September 25, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Presentation in WT Docket No. 06-150

Dear Ms. Dortch:

On September 25, 2007, Harold Feld of the Media Access Project and Sascha Meinrath of New America Foundation met with Chairman Martin, Aaron Goldberger, wireless advisor to the Chairman, and Fred Campbell, Chief of the Wireless Bureau, with regard to the above captioned matter.

In response to the September 19, 2007 *ex parte* filed by Verizon,[1] PISC stated the following. First, in the event an existing incumbent such as Verizon wins C Block licenses, it cannot continue to sell locked equipment that operates on the C Block licenses. Even though this would represent an extension of existing equipment limitations, the C Block rules explicitly prohibit a licensee from locking its phone to the network. Thus, even though Verizon would not be adding new limitations to an existing limitation, the Order prohibits the licensee from locking ***any*** handset that operates on the C Block to the network. A device that works on C Block must be portable from network to network.

The Order is more ambiguous with regard to whether Verizon could offer an unlocked version

[1]PISC note that the September 19 Verizon *ex parte* does not appear to conform to the requirements of Rule 1.1206(b)(2). As that rule states: "Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required." The Verizon *ex parte* merely states that Verizon's most senior lobbyists met with the Chairman and his staff on "paragraphs 206 and 222 of the 700 MHz Order" and that discussion was "consistent with those Verizon has placed on the record." Given the literally hundreds of pages placed in the record of this proceeding by Verizon that arguably relate to these paragraphs, this description cannot satisfy the requirement that the *ex parte* letter provide a "summary of the substance" so that interested parties may make meaningful responses.

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of existing subsidized, crippled handsets on C Block spectrum, or if it could offer exclusive marketing deals or other advantages to its own equipment or to manufacturers that agreed to limit the availability of features and functionalities in a manner similar to that required today. While acknowledging that the *Order* speaks less clearly here, PISC believes that the better reading would prohibit such practices. The *Order* deliberately avoided attempts to define a "safe harbor" of conduct for C Block licensees because the Commission recognized that a broad scope of conduct could undermine the intent of establishing a vibrant independent equipment market. *2nd R&O* at ¶224. The enormous market power an incumbent can exert in the form of pre-existing subscribers, marketing resources, etc., therefore raises serious concerns.

Accordingly, the Commission should interpret Rule 27.16(b) as prohibiting the C Block Licensee from engaging in marketing practices designed to promote equipment with limited utility or requiring third party manufacturers to give the licensee any right to dictate a device's capabilities. It is simply too easy for an incumbent to offer a third party manufacturer access to other frequencies, exclusive marketing deals, or other inducements or threats of exclusion, to control the features and functionalities available on a device. The Commission should therefore create a bright line rule that finds that all such practices "deny, limit or restrict the ability of their customers to use devics and applications of their choice." Rule 27.16(b)

FCC staff asked if PISC distinguished between an incumbent, such as Verizon, and a potential new entrant, such as Apple. Further, did PISC believe that Apple would bid if it could not also market its own iPhone? PISC stated that the Commission could, based on its expert judgement and experience in the area of structural separation, make a reasoned judgement that such a limit should apply only to pre-existing network providers rather than to new entrants due to the difference in market power. Nevertheless, even where the Commission did not chose to make such a distinction, the balance of public interest factors weighed in favor of adopting a bright line rule.

Finally, if the Commission declined to adopt a bright line rule, the Commission should not adopt a "safe harbor" that would permit the C Block licensee to evade scrutiny of its marketing, contracting, or manufacturing practices. The development of the Part 68 rules, which the C Block rules seek to emulate in the wireless context, always took care to address economic considerations as well as technical standardization and to recognize the potential of an incumbent operator to abuse its position.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 CFR §1.1206, this letter is being filed with your office.

Respectfully submitted,

/s/

Harold Feld
Senior Vice President

cc: Chairman Martin
Aaron Goldberger
Fred Campbell