

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
INTERNET BUREAU**

**IN THE MATTER OF
VERIZON WIRELESS**

ASSURANCE OF DISCONTINUANCE

WHEREAS, pursuant to the provisions of Article 22-A of the New York General Business Law, and Section 63(12) of the Executive Law, the Office of Andrew M. Cuomo, Attorney General of the State of New York (“OAG”) has made an inquiry into certain business practices of Verizon Wireless (the “Inquiry”);

WHEREAS Verizon Wireless has voluntarily worked with and cooperated with the OAG in the Inquiry by voluntarily producing documents and internal materials and answering questions relevant to the Inquiry;

WHEREAS in the course of the Inquiry the OAG has reviewed extensive documents and materials;

NOW THEREFORE, the OAG, based upon the Inquiry, concludes as follows:

FINDINGS OF ATTORNEY GENERAL

1. Cellco Partnership (d/b/a Verizon Wireless) (“Verizon Wireless”) is a Delaware partnership with its principal offices located in Basking Ridge, New Jersey.¹ Since its formation in 2000, its primary business has been the provision of cellular telephone service to businesses and individual consumers. Verizon Wireless is the largest provider of wireless telecommunications services in the United States in terms of revenue, and the second largest in

¹ Verizon Wireless is owned entirely by Verizon Communications, Inc. and Vodafone Group plc.

terms of total wireless customers.

2. Since early 2002, Verizon Wireless has offered high speed wireless data access to its customers in addition to standard voice cell phone service through its NationalAccess and, later, its BroadbandAccess plans. That is, customers with the proper equipment could access the internet (or a private intranet) using Verizon Wireless's wireless network. In order to take advantage of this data access service, a customer would need to (1) sign up for Verizon Wireless's NationalAccess or BroadbandAccess service plan ("Data Access Plans"²) and (2) purchase either a wireless PC card to attach to a computer (usually a laptop), or a Verizon Wireless cell phone capable of being used as a modem by a computer to access the World Wide Web ("Modem Cell Phone"). Customers who purchased a Modem Cell Phone would usually also sign up for a standard voice cell phone service plan in addition to a Data Access Plan.

3. Verizon Wireless regularly described and advertised its Data Access Plans to consumers as "unlimited." For example, its website prominently and repeatedly promoted the Verizon Wireless Data Access Plans as providing "unlimited wireless data usage" and "unlimited access." Verizon Wireless also regularly described its Data Access Plans as "unlimited" in print, television, and direct mail advertisements, as well as in displays and brochures available at Verizon Wireless stores.

4. A customer who saw an advertisement for "unlimited" internet access would not expect the service to have categorical limitations on usage or quantitative data usage caps.

5. However, Verizon Wireless purported to prohibit certain common uses of its

2 In the portion of this Assurance titled "Agreement," Data Access Plans shall refer not only to NationalAccess and BroadbandAccess but also to any future similar plan that provides high speed internet and intranet access through wireless PC cards and tethering of cell phones to use as a modem for a laptop. It shall not refer to service plans that only allow for viewing emails or webpages on a mobile phone.

internet access service in its terms and conditions. For example, at various times, Verizon Wireless's terms and conditions provided that customers could not use Verizon Wireless's Data Access Plan to download movies, music, or games.

6. These material categorical prohibitions were not clearly and conspicuously disclosed to consumers, especially given Verizon Wireless's consistent advertisement and description of these Data Access Plans as "unlimited." Some advertisements or descriptions of Verizon Wireless's Data Access Plans contained no reference to these restrictions. Other times, Verizon Wireless advertised its unlimited wireless data access "for internet browsing, email and intranet access." However, this proviso did not meaningfully convey that other uses were prohibited, nor did it explain what usage qualified as "internet browsing."

7. Verizon Wireless also capped its users' "unlimited" wireless access at specific usage thresholds (usually between five and ten gigabytes³ of usage per month). If a Data Access Plan customer accessed or downloaded more data than allowed by Verizon Wireless's cap, she would either be automatically terminated or sent a form letter stating that her service would be terminated unless she contacted Verizon Wireless and affirmed that she was not violating any of the categorical prohibitions on internet access contained within Verizon Wireless's terms and conditions.

