

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

In the Matter of	)	
	)	
	)	
Wireless Telecommunications Bureau Seeks	)	
Comments on the State of Mobile Wireless	)	WT Docket No. 10-133
Competition	)	
	)	
	)	

**COMMENTS OF METROPCS COMMUNICATIONS, INC.**

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## TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION AND SUMMARY .....	1
II. METROPCS CONTINUES TO GROW ITS NETWORK AND CUSTOMER BASE, AND IS AT THE FOREFRONT OF THE LTE 4G REVOLUTION.....	6
III. THE MOBILE WIRELESS SERVICES WHOLESALE MARKET IS BROKEN AND REQUIRES PROMPT CORRECTIVE ACTION .....	8
A. There is No Legitimate Wholesale Market for Wireless Data Roaming Services .....	9
B. Exclusive Handset Arrangements Further Hamper the Ability of New Entrants and Small, Rural and Mid-Tier Carriers to Compete .....	14
IV. MORE SPECTRUM IS NEEDED TO ENSURE CONTINUED GROWTH AND COMPETITION IN THE MOBILE WIRELESS SERVICES MARKET.....	16
A. Limited Access to Spectrum Exacerbates the Problems in the Broken Wireless Data Roaming Market.....	16
B. There is Wide Agreement that Additional Spectrum is Needed In the Near Term.....	19
C. The Commission Must Promote Sensible Auction Policies That Encourage Competition and Broad Distribution of Spectrum .....	23
D. The Commission Must Resist the Temptation to Adopt Additional Regulations, Such As Net Neutrality and Broadband Reclassification, That Will Exacerbate the Spectrum Shortage .....	24
V. THE COMMISSION MUST PROMOTE POLICIES THAT ENCOURAGE INTERMODAL COMPETITION .....	26
A. Intercarrier Compensation Reform .....	27
B. Special Access Reform .....	29
VI. CONCLUSION.....	30



provided enormous benefits to consumers. Consumers today have access to ever-more-sophisticated handsets and smartphones, unique devices like the Amazon Kindle, a stunning breadth of meaningful applications and access to a wide variety of service and pricing models to meet their needs. Many of these devices were but a dream a decade ago – now they are the new frontier of products and services and are driving increased adoption of wireless services. The introduction of next-generation 4G wireless technologies, such as long-term evolution (“LTE”), also will continue to expand these offerings and capabilities at a rapid pace. Providers and manufacturers continue to innovate and expand networks to meet consumer demand – all while lowering prices for mobile wireless services. The mobile wireless services industry has been an economic spark in a down economy, and the industry should be commended for its continued investment and active retail competition.

This *Notice* follows the Commission’s release of the *Fourteenth Report*, which, for the first time in years, declined to make a finding of “effective competition” in the retail market for wireless services.<sup>3</sup> MetroPCS does not suggest that the current mobile wireless services market lacks effective competition (in fact, it believes that there currently is effective competition on a retail level). However, storm clouds are appearing on the horizon that may imperil the continuance of effective retail competition for wireless services. The Commission has allowed the largest carriers, AT&T and Verizon Wireless, to acquire other wireless carriers, thereby

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<sup>3</sup> *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*, Federal Communications Commission, Fourteenth Report, WT Docket No. 09-66, (rel. May 20, 2010) (“*Fourteenth Report*”).

further concentrating the market.<sup>4</sup> This has effectively allowed these two largest carriers to begin recreating the wireless duopoly. The Commission expended great effort in the mid-1990s to eliminate concentration, and it would be unfortunate to now allow these carriers to limit competition by denying needed wireless data roaming and entering into exclusive handset arrangements. The Commission must reverse this trend and pursue policies that promote competition and new entrants, and thereby ensure that the mobile wireless services industry does not backslide to an anticompetitive market that is divided up into haves (AT&T and Verizon Wireless) and have-nots (everyone else).

Accordingly, MetroPCS urges the Commission to take action to correct market failures with respect to important upstream inputs that are necessary to promote retail competition. One important policy that the Commission must undertake relates to data roaming. In the *Fourteenth Report*, the Commission took the commendable step of recognizing the many parts of the broader mobile wireless ecosystem – consisting of wholesale and retail components, among others – each of which “has the potential to affect competitive and consumer outcomes in the mobile wireless services segment.”<sup>5</sup> As MetroPCS has noted in recent pleadings, “a failure in the market for [upstream inputs] – such as exists in the marketplace today – has the potential to adversely affect consumers and market competition as a whole.”<sup>6</sup> The Commission must take prompt action to eliminate the anticompetitive behaviors relating to handset exclusivity, wireless data roaming and special access in order to ensure that the market failure in the wholesale market

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<sup>4</sup> The Commission also has allowed Verizon and AT&T to largely recreate the old AT&T monopoly in wireline services, with Verizon and AT&T covering, on a combined basis, a considerable portion of the United States, and offering local, long distance and wireless services.

<sup>5</sup> *Id.* ¶ 9.

<sup>6</sup> Comments of MetroPCS Communications, Inc., WT Docket No. 05-265, filed Jun. 14, 2010 (“MetroPCS Data Roaming Comments”).

does not infect the substantial progress in the retail market, and recreate a wireless duopoly to the detriment of all consumers.

Meaningful access to spectrum by all carriers is a critical part of the competitive equation. MetroPCS commends the Commission for recognizing the looming spectrum crisis, and applauds the *National Broadband Plan*'s recommendation that 500 MHz of spectrum be made available for commercial mobile wireless use.<sup>7</sup> The Commission must follow this course and commit itself fully to promptly releasing 500 MHz of additional wireless spectrum for commercial use in the near term. And, such spectrum must be distributed using sensible auction policies that promote broad access to spectrum for new entrants and small, rural and mid-tier carriers.<sup>8</sup> Progressive spectrum auction policies will ensure that the largest nationwide carriers are not allowed to cement their competitive position, further exacerbating the competitive imbalances in the market for wholesale wireless inputs. MetroPCS supports the implementation of a number of policies as promotive of the Commission's competitive goals. To this end, the Commission must work diligently to make more spectrum available to all wireless carriers – not merely to the largest nationwide carriers. Making more spectrum available has received near-

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<sup>7</sup> FCC, *CONNECTING AMERICA: A NATIONAL BROADBAND PLAN FOR OUR FUTURE*, xii (2010) (“*National Broadband Plan*”) (recommending that the Commission “[m]ake 500 megahertz of spectrum newly available for broadband within 10 years, of which 300 megahertz should be made available for mobile use within five years”).

