STATEMENT OF COMMISSIONER
MICHAEL J. COPPS, CONCURRING

Re: *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*.

I concur in today's decision not because I like it. Not because I think it's the right thing to do. But because in light of the Commission's post-*Brand X* decisions, today's outcome has long been inevitable. I nevertheless want to reiterate my view that consigning broadband services to an indeterminate Title I regulatory limbo is no substitute for a genuine national broadband strategy. It doesn't give either businesses or consumers the kind of certainty that they are entitled to. And I simply cannot accept, when the stakes are so high, that deferring difficult decisions—rather than actually making them—constitutes a responsible regulatory framework.

To be sure, we have clarified certain questions about E911 and CALEA and decided (unwisely in my view) that broadband providers need not contribute to Universal Service. But we still haven't addressed important questions about such things as privacy, disabilities access and the future of the Internet. I hope that we will move expeditiously to patch these alarming holes in the leaky roof we have created. Until we do so, I fear it will be the American public that gets soaked.

Moreover, the multi-faceted nature of wireless services and devices raises a whole host of novel questions that today's *Order* does not even ***attempt*** to answer. For instance: consider a cutting-edge device like Apple's much-anticipated iPhone, which allows a user to communicate via IP-based Wi-Fi technology as well as traditional CMRS service. Under our precedent, a consumer who uses the CMRS features of the device to place a phone call can be secure in the knowledge that our Title II CPNI rules require the carrier to protect his or her call and location information. But what about when that very same consumer uses that very same device just moments later to send an email via Wi-Fi, to call up a map of his or her location via a browser, or even to place a VoIP call to another Internet user? Because *those* services—which the customer can be excused for thinking of as functionally identical to the CMRS call—are now classified as Title I information services, the carrier appears to be entirely free, under our present rules, to sell off aspects of the customer's call or location information to the highest bidder. *Caveat emptor*, indeed!

Finally, I would like to point out one additional—and more promising—aspect of today's decision. Back in 2005, the Commission issued a policy statement adopting four principles applicable to Internet access services, including that "consumers are entitled to connect their choice of legal devices that do not harm the network."[1] Now that IP-based

[1] Policy Statement, FCC 05-151, at 3 (2005) (citing *Hush-A-Phone Corp. v. United States,* 238 F.2d 266, 269 (D.C. Cir. 1956); *Use of the Carterfone Device in Message Toll Telephone Service*, 13 FCC 2d 420 (1968)) (The other principles are: "[C]onsumers are entitled to access the lawful Internet content of their choice. … [C]onsumers are entitled to run applications and use services of their choice, subject to the

wireless services are classified as Title I information services, the inescapable logical implication of our 2005 decision is that the right to attach network devices—as well as the three other principles of our policy statement—now applies to wireless broadband services.

I believe the Commission accordingly has a clear and pressing responsibility to open a rulemaking that will clarify how these Title I principles should be applied in the wireless context. I also believe we should include questions about how and whether the classification of CMRS services as Title II services incorporates the principle of the seminal 1968 *Carterfone* decision.[2] I believe that our answers to these questions—or our failure to answer them—will have a direct impact on the pace of technological innovation in the years ahead and on the extent to which consumers can take full advantage of that innovation.

Indeed, as the Commission has already recognized in a host of areas—such as *Carterfone*'s discussion of the PSTN, our 2005 Policy Statement's discussion of the Internet, and our rules on cable set-top boxes—consumers generally benefit when they can select from among a range of network attachments, including devices not chosen for them by their service provider. Indeed, without these decisions, groundbreaking devices like the fax machine and dial-up modem—which provided most of us with our first taste of the Internet—would never have become so commonplace and so inexpensive so quickly. Nor is it likely that so many of us would have set up home networks and Wi-Fi routers if service providers were free to charge us an extra fee for doing so.

In light of the enormous benefits that the Commission's device attachment rules have enabled for so many of the networks regulated by the Commission, I would have preferred that today's reclassification item contain an NPRM teeing up these issues for wireless networks. I certainly hope that my colleagues will join me in taking up these important questions soon. There is so much potential in wireless broadband—for consumers and entrepreneurs both—and our challenge is to do everything we can to make sure the promise of these pioneering technologies is redeemed.

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needs of law enforcement. … [C]onsumers are entitled to competition among network providers, application and service providers, and content providers.")

[2] *See id.*