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VIA ELECTRONIC FILING

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

Re: *Petition of the Cellular Telecommunications & Internet Association for an Expedited Declaratory Ruling Confirming that Early Termination Fees in Wireless Contracts Are “Rates Charged” for Commercial Mobile Services Within the Meaning of Section 332(c)(3)(A), WT Docket No. 05-194; Petition for Declaratory Ruling Filed by SunCom, and Opposition and Cross-Petition for Declaratory Ruling Filed by Debra Edwards, Seeking Determination of Whether State Law Claims Regarding Early Termination Fees Are Subject to Preemption Under 47 U.S.C. Section 332(c)(3)(A), WT Docket No. 05-193.*

Dear Ms. Dortch:

This letter responds to the April 28, 2006 letter filed on behalf of Mr. Harold P. Schroer, a former Verizon Wireless customer, in the above-captioned dockets (“*Letter*”). The *Letter* sets forth some details of a dispute between Mr. Schroer and Verizon Wireless regarding the formation of a contract and compliance with the terms and conditions thereof, including the payment of an early termination fee (“ETF”). In addition, the *Letter* uses these circumstances to mischaracterize the scope of the above-captioned proceedings and Verizon Wireless’s legal positions in this docket. This response corrects these factual and legal errors.

First, the dispute between Verizon Wireless and Mr. Schroer involved the question of whether a valid contract had been formed between the parties. Mr. Schroer believed that Verizon Wireless sought to “impose an early termination fee on an *invalid contract.*” *Letter*, at 2 (emphasis added). Mr. Schroer took the position that a contract was never formed, and thus that he was not obligated to comply with the contract’s terms and conditions. Verizon Wireless disagreed, and contended that a valid contract was formed and Mr. Schroer was bound by the terms and conditions of such contract, including payment of the ETF for discontinuing service. This

Ms. Marlene H. Dortch, Secretary

May 18, 2006

Page 2

dispute was resolved when Verizon Wireless, as a courtesy, waived the charges against Mr. Schroer's account.

As explained above, Mr. Schroer's dispute with Verizon Wireless was not about the legal status of the ETF. By contrast, CTIA's Petition for Declaratory Ruling requests that the Commission confirm that ETFs are "rates charged" under Section 332(c)(3)(A) of the Communications Act and subject to exclusive federal jurisdiction. CTIA's Petition seeks to ensure that state court litigation cannot be used to regulate CMRS rates and rate structures in valid contracts, as Congress mandated under Section 332(c). Grant of CTIA's Petition thus would not have undercut the gravamen of the Letter's contention that no ETF would be owed if the contract is invalid.

Second, Verizon Wireless and CTIA have consistently explained that CTIA's Petition does not seek to "restrict . . . [the] ability to assert state-law contract claims," as the Letter claims. *See Letter*, at 3. Contract formation falls within the scope of state contract law and will *continue* to fall within the purview of state contract law if the Commission grants CTIA's Petition. Indeed, Verizon Wireless has maintained in this docket that disputes regarding contract formation, such as Mr. Schroer's, would continue to be governed by state contract law:

[I]f, for example, plaintiffs assert that they never agreed to an ETF, that one was not contained in their contract, that they were never billed for an ETF that the carrier claims is past due, or that there has been a breach of an otherwise valid contract . . . , those claims can proceed in state court. They seek traditional interpretation and enforcement of a contract, and are predicated on a standard theory of breach that does not require the decision maker to pass judgment on the merits of the ETF itself.

Ex Parte Submission of Verizon Wireless, WT Dkt. No. 05-194, at 15-16 (Mar. 30, 2006).

Third, the Commission correctly responded to Mr. Schroer's informal complaint about the alleged invalidity of the contract by explaining that the Commission does not have jurisdiction over state contract law claims such as this. Moreover, by granting CTIA's Petition, the Commission will not preempt state court jurisdiction over these contract formation disputes. The Letter's arguments to the contrary

Wiley Rein & Fielding LLP

Ms. Marlene H. Dortch, Secretary

May 18, 2006

Page 3

simply misstate the scope of CTIA's Petition for Declaratory Ruling, and ignore our repeated clarification regarding the same.

Finally, the confusion between rate regulation and contract formation illustrated in the Letter demonstrates once again the need for a prompt decision granting CTIA's Petition to clarify that ETFs are "rates charged" within the meaning of Section 332(c)(3)(A) and thus not subject to state regulation on issues such as the legality and/or reasonableness of an ETF in a valid contract. Accordingly, Verizon Wireless urges the Commission expeditiously to grant CTIA's Petition.

Sincerely yours,

/s/ Helgi C. Walker
Helgi C. Walker