

**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. 09-66
14 th Annual Report and Analysis of)	
Competitive Market Conditions with)	
Respect to Commercial Mobile Services)	

COMMENTS OF VERIZON WIRELESS

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Date: June 15, 2009

SUMMARY

In its most recent report on Commercial Mobile Radio Services competition, the Commission concluded that U.S. consumers continue to benefit from low prices, new technologies, improved service quality and choice among carriers. That report provides a detailed and comprehensive analysis of the industry, using an appropriate framework for reviewing competitive markets, that is faithful to Congress's direction in Section 332(c)(1)(C) of the Communications Act that the Commission prepare an annual report on CMRS competition. The Commission should continue to use the same approach for its 2009 review, and should not adopt rigid criteria for measuring effective competition that quickly could become outmoded.

That report's key conclusion remains valid: the mobile wireless market remains robustly competitive. Midsize carriers, such as MetroPCS and Leap, are rapidly growing and offering consumers new options for mobile service. Both MetroPCS and Leap are leaders in prepaid and no-contract services, which continue to attract more customers by offering new choices for wireless plans. Other prepaid providers such as Tracfone continue to grow rapidly. In addition, there are new entrants such as Cox Communications, which has announced plans to launch wireless service using the spectrum it bought at auction, Atlantic Tele-Network, which will expand from being a wholesale provider to enter the retail wireless market, and Clearwire, which is the first carrier to begin deploying a nationwide next generation mobile wireless network using the largest spectrum position of any wireless company.

The past year has seen continued, vigorous competition, marked by the rapid growth of new plans, devices and features which are offered by a wide variety of

providers. Customers are clearly benefiting from this intense competition, and have ever-expanding choices for meeting their communications and information needs. These choices extend to wireless handsets as well. Customers have a multitude of devices of every price range, offering literally hundreds of features and applications. As carriers strive to win and keep customers, they compete intensively to offer devices that will prove popular with customers, driving innovation, which in turn benefits consumers and competition.

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COMMENTS OF VERIZON WIRELESS

Verizon Wireless submits these comments in response to the Public Notice seeking information and data regarding the state of competition in the Commercial Mobile Radio Services market.¹

I. THE WIRELESS MARKET REMAINS ROBUSTLY COMPETITIVE.

Six months ago, the Commission released its 13th report on CMRS competition.² The detailed, 190-page report compiled extensive data and other research to support the Commission’s central finding: “U.S. consumers continue to reap significant benefits – including low prices, new technologies, improved service quality, and choice among

¹ Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition, *Public Notice*, WT Docket No. 09-66, DA 09-1070 (rel. May 14, 2009) (“*Public Notice*”).

² *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, Thirteenth Report*, WT Docket 08-27, (rel. Jan. 16, 2009) (“*13th Competition Report*”).

providers – from competition in the CMRS marketplace, both terrestrial and satellite CMRS.”³

The Commission’s conclusions in that report remain fully valid today. The mobile wireless market remains robustly competitive by any measure. A recent filing by CTIA demonstrates that the U.S. market is the most competitive in the 26 Organisation for Economic Co-operation and Development (“OECD”) countries.⁴ In addition to four national carriers, Verizon Wireless, AT&T Mobility, T-Mobile, and Sprint Nextel, there are numerous regional carriers such as MetroPCS, Leap Wireless and US Cellular. This range of competition does not exist outside the United States. And the picture is not static; new companies are entering or could enter the market.⁵

- Clearwire, described in greater detail below, has begun deploying a nationwide next generation mobile wireless network.
- Atlantic Tele-Network will be another new entrant in the retail wireless market. It has entered into an agreement to acquire nearly 800,000 customers in 26 cellular market areas from Verizon Wireless.⁶
- Cox Communications also has announced plans to launch wireless service using the spectrum it bought at auction.⁷

³ *13th Competition Report* at ¶ 1.

⁴ Letter from Christopher Guttman-McCabe, CTIA, to Secretary, FCC, WC Docket No. 07-52 (May 12, 2009).

⁵ Carriers also face significant threats from competitors other than service providers. “Carriers are facing increased competition and service cannibalization from off-deck content and over-the-top applications, integrated customization and services from innovative handset OEMs, and emerging distribution channels. In an open network world, carriers have to learn to compete by leveraging their strategic positions, rather than by relying on controlling user experiences within a walled garden.” Macquarie Research Equities, *Wireless Emerging Devices* (March 30, 2009) at 1 (“*Wireless Emerging Devices Report*”). See also Section IV below describing in detail device competition in the United States.

