

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

In the Matter of)	
)	
Implementation of Section 6002(b) of the)	WT Docket No. 10-133
Omnibus Budget Reconciliation Act of 1993)	
)	
Annual Report and Analysis of Competitive)	
Market Conditions With Respect to Mobile)	
Wireless, including Commercial Mobile)	
Services)	

REPLY COMMENTS OF VERIZON WIRELESS

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REPLY COMMENTS OF VERIZON WIRELESS

I. INTRODUCTION AND SUMMARY

Verizon Wireless hereby submits these reply comments in response to the Public Notice in the above-captioned proceeding.¹ That Public Notice appropriately sought submissions containing facts and data on the state of competition in the wireless industry.² Verizon Wireless supplied figures, charts, graphs, and other information detailing, among other things:

- The broad and growing range of mobile service providers in the market;³
- The extraordinary level of competition and consumer usage in the United States in comparison to other nations;⁴

¹ *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, Public Notice, DA 10-1234 (June 30, 2010).

² *Id.* at 2 (“[W]e are interested in obtaining data and metrics that quantify the importance of mobile data and mobile broadband services; these would include detailed, comprehensive, historical measurements of mobile data traffic, usage, subscribers, and devices. This *Public Notice* contains a series of questions asking for data and analytic recommendations related to that effort.”).

³ Comments of Verizon Wireless, WT Docket No. 10-133, 9-31 (filed July 30, 2010) (“Verizon Wireless Comments”).

⁴ *Id.* at 42-46.

- The ability of new providers to enter the mobile services market;⁵
- The fierce price and non-price competition in which providers are engaged;⁶
- High and rising levels of consumer satisfaction;⁷ and
- Intense competition in the upstream backhaul, infrastructure, and spectrum segments, as well as the edge markets for devices, applications, and content.⁸

Verizon Wireless also showed how competition and innovation have accelerated under this Commission’s watch, providing numerous examples of new entrants, services, plans, applications, devices, and content introduced in the past year.⁹ It further illustrated how this Commission has encouraged competition by commencing proceedings to make more spectrum available for commercial mobile services and clearing unreasonable barriers to tower siting. The data, statistics, and other information provided by Verizon Wireless and other parties¹⁰ overwhelmingly demonstrate that competition in the wireless industry—as well as its input and downstream segments—is intense, growing, and providing customers with even more choices among wireless services, devices, and applications to meet their personal needs. The existence of vigorous competition is constantly being confirmed by industry analysts.¹¹

⁵ *Id.* at 31-42.

⁶ *Id.* at 46-81.

⁷ *Id.* at 81-85.

⁸ *Id.* at 86-122.

⁹ *Id.* at 2-5.

¹⁰ See Comments of CTIA-The Wireless Association, WT Docket No. 10-133 (filed July 30, 2010); Comments of AT&T Inc., WT Docket No. 10-133 (filed July 30, 2010); Comments of Sprint Nextel Corporation, WT Docket No. 10-133 (filed July 30, 2010).

¹¹ See also, e.g., Jeffrey Bartash, *AT&T Stock Gets First Upgrade In More Than A Year*, Dow Jones, July 26, 2010 (“Competition in the mobile industry is fierce.”); Reinhardt Krause, *MetroPCS Goes East On Its Growth Route Entering NYC*, *Boston, Investor’s Business Daily*, Apr. 24, 2009 (citing James Moorman, Standard & Poor) (“Still, competition is getting fierce, says James Moorman, a Standard & Poor’s analyst. Aside from Boost, T-Mobile USA offers a \$50 plan to long-term customers. Virgin Mobile, which has 5.4 million subscribers, slashed the

The few commenters who complained about the state of the industry failed to provide reliable facts or meaningful data to make their cases.¹² These omissions are significant in a proceeding in which the Commission specifically asked for data and analysis regarding the marketplace. Instead, these parties simply relied on rhetoric in repeating their tired calls for new regulation without documenting any evidence of market failure.¹³ In the few instances in which they attempted to analyze the state of the market, as requested by the Commission, their claims were not only unsupported, but erroneous as well. Indeed, many of commenters' claims are disproved by the evidence in the record and the statements of wireless providers to investors.¹⁴

price of its unlimited calling plan to \$50 from \$80 per month.”); *AT&T at UBS Media & Communications Conference – Final*, FD Wire, Dec. 9, 2009 (citing John Hodulik, UBS) (“I think there is a sense that you are seeing new competition sort of bubble up from below, and as the unlimited prepaid guys gain scale and Sprint and T-Mobile try to -- start to regrow their business.”).

¹² See Comments of Free Press and Media Access Project, WT Docket No. 10-133 (filed July 30, 2010) (“Free Press/MAP Comments”); Comments of MetroPCS Communications, Inc., WT Docket No. 10-133 (filed July 30, 2010) (“MetroPCS Comments”); Comments of Rural Cellular Association, WT Docket No. 10-133 (filed July 30, 2010) (“RCA Comments”); Comments of The Rural Telecommunications Group, Inc., WT Docket No. 10-133 (filed July 30, 2010) (“RTG Comments”).

