

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	
Implementation of Section 6002(b) of the)	WT Docket No. 09-66
Omnibus Budget Reconciliation Act of 1993)	
Annual Report and Analysis of Competitive)	
Market Conditions With Respect to)	
Commercial Mobile Services)	

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) hereby submits its reply comments on the Federal Communications Commission’s (“FCC’s” or “Commission’s”) Public Notice regarding the state of competition in the commercial mobile radio service (“CMRS”) industry.¹

INTRODUCTION AND SUMMARY

As the Commission has found year after year, competition in the CMRS retail marketplace is flourishing. Wireless carriers like T-Mobile continue to introduce new and innovative services, technologies, and pricing options that benefit consumers.² To maintain this level of competition, however, a number of important issues must be addressed to ensure the

¹ Public Notice, Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition, WT Docket No. 08-27, DA No. 08-453 (rel. Feb. 25, 2008) (“Notice”).

² T-Mobile holds licenses covering 284 million people across the U.S. In addition, T-Mobile USA operates one of the largest Wi-Fi (802.11b) wireless broadband (WLAN) networks in the country (including roaming sites), available in over 10,000 convenient public access locations nationwide, including Starbucks locations where T-Mobile will provide HotSpot Wi-Fi service either directly or through a roaming agreement with AT&T. T-Mobile also offers HotSpot @Home, an innovative offering that provides unlimited nationwide calling in the home via the subscriber’s WiFi network and outside the home over T-Mobile’s nationwide GSM network. In February 2009, J.D. Power and Associates announced that, for the eighth reporting period, T-Mobile ranks highest among the four largest wireless carriers for customer service.

wireless industry's focus on innovation and providing quality services to consumers continues to thrive in challenging economic times. *First*, additional spectrum should be allocated and assigned for commercial mobile broadband services. The demand of tomorrow's customers simply cannot be met by today's limited spectrum allocations. *Second*, the Commission should reform special access pricing rules.³ The inability of wireless providers in many markets to purchase an essential input from incumbent local exchange carriers ("ILECs") at reasonable rates, terms, and conditions continues to threaten the development of both intramodal and intermodal competition. *Finally*, to promote seamless and ubiquitous wireless service, the Commission should repeal or revise the "home market exclusion" to its automatic roaming requirement and streamline the process for siting wireless facilities by adopting a shot-clock for tower and collocation applications and reforming its pole attachment regulations.

I. ADDITIONAL SPECTRUM IS NEEDED FOR MOBILE BROADBAND TO REACH ITS FULL POTENTIAL.

The comments filed by CTIA – The Wireless Association document in great detail the remarkably competitive retail wireless marketplace and the efforts providers undertake to differentiate themselves and offer value and innovation to consumers.⁴ As CTIA notes, however, there is more the Commission can do to promote competition and enhance consumer

³ T-Mobile and other CMRS providers depend on wireline special access services, such as DS1s, to knit together their networks. These special access services, and especially the crucial initial links from cellular base stations to ILEC central offices, are often available only from a single provider – the ILEC itself.

⁴ *See generally* Comments of CTIA – The Wireless Association, WT Docket No. 09-66. (filed June 15, 2009) ("CTIA Comments"); *see also* Letter from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA – The Wireless Association, to FCC Chairman Julius Genachowski, Commissioner Michael J. Copps, and Commissioner Robert M. McDowell, GN Docket No. 09-51, WT Docket Nos. 08-165 and 09-66 (filed July 9, 2009), attaching study entitled *Mobile in America: Driving the Economy and Delivering the Communications Infrastructure for the Information Age*, authored by Dr. Harold Furchtgott-Roth with a forward by Dr. Robert Atkinson (July 2009) (demonstrating the substantial investments and contributions the wireless industry is making to achieve the nation's economic and infrastructure goals and the leading role that wireless services, and particularly mobile broadband, can play in revitalizing the economy).

welfare, including making sure “that the mobile wireless industry has access to additional licensed spectrum in order to facilitate further deployment of bandwidth-intensive next generation voice, data, and video services.”⁵ Spectrum is the most critical input of mobile broadband services. Spectrum constraints exist today and will only tighten over time. Mobile providers like T-Mobile have invested large amounts of capital in improving the robustness of their networks and the efficiency of how they use spectrum and will continue to do so going forward, but network expansion and the use of spectrum-efficient technologies can only stretch existing spectrum allocations so far. Consumer demand for bandwidth-intensive applications and services will quickly outpace existing spectrum holdings. Additional spectrum for licensed commercial services is needed to meet future consumer demand and maintain a competitively vibrant wireless marketplace.