⁶ Press Release, Atlantic Tele-Network, *Atlantic Tele-Network to Acquire Divestiture Properties from Verizon Wireless* (June 9, 2009) Available at http://www.atni.com/pr_web.php?nd=090609&pr=01 (last accessed June 15, 2009).

- Licensees with national, or near national, spectrum footprints, such as Echostar and SpectrumCo (a conglomerate of the nation’s largest cable television companies) are capable of entering the market.
- Many rural telephone companies and small licensees either currently offer wireless service or hold spectrum and assets that could be used to rapidly enter the market.

Consumers are clearly benefiting from this vigorous competition as carriers fight to win and retain their customers. In January 2009, *Consumer Reports* summarized the results of its annual wireless consumer survey as showing a “surge in satisfaction” among cellular customers, and that “Overall, cell-phone service has become significantly better. ... Sixty percent of readers were completely or very satisfied with their service.”⁸ And in May, the American Customer Satisfaction Index, an organization that measures customer satisfaction with the quality of various products and services, reported that “Customer satisfaction with wireless telephone services reaches a new all-time high for the third consecutive year.”⁹

In a declaration filed with the FCC in 2008, two economists studying the CMRS market concluded that a number of conditions that could signal lack of competition – such as the presence of a dominant firm, the ability of a firm to exclude rivals, high barriers to entry that are controlled by an incumbent firm and the ability of incumbent

⁷ Press Release, Cox Communications, *Cox To Launch Next Generation Bundle With Wireless In 2009* (Oct. 27, 2009), available at <http://cox.mediaroom.com/index.php?s=43&item=19> (last accessed June 15, 2009); see also Amol Sharma and Vishesh Kumar, *Cox Plans to Launch a Cellular Network Unlike Cable Rivals, Atlanta Company Sees Need to Own a Wireless System*, Wall Street Journal (Apr. 7, 2009) (“Sharma and Kumar”).

⁸ Consumer Reports, *Best Cell-Phone Service*, January 2009, at 28.

⁹ Press Release, *ACSI: Customer Satisfaction Rises Again, Now Jointed by Other Economic Indicators*, (May 19, 2009), available at http://www.theacsi.org/images/stories/images/news/0901q_Press_Release.pdf.

firms to coordinate business activities – were absent from the CMRS market.¹⁰ Hahn and Singer found “ample evidence to show each of the above condition[s] is in fact absent in today’s American wireless marketplace, thereby confirming that this particular market is indeed competitive by the standards the Commission has historically used.”¹¹ Verizon Wireless recently submitted a statement to the House Committee on Energy and Commerce, Subcommittee on Communications, Technology and the Internet, in which we describe in detail the many benefits of competition to the consumer.¹² Several trends evident from the past 18 months reinforce the continuing accuracy of the Commission’s conclusion in the *13th Competition Report*.

Midsized carriers are rapidly growing and offering consumers new options for mobile service. MetroPCS and Leap have been achieving market penetration rates of anywhere from 8 to 13 percent in those markets where they have been offering service for at least five years.¹³ Both Leap and Metro have strong financial and spectrum positions that they could easily leverage to increase market share and expand their footprints further. Indeed, Leap already has significant spectrum holdings and far-reaching roaming agreements that provide it with nearly national coverage¹⁴ and with its

¹⁰ *Declaration of Robert W. Hahn and Hal J. Singer*, Reply Comments of CTIA, WT Docket No. 08-27 (Apr. 10, 2008) at Appendix A (“*Hahn and Singer Declaration*”).

¹¹ Hahn and Singer Declaration at ¶23.

¹² Written Submission of Verizon Wireless to the Committee on Energy and Commerce Subcommittee on Communications, Technology and the Internet, U.S. House Of Representatives, Hearing on “An Examination of Competition in the Wireless Industry” (May 21, 2009) attached at Appendix A. (“*House Commerce Subcommittee Testimony*”).

¹³ See Sharma and Kumar; see also Macquarie Research Equities, *Prepaid Wireless Services* (May 1, 2009) (“*Macquarie Prepaid Wireless Report*”) at 12.

