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COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET  
U.S. HOUSE OF REPRESENTATIVES

*Wireless Innovation and Consumer Protection*

July 11, 2007

Good morning Chairman Markey, Ranking Member Upton and Members of the Subcommittee. It is a privilege to be with you this morning to discuss “Wireless Innovation and Consumer Protection.” Thank you for affording me this opportunity to share with you the views of Verizon Wireless on these important topics.

**Summary**

In 1993, this Subcommittee and the full Congress had the forethought to establish a deregulatory framework for the wireless industry. This limited regulatory approach led to explosive growth in innovation, competition, and investment in wireless networks, providing huge benefits to the national economy. Carriers are constantly expanding services and benefits to customers because they know they must fight fiercely to attract and retain those customers.

Today, however, there are two threats to this national success story of innovation and competition.

First, my company is concerned about renewed efforts at the state level to regulate wireless service as a public utility. State utility-style regulation is both unnecessary and harmful: unnecessary because the competitive market is already driving the prices, value and services consumers want; harmful because it discourages innovation and competition.

Verizon Wireless believes the answer to patchwork, utility-type regulation is for Congress to complete the job it started 14 years ago, and adopt a national framework for wireless oversight. That framework would establish a set of comprehensive, national consumer protection standards for the industry. State PUCs would no longer have authority to impose utility-style regulation on a competitive industry that is nothing like a utility. But the states would retain all of their power through their Attorneys General to protect against unfair and deceptive consumer practices if and when they determine such practices exist, under their generally applicable consumer protection statutes.

Second, we are equally concerned by the effort in Washington by advocates of so-called “open access” regulation to have the FCC regulate wireless broadband.

Such regulation is unwarranted. Indeed, it is entirely unclear what harm must be remedied. We believe such regulation would discourage, and likely harm, innovation and decrease the utility of the wireless networks themselves on which literally hundreds of millions of people depend. As applied to the wireless industry, we believe the quest for open access or, as some refer to it -- network neutrality -- is a solution in search of a problem that simply does not exist.

### **Wireless Innovation and Consumer Protection**

The 1993 amendments Congress made to the Communications Act placed the wireless industry on a path toward innovation, expanded service, and competition that has well served consumers and the American economy. The industry has gone from serving just 11 million customers at the beginning of 1993 to more than 233 million Americans at the end of 2006. An economic study conducted by Ovum, a research firm, indicates approximately 3.6 million U.S. jobs were directly or indirectly dependent on the U.S. wireless industry, and that an additional 2-3 million jobs will be created in the next 10 years. The same study shows the wireless industry generated \$118 billion in revenues in 2004 and contributed \$92 billion to the U.S. Gross Domestic Product. Ovum estimated that, over the next 10 years, the U.S. wireless industry will generate gains of more than \$600 billion from the use of wireless data services, and will add another \$450 billion to the GDP.<sup>1</sup>

Wireless companies compete against each other every day to win new - and each other's -- customers. Wireless customers have benefited enormously from this competition. The FCC recently reported that 97% of the U.S. population live in counties with at least three service providers, up from 88% in 2000,<sup>2</sup> and an average of nearly four carriers provide service in rural U.S. counties.<sup>3</sup> To secure and retain customers, carriers know they must invest in networks. Thus by the end of 2006, carriers had invested more than \$223 billion - excluding the cost of spectrum - in building networks to deliver an increasing array of wireless services to consumers.<sup>4</sup>

Innovation is obvious not only in the hundreds of new devices, features and applications that consumers can obtain every year, but also in the deployment of new technologies that allow them to send and receive data at faster speeds. Verizon Wireless, for example, has invested billions of dollars to make not one but two major network upgrades in the past three years. First, the company spent \$1 billion in just two years (2004 and 2005) to implement EvDO Revision 0, which offered customers download speeds typically at 400-700 mbps. This was in addition to significant network investment, which has averaged \$5 billion each year since 2000.

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<sup>1</sup> Entner, Roger and David Lewin, "The Impact of the US Wireless Telecom Industry on the US Economy," *Ovum-Indepen*, September 2005, p. 3.

<sup>2</sup> FCC, "Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Service: Eleventh Report," ¶ 2, FCC 06-142 (Sept. 29, 2006).

<sup>3</sup> Id., ¶ 86.

<sup>4</sup> CTIA's *Wireless Industry Indices, Semi-Annual Data Survey Results: A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Year-End 2006 Results*, released May 2007, at pages 7, 156.

