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United States Senate
WASHINGTON, DC 20510-3703

May 25, 2010

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Genachowski,

I write to call upon the Federal Communications Commission to immediately conduct an investigation into Early Termination Fees (ETFs) for wireless devices, to help determine the costs that wireless providers are attempting to offset through such fees. The nation's largest wireless carriers claim that these ETFs, which can now be as high as \$350, are in place primarily because of the subsidized price charged to consumers when they initially purchase a phone from their wireless carrier. Unfortunately, current data collected by the FCC does not include information about pricing structures for wireless devices. Consumers are in the dark about how much they are paying for their wireless device, regardless of whether they are subject to an ETF.

Given Verizon Wireless' response to the FCC's 2009 inquiry regarding ETF structures for "advanced devices," it appears that the cost of these termination fees are based on much more than recouping the wholesale cost or retail value of the wireless device. In its response to the FCC inquiry, Verizon stated that, "the ETF is not limited to the recovery of the wholesale cost of the device over the life of the contract... the ETF partially compensates Verizon Wireless for all the costs and risks of providing service, which include advertising, commission, store costs, and network costs." Industry's responses to the FCC's inquiry strongly suggest that ETFs are designed to socialize the costs of devices among all of a firm's wireless subscribers. The recent announcement by the nation's largest wireless providers that their ETFs will substantially increase conspicuously coincides with the anticipation that new smart phones will be on the market early this summer. It is unclear whether these new fees are related to the expense of the new smart phones, or whether they are designed to limit a firm's uncertainty about the marketplace.

The ETF seems to have little basis on the cost of the phone that a consumer chooses to buy. The obscure manner in which ETFs are constructed does little to benefit consumers or competition in the marketplace. The pricing structures that wireless carriers employ blur the line between the price of a handheld device and the voice and data service. In conducting its investigation, I ask that the FCC also determine to what extent monthly service charges for voice and data communication are established to finance the costs of wireless devices across all of the carrier's subscribers. The wireless marketplace is now dominated by only a few national providers; it would be valuable to know whether any of them reduce their monthly service fees once costs associated with a subscriber's handheld device are recouped.

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Mobile communication is now ubiquitous in America – the wireless industry enjoys a penetration rate of 90 percent and cellular networks are primary means of telephonic communication for over a third of American households. It is hard to see how consumers and competition can drive innovation in the marketplace when consumers must choose their wireless carrier based upon the devices they offer, and must stay with a sub-optimal carrier in order to avoid exorbitant exit fees.

I appreciate the inquiries the FCC has recently made regarding this issue and believe that it raised appropriate and timely questions. To more clearly understand ETFs and their role in the wireless market, the FCC, Congress, and the American public would benefit from understanding the pricing structures employed by wireless carriers to finance subscriber handsets.

Sincerely,

A handwritten signature in cursive script that reads "Ron Wyden".

Ron Wyden
United States Senator