Before the

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Wireless Telecommunications Bureau Seeks	)	WT Docket No. 15-125
Comment on the State of Mobile Wireless	)	
Competition	)	

COMMENTS OF THE WRITERS GUILD OF AMERICA, WEST, INC.

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I. Introduction

Writers Guild of America, West, Inc. ("WGAW") is pleased to submit comments on the state of mobile wireless competition for the Commission's 18th Annual Report.[1] WGAW is a labor organization representing more than 8,000 professional writers of film, television and new media content, including news and documentaries. Virtually all of the entertainment and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, "WGA"). Increasingly, video programming produced for initial distribution on online video platforms is also written by WGA members.

Since the last report, the Commission has adopted several policies that promote competition in the mobile broadband market, the most important of which was the inclusion of mobile broadband in the Commission's historic Net Neutrality Order, ensuring that wireless and wireline broadband customers and edge providers are afforded the same access to a fast, fair and open Internet. In addition, Commission efforts to increase spectrum for unlicensed use and for small carriers are important pro-competitive measures. The Commission has also helped facilitate industry agreement on cellphone unlocking, making it easier for customers to switch providers. Despite this progress, the mobile market remains highly concentrated. AT&T and Verizon retain duopoly control of the wireless market with 66% of subscribers and 73% of low-band spectrum. Although these two companies control two-thirds of the wireless market they continue to acquire spectrum. In the recent AWS-3 auction AT&T spent $18 billion, acquiring

[1] Public Notice, *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, WT Docket No. 15-125 (May 29, 2015), ("*Public Notice*").

AWS licenses that cover 96% of the population and Verizon's $10 billion netted AWS licenses covering 65% of the population. AT&T has already stated it intends to purchase between 20 and 40 MHz in the upcoming 600 MHz auction.[2]

The duopolists' market power allows them to keep data prices high, which limits competition between wired and wireless distribution systems and providers. Unlike other carriers, AT&T and Verizon are uniquely incentivized to use their pricing power to discourage substitution of wired broadband and multichannel video programming distribution ("MVPD") services with a mobile connection. As a result, mobile video cannot compete with less data intensive applications and consumption is largely limited to Wi-Fi connections. In addition, recent actions suggest both companies intend to use their control of mobile distribution to compete in upstream content markets. AT&T has invested in mobile content directly through Otter Media, its joint venture with Chernin Group. AT&T's pending acquisition of DirecTV could also be leveraged to expand its mobile content offerings. If the DirecTV transaction is approved, AT&T will become the largest MVPD in the United States, representing 27% of MVPD households.[3] With 25 million subscribers, AT&T will be able to leverage its control over programmers in the MVPD market to negotiate lower affiliate fees and expanded distribution rights for mobile and over-the-top ("OTT") content from programmers.[4] Verizon is also developing a mobile-first video offering. In

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[2] Phil Goldstein, *Analysts: Verizon might be playing coy with 600 MHz auction to get more favorable rules*, FierceWireless (February 18, 2015), http://www.fiercewireless.com/story/analysts-verizon-might-be-playing-coy-600-mhz-auction-participation-get-mor/2015-02-18; and Phil Goldstein, *AT&T tussles with T-Mobile over AWS-3 spectrum auction results*, FierceWireless (March 5, 2015), http://www. fiercewireless.com/story/att-tussles-t-mobile-over-aws-3-spectrum-auction-results/2015-03-05.
[3] SNL Kagan, U.S. Multichannel Operator Comparison by Market, Multichannel Video Subscribers for 2015Q1 (last accessed June 29, 2015).
[4] Writers Guild of America, West, Inc., Petition to Deny, MB Docket 14-904 (September 16, 2014).

addition to licensing deals with AwesomenessTV, Scripps and Viacom, Verizon just acquired AOL for $4.4 billion. Verizon and AT&T could use their control of mobile distribution to advantage their own video services and disadvantage rival offerings. To this end, AT&T has been exploring sponsored data plans, wherein the application subsidizes the cost of a consumer's use, and Verizon is considering ad-sponsored data for its upcoming OTT offering, where advertising subsidizes the cost of data consumption.

