

July 14, 2006

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: **Notice of Written Ex Parte Communication  
Reexamination of Roaming Obligations of Commercial Mobile Radio  
Service Providers (WT Docket No. 05-265)**

Dear Ms. Dortch:

Verizon Wireless and Cingular Wireless LLC (“Cingular”) hereby respond to a June 20, 2006 ex parte letter submitted by Leap Wireless International, Inc. (“Leap”) that would have the Commission jettison its longstanding precedent regarding section 202(a) of the Communications Act – the provision that prohibits a common carrier from making any “*unjust or unreasonable* discrimination” in rates, terms and conditions.<sup>1</sup> Leap has severely misstated the substance of that section’s requirements in its effort to convince the Commission to impose economic regulation that has never before applied to the CMRS industry. Other filings which Leap has joined make similarly incorrect arguments.<sup>2</sup>

Verizon Wireless and Cingular submit this response to correct the record. In particular, we emphasize here that:

- The factual basis for Leap’s arguments is flawed, as Leap obtains roaming rates that often are equivalent to or better than those obtained by large wireless carriers.
- The legal basis for Leap’s argument is defective because Leap misconstrues the section 202(a) standard, which the Commission (even in the roaming context) has

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<sup>1</sup> 47 U.S.C. § 202(a) (emphasis added); Letter from James H. Barker and Barry Blonien, Counsel to Leap Wireless International, Inc., to Marlene H. Dortch, WT Docket No. 05-265 (filed June 20, 2006) (“*Leap Ex Parte Letter*”)

<sup>2</sup> For example, Airpeak Communications, LLC and other parties including Leap assert that the Commission should initiate a Section 403 inquiry to obtain and review carrier roaming agreements because the prices in these agreements would enable the Commission “to assess the reasonableness of the roaming rates being charged to roaming partners.” Joint Petition for Commission Inquiry Pursuant to Section 403 of the Communications Act, WT Docket No. 05-265, at 8 (filed April 25, 2006). Verizon Wireless and Cingular have previously opposed that inquiry. As shown below, Commission caselaw makes plain that the price terms of an agreement do not establish its reasonableness or unreasonableness.

confirmed expressly provides for disparate treatment of parties that are not similarly situated.

- Adoption of intrusive pricing regulation in the CMRS market would be especially inappropriate in light of the competitive nature of the market and the downward pressure that such competition has had on roaming rates.

Existing caselaw, properly stated, provides the appropriate framework for addressing the issues in this docket. It leads to one result: The Commission should continue to refrain from intervention into roaming prices, a policy that has allowed the competitive market to drive lower roaming prices, thereby benefiting wireless consumers.

### **I. Leap Enjoys Roaming Rates That Are Typically Comparable To or Better Than Those Paid by Large Wireless Carriers.**

As an initial matter, the factual premise behind Leap's position is flawed. Leap obtains roaming rates from Verizon Wireless and Sprint Nextel that are competitive and reasonable.<sup>3</sup> For example, in over 70 percent of Verizon Wireless' roaming arrangements, Verizon Wireless pays a roaming rate that is equal to or *higher* than the roaming rate Leap currently pays Verizon Wireless. The record shows that Leap, in turn, charges its customers per-minute roaming prices that are significantly higher than the rate Leap is paying Verizon Wireless. Leap can hardly claim that FCC regulation is necessary to reduce roaming rates, when it appears to be marking up its roaming charges to earn a profit. Sprint Nextel also stated recently that "the prices Leap pays to Sprint Nextel under the current roaming arrangement are comparable to the prices Sprint Nextel pays in certain cases for one-way outbound roaming on other carrier network."<sup>4</sup> Further, like Sprint Nextel,<sup>5</sup> Verizon Wireless confirms that the amount Leap pays to roam on its network is *less* than the amount Verizon Wireless charges its *own* customers for casual CDMA roaming. Thus, there is no factual basis warranting intervention.