¹⁴ “New Markets,” CEO Letter, Leap 2008 Annual Review, available at http://www.leapwireless.com/ar2008/pdf/ceo_letter.pdf at 2 (“*Leap CEO Letter*”); see also Press Release, Leap Wireless International, Inc., *Cricket Footprint Grows with*

partner, Denali Spectrum, LLC, it won 100 licenses in the AWS-1 auction. Metro and Leap have also entered a nationwide roaming agreement that covers the companies' existing and future markets, "which the parties expect could ultimately encompass virtually all of the top 200 markets in the nation."¹⁵

Both MetroPCS and Leap have had strong results in recent quarters. For the first quarter of 2009 Metro PCS reported that sales rose 20 percent,¹⁶ that it had the highest

Premium Extended Coverage, Forming Largest Roaming Coverage Area for a Low-Cost, Unlimited Carrier (Nov. 13, 2008), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1226044&highlight> ("Leap November 13 Press Release") (explaining that Leap "has significantly expanded the size of its Cricket footprint with the availability of Premium Extended Coverage," which is a strategic roaming program which "gives [Leap] the largest unlimited roaming coverage area of any low cost, unlimited carrier" through "[s]trategic roaming partnerships with 14 wireless companies.")

¹⁵ Press Release, Leap Wireless International, Inc., *Leap Wireless International, Inc. and MetroPCS Communications, Inc. Enter into National Roaming Agreement and Spectrum Exchange Agreement and Settle Litigation* (Sept. 29, 2008), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=95536&p=irol-newsArticle&ID=1203114&highlight> (emphasis added) ("*Leap-MetroPCS Roaming Press Release*"). Leap recently explained that the roaming agreement with MetroPCS will significantly advance its competitive presence. See Jonathan Sidener, *Something to Talk About*, San Diego Union Tribune (Apr. 12, 2009), available at <http://www3.signonsandiego.com/stories/2009/apr/12/lz1b12leap224820-something-talk-about/?zIndex=80927> ("While it does not match the footprints of the top four wireless companies, [the roaming agreement with Metro] provides a solution for most of the no-contract demographic, Leap says."); see also Cricket Wireless Coverage, <http://www.cellularmap.net/cw.shtml> (map depicting Leap's wide-ranging roaming coverage). See also Written Testimony of Robert J. Irving, Jr., before the U.S. House of Representatives Subcommittee on Communications, Technology and the Internet Committee on Energy and Commerce (May 7, 2009) at 9-10 ("[W]e have built a network covering almost 84 million individuals in 32 states, and we are steadily expanding into new markets.").

¹⁶ Victor Godinez, *Richardson's MetroPCS plans to build on niche with frugal cellphone users*, The Dallas Morning News (June 2, 2009). See also Press Release, MetroPCS, *MetroPCS Reports First Quarter 2009 Results, Industry Leading High-Growth, Low Cost Structure, Results in Record First Quarter Adjusted EBITDA* (May 7, 2009), available at <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1285538&highlight> ("*May 7, 2009 MetroPCS Press Release*") (last accessed June 15, 2009).

share of gross subscriber additions of any U.S. carrier in operating markets in the aggregate¹⁷ and that it had a 51 percent increase in year over year consolidated net additions and a 59 percent increase in year over year consolidated gross additions.¹⁸

Leap's "year-over-year customer growth rate of 34 percent was the second highest in the wireless industry" and as part of this growth, Leap's "service revenues rose 23 percent for the year to \$1.7 billion."¹⁹ As Leap itself describes its position, "Our business is well positioned. We're expanding our role as a value-leader in the wireless space. . . . We've assembled significant assets at the right time. We have adequate financial resources and an attractive spectrum portfolio."²⁰

2. Prepaid and no-contract options for consumers continue to grow. Much of MetroPCS's and Leap's growth is attributable to continuing expansion of the "unlimited" and prepaid wireless segment of the industry. Interest in these plans may be partially due to the economic downturn, but some observers believe that consumers are turning to prepaid plans not just for value, but to give them more flexibility.²¹ According to some

¹⁷ May 7, 2009 MetroPCS Press Release.

¹⁸ Press Release, MetroPCS, *MetroPCS Releases First Quarter 2009 Subscriber Results* (April 7, 2009), available at <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1274006&highlight=> (last accessed June 15, 2009).

¹⁹ Leap CEO Letter at 1. Further, the investment community has recognized that "Leap issued [an] encouraging 2009 outlook, calling for some of the strongest growth in the industry," and has concluded that "the company is well positioned to achieve these targets from ongoing market expansion plans." See "Leap Wireless: Positive Outlook for 2009," Morgan Stanley (Mar. 2, 2009).

