

**Before the
Federal Communications Commission
Washington, D.C. 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 Commercial Mobile Services)	

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

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EXECUTIVE SUMMARY

CTIA – The Wireless Association® (“CTIA”) files these Reply Comments with the FCC demonstrating that the wireless industry is one of the most competitive wireless markets worldwide, delivering unparalleled competition, value and innovation to U.S. wireless consumers.

In this filing, CTIA urges the Commission to take note of a recent study by the United Kingdom’s Office of Communications (“Ofcom”) finding the UK wireless market to be the most competitive in Europe. We agree and note for the Commission that CTIA has submitted data over the past year-and-a-half showing that the U.S. market is working even better, with more competitors, with lower concentration, with lower prices, and with higher minutes of use. The Ofcom conclusion should be informative for the FCC. CTIA also dispels several recently-espoused and misguided critiques of the wireless industry, explaining that:

- *Myth* (Consumers have few choices) *v. Reality*: CMRS markets and regulatory structures have fostered widespread innovation and tremendous growth in wireless markets, resulting in a panoply of choices for consumers in terms of wireless services, service providers, and service plans;
- *Myth* (Innovation and investment are limited) *v. Reality*: America’s wireless providers invest over \$20 billion each year to upgrade and expand wireless network capacity and coverage, enabling the innovation in wireless devices and applications that consumers enjoy;
- *Myth* (Contract terms limit choice) *v. Reality*: Carrier policies have evolved significantly, giving consumers more options and a more consumer-friendly marketplace than nearly any other market worldwide, including pro-rated ETFs, extended trial periods, multiple pre-paid and post-paid offerings, and the ability to change plans without penalty;
- *Myth* (Prices are high) *v. Reality*: U.S. consumers pay the least per minute of use of any OECD country and use more wireless service than consumers in any other country, while enjoying a wide variety of high- and low-volume options in voice, data and messaging.

These Reply Comments make clear that when current industry metrics, policies and options are considered, the wireless industry has become pro-consumer, proactive, innovative, and an integral part of the lives of more than 270 million Americans. Competition occurs at every level of the U.S. wireless ecosystem and consumers have and will continue to reap the benefits of this competition.

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REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

I. INTRODUCTION.

CTIA – The Wireless Association® (“CTIA”)¹ hereby submits the following Reply Comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) May 14, 2009 *Public Notice* requesting data and information regarding the state of competition in the Commercial Mobile Radio Service (“CMRS”) industry.² Despite claims to the contrary, the U.S. wireless industry is not only effectively competitive, but is one of the most competitive wireless markets worldwide, delivering unparalleled competition, value and innovation to U.S. wireless consumers. While there are ongoing debates within the industry on a range of issues, these are the product of competition between carriers. While those issues are in debate in other proceedings, CTIA believes that whether you analyze the U.S. wireless industry

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, broadband PCS, ESMR and 700 MHz licensees, as well as providers and manufacturers of wireless data services and products.

² WTB Seeks Comment on CMRS Market Competition, *Public Notice*, WT Docket No. 09-66, DA 09-1070 (May 14, 2009) (hereinafter, “Notice”).

independently, or compare it to foreign markets like the UK, this is a competitive market that continues to innovate and respond to consumers.

In sharp contrast to reality, critics of the wireless market present a picture of an industry that cannot or will not respond to consumer demand, refuses to meet consumers' needs and gives consumers few options. They reach this conclusion through an overly simplistic view of both competition and the industry. For example, by ignoring necessary inputs to a wireless marketplace, like spectrum and tower siting, these critics reach the incorrect conclusion that the industry lacks competition. As CTIA stated in its initial comments in the docket, the Commission's method of taking a holistic look at the wireless industry, including the myriad benefits that consumers derive from competition at every level, is the proper framework for analysis. Using this framework, the Commission has consistently found the industry to be competitive. Moreover, consumers themselves are overwhelmingly endorsing developments in the wireless market, signing up for wireless service at record levels, rapidly embracing new services, dropping legacy alternative services, and incorporating wireless services into more and more activities of their lives.

As detailed below, critics also cite to outdated and inaccurate "facts" to portray the U.S. wireless industry as lacking competition. When current industry metrics, policies and options are considered, the industry is more accurately portrayed as the pro-consumer, proactive industry that has become an integral part of the lives of more than 270 million Americans. Competition occurs at every level of the U.S. wireless ecosystem and consumers have and will continue to reap the benefits of this competition.

II. CRITICS OF THE WIRELESS INDUSTRY SKEW MARKET REALITIES TO FIND A LACK OF COMPETITION.

In these Reply Comments CTIA will present some of the inaccurate statements made by parties to the proceeding and provide a more complete version of the facts.

Critics say: “[C]urrent CMRS markets and regulatory structures have produced fewer choices for consumers....”³

Reality: Wireless consumers benefit from the intense level of competition, and as a result innovation, that occurs at every level of the wireless ecosystem from carriers and service plans, to innovation at the handset and application levels. Whether reviewed based on the number of carriers, the number of service plans or the number of applications available, there clearly is choice.

Competition Among Carriers. No matter whether you measure nationwide, or on a market-by-market basis, this criticism is absurd. U.S. consumers choose among more than 150 wireless carriers and 43 non-facilities-based Mobile Virtual Network Operators (“MVNOs”).⁴ The vast majority of Americans – more than 94% – enjoy their choice of at least four wireless providers. In an effort to more accurately measure competition on a more granular basis as requested by Commissioner Copps, the FCC last year measured the number of carriers on a census tract basis. Even at this granular level, consumers continue to have a number of carrier options available. The number of choices in many markets actually is growing, not shrinking. With the expansion of service by companies

³ Comments of Consumer Federation of America, *et al.*, WT Dkt. No. 09-66, at iii (filed June 15, 2009).

⁴ See CTIA’s Wireless Industry Indices: Semi-Annual Data Survey Results: A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Year-End 2008 Results (rel. May 26, 2009) (“CTIA’s Wireless Industry Indices Report”) at 4. See also Nick Jotischky, et al., “Global MVNO Operations - A study of current business models and emerging opportunities,” Informa Telecoms and Media, May 2009, on-line summary available at <http://www.telecomsmarketresearch.com/research/TMAAAQPN-WCIS-Insight--Global-MVNO-Operations---A-study-of-current-business-models-and-emerging-opportunities.shtml> (last accessed May 29, 2009) (“The MVNO market remains competitive in USA with 43 such companies in operation” as of 3Q 2008).

like Leap Wireless/Cricket, MetroPCS, TracFone, Clearwire and more, carriers are facing more and more competition for consumers.