¹³ See Timothy J. Muris, *Antitrust in a High-Tech World: Innovation Suffers when Regulators Penalize Businesses for their Success in the Marketplace*, THE WALL STREET JOURNAL, Aug. 11, 2010 (“When a competitor tells government that its rival acts unfairly, the complaint should be viewed with great suspicion. . . . Competitors can provide valuable information about marketplace realities, but they have every incentive to misuse the government to obtain an advantage that is otherwise unattainable. . . [I]f an economist ‘finds a business practice . . . he does not understand, he looks for a monopoly explanation.’ . . . So when faced with complex business practices whose motivation and impact is not obvious, competition authorities should be particularly cautious not to limit or forestall innovation or to launch massive, costly investigations simply because competitors complain. . . . Complaining competitors often want the innovator to be forced to share the source of that success . . . Nothing could be more destructive of the incentives for future innovation than rules that prevent innovators from reaping the full benefits of their work. . . . [Regulators] must ensure that the players are penalized only for breaking the rules, not for winning.”).

¹⁴ See Attachment A.

II. CLAIMS REGARDING MARKET STRUCTURE AND COMPETITION ARE ERRONEOUS.

Claim: Market concentration effectively has recreated a wireless “duopoly.”

Fact: More than 90 percent of Americans are served by four or more providers, and new providers are continuing to enter the market.

MetroPCS alleges that “[t]he Commission has allowed the largest carriers, AT&T and Verizon Wireless, to acquire other wireless carriers, hereby further concentrating the market . . . [and] effectively allow[ing] these two largest carriers to begin recreating the wireless duopoly.”¹⁵ RTG makes the same conclusory claim.¹⁶ These filings, however, are bereft of any economic analysis, and ignore the facts. MetroPCS and RTG simplistically (and wrongly) equate their claims of increased concentration with suggestions of duopoly and lack of competition, but as the economics literature makes clear, even a very high market share will not necessarily denote market power.¹⁷ Furthermore, these commenters simply ignore the wealth of pricing and other market data that demonstrate that consumers are enjoying more choices and lower prices for many wireless plans and devices.

In any case, as MetroPCS affirms elsewhere in its comments, the market is remarkably competitive:

There is no question that the retail mobile wireless services marketplace is competitive, with five to six retail facilities-based competitors and numerous mobile virtual network operators in most metropolitan areas. This has created a hotbed of technological innovation that has provided enormous benefits to consumers. Consumers today have access to ever-

¹⁵ MetroPCS Comments at 2-3.

¹⁶ RTG Comments at 5-6.

¹⁷ See, e.g., Phillip E. Areeda and Herbert Hovenkamp, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION §506d (2007) (“Substantial market power can persist only when there are significant and continuing barriers to expansion and entry.”); *id.* §506a (“[T]he degree of market power depends on the response of buyers to price changes. Greater responsiveness (greater ‘elasticity’ of demand) minimizes market power.”).

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.... 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.¹⁸

The remainder of the record confirms that there is no “duopoly.” As Verizon Wireless demonstrated in its initial comments, it faces stiff competition from Clearwire, T-Mobile, Sprint, MetroPCS, Leap, TracFone (now the nation’s 5th largest wireless service provider), other regional and small providers, new and emerging entrants, and intermodal competitors, as well as AT&T.¹⁹ In many markets, these competitors enjoy substantial market shares, and AT&T and Verizon Wireless are not even the largest two providers. And, according to the FCC’s own analysis, 90.9 percent of American consumers have a choice of at least four mobile wireless service providers and 95.8 percent have a choice of at least three providers.²⁰ Moreover, 76.1 percent of Americans live in census tracts served by three or more 3G wireless mobile providers,

¹⁸ MetroPCS Comments at 1-2.

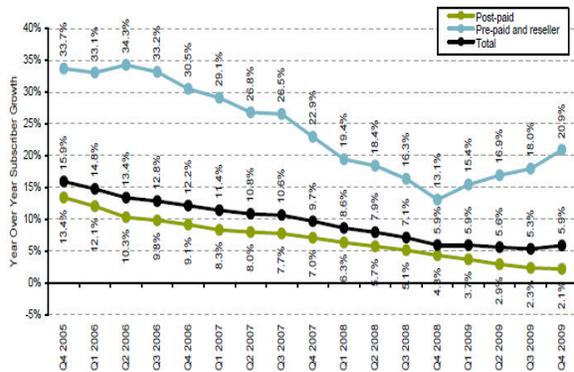
¹⁹ See Verizon Wireless Comments at 9-31.

²⁰ *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*, Fourteenth Report, FCC 10-81, 7 (¶ 4), 37 (¶ 42) (May 20, 2010) (“*Fourteenth Report*”). RTG claims that this information is unreliable as it is based on American Roamer data, which is based on carriers’ coverage representations. RTG claims that these representations are “overly optimistic (and rarely confirmed)” and thus “give a false impression that mobile services are ubiquitous and that effective competition exists across the country.” RTG Comments at 4. RTG, however, fails to acknowledge that carriers must submit accurate data to American Roamer or risk facing enforcement actions and lawsuits for potential violations of false advertising and misrepresentation laws, not to mention the outrage of customers that rely on that data.

up from just 50.7 percent one year earlier.²¹ These providers, moreover, are investing billions to upgrade service and cutting prices in order to win and retain subscribers in the hotly contested mobile services market.

