

February 10, 2011

Chairman Julius Genachowski  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: GN Docket No. 09-51 (National Broadband Plan)  
GN Docket No. 09-137 (Expansion of Advanced Broadband)  
WT Docket No. 10-133 (Wireless Competition)  
RM Docket No. 11592 (Mobile Interoperability)**

Dear Chairman Genachowski:

Beginning today, Verizon Wireless (Verizon) customers will have the ability to use the Apple iPhone 4 on the Verizon network. While we are pleased to see Verizon customers have more choices with respect to handsets, we are concerned about broader anti-consumer practices implicated by the availability of the Apple iPhone 4 on the Verizon network.

Specifically, we are concerned about AT&T Wireless (AT&T) customers who wish to switch to Verizon and the high early termination fee they will face if they choose to leave AT&T prior to the conclusion of their contract. We are also disturbed by the inability of iPhone users to use their devices on both networks, and instead will be required to buy a new iPhone if switching carriers.

The issues of ETFs and interoperability are not limited to this instance. Customers continue to be unable to freely move from one carrier to another if they are unhappy with their current wireless service provider. These issues have been raised in a number of proceedings, and we ask that the Commission swiftly resolve these proceedings so that consumers can benefit from more choice and competition.

### ***Early Termination Fees***

The offering of Apple's iPhone on the Verizon network will allow current AT&T customers to switch to Verizon. However, customers choosing to terminate their AT&T contracts early will face an ETF of \$325 minus \$10 for each full month of the contract the customer completes.

ETFs have long been a concern for consumers. Indeed, the Government Accountability Office found that ETFs are a key area of consumer concern and estimates that around 42% of consumers do not switch carriers due to ETFs. Consumers Union and other parties also have argued previously that high ETFs limit consumers' ability to switch between carriers and hinder competition in the wireless market. We have stated in Comments that ETFs "lock customers into lengthy contracts, limiting switching and the ability of consumers to 'vote with their feet' by

leaving a current provider when another provider can make a better offer.” Furthermore, ETFs effectively lock consumers into long-term contracts without acknowledging the fast-paced technological advancements made to mobile devices. For example, Apple has updated the hardware of its iPhone every year since it was released in 2007.

We welcome technological innovation, and consumers should not have to pay a penalty for wanting to have the most up-to-date technology because of ETFs. Although carriers argue that the ETFs pay for the subsidies that carriers offer consumers, Consumers Union calculated that the average subsidy of a wireless device is only \$14.33.

### ***Mobile Interoperability***

The Verizon iPhone will not function on the AT&T network. The absence of interoperability between the networks will result in great inconvenience to many consumers seeking to switch to a new mobile service provider. We are especially concerned with this limitation since at least one report, by Chris Foresman of *Ars Technica*, finds the Verizon iPhone could have been made a dual-mode phone, becoming interoperable between GSM and CDMA networks.

More importantly, the issue of interoperability will become even more relevant as carriers begin to build out 4G, LTE service in the 700 MHz band. Conceivably, with all parties using LTE technology in the 700 MHz band, it should be much easier for consumers to switch carriers and take their phones with them. However, as a number of parties have argued, there is concern that the wireless industry has begun to adopt standards that could lead to the balkanization of the 700 MHz band. This balkanization would prevent all carriers from having access to the same phones. Moreover, this would prevent consumers from taking their phones with them if they choose to sign-up with a new wireless provider.

### ***Commission Action***

The Commission has a number of proceedings where it can address these important consumer issues. For example, in a June 2010 inquiry on mobile wireless competition, the Commission raised questions around consumer behavior and ETFs. The Commission also has a petition for rulemaking by the 700 MHz Block A Good Faith Purchasers Alliance. A rulemaking would allow the Commission to require the interoperability of all devices operating on the 700 MHz Band.

Consumers Union urges the Commission to move forward on its proceedings to remedy the problems consumers face regarding ETFs and interoperability issues. With Commission action, consumers will be able to vote with their pocketbooks and feet if their wireless carrier is not providing adequate service. Without the threat of high ETFs, with the ability to access the phone of their choice on any network, and with the ability to keep one’s mobile device when switching carriers, dissatisfied wireless consumers can freely move to another carrier that they believe will better suit their needs. This will create a robust wireless market, foster innovation of devices, and hold wireless carriers responsible for sub-par service.

Sincerely,

A handwritten signature in black ink, appearing to read "Parul P. Desai". The signature is fluid and cursive, with the first name "Parul" being the most prominent.

Parul P. Desai  
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Cc: Commissioner Michael J. Copps  
Commissioner Robert M. McDowell  
Commissioner Mignon Clyburn  
Commissioner Meredith Attwell Baker