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February 14, 2011

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Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: GN Docket No. 09-191 (Preserving the Open Internet); WC Docket No. 07-52
(Broadband Industry Practices)

Dear Chairman Genachowski:

MetroPCS Communications, Inc., on its own behalf and on behalf of its licensee subsidiaries (collectively, “MetroPCS”), hereby responds to (1) the letter to you, dated January 10, 2011, signed by M. Chris Riley as counsel for Free Press (“FP”)¹ and (2) the letter to you, dated January 21, 2011, from Consumers Union and the Consumer Federation of America (collectively, “CU”).² The letters ask the Commission to investigate whether certain 4G LTE data plans that MetroPCS began offering on January 3, 2011 violate the rules set forth in the Commission’s recently released Net Neutrality (or Open Internet) *Order*. As is set forth in greater detail below, the innovative pro-consumer, pro-competitive broadband data offerings of MetroPCS are fully compliant with both the letter and the spirit of the Net Neutrality *Order*.³

¹ The “FP Letter.” The FP Letter also makes reference to the Center for Media Justice, Media Access Project, the New America Foundation and Presente.org.

² The “CU Letter.”

³ *Preserving the Open Internet; Broadband Industry Practices*, Report and Order, GN Docket No. 09-191, WC Docket No. 07-52, FCC 10-201 (rel. Dec. 23, 2010) (the “*Order*”); *see also* Part 8 of Title 47 of the Code of Federal Regulation. As an initial matter, the rules promulgated in the *Order* do not become effective until 60 days following the *Federal Register* publication of the Office of Management and Budget’s (“OMB”) approval of the information collection requirements of the *Order*. *Id.* at para. 161. As this point, the information collection requirements have not been approved by OMB, so the rules set forth in the *Order* currently are not effective. Certainly, there can be no violation of rules that are not yet effective. Indeed, comments to the *Federal Register* notice of the OMB collection are not even due to be filed until April 11, 2011, meaning that the rules will not become effective, if at all, for an extended period of time. While MetroPCS is submitting this response in order to set the record straight, in doing so it does not concede (or waive its right to contest) that any violation could actually occur before the Net Neutrality rules are effective, nor does it agree that any investigation would be appropriate at this time.

Background

MetroPCS is the fifth largest facilities-based wireless telecommunications service provider in the United States measured by the number of subscribers served. The company offers a variety of wireless communications services to retail customers on a no long-term contract, paid-in-advance and predominantly unlimited, fixed price basis. As of December 31, 2010, MetroPCS served over 8.1 million subscribers.

MetroPCS commenced providing wireless voice and text service to the public in three markets⁴ in the first quarter of 2002. At that time, the wireless market was being served by several long-established national wireless companies which had large customer bases and wide area networks. MetroPCS was able to succeed in this highly competitive market against entrenched incumbents by developing and marketing a differentiated wireless service -- an “all you can eat” voice and text service offered with no long-term contract at a low, affordable monthly rate. This innovative service appealed to a segment of the communications market that was largely unserved or underserved by the incumbent national carriers.

MetroPCS has enjoyed considerable success derived in large part from its consumer-friendly focus, its devotion to being a low cost provider and its willingness to offer differentiated services to target markets largely ignored by the larger national carriers. MetroPCS now has grown and expanded to provide its wireless broadband mobile services in and around a number of major metropolitan areas in the United States, including Atlanta, Boston, Dallas/Ft. Worth, Detroit, Las Vegas, Los Angeles, Miami, New York, Orlando/Jacksonville, Philadelphia, Sacramento, San Francisco and Tampa/Sarasota. In the process, MetroPCS has not wavered from its focus on differentiating itself by offering low priced, unlimited services, for a fixed price on a no long-term contract basis.⁵ For example, MetroPCS branched out from providing local-only voice and text service, to offering wide-area voice, text and web services (in part through roaming arrangements), and more recently to providing unlimited international calling to over 100 countries, without abandoning its no long-term contract unlimited service model. And, in January of 2010, MetroPCS further enhanced its unlimited, pro-consumer, pro-competitive service offerings by creating a family of service plans that include all applicable taxes and regulatory fees for roughly the same base price as its prior plans. This increased the predictability of the monthly bill, and consequently increased customer satisfaction, by removing variable monthly applicable taxes and surcharges. This also provided a better value proposition for consumers since, on average, taxes and regulatory fees totaled approximately \$5 per month.

⁴ Miami, FL, Atlanta, GA and Sacramento, CA.

⁵ In general, MetroPCS tries to offer its customers a greater value proposition than its competitors. Since its customers are not on long-term contracts, MetroPCS has to provide an attractive package to earn its customers back each month. So, when MetroPCS is able to include additional services for the same price, it historically has done so.

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Unlike certain of its national competitors who have substantial spectrum resources in each metropolitan area,⁶ MetroPCS serves certain metropolitan areas with as little as 10 MHz of spectrum,⁷ and has, on average, only approximately 20 MHz across all of its licensed areas.⁸ As a consequence, MetroPCS has had to innovate to make maximum use of its relatively limited spectrum resources. For example, MetroPCS utilizes six sector cells, as well as a state-of-the-art distributed antenna system, or DAS, design which serves to increase capacity by creating very small pico cells that maximize the frequency reuse potential in the MetroPCS networks.

As demand for data (web) services increased, MetroPCS took steps to offer web access. MetroPCS started with a wireless access protocol, or WAP, browser⁹ that was standard at the time. Then, as HyperText Markup Language, or, HTML,¹⁰ browser smartphones were priced so MetroPCS' customers could afford them, MetroPCS was able to offer more robust web access on its existing 1xRTT¹¹ CDMA¹² network. MetroPCS' success with these offerings and customer demand for web services, ultimately led MetroPCS to bring its 4G LTE offering to the wireless market.

When MetroPCS first entered the wireless market, it initially deployed 1xRTT CDMA technology throughout its networks. This was based upon its determination that this air interface protocol provided consumers with higher capacity, longer handset battery life, fewer dropped calls and an efficient migration path to next generation technology. As a result of its relatively limited spectrum and capital resources and its desire to continue to offer unlimited services, MetroPCS then made the bold business decision to bypass a migration to EV-DO¹³ and to leapfrog from 1xRTT all the way to state-of-the-art fourth

⁶ See <http://moconews.net/article/419-wireless-carriers-bicker-over-size-of-spectrum-holdings/>. For example, a 2010 Yankee Spectrum Group study found: "Clearwire ranks highest with an estimated average of 150 MHz in the top 100 U.S. markets, measured in terms of population. Clearwire is followed by Verizon and AT&T, which have 88 and 84 MHz respectively, then Sprint with 69 MHz and T-Mobile with 51MHz."

⁷ This includes Philadelphia, PA, a major metropolitan market.

⁸ The most spectrum MetroPCS has in any market is 40 MHz. These are relatively small markets (e.g., Stockton, Salinas-Monterey, and Redding CA).

⁹ WAP is "an open international wireless standard [that] lets users get to information on and via the Internet with handheld wireless devices such as mobile phones, pagers, two-way radios, smartphones and personal digital assistants." WAP handsets that use displays and access the Internet run what are called microbrowsers – "browsers with small file sizes that can accommodate the low memory constraints of handheld devices and the low-bandwidth constraints of a wireless-handheld network." See Harry Newton, Newton's Telecom Dictionary, 24th Edition (2008) ("Newton's Telecom Dictionary") at 1009.

¹⁰ HTML is "the authoring language used on the Internet's World Wide Web." See *id.* at 470.

¹¹ 1xRTT is the "first phase of CDMA2000 technology designed to double voice capacity and support data transmission speeds up to 144 Kbps." See *id.* at 61.

¹² CDMA, or, Code Division Multiple Access, is a "digital, spread spectrum, packet-based access technique generally used in Radio Frequency radio systems." See *id.* at 214.

¹³ EV-DO is a "data-only wireless network that is separate from the traditional voice cellular carrier. . . typically, it produces download speeds of 400 Kbps to 500 Kbps and upload speeds of around 80 Kbps." See *id.* at 61.

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generation Long-Term Evolution (“LTE” or “4G LTE”)¹⁴ services. Consequently, MetroPCS became the first broadband carrier in the U.S. to launch a commercial 4G LTE service. To do so, MetroPCS offered the world’s first commercially available 4G LTE enabled feature phone -- the Samsung Craft™ -- a dual-mode handset that provides both 4G LTE data services and CDMA voice services. The Samsung Craft™ features a brilliant 3.3 inch AMOLED (active-matrix organic light-emitting diode) screen, a combination touch screen, slide-out QWERTY keyboard, Samsung’s Touchwiz™ user interface to surf and text message, 3.2 megapixel camera with flash, a camcorder and is Wi-Fi capable.¹⁵ Compared to other 4G devices at the time, such as the Sprint 4G Evo smartphone, the Craft was priced dramatically less -- which demonstrates MetroPCS’ ability to leverage advanced technology to offer the best value to consumers.¹⁶ Initially unveiled in Las Vegas, Nevada in September 2010, MetroPCS now offers commercial 4G LTE services in Atlanta, Boston, Dallas-Ft. Worth, Detroit, Las Vegas, Miami, New York, Los Angeles, Orlando, Philadelphia, Sacramento, and San Francisco, and is planning to continue to roll out its 4G LTE service in additional metropolitan areas throughout 2011.

MetroPCS Data Offerings

MetroPCS established its foothold in the highly competitive wireless business, and initially differentiated its services to a segment of the wireless marketplace, by providing affordable voice and text services on an unlimited, fixed price, no long-term contract basis. Many MetroPCS subscribers are first time wireless customers and many adopted MetroPCS service as an alternative to landline service, meaning that MetroPCS has both expanded the universe of wireless customers and competed successfully against landline companies. Because MetroPCS offers its services on a no long-term contract basis, customers have the freedom and flexibility to stop service at any time without any penalty or termination fee. Further, customers looking for value, and those on fixed incomes or who are credit-challenged, find this service particularly useful as MetroPCS does not require deposits or credit checks, which normally are prerequisites for a long-term contract commitment with other carriers.

¹⁴ LTE, or Long-Term Evolution, is the development of an advanced mobile radio technology that will succeed current “3G” based technologies. Although “LTE” is not the name of the standard itself, it is often used that way (the actual standard is called 3GPP Release 8). LTE is considered by many to be a “4G” technology, both because it is faster than current 3G technologies, and because it uses an “all-IP” architecture where everything, including voice, is handled as data, similar to the Internet. *See* <http://www.phonescoop.com/glossary/term.php?gid=355>.

¹⁵ The Samsung Craft, however, is not an Android phone, but rather a BREW-enabled smartphone. As such, the application and protocols which can be used on it are naturally limited to those in the BREW library.

¹⁶ MetroPCS only is able to provide a limited subsidy for its handsets due to the no long-term contract nature of its business model. Consequently, it seeks reasonably priced handsets that will be affordable to its target customers.

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Data was not a major focus of the early MetroPCS offerings. The 1xRTT networks operated by MetroPCS were not optimal for broadband data offerings, in part because of their speed (an estimated 153.6 Kilobits per second, or Kbps, at most) and in part because of the BREW platform¹⁷ on which the available MetroPCS handsets operated. Capacity constraints also were a concern as studies showed that data users had large appetites for bandwidth¹⁸ and MetroPCS already was serving a customer base with higher than average voice and text usage because of its unlimited service offerings. Consequently, the early data service offerings of MetroPCS were generally limited to email and similar text-based programs, and only a limited ability to surf the Internet. Many applications, such as Flash and other web plug-ins, were not generally available for BREW handsets. Indeed, until HTML browsing became available, web services were largely text based. And, because of the limited broadband throughput of 1xRTT networks, many features of the broadband web did not work -- such as multimedia streaming, video on demand services and multimedia uploads and downloads (collectively, these are referred to below as "Multimedia Streaming").¹⁹

The constrained MetroPCS data offerings put the company at a competitive disadvantage for certain customer segments, particularly when the iPhone and other "smartphones" took hold in the wireless market. To address this market challenge, MetroPCS began working with manufacturers to select economical BREW-enabled HTML capable browser wireless handsets that MetroPCS could bring to the market. These smartphones offered a better web experience because of the HTML browsing, but were still limited by the BREW platform and the speed of the 1xRTT networks. Then,

¹⁷ The BREW, or Binary Runtime Environment for Wireless, platform was introduced in 2001 by Qualcomm primarily as an application development platform for CDMA phones.

¹⁸ Consumers have shown an almost insatiable demand for wireless data. In fact, according to numbers provided by the Commission, AT&T "reported that its network experienced an 18-fold increase in mobile data traffic during the two-and-a-half years after the iPhone was introduced" and also has reported that its mobile data traffic "increased 5000 percent from mid-2006 to mid-2009." *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, WT Docket No. 09-66, ¶ 183 (2010). Globally, Cisco has estimated that mobile data traffic grew 157 percent between 2008 and 2009. *Id.* All carriers, including MetroPCS, are witnessing a remarkable surge in data traffic as customers continue to migrate to cutting-edge smartphones and are increasing their mobile use of the Internet and other data applications.