MetroPCS and RTG conveniently omit discussions of the prepaid sector from their allegations of a duopoly, an omission that is particularly strange coming from MetroPCS, whose business is based on prepaid plans. One glance at the prepaid subscriber growth chart and the prepaid market share chart incorporated in Verizon Wireless’ comments should quickly dispel any notion of the limited role of prepaid in the wireless market and, for that matter, the myth of a wireless “duopoly.”²²

U.S. Wireless Industry Subscriber Growth Rates



Source: Company reports, Bernstein estimates and analysis

U.S. Wireless Prepaid Subscriber Share by Carrier, 3Q09

Carrier	Share (%)
TracFone	24.0
T-Mobile	11.9
MetroPCS	11.5
Boost Mobile	10.4
Verizon Wireless	9.9
AT&T	9.9
Virgin Mobile	8.7
Leap Wireless	8.5
Other	5.3

Note: Total U.S. prepaid subscribers are 55 million.

Source: IDC, 2010

Recent carrier announcements, moreover, demonstrate this competitive marketplace. For example, Clearwire reported that its customer total has reached over 2 million, almost three times what it was at the end of 2009, and that it expects to reach three million customers by year’s

²¹ *Fourteenth Report at 39 (¶ 45); 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, Thirteenth Report, 74 (¶ 146), DA 09-54 (Jan. 16, 2009).*

²² Verizon Wireless Comments at 50-51.

end.²³ MetroPCS also reported 1.4 million additional net subscribers in the past twelve months.²⁴ Thus, contrary to Free Press/MAP's claims,²⁵ Verizon Wireless and AT&T are not the only providers gaining subscribers. In any event, Verizon Wireless' increase in subscribers is due to its commitment to customer service, improving its network, providing high quality services that consumers want, and the hard work of its management and employees, not any purported market power.²⁶

²³ Clearwire Reports Strong Second Quarter 2010 Results, Press Release, Aug. 4, 2010, <http://newsroom.clearwire.com/phoenix.zhtml?c=214419&p=irol-newsArticle&ID=1456460&highlight=> (reporting 722,000 total net new subscribers in 2Q10 and \$122.5 million in revenue, a 93% increase over 2Q09). *See also* Clearwire Reports Fourth Quarter and Full Year 2009 Results, Press Release, Feb. 24, 2010, <http://investors.clearwire.com/phoenix.zhtml?c=198722&p=irol-newsArticle&id=1394717> (reporting 688,000 subscribers at the end of 4Q09).

²⁴ MetroPCS Reports Second Quarter 2010 Results, Record Adjusted EBITDA and Record Second Quarter Net Subscriber Additions, Press Release, Aug. 5, 2010, <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1456731&highlight=> (reporting finishing the second quarter 2010 with 7.6 million subscribers, an increase of 1.4 million from second quarter 2009).

²⁵ Free Press/MAP Comments at 14.

²⁶ *See* Verizon Wireless Comments at 81-85, 159-160, 167. *See also* J.D. Power and Associates Reports: The Gap in Call Quality Performance among Carriers Narrows as Competition Intensifies across the Wireless Service Industry, Press Release, Mar. 18, 2009, <http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2009041> (noting that “[i]n an increasingly competitive environment in which customers are growing more and more dependent on their wireless phones, carriers that can provide superior network quality will have a distinct advantage in attracting new customers and in keeping existing customers satisfied” and that Verizon Wireless ranks highest in the Northeast and Mid-Atlantic regions, leads in the Southwest region, and ties for the highest rank in the West region); American Customer Satisfaction Index, Scores by Industry, Wireless Telephone Service, http://www.theacsi.org/index.php?option=com_content&task=view&id=147&Itemid=155&i=Wireless+Telephone+Service (reporting the highest grade for wireless customer satisfaction since the survey started looking at wireless in 2004).

Claim: Consumers face limited choices in the wireless marketplace.

Fact: Wireless providers compete aggressively on all fronts, and price reductions have reflected this competition.

Free Press and Media Access Project (“MAP”) assert that “[c]onsumers of mobile wireless broadband services today face limited choices in terms of service plans and devices, and far too often pay supracompetitive service prices, penalties, and fees.”²⁷ This *ipse dixit* assertion is frivolous. In every segment of the market, consumers have numerous and varied choices and prices for many plans are falling, not rising. Moreover, these choices are developing in ways that reflect intensifying competition among wireless providers.

Consumers in fact have many choices among providers and among voice, data, and messaging plans offered by those providers. As Verizon Wireless showed in extensive detail in its initial comments,²⁸ wireless providers offer a wide variety of bundled and unbundled voice and data services with many features and pricing variables. An examination of these offerings demonstrates that carriers are competing on multiple dimensions. Specifically, some of the available plans include messaging and/or data services, free nights (beginning at different hours) and weekends, rollover minutes, friends-and-family options, and more. Other plans cater to more basic needs. Indeed, a review of just the phone plans with data offerings from a handful of providers demonstrates an astounding variety of options and price points.²⁹

PLANS AND PRICES – FEATURE PHONES AND SMARTPHONES (July 2010)				
Carrier	Plan	Max Monthly Traffic	Price	Notes
AT&T	Prepaid	1 KB	\$0.01	
AT&T	Prepaid	1 MB	\$4.99	
AT&T	Prepaid	100 MB	\$19.99	

²⁷ Free Press/MAP Comments at 3.

