

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554



In the Matter of)
)
Implementation of Section 6002(b) of the)
Omnibus Budget Reconciliation Act of 1993) WT Docket No. 09-66
)
Annual Report and Analysis of Competitive)
Market Conditions With Respect to Mobile)
Wireless including Commercial Mobile)
Services)

REPLY COMMENTS OF
CENTER FOR MEDIA JUSTICE, CENTER FOR RURAL STRATEGIES,
MAIN STREET PROJECT, MEDIA ACTION GRASSROOTS NETWORK,
MINNESOTA DIGITAL JUSTICE COALITION,
PEOPLE'S PRODUCTION HOUSE, AND RURAL BROADBAND POLICY GROUP

Respectfully submitted,

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SUMMARY

Media Access Project, on behalf of Center for Media Justice, *et al.* (collectively “Rural/Urban Commenters”), submits these Reply Comments to provide the Commission with additional information regarding consumer expectations and behavior in low-income, immigrant, and minority communities, as well as rural and urban communities. While some of the wireless carriers try to paint a competitive picture that is benefitting consumers, the reality is not so encouraging. The reality is that the constituents of Rural/Urban Commenters are not benefitting from competition which should be resulting in more affordable, open, and accessible services and devices. Moreover, their constituents are feeling constrained by what they are able to do with their service and their devices.

Mobile devices are increasingly playing a role in the lives of consumers as a way to speak to each other, as well as a way to share, create, and access knowledge and valuable information. In addition to traditional voice activities, consumers are increasingly using their mobile devices for non-voice activities such as texting and sending emails. For consumers who have the ability (either because of availability or affordability) to purchase smart phones, mobile devices also provide a means for consumers to access the Internet. Thus, in assessing whether the wireless marketplace is effectively competitive, the Commission must also assess the impact on consumers and their ability to fully take advantage of a mobile device and service.

In fact, the Supreme Court has unanimously embraced a robust view of the affirmative duty of government to facilitate speech, pointing to the public’s “collective right to have the medium function consistently with the ends and purposes of the First Amendment.” *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969). The Court emphasized that it “is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail,

rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee.” *Id.* The Court went on to further say that it “is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here.” *Id.*

Further, while Rural/Urban Commenters do not consider access to the Internet through a mobile device as a solution to solving the digital divide, the mobile ecosystem is a critical first step in helping to close the digital divide as well as providing a means for communication. This is especially critical because essential to the value of the Internet is the ability of citizens to speak to one another, to be publishers and speakers as well as readers and listeners. As the Supreme Court has observed, the content of the Internet is “as diverse as human thought.” *Reno v. ACLU*, 521 U.S. 844, 870 (1997). The Internet is an open and interactive medium, facilitating communication by anyone to and from everyone. *Id.* it is a medium that supports and enhances the free expression of citizens and serves as a vehicle for democratic governance and economic activities.

Thus, there is a long and unbroken line of authority that the Commission can and must take into account regarding the wireless market place and its impact on the ability of the consumer to communicate. As Rural/Urban Commenters demonstrate below, the benefits of competition are not being felt by their constituents. While the use of mobile devices is increasing among low-income, minority, and immigrant communities, in both rural and urban areas, their constituents feel constrained with what they are able to do with their service and their devices, and instead would benefit from a more affordable, open, and nondiscriminatory marketplace. Moreover, Rural/Urban Commenters suggest the Commission examine competition in local markets by collecting granular data, rather than adopting a broad and generic urban versus rural distinction. Finally, Rural/Urban Commenters urge

the Commission to quickly bring competition to both rural and urban areas by opening up more spectrum for the use of unlicensed services.

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Media Access Project, on behalf of Center for Media Justice, *et al.* (collectively “Rural/Urban Commenters”), submits these Reply Comments to provide the Commission with additional information regarding consumer expectations and behavior in low-income, immigrant, and minority communities. These Reply Comments will also add insight to the Commission’s inquiry regarding issues of rural and urban areas. Despite assertions by the carriers that the current mobile wireless ecosystem is greatly benefitting consumers, the experience of the constituents of Rural/Urban Commenters is to the contrary. Specifically, Rural/Urban Commenters’ insight based on surveys, work, and actual involvement in low-income, immigrant, and minority communities will provide the Commission with valuable information regarding some of the issues faced by mobile phone users in these communities (both rural and urban) and their needs and expectations for greater competition in the mobile wireless market. Rural/Urban Commenters further suggest the Commission examine competition more locally by collecting granular data, rather than adopting a broad and generic urban versus rural distinction.

Finally, Rural/Urban Commenters urge the Commission to quickly bring competition to both rural and urban areas by opening up more spectrum for the use of unlicensed services.

I. INTRODUCTION

Collectively, Rural/Urban Commenters represent low-income, immigrant, and minority communities, in both rural and urban neighborhoods.¹ For the constituents of Rural/Urban

¹The *Center for Media Justice* is a media strategy and action center that uses strategic communications and media activism to build a powerful movement for racial justice, economic equity, and human rights. Through its programs and projects, *CMJ* strengthens the communications effectiveness of grassroots groups and builds a powerful, integrated movement for media justice and communication rights.

The *Center for Rural Strategies* seeks to improve economic and social conditions for communities in the countryside and around the world through the creative and innovative use of media and communications. By presenting accurate and compelling portraits of rural lives and cultures, the *Center* hopes to deepen public debate and create a national environment in which positive change for rural communities can occur.

The *Main Street Project*, located in Minneapolis, MN, is a grassroots cultural organizing, media justice, and economic development initiative working to help rural communities face today's realities with hope. The *Project* provides creative and practical tools to give rural residents of all ages, cultures, economic, and immigration status the opportunity to more fully participate in all aspects of community life. The *Project* also uses these same tools to work with communities of color, including other communities that have been historically marginalized in the Minneapolis metro area.

The *Media Action Grassroots Network*, or MAG-Net, is a national initiative launched by some of the country's most dynamic regional organizations to provide an infrastructure for grassroots media activist organizations. Across the country they are building constituencies, partnerships and victories for progressive structural change. Grounded in a vision of social justice, these organizations generate creative, pragmatic models of strategic communications and mobilization that resonate powerfully far beyond the D.C. Beltway.

The *Minnesota Digital Justice Coalition* is a coalition of social justice organizations working together to ensure that communities have access to broadband.

The *People's Production House* is a comprehensive media justice organization serving New York City, Washington D.C., and the Gulf Coast. *PPH* believes a diverse, ethical, and independent media is an essential element of social change and historically excluded communities must be protagonists in media democracy. Its work combines media creation, media education and media activism, building a new generation of journalists that can both create and demand a media that works in their interest. Through a unique mix of community organizing, education on media policy, and intensive journalism training, *PPH* is transforming the face of the press corps and the media landscape.

The *Rural Broadband Policy Group* is a national coalition of rural broadband advocates with two goals: 1) to articulate national broadband policies that provide opportunities for rural communities to participate fully in the nation's democracy, economy, culture, and society; and 2) to spark and kindle

Commenters, access to mobile services is essential to their ability to communicate. Rural/Urban Commenters view communication as an essential human need and a fundamental human right and freedom of expression is the basis of individual and societal development. Key to that freedom is the ability to communicate, which enables the way individuals and communities find, create and share knowledge. Thus, communications should be an open, participatory, and collaborative process.

In fact, in *Red Lion*, the Court recognized that it “is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee.”² It further noted that it “is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here.”³ This role of the First Amendment in application of the Communications Act was dramatically restated in the Supreme Court’s *Turner* cases, which held that considerations of both competition and diversity justified enactment of cable must carry rules. In *Turner I*, the majority held that “assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment.”⁴

Thus, to further these objectives, a communication rights platform to create community-based and people-centered communication technologies is critical. It can help ensure that communities maintain the right to freedom of opinion and expression, as well as address democratic media

national collaboration among rural broadband advocates.

