

AMY KLOBUCHAR  
MINNESOTA

COMMITTEES:  
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AND TRANSPORTATION  
ENVIRONMENT AND PUBLIC WORKS  
JOINT ECONOMIC COMMITTEE  
JUDICIARY

# United States Senate

WASHINGTON, DC 20510

November 9, 2009

**1905**

Julius Genachowski  
Chairman  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Dear Chairman Genachowski:

As you know, I introduced legislation in the last Congress – the Cell Phone Consumer Empowerment Act – that would encourage transparency, competition, and quality service in the wireless market. Among other pro-consumer measures, this legislation would require wireless carriers to pro-rate their Early Termination Fees (ETFs) so that, at a minimum, a consumer exiting a two-year contract after the end of the first year would have to pay only half of the termination fee.

Since introducing this legislation, I was pleased to see that Verizon Wireless and other wireless carriers implemented modest plans to pro-rate their ETFs. That is why I was so disappointed to learn that Verizon Wireless recently announced that it will soon double its ETFs and charge a \$350 ETF for its new smart phones. Although Verizon Wireless will pro-rate this ETF by \$10 a month, under the company's new plan, the penalty for leaving the contract halfway through a two-year term would be \$230 – still higher than the \$175 ETF Verizon Wireless previously charged for these phones.

Verizon Wireless' decision shows us once again that the wireless industry cannot police itself and will not, on its own, make its practices more competitive and consumer-friendly. To that end, I urge the FCC to review the recent Verizon Wireless decision as well as the competitive and economic impact of ETFs on wireless consumers.

Sincerely,



Amy Klobuchar  
U.S. Senator



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

March 3, 2010

The Honorable Amy Klobuchar  
United States Senate  
302 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Klobuchar,

Thank you for your letter urging the Commission to review Verizon Wireless's decision to raise its early termination fee (ETF) on service contracts for "advanced devices."

I share your view that further inquiry into Verizon Wireless's ETF increase is warranted and that the wireless industry's use of ETFs deserves greater attention. On December 4, 2009, the Chiefs of the Commission's Wireless Telecommunications Bureau and Consumer & Governmental Affairs Bureau sent a letter to Verizon Wireless requesting detailed information regarding the company's decision. Press reports indicated that Verizon Wireless attributed its increased ETF to the cost it pays for these devices. Accordingly, the Bureaus asked whether the decision was the result of increases in the wholesale prices of advanced devices, and requested an explanation of the cost differentials between what the company pays for advanced devices and the price it charges its customers.

Verizon Wireless submitted its response to the ETF letter on December 18, 2009. It states in its response that the higher ETF associated with advanced devices reflects the higher costs associated with offering those devices to consumers at attractive prices, the costs and risks of investing in the broadband network to support these devices, and other costs and risks, such as advertising, commission, store costs, and network costs.

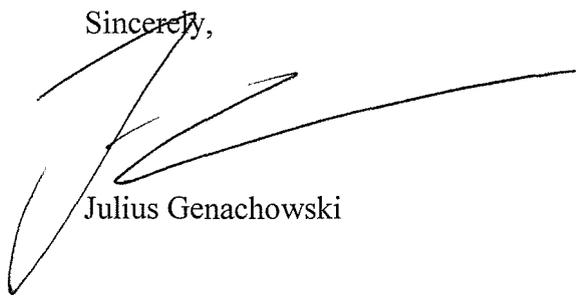
I believe that Verizon Wireless's response raised more questions than it answered about consumers' access to information about ETFs. The Commission's staff has been evaluating the response in light of the company's actions, consumer complaints, and the comments filed in response to the *Consumer Information and Disclosure Notice of Inquiry* (CG 09-158) and the *ETF* proceeding (WT 05-194). On January 26, 2010, the Wireless Telecommunications and Consumer & Governmental Affairs Bureau Chiefs followed-up with the enclosed letter to Verizon Wireless, and sent similar letters to AT&T, Sprint Nextel, T-Mobile, and Google.

Protecting and empowering American consumers is one of the Commission's most fundamental responsibilities. On January 20, 2010, the Commission launched a Consumer Task Force with the mission of ensuring that consumer protection and empowerment policies are accounted for in all Commission proceedings, applied consistently and reasonably across technologies.

Page 2—The Honorable Amy Klobuchar

I look forward to continuing our work with you on this important issue. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julius Genachowski'. The signature is stylized with a large, sweeping initial 'J' and a long horizontal stroke extending to the right.