²⁰ "Leap – Q4 2008 Leap Wireless International Earnings Conference Call," Final Transcript (Feb. 26, 2009), available at <http://seekingalpha.com/article/123043-leap-wireless-international-inc-q4-2008-earnings-call-transcript?page=7>.

²¹ W. David Gardner, *Interest In Prepaid Wireless Booming*, Information Week (June 11, 2009) <http://www.informationweek.com/story/showArticle.jhtml?articleID=217800828> (last accessed June 12, 2009).

reports, approximately 34 percent of the growth of the wireless industry in 2008 came from a variety of prepaid plans, with the expectation that this growth will continue throughout 2009.²² Larger carriers are responding to this competition with changes to their postpaid offerings. Verizon Wireless, for example, began last year to offer its customers a new “Month-to-Month” agreement, giving them the freedom to purchase new devices at full-retail price, or use their own CDMA devices without the commitment of a one- or two-year contract. Customers on month-to-month contracts are also permitted to terminate their agreement at the end of any month without paying an early termination fee.²³

Facilities-based carriers are not alone in this segment. Tracfone, for example, has introduced its prepaid product, “Straighttalk.”²⁴ Moreover, the prepaid activity is not confined to voice and messaging services. Leap Wireless offers an unlimited pay-as-you-go wireless broadband service for \$40 per month.²⁵ Last week Virgin Mobile announced that it will offer “Broadband2Go,” a national pay-as-you-go mobile broadband service, running over Sprint's EV-DO Rev. A network.²⁶ Neither service requires a contract. One

²² Macquarie Prepaid Wireless Report at 1 (“Overall, we expect additional entrants and competition in the prepaid segment over the next year.”).

²³ Press Release, Verizon Wireless, *No Contract Required — New Month-To-Month Agreement Gives Verizon Wireless Customers Even More Freedom* (Sept. 22, 2008), available at <http://news.vzw.com/news/2008/09/pr2008-09-22b.html>.

²⁴ Leslie Cawley, *TracFone offers new cut-rate prepaid cell Plan*, USA Today Technology Blog, <http://blogs.usatoday.com/technologylive/2009/06/tracfone-offers-new-cutrate-prepaid-cell-plan.html> (posted June 4, 2009) (last accessed June 15, 2009).

²⁵ Marguerite Reardon, *Virgin Mobile to Offer Pay-As-You-Go Broadband*, CNET News (June 11, 2009) http://news.cnet.com/8301-1035_3-10263033-94.html (last accessed June 12, 2009).

²⁶ Press Release, Virgin Mobile, *Virgin Mobile USA to Introduce Broadband2Go* (June 10, 2009) available at <http://virginmobileusa.marketwire.com/easyir/prsrel.do?easyirid=13135DE328B72AB2>

analyst predicts that the advent of these services is a sign of the changing dynamic and new fronts of wireless competition.²⁷

II. COMPETITION WILL CONTINUE UNABATED IN THE NEXT GENERATION OF MOBILE WIRELESS.

Robust competition will continue in the deployment of next generation broadband wireless services as well, because carriers will compete to win and retain customers who want the high speeds and applications that next-generation wireless broadband technologies promise. As one analyst stated, “We believe calls for the end of wireless growth are premature. Although voice adoption is slowing, faster and more-standardized data networks, paired with falling costs for embedded wireless modules, are creating new business opportunities across the consumer and enterprise spectrum.”²⁸

Clearwire, the joint venture of the third largest carrier, Sprint-Nextel, and its Silicon Valley partners, Google and Intel, is the first wireless firm to deploy 4G services.²⁹ In the last year, Clearwire launched mobile WiMax services in Portland, Oregon, and Baltimore, Maryland. Clearwire intends to cover up to 120 million pops in more than 80 markets by the end of 2010 and has indicated that it is testing Voice over

&version=live&prid=510059 (“*Virgin Mobile June 10, 2009 Press Release*”) (last accessed June 15, 2009).

²⁷ See Lowenstein: *Is TracFone the New Southwest Airlines of Wireless?* FierceWireless, <http://www.fiercewireless.com/story/tracfone-new-southwest-airlines-wireless/2009-06-03> (June 3, 2009).

²⁸ Macquarie Emerging Devices Report at 1.

²⁹ News Release, Clearwire *Clearwire Completes Landmark Transaction with Sprint Nextel to Combine 4G Mobile WiMAX Businesses*, <http://newsroom.clearwire.com/phoenix.zhtml?c=214419&p=irol-newsArticle&ID=1230786&highlight=> (Nov. 28, 2008), (“The company is building the first, nationwide 4G mobile Internet network, bringing together an unprecedented combination of speed and mobility.”)

