

Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning a Review of the	)	CC Docket No. 02-39
Equal Access and Nondiscrimination	)	
Obligations Applicable to Local Exchange	)	
Carriers	)	

**REPLY COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”)<sup>1</sup> respectfully submits these reply comments in response to the Commission’s Public Notice requesting that parties update the record in the equal access and nondiscrimination proceeding in light of marketplace and industry developments.<sup>2</sup> While equal access was a core element of the AT&T divestiture decree, it specifically addressed competition in the “long-distance” market and was designed with the specific purpose of preventing the incumbent [Bell] Operating Companies from favoring AT&T. As the FCC and Congress have long recognized, these considerations do not – and should not – apply to wireless carriers. Accordingly, CTIA opposes the comments in the proceeding suggesting the extension of equal access obligations to the wireless industry.<sup>3</sup>

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<sup>1</sup> CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, and AWS, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> Parties Asked to Refresh the Record Regarding Review of Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers, *Public Notice*, CC Docket No. 02-39, DA 07-1071 (Mar. 7, 2007).

<sup>3</sup> See Comments of the New Jersey Division of Rate Counsel, CC Docket No. 02-39 (filed May 29, 2007) (“NJ Division of Rate Counsel Comments”).

**I. CTIA OPPOSES ANY PROPOSED EQUAL ACCESS OBLIGATIONS ON THE HIGHLY COMPETITIVE WIRELESS INDUSTRY**

Equal access, a regulation borne out of a monopoly market, has no place in the competitive wireless marketplace. The success of the wireless industry and its continued ability to bring competitive and innovative new services to its more than 230 million subscribers is due in large part to the light regulatory touch of the Commission. While the FCC has imposed numerous equal access requirements on incumbent LECs, it has never imposed equal access requirements on CMRS carriers. As Kellogg, Thorne, and Huber put it:

“[t]he logic has been straightforward: equal access requirements only make sense as applied to an “essential” or “bottleneck” facility. The mobile switch is nothing of the sort. It is a competitive facility; there is always a competing mobile provider down the road.”<sup>4</sup>

In the 1996 Telecommunications Act, Congress exempted wireless carriers from equal access obligations.<sup>5</sup> Shortly thereafter, consumer demand for postalized wireless “one rate” plans led to the “death of distance” allowing customers to call anywhere in America, regardless of distance, without being assessed long distance charges. Wireless consumers do not choose a long-distance carrier because distance is irrelevant in wireless calling plans. As the Commission has noted in each of its Annual Reports to Congress on the State of Competition in the Commercial Mobile Radio Services (CMRS) Industry, consumers benefit from the deregulatory environment which results in a robustly competitive wireless industry. Unless long distance carriers are willing to provide long distance service to mobile customers for free, the great irony lurking behind the proposal

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<sup>4</sup> Kellogg, Thorne, and Huber, *Federal Telecommunications Law* § 13.3.5, 663 (1st ed. 1992).

<sup>5</sup> 47 U.S.C. § 332(c)(8).

to extend equal access obligations to wireless carriers is that a wireless consumer who selects a separate long distance carrier will be penalized by equal access and forced to pay a separate “long distance” charge for a service that already is included in the customer’s “one rate” bucket of minutes. The Commission should reject attempts to harm wireless consumers and burden wireless carriers with needless regulations whose only rationale is to raise wireless carriers’ costs and thus shield incumbent LECs, and their customers, from the full benefits of intermodal competition.

