



The Honorable Michael Powell, Chairman
Federal Communications Commission
445 12th St., SW
Washington DC 20554

March 11, 2004

Dear Chairman Powell:

We are writing to request that you investigate and take action to stop the practice of wireless handset locking, which effectively prevents consumers from keeping their cell phones when they change carriers.

Given that consumers are spending as much as \$600 on combination cell phone/personal digital assistants, it is wasteful and uneconomic for consumers to have to dump those phones in the trash every time they want to switch service providers. If consumers could keep their cell phones when they switch carriers, we believe both the costs of phones and wireless service would decline, as companies are forced to compete more directly on the price of their equipment and service.

Nearly all carriers use software locks that artificially prevent a customer from taking a phone to another network when changing carriers, even when that phone would otherwise be fully functional on the competitor's network. Although the locks take different forms with different network technologies, they all have the same effect—users needlessly have to throw away perfectly good technology if they change carriers. While some carriers acknowledge they will unlock phones under certain terms, these conditions do not allow consumers to switch without incurring unnecessary cost and hassle.

GSM carriers implement software installed on the phone prior to retail sale that locks a handset to that carrier. TDMA companies use "system operator code" (SOC) locks and some CDMA carriers use "master subsidy locks" that disable subscribers' ability to program their phones.

Our own experiences are a good example of the problems associated with these anti-competitive practices. While testing cell phones at our facilities in Yonkers, NY we found that one GSM carrier's coverage was not good enough for our testing. We attempted to switch the phone we bought to a competing GSM carrier with better coverage. We were prevented from doing so, and had to purchase a new sample of the **exact same phone** from the new carrier.

We are grateful that on Nov. 24, 2003, the Commission took final action to ensure that wireless subscribers could take their cell phone numbers with them when they changed carriers. Consumers have reaped the competitive benefits of this “number portability” policy. They are now enjoying new discounts on rate plans, larger packages of minutes, and enlarged “off-peak” calling hours (several carriers moved peak calling hours back to 7 p.m. from 9 p.m. at the same time number portability took effect). Unfortunately, the fruits of this competition may be significantly tempered by carriers who lock down phones to increase switching costs.

Some rural wireless carriers have indicated that they would support action by the FCC to prevent handset locking for this precise reason. These carriers cite frustration by rural consumers who have taken advantage of LNP and switched to a larger carrier, only to switch back to the rural carrier after finding reduced cellular coverage, and are not able to use the handset they just purchased at significant cost. The subscriber cannot understand how they can freely port their number, but are unable to use their new handset even if they are switching between compatible networks. As rural wireless carriers prepare for the implementation of number portability outside the top 100 MSAs this May 24, they want to be sure that customers will not be prevented from switching because of handset locking.

In addition, we believe eliminating the practice of wireless handset locking will have a very positive impact on public health and the environment. Americans are discarding millions of wireless telephones a year, and that means 65,000 tons of trash, including toxic materials such as arsenic, mercury, lead, copper, antimony, beryllium, cadmium, zinc and brominated flame retardants would be released into the air and groundwater supply if disposed of in landfills—creating threats to human and animal health as well as the environment. Cell phone recycling programs are in place with most carriers, but the Commission should act to reduce the need to dispose of technology in the first place.

While we recognize that carriers may subsidize handset sales in order to attract customers, handset locking should be unnecessary to recover subsidies, and is counter-productive to winning customer loyalty. Customers already pay \$175 early termination fees when leaving before one- or two-year contracts are up (even if, e.g., they are 90% through the contract term), which should more than cover the cost of any handset subsidies. And in the final analysis, “savings” from subsidies are false economies. They may save consumers up-front costs, but consumers bear the costs of subsidies in the rates they pay for service every month. However, by ensuring more portability of handsets between carriers, the Commission will make cell phone markets more competitive, which would drive down the real cost of handsets—not just perceived costs—saving consumers real dollars. Further, by allowing customers to come to carriers with phones they already own, the need for handset subsidies can be eliminated in the first place, with the hopeful result being even greater savings passed through to consumers.

If the agency works to eliminate handset locking, entrepreneurs will have stronger incentives to bring innovative products to market. For instance, Qualcomm has demonstrated a chipset for more than two years that works with both CDMA and GSM—a

phone built with this chip would be compatible with five out of the six national carriers. But without a guarantee that carriers won't cripple phones when consumers switch wireless providers, there seems to be little incentive to build such handsets.

Greater handset portability could have important public safety benefits as well. Given that the Commission has, over our objections, elected to eliminate requirements that analog phones seek a stronger signal if a user calls 911 and cannot connect to a home network, increased incentives for carriers to produce phones with multiple standards (such as the GSM/CDMA chipset mentioned above) would create greater likelihood that handsets could pick up some signal to reach public safety personnel in an emergency situation. We encourage the Commission to take this small step of preventing handset locking in order to move the marketplace towards interoperability.

Please note we are not asking for the FCC to mandate a new feature in phones, nor are we petitioning the Commission for an interoperability mandate. We are asking the Commission to stop carriers from disabling otherwise functional and compatible phones when consumers change networks. We are asking the Commission to prevent wireless companies from sabotaging consumers' phones simply for the purpose of impeding competition, by making it more expensive for consumers to switch.

We look forward to working with the Commission to uncover more information about these practices and find a remedy that will maximize the benefits of competition to consumers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Murray". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chris Murray, Legislative Counsel
Consumers Union

CC: Commissioners Abernathy, Adelstein, Copps, and Martin, Wireless Bureau Chief Muletta, Wireless Deputy Bureau Chief Cathy Seidel, Wireless Advisors Sheryl Wilkerson, Jennifer Manner, Barry Ohlson, Paul Margie, Sam Feder