



1776 K STREET NW  
WASHINGTON, DC 20006  
PHONE 202.719.7000  
FAX 202.719.7049

7925 JONES BRANCH DRIVE  
McLEAN, VA 22102  
PHONE 703.905.2800  
FAX 703.905.2820

www.wileyrein.com

June 9, 2009

Helgi C. Walker  
202.719.7349  
hwalker@wileyrein.com

**VIA ELECTRONIC FILING**

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

Re: Notice of Ex Parte Presentation

WT Docket 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

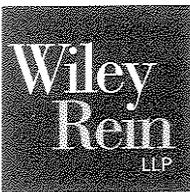
Dear Ms. Dortch:

On Monday, June 8, 2009, John T. Scott, III and Andre J. Lachance of Verizon Wireless and R. Michael Senkowski, Helgi C. Walker, and Gregg L. Elias of Wiley Rein LLP met with Acting Chairman Michael J. Copps and Paul Murray, his Acting Legal Advisor.

We discussed Leap's claim that the Verizon Wireless merger commitment to maintain roaming rates for four years should be "clarified" to extend to all terms and conditions – not just rates. The simple answer is that Leap knew then and now that the commitment does not extend beyond rates, and that the *Grant Order*<sup>1</sup> is clear on its face that the four-year commitment applies only to rates. Prior to the *Grant Order*, Leap stated, "Verizon proposes a two-year [later extended to four years] 'grandfathering' for rates found in ALLTEL's roaming agreements, but disconcertingly not for any other terms."<sup>2</sup> The *Grant Order* subsequently rejected Leap's request to expand the condition beyond rates, and the Commission stated that "we decline to condition our approval of the transaction on any additional

<sup>1</sup> *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 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, WT Docket 08-95, 23 FCC Rcd 17444 (Nov. 10, 2008).

<sup>2</sup> Reply Comments of Leap Wireless International, Inc., WT Docket No. 08-95, at 24 (filed Aug. 26, 2008).



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special requirements relating to roaming rates or arrangements.”<sup>3</sup> Accordingly, there is no basis for Leap’s assertion that the condition is ambiguous and that clarification is required. In support of this point, we reviewed the chronology attached hereto with Chairman Copps. The chronology confirms that the condition as proposed by Verizon Wireless and adopted in the *Grant Order* was limited to rates.

We also emphasized to Chairman Copps that Leap’s interpretation of the Pricing Condition would render entirely redundant Verizon Wireless’s commitment to honor the entirety of ALLTEL’s existing roaming agreements. Verizon Wireless committed to “honor all of the terms of [existing ALLTEL] CDMA and GSM roaming agreements, thereby ensuring that other carriers’ customers will continue to enjoy roaming service.”<sup>4</sup> Later, Verizon Wireless proposed an entirely separate and additional commitment whereby it agreed to honor the *rates* in those agreements for as long as four years *beyond* the life of those contract.<sup>5</sup> The Commission accepted both of these voluntary commitments as conditions of the *Grant Order*.<sup>6</sup> If “rates” in the Pricing Condition meant “rates” and “terms and conditions,” then the antecedent condition would be superfluous; the Pricing Condition would *already* have enabled all terms and conditions to live on well past the relevant contract life, and there would have been no need to commit to honor those agreements for their natural contractual life span.

Finally, we noted that Leap’s request is all about securing automatic home-roaming rights, in the face of two contrary full Commission decisions: (1) the *Grant Order*, which rejected any additional roaming conditions beyond what Verizon Wireless had proposed, and (2) the *2007 Roaming Order*, which rejected an automatic home-roaming mandate, finding that such a mandate “could harm facilities-based competition and negatively affect build-out in these markets, thus

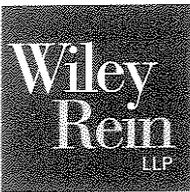
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<sup>3</sup> *Grant Order*, ¶ 179.

<sup>4</sup> Description of Transaction, Public Interest Showing and Related Requests and Demonstrations, *In re Applications of Atlantis Holdings, LLC, and Cellco Partnership d/b/a Verizon Wireless For Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act*, WT Docket 08-95, at 17 (filed June 13, 2008).

<sup>5</sup> See Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95, at 2 (November 3, 2008).

<sup>6</sup> See *Grant Order*, ¶ 178.



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adversely impacting network quality, reliability and coverage.”<sup>7</sup> Leap’s effort here is no more than an attempted end run around those decisions. The Commission should not entertain Leap’s gamesmanship.

Pursuant to Section 1.1206(b)(2) of the Commission’s rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket.

Sincerely,

/s/ Helgi C. 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

Attachment

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<sup>7</sup> See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15835 (¶ 49) (2007).