²⁸ Verizon Wireless Comments at 9-31, 46-65.

²⁹ Verizon Wireless Comments at 59-61.

PLANS AND PRICES – FEATURE PHONES AND SMARTPHONES (July 2010)				
AT&T	Pay-per-use	1MB	\$2.00	
AT&T	DataConnect 200 MB	200 MB	\$15.00	With a qualifying voice plan
AT&T	DataConnect 2 GB	2 GB	\$25.00	With a qualifying voice plan
AT&T	Smartphone/BlackBerry and tethering	2GB	\$45.00	With a qualifying voice plan
Boost Mobile	Unlimited (Prepaid)	Unlimited	\$50	Unlimited voice, web access, texting, email
Boost Mobile	Smartphone (Prepaid)	Unlimited	\$60	Unlimited voice, web access, texting, email
Cricket	Unlimited (Prepaid)	Unlimited	\$50-\$60	Unlimited voice, email, texting, web browsing
MetroPCS	Unlimited Plans (Prepaid)	Unlimited	\$40-\$60	Unlimited voice, web access, texting, email (\$50 plans and above)
MetroPCS	Smartphone	Unlimited	\$50	Unlimited voice, web access, texting, email
Sprint	Simply Everything	Unlimited	\$99.99	unlimited voice, data, messaging
Sprint	Everything Data - with Any Mobile, Anytime (450 voice minutes)	Unlimited	\$69.99	unlimited data and messaging
Sprint	Everything Data - with Any Mobile, Anytime (900 voice minutes)	Unlimited	\$89.99	unlimited data and messaging
T-Mobile	BlackBerry and Smartphone Unlimited	Unlimited	\$39.99	Voice calls .45/ minute
T-Mobile	Individual talk + text + web (500 minutes)	Unlimited	\$59.99	unlimited data and messaging
T-Mobile	Individual talk + text + web (1000 minutes)	Unlimited	\$69.99	unlimited data and messaging
T-Mobile	Individual talk + text + web (unlimited minutes)	Unlimited	\$79.99	unlimited data and messaging
T-Mobile	Sidekick Prepaid	Unlimited	\$1/day	Unlimited e-mail, texting, IM, and web; 15¢/minute for all domestic calls
TracFone	Straight Talk (Prepaid)	30 MB	\$30	1000 minutes, 1000 text messages
TracFone	Straight Talk (Prepaid)	Unlimited	\$45	Unlimited voice, web access, text, minutes
U.S. Cellular	BlackBerry / Windows Mobile Email & Web Personal Service	Unlimited	\$30.00	With a voice plan
U.S. Cellular	BlackBerry Email & Web Service (Corporate enterprise)	Unlimited	\$40.00	With a voice plan
U.S. Cellular	Android Email & Web Service	Unlimited	\$30.00	With a voice plan
U.S. Cellular	Android Email & Web & Modem Service	Unlimited (modem: 5 GB)	\$55.00	With a voice plan

PLANS AND PRICES – FEATURE PHONES AND SMARTPHONES (July 2010)				
Verizon Wireless	Feature phone (Prepaid)	N/A	\$0.99/day	Mobile web; music and ringback tones for additional fee
Verizon Wireless	Data plan: feature phone	N/A	\$1.99	
Verizon Wireless	Data plan: feature phone or 3G multimedia phone	25 MB	\$9.99	
Verizon Wireless	Data plan: feature phone, 3G multimedia phone, or 3G smartphone	Unlimited	\$29.99	
Verizon Wireless	Tethering: Mobile broadband Connect and 3G Mobile Hotspot-capable smartphones	2 GB	\$20.00	With a qualifying data package
Verizon Wireless	Tethering: Mobile broadband Connect and 3G Mobile Hotspot-capable smartphones	5 GB	\$30.00	With a qualifying data package of \$29.99 or higher
Verizon Wireless	Tethering: Mobile broadband Connect and 3G Mobile Hotspot-capable smartphones	5 GB	\$49.99	With a qualifying voice plan (but no data package)
Virgin Mobile	Unlimited (300 voice minutes)	Unlimited	\$25 (\$35 with BlackBerry)	Unlimited web access, texting, email
Virgin Mobile	Unlimited (1200 voice minutes)	Unlimited	\$40 (\$50 with BlackBerry)	Unlimited web access, texting, email
Virgin Mobile	Unlimited (unlimited voice minutes)	Unlimited	\$60 (\$70 with BlackBerry)	Unlimited voice, web access, texting, email

The prepaid market is also expanding dramatically, offering consumers even lower prices.³⁰

Cable, satellite, DBS, VoIP, intermodal, and unlicensed providers are also increasing their presence in the wireless marketplace, providing customers with even more service options.³¹

The number and variety of service plans available is only outpaced by the number and variety of wireless devices available, as well as applications. As Verizon Wireless has shown in the initial round, wireless providers offer a range of devices that are designed to meet the varying needs of individual customers.³² The range of smartphones available, in particular, is rapidly

³⁰ See Verizon Wireless Comments at 49-54.

³¹ See *id.* at 23-31.

