

**WRITTEN STATEMENT**

**of**

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## INTRODUCTION

Good morning Mr. Chairman and members of the Subcommittee. Thank you for allowing this opportunity to testify before you today regarding a number of important issues related to competition in the wireless industry. I have been in the wireless industry for over twenty (20) years with Cellular South, the nation's largest privately-owned wireless carrier serving all of Mississippi and portions of four other southeastern states.

In my years in the wireless industry, I have seen the duopolistic world of the early cellular licenses, the rise in wireless competition as a result of the later spectrum auctions, and the growth and innovation throughout the industry as a result of the Telecommunications Act of 1996. However as I sit before you today, I am convinced that, unless things change quickly, the industry is coming full-circle and progressing – or, rather, regressing – into a duopoly once again.

The Justice Department broke up the AT&T monopoly in 1983. In 1993, the wheels were set in motion for spectrum auctions that would open the duopoly in wireless markets to competition. In 1996, Congress rewrote the Telecommunications Act to further promote competition in telecommunications services. Today, however, the industry is trending back towards consolidation and the days of Ma Bell. The largest carriers continue with acquisition after acquisition – Centennial Wireless, Alltel, Rural Cellular Corporation, Dobson Communications, just to name a few – with seemingly no interest from regulators in the effects that this consolidation has on the market.

Today over ninety percent (90%) of the wireless market is in the hands of AT&T Wireless, Verizon Wireless, Sprint Nextel and T-Mobile. Combined, AT&T Wireless and

Verizon Wireless have approximately sixty-five percent (65%) of the market. This should come as no surprise after the parade of acquisitions over the past several years.

One reason that this is a problem is that the largest carriers use their market power to prevent competitors from having access to devices and roaming. If this trend continues, and I believe it will without intervention from Congress, then there will once again be a duopoly in the wireless industry. Our country's banking and finance policy mistakenly believed that free reign in the marketplace with little oversight was the best course of action and that certain institutions were simply too big to fail. This reasoning will lead to the same market failures in the wireless industry. Congress must take action now to ensure that the wireless industry remains the competitive and innovative marketplace that consumers have come to expect.

## **I. EXCLUSIVE AGREEMENTS FOR DEVICES**

One effect of the market concentration described above is that the largest carriers now use their market power to demand (and receive) long-term exclusive agreements with device manufacturers for the latest and greatest handsets. Exclusivity agreements prevent other carriers from acquiring these devices and are particularly harmful to wireless consumers.

Wireless service has evolved from a market where consumers were primarily concerned with attractive monthly plans and a provider's network, to a market where a carrier's wireless devices reign supreme. Cellular South and other regional and rural carriers have competed with the largest carriers for years on issues such as network quality, network coverage and price. These are all issues that are within our control. If we lose a customer because we don't offer the right plan or because we drop too many calls, that blame falls squarely on our shoulders – and I can and will fix that problem. However, regional and rural carriers are unable to compete on devices because the largest carriers lock up devices in exclusivity agreements which ensure that

those devices will not reach the subscribers of smaller carriers. Put simply, regional and rural carriers cannot gain access to the latest, cutting-edge devices which puts us in the impossible position of competing in an area that our competitors control. Focus groups of customers who have left Cellular South for the largest carriers repeatedly say that they are buying the device, not the network and certainly not the company.

Historically, exclusive agreements lasted three (3), maybe even six (6), months. Agreements of this length were certainly obstacles to competition, but they were not the anti-competitive weapons that today's long-term agreements have become. Today, handset manufacturers tell us that the largest carriers are demanding more as well as longer exclusive agreements for devices. The largest carriers are increasingly demanding "lifetime" exclusives on handsets. At least one large carrier is demanding that all of the devices it accepts from a particular manufacturer be provided under exclusive agreements. Another large carrier has convinced a device manufacturer to provide all of the handsets that it makes to that carrier exclusively. Manufacturers know that they must cater to the largest carriers in order to secure any kind of market share in the U.S. market. Increasing demands for customization and exclusive handset arrangements by the largest carriers further strain suppliers' limited resources to the point that smaller carriers are precluded from any relevant products.

