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Sent: Monday, April 11, 2011 2:39 PM
To: PRA; Cathy Williams
Subject: MetroPCS PRA Comments
Attachments: MetroPCS PRA Transparency Comments.pdf

Cathy - Attached, please find MetroPCS' comments in response to the Public Notice regarding the information collection for the Disclosure of Network Management Practices, Preserving the Open Internet and Broadband Industry Practices, Report and Order, GN Docket No. 09-191 and WC Docket No. 07-52.

Please call or email with any questions.

Please confirm receipt via return email.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Disclosure of Network Management Practices,
Preserving the Open Internet and Broadband
Industry Practices

COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its comments on the information collection request and disclosure requirements related to the proposed transparency rules promulgated in the *Open Internet Order* (the “*Order*”)² released by the Federal Communications Commission (the “FCC” or “Commission”) on December 23, 2010, under the provisions of the Paperwork Reduction Act. MetroPCS disagrees with the estimates regarding the collection requirements associated with the Open Internet Rules set forth in Section 8.3 of the Commission’s rules³ as promulgated by the “*Order*.”⁴ In support, the following is respectfully shown:

¹ For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

² *Preserving the Open Internet and Broadband Industry Practices*, Report and Order, in GN Docket No. 09-191 and WC Docket No. 07-52 (rel. Dec. 23, 2010) (the “*Order*”).

³ 47 C.F.R. § 8.3 (“A person engaged in the provision of broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for

I. INTRODUCTION AND SUMMARY

In the *Order*, the Commission asks, among other things, about “the accuracy of the Commission’s burden estimate” with respect to the proposed transparency requirements.⁵ In its assessment of the burdens imposed upon carriers by the proposed transparency rules, the Commission has woefully underestimated the reporting burdens of the new disclosure and transparency requirements on mobile wireless broadband Internet access providers. This is particularly true for small, rural, and mid-tier mobile wireless carriers who already face significant hurdles in providing broadband data services. While the larger national carriers may have staffs who can take on the additional reporting requirements caused by the new rules, and can spread the costs out over tens of millions of subscribers, small, rural, and mid-tier carriers, such as MetroPCS, do not have additional capacity in existing staffs to undertake these responsibilities without having to add staff.⁶ Further, these resources are spread over a considerably smaller customer base thus raising the cost of providing service. These increased administrative burdens will obstruct carriers’ ability to direct resources in a way that allows them to focus on deploying networks, serving customers, and providing new offerings at lower prices. These transparency and disclosure rules will damage competition in the mobile wireless market.

Such a miscalculation is particularly egregious with respect to the estimated time necessary to comply with the Commission’s rules both initially and on an ongoing basis. As a

consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.”)

⁴ *Order* at Appendix A.

⁵ 76 FR 7207, Feb. 9, 2011 (“*Federal Register Notice*”).

⁶ These requirements will largely be the same for large and small carriers because each has approximately the same number of rate plans. Since the amount of work required to comply with the requirements is the same, the burden of being spread over a smaller number of customers will materially add to the cost to provide service.

result, it is highly unlikely, if not impossible, that any mobile wireless broadband Internet access provider, including MetroPCS, will be able to comply with the Commission's new transparency disclosure requirements within the Commission's estimated timeframe.

The Commission acknowledges providers' concerns that its disclosure rule will impose significant costs but "believe[s] that the costs of the disclosure rule...are outweighed by the benefits of empowering end users and edge providers to make informed choices and of facilitating the enforcement of the other open Internet rules."⁷ However, considering the extreme underestimation of the time commitment required by its new Rule 8.3, the Commission needs to reconsider the result of its cost-benefit analysis.

II. THE COMMISSION'S ESTIMATE WOEFULLY UNDERESTIMATES THE ACTUAL BURDEN ON MOBILE WIRELESS BROADBAND INTERNET ACCESS PROVIDERS

According to the *Order* and the notice published in the *Federal Register* on February 9, 2011,⁸ pursuant to proposed rule 47 C.F.R. 8.3, each Internet access provider must prepare transparency disclosures to consumers and third-parties relating to all of their: (1) network management practices – including congestion management, application-specific behavior, and device attachment rules; (2) performance characteristics – including service descriptions and the impact of specialized services on capacity; and (3) commercial terms – including pricing, privacy policies, and redress options. While not defining the exact means by which broadband providers must supply this information, the Commission explains that "broadband providers must, at a minimum, prominently display or provide links to disclosures on a publicly available, easily

⁷ *Order* at ¶ 59.