Service Plan Options. Just as U.S. consumers enjoy their choice of multiple service providers, those same service providers compete vigorously for customers on the basis of service plan offerings. In the last two years, the wireless industry has seen the introduction of many new service offerings. Consumers have a number of both contract and non-contract options to choose from to suit their individual wireless needs. By far the most popular wireless service option, the post-paid contract plan, has seen changes to meet consumer needs in the last year. The introduction by all four nationwide providers of “unlimited calling” or “unlimited everything” plans has given high-volume U.S. wireless consumers an option that meets their considerable wireless needs.⁵

At the other end of the spectrum of wireless users, low-income and low-volume wireless users also have seen plan competition and innovation to help meet their wireless needs within their wireless budgets. Prepaid carriers, such as TracFone, Boost Mobile and Virgin Mobile continue to offer low-income and low-volume users affordable options – and have introduced their own unlimited plans.⁶ Additionally, regional

⁵ See, e.g., “Verizon Wireless Introduces New Unlimited Plans That Are as Worry Free as the Guarantee,” Press Release, Feb. 19, 2008, available at <http://news.vzw.com/news/2008/02/pr2008-02-19.html> (announcing \$99.99 Nationwide Unlimited Anytime Minute Plans, and enhanced Broadband Access Plans offering 50 MB a month for \$39.99 or 5 GB a month for \$59.99); see also AT&T Talk Unlimited, available at http://www.wireless.att.com/cell-phone-service/cell-phone-plan-details/?q_sku=sku1210020&q_planCategory=cat1370011 (last accessed June 12, 2009); T-Mobile Plans Overview, <http://www.t-mobile.com/shop/plans/detail.aspx?tp=tb1&id=dabdf217-d1f3-44ce-a5d2-322198f7a692> (last accessed June 15, 2009); Sprint Simply Everything Plan, <http://www.sprintspecialoffers.com/everything/> (last accessed June 15, 2009).

⁶ See <http://www.tracfone.com>; <http://www.boostmobile.com>; <http://www.virginmobile.com>; see also <http://www.straighttalk.com>.

providers like Leap Wireless's Cricket brand are expanding their coverage area to bring non-contract wireless options and additional competition to consumers.⁷

Finally, for those consumers who desire the service plans associated with post-paid contracts without a contract, plans such as T-Mobile USA's Flexpay may meet their needs.⁸ Flexpay plans provide consumers the option of pre-paying for post-paid plans. Like pre-paid plans, when the plan minutes are expended Flexpay customers have the option to purchase additional minutes.⁹

Wireless Device Innovation. In order to take advantage of improvements in wireless networks, the handset market is evolving. Smartphones are becoming a larger percentage of handset sales. From simple, voice-only devices to complex smartphones that more closely resemble a handheld computer than a telephone, the breadth and depth of devices manufactured and sold to American consumers far eclipses that in other developed countries.¹⁰ There are now at least 29 devices with integrated Wi-Fi capabilities, with more on the way. In fact, Sprint Nextel recently announced that it will feature Wi-Fi in all of its "major devices going forward."¹¹ Additionally, consumers have access to unlocked handsets that allow them to be attached to any compatible carriers' network.

⁷ See "Cricket's Flat-rate, Unlimited Wireless Service Now Available in Washington, D.C.", Press Release, available at <http://www.mycricket.com/aboutcricket/pressroom/details?id=421> (last accessed July 13, 2009).

⁸ See <http://www.t-mobile.com/shop/plans/Cell-Phone-Plans.aspx?catgroup=Flexpay-cell-phone-plan>.

⁹ See http://www.t-mobile.com/templates/faq.aspx?PAsset=Pln_Pop_FlexPayFAQ&CAsset=howsign#howsign.

¹⁰ As of February 12, 2009, manufacturers whose wireless devices are sold in the U.S. include Alcatel, Apple, ASUS, Axsesstel, Bandrich, BenQ, Cal-Comp, Casio, Firefly, HP, HTC, Huawei, Jitterbug, Kyocera, LG, Motorola, Nokia, Novatel, Option, Palm, Pantech & Curitel, Research in Motion, Samsung, Sanyo, Sharp, Siemens, Sierra Wireless, Sony Ericsson, Uniden, Waxess USA, and ZTE.

¹¹ "Sprint's Blackberry Tour to sprout WiFi Next Year", FierceWireless available at <http://www.fiercewireless.com/story/sprints-blackberry-tour-sprout-wifi-next-year/2009-07-09> (last accessed July 10, 2009).

Application Innovation. As a result of the industry investment in network and handset advances detailed above, U.S. wireless consumers now enjoy a plethora of wireless applications developed to meet consumers' increasing mobile wireless needs. In the last year, mobile applications stores have become available to provide central locations for wireless consumers to find applications for their wireless devices.¹² For example, Apple's iPhone,¹³ Google and T-Mobile USA's G1,¹⁴ Palm's PalmOS platform¹⁵ (and its new webOS platform launched to coincide with the first webOS device – The Palm Pre¹⁶) and Research in Motion's BlackBerry platform¹⁷ all have online stores dedicated to providing users access to applications for their wireless devices. Verizon Wireless recently launched a store based on Java ME for developers to create applications and make them available to Verizon Wireless' customers.¹⁸ Nokia launched its own apps store – Ovi – for use with Nokia devices.¹⁹ Press reports also indicate that Microsoft is

¹² See e.g., Jason Chen, "Blackberry's app store called 'App World' goes live tonight," Gizmodo Blog, Mar. 4, 2009, available at <http://i.gizmodo.com/5164429/blackberrys-app-store-named-app-world-goes-live-tonight>; see also Yardena Arar, "BlackBerry App Store Gets a Name: BlackBerry App World," PCWorld, Mar. 4, 2009, available at http://www.pcworld.com/article/160711/blackberry_app_store_gets_a_name_blackberry_app_world.html; see also BlackBerry App World: <http://na.blackberry.com/eng/services/appworld/> (last accessed); see also Colin Gibbs, "T-Mobile USA unveils new portal," RCR Wireless News, Nov. 21, 2008, available at <http://www.rcrwireless.com/article/20081120/WIRELESS/811209989/0/CARTOON>, (T-Mobile introduces web2go portal, to improve mobile Internet browsing, shopping and downloads, including a customizable home page, and allowing users to "continue to access some of their downloaded content even after upgrading to new phones"); and see T-Mobile, <http://support.t-mobile.com/doc/tm23842.xml;jsessionid=NqRU6ePhJP-fTVscgs>? (last accessed June 15, 2009).

