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**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

SEP - 4 2009

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| In the Matter of | ) | |
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| Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 | ) | WT Docket No. 09-66 |
| | ) | |
| Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services | ) | |
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SEP - 4 2009

# NOTICE OF INQUIRY

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**Reply Comment Date: October 13, 2009**

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker issuing separate statements.

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## I. INTRODUCTION

1. In 1993, Congress established the promotion of competition as a fundamental goal for Commercial Mobile Radio Service ("CMRS") policy formation and regulation. To measure progress toward this goal, Congress required the Commission to submit annual reports that analyze competitive

conditions in the industry.[1] On May 14, 2009, the Wireless Telecommunications Bureau ("Bureau") released a *Public Notice* soliciting data, information, and comment on the state of competition among providers of CMRS for its Fourteenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services.[2] Through this *Notice of Inquiry* ("*NOI*"), we seek to expand and enhance our analysis of competitive conditions, both to improve our assessment of the current state of competition in the entire mobile wireless market ecosystem and to better understand the net effects on the American consumer. We will consider the combined record from both the *Fourteenth Report Public Notice* and this *NOI* in our analysis of mobile wireless competition for the next report. By considering all factors that affect competitive conditions in the provision of mobile wireless service and ensuring we apply the best analytic framework to the most robust data available, we intend to provide a solid foundation for Commission policy making with respect to mobile wireless services.

2. Wireless mobility has become central to the economic, civic, and social lives of over 270 million Americans. We are now in the midst of a transition from reliance on mobile voice services to increasing use of and reliance on mobile broadband services, which promise to connect American citizens in new and deeper ways. A robustly competitive mobile wireless market will be essential to realizing the full benefits to American consumers and channeling investment toward vitally important national infrastructure. A vibrant mobile wireless market is also essential to driving innovation, not only within the mobile market itself, but also in markets—current and future—for which wireless mobility is a key enabler. We seek to ensure that competition in the mobile wireless market continues to bring substantial benefits to American consumers. Data and analysis will shed light on the current state of competition and provide a basis and foundation for the Commission's ongoing understanding of the mobile wireless market, including topics such as innovation, investment, entry, and the deployment of new technologies and services.

3. In this *NOI*, we expand upon the trend established in previous *CMRS Competition Reports* of viewing the mobile wireless industry broadly.[3] As the size of the mobile wireless industry has increased over time, and the diversity of products and services available to consumers has grown, so has the scope of the *CMRS Competition Reports*. As noted in the *Thirteenth Report*, many providers of commercial mobile voice service also offer a variety of mobile data services, including mobile broadband

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[1] 47 U.S.C. § 332(c)(1)(C). The relevant portion of the statute requiring the annual report on CMRS competition states:

> The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition.

[2] "Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition," DA 09-1070, WT Docket No. 09-66, *Public Notice*, rel. May 14, 2009 ("*Fourteenth Report Public Notice*").

[3] Congress has defined Commercial Mobile Service as "any mobile service ... that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by the Commission." The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), amending the Communications Act of 1934 and codified at 47 U.S.C. § 332(c); Communications Act § 332(d)(1), 47 U.S.C. § 332(d)(1). "Mobile service" is defined at Section 3 of the Act. Communications Act § 3(27), 47 U.S.C. § 153(27). The term "commercial mobile service" came to be known as the "commercial mobile radio service" ("CMRS"). 47 C.F.R. § 20.3.

Internet access service, which is not classified as a "commercial mobile radio service,"[4] and other mobile data services whose regulatory status the Commission has not addressed.[5] These mobile wireless services and applications – including voice, messaging, games, video and music downloads, and Internet access – often jointly use the same spectrum, network facilities, and customer equipment;[6] many mobile providers have integrated the marketing of these services and applications, offering them in bundles; and mobile telephone subscribers tend to purchase bundled services. As a result, the *Thirteenth Report* analyzed concentration in the mobile market using a combined product market for mobile telephony/broadband services.[7]

4. The mobile wireless industry has continued to evolve since the writing of the *Thirteenth Report*, with mobile voice and mobile data/broadband services becoming increasingly intertwined and many mobile devices more closely resembling mobile computers instead of mobile telephones. Accordingly, while the Commission will continue to fulfill its statutory obligation to report on the state of CMRS competition, subsequent reports will analyze CMRS as part of the broader mobile wireless market, which includes services beyond those narrowly defined as commercial mobile radio service. Because the report will analyze the broader mobile wireless market, we intend to name the report "Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services" (*"Mobile Wireless Competition Report"*).

5. In this *NOI*, we seek to expand our understanding of the mobile wireless industry in three ways. First, we inquire about which analytic framework and data sources will most clearly describe competition in the mobile wireless market. Second, we broaden the scope of our inquiry to include new market segments not covered thoroughly in previous reports, such as the device and infrastructure segments. Third, we inquire about the vertical relationships between "upstream" and "downstream" segments and how these relationships affect competition. We also note the release today of a notice of inquiry seeking comment on fostering innovation and investment in wireless communications.[8]

## II. DISCUSSION

6. Given the wider range of the issues we are considering, we invite new stakeholders and

[4] In 2007, the Commission classified wireless broadband Internet access service as an information service under the Communications Act and found that wireless broadband Internet access service using mobile technologies was not a "commercial mobile service" as defined in the Act. Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks, WT Docket No. 07-53, *Declaratory Ruling*, 22 FCC Rcd 5201 (2007).

[5] We note that the regulatory classification of a partieular wireless service offered by a CMRS carrier is determined on a case-by-case basis. *See* Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Service, WT Docket No. 96-6, *Second Report and Order and Order on Reconsideration*, 15 FCC Rcd 14680, 14683, ¶ 7, 14687, ¶ 15 (2000). Aside from broadband Internet access service, the regulatory classification of services and applications that rely on Internet Protoeol ("IP-enabled services") is pending. *See* IP-Enabled Services, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863 (2004). In addition, the Bureau has sought comment on a petition seeking clarification on the regulatory classification of text messaging services. *See* "Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling That Text Messages and Short Codes Are Title II Services or Are Title I Services Subject to Section 202 Non-Discrimination Rules," *Public Notice*, 23 FCC Rcd 262 (2008).

[6] 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, WT Docket No. 08-27, *Thirteenth Report,* DA 09-54, at ¶ 30 (rel. WTB Jan. 16, 2009) (*"Thirteenth Report"*).

[7] *Id.*, at ¶ 31.

[8] *See* Fostering Innovation and Investment in the Wireless Communications Market, GN Docket No. 09-09157, *Notice of Inquiry*, FCC 09-66 (rel. Aug. 27, 2009).

interested parties–those who might not otherwise have partieipated with the prior, narrower analytic scope–to provide further input for the *Mobile Wireless Competition Report*. Such parties may include application providers, equipment and device manufacturers, consumer groups, new content providers, software developers, analysts, and academics. Commenters desiring confidential treatment of their submissions should request that their submission, or specific parts thereof, be withheld from public inspection pursuant to the Commission's rules.[9] In order to facilitate the Commission's analysis of competitive trends over time, we request that parties submit current data as well as historic data that are comparable over time. We note that this *NOI* may include some areas of inquiry that are currently pending before the Commission in other proceedings.[10] In those instances, this inquiry will not preclude the Commission from taking action based on the existing record in those proceedings.

### A. Analytic Framework and Data Sources

7. The Commission strives constantly to improve and refine the way it collects, analyzes, and reports industry data. We seek to increase the understanding of the various segments[11] that are part of the mobile wireless "ecosystem," including the markets for key inputs ("upstream" markets), such as towers, backhaul, and transport facilities, as well as the markets for products that rely on mobile wireless services ("downstream" or "edge" markets), such as mobile applications, content, and commerce.[12] All of these segments may either affect or be affected by competition in the provision of mobile wireless services.[13] Similarly, we seek to understand the ways in which competition in the provision of mobile wireless services affects adjacent markets. In this section, we seek comment on whether, and to what extent, we should modify or change the analytic framework used since the *Ninth Report* to analyze the competitiveness of the mobile wireless market. In light of our proposed broader approach for analyzing competition in the mobile wireless market, we invite comment on whether the analytic framework of the *Mobile Wireless Competition Report* should change. We also seek comment on whether to expand the report to use other models and theories to analyze and interpret the data. We further seek comment on whether there are additional data sources available for this expanded analysis.

8. *Analytic Framework.* In the five most recent *CMRS Competition Reports*, the Commission has reviewed competitive market conditions using a framework that groups indicators into four categories: (1) market structure; (2) provider conduct; (3) consumer behavior; and (4) market

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[9] 47 C.F.R. § 0.459. *See* Section IV.C, Comment Filing Procedures, *infra*, for instructions on how to submit confidential information. *See also* Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, 13 FCC Rcd 24816 (1998), *Order on Reconsideration*, 14 FCC Rcd 20128 (1999).

[10] Any comments or materials received in this docket (WT Docket No. 09-66), which are relevant to both this proceeding and other proceedings, will be considered as part of those other proceedings. We urge parties not to submit comments in this docket that are unrelated to competition in the mobile wireless ecosystem, including the topics discussed in this *NOI* and in the *Fourteenth Report Public Notice*.

[11] *See infra* Section II.C, Market Segments and Edge Markets.

[12] Mobile commerce includes purchases and transactions made with a mobile device connected to a mobile wireless network. Examples include online shopping, auctions, and stock trading on a mobile device; purchasing and downloading content such as ringtones, songs, and books onto a mobile device; and using a mobile device as an electronic ticket, coupon, or debit card.

[13] *See* 47 U.S.C. § 3 (27); 47 C.F.R. 20.3 (defining "mobile service"). Mobile wireless services include all commercial mobile voice, video, and data services and applications provided over mobile stations and networks, including mobile broadband networks. *See also* 47 U.S.C. § 3 (28) (defining "mobile station" as "a radio-communication station capable of being moved and which ordinarily does move").

performance.[14] In the *Fourteenth Report Public Notice*, the Bureau requested data and information for each of these four categories but did not seek overall comment on the continued use of this analytie framework.

9. In this *NOI*, we expand the scope of our review to encompass competition across the entire mobile "value chain," from upstream markets for key inputs to downstream markets that depend on mobile wireless services.[15] Is our traditional four-pronged analytic framework sufficient to describe the full competitive dynamics and effects of the mobile wireless market, or are there other economic frameworks that would provide better analytical tools for analyzing the mobile wireless market? What new frameworks, models, standards, and metrics should the Commission consider in the *Mobile Wireless Competition Report*? Should we integrate new developments in industrial organization theory, behavioral economics, or other economic subfields? If so, how should we apply them to our analysis of the market?

10. *Data.* In the *Fourteenth Report Public Notice*, the Bureau requested data on service availability and deployment, mobile satellite services, capital expenditures by geographic region, mobile data subscriber shares, and pricing data, including data on the price of mobile data services.[16] The data reported in previous *CMRS Competition Reports* were derived from various sources including American Roamer,[17] industry associations, financial industry analysts, company filings and news releases, Security and Exchange Commission filings, trade publications, industry trade and press releases, research firms' publicly-available data, university researchers and scholarly publications, and vendor market product releases and white papers.

11. What other sources of data, especially quantitative data, can be used to perform a comprehensive competition analysis of the mobile wireless market? How can the data measurements included in the report be more precise? For example, what are the best units for measuring the price and quantity of various services provided (*e.g.*, price per minute, megabyte, text message)? Are there data available for bulk or wholesale market segments, as well as retail market segments? Are data available to measure the degree of horizontal integration? What is the appropriate way to analyze the data collected on price? What metrics can be used to quantify service quality? How should "coverage" be defined and how should we measure coverage? Should specific geographic coverage measures such as census tracts be incorporated? How accurate are the data sources? For example, how can we account for the market

[14] 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); 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, *Tenth Report*, 20 FCC Rcd 15908 (2005); 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*, 21 FCC Rcd 10947 (2006) ("*Eleventh Report*"); 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, *Twelfth Report*, 23 FCC Rcd 2241 (2008) ("*Twelfth Report*"); *Thirteenth Report*. The *CMRS Competition Reports* can also be found on the FCC's web site at http://wireless.fcc.gov/cmrsreports.html.

[15] By "value chain" we mean the chain of individual, value-creating activities, including not only those performed by mobile wireless providers but also those performed by all other entities, including firms providing inputs and firms providing consumer products and services complementary to wireless communications services.

[16] *Fourteenth Report Public Notice* at 4-9.

