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May 27, 2009

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VIA ELECTRONIC DELIVERY

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

Re: Notice of Ex Parte Presentation
WT Docket No. 08-95 – Applications of Atlantis Holdings LLC and Celco
Partnership d/b/a Verizon Wireless for Consent to the Transfer of Control of
Commission Licenses and Authorizations.

Dear Ms. Dortch:

This letter responds to the letter from counsel for Leap Wireless International, Inc. (“Leap”) of May 19, 2009.¹ In this most recent submission, Leap effectively concedes two key points regarding its request that the Commission “rule that . . . Verizon [Wireless] must extend for four years the rates, terms and conditions of the entire roaming agreement elected by its roaming partners, and not simply the rates.”² Specifically, the letter confirms that: (1) Leap seeks a major policy change to the *Grant Order*,³ not a mere “clarification;” and (2) Leap’s ultimate goal is to foist upon Verizon Wireless an extended home-roaming obligation that Verizon Wireless never agreed to undertake.

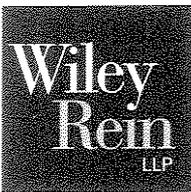
The four-year extension in the *Grant Order* is plainly limited to rates.⁴ The Commission’s use of the term “rates” means what it says – “rates,” not “rates, terms, and

¹ See Letter from James H. Barker & Barry J. Blonien, Latham & Watkins, LLP, and Pantelis Michalopoulos & Marc Paul, Steptoe & Johnson, LLP, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95 (May 19, 2009) (“Leap May 19 Letter”).

² Leap May 19 Letter at 11.

³ *Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, ¶ 178 (Nov. 10, 2008) (“*Grant Order*”).

⁴ *Grant Order* ¶ 178 (“We further condition our approval on Verizon Wireless’s commitment that it will not adjust upward the *rates* set forth in ALLTEL’s existing agreements with each regional, small and/or rural carrier for the full term of the agreement or for four years from the closing date, which ever occurs later.”) (emphasis added) (the “Pricing Condition”).



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conditions.”⁵ As Verizon Wireless has previously explained, the text of the *Grant Order* cannot be read any other way, especially given that the Commission expressly recounted and then declined to adopt Leap’s proposal to extend Verizon Wireless’s four-year commitment “to all terms of ALLTEL’s existing contracts – not just the rates.”⁶

Leap’s most recent submission only confirms this reading of the *Grant Order*. Leap describes the *Grant Order* in the same way as Verizon Wireless: “[Paragraph 178] contains commitments on *rates*, and specifically, a commitment that Verizon Wireless will not adjust upwards the *rates* set forth in ALLTEL’s existing roaming agreements for ‘the full term of the agreement or for four years from the closing date, whichever occurs later.’”⁷ And, as Verizon Wireless has previously highlighted, Leap’s request here mirrors its request that the Commission rejected in the *Grant Order*.⁸ That Leap does not even attempt to analyze the text of the *Grant Order* underscores Leap’s effort to ignore the reality of the record.⁹

⁵ Leap May 19 Letter at 11. See also Petition for Clarification or Reconsideration of Leap Wireless International, Inc., WT Docket No. 08-95, at 3 (Dec. 10, 2008) (“Leap Petition”) (asking the Commission to require Verizon Wireless to honor “the entirety of the [ALLTEL] roaming agreement . . . and not just the rates in [that] agreement[] . . . , for its full term, or for four years from closing, whichever is later”) (emphasis added).

⁶ *Grant Order* ¶ 176; see *id.* ¶ 179 (“[W]e decline to condition our approval of the transaction on any additional special requirements relating to roaming rates or arrangements . . .”) (emphasis added).

⁷ Leap May 19 Letter at 4 (quoting *Grant Order* ¶ 178) (emphasis added); see *id.* (asking the Commission “to clarify that the four-year time frame imposed by the Commission attaches to *both* the rate and contract election commitments”) (emphasis added). Recent congressional testimony by Leap’s General Counsel confirms that Leap understands the Pricing Condition to apply only to *rates*: “the FCC conditioned approval of the transaction on Verizon’s commitment to give roaming partners the option of selecting either the Verizon or Alltel agreement to govern all roaming traffic with the merged company, and to keep the *rates* provided in those agreements frozen for at least four years after the consummation of the merger.” Written Testimony of Robert J. Irving, Jr., Senior Vice President and General Counsel, Leap Wireless International, Inc. and Cricket Communications, Inc., Before the U.S. House of Representatives Subcommittee on Communications, Technology and the Internet Committee on Energy and Commerce, at 9-10 (May 7, 2009) (emphasis added).

