

# **Ensuring Nondiscriminatory Access and Rates for Wireless Pole Attachments**

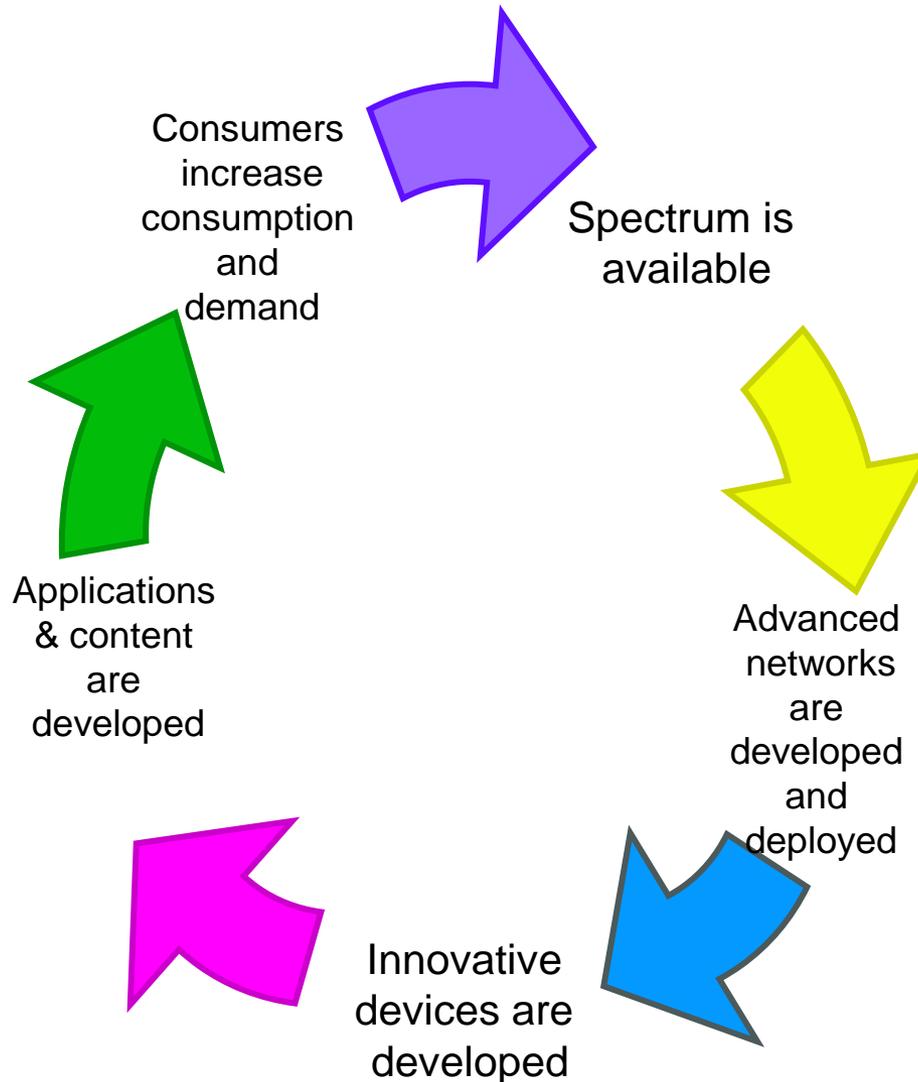
Presentation to Christine Kurth

Office of Commissioner Robert McDowell

CTIA-The Wireless Association®

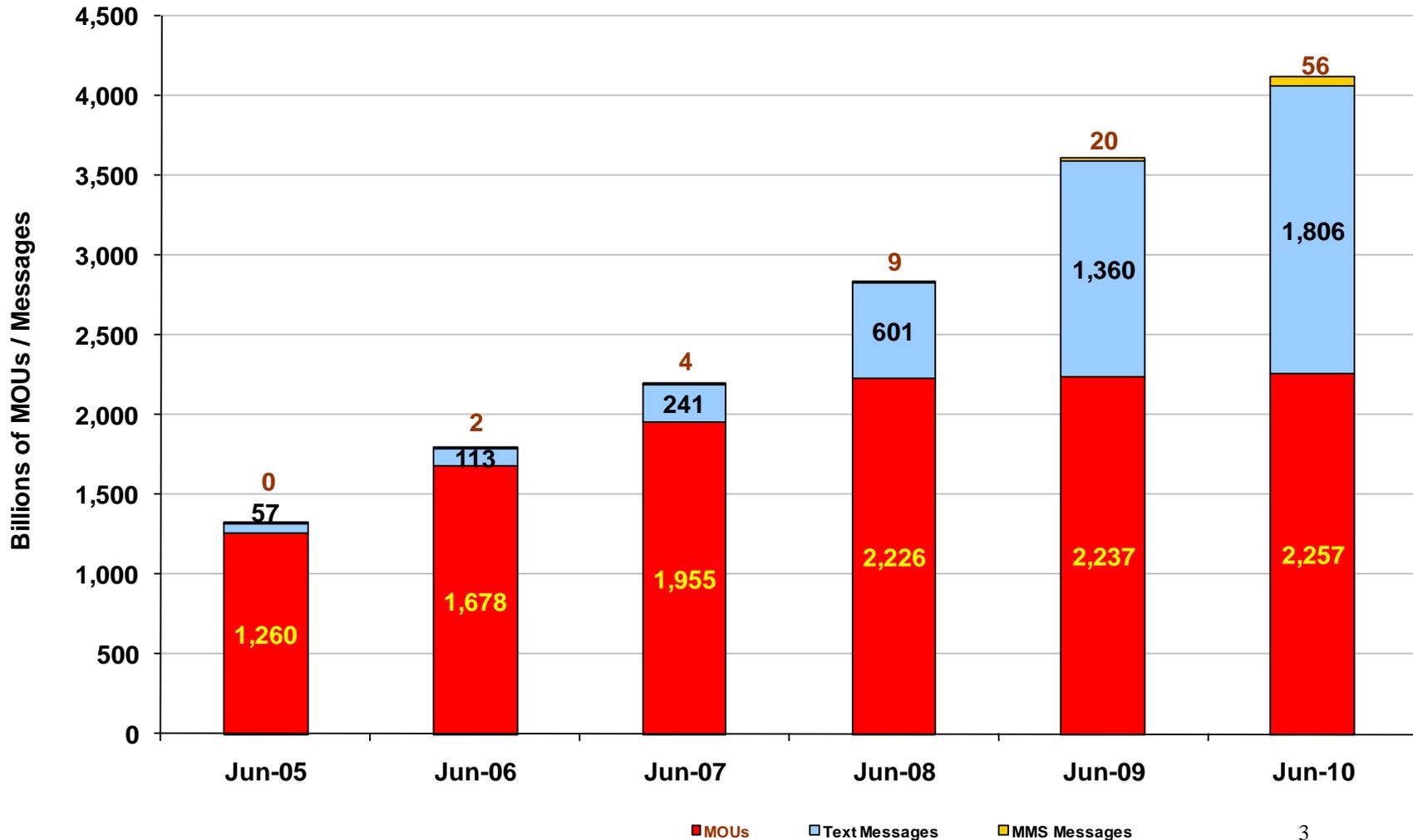
March 10, 2011

# “Virtuous Cycle”



# Increasing Wireless Traffic: Wireless Minutes and Messages Exceeded 4 Trillion in Most Recent 12 Month Period

Minutes and Messages as a Measure of Wireless Usage



# Growing Appetite for More Smartphones and Data Applications

- 31% of all U.S. mobile users had Smartphones as of December 2010, according to Nielsen.
- In *three years*, the wireless industry launched:
  - More than 26 applications stores
  - Offering almost one million applications
- To date, more than 10 billion applications have been downloaded by consumers.
- In the first half of 2010, 161.5 billion MB were carried by wireless networks in the U.S., up 50% from the last half of 2009.
- Wireless data use is expected to grow 1,914% from 2010 to 2015.