Just as the investment in Rev 0 was finished, we again upgraded our network to EV-DO Revision A, which further increases download speeds and also provides our customers the ability to upload files eight to nine times faster than before. With “Rev A”, customers can expect average download speeds of 600 kilobits to 1.4 megabits per second and average upload speeds of 500-800 mbps. This translates to being able to download a 1 Megabyte e-mail attachment – the equivalent of a small PowerPoint presentation or a large PDF file – in about eight seconds and upload the same-sized file in less than 13 seconds, not only while sitting at a desk. Our network allows downloads at these speeds while consumers are in a cab, on a train, or walking down the street, completely free of a desk.

Consumers are constantly benefiting from carriers’ drive to differentiate themselves and to win customers. One way in which Verizon Wireless has differentiated itself has been our history of strong consumer and privacy protection. For example:

- In 2003, Verizon Wireless was the first carrier to support Local Number Portability, allowing wireless customers to switch carriers while keeping their phone number. ← - - - - Formatted: Bullets and Numbering
  
- In 2004, we announced that we would help protect customer privacy by refusing to participate in a national wireless phone directory, effectively halting this project. ← - - - - Formatted: Bullets and Numbering
  
- In 2005, in a first of its kind lawsuit, we began prosecuting pretexters who were trying to illegally obtain and sell confidential customer telephone records.
  
- Beginning in 2005, we obtained injunctions against spammers who sent text message solicitations to Verizon Wireless customers. Just last month, we filed a lawsuit against several telemarketing companies and individuals who used pre-recorded messages in Spanish as well as techniques and technology to mask the origin of the call, known as “spoofing.”
  
- In 2006, Verizon Wireless became the first major wireless carrier to offer subscribers a pro-rated Early Termination Fee; a feature that many consumer groups have argued should be mandatory.
  
- This year, Verizon Wireless rolled out its “test drive” program which allows new subscribers to use our service for 30 days, and if they are not satisfied, to take their line to another wireless carrier during the first 30 days. We will then issue a credit for all the calls the customer made, along with the customer’s monthly access and activation fees. Verizon Wireless stands behind its claims of network reliability, even to the extent of refunding charges for any dissatisfied customer’s use of that network during the “test drive” period.

In part due to these efforts, consumer complaints to federal and state regulators are few. During each month in 2006, the rate for complaints from our customers to the FCC, state PUCs, or state Attorneys General was 11 out of every 1 million customers – a rate of 0.00001%.

Many other wireless carriers have also taken similar pro-consumer actions, including adhering to CTIA's Consumer Code, which sets forth detailed practices that carriers must follow in marketing their services and in billing customers.

As these examples illustrate, the marketplace, not government intervention, has addressed concerns about wireless carriers listening to consumers and providing benefits and features that consumers want.

### **The Need for Congress to Adopt a New National Regulatory Framework**

Despite the fact that wireless services are robustly competitive, as well as increasingly nationwide in nature, and allow customers to obtain the same prices and services across state boundaries, some states continue to attempt to assert monopoly utility-type regulation over the wireless industry. Ironically, at the same time the industry has been deploying national networks and offering national rate plans that offer unparalleled benefits for consumers, a number of states threaten to undermine these benefits by imposing a patchwork of burdensome and inconsistent rules. Left unchecked, these re-regulatory efforts will force wireless carriers to follow different rules in different states and undo the benefits of deregulation – a result antithetical to Congress' goal in 1993.

In 2005 alone, 18 states attempted to impose their own regulatory regimes on our industry. Below are several examples:

- Minnesota sought to regulate wireless prices through a detailed set of requirements for contracts. While the 8<sup>th</sup> Circuit struck down the law, the industry had to fight this attempt to impose utility-type regulation for two years.
- The California PUC has proposed rules that would intensively regulate the languages in which wireless carriers communicate with their customers. Aside from the serious First Amendment problems that afflict these proposed rules and the burdens they would impose, the rules would threaten carriers' ability to serve customers for whom English is not the preferred language.
- New Mexico bars wireless carriers from including charges for "non-communications services" on a customer's bill even if the customer wants the service. California, in contrast, not only allows such charges, but also requires them to be contained in a separate bill section. A carrier operating in these two western states must not only have different bill formats, but may not be able to offer a service in one state that it can offer in the other.

The wireless industry long ago shed any vestige of monopoly, on which PUC-imposed regulation was based. We are an intensely competitive, 21<sup>st</sup> Century consumer electronics business, far more like Apple and Dell and other high-tech businesses than we are like the telephone companies of 20 years ago. Yet state PUCs do not regulate those companies. So why should they regulate us, as if we were a 20<sup>th</sup> Century wireline telephone monopoly? We are not asking for special treatment, only the same treatment accorded other competitive businesses.

