

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: 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, Notice of Inquiry, WT Docket No. 04-111.

Pursuant to the mandate of section 332(c)(1)(C) of the Communications Act, the Commission annually submits a report to Congress analyzing “whether or not there is effective competition” in the CMRS industry (“the Competition Report”). In last year’s report to Congress, the Commission affirmatively concluded that the CMRS industry had become “effectively competitive.”¹ This is not a surprising conclusion given the dramatic increase in choice and decrease in prices. It would therefore seem appropriate to start this year’s inquiry with a presumption of effective competition. But we don’t. We start from scratch as if there has never been any data gathered about the nature of the wireless industry, the competitiveness of the market, and the wide variety of service offerings available to consumers.

It is not that I object to gathering useful data to inform our decision making efforts and to respond to Congress’ mandate. At the same time, however, we should not have to reinvent the wheel year after year. Given the maturity of the wireless industry and last year’s finding perhaps the question we should have asked this year is whether any changes over the past 12 months would lead us to conclude that the CMRS industry is no longer effectively competitive. We could have further pointed out that there have been no major industry mergers and that the Commission recently implemented wireless number portability in an effort to increase competition and choice in the wireless sector.

Virtually everyone is in agreement that the CMRS industry is a shining example of what a well-functioning market can achieve when not hindered by unnecessary regulation. In last year’s Competition Report, the Commission found that the wireless industry continued to show significant growth despite a difficult economic environment. There was continuing innovation and carriers offered a wider variety of service offerings, all the while reducing prices charged to consumers. Because of competition, per-minute prices for mobile calling have dropped steadily for nearly a decade, declining 76% since 1994 — 30% in the past 3 years. At the same time, carriers have invested over \$126 billion in their networks, thus improving service, creating jobs, and spurring economic growth.

Perhaps most significant, as the Commission determined last year, there is no dominant provider in the wireless sector. Instead, vigorous competition has produced a marketplace with six nationwide operators and several major regional providers. Wireless carriers have nimbly responded to consumer preferences, and as a result, the public has increased its use of and reliance on wireless networks for basic voice communications, for news and information through Internet services, and for public safety.

In light of these facts, our inquiry should begin with a recognition of the robustly competitive state of the wireless sector. Instead we go beyond our inquiry of last year and ask for data regarding the business and strategy decisions of CMRS providers. For example, we seek

¹ *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*, Eighth Report, 18 FCC Rcd 14783, para. 5 (2003).

information on advertising by CMRS providers. While such questions might be relevant for an industry that is concentrated or one where there is a dominant service provider, that is not the situation we find ourselves in. Similarly, the NOI asks for substantial information on service quality. While the question is relevant for consumers deciding which carrier to select, the data will have no bearing on whether the market remains effectively competitive. There are other examples of questions within the NOI that I believe go beyond the scope of our mandate under Section 332(c)(1)(C), but I will not belabor the point. I simply outline my concerns to point out that government sometimes gets carried away with data gathering at the expense of focusing on real problems and real solutions. I have no doubt that the information we gather will be interesting but I am not sure that is a sufficient reason to burden staff resources that could be better spent on other projects, or to burden service providers that could better spend their resources competing in the marketplace.