<sup>8</sup> For example, MetroPCS has previously proposed a broadband incentive discount, or BID program, which would allow applicants with less spectrum in a market a discount as compared to other applicants who may have more spectrum. *See infra*, Section IV.C. Other methods could include auction eligibility restrictions, or other means to ensure that all spectrum does not get acquired by the largest carriers, several of which alone, and through affiliates, have access to 100 MHz or more in many metropolitan areas.

unanimous support – from providers and industry stakeholders,<sup>9</sup> legislators,<sup>10</sup> the Commission itself,<sup>11</sup> and even from President Barack Obama.<sup>12</sup>

The Commission must also be mindful to not adopt policies, such as net neutrality, which will exacerbate the current problems in the industry – especially between the haves and the have-nots. Wireless carriers face unique challenges, as they must meet ever increasing demand for both voice and data services, which must be provided over finite spectrum resources. The Commission must be cautious in adopting policies that may, at first, seem disconnected from wireless competition. The Commission’s recent forays into net neutrality regulation and broadband reclassification are likely to have disastrous consequences for the wireless services industry if adopted. If wireless carriers are forced to become “dumb pipes” carrying all traffic regardless of its suitability, the wireless Internet experience may grind to a halt for all users.

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<sup>9</sup> In response to the *Wireless Innovation NOI* issued by the Commission last year, each of the following submitted comments citing the fact that greater spectrum resources were needed: American Legislative Exchange Council at 4, AT&T at 68, Cellular South at 4, Clearwire Corporation at 12, Comcast Corporation at 4, CTIA at 68, Enterprise Wireless Alliance at 5, Ericsson at 14, Extenet Systems at 3, Google at 5, Green Flag Wireless at 1, the GSM Association at 8, HYPRES at 1, Key Bridge Global at 5, the Mercatus Center at 1, PCIA at 14, Powerwave Technologies at 7, QUALCOMM at 27, Rural Telecommunications Group at 3, Spectrum Bridge at 7, Telecommunications Industry Association at 3, US Cellular at 27, Verizon Wireless at 138 and Vodafone Group at 6. *Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan for our Future*, Notice of Inquiry, GN Docket No. 09-157, GN Docket Nos. 09-157 and 09-51, FCC 09-66, rel. Aug. 27, 2009 (“*Wireless Innovation NOI*”). This remarkable consensus spans all licensees, new entrants, application providers and others who in many other instances find little to agree on.

<sup>10</sup> A recent letter from Senator Olympia Snow made several recommendations regarding how to “solve the looming spectrum crisis.” Letter dated Jan. 5, 2010 from Senator Olympia J. Snow to Julius Genachowski, Chairman, Federal Communications Commission, 2.

<sup>11</sup> Prepared Remarks of Chairman Julius Genachowski at the International CTIA Wireless I.T. & Entertainment Convention, “America’s Mobile Broadband Future,” Oct. 7, 2009, at 4, *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-293891A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293891A1.pdf).

<sup>12</sup> Memorandum on Unleashing the Wireless Broadband Revolution, DAILY COMP. PRES. DOCS., 2010 DCPD No. 201000556 (Jun. 28, 2010) (“*Obama Memo*”).

This is especially the case for carriers with limited spectrum resources, such as MetroPCS.

Whereas the larger carriers have 100 MHz or more of spectrum, MetroPCS has on average closer to 20 to 30 MHz. This disparity causes net neutrality and other policies have a disparate impact on small, rural and mid-tier carriers that do not have large spectrum holdings. Because many carriers have limited spectrum resources, a mandate to serve all regardless of their usage will cause further consolidation and accelerate the decline of the current competitive situation.

Instead of unnecessarily regulating a competitive wireless retail market, the Commission should instead focus on bringing parity to the broken wholesale market for wireless inputs, thereby increasing competition and improving the consumer experience.

## **II. METROPCS CONTINUES TO GROW ITS NETWORK AND CUSTOMER BASE, AND IS AT THE FOREFRONT OF THE LTE 4G REVOLUTION**

MetroPCS, through its licensed subsidiaries, offers wireless broadband mobile services, *e.g.*, Personal Communications Services (“PCS”) and Advanced Wireless Services (“AWS”), on an affordable, flat-rate basis with no annual contract and unlimited usage in selected major metropolitan areas in the United States. MetroPCS is the fifth largest facilities-based wireless carrier, has access to licenses covering a population of approximately 146 million people and offers service nationwide both through its own facilities and through roaming arrangements. As of March 31, 2010, MetroPCS had approximately 7.3 million subscribers, and currently offers service in many of the largest metropolitan areas in the United States.

MetroPCS targets a mass market which is largely underserved by traditional national wireless carriers, offering calling plans that are differentiated from the more complex and long-term plans required by many of its competitors. MetroPCS allows customers to place unlimited wireless calls within its and its extended service areas and to receive unlimited calls from any area while in MetroPCS’ and its extended service area under its simple and affordable flat-rate

monthly service plans. Customers pay for service in advance, without a credit check, with rate plans providing unlimited voice/text/data on a nationwide basis beginning as low as \$40 per month. MetroPCS also is acting as a substantial catalyst for wireless competition with traditional wireline services. Based on company surveys, a large percentage of MetroPCS customers use their MetroPCS service as their primary telecommunications service. MetroPCS is allowing a segment of the population which has been largely bypassed by the wireless revolution to gain the benefits of wireless services as a significant percentage of MetroPCS customers are first-time wireless users.

Indeed, a substantial number of MetroPCS' users use MetroPCS' services as their sole or primary means of accessing the Internet. Studies have shown that a significant portion of the minority community access the Internet primarily or solely from wireless devices.<sup>13</sup> A substantial portion of this population are also users of MetroPCS' services. Accordingly, MetroPCS' services are a vital part of the Commission's efforts to increase broadband adoption. Indeed, on September 15, 2009, MetroPCS announced that it had selected its vendors for its second half 2010 launch of 4G Long Term Evolution ("LTE") wireless services.<sup>14</sup> With its broadband LTE initiative, MetroPCS will provide consumers with an enhanced opportunity to "cut the cord" on the Internet, a richer HTML browsing experience and multimedia applications operating directly on the subscriber's wireless handset. Just as voice has gone wireless, the Internet will be increasingly mobile and MetroPCS will be one of the leaders in this evolution of

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<sup>13</sup> Cecilia Kang, "Going wireless all the way to the Web," WASH. POST, A6 (Jul. 10, 2010), available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/09/AR2010070905521.html> ("Kang Article").

<sup>14</sup> "Unlimited Wireless Carrier MetroPCS Announces Vendors for 2010 4G LTE Launch," Press Release (Sept. 15, 2009), available at <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1331809&highlight=LTE>.

the broadband industry. MetroPCS has selected Ericsson, a leading global provider of telecommunications equipment and related services to mobile and fixed network operators, as its LTE infrastructure provider to launch LTE in the second half 2010, and Samsung Telecommunications America, the number one mobile provider in the United States, to provide its initial LTE handset device. This will allow MetroPCS to bring broadband to segments of the population which today do not receive broadband data services.