²*Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

³*Id.*

⁴*Turner Broadcasting System v. FCC*, 512 U.S. 622, 663 (1994), *aff’d*. *Turner Broadcasting System v. FCC*, 520 U.S. 180 (1997).

governance, media ownership and control, the right to participate in one's own culture, language rights, rights to education, privacy, peaceful assembly, and self-determination. One piece of this communication rights platform is the availability and affordability of mobile devices and mobile services, and a competitive, open, and nondiscriminatory wireless marketplace is necessary to achieve these objectives. While Rural/Urban Commenters do not consider access to the Internet through a mobile device as a solution to solving the digital divide, the mobile ecosystem is a critical first step in helping to close the digital divide as well as providing a means for communication.

Therefore, in assessing competition in the wireless ecosystem, the Commission must consider the human impact of its current wireless communications structure and policies. That is, the Commission's yearly exercise in assessing the state of wireless competition should not simply focus on service providers or merely be superficial and perfunctory in order to meet a statutory objective. Rather, the review must also consider the human impact of competition (or lack of) and produce policies that provide meaningful and affordable opportunities for access to mobile services, regardless of an individual's or community's digital skills, geographical location, or socio-economic situation.

II. THE CURRENT WIRELESS MARKET IS NOT MEETING CONSUMER EXPECTATIONS.

In this Notice of Inquiry, the Commission seeks comment regarding competition in the mobile wireless industry. Initial comments in this proceeding seems to suggest that consumers are faring quite well in the current mobile wireless marketplace. For example, AT&T, Inc. asserts that the "Wireless Industry As a Whole Is Thriving by Giving Consumers Unparalleled and Unprecedented Choice."⁵ Similarly, Verizon Wireless claims that the "Marketplace Has Led to Rising Consumer

⁵See Comments of AT&T, Inc. at 10, WT Docket No. 09-66 (filed September 30, 2009).

Satisfaction.”⁶ CTIA-The Wireless Association even claims that “Consumers and the U.S. Economy Continue to Benefit from the Performance of the Wireless Industry.”⁷ However, the experience of actual consumers tells a different story.

The Commission has acknowledged that “[m]obile wireless services, including mobile broadband, play an important part in the lives of American consumers, affecting how they communicate, work, learn, and play.”⁸ To that end, the Commission has asked for “data and information on factors that affect consumer behavior in evaluating the broader mobile wireless ecosystem.”⁹ Based on recent Pew studies, data, and observations by Rural/Urban Commenters, it is evident that mobile services are increasingly playing a role in immigrant, low-income, and minority communities, and the current structure of the wireless market is not meeting the needs and expectations of those that use and rely on mobile wireless services.

A. Mobile Services are Vital to Low-income, Immigrant, and Minority Communities.

For the communities represented by Rural/Urban Commenters, mobile phones and services are a critical means for communication and accessing information through voice and data services and applications. For example, for some, a mobile device serves as a way to stay in touch with family members outside of the United States; for others, a mobile device serves as means for organizing and

⁶See Comments of Verizon Wireless at 91, WT Docket No. 09-66 (filed September 30, 2009).

⁷See Comments of CTIA-The Wireless Association at 57, WT Docket No. 09-66 (filed September 30, 2009).

⁸In the Matter of 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, WT Docket No. 09-66, *Notice of Inquiry*, ¶ 12, FCC 09-67 (rel. Aug. 27, 2009) (“*Notice*”).

⁹*Id.*

mobilizing around important issues for the community; and for some, their mobile device serves as a means for capturing and sharing news and other important activities in their community.

In fact, according to a recent survey, a majority of the adult population - 85% - own a cell phone.¹⁰ Among that population, 89% of Hispanics and 83% of Blacks own cell phones.¹¹ A May 2008 survey also found that 75% of urban and 73% of rural populations reported owning a cell phone.¹² The May 2008 survey also reported that 95% of those with an income greater than \$75,000 and 63% of those with an income of less than \$30,000 owned a cell phone.¹³ Thus, it is evident that adoption of mobile phones is high among the population.

