

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993)	WT Docket No. 04-111
)	
Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services)	

**REPLY COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”)¹ hereby submits these Reply Comments in the above-referenced proceeding. As a threshold matter, CTIA notes that only six parties filed comments, and each one observed the same reality the Commission itself has already acknowledged – the CMRS industry is highly competitive and there is a plethora of data readily available from numerous public sources demonstrating this fact.² Thus, there is absolutely nothing to be gained by the

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See e.g., the Comments of the Cellular Telecommunications & Internet Association, In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 04-111, filed April 26, 2004, at 5-7, 19-20, 31 *et seq.*; see also Comments of Metrocall Holdings, Inc., dated April 23, 2004, at 2, 4-8 (reviewing data from public third-party sources); Comments of the National Telecommunications

Commission expending its own limited resources, and those of the industry, year after year to completely reexamine the issue of whether the industry is competitive; rather, as Commissioner Abernathy suggests, the Commission more properly should focus its Section 6002(b) inquiry on developments during the preceding 12 months before the Commission's annual deadline that may have impacted, positively or negatively, the state of competition.³

To assist the Commission to properly frame this inquiry, CTIA has retained Michael Katz, the Sarin Professor of Strategy and Leadership at the University of California, Berkeley, and a specialist in the economics of industrial organization which includes the study of antitrust and regulatory policies. At CTIA's request, Dr. Katz has prepared the attached paper to address the methodological issues raised by the Commission regarding the assessment of competition in the CMRS industry. While Dr. Katz notes that the Commission should conduct an intellectually rigorous analysis of the state of competition in CMRS markets, he concludes that:

The Commission has repeatedly sought and received data over the years and has repeatedly found the CMRS industry to be competitive. This pattern strongly suggests that the Commission should focus on recent developments and changes in market conditions to update its findings rather than risk reinventing the wheel.⁴

Cooperative Association (Comments of the NTCA) filed April 26, 2004, at 2 (re NTCA's annual wireless survey, attached thereto and available on the web); Comments of Rural Cellular Association (Comments of RCA) filed April 26, 2004, at 3, 7 (describing the "vibrant" competition in the industry, and citing RCA's own rural wireless survey).

³ CTIA Competition Comments at 4.

⁴ Michael L. Katz, "Measuring Competition Effectively," May 10, 2004, at 3 ("Katz Paper," attached hereto).

Moreover, in seeking data to inform its analysis, the Commission should determine “whether additional relevant data already are available from public sources, such as carrier web sites” since the use of publicly available data will allow the Commission to sample the data on a flexible basis, avoid lag time, and gather data without creating unnecessary costs or confusion, or risk disclosure of proprietary information.⁵

Two additional and very important themes emerge in the comments on this year’s assessment of the state of competition in the CMRS industry: (1) there is vibrant competition in rural markets; and (2) continued state and local regulation of CMRS threatens to undermine the benefits that the competitive CMRS market has thus far delivered to consumers. Blooston, Movdkofsky, Dickens, Duffy & Prendergast, on behalf of their rural CMRS clients (the “Blooston Rural Carriers”), the National Telecommunications Cooperative Association (“NTCA”), and the Rural Cellular Association (“RCA”) each affirm the presence and reality of competition in rural markets. The Blooston Rural Carriers state that “rural CMRS carriers face significant competitive pressures from nationwide carriers.”⁶ NTCA points out that 44 percent of the members responding to NCTA’s annual survey identified “competition from nationwide carriers” as a matter of concern.⁷ Further, the RCA notes that its annual survey reveals that in the rural markets served by its members:

The number of wireless service providers . . . has grown year-to-year over the last five years. The survey results show there was an average of 3.0 wireless providers in survey participants’ markets in 1998; and that the number of wireless competitors increased to 3.6 in 1999; to

⁵ Id. at 21.

⁶ Comments of the Blooston Rural Carriers, filed April 26, 2004, at 1.

⁷ Comments of the NTCA at 3.

4.7 in 2000; to 4.9 in 2001; and to 5.1 in 2002 which is the last calendar year for which survey data is currently available. The survey results indicate there is robust and effective competition, increasing year-to-year, in the markets served by RCA members.⁸

With respect to the state of competition generally, the commenters all agree that the industry is highly competitive, encompassing many different kinds of providers offering a range of services, price plans and coverage areas.⁹ Virgin Mobile USA emphasizes the “rapid marketplace acceptance” which greeted their entry into the market as a Mobile Virtual Network Operator, and describes “the competitive response of the large, national wireless carriers.”¹⁰ As CTIA indicated in its Comments, a wide variety of competitive choices exists for consumers, as “98 percent of the U.S. population now lives in markets served by three or more operators, 93 percent in markets served by four or more operators, 83 percent in markets served by five or more operators, and 66 percent in markets served by six or more operators.”¹¹

The second important theme that emerges in this proceeding, and one that is not new, are the harmful effects state and local regulation of CMRS are having, and will continue to have, on competition and consumers.¹² RCA points to the impact of “costly

⁸ Comments of RCA at 3.

⁹ See CTIA Competition Comments at 6-7, 12-16, 21-22, and 38; see also Comments of the Blooston Rural Carriers at 3-4; Comments of Metrocall Holdings at 2, 4-6; Comments of the NTCA at 3; Comments of RCA at 3-4; Comments of Virgin Mobile USA, LLC, filed April 26, 2004, at 3-4.

¹⁰ Comments of Virgin Mobile USA at 2, 3.