The latest example of this is in the emerging area of netbooks. Netbooks are devices that fit somewhere between a handheld personal digital assistant ("PDA") and a laptop computer. These devices offer Internet access and common laptop functionality, but are priced at a level at or near most top-of-the-line PDAs. These devices will offer the perfect solution for a number of wireless users who find PDAs too small for extensive use, but find a laptop to be too cumbersome to be convenient. We have been in touch with several netbook manufacturers and,

as you may have guessed, the largest carriers are already demanding exclusive models of these wireless devices.

What would happen if merchants sold computers that only worked with one Internet service provider? Imagine a world in which Macintosh computers only worked on AT&T's DSL. That's exactly the world we live in with the iPhone and Apple's exclusivity agreement with AT&T Wireless. If you want that handheld computer, you must have service through a particular wireless voice and Internet provider. Of course, as I mentioned earlier, the largest carriers are now trying to do this in the netbook market as well.

As another example, what would happen if a pharmaceutical company developed a lifesaving drug that could be purchased exclusively from one pharmacy chain in the country, but you didn't have a branch of that chain in your city? That is similar to what consumers experience without access to some of the latest devices. Potentially lifesaving applications are being developed for devices that are exclusive to a single carrier. If that carrier doesn't serve your area, then you are simply out of luck.

#### **A. Consumers are Collateral Damage**

This battle among the industry titans has left consumers as collateral damage because device manufacturers are prohibited from providing the cutting-edge devices that consumers desire to the smaller carriers. Vast portions of America are not served by any of the largest carriers, so Americans in these areas are prohibited from acquiring the newest and most innovative devices. Even in areas that are served by one of the largest carriers, consumers are not free to choose the latest devices without being forced into accepting service from a particular carrier. If you live in New York City and want an iPhone, then you are obligated to be an AT&T

Wireless customer. If you live in Washington, D.C. and want a Blackberry Storm, then you will be a Verizon Wireless customer whether you want to or not.

**B. Impact on Consumers, Economic Development, Public Safety & Health Care**

If a regional or small carrier cannot get access to the latest devices, then it cannot roll out next-generation services. No carrier can justify the expense of deploying a new technology unless it can also deliver the devices necessary to make that technology work. While this is bad for the carrier, it is ultimately the consumer who pays the price for not having access to the devices necessary to use mobile broadband services. Without access to the latest devices, consumers are ill-equipped to respond to natural disasters, they cannot access many benefits of telemedicine applications, and they cannot adequately protect themselves in emergency situations. Today's advances in wireless technology will not be realized until the latest wireless handsets are available to all of rural America.

Collectively, a lack of access to the latest devices means that rural communities cannot maximize economic development. One of the first questions Toyota asked when considering building a plant in Mississippi was whether rural Blue Springs, Mississippi had access to wireless 3G (third generation) technology. Thankfully, for the town of Blue Springs and the surrounding area, that answer was "yes." However, without access to modern wireless devices, large portions of America will be left behind as the industry continues to deploy third generation or "3G" technologies and eventually deploys "4G" technology. Yesterday's economic development infrastructure meant rail and road access. Today's global economy requires wireless broadband and the latest wireless devices to compete in the global economy.

### **C. Attempts at Non-Governmental Solutions**

The situation with exclusivity agreements is bad and is only getting worse. Without action from Washington, there will be no solution. Cellular South and carriers like us have tried to find solutions to this problem without resorting to help from policymakers. We have attempted several solutions within the industry, but all have been fruitless insofar as resolving this problem.

#### **1. Device Manufacturers**

Our efforts with the equipment manufacturers have produced information, but no solution to the problem of exclusive agreements for devices. Manufacturers tell us that they would like to open their portfolios to us, but that they cannot show us a number of their devices – much less sell them to us – because the largest carriers will not allow it.

#### **2. Industry Groups**

The Cellular Telecommunications and Internet Association (“CTIA”) convened a working group late last year in an effort to resolve the device exclusivity issue. The CTIA brought large and small carriers to the table along with manufacturers, and the effort began with an early hope of promise. However, it quickly became apparent that the largest carriers had no incentive to participate, the manufacturers remained virtually silent on the matter, and the effort proved futile.

#### **3. Consolidation of Purchase Power**

One frequent response from the few carriers that profit from exclusive handset arrangements is the suggestion that smaller carriers should consolidate purchasing power in order

to gain access to cutting-edge devices. While that idea is good in theory, it does not work in practice.

