

**STATEMENT OF COMMISSIONER AJIT PAI,
APPROVING IN PART, 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 Mobile Wireless, including Commercial Mobile Services, WT Docket No. 11-186.

There is a lot of good news in the 16th Wireless Competition Report, which we adopt today. There are now more wireless connections in America than there are people.¹ Practically everyone has access to mobile voice and broadband service (99.9 percent and 99.5 percent, respectively), and a substantial majority of Americans (82 percent) can choose among at least four facilities-based mobile broadband operators.² Consumers have an incredible selection of handsets, with 23 manufacturers offering 266 models.³ And wireless providers are increasingly using the spectrum we auctioned in 2006 and 2008—the AWS-1 and 700 MHz spectrum—to offer 4G LTE services. In fact, annual incremental investment in wireless networks rose to \$25.3 billion in 2011, almost 25 percent over what it was two years before.⁴

The result of all this activity? More Americans are choosing smartphones when they purchase a new phone (67 percent in 2012), and more Americans are using them to go online (104 million in 2011).⁵ Mobile data traffic more than doubled from 2010 to 2011.⁶ And unit prices for mobile services are falling, whether measured on a per-minute basis, on a per-megabyte basis, or by the wireless inflation index.⁷ All of this is a testament to the success of the deregulatory approach to wireless taken by both Congress and the Commission over the past two decades.

And yet, I cannot approve today's report in every respect because it does not carry out all the tasks that Congress has assigned us. Specifically, Congress has directed us to include in our annual wireless competition report "an analysis of whether or not there is effective competition."⁸ The report simply does not do this. To be sure, some might not like answering this question. But the Communications Act does not give us the discretion to dodge. The binary choice of yes or no doesn't countenance a hedge based on "the complexity of the various inter-related segments and services within the mobile wireless ecosystem."⁹

¹ *Report* at para. 244.

² *Id.* at Tables 5, 9.

³ *Id.* at Table 44.

⁴ *Id.* at Table 33.

⁵ *Id.* at paras. 220, 339.

⁶ *Id.* at Chart 26.

⁷ *Id.* at paras. 264, 268, 263.

⁸ 47 U.S.C. § 332(c)(1)(C). Another question unanswered is "[w]hether any of such competitors have a dominant share of the market for [commercial mobile] services." *Id.*

⁹ *Report* at 2. I will concede that not everyone in Congress thinks that the Communications Act as it stands directs the FCC to answer the right questions. Last year, the U.S. House of Representatives passed by voice vote the FCC Consolidated Reporting Act of 2012, H.R. 3310, which would have eliminated the Wireless Competition Report as a stand-alone report and given the Commission considerably more flexibility to report on competition in the communications marketplace. But unless and until Congress amends the Act, it is our statutory responsibility to answer the questions that Congress has asked.

For what it's worth, the answer is pretty obvious to me: Yes, there is effective competition.¹⁰ That's what our report shows in page after page of analysis. That's what the Wireless Telecommunications Bureau basically found last week when it approved the combination of the fourth and fifth largest wireless providers in America without seeking a vote by the full Commission.¹¹ And that's what every consumer sees when he or she goes shopping for a new phone—choice and competition are ubiquitous. Because the Report does not acknowledge this conclusion directly, I concur in part.

¹⁰ I also believe that no competitor has a dominant share of the market for commercial mobile services. *See supra* note 8.

¹¹ *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations*, WT Docket No. 12-301, Memorandum Opinion and Order and Declaratory Ruling, DA 13-384 (WTB/IB rel. Mar. 12, 2013), available at <http://go.usa.gov/2EDR>.