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Vice President

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August 5, 2005

***Via Electronic Mail Delivery***

Mr. Samuel L. Feder  
Acting General Counsel  
Office of the Chairman  
Federal Communications Commission  
445 12th Street, S.W., Room 8-B201  
Washington, D.C. 20554

Re: Possible Filing of Confidential Sprint Documents, WT Docket 05-194, CTIA Petition Regarding Whether Early Termination Fees are "Rates Charged" within 47 U.S.C. §332(c)(3)(A); WT Docket No. 05-193, SunCom Petition for Declaratory Ruling.

Dear Mr. Feder:

Sprint is currently a party to litigation pending in California state court captioned: *In re CellPhone Termination Fee Cases*, J.C.C.P. 4332 (Superior Court of California, County of Alameda). During the course of that litigation, Sprint has produced confidential, proprietary and competitively sensitive documents regarding its ongoing operations. On August 2, 2005, the Superior Court issued an Order granting the plaintiffs in that litigation the right to use these documents in comments before the FCC in the pending Early Termination Fee (ETF) proceedings, provided the plaintiffs complied with certain requirements and procedural safeguards. The details of that Order are further explained in a letter sent to you from Verizon Wireless filed on August 3, 2005, a copy of which is attached.

Sprint shares the concern of Verizon Wireless that this highly confidential information may be inadvertently released by the Plaintiffs through the comment process. By filing this letter, Sprint confirms its right of confidential treatment under the state Order and seeks the same protections enumerated by Verizon Wireless in its August 3, 2005 letter. Sprint requests that the Commission temporarily set aside Comments filed by plaintiffs in either of the above dockets to ensure that plaintiffs have complied with the terms of the Superior Court's Order (note other parties potentially filing comments identified in the Verizon letter), and to provide Sprint with the opportunity to review any documents so filed to protect confidential and proprietary information.

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Sprint does not seek to prevent any party from filing comments in this proceeding, but merely seeks to protect documents and information provided during the course of litigation and protected by state protective order.

Thank you for helping to ensure that the necessary procedures are followed in these dockets.

Respectfully submitted,

/s/ Luisa L. Lancetti

Luisa L. Lancetti

Attachment

cc: Matthew Berry, Acting Deputy General Counsel  
Joel Kaufman, Deputy Associate General Counsel  
Alan R. Plutzik, Counsel for plaintiffs  
L. Timothy Fisher, Counsel for plaintiffs  
Reed R. Kathrein, Counsel for plaintiffs  
Jacqueline E. Mottek, Counsel for plaintiffs  
Shana E. Scarlett, Counsel for plaintiffs  
Aelish M. Baig, Counsel for plaintiffs  
Jennie Lee Anderson, Counsel for plaintiffs  
J. David Franklin, Counsel for plaintiffs  
Kristin Linsley Myles, Counsel for Verizon Wireless



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August 3, 2005

Helgi C. Walker  
202.719.7349  
hwalker@wrf.com

Sam Feder  
Acting General Counsel  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: Confidential Verizon Wireless Documents, WT Docket No. 05-194,  
Petition For Declaratory Ruling Filed By CTIA Regarding Whether Early  
Termination Fees Are "Rates Charged" Within 47 U.S.C. Section  
332(C)(3)(A).

Dear Mr. Feder:

On behalf of Verizon Wireless, this letter is to advise you that plaintiffs in a pending California state court litigation against Verizon Wireless and other wireless providers, *In re CellPhone Termination Fee Cases*, J.C.C.P. 4332 (Superior Court of California, County of Alameda), have successfully moved to modify the protective order previously adopted by the Court in that case to permit plaintiffs to file highly confidential Verizon Wireless documents—which were produced pursuant to mandatory discovery orders and covered by the protective order—before the Federal Communications Commission in the above-captioned proceeding. The Court's order modifying the protective order is attached hereto.

Verizon Wireless objected to the plaintiffs' highly irregular request to use confidential documents produced to them by Verizon Wireless in separate litigation in an FCC proceeding and urged the Court to adopt strict procedural conditions to ensure that plaintiffs protect the confidentiality of the proprietary information at the Commission. The Court, on August 2, 2005, ruled that plaintiffs will be permitted to file certain proprietary Verizon Wireless documents and/or describe the details of such document in the instant FCC proceeding provided that they: (1) submit a cover letter as well as an appropriate motion and/or request asking that such documents be afforded confidential treatment; (2) stamp each page of such documents as confidential; and (3) file any such documents in paper form, not electronically. The court also agreed to Verizon Wireless's request that plaintiffs identify the persons or entities that plaintiffs intend to include on any comments or other filings made in the ETF proceeding.

