

**WRITTEN STATEMENT OF**

**AT&T INC.**

*on*

**AN EXAMINATION OF COMPETITION IN  
THE WIRELESS INDUSTRY**

*before*

**SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY AND THE INTERNET  
UNITED STATES HOUSE OF REPRESENTATIVES**

The wireless marketplace in the United States is, and has long been, one of the most exciting, dynamic, and competitive industries in this or any country. Over the last two decades, lawmakers and regulators across the political spectrum have recognized that wireless consumer welfare is thus best promoted through market discipline, not inflexible and costly government regulation. The result has been an explosion of carrier investment, lower prices and increased value for consumers, and revolutionary new wireless devices and services. These changes are literally transforming the way Americans live and work.

Wireless has been one of the great success stories in American business, and the wireless industry of today represents a true bright spot in an otherwise weakened economy. Indeed, during troubled times when other industries are pulling back, the wireless industry is on the brink of yet another huge leap forward, as wireless carriers prepare to invest in even faster networks designed to take advantage of the next generation of revolutionary devices and applications. Those multi-billion dollar investments would be put at risk and discouraged, however, if, as some have urged, the government were suddenly to reverse its policies and impose intrusive restrictions on the providers of these services.

***Wireless Competition and Consumer Benefits***

Few businesses are more intensely competitive than today's wireless industry. According to the FCC's latest statistics, more than 95 percent of the U.S. population lives in census blocks with at least three competing wireless carriers, and more than half of the population lives in census blocks with at least five competing carriers.<sup>1</sup> The FCC continues to make additional spectrum available, and major new providers, such as Clearwire and the cable companies, continue to enter. As the FCC's detailed annual reports to Congress time-and-again confirm, the wireless

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<sup>1</sup> 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 Commercial Mobile Services*, WT Docket No. 08-27, ¶ 2 (January 15, 2009) ("*Thirteenth Report*").

marketplace is and will remain demonstrably competitive.<sup>2</sup> In fact, as a recent study shows, the U.S. enjoys the *least* concentrated wireless industry of any major industrial country.<sup>3</sup>

Because of this intense facilities-based competition, output continues to soar and prices continue to fall. There are now 270 million wireless subscribers in the United States, and in 2008 they used more than 2.2 trillion minutes – a tenfold increase since 2000.<sup>4</sup> Americans sent more than one trillion wireless text messages in 2008 – triple the amount in 2007. At the same time, prices have declined precipitously. Revenue per minute has fallen 89 percent since 1994, and U.S. wireless prices are much lower than in any other major industrialized country in the world.<sup>5</sup>

Consumers are also getting far more value for their wireless dollars than they did even a few years ago. Carriers, device manufacturers, and operating system and applications developers compete fiercely to provide consumers with an increasingly broad array of new features, functions and capabilities. This is especially true of wireless broadband services. Carriers have invested tens of billions of dollars in recent years to upgrade their networks to increase speeds and to support a wave of revolutionary new broadband devices and applications. Americans today do not just talk on their wireless “phones” – they surf the Internet, listen to music, send emails, edit documents, use GPS-enabled features, watch videos and even live televised events, play games, and much more.

The wireless industry is just beginning to tap these possibilities. Seemingly every month a new and innovative wireless device bursts onto the scene, from the Amazon Kindle – a wireless e-reading device that does not even support voice calls – to wireless mini-laptop computers, medical monitoring devices, and specialized devices tailored to the needs of particular businesses. AT&T alone currently supports specialty devices from more than 100 manufacturers. Because of this intense competition and furious pace of innovation, wireless services are transforming American life.

For its part, AT&T has responded to and, indeed, helped shape these industry dynamics by investing in its networks and offering its customers a broad array of high quality services and options. AT&T has invested \$38 billion in its wireless and wireline networks in the past two years; AT&T’s capital expenditures this year alone will approach \$17 billion – more than any other company in America in *any* industry. AT&T has deployed 3G technology in almost 350 markets, and now boasts the fastest 3G network in the nation. AT&T has established tens of thousands of Wi-Fi hot-spots across the country that provide free broadband connectivity to AT&T customers. In addition, AT&T offers an extraordinary variety of wireless devices, which give consumers a choice of capabilities and operating systems and thousands upon thousands of

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<sup>2</sup> *Thirteenth Report*, ¶ 2.