The Associated Carrier Group (“ACG”) was formed a number of years ago for just this purpose. ACG has almost 30 carriers who, at this time, are exclusively CDMA service providers. For the past two years, representatives of ACG have traveled to South Korea to plead for access to cutting-edge devices, but these South Korean manufacturers have made it clear that exclusive arrangements insisted upon by the nation’s largest carriers prevent them from selling the most appealing handsets to ACG members.

Commonly, it is suggested that ACG should push for its own exclusive devices. Although ACG did have a device several years ago that was not sold by another carrier, the suggestion that small carriers join together for their own exclusive device ignores our belief that exclusives are not good for consumers nor for the industry. It is not our position that exclusives are bad because we don’t have them – it is that exclusive agreements negatively impact consumers by unfairly impeding competition.

Furthermore, it strains the limits of credibility to suggest that the smaller carriers can pool their purchasing power in order to acquire devices, because market power has been concentrated in the hands of the few largest carriers over the past several years. As discussed previously, the largest four carriers have over ninety percent (90%) of the wireless market, with AT&T Wireless and Verizon Wireless combining for approximately sixty-five percent (65%) of the market. These carriers have grown through acquisition after acquisition with seemingly no regulatory consideration given to market concentration. As a result, all remaining carriers regardless of technology have less than ten percent (10%) of the market. If the largest carriers are allowed to

continue using their market power to thwart competition, we will once again have a duopoly for wireless services.

A second flawed argument is that there are plenty of device manufacturers from whom the smaller carriers can acquire handsets that are not bound by exclusivity agreements. This argument essentially boils down the concept that smaller carriers should offer the devices that the largest carriers do not want. If the non-exclusive devices were the type of cutting-edge, game-changing devices that attracted customers, you can be assured that the mega-carriers would not be arguing that those devices are the solution to this problem.

#### **D. Efforts at the FCC**

On May 20, 2008, Rural Cellular Association (“RCA”), of which Cellular South is a member, filed a Petition for Rulemaking (“Petition”) with the Federal Communications Commission (“Commission”), asking the Commission to investigate the widespread use and anticompetitive effects of exclusivity arrangements between commercial wireless carriers and handset manufacturers, and, as necessary, adopt rules that prohibit such arrangements when contrary to the public interest.

Only the four largest carriers and one manufacturer expressed opposition to the RCA Petition. In contrast, over two hundred (200) parties representing the rest of the wireless industry and the public interest community expressed their unconditional support for RCA’s petition either individually or in groups. The message of the majority was clear: free market competition and innovation has been strangled by large carrier demands for exclusive access to the latest advanced devices.

The market is distorted when a single carrier is allowed to have a monopoly on a device. Action is needed now to restore competition in the handset market and to ensure that consumers have the option to choose both the device and the service provider that they want.

## **II. ROAMING**

On the topic of roaming, far and away the most important issue is that of automatic roaming for data services – specifically, roaming for high-speed data such as EV-DO, HSPA, and as we go forward, both WiMAX and LTE. An equally important aspect of roaming is the issue of interoperability which allows seamless transitions between networks.

### **A. High Speed Data Roaming**

When I began in this industry, roaming agreements were a natural part of doing business. Consumers came to rely on the ability to use their device wherever they happened to be, regardless of who they chose as their service provider. Roaming agreements could be negotiated in a matter of an afternoon and usually finalized within a week.

As technology has advanced in the industry, the largest carriers have begun using data roaming agreements – actually, withholding data roaming agreements – as a means to restrict competition. Today's wireless devices do so much more than just make phone calls, and new applications are being introduced every day. Consumers literally have access to the world at their fingertips with today's wireless services. However, this world is often unavailable to many consumers because the largest carriers refuse roaming agreements for high-speed data.

Regional and rural carriers offer network access in areas that the largest carriers have not and, likely, will never build out on their own. These smaller carriers do not seek these roaming agreements as a means to actively market outside their footprint because 1) that is not the goal in

seeking roaming, and 2) even if that were the goal, roaming rates are too high to make an economic case for that type of growth. Our customers travel just like the customers of the big carriers and we believe that consumers should be able to use their devices wherever they may be.

