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Ignoring the Inconvenient Truth of Effective Wireless Competition

by

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On September 26, 2017, the FCC adopted the [Twentieth Wireless Competition Report](#), which found that the market for mobile wireless broadband is effectively competitive. The Commission’s affirmative finding was based on [market metrics for 2016](#). Among the consumer-friendly market outcomes cited in the new report: consumer connections and data consumption have risen, prices have decreased, access to advanced network capabilities has expanded, speeds have increased, and consumers enjoy more pricing options.

Despite these consumer-friendly market outcomes in the mobile wireless market, pro-regulatory advocates continue to call for regulation. As FCC Chairman Ajit Pai stated following the report’s adoption: “To those who want to impose more regulation upon the wireless marketplace, the reality of effective competition is an inconvenient truth that must be discounted or ignored.” Chairman Pai is correct. Pro-regulatory claims fall apart in the face of facts about the effectively competitive state of the mobile wireless services market.

Advocates of public utility regulation and other restrictions on mobile wireless services have complained that mobile prices are too high. But the report shows that prices continue to decline in important ways. Average monthly revenue per user fell during 2016 from \$44.65 to \$41.50. The price per megabit (MB) fell from \$1.37 per MB in 2007 to less than half a cent in 2016. The average U.S. consumer spends [five hours a day](#) on their mobile device. Thus, at \$41.50 a month, the average U.S. consumer is paying less than 30 cents for an hour of mobile broadband usage.

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Commissioner Jessica Rosenworcel [dissented](#) from the report's adoption because the report never defined "effective competition." The Commission previously has acknowledged a lack of a consensus definition for "effective competition" among economists and antitrust authorities. Although Section 332(c)(1)(C) does not define the term, the statute does require the Commission to conduct an analysis to determine whether or not there is effective competition in the market for commercial mobile radio services. Rather than dodge that requirement like the Wheeler Commission did, the report "consider[ed] a number of facts and characteristics of the provision of mobile wireless services, which taken together, indicate that there is effective competition."

That is, the report reached its effective competition conclusion by viewing market data in light of commonsense understanding that markets characterized by choices among providers and service plans, technological innovation, increasing consumption, and price-reducing trends are effectively competitive. This reasonable approach as to what constitutes "effective competition" accords with dictionary definitions of "effective" as meaning "actual" or "operative" and fits well within the scope of the Commission's discretionary authority.

Commissioner Mignon Clyburn issued a [dissenting statement](#) that also touched on the definition of "effective competition." She said: "[I]f one of our nationwide wireless carriers covers only 64% of the rural population, that means it is probable that 20.5 million people in these areas do not have access to all four of our nationwide wireless providers. So, my question is a simple one: How then can this Commission conclude that the mobile wireless market is effectively competitive?"

A hortatory goal of 100% consumer access to four or more wireless providers is admirable. And a sure sign of "effective competition" is the mobile wireless market's continuing movement in that direction. As of January 2017, at least four service providers covered 55% of the population in rural areas, an increase from 41% in July 2015. In non-rural areas, as of January 2017, at least four providers covered 92% of the U.S. population with 3G technology or better, compared to 82% at the beginning of 2014. As of December 2016, 99% of the U.S. population had access to two or more 4G LTE providers and 96.6% had access to three or more 4G LTE providers. Since the [Nineteenth Wireless Competition Report](#) was adopted, over three million Americans gained access to an additional 4G LTE provider in their residential area. This robust increase in wireless coverage is a product of dynamic and effective competition.

More fundamentally, there is no sound reason to make four providers an absolute standard for "effective competition," particularly in markets undergoing rapid innovation. Early 5G network trials cited in the report are among the most significant indicators of ongoing innovation in the wireless market. Moreover, the Commission already recognizes the presence of "effective competition" in local cable markets served by less than four providers. Under Section 623(l)(1)(B), the Commission applies a "competing provider test" for assessing effective competition in local cable markets. As explained in the Free State Foundation's [comments](#) in the wireless competition report proceeding:

By analogous application of the Section 623(l)(1)(B) competing provider test to the wireless market effective competition would be present if the given area is: (1) served by at least two competing wireless providers, each of which offers wireless voice and broadband services to at least 50% of all households in the area; and (2)

the number of subscribers other than the largest wireless voice and broadband provider in the area exceeds 15% of the area's households.