<sup>3</sup> *See The United States and World Wireless Markets: Competition and Innovation are Driving Wireless Value in the U.S.*, Presentation by CTIA-The Wireless Association at 6-7 (submitted in FCC WC Docket Nos. 09-51, May 12, 2009) (“*CTIA Study*”).

<sup>4</sup> *CTIA Study* at 4, 9.

<sup>5</sup> *CTIA Study* at 3, 9; *Thirteenth Report*, ¶ 192.

applications.<sup>6</sup> And, AT&T has introduced a multitude of consumer-centric policies and product options, including, just to name a few, unlimited calling plans; rollover minutes and unlimited mobile-to-mobile; family plans; parental controls; pro-rated early termination fees; prepaid options and postpaid plans that require no long term commitment; a “Bring Your Own Device” program that gives customers the option of using their own compatible wireless devices on the AT&T network; online billing and account management; and the freedom and capability to download virtually any application without restriction from the Internet, including the more than 4,000 applications that have been created by third-party developers who have worked with AT&T to optimize those applications for the AT&T network.

This embarrassment of riches is due to a single factor: competition in the wireless marketplace is white hot. If government continues its thoughtful policies that allow the vibrant marketplace to work, wireless carriers will compete even harder in the coming years to build the wireless broadband networks of the future and to find ways to increase value for their customers. If, on the other hand, government were to impose a new set of restrictions on these services, carriers would be able to undertake fewer of those risky, multi-billion dollar investments – which, in turn, would slow down the economic recovery. Neither Congress nor the FCC should try to “fix” one of the few things in the American economy that is not broken.

### ***Special Access “Middle Mile” Competition***

A good example of the benefits – for consumers and providers – of forward-thinking policy approaches is the introduction of progressive, flexible regulations for the communications services that wireless carriers use as inputs. The Clinton Administration adopted a set of “pricing flexibility” rules for special access services (“middle mile” facilities) that have resulted in more competitive pricing and huge costs savings for wireless carriers. These rules are measured in their approach. If an ILEC can show, with hard evidence, that competitors have *already* deployed competing facilities widely in a city, the ILEC is then freed from inflexible monopoly-era price regulation and given the ability to negotiate individualized contracts in that city that are tailored to particular customers’ needs. The result has been that, for the last decade, ILECs have had the freedom to respond to their facilities-based competitors by offering substantial *discounts* from their tariffed special access rates (and by providing numerous other individualized concessions and benefits). As a result, the special access marketplace today exhibits all of the hallmarks of an intensely competitive market: falling prices, rising output, improving service quality, rapid innovation, and enormous expansion and entry by both intramodal and intermodal competitors.

There is no real dispute that the FCC’s special access policies have led to steady, substantial price *decreases*. AT&T, Verizon, Qwest, and others have all provided the FCC with detailed data, taken from their actual billing records, showing that the prices that customers *actually pay* for special access services have declined across all services and in all areas since 2001, even for the lowest capacity circuits. AT&T has shown that the prices its customers pay in pricing flexibility areas fell by more than 18% (for DS1 circuits) and 10% (for DS3 circuits) in real

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<sup>6</sup> See [www.att.com/choice](http://www.att.com/choice). iPhone users alone have downloaded over 1 billion applications from the iTunes applications store in its first year of its existence.

inflation-adjusted terms from 2001 through 2004, and fell again by 23.7% (DS1) and 20.9% (DS3) in real inflation-adjusted terms from 2004 through the third quarter of 2007.<sup>7</sup> Verizon and Qwest have made similar showings. No one has refuted this evidence, and it has been confirmed in independent studies. The GAO found that that ILECs' average revenues "for both DS-1 and DS-3" circuits declined (or remained flat) from 2001 through 2005.<sup>8</sup> Another recent study relying on data from non-ILEC sources confirmed that special access prices for lower-capacity DS1 and DS3 circuits declined substantially over the period studied (2006-07).<sup>9</sup> Most notably, competition and pricing flexibility for special access have benefited wireless carriers in particular: for example, AT&T showed that the prices that Sprint pays AT&T for special access have declined substantially.<sup>10</sup>

Prices are declining and service quality is increasing for one simple reason: special access purchasers, including wireless carriers, have abundant options. Competitive special access providers have been deploying alternative special access facilities since the 1980s. Today, there are dozens of CLECs that operate alternative fiber networks in the commercial areas of America's cities where special access demand is heavily concentrated.<sup>11</sup> These alternative fiber networks are connected to or within striking distance of the locations that account for the vast majority of special access demand, and those CLECs provide service at all levels of bandwidth from T-1s to the very high capacity optical circuits that now serve many locations.<sup>12</sup> And because ILECs set their special access rates over broad geographic areas, this intense facilities-based competition necessarily disciplines special access prices and practices *everywhere* – not merely with respect to the individual buildings and other locations CLECs currently serve.

