivity is instead paid by the participating content provider as a way to facilitate the delivery of the content to consumers.

Freeway, and other sponsored data initiatives, benefits both consumers and content providers. For consumers, sponsored content increases the value of a wireless subscription, by offering additional content that the consumer may enjoy in addition to whatever data is consumed under the consumer’s traditional monthly data plan. Consumers can also “sample” sponsored content without the risk that they are stuck paying for a suboptimal product or service. And technophobic consumers who are unsure whether to purchase a mobile broadband service can potentially access a broad array of sponsored content on a minimal data plan, to decide whether to upgrade to a more comprehensive service. For content providers, sponsored content is a way to differentiate one’s product from the

competition, and thus adds an additional plane of competition within edge provider markets.

Beyond Freeway, Syntonic Wireless offers content providers additional opportunities to reach consumers. The Connected Services Platform is designed to work with any content and any mobile device on any wireless network. This means that in the future, content providers will be able to pay to make their content available to consumers for free on any mobile-enabled device—including devices that are not currently attached to monthly data plans. In this way, Syntonic can help narrow the digital divide, by bringing connectivity to those who cannot afford, or otherwise choose not to purchase, a traditional monthly data plan that provides access to the full Internet.

2. Enterprise: Facilitating Mobile Employee Connectivity

As companies struggle to cut costs, many have replaced company-provided wireless devices with bring-your-own-device (BYOD) policies that allow employee-owned equipment to join the company network. But BYOD programs are often complicated by the difficulties of ensuring company software works with myriad different handheld devices and of billing for services that support both company and personal use.

The Connected Services Platform offers a turnkey solution to this problem. Through the platform, the company can make available a suite of firm-specific applications to employee devices at no cost to the employee. Because the platform works with all devices, it eliminates technical integration issues. And with segmented billing, the employer is billed for company-related activities through the company's apps, while the employee incurs all other charges under his or her traditional monthly data plan. The Platform could also support the distribution of employer-specific mobile devices to

employees who lack a personal mobile device, with connectivity limited to the suite of employer-provided apps.

3. Education: Bridging the Digital Access Divide

Syntonic On-Ramp Education Services™ was launched in September, 2014 with the Highline School District in Washington State to bring improved connectivity to schools and to the community they serve. There are numerous school districts nationwide that lack quality Internet access, and even in broadband-equipped schools, many students lack affordable Internet access at home. Syntonic's On-Ramp services can help bridge this gap. A participating school district can distribute digital mobile devices to students that are dedicated exclusively to educational purposes. The school district can limit student access to curriculum-approved applications and content, which provides a cost-efficient alternative to traditional broadband access and allows the district to avoid the costs and security risks of unauthorized personal use of school-provided devices.

4. New Markets: Automotive, Wearables, Healthcare Solutions

Syntonic Wireless is also poised to help to pioneer new markets for mobile broadband content, by providing connectivity to limited-purpose devices that cannot support, or do not need, access to all content and applications available online. For example, Syntonic Wireless can help connect mobile-equipped automobiles with content and applications that would appeal to drivers, such as streaming audio that could rival traditional and satellite radio offerings, or turn-by-turn navigation applications. Car rental companies could use the service to provide in-car premium content to customers and to track fleets remotely and simplify vehicle pick-up and return. Similarly, health care

providers can use the Connected Services Platform to create highly targeted, remote patient monitoring and diagnostic systems using app-specific mobile devices.

B. Other Innovative Product Offerings

Syntonic Wireless is not the only company experimenting with innovative new ways to deliver broadband content to consumers. For example, T-Mobile recently introduced a data plan that includes unlimited streaming from selected Internet-based streaming audio services such as Pandora and iHeartRadio.¹⁶ Similarly, Sprint has announced that it will soon test-market wireless plans that will offer customers unlimited talk and text, plus access to a limited suite of mobile broadband services, such as Facebook, Twitter, Instagram, or Pinterest.¹⁷

While these new business models will bring increased choice to consumers, in some ways they are merely catching up to innovations that have long existed in international markets unencumbered by net neutrality rules. For example, French telecommunications provider Orange couples mobile data plans with a complementary subscription to the customer's choice of several content-based applications including Sky Sports TV or music service Deezer. And numerous wireless providers including Turkey's Turkcell, Claro of Latin America, and Ucell in Uzbekistan have long offered social media plans that provide access to Facebook or Twitter at a fraction of the cost of full Internet access.¹⁸

C. Opposition from Open Internet Proponents

¹⁶ Thomas Gryta, T-Mobile Will Waive Data Fees for Music Services, Wall Street Journal Blog, June 18, 2014, available at <http://online.wsj.com/articles/t-mobile-will-waive-data-fees-for-music-service-1403142678>.

