

**Before The
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W., Washington, D.C. 20554**

In the Matter of)

The State Of Mobile Wireless Competition)

WT Docket No. 10-133

REPLY COMMENTS OF AT&T INC.

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Pursuant to the Public Notice (“*Notice*”),¹ AT&T Inc. (“AT&T”) submits the following Reply Comments.

INTRODUCTION AND SUMMARY

The commenters responding to the *Notice* had little difficulty reaching a conclusion about the state of competition in the wireless marketplace. The commenters are almost unanimous that the marketplace is effectively competitive, and that the Commission should so find in the *Fifteenth Report*. Although the *Fourteenth Report*² highlighted red herring issues, such as HHIs,³ the commenters correctly point out that these types of theoretical calculations cannot obfuscate the overwhelming evidence that competition is alive and well in all facets of the wireless marketplace. Hence, the commenters remain focused on the overwhelming totality of the *facts* – that the U.S. wireless marketplace has the most competitors, the least concentration, the lowest prices, the highest output, the most investment, and the most innovation in the world. Even commenters that advocate new regulations have no trouble concluding that “[t]here is no

¹ Public Notice, *Wireless Telecommunications Bureau Seeks Comment on The State Of Mobile Wireless Competition*, WT Docket No. 10-133 (rel. June 30, 2010) (“*Notice*”).

² *Fourteenth Report, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 09-66, FCC 10-81 (rel. May 20, 2010) (“*Fourteenth Report*”).

³ Herfindahl-Hirschman Index (“HHI”).

question that the . . . wireless services marketplace is competitive”⁴ and that there “exists effective competition” in the wireless marketplace.⁵

The only commenter that actually examines the Commission’s four-part inquiry and attempts to argue that the marketplace is not effectively competitive is Free Press. This should not be surprising; Free Press is refreshingly candid about its ideological bias, and makes clear that it favors government regulation “regardless of the number of competitors in a particular geographic market.”⁶ Free Press stays away from the verifiable facts, and instead relies heavily on indirect measures and “proxies” for competition, such as HHIs and artificial estimates of capital expenditures and accounting profits. As even Free Press agrees, however, HHIs are never more than a starting point for analysis and cannot be the “be-all and end-all of the analysis” because they “do not tell the whole story.”⁷ Free Press cites supposedly declining capital expenditures relative to revenues, but the estimate of capital expenditures used by Free Press omits significant expenditures, including spectrum purchases and LTE⁸ upgrades, and in all events capital expenditures are “lumpy” and will naturally fluctuate from year to year when compared with revenues. Free Press’s measure of accounting profits is especially artificial: operating income before interest and taxes (“OIBIT”) of AT&T and Verizon Wireless compared with other Dow Jones Industrial Average companies. But this measure contains the same flaws that led the *Fourteenth Report* to reject a nearly identical measure of “profits,” earnings before

⁴ Comments of MetroPCS Communications, Inc., WT Docket No. 10-133, at 1 (filed July 30, 2010) (“MetroPCS”).

⁵ Comments of Sprint Nextel Corporation, WT Docket No. 10-133, at 21 (filed July 30, 2010) (“Sprint”).

⁶ Comments of Free Press and Media Access Project, WT Docket No. 10-133, at 9 (filed July 30, 2010) (“Free Press”).

⁷ *Id.*, at 9, 34.

⁸ Long Term Evolution (“LTE”).

interest and taxes (“EBIT”). And Free Press fills its comments with numerous factual assertions about the prices and terms of wireless offerings that are demonstrably false.

In short, with respect to the issue at hand – whether the wireless marketplace is effectively competitive – the overwhelming consensus is that the Commission should find that it is. A few commenters, nonetheless, urge the Commission to regulate data roaming, exclusive handset arrangements, backhaul, and spectrum allocation, under the ostensible justification that such regulations will ensure that the marketplace remains highly competitive. These arguments, none of which addresses the status of the marketplace *today*, which is the issue at hand, are, in all events, nothing more than self-serving attempts to game the regulatory process to the benefit of individual carriers, not competition or consumers. They should be dismissed on the grounds that they are both irrelevant and meritless.

The Commission should heed the comments and find that, based on the record before it, the wireless marketplace is effectively competitive. As AT&T and others have shown, the refusal to do so in the *Fourteenth Report* has exacerbated regulatory uncertainty by leaving the impression that the Commission may impose regulatory “solutions” and use various “policy levers” in the absence of any real market problems.⁹ As virtually all commenters recognize, competition is so intense and so obviously manifest in every corner of the wireless marketplace that the Commission loses substantial credibility when it suggests that it cannot conclude that competition is “effective.” The Commission has an opportunity to set the record straight in the *Fifteenth Report*, and as the great majority of commenters agree, it should seize that opportunity.

⁹ See, e.g., *Ex Parte* Submission of U.S. Dep’t of Justice, GN Docket No. 09-51, at 28 (filed Jan. 11, 2010) (even in monopoly or duopoly wireline situations “[a]lthough enacting some form of regulation to prevent certain providers from exercising monopoly power may be tempting . . . , care must be taken to avoid stifling the infrastructure investments needed to expand broadband access”).

I. THE COMMENTS CONFIRM THAT THE WIRELESS MARKETPLACE CONTINUES TO BE VIGOROUSLY COMPETITIVE.

The comments overwhelmingly confirm that the wireless marketplace is effectively competitive – notwithstanding the refusal to reach any conclusion in the *Fourteenth Report*. Indeed, even commenters that would like to see the Commission adopt new regulations in certain areas agree that the marketplace is effectively competitive. MetroPCS is emphatic that “[t]here 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.”¹⁰ Sprint “submits there exists effective competition in the retail market for mobile wireless services [that] . . . will likely continue in the near term.”¹¹ Business and non-profits conclude that “[t]he American wireless marketplace is competitive, healthy, and perpetually innovating; the facts are unequivocal and speak for themselves,”¹² and wireless infrastructure associations agree that “[t]oday’s wireless infrastructure market is not only extremely competitive in and of itself, but it also enables competition among wireless providers.”¹³ The *only* commenter that argues that the marketplace is not effectively competitive is Free Press, but its “analysis” is merely a hodgepodge of inaccurate “facts,” confused theories, and wild accusations. In short, the record here is overwhelming: any objective examination of market structure, market performance, provider conduct, and consumer conduct should lead to the conclusion that the wireless marketplace is not just effectively, but intensely, competitive.

¹⁰ MetroPCS, at 1.

¹¹ Sprint, at 21.

¹² Comments of Mobile Future, WT Docket No. 10-133, at 1 (filed July 30, 2010) (“Mobile Future”) (“Mobile Future is a broad-based coalition of businesses, non-profit organizations, and individuals interested in and dedicated to advocating for an environment in which innovations in wireless technology are enabled and encouraged.”).

¹³ Comments of PCIA – The Wireless Infrastructure Association and The DAS Forum, WT Docket No. 10-133, at 2 (filed July 30, 2010) (“PCIA/DAS”).

Market Structure. The comments document a U.S. market structure that *guarantees* intense competition. Numerous providers have invested (and continue to invest) billions of dollars to deploy wireless networks. Today, almost every American can choose among several facilities-based providers, and penetration is at or nearing one hundred percent. The existence of multiple facilities-based carriers offering service to a marketplace with such high penetration levels means that wireless providers today have no choice but to compete fiercely.¹⁴

The comments confirm that customers have many choices. By the end of 2009, 91.3 percent of Americans could choose from at least four wireless *voice* providers, and almost 75 percent could choose from at least three wireless *broadband* providers.¹⁵ In each of the ten largest Metropolitan Statistical Areas (“MSAs”) by population, there were “no fewer than five facilities-based wireless carriers” and the smallest Core Based Statistical Areas (“CBSAs”) by population had “no fewer than three facilities-based competitors.”¹⁶ When non-facilities-based providers are considered, there are “no fewer than fifteen” alternatives in the most populated MSAs and no fewer than fourteen in “eight of the bottom ten CBSAs.”¹⁷ These numbers are up since 2008, and they continue to rise as new providers enter and existing ones continue to invest billions of dollars to upgrade and expand their networks.¹⁸

¹⁴ See, e.g., Sprint, at 26 (“Sprint believes that effective competition in the retail mobile wireless space will likely continue for some time. This is because of the competition that necessarily results when a market like mobile wireless services becomes saturated”).

¹⁵ Comments of CTIA – The Wireless Association, WT Docket No. 10-133, at 36-37 (filed July 30, 2010) (“CTIA”); see also Mobile Future, at 1 (“In every corner of the market, consumers enjoy a wide range of service providers, pricing plans, devices, and applications.”).

¹⁶ *Id.*, at 38-39.

¹⁷ *Id.*, at 37-39.

¹⁸ *Id.*, at 6-16, 36. See also Sprint, at 1-5; MetroPCS, at 6-7; Comments of Verizon Wireless, WT Docket No. 10-133, at 9-41 (filed July 30, 2010) (“Verizon”); Comments of AT&T Inc., WT Docket No. 10-133, at 13-14 (filed July 30, 2010) (“AT&T”).

