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October 25, 2006

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VIA ELECTRONIC FILING

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

Re: *Notice of Ex Parte Communications – WC Docket No. 06-159*

Dear Ms. Dortch:

Verizon Wireless, by its counsel, responds to an October 23, 2006 letter in which Neutral Tandem requests disclosure of October 17, 2006 communications between John T. Scott III of Verizon Wireless and Federal Communications Commission ("FCC" or "Commission") staff regarding Verizon Wireless' proposal for resolution of the above-captioned proceeding.[1] Disclosure of these communications is plainly not required under the terms of the Commission's *ex parte* rules, and Neutral Tandem in any event learned of the discussions the very next day. Nonetheless, out of an abundance of caution and in the interest of avoiding even the potential appearance of impropriety, Verizon Wireless hereby files this notice of the communications.

On October 17, 2006, in response to a request from Commission staff, Mr. Scott met with Thomas Navin, Julie Veach, and Marcus Maher of the Wireline Competition Bureau to discuss possible maintenance of existing connection arrangements with Neutral Tandem as a way to resolve the issues raised in Neutral Tandem's Petition for Interim Relief. Verizon Wireless also stated, as part of its proposal for resolution, that the issues raised by Neutral Tandem in its Petition for Rulemaking should be addressed in the Commission's pending intercarrier compensation rulemaking, CC Docket No. 01-92, as set forth in Verizon Wireless' prior filings in this proceeding.

Neutral Tandem's assertion that these communications are covered by the *ex parte* rules is meritless. Under §1.1204 of the Commission's rules, *ex parte*

[1] Letter from Russell M. Blau, Counsel for Neutral Tandem, Inc., to Samuel Feder, General Counsel, FCC, WC Docket No. 06-159 (filed Oct. 23, 2006) ("Neutral Tandem Letter"); *see also* Letter from Russell M. Blau, Counsel for Neutral Tandem, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-159 (filed Oct. 24, 2006) (alleging "failure [of Verizon Wireless] to file required *ex parte* notification in this docket after having discussions with Commission staff").

presentations in permit-but-disclose proceedings are exempt from the disclosure requirements of §1.1206 where "[t]he presentation is requested by (or made with the advance approval of) the Commission or staff for the clarification or adduction of evidence, *or the resolution of issues*, including possible settlement."[2] This subsection further provides that any new information on the merits must be served on the parties to the proceeding but makes clear that "information relating to how a proceeding should or could be settled" is *not* new information.[3] Moreover, oral arguments that are already reflected in the presenting party's other filings in the proceeding are not encompassed by §1.1206 in the first place.[4]

By its terms, the exemption provision of §1.1204(a)(10) applies to all permit-but-disclose proceedings, not just to proceedings initiated by the Enforcement Bureau as Neutral Tandem contends, and is not limited to formal settlement talks but broadly covers discussions regarding the "resolution of issues, *including* possible settlement." The order that Neutral Tandem cites as support for the proposition that the provision applies only to settlement talks in the context of enforcement proceedings says *nothing* about the exemption in § 1.1204(a)(10).[5] Rather, the order simply refers to settlement discussions generally and finds that settlement discussions that occur before the filing of a complaint with the Commission do not implicate the *ex parte* rules, because those rules are triggered only by an existing FCC proceeding.[6] No Commission orders that actually discuss this exemption suggest any intent for it to encompass less than the full range of permit-but-disclose proceedings or discussions related to the resolution of issues outside the context of enforcement proceedings.[7]

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[2] 47 C.F.R. §1.1204(a)(10) (emphasis added).

[3] *Id.* §1.1204(a)(10)(ii).

[4] *See id.* §1.1206(b)(2).

[5] Neutral Tandem Letter at 3 & n.10 (citing *Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers*, CC Docket No. 96-238, Second Report and Order, 13 FCC Rcd 17018 (1998)).

[6] 13 FCC Rcd at 17037, ¶ 36.

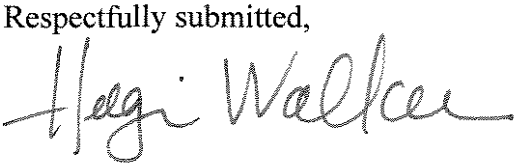
[7] *See, e.g., Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, Report and Order, 12 FCC Rcd 7348, 7369 ¶ 63 (1997).

Mr. Scott's communications with Bureau staff fall squarely within the §1.1204(a)(10) exemption. As set forth above, the October 17, 2006 meeting occurred at the request of Commission staff, and the discussion between Mr. Scott and the staff pertained to how the Neutral Tandem matter could or should be resolved. Furthermore, certain issues discussed as part of the proposal for resolution were previously raised and disclosed by Verizon Wireless in prior filings in this docket. Consequently, it is clear that no disclosure was required.[8]

Finally, Neutral Tandem suffered no possible harm from the absence of disclosure. By its own admission, Neutral Tandem learned of the discussions from Bureau staff the very next day, on October 18, 2006.[9] This is as fast, or faster, than Neutral Tandem would have learned of the presentation through the filing of an *ex parte* notice. It is apparent that Neutral Tandem could not possibly have been prejudiced in this circumstance.

Nevertheless, out of an abundance of caution and in order to avoid even the potential appearance of impropriety, Verizon Wireless files this notice of the communications.

Respectfully submitted,



Helgi C. Walker

cc: Russell M. Blau

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[8] Where disclosure has been required under the *ex parte* rules, Verizon Wireless has faithfully and timely filed such notices. *See, e.g.,* Letter from Charon Phillips, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 06-159, 01-92 (filed Oct. 17, 2006); Letter from Helgi C. Walker, Counsel to Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 06-159, 06-55, CC Docket No. 01-92 (filed Sept. 18, 2006); Letter from Helgi C. Walker, Counsel to Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-159, CC Docket No. 01-92 (filed Sept. 15, 2006).

[9] Neutral Tandem Letter at 2 n.5.

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