Internet Protocol (VoIP) in Portland, and looking at introducing mobile voice services.³⁰ Sprint-Nextel executives speculate that Clearwire has a 4G time-to-market advantage of 18-24 months over competitors and that its superior spectrum position gives it a clear advantage for offering next generation services.³¹ Clearwire executives also consistently refer to its significant spectrum resources as a “crucial differentiator.”³² Clearwire’s chief executive recently said that “[a]s a result of our combination with Sprint’s 4G business unit Clearwire now holds a nationwide spectrum portfolio that includes many times more spectrum that is available for 4G services than that of any other wireless carrier. In our business, more spectrum means more capacity and greater speeds which equals more opportunity.”³³ In short, Clearwire is “positioned to capitalize on the opportunities resulting from the intersection of these compelling trends due to our next generation

³⁰ See Wireless, Communications Daily, Apr. 3, 2009; *Clearwire Continues Expansion, Targets Applications*, Communications Daily (Apr. 22, 2009)

³¹ See Paul Kirby, *Sprint Nextel Officials Bullish on 4G Future*, TR Daily (May 20, 2009); see also Yu-Ting Wang, *Sprint Eyes Becoming Mobile Data Leader with 4G*, Communications Daily (May 21, 2009). Clearwire has made apparent that it considers wireless providers in the 700 MHz, cellular, and PCS bands as its competitors in the market for wireless broadband and data services. See Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-94, Lead File No. 0003462540, Description of the Transaction and Public Interest Statement (filed June 6, 2008, amended June 24, 2008) at 54-56.

³² Kevin Fitchard, *Clearwire’s Wolff embraces 4G but touts spectrum position*, Telephony Online (Apr. 2, 2009), available at http://blog.telephonyonline.com/bloglive_ctia/2009/04/02/clearwires-wolff-embraces-4g-as-a-whole-but-touts-spectrum-position/.

³³ See <http://seekingalpha.com/article/124559-clearwire-corporation-q4-2008-earnings-call-transcript>, Clearwire 4Q Earnings Call Transcript (March 5, 2009) at 1 (“*Clearwire 4Q Earnings Call Transcript*”).

technology and network architecture, our deep spectrum holdings and our unique business model.”³⁴

Verizon Wireless, AT&T, Cox Communications and Metro PCS have all announced plans to deploy LTE.³⁵ For example, Verizon Wireless, which invested billions of dollars to make not one but two major 3G network upgrades, is now building a 4G network that will increase tremendously mobile wireless uplink and downlink speeds. In 2009 and beyond, Verizon Wireless will invest billions of dollars to deploy long term evolution (“LTE”) technology on 700 MHz spectrum for which it paid the Government more than \$9 billion. It is the first carrier – in the U.S. or abroad – to test and deploy LTE. AT&T also is taking interim steps to upgrade its current 3G High Speed Packet Access (“HSPA”) network to faster speeds,³⁶ presumably as a response to competitive pressure from other providers’ rapid deployment of both WiMax and LTE.

All of these trends underscore that the competitive forces in the wireless industry can be expected to continue as carriers invest in broadband infrastructure to offer their customers even faster and more robust services, features and applications.

³⁴ See Clearwire 4Q Earnings Call Transcript at 7.

³⁵ See Press Release, Verizon Wireless, *Verizon Selects LTE As 4G Wireless Broadband Direction, Technology Platform to be Tried in 2008* (Nov. 29, 2007), available at <http://news.vzw.com/news/2007/11/pr2007-11-29.html>; Marin Perez, *MetroPCS Chooses LTE For 4G Wireless Network*, InformationWeek, Aug. 13, 2008, available at <http://www.informationweek.com/story/showArticle.jhtml?articleID=210003630>; Press Release, AT&T, *AT&T Acquires Key Spectrum To Set Foundation For Future Of Wireless Broadband, More Choices For Customers* (Apr. 3, 2008), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=25428>; Press Release, Cox Communications, *Cox to Launch Next Generation Bundle with Wireless in 2009* (Oct. 27, 2008), available at http://media.corporate-ir.net/media_files/irol/76/76341/release102708.pdf.

³⁶ Kevin Fitchard, *AT&T Doubling 3G Capacity*, Telephony Online (Apr. 20, 2009).