### **II. Leap Misinterprets the Section 202(a) Standard, Which Provides for Disparate Treatment of Entities That Are Not Similarly Situated.**

Leap's legal analysis is also wrong. Leap accurately recounts the three-step analysis the D.C. Circuit set forth in evaluating section 202(a) discrimination claims in the course of a section 208 complaint proceeding: "(1) whether the services are 'like'; (2) if they are 'like,' whether there is a price difference; and (3) if there is a difference,

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<sup>3</sup> Leap and Cingular do not have a roaming agreement because their networks deploy different air interface technologies. Nevertheless, Cingular would be adversely affected should the Commission grant the relief sought by Leap and others.

<sup>4</sup> Letter from Roger C. Sherman, Sprint Nextel, to Marlene H. Dortch, WT Docket No. 05-265 (filed June 23, 2006).

<sup>5</sup> *Id.*

whether it is reasonable.”<sup>6</sup> Leap, however, asks the Commission to presume that variations in roaming rates violate the third prong, and are thus unlawful, unless “there is a procompetitive justification for such practice.”<sup>7</sup> It then goes on to propose that the Commission adopt a presumption that it is unlawful for a facilities-based provider to charge a roaming rate that exceeds the rate it charges its own retail customers.<sup>8</sup> Leap’s novel approach is unfounded and misguided, and the Commission should not impose burdensome economic regulation on the CMRS industry based on it.

The D.C. Circuit has held that “the mere existence of a disparity between particular rates does not establish a statutory violation.”<sup>9</sup> Where two parties differ in material respects, disparate treatment – including the application of different rates – is permissible.<sup>10</sup> Indeed, the Commission has expressly addressed this issue *in the roaming context*. In considering whether to adopt an automatic roaming rule in 1996, it proceeded to “clarify that such a rule would need to recognize that not all carriers are similarly situated” and further stated “such a rule need not require carriers to offer roaming agreements to all other carriers on the same terms and conditions....”<sup>11</sup> As the Commission has explained, section 202(a) provides that “[c]arriers may differentiate among users so long as there is a valid reason for doing so.”<sup>12</sup> The Commission has further stated that because it is critical to ensure that market success is determined by an offering’s functionality and price, not by regulatory fiat, “treating differently situated entities the same can *contravene* the requirement for competitive neutrality.”<sup>13</sup>

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<sup>6</sup> *MCI Telecommunications Corp. v. FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990) cited at *Leap Ex Parte Letter* at 1-2.

<sup>7</sup> *Leap Ex Parte Letter* at 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Associated Press v. FCC*, 452 F.2d 1290, 1301 (D.C. Cir. 1971). *See, e.g., Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, 5903 para. 129 (1991) (“Courts have held in analogous circumstances, and we now find, that individually negotiated contracts are not unreasonably discriminatory if their terms are made generally available to other similarly situated customers willing and able to meet the contract’s terms.”); *see also AT&T, Revisions to Tariff F.C.C. No. 259, Wide Area Telecommunications Service (WATS)*, 89 F.C.C.2d 889, 899 para. 23 (1982) (explaining that Commission’s “duty under Section 202(a) [is] to prevent unjust discrimination against users of like service, as well as unreasonable preference to a particular class of similarly situated customer”).

<sup>10</sup> Even when the parties *are* similarly situated, discrimination can in some cases be warranted. *See, e.g., Reservation Telephone Cooperative v. FCC*, 826 F.2d 1136, 1139 (D.C. Cir. 1987) (upholding modification of AT&T policy with respect to some carriers but not others where continued application of original policy with respect to all carriers would have reduced its revenues, because basis for distinction was neutral and rational); *Orloff v. Vodafone Airtouch Licenses LLC*, 17 FCC Rcd 8987, 8996 (“*Orloff v. Vodafone*”) para. 20 (2002) *aff’d sub nom. Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003).

<sup>11</sup> *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 9462, 9475, para. 22 (1996).