³² *Id.* at 97-106.

increasing. Wireless providers of all sizes, including small and rural carriers, are offering consumers smartphones that use at least six different operating systems from a far higher number of manufacturers.³³ Wireless providers also offer basic and multimedia phones for consumers who may not want or need all of the capabilities of smartphones. In addition, carriers and retailers offer other wireless devices, such as PC cards, netbooks, tablets, Wi-Fi hotspots, e-readers, portable media players, and consumer navigation devices, that are fundamentally changing how and when consumers obtain information and entertainment.³⁴ In light of this data, no one could reasonably conclude (as Free Press/MAP wrongly assert) that consumers “face limited choices in terms of service plans and devices.”

Claim: Nationwide providers have engaged in collusive parallel pricing.

Fact: Available service plans in no way reflect collusive parallel pricing.

Free Press/MAP further contend—again providing no data or economic analysis whatsoever—that mobile wireless “[p]roviders engage in parallel conduct—both in setting their prices and in establishing their respective service plans’ terms, conditions, and limitations—and such conduct demonstrates the lack of effective competition while depriving users of the value and savings they would realize in a truly competitive environment.”³⁵ As demonstrated above, however, consumers have access to a wide variety of wireless service plans from a number of providers. This diversity shows that carriers are vigorously competing to offer consumers the best possible plan to suit their individual needs, resulting in plans that are anything but parallel.

These options are not the result of collusive parallel pricing. As economist Michael Topper observed in a declaration submitted in the Commission’s record for the *Fourteenth*

³³ *Id.* at 101-102 (listing a few of the smartphones available from wireless providers).

³⁴ *Id.* at 103-106.

³⁵ *See* Free Press/MAP Comments at 3.

Mobile Wireless Competition Report, product differentiation, such as that noted above, “makes it very difficult for carriers to coordinate pricing and monitor cheating from any agreement [to maintain specific prices].”³⁶ For example, a provider can change the terms of service—by increasing the number of minutes or messages included in a given plan, by improving quality of service, etc.—and such moves will have the effect of challenging competitors even if prices remain facially “parallel.” Accordingly, even if prices were identical, this fact can be entirely consistent with the workings of a competitive market,³⁷ as the Supreme Court recently emphasized.³⁸ Free Press/MAP never responded to Dr. Topper’s declaration, nor have they submitted an economist declaration of their own with data that might support their claims.

In sum, any objective review of service options and actual pricing behavior in the wireless market shows precisely the types of creative pricing decisions and shrewd responsive maneuvers that one expects in a robustly competitive marketplace.

³⁶ Declaration of Michael D. Topper, *Assessing the Competitiveness of Mobile Wireless: An Economic Analysis*, at 55 (Sept. 30, 2009), attached as Exhibit A to Comments of Verizon Wireless, WT Docket No. 09-66 (filed Sept. 30, 2009).

³⁷ *See id.* at 54-55 (“For example, since wireless providers face similar costs for deploying and operating their networks and largely compete for the same demand, vigorous competition would tend to result in market equilibrium prices that are similar for similar products and services.”).

³⁸ The Supreme Court recently affirmed this insight in connection with the telecommunications market, holding that “parallel conduct does not suggest conspiracy.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007). Indeed, “[e]ven conscious parallelism, a common reaction of firms in a concentrated market that recognize their shared economic interests and their interdependence with respect to price and output decisions[,] is not in itself unlawful.” *Id.* at 553-54 (internal quotation omitted).

III. CLAIMS REGARDING ACCESS TO SPECTRUM BY MID-SIZE AND SMALL CARRIERS ARE ERRONEOUS.

Claim: Because of industry consolidation and FCC auction policy, mid-size and small providers are unable to obtain spectrum.

Fact: While all wireless providers would benefit from the allocation of additional spectrum, small and mid-size providers have access to spectrum, and in fact have acquired substantial spectrum holdings.

Several parties argue that consolidation in the wireless market has led to a lack of spectrum resources for smaller and regional carriers, thereby restricting their growth and market entry.³⁹ MetroPCS alleges that “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.”⁴⁰ NTCA and MetroPCS further allege that recent auctions have been structured in ways that precluded small and mid-size carriers from obtaining spectrum.⁴¹ And RTG likewise claims that “spectrum scarcity . . . [has] stifled new market entry and next-generation network upgrades, which in turn has reduced competition.”⁴² These commenters supply no hard data or declarations to support these claims.⁴³ Verizon Wireless agrees that there is a need to identify and allocate new spectrum for commercial mobile wireless services and commends the Commission and Administration for committing to identify and make available 500 MHz of

³⁹ Free Press/MAP Comments at 16; MetroPCS Comments at 17; RCA Comments at 6; RTG Comments at 3; Comments of the National Telecommunications Cooperative Association, WT Docket No. 10-133, 5 (filed July 30, 2010) (“NTCA Comments”).

⁴⁰ MetroPCS Comments at 17.

⁴¹ NTCA Comments at 5 (“The top nationwide carriers have dominated the last few spectrum auctions.”); MetroPCS Comments at 17-18 (“Although it is true that the Commission has auctioned several significant blocks of broadband spectrum in recent years, much of it has ended up, one way or another, in the hands of the largest two carriers.”).

⁴² RTG Comments at 3.

⁴³ Again this year, these trade association comments fail to provide specific facts as to any of their members’ inability to obtain spectrum on the secondary market.

spectrum for wireless broadband use.⁴⁴ However, as detailed below, it is beyond dispute that mid-size and smaller carriers already regularly acquire spectrum through market-based mechanisms such as auctions and secondary market transactions.