### **III. THE MOBILE WIRELESS SERVICES WHOLESALE MARKET IS BROKEN AND REQUIRES PROMPT CORRECTIVE ACTION**

As MetroPCS has noted on numerous occasions, the wholesale upstream market for important mobile wireless services, such as access to spectrum, access to wireless handsets and access to wholesale, carrier-to-carrier wireless data roaming services, is badly broken and in need of prompt corrective action.<sup>15</sup> Each of these important inputs has become table stakes for wireless carriers to compete for customers. Consumers demand seamless, nationwide data coverage, the latest and most advanced handsets, and the broadest and fastest overall coverage. Without wireless data roaming services and meaningful access to the most advanced handsets, the Commission could watch small, rural and mid-tier carriers wither on the vine. At a time

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<sup>15</sup> See, e.g., MetroPCS Data Roaming Comments 26 (noting that “[t]he public interest also will be served by mandating automatic wireless data roaming because the market for wireless data roaming is broken, and market forces are not working to foster the ubiquitous availability of wireless data roaming”); Reply Comments of MetroPCS Communications, Inc., RM No. 11497, 13, filed Feb. 20, 2009 (noting that small, rural and mid-tier carriers “do not have timely access to the most popular or most advanced handsets ... [which] harms competitive carriers – and by extension, consumers – by not allowing them to compete on an even playing field”) (“MetroPCS Handset Exclusivity Reply Comments”); Comments of MetroPCS Communications, Inc., WT Docket No. 09-66, 21, filed Sept. 30, 2009 (noting that “it is time for the Commission to adopt new auction rules designed to foster new and increased competition in the wireless marketplace”) (“MetroPCS 2009 Competition Comments”).

when the Commission is seeking to promote the noble goals of its *National Broadband Plan*,<sup>16</sup> it should seek to cultivate these important competitive providers of wireless services, lest the entire industry be thrown back to the dark ages of a wireless duopoly.

**A. There is No Legitimate Wholesale Market for Wireless Data Roaming Services**

Wireless consumers grow more dependent on wireless data services with each passing day. Wireless data use is expanding rapidly, both at home and around the world. For example, according to a recent Cisco study, it is estimated that global mobile data traffic grew at a rate of 157 percent between 2008 and 2009.<sup>17</sup> Further, based on information provided by domestic carriers for the *Fourteenth Report*, all signs point to the United States outpacing even this impressive global growth rate. Specifically, in the *Fourteenth Report*, the Commission cited AT&T's report that data use on its network had increased 5,000 percent between mid-2006 and mid-2009, and had increased an additional 400 percent between June 2008 and June 2009.<sup>18</sup> Further, AT&T has indicated that a significant portion of its traffic is video – traffic which did not exist even one year ago.<sup>19</sup> As MetroPCS has stated, the profound consumer demand for wireless data services leads to the inevitable conclusion that “new entrants and small, rural and mid-tier carriers simply must be able to provide their customers with meaningful access to

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<sup>16</sup> See generally *National Broadband Plan*.

<sup>17</sup> Cisco, *Cisco Virtual Networking Index: Global Mobile Data Traffic Forecast Update, 2009-2014*, [http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c11-520862.html](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.html).

<sup>18</sup> *Fourteenth Report* ¶ 183.

<sup>19</sup> Tammy Parker, “AT&T's Rinne Campaigns for Spectrally Efficient Mobile Video,” *Fierce Wireless* (Mar. 24, 2010), available at <http://www.fiercewireless.com/ctialive/story/ts-rinne-campaigns-spectrally-efficient-mobile-video/2010-03-24> (noting that “[v]ideo is driving a great deal of the bandwidth demand for the network” and citing a 72 percent growth in global video traffic).

wireless data roaming, including next-generation broadband services such as LTE, at reasonable rates.”<sup>20</sup> The problem is, however, that the two largest wireless providers – AT&T and Verizon Wireless – are patently unwilling to provide other wireless carriers with access to wireless data roaming on non-discriminatory terms and conditions at just and reasonable rates, even though significant portions of their networks were subsidized by universal service funds. Accordingly, the wholesale market for wireless data roaming has broken down into a world of the “haves” and the “have-nots” – with AT&T and Verizon Wireless fighting desperately to keep all other carriers out of the “haves” club. AT&T and Verizon Wireless recognize that keeping carriers on the “outside” of wireless data roaming will enable them to extend their current dominance in voice services and 2G and 3G data into 4G services and wireless broadband. MetroPCS considers it a grievous error that nowhere in the *Notice* is wireless data roaming mentioned as a critical upstream input for the provision of mobile wireless services. MetroPCS considers wireless data roaming to be the most important input necessary to accomplish the Commission’s goal of true nationwide competition among all carriers and to promote the deployment of 4G broadband services. In many cases, wireless represents the best chance for broadband competition, but without wireless data roaming this important competition will not come to pass.

At this point in time, the wholesale market for carrier-to-carrier wireless data roaming services is a duopoly when viewed as a whole – and in fact is a monopoly once the air interface is taken into consideration. Viewing the separate markets for CDMA data roaming services, on the one hand, and for GSM data roaming services, on the other, reveals that AT&T<sup>21</sup> and

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<sup>20</sup> MetroPCS Data Roaming Comments 40.

<sup>21</sup> The GSM market is even more concentrated, with AT&T serving over 85 million customers, while its next largest rival, T-Mobile, serves approximately 34 million. This gives AT&T an estimated market share of over 70 percent in the GSM market, allowing it to exercise market

(continued...)

Verizon Wireless<sup>22</sup> each have dominant positions in their respective air interfaces. Since the roaming market is technology-limited at the current time, a CDMA provider cannot feasibly obtain data roaming from a GSM carrier, and *vice versa*.<sup>23</sup> This exacerbates the difficulties that new entrants and small, rural and mid-tier carriers face in negotiating fair roaming agreements, as they are limited as to who they may exchange wireless data roaming traffic with by virtue of their network technology. With the market power held by the largest two carriers, they are able to dictate both roaming rates and terms for access to new technologies – two critical areas in which other wireless players need to be on a level playing field in order to compete effectively. This market power also has the effect of deterring new entrants and depressing spectrum auction revenues, because new entrants and carriers seeking to expand geographically cannot afford to compete on a startup basis with well-entrenched players who have significant roaming advantages.<sup>24</sup> Unfortunately, the disappearance of a number of former small, rural and mid-tier roaming partners as a result of the recent market consolidation has made it much more difficult

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(...continued)

power, particularly with respect to the market for data roaming services. *See Fourteenth Report 9.*

<sup>22</sup> With Verizon Wireless' consummation of its acquisition of Alltel, it has over 91 million CDMA customers. By comparison, Sprint Nextel, US Cellular, MetroPCS and Leap CDMA carriers serve only just over 65 million customers in the aggregate. This means that Verizon Wireless alone serves more than 58 percent of the CDMA market, giving it considerable market power with respect to data roaming services. *See Fourteenth Report 9.*

<sup>23</sup> Even with the announcements that AT&T and Verizon are moving towards LTE, this situation will remain for some time since it will take a number of years for LTE services to be deployed to the same extent as CDMA/GSM, if they ever are. Further, unless wireless carriers other than AT&T and Verizon adopt LTE, the LTE roaming market would remain a near-duopoly for some time. Thus, this dominance will continue for the foreseeable future.