<sup>12</sup> *The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements For Priority Access Service*, 15 FCC Rcd 16720, 16730-16731, para. 23 (2000).

<sup>13</sup> *Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way*, 14 FCC Rcd 21697, 21725, para. 52 (1999) (emphasis added).

Applying these principles, the Commission has on numerous occasions confirmed that common carriers are entitled to treat entities differently based on those entities' dissimilarities,<sup>14</sup> and the courts have upheld such distinctions.<sup>15</sup> One relevant example is the Commission's longstanding precedent establishing the lawfulness of "bulk discounts" for customers consuming high volumes of communications service.<sup>16</sup> In the special access context, for example, the Commission expressly rejected arguments that volume discount arrangements violate section 202(a), concluding that "reasonable volume ... discounts can be a useful and legitimate means of pricing special access services...."<sup>17</sup> Leap's requested approach to addressing roaming ignores this precedent and the logic behind it.

Particularly instructive here is the Commission's 2005 decision in a primary jurisdiction referral matter addressing a dispute between Digital Cellular, Inc. ("Digital") and AirTouch Cellular, Inc. ("AirTouch").<sup>18</sup> Digital alleged in federal district court that AirTouch had refused to offer its services to Digital for resale on the same terms at which AirTouch offered such services to a third company, Topp Telecom ("Topp"). According to Digital, this behavior violated, *inter alia*, section 202(a). The court referred the matter to the Commission, and the Commission repudiated Digital's claims. While there was no dispute that AirTouch had offered Topp better terms than it had offered Digital, the Commission found that the disparity was justified because the Topp arrangement offered

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<sup>14</sup> See, e.g., *Nova Cellular West, Inc., v. AirTouch Cellular*, 17 FCC Rcd 15026, 15037 para. 32 (2002) (finding that carrier's practice of effectuating rate plan changes for individual customers in single day but requiring more time for reseller with multiple customers was reasonable and thus did not constitute unlawful discrimination, even if the services at issue were like); *Metrocall, Inc. v. WorldCom, Inc.*, 15 FCC Rcd 10826, 10831, para. 15 n.30 (2000) (rejecting claim that facilities-based provider had unreasonably discriminated by performing credit checks on its own customers but not those of its wholesale customer).

<sup>15</sup> See, e.g., *Panatronic USA v. AT&T Corp.*, 287 F.3d 840, 844 (9th Cir. 2002) (upholding AT&T practice of assessing universal service surcharges on some customers but not others on basis of differences in the relevant contracts); *National Association of Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095, 1133-38 (D.C. Cir. 1984) (rejecting challenge to Commission plan imposing disparate access charges on common carriers and private line carriers, on basis that differences in usage justified differences in rates).

<sup>16</sup> See, e.g., *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, 14 FCC Rcd 14221, 14291, para. 127 (1999) ("[W]e conclude that the benefits of permitting volume and term discounts without requiring a cost showing outweigh any possible costs."); *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing Usage of the Public Switched Network by Information Service and Internet Access Providers*, 11 FCC Rcd 21354, 21437, paras. 190-91 (finding that a bar against volume discounts for access service rates in the presence of retail competition "would impede the full development of effective competition").

<sup>17</sup> *Expanded Interconnection With Local Telephone Company Facilities, Amendment of the Part 69 Allocation of General Support Facility Costs*, 7 FCC Rcd 7369, para. 199 (1992); see also *AT&T Corp. et al. Joint Application for Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Construct, Acquire, and Operate Capacity in a Digital Submarine Cable System, Memorandum Opinion, Order, and Authorization*, 14 FCC Rcd 13436, 13439, paras. 9-10 (1999) (authorizing volume-discount pricing of digital submarine cable system capacity).

<sup>18</sup> *Digital Cellular, Inc., Petition for Declaratory Ruling Regarding a Primary Jurisdiction Referral from the United States District Court for the Central District of California*, 20 FCC Rcd 8723 (2005).

