

June 1, 2009

VIA ELECTRONIC FILING

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

Re: Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC
("Verizon/ALLTEL"), WT Docket No. 08-95, and Reexamination of Roaming Obligations of
Commercial Mobile Radio Service Providers, WT Docket No. 05-265 - **EX PARTE**

Dear Ms. Dortch:

On behalf of Leap Wireless, Inc. ("Leap"), this letter responds to Verizon Wireless's recent *ex parte* letter of May 27, 2009.¹ Under the logic of that letter, combined with Verizon's earlier submissions, the Commission in the *Verizon/ALLTEL Order*² got it right in deciding that the four-year term extended only to the rate commitment,³ and three of the five Commissioners somehow got it wrong in deciding that the four-year term extended to all conditions.⁴ But both of these propositions cannot be true, and Verizon has reached a schizophrenic zenith in its inconsistency. Having repeatedly discounted the intent of three Commissioners as irrelevant (*see, e.g.*, Verizon Ex Parte at 2, n.9), Verizon cannot then in the same breath solemnly and separately invoke the intent of "the Commission" as if the agency were an incorporeal entity, curiously independent of the mind of its members, and in lockstep only with Verizon's own mind.

A look at the two "key" Leap "concessions" advertised by the first paragraph of Verizon's recent letter reveals no such thing. Verizon finds one such compromising concession in Leap's statement that paragraph 178 contains "commitments on rates, and specifically, a commitment that Verizon will not adjust upwards the rate. . . ."⁵ But Leap has always

¹ See Letter from Helgi C. Walker, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95 (filed May 27, 2009)("Verizon Ex Parte").

² *Applications of Cellco 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*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, ¶ 178 (rel. Nov. 10, 2008) ("Verizon/ALLTELOrder").

³ Verizon Ex Parte at 2.

⁴ *Id.* at 2 n.9.

⁵ *Id.* at 2.

maintained (i) that the rate commitment extends to rates, (ii) that therefore there is some tension between it and the contract election commitment, which would mean nothing if Verizon could terminate the selected contract in a fortnight, and (iii) that the tension can and should be resolved by clarifying that the contract election commitment, too, extends to four years.

Leap's second "key" concession? In Verizon's telling:

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."⁶

To begin with, Leap has never asserted, either now or previously, that this condition was not "accurately transcribed," and Leap has always stated, both now and previously that the meaning of the condition is unclear. For the rest, interpreting a Commission order in light of the policy goals that inspired it is a standard tool for clarifying it. Taking into account these policy goals is not a "substantive policy change," as Verizon presents it, but rather an application of existing policy. Contrary to Verizon's apparent belief, merger approvals and the conditions on which such approvals are based can, and indeed should, be based on policy goals.

In reality, this latest retort from Verizon appears consistent with a strategy of making the issues appear insoluble except with the aid of long *ex parte* pleadings and after much time and deliberation. This is not so. Practically everything that can be said about these two Verizon commitments has been said, much of it twice.

Very truly yours,

- /s/ -

Pantelis Michalopoulos
Marc Paul
of STEPTOE & JOHNSON, LLP

James H. Barker
Barry J. Blonien
of LATHAM & WATKINS, LLP

Counsel to Leap Wireless, Inc.

⁶ *Id.* at 3.

cc (by email):

Paul Murray, Office of Acting Chairman Copps
Renée Crittendon, Office of Commissioner Adelstein
Angela Giancarlo, Office of Commissioner McDowell
Michele Ellison, Acting General Counsel
Jim Bird, Office of General Counsel
Neil Dellar, Office of General Counsel