The wireless market, by all measurements, is vibrantly competitive. Equal access regulations assume a market where consumer choice is limited by a dominant carrier’s market power. In wireless, however, consumers are free to choose from a number of competitors in their area who compete both on service offerings and price. According to the Commission, 98% of all Americans live in counties where at least three wireless carriers compete for subscribers and 94% of Americans live in counties with four or more wireless competitors.<sup>6</sup> Many of these markets also are served by MVNOs, such as Disney, Jitterbug, Amp’d, TracFone, and VirginMobile. Each wireless competitor offers numerous calling plans designed to address a particular consumer’s preferences. Additionally, with the completion of the Advanced Wireless Services auction three new carriers – Leap Wireless, MetroPCS and SpectrumCo. – received licenses that are the equivalent of a nationwide footprint. The upcoming 700 MHz auction will bring yet more competition to the mobile wireless marketplace. With such high levels of

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<sup>6</sup> *Eleventh Annual CMRS Competition Report*, Federal Communications Commn., at ¶ 41, available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-06-142A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-142A1.pdf) (last accessed Apr. 7, 2007).

competition, “there is always a competing mobile provider down the road.” Accordingly, there is no need to impose regulations designed to foster choice.

## **II. EQUAL ACCESS OBLIGATIONS WOULD REQUIRE THE FCC TO CREATE WIRELESS “LATAS” AND WOULD LEAD TO HIGHER END-USER RATES FOR CONSUMERS**

The comments suggest equal access and nondiscrimination requirements should be expanded to obligate wireless carriers in order to foster competition and offer consumers a choice of toll and long distance providers.<sup>7</sup> For a number of reasons, the concept of the long-distance carrier has no place in the wireless industry. As a threshold matter, the concept of a “long distance” toll call and “equal access” requires the complete separation of “local” and “long distance” service. The AT&T divestiture decree required the creation of local service areas – Local Access and Transport Areas (“LATAs”) – to separate local and long distance service. A LATA was defined as “one or more contiguous [LEC] local exchange areas serving common social, economic, and other purposes, even where such configuration transcends municipal or other local governmental boundaries.”<sup>8</sup> Absent special approval, no LATA was to encompass more than one standard metropolitan statistical area, nor cross state boundaries.<sup>9</sup> The license areas for CMRS carriers have never followed the LATA rules. From the first cellular

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<sup>7</sup> See NJ Division of Rate Counsel Comments at 3.

<sup>8</sup> MFJ, § IV(G), *United States v. AT&T Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982).

<sup>9</sup> Just as geographic area code boundaries do not cross state boundaries, LATA boundaries stopped at the state line to “leave[] undisturbed the jurisdiction of the states to prescribe rate structures ....” See Response of the United States to Public Comments on the Proposed Modification of Final Judgment at 77 (May 20, 1982). The Omnibus Budget Reconciliation Act of 1993 added Section 332(c)(3) to the Communications Act, and amended Section 2(b); through these provisions, Congress eliminated the states’ jurisdiction to regulate the rates of CMRS carriers.

license areas established twenty-five years ago, to the Major Trading Area (MTA) and Regional Economic Area (REA) boundaries of today, the FCC consistently has recognized that the nature of mobile services transcends Metropolitan Statistical Areas (MSAs) and state boundaries. When it exempted wireless carriers from equal access obligations, Congress also recognized this fact.<sup>10</sup> As a result, additional charges for local toll service and long distance calling are a concern of the past for wireless consumers.

Even if the Commission was inclined to spend years developing a “wireless” LATA system, and was further inclined to rescind its detariffing order<sup>11</sup> and establish a regulatory system extending the Uniform System of Accounts to wireless carriers and wireless access services, due to the success of the postalized wireless “one rate” plans, equal access obligations would lead to higher end user rates for wireless customers. In 1998, AT&T introduced its Digital One Rate Plan. Under the plan, customers could use their plan minutes to call anywhere in America, regardless of distance, without being assessed long distance or roaming charges when used on the operator’s network. AT&T’s plan was quickly followed by the introduction of competing national and regional One Rate-like plans by their rivals.<sup>12</sup> The rapid adoption of this “bucket of

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<sup>10</sup> 47 U.S.C. § 332(c)(8); *See Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services*, GN Dkt. No. 93-252, Second Report and Order, 9 FCC Rcd. 1411, ¶ 14 (1994) (“*Forbearance Order*”) (implementing the amendments to the Communications Act embodied in the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A)–(B), 107 Stat. 312, 392 (1993) (“*Budget Act*”), and forbearing to apply much traditional Title II regulation to CMRS providers).