AirTouch benefits that Digital could not match. Specifically, “Topp held the patent for handsets, prepaid cards, and redemption services for providing prepaid cellular service,” whereas Digital did not.<sup>19</sup> These “material differences between Digital and Topp were a legitimate basis for AirTouch to offer CMRS network access to Digital and Topp on different terms.”<sup>20</sup> The two parties therefore “were not similarly situated,”<sup>21</sup> and “AirTouch did not violate the Section 202(a) prohibition against unreasonable discrimination in charges and practices.”<sup>22</sup>

These various examples demonstrate a core principle animating section 202(a): Where neutral distinctions among entities render dealings with one more attractive than the other, the two entities are *not* “similarly situated” and disparate treatment is permissible. The holding Leap and others seek in this docket would be completely incompatible with this principle. Specifically, Leap implies that the provision turns not on whether disparate treatment is “reasonable” but on whether disparate treatment is “procompetitive” – in other words, whether it will improve Leap’s bottom line. As the Commission has emphasized, however, its “statutory duty is to protect efficient competition, not competitors,”<sup>23</sup> and “a claim for discrimination does not lie simply because the complainant would have been better off if it had paid lower rates.”<sup>24</sup>

At bottom, Leap seeks to transform the section 202(a) inquiry from a test recognizing that disparate circumstances warrant disparate treatment to one ensuring that *all* providers gain access to favorable rates charged for different offerings or even different services, irrespective of their significant differences. This approach is incompatible with section 202(a)’s requirements and that section’s precedent, which the Commission and courts have applied in a wide range of telecommunications markets, including highly concentrated ones. Here, Leap ignores the undisputable fact that this highly competitive market has brought consumers substantial benefit, *e.g.*, through lower roaming rates, in order to improve its own competitive position through regulatory intervention. Leap’s ill-advised scheme must be rejected.

### **III. Given the Precedent Described Above, Distinctions Between the Roaming Rates Leap Obtains and the Rates Paid by Retail Customers or Other Providers Are Entirely Justified.**

When the focus returns where it belongs – *i.e.*, to whether “like” offerings are being provided on equivalent terms to *similarly situated* parties – it is clear that section

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<sup>19</sup> *Id.* at 8728, para. 13.

<sup>20</sup> *Id.* at 8729, para. 15.

<sup>21</sup> *Id.* at 8729, para. 16.

<sup>22</sup> *Id.* at 8729, para. 15.

<sup>23</sup> *See, e.g., SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18371, para. 151 (2005); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18512, para. 151 (2005); *see also Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company*, 12 FCC Rcd 22280, 22288, para. 16 (1997).

<sup>24</sup> *Illinois Bell Telephone Co. v. AT&T*, 4 FCC Rcd 7759,7760 para. 5 (1989).

202(a) does not provide for the relief sought by various parties in this docket. Leap asks the Commission to “prohibit a facilities-based carrier from demanding rates that exceed its average retail revenue per minute in a serving area.”<sup>25</sup> This scheme makes no sense. As an initial matter, Leap invokes section 202(a) to gain a more favorable roaming rate – but then seeks to impose a regulatory solution based on average end-user *retail* rates. It makes no effort to show that roaming services (which involve negotiated intercarrier agreements) and retail wireless services (which carriers provide their own end-user customers) are “like” services for purposes of section 202(a) – and it is not at all clear that they are. Nor does the proposal’s use of *averaged* rates meet the section 202(a) standard – indeed, the use of averaging implicitly recognizes that different rates are permissible. Roaming carriers and individual retail customers are *not* similarly situated. Wireless providers and individual end-users play very different roles in the market, and have very different needs. Disparate treatment of such differently-situated entities is entirely appropriate. As the Commission noted in enacting distinctions in the resale obligations applicable to different types of wireless offerings, “considerations of parity do not require identical regulation of services that are differently situated.”<sup>26</sup>

