

**Before The
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Petition of Rural Cellular Association for)	
Rulemaking Regarding Exclusivity)	RM-11497
Arrangements Between Commercial Wireless)	DA 08-2278
Carriers and Handset Manufacturers)	
)	

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
SUPPORTING PETITION FOR RULEMAKING**

I. INTRODUCTION

On May 20, 2008, the Rural Cellular Association (“RCA”) filed a Petition for Rulemaking with the Federal Communications Commission (“Commission” or “FCC”), asking the FCC to “initiate a rulemaking 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, consistent with its obligations under the Communications Act.”¹ A Commission Public Notice set the RCA Petition for public comment²; the due date for the comments was subsequently extended to February 2, 2009, with replies due February 20, 2009.³

¹ Rural Cellular Association, Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, RM-11497 (May 20, 2008) (“RCA Petition”) at i.

² DA 08-2278 (rel. Oct. 10, 2008), *pleading cycle established* 73 Fed. Reg. 63127 (Oct. 23, 2008).

³ DA 08-2576 (rel. November 26, 2008). The extension was granted based on the request of RCA and CTIA – The Wireless Association® (“CTIA”) for a 60-day extension of the comment and reply comment deadlines to enable the Associations and their members to continue industry discussions regarding the issues raised in the RCA Petition. with the goal of reaching an agreement among interested parties on the issues raised or, at the very least, narrowing the issues for Commission consideration. *Id.* at 1. It does not appear that any such narrowing has occurred. The comments filed by NTELOS Inc. (“NTELOS”) state that “[t]he ensuing discussions were unsuccessful in accomplishing the associations’ goals.” NTELOS Comments at [6].

Comments were filed supporting the RCA Petition by a coalition of consumer interests,⁴ and by smaller and rural cellular carriers who -- along with their customers -- are harmed by exclusivity arrangements.⁵ By contrast, comments opposing the RCA Petition were filed by the large carriers who benefit from the anti-competitive effects of such arrangements.⁶

The National Association of State Utility Consumer Advocates (“NASUCA”)⁷ hereby files reply comments in support of the RCA Petition. These reply comments will focus on responding to the arguments in the AT&T, Sprint Nextel and VZW comments, which oppose even opening a rulemaking -- regardless of its results. The opponents’ comments lack basis, despite their bulk.⁸

⁴ The Ad Hoc Public Interest Spectrum Coalition (“PISC”).

⁵ The Blooston Rural Carriers (“Blooston”); California RSA No. 3 Limited Partnership d/b/a Golden State Cellular (“Golden State”); Cincinnati Bell Wireless LLC (“CBW”); Corr Wireless Communications, LLC (“Corr”); Iowa RSA 1 Limited Partnership, d/b/a Cellular 29 Plus and Iowa RSA 2 Limited Partnership d/b/a Lyrix Wireless (“Cellular 29/Lyrix”); Jim Chen (“Chen”), on behalf of Cellular South, Inc.; MetroPCS Communications, Inc. (“MetroPCS”); Nex-Tech Wireless, LLC (“Nex-Tech”); NTELOS; Rural Telecommunications Group, Inc., the Organization for the Protection and Advancement of Small Telecommunications Companies and the National Telecommunications Cooperative Association (“RTG/OPASTCO/NTCA”); South Dakota Telecommunications Association (“SDTA”); TCA Inc. (“TCA”). Corr filed comments before the original due date and filed further comments on the revised due date.

⁶ AT&T Inc. (“AT&T”); Sprint Nextel Corporation (“Sprint Nextel”); Verizon Wireless (“VZW”). The Telecommunications Industry Association (“TIA”) also filed comments.

⁷ NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

⁸ The combined AT&T, Sprint Nextel and VZW comments “out-page” by far the comments supporting the rulemaking.