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While the Court ordered plaintiffs to request confidential treatment, pursuant to 47 C.F.R. § 0.457(d)(2) & 47 C.F.R. § 0.459(b), for any documents covered by the prior protective order that they wish to file in the ETF proceeding, the Court placed the burden on Verizon Wireless to justify the basis for the confidential designation should such designation be questioned.

Even with the court-ordered procedures, Verizon Wireless is in the unfortunate position of having to justify the need for confidential treatment without knowing what information plaintiffs will include until such comments are filed.<sup>1</sup> Moreover, because the plaintiffs have no interest in keeping Verizon Wireless's proprietary information confidential, plaintiffs could seek to evade the Court's ruling by making arguments that rely upon—but not cite or file—proprietary documents.

To ensure that the procedures set forth in the Court's order are adhered to and that no Verizon Wireless proprietary information is disclosed publicly, Verizon Wireless respectfully requests that any comments or any other filings made by plaintiffs in WT Docket No. 05-194 initially be withheld from public inspection and set aside to permit Verizon Wireless to review such filing and determine if any arguments and/or attachments contain proprietary Verizon Wireless information. Withholding the plaintiffs' comments from public inspection is critical even if plaintiffs do not submit actual copies of any Verizon Wireless documents because, as noted above, plaintiffs may include arguments that rely in whole or in part on proprietary information. Once Verizon Wireless has conducted this review, and plaintiffs have submitted their request for protection as required by the Court's order, Verizon Wireless will take all further action as appropriate to ensure the confidentiality of its proprietary information and compliance with the procedures established by the Court's order.

As of the filing of this letter, plaintiffs' counsel have identified the following entities as comment-filers: American Association of Retired Persons ("AARP") (identified by the plaintiffs' law firm Lerach Coughlin Stoia Geller

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<sup>1</sup> While plaintiffs identified a universe of possible proprietary and non-proprietary Verizon Wireless documents, Verizon Wireless has no idea whether the plaintiffs will in fact use any of the documents and, if so, whether the plaintiffs will submit copies of such documents or merely include arguments that are based upon the information contained in these documents.

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Rudman & Robbins LLP); and Wireless Consumers Alliance, Inc., Delores (or "Dolores") Johnson, Richard Samko, Amanda Selby, Katherine Zill, Bruce Gatton, Porsha Meoli, Mark Lyons, Leslie Armstrong, Sridhar Krishnan, Margaret Schwarz, Astrid Mendoza, and Christina Nguyen (identified by plaintiffs' law firm Bramson, Plutzik, Mahler & Birkhaeuser LLP). While AARP and Wireless Consumer Alliance are *not* currently plaintiffs in the Alameda County litigation and thus are *not* authorized to file any confidential documents pursuant to the Order, Verizon Wireless nonetheless requests that the Commission set these entities' comments aside to ensure that plaintiffs' counsel have not inappropriately or inadvertently included any Verizon Wireless proprietary information.<sup>2</sup>

Verizon Wireless emphasizes that it seeks only to protect its proprietary information produced pursuant to discovery requirements and protective order in a private litigation and does not seek to hinder plaintiffs' ability to file comments in the CTIA declaratory ruling. Thus, Verizon Wireless commits to identify any confidential information contained in plaintiffs' filings and to promptly take all necessary action to ensure confidential treatment thereof.

We appreciate your attention to this matter.

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<sup>2</sup> . Although plaintiffs' counsel has represented to Verizon Wireless that no other plaintiff intends to file comments using Verizon Wireless confidential information, Verizon Wireless has no way of verifying this representation in advance. Verizon Wireless will communicate any further information from plaintiffs regarding additional comments or commenters as soon as it is received. For the information of the Commission, the named plaintiffs asserting claims against Verizon Wireless not identified above in the Alameda County proceedings are Molly White and Christine Morton. The lead law firms in the California action are Bramson, Plutzik, Mahler & Birkhaeuser LLP, Lerach Coughlin Stoia Geller Rudman & Robbins LLP, and Franklin & Franklin.

