

**TESTIMONY OF
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**BEFORE THE
U.S. SENATE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION**

**S. 2686, Communications, Consumer's Choice,
and Broadband Deployment Act of 2006**

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Chairman Stevens, Co-Chairman Inouye and Members of the Committee, thank you for the opportunity to appear before you and discuss issues relating to rewriting U.S. telecommunications laws generally, and revisions to the universal service program in particular. As Congress considers the important question of how to reform the universal service system, we believe there are important lessons that can be learned from the wireless industry's last 13 years of delivering enormous benefits to American consumers, rural and urban, rich and poor, young and old. Thanks in part to the national, deregulatory framework Congress established in 1993, the wireless industry has been able to deliver to more than 200 million American consumers more choices, faster, than any other segment of the telecommunications industry. Wireless offers consumers choices among providers, service plans, devices, and most significantly, the choice to reach and be reached whenever and wherever – the ability to be mobile. As I will discuss today, the wireless industry's proven record of success for U.S. consumers and the U.S. economy is under siege. The successful framework you established in 1993 is being threatened by a growing tide

of anti-competitive, command-and-control regulations at the federal, state, and local levels. We are asking for federal legislation to ensure that the wireless industry remains free from unnecessary, short-sighted regulatory constraints so that U.S. consumers can continue to receive the best wireless services, applications and devices that the industry can produce, at rates the consumer can afford.

The significant growth and expansion of the competitive mobile wireless industry has had a profound impact on the U.S. economy. In 2004, approximately 3.6 million jobs were directly and indirectly dependent on the U.S. wireless telecommunications industry. In that same year, the wireless industry generated \$118 billion in revenues and contributed \$92 billion to the U.S. Gross Domestic Product. The wireless industry has continued its ongoing investments in the networks and other facilities needed to deliver increasingly sophisticated wireless services – with almost \$200 billion in cumulative capital investment as of year-end 2005. Over the past five years, the wireless industry invested on average more than \$20 billion annually in new facilities. In addition, carriers have bid in excess of \$20 billion in winning spectrum licenses from the FCC.

Wireless carriers have been successful, in part, because Congress created an environment of regulatory restraint that focuses on efficiency, innovation, competition and empowers the consumer to be the regulator. The FCC most recently reported to Congress that 97 percent of the U.S. population lives in counties with access to three or more different operators offering mobile telephone service, up from 88 percent in 2000. This competition has resulted in lower monthly bills, cheaper minutes, and new and innovative service offerings. In June 1992, before Congress

enacted the Omnibus Budget Reconciliation Act of 1993, the average wireless bill was \$68.51 per month. As of December 2005, the average wireless bill was less than \$50 per month. For many customers, nationwide bucket of minute plans have made wireless the service of choice for making long-distance calls. In 1995, the average wireless customer used about 115 minutes of service per month. In 2005, the average wireless customer used almost 700 minutes of service per month. In 1995, there were 37 billion minutes of use on wireless networks. In 2005, wireless customers used almost 1.5 trillion wireless minutes of service. Now, wireless carriers are in the midst of rolling out mobile broadband services.

As we enter our third decade, the wireless industry is poised to enter a Wireless Renaissance, bringing advanced services like wireless Internet, to more than 200 million mobile Americans. We are at a critical juncture in our evolution and need your leadership to make this Renaissance a reality for consumers. American consumers – rural and urban, rich and poor – have benefited enormously from your decision in 1993 to limit regulation of the wireless industry; however, a patchwork quilt of state-by-state regulations threatens to undermine the principles of the 1993 Act and thereby undercut the ability of wireless carriers, suppliers, and developers to collectively bring newer and faster and more personal services to wireless consumers and business users across the country. Shoring up the national, deregulatory framework you created in 1993 is the best way to empower consumers and protect their rights and access to innovative, convenient and affordable wireless devices and services.

The wireless industry has developed guidelines that ensure customer billing information is clear and non-misleading, while simultaneously enabling carriers the flexibility to differentiate themselves in the market by competing on customer service features. State-specific wireless laws would undermine these market-oriented, consumer-focused solutions and hinder the industry's ability to compete in the converging telecommunications marketplace. State-by-state wireless specific regulation undermines the very purpose of a national, deregulatory framework and threatens to undermine the very nationwide and regional calling plans that are now so popular with consumers. Consumers in rural areas, where the cost of providing service tends to be higher, are particularly threatened by regulations that could put an end to uniform nationwide calling plans. Wireless consumers need your help to stem the growing tide of state regulation before this regulatory onslaught washes away the benefits they currently enjoy. We believe the best way to do this is to legislate a national framework for wireless carrier practices and allow the FCC to regulate only in instances necessary for public health and safety or demonstrated market failure.