¹³ See "App Store and Applications for iPhone" at <http://www.apple.com/iphone/appstore/> (last accessed Apr. 7, 2009).

¹⁴ See "Android | Market" at <http://www.android.com/market/> (last accessed Apr. 7, 2009).

¹⁵ See Palm Software, http://software.palm.com/us/html/top_products_treo.jsp?device=10035300025 (last accessed June 15, 2009); see also Pocketgear Palm Applications, <http://appstore.pocketgear.com/palm/> (last accessed June 15, 2009).

¹⁶ See Palm Developer, <http://developer.palm.com/> (last accessed June 15, 2009)..

¹⁷ See BlackBerry App World, <http://na.blackberry.com/eng/services/appworld/>? (last accessed Apr. 7, 2009).

¹⁸ See Marin Perez, "Verizon Rolling Out Java ME App Store; In a change from its past, the carrier will open up so developers can easily target and create programs for Verizon customers," Information Week, June 2, 2009, available at <http://www.informationweek.com/news/mobility/business/showArticle.jhtml?articleID=217701320>.

¹⁹ See Elizabeth Woyke, "Nokia's Gigantic App Store," Forbes, May 7, 2009, available at <http://www.forbes.com/2009/05/07/nokia-ovi-store-technology-wireless-nokia.html>; see also "Nokia starts

planning a store for its Windows Mobile platform.²⁰ Sony Ericsson has also recently announced it will provide mobile applications through its PlayNow Arena movie / content site.²¹

In the one year since the launch of the first of these smartphone application stores, more than one billion applications have been downloaded by consumers²² and more than 75,000 applications are available. The following chart shows the application stores that are available to U.S. consumers:

<u>Application Store</u>	<u>Date Launched</u>	<u>Number of Apps Available</u>
iTunes App Store	July 2008	> 50,000 ²³
Android Market	October 2008	> 1,000 ²⁴
Palm Software Store	January 2009	> 5,000 ²⁵
BlackBerry App World	April 2009	Launched with appx. 1,000 ²⁶
Nokia Ovi Store	May 2009	20,000 Apps and Media Files ²⁷
Palm App Catalog	June 2009 ²⁸	

roll-out of Apple App Store rival,” Reuters, May 25, 2009, available at <http://www.reuters.com/article/newsOne/idUSTRE54O2MI20090525>.

²⁰ Trade press reports that Microsoft is planning a marketplace for Windows Mobile devices called “SkyMarket.” See Jason Ankeney, “Microsoft to launch WinMo app store next month?,” Fierce Developer, Jan. 19, 2009, available at <http://www.fiercedev.com/story/microsoft-launch-winmo-app-store-next-month/2009-01-19>.

²¹ See James Middleton, “Sony Ericsson jumps on app store bandwagon,” Informa Telecoms & Media Group, June 4, 2009, available at <http://www.telecoms.com/11775/sony-ericsson-jumps-on-app-store-bandwagon> (“By teaming up with independent app store GetJar, Sony Ericsson will expand its mobile content offering with a library of over 45,000 free applications that will complement a series of premium apps from Sony Ericsson.”).

²² See Apple Download Countdown, <http://www.apple.com/itunes/billion-app-countdown/> (last accessed June 15, 2009).

²³ See Apple iPhone, <http://www.apple.com/iphone> (last accessed June 15, 2009).

²⁴ See Adam Ostrow, “Paid Apps Enter Google’s Android Market,” Mashable, Feb. 13, 2009, available at <http://mashable.com/2009/02/13/google-android-paid-apps/>.

²⁵ See Palm Software Store, http://software.palm.com/us/html/top_products_treo.jsp?device=10035300025 (last accessed June 15, 2009); see also Pocketgear App Store, <http://appstore.pocketgear.com/palm/> (last accessed June 15, 2009).

²⁶ See “RIM Launches BlackBerry App World,” Press Release, Apr. 1, 2009, available at <http://na.blackberry.com/eng/newsroom/news/press/release.jsp?id=2223>.

²⁷ See *supra* n. 19.

²⁸ See “New Apps for Plam Pre,” The Official Palm Blog, June 8, 2009, available at <http://blog.palm.com/palm/2009/06/new-apps-for-new-palm-pre.html>.

Windows Mobile Marketplace ²⁹	TBD	
Sony Ericsson PlayNow Arena	TBD	

Critics say: “The absence of effective [CMRS] competition has also limited innovation...and has discouraged investment to improve the quality of wireless networks.”³⁰

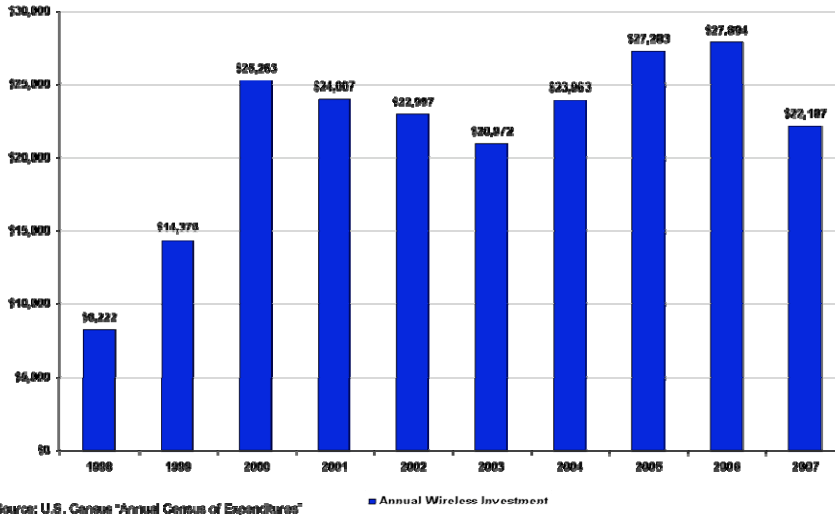
Reality: America’s wireless providers invest billions annually to upgrade and expand wireless network capacity and coverage, enabling the innovation in wireless devices and applications that consumers enjoy.