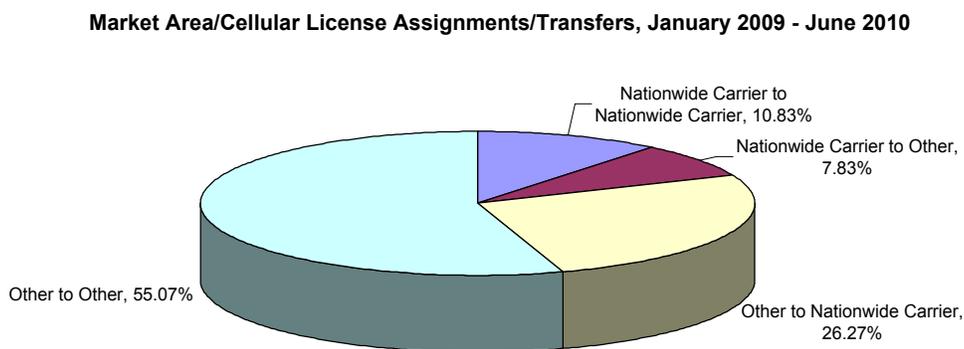
The Commission has taken several steps to ensure the continued ability of smaller providers to acquire spectrum. In addition to making bidding credits available to entrepreneurs as well as small and very small businesses, the Commission has adopted band plans intended to promote diversity in the allocation of spectrum among a wide variety of entities. For example, in the AWS-1 Auction 66 and the 700 MHz Auction 73, the Commission adopted band plans that contained licenses of various geographic area and spectrum sizes, including licenses covering smaller geographic areas, to respond to the stated needs of non-nationwide carriers. Indeed, with these two auctions, the Commission returned to licensing the very smallest sized license areas it had ever used—the 734 Cellular Market Areas (“CMA”). Of the licenses awarded in the AWS-1 and 700 MHz auctions, 66.1 percent were licensed on a CMA basis.⁴⁵

⁴⁴ The Omnibus Broadband Initiative, *Connecting America: National Broadband Plan*, at 75, 84-85 (2010), <http://www.broadband.gov/download-plan/> (“National Broadband Plan”); The White House, *Presidential Memorandum: Unleashing the Wireless Broadband Revolution* (June 28, 2010), <http://www.whitehouse.gov/the-press-office/presidential-memorandum-unleashing-wireless-broadband-revolution>.

⁴⁵ In the AWS-1 auction, the Commission offered 734 20-MHz CMA-based licenses, 176 20-MHz EA-based licenses, and 176 10-MHz EA-based licenses. *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66*, Public Notice, 21 FCC Rcd 4562, 4568 (¶ 11) (2006). In the most recent 700 MHz auction, the Commission offered 734 12-MHz CMA-based licenses, 176 12-MHz EA-based licenses and 176 6-MHz EA-based licenses. *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76*, Public Notice, 22 FCC Rcd 18141, 18147 (¶ 12) (2007). The Commission’s stated goal in taking these actions was “to promote dissemination of licenses among a wide variety of applicants, accommodate the competing need for both large and small licensing areas, meet the various needs expressed by potential entrants seeking access to spectrum and incumbents seeking additional spectrum, and provide for large spectrum blocks that can facilitate broadband deployment in the band.” *Service Rules for the 698-746, 747-762*

The results speak for themselves. As Verizon Wireless documented in its initial comments, approximately 83 percent of all licenses sold in the AWS-1 Auction were acquired by non-nationwide wireless service providers, and over 50 percent were won by businesses claiming designated entity status.⁴⁶ Likewise, 69 percent of all licenses sold in the 700 MHz Auction were acquired by non-nationwide providers, and 55 percent were won by small businesses claiming designated entity status.⁴⁷

In addition, mid-size and smaller carriers routinely acquire spectrum in the secondary market.⁴⁸ Since 2009, over 60 % of the license assignments involved non-nationwide carriers securing spectrum from nationwide or other non-nationwide carriers.⁴⁹



Indeed, mid-size and smaller carriers’ own statements, advertisements, and actions indicate that they have access to the spectrum they need to aggressively build-out new broadband wireless networks, particularly in less densely populated areas. For example, MetroPCS has

and 777-792 MHz Bands, Second Report and Order, 22 FCC Rcd 15289, 15317 (¶ 64) (2007) (citations omitted).

⁴⁶ See Verizon Wireless Comments at 32.

⁴⁷ *Id.*

⁴⁸ *Id.* at 34-40

⁴⁹ *Id.*

stated that it is “very comfortable” that it has “sufficient” spectrum to not only provide existing services but roll-out 4G, although of course like all carriers it would like additional spectrum.⁵⁰

Likewise, Leap Wireless has declared that it has adequate spectrum.⁵¹

Amid facts and figures such as these, there is no basis for claims that regional and smaller carriers lack access to spectrum or that the Commission’s auction rules must be revised for the benefit of mid-size or smaller providers.⁵² The Commission’s auction and secondary markets policies are working, enabling access to spectrum for nationwide, regional, and smaller wireless carriers alike. If, notwithstanding the opportunities provided by the Commission, certain local or regional providers remain unable to acquire spectrum resources, that outcome speaks more to the merits of their particular business strategies than to the state of competition in the market.