Julius Genachowski

Enclosure



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

January 26, 2010

DA 10-136

**Via Certified Mail, Return Receipt Requested**

Kathleen Grillo, Esq.  
Senior Vice President, Federal Regulatory Affairs  
Verizon  
1300 I Street, N.W., Suite 400 West  
Washington, D.C. 20005

**RE: Verizon Wireless's Early Termination Fee Policy**

Dear Ms. Grillo:

The purpose of this letter is to gather information about whether customers are adequately informed about Verizon Wireless's Early Termination Fees ("ETFs") for wireless service. We recognize that wireless carriers may have various rationales for ETFs. At the same time, these fees are substantial (and in some cases are increasing) and have an important impact on consumers' ability to switch carriers.<sup>1</sup> We therefore believe it is essential that consumers fully understand what they are signing up for—both in the short term and over the life of the contract—when they accept a service plan with an early termination fee.

The FCC is currently investigating options for improving consumer information and transparency about communications services and fees, including ETFs, as a follow-up to our Notice of Inquiry on Consumer Disclosure issued in August 2009.<sup>2</sup> Our discussions with wireless companies since December indicate that there is no standard framework for structuring and applying ETFs throughout the wireless industry. We also know that some companies do not have ETFs. While different companies may choose to

<sup>1</sup> GAO, *Telecommunications: FCC Needs to Improve Oversight of Wireless Phone Service*, GAO 10-34 (Washington, D.C.: November 2009).

<sup>2</sup> *Consumer Information and Disclosure*, CG Docket No. 09-158, *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, *IP-Enabled Services*, WC Docket No. 04-36, Notice of Inquiry, 24 FCC Rcd 11380 (2009).

offer different kinds of service plans to their customers, the absence of a standard framework makes it especially important that consumers have a clear understanding of terms and practices of individual companies, which will allow them to compare services offered by different providers on a clear and consistent basis.

In the interest of clarifying these important consumer issues, we are now writing simultaneously to multiple companies to ask a standard set of questions on approaches to ETFs and their implementation. This is an essential step to ensuring that consumers have the information that helps them make informed choices in a competitive marketplace. Please send us your responses to the following questions by February 23, 2010.

In light of our carrier-specific letter of December 4, 2009, to Verizon Wireless on ETF issues, please feel free in your answers to the questions below to cross-reference any specific portions of your response of December 18, 2009. Please also take this as an opportunity to supplement your responses where you deem appropriate.

In response to these questions, please make sure to describe how and where you disclose the relevant information to consumers. Please send us examples of the channels by which you make those disclosures, including: (1) Print, online, television, and radio advertisements; (2) Statements on your website (indicate where the relevant pages appear on the site); (3) Point-of-sale brochures; (4) Sales scripts; (5) Explanations and itemization on monthly bills; and (6) Any other format.

1. Do your ETFs apply to all service plans or only some? If so, which ones?
2. What is the amount of the ETF for each service plan where ETFs apply? If there are different ETFs for different plans, what is the rationale for those differences?
3. How much of a discount on handset purchase is given in return for a consumer accepting an ETF? Does the amount of the discount differ by device, and if so, how?
4. Does the ETF itself vary by device (*e.g.*, higher ETFs for advanced devices)? If higher ETFs apply to a certain class of devices, exactly how is that class defined?
5. Is it possible for consumers to buy a handset from you at full price to avoid an ETF? If this is possible, can consumers buy unsubsidized handsets online, as well as at brick-and-mortar stores?
6. Do monthly service rates and terms differ: (1) between customers who assume a term commitment and accept an ETF, and those who don't, and (2) between customers who purchase an unsubsidized device (either from your company or a third party), and those who purchase a subsidized device? If so, how do they differ, and what is the rationale for the difference? Can customers easily determine the impacts of their decisions and their rates and terms?

7. Are ETFs prorated so that the customer's liability decreases over time? If so, what is the exact schedule by which they are prorated?
8. If a customer renews his or her contract without buying a new handset, does his or her monthly service fee change in any way?
9. How long is the trial period during which consumers can cancel their service without an ETF penalty? If they cancel, can they return the handset? If they return it, will they receive a full refund, no refund, or a refund minus a restocking and/or refurbishing fee?
10. When do consumers receive their first bill under your service plans? How does the trial period relate, if at all, to receipt of the first bill?
11. Are there consumer fees or charges in addition to ETFs if consumers buy handsets and/or service plans from online phone dealers, such as Amazon, LetsTalk, and Simplexity (d/b/a Wirefly), or from a service provider, if a customer does not complete the contract term? If so, what are they, and what are their levels, terms, and conditions? Do the fees or charges affect the ETFs and if so, how?
12. Press reports and public statements from wireless companies have attributed ETFs to several different factors. What is the rationale for your ETF(s), and how specifically do the structure and level of those ETF(s) relate to that rationale?

*Request for Confidential Treatment.* If Verizon Wireless requests that any information or documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and documents, a statement in accordance with section 0.459 of the Commission's rules. 47 C.F.R. § 0.459. Requests for confidential treatment must comply with the requirements of section 0.459, including the standards of specificity mandated by section 0.459(b).

Sincerely,

Joel Gurin  
Chief  
Consumer and Governmental Affairs Bureau  
Federal Communications Commission

Ruth Milkman  
Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission