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October 3, 2007

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th St., SW  
Washington, DC 20554

Re: *Ex Parte* Communication  
WT Docket Nos. 96-86, 06-150; PS Docket No. 06-229; AU Docket No. 07-157

Dear Ms. Dortch:

Verizon Wireless's recent *ex parte* letters seek to explain its irregular activities at the Commission but instead continue to obfuscate. Verizon Wireless does not deny that it continues to push the Commission to alter decisions reached in the *Second Report & Order*, and yet it claims that any claim to the contrary "hardly dignifies a response."<sup>1</sup> In support of its position, Verizon asserts the following "facts": (i) it met with the Commission on September 17, 2007 "prior to the deadline for filing petitions for reconsideration of the *700 MHz Second Report & Order*" to urge a change in decisions reached in that *Order*; (ii) it did not file a petition for reconsideration; (iii) the deadline for petitions for reconsideration has passed.<sup>2</sup> We are responding to correct certain errors and omissions in these statements.

The first statement is true, but omits one key fact: the September 17th meeting took place *seven days after* Verizon Wireless had filed its notice of appeal.<sup>3</sup> Thus, Verizon already had chosen the appellate path, but still walked into the Commission to seek a change in the very provision it was challenging on appeal. Moreover, Verizon Wireless apparently feels compelled to point out that this meeting took place "prior to the deadline for filings petitions for reconsideration," apparently in an attempt to hedge its bets since that is relevant only if a party wanted to have its request for alteration of a Commission decision timely presented. That, by any other name, is a petition for reconsideration.

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<sup>1</sup> Letter from R. Michael Senkowski, Counsel to Verizon Wireless, to Marlene H. Dortch, FCC, WT Docket Nos. 96-86, 0-150; PS Docket No. 06-229 (Sept. 28, 2007).

<sup>2</sup> Letter from R. Michael Senkowski, Counsel to Verizon Wireless, to Marlene H. Dortch, FCC, WT Docket Nos. 96-86, 0-150; PS Docket No. 06-229 (Oct. 1, 2007).

<sup>3</sup> See Petition for Review, *Cellco Partnership d/b/a Verizon Wireless v. Federal Communications Commission*, Case No. 07-1359 (filed Sept. 10, 2007).

The second statement is a legal conclusion that Frontline thinks is in error, and about which the Commission itself has responded by expressing serious doubts.

[A]t the same time that it seeks this Court's review of the *700 MHz Order*, Verizon also has been actively lobbying the Commission to clarify that (among other things) C Block licensees may provide their customers with devices that do not accommodate all applications when the customer obtains the device from the licensee as part of a service plan. *See Ex Parte Notice of John T. Scott, III*. To the degree that Verizon's lobbying efforts can be construed as a petition for reconsideration of the *700 MHz Order*, they raise potential jurisdictional issues under the "incurable prematurity" doctrine that would provide grounds for dismissal of this case. *See Tennessee Gas Pipeline Co. v. FERC*, 9 F.3d 980 (D.C. Cir. 1993) (*per curiam*) (party may not seek agency reconsideration and court review simultaneously). *Tennessee Gas* rests on a principle that parties should choose either the Court or the Commission to press their cases, but may not seek relief in both fora simultaneously. *Yet that is precisely what Verizon is attempting to do here*. That potential jurisdictional issue – and the motion practice that may follow from it – indicate further that the case should proceed in the normal way, without expedition.<sup>4</sup>

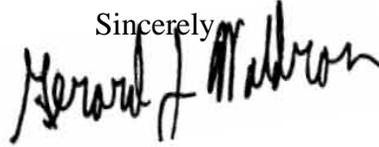
Third, Verizon Wireless apparently believes that efforts to assure transparency are absurd. In contrast, the Commission has shown that it believes in transparency and that all parties have to abide by the rules. It should be commended for making Verizon Wireless file a complete and accurate description of the September 17th meeting, and also for alerting the D.C. Circuit Court of Appeals that Verizon Wireless is attempting to circumvent the rules of that esteemed court. Following up on that commitment, it should grant Frontline's Motion filed September 28, 2007 and not act on Verizon Wireless's complaints against the *Order* until Verizon Wireless submits its concerns and arguments in support of changing the *Order* in the form of a petition for reconsideration that the public may comment on. Alternatively, the Commission could treat Verizon Wireless's September 17, 2007 *ex parte* for what it is -- a petition for reconsideration -- and direct it to file supplemental comments explaining the arguments that support its position.

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<sup>4</sup> Opposition of the Federal Communications Commission to Verizon's Emergency Motion for Expedited Review, *Cellco Partnership d/b/a Verizon Wireless v. Federal Communications Commission*, Case No. 07-1359 (filed Oct. 1, 2007) (footnote omitted) (emphasis supplied).

Please direct any questions to the undersigned.

Sincerely

A handwritten signature in black ink, appearing to read "Gerard J. Waldron". The signature is written in a cursive style with a large initial "G".

Gerard J. Waldron  
*Counsel to Frontline Wireless, LLC*

cc: Hon. Kevin Martin  
Hon. Michael Copps  
Hon. Jonathan Adelstein  
Hon. Deborah Taylor Tate  
Hon. Robert McDowell  
Aaron Goldberger  
Bruce Gottlieb  
Rene Crittenden  
Wayne Leighton  
Angela Giancarlo  
Fred Campbell  
Sam Feder  
Matthew Berry  
Joel Marcus