

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
APPROVING IN PART AND CONCURRING IN PART**

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, Twelfth Report, WT Docket No. 07-71

In past years, I have concurred in the agency's annual *CMRS Competition Report* because I believe it relied on insufficiently granular data and did not define the statutory term "effective competition." Today's *Report* makes important strides towards addressing my first concern. The analysis we release today relies upon census block data—not county-level data—gathered by an independent data provider. This more granular analysis yields quite a different picture of wireless availability in the U.S. than in past reports. We learn, for example, that only 25% of the U.S. land mass is covered by four or more wireless providers—not 49% (the figure generated by applying last year's methodology to this year's data).¹ I greatly appreciate the willingness of Bureau Chief Fred Campbell, Division Chief John Branscome, and the Wireless Bureau staff to conduct this more accurate but also more difficult analysis. I know it took a lot of work, but the end result is a far more accurate and useful report than in previous years.

I nevertheless concur in part in this year's report because it still fails to define the term "effective competition." As I have stated before, we need to define that term ahead of time and *then* assess whether current competition data meets our definition. Instead, we come at the problem backwards—gathering some data throughout the year and, when report time rolls around, letting the data drive us to an undefined conclusion that competition is present. Not only does this *post hoc* process lack methodological rigor, it also leaves consumers, industry, and Congress with no clear idea of how this Commission will react to further changes in the market.

I find our failure to define "effective competition" especially striking because 2007 has been a year in which important concerns have bubbled to the surface about whether the current wireless marketplace delivers consumers an optimal mix of technologies, features, handsets, software, and services. Broad-ranging critiques about the openness of the cell phone market have come from academics, public interest advocates, wireless entrepreneurs, and columnists for the *New York Times* and *Wall Street Journal* covering technology.² Concern over the lack of

¹ Interestingly—and cause for some concern—the comparable figure from last year was 51%. This means that, with methodology held constant, at least one measure of wireless deployment in the U.S. has actually *decreased*. The difference (2%) is far from trivial—it represents 76,000 square miles, an area roughly the size of Nebraska or North Dakota.

² See, e.g., Tim Wu, "Wireless Carterfone," *International Journal of Communication*, Vol. 1, p. 389, 2007; Testimony of Jason Devitt at Federal Communications Commission July 31, 2007 Open Meeting, available at <http://www.fcc.gov/realaudio/mt073107.ram> at 9 minutes 30 seconds; "Same name, very different phones," *Consumer Reports* (January 2008), at 38; David Pogue, "Are U.S. Cell Phone Carriers Calcified?" available at <http://pogue.blogs.nytimes.com/2007/07/05/are-us-cellphone-carriers-calcified/>; Walter Mossberg, "Free My Phone," available at <http://mossblog.allthingsd.com/20071021/free-my-phone/>.

openness in the wireless industry even led a majority of this Commission to implement mandatory openness principles in 22 MHz of the 700 MHz spectrum the Commission will auction next year. While I would have preferred that we adopt a more expansive set of openness principles, I think it is quite significant that 2007 is the first year to see bipartisan recognition of significant barriers to innovation in the wireless marketplace.

I hope that in 2008 the agency can find bipartisan support for adopting an *a priori* definition of “effective competition.” In particular, I hope this definition can incorporate concepts like opportunity to innovate and measures of concentration in the handset and device software markets, along with more traditional concepts like market concentration at the carrier level. (I also incorporate my views from last year that a definition of effective competition must also account for the fact that two of the leading wireless companies are owned in whole or in part by wireline broadband providers.)

I am confident that questions about network openness will only grow in importance in 2008 and beyond, as wireless devices continue their transformation from mobile versions of the traditional telephone to smaller versions of laptop computers. The FCC must dedicate itself to policies that secure the same degree of hardware and software choice and innovation in the wireless market that we see in the market for personal computers and accessories. Of particular importance are the recent set of voluntary openness initiatives announced by carriers and their high-tech partners. Only time will tell whether these voluntary efforts yield concrete consumer benefits. I hope that the next edition of the *CMRS Competition Report* will take a serious and rigorous look at this set of issues.