<sup>24</sup> Indeed, without data roaming, new entrants seeking to offer new competition may face an insurmountable head start advantage enjoyed by the largest carriers. This is no different than the situation the Commission faced in the early days of cellular which prompted mandatory resale by the B Block carriers.

for small, rural and mid-tier carriers to negotiate reciprocal wireless data roaming agreements.<sup>25</sup> As pointed out by T-Mobile, “[m]arket consolidation in the wireless industry has reduced the number of choices for data roaming partners and has exacerbated the market position of AT&T and Verizon.”<sup>26</sup>

Due to the substantial market power that the two largest carriers enjoy in their respective air interfaces, they have little incentive to currently offer 3G or, in the future, 4G wireless data roaming to competing providers – and their actions confirm these incentives. Indeed, the largest carriers consistently refuse to engage in meaningful data roaming negotiations with small, rural and mid-tier carriers. In one instance, a mid-tier carrier “for over a year, [was] rebuffed by larger carriers with compatible networks whenever an automatic [data] roaming agreement [was] requested.”<sup>27</sup> Other carriers shared this same unfortunate experience. Bright House Networks “has indicated that it is unable to secure roaming agreements at reasonable and non-discriminatory rates,”<sup>28</sup> Leap Wireless has “increasingly encountered abusive and anticompetitive business practices, such as the largest carriers’ refusal to provide wholesale automatic roaming on just, reasonable, and non-discriminatory terms,”<sup>29</sup> and Cox Communications “has been unsuccessful negotiating data roaming arrangements with Verizon

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<sup>25</sup> In many instances, the acquired carriers have offered more favorable roaming arrangements through the acquiring carriers. For example, several carriers challenged the Verizon/Alltel transaction because Alltel offered more suitable roaming arrangements than Verizon.

<sup>26</sup> Comments of T-Mobile in WT Docket No. 05-265, 7, filed Jun. 14, 2010.

<sup>27</sup> *Ex Parte* Letter from David L. Nace, Counsel for Cellular South, to Marlene H. Dortch, Secretary, FCC, WT Docket nos. 06-150, 06-169, 96-86, and 05-265, PS Docket No. 06-229 (filed June 26, 2007), 3.

<sup>28</sup> Comments of Rural Cellular in WT Docket No. 05-265, 15, filed Jun. 14, 2010 (“Rural Cellular Association Data Roaming comments”).

<sup>29</sup> Comments of Cricket Communications, WT Docket No. 09-66, 7, filed Jun. 15, 2009.

since August 2009 and ‘after eight months, the parties [had] yet to *begin* negotiating the provisions of [a] roaming agreement.’”<sup>30</sup> Because Verizon Wireless, without citing any legitimate reason, refused to even commence data roaming negotiations, “Cox concluded that its ‘experience defies Verizon’s characterization that it is “ready and willing” to negotiate in good faith.’”<sup>31</sup> This “market failure only promises to grow as small, rural and mid-tier carriers are forced to decide whether or not to invest in next-generation broadband technologies, such as LTE.”<sup>32</sup>

Worse still, even where small, rural and mid-tier carriers are able to fight roaming agreements to the finish line, the rates charged by the largest two national carriers effectively neutralize the utility of those agreements. Industry group OPASTCO noted that a survey of their rural members found that roaming rates range from 30 cents a megabit to one dollar per megabit of mobile data usage.<sup>33</sup> The typical mobile wireless user may use several hundred megabits to several gigabits per month, causing these prices to effectively prohibit consumers from using their wireless data services while roaming.<sup>34</sup> Considering typical roaming patterns, at these rates, roaming charges could easily reach hundreds of dollars per month per subscriber – effectively precluding customers of rural and mid-tier carriers from using these important services. Ironically, these high per megabit data charges are being imposed at the same time that the costs

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<sup>30</sup> Rural Cellular Association Data Roaming Comments 15 (quoting Letter from Michael H. Pryor, Counsel to Cox Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-104, 2 (filed Apr. 28, 2010) (emphasis in original) (“*Pryor Letter*”).

<sup>31</sup> Comments of Cellular South in WT Docket No. 05-265, 22, filed Jun. 14, 2010 (quoting *Pryor Letter* 2).

<sup>32</sup> MetroPCS Data Roaming Comments 27.

<sup>33</sup> Comments of OPASTCO in WT Docket No. 05-265, 4, filed Jun. 14, 2010.

<sup>34</sup> Wireless laptop users may create 3 to 5 times more data traffic, which further precludes wireless from acting as a competitive check on other broadband providers.

to provide mobile data are dropping dramatically. In fact, some analysts have concluded that the average retail rate per megabit of data on a home network is approximately one cent per megabit, making the rates proposed by nationwide carriers even more outrageous.<sup>35</sup>

MetroPCS' experience with data roaming rates with one of the largest national carriers has mirrored those of other commenters. The fact that the largest national carriers – when they choose to negotiate wireless data roaming agreements at all – consistently apply prohibitively expensive per-megabit rates to wireless data roaming services means that MetroPCS is effectively precluded from offering this service to its customers at reasonable rates.<sup>36</sup> This is clear evidence that the market for wireless data roaming is broken, and the Commission must take prompt action to correct it.

**B. Exclusive Handset Arrangements Further Hamper the Ability of New Entrants and Small, Rural and Mid-Tier Carriers to Compete**

At present, the largest carriers not only dominate in terms of wholesale access to spectrum and wireless data roaming, but also have extended this dominance into the wholesale market for access to the newest and most advanced wireless handsets. In almost all instances, if consumers want a particular new handset, they are forced to select a provider based on handset availability, rather than on quality of service or on price. For example, a customer wanting to utilize the advanced capabilities of the HTC EVO must choose Sprint Nextel as their provider, much as the customer who desires a Motorola Droid X must choose Verizon Wireless. And, the marriage of Apple's iPhone 4 (and its predecessor iPhone and iPhone 3G) to AT&T is well

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<sup>35</sup> Bernstein Research, *U.S. Telecommunications and Global Telecom Equipment: The Wireless Data Exaflood*, 3 (Jun. 14, 2010).

<sup>36</sup> This is even the case with respect to data services on 1xRTT which is not an effective substitute for broadband services. Indeed, MetroPCS has been unsuccessful with the large carriers in securing even 1xRTT roaming.

known to the Commission and to frustrated consumers alike. As the market power of the largest carriers continues to grow, and the number of carriers to which manufacturers can sell diminishes, the Commission should expect this already bad situation to further deteriorate.

While those carriers holding exclusive handset arrangements love to tout the breadth of the wireless handsets available on the market, the simple fact is that consumers routinely do choose a service provider specifically to obtain the hottest new technology. A study commissioned by Google found that more than one in two wireless shoppers said handsets played a major role in their purchase decisions.<sup>37</sup> “Specifically, 24% said their decision-making was solely a function of the handset; 28% said both handset and carrier influenced their decisions.”<sup>38</sup> This tying of products to services should be of great competitive concern to the Commission, as it limits consumer choice of wireless provider, in turn restricting competition among the various carriers. Further, because these handsets in many instances will not work on other networks – either because they are locked or because they are incompatible – these exclusive handsets limit customer ability to switch to a competitive service once their commitment has expired.