III. THE COMMISSION'S COMPETITION REPORTS TAKE THE APPROPRIATE ANALYTICAL APPROACH TO MEASURING COMPETITION IN THE WIRELESS INDUSTRY.

The Commission produces a detailed and comprehensive annual analysis of the industry, using an appropriate framework for reviewing competitive markets that is faithful to Congress's direction in Section 332(c)(1)(C) of the Communications Act. No static measure, such as that dictated by statute for the cable industry,³⁷ could produce as comprehensive an analysis as what the Commission currently generates. Unlike the annual report it required for the cable industry, Congress allowed the Commission flexibility to report on CMRS competition rather than set hard and fast criteria.³⁸ The Commission should thus continue to use the same approach for its 2009 review, and should not adopt specific criteria for measuring effective competition that quickly would become outmoded.³⁹

The Commission has performed an increasingly more rigorous analysis of the structure and performance of the wireless market. Just as competition in the industry has grown more robust, so too have the Commission's CMRS competition reports, adding new areas of discussion and deeper review of issues as the industry has matured. When

³⁷ *Public Notice* at 3 (“Are there elements of the effective competition definition for the cable industry in Section 623(l)(1) that should be applied to the CMRS industry?”)

³⁸ Congress had adopted the effective competition standard for cable in 1992, so it easily could have considered as specific a standard for the mobile wireless industry.

³⁹ Verizon Wireless also believes that profitability measures would provide no meaningful information regarding competition in the wireless industry. *See Public Notice* at 12. It is not clear how the Commission could determine economic profits, since accounting profits are not necessarily economic profits. *See e.g.*, Franklin M. Fisher and John J. McGowan, *On the Misuse of Accounting Rates of Return to Infer Monopoly Profits*, the American Economic Review (March 1983). Verizon Wireless and other wireless providers use much of the accounting profits generated each year to respond to competitive pressure and build, expand and continuously upgrade the network.

the Commission released its first report in 1995, it was before personal communications services (PCS) were widely launched, so the report covered only the cellular market, primarily looking at price and entry by new competitors. The second report was slightly more detailed, in discussing the new entrants that the recent PCS auctions would bring and the introduction of digital technology in cellular markets. Intra-industry competition was still relatively new, so that the majority of the report discusses competition within services or between cellular and PCS or cellular and specialized mobile radio service (SMR), with little discussion of intermodal competition.

In the 9th *Competition Report* in 2004⁴⁰ the Commission enhanced its analysis “by reorganizing the presentation of the various indicators to conform to a framework that groups such indicators into four distinct categories (A) Market Structure, (B) Carrier Conduct, (C) Consumer Behavior, and (D) Market Performance.”⁴¹ It concluded then and in subsequent reports that the “[u]se of this framework has the advantage of providing a systematic approach to addressing the four statutory requirements.”⁴² The Commission’s last five reports are thus quite detailed, examining the following areas that were not mentioned in the early years:

- barriers to entry (spectrum policy, auctions, advertising costs, economies of scale, and access to outside financing)
- rural competition
- non-price provider conduct (advances in technology, capital expenditures, marketing, network quality, data)

⁴⁰ *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, Ninth Report*, 19 FCC Rcd 20597 (2004) (“9th Competition Report”).

⁴¹ 9th *Competition Report* at ¶ 8.

⁴² *Id.*

- consumer behaviors (churn & local number portability)
- detailed discussion of pricing trends to include minutes used and data usage
- penetration rates and intermodal competition.

Beginning with its *12th Competition Report* in 2007, the FCC has looked at wireless competition in each census block, of which there are over 8 million in the United States. This has allowed for a more granular, and thus more accurate, assessment of wireless coverage in specific areas.⁴³ Even when assessed at this very exacting standard, the Commission found in the *13th Competition Report* that 99.6% of the total U.S. population has access to one or more different mobile service providers in the census blocks in which they live, and 98.5% of the U.S. population living in rural census blocks have that access.⁴⁴ These and other data led the Commission to conclude that “U.S. consumers continue to reap significant benefits – including low prices, new technologies, improved service quality, and choice among providers – from competition in the CMRS marketplace, both terrestrial and satellite CMRS.”⁴⁵

The Commission’s current approach fully discharges its obligation under Section 332(c)(1)(C) of the Act. The Commission should follow that same approach in compiling this year’s report.

⁴³ The Commission applied this approach in part in response to concerns that interim Chairman Copps raised that examining competition on a county level would mislead as to the true extent of wireless coverage in the United States. *See, e.g., 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, Eleventh Report*, WT Docket 06-17, 21 FCC Rcd 10947 (2006) (“*11th Competition Report*”) Concurring Statement of Commissioner Michael J. Copps at 1.