In addition, cable, wireless, and other competitors are rapidly deploying new and existing technologies to provide non-ILEC special access alternatives even outside downtown areas – in no small part to seize the opportunity provided by rapidly increasing special access demand from wireless carriers that are providing ever more broadband services to consumers.<sup>13</sup> As they

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<sup>7</sup> See Letter from Robert W. Quinn, AT&T, to Marlene S. Dortch, FCC, WC Docket No. 05-25 (filed February 6, 2009) at 5-6 (citing record evidence). Not accounting for inflation, AT&T's prices still fell by more than 13% (DS1) and 5% (DS3) from 2001 through 2004, and fell again by 13.2% (DS1) and 10% (DS3) in from 2004 through 2007. *Id.* n.14.

<sup>8</sup> See Government Accountability Office, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access*, Report 07-80 (November, 2006) ("*GAO Report*") at 13, 32-33.

<sup>9</sup> See Peter Bluhm & Robert Loube, National Regulatory Research Institute, *Competitive Issues in Special Access Markets*, at 59 (January 21, 2009, rev. ed.) ("*NRRI Report*") ("[d]ata in this table are the best estimate of actual prices paid by large wholesale purchasers because these customers purchase a high percentage of their circuits at discounted rates," and "[e]ach of the discounted rates we measured declined from 2006 to 2007").

<sup>10</sup> AT&T 2007 Reply, Casto Supp. Reply Decl. ¶ 4.

<sup>11</sup> See, e.g., AT&T 2007 Comments, Casto Supp. Decl. ¶¶ 10-13 & Attachment (maps plotting CLEC fiber); Verizon 2007 Comments at 15-17 & Attachment H (maps plotting CLEC fiber); Qwest 2007 Comments at 20-24.

<sup>12</sup> See, e.g., AT&T 2007 Comments, Casto Supp. Decl. ¶¶ 10-13 & Attachment (maps showing known CLEC fiber in wire centers that account for more than 80% of AT&T's DSn level demand); Verizon 2007 Comments, Lew Decl. ¶¶ 22-33, Lew Decl. ¶¶ 27-30 & Attachment H (same); Qwest 2007 Comments at 20-23 (demonstrating that CLECs can serve the vast majority of Qwest's DSn level demand).

<sup>13</sup> See, e.g., AT&T Supplemental Reply Comments, FCC WC Docket No. 05-25, at 7-23 (filed August 15, 2007).

recently confirmed to the FCC, “cable operators provide high-capacity services that compete with special access services offered by incumbent local exchange carriers,” and, indeed, “view such services as a growing segment of their businesses.”<sup>14</sup> Wireless “backhaul” – connecting cell towers to wireless networks with wireless microwave transmitters and receivers – is rapidly becoming more prevalent. Outside the U.S., this microwave technology already accounts for the *majority* of cell tower middle mile connections, and AT&T, for one, already purchases thousands of wireless backhaul circuits here in the U.S.<sup>15</sup>

Of course, we continue to hear the same tired claims regarding the competitiveness of the special access marketplace. Some claim that the DOJ and the GAO have found that special access purchasers have no options, but that is not true. The DOJ alleged that the SBC-AT&T and Verizon-MCI mergers might reduce competition in a few hundred buildings scattered throughout the country,<sup>16</sup> and that limited concern was put to rest when AT&T and Verizon divested fiber facilities serving those buildings.<sup>17</sup> And the GAO concluded that it did not have enough data to make a judgment about the extent of competitive facilities deployment.<sup>18</sup> Nor is there merit to claims that incumbent carriers have “locked up” wireless and other special access customers by offering substantial discounts from their list prices in return for volume purchase commitments

