

July 20, 2009

The Honorable Rick Boucher  
Chairman, Subcommittee on Communications, Technology and the Internet  
Committee on Energy and Commerce  
United States House of Representatives  
2187 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Boucher,

We write today in response to indications by Verizon Wireless that the company will open its exclusive deals for handsets to carriers with fewer than 500,000 subscribers after a period of six months. Recent hearings in the House of Representatives and the Senate, and recent statements and indications by both the Federal Communications Commission and the Department of Justice, have demonstrated that exclusive deals for wireless devices may pose competitive problems and deserve serious and careful examination.

In response to this political pressure, Verizon Wireless has taken a small step in the right direction. However, the impact of this action is largely insubstantial, and benefits few consumers. Furthermore, industry self-regulation cannot be a substitute for meaningful consumer protection laws, particularly in a market that demonstrates insufficient competition.

A closer examination of the offer reveals its deficiencies. Limiting the benefits to competitors with fewer than 500,000 subscribers greatly circumscribes the competitive and consumer benefits of this action – in fact, according to data from the FCC’s most recent report on the wireless market, only about 5% of all wireless subscribers subscribe to such carriers.<sup>1</sup>

Similarly, even time-limited exclusive deals constitute a significant barrier to entry into the market by competitors, and a considerable cost to consumers seeking to switch wireless services. Verizon Wireless contends that exclusive deals warrant these inefficiencies because the deals justify the risk that carriers take in making purchase commitments. However, as we noted in the Federal Communications Commission’s proceeding on wireless competition, any risks associated with new devices (and the potential rewards) can be more effectively distributed *without exclusives* by allowing multiple carriers to make advance purchase commitments. And, in a market with 270 million consumers, substantial demand for new devices will fuel the flame without exclusive deals.

Moreover, one of the most important factors for consumers is how quickly an interoperable phone can be made available to them. A six month cap on an exclusive deal, which does not permit competitors to begin negotiations for devices before and during the exclusivity period, creates in practice a much longer exclusive window. According to smaller wireless carriers, it can take up to nine months between the start of negotiations and the date when handsets can be available on the shelves to be sold through other carriers. Fifteen months in the handset market is the difference between “cutting edge” and “obsolete.” Without the ability to negotiate for all devices, the Verizon Wireless offer does not offset this harm. The better solution is to encourage manufacturers to make interoperable phones from the outset by doing away with any exclusive deals in the wireless market.

Finally, even setting aside its substantive deficiencies, voluntary promises of self-regulation by industry are not enough to give confidence to consumers. As markets and regulatory environments change, so does industry willingness for self-policing. Consider the *Wireline Broadband Order* of the Federal Communications Commission, which relied in part on the promise of self-regulation. Specifically, Verizon claimed that it would maintain an open wireline network and would offer an active wholesale business to its competitors – claims cited by the Commission in its decision to deregulate Verizon’s broadband business. However, following the *Order*, Verizon proceeded to scale back substantially on these commitments.

Despite Verizon’s assertions that all is well – unsurprising from a company reporting 40% profits from its wireless division – the wireless market is not sufficiently competitive for the harms caused by exclusive deals (and other ongoing consumer harms and harms to competition) to be remedied without affirmative regulation. Until then, we will continue to see limits on innovation and consumer choice.

We encourage you to continue your leadership on these issues by investigating the problems that exclusive deals for devices pose for competition in the wireless market.

Sincerely,



Ben Scott  
Chris Riley  
Free Press



Joel Kelsey  
Consumers Union



Parul P. Desai  
Media Access Project

cc: Chairman Henry A. Waxman, Ranking Member Joe Barton, Ranking Member Cliff Stearns

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<sup>i</sup> Compare Table A-4, p. 138, with Table A-1, p. 131, in the FCC’s *Thirteenth Report*. Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services, WT Docket No. 08-27, *Thirteenth Report*, DA 09-54 (rel. Jan 16, 2009).

July 20, 2009

Senator John D. Rockefeller  
Chairman  
Committee on Commerce, Science, and Transportation  
United States Senate  
531 Hart Senate Office Building  
Washington, D.C. 20510

Dear Chairman Rockefeller,

We write today in response to indications by Verizon Wireless that the company will open its exclusive deals for handsets to carriers with fewer than 500,000 subscribers after a period of six months. Recent hearings in the House of Representatives and the Senate, and recent statements and indications by both the Federal Communications Commission and the Department of Justice, have demonstrated that exclusive deals for wireless devices may pose competitive problems and deserve serious and careful examination.

In response to this political pressure, Verizon Wireless has taken a small step in the right direction. However, the impact of this action is largely insubstantial, and benefits few consumers. Furthermore, industry self-regulation cannot be a substitute for meaningful consumer protection laws, particularly in a market that demonstrates insufficient competition.

A closer examination of the offer reveals its deficiencies. Limiting the benefits to competitors with fewer than 500,000 subscribers greatly circumscribes the competitive and consumer benefits of this action – in fact, according to data from the FCC’s most recent report on the wireless market, only about 5% of all wireless subscribers subscribe to such carriers.<sup>1</sup>

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Moreover, one of the most important factors for consumers is how quickly an interoperable phone can be made available to them. A six month cap on an exclusive deal, which does not permit competitors to begin negotiations for devices before and during the exclusivity period, creates in practice a much longer exclusive window. According to smaller wireless carriers, it can take up to nine months between the start of negotiations and the date when handsets can be available on the shelves to be sold through other carriers. Fifteen months in the handset market is the difference between “cutting edge” and “obsolete.” Without the ability to negotiate for all devices, the Verizon Wireless offer does not offset this harm. The better solution is to encourage manufacturers to make interoperable phones from the outset by doing away with any exclusive deals in the wireless market.

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July 20, 2009

Senator John F. Kerry  
Chairman, Subcommittee on Communications, Technology, and the Internet  
Committee on Commerce, Science, and Transportation  
United States Senate  
218 Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairman Kerry,

We write today in response to indications by Verizon Wireless that the company will open its exclusive deals for handsets to carriers with fewer than 500,000 subscribers after a period of six months. Recent hearings in the House of Representatives and the Senate, and recent statements and indications by both the Federal Communications Commission and the Department of Justice, have demonstrated that exclusive deals for wireless devices may pose competitive problems and deserve serious and careful examination.

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