Congress can simultaneously recognize the benefits of competition and prevent the harmful impacts of state-by-state regulation of a national industry by completing the deregulation it began in 1993. The federal government is in the best position to oversee this national industry, which serves the public across and without regard to state lines.

***What Should Congress Do?*** Verizon Wireless urges the Committee to amend Section 332 of the Communications Act to eliminate state regulation of wireless terms and conditions. This is the approach the Senate Commerce, Science and Transportation Committee took in the legislation it adopted by a 15-7 bipartisan vote last year. Section 1006 of the Senate substitute for H.R. 5252 set forth a national framework that would fully protect consumers while not discouraging the innovation and carrier differentiation that have been the hallmarks of wireless service. We believe that consumer benefits, consumer protection and privacy will increase through imposition of a national framework for wireless regulation.

National regulation serves the public interest because:

- It benefits all consumers in all states by setting uniform protection and service quality standards for wireless consumers. Individual state-by-state regulation cannot do that.
- It avoids disparate state requirements that raise operational costs and cause uncertainties for companies; create confusion and inconvenience for consumers; delay new services or options that consumers would otherwise enjoy; and discourage investment in new wireless jobs and technology.

As part of this new national framework, we would support an FCC rulemaking to set consumer protection rules. These could include, for example, rules governing clear and conspicuous point of sale disclosures of charges and fees; representation of coverage and service areas, disclosures governing cancellation of wireless services; and advertising products, coverage and services.

A national framework is important for national carriers, but perhaps even more so for smaller regional and even local carriers. These companies can extend their own defined network footprint to virtual national reach by negotiating roaming agreements with one or more larger carriers, bringing value to their customers in terms of affordable national reach.

One model for a national set of rules should be the agreement that 32 state Attorneys General entered into in 2004 with Cingular, Sprint and Verizon Wireless, in which these carriers agreed to follow specific practices for conducting their business in all those states, known as the Assurance of Voluntary Compliance (AVC). The AVC sets detailed requirements, enforceable by the Attorneys General, for advertising, information that carriers must disclose at the point of sale, coverage maps, grace periods during which customers can cancel service without penalty, and formats for customer bills.

*States would not lose power to address unfair and deceptive practices.* Under the national framework, states would continue to enforce their consumer protection statutes of general applicability, but would not be able to impose state specific wireless regulations. State Attorneys General would thereby lose none of their authority to go after practices that they believe are unfair or deceptive. Our CEO made this point in a letter last year to Senator Lautenberg, which is attached to my testimony. States may also adopt consumer education programs, refer complaints to carriers for resolution, bring formal complaints to the FCC against carriers they believe are acting unlawfully, investigate wireless practices, and of course participate in the FCC's national consumer protection rulemaking. This new framework will maximize protections to consumers while avoiding the harms of patchwork state-by-states regulation.

The national framework would not grant any wireless carrier something different from other businesses. Instead, it would harmonize regulation. And, it would otherwise rely on market forces – consumers deciding which providers deserve their business and which do not – to compel providers to excel more effectively than patchwork state PUC regulation, and to drive providers to be more innovative and accountable.

### **Innovation and Open Access**

Congress and the FCC have been barraged with requests that they regulate broadband wireless services by imposing so-called “open access” requirements. But we believe these requests have not identified how the wireless market has failed consumers. To the contrary, as I explained above, consumers and the national economy have reaped enormous benefits from the wireless industry's investments and innovations since 1993. We therefore agree with the Federal Trade Commission's report last month urging the exercise of “caution, caution, caution” before policymakers mandate so-called net neutrality or open access.

The one-size-fits-all mentality that characterizes open access regimes for the wireless industry would begin the process of stifling innovation and creativity in our industry. Consumer choice would be the casualty of policies that mandate that all companies do the same thing the same way. Differentiation has been a key driver for consumer acceptance of wireless product and service offerings. Indeed, manufacturers of wireless equipment and devices thrive on competing to invent the next best device. New players are entering the market. Carriers, large and small, have their own unique marketing strategies -- some focus on devices, others focus on network quality, and some compete on price alone.

Verizon Wireless supports the ability of consumers using our broadband data network to surf the net freely using our network. We also assist customers who want to bring their own devices on to our network. We simply ask that they work with us to insure their device does not degrade or interfere with the experience of the more than 60 million other users who depend on the reliability of our network every day.

