

June 16, 2009

Senator Jay Rockefeller  
Chairman

Senator Kay Bailey Hutchison  
Ranking Member

Dear Senators,

Our understanding is that the Commerce Committee hearing tomorrow, “The Consumer Wireless Experience” will focus on exclusivity agreements in business.

Our organization, the Institute for Policy Innovation (IPI) is a twenty-two year old market-oriented public policy research institute based in Texas. IPI does not lobby, we do not represent clients, and we do not advocate the passage of specific legislation.

We do, however, advocate policies that stimulate economic growth. We have observed that a robust marketplace leads to innovation and benefits both producers and consumers, and markets are facilitated by allowing businesses to freely compete and to have their property rights protected, including the right to enter into contracts with their property.

Unfortunately, from time to time, some companies seek to use the government to gain a perceived advantage over a competitor through regulation or legislation—disrupting the innovation and benefits of the marketplace. This is the worst example of rent-seeking behavior.

As the Joint Economic Committee reported, “Politically-created rents are very valuable to the people who are fortunate enough to have received them. To maintain these privileges, special interests will hire lobbyists, make political contributions, and buy advertisements. Other special interests compete for these privileges in the same manner. These efforts to influence the political process for economic gain are called rent seeking.” Or these marketplace competitors operate in the reverse where the same interests seek to tear down another business by spurring government intervention. The report continued, “Seekers of economic privilege are emboldened by past successes, so they pressure for additional assistance. The sum total of all these demands hobbles the American economy.”

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And so it is with those who would push to have the government intervene and vitiate contracts between handset makers and service providers. As is apparent, exclusivity agreements are commonplace in our economy across all industry sectors. Whether certain movies released in a limited venue, certain groceries offered at certain grocery stores, or particular electronics available in limited locations. The fact is that exclusivity agreements are commonplace in business.

If there are inquiries into the wireless market, the inquiries should focus on investigating how the vibrant competitive nature of it could be transferred to other industries. Competition is undeniable, with hundreds of handsets, with hundreds

of plans available from a variety of service providers covering thousands of markets, and there are scant signs of anything that could be construed to be “consumer harm.” In this environment some in the industry will not be able to compete as ably as others. This is the reality of a market economy.

A letter sent earlier this week by some in the Senate asked the FCC to review exclusive arrangements regarding mobile handset technology between wireless carriers and cell phone makers and to discover how they affect competition and choice in the marketplace. The answer is simple—companies providing products desired by consumers will show up as having done quite well, while those that do not innovate, and package quality service with quality products will fair poorly regardless of size or regional reach.

In our mind, the question should be: Is there a key economic principle involved, or is this just the case of opponents “ganging up” on a particular exclusive contract for a particular highly-desirable product? If a principle is involved, should it be extended across the entire economy? If not, then we would suggest that no principle is involved, but rather simply raw exercise of political pressure.

Facing tough competition, or even outright failure, the answer should not be turning to the government for a bailout or favor. The wireless industry is an example of incredible innovation, competition, and consumer benefit. Government agencies should recognize this rather than interrupt it.

We would be delighted to further share our perspective with you as you consider this legislative initiative.

Sincerely,

A handwritten signature in black ink, appearing to read "Bartlett D. Cleland". The signature is fluid and cursive, with a prominent initial "B".

Bartlett D. Cleland  
Director  
IPI Center for Technology Freedom

cc: Members of the Senate