[17] American Roamer is an independent consulting firm that produces coverage maps based on public sources as well as confidential information supplied directly by service providers. *See Twelfth Report*, 23 FCC Rcd at 2261, ¶ 35, n. 61.

share of wireless broadband providers that do not provide voice service, and for the market share of mobile wireless broadband subscribers who do not have phone numbers associated with their devices?[18] What information is available to consumers that we should consider and analyze? In addition, what additional data and metrics are available to compare the mobile wireless market in the United States with that in other countries? In particular, are there data or studies available that include accurate price per minute comparisons, including those that account for the differences in calling party pays versus mobile party pays systems?[19]

### B. Consumer Benefits

12. Mobile wireless services, including mobile broadband, play an important part in the lives of American consumers, affecting how they communicate, work, learn, and play. Consumers have a strong influence on the development of mobile applications and content of mobile wireless services. Consumers face a range of choices in the mobile wireless market, with various product attributes, terms, and conditions affecting their purchasing decisions. In the *Fourteenth Report Public Notice*, the Bureau sought comment on factors that may impact consumers' purchasing decisions including pricing plans, Early Termination Fees ("ETFs"), service quality, and coverage.[20] In this *NOI*, we are interested in gathering specific and granular quantitative and qualitative data and information on factors that affect consumers' mobile wireless purchasing decisions and consumer behavior in evaluating the broader mobile wireless ecosystem.

13. What are the forces that drive adoption and demand? What are the different consumer market segments that we should analyze to assess the effectiveness of these competitive forces? How does the structure of prevalent pricing plans affect consumer choice and the competitiveness of the mobile wireless market? Does the price structure of prevalent plans reflect a competitive market structure? What are the primary non-price characteristics customers consider when selecting a particular service offering (*e.g.*, handsets, service quality)? Are there switching or search costs that affect a consumer's ability to change plans or providers (*e.g.*, ETFs, address book portability, service quality)? Are there any data or studies that quantify these switching and search costs for the mobile wireless market? Are there any data or studies that quantify whether consumers view mobile wireless broadband services as substitutes or complements to wired broadband services? Are there any market trends that may affect whether mobile wireless broadband services are complements or substitutes for wired broadband services?

### C. Market Segments and Edge Markets

14. The Commission, in its endeavor to improve its analysis of competition in the mobile wireless market, seeks to understand the competitive conditions in each of the market segments and edge markets that are part of the mobile wireless ecosystem and across the full "value chain" of the mobile wireless market. Previous *CMRS Competition Reports* examined the state of competition within the CMRS market but did not separately analyze specific market segments, or analyze these markets effects

[18] Our current analysis of market share relies upon Numbering Resource Utilization and Forecast ("NRUF") data, which does not identify subscribers that use broadband services. *Fourteenth Report Public Notice* at 6-7. The *Fourteenth Report Public Notice* also discusses the data on mobile broadband subscribership available through the Form 477 broadband reporting requirements. *Id. at* 6-7, 13.

[19] Previous *CMRS Competition Reports* have included information on revenue per minute figures (a proxy for price per minute) for different countries reported by Merrill Lynch. As stated in the *Thirteenth Report*, Merrill Lynch has noted that these data have certain limitations for comparing countries that use calling party pays versus mobile party pays systems. *See Thirteenth Report*, DA 09-54 at ¶ 218, n.618.

[20] *Fourteenth Report Public Notice* at 8.

on competition in the CMRS market.[21] In this *Mobile Wireless Competition Report,* we intend to reflect the current state of the entire mobile wireless market ecosystem, which includes services and market segments beyond those narrowly defined as "commercial mobile service." Therefore, we seek specific and granular quantitative and qualitative data and information on mobile wireless market segments and edge markets to inform and evaluate competition in the mobile wireless market.

15. *Retail Service or Consumer Market Segments.* What are the retail service or consumer market segments that should be examined? For example, should we break down and analyze the market according to: type of service offered (*e.g.*, mobile voice, text messaging or data); type of device on which the service is offered (*e.g.*, handsets, smartphone, or modem/aircard); type of subscription (*e.g.*, prepaid or postpaid); and type of subscriber using the service (*e.g.*, individual consumers, small businesses, or enterprises)? What other retail service market segments should we consider and analyze? What data are available to assess competition in these various market segments?

16. *Device Market Segments.* In the *Mobile Wireless Competition Report,* we seek to examine the end-user device market segments of the mobile wireless ecosystem, as distinct from the retail service market segments. We note that the *Fourteenth Report Public Notice* sought comment on the types of handset features and innovations that are most popular with consumers, whether the number of features available on most handsets has generally increased over time, and whether a consumer's choice of service provider is influenced by the devices or handsets available for use on that provider's network and how has this changed over time.[22] While we are aware that consumers have a variety of wireless devices in the market from which to choose, we note that the features and capabilities differ significantly among devices. In light of this, we seek to develop a more detailed understanding of the device market segments and how different wireless devices – including, for example, smartphones, netbooks, and modems/aircards – should be examined and evaluated. Thus, we seek comment on how to analyze and evaluate the wireless device market segments. What wireless devices other than handsets are currently being used by consumers to access mobile wireless services? How do these devices complement the wireless handset market? Should our broader *Mobile Wireless Competition Report* provide a more detailed and comprehensive analysis of the wireless device market, including new devices such as netbooks or smartphones? How are these devices integrated with other segments of the wireless market?

17. How should we analyze the range of device networking capabilities available to consumers? Is there a market for multi-standard handsets that work within U.S. frequency allocations? If yes, what are the benefits of such devices for consumers? Are multi-standard handsets currently available to American consumers? How does the availability of such multi-standard handsets affect competition? How are wireless handsets or devices restricted for consumer use?

18. *Edge Markets.* Wireless applications, content, and commerce are an increasingly important segment of the wireless market. These "edge" markets may influence how consumers purchase entertainment, interact socially, and shop for consumer goods. It is important for the Commission to develop a more detailed understanding of these developing markets. Thus, we seek comment on how to analyze the market from the standpoint of applications, content (*e.g.*, audio and video entertainment), and commerce. Previous *CMRS Competition Reports* described new technologies and services launched within the previous year.[23] In this *NOI,* we also seek to develop an analytic framework to provide an enhanced analysis of the competitive conditions in the current mobile wireless market to include "downstream" application services, content, and commerce.