The wireless marketplace is also clearly open to new entry and expansion. Sprint documents the rapid rise of Clearwire, which began offering mobile wireless services two years ago in Baltimore and now offers service in 44 markets covering 51 million people, and expects to expand to many new markets reaching 120 million people by the end of this year.¹⁹ Clearwire is also the launching point for new entrants, such as Comcast and Time Warner Cable, that are using Clearwire's network to offer their own mobile wireless services.²⁰ Cox Communications, using its own spectrum, recently launched 3G service, has tested its 4G LTE-based service, and plans to offer a "quadruple play," with bundled voice, data, video, and wireless.²¹ LightSquared (the entity formed by the Harbinger/Skyterra transaction) is deploying a nationwide mobile wireless network that will cover 90 percent of U.S. customers with a terrestrial 4G (LTE) network and 100 percent of U.S. customers with a satellite network, and it has already raised and invested several billion dollars to do so.²² And, MetroPCS, Leap Wireless, U.S. Cellular and other regional and smaller providers continue to rapidly expand their already substantial networks, and they are among the fastest growing U.S. providers. In fact, some of the regional and smaller providers are adding more subscribers than some national providers.²³

¹⁹ Sprint, at 2-3.

²⁰ *Id.*, at 3-4.

²¹ See Verizon, at 24 (discussing Cox Communications' press releases); see also CTIA, at 14; AT&T, at 12.

²² Verizon, at 26-27; AT&T, at 12-13. See also Comments of MSS/ATC Coalition, WT Docket No. 10-133, at 2-10 (filed July 30, 2010) ("MSS/ATC") (documenting mobile wireless buildout of LightSquared and other satellite-based spectrum).

²³ CTIA, at 71 ("U.S. Cellular's network coverage grew by over 100 percent, and Leap's network growth posted not only the highest absolute gain with 59.5 million additional POPs covered, but also the highest percentage gain of over 300 percent. . . . Growth is occurring across the competitive mobile industry, and is in no way limited to the largest carriers."); see also Verizon, at 15-21; MetroPCS, at 6-8; AT&T, at 10.

Given these competitive facts, the comments confirm that the Commission should not place any weight on HHIs.²⁴ As all commenters that addressed the issue stress, HHIs are not even designed to measure market power outside of the merger context.²⁵ The commenters also uniformly agree that HHIs standing alone do not say anything about the level of competition in the wireless marketplace.²⁶

Moreover, as several commenters note, the absolute magnitude of the HHIs here are not worrisome. The Commission has determined that high HHIs are expected in the wireless marketplace where there are high sunk costs and large economies of scale and scope,²⁷ and the Commission has thus recognized that in areas with wireless HHIs at or below 2800, “there is clearly no competitive harm relative to today’s generally competitive [wireless] marketplace.”²⁸ The record here shows that properly calculated national HHIs in the U.S. are far below 2800 (at 2369)²⁹ and that at least 70 percent of the U.S. population is located in Economic Areas (“EAs”) below that level.³⁰ Even these metrics are skewed because they do not count MVNOs; many of

²⁴ CTIA, at 69; Verizon, at 126-29; AT&T, at 15-24.

²⁵ Verizon, at 126-29; AT&T, at 15-24. *See also, e.g.*, Reply Comments of AT&T Inc., WC Docket No. 05-25, Reply Declaration of Dennis W. Carlton, Allan L. Shampine & Hal Sider, ¶ 53 (filed Feb. 24, 2010) (the “Merger Guidelines approach . . . was not designed to measure the existence of market power”).

²⁶ CTIA, at 69; Verizon, at 126-29; AT&T, at 15-24. *See also* Free Press, at 9 (HHIs cannot be the “be-all and end-all of the analysis” because they “do not tell the whole story”).

²⁷ *See* Thirteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless*, 24 FCC Rcd. 6185, ¶ 48 (WTB 2009) (“*Thirteenth Report*”).

²⁸ Memorandum Opinion & Order, *Applications of AT&T Inc. & Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, & Spectrum Leasing Arrangements*, 24 FCC Rcd. 13915, ¶ 46 (2009) (“*AT&T-Centennial Order*”).

²⁹ CTIA, at 57.

³⁰ AT&T, at 21 (summarizing information contained in the *Fourteenth Report*, App. C).

the remaining EAs would also fall below 2800 if MVNOs were included.³¹ Indeed, every commenter that addressed the issue confirmed that MVNOs and facilities-based providers compete fiercely against one-another for customers, and that the *Fourteenth Report* erred by failing to recognize MVNOs as significant independent competitors in the wireless marketplace.³² A recent report again confirms that competition among facilities-based providers is “set to get even more intense as the big guys move into [additional] areas once the sole domain of MVNOs.”³³

Free Press claims, based solely on the Commission’s HHI calculations, that “the overall industry structure has worsened from a competitive standpoint,”³⁴ but not even Free Press puts much stock in HHIs. It expressly acknowledges that even properly computed HHIs cannot be the “be-all and end-all of the analysis” because they “do not tell the whole story.”³⁵ Moreover, Free Press fails to recognize that the “national” HHI it used from the *Fourteenth Report* is an average of many local HHIs, and therefore cannot be meaningfully compared to the HHI benchmarks in the Horizontal Merger Guidelines, which are made for properly computed HHIs,

³¹ CTIA, at 72-73; Verizon, at 126-29; AT&T, at 9.

³² CTIA, at 69; Verizon, at 126-29; AT&T, at 15-24.

³³ What’s next for the nation's roughly four dozen MVNOs?, FierceWireless (Aug. 12, 2010), available at <http://bit.ly/cxfyEs>.

³⁴ Free Press, at 7-8.

³⁵ *Id.*, at 9.

not constructed averages.³⁶ In all events, Free Press is refreshingly candid about its ideological biases: it makes clear that it would find insufficient competition and a need for massive government regulation “*regardless of the number of competitors in a particular geographic market.*”³⁷

Free Press has nothing else to add, except inaccurate “facts.” It asserts that AT&T and Verizon are growing disproportionately to their rivals³⁸ – in fact, MetroPCS and Leap are the fastest growing facilities-based providers in the U.S.³⁹ It claims that in 2010 AT&T and Verizon added subscribers while “the two next largest providers have seen a net loss.”⁴⁰ In fact, Sprint and T-Mobile have begun to reverse their losses: Sprint reports that it gained about 100,000 customers in 2010,⁴¹ and T-Mobile reports that it has added 106,000 post-paid subscribers.⁴²

³⁶ See also AT&T, at 22. The Commission should also reject Free Press’ proposal that the Commission try to compute mobile broadband-specific concentration or HHI metrics. Free Press, at 10-12. The Commission has explained the numerous difficulties in computing an accurate broadband-specific HHI. *Fourteenth Report* ¶¶ 21-23. In any event, as noted, such metrics would tell the Commission very little, if anything, about competition for mobile broadband services; static market shares would not begin to capture the extraordinary dynamism and growth in broadband services, and could merely identify those who were first to make massive investments in wireless broadband. As the Commission recently explained, “there are risks associated with defining product markets too narrowly in the context of rapidly evolving markets and services such as those for mobile broadband services.” Memorandum Opinion And Order And Declaratory Ruling, *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, 23 FCC Rcd. 17444, ¶ 46 (2008).

³⁷ Free Press, at 9 (emphasis added).

³⁸ *Id.*, at 12-14.

³⁹ *Fourteenth Report* ¶ 175; CTIA, at 68; Verizon, at 17 (table summarizing company year-end reports showing greater percentage growth for Leap and MetroPCS compared to AT&T, Verizon, Sprint, and T-Mobile).

⁴⁰ Free Press, at 12-13.

⁴¹ Compare News Release, *Sprint Reports Fourth Quarter and Full Year 2009 Results*, at 3 (Feb. 10, 2010), available at <http://bit.ly/9AcWuh> (“The company served 48.1 million customers at the end of the fourth quarter of 2009”) with News Release, *Sprint Reports Second Quarter 2010 Results*, at 1, 4 (July 28, 2010), available at <http://bit.ly/bxu8TL> (Sprint “served 48.2 million customers at the end of the second quarter of 2010”).

In any event, comparing AT&T and Verizon subscriber additions to those of other providers in any given slice of time misses the point. In a competitive marketplace, one expects the comparative prospects of different providers to ebb and flow. Sprint has sustained well-documented problems in recent years related to its merger with Nextel, and T-Mobile has incurred challenges stemming from its decision to delay upgrading to 3G. Both providers have worked to recover. Sprint worked with Clearwire to offer its customers an entirely new class of mobile broadband services using WiMAX technology. T-Mobile has embarked on a major upgrade of its network to HSPA+. Customers benefit from this competition, and Sprint and T-Mobile are now seeing improvements in terms of customer satisfaction and net additions.⁴³

Finally, the commenters agree that the *Fourteenth Report* was misguided in suggesting that there is an inherent advantage to spectrum below 1 GHz.⁴⁴ As Verizon correctly explains, the treatment of this issue in the *Fourteenth Report* “fails to afford sufficient weight to the benefits of higher band frequencies in a capacity-constrained environment, while over-emphasizing the benefits of lower band frequencies.”⁴⁵ Indeed, it is quite telling that no commenter with spectrum principally above 1 GHz agreed that there is any inherent uniform benefit to spectrum below 1 GHz, or that they are at a disadvantage. To the contrary, their

⁴² Deutsche Telecom, Q2/10 – Results Presentation, at 9 (Aug. 5, 2010), *available at* <http://bit.ly/9LRcGx>.

