

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Petition for Rulemaking Regarding) RM No. 11497
Exclusivity Arrangements Between)
Commercial Wireless Carriers)
and Handset Manufacturers)

COMMENTS OF CINCINNATI BELL WIRELESS LLC

Jouett K. Brenzel
221 E. Fourth Street, 103-1280
Cincinnati, OH 45202
Tel: (513) 397-7260
Email: jouett.brenzel@cinbell.com

Attorney for Cincinnati Bell Wireless LLC

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Cincinnati Bell Wireless LLC (“CBW”) hereby submits comments in support of the Rural Cellular Association’s Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers (“Petition”) filed on May 20, 2008, and placed on public notice October 10, 2008.¹ For the reasons expressed herein, CBW supports RCA’s petition and urges the Commission to initiate a rulemaking to examine the growing use of exclusive handset arrangements by the largest wireless carriers and the detrimental effect such agreements have on the state of wireless competition among retail providers and on consumers.

BACKGROUND

CBW is an Ohio limited liability company which holds licenses for Broadband PCS, AWS and 700 MHz services covering the greater Cincinnati and Dayton metropolitan areas as well as several counties in northern Kentucky and Indiana. As a regional wireless provider, CBW competes with five national providers—AT&T, Verizon, T-Mobile, Sprint and Cricket—to provide retail service to over 500,000 subscribers using GSM and 3G technologies and

¹ See *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, Public Notice, DA 08-2278 (October 10, 2008).

offering both national and international voice and data roaming to these subscribers. In addition to providing wireless services, CBW works with its affiliate companies—Cincinnati Bell Telephone Company LLC, an incumbent local exchange carrier; Cincinnati Bell Extended Territories LLC, a competitive local exchange carrier; and Cincinnati Bell Any Distance Inc., an interexchange carrier—to provide compelling bundles of wireless and wireline voice and data services to meet the needs of subscribers throughout the region.

As a regional provider, CBW has had significant success in the Cincinnati/Dayton markets since service was launched in 1998. CBW's data indicates that it has approximately 25% share of the overall market and, for the last several years, CBW has enjoyed a churn rate of less than 2%. CBW attributes its success to its continuous capital investments in the network and quality of service, the provision of "no contract" service to residential subscribers,² competitive rate plans and ability to provide national and international roaming, an attractive selection of wireless handset models, as well as the availability of bundle discounts to customers who subscribe to other services offered by the Cincinnati Bell family of companies. As a result of these efforts, CBW received the prestigious JD Power Award for Wireless Customer Satisfaction in September 2002 and an independent study ranked CBW's network first overall among providers in the market in 2006 and 2007.³

However, despite its success to date, CBW has increasingly felt the very real detrimental effect that exclusive handset arrangements between manufacturers and the national providers have on its ability to attract and retain customers. As explained below, CBW joins RCA in

² CBW provides service to residential subscribers without requiring the subscriber to enter into a year or multi-year contract. Thus, CBW subscribers are not subject to early termination penalties and are truly free to terminate service at any time.

³ Drive tests performed in 2006 and 2007 by InCode Telecom Group, Inc. ranked CBW first overall based on network coverage, quality, accessibility and retention compared to AT&T (formerly Cingular), T-Mobile, Verizon, Sprint and Cricket.

asking the Commission to initiate a proceeding to investigate the growing use of exclusive handset arrangements and the effect such arrangements have on wireless competition and on consumers.

COMMENTS IN SUPPORT OF RCA's PETITION

In recent years, it has become increasingly difficult if not impossible for CBW to obtain the latest, technologically advanced and most desirable handsets for its subscribers because of the continued trend toward exclusive handset arrangements between manufacturers and the largest wireless providers. As explained by RCA and in recent merger proceedings, only the very largest national providers have the massive customer bases necessary to leverage exclusivity arrangements from the manufacturers, a competitive disparity that grows ever greater with every wireless carrier merger.⁴ When handset manufacturers would generally be driven to sell as many handsets as possible to any wireless provider (as they once did), these new arrangements prevent them from selling the latest and most advanced handsets to the exclusive providers' competitors either indefinitely or for varying lengths of time. Additionally, such arrangements may serve to prevent the manufacturers from developing handsets that are compatible with competing wireless technologies (e.g. an iPhone compatible on CDMA networks). Thus, the exclusive arrangements enable the largest providers to corner the market on the newest cutting-edge devices, relegating smaller competitors and their customers to the out-of-date and the second-rate.

As the exclusivity arrangements for devices like the Apple iPhone have become more prevalent in recent years, CBW has noticed significant spikes in its churn rate when new, highly touted handsets are launched. For example, CBW's internal data indicates that it experienced a 35% higher churn rate in the second six months of 2008 than in the first six months, a period

⁴ See Petition of Cincinnati Bell Wireless LLC Petition to Condition Consent or Deny Application, WT Docket 08-246, filed January 15, 2009, at 19; See also, Centennial Communications Corp. Petition to Deny, WT Docket 08-95, filed August 11, 2008 ("Centennial Verizon Petition"), at 8-12.

during which a number of exclusive handsets and smartphones like the 3G iPhone and Blackberry Storm by AT&T and Verizon, respectively, were launched.⁵ In addition, the results of a random survey conducted by CBW in December 2008 further highlight the importance of handsets to customers who have ported from CBW to another provider.⁶ When asked: “About your new cell phone carrier. What is the most appealing thing about your new service?” – 42% of the 290 respondents chose “phone selection” over price, features of service, and friends/family being on the same network. And of those who cited “phone selection” as the basis for their switch, 35% of customers identified the Apple iPhone and 10% identified the Blackberry Storm as their new handset.