Despite claims to the contrary, the innovation in the wireless industry is not occurring solely at the edge of the network. In fact, the innovation at the edge of the network only is possible as a result of the innovation that has increased the capacity of wireless networks. According to CTIA’s Semi-Annual Survey results, wireless licensees together invest an average of \$22.8 billion a year to run their networks and provide service to consumers. Cumulatively, licensees have invested just under \$265 billion to date, not including the billions more they have paid for access to spectrum.

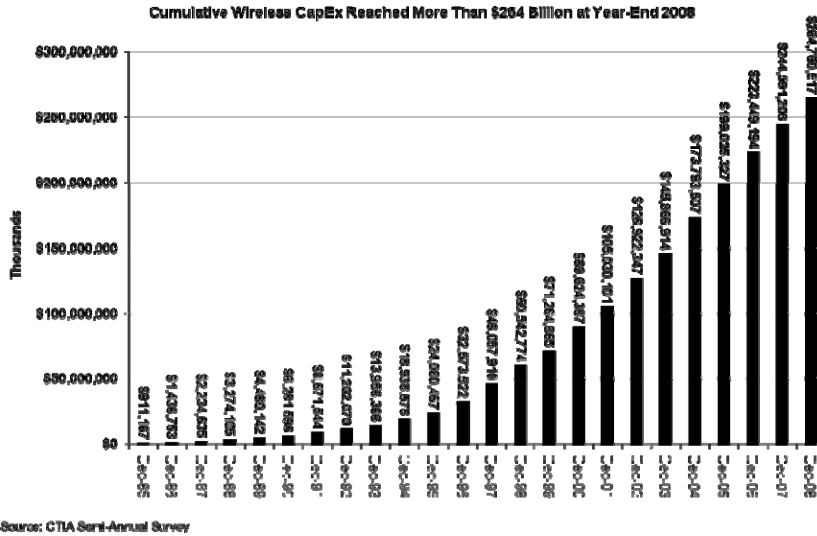
²⁹ Trade press reports that Microsoft is planning a marketplace for Windows Mobile devices. See <http://www.fiercedeveloper.com/story/microsoft-launch-winmo-app-store-next-month/2009-01-19>; see also <http://www.downloadsquad.com/tag/windows-marketplace-for-mobile>.

³⁰ Comments of Consumer Federation of America, *et al.*, at iii.

Total Wireless Expenditures on Structures and Equipment from 1998 - 2007 Totaled More Than \$217 Billion



Cumulative Wireless Investment



Source: Bank of America/Merrill Lynch

Not only is the wireless marketplace extraordinarily robust, but this robust competition affords consumers countless benefits as a direct result of carriers' innovation and significant investment in wireless networks. The innovation that has occurred and continues to occur at the network edge is a direct result of the innovation in the network core. The wireless industry has made its networks more efficient, expanding capacity to

push wireless spectrum limits. This capacity expansion affords consumers new service capabilities, including increased access to exciting data applications.

Additionally, carriers are developing currently and have started rolling out fourth generation (4G) networks.³¹ Sprint Nextel and Clearwire have teamed up to deliver a high-speed network that uses mobile WiMax technology. Competitors Verizon Wireless and AT&T Mobility are developing their own 4G networks that will use LTE (Long Term Evolution) technology. And others have announced their interest in deploying 4G technologies, as well.

Despite carrier investment, however, because spectrum is a limited resource, wireless carriers cannot simply “build their way out of the problem” by adding capacity. Increasing U.S. mobile data use is placing a strain on wireless providers’ existing network infrastructure. According to Cisco, wireless data use is expected to double every two years through 2012.³² A great illustration of this evolution is a recently reported statistic on mobile uploads to YouTube. According to YouTube’s blog, mobile uploads to YouTube have increased 1700% in the last six months – and an increase of more than 400% per day in the week following the launch of the iPhone 3GS.³³ In order to continue to meet the needs of U.S. wireless broadband consumers additional spectrum must be identified, allocated and made available to wireless providers.³⁴

³¹ See, e.g., Sue Marek, *Verizon's Dick Lynch reveals LTE equipment vendors*, FIERCEWIRELESS, Feb. 15, 2009, <http://www.fiercewireless.com/story/embargoed-verizons-richard-lynch-reveals-lte-equipment-vendors/2009-02-15> (noting Verizon Communications' executive vice president and CTO Dick Lynch's statement in an interview that Verizon could demonstrate a commercial LTE system in 2009 and could show a respectable magnitude in 2010).

³² Cisco, “Approaching the Zettabyte Era”, June 16, 2008.

³³ “Mobile Uploads to YouTube Increase Exponentially”, YouTube Blog *available at* http://youtube-global.blogspot.com/2009/06/mobile-uploads-to-youtube-increase_5122.html (June 25, 2009).

³⁴ See generally Comments of CTIA – The Wireless Association®, WT Dkt. No. 09-66 (filed June 15, 2009).

Critics say: “High early termination fees [and contract extensions] limit consumer switching[.]”³⁵

Reality: Recycled criticisms of outdated carrier contract policies by critics have been surpassed by events in the market. Carrier policies with respect to contract extensions and ETFs have evolved to meet consumer needs. Critics’ comments, however, have not. The reality is that wireless carriers are providing more options to consumers (and a more consumer friendly marketplace) than nearly any other market worldwide.

As the chart below shows, the five largest wireless providers in the U.S., representing approximately 90% of U.S. wireless subscribers, offer prorated early termination fees and the ability to change wireless service plans without incurring a contract extension:

³⁵ *Id.* at 14, 15 (“High early termination fees limit consumer switching and hinder competition;” “Contract extensions limit consumer switching and hinder competition.”).

	AT&T Mobility	Sprint Nextel	T-Mobile USA	U.S. Cellular	Verizon Wireless
ETF Policy	Prorates new and renewed 1 & 2 year consumer contracts. Fees decline by \$5 each completed month of the contract. ³⁶	Prorates new and renewed 1 & 2 year consumer contracts. Fees decline by \$10 per month, beginning with the 5th month of the contract until reaching \$50 for the remaining 5 months of the contract. ³⁷	Prorates new and renewed 1 and 2 year consumer contracts. \$100 with < 180 days left, \$50 with < 90 days left, and the lesser of \$50 or the customers' standard monthly charge with < 30 days left. ³⁸	Starting in the 5 th month, the ETF will be reduced by \$7.50/month (24 month contract) or \$18.50/month (12 month contract). ³⁹	Prorates new and renewed contracts. Fees decline by \$5 per month. ⁴⁰
Ability to change service plan without contract extension	Yes ⁴¹	Yes ⁴²	Yes ⁴³	Yes ⁴⁴	Yes ⁴⁵

Moreover, these policies with regard to ETFs and contract changes are only the tip of the iceberg of the evolution of wireless providers' consumer-friendly practices. As detailed

³⁶ Press Release, AT&T Implements New Approach to Early-Termination Fees, (May 23, 2008) available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=25892>; See "Hanging Up on Early Exit Fees" (June 5, 2008), available at http://www.businessweek.com/technology/content/jun2008/tc2008063_586218.htm (Last accessed May 29, 2009).