II. PROCEDURAL ISSUES

To begin, Sprint Nextel asserts that the Petition should be dismissed because it is “procedurally defective.”⁹ This is first, because the petition did not include the rules that RCA would like to have adopted, and second, because the petition supposedly did not indicate how RCA’s interests are affected.¹⁰ As to the first point, this rule is honored more in the breach than in the observance, by many practitioners¹¹; indeed, the Commission itself seldom includes the text of rules in its Notices of Proposed Rulemaking.¹² As to the second point, RCA’s entire petition shows how RCA’s members’ interests are affected by the practice of handset exclusivity.¹³

III. COMPETITION IN THESE MARKETS DOES NOT REMOVE THE NEED FOR REGULATION OF EXCLUSIVITY ARRANGEMENTS.

A. *Wireless in general*

Fundamental to the oppositions is the proposition stated by AT&T that “[t]he U.S. wireless business is universally recognized as one of the most intensely competitive industries of any kind anywhere.”¹⁴ This hyperbole serves little purpose, especially given the facts as shown by many of the comments: The U.S. wireless business is concentrated and growing more so. As Blooston states,

⁹ Sprint Nextel Comments at 2.

¹⁰ Id.; see also VZW Comments at 28-31.

¹¹ See, e.g., CTIA Petition for Rulemaking Regarding the Transition of Part 22 Cellular Services to Geographic Market-Area Licensing, RM-11510 (filed October 8, 2008).

¹² See, e.g., *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, et al., Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. November 5, 2008).

¹³ See, e.g., RCA Petition at ii (“For the nation’s five largest wireless carriers demanding these exclusive arrangements, the end result is a significant and unfair advantage over competitors.”).

¹⁴ AT&T Comments at 1.

[T]he so-called “Big 5” carriers – *i.e.*, AT&T, Verizon Wireless, Sprint Nextel, T-Mobile and Alltel – are now the “Even Bigger 4” and the competitive gap between these nationwide behemoths and the rest of the wireless industry (especially the small and independent wireless carriers that serve rural America) has only grown larger.¹⁵

By all measures, this is a concentrated market. As Professor Chen states, this is “a market in which three providers (Verizon Wireless, AT&T, and Sprint Nextel) command more than three-quarters of all wireless telephone subscribers in the United States....”¹⁶ Including the four biggest carriers, MetroPCS points out that

[a]s of December 31, 2007, the Big-4 nationwide carriers (AT&T, Verizon Wireless, Sprint Nextel, and T-Mobile) accounted for approximately 92.2% of all wireless telephone subscribers in the United States. Since December 31, 2007, there also has been significant additional consolidation in the wireless industry, including the mergers of T-Mobile and SunCom, Verizon Wireless and Rural Cellular Corporation, and most recently, Verizon Wireless and Alltel Wireless. These mergers have increased the percentage of wireless telephone subscribers accounted for by the Big-4 carriers to well over 92.2%. In addition, on November 7, 2008, AT&T announced its plans to purchase regional wireless provider Centennial Communications Corp., a wireless provider with roughly 1.1 million wireless subscribers.¹⁷

Indeed, as the Commission itself has reported, “the HHI ... in this market is 2674 -- highly concentrated.”¹⁸ CBW asserts correctly that there is “a competitive disparity that grows ever greater with every wireless carrier merger.”¹⁹

Therefore, as MetroPCS states, “At this point, the free market for handsets no longer operates properly as a result of the recent consolidation in the wireless industry.”²⁰ This refutes

¹⁵ Blooston Comments at 2; see also NTELOS Comments at [1], [5]. See New York Times, “AT&T Said to Seek Verizon Wireless Assets” (February 4, 2009).

¹⁶ Chen Comments at 13; see also PISC Comments at 2.

¹⁷ MetroPCS Comments at 5 (citations omitted).

¹⁸ MetroPCS Comments at 3, n.5, citing *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 08-27, DA 09-54, Thirteenth Report at 6 (reI. Jan. 16, 2009).

¹⁹ CBW Comments at 3.

²⁰ MetroPCS Comments at 1-2.

the argument of the “big guys,” corresponding to their argument that the service market is competitive, that the market for handsets is also or even more competitive.²¹

B. The handset market

Indeed, the comments provide ample evidence of market failure for handsets, especially for the newer feature-laden handsets that are increasingly the focus of consumer interest.

