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October 19, 2009

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Communication – WT Docket No. 08-246 (Centennial/AT&T)

Dear Ms. Dortch:

On behalf of Cincinnati Bell Wireless LLC ("CBW"), and pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, this is to provide notice of *ex parte* meetings held October 16, 2009, in connection with WT Docket No. 08-246. The meetings were attended by Mr. Brian A. Ross, Chief Operating Officer, Mr. Christopher J. Wilson, General Counsel, and Ms. Patricia Rupich, Senior Manager – Regulatory, of CBW, and the undersigned (the "CBW Participants"), who met with Ms. Ruth Milkman, Chief of the Wireless Telecommunications Bureau ("WTB") and the members of the WTB and Office of General Counsel Staff listed below (together, the "FCC Participants"). The purpose of the meeting was to discuss matters set forth in CBW's Petition to Consent or Deny Application ("CBW Petition") filed on January 15, 2009, and its Reply to Joint Opposition filed on February 2, 2009, in the above-referenced docket ("CBW Reply" and together with CBW Petition, "Comments").

In addition to matters set forth in those Comments, the CBW Participants discussed the attached written *ex parte* presentation subsequently submitted by Verizon Wireless on July 17, 2009, in dockets RM-11497 and WT Docket No. 09-66. That presentation stated Verizon's commitment to eliminate any new long-term (*i.e.* greater than 6 months) handset exclusivity arrangements for with respect to "small" wireless carriers and to permit full access by such carriers to any manufacturer's portfolio of prototypes and products in development (the "Verizon Handset Commitment"). Initially, Verizon defined "small" as carriers with 500,000 customers or less but, as reported in the attached Reuters article, subsequently expanded that definition to extend to a carrier with approximately 800,000 customers.

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The CBW Participants advised the FCC Participants that imposition of a condition in connection with the above-referenced merger that parallels the Verizon Handset Commitment is the minimum condition necessary to mitigate the competitive harms demonstrated by CBW in its Comments, and by the Rural Cellular Association and Cellular South in their separate filings, that would otherwise accrue to smaller carriers with respect to handset availability.[1] As noted in CBW's Petition,

> AT&T's acquisition of Centennial will reduce smaller carriers' ability to compete in purchasing handsets in another, complementary way as well – it will deprive smaller carriers of an ally and consortium partner in buying arrangements. Recently, Cincinnati Bell has found that the only way for it to achieve relatively competitive prices and terms from a number of handset providers is to join forces with two other small carriers – one of them being Centennial itself – in a buying consortium. By combining their purchases, the consortium has been able to offer larger volumes of purchases, and in at least one case, negotiations were getting nowhere until Centennial's volume requirements were added to the deal. Thus, AT&T's merger with Centennial will exacerbate the inequality in bargaining positions and make it even easier for AT&T to impose exclusivity requirements on handset manufacturers.[2]

Accordingly, for the reasons set forth in its Comments, absent a merger condition limiting AT&T's ability to preclude handset availability to smaller carriers through long-term exclusive agreements, the merger will harm the public. Although the Commission may well determine in the context of its generic investigations of wireless competition that additional – and stronger – industry-wide competitive protections are required, adoption of a handset condition in this merger parallel to

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[1] CBW Petition at pp. 19-24, and Reply at pp. 8-10; *see also e.g.*, Comments of the Rural Cellular Association, WT Docket 08-246, at pp. i-ii (filed Jan. 15, 2009); Petition to Deny of Cellular South, Inc., WT Docket 08-246, at p. 2 (filed Jan. 15, 2009). Indeed, prior to announcing its own merger with AT&T, Centennial itself provided justification for adoption of a merger condition prohibiting handset exclusivity with respect to the Verizon/Alltel merger – another merger that reduced smaller carriers' ability to compete in purchasing handsets. *See* CBW Petition at 21-22, *citing* Centennial Communications Corp. Petition to Deny, WT Docket No. 08-95, at 6 (filed Aug. 11, 2008).

[2] CBW Petition at 20.

the Verizon Handset Commitment will at least serve to mitigate the competitive harm resulting from AT&T's acquisition of Centennial.

Should any additional information be required with respect to this *ex parte* notice, please do not hesitate to contact me.