¹⁹ Generally, the protocol used to provide streaming audio and video, Real Time Streaming Protocol, or RTSP, requires a network capable of sustaining a throughput of approximately 300-400 Kbps, which meant that the MetroPCS systems were not suited for streaming content. The data speed of a 1xRTT network depends on a number of factors, including the distance of the handset to the base station, environmental factors and how much voice traffic is on the network. If Multimedia Streaming is attempted on a 1xRTT network, the experience will be either jerky (*i.e.*, a second or longer per frame) or spool without delivering the content. In addition, the handsets in many instances do not have sufficient memory to spool up sufficient frames to make Multimedia Streaming occur in real-time. In short, because of the length of time it takes to upload or download a file at 1xRTT speeds, Multimedia Streaming is not a viable option for consumers. Multimedia Streaming does not include voice over Internet protocol ("VoIP").

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when Android-based phones started to take hold in the market, MetroPCS worked with major wireless handset manufacturers, including Huawei and LG, to develop affordable Android smartphones capable of operating on the 1xRTT network.²⁰ These mobile devices had greater functionality and radio access capabilities, and are popular MetroPCS products.

One particular limitation that put MetroPCS at a significant competitive disadvantage for certain customer segments was its inability to offer customers access to YouTube, which many customers wanted. YouTube typically required an EV-DO or similar-speed network to run properly. However, by adding an optimization layer to its 1xRTT network, and working in cooperation with its network hardware vendor and YouTube, MetroPCS was able to compress YouTube traffic so that it was available to MetroPCS customers who had HTML BREW-enabled smartphones on the 1xRTT networks.²¹ This effort was undertaken due to YouTube's popularity,²² and the competitive necessity for MetroPCS to offer customers and potential customers who wanted YouTube access that was available on competing carrier networks.

The competitive necessity for MetroPCS to better replicate the data offerings of its competitors was a major driving force behind MetroPCS' LTE strategy. 4G LTE allowed MetroPCS to enjoy greater capacity on its relatively limited spectrum and to offer higher download speeds on a platform optimized for data services. LTE -- which was quickly becoming the global standard for 4G mobile wireless services -- also provided cost advantages over both the existing 1xRTT network, and over the alternative of migrating on an interim basis to EV-DO.²³ In effect, competitive market forces created a powerful impetus for MetroPCS to offer a more sophisticated suite of data services at an attractive rate. However, the challenges faced by MetroPCS were epic. First, early manufacturers' LTE development efforts were focused on 700 MHz LTE deployments, since both AT&T and Verizon had indicated they planned to deploy LTE in their recently acquired 700 MHz spectrum. Second, because other major carriers held large blocks of 700 MHz spectrum in each market capable of being devoted to LTE, early manufacturer development efforts contemplated deployments utilizing a minimum of 20 MHz of spectrum in a paired (10x10) configuration. MetroPCS, however, did not have sufficient

²⁰ For example, MetroPCS offers the Huawei Ascend for \$99 plus tax after rebate and the LG Optimus for \$149 plus tax after rebates.

²¹ As is discussed in greater detail within, MetroPCS has no financial arrangement with YouTube.

²² See <http://www.network-box.com/node/533>. YouTube is one of the United States' most popular websites. As an example, one study demonstrated that 10% of all Internet-driven web traffic from businesses was to YouTube in the first quarter of 2010 -- more than any other website. Nevertheless, as noted herein, MetroPCS constantly monitors the usage of its network, and may change its rate plans in the future based on such monitoring.

²³ Since it is IP-based, LTE infrastructure is generally "flatter" and the equipment is capable, for relatively little additional cost, of receiving increased capacity, for example, from a paired 5x5 MHz channel to a paired 10x10 MHz channel or greater. Because of the lower cost per channel and its greater capacity, the cost per byte for LTE is dramatically lower than for 1xRTT or EV-DO.

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spectrum in many markets to deploy in that fashion. So, MetroPCS worked with manufacturers to foster LTE deployments in its PCS and AWS bands utilizing channels as small as 1.4 MHz, which was an option under the 3GPP LTE standard.²⁴ This enabled MetroPCS -- despite its relatively limited spectrum resources -- to offer a suite of data services on its network without abandoning its commitment to unlimited fixed price services.

The MetroPCS 4G LTE Data Plans

MetroPCS knew that the capabilities of its first 4G phone -- the BREW-platform HTML browser-enabled Craft™ -- were fairly limited because there were no Flash, VoIP or other similar advanced technologies available via BREW application stores to MetroPCS customers. MetroPCS also had limited experience with advanced data services, and, as a starting point, decided to first test the 4G LTE market with a small number of service options with the understanding that it would revisit its service options as it gained additional experience both with Android handsets over both the 1xRTT and 4G LTE networks. Thus, MetroPCS rolled out its 4G LTE services in September 2010 with only two rate options: (1) a fixed \$55 per month plan (including taxes and regulatory fees) which allowed unlimited voice service (local and long distance), unlimited text, and unlimited web access, including access to Multimedia Streaming for an additional fee, to particular audio content available via MetroSTUDIO; and (2) a fixed \$60 per month plan (including taxes and regulatory fees), which included all services and features of the \$55 plan, plus a premium video content service offered by MetroPCS called MetroSTUDIO. The MetroSTUDIO offering on the \$60 plan, in addition to enabling customers to download music and select from a wide variety of ringtones and ringback tones, enabled customers to access a variety of video on demand services such as select television shows, news, sports and entertainment, including content from NBC Universal, Black Entertainment Television ("BET") and Univision.²⁵ Both the \$60 plan and the \$55 plan included MetroWEB service, which allowed unlimited Internet access and easy access to web browsing, email, social networking sites and instant messaging applications. In addition, customers could use their phones to enjoy any service their handset was capable of receiving, including Multimedia Streaming, over Wi-Fi, which capability was built into the handset.

However, as MetroPCS started to gain experience with data offerings, it faced several significant implementation with such offerings, first on its 1xRTT services with the Android operating system, and then on its 4G LTE networks. The additional functionality of the 1xRTT Android handsets offered by MetroPCS started to cause a

²⁴ MetroPCS initially has deployed LTE in 1.4 MHz channels in Sacramento and Philadelphia.

²⁵ MetroPCS' internal market research revealed that major drivers for consumer demand of mobile broadband were video and social networking, which led to the MetroPCS focus on MetroSTUDIO, as well as another offering called Social IM, which aggregates customers' social networks and instant messaging accounts into an integrated, easy to use interface.