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[21] *See e.g., Twelfth Report,* 23 FCC Rcd at 2250-51, ¶¶ 3-5; *Thirteenth Report,* DA 09-54 at ¶¶ 3-5.

[22] *Fourteenth Report Public Notice* at 9-10.

[23] *See e.g., Twelfth Report,* 23 FCC Rcd at 2297-2306, ¶¶ 125-152; *Thirteenth Report,* DA 09-54 at ¶¶ 126-153.

19. How does the structure of the wireless market affect the market for "downstream" application services? What types of applications are most popular with consumers? To what extent can consumers access the Internet content and applications of their choice over their provider's network? What processes have providers implemented for allowing third-party applications onto their platforms? Have wireless providers restricted access to platforms, and if so, how? A number of providers of applications (*e.g.*, Apple, RIM, Nokia, Palm, and carriers such as Verizon Wireless and AT&T) are creating "applications stores" that allow content and customization of mobile services. How many "applications stores" are available for users to obtain services and content? How many applications, on average, are currently available from these stores and what percentage of these are free? If not free, what is the average price of the applications and what is the method of payment for such applications? We also request information from wireless providers on the processes they have implemented for allowing third-party applications onto their platforms, and the specific ways in which they have restricted or expanded the types of applications that customers can access on their networks.

20. *Resale and Roaming.* Previous *CMRS Competition Reports* have included data regarding the amount of resale and roaming revenue in the CMRS market.[24] In this section, we seek information on how we should analyze the market from the perspective market segments that include resale and roaming.

21. What are the key bulk or wholesale market segments that currently exist in the wireless industry, such as those involving Mobile Virtual Network Operators ("MVNOs") or WiFi resale? How should we assess the effect of wholesale segments on retail competition in the wireless market? To what extent are resellers or MVNOs competing effectively in the mobile wireless market? Who are the major resellers or MVNOs in the United States? What are the competitive effects of these resellers or MVNOs on the market as a whole? What quantitative data are available to measure costs, revenues, and quantity of the wholesale and resale segment and to analyze their effect on the market?

22. We also note that, in August 2007, the Commission released a *Report and Order* clarifying, among other things, that automatic roaming is a common carrier obligation for CMRS providers.[25] To date, there are pending petitions for reconsideration of portions of that order, including the home market exclusion to the automatic roaming requirement, and a *Further Notice of Proposed Rulemaking* addressing roaming for non-interconnected services also remains pending.[26] We intend to address the issues pending in that proceeding based on the record in that docket. However, parties are invited to provide more general comment on the proper treatment of roaming services in the broader analytical framework under consideration here.

### D. Spectrum, Non-Spectrum Inputs, and Vertical Relationships

23. The Commission has progressively implemented a more flexible, market-oriented model of spectrum allocation and assignment used to provide commercial mobile services.[27] As part of this market-oriented approach, it is important for us to understand how differences in spectrum holdings affect competition. The *Fourteenth Report Public Notice* asked general questions about spectrum utilization.[28]

[24] *See e.g., Twelfth Report,* 23 FCC Rcd at 2307, ¶ 155; *Thirteenth Report*, DA 09-54 at ¶ 156.

[25] *See* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007) ("*Roaming Report and Order*" and "*Roaming Further Notice*" respectively ).

[26] Copies of the petitions for reconsideration of the *Roaming Report and Order* and comments and reply comments to the *Roaming Further Notice* are available via the Commission's website through its Electronic Comment Filing System (ECFS) in WT Docket No. 05-265.

[27] *See e.g., Twelfth Report,* 23 FCC Rcd at 2273, ¶ 73; *Thirteenth Report*, DA 09-54 at ¶ 66.

[28] *Fourteenth Report Public Notice* at 7-8.

In this *NOI*, we seek quantitative and qualitative data to inform our analysis of how spectrum holdings affect competition. As part of the Commission's approach to develop a greater understanding of the mobile wireless ecosystem, we also would like to develop a more detailed record of how upstream non-spectrum inputs affect overall competition. Thus, we further seek comment on how we should analyze the effect of upstream, non-spectrum inputs such as towers, backhaul, and network hardware on competition in the mobile wireless market. Finally, we seek information and data on vertical relationships between upstream and downstream market segments in order to enhance our analysis of the mobile wireless market.

24. *Spectrum.* With respect to spectrum utilization, how should we assess the ways in which spectrum holdings affect market structure, conduct, and performance? How do wireless carriers currently use their licensed spectrum? Are certain frequencies used heavily while others lie fallow? How does this vary across different types of geographic areas? How much additional spectrum will be required to support next generation technologies and mobile broadband applications? How should we account for differences in bandwidth in evaluating competition? How much spectrum is being used to provide services over 3G network technologies versus 2G/2.5G technologies? How much spectrum is required to rollout services over next generation/4G network technologies such as WiMax and Long Term Evolution (LTE)? Which types of services and applications require large amounts of spectrum? What types of technologies and applications are designed to use spectrum efficiently? How do spectrum demands for such services differ in urban and rural areas? How much spectrum is unused or underutilized? To what extent do spectrum licensees lease, partition, or disaggregate their spectrum? How much of the spectrum available for the provision of mobile wireless services is actually used to provide service? Of the spectrum that is currently unused, to what extent do licensees plan to use that spectrum to provide service in the future? Are there geographic areas within spectrum license boundaries that licensees do not plan to serve? Are there any data or estimates available on spectrum utilization or nonutilization/warehousing?

25. Wireless mobile services and wireless broadband deployment may be constrained by spectrum propagation characteristics.[29] What are the benefits of transmitting in different frequency bands? How do such benefits translate into capital and operating cost differences? How does the use of different frequency bands affect competition in the industry? Should we distinguish the competitive effects of different spectrum bands (*e.g.*, above or below 1 GHz)?

26. *Non-Spectrum Inputs.* Besides spectrum access, mobile wireless services depend critically on access to productive inputs such as backhaul facilities and cell sites.[30] New backhaul transmission facilities in terms of T1, cable, microwave backhaul, and fiber optics may have to be built and maintained to accommodate increased broadband traffic in these areas. How does the structure of the market for backhaul services affect overall competition? How does the structure of the market for towers affect overall competition? How do the differences in technology, availability and price for backhaul

[29] *See* Michael J. Copps, Acting Chairman, Federal Communications Commission, *Bringing Broadband to Rural America, Report on a Rural Broadband Strategy*, ¶ 85, n.194 (rel. May 22, 2009) ("*Rural Broadband Report*"); *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part27 of the Commission's Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket Nos. 06-150, 96-86, 03-264, 01-309, 06-169, CC Docket No. 94-102, PS Docket No. 06-229, Second Report and Order, 22 FCC Rcd 15289, 15348, ¶ 154 (2007), *recon. pending*.