Handsets are a crucial factor in consumer choice of wireless providers:

[A] recent study commissioned by Google Inc. found that more than one in two wireless shoppers said handsets played a major role in their purchase decisions. ‘Specifically, 24% said their decision-making was **solely** a function of the handset; 28% said both handset and carrier influenced their decisions.’ Thus, consumers who want a particular exclusive handset end up being forced to purchase it from the particular carrier which has the exclusive right to market the handset.²²

NTELOS describes the practical impact of these trends:

Although NTELOS offers a wide range of plans and services, a critical part of customers’ buying decision is based on the handsets that NTELOS can offer them. Consumers are bombarded by advertisements from the larger carriers touting the benefits of exclusive handsets. Although NTELOS offers handsets with similar features, it is an uphill battle to convince consumers to try a handset other than those that are heavily advertised. Consequently, even with very competitive rate plans and services, NTELOS loses a significant number of sales opportunities because we are unable to offer the exclusive handsets.²³

The RCA Petition contained an exhibit listing exclusivity arrangements for the larger carriers.²⁴ RCA also noted smaller carriers’ difficulties in obtaining “the most popular handsets,” even where there is ostensibly no exclusivity arrangement.²⁵

²¹ See AT&T Comments at 15-16; VZW Comments at 11-15.

²² MetroPCS Comments at 6 (citation omitted, emphasis added); see also CBW Comments at 4.

²³ NTELOS Comments at [4].

²⁴ RCA Petition, Appendix A. Notably, neither AT&T, nor Sprint Nextel, nor VZW, all of which are identified on the RCA Appendix, challenged these claims of exclusivity.

²⁵ RCA Petition at 3.

The comments identify issues for specific carriers: MetroPCS notes its “difficulty securing the newest phones from LG, RIM and others.”²⁶ TCA identifies problems with the T-Mobile Android phone.²⁷ RTG/OPASTCO/NTCA provide a litany:

RTG, OPASTCO and NTCA members have encountered difficulties in acquiring handsets desired by their customers, including the iPhone; BlackBerry; Motorola Q; LG Voyager VX1000, Shine, Invision, Incite, CU515, CE110, Chocolate, Voyager, Rumor/Scoop, DARE and enV2; UTStarcom G’Zone Type-S; Motorola KRAVE; Palm Centro; and Samsung BlackJack, SideKick I, SideKick II, Beat, T429, T729, T439, Blast, Behold, Epix and 737.²⁸

As Professor Chen states, “[E]xclusivity arrangements now dominate the marketplace for advanced handsets. Eight of the ten most popular handsets in November 2008 were handcuffed by an exclusivity arrangement to a single carrier.”²⁹

Professor Chen also states,

Handset exclusivity arrangements corrode the fundamental principles that have given rise to competition in the wireless industry: consumer choice, competitive and technological neutrality under law, evenhanded regulation, and a culture of technological innovation that is productive to the very extent that it is unpredictable. By definition – by their very intent and design – handset exclusivity arrangements eliminate all choices but one in the market for the “must-have” devices that are now driving consumer demand and preferences in the radically changed wireless industry. To argue that consumers have a nominal choice among these devices – for example, the iPhone and other touchscreen handsets such as the Samsung Instinct – is effectively to concede the market for wireless carriage to no more than four large carriers.³⁰

That is not a concession this Commission should make.

²⁶ MetroPCS Comments at 8; see also Chen Comments at 8-9.

²⁷ TCA Comments at 2-3.

²⁸ RTG/OPASTCO/NTCA Comments at 2.

²⁹ Chen Comments at 9 (citation omitted).

³⁰ Chen Comments at 42; see also Golden State Comments at 2-3.