⁴³ News Release, *Sprint Nextel Reports Second Quarter 2010 Results*, Sprint (July 28, 2010), *available at* <http://bit.ly/b7jaYA> (stating that Sprint “[g]rew total wireless subscribers by 111,000 with best ever postpaid churn” and that Sprint has been “recognized by American Customer Satisfaction Index as most improved company in customer satisfaction, across all industries, in the last two years”); Deutsche Telecom, Q2/10 – Results Presentation, at 9 (Aug. 5, 2010), *available at* <http://bit.ly/9LRcGx> (106,000 postpaid net adds); Press Release, *Customers Rank T-Mobile USA Highest In Wireless Customer Service*, T-Mobile (July 29, 2010), *available at* <http://bit.ly/aTkBeC>. *See also* Sprint, at 14-15 (“All recent surveys show that consumers are increasingly satisfied with their mobile wireless serves.”).

⁴⁴ AT&T, at 24-27; Verizon, at 137-47.

⁴⁵ Verizon, at 137-38.

actions and public statements dismiss such claims. Clearwire, for example, is rapidly deploying a nationwide wireless broadband network using its immense holdings of 2.5 GHz spectrum,⁴⁶ and it has stated that it has a “spectrum advantage.”⁴⁷ Likewise, Clearwire’s partner, Sprint, touts that it has enough spectrum to deploy both a successful nationwide WiMAX network *and* a nationwide LTE network.⁴⁸ MSS provider LightSquared, which also uses spectrum above 1 GHz, has committed to deploying a nationwide MSS-based mobile wireless network within the next few years.⁴⁹ And, a lack of sub 1 GHz spectrum has not hampered T-Mobile from upgrading and expanding its network to HSPA+,⁵⁰ or the rapid entry and expansion of smaller providers, like MetroPCS and Leap, which the *Fourteenth Report* recognizes are the fastest growing providers in the U.S.⁵¹

Market Performance. The comments also strongly confirm that every market performance metric – pricing, output, innovation, investment, service quality and satisfaction – establishes that competition in the U.S. wireless marketplace is thriving. As aptly summarized by MetroPCS, “[p]roviders and manufacturers continue to innovate and expand networks to meet consumer demand – all while lowering prices for mobile wireless services.”⁵²

⁴⁶ Clearwire’s 2.5 GHz spectrum holdings significantly exceed the spectrum holdings of either AT&T or Verizon. *See, e.g., Fourteenth Report* ¶ 268, Chart 40.

⁴⁷ *See* Clearwire Investor Presentation, Feb. 10, 2010, slide 12, *available at* <http://bit.ly/bkNep7>.

⁴⁸ *See* Communications Daily, July 16, 2010 (Sprint CEO Dan Hesse tells Financial Times “[w]e have the spectrum resources where we could add LTE if we choose to do that, on top of the WiMAX network . . . that is the beauty of having a lot of spectrum is that we have a lot of flexibility”).

⁴⁹ Memorandum Opinion and Order and Declaratory Ruling, *Applications for Consent to Transfer of Control of SkyTerra Subsidiary, LLC*, 25 FCC Rcd. 3059, ¶ 56 (2010).

⁵⁰ T-Mobile Press Release, T-Mobile HSPA+ Network Now Delivers Broadest Reach Of 4G Speeds In U.S. (July 21, 2010), *available at* <http://bit.ly/b8u35Q>.

⁵¹ *Fourteenth Report* ¶ 175.

⁵² MetroPCS, at 2.

It is well documented that U.S. providers continue to cut prices and that those price cuts, in turn, trigger responsive price cuts by other providers.⁵³ At the same time, the record establishes that output is soaring, as the overall number of subscribers continues to increase (with wireless penetration rate for ages 12 and up approaching 100 percent).⁵⁴ Consumers generated 2.2 trillion minutes of use, 1.563 trillion text messages, and 35 billion MMS messages in 2009 – all significantly up from the year before⁵⁵ – and mobile broadband data use continues to rise exponentially,⁵⁶ with the number of broadband subscriptions increasing by more than 35 percent from 2008 to 2009. Indeed, nearly one third of Americans have a wireless broadband data subscription, and that does not include Americans that use wireless broadband on a pay-per-use basis.⁵⁷

Investment also continues to soar – despite the recession – as providers continue to expand and upgrade their existing networks. Carriers have added tens of thousands of cell sites⁵⁸ and are deploying next generation LTE and WiMAX networks.⁵⁹ In addition, innovation

⁵³ CTIA, at 64; Sprint, at ii, 21-22; MetroPCS, at 2; Verizon, at 46-66; AT&T, at 29-32, 42-44.

⁵⁴ Sprint, at 26-27 (“If children under the age of 11 are excluded from the calculation, the national wireless penetration rate in the end of 2008 would be 104.8 percent”); CTIA, at 33 (more than 285 million active connections in the U.S. in 2009, an increase of more than 15 million compared to 2008).

⁵⁵ CTIA, at 34.

⁵⁶ *Id.*, at 10; Mobile Future, at 3-4; Sprint, at 35; Verizon, at 4; AT&T, at 30.

⁵⁷ CTIA, at 12-13.

⁵⁸ *Id.*, at 6-20; Sprint, at 2-3; Verizon, at 67-73; AT&T, at 33-36. *See also* MetroPCS, at 2 (“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.”).

⁵⁹ CTIA, at 6-20; Sprint, at 3-4; Comments of The National Telecommunications Cooperative Association, WT Docket No. 10-133, Survey Results, at 9 (filed July 30, 2010) (“NTCA”); Verizon, at 67-73; AT&T, at 33-36. Indeed, by the end of 2009, U.S. wireless carriers cumulative capital expenditures (excluding license purchases and expenditures made on facilities that are not yet deployed) “totaled more than \$285 billion, an increase of more than \$20 billion from year-end 2008.” CTIA, at 6.

continues to be the hallmark of the wireless marketplace as providers develop and deploy network technologies that provide faster and more reliable connections,⁶⁰ and as they develop innovative postpaid and prepaid plans.⁶¹ At the same time, device manufacturers are competing vigorously to develop and deploy the next game-changing device,⁶² and developers continue to roll out thousands upon thousands of innovative applications further spurring consumer demand for the best handsets and the best networks,⁶³ while providers seek to offer customers an increasing array of devices with access to these applications.⁶⁴ Customer satisfaction and service quality are at all time highs.⁶⁵

In short, “the U.S. wireless market is – without question – the most competitive [wireless] market in the world.”⁶⁶ It has the most competitors, the least concentration, and the lowest prices.⁶⁷ It leads the world in total amount of investment, significantly exceeding the investment made by the five largest European investors combined.⁶⁸ It also “leads the world” in broadband services – although “the U.S. accounts for only 6 percent of the world’s total wireless

⁶⁰ CTIA, at 16-20; Sprint, at 3-4; MetroPCS, at 6-8; Verizon, at 11; AT&T, at 12, 45-46.

⁶¹ CTIA, at 39-43; Sprint, at 10-14, 21-23; MetroPCS, at 6-8; Verizon, at 46-66; AT&T, at 7, 23, 42-43.

⁶² CTIA, at 20-32; Sprint, at 4-5; Verizon, at 107-09; AT&T, at 48-50.

⁶³ CTIA, at 25-28; Verizon, at 109-19; AT&T, at 48-50.

⁶⁴ CTIA, at 20-28; Verizon, at 107-19; AT&T, at 48-50.

⁶⁵ CTIA, at 43-49; Sprint, at 14-21; Verizon, at 81-86; AT&T, at 35-36.

⁶⁶ CTIA, at 55.

⁶⁷ *Id.*, at 55-63.

⁶⁸ *Id.*, at 61.

subscribers, [it] has more than 21 percent of the world's 3G subscribers.⁶⁹ And, “the most anticipated devices are launched in the U.S. first.”⁷⁰

Free Press is the only dissenter, based on claims that investment is lagging, profits are excessive, and that prices are higher than in other countries. None of these claims withstands scrutiny.

First, Free Press asserts that capital expenditures in the U.S. wireless marketplace are “declining” as a percentage of revenue.⁷¹ But it bases this assertion solely on limited capital expenditure figures reported by CTIA,⁷² and CTIA has explained that its figures omit a number of expenditures, including spectrum licenses and expenditures for facilities that have not yet been turned up (*e.g.*, investments in LTE).⁷³ Moreover, the relationship of current-year capital expenditures to revenues will naturally fluctuate from year to year, because capital expenditures in the telecommunications industry are “lumpy” as providers make large expenditures in one year to upgrade their networks and then the next year focus on integrating those new facilities into their existing networks.⁷⁴ Revenues, on the other hand, are based on cumulative historic investments and have been increasing sharply as output expands.⁷⁵ Plotting the ups and downs of capital expenditures against increasing revenues thus provides no useful information.

Second, Free Press asserts that AT&T's and Verizon's accounting profits – measured by OIBIT relative to overall revenues – are too high relative to the average Dow Jones Industrial

⁶⁹ *Id.*, at 62.

⁷⁰ *Id.*, at 20.

⁷¹ Free Press, at 33.

⁷² *Id.*

⁷³ CTIA, at 66; *see also* AT&T, at 6-7.

⁷⁴ CTIA, at 66-67; Verizon, at 163-65.

⁷⁵ *See* CTIA, at 66-67; Verizon, at 163-65, AT&T, at 6-7.