[30] *See e.g., Twelfth Report*, 23 FCC Rcd at 2309, ¶ 162; *Thirteenth Report*, DA 09-54 at ¶ 159.

services impact overall competition? Are there other key input markets that affect overall competition? What data are available to measure these effects?

27. *Vertical Relationships.* Previous *CMRS Competition Reports* have not examined whether or how vertical relationships impact the CMRS market. In this *NOI*, we seek information on how vertical relationships impact competition in the broader mobile wireless ecosystem. What are the key vertical relationships among market segments? Are these relationships conducive to an overall competitive market? How should we evaluate competition among market segments when firms have vertical relationships, outsourcing agreements, or other contracts? Should we track vertical relationships? If so, how should we track vertical relationships? What data are available to show the effect of vertical relationships on downstream market competition?

### E. Investment, Entry and Growth

28. Investment is critical to the development of the mobile wireless market. It impacts how many providers offer service as well as the development and deployment of next-generation technologies and devices. However, access to capital may vary among individual firms as well as among market segments, and previous *CMRS Competition Reports* found that the wireless sector is characterized by large barriers to entry. We seek comment on the relationship between competition and domestic investment in the mobile wireless ecosystem. We also seek comment on any barriers to entry or growth that exist in the mobile wireless market. The *Fourteenth Report Public Notice* invited comment on barriers to entry or growth that providers or entrants consider significant, and whether these barriers are different between rural and urban areas.[31] The *Fourteenth Report Public Notice* also asked whether existing service providers are spectrum constrained, and whether potential entrants have sufficient opportunities to access spectrum.[32] To fully evaluate competition in the mobile wireless market, we seek specific quantitative and qualitative data and information on any structural or regulatory barriers to entry and growth that may exist. Building on our questions in the *Fourteenth Report Public Notice* on profitability, what data should we use to measure investment (*e.g.*, return on investment, return on invested capital, operating margins)?

29. In this *NOI*, we seek information on the relationship between investment and competition in the mobile wireless market. What data are available to track investment? How should we measure investment across the full value chain of the mobile wireless market and analyze its effect on competition? How should we measure the effect of competition in the mobile wireless ecosystem on investment? How do mobile wireless firms make investment decisions? How does the impact of investment in networks translate into investment in related mobile wireless segments, such as edge services and retail sales?

30. What are the most significant barriers to entry and growth? Can a potential entrant in the nationwide market for the provision of mobile wireless services buy or lease spectrum licenses on a nationwide basis (*e.g.*, to achieve efficient economies of scale in network coverage)? Are the spectrum licenses that are available on a nationwide basis technologically and economically feasible for deploying mobile broadband networks? How much spectrum, and in which bandwidths, will be needed by wireless carriers in the near future to satisfy demand for next generation mobile broadband services? How does this vary by type of coverage area (urban, suburban, rural)?

### F. New Technologies and Future Developments

31. In this *NOI*, we seek comment on how technological changes alter the nature of mobile

[31] *Fourteenth Report Public Notice* at 7-8.

[32] *Id.* at 7-8.

wireless competition. The mobile wireless market undergoes frequent and rapid technological advances.[33] We seek additional detail on what information is available on current and future deployment of next generation technologies.

32. How widespread are deployments for next-generation technologies such as LTE and WiMAX? What types of services are driving deployment of these technologies? To what extent do these new networks and services complement or compete with the current wireless networks and services in place today? How is convergence among networks (*e.g.*, mobile, Wi-Fi, landline broadband) affecting the competitive structure of the market? Are there data available for the deployment of next generation technologies including towers and the proportion of the existing network overbuild as well as the construction of new networks? Are there any important developments in backhaul services?

### G. Geographic Market Segments: Urban vs. Rural

33. Mobile wireless services are rapidly transforming the way Americans communicate, work, learn, and play.[34] However, not all consumers have equal access to the same services, handsets and applications.[35] Whether a consumer resides in an urban or rural area appears to be an important factor in accessing services. In the *Fourteenth Report Public Notice*, comment was requested on the extent of mobile voice and broadband network deployment in rural areas and tribal lands.[36] Below, we request specific and granular data and information on how competition differs between urban and rural areas to inform and evaluate the role of this segment in the broader mobile wireless ecosystem.

34. What are the demographic, geographic, and economic factors that drive differences in competition between urban and rural markets, both with respect to cost and demand? How do service coverage, available services, end user devices, and applications differ between rural and urban areas and why? If there are differences, what are the consequences of such differences from an economic perspective?

35. Are there different patterns of spectrum usage in urban and rural areas? What are the build-out and backhaul constraints in rural and rugged areas? What are the solutions to these constraints? To what extent are rural carriers, including rural LECs, expanding service in rural areas? How much spectrum is needed to provide broadband in rural areas?

## III. CONCLUSION

36. We believe that the information sought in this *Notice of Inquiry* will enable us to better establish a more appropriate analytic framework and allow us to provide an enhanced analysis of competitive conditions in the current mobile wireless market. Accordingly, we seek comment on those issues discussed above, as well as any facts or issues related to our analysis of competitive conditions not otherwise addressed in this *Notice of Inquiry*.

## IV. PROCEDURAL MATTERS

### A. Paperwork Reduction Act

37. This document does not contain proposed information collection(s) subject to the

[33] *See e.g., Twelfth Report,* 23 FCC Rcd at 2298, ¶ 126; *Thirteenth Report*, DA 09-54 at ¶ 127.

[34] *Rural Broadband Report* at ¶ 14 ("Broadband Internet access, often on small, easy-to-use devices, is rapidly transforming the way we communicate, learn, work, and play. Touch-screen mobile devices, e-books, and Voice over Internet Protocol (VoIP) have become standard features in many people's daily lives.").

[35] *Id.* at ¶ 15.

[36] *Fourteenth Report Public Notice* at 5.

Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 47 U.S.C. § 3506(c)(4).

### B. Ex Parte Presentations

38. This is an exempt proceeding in which ex parte presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.[37]

### C. Comment Filing Procedures

39. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[38] interested parties may file comments and reply comments regarding the Notice on or before the dates indicated on the first page of this document. **All filings related to this Notice of Inquiry should refer to WT Docket No. 09-66**. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.
- ECFS filers must transmit one electronic copy of the comments for WT Docket No. 09-66. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of <u>before</u> entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.
- Parties should send a copy of their filings to Chelsea Fallon, Spectrum & Competition Policy

[37] 47 C.F.R. § 1.1204(b)(1).

[38] 47 C.F.R. §§ 1.415, 1.419.

Division, Wireless Telecommunnications Bureau, Federal Communications Commission, Room 5-C140, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to Chelsea.Fallon@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

- Documents in WT Docket No. 09-66 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

40. If a Submitting Party requests that any information or documents responsive to this NOI be treated in a confidential manner, it shall submit, along with all responsive information and documents, a statement in accordance with section 0.459 of the Commission's rules. 47 C.F.R. § 0.459. Requests for confidential treatment must comply with the requirements of section 0.459, including the standards of specificity mandated by section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of documents are unacceptable. Pursuant to section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of section 0.459.

- The cover or first page of the filing, and each page of the filing that contains or discloses Confidential Information must be clearly marked: "CONFIDENTIAL INFORMATION –WT DOCKET NO. 09-66 before the Federal Communications Commission;"
- One copy of the filing shall be filed with the Secretary's Office. The filing shall be accompanied by a cover letter stating "CONFIDENTIAL INFORMATION IN WT DOCKET NO. 09-66 before the Federal Communications Commission." The filing shall be made under seal, and will not be placed in the Commission's public file.
- Those portions of the filing that constitute Confidential Information shall be clearly identifiable as such, so that those portions that are deemed to be Confidential Information are readily identifiable based on an examination of the filing.
- Two redacted copies of the filing containing no Confidential Information (the "Redacted Filing") shall also be filed with the Secretary's Office. Each Redacted Filing shall have the same pagination as the Confidential Filing from which it is derived. The two copies of the Redacted Filing and their accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION" and shall state that the Submitting Party is filing a redacted version of the filing.
- Two copies of the filing containing Confidential Information and the accompanying cover letter shall be delivered in person to Chelsea Fallon, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. She may be reached at (202) 418-7991 to schedule delivery.

### D. Accessible Formats

41. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

## V. ORDERING CLAUSE

42. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 403, this Notice of Inquiry IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF**
**CHAIRMAN JULIUS GENACHOWSKI**

***Re: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services, WT Docket No. 09-66, Notice of Inquiry***

Today we address competition in the wireless marketplace, as part of our statutory duty to produce an annual report on this topic. This is an important step in the process of laying a solid foundation for predictable, fact-based competition policy in the wireless sector, a process that will continue with the other competition reports the agency is responsible for preparing.

Competition is important for many reasons, including, of course, that it produces low prices and high quality for consumers. But competition is also the mother of invention, which makes it especially important in a fast-changing marketplace like communications. Today's Competition Notice is an essential companion to the Innovation and Investment NOI we have just discussed, and vice versa.

To illustrate the importance of competition, let's take a look at some data showing how the wireless industry evolved when competition was introduced in the mid-1990s. During my tenure as an FCC staffer the Commission held the first spectrum auctions. These increased the number of wireless competitors from two to over five providers in some markets.

How did this increase in competition change the consumer market? Between 1994 (when the first PCS Auctions were held) and 1999, there was a drop of 50 percent in the per-minute price of cell phone service, and at the same time the number of subscribers more than tripled.

In addition to these kinds of consumer benefits, competition drives investment and creates jobs. Over the same five-year period, cumulative investment in the industry more than tripled from $19 billion to over $70 billion. The industry also quadrupled the number of cell sites, from 18,000 to over 80,000, and industry employment tripled from 54,000 to over 155,000. A competitive wireless sector, in short, is essential to ensuring that communications remains an engine for long term economic prosperity.

Competition also drives innovation. That same period saw a rapid uptick in the pace of industry change, from the deployment of new wireless technologies, to the introduction of new services such as SMS, to the launch of the first nationwide service plans. In more recent years, competition has led to the launch of smart device platforms by innovators such as Palm, Microsoft, Google, and of course, Apple.

We are at a pivotal moment in the history of the mobile industry. We are transitioning from a voice-centric world to a world of ubiquitous, mobile Internet access. This transition promises to increase the pace of innovation and investment, but only if we have an open and competitive marketplace that gives every great idea a chance to make its way to consumers so that the best products or services win.

I hope the new wireless competition report will help set a standard for fact-based, analytically deep analysis of the mobile industry. And we will continue to apply such an analysis to all of the other competition and industry reports produced throughout the Commission.

To succeed in this goal, we will need help from outside the agency: from wireless companies, from the companies that make the networks, the devices, the operating systems and the applications, from academics, from analysts, from consumer groups, from a full and wide range of participants.

We need help identifying facts that crystallize our understanding a market that is constantly evolving in new and exciting ways.

The wireless industry has been a source of real progress in America. If we are vigilant about maintaining competition in the industry, we have every reason to expect great things as we move to mobile broadband and beyond.

## STATEMENT OF COMMISSIONER MICHAEL J. COPPS

***Re: In the Matter of Fostering Innovation and Investment in the Wireless Communications Market, GN Docket No. 09-157; A National Broadband Plan For Our Future, GN Docket No. 09-51, Notice of Inquiry***

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

***Consumer Information and Disclosure, CG Docket No. 09-158; Truth-in-Billing and Billing Format, CC Docket No. 98-170; IP-Enabled Services, WC Docket No. 04-36, Notice of Inquiry***

Today we launch three important Notices of Inquiry—each going to the heart of the Commission's core function: protecting and empowering American consumers. This is a most propitious beginning for the first meeting of our fully reconstituted FCC. These items are welcome news. I want to thank Chairman Genachowski for his vision and leadership in bringing these items forward at the outset of his tenure. It shows a commitment that bodes well for the months and years ahead.

The Notices that we are adopting today lay the groundwork for sound public policy-making. They seek to protect consumers in three ways—by searching out new ways for the Commission to facilitate wireless innovation and investment; by improving our ability to promote wireless competition; and by ensuring that consumers of wireless and other services have the information they need to make intelligent choices.