IV. HANDSET EXCLUSIVITY IS LIMITED TO THE U.S. MARKET.

The big carriers' attempts to inflate the benefits of exclusivity arrangements are also belied by their limitation to the U.S. market. As Professor Chen states,

Handset exclusivity arrangements are the outgrowth of a retailing anomaly that sets the United States apart from the rest of the industrialized world. Roughly 70 percent of mobile phones in Europe are sold independently of a wireless carrier; in some Asian market, that figure reaches approximately 80 percent. ... By contrast, between 90 and 95 percent of mobile phones in the United States are sold by carriers.³¹

Indeed, as Corr notes, recently the French Competition Council provisionally suspended an exclusivity arrangement for the iPhone between Apple and France Telecom.³²

V. CONSUMERS ARE HARMED BY EXCLUSIVITY ARRANGEMENTS.

Sprint asserts that there is no evidence that consumers who cannot buy these handsets are harmed.³³ On the whole, consumers definitely **are** harmed by exclusivity arrangements.

As MetroPCS states, "The market power of the dominant nationwide wireless carriers... has been allowed to grow to the point where they can dictate exclusivity terms to handset manufacturers that prevent customers served by small, rural and regional carriers and new entrants from receiving the newest handsets."³⁴ More generally, "[h]andset exclusivity arrangements prevent consumers from purchasing a new phone and using it with service from the wireless provider of their choice, without waiting for the termination of the initial contract (by

³¹ Chen Comments at 3-4; see also PISC Comments at 3, n.6.

³² Corr Further Comments at 1-2.

³³ Sprint Nextel Comments at 7-9.

³⁴ MetroPCS Comments at 2.

which time the phone is widely considered obsolete) or paying a hefty ‘early termination fee.’”³⁵

This frustration of consumer desires is a clear harm from the exclusivity arrangements.

Further, as a perfect example,

[t]he exclusion of the iPhone from broad swaths of the United States illustrates this phenomenon. Thanks to an exclusivity arrangement confining the iPhone to AT&T, consumers in Alaska, Arizona, Colorado, Idaho, Kansas, Maine, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, South Dakota, Utah, Vermont, West Virginia, and Wyoming have little or no access to the most coveted smartphone in today’s marketplace. Alaska residents who tried to buy the iPhone out-of-state – initially AT&T provided only roaming service in Alaska and operated no retail outlets there – had their service canceled under contractual terms requiring subscribers to live in a community served directly by AT&T and to spend no more than 40 percent of their minutes roaming on non-AT&T networks.³⁶

Exclusivity arrangements raise the specter of “tying,” often seen as a source of consumer harm: “When consumers are required to purchase wireless service from that carrier just so that they can obtain that device, it has the impact of a tying arrangement. Antitrust law has long recognized that tying arrangements can be harmful to consumers, and must be carefully evaluated for anticompetitive impact.”³⁷ These arrangements “steer[] subscribers away from the nationwide carriers’ competitors, not on the basis of price or service, but strictly on access to devices that would be available through other vendors (including unaffiliated equipment dealers as well as competing wireless service providers) in a market not distorted by the large carriers’ oligopsonistic dominance of the market for handsets.”³⁸ Finally, as Professor Chen also notes, “[A]rrangements that commit equipment manufacturers to design smartphones for a single

³⁵ PISC Comments at 4.

³⁶ Chen Comments at 12. Nex-Tech focuses on the unavailability of the iPhone in its territory in Kansas, one of the states cited by Professor Chen; RTG/OPASTCO/NTCA confirm for North Dakota, South Dakota and Montana. RTG/OPASTCO/NTCA Comments at 3, n.6. Professor Chen also notes that “[i]t remains striking that it took the elimination of an independent wireless carrier [through AT&T’s acquisition of Dobson] to bring the iPhone to any part of Alaska.” Chen Comments at 13.

³⁷ Blooston Comments at 6.

³⁸ Chen Comments at 10.

purchaser reduce each manufacturer's incentive to develop innovative features that would optimize consumer value across wireless networks."³⁹

VI. SMALLER CARRIERS ARE ALSO HARMED BY EXCLUSIVITY ARRANGEMENTS.

Fundamental to AT&T's, Sprint Nextel's and Verizon's opposition to the RCA Petition is their assertion that rural carriers are not harmed by exclusivity arrangements.⁴⁰ This is supposedly (as previously discussed) because the rural carriers have adequate access to handsets, because of the competition within the handset market, and because the carriers can combine forces to get access to handsets.