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<sup>14</sup> See Letter from Steven F. Morris, National Cable & Telecommunications Association, to Marlene Dortch, FCC, FCC WC Docket No. 05-35 (filed May 8, 2009). For example, Comcast noted in its most recent earnings announcement that Business Service revenue had increased 47 percent in the first quarter of 2009, and that it would continue to invest in its Business Services throughout the rest of 2009. Comcast 1Q09 Earnings Presentation at 5, 7. Time Warner Cable’s CEO recently stated that commercial services represented the company’s biggest opportunity; its commercial service revenues grew 17 percent in the first quarter of 2009 and accounted for 15 percent of the company’s total growth in revenue. “Time Warner Puts Pressure Back on Telcos,” TelephonyOnline.com, April 29, 2009.

<sup>15</sup> Sprint’s views on this topic are vexing. Sprint claims that there is virtually no wireless backhaul market. Written Testimony of Paul Scheiber, Sprint, at 3. But FiberTower, one of Sprint’s microwave backhaul suppliers, makes clear that it has a “100% facilities-based telecommunications network” extending “over substantially all of the continental U.S.,” comprising “approximately 1.55 billion channel pops,” and representing “one of the largest and most comprehensive collections of millimeter wave spectrum in the U.S.” Written Testimony of Ravi Potharlanka, FiberTower, at 3-4 (“As of December 31, 2008 we provide backhaul service to over 6,000 mobile base stations (or cell sites”). Sprint’s statements here are also impossible to reconcile with the real world experience of its affiliate Clearwire, which has indicated that it already self-supplies or purchases from non-ILEC sources the vast majority of its wireless backhaul. Indeed, a Sprint officer recently admitted that the only reason microwave backhaul is not already more prevalent here is that market-based rates for T-1s (also known as DS1s) from the ILECs are so cheap. See Stephen Lawson, *Sprint Picks Wireless backhaul for WiMAX*, The Industry Standard, July 9, 2008, available at <http://www.thestandard.com/news/2008/07/09/sprint-picks-wireless-backhaul-wimax>.

<sup>16</sup> See Complaint, *United States v. SBC Communications, Inc. and AT&T Corp.*, No. 1:05-CV-02102 (D.D.C. Oct. 27, 2005); Complaint, *United States v. Verizon Communications Inc. and MCI, Inc.*, No. 1:05-CV-02103 (D.D.C. Oct. 27, 2005).

<sup>17</sup> See *SBC Commc’ns and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd. 18290, ¶ 24 (2005) (“We conclude, however, that the consent decree” by which “the Applicants agreed to certain divestitures . . . should remedy any likely anticompetitive effects”); *Verizon Comm’ns and MCI Inc., Applications for Transfer of Control*, 20 FCC Rcd. 18433, ¶ 24 (2005) (same); *United States v. SBC Communications, Inc.*, 489 F. Supp. 2d 1, 70 (D.D.C. 2007) (upholding the merger and finding the divestiture and other merger commitments to be “in the public interest”).

<sup>18</sup> Government Accountability Office, Report to the Chairman, Committee on Government Reform, House of Representatives, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO-07-08, at 40 (Nov. 2006); see also *id.* at 50-52.

based upon the customer's total special access spend. In fact, AT&T has discount offerings that do not require any such minimum spending requirements and such volume discounts arrangements are, in any event, entirely unobjectionable.<sup>19</sup> As for the rhetorical chestnut that ILEC profits are too high, those claims are based on FCC accounting data that the FCC itself has repeatedly acknowledged were never designed to be used to calculate service-specific rates of return. Recently, a study by the research arm of the National Association of Regulatory Utility Commissioners agreed that "rates of return" estimated from this FCC accounting data are "meaningless."<sup>20</sup>

Of course, even customers in the most competitive markets would always *like* to have lower prices and some have urged the FCC arbitrarily to slash ILEC special access prices below market-driven levels. This would be a disastrous policy, especially at this critical juncture, that could only lead to reduced broadband investment and lost jobs. The telecommunications industry is one of the very few areas in the American economy that is experiencing healthy growth in demand. Special access providers have abundant incentives today to invest in new infrastructure that can meet that demand, improve the lives of Americans, and provide new jobs. But these carriers' investment decisions are based on the assumption that the prices for these services will remain market-driven and allow a reasonable return on the invested dollars. If the government were to intervene and suddenly mandate the sorts of massive rate reductions Sprint and others are advocating, all carriers – both incumbents and new entrants – would lose the incentive to invest in that new infrastructure. Just when we want companies to commit to enormous investments and to hire workers to build the broadband networks of the future, the last thing we should do is mandate huge rate reductions that would eliminate any incentive to make those investments.