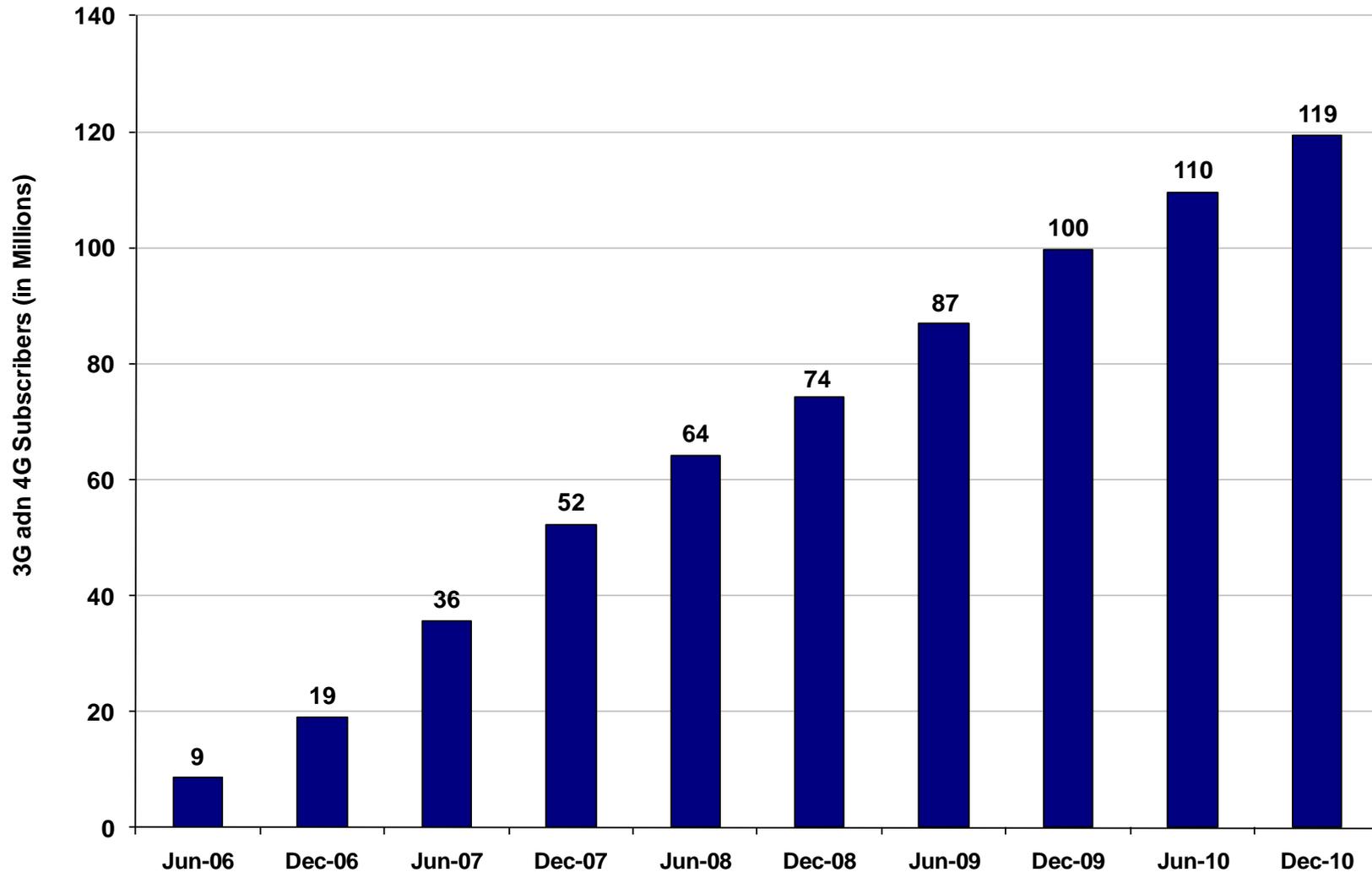
# Rapid Build-out of High-Speed Networks

- A variety of providers have been deploying high-speed wireless broadband networks and solutions for customers in markets across the country.
- AT&T deployed HSPA+ to virtually 100 percent of its mobile broadband network by January 2011, and will launch its 4G LTE service mid-2011.
- Verizon launched its 4G LTE network in 38 markets and more than 60 commercial airports, covering one-third of all Americans. The company will expand its 4G LTE network to an additional 140 markets by the end of 2011 and plans to cover its entire 3G footprint with 4G by the end of 2013.
- T-Mobile has launched HSPA+ in more than 100 markets covering 200 million people, and plans to double the speed of its HSPA+ network in 2011, with 140 million Americans having access to these increased speeds by mid-year.

# Rapid Build-out of High-Speed Networks (cont'd)

- Sprint Nextel offers nationwide wireless service, with its 4G (WiMAX) service covering nearly 40 million people.
- Regional Operators providing high-speed wireless service include: Alaska Communications Systems, Bluegrass Cellular, General Communication Inc., Nex-Tech Wireless, nTelos, and Stelera Wireless.
- Bluegrass Cellular, Cellcom, and Pioneer Cellular are participating in the LTE in Rural America program.

# Growing Number of Unique 3G and 4G Wireless Subscribers



Source: comScore MobiLens (3 month averages ending in named month)

# Wireless is a Growing Means of Broadband Access

- Consumers want Mobility and Broadband
  - The last mile is essential to making that a reality.
- Wireless attachments on utility poles allow carriers to expand coverage, increase signal strength (*i.e.*, improve indoor coverage), improve quality of service (*i.e.*, eliminate “dead spots” and dropped calls), and bring new, innovative broadband services to more Americans.
- As carriers continue deploying additional spectrum (*e.g.*, 700 MHz) and wireless broadband technologies (*e.g.*, LTE, WiMAX), coverage and capacity remain critical issues.
- Yet wireless providers face regulatory, technical, and environmental hurdles when meeting the demands for improved and expanded capacity and coverage.
  - Extensive delays, inflated costs and difficulties in obtaining approval for new tower structures.