There have been attempts to justify open-access regulation by pointing to a few examples of wireless products and services that are viewed as somehow not “open” enough. For example, Columbia Law School Professor Timothy Wu claimed that Verizon Wireless blocks phones that are not sold by Verizon itself.<sup>5</sup> That is incorrect. While we extensively test and approve phones that will operate on our network, consumers can and do buy these phones from third-party sources, not only directly from Verizon Wireless. Moreover, the limits we place on devices and applications that operate on our network are designed to manage network resources, protect against harm to the network and other subscribers, and increase spectrum efficiency, which Professor Wu acknowledges are legitimate practices for wireless network operators.<sup>6</sup>

Professor Wu also claims that Verizon Wireless is somehow blocking innovation in consumer applications because we “cripple” Bluetooth features of our phones, and that subscribers sued us because of it.<sup>7</sup> Contrary to the notion of “crippling” functionality, Verizon Wireless experts work to determine which functions to enable on the handsets we offer our customers. While a handset manufacturer may provide a device with myriad potential features, our technology and network teams work to ensure security and quality of the function we decide to enable on those handsets. In fact Bluetooth functionality is available on many of the handset we offer.

Moreover, the lawsuit over Bluetooth was about marketing disclosures, not “crippling” phones features. And, in settling the lawsuit the plaintiffs explicitly acknowledged that Verizon Wireless “has the absolute right” to decide whether or not to include Bluetooth features on the phone it sells.

Open access advocates have not articulated precisely what problem they believe needs to be solved. The few restrictions cited do not prove that government intervention is needed, particularly by the means of a *Carterfone*-like open access regime.

What most concerns Verizon Wireless is not the fact that advocates of open access have not made a case for regulation. Nor is it that, as economic studies have repeatedly shown, generic government regulation is a poor substitute for competitive markets where consumers “vote with their feet” to inform carriers of what services they want and how much they are willing to pay for them.

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<sup>5</sup> Tim Wu, “Wireless Net Neutrality: Cellular *Carterfone* and Consumer Choice in Mobile Broadband,” at 8, New America Foundation Working Paper #17 (Feb. 2007).

<sup>6</sup> *Id.* at 26-27.

<sup>7</sup> *Id.* at 11.

What most concerns us is that open access regulation, particularly the vague, sweeping type that advocates are pushing by proposing the FCC's *Carterfone* regime be imposed on the wireless industry, threatens to disrupt the positive consumer experience that these groups claim to be promoting. Consumers want their wireless carriers to offer a secure, high-quality experience and to ensure reliable voice and data service, free from viruses and other threats that could compromise consumers' ability to use their mobile devices and the wireless network. But that experience is built on carriers' ability to manage their networks for the benefit of all their customers. Spectrum is a finite resource that must be managed efficiently for the benefit of all network users.

Open access regulation would be harmful to consumers in many respects. For example:

***Decreased device security and increased risks of viruses and hacking.*** By integrating devices and applications with the network, carriers have been able to offer a broad range of spectrally efficient and reliable services to subscribers, generally free from security or privacy concerns. Consumers have occasionally chosen to bring their own devices and applications on to the network. When this occurs, there is no guarantee that the handsets or applications will operate in the most reliable, efficient or secure manner. Many applications that are touted as providing "open access" on their wireless handsets are the most apt to be hacked in to, allowing theft of private information or imposition of viruses and snoopware.

***Harms to other users.*** There are currently available various "place-shifting" products which support streaming media transmissions from a home PC or television to a wide array of devices connected to a wireline or wireless network. These software and hardware based home media appliances offer end-users the capability to view streaming content (e.g., video, music, photos) from the home location over the Internet at a remote location with a PC, laptop or handheld device loaded with the application software. These applications use substantially more capacity than typical Internet surfing or email because they require more bandwidth and for longer and continuous periods of time. Thus, while the user of a TV place-shifting device may enjoy watching his home TV in the waiting lounge of an airport over a wireless broadband connection, such "bandwidth-hogging" usage can prevent other wireless users from accessing the network at all.

Modeling the network for anticipated usage and reasonable prices requires complex tradeoffs that only the wireless operator can achieve to maximize efficient network use. As long as wireless broadband services operate over limited and shared spectrum resources, more consumers will benefit when the network operator is making resource allocation decisions in the public interest as required by its spectrum licenses, rather than leaving resource allocation decisions to users on the network.

For example, in 2006, Verizon Wireless discovered that a customer had installed a repeater without our knowledge in a Manhattan office building. Our engineers immediately began to see degradation on the network. This single device negatively impacted almost 200 surrounding cell sites in the New York metro area, which resulted in

tens of thousands of blocked voice and data sessions on our network. As this situation illustrates, if wireless network operators are not allowed to manage the products and services designed to be operated on their networks, service to consumers risks degradation.