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significant increase in the use of data services on the MetroPCS 1xRTT network. If MetroPCS continued to experience significant growth in 1xRTT data usage, it faced the prospect that, at some point, network congestion could force the company to devote additional capital to its older 1xRTT network, which capital might become stranded when voice over LTE (“VoLTE”) was commercially deployed.²⁶ Because of MetroPCS’ relatively finite spectrum and capital resources, it was essential that it manage the growth on its 1xRTT and 4G LTE networks without stranding spectrum or capital. Specifically, MetroPCS needed to incent customers who were significant 1xRTT data users to migrate up to its more efficient 4G LTE services. Migration also was necessary because MetroPCS customers would have additional 1xRTT Android handset choices in early 2011, which was certain to fuel increased data usage on MetroPCS’ 1xRTT networks. It was important, therefore, to encourage as many data users as possible to utilize the newer, higher speed 4G LTE network. Migration to the 4G LTE network is especially attractive now that a 4G LTE Android handset has become available.²⁷

After MetroPCS gained experience with the 1xRTT Android handsets and the Samsung Craft™, it was in a position to formulate discounts from its originally-offered \$60 and \$55 4G LTE rate plans to encourage migration from 1xRTT to its 4G LTE network in order to better manage the use of its 1xRTT network now and for the future. Discounts also were necessary to foster migration because the 4G LTE service plans initially offered by MetroPCS (\$55 and \$60) were priced at a premium to the 1xRTT services. 1xRTT service for Android handsets was and remains available at \$50 per month, whereas the least expensive 4G LTE service plan initially offered was \$55 per month.²⁸

As a consequence, MetroPCS decided in mid-October of 2010 to develop 4G LTE rate plans that would incent customers to migrate to 4G LTE without overburdening the 4G LTE network. A key element in the migration strategy was to ensure that customers could get a similar experience on 4G LTE for a comparable or lower price than what they would pay for 1xRTT service. Since MetroPCS’ 1xRTT network did not

²⁶ VoLTE will enable MetroPCS to offer both voice and data services over an integrated LTE network rather than subdividing the spectrum into separate LTE and 1xRTT components, which will be more efficient from a technical implementation and capacity perspective.

²⁷ MetroPCS announced on February 9, 2011 that it was launching the world’s first dual mode 4G LTE/CDMA handset with an Android operating system on February 10, 2011. The Galaxy Indulge, which runs on Android 2.2, provides complete access to Google Mobile services, including Google Search(TM), Google Maps(TM), Gmail(TM) and YouTube(TM). The smartphone features a 3 megapixel camera and camcorder with auto-focus, music player, Stereo Bluetooth(R) capabilities and expandable memory storage up to 32GB. Additionally, the Galaxy Indulge includes a 4GB microSD(TM) card, preloaded with the action film “IRONMAN 2,” produced by Paramount Pictures. *See* <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1526849&highlight=>.

²⁸ MetroPCS also anticipated that, because 4G LTE Android handsets would be capable of delivering Multimedia Streaming, the amount of Multimedia Streaming usage over time could represent a significant amount of traffic on its 4G LTE network due to the increased speed available on 4G LTE.

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provide robust Multimedia Streaming, MetroPCS decided that it would offer a discounted \$40 plan, which was \$15 less than its least expensive original 4G LTE plan (\$55) and also \$10 less than the \$50 1xRTT Android plan. For this migration strategy to work, MetroPCS felt, at the time, that it was important to include within the \$40 plan all of the core services available in the \$50 1xRTT service plan. Because 1xRTT service could not effectively support Multimedia Streaming, MetroPCS decided that the \$40 4G LTE rate plan would not generally include Multimedia Streaming. However, since the \$50 1xRTT rate plan included YouTube, MetroPCS felt, at the time,²⁹ it was necessary to offer unlimited YouTube on all 4G LTE plans. Otherwise, it would make no sense for customers to “upgrade” to 4G LTE because in fact they would lose popular functionality they had on 1xRTT. Adding YouTube as a feature of the 4G LTE service also was thought to be necessary because the LTE footprint is not yet the same as the 1xRTT footprint and consumer confusion might result if their handset had different functionality when reverting to 1xRTT service in a non-LTE area. Further, MetroPCS decided that it would offer a discounted \$50 per month plan, which represented a \$10 discount from the \$60 plan, for customers who only wanted up to 1GB (not counting unlimited YouTube) of Multimedia Streaming. This option would allow customers who were on the \$50 1xRTT plan to upgrade to a \$50 4G LTE rate plan and enjoy 1GB of Multimedia Streaming that they could not fully enjoy on 1xRTT. Finally, MetroPCS decided that it would leave in place the \$60 4G LTE rate plan.

Accordingly, the new three-tiered 4G LTE rate plans that MetroPCS adopted were as follows:

A \$60 Service Plan (price includes all applicable taxes and regulatory fees): This plan remains unchanged from the initially launched \$60 plan that was offered when the 4G LTE service was rolled out initially. It includes unlimited voice, unlimited text, unlimited web browsing (including Multimedia Streaming) plus MetroSTUDIO, including MetroSTUDIO’s video-on-demand features.

A \$50 Service Plan (price includes all applicable taxes and regulatory fees): This plan includes all of the services included in the \$60 plan, except that Multimedia Streaming is capped at 1 GB.³⁰ MetroSTUDIO audio services are available to customers for an additional fee, depending on the customers’ choice, and customers do not have access to the video on demand features of MetroSTUDIO.³¹

²⁹ Providing services in a highly competitive retail wireless market requires MetroPCS to constantly reevaluate its service offerings. As a consequence, it may revisit at some point the offering of unlimited YouTube on its network. MetroPCS is continually monitoring the impact on the system.

³⁰ As discussed in detail within, a customer reaching the 1 GB limit could convert to the unlimited plan without penalty by paying a *pro rated* portion of the higher charge.

³¹ This includes certain limited streaming audio previews of certain audio available on MetroSTUDIO, which are excluded from the 1 GB cap.

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A \$40 Service Plan (price includes all applicable taxes and regulatory fees): This plan provides unlimited voice and text service, and web access to all lawful websites, but does not allow Multimedia Streaming.³² MetroSTUDIO audio services are available to customers for an additional fee, depending on the customers' choice, and customers do not have access to the video on demand features of MetroSTUDIO.³³

When MetroPCS introduced the two discounted price plans (\$50 and \$40 per month) and eliminated the \$55 plan, it grandfathered all \$55 customers and enabled them to continue renewing this service month-after-month at this price so as not to take away functionality, or increase their price by forcing them to another plan.³⁴

In sum, the three-tiered rate plan structure was intended to serve multiple important network management functions. First, it was intended to encourage 1xRTT data users to migrate to the more efficient 4G LTE network. Second, it was intended to provide rate discounts to less intensive users of the network. Of course, as a non-dominant competitor, MetroPCS must constantly evaluate and change its rate plans to drive adoption, differentiate its services, respond to competitor offerings and manage the usage of its network. As part of this dynamic process, MetroPCS continually considers whether particular included services are having the anticipated effect on consumer demand and network usage. As a result, MetroPCS can and does change its rate plans on a regular basis, and will continue to do so.

