

**DISSENTING STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 17-69

There is a lot to celebrate in the way that wireless ubiquity has changed our lives and our world. After all, there are few aspects of civic and commercial life that remain untouched by the power of wireless service. But the truth is, we're just getting started. Hard as it may be to imagine, our connections in the future will multiply, expanding beyond the devices in our palms to anything and everything that can be connected around us. The endless data these connections supply have the capacity to make our world more efficient, our choices more just, and our lives more safe. They will play no small role in helping us address global challenges in future—from energy to agriculture to governance and human rights.

Rewind, however, because this report is firmly rooted in the present, with a singular focus on the mobile voice and data services available today. To this end, it highlights changes in consumer service plans, improvement to network speeds, and alleged trends in capital investment. But it has a fatal flaw—and for that reason I dissent.

In the Communications Act, Congress charged the Commission with reporting annually on the state of commercial mobile service markets. As part of this assessment, the agency is tasked with an analysis of whether or not there is “effective competition.” Simple enough. But to make this determination in the affirmative—as this report does—requires that the Commission define “effective competition.” On this account it fails. Instead of a definition of this essential threshold, we have all manner of apologies and admissions. We are told there is no single definition used by economists or policy authorities. We are told that upstream and downstream market segments involving network equipment, operating systems, and applications are outside the scope, and yet the core of what is “effective competition” remains undefined. In short, it's hard. Well, tough. Congress creates new terms in legislation all the time and it's up to expert agencies like this one to define them. But our failure to do so is inexcusable if the Commission wants desperately to conclude, as it does here, that “effective competition” exists.

If you add this up, this Commission is making a determination about the state of competition in one of the most vital sectors of the new economy using a standard that calls to mind Potter Stewart's famous “I know it when I see it.” That's not good enough. The bottom line is this: If you find it, you must define it. And on that account, this report fails.

One further thing: Like everyone else, I read reports of mergers waiting in the wings. So while this report celebrates the presence of four nationwide wireless providers, let's be mindful that a transaction may soon be announced that seeks to combine two of these four. While the Commission should not prejudge what is not yet before us, I think this agency sticks its collective head in the sand by issuing this report and implying move along, there is nothing to see here. For my part, any transaction before us will require someone to explain how consumers will benefit, how prices will not rise, and how innovation will not dissipate in the face of so

much more industry concentration. Someone will also need to explain how having fewer potential big bidders in upcoming spectrum auctions will not render our most potent distribution mechanism substantially less powerful. Those are hard questions that hover over this report—and we should not ignore them.