Increased competition is needed in the wireless market, particularly for upstream mobile video markets to become viable. These comments highlight the fact that video is driving data traffic and growth in the mobile market. However, the data pricing policies of the two largest carriers have limited the amount of video consumed over mobile connections. As carriers acquire content and explore data subsidization models, unaffiliated content will be at an even greater disadvantage. In assessing the state of the mobile wireless market, the Commission should recognize the strategic value of video as a market input affecting mobile competition and adopt appropriate policies to enhance competition.[5]

II. Mobile Consumption is Growing Rapidly

Mobile data consumption is growing, driven by consumer device adoption and faster 4G and LTE connections. An estimated 237.7 million smartphones, representing 75% of US mobile users, and 118.2 million tablets were in use in the United States at the close of 2014.[6] Advances in data compression, cloud storage, cross-platform operating systems, and large screen sizes have optimized mobile devices for data-intensive applications like video. As a result, consumers

[5] *See* Public Notice, *supra* note 1, at 3, 5.
[6] SNL Kagan, Economics of Mobile Programming, 2 (2015 ed.).

spent 43 hours a month using mobile devices in 2014, a 9-hour increase over the previous year,[7] and mobile ad revenue reached $12.5 billion, a 76% increase year-over-year.[8]

This has led companies from all segments of the communications industry to develop mobile strategies. DISH CEO Charlie Ergen wrote to shareholders, "We are convinced that the convergence of video and data over wireless networks using mobile devices is inevitable and will create opportunities for DISH as we work to provide service to our customers anytime, anywhere."[9] Prior to the Verizon transaction, Tim Armstrong opened AOL's 2014 annual report with the statement, "We have stayed consistent in building a media technology company that fully harnesses the simple idea that most humans in the planet will one day own a powerful mobile machine and a powerful mobile connection to a global network."[10] And Yahoo's Marissa Mayer wrote, "In 2012, our leadership team began a multiyear transformation to return an iconic company to greatness, shifting from a declining desktop strategy to a mobile-first strategy that has already yielded significant results."[11]

A. Video is Driving Growth in the Mobile Market but is Limited by Costly Data Plans

Streaming video has become one of the most-used functions on mobile devices. Research from Sandvine shows that entertainment applications—including video—generate 36.5% of

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[7] Nielsen, *The Total Audience Report, Q4 2014* 12, tbl.3 (2015), http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2015-reports/total-audience-report-q4-2014.pdf.
[8] Interactive Advertising Bureau, IAB Internet Advertising Revenue Report, 2014 Full Year Results 4, 7 (April 2015).
[9] Charles W. Ergen, Chairman of the Board of Directors, DISH, *Letter to Shareholders*, DISH Network Annual Report FY 2013.
[10] Tim Armstrong, Chairman & CEO, AOL, *Letter to Shareholders*, AOL Annual Report FY 2014.
[11] Marissa A. Mayer, CEO & President & David Filo, Co-founder & Chief Yahoo, Yahoo, *Letter to Shareholders*, Yahoo Annual Report FY 2014.

mobile traffic during peak hours.[12] The second largest source of data traffic is social applications. But as social applications integrate video functionality—such as Facebook's auto-play—video will claim an even larger share of mobile data traffic. By 2019, video is projected to generate 69% of mobile traffic globally.[13]

OTT video applications have created demand for mobile access. However, expensive data plans have discouraged extensive video use, leading to disproportionate consumption of short-form content. For example, Netflix represents 32% of traffic on fixed broadband connections during peak hours.[14] During the same period, Netflix represented only 4% of mobile traffic despite a research finding from Frank N. Magid Associates that 45% of smartphone users watch long-form TV, movies and sports on their phones.[15] YouTube's traffic during peak periods similarly demonstrates device preference; YouTube represented 14% of desktop traffic and 18% of mobile traffic in the second half of 2014.[16]