Based on coverage data contained in the report, mobile wireless markets would overwhelmingly satisfy the competing provider test for effective competition. As of December 2015, 715 out of 716 cellular marketing areas were served by two or more mobile service providers with at least a 5% market share, while 557 areas were served by three or more providers possessing at least a 5% market share. Nationwide 4G LTE network coverage figures for 2016 – discussed above – are consistent with this conclusion.

The report also indicates that wireless speeds have increased dramatically. The average LTE download speed increased to 23.5 Mbps in the first half of 2017, up from 14.4 Mbps in the first half of 2014. Over that same span, the median LTE download speed increased to 15.5 Mbps, up from 11.0 Mbps. Several pro-regulatory organizations have stated that mobile broadband is [not a substitute for fixed](#), despite evidence that consumers across [all incomes levels](#) are substituting mobile broadband for fixed broadband. Indeed, with the average LTE download speed quickly approaching the FCC's definition of broadband at 25 Mbps down and with monthly broadband prices falling rapidly, the plausibility of the pro-regulatory position is increasingly untenable.

Another common claim by pro-regulatory advocates is that [switching costs](#) create “gatekeeper power,” encouraging broadband providers to block or throttle specific content. But the report finds that “service providers have offered various promotions designed to partially or fully compensate consumers' switching costs” and that “consumers are not only willing but are also able to readily switch between service providers.” As pointed out in a [recent blog](#) by Free State Foundation Senior Fellow Seth Cooper, the trend to reduce or eliminate switching costs was recognized in the [Eighteenth](#) and *Nineteenth Wireless Competition Reports*.

Pro-regulatory advocates often have opposed [data caps and free data offerings](#). But as explained in the Free State Foundation's [reply comments](#) in the *Restoring Internet Freedom* proceeding, plan options like data caps, free data, and unlimited data enhance consumer choice and thereby increase consumer demand:

Consumers widely perceive free data plans as complements to plans with data thresholds or caps, since free data plans enable consumers to access certain websites or content without the traffic counting against the data allotments of their service plans. Unlimited data plans are viewed as substitutes to free data plans and data caps, particularly for consumers who use a lot of traffic. Each type of plan serves a different purpose and each individual consumer can subscribe to the plan that best fits his or her preferences. These complementary and substitutable options spur consumer demand and usage and allow for an efficient allocation of data usage based on consumer preferences.

Notably, pro-regulatory advocates were critical when several wireless providers discontinued unlimited data plans a couple of years ago. However, wireless providers did not halt unlimited data plans due to lack of competition; they were halted due to fears that network management practices associated with such plans would be perceived by the Commission as unreasonable discrimination. As Free State Foundation Research Associate Michael Horney explained in a

[March 2017 blog](#), unlimited data plans re-emerged in early 2017 because Chairman Pai established a market-oriented approach to broadband policy, alleviating concerns that wireless providers had about the regulatory status of their network management practices.

Despite the re-emergence of unlimited data plans, pro-regulatory advocates continue to call for new restrictions. Unfortunately, such calls validate Chairman Pai's observation that "the reality of effective competition is an inconvenient truth that must be discounted or ignored" by supporters of new wireless regulation.

The reality of effective competition in the mobile wireless market is reflected in pro-consumer outcomes: prices have fallen, consumer demand has increased, deployment has expanded, and additional consumer-friendly offerings are emerging. The Commission should be commended for at long last recognizing the truth about effective competition in the commercial mobile radio services market.

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Further Readings

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[Reply Comments of the Free State Foundation](#), Restoring Internet Freedom, WC Docket No. 17-108 (August 30, 2017).

[Comments of the Free State Foundation](#), Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 17-69 (May 8, 2016).

Michael J. Horney, "[Zero-Rating Promotes Upward Mobility for Minority and Low-Income Consumers](#)," *FSF Blog* (May 13, 2016).

Seth L. Cooper, "[Wireless Report Data Undermine the FCC's Rationale for Regulation](#)," *Perspectives from FSF Scholars*, Vol. 11, No. 5 (January 22, 2016).

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Seth L. Cooper, "[FCC Should Be Clear and Consistent on Effective Competition in the Wireless Market](#)," *Perspectives from FSF Scholars*, Vol. 10, No. 21 (June 22, 2015).

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