Notably, all of the 4G LTE phones currently sold by MetroPCS under each of the 4G LTE rate plans are Wi-Fi enabled. MetroPCS offers free Wi-Fi hotspots in all of its company-owned retail stores, and encourages the independent resellers who are authorized to market MetroPCS services to establish free Wi-Fi hotspots as well -- which many have done. The Samsung Craft™, as well as the new Android-based Samsung Galaxy Indulge that MetroPCS now offers, comes with a pre-loaded Wi-Fi client that enables users to easily identify Wi-Fi hotspots that are available to the customer (*e.g.*, at Starbucks, McDonalds, etc.). At present, there are also thousands of Wi-Fi hotspots available across the United States. Thus, any MetroPCS 4G LTE customer -- even a subscriber to the \$40 and \$50 plans -- is able to enjoy all of the unlimited Multimedia Streaming using Wi-Fi that their chosen handset is capable of displaying.

³² Again, a customer who decides in the midst of a monthly billing period to switch to either the \$50 or \$60 plan in order to access Multimedia Streaming can convert to one of these plans without penalty by paying a *pro rated* portion of the higher monthly charge.

³³ This includes certain limited streaming audio previews of certain audio available on MetroSTUDIO.

³⁴ Since MetroPCS does not require customers to sign a long-term contract, it had no contractual obligation to continue to offer the \$55 plan and to allow customers to select it. But it did so as an accommodation to its customers.

VoIP and Skype

Prior to MetroPCS rolling out its 4G LTE services, VoIP, including Skype or similar Internet protocol-based voice and/or video telephony³⁵ services (collectively, “VoIP Services”), were not available on its 1xRTT networks. This was the case for several reasons. First, to the knowledge of MetroPCS, when MetroPCS first started to move into advanced data services, there was no VoIP client readily available via a BREW application store for MetroPCS handsets. Second, the throughput of the 1xRTT network was not adequate to reliably support VoIP Services.³⁶ And third, these Internet protocol-based services were not an efficient use of MetroPCS’ 1xRTT network. Restrictions on VoIP Services initially were carried over to 4G LTE services because the first handset -- the Samsung Craft™ -- also was BREW-enabled. However, as MetroPCS continued rolling out its 4G LTE network, reviewed the Commission’s new net neutrality rules, planned for the recently-announced arrival of an Android-based handset for its 4G LTE service and drew upon its experience with 1xRTT Android handsets, MetroPCS revisited the prior restrictions on VoIP Services.³⁷ Having completed this review process, MetroPCS now allows all of its 4G LTE customers to utilize VoIP Services on any handset that is technically capable of using such a service.³⁸

MetroPCS’ Relationship with YouTube

As earlier noted, MetroPCS opted to enable smartphone users on its 1xRTT service to access popular YouTube content by compressing the traffic in a manner that made it accessible at the relatively slower speeds of that air interface. This decision was made to enable MetroPCS to compete more effectively against other national carriers who were able to provide YouTube access over their EV-DO (or HSPA or HSPA+) networks.

³⁵ MetroPCS does not offer its own video telephony services to its customers on its 1xRTT or 4G LTE rate plans.

³⁶ As noted above, 1xRTT networks do not support data speeds in excess of 153.6 Kbps at most. The actual speed, however, is a function of many factors, including distance from the cell site, interference, environmental conditions and the amount of voice and data traffic on the network. Because 1xRTT is designed as a voice technology first, the voice logical channel is given priority over the data logical channel in a 1xRTT network. Since both voice and data services are served in the same physical channel (but different logical channels), increases in use of the voice service decreases the amount of capacity and the speed at which data services are available. Since MetroPCS historically has offered unlimited voice services, it has voice usage patterns which are higher than the other national carriers with an average customer approaching the use of 2000 voice minutes per month (compared to typical post paid operators, where the average customer uses less than 1000 voice minutes a month). Accordingly, the network at many times will have limited capacity for data services -- especially during the busy hours. Further, since MetroPCS offers most of its monthly voice services on an unlimited basis, there has not been any significant demand for MetroPCS to allow VoIP on its 1xRTT networks.

³⁷ There was no urgency in resolving this issue since the Samsung Craft™ is a BREW platform phone that is not suited to these Internet protocol-based services.

³⁸ MetroPCS customers now can enjoy the benefits of this change as a result of the February 10, 2011 launch of its first Android-based 4G LTE phone.

MetroPCS considered it to be a competitive necessity at the time to take steps to meet its customer demands for YouTube. Having made this pro-competitive decision for its 1xRTT customers, MetroPCS felt it had no choice but to extend YouTube access to all 4G LTE plans in order to create greater parity with MetroPCS' 1xRTT service and foster migration to the faster network.³⁹

The MetroPCS arrangement with YouTube is not a “pay for priority” arrangement, as MetroPCS has no financial arrangement with YouTube that gave rise to, or caused MetroPCS to extend or maintain, the YouTube access.⁴⁰ Significantly, MetroPCS has not been approached by any competitor of YouTube seeking to deliver its content to MetroPCS customers. However, if another company approaches MetroPCS, or if significant customer demand arises, MetroPCS would pursue the matter. In sum, MetroPCS has no financial arrangement with YouTube and no intention of unreasonably discriminating against other content providers.⁴¹

The MetroPCS 4G LTE Data Plans Are Pro-Competitive and Consumer Friendly

The MetroPCS 4G LTE rate plans clearly are pro-consumer. MetroPCS' most expensive all-inclusive plan -- that includes unlimited web access and Multimedia Streaming (at a fixed \$60 per month rate, including all applicable taxes and regulatory fees) -- is priced well below the unlimited voice and data offerings of all of MetroPCS' major competitors.⁴² Thus, MetroPCS provides competition to the other national wireless

³⁹ An additional reason driving this decision was the realization that customers would have varying experiences depending on which network they were being served on. If YouTube was not included in a 4G LTE service plan, customers would have access to it on Wi-Fi networks, but not have access to it when they were in a 4G LTE service area, and would again receive it when roaming in a 1xRTT service area. This could lead to considerable customer confusion and dissatisfaction. Of course, as noted above, MetroPCS constantly reevaluates its offerings and may revisit the offering of unlimited YouTube if it is not having the desired customer benefit or effect.