Data traffic patterns suggest that long-form viewing is either happening over a Wi-Fi connection or is limited to the minority of consumers who subscribe to a higher data tiers or purchase a separate data plan for their mobile device. For most mobile subscribers, data consumption over a cellular network remains relatively low. In the United States, median monthly data consumption was only 118 MB in 2014, far below 1 GB, which is the amount of data needed to stream an hour of HD video. The costly data plans offered by market leaders

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[12] Sandvine, Global Internet Phenomena Report 2H 2014 7 (2014).
[13] Cisco, Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2014-2019 17 (2015).
[14] *See* Sandvine, *supra* note 12, at 6, 8
[15] *See* SNL Kagan, *supra* note 6, at 5.
[16] *See* Sandvine, *supra* note 12, at 6, 8.

AT&T and Verizon continue to limit the amount of video consumers can watch on mobile devices.

Verizon estimates an hour of streaming HD video on a 4G tablet uses 1 GB[17] of data and an hour of streaming video on a smartphone requires 250 MB for a 3G phone and 350 MB for a 4G phone.[18] To watch an hour of video a day, Verizon customers would need to purchase 10 GB of data for a smartphone at $80 per month or 30 GB for a tablet, costing $185 per month, which does not include device charges.[19] AT&T estimates that an hour of HD streaming on a tablet or smartphone uses 900 MB of data.[20] An AT&T subscriber would then need 26 GB of data to watch 30 hours of HD video per month at a cost of $225 plus device charges.[21] As a result, mobile video can only be consumed in large quantities by using a Wi-Fi connection, which disadvantages video applications in comparison to less data-intensive apps like social networking or email.

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[17] Verizon, *Data Calculator*, available at http://www.verizonwireless.com/b2c/splash/dataShareCalculator.jsp (last visited May18, 2015). Select "Tablet" on the "Add a Device" drop-down menu and scroll down to "How much data does a 4G Tablet use?"

[18] *Id.* Select "Smartphone" on the "Add a Device" drop-down menu and scroll down to "How much data does a 3G/4G Smartphone use?"

[19] Verizon, *MORE Everything Plan*, http://www.verizonwireless.com/landingpages/more-everything/ (last accessed May 18, 2015). Scroll down and select tab "Add Phones & Devices Device Details & Pricing" and $40 device fee for smartphones and a $10 device fee for tablets.

[20] AT&T, *Smartphone Data Calculator*, http://www.att.com/att/planner/ (last accessed May 18, 2015). Click "Select Device" and select "Smartphone" then click "Estimate my monthly usage in detail" and scroll down to "Data Legend for Smartphone."; and AT&T, *Tablet Data Calculator*, http://www.att.com/att/planner/ (last accessed May 18, 2015). Click "Select Device" and select "Tablet" then click "Estimate my monthly usage in detail" and scroll down to "Data Legend for Tablet." AT&T estimates an hour of streaming standard definition video requires 240 MB and an hour of high definition video requires 900 MB. Consuming 149 hours of video would require 40 GB for SD and 131 GB for HD.

[21] AT&T, *Smartphone Data Calculator*, available at http://www.att.com/att/planner/ (last visited May 18, 2015). Click "Select Device" and select "Smartphone" then click on "Monthly Usage" for 26 GB.

III. Vertical Integration Threatens Mobile Video Competition

Until recently, mobile carriers have not vertically integrated with content. Previously, AT&T, Sprint and T-Mobile experimented with offering branded, mobile video applications. But after peaking in 2009 with 5 million subscribers and $491 million in revenue, carrier-branded video applications dropped in popularity. In 2014, these applications had only 1.8 million subscribers and $185 million in revenue.[22]

The failure of carrier-branded video apps is likely due to smaller content libraries, more expensive monthly fees, and reach. In comparison, OTT apps like Netflix and YouTube have large content libraries and are accessible from a single account across a number of devices. In the last year, however, AT&T and Verizon have begun acquiring mobile content assets.