⁸ *Federal Register Notice*.

accessible website that is available to current and prospective end users and edge providers as well as to the Commission, and must *disclose relevant information at the point of sale.*”⁹

The Commission has estimated that it would take each carrier an average of 10.3 hours¹⁰ annually to satisfy the disclosure requirements of the Commission’s Rule 8.3 as adopted by the *Order*. This estimate wildly underestimates the actual burden imposed on broadband providers to comply with the disclosure requirement. In fact, the actual time in person-hours to comply with the Commission’s proposed transparency rules, including the consistent updating of disclosures needed, will be exponentially higher. This combined with the additional burden of complying with the Commission’s net neutrality rules and fielding network-related questions and complaints adds even more burden to carriers that are already fighting to compete with the ever-increasing dominance of the largest carriers.

As an initial matter, the Commission’s rules are extremely vague. They do not discuss a safe harbor for compliance, and the *Order* cites only one example of a disclosure statement –for which it cannot or will not even confirm would be sufficient to satisfy its rules.¹¹ Thus, in order to ensure compliance, carriers will need to go above and beyond to try to meet the Commission’s nebulous standards. This will require extensive resources and vast efforts.

Taking the above into account, companies like MetroPCS that provide wireless broadband Internet access will have to complete a number of concrete actions in order to comply with the proposed transparency requirement. For instance, MetroPCS will need to conduct a thorough review and analysis of its network management policy, including how it will deal with

⁹ *Order* at ¶ 57 (emphasis added).

¹⁰ *Federal Register Notice*.

¹¹ See *Order* at n.177 (“We note that the description of congestion management practices provided by Comcast in the wake of the Comcast-BitTorrent incident *likely* satisfies the transparency rule with respect to congestion management practices.”) (emphasis added).

congestion, applications, and device attachments. This will involve developing an overall, company-wide strategy (to the extent it does not already exist), including consultation with the engineering and marketing teams, coordination of the products team with third-party vendors, and advice and counsel from the legal staff. This will also include the formulation of new policies with respect to the attachment of devices and use of applications on the company's network – entirely new requirements that the Commission is now seeking to impose upon wireless providers. Such processes will be extremely time consuming and labor intensive, as well as involve extensive coordination and numerous layers of review between many levels of the organization.

MetroPCS, of course, also will need to deploy and implement such a policy into various disclosures that would be made available to the public at the point-of-sale and third parties, including efforts to update marketing practices and collateral, adjustments to MetroPCS' website, all with advice from legal counsel. However, the single most time-consuming portion of the deployment process, though, will be the training of marketing employees, network employees, network operators and retail store staff.

Finally, all of the above requires supervision, management, and directions from the highest levels of the company. Of course, all of the aforementioned efforts only account for the initial actions necessary to come into compliance once the *Order* becomes effective. Because the technologies involved in operating networks and the devices used to connect to broadband Internet access services are constantly evolving, providers will have to continuously review and revise their policies throughout the year as they add new devices and services to their offerings. Each one of these groups has some impact on the company's ability to comply with the rules. Further, as the company experiences turnover in staff (which can be quite high in the call centers

of retail staff) additional training will be required. Further, recurring training will also be required to make sure staff remember and follow the latest requirements and are able to provide the proper disclosures. Thus, the above process will need to be repeated multiple times throughout any given year. MetroPCS, having considered all of these elements, believes that the Commission's estimation is considerably inaccurate, and that the Commission's new rules may result in thousands of hours annually, even after initial compliance.

III. THE INITIAL COMPONENT OF COMPLIANCE AND DISCLOSURES, CONSISTING OF POLICY DEVELOPMENT, DEPLOYMENT, AND MANAGEMENT, WILL REQUIRE SIGNIFICANT RESOURCES FROM WIRELESS INTERNET BROADBAND PROVIDERS

In order to establish an initial framework for compliance with the Commission's new transparency and disclosure rules, MetroPCS and other wireless broadband Internet access providers must develop and deploy new policies that correspond with the Commission's new rules. This will necessitate the involvement of high-level executives to develop the company's strategy, along with interaction between engineers, products specialists, marketing teams, legal counsel, web site designers, compliance personnel, and training teams.

A. Policy Development Will Take Place Across the Enterprise

First, multiple layers of review will be essential in the development of an overall policy related to network congestion, the use of third-party applications and devices, and the rules to be applied in order for third parties to use such applications and devices on the MetroPCS network. The company's management will have to determine policy with regard to each of the Commission's proposed transparency requirements. Indeed, management must spend hours deciding, directing, and supervising these initiatives for compliance in order to implement the initial components for compliance. Network engineers must be consulted to ensure the technical details are accurately described in the language to be used in any disclosure. The Commission

suggests the inclusion of a number of network management elements that would require extensive involvement by network operators and engineers. For example, the Commission suggests that providers detail all the types of traffic affected by management policies, the criteria for evaluating triggers, and the effect on end users' experiences.¹² However, the Commission neglects to mention that these decisions involve complicated issues and cannot be thoroughly dealt with in a brief exercise, as the Commission's time estimate seems to indicate. Additionally, engineers and network operators will be required to evaluate and describe "service technology, expected and actual access speed and latency, and the suitability of the service for real-time applications."¹³ Access speeds will vary greatly depending on time and location, elements which cannot be easily described in a few sentences, and there are countless real-time application types for which the engineers and operators would need a great deal of time to consider and address.