The industry has proven itself a responsible steward of the wireless consumer. Carriers have reduced the number and complexity of pricing plans, reduced or eliminated additional charges for roaming, peak/off-peak, and long distance calling. Wireless carriers have also made enormous improvements in how consumers are informed about, acquire, and manage their wireless services. Website and in-store literature provide details on price, plans, and other options. Wireless carriers have also developed sophisticated on-line tools to provide more efficient and user-friendly self-care options – from checking minute usage to signing up for new services to

paying bills via the Internet and via the mobile phone itself. Wireless companies now list on their bills contact information not only for their own customer service departments, but also for state and federal regulatory agencies, including TTY contact information. More than 200,000 E-911 calls are made with wireless devices each day. This year, the U.S. Attorney General officially commended the industry on its voluntary, national Wireless AMBER Alerts Initiative. These are just a few of the characteristics that mark a highly competitive, responsible industry like the U.S. wireless industry.

Recently, a concept called “Net Neutrality” has generated intense debate within the context of broader reforms of our telecommunications laws. The wireless industry is very concerned that the proposed Net Neutrality regulations being contemplated will drive away the investment the industry needs to continue building the infrastructure, design the devices and operate the evolving networks needed to sustain consumer demand for more advanced mobile services. The industry is also concerned that many of the unintended consequences that would flow from some of the Net Neutrality regulations being considered would have a particularly negative impact on wireless consumers. CTIA believes the Internet has derived its strength and contributed to the economy by virtue of its freedom from regulation and therefore believes the net neutrality provisions of the Communications, Consumer’s Choice, and Broadband Deployment Act of 2006, which calls for a review of the current system, in lieu of regulation, is appropriate absent market failure.

The industry agrees with FCC Chairman Martin that the FCC already has the jurisdiction and ability to address any problems in this area and urges you to carefully

consider the unintended, negative consequences that could befall the U.S. wireless consumer if anticipatory regulations are enacted. The Internet, like the wireless industry, has never stopped growing and evolving. There is no reason to restrict the growth or evolution of either, unless and until a real marketplace failure is identified.

Universal Service Reform

As a significant net payer in to the universal service system, the wireless industry is uniquely positioned to comment on proposals to reform the universal service system. When it comes to universal service, the wireless industry writes more checks than it cashes. Wireless carriers collectively are responsible for approximately 32% of contributions to universal service, while receiving only approximately 13% of payments. Wireless carriers have strong incentives to ensure that universal service contributions are collected from as wide a base of contributors as possible, while ensuring that both incumbent and competitive eligible telecommunications carriers (ETCs) receive no more support than is necessary to achieve the goals of universal service. As I will discuss, both the contribution and distribution sides of the universal service equation are in urgent need of reform.

Universal Service Contributions. On February 28, 2006, CTIA appeared before this Committee to present its views on reforming the universal service contribution methodology. At that hearing, CTIA described its proposal for the FCC to transition from the current revenue-based system to a numbers- and capacity-based system. Under CTIA's proposal, all switched connections would be assessed based on working telephone numbers and non-switched connections would be assessed based on capacity. CTIA believes that a numbers- and capacity-based contribution

system will best adapt to the evolving multi-dimensional communications market in which we now operate. The current revenue-based system simply is no longer sustainable and must be scrapped.

CTIA has designed its proposal to ensure that no consumer groups will be unfairly disadvantaged as a result of the transition to a numbers- and capacity-based system. Under CTIA's proposal before the FCC, the typical household would pay about the same universal service costs as it does today. CTIA has achieved that result by providing safe harbors for certain broad customer categories – for example, exempting low-income Lifeline and Link-Up customer numbers from contribution obligations. CTIA's proposal also provides safe harbors for wireless family plan and wireless prepaid customers. We welcome legislation under consideration that would give the FCC flexibility to transition to a numbers-based system that addresses the critical needs of residential customers.

Universal Service Distributions. Let me turn now to the distribution side of the universal service equation. The wireless industry shares Congress's concerns about growth in the size of the universal service fund. Since 1997, wireless carriers and their customers have paid almost \$7 billion into the universal service fund. The wireless industry's contribution to universal service is significant and growing. At the same time, wireless carriers continue to receive less than 20% of high-cost universal service support and about 13% of universal service support overall. Since 1997, of the \$22 billion spent on high-cost universal service subsidies, \$ 20.9 billion has gone to incumbent LECs and only \$ 1.1 billion has gone to wireless carriers. Simply put, wireless carriers and their customers pay too much into the universal

service fund and receive too little in return. CTIA, therefore, is calling for commonsense, market-oriented reforms to the universal service system. More of the same is not acceptable.