In April 2014, AT&T and Chernin Group formed a joint venture called Otter Media to invest in mobile and digital content. In announcing the new joint venture, AT&T's Chief Strategy Office John Stankey said, "Combining our expertise in network infrastructure, mobile, broadband, and video with The Chernin Group's management and expertise in content, distribution, and monetization models in online video creates the opportunity for us to develop a compelling offering in the OTT space."[23] In September, Otter Media acquired a majority stake in

[22] *See* SNL Kagan, *supra* note 6, at 5.
[23] Press Release, AT&T, The Chernin Group and AT&T Create New Venture to Acquire, Invest In, and Launch Online Video Businesses (April 22, 2014), http://about.att.com/story/the_chernin_group_and_att_create_new_venture_to_acquire_invest_in_and_launch_online_video_businesses.html.

Fullscreen, one of the largest multi-channel networks ("MCN") on YouTube.[24] AT&T's pending acquisition of DirecTV is a much larger transaction that may also impact the mobile market. If approved, AT&T will become the largest MVPD in the United States and will have the market power to negotiate expansive content rights for mobile and online distribution.

Verizon has been interested in virtual MVPD and OTT services for several years. In 2014 Verizon announced that it would launch a mobile-first OTT service. Verizon has negotiated licensing deals with Scripps and Viacom to program the service, [25] and online creators from AwesomnessTV will provide 200 hours of original content. [26] The most significant transaction, though, is Verizon's recently-completed acquisition of AOL for $4.4 billion, which gives the company control over original digital content.

The video plans of the dominant wireless carriers could harm mobile video competition. For instance, AT&T and Verizon could selectively exempt affiliated video offerings from data allowances, a practice called zero-rating. Because the Commission has not adopted bright line regulations on zero-rating, it is not clear when such practices will run afoul of Open Internet policies. Given the high cost of mobile data, the ability to exempt certain content from a subscriber's monthly allowance is a significant competitive advantage, one that could be used to limit competition in the mobile video market. Further, both carriers are developing data-

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[24] Todd Spangler, *AT&T/Chernin's Otter Media joint venture buys majority stake in YouTube multichannel network*, Variety (September 22, 2014), http://variety.com/2014/digital/news/att-chernin-group-take-control-of-youtubes-fullscreen-network-1201310694/.

[25] Jeff Baumgartner, *Verizon's Mobile-First Service to Serve Up Scripps Fare*, Multichannel News (June 25, 2015), http://www.multichannel.com/news/technology/verizons-mobile-first-service-serve-scripps-fare/391682.

[26] Todd Spangler, *Verizon Inks AwesomenessTV Deal for 200-Plus Hours of Content*, Variety (March 11, 2015), http://variety.com/2015/digital/news/verizon-inks-awesomenesstv-deal-for-200-plus-hours-of-content-1201450526/.

subsidization models. AT&T's model allows apps to pay for consumer's data usage inside the app. Verizon's model will subsidize data usage with advertising. These models will allow consumers to use certain apps without exhausting their monthly data allowance. Given the high cost of data plans, subsidized data will be a significant advantage to participating applications and challenging for emerging applications that may not have the capital to subsidize consumer usage.

IV. Conclusion

The mobile wireless market hosts diverse and robust applications. Advances in mobile distribution and consumer interest in the medium has positioned mobile as a potential competitor to broadband and MVPD service. However, the mobile market is challenged by carrier concentration and vertical integration. The Commission should adopt spectrum policies that ensure the viability of smaller carriers. To this end we continue to support a spectrum reserve of 40 MHz in the upcoming auction. Further, we encourage the Commission to consider the impact of data subsidization models on application competition. It's important that the Commission evaluate carriers' vertical assets, exclusive relationships with apps and data pricing in the context of these reports and take steps to ensure that mobile devices remain open, competitive and accessible.