

**WRITTEN STATEMENT OF**

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*on*

**AN EXAMINATION OF THE CONSUMER WIRELESS EXPERIENCE**

*before*

**COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION  
UNITED STATES SENATE**

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AT&T appreciates the opportunity to discuss the competitive dynamics of today's vibrant wireless industry and, in particular, the pro-innovation, pro-consumer model for bringing next-generation devices to the marketplace. My name is Paul Roth. I am AT&T's President for Retail Sales and Service. In that capacity, I am responsible, among other things, for ensuring that we provide the highest-quality experience possible to our wireless customers. I look forward to discussing these important matters with you.

The wireless business has been one of the great success stories in all of American business, and the wireless industry of today represents a true bright spot in a weakened economy. Now, the industry is on the brink of another huge leap forward, as wireless carriers prepare to invest in even faster networks designed to take advantage of the next round of revolutionary devices and applications. Those multi-billion dollar investments would be put at risk and discouraged, however, if, as some have urged, the government were suddenly to reverse its pro-investment, pro-competition policies and impose intrusive restrictions on these services or the way that service providers and manufacturers collaborate on next-generation devices.

## *Wireless Competition and Consumer Benefits*

Few businesses are more intensely competitive than today's wireless industry. According to the FCC's latest statistics, more than 95 percent of the U.S. population lives in census blocks with at least three competing wireless carriers, and more than half of the population lives in census blocks with at least five competing carriers.<sup>1</sup> The FCC continues to make additional spectrum available, and major new providers, such as Clearwire and the cable companies, continue to enter. As the FCC's detailed annual reports to Congress time-and-again confirm, the wireless marketplace is and will remain effectively competitive.<sup>2</sup> In fact, as a recent study shows, the U.S. enjoys the *least* concentrated wireless industry of any major industrial country.<sup>3</sup>

Because of this intense facilities-based competition, output continues to soar and prices continue to fall. There are now 270 million wireless subscribers in the United States, and in 2008 they used more than 2.2 *trillion* minutes – a tenfold increase since 2000.<sup>4</sup> At the same time, prices have declined precipitously. Revenue per minute has fallen 89 percent since 1994, and U.S. wireless prices are much lower than in any other major industrialized country in the world.<sup>5</sup>

Consumers are also getting far more value for their wireless dollars than they did even a few years ago. Carriers, device manufacturers, and operating system and applications developers

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<sup>1</sup> 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 Services*, WT Docket No. 08-27, ¶ 2 (January 15, 2009) (“*Thirteenth Report*”).

<sup>2</sup> *Thirteenth Report*, ¶ 2.

<sup>3</sup> See *The United States and World Wireless Markets: Competition and Innovation are Driving Wireless Value in the U.S.*, Presentation by CTIA-The Wireless Association at 6-7 (submitted in FCC WC Docket Nos. 09-51, May 12, 2009) (“*CTIA Study*”).

<sup>4</sup> *CTIA Study* at 4, 9.

<sup>5</sup> *CTIA Study* at 3, 9; *Thirteenth Report*, ¶ 192.

compete fiercely to provide consumers with an increasingly broad array of new features, functions and capabilities. This is especially true of wireless broadband services. Carriers have invested tens of billions of dollars in recent years to upgrade their networks to increase speeds and to support a wave of revolutionary new broadband devices and applications. Americans today do not just talk on their wireless “phones” – they surf the Internet, listen to music, send emails, edit documents, use GPS-enabled features, watch TV, play games, and much more.

The wireless industry is just beginning to tap these possibilities. Seemingly every month a new and innovative wireless device bursts onto the scene, from the Amazon Kindle – a wireless e-reading device that does not even support voice calls – to wireless mini-laptop computers, medical monitoring devices, and specialized devices tailored to the needs of particular businesses. AT&T alone currently supports specialty devices from more than 100 manufacturers. Because of this intense competition and furious pace of innovation, wireless services are transforming American life.