CBW believes this data supports the conclusion that exclusive handset arrangements result in a very direct and negative affect on its competitive position relative to the largest national providers. CBW contends that, absent such exclusivity agreements, CBW would be able to offer its customers a more complete package of services and equipment, i.e. the most technologically advanced handsets/smartphones together with CBW’s already competitive service offerings. Thus, CBW would be in a position to compete against the national providers based on the full spectrum of competitive factors—service, coverage, quality, price, etc. – rather than on its inability to provide particularly coveted handset models.

On the flip side of the competitive coin, exclusivity arrangements also have a negative impact on subscribers as well. In the absence of competition, customers who want the most advanced wireless handsets not only have to switch providers but must also pay a premium for

⁵ CBW’s higher churn following the release of the iPhone 3G is not surprising given AT&T’s 4th quarter earnings report. According to the report, AT&T activated 4.3 million iPhone 3G devices in the second half of 2008. The report further states that approximately 40% of iPhone activations were for new customers. See A&T News Release on 4th quarter earnings dated January 28, 2009.

⁶ In December 2008, CBW conducted a random survey of approximately 1200 customers who had ported service to another carrier in November and December. There was a total of 290 respondents to the survey.

the desired handset. Additionally, customers must enter into multi-year service agreements with the exclusive providers, presumably to offset handset subsidies, and often end up paying a premium for the associated wireless services as well. It is telling that of the 290 respondents to CBW's December survey, approximately 40% indicated that they were paying more for service with their new provider than they had with CBW. Moreover, customers who change wireless service providers for the sake of the desired handset may forgo attractive bundle discounts available to them when they purchase wireless service in combination with other Cincinnati Bell service offerings like home phone and broadband Internet access. Thus, the handset exclusivity arrangements affect not only wireless competition but the ability of small and regional providers to compete in the broader telecommunications marketplace as well.

Another negative consequence of the growing trend toward handset exclusivity arrangements is CBW's limited ability to acquire handsets for use on the AWS spectrum purchased in September 2006. After spending over \$25 million to purchase AWS spectrum in the Greater Cincinnati and Dayton markets and an additional \$30 million to build the network necessary to make use of that spectrum, CBW's ability to deliver advanced broadband wireless services to consumers is severely hampered by the limited number of 3G handsets available using the AWS spectrum. For example, CBW and T-Mobile provide service in the same bands for both GSM and AWS spectrum. However, because T-Mobile has entered into exclusive handset deals with Nokia, Samsung, and other manufacturers, CBW's ability to get an adequate inventory of 3G handsets is compromised. CBW estimates that because of these exclusive handset arrangements, it will have 35,000 fewer 3G handsets than it will need to meet projected demand from June through October 2009. Further, CBW will be forced to activate more GSM handsets onto the GSM network rather than migrating customers to its 3G network, a move that

results in considerably higher capital costs. CBW estimates its capital expenditure per incremental minute of use per month on the GSM network to be nearly twice that of its 3G/AWS network. And adding even more costs, CBW may be required to lease additional spectrum in the PCS band to augment GSM network capacity in order to meet consumer demand (assuming such spectrum is available to be leased), demand which would otherwise be shifted to the AWS/3G network. Thus, not only will CBW have spent millions on buying and building out the AWS spectrum, exclusive handset arrangements will cause CBW to suffer considerable economic harm on two fronts—first, lost revenue from customers who want advanced wireless/3G services that CBW cannot provide without an adequate supply of 3G handsets and, second, the additional capital costs associated with supporting customers on the GSM network.

Finally, as the Commission’s hearing aid compatibility (“HAC”) requirements become more stringent, CBW’s ability to meet the benchmarks set forth in the rules is subject its ability to acquire a wide variety of wireless handsets in a timely manner.⁷ As explained by Corr Wireless, exclusive handset arrangements “serve to impede [Tier III carriers’] ability to obtain the breadth of models needed to comply with the rules.”⁸ Quite simply, if CBW cannot obtain an adequate variety of handsets because of the growing movement toward exclusive handset arrangements, it risks being found in noncompliance by the Commission and, more importantly, it will be unable to provide hearing impaired customers with a wide variety of handsets with varying levels of functionality and at a range of price points.

⁷ 47 CFR § 20.19.

⁸ Comments of Corr Wireless Communications LLC, RM No. 11497, filed December 2, 2008, at 2-3.

CONCLUSION

In sum, CBW agrees with RCA that the growing trend toward handset exclusivity arrangements is anticompetitive and inconsistent with the public interest. CBW joins RCA in urging the Commission to initiate a rulemaking proceeding to examine the effects of these arrangements and the need for rules prohibiting or limiting such arrangements in the future.

Respectfully submitted,

/s/ Jouett K. Brenzel
Jouett K. Brenzel
221 E. Fourth Street, 103-1280
Cincinnati, OH 45202
Tel: (513) 397-7260
Email: jouett.brenzel@cinbell.com

Attorney for Cincinnati Bell Wireless LLC