Very truly yours,

/s/ Jean L. Kiddoo

Jean L. Kiddoo
Counsel for Cincinnati Bell
Wireless LLC

Attachments (2)
cc (by email): Ruth Milkman
Jim Schlichting
Paul Murray
Nese Guendelsberger
Blaise Scinto
Ty Bream
Christina Clearwater
Virginia Metallo
Louis Peraertz
Susan Singer

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UPDATE 3-Verizon says it will limit new handset deals

Fri Jul 17, 2009 3.55pm EDT

* Applies to carriers with less than 500,000 customers

* Could also apply to other "small" carriers

* Offer open to Cellular South, not U.S. Cellular (Adds analyst, consumer group comment)

By Diane Bartz and Sinead Carew

WASHINGTON/NEW YORK, July 17 (Reuters) - Verizon Wireless is dialing back on its exclusivity agreements with handset makers after pressure from U.S. lawmakers and smaller carriers.

The biggest U.S. mobile service said on Friday it will limit exclusivity periods with cellphone makers to six months and then allow the country's smallest wireless service providers to sell the devices.

The move comes after reports that the U.S. Department of Justice was taking a preliminary look into whether U.S. operators had violated antitrust laws by obtaining exclusive deals to sell specific phones.

Exclusivity deals are common among the biggest U.S. carriers but have recently faced strong opposition from small, rural carriers, which say they lack the clout to make deals to carry the most popular advanced phones.

The iPhone has drawn such deals into the spotlight because AT&T Inc (T.N: Quote, Profile, Research, Stock Buzz), the second biggest U.S. wireless service, has had exclusive U.S. rights with Apple Inc (AAPL.O: Quote, Profile, Research, Stock Buzz) since 2007.

In an apparent effort to preempt any regulatory changes, Verizon Wireless, a venture of Verizon Communications (VZ.N: Quote, Profile, Research, Stock Buzz) and Vodafone Group (VOD.L: Quote, Profile, Research, Stock Buzz), sent a letter to major lawmakers on July 17 offering to limit exclusivity.

Verizon said the offer would apply to carriers with 500,000 or fewer subscribers. However, Verizon spokesman Jeffrey Nelson said it applies to all "small" operators, without giving a specific definition. Cellular South, a vocal activist against phone exclusivity deals would be able to avail of the offer even though it has roughly 800,000 customers, he said.

However, the offer will not extend to larger companies such as U.S. Cellular Corp (USM.N: Quote, Profile, Research, Stock Buzz), which has about 6 million customers and has been a vocal opponent of the practice, Nelson said. U.S. Cellular did not immediately comment.

"Effective immediately for small wireless carriers ... any new exclusivity arrangement we enter with handset makers will last no longer than six months – for all manufacturers and all devices," Verizon Wireless CEO Lowell McAdam said in the letter.

He said 24 small wireless carriers had asked Verizon to eliminate its long-term exclusive handset agreements with LG (066570.KS: Quote, Profile, Research, Stock Buzz) and Samsung [SAGR.UL] in February. The company

was now expanding that idea to all handsets.

Stifel Nicolaus analyst Rebecca Arbogast described the letter as a "significant move to diffuse the heightening pressure for regulation to curtail" exclusive deals and said it would put pressure on other big carriers to follow suit.

"It will likely not be the end of the debate, in our view, as US Cellular, one of the more vigorous advocates for eliminating exclusives, will not benefit," Arbogast said, but she said the move would take pressure off of the U.S. telecom regulator, the Federal Communications Commission, to change laws.

But Consumers Union, a Washington based consumer advocate, said Verizon's focus on the smallest carriers would mean more phone choices for a very limited number of consumers.

"For the rest of the hundreds of millions of wireless consumers its not nearly enough," said Consumers Union policy analyst Joel Kelsey. "This is Verizon trying to dodge tough questions about its anti-competitive behavior."

A spokeswoman for the Justice Department was not immediately available for comment. The DoJ's preliminary examination is believed to be focused on deals like AT&T's with Apple and Sprint's (S.N: Quote, Profile, Research, Stock Buzz) with Palm's (PALM.O: Quote, Profile, Research, Stock Buzz) Pre cellphone. Another is Verizon's deal with LG for its Voyager phone.

AT&T spokesman Mark Siegel declined to comment on how it might respond to Verizon's move, but defended exclusive deals.

"Without question exclusive handset deals have given America's wireless customers big benefits, including more choices, lower prices, and a level of innovation that is the best in the world," he said in an emailed statement.

Sprint declined immediate comment and a spokesperson for the FCC was not immediately available for comment.

Arbogast said AT&T, Sprint and T-Mobile USA, the No. 4 U.S. mobile service owned by Deutsche Telekom (DTEGn.DE: Quote, Profile, Research, Stock Buzz), would come under pressure to follow suit.

The letter was sent to Senate Commerce Committee Chairman John Rockefeller, a West Virginia Democrat, and committee members John Kerry of Massachusetts and Republican Kay Bailey Hutchison of Texas. The letter also was sent to Representatives Rick Boucher, Henry Waxman, Joe Barton and Cliff Stearns.

