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November 10, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation
CG Docket No. 04-208, WT Docket No. 05-194, CC Docket No. 98-170

Dear Secretary Dortch:

This is written in response to Consumers Union's ("CU's") ex parte letter of November 2, 2005, filed in the above-referenced dockets. As CU points out, in a previous ex parte, the undersigned counsel incorrectly stated that CU does not permit cancellation of *Consumer Reports Online*. As it turns out, CU's User Agreement, which can be reached by clicking on a link to the Subscribe Now page, does provide for refunds. I apologize for any confusion this misunderstanding may have caused. The provision to which CU refers, however, was placed at the end of a long paragraph in its six-page User Agreement following three sentences on CU's automatic renewal policy (which led counsel to believe the cancellation period applied solely to the renewal period). The Subscribe Now page itself, by contrast, states that a *monthly* subscriber may "[c]ancel or change to Annual at any time," but there is no equivalent cancellation language associated with the two *annual* options. CU might want to consider clarifying the presentation of this information for easier understanding for the benefit of its customers.

Notwithstanding CU's approach, in the commercial world, no-refund or early termination fee ("ETF") policies are common for subscription-based services. The Wall Street Journal, Blockbuster Online, Symantec and McAfee antivirus software, and TiVo, for example, either require full upfront payment with no provisions for cancellation during the contract period (after a trial period) or they charge ETFs if periodic payments are discontinued. Tuition-based services (*e.g.*, schools, camps, continuing education classes), and vacation and club packages (*e.g.*, cruises, vacation rentals, ski trips, and health clubs) similarly provide hefty discounts for early sign-ups or long-term commitments, but offer no refunds or charge ETFs after a certain point. Like wireless carriers, most of these companies also offer payment plans that require no term commitments or permit last-minute bookings but, just as with wireless subscribers, the term plans and associated upfront discounts presumably are more popular with consumers. So long as the company fully discloses its cancellation policies, it is in the public interest to put the payment plan choice in the hands of the consumer instead of the government.

Like CU, T-Mobile holds itself to the highest standards and has put in place numerous consumer protections for its customers. As T-Mobile explained in its comments in these dockets and in various ex parte letters, it has voluntarily signed on to the CTIA Consumer Code, which requires, among other things, accurate descriptions of charges on bills, separation of charges retained by the carrier from taxes and fees remitted to the government, penalty-free cancellation periods, and detailed point-of-sale disclosures. T-Mobile also has introduced "Personal Coverage Check," which allows prospective subscribers to assess the quality of T-Mobile's coverage down to the neighborhood level *before they buy*. In addition, for new customers choosing contractual (as opposed to prepaid) plans, T-Mobile's terms are only one year, and T-Mobile has no automatic renewal policy. Similarly, T-Mobile's ETF allows it to meet consumer demand for discounted or free handsets and large buckets of minutes, all of which can be paid for via low monthly charges instead of a large upfront investment. Because of these voluntary, market-driven initiatives, T-Mobile has been ranked first in overall customer satisfaction among wireless carriers by J.D. Power and Associates for two years in a row.

Please direct any questions regarding this matter to the undersigned.

Sincerely,

/s/

Sara F. Leibman

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