For its part, AT&T has responded to and, indeed, helped shape these industry dynamics by investing in its networks and offering its customers a broad array of high quality services and options. AT&T has invested \$38 billion in its wireless and wireline networks in the past two years; AT&T’s capital expenditures this year alone will exceed \$17 billion – more than any other company in America in *any* industry. AT&T has deployed 3G technology in almost 350 markets, and now has the fastest 3G network in the nation. AT&T has established thousands of Wi-Fi hot-spots across the country that provide free broadband connectivity to AT&T customers. In addition, AT&T offers an extraordinary variety of wireless devices, which give consumers a choice of capabilities and operating systems and thousands upon thousands of applications.<sup>6</sup>

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<sup>6</sup> See [www.att.com/choice](http://www.att.com/choice). iPhone users alone have downloaded over 1 billion applications from the iTunes applications store in its first year of its existence.



And, AT&T has introduced a multitude of consumer-centric policies and product options, including, just to name a few, unlimited calling plans; pro-rated early termination fees; and the freedom and capability to download virtually any application without restriction from the Internet, including the more than 4,000 applications that have been created by third-party developers who have worked with AT&T to optimize those applications for the AT&T network. In fact, it is AT&T policy that customers may use their own compatible wireless devices on the AT&T network.

This multitude of consumer benefits is due to a single factor: competition in the wireless marketplace is white hot. If government continues its thoughtful policies that allow the vibrant marketplace to work, wireless carriers will compete even harder in the coming years to build the wireless broadband networks of the future and to find ways to increase value for their customers. If, on the other hand, government were to impose a new set of restrictions on these services, carriers would be able to undertake fewer of those risky, multi-billion dollar investments – which, in turn, could well stymie any economic recovery. Neither Congress nor the FCC should try to “fix” one of the few things in the American economy that is not broken.

### ***Exclusive Handset Distribution Arrangements***

Calls for the government to dictate the terms of contracts for handset distribution between device manufacturers and carriers should be rejected. The reasons for this are simple and compelling: the current business and regulatory framework – which allows service providers and device manufactures to partner and share risks to develop the most compelling devices – ensures innovation, lower prices, and choice. Regulations that would prohibit or nullify these critical partnerships would serve only to harm consumers, as devices would devolve into the

lowest common technological denominator and the key pillars of wireless competition would evaporate.

Wireless carriers battle fiercely to attract and retain customers. Each carrier strives to differentiate its offerings from those of its rivals by offering more attractive service plans, improved coverage and service quality, innovative features and content, and a mix of handsets that it believes will best meet consumers' widely varying needs. And, as is common in highly competitive industries, wireless competitors sometimes seek to set themselves apart through exclusive offerings – *i.e.*, a wireless carrier may ink a deal with a like-minded manufacturer to be the exclusive distributor of a new handset in the hope that it will prove popular.

It is widely recognized in economics and the law that such exclusive distribution arrangements, which have been a feature of the U.S. wireless marketplace since its inception, promote innovation, product differentiation, consumer choice and competition. Exclusive handset distribution arrangements encourage the necessary collaboration that optimizes handset performance and accelerates the delivery of next-generation features. They increase a carrier's incentives to make purchase commitments and to invest in promotions, network improvements and special training of sales staff. They lower manufacturer entry barriers and serve as a key tool to maintain brand value. And, as an important form of competition, they encourage other carriers and manufacturers to do better, by improving their own handset portfolios or the prices, features and other characteristics of their existing offerings.

Against this backdrop, it should be obvious that consumers would be the ultimate victims of any prohibition on exclusive handset arrangements; indeed, there is no clearer proof of this than the iPhone arrangement, the success of which is exactly what has spawned calls for bans on exclusive arrangements. There is, quite simply, no more dramatic example of an exclusive

arrangement creating enormous benefits for all consumers. The popularity of the iPhone and its innovative features and applications has provoked an unprecedented competitive frenzy, palpably accelerating not only handset innovation, but also the pace of wireless broadband investment and applications development. Before the iPhone, mobile handheld “computers” tended to be clunky, expensive devices with traditional applications; now, the marketplace is awash with innovative devices that allow consumers to do things that no one even imagined only a year earlier and that cost consumers less than their more limited predecessors.

