

September 10, 2009

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
12th Street Lobby, TW-A325
Washington, D.C. 20554

**Re: ERRATUM: *Written Ex Parte Communication*
Annual Report and Analysis of Competitive Market Conditions With
Respect to Mobile Wireless including Commercial Mobile Services,
WT Docket No. 09-66.**

Dear Ms. Dortch:

As the Commission prepares its first *Mobile Wireless Competition Report*,¹ CTIA takes this opportunity to highlight the recently-completed analysis of the wireless market in the United Kingdom (UK) compiled by its independent regulator, the UK Office of Communications (“Ofcom”).² Ofcom’s analysis of the benefits of competition, its assessment of the increasing innovation and openness in UK wireless markets, and its recognition of the importance of access to additional spectrum for commercial wireless services are all instructive for U.S. policymakers. The Ofcom report once again illustrates that, if the measuring stick for our wireless services is international comparison, the U.S. market is leading the world and delivering for consumers.

Notably, Ofcom concluded its year-long review by observing that “[t]he UK has the most competitive mobile industry in Europe with five mobile network operators.”³ The Ofcom report found that “[c]ompetition in the mobile sector has delivered substantial benefits to consumers and citizens today, and will continue to do so in the future.”⁴ The good news for U.S. consumers is that the findings about the success of the UK market are equally applicable, if not more so, to the U.S. wireless market. As detailed in this report, policymakers in the UK have embraced a regulatory model based on consumer demand and competition, finding that “*the best contribution we can make to timely and efficient investment in the mobile market continues to be to promote competition and ensure that*

¹ See *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services*, Notice of Inquiry, WT Docket No. 09-66, FCC 09-67 at para. 4 (rel. Aug. 27, 2009).

² “Mostly Mobile,” UK Office of Communications, available at <http://www.ofcom.org.uk/consult/condocs/msa/msa.pdf> (July 9, 2009) (“Mostly Mobile”).

³ “Ofcom Pledges Further Consumer Protection for Mobile Users and Publishes 3G Mobile Coverage Maps for the First Time,” Ofcom (July 8, 2009), available at: http://ofcom.org.uk/media/news/2009/07/nr_20090708.

⁴ Mostly Mobile at 15. See also *id.* at 12 (“Mobile services have been a tremendous success story for consumers and citizens.”).

*any regulation we impose does not hinder or delay investment.*⁵ This is the very same approach that U.S. policymakers adopted and have fostered on a bipartisan basis for nearly twenty years. CTIA is pleased to see that Chairman Julius Genachowski has also made clear that “[m]aximizing and accelerating innovation and investment, along with ensuring competition and empowering consumers, are core components of the FCC’s mission.” The results speak for themselves: a U.S. wireless market that leads the world, with more competitors, with lower concentration, lower prices, higher usage, and new and innovative services.

Competitive Markets. In recent filings, CTIA has presented data demonstrating that U.S. consumers have the kind of choices and value that consumers around the world strive for. For example, a comparison of market structure in the UK and the U.S. markets illustrates the robust competition taking place in the U.S. wireless market. In the UK, which Ofcom found to be the most competitive market in Europe, the top four wireless carriers serve 93.5% of the market, and the top five network operators serve 100% of the market.⁶ Ofcom noted the significance of its competitive landscape, concluding that the “success [of the wireless market] derives in part from the existing market structure.”⁷

By comparison to the UK market, the U.S. wireless market is even more competitive and has even less concentration. As of year-end 2008 the top four U.S. carriers serve 85% of the market, and the top five serve less than 90% of the market. The remaining 10% of the market is made up not by one carrier, but by numerous aggressive competitors like Leap Wireless, MetroPCS, and others. Moreover, new entrants such as Clearwire and Cox Communications are not even included in that analysis. So, while some critics have made outlandish pronouncements about consolidation in the U.S. wireless market, the facts show a very different picture. Due in part to a steady influx of new competitors, the HHI calculation for the U.S. wireless market is the lowest among the 25 other OECD countries regularly tracked by Merrill Lynch.⁸ If the UK market is competitive – which is the finding of UK’s independent regulator – clearly the U.S. market is competitive, as well.

We also note the recent announcement that the third and fourth largest wireless carriers in the UK, T-Mobile and Orange, have announced their intention to merge, creating a new largest carrier in the UK, with a 37% market share. Assuming that this proposed combination receives necessary regulatory approval, the U.S. market with an approximate HHI calculation of 2280 will be the only market below 2900.

Benefits of Competition. Much as U.S. policymakers have emphasized the importance of competition, so too does Ofcom in its report. The report concludes that “competition is the most important stimulus for ensuring that consumers benefit from advances in the mobile sector through service and technology innovation, fair prices and

⁵ Mostly Mobile at 71 (emphasis added).

⁶ Letter from Christopher Guttman-McCable, CTIA, to Marlene Dortch, FCC, RM-11361, GN Docket No. 09-51, WC Docket No. 07-52 (May 12, 2009) (citing Merrill Lynch, “Global Wireless Matrix 4Q08”) (“May 12, 2009 CTIA Ex Parte”).

⁷ Mostly Mobile at 5.