These exclusive arrangements, while already problematic for small, rural and mid-tier carriers, will cause increasing marketplace disruption as new advanced technologies, such as LTE, come online. Indeed, these exclusivity arrangements may significantly hinder broadband deployment if the largest carriers are able to dictate handset standards and availability – in direct contradiction of the *National Broadband Plan*’s goal of “promot[ing] universal broadband

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<sup>37</sup> “Proof that Handset Brands Help Sell Wireless Plans,” RCRnews.com, Oct. 28, 2008.

<sup>38</sup> *Id.* (emphasis supplied).

deployment and adoption.”<sup>39</sup> As the largest carriers control ever more customers through market consolidation, it will become increasingly difficult for small, rural and mid-tier carriers to secure cost-effective contracts for the manufacture of advanced wireless handsets. Indeed, if this disturbing trend continues, MetroPCS is concerned about the ability of new entrants and small, rural and mid-tier carriers to procure handsets that comply with various Commission mandates, including hearing-aid compatibility requirements and any additional E911 requirements. In order to guard against these troubling possibilities, the Commission should immediately initiate a rulemaking, as proposed by the Rural Cellular Association.<sup>40</sup> In this proceeding, MetroPCS urges the Commission investigate the negative effects of handset exclusivity arrangements, and, if necessary, adopt rules that limit or prohibit these arrangements, especially as they relate to new technologies, such as LTE.<sup>41</sup>

#### **IV. MORE SPECTRUM IS NEEDED TO ENSURE CONTINUED GROWTH AND COMPETITION IN THE MOBILE WIRELESS SERVICES MARKET**

##### **A. Limited Access to Spectrum Exacerbates the Problems in the Broken Wireless Data Roaming Market**

In the *Fourteenth Report*, the Commission recognized that each segment of the mobile wireless market “has the potential to affect competitive and consumer outcomes in the mobile wireless services segment.”<sup>42</sup> Wireless spectrum is the lifeblood of the mobile wireless services industry – without plentiful, regular, and meaningful access to wireless spectrum, providers

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<sup>39</sup> *National Broadband Plan* xiii.

<sup>40</sup> *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, Rural Cellular Association, RM-11497 (filed May 22, 2008).

<sup>41</sup> Comments of MetroPCS Communications, Inc. in RM-11497, 10-12, filed Feb 2, 2009; Reply Comments of MetroPCS Communications, Inc. in RM-11497, 18-19, filed Feb 20, 2009.

<sup>42</sup> *Fourteenth Report* ¶ 9.

simply are not able to offer robust services to their customers.<sup>43</sup> The Commission also has recognized the important role of wireless spectrum, finding that “[e]nsuring that sufficient spectrum is available for incumbent licensees, as well as for entities that need spectrum to enter the market, is critical for promoting competition, investment, and innovation.”<sup>44</sup> Nationwide data services are becoming increasingly expected by consumers. As MetroPCS has pointed out, “[c]onsumers are becoming ever-more dependent on the use of wireless data, which continues to grow at an astonishing pace.”<sup>45</sup> In fact, AT&T’s own online marketing materials boast that “Internet access is no longer a luxury but rather a necessity ... [and] has become an integral part of our daily lives.”<sup>46</sup> Unfortunately, many small, rural and mid-tier carriers that would love to offer nationwide service on their own networks are unable to do so due to lack of access to wireless spectrum. Therefore, the manner in which their customers can access a nationwide data network is for these carriers to reach roaming agreements with increasingly unwilling nationwide providers.

Although it is true that the Commission has auctioned several significant blocks of broadband spectrum in recent years,<sup>47</sup> much of it has ended up, one way or another,<sup>48</sup> in the

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<sup>43</sup> The Commission itself has noted this basic premise, finding that “[a]ccess to spectrum is a precondition to the provision of mobile wireless service.” *Id.* ¶ 251. Also, because spectrum is needed over time, the Commission must be careful to ensure the regular release of additional wireless spectrum. Auctioning all spectrum at the same time will limit the ability of new entrants to gain access to spectrum on an ongoing basis.

<sup>44</sup> *Id.* ¶ 251.

<sup>45</sup> MetroPCS Data Roaming Comments 26; *Fourteenth Report* ¶¶ 181-184.

<sup>46</sup> AT&T Wireless, “AT&T Internet access options,” available at <http://www.wireless.att.com/learn/internet/index.jsp>.

<sup>47</sup> See, e.g., FCC Auction Nos. 73 (700 MHz), 71 (Broadband PCS) and 66 (AWS-1).

hands of the largest two carriers. For example, in the recently concluded 700 MHz auction, AT&T Wireless and Verizon Wireless bought nearly \$16 billion of the more than \$19 billion worth of licenses sold, and acquired the overwhelming majority of the available spectrum.<sup>49</sup> As a result, many of the small, rural and mid-tier wireless providers either ended up with no new spectrum (*e.g.*, Leap Wireless) or with less additional spectrum than they sought when they entered the auction (*e.g.*, MetroPCS and U.S. Cellular). Thus, by being shut out of both reasonable wireless data roaming agreements and meaningful access to needed spectrum, new entrants and small, rural and mid-tier wireless providers will find themselves simply unable to grow or to offer robust 4G services on a cost effective basis.

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(...continued)

<sup>48</sup> Not only have the nationwide carriers been the most successful participants in the auctions, but they also have managed to acquire a significant amount of spectrum in the secondary market through private market acquisition transactions.

<sup>49</sup> See Written Testimony of Coleman Bazelon, Ph.D., Principal, The Brattle Group, *Hearing on Over of the Federal Communications Commission – the 700 MHz Auction Before the House Comm. on Energy and Commerce, Subcomm. on Telecommunications and the Internet*, 110th Cong. (April 15, 2008), available at <http://energycommerce.house.gov/images/stories/Documents/Hearings/PDF/110-ti-hrg.041508.Bazelon-testimony.pdf>. (“Unfortunately, the outcome of the 700 MHz auction was that the nation’s two largest mobile phone providers—AT&T and Verizon—won most of the licensed spectrum....The irony of this outcome is that the cellular firms that dominated the duopoly marketplace that existed prior to the first FCC auctions are the same firms that, after a series of mergers and acquisitions, make up AT&T and Verizon today. This unfortunate outcome was caused by ill-configured spectrum license blocks and a poorly designed auction. The central problem was one of hubris. The FCC thought it could do too much—in fact, way too much—with the tools at hand. The Commission tried to promote rural build-out, create open access, encourage new entrants, increase broadband competition and, of course, provide a solution to the serious problem of deploying a nationwide interoperable public safety network. In an attempt to accomplish all of these various goals, the 700 MHz auction was designed with an astonishing number of new, largely untried, features, including package bidding, high reserve prices, open access requirements, mixing of paired and unpaired spectrum, and a public-private partnership. The failure of the results were predicted: rural build-out will be hampered, Verizon—already committed to open access on its existing network—won a nationwide license on the cheap, there are no new entrants of note.”).

