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June 16, 2011

The Honorable John D. Rockefeller IV
Chairman
Committee on Commerce, Science and Transportation
United States Senate
Washington, DC 20510

The Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science and Transportation
United States Senate
Washington, DC 20510

Dear Chairman Rockefeller and Ranking Member Hutchison:

For millions of Americans, the smartphone is becoming a necessary element of everyday life. Smartphones account for approximately one-third of the 300 million mobile phone subscriptions in America, and adoption is accelerating.

Consumers are lucky that the Federal Communications Commission had the foresight to recognize this revolution in connectivity ahead of time. In 2007, a bipartisan Commission adopted a minimal but significant set of consumer protections on a portion of the spectrum that is used for mobile broadband. The obligations, which govern what is known as the Upper 700 MHz C Block of spectrum, were designed to protect subscribers and promote the innovations that would drive consumer demand for these services.

At the time, Congressman Edward Markey compared the potential of this policy to the historic *Carterfone* decision, which “resulted in...incredible innovation and [was] an unquestioned policy success.” He recognized that the rules provided “a rare chance to foster similar innovation in the wireless marketplace.”

As then-FCC Chairman Kevin Martin explained, the rules should ensure that “[c]onsumers will be able to use the wireless device of their choice and download whatever software they want onto it.”

But the Commission’s policy of protecting innovation and consumers is now in jeopardy.

For consumers who need frequent access to the Internet away from their home or office, or who can’t afford numerous separate broadband connections, the ability to turn their smartphones into mobile hotspots is an important feature. This process – known as “tethering” – allows a subscriber to connect a laptop to the Internet using his mobile data service.

Consumers value the ability to tether, for the convenience and utility it can provide. In fact, wireless carriers have charged up to \$30 per month for the service. In response, software entrepreneurs have developed free and low-cost applications that provide the same functionality. But if a consumer chooses to use a third-party tethering application, he will not subscribe to his carrier's tethering service. As a result, these innovative applications threaten a carrier's potential revenue stream.

Three of the four major wireless carriers – including Verizon Wireless – now limit or restrict their subscribers' access to free tethering applications. In May 2011, numerous news outlets reported that Google has disabled access to tethering applications at the explicit request of these carriers.

Any actions that cripple smartphone features and applications should concern policymakers, consumers, and innovators. Yet Verizon Wireless's actions to limit its LTE customers' access to the applications of their choice represent more than a typical competitive dust-up – those actions also violate the C Block rules that govern Verizon's use of the public airwaves.

The C Block obligations state that carriers using this spectrum “shall not . . . deny, limit, or restrict the ability of their customers to use the devices and applications of their choice on the [carrier's] network.”

Last week, Free Press filed the attached informal complaint at the FCC. We are urging the agency to investigate Verizon's practices and assess appropriate penalties for violations. The Commission has decided to restrict public comment on our complaint. While the agency deliberates, there is little public scrutiny of these anti-consumer practices that restrict consumers' access to software.

We write today to urge you to investigate this matter in the Senate Commerce Committee. Today, it's tethering. Tomorrow, it could be online video or Twitter. We ask that you shine much needed sunlight on efforts to cripple innovation in one of the country's fastest growing economic sectors.

We look forward to your attention to this matter.

Sincerely,

A handwritten signature in black ink, reading "Joel Kelsey". The signature is stylized with a large, looping "J" and "K".

Joel Kelsey
Political Adviser