³⁷ http://nextelonline.nextel.com/en/services/termination_fee/early_termination_fee.shtml?id9=vanity:etf (last accessed June 3, 2009).

³⁸ See http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true&WT.srch=2&Result_Inq=answer&InqSource=TMO. See http://www.consumeraffairs.com/news04/2007/11/sprint_tmobile.html. (Last accessed May 29, 2009).

³⁹ See http://www.uscellular.com/uscellular/SilverStream/Pages/x_page.html?p=legal_csa (last accessed June 1, 2009)

⁴⁰ <http://news.vzw.com/news/2006/11/pr2006-11-16e.html>; see also <http://www.techdirt.com/articles/20061117/115842.shtml> (Last accessed May 29, 2009)

⁴¹ See <http://www.wireless.att.com/answer-center/main.jsp?t=solutionTab&solutionId=KB61945>. See "AT&T Eases Penalties on Mobile Plans", available at <http://www.marketwatch.com/story/att-eases-penalties-on-mobile-plans?dist=SecMostMailed> (last accessed May 29, 2009).

⁴² See http://support.sprint.com/doc/sp3215.xml?user.status=prospect&user.site=sprint&id12=HispanicHP_SupportTab_Link_ComoPuedoCambiarMiPlanDeServicioPorInternet (last accessed May 29, 2009).

⁴³ http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true&WT.srch=2&Result_Inq=answer&InqSource=TMO (Last accessed May 29, 2009) (although some promotional plans require customer to sign another service contract).

⁴⁴ See http://www.uscellular.com/uscellular/SilverStream/Pages/x_page.html?p=a_excellence (last accessed June 1, 2009).

⁴⁵ <http://news.vzw.com/news/2007/10/pr2007-10-01a.html> (Last accessed May 29, 2009).

in the attached chart, consumer trial periods, street-level coverage maps, the ability to bring a handset to a carrier's network, and consumer prepaid and non-contract options have similarly evolved to meet the needs of U.S. consumers.

Critics say: “Without effective competition...prices remain high [] and consumers suffer”⁴⁶

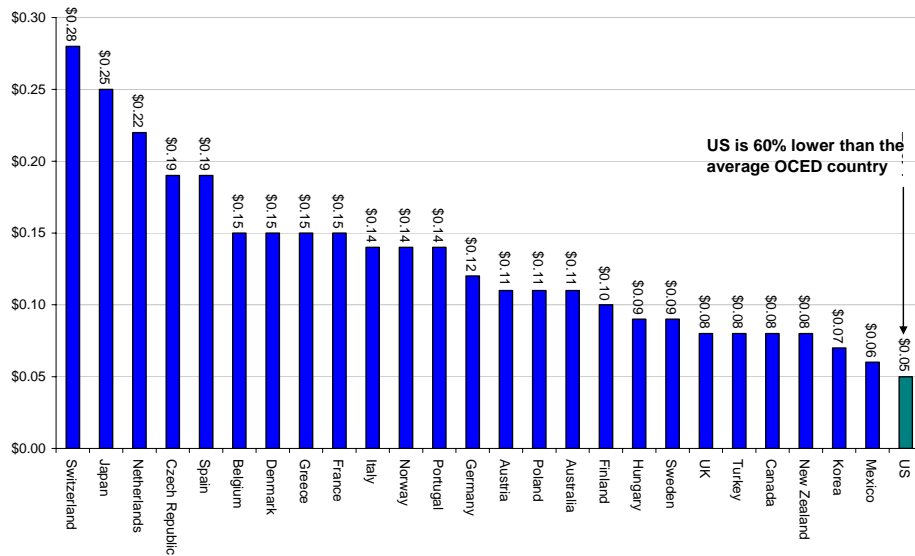
Reality: Claims that U.S. consumers pay more than wireless consumers in other countries ignores the fact that U.S. consumers pay the least per minute of use of any OECD country, that U.S. consumers use more wireless service than consumers in any other country, and that the U.S. market provides a wide variety of high- and low-volume options available to consumers (in voice, data and messaging).

The indisputable fact is that American consumers enjoy unparalleled value in wireless service. While American consumers have the highest minutes of use per month of the 26 OECD countries tracked by Merrill Lynch, the U.S. wireless industry has the lowest revenue per minute (“RPM”) of all 26 OECD countries tracked, with a RPM 60% lower than the average of the other 25 countries measured, as well as the lowest price per minute of service of all 26 OECD countries.⁴⁷

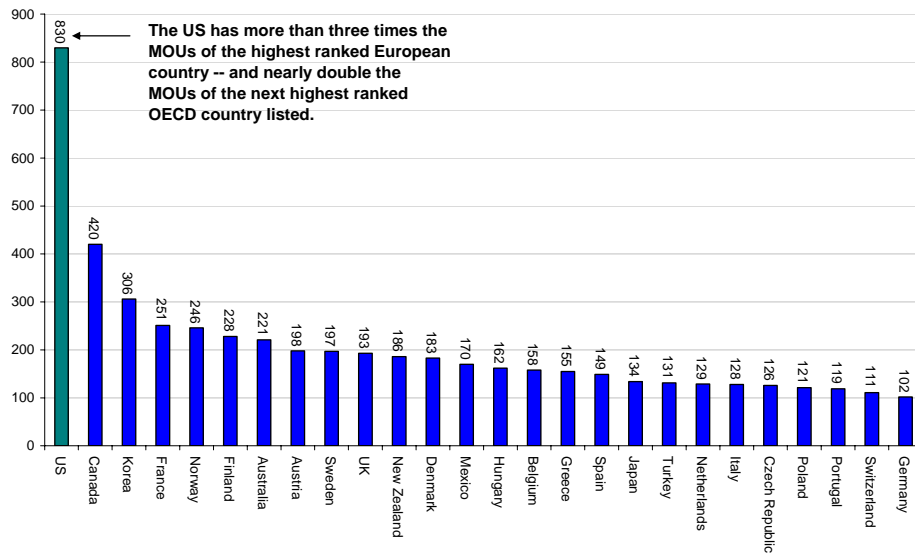
⁴⁶ Comments of Consumer Federation of America, *et al.*, at 30; *see also* Testimony of Joel Kelsey, Policy Analyst, Consumers Union, on behalf of Consumers Union, Consumer Federation of America, Free Press, the Media Access Project and Public Knowledge, hearing on “Cell Phone Text Messaging Rate Increases and the State of Competition in the Wireless Market,” before the Senate Judiciary Committee Subcommittee on Antitrust, Competition Policy and Consumer Rights, June 16, 2009, at 27 (“With insufficient competition...prices remain artificially high, and consumers suffer...”).