## **B. There is Wide Agreement that Additional Spectrum is Needed In the Near Term**

As shown above, the lack of meaningful access to spectrum exacerbates the wholesale market failures extant in the mobile wireless services market. This problem is expected to grow over time. Indeed, AT&T's CTO recently indicated that the growth of wireless data is outstripping carriers' ability to meet the demand, and that getting ahead is critical.<sup>50</sup> Although AT&T's CTO was speaking mainly about building networks, without spectrum no networks are possible. Additional spectrum is an important first step towards adding capacity – and any delay in releasing spectrum will delay the entire process. Accordingly, the Commission must take immediate steps to free up additional spectrum for use by commercial wireless service providers. It is not only small, rural and mid-tier carriers that are in need of more spectrum – the entire industry requires it. In a 2009 Commission panel discussion on spectrum allocation, a panelist noted that, in order to provide the type of broadband speeds that would replicate what consumers experience at home, a wireless provider would need a *minimum* of 40 MHz of paired spectrum, and probably more like 100 MHz.<sup>51</sup> Each of the carriers represented on the Commission's panel indicated that an additional 100 MHz of spectrum was required for each carrier to meet exploding consumer demand over the next five years.<sup>52</sup> Other industry groups have called on the

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<sup>50</sup> Anthony Ha, "AT&T CTO: 'We will move heaven and Earth' to improve our network," MobileBeat (July 12, 2010), available at [http://mobile.venturebeat.com/2010/07/12/att-cto-john-donovan/?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+Venturebeat+%28VentureBeat%29](http://mobile.venturebeat.com/2010/07/12/att-cto-john-donovan/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+Venturebeat+%28VentureBeat%29).

<sup>51</sup> *FCC National Broadband Plan Staff Workshop: Spectrum*, Federal Communications Commission, Sept. 17, 2009, available at <https://fccevents.webex.com/fccevents/lsr.php?AT=pb&SP=EC&rID=15695067&rKey=6260ad75d459633a> (last visited Sept. 23, 2009).

<sup>52</sup> *Id.* Given that there are five to six facilities based competitors in each license area, 500-600 MHz of additional spectrum is required.

Commission to “allocate at least 800 MHz of additional spectrum for licensed commercial wireless use within the next six years.”<sup>53</sup>

Those outside the mobile wireless services industry recognize the critical importance of spectrum to the wireless services marketplace. This fact has been recognized by multiple parties at all levels of the legislative<sup>54</sup> and executive branches.<sup>55</sup> Even Chairman Genachowski has recognized that “the biggest threat to the future of mobile in America is the looming spectrum crisis.”<sup>56</sup> In a recent memorandum, President Obama also recognized the spectrum scarcity and directed government agencies to work to free up 500 MHz of additional spectrum in order to

[promote] innovative new businesses, provide cost-effective connections in rural areas, increase productivity, improve public safety, and allow for the development of mobile telemedicine, telework, distance learning, and other new applications that will transform Americans’ lives.<sup>57</sup>

In addition, the Commission’s own *National Broadband Plan* recognizes the unique spectrum shortages faced by the wireless broadband industry, noting that the “growth of wireless broadband will be constrained if government does not make spectrum available to enable network expansion and technology upgrades.”<sup>58</sup> Further, the coming deployment of next-generation technologies like LTE, beneficial for carriers and consumers alike, “will [also]

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<sup>53</sup> CTIA – The Wireless Association Written *Ex Parte* Presentation in GN Docket No. 09-51, filed Sept. 29, 2009.

<sup>54</sup> A recent letter from Senator Olympia Snow made several recommendations regarding how to “solve the looming spectrum crisis.” Letter dated Jan. 5, 2010 from Senator Olympia J. Snow to Julius Genachowski, Chairman, Federal Communications Commission, 2.

<sup>55</sup> *See Obama Memo.*

<sup>56</sup> Prepared Remarks of Chairman Julius Genachowski at the International CTIA Wireless I.T. & Entertainment Convention, “America’s Mobile Broadband Future,” Oct. 7, 2009, at 4, *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-293891A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293891A1.pdf).

<sup>57</sup> *Obama Memo.*

<sup>58</sup> *National Broadband Plan* 77.

increase the range of applications and devices that can benefit from mobile broadband connectivity, generating a corresponding increase in demand for mobile broadband service from consumers.”<sup>59</sup> While these new technologies will benefit consumers and support the goals set forth in the Commission’s *National Broadband Plan*, the emergence of these new wireless broadband standards will only serve to “intensify the impact [of the spectrum shortage] on mobile broadband networks.”<sup>60</sup> As the Department of Justice noted in an *ex parte* filing with the Commission, “[s]tated simply, without access to sufficient spectrum a firm cannot provide state-of-the-art wireless broadband services.”<sup>61</sup>

Unfortunately, the mobile wireless industry has already begun to see the effects of the spectrum crunch on consumers. Indeed, AT&T recently has announced that it is moving to tiered data plans for its wireless services,<sup>62</sup> which has “resulted in an uproar among many users.”<sup>63</sup> Verizon Wireless has also announced that it is considering following AT&T to a tiered

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Written *Ex Parte* Submission of the United States Department of Justice in GN Docket No. 09-51, 21-22, filed Jan. 4, 2010.

<sup>62</sup> “AT&T Tiered Data Pricing Plan A Worm In The Apple,” *Forbes.com* (Jun. 10, 2010), available at <http://blogs.forbes.com/greatspeculations/2010/06/10/att-tiered-data-pricing-plan-a-worm-in-the-apple/>.

<sup>63</sup> Paul Mah, “AT&T tiered pricing brings data usage into spotlight,” *FierceCIO.com* (Jun. 8, 2010), available at <http://www.fiercecio.com/techwatch/story/t-tiered-pricing-brings-data-usage-spotlight/2010-06-08>. Indeed, Verizon Wireless is estimated to have as much or more data usage by smartphones as AT&T. Verizon Wireless smartphone users are estimated to use an average of 421 megabytes per month, as opposed to AT&T’s monthly average of 338 megabytes per month. Esther Shine, “Verizon Users Consume Most Smartphone Data,” *InformationWeek* (July 27, 2010), available at [http://www.informationweek.com/news/infrastructure/traffic\\_management/showArticle.jhtml?articleID=226300062](http://www.informationweek.com/news/infrastructure/traffic_management/showArticle.jhtml?articleID=226300062).

data pricing model.<sup>64</sup> As is clear from the public reaction to these tiered data plans, consumers demand unlimited data plans as a part of their mobile wireless services offering. What is also clear is that current spectrum holdings may not be sufficient to support such unlimited data offerings for very long. As a provider of unlimited wireless voice and data plans, MetroPCS is concerned that the acute shortage of spectrum will limit or eliminate its very business model, leaving consumers without this important additional pricing choice. Consumers have flocked to the unlimited-data business model, and it has been a proven winner in the marketplace. The Commission should take all necessary steps – including freeing up 500 MHz of additional wireless spectrum for commercial use in the near term – to prevent consumers from losing out on this valuable service model.