⁴⁴ *13th Competition Report* at 5.

⁴⁵ *13th Competition Report* at 1.

IV. THE COMPETITIVE WIRELESS HANDSET MARKET CONTRIBUTES TO COMPETITION AMONG CMRS PROVIDERS.

The Commission seeks information on the role of handsets in the CMRS market, including how wireless service providers use innovations in handsets features and design as a way to compete.⁴⁶ The wireless handset industry underscores the vigorous competition that pervades wireless services. As carriers compete to win and retain customers, they and handset suppliers invest in innovative devices that they believe will appeal to customers, while innovation itself drives growing demand. This “virtuous cycle” promotes competition as well as expanded choices and services for customers.

The U.S. handset market is characterized by significant competition among about three dozen well-established and newer manufacturers, including Motorola, Nokia, LG, Samsung, Research in Motion, Palm, HTC, and ZTE.⁴⁷ From these manufacturers, hundreds of wireless phones and devices are available to U.S. consumers.⁴⁸ CTIA recently noted that U.S. consumers have access to 630 different wireless handsets and devices, compared to, for example, less than 150 in the United Kingdom.⁴⁹

There are also multiple competing channels of distribution for wireless handsets. Equipment manufacturers offer their products to consumers through many channels, including big box stores, wireless providers, and the manufacturers’ own websites. In short, consumers have many handset choices, and they can and do make selections of

⁴⁶ *Public Notice* at 9-10.

⁴⁷ *See, e.g.*, Michael L. Katz, “An Economic Analysis of the Rural Cellular Association’s Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers,” at 18-19 (Feb. 2, 2009), attached to Comments of AT&T on RCA Petition, RM-11497 (filed Feb. 2, 2009) (“*Katz Declaration*”).

⁴⁸ *Id.* at 19-20.

⁴⁹ CTIA May 12 Letter, at 2 and accompanying charts.

handsets and providers based on what handsets and/or handset features and functions they find attractive.

Wireless service providers use handsets and handset features as a means to differentiate themselves, a characteristic of a competitive market. In today's mobile wireless industry, where penetration levels are high and differences among carriers on other factors such as coverage have decreased,⁵⁰ handsets offer a rich opportunity for competitive marketing of new designs or technologies or features or applications linked to the burgeoning market for "app stores" to attract consumers. Therefore, the handset has become a key factor in the selling of a specific CMRS brand and in a customer's purchasing decision.⁵¹ According to one study, the number of consumers choosing a wireless carrier based on handsets has grown by 51 percent since 2004.⁵²

Competition among service providers to offer handsets that are popular with consumers has repeatedly produced innovations in technology and features that benefit consumers and the wireless industry generally. The fastest growing segment of the handset market is for smartphones.⁵³ One source recently predicted that mobile broadband subscribers will represent one-third of all mobile subscribers worldwide by

⁵⁰ Mark Lowenstein, "Evolving Role of Handsets in the U.S. Wireless Industry," at 4-6 (Jan. 2009), Attachment A to Comments of Verizon Wireless Requesting Dismissal or Denial of Petition, RM-11497 (filed Feb. 2, 2009) ("*Lowenstein Paper*").

⁵¹ *Id.* at 4.

⁵² *Id.* at 6.

⁵³ See, e.g., Steve Lohr, *Smartphone Rises Fast from Gadget to Necessity*, New York Times, June 10, 2009, at B1.

2013.⁵⁴ And, to fuel this shift, there is no shortage of competing smartphones from multiple manufacturers. Some examples available in 2008 include:

- AT&T: Apple iPhone; Blackberry Bold
- Verizon Wireless: LG Voyager; Blackberry Storm
- T-Mobile: G1 (Google Android); Blackberry Pearl Flip
- Sprint: Palm Centro; Samsung Instinct
- Helio: Ocean⁵⁵

In February 2009, economist Michael Katz prepared a comprehensive analysis documenting the vigorous competition in the wireless device industry.⁵⁶ He concluded that no single manufacturer or service provider has sufficient market power in its respective market to control the wholesale or retail distribution chain or prevent a handset manufacturer from working with its wireless carrier competitors. “This is not a marketplace in which there is a single, dominant distributor that has obtained exclusive distribution rights. Rather, many different carriers have negotiated exclusive rights to distribute individual handsets from many different manufacturers.”⁵⁷ Indeed, as the above list indicates, manufacturers and service providers are churning out many forms of, and variations on, the smartphone concept to attract consumers. Smaller wireless carriers offer similar products. Dr. Katz noted that, among 51 members of the Rural Cellular

⁵⁴ Lynette Luna, *Informa: Mobile Broadband Will be Growth Engine by 2013*, Fierce Wireless (Mar. 26, 2009) <http://www.fiercebroadbandwireless.com/story/informa-mobile-broadband-subs-will-make-one-third-worldwide-subs-2013/2009-03-26>. (last accessed June 15, 2009).