### ***Misguided Proposals to Substitute Regulation for Market Discipline***

Given that conditions in the wireless marketplace are so unambiguously competitive, government policy should be to continue to encourage competition and investment through market discipline, not heavy-handed government mandates. Thus, calls for government to dictate terms of contracts for handset distribution between device manufacturers and carriers or for roaming arrangements between carriers should be rejected. Congress and the FCC should instead focus on measures to ensure that Congress's original intention to remove roadblocks to investment and competition, such as spectrum scarcity, delays in tower siting approvals and conflicting state laws, are given fuller effect.

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<sup>19</sup> AT&T 2007 Reply Comments, FCC WC Docket No. 05-25, at 60-62 (filed August 15, 2007). Volume and term discounts are hardly unique to special access. Such discounts are common not only throughout the telecommunications industry but in all competitive industries. The FCC has repeatedly and correctly held that ILECs should not be prohibited from making such offerings, which, after all, facilitate *lower* prices for consumers. *See, e.g., Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd. 5880, ¶¶ 28, 33, 36 (1991). The courts have specifically held that special access discount plans are "most naturally viewed as a bargain containing terms that both benefit and burden its subscribers." *BellSouth v. FCC*, 469 F.3d 1052, 1060 (D.C. Cir. 2006) (Tatel, J.). It is extraordinary that a sophisticated carrier like Sprint would now ask Congress to help it get out of bargains that it voluntarily negotiated.

<sup>20</sup> *See NRRRI Report*, at 70 ("the RBOCs contend that the ARMIS figures are virtually meaningless. We agree with the RBOCs"); *see also 2005 NPRM*, FCC WC Docket No. 05-25, at ¶ 129.

*Proposals to Prohibit Exclusive Handset Distribution Arrangements.* Wireless carriers battle fiercely to attract and retain customers. Each carrier strives to differentiate its offerings from those of its rivals by offering more attractive service plans, improved coverage and service quality, innovative features and content, and a mix of handsets that it believes will best meet consumers' widely varying needs. And, as is common in highly competitive industries, wireless competitors sometimes seek to set themselves apart through exclusive offerings – *i.e.*, a wireless carrier may ink a deal with a like-minded manufacturer to be the exclusive distributor of a new handset in the hope that it will prove popular.

It is widely recognized in economics and the law that such exclusive distribution arrangements, which have been a feature of the U.S. wireless marketplace since its inception, promote innovation, product differentiation, consumer choice and competition. Exclusive handset distribution arrangements encourage collaboration that optimizes handset performance and accelerates the delivery of next-generation features. They increase a carrier's incentives to make purchase commitments and to invest in promotions, network improvements and special training of sales staff. They lower manufacturer entry barriers and serve as a key tool to maintain brand value. And, as an important form of competition, they encourage other carriers and manufacturers to do better, by improving their own handset portfolios or the prices, features and other characteristics of their existing offerings.

It should be obvious that consumers would be the ultimate victims of any prohibition on exclusive handset arrangements. Government interference with carrier/manufacturer distribution agreements could only dampen and delay innovation and investment, reduce consumer choices and raise prices, all in the name of protecting individual competitors *from* the pressures of competition and allowing them to free-ride on the investments and risk-taking of others.<sup>21</sup>

There is no clearer proof of this than the iPhone arrangement that regulation advocates have adopted as their poster child. There is, quite simply, no more dramatic example of an exclusive arrangement creating enormous benefits for all consumers. The popularity of the iPhone and its innovative features and applications has provoked an unprecedented competitive frenzy, palpably accelerating not only handset innovation but the pace of wireless broadband investment and applications development. Before the iPhone, mobile handheld “computers” tended to be clunky, expensive devices with traditional applications; now, the marketplace is awash with innovative devices that allow consumers to do things that no one even imagined only a year earlier and that cost consumers less than their more limited predecessors.

