

October 22, 2009

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

Re: WT Docket No. 09-66, *In the Matter of 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*

Dear Secretary Dortch:

Progressive Concepts, Inc. d/b/a Hawk Electronics ("PCI") respectfully submits these Reply Comments in the above-referenced proceeding responding to statements by AT&T and others touting the competitive benefits of vertically integrated enterprises. The treatment of PCI by AT&T illustrates the dangers to competition posed by such organizations.

PCI currently is the largest remaining master distributor of AT&T's wireless products and services in the United States. PCI operates within major metropolitan areas of Texas, and provides a broad range of customer support, billing, and retail services to its customers, who interact directly with PCI, and not with AT&T. PCI has been a distributor of AT&T's products and services for over twenty-five years. Beginning in approximately mid-2007, PCI's business began to steadily erode because AT&T, in violation of its contract with PCI, refused to allow PCI to sell the iPhone. AT&T's actions, along with its aggressive marketing to PCI customers, caused PCI's long-standing customers to terminate their relationships with PCI in order to secure the iPhone directly from AT&T.

In short, AT&T has wielded its dominant market position to secure exclusive supply arrangements for the iPhone from Apple, and in refusing to make the iPhone available for sale by its longtime distributors, AT&T has caused significant harm to PCI. The actions of AT&T demonstrate the genuine threats to competition and consumers that tend to follow the development of large, vertically integrated wireless telecommunications enterprises.

1. PCI's primary business is the sale and service of cellular services and products under its Distribution Agreement with AT&T. PCI is a retail, wholesale, and billing services operating company that performs a variety of management services for its various types of customers, including but not limited to billing, accounting, collections, staffing, payroll, and marketing services, and that provides a broad range of wireless products. PCI also sells cellular telephones, accessories and service plans, along with proprietary warranty programs and third-party insurance plans that PCI directly bills to individual consumers, businesses, and government agencies. All such products and services are sold through PCI's retail stores, known locally as Hawk Electronics, PCI's own direct sales force, PCI's own call center, and through PCI's own Internet sites. In addition, PCI's business includes the sale of cellular-related equipment and accessories, car audio and video products, and virtually all forms of consumer electronics, through PCI's wholesale distribution business unit, PCI's retail stores, and the Internet.

2. Until 2007, AT&T rarely, if ever, denied PCI the right to offer any of AT&T's services or products to PCI's own customers. In fact, PCI was required by contract to offer the same products and services as those offered by AT&T.

3. In 2007, following the merger of AT&T Wireless and Cingular Wireless, AT&T greatly increased the number of AT&T retail stores in PCI's service area, to the point of effectively surrounding PCI's stores. At the same time, AT&T reduced the number of Cingular/AT&T retail stores in other market areas.

4. In late June, 2007, Apple, Inc. introduced the iPhone to American markets, in an exclusive distribution and wireless services partnership with AT&T. AT&T was at the time, and remains today, the only authorized provider for the iPhone.

5. AT&T has aggressively marketed, advertised, and promoted its products and services through direct contact with customers, and even has begun offering its services and products directly to PCI's customers. AT&T also has wrongfully refused to make available through PCI certain of its products and services, which in turn has induced hundreds of PCI's subscribers per month to obtain such products and services directly from AT&T. AT&T's actions have adversely and materially affected PCI's business, and have deprived wireless consumers of the benefit of a competitive market.

6. AT&T's actions clearly demonstrate the competitive harms caused by large vertically integrated businesses.

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PCI respectfully requests that the Federal Communications Commission take any and all such actions that will limit the damage that such vertically integrated organizations can cause to competitors, consumers and the American economy.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brett H. Freedson", with a long horizontal flourish extending to the right.

Brett Heather Freedson

Counsel to Progressive Concepts, Inc.