⁴⁰ MetroPCS also certainly cannot be accused of operating in a “walled garden” and favoring its own content over that of third parties. Subscribers to the MetroPCS 4G LTE \$40 plan have access to YouTube (in which MetroPCS has no financial interest), but not to the MetroSTUDIO video on demand content.

⁴¹ Notably, the non-discrimination requirement in the new Net Neutrality rules applies only to “fixed broadband Internet access service,” not to wireless. *See* 47 C.F.R. § 8.7. The wireless rule only prohibits providers of mobile broadband Internet access service from blocking applications that compete with the providers voice or video telephony service. This rule has no applicability to Vimeo or other streaming video services that Free Press is seeking to promote over YouTube.

⁴² Comparable unlimited voice, data and text plans from nationwide carrier competitors are substantially more expensive than the \$60 per month plan that MetroPCS offers. For example, a comparable plan from AT&T would cost \$114.99 and is not unlimited at all -- data use under the plan is capped at 2 GB. Similarly, an unlimited voice, data and text plan costs \$119.98 with Verizon Wireless, \$109.99 (including a \$10 smartphone surcharge) with Sprint Nextel and \$99.99 with T-Mobile. Verizon does not offer an unlimited 4G LTE data plan at all. Further, none of these advertised prices include the taxes and fees that all are included with the MetroPCS 4G LTE plans -- which increases the prices of these plans even more.

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providers and offers a competitive alternative to their considerably higher cost data plans. MetroPCS also prides itself on offering customers choices that meet differing needs. Some consumers do not want or cannot afford an all-inclusive plan. For example, customers who need only a limited or finite amount of Multimedia Streaming can opt to reduce their monthly costs by \$10 from the \$60 rate plan to a \$50 rate plan. Customers who do not plan to do any Multimedia Streaming can opt for an additional \$10 discount and sign up for a \$40 rate plan. However, if they decide to opt for the \$60 rate plan, they can enjoy the lowest available price from any carrier for 4G LTE services with unlimited Multimedia Streaming.

Regardless of the plan chosen, customers can access any lawful web site because MetroPCS does not block access to any URL.⁴³ Of course, a customer who has elected not to receive Multimedia Streaming will not be able to access Multimedia Streaming content -- but will be able to view all the other content on the site.⁴⁴ MetroPCS also prides itself on giving customers great flexibility to change plans, or to discontinue service altogether, without penalty. Customers can decide at any time to change rate plans, and will only have to pay the *pro rated* difference without having to sign up for an additional term or extending their existing term. So, for example, \$40 rate plan customers who decide that they want some Multimedia Streaming can call at any time and upgrade their plan to either the \$50 or \$60 rate plans and will only have to pay a *pro rated* portion of the \$10 or \$20 plan differential at their next billing cycle. Thus, customers always have the ability to access all lawful websites, and to enjoy the specific downloading capabilities they need. At the same time, customers not needing or wanting to use their phone for Multimedia Streaming can select a lower cost service that best suits their budget. And, customers who for any reason want to discontinue service with MetroPCS are free every month to go to another competing carrier without paying any early termination fee or any other penalty. Indeed, it is because all MetroPCS customers are able to “vote with their feet” every month by potentially discontinuing service that the MetroPCS services have been designed to be so consumer friendly.

⁴³ If the Commission decides that customers unable to download multimedia content do not have “access” to websites with such content, then the \$40 plan customers should not be deemed to be subscribing to a “broadband Internet access service” because they are not able to “receive data . . . from substantially all Internet endpoints.” See 47 C.F.R. § 8.11. At that point, the MetroPCS service offering would not be subject to the Net Neutrality rules at all.

⁴⁴ MetroPCS does not discriminate based on content or website.

**The MetroPCS 4G LTE Data Plans
Do Not Raise Regulatory Concerns**

Based on the foregoing, the Commission can easily discern that the MetroPCS 4G LTE service offerings need not be a matter of regulatory intervention, investigation or concern:

- The FP Letter describes the MetroPCS plans as creating a situation in which “carriers, not users, decide what content, applications, and services are important and will be delivered.”⁴⁵ In fact, MetroPCS is offering its customers the ability to choose the web experience they want at the price they want to pay -- and at prices significantly lower than its nationwide competitors. Notably, the unlimited service offered by MetroPCS is a compelling value proposition compared to all of its competitors’ offerings.
- The FP Letter expresses concern that MetroPCS is “[p]ermitting the use of some Internet applications and services, while prohibiting the use of others.”⁴⁶ But, MetroPCS is not prohibiting any Internet applications or services. MetroPCS offers customers the lowest cost unlimited broadband access service in the industry. However, customers also may elect to forego Multimedia Streaming over the 4G LTE MetroPCS network, or to cap their Multimedia Streaming usage, in exchange for a price reduction.⁴⁷ But, customers who make this election still have Wi-Fi access to all of the services, applications and Multimedia Streaming they want and can side load multimedia content. They also are free to change their plan at any time without penalty to garner additional access over the MetroPCS network to Multimedia Streaming.⁴⁸
- The FP Letter claims that MetroPCS is “[o]ffering a service plan that does not permit the use of Skype, Google Voice, or other VoIP applications” in violation of the Net Neutrality rule applicable to mobile broadband services.⁴⁹ However, MetroPCS permits such applications and was in the process of implementing this policy when FP filed its letter. Notably, the Net Neutrality *Order* purposefully allowed a period of time -- which has not yet run -- before the new rules become

⁴⁵ FP Letter, p. 1.

⁴⁶ *Id.* at p. 2.

⁴⁷ The attacks on MetroPCS have given rise to active debate in which certain well-known advocates for minority rights in the telecommunications industry have recognized the benefits of the choices offered by MetroPCS to lower income users. See Tony Romm, “Politico Morning Tech,” (Feb. 7, 2011), *available at* <http://www.politico.com/morningtech/>.

⁴⁸ Of course, as noted herein, certain applications may not be technically capable of running on particular handsets, or over particular handset operating systems.