We begin with innovation. More even than the dramatic technology advances of the Twentieth century, the Twenty-first will be about stunning and transformative innovations in technology. Wireless innovations have already empowered consumers in ways unimagined just a few short years ago. Those first seemingly magical devices that carried our voices hither and yon—when everything was working well—are now evolving into robust mobile computers. The wireless industry deserves recognition and credit for how much it has accomplished. But mark me down as one who believes we have only glimpsed the beginning. Much more is coming. How much more depends in significant measure on our country's success in encouraging wireless innovation. There should be no doubt that facilitating further innovations in wireless technologies and services is absolutely crucial to our nation's prosperity and well-being in the Digital Age. We look to industry for much of that. But visionary public policy should always be the handmaiden of private enterprise. That's how we grew this country. Now, once again, we must learn to harness all our national resources for innovation and growth.

One of the great and costly shortfalls of the last decade was a declining national commitment to basic technology research and development. The tsunami of industry consolidation America endured in recent years short-changed research and development because R&D supposedly didn't nourish the quarterly bottom-line in ways sufficiently appealing to speculators-on-the-make. At the same time, government was for the most part exiting its role as an incubator of research and development. These simultaneous private and public cut-backs constituted a double whammy that cost us—consumers, citizens and country—dearly. The National Research Council reported, a couple of years ago, that without enhanced focus on technology research and development the U.S. role as a global leader in technology innovation

can only continue to decline. The report showed how industry and government-funded research have decreased considerably over the past several decades. We need to understand these things. We need to act upon them.

With today's Notice on fostering innovation in the wireless communications market, we begin to act. We launch an inquiry to understand how the Commission can better promote innovation and investment in new technologies and services. We ask wide-ranging questions. We seek to better understand where and how key innovations are occurring across the extensive "value ehain" of the wireless market. What has gone wrong? Where are the shortfalls? What are other countries doing to promote innovation? We also inquire about ways to improve spectrum management practices to make more spectrum available for innovative services. For example, do technology innovations create new opportunities for accessing or sharing spectrum? What are they? How can we revise our rules to enable greater access for those with new products and serviees that Americans want? How can we do a better job as an agency addressing interference protection concerns and the conflicting claims of contending parties so that rulemakings do not continue to languish? What rule changes do we need to make as wireless network infrastructure and technologies bring us a flood of new possibilities and new applications? Improving the Commission's analysis and understanding of these matters will substantially enhance our ability to take the actions needed to promote wireless innovation and investment.

I am also pleased that a number of questions in this Notice focus on innovations in wireless devices and applications. The increasing sophistication and complexity of new devices and applications have opened new worlds to millions of consumers. How exactly does the "openness" of wireless networks and devices affect the pace of innovation? Aren't open platforms and open access the kinds of models that best promote innovation? What can we learn from the Internet model, where openness has provided consumers a fantastic world of choice in applications and services? The freedom to choose devices and applications is, I believe, good for consumers and good for entrepreneurs, too.

Wireless technologies and services are not just ends in themselves. These are things that will be called on to help solve many of the critical challenges facing our country—improvements in health care through telemedicine and patient monitoring devices; energy conservation through "smart grids;" education by bringing classrooms to eager learners wherever they may be; and public safety by enhancing the capabilities of our first responders, just to name a few. As we enable wireless technologies and services, we enable America to meet and master these many challenges. I would also say how pleased I am that we will have the opportunity to consider the comments we receive in this Notice as we develop our Congressionally-mandated National Broadband Plan, wherein promoting innovation will be critical to the achievement of our goals. Of course we already have records on some of these issues so that action does not have to wait until next year.

Today we also pave the way for improving the agency's annual *CMRS Competition Report* to Congress by expanding the scope of the report. For years I have advocated the benefits of a more granular, data-driven understanding of the current mobile wireless marketplace. While we have made some limited progress in this regard in recent years, we have a long way to go. In particular, I have remained concerned that the Commission has not yet developed a clearer, more analytically sound standard for evaluating the state of competition that these annual reports are supposed to address.

This is a crucial time to fully understand the state of competition in wireless. It's no

secret to most folks in this room that I have been more than a tad critical of the extensive consolidation that has occurred in wireless. While I again applaud the technology and service strides the wireless industry has made, I remain unconvinced that the road we traveled was ideal. The Commission has a statutory duty to prevent undue concentration in the wireless marketplace. We opened the floodgates to consolidation with the repeal of spectrum caps and, more recently, the Commission has been playing unhelpful games with altering spectrum aggregation screens without first completing the necessary analysis on how the use of different frequency bands may affect competition. The time is now, with a new Commission and with a National Broadband Plan in the making, to decide what path to take in order to ensure a more competitive wireless marketplace.

Today's Notice signals that the Commission is, at last, moving beyond too heavy a focus on what it has classified as "commercial mobile radio service" so that, going forward, we can cover more completely the broader mobile wireless marketplace. The nature of mobile wireless services has evolved significantly in recent years, transitioning from a reliance chiefly on mobile voice services to the increasing use and reliance on mobile broadband services in a variety of forms that connect Americans in myriad new ways. We need to better understand the various segments that comprise the mobile wireless ecosystem. So in this inquiry we seek to identify the retail service and consumer market segments that we should examine – which could include analysis of the market by type of service (such as mobile voice, text, or data), type of device (such as handsets or modem cards), type of subscription (such as prepaid or postpaid), or type of subscriber using the service (such as individual consumers, small businesses, or enterprises). We seek additional data about "upstream" markets (such as spectrum, towers, and backhaul) and "downstream" or "edge" markets (such as applications and content) that may affect mobile wireless competition. And we seek more data regarding the range of choices that consumers have that affect their purchasing decisions. These are the right questions.

Finally, we will consider today a Notice addressing consumer information and disclosure. It inquires how the Commission can better protect consumers by ensuring that they have the information they need when purchasing their communications services. We have not done much of a job on this important element of consumer protection in recent years. Consumers cannot be expected to make informed choices without information that truly informs. I have spoken in the past about, for example, better cell phone mapping being available to consumers when they go in to sign up with a carrier. The situation is arguably better now than it was, but it could have been better sooner and there is still room for improvement. Wireless bills remain a monthly agony for consumers. Ask my wife who pays our bills about how much she looks forward to ***that*** envelope arriving in the mail each month!