The exclusive arrangement between AT&T and Apple is in no small part responsible for these spectacular public interest benefits – both for the close collaboration and enormous investment

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<sup>21</sup> Even if public policy was concerned with protecting small competitors *from* competition, rather than protecting competition and consumers, claims that exclusivity prevents smaller wireless carriers from obtaining desirable handsets on terms that allow them to remain competitive are simply false. In fact, an entire industry has developed for the wholesale distribution of wireless handsets to smaller carriers. These wholesale distributors buy in bulk (some, in greater quantities than any single U.S. wireless carrier), operate worldwide, and plainly have the clout to obtain favorable terms for popular handsets from the scores of manufacturers that compete in the vigorously competitive global handset market. Thus, even the smallest carriers offer dozens of handsets, from basic voice phones to the highest of the high end, including “smartphones” from multiple manufacturers that include the latest features. And smaller carriers also can (and do) band together to obtain their own handset exclusives.

that deal made possible and for the competitive envy and activity it engendered when it proved successful. With the benefit of hindsight it is easy to view the iPhone as a great boon for AT&T and Apple. In fact, both companies risked a great deal when success was by no means guaranteed. AT&T and Apple both invested heavily in bringing the iPhone to the market; brought to consumers brand-new innovations, such as visual voice mail, through deep collaboration; and risked billions of dollars on the device and its rollout. Press reports suggest that other wireless carriers were simply unwilling to take such enormous risks and make such enormous investments – the massive handset subsidies alone dwarf anything ever before experienced in the wireless industry – on an untried handset manufactured by a company with no wireless handset track record.

Those now calling for bans on such exclusive arrangements – and even government abrogation of existing contracts – should ask themselves whether they would be just as willing to repay wireless carriers and handset makers that took risks on new handsets that did *not* pan out as expected.<sup>22</sup> The answer is, of course, no. And there is likewise no conceivable basis to conclude that it could be in the “public interest” to forgo future opportunities to unleash market forces through exclusive distribution arrangements: heavy-handed intervention in manufacturer and carrier choices would dramatically decrease the chances that consumers would reap the pro-competitive benefits of the next iPhone or whatever other as-yet-unimagined handset innovation is on the horizon.

*Proposals to Expand Roaming Regulation.* Nor is there any legitimate reason to expand the FCC’s current automatic roaming rules.<sup>23</sup> The FCC adopted comprehensive automatic roaming requirements for wireless telephone services in 2007.<sup>24</sup> The FCC’s rules contain a “home market” exception, and they do not apply to emerging broadband Internet and other “non-interconnected” data services. Contrary to the claims of participants here, both limitations are essential to promote wireless investment and avoid serious harm to consumers.

The FCC correctly has explained that, “if a carrier is allowed to ‘piggy back’ on the network coverage of a competing carrier in the same [home] market [where it has its own spectrum], then both carriers lose the incentive to build-out into high cost areas in order to achieve superior network coverage.”<sup>25</sup> Consumers would, then, be severely “disadvantaged by a lack of product differentiation, lower network quality, reliability and coverage.”<sup>26</sup> The home market exception

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<sup>22</sup> The Motorola ROKR E680 is just one of many examples of an investment risk that failed. Despite significant investment by Cingular, Apple and Motorola, and the anticipation that this would be a game-changing device, the ROKR failed to connect with consumers. In turn, such a failure usually causes significant customer defections for the wireless carrier that took the risk.

<sup>23</sup> “Roaming” permits a customer to use other wireless carrier’s networks when traveling outside of the areas served by the wireless provider from which the customer purchases service. Roaming is typically implemented through agreements between carriers.

<sup>24</sup> See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 15817, ¶¶ 23, 28 (2007) (“*Automatic Roaming Order*”).

<sup>25</sup> *Id.* ¶ 49.

<sup>26</sup> *Id.*

encourages carriers to compete and invest by building out service in areas where they have spectrum. Those benefits are particularly important in rural and underserved communities, and the home market exception also produces significant public safety benefits, through increased wireless capacity and redundant networks.

The FCC has also correctly declined to extend roaming obligations to non-switched services such as wireless broadband Internet services. The provision of wireless broadband Internet services is an emerging marketplace with still-developing standards and practices that must address the enormous technical complexities of data network management and interconnection. The wide array of developing “data” services, devices and applications make it impossible to craft an automatic roaming rule without severe detrimental effects: network overload on account of unanticipated roaming demand, for example, would be felt broadly across all users, voice and data alike, roaming and home users alike. And, in the end, any such mandates would only encourage “piggy backing” and deter investment in and expansion of broadband wireless services.