And while MetroPCS is pleased that the Commission has recognized the need to "exclude from the rule competitively sensitive information, information that would compromise network security, and information that would undermine the efficacy of reasonable network management practices,"¹⁴ the Commission must also acknowledge this will add yet another vague layer of complexity to the task confronting network operators, engineers and the providers' management. These actors will need considerable time to carefully comb through and parse their disclosures, especially those aimed at third-parties, to ensure that they are not disclosing any proprietary business information, confidential information, or information that could be used by those wishing to do harm to or through the provider's network.

¹² *Order* at ¶ 56.

¹³ *Id.*

¹⁴ *Id.* at ¶ 59.

Furthermore, the Commission notes that providers likely should address “any restrictions on the types of devices and any approval procedures for devices to connect to the network.”¹⁵ Not only will this entail the consultation of engineers, but products specialists as well. And, because the *Order* suggests that providers will likely need to describe the specifics of pricing,¹⁶ the marketing department will also need to review the policy language in any disclosure. And inclusion of details concerning privacy and “resolving end-user and edge provider complaints and questions”¹⁷ will certainly necessitate extensive review by legal counsel. Legal counsel will also need to be involved in approving the language added to the website, reviewing all associated terms and conditions, and disclosures to third-parties wanting access to the MetroPCS network.

Further, these third-party disclosures are not required today and would not otherwise be undertaken by the company. Accordingly, these third-party requirements do not get the benefit of merely being revised elements of existing procedures, but rather involve completely new procedures and disclosures that the carriers today are not required to undertake.

A. Deployment of Policies, Once Developed, Will Require Enormous Resources

Second, providers must deploy their new policies. The marketing department must integrate the policy into their marketing materials, including point-of-sale materials, and revise their marketing practices. More time will be required to redesign the provider’s website in order to emphasize the new network management terms in a manner such that “[c]urrent end users [will] be able to easily identify which disclosures apply to their service offering.”¹⁸ The Commission advises mobile broadband providers to “follow the guidance the Commission

¹⁵ *Order* at ¶ 56.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at ¶ 57.

provided to licensees of the upper 700MHz C Block spectrum regarding compliance with their disclosure obligations, particularly regarding disclosure to third-party application developers and device manufacturers of criteria and approval procedures (to the extent applicable).”¹⁹ Even based on that advice, the Commission should realize that its estimate is woefully low. Verizon’s “Open Development” website is proof of this.²⁰ Verizon’s website, created pursuant to its purchase of the 700 MHz C Block, details the specifications needed to attach devices on its network looks to have taken a significant amount of time and effort. The development of a website comparable to that of Verizon, as complex, detailed, and thorough as it is, would alone clearly take far more time than the Commission has designated for the entirety of providers’ disclosure obligations.

Of course, legal counsel would again need to spend extensive time advising each of these departments at every step of the process regarding on deployment, including evaluating adjustments made to the marketing materials and language on the website, reviewing the materials, and finally assuring that no intellectual property of third-parties is infringed.

Most time-consuming, however, will be the time commitment involved in training and retraining retailers, customer service representatives and call center employees to effectively inform customers of the new policy and answer customers’ related questions, as the *Order requires* that provider’s “must disclose relevant information at the point of sale.”²¹ This is a Herculean undertaking that the Commission clearly did not take into account when formulating its burden estimate. Nor is such a task imposed on the 700 MHz C Block. For example,

¹⁹ *Id.* at ¶ 98.

²⁰ Open Development, Verizon Wireless, <https://www22.verizon.com/opendev/index.aspx> (last visited March 31, 2011).

²¹ *Id.* at ¶ 57.

MetroPCS currently has 159 corporate-owned stores, each employing approximately five people. Corporate staff must develop a training program for these store employees. In addition to disclosure materials that must be provided by these stores at the point of sale, training materials must be written, printed, and distributed to all of these locations. Then, staff must travel to each market to train those market employees to effectively convey to customers the details of MetroPCS' new terms and conditions, device capabilities, and network management practices. Even if training in each store lasts only five hours per store (a conservative estimate), that part of the Commission's disclosure requirement alone would increase the time commitment and burden on broadband Internet service providers by nearly 800 hours.