### Timeline of Pricing Condition

- **June 13, 2008: Verizon Wireless agreed to honor the terms of existing ALLTEL agreements.**  
“Upon closing of the transaction, Verizon Wireless will honor all of the terms of those [existing ALLTEL] CDMA and GSM roaming agreements, thereby ensuring that other carriers’ customers will continue to enjoy roaming service.” Public Interest Statement at 17 (June 13, 2008).
- **July 22, 2008: Verizon Wireless agreed to honor the rates in existing ALLTEL agreements, notwithstanding rights to terminate agreements.**  
“First, each such regional, small and/or rural carrier that has a roaming agreement with Alltel will have the option to keep the rates set forth in that roaming agreement in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give Verizon Wireless the right to accelerate the termination of such agreement.” Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95, at 2 (filed July 22, 2008) (emphasis added).
- **August 11, 2008: Leap criticized the duration of Verizon Wireless’s commitments.**  
In its Petition to Deny, Leap took issue with Verizon Wireless’s voluntary commitments, calling them “a vow of faithfulness for all of one month (the effective term of many roaming agreements).” Petition to Deny of Leap Wireless International, Inc., WT Docket No. 08-95, at 4 (filed Aug. 11, 2008).
- **August 19, 2008: Verizon Wireless extended the duration of its commitment with regard to rates to two years.**  
In its Opposition to Petitions to Deny and Comments on August 19, 2008, Verizon Wireless agreed to “keep rates set forth in Alltel’s existing agreements with [other] carriers for the full term of the agreement or for two years from the closing date, whichever occurs later.” Joint Opposition to Petitions to Deny and Comments filed by Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, WT Docket No. 08-95, at iii, 49 (filed Aug. 19, 2008) (emphasis added).
- **August 26, 2008: Leap criticized Verizon Wireless’s commitment with regard to rates precisely because it is so limited.**  
On August 26, 2008, in its Reply Comments Leap stated that “Verizon’s commitment to respect the rates found in ALLTEL’s roaming agreements (disconcertingly, not even the agreements themselves) for two years is meaningless.” Reply Comments of Leap Wireless International, Inc., WT Docket No. 08-95, at 5 (filed Aug. 26, 2008) (emphasis added). Leap continued, characterizing Verizon Wireless’s voluntary commitment as “a two-year ‘grandfathering’ for the rates found in ALLTEL’s roaming agreements,” and “not for any other terms.” *Id.* at 24 (emphasis added).

- **November 3, 2008: Verizon Wireless extends the duration of its commitment with regard to rates to four years.**  
 On November 3, 2008, Verizon Wireless agreed to “double, from two years to four, the duration of the commitment with respect to roaming rates that it made previously in this proceeding.” Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95, at 2 (November 3, 2008) (emphasis added). “Verizon Wireless will keep 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, whichever occurs later.” *Id.* (emphasis added).
- **November 10, 2008: The Commission adopted Verizon Wireless’s commitment with regard to rates and rejected Leap’s proposal to extend this commitment to all the terms of existing ALLTEL roaming agreements.**

  - “[Verizon Wireless] commits to honor the rates in ALLTEL’s existing roaming agreements with each carrier for the full term of the agreement or for four years from the closing date, whichever occurs later.” *Grant Order*, ¶ 176 (citing Verizon Wireless November 3, 2008 Ex Parte Filing at 2) (emphasis added).
  - “Commenters further request that Verizon Wireless make clear that their roaming commitment apply to all terms of ALLTEL’s existing contracts – not just the rates.” *Grant Order*, ¶ 176 (citing Leap Wireless Reply at 24) (emphasis added).
  - “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.” *Grant Order*, ¶ 178 (citing Verizon Wireless November 3, 2008 Ex Parte Filing at 2) (emphasis added).
  - “With regard to any additional roaming concerns raised in the record or in the ex parte letter filed by MetroPCS and other commenters, as discussed elsewhere in this Memorandum Opinion and Order and Declaratory Ruling, we find that the package of divestitures on which we are conditioning our approval of this transaction, along with the roaming conditions described above, sufficient to prevent the significant competitive harm that this transaction would likely cause in certain geographic markets. Based on this finding that the divestitures, as well as Verizon Wireless’s roaming related commitments, will protect competition at the retail level in those geographic markets, we conclude that this transaction will not alter competitive market conditions to harm consumers of mobile telephony/broadband services. We note that our conclusion here is consistent with the Commission’s prior findings that competition in the retail market is sufficient to protect consumers against

potential harm arising from intercarrier roaming arrangements and practices. Accordingly, we decline to condition our approval of the transaction on any additional special requirements relating to roaming rates or arrangements.” *Grant Order*, ¶ 179 (emphasis added).

– “Furthermore, the commenters have failed to demonstrate that the transaction will cause the potential harms they purportedly seek to remedy. We note that the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are related to the Commission’s responsibilities under the Communications Act and related statutes. We will address the concerns about roaming raised in the record of this transaction in other, more appropriate, proceedings.” *Grant Order*, ¶ 180 (emphasis added).

- **December 10, 2008: In its, now-pending Petition, Leap characterized the commitment with regard to rates, as adopted by the Commission, as limited to rates.**

Leap asked the Commission to require Verizon Wireless to honor “the entirety of the [ALLTEL] roaming agreement . . . and not just the rates in [that] agreement” for a minimum of four years. Petition for Clarification or Reconsideration of Leap Wireless International, Inc., WT Docket No. 08-95, at 3 (filed Dec. 10, 2008) (emphasis added).

- **May 19, 2009: Leap again described this commitment as limited to rates.** “[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.’” 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, at 4 (May 19, 2009) (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).

- **May 7, 2009: Recent congressional testimony by Leap’s General Counsel confirmed that Leap understands the Pricing Condition to apply only to rates.**

“[T]he 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).