Access and adoption is especially relevant for minorities, who rely more than Whites on their mobile devices for non-voice activities; the Pew 2009 Study concludes that Blacks and Hispanics are more likely than Whites to use their phones for a number of non-voice activities. For example, while 71% of Blacks and 81% of Hispanics send or receive text messages on a cell phone or personal data assistant, 62% of Whites do so.¹⁴ Similarly, while 73% of Blacks and 78% of Hispanics take a picture on their mobile device, 63% of Whites do so.¹⁵ Blacks and Hispanics also send or receive email, access the Internet, record or watch a video, and send or receive instant messages on their

¹⁰See John Horrigan, Pew Internet & American Life Project, *Wireless Internet Use*, at 18 (July 2009) (“Pew 2009 Study”).

¹¹See *id.* at 18.

¹²See Susannah Fox and Jessica Vitak, Pew Internet & American Life Project, *Presentation, Degrees of Access (May 2008 data)*, (July 9, 2008).

¹³See *id.*

¹⁴See Pew 2009 Study at 28.

¹⁵See *id.* at 28.

mobile devices more than Whites.¹⁶ Thus, in addition to the voice functions, mobile phones are increasingly being used for activities that traditionally required broadband and Internet access.

Indeed, while Rural/Urban Commenters do not consider access to the Internet through a mobile device as a solution to solving the digital divide, the mobile ecosystem is a critical first step in helping to close the digital divide as well as providing a means for communication. In fact, according to a study conducted in 2007, “some Latinos who do not use the internet are connecting to the communications revolution on a different way - via cell phone.”¹⁷ The “survey found that Hispanics are more likely than non-Hispanics to consider the cell phone a necessity, rather than a luxury.”¹⁸

Similarly, “African Americans are the most active users of the mobile internet - and their use of it is also growing the fastest.”¹⁹ According to the survey, the “high level of activity among African Americans on mobile devices helps offset lower levels of access tools that have been traditional onramps to the internet, namely desktop computers, laptops, and home broadband connections.”²⁰ The study concludes that “[f]or African Americans, using the onramp to internet is, in contrast to whites, more likely to be a handheld device on mobile wireless network - and not nearly as likely to

¹⁶*See id.* at 28.

¹⁷Pew Hispanic Center, Pew Internet & American Life Project, *Latinos Online* at ii (March 14, 2007).

¹⁸*Id.* at 14. “Fully 59% of Hispanics consider them a necessity, compared with a fewer than half of non-Hispanic whites (46%) and non-Hispanic black (46%).”

¹⁹Pew 2009 Study at 4.

²⁰*Id.* at 4.

be on a wireline home broadband connection.”²¹

These numbers indicate that cell phone use is becoming the norm and highlights the need for a competitive marketplace so all users have access to service, access to desired content and applications, and choice among devices and competitors. A competitive marketplace should also ensure that prices - whether it be for devices, voice plans, or data plans - are affordable.

B. Consumers Feel Constrained from Taking Full Advantage of Wireless Services.

As discussed above, the importance of mobile services as a means for communication is not lost on consumers. However, as demonstrated by Public Interest Commenters, the current marketplace is not competitive,²² thereby affecting consumer choice and behavior. The consequences of this lack of effective competition is also apparent to actual consumers.

In fact, recognizing the importance of mobile phones, a youth initiated survey was recently conducted in low-income, immigrant, and minority communities in New York City. In creating the survey, the authors recognized that in many communities in New York City, mobile phones served as a key means for voice and non-voice communication. Further, the authors of the survey recognized that while mobile phones are not the solution to wireline broadband access, they could help in limiting the effects of the digital divide.²³ Thus, in conducting the survey, the authors sought

²¹*Id.* at 35.

²²*See* Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, the New America Foundation, and Public Knowledge, WT Docket No. 09-66 (filed September 30, 2009) (“Public Interest Comments”).

