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December 13, 2011

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Preserving the Open Internet, GN Docket No. 09-191; Broadband Industry Practices, WC Docket No. 07-52; Service Rules for 698-746, 747-762, and 777-792 Bands, WT Docket No. 06-150; File No. EB-11-MDIC-0004

Dear Chairman Genachowski:

We write to bring your attention to recent Verizon Wireless actions that appear to raise similar concerns to those described in our previously filed “C Block” complaint against the company. In that complaint, we documented Verizon Wireless’s violations of conditions made applicable to the Upper 700 MHz Band C Block licensee by Section 27.16 of the Commission’s rules, 47 C.F.R. § 27.16. We file this letter in the 700 MHz service rules docket in the absence of a public docket and record specific to our complaint. For the sake of completeness, we also file this letter in the two proceedings for the Commission’s recent Open Internet order.

According to several press reports, Verizon Wireless is currently taking actions that deny, limit, or restrict its subscribers access to third-party mobile payment applications, possibly in order to force those subscribers to use the forthcoming “Isis” technology for mobile payments. Verizon Wireless is a party to the joint venture developing Isis. According to the facts available at this time, it seems that Verizon Wireless likely is abusing its gatekeeper control over a substantial percentage of the national market for mobile Internet users in order to block a third-party competitor. Such a textbook example of anti-competitive behavior poses significant harm to consumers and to innovation on the Internet.

Verizon Wireless’s practices with regard to third-party mobile payment systems appear to be consistent with its practices to limit access to third-party tethering applications. The company may be using its leverage over business partners to restrict the ability of Verizon Wireless subscribers to download, install, and operate end user mobile phone software, rather than directly blocking the ability of the software to communicate over the network. But the harms caused by any such Verizon Wireless actions are the same, regardless of whether the blocking activity operates directly through network management or indirectly through pressure on intermediaries.

Early press coverage suggests that Verizon Wireless’s response to these allegations will be comparable to its response on tethering: The company will contend that the third party mobile payment application at issue is not, in fact, an application¹; and that the company is not blocking

¹ Verizon Wireless has already made this distinction, defending its actions on the grounds that Google Wallet “is

any network communications but is merely asking its business partners to enforce the terms of service that govern use of Verizon Wireless end user mobile broadband services. As with tethering, such counterarguments are unsupportable.² From the point of view of Verizon Wireless's communications services, mobile payment systems are applications, just like tethering applications, voice over IP applications, and video streaming applications. Additionally, Verizon Wireless's actions clearly fall within the C Block rules prohibitions of denying, limiting, or restricting the use of applications or devices of the user's choice. Imposing such restrictions by exerting pressure on third-parties does not excuse Verizon Wireless from compliance with the rules.³

Verizon Wireless must not be allowed to continue to engage in rampantly anti-competitive, anti-consumer, anti-innovation blocking of applications, including third-party tethering and mobile payment applications, in violation of its license obligations – and in violation of the spirit if not the letter of its legal obligations under the Commission's Open Internet rules. We again wish to remind the Commission that the C Block rules were cited at great length in the recent Open Internet order, and that the unfortunate decision to adopt far weaker protections for mobile broadband users relied upon the existence and presumed enforceability of these rules.⁴

Sincerely,

/s/ *Chris Riley*

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different" because it "does not simply access the operating system and basic hardware of our phones." Google Wallet requires two additional elements, an antenna and hardware for encryption, both of which are already included in the Galaxy Nexus phone offered to Sprint customers. Mark Hachman, "Verizon Denies Blocking Google Wallet," *PCMag.com* (Dec. 6, 2011), at <http://www.pcmag.com/article2/0,2817,2397276,00.asp>. Even if Verizon Wireless articulates hardware features that it claims are integrated into the functionality, its legal obligations prohibit it from blocking devices as well as applications. *See* 47 C.F.R. § 27.17(b).

² *See* Letter from Chris Riley, Free Press, to Marlene Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-150, File No. EB-11-MDIC-0004, at 1-2 (Aug. 19, 2011).

³ *See id.* at 2.

⁴ In building to the conclusion that "it is appropriate to take measured steps at this time" for mobile broadband, including adoption of only a transparency requirement and a "basic" prohibition on blocking, the Commission stated "we anticipate soon seeing the effects on the market of the openness conditions we imposed on mobile providers that operate on upper 700 MHz C Block ('C Block') spectrum, which includes Verizon Wireless." Preserving the Open Internet, Broadband Industry Practices, GN Docket No. 09-191, WC Docket No. 0-52, *Report and Order*, FCC 10-201 (rel. Dec. 23, 2010), at paras. 95-96. On transparency, the Commission directed mobile carriers to "follow the guidance the Commission provided to licensees of the upper 700 MHz C Block spectrum regarding compliance with their disclosure obligations." *Id.* at para. 98.