¹¹ CTIA Competition Comments at 31.

¹² Id. at 4.

new obligations on wireless carriers,”¹³ and Virgin Mobile USA expresses concern “about recent state and local government attempts to regulate wireless services and to impose discriminatory fees related to wireless services.”¹⁴ The Blooston Rural Carriers also warn against the “disproportionate burden that unfunded regulatory mandates (such as E911, CALEA and LNP) place on rural carriers.”¹⁵

One new area the Commission should monitor is the effects of state and local regulation of CMRS on competition and consumers. As Dr. Katz explains in his paper, the Commission must pay particular attention to the creeping state regulation of terms and conditions, as such efforts quickly become an especially inefficient form of price regulation that would limit competition.¹⁶ Indeed, such regulations may create artificial competitive advantages for competing transmission technologies, distorting investment decisions.¹⁷ Thus, as Dr. Katz points out, state and local regulations tend to distort a competitive market and harm consumer welfare by suppressing demand and increasing compliance costs.¹⁸ It was precisely these distortions and harms to consumer welfare that

¹³ Comments of RCA at 5 (noting that “while this is an important issue for all wireless carriers, it disproportionately affects small carriers”).

¹⁴ Comments of Virgin Mobile USA at 5.

¹⁵ Comments of the Blooston Rural Carriers at 1. As CTIA noted in its Comments, another threat in rural markets is the disproportional impact of government mandates that must be recovered over a smaller customer base and typically a larger service territory. These mandates, which include implementation of Local Number Portability (“LNP”), CALEA, and E-911, have seriously impacted and delayed build-out to unserved areas of carriers’ service territory and the introduction of new services and technologies.

¹⁶ Katz Paper at 20 paragraph 46.

¹⁷ Id. at 17 paragraph 40.

¹⁸ Id. at 18-19 paragraph 44.

CTIA warned the Commission about in the original proceedings on the preemption of state regulation in 1994 and 1995.¹⁹

A variety of state and local policies increase wireless service costs by imposing taxes, fees, and regulatory burdens. In addition to the costs and distortions caused by specific state and local policies, a patchwork of varying regulations across the country can be costly because it raises compliance costs and because there may be distortions between national and more regionally or locally focused providers.²⁰ For example, the California Public Utilities Commission is currently considering whether to adopt California-specific privacy rules governing the use of certain customer data that differ significantly from the Commission's privacy rules. Creating distinct rules for California will increase the costs of service for carriers that operate on a multi-state or national basis.

Allowing states to increasingly balkanize the wireless industry through regulatory intervention is completely contrary to the pro-competitive and pro-consumer goals of the provisions of the Telecommunications Act adopted in 1993 and 1996. State-specific proposals regarding everything from billing formats to advertising form and content, to state-specific privacy rules threaten to raise the cost of service to consumers, and are

¹⁹ For example, research indicated that California's then-cellular regulations increased consumers' costs by hundreds of millions of dollars each year, and suppressed demand for wireless service. *See e.g.*, Petition of the People of the State of California and the Public Utilities Commission of the State of California To Retain Regulatory Authority over Intrastate Cellular Service Rates, 10 FCC Rcd. 7486, at 7522 n.183 (1995) *citing* the affidavit of Professor Jerry A. Hausman filed therein.

²⁰ Katz Paper at 18-19 paragraph 40. Such a patchwork, if unchecked, could jeopardize the continued viability of the national "One-Rate" plans by creating state-specific rules that increase carriers' costs of service.

inconsistent with the operation of wide-area interstate and multi-state wireless systems. In effect, such state-specific regulations would hamper carriers' ability to use centralized operational support systems and databases, creating burdens for carriers and unnecessarily increasing their operational costs.

The evolution of the wireless industry has demonstrated the principle that, absent market failure, government intervention is unwarranted in a competitive market. Indeed, unwarranted interventions in competitive markets produce distortions ranging from higher costs, to inefficiency or suppressed demand as a result of improper pricing signals. As Dr. Katz notes,

In assessing market conditions and market performance, the Commission should take into account the extent to which state and local regulations and fees are distorting competition. For example, state and local governments levy a variety of direct and indirect taxes on CMRS providers, which raise the costs of providing services and, hence, the prices at which services are sold. The Commission should be especially wary of regulations that constitute "backdoor" price regulation (e.g., attempts to limit the use of early termination fees), which limit and distort competition.²¹

Finally, contrary to the unsupported statement by NTCA that handset locks are a barrier to entry, there is no data to support this claim. In fact, the successful entry into the U.S. wireless market by MVNO's such as Virgin Mobile, and the recent announcements by AT&T and MCI of their intent to enter as MVNO's, offers empirical evidence that neither handset locks, nor any other factor, is suppressing entry.²² The

²¹ Katz paper at 3.

²² In point of fact, the use of handset locks is not universal among CMRS carriers. Moreover, the carriers that do use handset locks have different policies regarding "unlocking" a handset upon a customer's request. Carriers use handset locks for a variety of pro-competitive reasons, ranging from a desire to prevent consumers from confusing their brand name (which is often displayed on the handset case and operating features) with another carrier's service, to discouraging gray market

Commission should, therefore, affirm its previous conclusion that the wireless industry is effectively competitive, and is delivering to consumers the full benefits of a competitive marketplace – lower prices, higher quality, a greater choice of services.

Respectfully submitted,

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transfers of handsets from the United States to markets where carriers do not discount handsets.