²³The authors of the survey were concerned with evidence of low broadband adoption rates, especially among low-income communities. According to a September 6, 2007 Discussion Draft of a New York City Broadband Needs Assessment Study, Internet service was available through cable in 98% of New York City households and through DSL in 87% of New York City households.

However, despite the availability of broadband service, according to Scarborough Market

to understand consumer attitudes towards the uses of mobile phones and the capabilities of their phones.

Assisted by the People's Production House, the authors surveyed members of their community using a video camera. The authors asked community members questions such as: "What do you like about your phone?" "What would you change about your phone?" and "What would you like your phone to do that it doesn't do now."²⁴ Answers with respect to what community members liked about their phone included the ability to travel overseas with their phone (for those who owned Nokia phones which are not locked). Also, those that owned smart phones liked the various features and functions of their phones. When asked what they would like to change regarding their phone, most had issues with the price of the device and service, especially those that owned smart phones. Additionally, some wanted more choice in networks, devices, and applications. Similarly, when questioned about what they would like to do with the device, which they could not currently do, those participating in the survey wanted more control over the device and what applications they could use.

Research for 2006-2007, disparities existed in broadband adoption in New York City. According to the research, broadband usage was at the following rates in New York City:

- The Bronx: 38.8%
- Brooklyn: 41.5%
- Queens: 46.4%
- Manhattan: 55.7%
- Staten Island: 57.9%
- All boroughs: 46.4%

Additionally, according to the New York City Broadband Needs Assessment Study, 54% of moderate and high-income households in New York City had high-speed Internet access at home, while 26% of low-income households in New York City had high-speed Internet access at home.

²⁴ The issues related to mobile services continue to resonate with members in the community and these surveys and conversations are continuing in the neighborhoods.

These interviews were then analyzed to determine which aspects of a mobile phone and service were most important to those living in some of the communities of New York City. Based on the answers, the authors determined that the most important factors consumers consider in purchasing a mobile device include: the price of the plan, the features of the device, the software available for the device, and the ability to download applications.

Similar observations can also be discovered in other communities across the country, including rural communities. For example, in St. Charles, Minnesota, mobile phone owners feel constrained with what they can do with their mobile phones. For example, mobile phone users are unable to access desired applications such as VoIP or document viewers, or in some cases, while these applications may be available, they are often treated as premium services that consumer have to pay a great deal more for, and often times are required to upgrade their phones to do so.

Therefore, while many in the community have mobile phones with Internet and email access, they are unable to send or receive documents or communicate with families in other countries via VoIP applications. Instead, since they cannot experience the same freedoms available through wireline access on their mobile phone, consumers have to rely on broadband access available at the local library to take advantage of applications like VoIP and document viewers. However, libraries have limited hours of operation, and are often closed on Sunday. Consequently, for these community members, who work during the day or are young children in school, without open and nondiscriminatory access on their mobile device, they are limited as to what they can do on their device.

These consumer experiences make it clear that in assessing the marketplace, the Commission must go beyond a cursory review of the four factors (market structure, consumer behavior, provider conduct, and market performance) traditionally considered by the Commission. Specifically, in

considering the behavior and choices available for consumers, the Commission must consider that consumers look a great deal to prices, available features for available devices, and the ability to view desired content and download desired applications. Thus, in addition to the recommendations submitted in the Public Interest Comments, Rural/Urban Commenters expect that a competitive marketplace should provide consumers with an affordable, vibrant, and open wireless marketplace and experience. To achieve those objectives, Rural/Urban Commenters believe it is imperative that the Commission make clear that the same principles and rules guiding wireline access are equally applicable to wireless services.

However, even applying the same rules to wireless service, mobile phones should not be considered as a complete replacement or substitute for wired access. Communities lacking meaningful access and choice for wireline broadband access continue to desire affordable wireline access and should have that option, especially when considering speeds and ease of undertaking certain tasks (*e.g.*, filling out a job application on-line). Thus, these communities would like also the ability to access broadband in the home, while benefitting from mobile service as one means of communication.²⁵

III. THE COMMISSION SHOULD NOT ASSUME A RURAL/URBAN DISTINCTION.

The Commission states that “[w]hether a consumer resides in an urban or rural area appears to be an important factor in accessing services.”²⁶ However, rather than viewing competition based on an urban versus rural distinction, the Commission should consider examining competition in each

²⁵Mobile access could also, at some point, help with adoption of wired access since access on mobile phones can start as engagement point. That is, if consumers are using services like social networking and email on their mobile phone, it could help bridge to adoption of broadband since the consumer has already experienced services and information that they find valuable.