⁸ May 12, 2009 CTIA Ex Parte at 7.

investment.”⁹ CTIA endorses this approach and the experience of the U.S. wireless market is illustrative. Considering both price and minutes of use, U.S. consumers fare even better than their counterparts in the UK. As CTIA submitted recently in a multi-national comparison of wireless markets, the price per minute in the UK is 140% above the United States, \$0.12 to \$0.05, and the minutes of use per month in the UK is below 200, while in the United States it is above 800.¹⁰

The Ofcom report also shows that the benefits of competition are flowing to consumers not only in the form of lower prices, but also through new services and innovation. The report documents the development of a virtuous cycle in the wireless market, with demand, new services, and new technical capabilities emerging.¹¹ According to Ofcom, the uptake in data services has caused an exponential growth in traffic volume, with the amount of wireless data volume in the UK increasing by a factor of six between the first and last quarters of 2008.¹² Once again, by comparison, U.S. wireless consumers are among the most prolific mobile Internet users worldwide. According to a Nielsen Media study, the United States has a higher percentage of consumers actively using mobile Internet capabilities – 15% – than any country measured in the survey.¹³ Put in terms of total number of users, Neilson’s estimated 15% of wireless subscribers equals 40 million American consumers who are “active users” of mobile web service – 75% more than just two years earlier.¹⁴ More recently, an April 2009 survey conducted by the Pew Research Center’s Internet & American Life Project found that 32% of all Americans have gone online with a mobile device and that use of the Internet on mobile devices has grown sharply from the end of 2007 to the beginning of 2009.¹⁵ These findings – and these comparisons – affirm that, when it comes to mobile broadband services, U.S. wireless providers are leading the way and U.S. consumers are reaping the benefits of competition.

Network Management. The explosion in demand for mobile Internet services has also shaped Ofcom’s approach to network management issues. Ofcom has observed that “[u]ntil recently, there was nothing similar to this openness and flexibility in the mobile sector . . . [yet] [o]ver time consumers have demanded, and got, open access to the [I]nternet.”¹⁶ This trend toward greater openness, spurred on by consumer demand, has

⁹ Mostly Mobile at 42.

¹⁰ May 12, 2009 CTIA Ex Parte at 3.

¹¹ Mostly Mobile at 28 (“As consumer demand grows, software developers are increasingly attracted by the mobile market. New data services are likely to affect the performance of existing networks as they demand more and more resources. Consequently, operators have an incentive to upgrade their mobile networks or invest in new technologies. The virtuous circle also operates in reverse: as networks and devices allow higher bandwidth, better computer processing and more memory storage, there is more scope for innovative applications to run over mobile. This leads to the development of new services and consequently attracts more mobile consumers.”).

¹² Mostly Mobile at 25.

¹³ “Critical Mass: The Worldwide State of the Mobile Web”, Nielsen Mobile at 2, 4 (July 2008).

¹⁴ *Id.* at 2.

¹⁵ “Wireless Internet Use,” Pew Research Center’s Internet & American Life Project, John Horrigan (July 22, 2009).

¹⁶ Mostly Mobile at 29 (emphasis added).

led Ofcom to resist calls for “net neutrality” principles or requirements. Ofcom expressed its view that:

[I]n a competitive market we expect that the degree of ‘net neutrality’ (if any) will be determined by consumer choice and therefore does not require regulation. An important corollary is that consumers should be aware of any restrictions that are placed on their service, both at the point of sale and during the term of the contract.¹⁷

CTIA agrees that a balanced approach, relying primarily on consumer demand and consumer awareness, makes sense in competitive markets such as the UK and U.S. and encourages policymakers to continue this successful approach, also adopted on a bipartisan basis here in the United States.¹⁸

National Commitment of Spectrum Resources. Finally, CTIA applauds Ofcom’s recognition of the importance of allocating additional spectrum for commercial wireless services. While not attempting to engage in a detailed discussion of spectrum policy, the Ofcom report nonetheless recognizes that spectrum is a critical and scarce resource for wireless providers. The study noted:

Access to spectrum is central to innovation and competition in the mobile sector. Releasing new spectrum into the market and liberalising the use of existing spectrum will encourage competition and innovation in the mobile market for two main reasons: The availability of new spectrum will increase competition and contestability in the market. It will also allow spectrum for new services, such as WiMAX.¹⁹

Comparing the spectrum positions of the United States and the UK, it is apparent that the United States will need to allocate significant additional spectrum to commercial wireless services. In the United States, the government has assigned 409.5 MHz to serve 279 million customers. By contrast, in the UK, the government has assigned for licensed commercial use 352.8 MHz of spectrum to serve approximately 80 million customers. This comparison illustrates the spectral efficiency of U.S. wireless providers, which, as CTIA has demonstrated in prior filings, leads the world.²⁰

More staggering – and more concerning for our future broadband opportunities – is the comparison of future spectrum positions. With consumers increasingly recognizing the importance of mobile broadband services and with the explosion of new capabilities that these services permit, there is a crisis brewing for the United States. While the United States has, by the most generous estimates, 50 MHz that could conceivably be assigned for commercial use (AWS-2 and AWS-3), the UK has over 350 MHz in the

¹⁷ Mostly Mobile at 67.

¹⁸ It is notable that even in areas such as consumer protection, where Ofcom found that competition alone may not always be sufficient to ensure consumers are protected, it noted that “there are counterbalancing pressures to ease some of the impact of these factors consumers.” *Id.* at 88.

¹⁹ *Id.* at 65.

²⁰ May 12, 2009 CTIA Ex Parte at 9.

pipeline. *The UK – a country serving less than one-third the number of subscribers, who use less than one-fourth the minutes of use per month – has seven times the amount of spectrum in the pipeline.* CTIA believes that, just as policymakers in the UK have recognized the importance of bringing to market significant additional spectrum resources for mobile broadband, addressing our global spectrum imbalance must be a key priority for U.S. policymakers.

CTIA urges the Commission to consider this analysis as it finalizes its *Mobile Wireless Competition Report*. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Christopher Guttman-McCabe

Christopher Guttman-McCabe

cc: Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker