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

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

REPLY COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®

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EXECUTIVE SUMMARY

In these Reply Comments, CTIA – The Wireless Association® ("CTIA") urges the Commission to adhere to its commitment of a fact-based, data-driven review of the mobile wireless ecosystem. Such a review of the initial comments to the *Mobile Wireless Competition NOI* leads inexorably to the conclusion that the U.S. wireless industry is one of the most competitive wireless markets worldwide, delivering unparalleled competition, value and innovation to U.S. wireless consumers.

The record confirms what CTIA detailed in its initial comments: namely, that during the past two years, the wireless market has transformed into a multi-faceted ecosystem, made up of service providers, infrastructure suppliers, device manufacturers, operating system developers, and applications developers. This ecosystem is characterized at every level by intensifying competition and innovation. As a result, U.S. consumers and businesses are reaping the benefits of the lowest prices, the highest minutes of use, the most innovative services and devices, the most robust mobile broadband networks, and the least concentrated wireless market among our global competitors.

CTIA has provided specific evidence – based on every major market indicator – of the vibrant and highly dynamic nature of the mobile wireless ecosystem. Even in the short time since the initial comment filing round, providers at all levels of the wireless ecosystem continue to innovate and expand their service offerings. Indeed, updated data from CTIA's just-released Semi-Annual Wireless Industry Survey, reflecting data as of June 30, 2009, reaffirm that consumers continue to embrace wireless services and that significant ongoing network investments are indicative of healthy competition among carriers to provide the best coverage and services.

CTIA also rebuts the pessimistic and unsupported assessment of certain public interest critics who, in absence of data to support their perceived lack of competition, argue for a cocktail of data collection requirements that are wholly unnecessary and would hamper the vibrant wireless ecosystem. In the face of overwhelming data to the contrary, these criticisms of the wireless marketplace (whether regarding price, service offerings, investment, or the need for new mandatory data collection regimes) amount to little more than an irresistible urge to insist that no glass can be anything but half empty.

Finally, CTIA is pleased to report that there is widespread support for several important steps that the Commission can take to ensure that competition, investment, and innovation continue to flourish in the wireless ecosystem. As CTIA noted in its initial comments, the Commission can do this by allocating more spectrum for licensed commercial use, conducting a comprehensive spectrum inventory, clearing spectrum already allocated and auctioned, and eliminating tower siting delays. With a vibrantly competitive and innovative wireless ecosystem, the Commission can acknowledge its success and reaffirm its commitment to wireless policies grounded in free and open auctions, flexible service rules, and competition-driven, consumer-focused regulatory restraint.

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REPLY COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® ("CTIA")[1] hereby submits the following Reply Comments in response to the Federal Communications Commission's ("Commission" or "FCC") August 27, 2009 Notice of Inquiry ("*NOI*") in the above-referenced proceeding.[2] As discussed below, the record in this proceeding demonstrates conclusively that the expanding wireless "ecosystem" – composed of service providers, infrastructure suppliers, device manufacturers, operating system developers, and applications developers – is dynamic and fiercely competitive at every level. The intense competitive pressures of this ecosystem are driving explosive innovation, creating unparalleled value for U.S. consumers, and should give

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[1] CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, Advanced Wireless Service, broadband PCS, ESMR, and 700 MHz licensees, as well as providers and manufacturers of wireless data services and products.

[2] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services*, WT Docket No. 09-66, Notice of Inquiry, FCC 09-67 (rel. Aug. 27, 2009) ("*NOI*").

policymakers every confidence that their bipartisan, market-driven and light-handed regulatory approach to mobile wireless remains a model for success. At the same time, the record also reflects broad support for several additional steps that the Commission can take to amplify competition and ensure that consumers continue to reap tremendous benefits from the mobile wireless sector.

I. INTRODUCTION

In its initial comments, CTIA provided extensive facts and data about the vibrant, innovative mobile wireless ecosystem, and demonstrated the intense competition across all levels of the complex ecosystem, including wireless service providers, infrastructure suppliers, device manufacturers, operating system developer, and applications developers, are intensely competitive.[3] As a result of this ongoing, intensifying competition, U.S. consumers and businesses are enjoying the lowest prices; most advanced services, devices, and applications; and the least concentrated wireless market among our global competitors. Moreover, newly-released CTIA industry survey data further confirm that U.S. consumers are receiving increasing value from their wireless services, and that competition is driving providers to make substantial investments to expand and improve their networks, even in the midst of a deep economic recession. The pessimistic rhetoric and unsupported conclusions by "public interest" commenters are simply belied by the facts in the record. In fact, every major market indicator confirms the robust competition and immense consumer value and choice stemming from the mobile wireless ecosystem, including:

- number of competitors in each sector and relative market shares

[3] Comments of CTIA – The Wireless Association®, WT Docket No. 09-66 (filed Sept. 30, 2009) ("CTIA Comments").

- average minutes of use
- advertising expenditures
- capital expenditures and network investments
- subscribership levels
- number of devices manufactured for the U.S. market
- operating system choices
- level of application development
- infrastructure deployments
- consumer choice in calling plans, data plans, and other service offerings
- network coverage
- pricing trends
- enhancements in service policies, customer care, and transparency

For example, it's a fact that U.S. consumers have a multitude of service providers from which to choose. A wide variety of facilities- and non-facilities-based wireless carriers are vying head-to-head to win and retain consumers' business, differentiating themselves through service offerings, usage plans, network coverage and reliability, and service quality and customer care, among other features.[4]

This vigorous competition, moreover, is not limited to the largest urban areas, but rather extends broadly across the country.[5] In its initial comments, CTIA analyzed competition in the top 10 largest Metropolitan Statistical Areas ("MSAs") in the nation, and also in the 10 least populous Core Based Statistical Areas ("CBSAs") in the nation (*i.e.,* CBSAs nos. 931-940). The results were striking. There are no less than five

[4] *Id.* at 5-8.

[5] *Id.* at 6-8.

facilities-based wireless carriers in every one of these large U.S. metropolitan areas. Considering facilities-based and non-facilities based providers, there are no less than fourteen providers in each area. Given this abundance of wireless service providers, it is no surprise that we witness the intense competitive behavior. To provide a window into the extent of competition, CTIA also looked at the ten least populous of the 940 CBSAs and also found abundant competition among service providers, with no fewer than three facilities-based providers and, in many cases, fourteen or more providers in total.

As a result of these competitive pressures, the wireless industry is continuing to innovate and invest at all levels of the wireless ecosystem. As CTIA detailed in its comments, competition and investment are occurring in each link of the wireless "value chain," creating a "virtuous cycle" of innovation.[6] Wireless providers are investing billions of dollars to deploy 3G and 4G facilities across the country, which provide additional network coverage, capacity and capabilities. These new advanced networks allow device manufacturers to create more sophisticated devices with new technical capabilities which, in turn, encourage developers to create innovative, bandwidth-intensive applications. These new advanced applications lead to greater consumer demand in terms of both new subscribers and higher usage levels among existing subscribers.

Whether you analyze the U.S. wireless industry independently or compare it to foreign markets, the wireless ecosystem demonstrates robust competition under the Commission's well-respected and roundly-supported traditional framework for assessing competition. Notwithstanding the mistaken, anachronistic proposals from public interest

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[6] *Id.* at 29.

commenters, U.S. consumers have more wireless choices than consumers in every developed country in the world, without exception.

Beyond voice communications, there is an explosion in the development of machine-to-machine ("M2M") services which have tremendous potential for business, government and institutional users, as well as consumers. For example, M2M wireless devices can improve the ability of chronically ill patients to manage their conditions[7] or manage the use of scarce energy resources through wireless applications of smart grid energy technology.[8] This developing field is further evidence of the ongoing public benefits of wireless competition.

Thus, the Commission should focus its attention on ensuring that competition continues to flourish in the mobile wireless ecosystem by allocating more spectrum for licensed commercial use, conducting a comprehensive spectrum inventory, clearing spectrum already allocated and auctioned for licensed commercial use, and eliminating tower siting delays. It should also continue and expand its wireless policies grounded in free and open auctions, flexible service rules, and competition-driven, consumer-focused regulatory restraint.

II. NEW DATA FROM CTIA'S SEMI-ANNUAL WIRELESS INDUSTRY SURVEY CONFIRM THAT U.S. CONSUMERS DERIVE SIGNIFICANT VALUE FROM THE COMPETITIVE WIRELESS ECOSYSTEM

Since filing its initial comments last month, the mid-year results of CTIA's Semi-Annual Wireless Industry Survey, reflecting data as of June 30, 2009, has been released. These more recent data continue to confirm that consumers increasingly value the services offered by wireless providers, and the significant ongoing network

[7] *See, e.g., id.* at 46-48.

[8] *See, e.g., id.* at 48-52.

investments demonstrate the robust competition among carriers to provide the best coverage and services.

In its initial comments, CTIA reported that there were an estimated 270.3 million wireless subscribers as of year-end 2008. Six months later, that figure continues to rise, climbing to 276.6 million, a 6.3 million increase.[9] This represents an average of more than 34,800 net new wireless subscriptions *per day, every day* during the past six months. The subscriber growth rate from June 2008 to June 2009 was 5.3%, a very notable achievement considering that it occurred during the most economically wrenching 12-month period since the Great Depression, when consumers were extremely cautious in their purchasing decisions. Indeed, overall real consumer spending fell 3.3% during the last two quarters of 2008 and edged down another 0.3 percent in the first two quarters of 2009.[10] More vividly, Gallup reported that its 14-day rolling average of daily consumer spending dropped precipitously from $99 as of July 1, 2008 to $63 as of June 30, 2009.[11] Maintaining healthy growth rates during a severe economic downturn indicates that consumers view wireless service as offering good value.

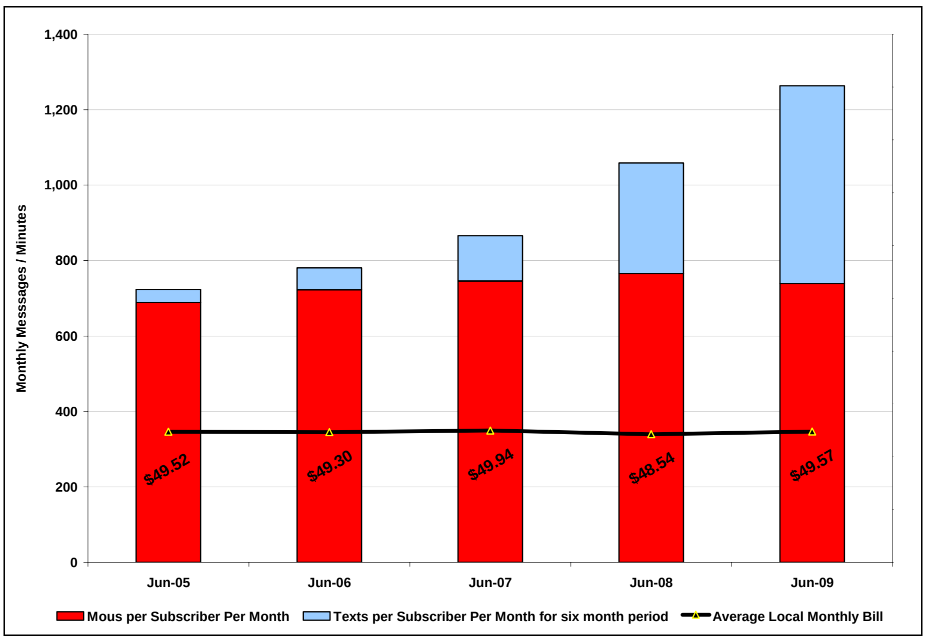
[9] For the June 30, 2009 installment of the semi-annual survey, CTIA received responses from companies serving 95.9% of wireless subscribers. Because not all systems respond, CTIA develops an estimate of total subscribership. The number of actual *reported* subscribers was 265.3 million, up 5.5 million from the reported numbers at year-end 2008. For more information on the estimation methodology used by the survey, *see* CTIA Semi-Annual Wireless Industry Survey, *at* http://www.ctia.org/advocacy/research/index.cfm/aid/10316 (last accessed Oct. 21, 2009) ("CTIA Survey Summary").

[10] *See* "Statement from ESA Under Secretary Blank on June Personal Income," U.S. Department of Commerce Press Release (Aug. 4, 2009), *available at* http://www.commerce.gov/NewsRoom/PressReleases_FactSheets/PROD01_008256 (last accessed Oct. 21, 2009).

[11] *See* Gallup Daily: U.S. Consumer Spending, *at* http://www.gallup.com/poll/112723/gallup-daily-us-consumer-spending.aspx# (last accessed Oct. 21, 2009). Gallup's consumer spending tracks the average dollar amount Americans report spending or charging on a daily basis, not counting home and vehicle purchases or normal household bills. *Id.*

Not only did millions of new subscribers sign-up for wireless service, but the total quantity of services consumed also continued to increase. Reported minutes of use ("MOUs") amounted to 1.16 trillion for the six months ending in June 2009, up 3.1% from 1.12 trillion for the six-month period ending June 2008.[12] Significantly, messaging services continued along their dramatic growth trajectory. Reported SMS messages for the six-month period totaled more than 740 billion, up 92% from the 385 billion reported for the same period in 2008.[13] MMS traffic for the period reached 10.3 billion messages, nearly double the 5.6 billion messages sent in the first half of 2008.[14]

The following chart shows industry-wide usage statistics for MOUs and messages (SMS and MMS), as compared to the average local bill:



Source: CTIA Semi-Annual Survey

[12] *See* CTIA's Wireless Industry Indices: Semi-Annual Data Survey Results: A Comprehensive Report from CTA Analyzing the U.S. Wireless Industry, Mid-Year 2009 Results at 2 ("CTIA's Wireless Industry Indices Report").

[13] *Id.*

[14] *Id.*

U.S. consumers also continued to embrace wireless services as a means to access the Internet, using a variety of devices. Reported web-capable devices on carriers' networks rose from 210.6 million in June 2008 to 237.1 million as of June 2009.[15] That means that as many as 85.7% of the nation's 276.6 million subscribers have a device that enables mobile access to the Internet. The number of smartphones and wireless-enabled PDAs reported on carriers' networks as of June 2009 was 40.7 million, and the number of wireless-enabled laptops, aircards, and wireless modems reported on carriers' networks was 10.8 million.[16] That number is expected to continue to increase, as close to smartphones are becomingly increasingly popular and now account for 28% of all handset sales according to the NPD Group.[17]

Despite year-after-year increases in consumers' usage of wireless services, their average monthly bills have remained essentially flat over the past several years. The average local bill in June 2009 was only $0.08 more than the average local bill five years earlier in June 2004.[18] Notably, by comparison, individual subscribers' average monthly MOUs grew more than 32%, as usage grew from 559 MOUs in 2004 to 739 MOUs in 2009, and the average bill in 2009 now includes hundreds of SMS and MMS messages, as well as web-access and other applications.[19] Not only are consumers reaping the

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[15] *Id.*

[16] *Id.*

[17] Press Release, The NPD Group, Feature Phones Comprise Overwhelming Majority of Mobile Phone Sales in Q2 2009, n.33 (Aug. 19, 2009), *available at* http://www.npd.com/press/releases/press_090819.html (last accessed Sept. 23, 2009) ("The NPD Group Press Release").

[18] Average local monthly bills exclude toll and roaming charges, equipment charges, and taxes, fees and pass-through surcharges. *See* CTIA's Wireless Industry Indices Report at Section 6.0.

[19] *See* CTIA's Wireless Industry Indices Report at Sections 6.3 and 6.4 (MOU Trend Analysis, and Text / SMS and MMS Traffic Volumes). For the month of June 2004, wireless carriers reported handling 2.8 billion text messages. For the month of June 2009, they reported handling more than 135.1 billion text messages and 1.8 billion MMS messages,

benefits of more and better service, they are also benefiting from lower prices, which are a direct result of the competitive wireless ecosystem. For example, after accounting for inflation, the June 2009 average bill represents a significant decrease when measured in constant dollar terms.[20] Thus, consumers are getting much more service for less money, another sign of a competitive market at work.

Finally, despite the economic crisis, wireless providers continued to spend significant amounts to improve the capacity and expand the coverage of their networks. For the twelve months ending June 2009, providers reported making capital investments totaling $19.5 billion, without even including investment made in non-operational spectrum.[21] That investment translated into over 25,000 new cell sites, up 11.5% over the prior year and representing the largest growth in new sites in the past five years.[22] The total number of reported operational sites stands at 245,912 as of June 30, 2009.[23] This level of expansion, especially given the economic climate, certainly reflects no lack of competitive forces. To the contrary, it indicates that providers are expanding geographic coverage and increasing network capacity for broadband services in order to compete for additional subscribers.

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[20] For example, according to the inflation calculator maintained by the Bureau of Labor Statistics, the average local monthly bill in June 2004 of $49.49 would equal $56.58 in 2009 dollar terms, which is over seven dollars more than the average bill of $49.57 in June 2009. *See* CPI Inflation Calculator, *at* http://data.bls.gov/cgi-bin/cpicalc.pl (last accessed Oct. 21, 2009).

[21] CTIA's Wireless Industry Indices Report at 8.

[22] CTIA's Survey Summary at 2.

[23] *Id.*

III. THE RECORD DEMONSTRATES THAT THE STRUCTURE, CONDUCT, AND PERFORMANCE OF THE WIRELESS ECOSYTEM REFLECT INTENSE COMPETITION AND CONSUMER BENEFIT AT EVERY LEVEL

A. CTIA's Initial Comments Provide a Strong Foundation for the Commission to Find Effective Competition in the Wireless Ecosystem

As noted in CTIA's initial comments, the mobile wireless market has developed into a complex ecosystem, with each level – service providers, infrastructure suppliers, device manufacturers, operating system developers, and application developers – facing vibrant competition within its own space.

At the service provider level, there are more than 140 separate wireless carriers and 43 non-facilities based Mobile Virtual Network Operators ("MVNOs"). In the large metropolitan areas, consumers can choose from no less than 14 competitive choices, including no less than five facilities-based wireless competitors. There is significant competition even in the ten least populous of the 940 Core Based Statistical Areas ("CBSAs"). Eight of the ten least populous CBAs have five facilities-based providers (the other two have three) and in many cases there are 14 or more providers in total.[24]

The result is the most competitive of all wireless markets in the 26 Organisation for Economic Co-Operation and Development ("OECD") countries, using the Herfindahl-Hirschman Index ("HHI"). The prospects for this competitive dynamic remain strong as new entrants, including Clearwire, Leap Wireless, Cox Communications, and MetroPCS Communications have acquired significant spectrum in recent auctions and are aggressively building out their networks and launching new services. Consumers have additional choices from the 43 MVNOs which are delivering

[24] CTIA Comments at 6-8.

wireless services with innovative rate plans and devices to specific demographic and specialized consumer segments.

Likewise, CTIA has demonstrated the highly competitive market for infrastructure suppliers as well. Major suppliers compete fiercely to build out carriers' 3G networks and provide High Speed Packet Access ("HSPA") technology to service providers using the GSM communications standard and EV-DO technology to service providers using the CDMA standard. Infrastructure suppliers also compete for 4G network contracts, providing service under the two competing platforms, LTE and WiMAX, that have emerged. The results speak for themselves: while North America accounts for less than seven percent of worldwide GSM subscribers, the U.S. alone comprises 24 percent of the world's 130+ million 3G GSM HSPA users. AT&T alone has more HSPA subscribers than any other carrier in the world. And worldwide, the U.S. has 59% of all EV-DO subscribers.[25]

Moreover, we noted that at least 32 companies manufacture devices for the U.S. market, leading to more than 630 unique devices – more than any other country in the world (by contrast, the U.K. has fewer than 180 devices). More than 85 percent of all devices on carriers' networks are Web-capable; 20 percent of new devices are equipped with Wi-Fi capability.[26] In the increasingly important operating system developer space, more than nine companies compete – with fluid market shares for each – reflecting a

[25] *Id.* at 14-15.

[26] *See* CTIA's Wireless Industry Indices Report at 10. *See also* Press Release, The NPD Group, "Feature Phones Comprise Overwhelming Majority of Mobile Phone Sales in Q2 2009" (Aug. 19, 2009), *available at* http://www.npd.com/press/releases/press_090819.html (last accessed Sept. 23, 2009) ("The NPD Group Press Release"). In fact, Sprint Nextel recently announced that it will feature Wi-Fi in all of its "major devices going forward." Mike Dano, Sprint's Blackberry Tour to sprout WiFi Next Year, FierceWireless, July 9, 2009, *available at* http://www.fiercewireless.com/story/sprints-blackberry-tour-sprout-wifi-next-year/2009-07-09 (last accessed Sept. 23, 2009).

marketplace battle for subscribers.[27] Two of the newest systems, iPhoneOS and Android, hold more than 15 percent of the market already. As for application developers, in the 14 months since the launch of iTunes App Store, more than 100,000 mobile specific applications have come to the market from six different stores on six differentiated platforms.[28] All the while, consumers have options to download applications directly from the Internet, which they increasingly can access using their service provider's licensed CMRS network and unlicensed Wi-Fi service.

B. Public Interest Commenters' Pessimistic and Unsupported Rhetoric Does Not Comport with the Facts, Nor with the Burgeoning, Dynamic Wireless Ecosystem

From the foregoing the FCC should conclude that there is overwhelming evidence of a vibrantly competitive, multilayered wireless ecosystem – comprised of hundreds if not thousands of providers at different levels – with daily dispatches from the wireless marketplace reporting new products and services. Nonetheless, a coalition of "public interest" commenters bemoans "a lack of real competition in that market. Readily apparent competitive failings stem from fundamental flaws in the market structure of an ever-more-concentrated industry."[29] This pessimistic rhetoric, in the face of contrary data and consumer behavior, manifests little more than the irresistible urge to insist that no glass can be anything but half empty.

As eloquently stated by T-Mobile: "Efforts to portray the market as somehow broken are distorting one of America's finest market success stories of recent years.

[27] *Id.* at 23.

[28] *Id.* at 25-27.

[29] Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge (the "Public Interest Commenters"), WT Docket No. 09-66, ii (filed Sept. 30, 2009) ("Public Interest Comments").

There are scores of providers offering wireless services to consumers, and the market has flourished in ways that exceed anyone's expectations."[30] In the following section, we examine four of the hollow claims made in the comments of these critics.

Claim:	*Consumers pay too much for their wireless services.*[31]
Reality:	**Whether viewed over time or in comparison with our global competitors, U.S. consumers pay less money for more service.**

There is near universal agreement that competition in the wireless market has driven prices down for consumers over time. That trend continues, as evidenced by CTIA's filing, the independent research of Bank of America/Merrill Lynch, and even the Federal Government's own Bureau of Labor Statistics.[32] As Sprint explained in its initial comments, this continued decrease in price for wireless service is further reflected by the Bureau of Labor Statistics' Consumer Price Index ("CPI"), which shows that the CPI for all goods and services increased by 3.1 percent in 2008, while the CPI for wireless services decreased by 5.4 percent.[33]

Despite these data, critics focus myopically on per-minute costs of certain a la carte services, even though wireless customers today have a wide variety of services and bundled offerings that represent the overwhelming percentage of consumers' actual usage. It is true that some pay-as-you-go plans may cost 10 or 20 cents a minute for voice use. But these plans are designed for customers who may need only limited

[30] Comments of T-Mobile USA, Inc., WT Docket No. 09-66, at 9 (filed Sept. 30, 2009) ("T-Mobile Comments").

[31] "Carrier practices that present customers with the 'choice' of over-paying for minutes outside the plan or over-purchasing capacity are not limited to voice offerings. The prices charged for wireless data plans seem far removed from any possible cost to provide such services, indicating supracompetitive profits and an absence of price rivalry for mobile data offerings." *Id.* at 11.

[32] *See, e.g.*, CTIA Comments at 60-61 (*citing* Glen Campbell, *et al.*, *Global Wireless Matrix: 1Q09* (Apr. 2009) ("*BofA/Merrill Lynch*").

[33] Comments of Sprint Nextel Corporation, WT Docket No. 09-66, 4 (filed Sept. 30, 2009) ("Sprint Nextel Comments").

service. For customers who want or need more than limited "peace of mind" service, numerous providers offer simplified voice-data-Web combinations at vigorously-advertised, competitive prices. Such volume pricing is a common practice in nearly all industries. Moreover, these bundles often include introductory trial periods to make sure that the package best fits the customer.

Nevertheless, Public Interest Commenters attempt to paint a dire picture of competition in the wireless market on the basis of the per-message cost of SMS texting. Perhaps most importantly, it has been submitted already to the Commission that these a la carte per message purchases represent approximately 1 percent of all SMS traffic.[34] But these critics also fail to acknowledge that consumers have varying demand for messaging, and that providers are responding with an array of service plans to meet their customers' needs. Is it surprising that consumers who purchase messaging services one message at a time pay a higher per unit price than if they purchase a package of messages? No more so than if a consumer buys one can of soda from a vending machine, rather than in six, 12, or 24 packs, or in 2 liter bottles, or a student in a dorm room who purchases a single roll of paper towels from a convenience store instead of a bale of 48 rolls from a warehouse club.

In a market where applications and usage are so diverse, it is as foolish to focus on one or two per-minute or per-message data points (which may account for less than one percent of all messages or voice minutes) to conclude that customers pay too much as

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[34] *See* Testimony of Randal S. Milch, Executive Vice President and General Counsel, Verizon Communications *and* Testimony of Wayne Watts, Senior Executive Vice President and General Counsel, AT&T, Inc., Subcommittee on Antitrust, Competition Policy and Consumer Rights, Committee on the Judiciary, U.S. Senate, 111th Cong. (June 16, 2009).

it would be to focus on just the "unlimited" free night and weekend calling that many wireless customers receive at no additional charge. The broad and consistent trend in wireless costs is downward, as the FCC has itself found on numerous occasions. For the occasional user, there is not a hint of evidence that current prices (even the examples cited by critics, which are less expensive and more convenient than the cost of a short local pay phone call and vastly cheaper than a pay phone toll call) are unaffordable. To the contrary, CTIA's new Semi-Annual Survey suggests that consumers continue to embrace the many new wireless services available in the marketplace.

As discussed above, CTIA's Semi-Annual Survey demonstrates that, despite yearly surges in consumer usage of wireless services, average monthly consumer bills have remained essentially flat over the past five years, with the average local bill in June 2009 only $0.08 more than in June 2004, despite a dramatic increase in the number of MOUs and messages consumed by users during that period. When adjusted for inflation, the 2009 average monthly bills are a fair amount less than 2004 bills, even though consumers are getting much more today.

Claim:	*Critics argue that wireless providers impose lengthy contracts, termination fees, and restrictive usage limits.*[35]
Reality:	**These critiques are incorrect or outdated. U.S. consumers enjoy a wide variety of service plans and non-price terms. Consumers can find plans tailored to their needs. Wireless providers continue to experiment and deliver new options for consumers.**

For over ten years, wireless companies have continued to introduce a wide variety of innovative service and rate plans to U.S. consumers. AT&T's Digital One Rate plan in 1998 allowed customers to purchase a bucket of minutes to use on a nationwide basis for a single flat rate, without roaming or long distance charges. Since that breakthrough,

[35] *Id*. at 14, 19.

competitors have been driven to market and promote plans that compete on price, service combinations, and coverage.[36] In response to the intense competitive pressures of the wireless ecosystem, providers continue to develop new and innovative service offerings that meet the needs of consumers. For example, even since the comment deadline in this proceeding, the nation's largest retailer, Wal-Mart, announced a $30 1000-minute plan and a $45 unlimited plan under the Tracfone Straight Talk banner.[37]

Early termination fee policies have also been changed, as competitive choices forced carriers to respond to consumer desires. As CTIA noted in our comments, five of the largest wireless providers now offer pro-rated early termination fees and the ability to change wireless service plans without incurring a contract extension.[38] No contract pre-paid services also provide consumers with additional choices of service plans with "no strings attached." Other changes to the customer-provider relationship include consumer trial periods (with money-back guarantees), coverage maps down to the street level, and the ability to bring your existing phone onto a new service provider's network. The industry has developed a Consumer Code, Wireless Content Guidelines, and Best Practices and Guidelines for Location Based Services, all of which play an important role in the wireless service environment today.

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[36] *See, e.g.*, CTIA Comments at 41-43 for examples of other innovative offerings.

[37] Straight Talk will offer two types of prepaid plans. The $30 a month plan includes 1000 minutes, 1000 texts, and 30 MB of mobile web access a month. A limited number of 411 calls are also offered at no extra charge. The $45 a month plan includes unlimited minutes, unlimited text, unlimited mobile access, and an unlimited number of 411 calls. Both plans include nationwide coverage. "Walmart offers Straight Talk for wireless service," geek.com (Oct. 17, 2009), *at* http://www.geek.com/articles/mobile/walmart-offers-straight-talk-for-wireless-service-20091017 (last accessed Oct. 21, 2009). *See also* David W. Barden, "T-Mobile pricing down but clear of worst case" Bank of America/Merrill Lynch ("T-Mobile is making an aggressive downward, and in some cases price leading, move in post-pay, and planting a new flag in the pre-pay space") (Oct. 21, 2009).

[38] CTIA Comments at 43.

Thus, complaints about excessive early termination fees or "uniformly low usage caps and high overage fees"[39] are outdated critiques that fail to acknowledge the wireless industry's responsiveness to consumers and do not accurately describe the many pricing or service options offered by the wireless market today. The wireless carriers' response to consumers on these issues over the past two years further reflects the dynamic wireless marketplace in operation.

Claim:	*Critics argue low investment by AT&T and Verizon demonstrates a failure of competition.*[40]
Reality:	**This claim is patently incorrect. Over the last three years, the wireless industry has contributed more than $140 billion to the U.S. economy, a staggering sum even when you don't factor in the effects of a crippling U.S. economy.**

Through innovation, the wireless industry has extended its coverage and made its networks more efficient, allowing providers to expand capacity even without additional spectrum resources. This investment has continued through the economic recession as providers continue to compete for customers. As the Public Interest Commenters acknowledge, mobile operators have averaged more than $22.8 billion per year in investments from 2001 through 2008.[41]

Despite recognizing this massive investment, the Public Interest Commenters conclude that "providers do not appear to be effectively competing to invest and build the best possible network."[42] The sole basis for this assertion: claims that investment spending did not rise as a percentage of service revenue. Citing no authority, economic

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[39] Public Interest Comments at 19.

[40] *Id.* at 45-51.

[41] *Id.* at 13-14, citing *Ex Parte* submission by CTIA – The Wireless Association®, GN Docket No. 09-51, WT Docket Nos. 09-66, 08-165, at 1 (filed July 9, 2009).

[42] Public Interest Comments at 14.

or otherwise, they conclude: "A substantial decrease in capital expenditures as a percentage of revenue is a strong sign that providers are not competing on non-price factors such as investment."[43] Special focus is given to investments by AT&T and Verizon Wireless in an Appendix which purports to demonstrate this principle, while ignoring the significant investments being made by other wireless carriers, including Sprint, T-Mobile, Leap Wireless, and Clearwire.

It is difficult to understand the basis for this argument. AT&T and Verizon Wireless provide in their comments abundant evidence of their sizable network investments. As Verizon Wireless describes, it has announced plans to develop and deploy its fourth generation mobile broadband network using LTE technology and is "the first carrier – in the U.S. or abroad – to test and deploy LTE."[44] Verizon Wireless's commitment to network reliability has been a major focus of both its business and its marketing strategy. Indeed, it is next to impossible to turn on the television or flip open a periodical and not see the man with the horn-rimmed glasses reminding customers that his company's network investments stand behind every call. Likewise, AT&T describes its efforts to expand the availability and quality of its 3G mobile broadband network and its investment in 4G LTE technology.[45] One cannot ignore the launch of the iPhone on AT&T's platform and the network upgrades that were required to make it successful. AT&T explains that "to keep up with the exploding network usage that has resulted, AT&T has continued to invest billions in upgrading its infrastructure and deploying next

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[43] *Id.*

[44] Comments of Verizon Wireless, WT Docket No. 09-66, at 83 (filed Sept. 30, 2009) ("Verizon Wireless Comments").

[45] AT&T Comments at 57.

generation networks."[46] Indeed, it is hard to imagine what more these two providers could do to compete based on their networks. As CTIA described in its initial comments, the same is true for the other facilities-based carriers, which actively showcase the ubiquity and quality of their networks.

The numbers cited by the Public Interest Commenters do not tell the entire story. For instance, in its Cap Ex number CTIA does not include spectrum costs, nor other costs of doing business, like salaries and benefits. In the last three years alone, the wireless industry has bolstered the U.S. economy with over $140 billion in economic contributions, a staggering sum. Moreover, it is unsurprising that as their wireless voice and data usage continues to grow, wireless revenues will continue to grow, and capital expenditures as a percentage of that revenue might decrease as customer service and other costs become more significant. But such data tell the Commission nothing about whether there is inadequate capital investment, and do not reflect the timing of upcoming new investments in LTE and next-generation technology eagerly awaited from the vendors. Nor do they account for the efficiencies of newer technologies, which allow providers to expand capacity at lower costs.

What *is* a better indicator of such investment is the explosive growth in wireless applications and data usage, which testifies to a robust network and market incentives to continue investing in the network to keep existing customers happy and to offer additional services to gain other customers. Moreover, as noted previously, providers spent $19.5 billion in the last 12 months alone, investing in more than 25,000 new cell sites – up 11.5% over the prior year and the largest growth in new sites in the past five years – despite the crippling recession.

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[46] *Id.*

Claim: *Critics suggest that the FCC needs to impose a host of burdensome new data collections to verify the critics' unsubstantiated claims.*[47]

Reality: A wealth of existing data demonstrate conclusively the intense competition in the wireless ecosystem and the substantial benefits being delivered to consumers. There is no need for the FCC to burden the wireless ecosystem with unnecessary data collection obligations.

CTIA respectfully submits that its extensive comments in this and the companion proceeding, *Fostering Innovation and Investment in the Wireless Communications Market*,[48] provide the Commission with detailed, extensive data points on a host of wireless developments.[49] Because the Public Interest Commenters did not have the benefit of these comments and the detail they provide prior to their filing, their insistence on the need to impose new data collection requirements may be moot. In any case, their demand for a data dragnet, with burdensome new data collection duties under the annual wireless competition review, is seriously misplaced, given the abundant competition throughout the wireless ecosystem and multitude of data already available.

The FCC has a long tradition of relying on third parties to collect accurate data, which is often used to make regulatory decisions in specific cases. For example, in the cable context the FCC has long looked to third-party data to determine whether a television station is "significantly viewed" for distant signal importation and market modification rules for cable systems[50] and whether a cable operator faces "effective competition" from non-incumbent cable providers in its service area for rate regulation

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[47] Public Interest Comments at 30-42.

[48] Comments of CTIA – The Wireless Association®, GN Docket Nos. 09-157, 09-51 (filed Sept. 30, 2009).

[49] Press reports suggest that this year's submissions in this docket are proving helpful. Commenting on submissions to this year's wireless competition notice, Wireless Telecommunications Bureau Chief Ruth Milkman was quoted as saying responses to this year's notice were better than in years past. "Major Wireless Industry Changes Mean FCC Must Ask Hard Questions, Milkman Says," Communications Daily, 1-2 (Oct. 20, 2009).

[50] *See* 47 C.F.R. § 76.7 (audience ratings from ratings services are used in the evaluation).

purposes.[51] Even the NTIA and RUS have asked third parties to verify data regarding pending applications for their broadband stimulus grant programs.[52]

In the wireless space, the collection of third-party data has been validated. Prior to the most recent CMRS Competition Report, the Commission always used CTIA data on the number of choices available to consumers. At the request of Commissioner Copps, the Commission sought, and ultimately purchased, more granular data that completely confirmed the data that CTIA had been providing over the past years.

Moreover, the FCC's regrettable folly, cited by the Public Interest Commenters regarding the use of third-party data in assessing the market for delivery of video programming in 2007,[53] later repudiated by a re-do in 2009, is no bar to third-party data use by the agency.[54] Among the many unique factors at play in that case was that third-party data was attempted to be *substituted* for data that had already been collected by the FCC.[55]

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[51] *See* 47 U.S.C. § 543(l)(1)(B)(ii) (requiring a showing that a competitor has 15 percent of households subscribing to its service. From 1993-2004, a commercial publisher, SkyTrends, provided the relevant data for a fee to cable operators; after its demise, the satellite trade association assumed the duty).

[52] Broadband Initiatives Program and Broadband Technology Opportunities Program, Notice of Funds Availability, 74 Fed. Reg. 33104, 33106-07 (July 9, 2009) (noting the agencies' reliance on "external engineering, business and subject matter experts to evaluate the consistency of the application with the supporting documents and ensure applications merit awards"). Moreover, the agencies rely on existing service providers to "police" applicants' claims that their proposed projects are located in unserved or underserved areas. *Id.* at 33122.

[53] Public Interest Comments at 33-34.

[54] The controversy concerned the Cable Act's "70/70" rule, 47 U.S.C. § 532(g).

[55] Indeed, in that instance the Commission had collected virtually all data on its Form 325 from all larger operators and from a statistically significant sample of operators with subscribers under 20,000. *See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming,* Thirteenth Annual Report, 24 FCC Rcd 542, Statement of Commissioner Jonathan S. Adelstein (adopted Nov. 27, 2007, rel. Jan. 16, 2009); "Hot Numbers: FCC's 70/70 Data Source Explains the Data – Warren Communications' Dan Warren: Not All Cable Systems Responded," Broadcasting & Cable (Dec. 2, 2007) *available at* http://www.broadcastingcable.com/article/99932-Hot_Numbers_FCC_s_70_70_Data_Source_Explains_the_Data.php? (last accessed Oct. 21, 2009).

To be sure, where there is a compelling need to collect the data from individual providers, the FCC has not hesitated to impose a reporting duty, and companies have responded. For instance, since March, 2000, the FCC has required reporting requirements through FCC Form 477 to determine the extent of deployment of local telephone and broadband services. Wireless companies continue to provide FCC Form 477 data. But the new information collection requirements proposed by the Public Interest Commenters for the competitive wireless industry would go far beyond what the Commission requires in the context of markets that are far less competitive. For example, imposing the collection of an avalanche of new pricing and usage data from areas "as small as census block groups or their equivalents in both urban and rural areas," as urged by the Public Interest Commenters,[56] is utterly inappropriate for wireless providers, whose customers are mobile and offer national rate plans. Wireless service is not marketed and sold in that format. Moreover, forcing wireless carriers to implement such a new data collection program would add significant costs and administrative burdens, especially for smaller providers and new entrants, at a time when the Administration is encouraging the deployment of advanced broadband and next generation technology.

[56] Public Interest Comments at 36.

IV. THE RECORD REFLECTS BROAD SUPPORT FOR CTIA'S PROPOSED FCC ACTIONS

A. The Commission Should Allocate Additional Spectrum for Commercial Wireless Use, Conduct a Comprehensive Spectrum Inventory, and Facilitate Clearing of Spectrum Already Allocated and Auctioned for CMRS

As the Commission itself has recognized, "[t]he provision of innovative wireless services is critically dependent on having access to spectrum."[57] Moreover, CTIA applauds Chairman Genachowski's recent statement regarding the need for "unleashing" spectrum for mobile broadband.[58] As he stated, "one of the FCC's highest priorities is to close the spectrum gap."[59]

The comments in this proceeding underscore this conclusion: service providers must have access to more spectrum in order to meet consumer demand and ensure competition in the market for wireless services.[60] There is broad support in the record, even among the non-carrier commenters, for a significant new allocation of spectrum for licensed commercial use.[61] As Jerry Ellig and Jerry Brito of George Mason University's

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[57] *Fostering Innovation and Investment in the Wireless Communications Market*, Notice of Inquiry, 24 FCC Rcd 11322 ¶ 20 (2009).

[58] "America's Mobile Broadband Future," Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, at International CTIA WIRELESS I.T. & Entertainment, San Diego, California, at 2, 4, 6, 7 (Oct. 7, 2009) ("Chairman Genachowski CTIA Remarks").

[59] *Id.* at 5.

[60] *See, e.g.*, Comments of T-Mobile USA, Inc., WT Docket No. 09-66, at 17 (filed Sept. 30, 2009) ("T-Mobile Comments") ("Providing the marketplace with additional licensed spectrum is the single most important step that the Commission could take both to preserve and stimulate mobile innovation and competition."); Comments of AT&T Inc., WT Docket No. 09-66, 72-76 (filed Sept. 30, 2009) ("AT&T Comments"); Comments of Verizon Wireless, WT Docket No. 09-66, 159 (filed Sept. 30, 2009) ("Verizon Wireless Comments").

[61] *See, e.g.*, Verizon Wireless Comments at 159 (arguing that the Commission should remove barriers to investment, new services and network growth by "identify[ing] additional spectrum suitable for wireless broadband services); Public Interest Comments at 23 (noting that "[l]imited availability of spectrum continues to restrict growth in and entry into the mobile wireless market . . . ."); *see also* Comments of MetroPCS Communications, Inc., GN Docket No. 09-157, at 11-12 (filed Sept. 30, 2009) ("MetroPCS Innovation NOI Comments") (arguing that the Commission should license available AWS and 700 MHz spectrum).

Mercatus Center note "[b]y artificially limiting the amount of spectrum available for commercial wireless services, federal policy limits the amount of service that can be offered. This quantitative limit on the amount of service increases prices and diminishes consumer welfare . . . ."[62]

Several commenters in addition to CTIA note that the amount of licensed spectrum allocated to mobile wireless services in the United States is substantially less than the amount available or identified for allocation in other industrialized countries, despite the fact that U.S. consumers use wireless service at a much higher rate than consumers in other countries.[63] To allow service providers to keep pace with consumer demand, CTIA urges the Commission to identify at least 800 MHz of spectrum for reallocation to licensed commercial use within the next six years.[64]

As CTIA noted in its comments, and others have observed, reallocation of spectrum can take years, so it is important that the process of identifying spectrum to be reallocated for licensed commercial wireless services begin very soon.[65] The Commission should immediately commence a comprehensive inventory of spectrum it has already licensed to determine which bands are underutilized. Indeed, there is broad support among all of the commenters for such an inventory[66] to ensure that allocated

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[62] Comments of Jerry Brito and Jerry Ellig, Georg Mason Mercatus Center, WT Docket No. 09-66, at 9-10 (filed Sept. 30, 2009).

[63] *See, e.g.*, CTIA Comments at 82-83; AT&T Comments at 76; T-Mobile Comments at 18-19.

[64] CTIA Comments at 83.

[65] *Id.*; *see also* Comments of Verizon Wireless, GN Docket No. 09-157, at 179 (filed Sept. 30, 2009) ("Verizon Wireless Innovation NOI Comments").

[66] Public Interest Comments at 24; *see also* Comments of AT&T Inc., GN Docket No. 09-157, at 71 (filed Sept. 30, 2009); MetroPCS Innovation NOI Comments at 13; Verizon Wireless Innovation NOI Comments at 179.

spectrum is deployed efficiently and effectively to allow more service providers access to this essential input.[67]

CTIA also explained that, in addition to allocating additional resources for wireless broadband provision, the Commission can act to speed access to existing allocated spectrum.[68] Existing AWS-1, 2 GHz, and 700 MHz licensees face a myriad of impediments to use of the bands to provide service. Commission action in this area would provide short-term relief for congested wireless networks and wireless providers attempting to expand or offer service in underserved areas.

B. Commenters Also Agree that an Improved Tower Siting Policy is Essential to Facilitating Competition, Expanding Broadband Coverage, and Fostering Innovation

In recent years, local authorities have delayed and obstructed tower siting approval, thus raising barriers to competition, access and innovation in the wireless industry. In 2008, CTIA submitted a petition for declaratory ruling to the Commission that requested it address this problem and move to streamline tower siting decisions made by local zoning authorities.[69] CTIA also encouraged the Commission to clarify that zoning authorities cannot deny applications merely based on another provider's presence in the area.[70] After reiterating these recommendations in its initial comments to the Commission last month,[71] CTIA was pleased that Chairman Genachowski recently stated that "[t]his issue is ripe for action" and pledged to "move forward with a shot-clock

[67] Public Interest Comments at 24; Comments of the New America Foundation, Public Knowledge, and Media Access Project, GN Docket No. 09-51, at 16-23 (filed June 8, 2009); Verizon Wireless Innovation NOI Comments at 179.

[68] CTIA Comments at 86-87.

[69] CTIA Petition for Declaratory Ruling 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) (the "Petition").

[70] *See id.*

[71] CTIA Comments at 84-85.

proposal designed to speed the process, while taking into account the legitimate concerns of local authorities."[72]

Not surprisingly, many other commenters urged the Commission to adopt CTIA's tower siting proposals, noting that slow-moving local authorities burden competition and mobile broadband deployment. For example, Sprint Nextel explained that "[siting] delays negatively affect investment in and deployment of wireless broadband services,"[73] and Verizon Wireless concluded that "it is not the number of infrastructure providers or diversity of sites that limits the growth and new entry in the wireless ecosystem, but zoning approval delays at the local level."[74] Commenters encouraged the Commission to act on this issue to foster competition, access and innovation,[75] and numerous commenters advocated that the Commission implement CTIA's "shot clock" proposal to establish timeframes for local authorities to act and to grant applications where the local

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[72] Chairman Genachowski CTIA Remarks at 6.

