

July 23, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in:

WT Docket Nos. 06-150, 05-211, 96-86
PS Docket No. 06-229

Dear Ms. Dortch:

On July 23, 2007, at the request of Commissioner Adelstein, Public Knowledge sent the attached memorandum to Barry Ohlson, Legal Advisor, and Renée Crittendon, Acting Legal Advisor, Office of Commissioner Adelstein. The memorandum gives examples of existing markets for wholesale communications services.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Respectfully submitted,

/s/

Kim Maynard
Law Clerk

cc:

Commissioner Jonathan Adelstein
Barry Ohlson
Renée Crittendon

To: Commissioner Jonathan Adelstein
From: Public Knowledge
Date: July 20, 2007
Re: Existing Markets for Wholesale Communications Services

Memorandum

In our meeting yesterday, you expressed an interest in obtaining more information on the matter of existing markets for wholesale communications services. Accordingly, we have prepared this brief memorandum.

Example #1: MVNOs

PISC has cited the example of Mobile Virtual Network Operators (MVNOs)¹ in its filing. These are companies like Virgin Mobile and Helio that, from a consumer's perspective, are cell phone carriers no different than T-Mobile, Sprint, or Verizon. However, instead of controlling their own spectrum licenses or owning their own infrastructure, they lease capacity and services (at wholesale rates) from the “real,” non-virtual provider (the “underlying carrier”).

Under MVNO agreements, the MVNO negotiates with the underlying carrier for access to the carrier’s infrastructure, including its towers and its interconnection to the larger telephone network. These arrangements also give the MVNO access to what is perhaps the most important thing that the underlying carrier controls: the spectrum, which it holds under an exclusive license from the FCC. All of the customer-facing aspects of the business are controlled by the MVNO: they typically provide their own range of handsets, their own billing and customer support, and their own marketing.

¹ For more information about MVNOs, see *What is an MVNO*, available at http://www.mobilein.com/what_is_a_mvno.htm.

MVNOs are interesting in that they show how a wholesale model can allow competitors to come to market without having first to obtain costly spectrum licenses. They also demonstrate how license holders need not maintain exclusive control over retail sale of their spectrum to customers. As of June 2006, there were about 230 active MVNOs worldwide, with about 60 operating in North America.² The way this diverse market is currently structured has led to some good results, though it is not without its drawbacks. Particularly, MVNOs are more constrained in the kinds of offerings they may provide than is ideal.

Some MVNOs do very innovative things to differentiate themselves that the larger carriers won't do or can't. For instance, Helio is the sole domestic provider of certain innovative handsets that it adapts from the advanced South Korean wireless market. Qwest Wireless is in fact an MVNO (using Sprint's network), and it offers integration with its landline offerings and bundles its wireless with the many other services Qwest provides. Virgin Mobile largely targets the youth market. There is no guarantee of success for an MVNO—for instance, Amp'd Mobile recently underwent a high-profile bankruptcy largely due to its failure to manage a proper billing system.³ But the diversity of the MVNO market means that there are bound to be failures as well as successes. Like in any healthy and competitive market, the various competitors can learn from each other what works—and what doesn't.

There is an important distinction between the kind of wholesale access currently existing in the MVNO market, and the kind of wholesale access PISC is advocating for the 700 MHz spectrum. Because MVNO relationships are strictly voluntary, and because the carriers run their

² See The MVNO Directory, available at <http://www.mvnodirectory.com/index.html>; see also Erika Brown, *I Want my MVNO!*, Forbes, available at <http://members.forbes.com/global/2005/1128/062A.html>.

³ See Olga Kharif, *Amp'd Mobile Runs Out of Juice*, Business Week, available at http://www.businessweek.com/technology/content/jun2007/tc20070605_529608.htm?chan=top+news_top+news+index_technology.

own retail operations to which they do not want to create competitors, the underlying carriers exercise much control over the kinds of services MVNOs can offer. Accordingly, the offerings of MVNOs can be somewhat limited. For example, the kinds of pricing plans they offer are often designed not to compete with the underlying carrier—MVNOs sometimes specialize in, for instance, pre-paid plans. An MVNO would be unlikely to be allowed to create a service that relied on two underlying carriers—for instance, a handset that would operate on the networks of both Verizon and Sprint, depending on whose signal was stronger. Such a service would necessarily be superior to the offerings of either Verizon or Sprint, and it is hoped that if Open Access requirements are placed on the 700 MHz spectrum, these kinds of “mix and match” offerings would be possible.