Average company. Accounting profits, however, are not an economically meaningful way to assess competition.⁷⁶ Moreover, Free Press provides no basis for assuming that AT&T and Verizon should have the same OIBIT to revenue ratios as other firms in the Dow Jones Industrial Average. Wireless providers must make very high up front investments, and therefore they would be expected to have higher accounting returns than firms that do not.⁷⁷ Thus comparisons of wireless accounting profit measures against firms in other industries are economically meaningless.⁷⁸ In any event, Free Press' comparison is a meaningless apples-to-oranges comparison of 2005-2008 data for the DJIA to 2010 data for AT&T and Verizon Wireless.⁷⁹

⁷⁶ Verizon, at 165-67; AT&T, at 6-8.

⁷⁷ William J. Baumol & Daniel G. Swanson, *The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power*, 70 Antitrust L.J. 661, 682 (2003); see also *id.* at 668 (“Since marginal cost is the added (variable) cost incurred by the supply of one additional unit of output, then by definition marginal cost does not include fixed or sunk costs, because neither of these costs is variable. Hence, a price equal to marginal cost covers only variable costs and makes absolutely no contribution to recovery of either fixed or sunk costs. Such a price is clearly a recipe for insolvency. Unless voluntary suicide is considered a necessary requirement of absence of market power, the failure of firms with scale economies to charge the prices of perfectly competitive markets cannot be deemed to constitute proof of such power.”); see also Alan J. Daskin & Lawrence Wu, *Observations On The Multiple Dimensions Of Market Power*, 19 Antitrust ABA 53, 55 (2005).

⁷⁸ Verizon, at 165-67; AT&T, at 6-8. In addition, the particular accounting profit measure used by Free Press – OIBIT divided by revenues – is especially useless for making such comparisons. Just like EBIT margins, OIBIT margins leave out interest and taxes, and the Commission has already found that this deficiency produces metrics that are not useful for making profit comparisons because different providers can have vastly different interest and tax liabilities, so that leaving them out of the calculation strongly skews the results. *Fourteenth Report* ¶ 216 (discussing these problems and stating that therefore “[w]e do not discuss EBIT data in this report”). Notably, it appears that not even Free Press supports the EBITDA analysis presented in the *Fourteenth Report*, that the commenters have shown to be fundamentally flawed. See CTIA, at 74; Verizon, at at 165-67; AT&T, at 6-8.

⁷⁹ Free Press compares operating income margins for the Dow Jones Industrial Average from 2005 through 2008 (17%) to the operating income margins for Verizon and AT&T for the first two quarters of 2010 (30%). But as Free Press' own chart (at 24) shows, AT&T's and Verizon's average operating margins for 2005-2008 were in line with the DJIA operating margins for that time period.

Finally, Free Press alleges “that providers elsewhere *generally* offer far more affordable service than do their U.S. counterparts.”⁸⁰ The sole basis for this claim is a comparison of laptop card data services for two U.S. plans versus a few providers in seven foreign countries.⁸¹ This selective comparison completely ignores many lower-priced U.S. data card plans,⁸² and it simply leaves out every instance where the two U.S. data-card services it examined are cheaper than those in other countries.⁸³ Free Press also leaves out the critical fact that the foreign prices it lists cover only a single European country and that customers will incur significant roaming charges if they want to use their laptop cards elsewhere, whereas U.S. laptop card services typically allow customers to use it anywhere throughout the entire U.S., thus providing far greater coverage.

In reality, the countries in Free Press’ comparison often have much higher prices for voice, text and data plans for ordinary handsets. For example, although Free Press highlights the price charged by Meteor in Ireland for a laptop card, it neglects to mention that Meteor charges 85 Euros, or about \$112, for an unlimited voice and text plan with only 1 GB of data, with extra charges outside of Ireland.⁸⁴ In the U.S., an unlimited voice and text plan with *at least double* the amount of data from a national provider is priced as low as \$70 and is typically no higher than \$115, and those plans cover the entire U.S. Another country highlighted by Free Press is

⁸⁰ Free Press, at 31 (emphasis added).

⁸¹ *Id.*

⁸² *See Verizon*, at 59 (listing numerous available U.S. data card plans ranging from \$10 to \$60).

⁸³ For example, in France, Orange charges 39 Euros (about \$52) for only 2 GB – or about \$26 per GB – and only for France (there are significant roaming charges for using the data card in other countries). Orange Mobile, <http://mobile-shop.orange.fr/>. By contrast, AT&T charges \$60 for 5GB, or about \$12 per GB, without any additional roaming charges for use within the United States, Puerto Rico, and the U.S. Virgin Islands. *See AT&T LaptopConnect PC Cards*, <http://www.wireless.att.com/learn/basics/choosing-phone/laptop-connect-cards.jsp>.

⁸⁴ *See Meteor Website*, http://www.meteor.ie/plans/bill_pay/connect/#plans-tab.

Australia, where a data handset plan costs about \$118 (US dollars) and includes charges for *each text and telephone call* with 6 GB of data.⁸⁵

Provider Conduct. The comments establish that U.S. providers are intensely competing to win customers. U.S. providers continue to offer even better handsets and devices,⁸⁶ access to more applications,⁸⁷ broader coverage,⁸⁸ faster speeds,⁸⁹ improved reliability,⁹⁰ and better overall customer service,⁹¹ all at the same or lower prices,⁹² with an increasing array of postpaid and pre-paid offerings.⁹³ U.S. providers continue to spend more on advertising than most other U.S. industries,⁹⁴ continue to improve and expand their retail outlets,⁹⁵ and continue to increase investment as they spend billions of dollars in network expansion, capacity upgrades, and technology upgrades.⁹⁶ Numerous U.S. providers will begin widespread deployment of next generation wireless services within the next 24 months,⁹⁷ even as they continue to improve the

⁸⁵ See Telstra Website, <http://www.telstra.com.au/mobile/phones/iphone/pricing.html>.

⁸⁶ CTIA, at 20-25; MetroPCS, at 2; Sprint, at 5; Mobile Future, at 4-5; Verizon, at 73-74; AT&T, at 48-50.

⁸⁷ CTIA, at 25-35; MetroPCS, at 2; Mobile Future, at 4-5; Verizon, at 74-75; AT&T, at 48-50.

⁸⁸ CTIA, at 8-14; Sprint, at 3-4; Mobile Future, at 5-6; Verizon, at 66-73; AT&T, at 42-50.

⁸⁹ CTIA, at 10-14; MetroPCS, at 7-8; Sprint, at 4-5; Mobile Future, at 5-6; Verizon, at 66-73; AT&T, at 42-50.

⁹⁰ CTIA, at 43-54; Sprint, at 14-16; Verizon, at 81-86; AT&T, at 42-50.

⁹¹ *Id.*

⁹² CTIA, at 22, 59-61, 64; MetroPCS, at 2-3; Sprint, at 21-22; Verizon, at 46-66; Mobile Future, at 1-2; AT&T, at 42-50.

⁹³ CTIA, at 39-42; MetroPCS, at 6-7; Sprint, at 10-14; Mobile Future, at 3; Verizon, at 46-66; AT&T, at 42-50.

⁹⁴ CTIA, at 14-16; Verizon, at 80-81; AT&T, at 42-50.

⁹⁵ AT&T, at 48.

⁹⁶ CTIA, at 6-14; MetroPCS, at 7-8; Sprint, at 1-5; Mobile Future, at 5-6; Verizon, at 66-76; AT&T, at 42-50.

quality, speed and reliability of their current generation networks.⁹⁸ On this record, there is widespread agreement among commenters that provider conduct indicates vibrant competition in the wireless marketplace.⁹⁹

Free Press can only respond with wild accusations. It claims that when AT&T and Verizon lowered their prices in response to competition (as noted in the *Fourteenth Report ¶¶* 92-93), they were engaged in a “parallel” “pricing-matching” conspiracy.¹⁰⁰ Such allegations are completely irresponsible and are refuted by the directly observable facts (*e.g.*, variation in the pricing of wireless plans)¹⁰¹ and common sense (conspiracies to reduce prices are decidedly uncommon). Free Press’ assertion that AT&T and Verizon are conspiring to match ETFs is also irresponsible and frivolous.¹⁰² AT&T and Verizon have different ETFs and pro-rate them differently.¹⁰³

Free Press also complains that AT&T *lowered* its prices for 2 GB and 200 MB data plans and thus offered a price reduction to more than *98 percent* of its data customers. It asserts that

⁹⁷ CTIA, at 13-14; MetroPCS, at 7-8; Sprint, at 1-5; Mobile Future, at 5-6; Verizon, at 66-76; AT&T, at 42-50.

⁹⁸ CTIA, at 10-13; Sprint, at 14-21; Verizon, at 66-76; AT&T, at 42-50.

⁹⁹ CTIA, at 13-33; MetroPCS, at 1; Sprint, at 21-28; Mobile Future, at 1; PCIA/DAS, at 2; Verizon, at 46-86; AT&T, at 42-50.

¹⁰⁰ Free Press, at 23.

¹⁰¹ For example, AT&T offers two smartphone data plans, a 20 MB plan for \$15 and a 2 GB plan for \$25. Verizon offers only an unlimited smartphone plan for \$30. In addition, AT&T’s voice plans typically offer roll over minutes, a feature that Verizon does not offer, which effectively provides AT&T customers with more minutes for each of AT&T’s non-unlimited voice plans.

¹⁰² Free Press, at 27-28.