But as discussed above, it is the newest, most advanced handsets that customers want; those are the handsets that the rural carriers have difficulty with.⁴¹ As TCA states, "Many of TCA's clients, like the members of RCA, and, TCA surmises, almost all small and mid-sized wireless providers, have experienced difficulty in providing for their customers the 'latest and greatest' handsets. Often, even exceptional efforts by small wireless providers are met with failure."⁴² And as Blooston asserts,

Most recently, representatives of Sprint Nextel acknowledged that the company's poor earnings in the 3rd Quarter of 2008 – and significant loss of customers - was due in large part to the strong appeal of the iPhone. And this came in spite of Sprint's own exclusive partnership with Samsung for the Instinct touch-screen phone, which features internet applications much like the iPhone. Verizon Wireless is able to compete with AT&T and Sprint because it has an exclusive arrangement for its own touch-screen device, the BlackBerry Storm 9530. Rural carriers have access to none of these coveted devices, and are finding it

³⁹ Id.

⁴⁰ AT&T Comments at 5, 22-23, 24-25; Sprint Nextel Comments at 9-11; VZW Comments at 15-20.

⁴¹ See Chen Comments at 15.

⁴² TCA Comments at 1.

increasingly difficult to maintain customer loyalty based on their superior local service alone.⁴³

CBW's comments show the need of smaller carriers -- not just rural carriers -- for the advanced handsets that are subject to the exclusivity arrangements.⁴⁴

AT&T touts the existence of handset wholesalers such as Brightpoint, which "handled nearly 80 million handsets in 2007 (many more than any U.S. wireless carrier), and expects to handle up to 90 million handsets in 2008."⁴⁵ AT&T fails to mention, however, that this is a worldwide number.⁴⁶ Stateside, however, "even the combined purchasing power of industry consortiums such as the Associated Carrier Group, LLC, does not approach that of the nationwide carriers."⁴⁷

The negative impact on smaller wireless carriers also translates into negative impacts on consumers: "Handset exclusivity arrangements threaten the ability of Tier II and Tier III wireless carriers to compete effectively with nationwide carriers and their ability to provide service in remote and sparsely populated areas that are not adequately served by the nationwide carriers."⁴⁸ As Blooston further explains, "If smaller rural carriers are forced out of business by the loss of customers in the few populated portions of their service areas (a reality that is growing more possible in today's fragile economy), many of the most remote areas will lose access to any type of wireless service."⁴⁹

Another crucial issue is raised by the comments. It appears that the lack of access to these handsets caused by exclusivity also impairs the smaller carriers' ability to comply with

⁴³ Blooston Comments at 3.

⁴⁴ CBW Comments at 5-6.

⁴⁵ AT&T Comments at 25.

⁴⁶ See <http://cell.client.shareholder.com/events.cfm>, at 3, 18.

⁴⁷ Chen Comments at 13; see also NTELOS Comments at [5-6].

⁴⁸ Blooston Comments at 1.

⁴⁹ Id. at 4.

various FCC mandates.⁵⁰ This also harms the consumers whom the FCC requirements were designed to benefit and protect.

VII. THERE ARE NO SIGNIFICANT BENEFITS FROM EXCLUSIVITY ARRANGEMENTS.

The big carriers all extol the benefits of their exclusivity arrangements with handset manufacturers.⁵¹ Their presumption is that the “whiz-bang” handsets would not have been developed or produced without such arrangements. An example of the hyperbole surrounding this issue can be found in a Progress on Point paper of the Progress & Freedom Foundation, where exclusivity arrangements are described as “the business model that made the iPhone possible.”⁵²

AT&T cites its supposed involvement in the development of the iPhone.⁵³ Yet it should be clear that such was not the case. As PISC states,

Consider that the iPhone -- the most innovative wireless device in recent years -- was produced under truly unique circumstances where, thanks to the daunting market power of the device manufacturer Apple, AT&T was unable to exert any influence over the design of the device. The iPhone is the exception that proves the rule—carrier control over wireless device design restricts innovation. Hopefully the success of the iPhone will encourage other device manufacturers to take their chances and resist carrier influence over device design, but nearly two years after the iPhone’s release, none have yet followed suit.⁵⁴

⁵⁰ Id. at 5; CBW Comments at 6; Corr Initial Comments at 3-4; MetroPCS Comments at 10-12.

