Response of Cricket Communications, Inc. to the Register's June 23, 2009 Questions

1. Virgin Mobile USA testified that due to the inexpensive nature of the chip used on many of its subsidized handsets, there was no practical or cost-effective way to use separate technological measures to protect (1) the firmware and (2) the copyrighted works (such as ringtones, wallpaper or screensavers) contained on its handsets. Do any other manufacturers use the same or substantially similar chipsets but with separate protection measures on (2)? Are equally or nearly-equally inexpensive chipsets available that can accommodate such separate technological measures? In other words, in order to control cost, is it necessary to protect different copyrighted works contained on such handsets with one technological protection measure that controls access?

   RESPONSE:

   Unlike some of the larger wireless providers, Cricket does not require its customers to sign a contract and commit to stay on its service for a prescribed length of time. Accordingly, Cricket tries to keep its equipment costs low and to minimize the subsidies that it provides.

   However, on certain occasions, Cricket offers some of its wireless handsets at no cost to its customers. Other wireless handset models are offered to Cricket customers at subsidized prices as low as $29.99. One of the wireless handsets that was offered by Cricket is the UTStarcom CDM7126. This phone uses a Qualcomm QSC-6055 chipset, a chipset that Qualcomm refers to as part of its "Value Platform."[1] Based on information publicly available from Qualcomm[2], Cricket understands that this second generation lower-cost chipset is also used in other handsets marketed by other wireless service providers.

   Cricket's experience with the QSC-6055 chipset, and with other chipsets in other Cricket wireless handsets, is that the chipset does not have any part in protecting copyrighted works such as ringtones, wallpaper and screensavers. Rather, copy protection is software driven. Copyrighted content is typically not integrated in the same fashion as the core software and utilizes standard (OMA) digital rights management (DRM) protection methodologies. DRM is a series of standards associated to content copyright protection and is not specific to the device hardware.

2. At the hearing in Palo Alto, representatives of Virgin Mobile USA stated that more information would be supplied to the Register in regard to the following question:
   MR. CARSON: Which of your exclusive rights under Section 106 of Title 17 of the U.S. Code are being infringed when the customer takes that handset, switches to another service and uses the user interface, listens to the ring tones, whatever?

---

[1] *See* Press Release, Qualcomm, Qualcomm Samples Single-Chip Solutions for Low-Cost CDMA2000 Handsets (Apr. 5, 2006) *available at* http://www.qualcomm.com/news/releases/2006/060405_samples_single_chip_print.html.
[2] *Id.*

MR. LURIE: I'd like to have this filed under written submission.

Please respond to this question.

RESPONSE:

Cricket is an active member of CTIA that provides innovative, high-value wireless services to a fast-growing, young and ethnically diverse customer base. Cricket is a mid sized wireless carrier that focuses on offering lower-cost, flat-rate plans using a streamlined distribution and service model. To keep costs low for consumers, Cricket permits its customers to bring in compatible unlocked phones that they already own and activate them on Cricket's network. Similarly, Cricket permits its own customers to unlock their phones and take them to another carrier if the customer no longer chooses to subscribe to Cricket's services, even if the phone contains ringtones, Cricket's user interface, or other features unique to Cricket's service. Cricket does not view this as an infringement of its exclusive rights under Section 106 of Title 17 of the U.S. Code.

3. Do carriers, other than Virgin Mobile USA, use separate technological protection measures to protect (1) the firmware, bootloader, or operating system and (2) other copyrighted works contained on, or capable of being added to the handset, e.g., ringtones, music, motion pictures, or software applications? If so, which carriers?

RESPONSE:

Across different technologies there are varying levels of encryption techniques utilized with respect to the firmware, bootloader, and operating system which are based on standardized crypto logical algorithms. Copyrighted content is typically not integrated in the same fashion as the core software and utilizes standard (OMA) DRM protection methodologies.

4. Which carriers unlock handsets for the owners of the handset, so that handset owner can switch carriers? Under what circumstances or conditions are the handsets unlocked, if any?

RESPONSE:

Cricket permits its customers to unlock their phones. A Cricket customer that seeks to unlock his or her phone simply needs to contact a Cricket customer service representative, either by calling Cricket's customer service hotline, or by speaking with a customer service representative in one of Cricket's stores. The customer is then provided with the code to unlock the handset and instructions that explain the steps of the unlocking process. Cricket does not require customers to pay a fee or incur any other type of early termination penalty when such customers seek to unlock their phones. Moreover, Cricket is a Pay-In-Advance and Pay-As-You-Go service provider that does not require its customers to sign a contract that the customer will subscribe to Cricket's service for a specified period of time. As a

result, Cricket's customers can unlock their phones at any time and without incurring a penalty.

5. Which carriers will lock a handset in some way in the course of providing service for an unlocked phone or an unsubsidized phone, if any?

RESPONSE:

Cricket does not engage in the practice of locking previously unlocked phones when a new customer brings an unlocked phone to Cricket's network. Unlocked phones that are brought to Cricket's network remain unlocked when these phones are placed into service with Cricket.