T-Mobile recently called on the Commission to lead the effort of reallocating additional spectrum for mobile broadband services.⁶ In its comments on the National Broadband Plan, T-Mobile urged the Commission to seek the necessary Congressional action to establish a schedule for making 200 MHz of spectrum available for commercial use within the next three to five years. To that end, T-Mobile endorsed the initial step of a spectrum inventory of federal and non-federal allocations and uses from 300 MHz to 3.5 GHz⁷ and proposed a meaningful deliverable as a vital second step: identify 200 MHz of spectrum, with 50 percent coming from the National Telecommunications and Information Administration (“NTIA’s”) current

⁵ CTIA Comments at 4.

⁶ See Comments of T-Mobile USA, Inc., GN Docket No. 09-51 (filed June 8, 2009) (“T-Mobile Broadband NOI Comments”).

⁷ T-Mobile applauds the initial effort of Senators Kerry and Snow to move in that direction by introducing S. 649, the Radio Spectrum Inventory Act on March 19, 2009. See Radio Spectrum Inventory Act, S. 649, 111th Cong. (2009).

government allocations and 50 percent from spectrum regulated by the Commission, that could be allocated and auctioned for commercial use.

As past efforts have shown, reallocating and assigning spectrum can be a lengthy endeavor. Given the likelihood of the passage of spectrum inventory legislation in the near future, it would be prudent for the FCC and NTIA to work together to initiate this process as soon as possible to ensure that the wireless industry can meet the burgeoning future demands of American consumers.

II. IN MANY MARKETS, SPECIAL ACCESS SERVICE IS NOT COMPETITIVE AND IS DUE FOR REVIEW AS THE FCC SEEKS TO PROMOTE BROADBAND.

Like spectrum, special access services are an essential input of mobile broadband networks, and in a number of markets (especially rural and suburban areas), wireless carriers must purchase such services from a single provider. As T-Mobile and others have demonstrated time and again,⁸ ILECs in many areas of the country face little competition for their special access offerings and remain the sole source in most of their service areas for the special access services that T-Mobile and other carriers need for the critical links between their base stations, mobile switching centers (“MSCs”), and ILEC central offices. Of course, T-Mobile attempts to use alternative special access suppliers where available, but the current reality is that in many markets, ILECs are the only practical suppliers of the requisite high-capacity backhaul for the necessary links.

T-Mobile currently relies heavily upon special access as a critical component of its wireless network, and as it further extends its broadband deployment, its need for additional

⁸ See Comments of T-Mobile USA, Inc., WC Docket No. 05-25 (filed June 13, 2005); Comments of T-Mobile USA, Inc., WC Docket No. 05-25, RM-10593 (filed August 8, 2007) (“T-Mobile 2007 Special Access Comments”); Comments of Sprint Nextel Corporation, WT Docket No. 09-66 (filed June 15, 2009).

backhaul capacity will continue to grow. Thus, Commission intervention is more essential than ever to correct widespread failure in the special access market and to ensure the availability of special access services on reasonable rates, terms, and conditions.

To remedy this market failure, the Commission should move quickly to adopt the special access reforms described by T-Mobile in the special access proceeding, including: limiting the size of geographic areas eligible for pricing flexibility; analyzing competition for special access service separately in each of the markets for channel termination, channel mileage, and other special access services; and, adopting more stringent triggers for price cap LECs to satisfy before obtaining pricing flexibility in these newly defined markets.⁹ At the same time, the Commission should examine whether onerous ILEC volume and term commitments limit independent wireless providers from obtaining backhaul from sources other than the ILECs to the extent those sources are or are just now becoming available.