Boucher, chairman of the House Energy and Commerce Subcommittee on Communications, who met with McAdam on Friday, praised Verizon's actions.

"Verizon has taken an important and forward-looking step. I think it does ensure that smaller carriers get rapid access to the latest devices," Boucher told Reuters.

Smaller telecommunications companies and consumer advocacy groups also have complained that bigger companies use their size to squeeze out smaller rivals by refusing roaming deals, or block applications like the Skype Web-based phone service. (Additional reporting John Poirier; Editing by Phil Berlowitz, Tiffany Wu, Richard Chang and Carol Bishopric)

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July 17, 2009

Written Ex Parte Presentation

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: RM-11497, Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers

WT Docket No. 09-66, Fourteenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services

Dear Ms. Dortch:

Enclosed herewith for filing in the above-referenced dockets are copies of letters from Lowell C. McAdam, President and Chief Executive Officer of Verizon Wireless, to Representative Rick Boucher, Senator John F. Kerry and Senator John D. Rockefeller IV. The letters set forth Verizon Wireless's new policy on handset exclusivity arrangements.

Pursuant to Section 1.1206 of the Commission's Rules, this ex parte presentation is being filed electronically in these proceedings. Should you have questions regarding this filing, please contact the undersigned.

Respectfully submitted,

John T. Scott, III

John T. Scott, III

Enclosures

cc: Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Bruce Gottlieb
Paul Murray
Angela Giancarlo
Ruth Milkman
James Schlichting
Renee Crittendon
John Leibovitz

Lowell C. McAdam
President & Chief Executive Officer

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July 17, 2009

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

Dear Chairman Boucher:

Last February, a group of 24 small wireless providers asked Verizon Wireless to eliminate long-term exclusive handset agreements with LG and Samsung. We agreed to do so for those small providers. Today I am writing to reaffirm that commitment and to let you know that Verizon Wireless is taking an even bolder step to transform exclusive handset arrangements. Effective immediately for small wireless carriers (those with 500,000 customers or less), any new exclusivity arrangement we enter with handset makers will last no longer than six months – for all manufacturers and all devices.

This new approach is fair to all sides. Exclusivity arrangements promote competition and innovation in device development and design. We work closely with our vendors to develop new and exciting devices that will attract customers. When we procure exclusive handsets from our vendors we typically buy hundreds of thousands or even millions of each device. Otherwise manufacturers may be reluctant to make the investments of time, money and production capacity to support a particular device. This of course constitutes a major risk for us, because if the device is not popular in the marketplace we end up with excess inventory and potential competitive losses. On the other hand, if the device does well in the market, six months is a reasonable time for us to earn the benefit of our risk and investment.

Moreover, we have no objection to small carriers having full access to any manufacturer's portfolio of prototypes and products in development, without being informed which may have been selected by Verizon Wireless. Obviously our pre-launch product selections are proprietary and must remain confidential between us and our vendors.

Our actions today are consistent with our long track record of leading the vibrant, highly competitive wireless industry in new and innovative directions that benefit consumers. We would be happy to meet with you or your staff to discuss this further.

Sincerely,

L. C. McAdam

Lowell C. McAdam

cc: Chairman Waxman
Ranking Member Barton
Ranking Member Stearns

Lowell C. McAdam
President & Chief Executive Officer

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July 17, 2009

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

Dear Chairman Kerry:

Last February, a group of 24 small wireless providers asked Verizon Wireless to eliminate long-term exclusive handset agreements with LG and Samsung. We agreed to do so for those small providers. Today I am writing to reaffirm that commitment and to let you know that Verizon Wireless is taking an even bolder step to transform exclusive handset arrangements. Effective immediately for small wireless carriers (those with 500,000 customers or less), any new exclusivity arrangement we enter with handset makers will last no longer than six months – for <u>all</u> manufacturers and <u>all</u> devices.

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Sincerely,

L. C. McAdam

Lowell C. McAdam

cc: Ranking Member Ensign

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July 17, 2009

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

Dear Chairman Rockefeller:

Last February, a group of 24 small wireless providers asked Verizon Wireless to eliminate long-term exclusive handset agreements with LG and Samsung. We agreed to do so for those small providers. Today I am writing to reaffirm that commitment and to let you know that Verizon Wireless is taking an even bolder step to transform exclusive handset arrangements. Effective immediately for small wireless carriers (those with 500,000 customers or less), any new exclusivity arrangement we enter with handset makers will last no longer than six months – for all manufacturers and all devices.

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Sincerely,

L. C. McAdam

Lowell C. McAdam

cc: Ranking Member Hutchison