Existing Title II Regulation of Cellular Service is the Right Model for Broadband

James P. Tuthill
Adjunct Professor, University of California, Berkeley, School of Law
November 19, 2014
Cellular Service is a “Common Carrier” Service

- Cellular services are “Commercial Mobile Radio Services”: CMRS
- CMRS services are Title II Common Carrier services under the Communications Act
- States have authority to protect users and consumers
- Title II regulation of cellular has not hurt either investment or innovation
- FCC should adopt this model of “lite” Title II regulation for broadband
The Communications Act Classifies Mobile Service Providers as Common Carriers

- 47 USC § 332 (c): Regulatory treatment of mobile services:
  - Common carrier treatment of commercial mobile services:
    - “A person engaged in the provision of a service that is a commercial mobile service shall...be treated as a common carrier for purposes of this chapter....”

James P. Tuthill, Adjunct Professor, University of California, Berkeley, School of Law
The Communications Act Classifies Mobile Service Providers as Common Carriers

- Commission has authority to forbear from application of provisions of Title II
  - Both under Section 332 and Section 10
- No rate regulation—the only real burdensome part of Title II
  - Historically an essential part of common carriage:
    - Setting “just and reasonable” rates
  - And a critical issue in defining “common carriage” that the court in *Verizon* failed to address
The Communications Act Classifies Mobile Service Providers as Common Carriers

- Apply Sections 201, 202 and 208 of Title II

- "These fundamental provisions collectively forbid unreasonable denials of service and other unjust or unreasonable practices, and allow the Commission to enforce the prohibition."
  Austin Schlick, General Counsel, FCC, May 6, 2010
The Communications Act Classifies Mobile Service Providers as Common Carriers

- States preempted from setting rates
- But states may regulate “…the other terms and conditions of commercial mobile services.”
- Significant role of states for consumer protection

James P. Tuthill, Adjunct Professor, University of California, Berkeley, School of Law
The Communications Act Classifies Mobile Service Providers as Common Carriers

- Mobile Services model of “lite” Title II regulation together with Section 706 gives Commission the right balance of authority for the regulation and promotion of broadband
The Communications Act Classifies Mobile Service Providers as Common Carriers

- Commission has authority to reclassify broadband from an Information Service to a Telecommunication Service
  - It’s a policy decision
  - Six justices in *Brand X* decision acknowledged classification of a service is a policy call for the Commission
  - Commission can change policy where it acknowledges it is doing so and its reasons are rationale: *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800 (2009)
“Lite” Common carrier regulation has not harmed Cellular

- In 1995 in its first report to Congress on mobile services the Commission stated that there were approximately 25 million cellular subscribers.
- In its 16th report to Congress in March of 2013 the Commission said there were 298.3 million subscribers to mobile telephone or voice services.
## FCC Estimated Total Mobile Wireless Connections

<table>
<thead>
<tr>
<th>Year</th>
<th>Connected Devices (millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>128.5</td>
</tr>
<tr>
<td>2002</td>
<td>141.8</td>
</tr>
<tr>
<td>2003</td>
<td>160.6</td>
</tr>
<tr>
<td>2004</td>
<td>184.7</td>
</tr>
<tr>
<td>2005</td>
<td>213.0</td>
</tr>
<tr>
<td>2006</td>
<td>241.8</td>
</tr>
<tr>
<td>2007</td>
<td>263.0</td>
</tr>
<tr>
<td>2008</td>
<td>279.6</td>
</tr>
<tr>
<td>2009</td>
<td>290.7</td>
</tr>
<tr>
<td>2010</td>
<td>301.8</td>
</tr>
<tr>
<td>2011</td>
<td>317.3</td>
</tr>
</tbody>
</table>
“Lite” Common carrier regulation has not harmed Cellular and will work for broadband

- In 2001 Tom Tauke, Verizon’s Senior VP for Public Policy told Congress that the forbearance framework “produced what is arguably one of the greatest successes in this industry in the last twenty years-the growth of wireless services.”
- The Wireless framework will work for broadband Internet services too.