Claim: A spectrum cap or other spectrum ownership limits are necessary to preserve competition.

Facts: There is no data that shows how or why a cap or other limits would promote competition; to the contrary, carriers clearly need more (not less) spectrum.

There is no plausible ground for the Commission to reestablish a spectrum cap or adjust the spectrum screen, as once again advocated by RTG and Free Press/MAP.⁵³ Parties in favor of

⁵⁰ Roger Linqvist, Chairman & CEO of MetroPCS Communications Inc., Statement at Sanford C. Bernstein Strategic Decisions Conference, Jun. 4, 2010 (“We don’t need 100 megahertz. Obviously, we’d like to have more spectrum than less spectrum, but we’re very comfortable that, on average, we have sufficient spectrum to roll over into LTE.”).

⁵¹ Walter Berger, EVP & CFO of Leap Wireless International, Statement at Goldman Sachs Inaugural Technology, Media & Telecom Leveraged Finance Conference, Apr. 14, 2010 (“I think it’s going to be a very interesting time as the different propositions come out or different possibilities come out for Spectrum. But our positions are good.”); Doug Hutcheson, Leap Wireless International, Statement at Citi Global Entertainment, Media, and Telecommunications Conference, Jan. 07, 2010 (“So from a spectrum standpoint as we said, we think we have adequate spectrum to continue to drive us ahead. So I don’t know at this point we have any issues that are concerning or alarming to us on what we have seen on how that is unfolding.”).

⁵² See MetroPCS Comments at 23-24; NTCA Comments at 5-6.

⁵³ RTG Comments at 3 (“spectrum scarcity and the absence of a spectrum cap have stifled

a cap offer no economic, factual or data-driven analysis to support the assertion that the FCC should severely restrict spectrum ownership. To the contrary, as one of the central findings in the National Broadband Plan concludes, carriers need *more* (not less) spectrum to meet the dramatically increasing demands of their customers.⁵⁴ A spectrum cap will do nothing to address this situation. To the contrary, a spectrum cap will actually *limit* competition by restricting output and preventing wireless operators from growing. As Professor Katz observed:

[C]onsider a carrier that was deciding whether to develop and introduce a new service or device that was projected to be very popular with consumers and would increase the carrier's need for spectrum. If the spectrum cap were a binding constraint on the carrier, it would find it more difficult and/or costly to introduce the new service or device. For example, introducing the new service while being unable to expand the carrier's network capacity might lead to network congestion and service degradation. The result would be to weaken innovation incentives and discourage dynamic competition.⁵⁵

Also, there are insurmountable legal barriers to reimposing the spectrum cap.⁵⁶ That action could be justified only by compelling evidence of changed facts that warrant the reversal of the FCC's 2001 decision eliminating the cap.⁵⁷ The Commission's burden is particularly

new market entry and next-generation network upgrades, which in turn has reduced competition"); Free Press/MAP Comments at 16 ("the Public Interest Commenters continue to call upon the Commission to reinstitute spectrum caps and meaningful spectrum screens whenever appropriate.").

⁵⁴ National Broadband Plan at 76-77.

⁵⁵ Michael Katz, *An Economic Analysis of the Rural Telecommunications Group's Proposed Spectrum Cap*, 4 (Dec. 2, 2008), attached as Exhibit A to the Opposition of Verizon Wireless, RM-11498 (filed Dec. 2, 2008).

⁵⁶ See 2000 Biennial Regulatory Review: Spectrum Aggregation Limits for Commercial Mobile Radio Services, *Report and Order*, 16 FCC Rcd 22668 (2001) (eliminating the spectrum cap effective January 1, 2003) ("*Spectrum Cap Sunset Order*").

⁵⁷ See Comments of Verizon Wireless, GN Docket Nos. 09-157 & 09-51, 125-26 (filed Sept. 30, 2009) ("Verizon Wireless Innovation Comments") (citing *Brusco Tug & Barge Co. v. NLRB*, 247 F.3d 273, 278 (D.C. Cir. 2001) ("[I]t is 'axiomatic that an agency adjudication must either be consistent with prior adjudications or offer a reasoned basis for its departure from precedent.'"); *Robbins v. Reagan*, 780 F.2d 37, 48 (D.C. Cir. 1985) ("This court has long held

heavy here since it *eliminated* the spectrum cap based on its express finding that the rule was unnecessary. Its repeal was therefore statutorily *mandated* under section 11 of the Communications Act of 1934, as amended, which provides that the Commission “shall repeal or modify any regulation it determines to be no longer necessary in the public interest.”⁵⁸ Despite the Commission’s failure to state whether effective competition exists in the mobile wireless market in its *Fourteenth Report*, competition is rampant as demonstrated by the record in this proceeding. Indeed, the wireless industry is much more competitive now than it was in 2001 when the Commission eliminated the spectrum cap. No party has offered any factual basis sufficient to overcome this conclusion, nor could they.