Consumer protection must always be front-and-center as we discharge our public interest obligations, and in a market that I think is less than maximally competitive, that's not just good public policy—it is essential public policy. If information is power, consumers too often lack power. So as the Digital Revolution transforms our lives, let's make sure that consumers have the information they need to select and maintain the products and services that serve them best.

I am also very pleased that this Notice asks whether the Commission's truth-in-billing rules—which currently apply only to wireline and wireless voice services and then, as I've remarked, not always adequately—should be extended to broadband Internet access service and subscription video services. The Digital Age is a time of communications convergence wherein voice, video and broadband services are more and more intertwined. Double, triple and quadruple play services are now offered by single or partnered service providers. I am pleased

that, finally, with this item, the Commission begins to examine what information should be readily available to consumers who seek to protect and empower themselves when selecting, maintaining or switching these new services.

In sum, these Notices are good news. By issuing them, we endeavor to become the more pro-consumer agency that we were originally conceived to be—and must yet become. But let there be no doubt that these Notices represent only the beginning of the process. NOIs begin proceedings; NPRMs breathe direction into them; Commission Orders bring the change. I hope, and I believe, that this Commission will act with a sense of urgency in getting from NOIs to final Orders. That's fundamental to doing our job for the American people.

Again, I appreciate the leadership of the Chairman and the input of all my colleagues, two of whom didn't have exactly an abundance of time to consider these items. And I thank the staff from all the different bureaus and offices that has collaborated in the preparation of these proceedings. A job well done!

**STATEMENT OF**
**COMMISSIONER ROBERT M. McDOWELL**

***Re: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services, WT Docket No. 09-66, Notice of Inquiry***

I am voting to approve today's inquiry, which seeks additional information regarding the competitive market conditions within the wireless industry. I am pleased that the Commission is aiming to expand and enhance our analytical tools by asking for comment on an array of issues. Our task is really two-fold. We will consider a comprehensive list of factors that affect competitive conditions in the provision of wireless services and then ensure that we apply the best analytic framework to the most robust data available. Doing so will position the Commission to think through and determine prudent courses of action in a wide variety of areas.

At the same time, I am less sanguine about the prospects for gathering meaningful new information. While I understand that the reality of limited resources in a troubled economy may affect participation in this docket, I hope that interested stakeholders will not simply resubmit the pleadings filed in response to the Wireless Bureau's *Fourteenth Report Public Notice*, which was issued in May. This is especially so given that we will incorporate those earlier filings into this new docket.

**STATEMENT OF**
**COMMISSIONER MIGNON L. CLYBURN**

***Re: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services, WT Docket No. 09-66, Notice of Inquiry***

I am very pleased to support this Notice of Inquiry. Consistent with our Congressional directive, the Commission is tasked with developing policies and regulations that promote competition in the commercial mobile services arena. Developing an effective and informative analysis of the state of competition in the wireless industry is key to reaching Congress' stated fundamental goal – the promotion of competition. By expanding and enhancing the Commission's analysis of current competitive conditions, we hope to gain a more granular level of data that should form the basis for sound policy choices for competitive wireless mobile services.

I believe that this item takes the right approach by analyzing commercial mobile radio services (CMRS) as part of a more broad mobile wireless market. When consumers consider the capabilities of their mobile wireless devices, their focus is typically on the cost and capabilities for a device that integrates voice, content, applications and other data services. And given that mobile providers have themselves integrated, through bundling, the marketing of all of these services and applications, it certainly makes sense that we look at the services beyond those more narrowly defined as CMRS.

Taking a critical look at our analytical framework and data sources is an important piece of this inquiry. I'm particularly pleased that we are seeking specific qualitative and quantitative data on elements that affect consumers' mobile wireless purchasing decisions and consumer behavior. Additionally, improving our understanding of market segments and edge markets, while working to develop a more detailed record on spectrum holdings and all inputs in this so-called "wireless ecosystem," is a worthwhile endeavor -- with an end of goal of competition to benefit consumers. I also look forward to hearing more from commenters regarding barriers to entry, which remain an ongoing challenge.

I thank Chairman Genachowski for his leadership in initiating this inquiry, and the Bureau staff for their work on this item.

**STATEMENT OF**
**COMMISSIONER MEREDITH A. BAKER**

***Re: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services, WT Docket No. 09-66, Notice of Inquiry***

I am happy to vote in favor of this *Notice of Inquiry*, which will facilitate the Commission's ability to gather broader information and data regarding the state of competition in the mobile wireless market. Today's *Notice of Inquiry* expands the scope of the annual Competition Report to analyze Commercial Mobile Radio Services (CMRS) as part of the mobile wireless market ecosystem. I commend the staff for their thoughtful work and creativity.

By seeking comment on how a greater segment of the wireless industry – such as infrastructure, spectrum input, applications, content, and devices – affects competition, we are improving our ability to analyze the marketplace. I hope that interested parties, which may not have commented on the *Fourteenth Competition Report Public Notice*[1] because the scope was limited solely to CMRS, will take this opportunity to participate.

I am pleased that today's *Notice of Inquiry* poses important questions about an array of components impacting the wireless sector and inquires as to whether we should modify the framework we use to analyze market conditions. We must ensure that we are applying the best data framework to accurately determine the state of the competitive environment. I have a particular interest in spectrum matters, and, more specifically, the means and tools to maximize spectral efficiency and optimize spectrum use and management. Therefore, I applaud that, as part of this overall inquiry, we request quantitative and qualitative data to inform our analysis of how spectrum holdings and infrastructure affect overall competition. I am also pleased that the *Notice of Inquiry* recognizes the important role that consumers play in influencing the development of wireless products and services and requests data and information regarding how their purchasing decisions affect the marketplace.

At the same time, although there are benefits in collecting additional data regarding the wireless marketplace, we must be mindful that we may be seeking information about services that the Commission may not have the authority to regulate. That said, I look forward to reviewing the information and data that we receive as a result of today's inquiry, along with the pleadings filed in response to the *Fourteenth Competition Report Public Notice*, and engaging with staff, interested parties, the Chairman, and my fellow Commissioners on issues relating to competition n the wireless industry.

[1] Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition, WT Docket 09-66, *Public Notice*, DA 09-1070 (WTB rel. May 14, 2009).