Although most of the wireless industry's growth has occurred without the benefit of universal service subsidies, universal service can and does play a critical role in improving access to wireless services in high-cost, rural areas. Wireless deployment in some rural areas has occurred because of wireless carrier access to universal service support. In a few short years, wireless ETCs have achieved a great deal. For example, Cellular South serves 380,000 square miles of rural territory in Mississippi and is using high-cost support to significantly expand its network capacity. Centennial Wireless has brought mobile wireless services to communities, such as Shaw and Blackhawk, Louisiana, that previously had no telephone service at all, wireline or wireless. On the Pine Ridge Indian Reservation in South Dakota, Alltel has used universal service to increase telephone penetration rates from 27% to 92% in only five years. These are areas where the incumbent carrier – the “carrier of last resort” – was unwilling or unable to serve all customers. There are numerous other examples.

Any universal service reform that discriminates against wireless carriers will disserve consumers and must be rejected. CTIA has supported proposals to ensure that universal service support is used only for its intended purposes. CTIA supports stringent guidelines adopted by the FCC requiring both incumbent and competitive ETCs to use high-cost universal service support to provide supported services to

requesting customers throughout a designated service area (in essence, a “carrier of last resort” obligation). CTIA welcomes this Committee’s focus on universal service accountability, but that accountability should apply to both incumbent ETCs and new entrants.

CTIA strongly opposes any anti-competitive proposals to discriminate against wireless carriers in the name of accountability. For example, CTIA opposes proposals to require competitive ETCs to serve an entire incumbent LEC service area in order to receive universal service support. Wireless licensed service areas often do not match incumbent LEC service areas. Wireless licensed service areas are determined by the FCC, not wireless carriers. Denying wireless carriers designations under such a scenario would in some cases prevent wireless carriers from bringing wireless service to remote underserved areas.

In addition, CTIA opposes proposals to require wireless carriers to become like wireline carriers in order to receive high-cost universal service funding – something that contradicts the expectations of consumers. Just as wireline ETCs should not be required to offer mobility, wireless ETCs should not be required to offer local usage and other wireline service packages that are comparable to that offered by the relevant incumbent carrier. CTIA believes that consumers, not regulators, should decide whether they would rather pay one amount for unlimited local usage in a small incumbent LEC local calling area, or a different amount for a certain number of minutes in a much larger (perhaps even national) wireless local calling area. There is no rational basis to determine whether two plans are “comparable” other than consumer choice. Likewise, CTIA opposes proposals to

require wireless carriers to offer equal access, something wireless consumers clearly do not want. CTIA does not believe it is appropriate for government to second guess consumers.

CTIA is particularly troubled by proposals to calculate competitive ETC support based on companies' embedded or "actual" costs. Such proposals threaten the efficiency and innovation that has been a hallmark of the wireless industry's incredible success over the last decade. The embedded cost system has produced increasing demand for subsidies by incumbent LECs. This trend – reflecting incentives for inefficiency inherent in any "actual" cost system – should not be replicated for competitive carriers. Neither the incumbent nor the competitor should receive high-cost support based on their "actual" costs. Rather, as discussed below, both incumbents and competitors should receive equal "per-line" support based on the costs of the most efficient technology for a given geographic area. We welcome the Stevens/Inouye bill to the extent it does not include an "actual" cost requirement.

If you do not address universal service fund growth by discriminating against competitors, what should be done? The best way to answer that question is to first look at all that is wrong with the current high-cost universal service mechanisms – which represent an increasing majority of the overall universal service fund. There are numerous problems with the high-cost mechanisms, such as: (1) incentives for inefficiency; (2) enrichment of incumbent LEC profits; and (3) impenetrable administrative complexity. Taken together, these problems result in a bloated fund that does not effectively target the appropriate levels of support to different high-cost areas. As a result, the high-cost support mechanisms do a poor job of ensuring that

all Americans have access to high-quality, affordable telecommunications and information services. Moreover, the high-cost support mechanisms undermine the efficient development of competition as envisioned by the Act. All of these problems illustrate the need for reform.

As mentioned earlier, efficiency and innovation have been hallmarks of the wireless industry. We think universal service policies should replicate those values as much as possible. CTIA has long supported market-driven efforts to curb demand for universal service subsidies. Under CTIA's proposals, both incumbents and competitors would receive less support.

At the FCC, CTIA has proposed combining the current five high-cost universal service mechanisms into one mechanism that calculates support based on the most efficient technology – whether wireline or wireless – in a small geographic area. CTIA is open to other market-driven proposals (such as reverse auctions) that would encourage carriers to bid down the price of universal service. CTIA also has proposed shorter term reforms within the context of the current embedded cost mechanisms. For example, CTIA has supported:

- (1) Eliminating profit guarantees in the high cost mechanisms (We think carriers should get their profits from their own customers, not through the universal service mechanisms);
- (2) Requiring carriers to combine study areas in a given state (The current rules allow large, low-cost incumbents to appear small and high-cost by balkanizing their operations within a state); and

(3) Transitioning larger rural incumbent LECs to the non-rural high-cost mechanisms.

We are open to other proposals and look forward to a continuing dialogue with this Committee and Congress on these important issues.