The FCC has addressed the issue of automatic roaming for voice services, but it has not taken final action on the data roaming issue. Unfortunately, there is concern at the Commission as to whether data roaming is within its powers. While we believe that the Commission has the power to resolve this issue, there is no doubt at all that Congress has the power to address high-speed data roaming obligations. By requiring carriers to provide automatic data roaming to requesting carriers that use a compatible technology, Congress can ensure that consumers never again find themselves unable to utilize the indispensable data features of their wireless device when traveling outside of their home carrier's footprint.

## **B. Interoperability**

A related matter in the roaming discussion is the issue of interoperability between wireless carriers. At its most basic, interoperability allows consumers to move seamlessly from one network to another. In other words, the networks are configured in such a manner that the consumer gets full access to the features on his or her device whether that consumer is at home, or traveling on the other side of the continent. The applications that are possible with interoperable networks are virtually limitless:

- Navigation – the ability to provide turn-by-turn directions to end users outside the home footprint.
- Tracking – the ability to track a device, package, or other shipment nationwide instead of just inside the home footprint
- Child finder – the ability to use a child's phone to find a lost child outside the home footprint

- Weather Applications – the ability to passively provide the current and forecasted weather conditions in the location where the end user is currently located. This would include severe weather alerts and warnings to move out of a storm’s path

Each day, consumers rely more and more on the data capabilities of their wireless devices. As wireless providers deploy 3G and 4G technologies, we are entering a world where even voice communications are treated like data transmissions. It is not acceptable in this era of wireless technology that there would be a roaming requirement for yesterday’s voice traffic, but not for the data services of today and tomorrow. Consumers need a solution and Congress is in the clearest position to provide it.

### **III. STATE PREEMPTION AND A NATIONAL CONSUMER PROTECTION FRAMEWORK**

Given the nature of telecommunications services – interstate service, footprints and licenses that cross civil boundaries of all sizes, etc. – there is a growing need for uniform regulation of the wireless industry. Consistent regulations can only enhance the relationship between consumers and wireless providers because consumers will be guaranteed the same protections regardless of the jurisdiction in which they live. By contrast, patchwork regulation is harmful to any industry that operates in multiple states as it can significantly raise the cost of doing business, which is passed along to consumers in the form of higher rates. To be clear, we don’t oppose appropriate consumer protection laws. Having to comply with materially different criteria from state to state, however, requires a huge investment that consumers ultimately fund without receiving any corresponding benefit from the multiple requirements. Cellular South supports the concept of a national framework of regulation for the wireless industry.

#### **IV. TOWER SITING**

Cellular South has experienced delays in the past in getting decisions on tower sites. We support the idea of a deadline by which officials must make a determination as to whether or not a tower site is approved. This has become a problem in some areas but, as carriers face buildout deadlines for recently-acquired 700 MHz spectrum, this will become an increasingly critical issue. Congress should address this problem before it becomes more acute.

#### **V. NUMBER PORTABILITY**

It is unfortunate that number portability continues to be a problem between carriers. As more and more consumers choose a wireless-only life, policymakers should ensure that landline-to-wireless porting and wireless-to-wireless porting is as expeditious as possible for the consumer. Any unnecessary delay in number porting is a disservice to the consumer.

#### **VI. BACKHAUL**

Backhaul for wireless services is an increasingly important issue in the industry. All of the traffic between handsets and towers has to go somewhere and that somewhere is the system of backhaul facilities. As wireless technologies continue to advance, usage of bandwidth is growing by corresponding leaps and bounds. Congress should examine the rules that regulate backhaul providers to ensure that these services are promoting the best interests of the consumer.

## **CONCLUSION**

As you can see, we are at a critical juncture in the wireless industry. Decisions made today will determine whether our industry becomes more consumer-friendly and innovative as a result of increased competition, or whether the trend towards a duopoly will continue and competition will be eliminated.

Although the wireless industry may no longer be in its infancy, it is no more mature than a gangly teenager. There is much innovation left to be done. There are more people of all socio-economic backgrounds and geographic locales who have yet to benefit fully from the wireless experience. Before it is too late, Congress must step in and put an end to the largest carriers' stranglehold on devices, as well as ensure full roaming access. A light regulatory touch today will prevent the re-emerging duopoly in which two companies control all the customers, all the devices, all the prime spectrum, and become "too big to fail."

Thank you again for the opportunity to be here today. I appreciate your time and your interest in these issues and look forward to discussing them here this morning. With that, I welcome any questions you may have.