¹⁰³ For advanced devices, AT&T’s ETF is \$325 and Verizon’s ETF is \$350. For other devices, AT&T’s ETF is \$150 and Verizon’s ETF is \$175. Verizon also pro-rates its ETFs differently for non-advanced devices (AT&T’s ETF’s decline by \$4 per month and Verizon’s decline by \$5 per month).

these price cuts will “harm consumers and cause negative effects.”¹⁰⁴ This is irresponsible nonsense, pure and simple. Free Press seizes on AT&T’s stated expectation that the price cuts will lead to higher average revenue per user, but this is because more customers who do not now subscribe to a data plan will choose to purchase one because of the lower priced options – thus producing a higher average revenue per user. Only in Free Press’s world is it a bad thing to lower prices so more people can buy the product.¹⁰⁵ Free Press also alleges that there is something wrong with AT&T’s price reductions because the less than two percent of AT&T customers that may consume more than 2 GB per month will have to pay “whopping” overage fees.¹⁰⁶ In fact, AT&T charges \$25 for 2 GB of data, which is \$12.50 per GB. AT&T’s charge for each additional GB of data for consumers on this plan is lower – \$10 per GB.¹⁰⁷ It used to be that consumer advocates were vigilant in protecting low volume and ordinary users by insisting that they not be forced to bear costs created by other, heavier users. Free Press’ remarkable repudiation of this principle may serve the interests of a small minority of affluent, tech-savvy, excessively heavy data users, but it is decidedly at odds with the interests of most consumers.

¹⁰⁴ Free Press, at 24.

¹⁰⁵ See, e.g., Dan Frommer, AT&T’s New Smartphone Plans Could Send iPhone And BlackBerry Sales Through The Roof, Business Insider (June 3, 2010), *available at* <http://bit.ly/aF8yQr> (“cheaper plans will make smartphones more affordable to a much bigger market, which in turn should drive bigger unit sales and activations for Apple, Research In Motion, and other companies that sell smartphones at AT&T”). Free Press also asserts that AT&T has stated that its costs of moving a bit of data on its wireless network has decreased and that its wireless revenues are growing. Free Press, at 24. But lower costs and higher revenues are perfectly consistent with a price cut.

¹⁰⁶ Free Press, at 24.

¹⁰⁷ There is likewise no merit to Free Press’ assertion that customers of AT&T’s 200 MB plan must pay \$75 for an extra GB. Customers of that plan have the option to upgrade to the 2GB plan for \$25 at any time, which costs \$12.50 per GB (and \$10 for additional GBs), not \$75 per GB.

Free Press’s complaint that AT&T charges for tethering – a new feature offered with certain AT&T data plans – is likewise frivolous. The fact is that tethering typically results in much higher network capacity demands than ordinary handset data use, and thus requires significant investment in capacity to maintain fast and reliable services for all customers. There are also significant costs to developing and implementing tethering technology that ensures a high quality customer experience.¹⁰⁸ In the world envisioned by Free Press these services would never be developed or deployed because providers would not be allowed to charge for them and could thus never recover their costs or earn a profit from them.

Finally, Free Press is also wrong in asserting that providers “tightly control and limit the availability of applications for data-capable handsets.”¹⁰⁹ AT&T, for one, offers a wide variety of devices, including the iPhone, Android handsets, Blackberrys, Nokias, Palm devices, and Microsoft Mobile devices, each of which have thousands of applications available (and some far more).¹¹⁰ In addition, AT&T itself offers its customers tens of thousands of additional

¹⁰⁸ Free Press also asserts that AT&T requires certain “customers to purchase a data plan whether those customers want one or not.” Free Press, at 26-27. Some of the devices AT&T offers are designed for data and/or messaging use, *e.g.*, they have a fully featured web browser, keyboards, and email software. AT&T has found that customer that use Smartphones and Quick Messaging Devices engage in more texting and Internet browsing and thus have a higher potential for “bill shock” if they incur charges on a pay-per-use basis rather than as part of a monthly plan. As such, AT&T requires its Smartphone users to subscribe to a data plan and its Quick Messaging Device customers to subscribe to an unlimited messaging plan or a qualifying messaging/data plan. AT&T informs customers at the point-of-sale of any data or messaging plan requirement. For customers that do not wish to purchase a messaging or data plan, AT&T offers many other devices that do not require such plans.

¹⁰⁹ Free Press, at 28.

¹¹⁰ See Verizon, at 112 (listing the number of applications available in various applications stores).

applications.¹¹¹ Other providers offer a similar access to a vast array of applications from many sources. For example, Verizon, Sprint, T-Mobile, Leap, MetroPCS, Cellular South, NTLEOs, U.S. Cellular all now offer Android-based devices with access to the more than 65,000 applications in the Android Marketplace, and each of these providers also offers some combination of Blackberrys, Nokias, Palm devices, and Microsoft Mobile devices, as well as their own applications stores. Given the incredible array of choices that have become available to consumers in just a short period of time, Free Press' insistence that consumers are somehow being denied the applications they need and want for no good reason is nothing short of absurd.

Consumer Conduct. Finally, the Comments confirm that consumer conduct establishes a highly competitive wireless marketplace. Consumers have access to an extraordinary amount of information about their alternatives from the providers themselves and from numerous third parties.¹¹² The record confirms that barriers to switching are low and that consumers can and do readily vote with their feet in very high numbers, with, on average, about 25 percent of a

¹¹¹ Free Press' assertion (at 29) that AT&T does not permit use of the Sling application or Skype is ancient history. Those applications are now optimized for and can be used on AT&T's network. Free Press also complains (*id.*) that AT&T's Android handsets lack an option to purchase third-party applications found outside of the Android Market. For AT&T, this is a balancing act as it seeks both to ensure that its customers have access to all of the applications they want (*e.g.*, the more than 65,000 in the Android Market) and that they are protected from potential harmful applications that may compromise their private data or otherwise cause harm. Applications in the Android marketplace are subject to a certain level of standards and scrutiny, and where an application is found to be harmful Google has the ability to effect a "kill switch." There typically is no such control for third-party Android applications. A recent problem, where an Android application was collecting private customer information and sending it to servers in China, vividly illustrate the importance of such protections. *See* Daniel Eran Dilger, *Millions of Android Users Hit By Malicious Data Theft App*, Appleinsider.com (July 29, 2010), available at <http://bit.ly/aidTth> ("An app distributed by Google's Android Market . . . collected private data from millions of users and forwarded it to servers in China," "including "browsing history, text messages, [the] phone's SIM card number, subscriber identification, and even [the] voicemail password."").

¹¹² CTIA, at 36-55; Sprint, at 14-21; Verizon, at 75-79; AT&T, at 50-55.

providers' customers switching to a different provider each year.¹¹³ Indeed, it is precisely because consumers can and do easily switch among providers that, as discussed above, providers have sought to decrease their churn rates by investing billions of dollars to continue offering customers more and better services for the same or lower prices. These investments appear to be paying off based on reductions in churn rates for post paid plans reported by several providers.¹¹⁴

Free Press ignores these facts and instead complains about early termination fees ("ETFs"). First, it irresponsibly asserts that providers are conspiring to "match" ETFs, which, as explained above, is patently false (providers have significantly different ETFs and pro-rate them differently). Free Press also alleges that ETFs are designed only to "penalize customers who might otherwise switch to a competing provider."¹¹⁵ This shop-worn argument has been refuted over and over again.¹¹⁶ The fact is that consumers today can choose from a variety of wireless options – prepaid and postpaid – from a number of providers that do *not* include a term plan with a pro-rated ETF.¹¹⁷ Wireless consumers understand that they have choices – AT&T has millions of prepaid and month-to-month (post-paid) subscribers – but the reality is that most customers

¹¹³ AT&T, at 50-55.

¹¹⁴ CTIA, at 54-55, Verizon, at 81; AT&T, at 50-55.

¹¹⁵ Free Press, at 28.

¹¹⁶ See, e.g., Letter from Robert W. Quinn (AT&T) to Joel Gurin and Ruth Milkman (FCC), *Re: AT&T's Early Contract Termination Policy*, CG Docket No. 09-158 (filed Feb. 23, 2010) ("AT&T ETF Letter"); Letter from Kathleen Grillo (Verizon) to Joel Gurin and Ruth Milkman (FCC), *Re: Request for Information Regarding Verizon Wireless' Early Termination Fee Policy; Consumer Information and Disclosure*, CG Docket No. 09-158 (filed Feb. 23, 2010); Letter from Vonya B. McCann (Sprint) to Joel Gurin and Ruth Milkman (FCC), *Re: Sprint Nextel Corporation's Early Termination Fee Policy, Consumer Information and Disclosure*, CG Docket No. 09-158 (filed Feb. 23, 2010); Letter from Thomas J. Sugrue (T-Mobile) to Joel Gurin and Ruth Milkman (FCC), *Re: January 26, 2010 Letter on T-Mobile's Early Termination Fee Policy; CG Docket No. 09-158* (filed Feb. 23, 2010).

¹¹⁷ See, e.g., CTIA, at 44-45 (listing various non-ETF offerings by provider).

choose to buy a subsidized device in exchange for a one or two year commitment with a prorated ETF.