⁵⁵ Lowenstein Paper at 5.

⁵⁶ Katz Declaration.

⁵⁷ *Id.* at 3.

Association, “all offer one or more phones with Internet access, and 38 offer one or more phones with touch screens.”⁵⁸

Some aspects of handset availability are influenced by the network provider’s choice among air interface technologies. U.S. wireless devices are currently broadly divided between CDMA, GSM and iDEN technologies that are not interoperable. AT&T operates a GSM network, and the Apple iPhone is only marketed in the United States as a GSM device. Sprint Nextel offers Motorola push-to-talk devices using iDEN technology, which is generally not available through other providers. In both cases, these devices can only be purchased for use on networks of carriers that use the same technology. This technological differentiation provides additional incentives for carriers and manufacturers to innovate in handset choices, for example, push-to-talk handsets that compete with Sprint’s iDEN service.

In Europe, where use of GSM technology is standardized, consumers may have more device choices, simply because more GSM phones are manufactured globally.⁵⁹ However, U.S. consumers have access to more diverse handsets and more multi-band and multi-mode phones in addition to their fair share of innovative devices, including the iPhone and many Blackberry and Treo models that are introduced in the United States first.⁶⁰ Also, “[s]ome of the most feature-rich 3G handsets are either only available in the U.S. or have been specially developed for the market here.”⁶¹ The technical diversity has

⁵⁸ *Id.* at 20.

⁵⁹ See Mark Lowenstein, “Comparisons Between U.S. and European Markets for Wireless Services and Devices: Myth vs. Reality,” at 3 (July 2007), Attachment to Verizon Wireless Ex Parte Letter, RM-11361 (filed Aug. 28, 2007).

⁶⁰ *Id.* at 4.

⁶¹ *Id.*

allowed U.S. carriers to differentiate themselves, whether through exclusive handsets or exclusive features on more generic handsets, all to the benefit of U.S. consumers who can obtain more innovative devices.

The Commission asks to what extent “equipment vendors and/or retailers selling products that at least in part rely on a wireless broadband connection but do not require a long-term contract?”⁶² As mentioned above, Virgin Mobile USA recently announced that the launch of Broadband2Go, “a 3G nationwide wireless Internet service without an annual contract, monthly subscription or activation fee,” building on its existing prepaid phone service.⁶³ The Virgin Mobile service allows customers to purchase data usage from 100 MB to 1 GB on the pay-as-you-go model. Leap Wireless also offers an unlimited pay-as-you-go wireless broadband service for \$40 per month.⁶⁴ Verizon Wireless offers a \$15 DayPass for 24-hour access on its Mobile Broadband service when the customer purchases a mobile broadband device at full retail price without a monthly service plan. Given the increasing popularity of pre-paid services and smartphones, non-contract broadband service alternatives are likely to appear from multiple providers.

⁶² *Public Notice* at 10.

⁶³ Press Release, Virgin Mobile, *Virgin Mobile USA to Introduce Broadband2Go* (June 10, 2009) available at <http://virginmobileusa.marketwire.com/easyir/prssrel.do?easyirid=13135DE328B72AB2&version=live&prid=510059> (“*Virgin Mobile June 10, 2009 Press Release*”) (last accessed June 15, 2009).

⁶⁴ Marguerite Reardon, *Virgin Mobile to Offer Pay-As-You-Go Broadband*, CNET News (June 11, 2009) http://news.cnet.com/8301-1035_3-10263033-94.html (last accessed June 12, 2009).

V. **CONCLUSION**

The Commission's finding of effective competition in the CMRS market in its January 2009 annual report remains accurate. The past year has seen continued, vigorous competition, marked by the rapid growth of new plans, devices and features which are offered by a wide variety of providers. Customers are clearly benefiting from this intense competition, and have ever-expanding choices for meeting their communications and information needs.

Respectfully submitted,

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