[73] Comments of Sprint Nextel Corporation, WT Docket No. 09-66, at 16 (filed Sept. 30, 2009) ("Sprint Nextel Comments"); *see also, e.g.*, Comments of U.S. Cellular Corporation, WT Docket No. 09-06, at 18 (filed Sept. 30, 2009) ("U.S. Cellular Comments") (stating that "such regulatory obstacles are also a considerable barrier to both competition and innovation"); Comments of MetroPCS Communications, Inc., WT Docket No. 09-66, at 24 (filed Sept. 30, 2009) ("MetroPCS Comments") (stating that "timely deployment of wireless facilities is critical to ensuring consumers' access to wireless broadband services"); T-Mobile Comments at 28-30 ("Indeed, obtaining zoning and other authorizations from local authorities to build cell sites has become so cumbersome that targeted regulatory intervention is necessary. . . . [Regulatory action is] necessary to cure specific market failures and improve the prospects for increased competition among mobile providers.").

[74] Verizon Wireless Comments at 105.

[75] *See, e.g.*, Comments of Clearwire Corporation, WT Docket 09-66, at 7 (Sept. 30, 2009) ("Clearwire Comments") ("The Commission should ensure that state and local zoning issues, including tower siting . . . , do not unnecessarily delay facility construction and deployment . . . ."); Comments of PCIA-The Wireless Infrastructure Association & The DAS Forum, WT Docket No. 09-66, at 11 (Sept. 30, 2009) ("PCIA & DAS Forum Comments") ("To facilitate continued infrastructure investment and growth needed to support wireless competition and innovation, the FCC should act quickly to resolve local siting delays . . . ."); Verizon Wireless Comments at ix ("[T]he Commission can nevertheless take a number of steps to support competition and continued wireless innovation. Specifically, Verizon Wireless urges the Commission to . . . help to streamline tower siting . . . .").

authorities fail to do so.[76] Given the wide-ranging support of its proposals, CTIA believes that the wireless industry will strongly endorse Chairman Genachowski's efforts to move forward on the recommendations in its Petition.

C. The Commission Should Continue Its Policy of Regulatory Restraint

A broad range of commenters in this proceeding affirm the wisdom of the Commission's traditional policy of regulatory restraint as it relates to the competitive wireless industry.[77] As CTIA has noted, the wireless industry and broader wireless ecosystem are fiercely competitive. Where markets are fiercely competitive, market forces are much more effective than regulation in lowering prices, improving service quality, ensuring that providers respond to consumer desires and concerns and promoting innovation. Where competitive markets exist, regulators that are considering intervening in the market should always strive to ensure that a problem requiring government

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[76] *See, e.g.*, U.S. Cellular Comments at 18 ("We would . . . ask the FCC to consider taking action on various proposals which have been made to streamline these processes, such as the local zoning 'shot clock' proposal made by CTIA."); MetroPCS Comments at 24 ("[T]he Commission should grant CTIA's Petition seeking a 'shot clock' on local zoning authorities' consideration of tower siting applications . . . ."); Clearwire Comments at 7 ("[T]he Commission should grant the CTIA 'shot clock' petition setting forth reasonable 45 day and 75 day time periods for tower siting determinations."); T-Mobile Comments at 28-29 ("To help ensure that new wireless services are deployed expeditiously, the Commission should set 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."); PCIA & DAS Forum Comments at 8 ("The second most effective action the Commission can take . . . is to grant the pending *Petition* requesting the Commission to ensure that local siting decisions are made in a reasonable timeframe.").

[77] *See, e.g.*, Verizon Wireless Comments at 2 ("The 13 previous *Competition Reports* – released over the tenures of four FCC Chairmen – show that Congress's and the Commission's wireless policies, focused on open market structures and limited regulation, have allowed the wireless ecosystem to deliver unprecedented competition and benefits to American consumers at an ever-accelerating pace."); AT&T Comments at 3 ("Over the last two decades, this Commission, marching in lock step with Congress, has taken aggressive steps to ensure a pro-competitive, de-regulatory environment for wireless that has facilitated investment and enabled competitive forces to drive innovation and consumer welfare throughout the entire industry."); T-Mobile Comments at 6 ("Years of a cautious, light-handed regulatory approach in the wireless market have produced precisely the result the academics and others predict: Competition is robust, and innovation is boundless . . . And as the wireless industry continues to develop, consumer choice initiatives are quickly becoming essential competitive tools for the firms leading the way."); Sprint Nextel Comments at 2 ("Reliance on market forces rather than regulation, the Commission has recognized, promotes competition by refocusing competitors' efforts away from strategies in the regulatory areas and toward technological innovation, service quality, competitive prices, and responsiveness to consumer needs.")

intervention actually exists, and that, once such a problem is identified, the cost of any regulation aimed at solving the problem will not end up being greater than the benefits.

The Commission's traditional wireless policies and practices (*i.e.*, exclusive licensing, flexible spectrum use, technology neutrality, the use of auctions to resolve mutual exclusivity in license assignments and market competition rather than heavy-handed regulation) have been endorsed enthusiastically by a wide range of commenters in this proceeding.[78] These parties understand how well the Commission's traditional wireless policies have promoted lower prices, consumer choice, and innovation in the dynamic wireless market that exists today.

The current consensus in favor of regulatory restraint has as its underpinnings concrete and verifiable findings made over the years by the Commission regarding the benefits of such an approach. CTIA urges the Commission to consider the significant benefits achieved during the last decade and a half of enlightened, light touch regulation and affirm that tradition in this proceeding.

Even well-intentioned regulation imposes real costs for providers and wireless consumers. These can have deleterious effects, particularly for smaller carriers that lack the scale of larger carriers and often are capital-constrained. For such carriers, the costs and burdens of regulation can often preclude or restrict the flow of capital into network upgrades, research and development, service and equipment roll-outs, and other consumer benefit-enhancing investments. CTIA urges the Commission to continue adhering to these tried and true principles – which have well-served U.S. wireless consumers – as it refines and updates its wireless policies based on the comprehensive record in this proceeding.

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[78] *Id*.

V. CONCLUSION

The record established by the initial comments filed in response to the *NOI* – as well as new CTIA survey data – clearly establish that the mobile wireless ecosystem is intensely competitive and delivers significant value to U.S. consumers, providing them with the lowest prices, most advanced services, devices, and applications, and the least concentrated wireless market among our global competitors. Ill-informed conclusions reached by the "Public Interest Commenters" fail to stand up to the data-driven analysis that demonstrates the presence of competition in every segment of the ecosystem. While the Commission has found the right formula for success – grounded in market-driven, light touch regulation and exclusive, flexible use spectrum policies – there are steps the Commission can take ensure that competition and innovation continue to flourish.

As described above, the Commission should follow the recommendations of commenters by making more spectrum available for licensed commercial use, improving tower siting policies and continuing its successful policies of competition-driven, consumer-focused regulatory restraint.

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