September 15, 2006

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ex Parte Submission

Re: Petition of the Cellular Telecommunications & Internet Association for an Expedited Declaratory Ruling – WT Docket No. 05-194; and Petition for Declaratory Ruling filed by SunCom Operation Company L.L.C. and Opposition and Cross-Petition for Declaratory Ruling Filed by Debra Edwards – WT Docket No. 05-193.

Dear Ms. Dortch:

Attached to this letter is an *ex parte* Declaration of Dr. Lee L. Selwyn of Economics and Technology, Inc. Dr. Selwyn's Declaration addresses and rebuts several *ex parte* declarations, including in particular the Declaration of Harold Furchtgott-Roth submitted on June 6, 2006 by CTIA, in the docket captioned above. Those declarations argue that early termination fees ("ETFs") constitute "rates charged" as that term is used in 47 U.S.C. § 332(c)(3)(A) and that the imposition of ETFs by wireless carriers is economically beneficial to consumers, permitting prices for wireless services to be lower than they would be in their absence.

Dr. Selwyn analyzes in the attached Declaration the assertions in other filings that ETFs are part of the rate structure of wireless services. These filings offer no analysis or discussion as to the basis for this characterization of ETFs. Dr. Selwyn notes that the Furchtgott-Roth Declaration uses the statutory term "rates charged" only twice – once in describing the purpose of the Declaration and again in reciting "the issue currently before the Commission" – and in both cases specifically in the context of the text appearing in § 332. The remainder of the Declaration uses the term "rate

structure," asserting generally that ETFs, prepayment requirements, collateral, forfeitures, and penalties are all part of the "rate structure" of the products and services to which they apply. The term "rate structure" does not appear in the statute, however, nor is there any basis for assuming that "rate structure" and "rates charged" are synonymous or interchangeable. Dr. Selwyn explains that "rate structure" is a far more comprehensive concept than "rates charged" as used in the statute. Thus, the claim in the Furchtgott-Roth Declaration that ETFs are a part of a wireless service's rate structure is irrelevant to the issues raised by the CTIA petition since, even if true (which it is not), that claim alone does not establish that ETFs are "rates charged" within the meaning of § 332 of the Communications Act.

Dr. Selwyn also addresses certain policy rationales for ETFs, advanced in the Furchgott-Roth Declaration as proof that ETFs benefit consumers economically. Dr. Selwyn demonstrates that these extrinsic economic contentions, even if accurate (which Dr. Selwyn shows is not the case), have no bearing upon the specific issue CTIA has raised in its petition, *viz.*, whether early termination fees ("ETFs") are "rates charged" and thereby preempted from state regulation under 47 U.S.C. §332(c)(3)(A), or instead constitute "other terms and conditions," the continued regulation of which is expressly reserved to the states in the same statute.

Dr. Selwyn also refutes arguments that the elimination of ETFs would lead to increased customer "churn," increasing "customer acquisition costs" which would be flowed through to consumers in the form of higher prices. As Dr. Selwyn points out, increased churn produces both costs and benefits for consumers. To the extent that the elimination of ETFs enables more customers to change carriers without incurring a penalty, it would make more consumers "addressable" by all carriers, resulting in increased price competition and reduced consumer prices overall. Dr. Selwyn notes that the Commission itself already concluded that improving the ability of wireless consumers to switch wireless carriers results in more, not less, competition and in lower, not higher, prices overall. Thus, the notion that state regulation of ETFs and the various other "terms and conditions" contained in wireless customer service agreements would result in increased prices is speculative and at odds with the Commission's own findings.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

David Certner
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Attachment