²⁶*See Notice* at ¶33.

local market. For this reason, Commenters support the Public Interest Comments which suggest collecting data based on census block groups to determine whether competition exists in a local community and adopt policies and rules based on such granular data.

A. A Local Analysis of The Market is More Appropriate Than a Rural versus Urban Analysis.

A more granular, local analysis is especially necessary since no single “urban” or “rural” area is identical. For example, rural communities are extremely diverse in a number of ways - geographically, racially, and socially – and individuals in these communities have different reasons for using mobile phones and services. Similarly, not all urban communities are homogenous when considering the same factors.

Indeed, both rural and urban communities face a host of similar barriers. For example, consumers in rural areas like Morehead, Minnesota are limited to one or two options with respect to carriers, with limited choices for mobile devices. In Morehead, which is a city that demographically has changed through the influx of Somali, Albanian, and Sudanese refugees and Latino immigrants, Verizon Wireless and Alltel are the only viable options for wireless service. However, the coverage between the two is quite different and the plans are pricey, especially considering that many consumers sign up for services they will never use. This is the result of a lack of cultural competency among the providers, which leads to consumers in the community signing up for services and plans that they do not understand or can even afford. Affordability issues also exist in urban areas, which should supposedly benefit from increased competition. For instance, in Harlem, New York, although the iPhone is available, consumers either have to forgo purchasing one due to costs of the annual service or manipulate the phone in order to purchase a cheaper service plan from a competitor. This

demonstrates that even in urban areas, issues of affordability and choices for devices and services exist.

Thus, Rural/Urban Commenters suggest that rather than adopting a rural/urban distinction, the Commission should assess competition based on a more local and granular analysis. Further, in assessing competition, the benchmark is not simply about getting service, but also affordability of the service; the ability to choose from one or more providers can serve no purpose if the service is not affordable. In other words, competition must promote both accessibility of devices, services, applications, and content as well as affordability.

B. The Commission Must Act Quickly to Bring Wireless Competition to Rural and Urban Areas.

As demonstrated by the Public Interest Comments, the mobile wireless marketplace is not effectively competitive, and as demonstrated above, low-income, minority, and immigrant communities can especially benefit from a competitive and open marketplace. One way the Commission can help bring competition to these communities is to open up more spectrum for the use of unlicensed services. One step in this direction would be to quickly consider and resolve the pending Petitions for Reconsideration in ET Docket No. 04-186 and ET Docket No. 02-380.²⁷ Additionally, the Commission should quickly move forward in establishing appropriate guidelines for the geolocation database and establish procedures for testing and certifying white spaces devices. Finally, the Commission should immediately commence a Notice of Inquiry regarding higher power levels for white space devices in rural areas since there are ample amounts of spectrum and few

²⁷See, e.g., In the Matter of Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band, *Petition for Reconsideration of the Public Interest Spectrum Coalition* (filed March 19, 2009).

incumbents providing services in those areas. Delay in these matters simply delays the choice and competition for consumers.

IV. CONCLUSION

Availability and affordability of mobile phones has become critical for the ability to communities, whether it be through voice or non-voice services. In many low-income, immigrant, and minority communities - both rural and urban - mobile phone use has surpassed that of the Internet. The Commission should recognize the importance of mobile devices as a means for accessing information as well as sharing information. For those living in low-income, immigrant, and minority communities, whether they be urban or rural, it is essential that the Commission ensure the existence of a competitive mobile wireless market that allows for improved, increased, and nondiscriminatory access to affordable, high-quality mobile devices, applications, and services.

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