⁴⁷ Comments of CTIA at 2, 3, *Written Ex Parte Communication*, RM-11361; GN Docket No. 09-51; WC Docket No. 07-52.

Comparative Revenue Per Minute in 26 OECD Countries, 1Q09



Comparative Monthly Wireless MOUs in 26 OECD Countries, 1Q09



To ignore per unit cost is tantamount to saying the average Costco member pays more for rice because they buy in larger quantities than a Harris Teeter customer. It is disingenuous, at best, to make this kind of gross generalization with complete disregard for levels of use. Additionally, as detailed above, consumers who neither need nor desire

wireless service plans with large buckets of minutes have numerous alternatives including pre-paid, pay-as-you-go, and other plans.⁴⁸

III. THE RECENT OFCOM REVIEW OF THE WIRELESS MARKET IN THE UNITED KINGDOM SHOULD PROVIDE THE FCC WITH A SIGNIFICANT POINT OF COMPARISON AS IT COMPLETES THE CMRS COMPETITION REPORT.

As the FCC completes its analysis of the level of competition in the CMRS marketplace, CTIA thinks it would make sense to include the results from a recently-completed analysis of the wireless market in the United Kingdom. On July 8 of this year, Ofcom “underlined its commitment to competition, consumer protection and investment in the mobile market with the publication of the second phase of its mobile sector assessment.”⁴⁹ Ofcom has concluded, after significant review of its mobile wireless industry, that “the UK has the most competitive mobile industry in Europe with five mobile network operators,”⁵⁰ and that “Ofcom does not propose to undertake a wider formal market review of the mobile sector.”⁵¹ Based on our review of independent statistics, we would agree and note for the Commission that the U.S. market is performing even better.

The Ofcom analysis is germane on several levels. First, over the course of the last several years, organizations have pointed to Europe and Japan as examples of fully functioning wireless markets. The Ofcom study supports this conclusion – that the wireless market in the UK is working. CTIA has submitted data over the past one-and-a-half years that shows that by any measure, the U.S. market is working even better. For example, in the UK, the top four carriers have 93.5% of the market, and the

⁴⁸ See *supra*, pp. 4-5.

⁴⁹ “Ofcom pledges further consumer protection for mobile users and publishes 3G mobile coverage maps for the first time”, Press Release, *available* at http://www.ofcom.org.uk/media/news/2009/07/nr_20090708 (last accessed July 13, 2009).

⁵⁰ *Id.*

⁵¹ *Id.*

top five network operators have 100% of the market.⁵² In comparison, in the United States, where critics have argued that there is too much consolidation, as of year-end 2008 the top four carriers had 85% of the market, and the top five had less than 90% of the market. The remaining 10% of the market is made up of carriers like Leap Wireless, MetroPCS, and more. Further, carriers like Clearwire and Cox Communications that are entering the market are not even yet represented in that analysis. At the same time that there has been consolidation in the market, there also has been expansion, resulting in an HHI calculation that is lower than the 25 other OECD countries regularly tracked by Merrill Lynch.

The comparison of the U.S. consumer to the UK consumer is even better when you expand the comparison beyond market share to include both price and minutes of use. As CTIA submitted recently in a multi-national comparison of wireless markets, the price per minute in the UK is 140% above the United States, \$0.12 to \$0.05.⁵³ And the minutes of use per month in the UK is below 200, while in the United States it is above 800. If the UK market is competitive, clearly the U.S. market is competitive. In its study, Ofcom concluded that it considers “that competition is the most important stimulus for ensuring that consumers benefit from advances in the mobile sector through service and technology innovation, fair prices and environment.”⁵⁴ While Ofcom is working to ensure that consumers continue to enjoy a high level of competition, their goal is likely to have a market evolve to something that more closely reflects the market in the United States.

⁵² Source: Merrill Lynch, “Global Wireless Matrix 4Q08”

⁵³ See Letter from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA – The Wireless Association® to Marlene Dortch, Secretary, FCC dated May 12, 2009, GN Dkt. No. 09-51, at 3.

⁵⁴ “Mostly Mobile”, Consultation, UK Office of Communications *available at* <http://www.ofcom.org.uk/consult/condocs/msa/msa.pdf> (last accessed July 13, 2009).

While Ofcom stated that it would not pursue a wider formal review, it did pledge to protect consumers and “to monitor and safeguard competition between mobile networks, and would work with the government to address spots of poor or no reception, particularly in rural areas.”⁵⁵ Ofcom concluded that “mobile network coverage in the UK is generally good but some problems persist, particularly in rural areas. Ofcom is focusing on persistent so-called not-spot areas and working where it can to facilitate better mobile coverage.

“To help address these problems Ofcom will:

- “Assist the Government on its proposals to make more spectrum available for mobile broadband as well as the work to improve 3G coverage on key transport routes;
- “Undertake new research to explore for the first time the technical quality of service such as mobile broadband speeds - that consumers receive from mobile devices; and
- “Investigate the causes of some persistent mobile coverage not-spots areas of poor or no reception - and work with public bodies to consider how to resolve these issues. This may include providing guidance on ways to overcome coverage issues.”⁵⁶

CTIA believes that these efforts on behalf of the UK regulator, Ofcom, can easily be replicated in the United States by the FCC. Specifically, CTIA has asked for help from the FCC and NTIA in identifying new spectrum for reallocation to licensed commercial use. CTIA also has asked the FCC for help in establishing a “shot clock” for review of tower and antenna siting applications before municipal and local zoning authorities.