Further, even different agreements with different *roaming* partners is warranted, where they differ in significant ways. As parties have pointed out in this docket, there are many factors that distinguish carriers in ways that are material to roaming agreements. These include customer base size, implementation of advanced technologies, geographic coverage within the market, the availability of supply, and the quantity of service demanded.<sup>27</sup> Differences such as these are significant in the roaming context, and justify disparate treatment.<sup>28</sup>

Leap’s suggestion that all roaming partners are entitled to rates that are the same as the bulk arrangements negotiated by large MVNOs, which often contain financial penalties where the MVNO fails to meet its volume commitment, is also misplaced.<sup>29</sup> MVNOs can offer facilities-based carriers access to market segments they might otherwise be unable to reach. The rates they negotiate with facilities-based carriers reflect these factors. As described above, the Commission has expressly concluded in various contexts that discounts reflecting a buyer’s volume commitments comply with the section 202(a) nondiscrimination requirements – *i.e.*, that customers buying significantly different quantities are not “similarly situated” for purposes of the nondiscrimination analysis. It has also concluded (in the Digital/AirTouch matter) that a carrier’s ability to obtain benefits from one entity that others cannot match is also a relevant ground on which to treat parties dissimilarly. Leap and others, however, would

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<sup>25</sup> Leap Reply Comments at 1-2.

<sup>26</sup> *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 18455 at 18464-68, paras. 15-22 (1996); *Orloff v. Vodafone*, 17 FCC Rcd at 8996 para. 20.

<sup>27</sup> See Verizon Wireless Comments at 4, 19; see also Verizon Wireless Reply Comments at 5; Cingular Reply Comments at 5 n.18.

<sup>28</sup> *NARUC*, 737 F.2d at 1133 (“[W]hen there is a neutral, rational basis underlying apparently disparate charges, the rates need not be unlawful.”); *Panatronic USA v. AT&T Corp.*, 287 F.3d 840, 844 (9th Cir. 2002).

<sup>29</sup> See, e.g., Leap Reply at 11.

have the Commission reject this precedent and declare such distinctions invalid in the roaming context.

For the same reasons, section 202(a) cannot justify the imposition of a requirement that roaming providers “make their networks available to all roaming partners on the same terms and conditions as they offer to their ‘most-favored’ roaming partners.”<sup>30</sup> Roaming partners with valuable geographic coverage (be it nationwide or in areas not otherwise well-served) can offer benefits that others cannot; likewise, roaming partners using advanced technologies can offer benefits that others cannot. The Commission’s approach to the Digital/AirTouch dispute demonstrates that factors such as these justify disparate treatment. Like AirTouch, carriers are entitled to offer better terms to more attractive business partners. Leap, however, would have the Commission mandate access to the same rates that other carriers receive regardless of their networks’ coverage areas or technical capabilities.

#### **IV. Any Effort to Impose Extensive Price Regulation on the CMRS Market is Particularly Inappropriate Given the Competition in That Market and the Salutary Effect Such Competition Has Had on Roaming Rates.**

What matters here is not what is best for Leap but what is happening in the *consumer* market – and the Commission’s CMRS Competition Reports have made abundantly clear that competitive pressures have resulted in a consistent and dramatic drop in roaming rates over the past ten years. Roaming revenues have declined from 12 percent of total wireless revenues in 1996 to 4.1 percent in 2004.<sup>31</sup> This decline has occurred even as roaming minutes have increased substantially – meaning that per-minute roaming rates themselves have declined at an even greater pace.<sup>32</sup> J.D. Power and

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<sup>30</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service*, 20 FCC Rcd 15047, 15062, para. 42 (2005).

<sup>31</sup> *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 20 FCC Rcd 15908, 15957 para. 129 (2005) (“*Tenth CMRS Competition Report*”); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 12 FCC Rcd. 11266, 11287 (1997) (“*Second CMRS Competition Report*”).