<sup>11</sup> *In re* Policy and Rules Concerning the Interstate, Interexchange Marketplace Detariffing Order, 11 FCC Rcd 20730 (1996) (“*Detariffing Order*”).

<sup>12</sup> *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*, Fourth Report, 14 FCC Rcd 10145, 10155-56 (1999); *See also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis*

minutes” pricing plan has become the standard in the wireless industry. Whether subscribing to a pre- or post- paid plan, wireless consumers do not choose a long-distance carrier because distance is irrelevant in wireless calling plans. As described above, the imposition of an equal access obligation on wireless carriers would penalize wireless consumers who select a separate long distance carrier and thus incur separate “long distance” charges for a service that already is included in the customer’s “one rate” bucket of minutes. Accordingly, equal access would not benefit consumers – since they have no incentive to choose *any* separate long-distance carrier – and would instead impose regulatory burdens on carriers that will ultimately lead to higher end-user rates.

### **III. EQUAL ACCESS OBLIGATIONS ON COMPETITIVE PROVIDERS OF BUNDLED SERVICES IS UNNECESSARY**

Lastly, the telecommunications market at-large is moving ever closer to the wireless model. With the incredible success of the wireless industry, other sectors of the industry are also offering combined service packages. Cable and wireline companies currently offer packages bundling local, long-distance, and a host of other telecommunications services for fixed monthly subscription rates;<sup>13</sup> and Voice over Internet Protocol carriers offer their service, including unlimited domestic calling, as a

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*of Competitive Market Conditions with Respect to Commercial Mobile Services*, Sixth Report, 16 FCC Rcd 13350, 13377-78 (2001); and “Long Distance: Sprint PCS Unveils All-Inclusive Nationwide Service Plans with Prices as Low as a Dime a Minute, Anytime, Anywhere,” *Edge*, Oct. 5, 1998, available at [http://findarticles.com/p/articles/mi\\_m0UNZ/is\\_1998\\_Oct\\_5/ai\\_53058236](http://findarticles.com/p/articles/mi_m0UNZ/is_1998_Oct_5/ai_53058236) (noting nationwide calling plans, and first incoming minute free practice).

<sup>13</sup> See “Comcast Triple Play” available at [www.comcast.com](http://www.comcast.com) (last accessed June 4, 2007); see also “Verizon Triple Freedom” available at <http://www22.verizon.com/Residential/Templates/Products/ProductDisplay.aspx> (last accessed June 4, 2007).

replacement for traditional wireline service.<sup>14</sup> Consumers continue to benefit from packaging of services that have resulted in lower prices and increased innovation. With a variety of providers offering access to long distance calling at no additional charge under these bundled plans, consumers have no incentive to pay more to receive long distance service from a separate provider.

Further, these changes in the way that Americans obtain and use their telecommunications services, including the increasing number of consumers that are “cutting the cord” by eliminating wireline telephone service altogether,<sup>15</sup> demonstrate that consumers no longer think of telecommunications in terms of separate providers for distinctly separate services, but instead seek packages of services from the chosen provider to serve all of their telecommunications needs. Legacy regulation from a bygone era has no place in the rapidly changing, consumer-oriented telecommunications marketplace.

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<sup>14</sup> See e.g., <http://www.vonage.com>.

<sup>15</sup> According to the Centers for Disease Control and Prevention's National Center for Health Statistics during the second half of 2006 nearly 13% of American households were wireless-only. Stephen J. Blumberg, Ph.D and Julian V. Lake, “Wireless Substitution: Early Release of Estimates Based on Data from the National Health Interview Survey, July – December 2006”, Centers for Disease Control and Prevention, *available at* <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200705.pdf> (rel. May 14, 2007).

#### IV. CONCLUSION

For the reasons described above, the Commission should not impose equal access and nondiscrimination obligations of Section 251(g) on otherwise competitive markets, such as the wireless industry.

Respectfully submitted,

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