For purposes of comparison in the spectrum setting, it is worth noting the spectrum positions of the two countries. In the UK, the government has assigned for licensed commercial use 352.8 MHz of spectrum to serve approximately 80 million

⁵⁵ http://www.nytimes.com/reuters/2009/07/08/business/business-uk-britain-telecoms-ofcom.html?_r=2

⁵⁶ “Ofcom pledges further consumer protection for mobile users and publishes 3G mobile coverage maps for the first time”, Press Release, *available* at http://www.ofcom.org.uk/media/news/2009/07/nr_20090708 (last accessed July 13, 2009).

customers. In the United States, the government has assigned 409.5 MHz to serve 279 million customers.⁵⁷ The more staggering statistic is not the current spectrum positions of the two countries, but rather the future spectrum positions. While the U.S. has less than 50 MHz that could conceivably be assigned for commercial use (AWS-2 and AWS-3), the UK has over 350 MHz in the pipeline. A country serving less than one-third the number of subscribers, who use less than one-fourth the minutes of use per month, has seven times the amount of spectrum in the pipeline. There has been a debate in the U.S. about access to spectrum and spectrum consolidation. That debate would be overtaken if the U.S. would provide comparable amounts of spectrum for its licensed commercial industry.

Finally, the Ofcom study also addressed an issue that has been the subject of policy discussions in the United States – the applicability of “net neutrality” principals to the wireless market. CTIA has argued that these rules are not necessary in a competitive environment and that they are incompatible with the unique technical requirements of wireless networks. The Ofcom conclusion on this issue is very much on point with CTIA’s position. “As stated in the MSA 1 consultation, in a competitive market we expect that the degree of ‘net neutrality’ (if any) will be determined by consumer choice and therefore does not require regulation. An important corollary is that consumers should be aware of any restrictions that are placed on their service, both at the point of sale and during the term of the contract. Therefore, to the extent that any intervention is called for, it would be focused on making the restrictions transparent to consumers, rather

⁵⁷ Note that the United States spectrum statistic includes spectrum not yet in use, including AWS 1, 700 MHz and 55.5 MHz of spectrum at 2.5 Ghz

than regulating access.”⁵⁸ CTIA believes that this approach makes sense in the competitive U.S. wireless market.

IV. CONCLUSION.

CTIA urges the Commission to continue to recognize that the wireless U.S. industry is one of the most competitive wireless markets worldwide, delivering unparalleled competition, value and innovation to U.S. wireless consumers. Industry critics ask the Commission to ignore changes in the wireless marketplace and rely on outdated claims and unsound analysis to find a lack of competition. The reality is the U.S. wireless market is, as bolstered by a recent Ofcom study, one of the most competitive in the world.

Respectfully submitted,

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⁵⁸ See Section 4.88, <http://www.ofcom.org.uk/consult/condocs/msa/msa.pdf>

U.S. Wireless Carrier Consumer Practices

	ETF policies	Trial period	Point of sale information/documentation	Online, street-level coverage maps	Ability to change plan w/o contract extension	Ability to purchase service w/o a contract (prepaid)	Ability to bring your own phone	Ability to pay full price for a handset and take service w/o a contract	Military Personnel Benefits	
									Suspension	Termination
AT&T	Prorates new and renewed 1 & 2 year consumer contracts. Fees decline by \$5 each completed month of the contract ¹	30-day ²	Follows CTIA Consumer Code ³	Yes ⁴	Yes ⁵	Yes ⁶	Yes ⁷	Yes ⁸	Yes ⁹	No ETF ¹⁰
Sprint Nextel	Prorates new and renewed 1 & 2 year consumer contracts. Fees decline by \$10 per month, beginning with the 5th month of the contract until reaching \$50 for the remaining 5 months of the contract. ¹¹	30-day ¹²	Follows CTIA Consumer Code ¹³	Yes ¹⁴	Yes ¹⁵	Yes ¹⁶	Yes ¹⁷	Yes ¹⁸	Yes ¹⁹	No ETF ²⁰
T-Mobile USA	Prorates new and renewed 1 and 2 year consumer contracts. \$100 with < 180 days left, \$50 with < 90 days left, and the lesser of \$50 or the customers' standard monthly charge with < 30 days left ²¹	14-day (30 days in CA) ²²	Follows CTIA Consumer Code ²³	Yes ²⁴	Yes ²⁵	Yes ²⁶	Yes ²⁷	Yes ²⁸	Yes ²⁹	No ETF ³⁰
U.S. Cellular	Starting in the 5 th month, the ETF will be reduced by \$7.50/month (24 month contract) or \$18.50/month (12 month contract) ³¹	30-day ³²	Follows CTIA Consumer Code ³³	No, State-level only ³⁴	Yes ³⁵	Yes ³⁶	Yes ³⁷	Yes ³⁸	Yes ³⁹	No ETF
Verizon Wireless	Prorates new and renewed contracts Fees decline by \$5 per month ⁴⁰	30-day ⁴¹	Follows CTIA Consumer Code ⁴²	Yes ⁴³	Yes ⁴⁴	Yes ⁴⁵	Yes ⁴⁶	Yes ⁴⁷	Yes ⁴⁸	No ETF ⁴⁹

¹ Press Release, AT&T Implements New Approach to Early-Termination Fees, (May 23, 2008) *available at* <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=25892>; See “Hanging Up on Early Exit Fees” (June 5, 2008), *available at* http://www.businessweek.com/technology/content/jun2008/tc2008063_586218.htm (Last accessed May 29, 2009)

² AT&T Return Policy, *available at* <http://www.wireless.att.com/cell-phone-service/legal/return-policy.jsp> (Last accessed May 29, 2009).

³ CTIA Consumer Code for Wireless Service, *available at* <http://www.wireless.att.com/learn/articles-resources/consumer-code.jsp>. See “Wireless Carriers Adopt Guidelines”, *available at* <http://www.cbsnews.com/stories/2003/08/04/tech/main566584.shtml> (Last accessed May 29, 2009)

⁴ See <http://www.wireless.att.com/coverageviewer/> (Last accessed May 29, 2009)

⁵ See <http://www.wireless.att.com/answer-center/main.jsp?t=solutionTab&solutionId=KB61945>. See “AT&T Eases Penalties on Mobile Plans”, *available at* <http://www.marketwatch.com/story/att-eases-penalties-on-mobile-plans?dist=SecMostMailed> (Last accessed May 29, 2009)

⁶ <http://www.wireless.att.com/cell-phone-service/go-phones/index.jsp> (Last accessed May 29, 2009)

⁷ <http://www.wireless.att.com/cell-phone-service/legal/plan-terms.jsp> (Last accessed May 29, 2009)

⁸ <http://www.wireless.att.com/learn/basics/shopping-faqs.jsp#106> (Last accessed May 29, 2009)

⁹ http://www.wireless.att.com/answer-center/main.jsp?t=solutionTab&ft=searchTab&ps=solutionPanels&locale=en_US&_dyncharset=UTF-8&solutionId=60168&isSrch=Yes (Last accessed May 29, 2009)

¹⁰ See <http://www.wireless.att.com/businesscenter/business-programs/government/federal-programs.jsp> (last accessed June 1, 2009)

¹¹ http://nextelonline.nextel.com/en/services/termination_fee/early_termination_fee.shtml?id9=vanity:etf (last accessed June 3, 2009).