¹⁷ Ryan Knutson, *Sprint Will Sell a \$12 Wireless Plan that Only Connects to Facebook or Twitter*, WALL STREET JOURNAL BLOG, July 30, 2014, available at <http://blogs.wsj.com/digits/2014/07/30/sprint-tries-a-facebook-only-wireless-plan/>.

¹⁸ See Daniel A. Lyons, *Innovations in Mobile Broadband Pricing*, Mercatus Working Paper No. 14-08 (March 2014) at 17-18, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2418563.

Like the Freeway application, these innovative new wireless services benefit consumers. T-Mobile's streaming music plan targets music-savvy consumers whose demands are not adequately met by traditional data plans. For those customers, the Simple Choice Plan is a superior alternative to paying to stream data, or choosing not to consume music because the price is too high. Sprint's social media plan appeals to cost-conscious customers who are interested in having mobile access to Facebook but who are unable or unwilling to pay for more expensive all-inclusive Internet plans.

But despite the fact that these alternative business models increase consumer choice and help bring consumers the content they desire more efficiently, many net neutrality advocates—including numerous commenters calling on the Commission to adopt more stringent rules in this proceeding—have condemned these innovations. Shortly after Sprint announced its future plans, Free Press decried the fact that the alternative “helps lock in the existing choices and not let the new ones grow more organically. That's just not the way the Internet has worked.” Similarly, Public Knowledge described T-Mobile's plan as “the latest example of ISPs using data caps to undermine net neutrality....This type of gatekeeping interference by ISPs is exactly what net neutrality rules should be designed to prevent.” And both have condemned sponsored data as “a lose-lose for customers and app makers”¹⁹ and a “tremendous loss for all of us.”²⁰

These opponents can use stringent net neutrality rules to impose homogeneity on broadband markets and destroy even the most consumer-friendly alternatives to the status

¹⁹ Press Release, AT&T Sponsored Data Scheme is a Lose-Lose for Customers and App Makers, <http://www.freepress.net/press-release/105490/att-sponsored-data-scheme-lose-lose-customers-and-app-makers>.

²⁰ Michael Weinberg, AT&T's New Sponsored Data Scheme is a Tremendous Loss for All of Us, <https://www.publicknowledge.org/news-blog/blogs/attas-new-asponsored-dataa-scheme-tremendous>.

quo. For example, in 2010 these groups successfully pressured MetroPCS to withdraw an innovative plan that offered unlimited talk, text, web, and YouTube videos for \$40/month because it allegedly violated the 2010 rules—despite the fact that those rules were not yet in force.²¹ One sees a similar anti-consumer result in Chile, which earlier this year held that free social media plans similar to those Sprint is considering violated the nation’s first-in-the-world net neutrality law. By allowing consumers to reach some online services but not others, these plans effectively “blocked” access to all services not included in the promotion, which violated the country’s prohibition on blocking legal services over the Internet—despite the fact that the likely result of the decision was to increase the cost of Internet service and enhance Chile’s digital divide by eliminating a low-cost option for mobile connectivity.²²

These cases show the danger of structural rules designed to protect edge providers rather than consumers. The Commission is unquestionably correct that some broadband providers have incentives to use their position in the Internet ecosystem in an anticompetitive way. And that risk may be sufficiently grave to justify some regulation to reduce the risk of this harm. But when enacting any such regulation, the Commission must not lose focus on the consumer welfare that first prompted it to action—and any rules must leave room for pro-consumer innovation in broadband as well as edge markets.

IV. The Commission Should Reject Calls to Reclassify Broadband Service Under Title II

Numerous commenters have called upon the Commission to reclassify broadband service as a Title II telecommunications service subject to common carriage obligations.

²¹ Lyons, *supra* note 18, at 3-6.

²² See Daniel A. Lyons, *In Chile, Net Neutrality Widens the Digital Divide*, <http://www.techpolicydaily.com/communications/chile-net-neutrality-widens-digital-divide/>.

As the NPRM explained, the *Verizon* court held that the 2010 rules improperly imposed common carriage obligations on non-Title II services, and if the Commission intends to go forward with Open Internet rules under Section 706, it must assure that the rules leave “substantial room for individualized bargaining and discrimination in terms” between carriers and edge providers.²³ Because individualized bargaining is inconsistent with net neutrality advocates’ view of a homogenized broadband service, they advocate reclassification as the preferred way for the Commission to avoid the *Verizon* court’s mandate.

Syntonic Wireless would urge the Commission to view the *Verizon* decision not as a limit on the Open Internet initiative, but rather an essential element protecting it. Individualized bargaining and discrimination in terms preserve space for innovation in the broadband market. It is through individualized negotiations that Syntonic Wireless and other edge providers can partner with broadband providers to test potentially more efficient methods of delivering Internet services to consumers.