Free Press’s suggestion that ETFs cannot be justified unless monthly prices are lower for plans that do not have a term commitment with a pro-rated ETF misconceives the nature of these offers.¹¹⁸ AT&T has previously explained the ways both consumers and providers benefit from arrangements that include ETFs: “First, for many consumers, the high retail cost of wireless equipment would make wireless service unaffordable. Second, wireless providers value the predictability of term commitments. This predictability helps carriers plan and manage networks. Term commitments also provide a predictable revenue stream that helps fund capital investment. In the aggregate, term commitments also allow carriers to reduce the price of service to all subscribers because they reduce carriers’ acquisition and retention costs and increase the number of users on the network, allowing carriers to reduce operating costs through economies of scale. ETFs make this bargain – bundled discounts in exchange for term commitments – more efficient by giving consumers an option to reduce their contractual obligations while providing carriers with enough predictability to make it reasonable to discount device prices in exchange for a service commitment.”¹¹⁹

II. COMPETITION IN THE WIRELESS MARKETPLACE IS NOT HAMPERED BY DATA ROAMING, EXCLUSIVE HANDSET ARRANGEMENTS, BACKHAUL PRICES, OR SPECTRUM ALLOCATIONS.

A few commenters seize the opportunity to repeat requests made in other proceedings for specific new regulations relating to various aspects of wireless service. As most of these commenters concede, these concerns are not really relevant to the issue at hand – *i.e.*, whether the Commission should find the wireless marketplace to be effectively competitive – because, as

¹¹⁸ Free Press, at 28.

¹¹⁹ AT&T ETF Letter, at 10.

Sprint and MetroPCS expressly state, they do not mean to suggest “that the current mobile wireless services market lacks effective competition [today].”¹²⁰ Rather, at most these commenters claim that, absent substantial new regulation, these issues could affect wireless competition in the future. In reality, however, these issues are being considered in other Commission proceedings, and the arguments raised by these commenters are meritless.

Data Roaming. MetroPCS, Sprint, RTG and RCA allege that wireless competition could potentially be harmed without common carrier obligations on data roaming.¹²¹ Notably, the Commission did not mention data roaming as a possible problem either in the *Fourteenth Report* or in the *Public Notice* for this proceeding.¹²² Moreover, the Commission is presently examining whether to subject data roaming to common carrier regulation in a separate rulemaking, and the record there shows that these proposals are contrary to the public interest and that, in any event, the Communications Act prohibits common carrier regulation of such services.¹²³

For present purposes, it suffices to say that none of these commenters has presented any *facts* that would suggest data roaming agreements pose any potential issue for wireless competition. MetroPCS, which, as noted, agrees that the retail wireless marketplace is currently intensely competitive, merely asserts, with no supporting evidence, that AT&T and Verizon “have little incentive to currently offer 3G or, in the future, 4G wireless data roaming to

¹²⁰ MetroPCS, at 2; Sprint, at 21-26.

¹²¹ MetroPCS, at 9-14; Comments of Rural Cellular Association, WT Docket No. 10-133, at 4-6 (filed July 30, 2010) (“RCA”); Comments of The Rural Telecommunications Group, Inc., WT Docket No. 10-133, at 6-8 (filed July 30, 2010) (“RTG”).

¹²² See MetroPCS, at 10 (bemoaning the omission); RTG, at 7 (same).

¹²³ See Comments of AT&T Inc., WT Docket No. 05-265 (filed June 14, 2010); Reply Comments of AT&T Inc., WT Docket No. 05-265 (July 12, 2010) (“AT&T Data Roaming Reply”).

competing providers.”¹²⁴ In fact, AT&T is currently negotiating 3G data roaming with several providers, and Verizon reports that “more than a third of its active roaming partners have data roaming agreements, and about half of those have 3G (EV-DO) agreements” and it continues to negotiate more.¹²⁵ Indeed, all facilities-based wireless providers have an incentive to compete to win a share of the available roaming revenues. As the history of roaming agreements confirms, first voice roaming, then 2G data roaming, and now 3G data roaming have all become widespread without common carrier regulation.

Instead of dealing with the facts, these commenters merely recycle unsupported and clearly outdated assertions and anecdotes from old pleadings. For example, MetroPCS trots out Cellular South’s 2007 pleading alleging that its data roaming request was “rebuffed” by “larger carriers,” when the reality is that Cellular South has obtained 3G roaming and now advertises that its network coverage is *better* than AT&T’s 3G coverage.¹²⁶ MetroPCS also quotes an old Cox pleading about some party-specific negotiations with Verizon, but subsequent events show that data roaming is obviously no impediment to Cox’s plans, given that Cox is widely deploying

¹²⁴ MetroPCS, at 12.

¹²⁵ Verizon, at 41.

¹²⁶ Cellular South website, <http://www.cellularsouth.com/DiscoverCenter/why-cs/network.jsp> (“We have . . . [b]etter coverage than the other guys.”); *see also* AT&T Data Roaming Reply, at 34 (showing Cellular South’s 3G coverage map).

3G technology and is already conducting trials for 4G LTE in Phoenix and San Diego.¹²⁷ Moreover, Cox has a data roaming arrangement with Sprint.¹²⁸

The lack of common carrier regulation of data roaming clearly is also not hampering MetroPCS's own ability to compete. MetroPCS has recently announced record subscriber additions, record revenues, and a substantial decrease in churn.¹²⁹ As the *Fourteenth Report* confirmed, MetroPCS is one of the fastest growing wireless providers in the country – faster than either AT&T or Verizon. Nor is a lack of common carrier regulation hindering its investment: MetroPCS is leap-frogging 3G altogether and is investing heavily to build a 4G network, which it expects to deploy this year.¹³⁰ Similarly, RCA specifically states that its members are building out their networks in rural areas.¹³¹

¹²⁷ See, e.g., Jeff Baumgartner, *Cox Wireless: Soup to Nuts*, Light Reading, Oct. 28, 2008, available at <http://bit.ly/9CrKH8> (“When it comes to wireless and mobility, Cox Communications Inc. isn’t messing around this time. It’s putting its money where its mouth is, going ‘all-in,’ and jumping in with both feet all at the same time as it builds out elements of its own 3G network, installs the steps necessary to make the climb to Long-Term Evolution (LTE) technology, and takes control of the services that will ride on top of it all.”); see also *Fourteenth Report* ¶ 73.

¹²⁸ See Mike Dano, *Cox details LTE tests, but highlights limitations*, FierceWireless (Feb. 18, 2010), available at <http://bit.ly/9BMTme> (“Cox is currently . . . leverage[ing] Sprint Nextel’s CDMA network. When Cox launches its own network, Sprint will be one of its roaming partners.”).

¹²⁹ Press, *MetroPCS Reports First Quarter 2010 Results: Record First Quarter Adjusted EBITDA and Net Subscriber Additions*, MetroPCS (May 6, 2010), available at <http://bit.ly/9MKujg>.

¹³⁰ See, e.g., *id.* (MetroPCS reiterated it is “on track for our initial 4G LTE launch in selected metropolitan areas in the second half of this year” and that its “4G LTE network will enable us to offer and increasing array of new services and applications to Smartphones and other devices.”); see also *Fourteenth Report* ¶ 114.

¹³¹ RCA, at 4.

Exclusive Handsets. Three commenters also claim that exclusive handset arrangements could hinder competition.¹³² They claim that, because of exclusive offers, rural and mid-sized carriers have reduced access to cutting edge phones and if “trends” continue such arrangements “may significantly hinder broadband deployment.”¹³³ In truth, where there is no single dominant provider – and no wireless carrier or device manufacturer is even remotely dominant – exclusive offers are commonplace and can only be *pro*-competitive.¹³⁴

Exclusive handset offers are pro-competitive for a simple reason: they promote innovation, investment, and competition.¹³⁵ In competitive markets, firms seek to differentiate and improve their products to attract new customers and to retain existing ones. One common form of differentiation is an exclusive offer. Exclusive handsets merely enhance one competing carrier’s offer, much like better service, better call quality, fewer dropped calls, or a lower price. As economists and regulators have long recognized, such exclusive offers have several strongly pro-competitive benefits. When an exclusive offer is successful, it raises the competitive bar for everyone else, igniting the virtuous cycle of innovation and response and resulting in better prices, better features, and/or better service.¹³⁶ Exclusivity agreements also align incentives in ways that lead to more innovation more quickly: they permit the manufacturer to focus its resources on working with only one carrier to optimize, introduce and promote a new handset,

¹³² MetroPCS, at 14-16; RCA, at 2-3; RTG, at 9-10.

¹³³ See, e.g., MetroPCS, at 14-15.

¹³⁴ See Reply Comments of AT&T Inc., WT Docket No. 09-66, Declaration of Michael Katz ¶¶ 41-44 (filed July 12, 2009) (“Katz Decl.”); see also Comments of AT&T Inc., RM 11497, Declaration of Michael Katz, at 2 (filed Feb. 2, 2009) (“Katz Handset Decl.”) (exclusive contracts promote consumer welfare, and are problematic only where “a dominant distributor . . . locks up such a substantial portion of the suppliers that rival distributors are left without competitively viable supply options” – circumstances that do not remotely exist here).

¹³⁵ See Katz Decl. ¶¶ 41-44; see also Katz Handset Decl. ¶ 3.

¹³⁶ See Katz Decl. ¶¶ 41-44; Katz Handset Decl. ¶ 9.

while increasing the carrier's incentives to make supporting network investments and to promote the handset (because no carrier wants to invest in and heavily advertise a handset only to have consumers buy the phone from a competitor).¹³⁷

There is no question that – as AT&T predicted in the exclusive handset proceeding – exclusive handset arrangements have had exactly these pro-competitive benefits in the wireless marketplace. Indeed, today there is an incredible array of innovative devices being introduced seemingly weekly, as providers, device manufacturers, and operating system designers furiously compete to leap ahead of one another.¹³⁸ In just the last few weeks, the marketplace has seen the introduction of the Apple iPhone 4, the Droid X, the Droid Incredible, the Blackberry Torch, and the HTC EVO – not to mention data-only devices like the Apple iPad and the upcoming next generation Kindle. All providers have benefited from this rapid innovation; as CTIA and Verizon both document, small and mid-sized carriers offer many different kinds of phones and devices, including many smartphones with the latest features.¹³⁹ In fact, the principal complainer here, MetroPCS, offers a dramatic illustration of the consumer *benefits* this competition is producing: MetroPCS has been investing heavily to deploy a 4G LTE network, and it recently

¹³⁷ See Katz Decl. ¶¶ 41-44; Katz Handset Decl. ¶¶ 12-27.