Free Press/MAP’s other assertions as to spectrum are also meritless. First, they ask the Commission to institute a lower spectrum screen.⁵⁹ The Commission’s current screen includes cellular, broadband PCS, SMR, AWS-1, 700 MHz, and BRS spectrum. Given that all of this spectrum is used to provide competitive wireless service,⁶⁰ there is no basis for the Commission to remove any of these frequency bands from its spectrum screen. To the contrary, the Commission should *increase* the screen to reflect the reality that significant amounts of

that an agency’s change in direction from a previously announced intention is a danger signal that triggers scrutiny to ensure that the agency’s change of course is not based on impermissible or irrelevant factors.”)).

⁵⁸ *Spectrum Cap Sunset Order*, 16 FCC Rcd at 22677 (¶ 22), 22693 (¶ 47) (quoting 47 U.S.C. § 161(a)(2)) (footnotes omitted); *see id.* at 22670 (¶ 6) (“[I]n light of the strong growth of competition in CMRS markets since the initiation of the spectrum cap, we decide today that we should move from the use of inflexible spectrum aggregation limits to case-by-case review of spectrum aggregation.”). *See also* Opposition of Verizon Wireless, RM-11498, 2-7 (filed Dec. 2, 2008) (detailing the Commission’s Section 11 obligations).

⁵⁹ *See* Free Press/MAP Comments at 16.

⁶⁰ *See* Verizon Wireless Innovation Comments at 127 (citing *Sprint/Clearwire Order*, 23 FCC Rcd at 17592 ¶ 53).

additional spectrum are available for use to provide competitive wireless service but are not included, such as MSS and WCS spectrum.⁶¹

Second, Free Press/MAP suggest the Commission should differentiate between spectrum above vs. below 1 GHz because spectrum below 1 GHz is the “most efficient spectrum for mobile Internet usage.”⁶² This is not correct. As Verizon Wireless demonstrated in its initial comments, spectrum both above and below 1 GHz offers benefits for broadband service.⁶³ If anything, spectrum above 1 GHz, because of its potential to handle capacity demands and to be licensed in larger contiguous blocks, can provide advantages for some broadband deployments. That different bands have different advantages and disadvantages is widely recognized. As Sprint has stated, “having more spectrum available is a far greater advantage than the frequency band it occupies.”⁶⁴

⁶¹ See Verizon Wireless Comments at 147-157.

⁶² See Free Press/MAP Comments at 16 (claiming that spectrum under 1 GHz is the “most efficient spectrum for mobile Internet usage”).

⁶³ Verizon Wireless Comments at 137-147. See also AT&T Comments at 24-27.

⁶⁴ Sprint, Presentation, “Mobile WiMAX: The 4G Revolution Has Begun,” Version 1.0, at 12, http://www4.sprint.com/servlet/whitepapers/dbdownload/Mobile_WiMAX_The_4G_Revolution_Has_Begun_Jan2010.pdf?table=whp_item_file&blob=item_file&keyname=item_id&keyvalue=%274v994ya%27.

IV. CLAIMS SEEKING NEW REGULATION ARE ERRONEOUS AND INAPPROPRIATE IN THIS PROCEEDING.

Claim: Rural, mid-tier, and smaller carriers are unable to obtain handsets and roaming or other agreements.

Fact: Rural, mid-tier, and smaller carriers offer a range of handsets, including smartphones, and have successfully entered into reasonable roaming and other arrangements.

Parties also use this proceeding to recycle claims they made in the Commission's handset exclusivity and data roaming dockets, and other proceedings as well.⁶⁵ These are the subject of separate rulemaking proceedings, and parties fail to provide any new information, facts, or data that have not already been raised in those proceedings.⁶⁶ Verizon Wireless has addressed commenters' conclusory and unsupported claims in the records of those proceedings and sees no need to burden the record in this proceeding by responding again.⁶⁷ In any event, various carriers have told the investment community that they currently offer a wide range of handsets,

⁶⁵ See NTCA Comments at 3-4; Free Press/MAP Comments at 14-22; MetroPCS Comments at 10, 16, 29-30; RCA Comments at 2-7; RTG Comments at 3.

⁶⁶ See Rural Cellular Association, Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, RM-11497 (filed May 20, 2008); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181 (2010). See also 700 MHz Block A Good Faith Purchasers Alliance, Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks, \$M-11592 (filed Sept. 29, 2009); *Parties Asked to Comment on Analytical Framework Necessary to Resolve Issues in the Special Access NPRM*, Public Notice, 24 FCC Rcd 13638 (2009).

⁶⁷ See, e.g., Comments of Verizon Wireless Requesting Dismissal or Denial of Petition, RM-11497 (filed Feb. 2, 2009); Comment of Verizon Wireless, WT Docket No. 05-265 (filed June 14, 2010); Reply Comments of Verizon Wireless, WT Docket No. 05-265 (filed July 12, 2010).

including smartphones,⁶⁸ and have also publicly touted their nationwide coverage obtained through roaming agreements.⁶⁹

V. CONCLUSION

For the reasons discussed herein and in Verizon Wireless' initial comments in this proceeding, the Commission should find that the mobile wireless market and adjacent markets subject to this review are effectively competitive and are producing substantial—and growing—consumer benefits.

Respectfully submitted,



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⁶⁸ See Attachment A at 4-5 (public statements of MetroPCS, Leap Wireless, NTELOS, Cincinnati Bell, and Pocket Communications touting their smartphone lineups).

⁶⁹ See Attachment A at 6 (public statements of MetroPCS, Leap Wireless, and NTELOS).