⁴⁹ *Id.* at p. 3.

effective in order to give carriers an opportunity to take the steps necessary to comply with the new rules.⁵⁰

- The FP Letter claims that the MetroPCS terms and conditions of service are broad and could be interpreted to allow blocking of lawful websites.⁵¹ MetroPCS only blocks access to websites as required by law (*e.g.*, child pornography) or that the customer has requested not be accessible (*i.e.*, parental controls). Further, MetroPCS was in the midst of a review of its standard terms and conditions in light of the recently-adopted Net Neutrality *Order* when the FP Letter was filed. That process is ongoing, and MetroPCS certainly cannot be faulted for old language in its terms and conditions when the new Net Neutrality rules have not taken effect. But, most important, MetroPCS is not blocking access to any lawful website. The only limitation, which is reasonable and lawful, is that customers may elect the extent to which they shall receive or not receive Multimedia Streaming. If they decide not to take advantage of a plan with Multimedia Streaming (or only desire limited access to Multimedia Streaming), they will be able to choose a discounted plan -- and not be forced to pay for functionality they do not want. Nevertheless, they will still be able to access any lawful website.⁵²
- FP contends that MetroPCS has created “distinctions between different uses of the Internet that lack any engineering merit.”⁵³ But, the distinction that is being drawn among and between the three 4G LTE data plans is the amount of Multimedia Streaming that is available at the consumers’ election. Since Multimedia Streaming places obvious burdens on network capacity, providing a discount for customers who opt not to use such services clearly is a reasonable network management technique.⁵⁴

⁵⁰ *Order* at para. 59.

⁵¹ FP Letter, p. 4.

⁵² As noted above, if offering a service without Multimedia Streaming is deemed to deny access to an Internet endpoint, then the \$40 MetroPCS service should not be deemed a broadband Internet access service and thus the Net Neutrality rules FP is seeking to invoke would not apply.

⁵³ *Id.* at p. 2.

⁵⁴ In a separate Internet blog post, Chris Riley of FP anticipated that MetroPCS would defend its plans in part on the ground that it is meeting its net neutrality obligations because it does offer unfettered access to the Internet, albeit at a higher price point. He dismisses this defense by posing the rhetorical question “[w]hat if that \$60 unlimited plan were \$100? What about \$600?” See <http://www.savetheinternet.com/blog/11/01/12/more-metropcs-discrimination-just-isnt-reasonable>. The answer is that MetroPCS is not charging \$100 or \$600. At \$60, the MetroPCS offering is the most economical unlimited voice and data plan available from any carrier. Certainly this highly competitive offering cannot be viewed askance by the Commission. Further, the *Order* clearly permits customers to refuse to receive certain traffic. *Order* at para. 89. If a customer decides that they do not want certain traffic, the rules set forth in the *Order* do not preclude a carrier from passing along the savings from such a refusal to that customer. Any other outcome would require customers to pay for traffic that they do not want or need. Such choice is the *sine qua non* of a competitive marketplace.

- FP suggests that MetroPCS is unfairly picking winners and losers by discriminating in favor of YouTube to the possible disadvantage of Vimeo, or other deserving companies offering a “better video service” than YouTube.⁵⁵ Of course, MetroPCS didn’t pick YouTube; the free market did. There is ample evidence that YouTube is, far and away, the most popular video site. It is no surprise that customers wanted access to YouTube, and MetroPCS cannot be faulted for responding to these market demands, particularly when YouTube was available on competitor systems. To its knowledge, MetroPCS has never been approached by Vimeo, or by any other YouTube competitor seeking access, and has no intention of unreasonably discriminating against them.⁵⁶
- The FP Letter suggests that the MetroPCS plans were designed to circumvent or skirt the edge of the new Net Neutrality rules.⁵⁷ As is set forth above, MetroPCS’ three-tiered rate plan was devised and already being implemented months before the *Order* was released.
- The FP Letter claims that the limited MetroPCS disclosure regarding the “scope of ‘data access’” would violate the Commission’s transparency requirements.⁵⁸ Those requirements are not yet effective and thus are not being violated by MetroPCS. The company is, though, committed to providing consumers with sufficient information to enable them to make informed decisions. As noted above, since MetroPCS customers sign no long term contracts, the company has nothing to gain -- and everything to lose -- by causing customer confusion or dissatisfaction. The challenge is to provide the customer with sufficient information to make a well-reasoned purchase decision, without creating an information overload that actually will inhibit rational choice. This challenge is particularly acute in the world of wireless broadband Internet access where service descriptions can easily devolve into hyper-technical jargon that has no real world meaning to the average consumer.⁵⁹ Nevertheless, the Commission can rest assured that MetroPCS continually is reviewing and updating its service and plan

⁵⁵ FP Letter, p. 3.

⁵⁶ In any event, as earlier noted, since YouTube and Vimeo are not voice or voice telephony services, the restriction applicable to mobile providers prohibiting discrimination in favor of affiliated services is not implicated.

⁵⁷ *Id.* at p. 1.

⁵⁸ *Id.* at p. 5.

⁵⁹ For example, Multimedia Streaming may include RTSP and other acronymed protocols, which have little or no meaning to most customers. MetroPCS is opting instead for the phrase Multimedia Streaming in the belief that most customers will have some relevant experience listening to or looking at or downloading video or audio files, and are more likely to understand the term “multimedia.” Since the goal is to make sure that customers know what is and is not included in a rate plan, this layman’s description is believed to be more informative than a hypertechnical one focused on protocols. The *Order* also contemplates transparency for third parties, such as content providers, and MetroPCS also is in the process of developing those disclosures and putting them in place on a timely basis.

descriptions in an ongoing effort to ensure that they are accurate and meaningful to customers and prospective customers.

- The FP Letter accuses MetroPCS of putting Netflix at a “competitive disadvantage to the . . . video services offered by MetroPCS.”⁶⁰ This is incorrect. Any MetroPCS customer who has access to MetroSTUDIO video on demand services also will have equivalent access to Netflix and other competing video services, to the extent that the selected handset is technically capable of accommodating such services.⁶¹ And, consumers do not “pay more” for the privilege to use alternatives to the services offered by MetroPCS.
- The CU Letter claims the MetroPCS terms and conditions are unclear as to what is meant by “web browsing” and “data access,” and questions “whether these terms would allow for mobile users to access any lawful website of their choice.”⁶² The answer is that MetroPCS does not block access to any lawful website.
- The CU Letter questions whether consumers will be able to access applications like Skype that compete with MetroPCS’ voice service.⁶³ The answer is -- now that MetroPCS has Android phones on its 4G LTE network -- “Yes!”
- The CU Letter suggests that access to “affiliated” services “may not count against a bit cap, but similar independent services would count, and therefore would be subject to an additional cost.”⁶⁴ That is incorrect. The 1GB cap applies to all Multimedia Streaming (except YouTube, for the reasons explained above⁶⁵) and video on demand services from MetroSTUDIO are not available on the \$50

⁶⁰ FP Letter, p. 2.