¹³⁸ See, e.g., *Consumer Wireless Experience: Testimony Before the Comm. On S. Commerce, Science & Transp.*, 111th Cong. 9 (2009) (statement of Barbara S. Esbin, Senior Fellow and Director, The Progress and Freedom Foundation) (“if every wireless carrier had been able to sell the iPhone when it was initially released, it is unlikely that there would have been as much carrier support for developing competing products such as Google’s G1, Research in Motion’s touch screen Blackberry Storm, Samsung’s Instinct, or Palm’s Pre”).

¹³⁹ CTIA, at 20-24; Verizon, at 101-04. Tellingly, although NTCA complains about exclusive handset arrangements (at 3), that issue did not even register in its list of top “concerns” of rural carriers produced by its survey. *Id.* Survey Report, at 13.

announced that it will be the *first* carrier to offer a 4G LTE handset, the Samsung Craft.¹⁴⁰ In short, exclusive handsets arrangements intensify competition, rather than hinder it.

Backhaul. In what has become an annual ritual, a few commenters also repeat the same old arguments they have been making since at least 2002 that the rates for ILEC *wireline* special access backhaul are hindering competition in the wireless marketplace.¹⁴¹ Again, however, both Sprint and MetroPCS concede that the retail wireless marketplace has continued to become increasingly competitive since then, and is extremely competitive today. Special access backhaul is obviously not hindering these carriers from offering successful services at competitive prices.¹⁴² These carriers assert, however, that without Commission intervention, ILEC special access services still have the potential to harm wireless competition in the future. Although these claims never had any validity, they are even more starkly incorrect today, because in fact the wireless industry is increasingly relying on alternatives to ILEC wireline special access services.

The Commission has already collected an expansive record in its special access proceeding that confirms that CLECs, cable companies and microwave wireless providers have deployed extensive alternative facilities, both in the downtown areas where special access demand is traditionally concentrated, and in suburban and rural areas where broadband wireless

¹⁴⁰ Sascha Segan, *First LTE Phones Due from Samsung, MetroPCS*, PCMagazine.com (March 24, 2010) (“And the first 4G LTE phone in the United States will come from . . . MetroPCS!”); MetroPCS Details Samsung ‘Craft’ LTE Handset, promises content ‘studio,’ Fierce Wireless (Aug. 5, 2010) (“MetroPCS chief Roger Linquist said the carrier’s planned LTE handset from Samsung – which will be called the ‘Craft’ – will sell at a price comparable with the carrier’s current smartphone offerings . . . Linquist said MetroPCS plans to expand its smartphone lineup beyond Research In Motion’s BlackBerry. ‘Our lineup will include a number of Android devices by the end of the year,’ he said”).

¹⁴¹ MetroPCS, at 29-30; Sprint, at 29; RTG, at 10-12.

¹⁴² See Sprint, at 10-13, 21-23 (describing Sprint’s innovative, competitively priced plans); MetroPCS, at 6 (MetroPCS offers “simple and affordable” plans).

backhaul demand is attracting extraordinary investment by alternative backhaul providers.¹⁴³ Wireless carriers are increasingly relying on these alternatives to ILEC special access. Sprint itself is betting its entire future on the widespread availability and quality of microwave backhaul services; its 4G service relies on Clearwire's WiMAX network, and Clearwire has stated that 90 percent of its wireless network is served by microwave backhaul.¹⁴⁴ T-Mobile recently reported to investors earlier this year that it “*already uses* ‘alternative backhaul providers’ for more than 40 percent of its 3G cell sites,” it “plans to increase its use of alternative backhaul to more than 75 percent by the first half of 2011,” and it expects its backhaul cost per megabit to fall by 90 percent during this period.¹⁴⁵ US Cellular Corp. has reported that it “makes very extensive use of . . . common carrier microwave facilities to link its base stations with each other and with USCC’s switches,”¹⁴⁶ and, indeed, already has such backhaul facilities to at least 40 percent of its cell sites.¹⁴⁷ LightSquared reports that it expects to use non-fiber backhaul for about 40

¹⁴³ See, e.g., *Ex Parte* Letter from Christopher Heimann (AT&T) to Marlene H. Dortch (FCC), WC Docket No. 05-25 (filed April 15, 2010) (“AT&T April 15 Letter”); Reply Comments of AT&T Inc., WC Docket No. 05-25, at 28-38 (filed Jan. 24, 2010); *Ex Parte* Letter from Donna Epps (Verizon) to Marlene H. Dortch (FCC), WC Docket No. 05-25 (filed June 7, 2010); *Ex Parte* Letter from Christopher Heimann (AT&T) to Marlene H. Dortch (FCC), WC Docket No. 05-25 (filed June 17, 2010).

¹⁴⁴ Yankee Group 4G Network Backhaul Summit, PowerPoint Presentation of John Saw, CTO Clearwire (Sept. 15, 2009) (“90% of Clearwire cell sites use microwave backhaul; Largest wireless backhaul network in North America”; “Rapid rollout,” “Very low recurring costs,” “Tremendous scalability, 50 Mbps – 1 Gbps of backhaul per site”).

¹⁴⁵ See Presentation by Robert Dotson (CEO and President, T-Mobile USA) & Brian Kirkpatrick (CFO, T-Mobile USA), *T-Mobile USA: Regaining U.S. Market Position*, Deutsche Telecom Investor Day, at Slide 21, March 18, 2010, attached to AT&T April 15 Letter.

¹⁴⁶ Comments of U.S. Cellular Corp., WT Docket No. 09-106, at 1 (filed Jul. 27, 2009).

¹⁴⁷ In July 2009, U.S. Cellular reported 2,350 microwave backhaul connections, *id.*, out of about 6,400 total cell sites. http://en.wikipedia.org/wiki/U.S._Cellular. USCC thus has microwave backhaul connections to approximately 40 percent of its cell sites.

percent of its cell sites.¹⁴⁸ Similarly, both AT&T and Verizon have documented their own substantial use of microwave backhaul solutions.¹⁴⁹

None of the commenters that raise this issue here has made any serious attempt to show, with *facts*, that special access rates are harming or will harm wireless competition. But that is par for the course: advocates of massive rate reductions for special access services have always relied entirely on assertions that they have “no” alternatives, but when asked to back up those assertions with documentation of the scope of their network facilities and available alternatives, they have done nothing but stonewall. The Commission is considering these issues in another proceeding, but it is clear that special access rates have no adverse impact today on the ability of any wireless provider to compete for customers.

Spectrum. Lastly, RTG, MetroPCS and RCA repeat their baseless requests for specific new regulations on spectrum, such as spectrum caps or other mechanisms to deny or limit larger providers access to more spectrum, and Commission intervention in international standards setting bodies to micromanage how 700 MHz LTE handsets will be designed. These claims are pending in other Commission proceedings and have been shown to be completely without merit.

1. RTG’s Spectrum Cap Proposal & MetroPCS’s Bidding Credit Proposal. The Commission has repeatedly recognized that the best means of ensuring efficient use of licensed mobile spectrum and of promoting innovation is to auction new spectrum to the highest bidder and to foster a secondary marketplace where providers may purchase or sell licensed

¹⁴⁸ Dan Meyer, *LightSquared Confident In Finding Place In Mobile Space*, RCR Wireless News (Aug. 6, 2010).

¹⁴⁹ *See, e.g.*, Supplemental Comments of AT&T Inc., WC Docket No. 05-25, at 16 & attached Supplemental Declaration of Parley Casto, ¶¶ 22, 25, 49-50 (filed Aug. 8, 2007); Comments of Verizon Wireless, WC Docket No. 05-25, at 28 & attached Declaration of Wells ¶¶ 6-7 (filed Aug. 8, 2007).

spectrum.¹⁵⁰ These market-based policies devote spectrum to its highest and best uses and are the linchpin of the wireless industry's extraordinary record of investment and innovation. The policies have only become *more* important now that the industry faces a spectrum crisis, and it would harm the public interest to prevent or inhibit providers from purchasing additional spectrum needed to provide – and improve – services on which customers depend. For these and other reasons, reinstating spectrum caps that were repealed in 2003 (as RTG proposes) or otherwise rigging auctions to inhibit larger providers from obtaining spectrum (as MetroPCS proposes) would be a giant step backwards in terms competition, innovation and overall public interest.