Although the information included in the current voluminous record would allow the Commission to act immediately to reform special access regulation, it has been reported that the Commission is likely to ask for additional data in order to present the strongest legal foundation for possible reforms. With that in mind, as noted by numerous public interest associations, industry organizations, and companies, any data request should not be overly burdensome on wireless providers and other competitors, and should tailor questions to focused goals.¹⁰ Because of the impact of special access regulation on the future of broadband deployment and adoption, T-Mobile urges the Commission to act as quickly as possible.

⁹ See T-Mobile 2007 Special Access Comments at 9-14.

¹⁰ See Letter from Computer & Communications Industry Association et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 at 2-3 (filed June 3, 2009); Letter from Harold Feld, Media Access Project, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 5-25 (filed June 10, 2009).

In addition to improved regulatory oversight of special access, the Commission could also improve the viability of competitive wireless backhaul by making a portion of the white spaces spectrum available for licensed, fixed use. As discussed in a recent paper submitted by FiberTower Corporation and the Rural Telecommunications Group, white spaces spectrum is ideal for providing wireless backhaul services in many areas due to the propagation characteristics of the band and the ability of signals to cover long distances.¹¹ As such, white spaces spectrum can be used effectively as a “foundational tool for new entrants and existing carriers to construct wireless networks across large regions of the country.”¹²

III. THE COMMISSION SHOULD ENSURE THAT WIRELESS CARRIERS CAN CONTINUE TO PROVIDE RELIABLE, UBIQUITOUS SERVICE.

T-Mobile and other wireless carriers are continuously striving to extend their coverage, enlarge their networks, and fill in gaps in coverage so that consumers can receive the most reliable, widely available mobile service. The availability of reliable, ubiquitous wireless service is an important goal standing alone, and it is even more important when viewed in terms of other Commission priorities such as E911 and universal service. The Commission can foster the availability of seamless wireless service by eliminating or modifying the “home market exclusion” to the automatic roaming requirement¹³ and by streamlining the siting process for wireless facilities.

¹¹ See Letter from Michele C. Farquhar, Special Counsel, FiberTower Corp. and Rural Telecommunications Group, Inc., to Marlene H. Dortch, Secretary, FCC, ET Docket Nos. 04-186, 02-380, attaching White Paper, *Optimizing the TV Bands White Spaces*, at 7 (Oct. 2, 2007).

¹² *Id.*

¹³ See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007) (“*Automatic Roaming Order*”).

A. The Commission Should Move Quickly To Modify the Home Market Exclusion.

Roaming will continue to be an important component of providing mobile broadband for the foreseeable future. Independent mobile providers do not have network facilities in all parts of the United States and must rely on roaming relationships with other mobile providers to provide service at affordable rates. The Commission's "home market exclusion" in the *Automatic Roaming Order*, however, tacitly authorizes the very largest existing facilities-based network operators to deny a request for automatic roaming to another carrier licensed in the same market, even for areas where the other carrier has not built facilities.¹⁴ The home market exclusion ignores the practical economic realities of operating a wireless network and, in doing so, could reduce competition nationally and even more dramatically in particular areas of the country. Indeed, the Commission's adoption of an implied right of one carrier to deny roaming to another facilities-based carrier in the same market, without recourse to Commission review of that denial under sections 201 and 202 of the Act, is a dramatic departure from precedent, and undermines the goals of the Commission's automatic roaming requirement to the detriment of both competition and consumers.¹⁵

T-Mobile and other wireless carriers have invested and continue to invest billions of dollars in building out their networks consistent with the FCC's construction obligations. But, in some areas, it is economically and practically infeasible to construct facilities and, therefore, entering into roaming agreements is far more efficient for carriers, while also providing

¹⁴ See Petition for Partial Reconsideration of T-Mobile USA, Inc., WT Docket No. 05-265 (filed October 1, 2007).