In order to free up badly-needed wireless spectrum, the Commission should immediately allocate for commercial use the 30 MHz of paired spectrum that it is currently able to allocate – spectrum that includes the AWS-2 and 700 MHz D Block. The Commission should also consider various proposals to pair the AWS-3 Band with spectrum in the 1755-1780 MHz Band, or, if 1755-1780 MHz is not available, the 1675-1710 MHz Band.<sup>65</sup> Additionally, the Commission should continue to pursue all avenues to reach its stated goal of 500 MHz of additional spectrum over the next decade, and 300 MHz of additional spectrum over the next five years.<sup>66</sup>

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<sup>64</sup> Lance Whitney, “Verizon Wireless eyeing tiered data service,” Cnet.com (Jun. 18, 2010), available at [http://news.cnet.com/8301-1035\\_3-20008138-94.html](http://news.cnet.com/8301-1035_3-20008138-94.html).

<sup>65</sup> Comments of MetroPCS Communications, Inc. in ET Docket No. 10-123, 3-8, filed June 28, 2010.

<sup>66</sup> *National Broadband Plan* xii.

If the Commission does not act, the need for additional spectrum will result in the need for further consolidation in the wireless industry. Since each carrier must have not only sufficient spectrum to meet the needs of their existing customers and planned customers, but also additional capacity to make sure all customer demands can be served, an increased number of competitors results in the need for more spectrum per customer. Accordingly, unless the Commission allocates sufficient spectrum to enable all competitors to meet their needs (and does so in a manner that allows each carrier to obtain its fair share), further consolidation is inevitable. With further consolidation, competition will be limited and the *National Broadband Plan*'s goal of additional competition will not be reached.

**C. The Commission Must Promote Sensible Auction Policies That Encourage Competition and Broad Distribution of Spectrum**

Just as important as actually releasing the proposed 500 MHz of additional wireless spectrum, such spectrum must be licensed in a way that encourages the participation of new entrants and small, rural and mid-tier carriers to participate in the resultant spectrum auction. MetroPCS believes economic areas ("EAs") would be ideal, but cellular market areas ("CMAs") or even the disfavored basic trading areas ("BTAs") would encourage competitive entry. Further, any auction rules must incent new entrants and small and rural carriers to compete on an equal footing. In previous comments, MetroPCS has proposed a sliding auction bidding credit scale that will encourage all participants possessing less than ideal spectrum holdings, including new entrants, and other small, rural and mid-tier carriers that have limited access spectrum, to participate in upcoming spectrum auctions.<sup>67</sup> MetroPCS' specific proposal, the Broadband

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<sup>67</sup> See, e.g., Comments of MetroPCS Communications, Inc. in WT Docket No. 09-66, 21-22, filed Sept. 30, 2009.

Incentive Discount (“BID”) Program, recommends that the following sliding scale of discounts be used in future spectrum auctions:

<u>Attributable Spectrum</u>	<u>% Discount</u>
0 to 20 MHz	60%
20 to 40 MHz	40%
40 to 60 MHz	20%
60+ MHz	0%

Such innovative and sensible auction policies will help to encourage new entrants in markets and increase competition. Finally, the Commission must refrain from imposing auction rules – such as combinational bidding – which clearly favor large entrenched bidders to the detriment of the competitive carriers that so badly need additional spectrum.<sup>68</sup>

**D. The Commission Must Resist the Temptation to Adopt Additional Regulations, Such As Net Neutrality and Broadband Reclassification, That Will Exacerbate the Spectrum Shortage**

The Commission recently has initiated two proceedings – net neutrality and broadband reclassification – each of which may have extremely harmful and unintended consequences on the mobile wireless services industry.<sup>69</sup> MetroPCS strongly opposes the unwarranted imposition

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<sup>68</sup> See US Cellular Corporation Comments in *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band License and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 06-169, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86, Further Notice of Proposed Rule Making, FCC 07-72 (rel. April 27, 2007).

<sup>69</sup> *Framework for Broadband Internet Service*, GN Docket No. 10-127, FCC 10-114 (rel. Jun. 17, 2010) (“*Third Way NOF*”); *Preserving the Open Internet, Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, FCC 09-93 (rel. Oct. 22, 2009) (“*Net Neutrality NPRM*”).

of additional regulations in either proceeding for a number of practical, public interest and legal reasons.<sup>70</sup> In particular, MetroPCS is gravely concerned that additional regulation in these areas “will disrupt a functioning Internet marketplace and also will freeze the investment necessary to accomplish the Commission’s goals set forth in the *National Broadband Plan*.”<sup>71</sup> The spectrum scarcity issue discussed above underscores the different circumstances faced by wireless and wireline providers with respect to net neutrality regulation. Wireless carriers must provide both voice and data service over finite spectrum resources, unlike wired providers who can lay more cable to increase capacity nearly on demand.<sup>72</sup> This fact requires that providers of mobile wireless services be able to rationally manage their networks to ensure that they are not clogged – thereby preserving the Internet experience for all users. As MetroPCS has noted, “[w]ireless networks simply are not well suited for the type of top-down net neutrality regulation that the Commission has proposed.”<sup>73</sup> Instead of looking for additional ways to regulate the functioning retail component of the mobile wireless services industry, the Commission should instead focus on promoting seamless, nationwide data services by creating an automatic data roaming right and releasing additional wireless spectrum for commercial use under sensible auction policies. Such policies will promote competition in the mobile wireless services industry, furthering the goals of the *National Broadband Plan* and improving the broadband experience for all consumers.

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<sup>70</sup> See Comments of MetroPCS Communications, Inc. in GN Docket No. 09-191 and WC Docket No. 07-52, filed Jan. 14, 2010 (“MetroPCS Net Neutrality Comments”); Reply Comments of MetroPCS Communications, Inc. in GN Docket No. 09-191 and WC Docket No. 07-52, filed Apr. 19, 2010; Comments of MetroPCS Communications, Inc. in GN Docket No. 10-127, filed Jul. 15, 2010 (“MetroPCS Third Way Comments”).

<sup>71</sup> MetroPCS Third Way Comments 16.

<sup>72</sup> In many instances, the only requirement to add additional capacity may be to change the terminal equipment on the ends of existing cable.

<sup>73</sup> MetroPCS Net Neutrality Comments 39-40.

## V. THE COMMISSION MUST PROMOTE POLICIES THAT ENCOURAGE INTERMODAL COMPETITION

Trending data show that consumers are increasingly likely to abandon their traditional landline telephones for wireless – to “cut the cord.” In fact, recent studies have shown that “22.7 percent of households, or more than one out of every five, were wireless-only, up from 17.5 percent in the first half of 2008, 13.6 percent in the first half of 2007, and 10.5 percent in the first half of 2006.”<sup>74</sup> Innovative fixed-price, tax-inclusive, unlimited-use wireless plans, such as those offered by MetroPCS, are a driving force behind the reason that the “number of adults who rely exclusively on mobile wireless for voice service has increased significantly in recent years.”<sup>75</sup> Importantly, a significant percentage of MetroPCS’ users are first-time wireless users, including those low-income customers without credit that uniquely benefit from MetroPCS’ pay-in-advance wireless plans. Further, a substantial number of MetroPCS’ customers use MetroPCS as their primary or sole telecommunications service. Wireless substitution for data services is also increasing, with a “fast-growing population of cellphone users – led by minorities – who are taking advantage of more powerful devices, an explosion of applications and cheaper access to the Web.”<sup>76</sup> Indeed, “Six out of 10 African Americans and Hispanics use their cellphones to get onto the Internet, a greater portion than for the overall adult population”<sup>77</sup> – showing that wireless substitution is helping to bridge the digital divide. It is just these types of customers that MetroPCS serves – those who most need affordable primary access to the Internet. In an effort

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<sup>74</sup> *Fourteenth Report* ¶ 340.