¹² <http://www.sprint.com/landings/returns/> (last accessed June 3, 2009).

¹³ See http://www2.sprint.com/mr/gp_dtl.do?article=840 (Last accessed May 29, 2009)

¹⁴ See <http://coverage.sprintpcs.com/IMPACT.jsp?PCode=vanity:coverage> (Last accessed May 29, 2009)

¹⁵ See http://support.sprint.com/doc/sp3215.xml?user.status=prospect&user.site=sprint&id12=HispanicHP_SupportTab_Link_ComoPuedoCambiarMiPlanDeServicioPorInternet (Last accessed May 29, 2009)

¹⁶ See http://support.sprint.com/doc/sp10549.xml?id16=prepaid_plans; <http://www.sprint.com/en/boostlanding/> (Last accessed May 29, 2009)

¹⁷ See http://nextelonline.nextel.com/en/legal/legal_terms_privacy_popup.shtml (Last accessed May 29, 2009)

¹⁸ See http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions (Last accessed May 29, 2009)

¹⁹ See <http://support.sprint.com/doc/sp10702.xml?id16=military> (Last accessed May 29, 2009)

²⁰ See http://support.sprint.com/doc/sp11408.xml?id16=military_deployment (last accessed June 3, 2009) (deployment must exceed 90 days).

²¹ See http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true&WT.srch=2&Result_Inq=answer&InqSource=TMO. See http://www.consumeraffairs.com/news04/2007/11/sprint_tmobile.html. (Last accessed May 29, 2009)

²² See http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true&WT.srch=2&Result_Inq=answer&InqSource=TMO (Last accessed May 29, 2009)

²³ http://www.t-mobile.com/Company/Community.aspx?tp=Abt_Tab_ConsumerCode (Last accessed May 29, 2009)

²⁴ <http://www.t-mobile.com/coverage/pcc.aspx> (Last accessed May 29, 2009)

²⁵ http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true&WT.srch=2&Result_Inq=answer&InqSource=TMO (Last accessed May 29, 2009) (although some promotional plans require customer to sign another service contract)

²⁶ <http://www.t-mobile.com/shop/plans/Prepaid-Plans.aspx> (Last accessed May 29, 2009)

²⁷ http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true&WT.srch=2&Result_Inq=answer&InqSource=TMO (Last accessed May 29, 2009)

²⁸ Id.

²⁹ See “Military Suspension Can Protect Accounts”, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/11/AR2008041102819.html> (Last accessed May 29, 2009)

³⁰ Id.

³¹ See http://www.uscellular.com/uscellular/SilverStream/Pages/x_page.html?p=legal_csa (last accessed June 1, 2009)

³² http://www.uscellular.com/uscellular/SilverStream/Pages/x_page.html?p=a_30day (last accessed June 1, 2009)

³³ See http://www.uscellular.com/uscellular/SilverStream/Pages/x_page.html?p=a_code (last accessed June 1, 2009)

³⁴ http://www.uscc.com/uscellular/SilverStream/Pages/x_page.html?p=map_home (last accessed June 1, 2009)

³⁵ See http://www.uscellular.com/uscellular/SilverStream/Pages/x_page.html?p=a_excellence (last accessed June 1, 2009)

³⁶ See http://www.uscellular.com/uscellular/SilverStream/Pages/x_page.html?p=b_prepaid (last accessed June 1, 2009)

³⁷ See http://www.uscc.com/uscellular/SilverStream/Pages/x_page.html?p=legal_csa (last accessed June 1, 2009)

³⁸ See id.

³⁹ See http://www.uscc.com/uscellular/SilverStream/Pages/x_page.html?p=military_dc

⁴⁰ <http://news.vzw.com/news/2006/11/pr2006-11-16e.html>; see also <http://www.techdirt.com/articles/20061117/115842.shtml> (Last accessed May 29, 2009)

⁴¹ http://www.verizonwireless.com/b2c/globalText?textName=RETURN_POLICY&jspName=footer/returnPolicy.jsp (Last accessed May 29, 2009)

⁴² <https://www.openwebdevsummit.com/node/41351> (Last accessed May 29, 2009)

⁴³ <http://www.verizonwireless.com/b2c/CoverageLocatorController?requesttype=NEWREQUEST&market=All>; see also “Where Does Your Cell Phone Work?” (Dec 16, 2002), *available at* <http://www.computerworld.com/printthis/2002/0,4814,76664,00.html> (Last accessed May 29, 2009)

⁴⁴ <http://news.vzw.com/news/2007/10/pr2007-10-01a.html> (Last accessed May 29, 2009)

⁴⁵ http://www.verizonwireless.com/pdfs/user_guides/PrepaidPOSBro_English_Internet.pdf (Last accessed May 29, 2009)

⁴⁶ http://www.verizonwireless.com/b2c/globalText?textName=CUSTOMER_AGREEMENT&jspName=footer/customerAgreement.jsp (Last accessed May 29, 2009)

⁴⁷ Press Release, No Contract Required — New Month-To-Month Agreement Gives Verizon Wireless Customers Even More Freedom (Sept 22, 2008) *available at* <http://news.vzw.com/news/2008/09/pr2008-09-22b> (last accessed May 29, 2009); See http://news.cnet.com/8301-1035_3-10048123-94.html (Last accessed May 29, 2009)

⁴⁸ Press Release, Verizon Wireless Adjusts Contract Policy to Accommodate Customers on Extended Military Duty (Sept 13, 2007), *available at* <http://news.vzw.com/news/2007/09/pr2007-09-13.html> (last accessed May 29, 2009).

⁴⁹ Id.