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July 12, 2006

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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 June 30, 2006 filing (“*Letter*”) by Scott A. Bursor, counsel for claimants in the consolidated arbitration *Brown v. Verizon Wireless*, No. 11 459 01274 05/*Zobrist v. Verizon Wireless*, No. 11 494 0032 05 (American Arbitration Association), and for plaintiffs in *In Re Cellphone Termination Fee Cases*, J.C.C.P. 4332 (Cal. Super. Ct.). These actions challenge Verizon Wireless’ early termination fees (“ETFs”) under state law and, in the *Brown/Zobrist* arbitration, under 47 U.S.C. § 201(b) as well.¹

As the *Letter* notes, on June 28 Verizon Wireless CEO Denny Strigl announced the company’s decision to initiate a pro-rated ETF for subscriber contracts nationwide, beginning this fall. Despite this landmark pro-consumer decision, Verizon Wireless continues to be pursued in numerous state court and arbitration class actions that seek to regulate the use and amount of ETFs, contrary to Section 332 of the Communications Act. Mr. Bursor’s negative spin on this decidedly positive

¹ In the *Brown/Zobrist* dispute, Verizon Wireless repeatedly has asserted to the arbitrator that the claimants’ § 201(b) claim falls within the primary jurisdiction of the Commission under well-settled law. The arbitrator thus far has refused to refer this claim to the Commission.

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development demonstrates once again the pressing need for the Commission to grant CTIA's petition and to put an end to this concerted state-by-state effort to regulate "rates charged" for wireless services and to nullify Section 332.

Specifically, the *Letter* claims that Verizon Wireless' new, national policy of pro-rating ETFs somehow contradicts the company's and CTIA's position on the preemption of regulation of ETFs by state courts and arbitrators under Section 332 of the Communications Act. This is simply untrue.

Contrary to Mr. Bursor's suggestion, there is no inconsistency between CTIA's entirely accurate factual statements that the number of consumer complaints related to ETF is, as a proportion of overall complaints, relatively small and Mr. Strigl's statement that existing levels of customer concern over ETFs will be addressed proactively by the company. Mr. Strigl did not characterize the number of complaints but simply made clear that Verizon Wireless is committed to achieving the highest possible level of customer satisfaction.

Nor is there any inconsistency between Mr. Strigl's characterization of ETFs and Professor Jerry A. Hausman's declaration regarding the economics of ETFs (submitted in WT Dkt. No. 05-194, October 25, 2005). ETFs, in either a pro-rated or flat form, are part of a carrier's pricing structure for recovering revenues to offset costs. Further, consumers prefer contracts that give them lower prices in exchange for a commitment to a term of service over pre-paid plans without any time commitment, and that choice will still exist for Verizon Wireless customers after pro-rated ETF plans are implemented. Finally, Verizon Wireless' decision to pro-rate ETFs in no way indicates that the pricing of various rate elements is any less complex or interrelated an exercise than Professor Hausman explained. Rather, the nationwide pro-rated ETF is another example of an innovation in wireless rate structures that is characteristic of a competitive market (*see* Hausman Declaration, ¶ 15), which Verizon Wireless believes will be highly popular with consumers. In this way, ETFs fall squarely within "rates charged" in Section 332, as CTIA and Verizon Wireless have demonstrated in their pleadings.

Far from "call[ing] the very purpose of these proceedings into question," *Letter* at 2, the recent announcement of Verizon Wireless shows that the wireless market is working to encourage carriers to address the issue of ETFs themselves on a uniform, national basis and that substantive rate regulation, whether at the state or federal

Wiley Rein & Fielding LLP

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level, is unnecessary. As Mr. Strigl put it, “That’s what competition is all about.” The granting of CTIA’s petition, however, is more important than ever. In order to permit carriers to enact such market-based rate policies on a nationwide basis, the Commission must promptly make clear that the burdensome, class action litigation seeking to regulate ETFs on a state-by-state basis, which carriers continue to face across the country, is preempted by Section 332. Verizon’s decision to pro-rate ETFs should illustrate, rather than call into question, that ETFs are “rates charged” under Section 332 and that the state court and arbitration litigation at issue amounts to prohibited rate regulation.²

Indeed, recent developments in the ETF-related litigation only underscore the urgent need for Commission action. On June 30, Mr. Bursor served a notice of deposition of Mr. Strigl in the *Brown/Zobrist* dispute based on Mr. Strigl’s announcement of the new pro-rating policy. Verizon Wireless’ efforts to listen to its customers and to lead the industry on this issue have only been rewarded with a notice of deposition for its CEO. Verizon Wireless once again urges the Commission expeditiously to grant CTIA’s Petition and, by providing much needed guidance to state entities and arbitrators as to the proper interpretation of Section 332, to bring this burdensome, costly, and unlawful litigation to an end.

Sincerely yours,

/s/ Helgi C. Walker
Helgi C. Walker

² For these reasons, the similar attacks on Verizon Wireless’ pro-rating announcement in the *ex parte* presentation of Wireless Consumers Alliance (“WCA”), *see* Letter from James R. Hobson, Counsel for WCA, to Ms. Marlene Dortch, Sec’y, Federal Communications Commission, at 3 (July 7, 2006), are also without merit.