<sup>75</sup> *Id.* ¶ 339.

<sup>76</sup> *Kang Article*.

<sup>77</sup> *Id.*

to promote the broad distribution of the broadband Internet, MetroPCS urges the Commission to recognize these important trends and support policies that promote intermodal competition.

#### **A. Intercarrier Compensation Reform**

MetroPCS believes that the time has come for the Commission to adopt comprehensive intercarrier compensation and universal service reform that implements a unified regime and reflects marketplace realities. The Commission itself has recognized that it “can wait no longer to begin the process of comprehensive intercarrier compensation reform. The differences in existing intercarrier compensation regimes impose significant inefficiencies on users and distort carriers’ investment incentives.”<sup>78</sup> MetroPCS urges the Commission to adopt rules that treat all types of traffic – local, intrastate, or interstate; wireline and wireless; access and reciprocal compensation – in a consistent manner, thus creating a clear path toward unifying all intercarrier rates. These rates should be no more than \$0.0007 per minute-of-use (“MOU”), which closely approximates the actual costs of terminating traffic. Doing so will promote intermodal competition, and allow wireless and wireline carriers to compete fairly against each other.

In order for wireless and wireline carriers to compete on a level playing field, wireless carriers must also have the ability to obtain access payments equal to those received by their wireline competitors. Due to the Commission’s policy restricting the ability of CMRS carriers to collect access payments, “most traffic sent to CMRS providers from small incumbent LECs is

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<sup>78</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, 24 FCC Rcd 6475, Appendix A, ¶ 189 (2008).

terminated without compensation.”<sup>79</sup> This imbalance defies logic – from the end user’s perspective, it makes little or no difference whether a call originates from or terminates to a wireless as compared to a wireline phone. And, the call functions performed by the wireless carrier are virtually identical to those performed by a wireline carrier. Further, as increasing amounts of traffic move to wireless, interexchange carriers are reaping an unwarranted windfall. Although interexchange carriers can enter into voluntary agreements to pay wireless access, there is little incentive to do so. Under the present regulatory regime, such providers can terminate traffic for free, while wireless carriers are unable to block such traffic or to force an intercarrier agreement.<sup>80</sup> By mandating access, the wireless industry can continue its move towards flat rate pricing, which will accelerate competition with wireline carriers. Further, since the largest two wireless carriers are associated with wireline carriers who receive access payments for such traffic, the absence of access for unaffiliated wireless carriers is particularly problematic, since such wireless carriers compete against each other. This situation gives the unaffiliated wireless carriers less price flexibility than their counterparts since they are unable to receive such access payments within their corporate structure. Thus, the Commission should finally allow wireless providers to collect access payments.

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<sup>79</sup> *T-Mobile Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, 20 FCC Rcd 4855 (2005).

<sup>80</sup> This is to be distinguished from the situation for local traffic under 251(a)(1) since for all non-access traffic the carriers have an obligation to enter into interconnection agreements. Here, the Commission has not mandated such arrangements, so an interexchange carrier can refuse to negotiate; leaving the wireless carrier with no recourse.

## **B. Special Access Reform**

Special access services play an important role in the deployment of affordable broadband service, and quick Commission action on this critical input is necessary.<sup>81</sup> In order to deploy 3G and 4G networks, wireless carriers will be required to further expand their backhaul capacity. Whereas with voice, several T-1 lines at a site might be sufficient to handle the anticipated traffic, upgrading to 4G broadband services will require carriers to deploy DS-3s or higher capacity at each site. Indeed, the two largest carriers have indicated that they are installing Ethernet at most of their sites to handle the current and anticipated traffic demands. Due to network structure, wireless carriers are forced to use incumbent wireline carriers for a number of important inputs vital to wireless services, such as access charges and transit fees. When the cost of such inputs increases, so does the cost of wireless services, to the detriment of competition and consumers. The special access market as it exists today is ripe for anticompetitive behavior – not only do the largest three incumbent LECs account for approximately 94 percent of the interstate special access market, but also “special access generated 85% of [these LECs’] reported intercarrier revenues.”<sup>82</sup> Incumbent LECs have every incentive to overprice special access facilities, not only to “protect their local exchange monopolies from competition,”<sup>83</sup> but also to subsidize or otherwise protect their own wireless subsidiaries. Commissioner Copps and former Commissioner Adelstein both have stated that there is “substantial data available in [Commission] proceedings to indicate that the special access market is anything but

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<sup>81</sup> Comments of Sprint Nextel Corporation in WT Docket No. 09-66, filed Jun. 15, 2009 (“Sprint Nextel Special Access Comments”).

<sup>82</sup> Peter Bluhm with Dr. Robert Loube, National Regulatory Research Institute, *Competitive Issues in Special Access Markets*, No. 09-02, at 8 (Jan. 21, 2009).

<sup>83</sup> *LEC-CMRS Safeguards Order*, 12 FCC Rcd 15668, ¶ 27, 49 (1997), *aff’d GTE v. FCC*, 233 F.3d 341 (D.C. Cir. 2000).

competitive,”<sup>84</sup> and other stakeholders agree.<sup>85</sup> In order to promote a level playing field among all competitors in the market for wireless services, MetroPCS urges the Commission to undertake special access reform based on the current record.

## VI. CONCLUSION

In order to encourage competition in the industry, the Commission must focus its efforts on bringing parity and competition to the wholesale market for access to wireless data roaming services, access to spectrum and access to the latest and most advanced handset technologies. In doing so, the Commission must adopt policies that promote competition and innovation for all wireless carriers, not merely the largest few. The Commission must also resist the temptation to adopt unnecessary regulations, such as net neutrality and broadband reclassification, which may have substantial unintended consequences for the wireless industry. Finally, the Commission must adopt meaningful reforms with respect to intercarrier compensation and special access. By adopting the policies discussed above, the Commission can quickly fix the non-competitive wholesale market for wireless inputs, ensuring that the retail market will remain competitive, thus continuing to benefit consumers and promote the goals of the *National Broadband Plan*.

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<sup>84</sup> Joint Dissenting Statement of Commissioners Copps and Adelstein, *AT&T Broadband Forbearance Order*, 22 FCC Rcd 18705, 18742 (2007).

<sup>85</sup> Sprint Nextel previously has noted that the current record provides the Commission ample evidence of a failed special access market. *See* Sprint Nextel Special Access Comments 3.

Respectfully submitted,

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