⁸ See *Granting Leap’s Roaming Petition Would Be Procedurally And Substantively Unlawful And Harm The Public Interest* (attachment to Letter from Helgi C. Walker, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95 (May 8, 2009)) (“*Verizon Wireless White Paper*”) at 3.

⁹ Instead, Leap seeks to manufacture an ambiguity in the *Grant Order* by relying on isolated statements of individual commissioners. But the statements have no legal force or effect; it is the *Grant Order* that was voted on and adopted and thus controls. See *Verizon Wireless White Paper* at 14-15 & n.49.



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Moreover, Leap's stated rationale for its requested "clarification" proves that it seeks a substantive policy change. Tellingly, in explaining why the Pricing Condition should be extended to all terms and conditions, Leap no longer asserts that the original understanding of this condition was not accurately transcribed in the *Grant Order* or that the meaning of the condition is somehow unclear. Rather, Leap states such action is required because reading the commitment as limited to rates is "implausible in view of the Commission's policy goals in policing the anticompetitive effects of the Verizon/ALLTEL merger."¹⁰ But this is just another way of saying that Leap *disagrees* with the Commission's decision to limit the four-year extension to rates and its ultimate conclusion that the merger, as conditioned and with the required divestitures, was sufficient to "protect competition at the retail level" and ensure that no "harm [to] consumers" would occur.¹¹ By making plain that Leap believes the Commission simply got the competitive analysis wrong, thus abandoning any pretense that it seeks a "clarification" of any actual ambiguity or failure to document correctly the scope of Verizon Wireless's voluntary commitment, the letter confirms that Leap seeks a substantive policy change (and a substantial one at that).

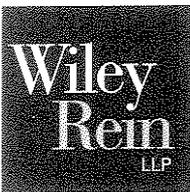
Leap's most recent submission also confirms that Leap's ultimate goal is to impose upon Verizon Wireless an in-market roaming obligation of longer duration than Leap would otherwise be entitled to, even under the condition allowing Leap to elect its preferred contract to govern its roaming traffic with the combined Verizon Wireless/ALLTEL entity.¹² Despite asking that Verizon Wireless's rates commitment be extended to all rates, terms, and conditions, Leap mentions no terms or conditions *other than* the home-market roaming provisions of existing ALLTEL roaming agreements. Indeed, Leap's narrow focus on home-market roaming and repeated claims of discrimination on the part of Verizon Wireless (based on its lawful decision not to offer home-roaming rights, consistent with Commission policy)¹³ highlight the fact that the entire point of Leap's request is to obtain for the foreseeable future the very home-market roaming rights Leap failed to secure in the original merger proceeding and the Commission's roaming rulemaking.

¹⁰ Leap May 19 Letter at 4.

¹¹ *Grant Order* ¶ 179.

¹² Verizon Wireless has not "feigned shock" over the contract-election condition. Leap May 19 Letter at 2. Verizon Wireless voluntarily proffered that condition, to the great benefit of carriers such as Leap. What is new here – and what Verizon Wireless did not propose and the Commission did not adopt – is the suggested extension of any terms and conditions other than price for as long as four years *beyond* the life of the present agreements. See *Verizon Wireless White Paper* at 2 (explaining interaction of contract-election provision and Pricing Condition).

¹³ Leap May 19 Letter at 7, 9.



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Finally, Leap is wrong to claim that Verizon Wireless's reading of the *Grant Order* leaves requesting carriers unable to make a contract election and has thus paralyzed implementation of Verizon Wireless's voluntary commitments as adopted by the Commission in the *Grant Order*.¹⁴ Other carriers have made contract elections and have begun operating consistent with Verizon Wireless's commitments. It is factually irrelevant to the present analysis that Leap stubbornly refuses to act because it did not get what it wanted in the *Grant Order*.

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

Sincerely yours,

A handwritten signature in cursive script that reads "Helgi Walker".

Helgi C. Walker

cc: (by email):

Acting Chairman Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Robert M. McDowell
Jim Bird
Renee Crittendon
Neil Dellar
Michele Ellison
Angela Giancarlo
Aaron Goldberger
Nese Guendelsberger
Paul Murray
Jim Schlichting
Susan Singer

¹⁴ *Id.* at 3.