# Wireless Attachers' Access to Electric Utility Poles

- Prompt attachments are critical to a wireless carrier's business.
- There should be no debate regarding wireless providers' rights to protection under Section 224 of the Act.
  - FCC's decision that wireless attachments were included within the scope of federal pole attachment protections was upheld by the U.S. Supreme Court in *NCTA v. Gulf Power Co.*, 534 U.S. 327 (2002).
  - *See also Omnipoint Corp. v. PECO Energy Co.*, MO&O, 15 FCC Rcd. 5484 (2003); *Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at Reasonable Rates*, Public Notice, 19 FCC Rcd. 24930 (2004).
- Wireless carriers are ready and willing to work cooperatively with pole owners. To facilitate non-discriminatory access by wireless attachers, clear, written procedures are necessary to streamline and minimize delays.
  - But blanket denials or extended timelines due to alleged "uniqueness" of wireless attachments is unjustified.

# Wireless Attachers' Access to Electric Utility Poles (cont'd)

- While there may be some differences in the physical characteristics of wireline and wireless communications facilities, these variances do not require materially different treatment.
  - Wireless pole-top attachments are more flexible than standard wireline attachments because wireless attachers do not need to attach to every pole.
- The Commission should implement a shorter timeline for wireless make-ready, which is consistent with the Commission's suggestion that the size of a build-out request impact the make-ready timeline.
  - Whereas typical wireline networks can include hundreds of thousands of poles, DAS networks only include dozens of poles – or hundreds at the high end of the scale.
  - As a result, quantifiably less engineering and make-ready work is required for building out a wireless system.
  - The 2009 “Shot Clock” *Declaratory Ruling* sets a presumptively reasonable timeframe for processing collocation and non-collocation tower siting applications. If 90 days is a presumptively reasonable time period for a wireless siting collocation application, then a make-ready timeline for wireless attachments can be shorter than the 148-day timeline proposed by the Commission.

# Wireless Attachers' Access to Electric Utility Poles (cont'd)

- Electric Utilities' refusals to negotiate pole attachment agreements in good faith are unlawful.
- Electric Utilities' concerns of safety issues and RF emissions are adequately addressed by applicable NESC, FCC, OSHA, EPA and state rules.
  - FCC has rejected utilities' claims that that they are the "primary arbiters" of safety, reliability or engineering concerns "or that their determinations should be presumed reasonable." 1996 Local Comp. Order, para. 1158.
- Electric Utilities' may not impose blanket prohibitions on mid-pole and pole-top wireless attachments.
  - The FCC declined to establish any presumption that space above the "communications space" is reserved for utility use only.
  - Other states permit attachments to pole tops. Utah Admin Code R746-345-5 - "Usable space" means space on a utility pole above the minimum grade level to the top of the pole, which includes the space occupied by the pole owner.
- Electric Utilities attach and maintain wireless antennas and equipment for their own communications networks.

# Pole Rental Rates Should Remain Uniform and As Low As Possible

- The FCC should establish a rate structure that encourages broadband deployment while fully compensating pole owners for use of their infrastructure.
- CTIA applauds the development of a uniform rate that incorporates more efficient marginal costs principles.
- Consistent with the National Broadband Plan, CTIA supports setting pole attachment rates as low as possible to facilitate the expansion of broadband.
- The FCC should make clear that any rate adjustments apply to both wireline *and* wireless attachments. FCC and Supreme Court precedents dictate that wireless attachments receive the statutory prescriptions accorded to telecommunications carriers under Section 224.
  - As with make-ready access issues, wireless attachment rates should not be treated materially differently than wireline attachment rates.

# The Current Enforcement Process Can Be Improved

- CTIA suggests adoption of a two-tiered complaint process that “fast-tracks” access-related disputes.
  - Complainants should be able to request resolution of access-related disputes on a timeline and under procedures such as those already established in the Enforcement Bureau’s accelerated docket. See 47 C.F.R. § 1.730.
  - The FCC could then “fast-track” those disputes that are time-sensitive, and would continue the current process for those disputes that are not.
- Where an electric utility unlawfully denies or delays access or charges unreasonable rates, the FCC should grant the attacher compensatory damages and impose other measures such as forfeitures and attorneys fees.
- Damages should accrue prior to the complaint date.
  - Would realign these incentives so that it is in *both* parties’ best interests to resolve disputes as quickly as possible.