Amol Sarva, who was early on involved with Virgin Mobile, talked about the restrictions Virgin operated under in his recent Congressional testimony.

We had to compromise away many degrees of freedom to get a deal done with the network partner, Sprint. We agreed to market a prepaid product that would not directly compete with Sprint’s products nor compete for Sprint’s mainstream customers.

....

Virgin Mobile USA was successful in spite of a huge number of hurdles raised by the wireless incumbents. We almost failed to get a network deal with any carrier. We almost failed to navigate the arduous device certification process. Who knows how many other ventures have failed to pass through the “star chamber” of the wireless incumbents’ technical and business requirements processes?⁴

Open Access for some of the 700 MHz licenses would allow entrepreneurs like Mr. Sarva to gain access to the public’s spectrum more easily. It would eliminate the need for huge outlays of capital which keeps much of the telecommunications industry in the control of behemoths. To paraphrase Mr. Sarva’s oral remarks, it would replace a “bet early and big” model with a “bet

⁴ Mr. Sarva’s written testimony is available at http://www.freepress.net/docs/sarva_written_statement.pdf.

small and often” model that is more amenable to entrepreneurs. The Open Access model advocated by PISC would allow for even greater competition than is seen in the MVNO market, because it is a model whereby the license holder has no incentive to control the kinds of services and plans the retailer offers.

Example #2: Broadband

Back when nearly all consumer Internet access was through dial-up modems, the Open Access and common carriage requirements that flowed from the classification of the telephone network as a “telecommunications service” meant that phone companies could not block out independent ISPs. The result was a highly competitive world of thousands of ISPs competing fiercely for customers on quality and price. Net Neutrality and similar concerns were not the controversial issues they are today, because any ISP (even one with millions of customers, like AOL) that dared to try to control who had access to its customers would find itself losing those customers to its competitors.

There is no technological reason why cable and DSL broadband networks cannot operate in much the same way, with many competitors sharing the same pipe. This form of competition is known as “intramodal” competition. However, the United States has taken a different path, instead betting on “intermodal” competition, whereby most competition is between a market’s sole cable broadband provider and its sole DSL broadband provider. Because of the different way cable and DSL are regulated, cable operators and telephone companies do not need to provide access to their networks to third parties. As a result, competition in broadband is severely contracted. Instead of there being dozens of ISPs for a customer to choose from, in most markets there are only one or two broadband ISPs.⁵

⁵ For more information on the state of broadband Internet access in the United States, see S. Derek Turner, *Broadband Reality Check II*, available at <http://www.freepress.net/docs/bbrc2-final.pdf>.

However, there are still some examples of third parties offering broadband services over leased capacity they have purchased at wholesale rates. Earthlink provides high-speed Internet access through both cable and DSL (as well as satellite). Brand X also provides high-speed DSL over various networks. Although the market for wholesale broadband today is not very large, the existence of these companies shows that there are no *technological* barriers to the provision of wholesale services.

Example #3: CLECs

Under the terms of the Telecommunications Act of 1996, local telephone companies must provide access to their networks to competitors. This allows for there to be competition for local telephone service.

The troubles that competitors have faced in the face of uncooperative incumbents are well known. In this instance, the incumbents saw the competitors as a threat, and in face of legal, physical, and technological obstacles erected by the incumbents, the new competitors were not as successful as they otherwise might have been. The vivid example of competitive local telephone service is in part what has led us to ask for conditions that ensure that the license holder has incentives to maximize its wholesale operations.

Example #4: International markets

The success of the United States' broadband market as compared with those of other nations has been a matter of some controversy recently. Although the reasons between the disparities between the outcomes in different nations are complex,⁶ we have observed that many of the nations that have had good outcomes have line-sharing policies, which allows for there to

⁶ For more information on the different regulatory environments in other countries, *see generally* Scott Wallsten, *Broadband and Unbundling Regulations in OECD Countries*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=906865; Working Party on Telecommunication and Information Services Policies, *Developments in Local Loop Unbundling*, available at <http://www.oecd.org/dataoecd/25/24/6869228.pdf>.

be intramodal competition, much as the United States once had with dial-up Internet access.

Customers in many Asian and European countries can choose between many different broadband providers, and as a consequence, prices are lower, speeds are higher, and penetration is greater.

It is hoped that Open Access requirements on the 700 MHz spectrum will similarly increase competition and improve America's international broadband ranking.

Conclusion

If you would like more information or clarification of any of the points raised here, please do not hesitate to contact us.