⁵¹ AT&T Comments at 2, 7, 17-21; Sprint Nextel Comments at 11-13; VZW Comments at 3, 20-28.

⁵² Barbara Esbin and Barin Szoka, “Exclusive Handset Prohibitions: Should the FCC Kill the Goose that Laid the Golden iPhone?” (June 2008) at 1, accessible at <http://www.pff.org/issues-pubs/pops/2008/pop15.8exclusivehandsetdeals.pdf>.

⁵³ AT&T Comments at 4, 19-21.

⁵⁴ PISC Comments at 5. The footnote that follows the first sentence of the quotation provides the following citations: “Leslie Cauley, *AT&T: 'We're all about wireless'*, USA TODAY, July 31, 2008, available at http://www.usatoday.com/tech/wireless/phones/2008-07-31-att-iphone-stephenson-apple_N.htm (“AT&T, he notes, is “renowned for the amount of control” it typically exercises over new products. With the iPhone, however, “AT&T essentially surrendered to Apple.””); Fred Vogelstein, *The Untold Story: How the iPhone Blew Up the Wireless Industry*, WIRED, Jan. 9, 2008, available at http://www.wired.com/gadgets/wireless/magazine/16-02/ff_iphone

It should also be clear that none of these purported benefits are exclusive to exclusivity arrangements. The arrangements are a business decision; they are not fundamental to improvements from the consumers' perspective.

Professor Chen sums the matter up concisely, having enumerated the harms: "There simply are no countervailing consumer benefits from handset exclusivity arrangements."⁵⁵

VIII. THE LEGAL BASIS FOR A BAN ON EXCLUSIVITY ARRANGEMENTS

Finally, AT&T, Sprint Nextel and VZW all argue that the Commission lacks legal authority to regulate arrangements between wireless carriers and handset manufacturers.⁵⁶ Clearly, the FCC's authority over the manufacturers is limited, but the authority over the carriers extends to the types of devices that the manufacturers can supply to the carriers (at least if the carriers want customers to be able to buy them). For example, although manufacturers are free to produce handsets that do not have 9-1-1 capability that is effective even when service has been terminated, wireless carriers are not free to sell those handsets to their customers.⁵⁷

Professor Chen provides a detailed and expansive review of the Commission's authority to regulate the arrangements between wireless carriers and handset manufacturers, and

("Apple retained complete control over the design, manufacturing, and marketing of the iPhone. Jobs had done the unthinkable: squeezed a good deal out of one of the largest players in the entrenched wireless industry.")"

⁵⁵ Chen Comments at 43.

⁵⁶ AT&T Comments at 6, 27-36; Sprint Comments at 13-20; VZW Comments at 2, 4-11.

⁵⁷ See <http://www.fcc.gov/cgb/consumerfacts/wireless911srv.html>.

specifically to prohibit exclusivity arrangements.⁵⁸ Professor Chen also shows why such regulation is in the public interest.⁵⁹

IX. CONCLUSION

Once again, Professor Chen provides an effective summation for the issues here:

Handset exclusivity arrangements between mobile device manufacturers and wireless carriers have a wide range of anticompetitive, discriminatory effects on consumer welfare and the national interest in competition and technological innovation in all facets of the wireless industry. These arrangements fall within the jurisdictional reach and regulatory responsibility of the Federal Communications Commission. The Commission should ban the enforcement of existing handset exclusivity arrangements and the execution of new arrangements.⁶⁰

NASUCA agrees.

Respectfully submitted,

Charles A. Acquard
Executive Director
NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

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⁵⁸ Chen Comments at 18-29; see also PISC Comments at 6-7. VZW also argues that prohibiting handset exclusivity goes against Congress' generalized intention for a deregulated wireless industry. VZW Comments at 4, 31-34. In this situation, as in many others, the particularized public interest trumps such vague expressions of Congressional intent.

⁵⁹ Chen Comments at 29-44.

⁶⁰ Id. at 18.