⁶¹ To MetroPCS’ knowledge, no Netflix client exists for the BREW platform, so Netflix service is not available at present on the current Samsung Craft™ handset. MetroPCS also does not believe a Netflix client is available for the recently launched Android handset (*See* <http://cdn-0.nflximg.com/us/layout/signup/hiw/201006/otherDevicesOnly.gif>), but the \$60 plan should enable customers to stream Netflix on an unlimited basis when and if such a client is available. \$50 plan customers will be able to receive up to 1GB of Netflix (but would not be able to receive any video on demand from MetroSTUDIO). Thus, on the \$50 plan, MetroPCS certainly cannot be deemed to be discriminating in favor of its own service -- since it does not provide its own video on demand content for such plan, but would allow up to 1 GB of Multimedia Streaming from Netflix.

⁶² CU Letter, p. 2.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ As mentioned above, MetroPCS does not have any affiliation relationship with YouTube. Moreover, the *Order* does not impose a non-discrimination requirement upon mobile services. Rather, the only limitation is that a carrier cannot limit voice or video telephony services that compete with a carrier’s own voice or video telephony services. Such a requirement would not reach Multimedia Streaming for non-voice or video telephony services.

metered plan. Accordingly, the cap generally applies to all services, affiliated or not, equally.⁶⁶

- The CU Letter encourages the Commission to “examine the disclosures of . . . MetroPCS to determine whether they conform to the Commission’s rule on transparency.”⁶⁷ This request is premature, as the transparency rules have not yet become effective.⁶⁸ However, as a service provider who does not lock consumers in with long-term contracts or termination fees, MetroPCS has powerful competitive incentives to give customers all the information they need to make informed decisions.⁶⁹

MetroPCS is in Compliance with the Letter and the Spirit of the Commission’s Rules

MetroPCS supports an open Internet, and is trying to make that a reality by offering consumers affordable broadband wireless Internet access data options that will spur broadband wireless Internet access services adoption and break through to consumers who in the past were on the wrong side of the digital divide. Recent reports have indicated that one major barrier to broadband adoption is the cost of the service.⁷⁰ This is a particular challenge for minorities.⁷¹ Indeed, David Honig, co-founder of the Minority Media and Telecommunications Council, recently opined that MetroPCS has been unfairly accused of net neutrality violations,⁷² noting that MetroPCS’ pricing plans are beneficial to low-income families that want affordable service. Indeed, Mr. Honig

⁶⁶ The \$40 and \$50 plans limit MetroSTUDIO to solely ring tones and streaming audio, based on additional payment; when a customer buys a music download, the price for the network usage is included in the download price. In addition, the \$40 and \$50 plans include the limited streaming of certain audio previews of certain audio available on MetroSTUDIO (this streaming is excluded from the \$50 plan’s 1 GB cap). A customer may then purchase MetroSTUDIO audio content for an extra fee on a per song or bundled basis.

⁶⁷ CU Letter at p. 3.

⁶⁸ Cecilia Kang, “Net Neutrality Complaints Pile Up,” Washington Post (Jan. 25, 2011), *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/24/AR2011012406319.HTML>.

⁶⁹ Indeed, MetroPCS was one of the first wireless carriers to offer applicable taxes and fees included in its rate plans, in order to make pricing decisions easier and more transparent to its customers and potential customers.

⁷⁰ “Exploring the Digital Nation: Home Broadband Internet Adoption in the United States,” Economics and Statistics Administration and National Telecommunications and Information Administration, vi, 17, 21 (Nov. 2010) (finding that “households that did not use the Internet . . . ranked affordability as the primary deterrent to home broadband Internet use”), *available at* http://www.ntia.doc.gov/reports/2010/ESA_NTIA_US_Broadband_Adoption_Report_11082010.pdf.

⁷¹ See “National Minority Broadband Adoption: Comparative Trends in Adoption, Acceptance and Use,” Joint Center for Political and Economic Studies (Feb. 2010), *available at* http://www.jointcenter.org/publications_recent_publications/media_and_technology/national_minority_broadband_adoption

⁷² Tony Romm, “Politico Morning Tech,” (Feb. 7, 2011), *available at* <http://www.politico.com/morningtech/0211/morningtech154.html>.

correctly recognizes that MetroPCS is “not blocking websites”⁷³ and is attempting to allow all Americans the opportunity to participate in the Internet revolution.

MetroPCS is pursuing these objectives in a manner that complies with both the letter and the spirit of the recently adopted rules:

- MetroPCS is not blocking consumers from accessing lawful websites.
- MetroPCS is not blocking applications that compete with MetroPCS’ voice or video telephony services.
- The tiered pricing plan, whereby customers pay lower fees if they do less (or no) Multimedia Streaming, is a reasonable network management practice.
- MetroPCS is not party to a “pay for priority” access scheme with YouTube. MetroPCS receives no financial consideration from YouTube for the YouTube access that MetroPCS accords to its subscribers.
- MetroPCS is committed to providing accurate information to consumers so that they can make informed choices regarding its services and equipment.

Conclusion

The goal of MetroPCS is simple: Wireless for All. It seeks to achieve this goal by providing affordable, predictable and innovative wireless service. Interestingly, the FP Letter claims that the “value of the Internet” will only be realized when “consumers can choose the Internet content, applications and services that best serve their needs.”⁷⁴ The multiple data plans offered by MetroPCS provide consumers with that precise opportunity. Providing more choice and flexibility has been core to the mission of the company since its inception.

Consumers would not be benefited if MetroPCS offered only a \$60 plan. Nor will the wireless market be more robustly competitive if MetroPCS is prohibited from offering its customers unlimited YouTube access or investigated for trying to differentiate its services by meeting consumer demand. The reality is that MetroPCS operates in a highly competitive wireless marketplace dominated by larger entrenched incumbents. As a result, the company must continually strive to offer consumers an exceptional value proposition by managing its costs, maximizing its relatively limited spectrum assets, offering differentiated services and becoming the champion of consumer-friendly broadband wireless service plans. Disapproving MetroPCS’ rate plans, or subjecting the

⁷³ *Id.*

⁷⁴ FP Letter, p. 3.

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company to a distracting investigation, would not foster an open Internet. Indeed, consumers will be the losers if MetroPCS is distracted from its mission of being a disruptive, pro-competitive force in a wireless broadband market that is becoming increasingly concentrated.

In sum, MetroPCS is not violating either the letter or the spirit of the Net Neutrality *Order*. MetroPCS hopes this letter will set the record straight regarding its consumer friendly pro-competitive rate plans.

Kindly refer any questions in connection with this letter to the undersigned.

Respectfully submitted,



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