No one seriously disputes that the since the repeal of spectrum caps in 2003, the wireless marketplace has become far *more*, not less, competitive. Under the Commission's current policies, spectrum has made its way to many providers of all sizes that are using it to compete by

¹⁵⁰ See, e.g., Report and Order and Further Notice of Proposed Rulemaking, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, 22 FCC Rcd. 8064, ¶ 235 (2007) (“Congress and the Commission have determined that using competitive bidding mechanisms for assigning spectrum licenses offers significant public interest benefits. For example, the competitive bidding process ensures that spectrum licenses are assigned to those who place the highest value on the resource and will be suited to put the licenses to their most efficient use.”); Policy Statement, *Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets*, 15 FCC Rcd. 24178, ¶ 9 (2000) (“an active secondary market will facilitate full utilization of spectrum by the highest value end users”); Report, *Bringing Broadband To Rural America: Report On A Rural Broadband Strategy*, 2009 WL 1480862, ¶ 146 (2009) (“The Commission's rules permit licensees to transfer their licenses, or partition or disaggregate their licenses, in the secondary market with Commission approval. The Commission's secondary markets rules also provide flexibility to a wide array of wireless licensees, including broadband providers, to enter into spectrum leasing arrangements with other providers that seek access to spectrum in rural areas.”).

offering broader, better and cheaper services.¹⁵¹ The Commission found, for example, that its recent major auction (700 MHz band licenses) resulted in purchases not only by nationwide carriers, but also by a diverse group of new entrants and small regional and rural carriers that acquired spectrum covering almost all of the United States.¹⁵² Further, in addition to the spectrum that they have purchased in auctions, companies like Leap, U.S. Cellular, Cellular South, Clearwire, and MetroPCS, have in fact amassed very substantial amounts of spectrum in secondary markets.¹⁵³ As Verizon shows, 63 percent of all spectrum assignments from January 2009 through June 2010 was acquired by firms that are not affiliated with AT&T, Verizon, Sprint, or T-Mobile, and nearly half of the spectrum that was sold by these four carriers was transferred to firms unaffiliated with any of them, *i.e.*, to smaller providers.¹⁵⁴ The Commission has emphasized that all of these “spectrum acquisitions . . . have enabled certain operators – including Leap, MetroPCS, and T-Mobile – to expand networks into new markets, . . . to improve and enhance networks in existing markets,” and to provide innovative service offerings.¹⁵⁵ The end result is an increasingly vibrant competitive marketplace, where spectrum

¹⁵¹ See, e.g. *Fourteenth Report* ¶ 62 (explaining that new entrants have many ways to access spectrum, including “purchasing spectrum in the secondary market,” and that entire firms, such as Spectrum Bridge, are devoted entirely to facilitating secondary market transactions with “online market places for spectrum exchange”). See also Verizon, at 34-40, 87 (“Carriers of all sizes lease spectrum in the secondary market on a regular basis. Indeed, the FCC approves hundreds of transfer/assignment applications and spectrum leasing applications each year, and those transfers have been increasing”).

¹⁵² See *Thirteenth Report* ¶ 68 (“As a result of [the 700 MHz Auction] auction, a diverse mix of new entrants and small regional and rural providers as well as nationwide providers succeeded in acquiring access to spectrum needed to deploy the next generation of wireless networks.”). In addition, this spectrum includes 90 MHz of AWS spectrum, and 55.5 MHz of BRS spectrum, with another 30 MHz still anticipated from the AWS-2 and AWS-3 spectrum.

¹⁵³ *Fourteenth Report* ¶ 107.

¹⁵⁴ Verizon, at 38-39.

¹⁵⁵ *Fourteenth Report* ¶ 107.

finds its way into the hands of those that can maximize its use, thus keeping the U.S. wireless marketplace at the cutting edge of maximum innovation, all of which ultimately inures to the benefit of consumers.¹⁵⁶

The proposals by RTG and MetroPCS to limit larger providers from access spectrum can only produce inefficient spectrum allocations that undermine competition, innovation, and harm consumers. RTG's proposal for spectrum caps would deny larger providers ability to obtain additional spectrum outright, regardless of whether the larger provider could put it to a better and higher use than others. Thus, a large established provider with a pressing need for additional spectrum in New York City that would put it to immediate use to improve or upgrade service for millions of customers would not be eligible for the spectrum, while speculators that have no immediate plans to use it could snap it up at artificially low prices.

Similarly, MetroPCS proposes a new auction system in which "auction bidding credits" would be given to applicants in inverse proportion to the amount of spectrum that the applicant holds.¹⁵⁷ This proposal effectively punishes providers whose investments and innovations have increased demand for their services and necessitated the acquisition of additional spectrum. By contrast, a firm that had never provided wireless service to a single customer would get

¹⁵⁶ RTG's assertion that rural service will be enhanced if auctions are biased to prevent purchases by larger carriers is baseless. AT&T is one of the largest rural wireless providers in the U.S. Its wireless network covers more than 95% of the U.S. population, and it covers more than 76% of the population of rural counties (with a population of 100 persons or less). By contrast, smaller carriers often focus their service expansions in more highly populated areas. *See, e.g.*, Paul M. Murdock, *Telecommunications*, Forbes, Dec. 2008, <http://bit.ly/bMvUbF> (pointing out that MetroPCS and Leap Wireless are focusing their deployment in "large markets," such as "Boston and New York (MetroPCS) and Baltimore, Washington, D.C., Philadelphia and Chicago (Leap)"). Moreover, NTCA's survey of small carriers that do provide service in rural areas shows that the "majority" those surveyed "have wireless licenses" and that "[e]ighty-eight percent of" the survey respondents that currently offer service "indicated that they plan to deploy next generation technology – 25% in the next 1-2 years." NTCA, at 2.

¹⁵⁷ MetroPCS, at 23.

maximum bidding credits, even if it was a large company. That would have the perverse effect of subsidizing firms that have no track record of investment, innovation, and customer service.¹⁵⁸

Indeed, these proposals are remarkably self-serving. To be sure, it may be in the interest of the *providers* that would be able to pick up extremely valuable spectrum at artificially low prices, but these proposals are not in the interest of American consumers and taxpayers, who deserve both the maximum auction revenues and the highest valued uses of the spectrum. At the end of the day, these proposals amount to nothing more than calls for the Commission to rig its spectrum auctions to favor certain providers over others, without regard to efficiency or the best use of the spectrum. The wireless marketplace has thrived because the Commission has eschewed such micromanagement and it would be a mistake of the highest order to abandon that policy in order to engage in heavy-handed, intrusive, and inefficient micromanagement of what virtually everyone agrees is a vigorously competitive marketplace that is delivering benefits to consumers.

2. *RCA's 700 MHz Arguments.* Finally, RCA repeats assertions made elsewhere that devices being developed to support the 700 MHz Lower B and C blocks and the 700 MHz Upper C block will not also support the 700 MHz Lower A block.¹⁵⁹ RCA asks the Commission to intervene and require that all 700 MHz devices be capable of operating on every paired 700 MHz

¹⁵⁸ MetroPCS claims that regional providers are disadvantaged when spectrum is auctioned in large geographic blocks either directly or through combinatorial bidding, and proposes instead that all spectrum be allocated in much smaller geographic blocks. *Id.* MetroPCS' proposal, however, is too extreme. It would impose substantial transaction costs on carriers who are interested in providing service across larger areas because they would be required to participate in auctions for smaller geographic levels and then cobble together spectrum through a series of secondary market transactions. It was precisely to avoid these costs that the Commission adopted its current practice of auctioning some spectrum in both larger and smaller geographic blocks – a solution that remains far more reasonable. See Second Report and Order, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, 22 FCC Rcd. 15289, ¶ 81 (2007).

¹⁵⁹ RCA, at 6-7.

band, in contravention of international LTE device standards. AT&T and others have completely refuted RCA's claims in the relevant Commission rulemaking proceeding.¹⁶⁰

The LTE device standards upon which new 700 MHz handsets are being developed were adopted in the 3rd Generation Partnership Project ("3GPP") international standards-setting process. Despite the claims that these standards were the product of AT&T, which holds 700 MHz Lower B and C block spectrum, and Verizon, which holds 700 MHz Upper C block spectrum, the LTE device standards were originally proposed to the 3GPP by Motorola in 2008 to address significant interference issues that are unique to the 700 MHz A Block spectrum.¹⁶¹

A Commission regulation forcing all 700 MHz devices to be capable of operating in the A Block spectrum could only *reduce* critical roaming capabilities. As LG Electronics recently explained, "the requested regulatory intervention would, at a minimum, delay mobile broadband deployment at 700 MHz and reduce the ultimate utility of 700 MHz-capable devices with respect to interoperability and roaming."¹⁶²

In all events, RCA's claims that providers will not be able to obtain LTE compatible handsets absent Commission intervention in the standards-setting process is refuted by the fact that, as noted, MetroPCS is the first carrier to obtain an LTE-compatible handset, and MetroPCS' LTE network will operate in AWS spectrum, outside the 700 MHz spectrum used by AT&T and Verizon.

¹⁶⁰ See Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices*, RM 11592, DA 10-278 (rel. Feb. 18, 2010).

¹⁶¹ See Comments of Motorola, RM 11592, at 3-4 (filed Mar. 31, 2010) ("Motorola").

¹⁶² *Ex Parte* Letter from Alan K. Tse (LG Electronics MobileComms U.S.A. Inc.) to FCC, *Re: LG Opinion on 700 MHz Block A Good Faith Purchasers Alliance Petition*, RM-11592 (filed June 11, 2010). See also Motorola, at 3, 6, 8 (RCA's proposal would "limit the national and international roaming ability and legacy band support for new mobile broadband services").

CONCLUSION

For the foregoing reasons, and for the reasons set forth in AT&T's opening comments, the Commission should find in the *Fifteenth Report* that wireless markets are intensely competitive.

Respectfully Submitted,

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