¹⁵ See Comments of Cricket Communications, Inc., WT Docket No. 09-66, at 6-8 (filed June 15, 2009) (noting that the home market exclusion can be used to prevent consumers from accessing the mobile telephony services, including in times of emergency, that they reasonably expect when they are traveling outside of their providers' network areas).

competitive services for the consumer. As noted below, obtaining approvals to construct new towers and other facilities often is impossible in many markets. Achieving nationwide mobile broadband will require seamless and reasonably priced automatic roaming. Consumers should not be forced to switch to one of the two largest U.S. wireless carriers just so they can make and receive calls when they travel outside of an area in which their provider of choice has constructed facilities. The home market exclusion has the potential to severely harm competition as well as undermine the legitimate expectations of consumers.

B. The Commission Should Streamline the Process for Siting Wireless Facilities.

T-Mobile and other wireless carriers face many obstacles as they expand their facilities to improve coverage, not the least of which is the siting of wireless facilities themselves. Although the facilities siting is generally (and rightfully) under the authority of local jurisdictions, the Commission can and should help streamline the process in two key areas. First, the Commission should institute a federal shot clock of 45 days for final action on collocation requests and 75 days for ruling on all other state and local tower siting applications.¹⁶ Obtaining zoning and other authorizations from local authorities has become increasingly cumbersome for wireless carriers.¹⁷ All too often, collocation requests filed with state and local authorities are left pending for months and sometimes even years, and T-Mobile faces even greater delays for requests for permission to construct new towers. Delays of this type will slow the construction of new broadband networks and undermine the build-out efforts of carriers with the resources

¹⁶ See Petition for Declaratory Ruling by CTIA – The Wireless Association to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165 (filed July 11, 2008); Comments of T-Mobile USA, Inc., WT Docket No. 08-165 (filed Sept. 29, 2008).

¹⁷ See T-Mobile Broadband NOI Comments at 22; CTIA Comments at 4 (Among other steps necessary to ensure “the sustained evolution of the wireless industry,” the Commission should “establish reasonable time periods for resolution of tower siting applications before local zoning authorities.”).

and business plans to deploy mobile broadband to unserved and underserved areas. A shot clock requires only that state and local authorities act on applications in a timely manner, not that they rule in favor of the requesting carrier.

Second, the Commission can help streamline the siting process by reforming its pole attachment regulations. Because local zoning restrictions often hinder the construction of new communications towers, utility poles may be a wireless carrier's best (or only) option to provide facilities-based service. While many utilities now treat CMRS facilities as routine attachments, some still have not adopted reasonable and transparent procedures for CMRS attachments.

As T-Mobile has explained, ensuring that utilities have in place appropriate pole attachment procedures with key information easily accessible on their Web sites would significantly reduce transaction costs and expedite the build-out of wireless networks, all to the benefit of consumers.¹⁸ The Commission should also address abusive practices by pole owners that impede the expansion of wireless service, such as (i) the unreasonable identification of poles as interstate transmission facilities, (ii) the leveraging of access rights to interstate transmission facilities to dramatically raise rates for local distribution poles, (iii) the unreasonable calculation of attachment space, (iv) discriminatory capacity expansion practices, and (v) unpredictable negotiation procedures. In addition, CMRS providers attaching to poles should not be required to obtain unnecessary authorizations (such as certificates of public convenience and necessity) because such requirements often amount to rate and entry regulation and serve only to bog down the siting process. Finally, adoption of a wireless-specific rate formula and a single rate for attachments used to provide broadband Internet service, as well as the application of the

¹⁸ See generally Comments of T-Mobile USA, Inc., WC Docket No. 07-245, RM Nos. 11293 and 11303 (filed March 7, 2008).

accelerated docket rules to pole attachment complaints, would promote ubiquitous and affordable wireless telephony and broadband Internet access services.

CONCLUSION

In the current competitive CMRS environment, the Commission should take steps to enhance the continued growth and innovation in the wireless industry by ensuring that more licensed spectrum is made available for mobile broadband access, revisiting its special access regulation so that wireless carriers have access to sufficient backhaul capacity at reasonable rates, terms, and conditions, and helping to provide more robust and ubiquitous networks by repealing or revising the home market exclusion to automatic roaming and streamlining the siting process for wireless facilities.

Respectfully submitted,

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