Indeed, not two weeks ago Palm deployed just the newest potential “iPhone killer,” called the Pre, which is provided exclusively by Sprint. Early reviews of the device are positive. Since the Pre’s entry into the market, not only has Apple announced the introduction of an upgraded iPhone – the iPhone S – that will go on sale this week, but also AT&T has reduced the price of the currently available iPhone 3G to just \$99.00.<sup>7</sup> It is the ability of carriers to partner with device manufacturers to bring to market new devices that allow for competitive differentiation that sparks the virtuous cycle of innovation and response.

With the benefit of hindsight it is easy to view the iPhone as only a great boon for AT&T and Apple. In truth, both companies risked a great deal and success surely was not guaranteed. Put differently, the success of the iPhone was not an accident; it was the culmination of a deep collaboration between AT&T and Apple that spanned years, not months, and led to revolutions in the wireless industry. One notable example of this collaboration was the ability of iPhone customers to activate their phones and initiate service simply by logging onto Apple iTunes. For customers, this was a boon, and for the industry it was a game-changer. But it only happened

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<sup>7</sup> Should there be any doubt about the importance of this price move, one need only consider its impact in Detroit, arguably the city hardest hit by the current recession. Not surprisingly, sales of all devices, including the iPhone, have been relatively harder to come by in Detroit. Once we reduced the price of the iPhone 3G to \$99.00, however, we rapidly sold out our inventory in Detroit. The point: innovations of all kinds matter, even pricing innovations. Now, the best device is a realistic option for the mass market even in economically hard hit Detroit.



because AT&T and Apple committed the money, resources and countless hours necessary to develop and synchronize the systems and software that enable it. It is highly unlikely either that Apple would have been willing or able to devote the resources necessary to enable the process with dozens or even a few providers, or that AT&T would have risked this time, talent and money, just to see the iPhone available to its competitors.

Notably, another AT&T collaboration on a wireless device evidences the very real risks of failure that faced the iPhone. AT&T teamed with Motorola and Apple to develop a robust wireless device that would also include direct access to iTunes and store up to 100 songs. The companies made significant investments, heavily marketed the device, and fully anticipated that it would be a game-changer. It was not. Despite all the effort, the Motorola ROKR E680 simply did not connect with consumers and failed in the marketplace. It also drove customer defections from AT&T, and is just one of many examples of seemingly promising but ultimately unavailing attempts to compete – examples that are rarely talked about and almost never drive calls for regulatory reform.

Thus, those now calling for bans on exclusive arrangements – and even government abrogation of existing contracts – should ask themselves whether they would be just as willing to repay wireless carriers and handset makers that took risks on new handsets that did not pan out as expected. The answer is, of course, no. And there is likewise no conceivable basis to conclude that it would be in the “public interest” to forgo future opportunities to unleash market forces through exclusive distribution arrangements: heavy-handed intervention in manufacturer and carrier choices would dramatically decrease the chances that consumers would reap the pro-competitive benefits of the next iPhone or whatever other as-yet-unimagined handset innovation is on the horizon.

Finally, even if public policy was concerned with protecting small competitors *from* competition, rather than protecting competition and consumers, claims that exclusivity prevents smaller wireless carriers from obtaining desirable handsets on terms that allow them to remain competitive are simply false. In fact, an entire industry has developed for the wholesale distribution of wireless handsets to smaller carriers. These wholesale distributors buy in bulk, operate worldwide, and plainly have the clout to obtain favorable terms for popular handsets from the scores of manufacturers that compete in the vigorously competitive global handset market. Thus, even the smallest carriers offer dozens of handsets, from basic voice phones to the highest of the high end, including “smartphones” from multiple manufacturers that include the latest features. And smaller carriers also can (and do) band together to obtain their own handset exclusives. For all of these reasons, exclusivity provides enormous consumer benefits and results in devices and innovations that would not otherwise be introduced.