V. Any Blocking or Nondiscrimination Rules Should Allow Room for Pro-Consumer Innovation

Consistent with a focus on consumer welfare, any rules to enforce an Open Internet should take care not to restrict the potential for differentiation and innovation that benefit consumers. For example, the Commission may find it appropriate to enact a rule that prohibits broadband providers from blocking access to content included within a consumer’s subscription. But this rule should not preclude broadband providers from offering differentiated services whose entire value proposition depends on accessing only a portion of the Internet—such as Syntonic’s education initiative, which allows school

²³ *Verizon v. FCC*, 740 F.3d 623, 652 (DC Cir. 2014).

districts to deploy devices that can reach only curriculum-related, district-approved online resources, or Sprint’s proposed social media plan.

These differentiated services are seemingly at odds with the no-blocking rule proposed in the NPRM. The Commission has proposed to re-enact verbatim the 2010 no-blocking rule. Although the NPRM offers little guidance as to how this rule should be enforced, the 2010 Open Internet rule explained that

an Internet access service that provides access to a substantial subset of Internet endpoints based on end users preference to avoid certain content, applications, or services; Internet access services that allow some uses of the Internet (such as access to the World Wide Web) but not others (such as e-mail); or a “Best of the Web” Internet access service that provides access to 100 top websites could not be used to evade the open Internet rules applicable to “broadband Internet access service.”²⁴

But as noted above, such plans can benefit consumers who are interested in something less than full Internet access. As an increasing amount of our daily activities migrate online, different customers are likely to demand different services from their network providers. Moreover, proliferation of Internet-connected devices means consumers have multiple ways of reaching the Internet, and do not necessarily need every device to access every Internet endpoint at all times. Allowing broadband providers to tailor offerings to customers’ particular preferences can be more efficient than forcing them into one-size-fits-all plans that are ill-suited to their needs.

Moreover, as the “Internet of Things” expands to include devices such as Syntonic’s proposed remote healthcare monitoring solution, an increasing portion of network capacity will be dedicated to devices needing only limited connectivity. The Commission may explain that service to such devices falls outside its definition of

²⁴ 2010 rules ¶ 47.

“broadband Internet access service” and are therefore exempt from the rules. But as the spectrum of devices expands, the line between covered and non-covered services becomes difficult to discern. Consumer welfare is enhanced by allowing greater flexibility to offer less-than-full-Internet-access plans, subject perhaps to ex post review by the Commission in the event of demonstrated consumer harm.

Similarly, for reasons stated above, any nondiscrimination or commercial reasonableness standard must make provision for innovative, differentiated service offerings that benefit consumers. Numerous commenters have suggested that initiatives such as the Freeway application violate at least the spirit of net neutrality by treating content differently: sponsored content is exempt from a customer’s monthly data cap while non-sponsored content is not. Certain edge providers may object to such an arrangement, but it should be without question that most sponsored data agreements are good for consumers. As consumer conduct online continues to grow and evolve, the law should allow broadband providers the flexibility to enter into new arrangements that better fit consumers’ and edge providers’ needs, again perhaps subject to Commission review to correct instances of demonstrable consumer harm.

VI. The Commission Should Maintain a Light Touch When Regulating Mobile Services

Syntonic Wireless encourages the Commission to maintain its policy, first incorporated within the 2010 rules, of applying a lighter regulatory touch to mobile broadband. Our business model requires us to work closely with wireless broadband networks, and we recognize from first-hand experience that the unique challenges of managing a wireless broadband network strongly suggest the need for greater regulatory flexibility in this space.

As numerous other commenters have indicated, the mobile broadband environment is rapidly evolving. Sandvine estimates that median monthly data consumption over North American wireless networks has grown twenty percent in the last six months alone.²⁵ Mobile networks also face unique capacity constraints and less predictable traffic patterns, which makes management of network capacity more difficult. Syntonic routinely partners with mobile providers to navigate these capacity constraints to deliver growing amounts of Internet content wirelessly—a task that would prove much more difficult if wireless networks were treated identically to their wireline counterparts.

Conclusion

Consumer welfare has been, and should continue to be, the lodestar guiding the Commission's efforts to preserve the Open Internet. Syntonic Wireless has staked its company's future on its ability to provide novel new ways to deliver to consumers the content they demand. Any effort to promote the Open Internet must allow companies like ours to innovate in ways that promote consumer welfare, in broadband markets as well as upstream markets. In this fashion, the Commission can best assure that its rules enhance the ability of the Internet ecosystem to evolve to meet changing consumer demand.

Respectfully submitted,

²⁵ Sandvine, Global Internet Phenomena Report 1H2014, at 8, available at <https://www.sandvine.com/downloads/general/global-internet-phenomena/2014/1h-2014-global-internet-phenomena-report.pdf>.



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