<sup>32</sup> *See, e.g.,* Colette M. Fleming et al., *Wireless 411*, UBS Warburg Equity Research, Jan. 5, 2005, at 33 (“Regional operators have generally seen annual declines in roaming revenues, as growth in roaming minutes has been more than offset by declines in roaming rates”); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Eighth Report, 18 FCC Rcd 14783, 14786, 14829, para. 97 n.335 (2003) (“*Eighth CMRS Competition Report*”) (citing “declining per-minute roaming rates” as factor in reduced roaming revenues); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Sixth Report, 16 FCC Rcd 13350, 13379 n.192 (2001) (“*Sixth CMRS Competition Report*”) (citing trend of roaming rate reductions and reporting 18% average drop in per-minute roaming rates among large regional carriers over the previous year); *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Fourth CMRS Competition Report*, 14 FCC Rcd

Associates reported in 2004 that customer satisfaction with the cost of wireless service had risen substantially over the preceding year, due primarily to increased “fairness in roaming charges.”<sup>33</sup> Indeed, many carriers now offer calling plans that impose no additional charges for roaming.<sup>34</sup>

Where the market has produced such extraordinary consumer benefits, any suggestion that larger carriers bear the burden of demonstrating that the current regime is “procompetitive” is facetious at best, not to mention inconsistent with section 202(a) precedent. Rather, in the presence of falling prices and increasing customer satisfaction, Leap must explain why the Commission should abandon its successful market-based approach to roaming in favor of highly intrusive regulatory oversight that contravenes decades of precedent. A government mandate requiring identical roaming rates would punish roaming partners that deploy facilities and those that commit to bulk buying by forcing them onto equal footing with competitors who do neither, notwithstanding the significant benefits that these partners offer to other carriers and the public policy benefits associated with infrastructure investment and market certainty.<sup>35</sup>

In sum, Leap and others are attempting to effect a radical revision of the section 202(a) regime. Leap seeks to replace the section 202(a) reasonableness inquiry with an outcome-oriented test regarding “procompetitiveness,” and asks the Commission to presume that roaming rates in excess of retail wireless rates are unlawful. These proposals are inconsistent with court and Commission precedent and are incompatible with sound policy. The mandates these parties request would turn on its head the principle that a CMRS carrier’s success “should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer needs – and not by strategies in the regulatory arena.”<sup>36</sup> Given falling roaming rates and rising consumer satisfaction in the wireless market, the Commission should maintain its fidelity to the traditional section 202(a) analysis and reject calls for “equal” treatment of differently situated parties – and the imposition of burdensome economic regulation on the CMRS industry.

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10145, 10167 (1999) (“*Fourth CMRS Competition Report*”) (“Another indication of the competitive pressures being exerted on mobile telephone prices can be seen in [declining] roaming charges.”).

<sup>33</sup> J.D. Power and Associates Reports Satisfaction With Wireless Service Providers Increases Significantly as Customers Report Higher Ratings in Call Quality and Cost-Related Attributes, Press Release, J.D. Power and Associates, Sept. 9, 2004, *discussed at Tenth CMRS Competition Report*, 20 FCC Rcd 15973, para. 179.

<sup>34</sup> See *Tenth CMRS Competition Report*, 20 FCC Rcd at 15946, para. 97.

<sup>35</sup> Section 202(a) authorizes imposition of “reasonable charges to promote a rapid, efficient, and modern telecommunications network in which technological innovations are encouraged in order the permit the development of facilities adequate to provide this service.” *National Association of Regulatory Utility Commissioners*, 737 F.2d at 1136.

<sup>36</sup> *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1420 (1994); *Orloff v. FCC*, 352 F.3d 415, 419 (D.C. Cir. 2003) (citing same).

Ms. Marlene H. Dortch

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Pursuant to Section 1.1206 of the Commission's Rules, an electronic copy of this letter is being filed in the above-referenced docket.

Sincerely,

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