Here, too, the proposals for increased regulation are directly at odds with the core public interest goals of encouraging investment, competition and employment.

### ***Roadblocks To Wireless Investment And Innovation***

Although increased regulation of wireless services is clearly unwarranted and would harm consumers, Government action is necessary to address the few remaining roadblocks to continued wireless investment and competition.

*National Consumer Protection Rules.* In 1993, Congress enacted section 332(c) of the Act, which recognizes that the wireless industry can operate efficiently only if regulation is uniform. Nonetheless, some state and local authorities have taken advantage of unresolved ambiguities in section 332(c) – particularly section 332(c)(3)(A)’s provision that states may regulate the non-rate “terms and conditions” of mobile service provision – to adopt the very patchwork of differing regulatory requirements that Congress was trying to eliminate. If state regulation forces wireless carriers to abandon a single, integrated service and instead tailor particular service offerings to particular local jurisdictions, service costs will inevitably increase and innovation will be slowed. Study after study has shown this to be the case.<sup>27</sup>

Congress should preempt state attempts to impose their own wireless codes of conduct. States would retain the same, robust enforcement and regulatory role that they play with respect to any other national, competitive industries. State attorneys general and other state enforcement officers would still apply generally applicable consumer protection and fraud statutes to particular instances of conduct by wireless carriers, just as they do today against practices of a range of retailers that compete in national markets.

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<sup>27</sup> See, e.g., T. Hazlett, *Is Federal Preemption Efficient in Cellular Phone Regulation?* 56 Fed. Comm. L.J. 155, 176 (2003); S. Largent, *Statement before the Subcommittee on Telecommunications and the Internet*, at 14 n.20 (Feb. 27, 2008) (collecting sources).

*Tower Siting Approvals.* Delays in approving cell towers and related facilities obviously impair a wireless carrier's ability to provide better service coverage and to introduce new services. Congress sought to prevent these outcomes by directing in 47 U.S.C. § 332(c)(7)(A) that state and local authorities act "within a reasonable period of time" after a siting request is filed, set forth a valid basis for their decisions in writing, ensure that decisions do not discriminate among carriers, and be subject to judicial review within 30 days following their "failure to act." Unfortunately, the FCC has not fleshed out those statutory terms with more specific rules.

The resulting regulatory uncertainty has defeated Congress's intent, with state and local authorities in many cases delaying action on siting requests for many months or even years. Worse, those authorities often delay action even for "collocation" requests to place additional facilities on *existing* towers. As CTIA has described: "Of 3,300 tower and antenna applications pending in the Spring of 2008, 760 were pending for more than one year, and 180 were pending for more than 3 years. 135 of the 180 applications pending for more than 3 years are collocation applications."<sup>28</sup> Horror stories abound. In one case, a tower siting application has been the subject of 41 zoning hearings; in another case, a carrier experienced a delay of four years and seven months for a simple collocation request.<sup>29</sup>

The FCC could easily solve this problem by adopting authoritative constructions of the statutory phrases "reasonable period of time" and "failure to act." CTIA has proposed that these phrases be construed to require local authorities to take final action on a collocation application within 45 days and act on other applications for siting authority within 75 days from submission of the application. If a local authority does not act within those reasonable periods of time, the application should be deemed granted.

*Spectrum.* There are limits to what can be achieved by accelerating tower siting decisions, important as that is. More significant improvements in service quality and innovation depend, in the end, on the amount of spectrum allocated to commercial uses. Over the medium and longer term, increasing the spectrum available for carriers to use will be the key regulatory change that will ensure that wireless carriers can continue to deliver the astounding array of cost reductions and innovative services that have benefited consumers over the past decades.

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<sup>28</sup> See Letter from Christopher Guttman-McCabe, CTIA, to Marlene Dortch, FCC, *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B)*, WT Docket No. 08-165 (filed February 13, 2009).

<sup>29</sup> See, e.g., Reply Comments of CTIA, *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B)*, WT Docket No. 08-165, at pp. 4-7 (Oct. 14, 2008) (cataloguing patterns of extreme delay).