***Decreased incentive to innovate.*** An open access regime would threaten to shift the business of wireless network operators to primarily offering subscribers airtime. In this model, wireless network operators would have a decreased incentive to develop new products or services, because they would simply be in the business of providing airtime access for products chosen by the consumer, deterring investment away from network upgrades. Innovations made in wireless services and products over the past 14 years have kept pace with the innovations made in computer technology and Internet services; maintaining the existing wireless regulatory model will ensure that such investment and innovation continues in the future.

***Harms to pro-consumer federal programs.*** Congress and the FCC currently implement many programs through the close relationship between wireless networks and the devices that operate on those networks. These include CALEA, the wireless E-911 program, hearing aid compatibility under Section 255 of the Communications Act, and Congress's plan for a nationwide wireless emergency alert system under the WARN Act, passed just last year. Forcing the separation of the sale of wireless devices from the wireless network would impair these programs because there will no longer be one person to whom Congress or the FCC can turn for implementation. A *Carterfone* regime not only undermines the ability of carriers to provide consumers with robust, innovative and secure wireless services, it also undermines the very consumer protection and homeland security programs that Congress and the FCC have put in place in reliance on the current regulatory regime for wireless services.

## **Conclusion**

We are at a crucial juncture in the development of the nation's wireless industry. Over the past decade and a half, wireless consumers have come to expect – and rely on – their wireless phones, first as a safety device, then as a convenience, and increasingly an integral part of more than 220 million Americans' daily lives.

We can now call a friend from anywhere, send text messages and e-mails while walking down the street, and even watch television when we are nowhere near a conventional television set. It may seem like magic, but the work of thousands of dedicated men and women every day helps build, maintain and expand robust and secure wireless networks – and provide the customer service enabling tens of millions of Americans to use our products and services every day.

Verizon Wireless therefore urges that the Subcommittee adopt “national framework” legislation that will promote further growth of the wireless industry, while fully protecting all consumers in all states. We also respectfully urge that you resist calls for imposing new open access regulation, which would not serve consumers but only

disrupt and impede the tremendous contribution that the wireless sector makes to the nation's economy.

Dennis F. Strigl  
President &  
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June 27, 2006

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The Honorable Frank R. Lautenberg  
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Re: Wireless Telecommunications Legislation

Dear Senator Lautenberg:

I am writing to follow up on our telephone conversation this morning concerning the wireless provisions (section 1005) in the Commerce Committee's telecom bill.

Verizon Wireless, one of New Jersey's largest employers, strongly supports section 1005, and we ask for your support. You expressed concerns about the Bill's impact on protecting New Jersey consumers. As you know, the Bill specifically preserves the role of the states in protecting consumers, by guaranteeing States the power to continue enforcing against wireless carriers the *same* consumer protection laws that are "generally applicable to businesses in the state." Attorney General Farber will have *exactly* the same powers under the Bill as she does today to enforce New Jersey's consumer protection laws against wireless carriers.

The only change the Bill makes is to *protect* consumers from backward-looking, monopoly style economic regulation. State utility regulators want to treat the wireless business as if it were a monopoly, controlling the font size in our advertising, the prices we charge, the services we offer, and the investments we make. The prospect of fifty different sets of such rules would *harm* consumers by driving costs up and investment down. But wireless companies are not monopolies, and they should not be regulated as such. As you know, the wireless business is a fiercely competitive, nationwide industry. Wireless companies fight each other every day to win each other's customers. And wireless customers have benefited enormously from this competition. Wireless prices have fallen over *eighty percent* in the last ten years. Employment and capital investment in New Jersey has skyrocketed. Innovation has delivered amazing new products and services to New Jersey consumers.

Verizon Wireless has competed successfully and become the leader in the wireless industry by focusing on consumer issues. We were the first carrier to support local number portability. We were the first carrier to announce we would not list our

customers' numbers in a wireless telephone directory. We were the first carrier to fight spam and pretexting. We didn't need utility regulators to tell us to do these things. We did them to beat the competition, win new customers and keep our current customers happy. And tomorrow we'll do more of the same – in a major speech at the Yankee Group Conference in New York City, I will announce that Verizon Wireless will become the first carrier to pro-rate early termination fees nationwide, because that is something our customers want.

Senator, I ask for your support for this important legislation. We are at a crucial juncture in the development of the nation's wireless industry. The choice is stark and simple: do we want state utility regulators to stunt the progress of the wireless industry with 20<sup>th</sup> Century style economic regulation, or do we want to see this 21<sup>st</sup> Century engine of economic growth generate more jobs, more investment, more innovation, and lower prices for New Jersey's wireless consumers, all the while under the watchful eye of the New Jersey Attorney General?

We hope you opt for the latter.

Very truly yours,