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Sincerely yours,

/s/ Helgi C. Walker  
Helgi C. Walker

cc: Matthew Berry, Acting Deputy General Counsel  
Joel Kaufman, Deputy Associate General Counsel  
Alan R. Plutzik, Counsel for plaintiffs  
L. Timothy Fisher, Counsel for plaintiffs  
Reed R. Kathrein, Counsel for plaintiffs  
Jacqueline E. Mottek, Counsel for plaintiffs  
Shana E. Scarlett, Counsel for plaintiffs  
Aelish M. Baig, Counsel for plaintiffs  
Jennie Lee Anderson, Counsel for plaintiffs  
J. David Franklin, Counsel for plaintiffs  
Kristin Linsley Myles, Counsel for Verizon Wireless

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

**FILED**  
ALAMEDA COUNTY

AUG - 2 2005

CLERK OF THE SUPERIOR COURT  
By Wesley Mangis Deputy

Case No.: C-835687

Coordination Proceeding  
Special Title (Rule 1550(b))

**CELLPHONE TERMINATION FEE CASES**

**ORDER GRANTING PARTIAL RELIEF  
FROM PROTECTIVE ORDER**

DATE: August 2, 2005  
TIME: 9:00 am  
DEPT: 22

The Plaintiffs' motion for partial relief from the protective order came on regularly for hearing on August 2, 2005, in Department 22, the Honorable Ronald M. Sabraw, presiding. Plaintiffs and Defendants appeared at the hearing through counsel of record.

IT IS HEREBY ORDERED that Plaintiffs' motion is GRANTED.

Plaintiffs may submit to the FCC only those documents identified by subject and Bates number on pages 1 and 2 of Exhibit A of Plaintiff's Supplemental Appendix, together with Defendants' responses to contention interrogatories as well as deposition transcripts identified as exhibits E, F, G, and H of Plaintiffs' original Appendix in Support of Motion for Limited Relief from Protective Order.

All documents identified as "confidential" by Defendant in this action that Plaintiffs submit to the FCC and all comments that describe the details of confidential

1 documents must (1) be filed in paper form and not electronically; (2) be accompanied by  
 2 a cover letter that substantially conforms to that included in Defendants' opposition; and  
 3 (3) be stamped on each page with a legend substantially conforming to that included in  
 4 Defendants' opposition.

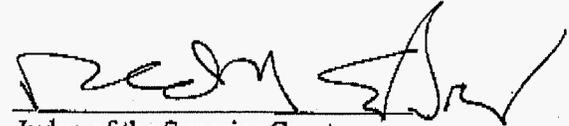
5 Plaintiffs must also make the appropriate motions and/or requests at the FCC  
 6 asking that the confidential documents be protected at the FCC.  
 7

8 The Court notes that at the FCC the Plaintiffs may be limited to stating that they  
 9 are asking the FCC to treat the documents as confidential because in the California state  
 10 court action the Defendants designated the documents as confidential. If the FCC  
 11 requires a factual showing that any given document is truly confidential, then it may be  
 12 appropriate to place that burden on the Defendant that originally designated the document  
 13 as confidential.  
 14

15 The Court has considered Defendant Sprint's objections to the Plaintiffs'  
 16 designation of certain documents after this Court's deadline. Despite the tardiness of that  
 17 designation, the Court is inclined to permit the Plaintiffs broad latitude in submitting a  
 18 record for the FCC's consideration. Sprint's objections are therefore overruled, and  
 19 Plaintiffs' motion is GRANTED as to those additional documents, subject to the  
 20 conditions described above.  
 21

22 The Court has returned to Plaintiffs all original documents submitted in support of  
 23 this motion.  
 24

25  
 26 Dated 8/2/05  
 27

  
 Judge of the Superior Court

**CLERK'S CERTIFICATE OF MAILING**

I certify that I am not a party to this cause and that I caused a true copy of the foregoing ORDER GRANTING PARTIAL RELIEF FROM PROTECTIVE ORDER to be mailed, first-class, postage pre-paid, in a sealed envelope, addressed as shown on the attached service list. Executed, deposited and mailed in Oakland, California on August 2, 2005.

**Plaintiff's Liaison Counsel**

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Wosen Mengiste, Deputy Clerk  
Alameda County Superior Court, Department 22