What's more, MetroPCS products are sold by more than 5,000 third-party retailers, each having multiple employees. The *Order* does not distinguish between the point of sale at a corporate-owned store and the point of sale at a third-party retailer's location. Thus, MetroPCS will need time to deliver disclosure materials to every one of these vendors, directly communicate with them to ensure they understand the terms and conditions, device capabilities, and network management practices of MetroPCS' broadband service that must be conveyed to customers at the point of sale, and ensure the continued availability of such materials. The time commitment will be staggering, and could extend into thousands of hours.

Further, the third-party call centers which handle MetroPCS' customer service calls run into the thousands. Each one of these customer service representatives will need to be trained initially, recurrently trained, and new employees will have to be trained. Since many of these employees may also be part-time and these call centers are staffed for twenty four hours seven days a week in two languages, the annual burden can easily run into the thousands of hours. Further, since turnover at call centers is traditionally robust (such as 5-10% per month), the new

training required to just train turnover in employees would be substantial. Since third-parties (not customers) may also call customer service, such staff may also need to be trained on the third-party disclosures as well.

While the larger national carriers may be able to make slight adjustments to their armies of staff on hand to handle this large new task load, small, rural and mid-tier carriers will struggle to cope with this new burden while still being able to keep cost profiles down. The end result will be these non-national carriers losing opportunities to place their resources in the most needed places, namely network deployment and low-cost offerings. Though the Commission professes to work only for the best interest of competition and consumer welfare, it will wind up only bolstering the position of the larger national carriers.

IV. THE ON-GOING MAINTENANCE COMPONENT OF COMPLIANCE WILL REQUIRE A STAGGERING AMOUNT OF TIME AND PLACE A SIGNIFICANT BURDEN ON BROADBAND INTERNET PROVIDERS

Because the broadband Internet service market is continuously evolving as new technologies are developed and new devices and tools to utilize networks are made available, any network management policy adopted by a broadband provider will need to be updated on a continuous basis throughout the year. As new threats to broadband networks arise and new devices and network technologies advance, network engineers and operators must change their tactics in managing traffic. In addition, in order to react to the competitive marketplace, MetroPCS consistently changes and updates its service offerings. Under the Commission's proposed transparency rules, all such changes would need to be reflected and disclosed to the public and to potential third-party users of MetroPCS' network, and thus force broadband Internet providers to engage in the above-described process numerous times each year.

For instance, simple adjustments to the policy following these reevaluations of network management practices made on a normal basis will require a significant amount of time each

month. What's more, when providers roll out new products and offerings, additional time will be needed to update the disclosure statements. The provider must again go through the same layers of review detailed above. Management-level decision-makers, engineers, products specialists, marketing teams, website designers, legal counsel, and policy training personnel must be consulted each time a change is made to the policy. If any of these layers is skipped during the update process, then the carrier will risk inaccuracies in its policy, and incomplete or incorrect information will be disseminated to its customers. Further, all sales, customer service and call center staff will also need to be retrained as well.

Assuming that a carrier adds new products and services at least six times per year (which is a conservative estimate considering the constant changes in the wireless marketplace), the addition of new products and services would add substantial time annually to the time commitment necessary for compliance with the Commission's information collection request. And this on-going maintenance of the requisite network management policy would begin immediately upon completion of the initial policy implementation detailed in Section III. Clearly, the Commission has failed to account for all of the work necessary to maintain up-to-date transparency disclosures and has not even attempted to address the associated costs, even though such costs will be substantial and take away from MetroPCS' goal of broadened 4G broadband deployment.

V. CONCLUSION

Compliance with the new Section 8.3 of the Commission's rules will represent a large cost and significant resource burden on MetroPCS and other broadband providers. No effort to comply with the Commission's disclosure requirement in the Order could take merely 10.3 hours, as estimated by the Commission. Indeed, in order to fully comply with the Commission's proposed disclosure requirements, a broadband Internet service provider may have to spend

thousands, or maybe even tens of thousands, of hours. Compliance will require the involvement of multiple layers of review simply for initial development and deployment, including engineers, products specialists, marketing teams, website designers, policy training personnel, management, and legal counsel. Additionally, even after the initial development and deployment of the policy for disclosure to customers and to the Commission, broadband providers must spend time revising their policies on a continuing basis, due to the normal evolution of network management practices, and for each new product or service offering. For each of these updates, those multiple layers of review will need to be revisited. Accordingly, MetroPCS believes that the Commission's proposal will require hundreds and hundreds of hours, rather than the woefully inadequate estimation presented by the Commission in this proceeding.

Respectfully submitted,

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