8. Verizon Wireless's data usage cap was also not clearly and conspicuously disclosed to consumers. Most advertisements and descriptions of Verizon Wireless's Data Access Plans did not mention the cap for the "unlimited" service at all and others only referenced

³ A "byte" is a measurement of binary data. One byte usually contains enough information to convey or store just one character (such as the letter "a"). A "gigabyte" equals approximately one billion bytes, or approximately one thousand "megabytes" (the standard unit of data measurement). Static webpages often contain less than one megabyte of data, while a three minute video clip on YouTube might contain approximately four megabytes of data.

the cap in fine print at the bottom of the advertisement.

9. Although Verizon Wireless's usage threshold was considerably higher than the average Verizon Wireless customer's consumption, over 13,851 subscribers were terminated by Verizon Wireless for excessive or prohibited usage of its "unlimited" data access plans. Because wireless data access hardware (wireless PC cards and Modem Cell Phones) is generally not portable to other data access networks, customers terminated by Verizon Wireless for excessive usage of a Data Access Plan ("Terminated Customers") were unable to use these products to access the internet after Verizon Wireless stopped providing the customers with wireless data access service.

STATUTORY VIOLATIONS

10. The OAG finds that by engaging in the practices described in Paragraphs 1 through 9 above, Verizon Wireless has violated New York General Business Law §§ 349 and 350 and New York Executive Law § 63(12).

11. **IT NOW APPEARS** that Verizon Wireless is willing to enter into this Assurance of Discontinuance, without admitting the findings contained herein. Verizon Wireless expressly denies that its conduct constituted any violation of law but is nevertheless willing to cooperate with the OAG and enter into this Assurance of Discontinuance so that this matter may be resolved amicably. Verizon Wireless believes that it is, and at all times has been, in compliance with New York's fair advertising laws, and further believes that its advertising materials have been accurate and complete and disclosed all necessary material information clearly and conspicuously. The OAG is willing to accept the terms of this Assurance of Discontinuance pursuant to Executive Law § 63(15) in lieu of commencing a statutory special proceeding.

AGREEMENT

12. This Assurance of Discontinuance (hereinafter “Assurance”) shall apply to Verizon Wireless, whether acting through its principals, directors, officers, shareholders, employees, representatives, agents, assigns, successors, or other business entities, whose acts, practices, or policies are directed, formulated, or controlled by Verizon Wireless.

13. Verizon Wireless shall not use the word “unlimited” to describe, advertise, or offer for sale any Data Access Plan if a consumer’s ability to access data through such a plan is subject to a quantitative data usage cap. In the event that Verizon Wireless adopts a policy imposing a quantitative cap on the amount of data a user may consume under a Data Access Plan, Verizon Wireless shall clearly and conspicuously disclose the cap to consumers within any advertisement or offer of the Data Access Plan.

14. In the event that Verizon Wireless adopts a policy limiting a Data Access Plan customer’s access speed after the consumer has exceeded a certain usage threshold, Verizon Wireless shall clearly disclose this policy within any Data Access Plan’s terms and conditions and within any Data Access Plan contract. In advertising the access speed of any Data Access Plan, Verizon Wireless in the same advertising shall clearly and conspicuously disclose any policy limiting access speed after a consumer has exceeded a certain usage threshold such that it would be readily apparent to an ordinary consumer and in language such that the ordinary consumer would comprehend its import. In advertisements that characterize Verizon Wireless’s Data Access Plan as “unlimited,” the policy must be disclosed in close proximity to any claimed access speed.

15. In the event that Verizon Wireless adopts a policy prohibiting a Data Access Plan customer from using the Data Access Plan to access legal, legitimate, and non-infringing

common internet applications, Verizon Wireless shall clearly and conspicuously disclose to consumers within the advertisement or offer the common internet applications for which the Data Access Plan may or may not be used. Such disclosure must be prominently placed within the advertisement or offer, and written in language such that the ordinary consumer would comprehend its import. For purposes of this Assurance, examples of uses that are not “common internet applications” subject to this disclosure obligation shall include server devices or host computer applications, including continuous web camera posts or broadcasts, automatic data feeds, automated machine to machine connections, and peer to peer (P2P) file sharing applications that are of such a nature as to lead to unreasonable broadcast to multiple servers or recipients such that it could enable bots, or otherwise denigrate network capacity or functionality, or which disrupt net user groups or email use by others; usage as a substitute or backup for private lines or dedicated data connections; software or other devices, such as “keep alive” functions, that maintain continuous active Internet connections when a computer’s connection would otherwise be idle; or illegal or infringing activities, or uses that perpetuate spam, malware, denial of service attacks, or viruses. In addition, Verizon Wireless shall clearly disclose any prohibited uses, including those uses that are not “common internet applications,” within any Data Access Plan’s terms and conditions and within any Data Access Plan contract.

16. Verizon Wireless shall make available to all Data Access Plan customers a reasonable mechanism to monitor data usage pursuant to such a plan.

17. Verizon Wireless shall make restitution to all Terminated Customers for all wireless PC cards and Modem Cell Phones purchased in order to take advantage of the company’s Data Access Plans. For all Terminated Customers for which Verizon Wireless has records reflecting the purchase price paid by the Terminated Customers for the Data Access Plan

equipment (e.g., most customers who purchased their Verizon Wireless equipment through a Verizon store or through VerizonWireless.com), Verizon Wireless shall reimburse Terminated Customers 100% of any amounts paid for any wireless PC card using the Data Access Plan when the account was terminated and 75% of any amounts paid for any Modem Cell Phone using the Data Access Plan when the account was terminated. For all Terminated Customers for which Verizon Wireless does not have records reflecting the purchase price paid by the Terminated Customers for the Data Access Plan equipment (e.g., customers who purchased their Verizon Wireless equipment through third parties), Verizon Wireless shall reimburse Terminated Customers 100% of the "Average Purchase Price" for any wireless PC card using the Data Access Plan when the account was terminated and 75% of the Average Purchase Price for any Modem Cell Phone using the Data Access Plan when the account was terminated. "Average Purchase Price" shall mean the average of the prices known by Verizon Wireless to have been paid by all Terminated Customers for either wireless PC cards or Modem Cell Phones as the case may be. Provided however, Verizon Wireless shall not be required to make restitution for wireless PC cards or Modem Cell Phones to Terminated Customers who subsequently entered into a new Data Access Plan with Verizon Wireless using the same wireless PC card or Modem Cell Phone as when the previous account was terminated.

18. Verizon Wireless may make it a condition of the redemption any restitution check that the Terminated Customer waives all other recourse and remedy and fully releases Verizon Wireless for all claims related to any deceptive or illegal marketing of its Data Access Plans.

19. Within 60 days of the execution date of this Assurance, Verizon Wireless shall make such restitution by tendering to each Terminated Customer a check, voidable after 120 days, in the appropriate amount, accompanied by a cover letter approved by the OAG describing

the settlement and explaining why the check has been issued to the consumer. Funds underlying any checks voided pursuant to this paragraph shall revert to Verizon Wireless.

20. For any current Verizon Wireless customer who signed up for a Data Access Plan prior to the execution date of this Assurance, Verizon Wireless shall notify the customer, either by mail or electronic mail, in a clear and conspicuous manner, if Verizon Wireless adopts new Data Access Plan limitations, including any material prohibited uses and any policy limiting a Data Access Plan customer's access speed after the consumer has exceeded a certain usage limit. For any customer whose historical usage would violate Verizon Wireless's new policy of prohibited uses or exceed the usage threshold at which Verizon Wireless will now throttle back a customer's access speed, Verizon Wireless shall clearly and conspicuously offer the Data Access Plan customer the option of remaining a Data Access Plan customer pursuant to the new restrictions, or alternatively the option to terminate the Data Access Plan with no early termination fee or other penalty.

21. Within 180 days of the execution date of this Assurance, Verizon Wireless shall provide to the OAG an affidavit confirming that Verizon Wireless has appropriate practices and procedures in place to ensure compliance with each and every term of this Assurance, including confirmation that the restitution checks have been sent to all Terminated Customers.

22. Within 30 days of the execution date of this Assurance, Verizon Wireless shall tender to the OAG \$150,000, representing \$125,000 in penalties and \$25,000 in costs by certified check payable to the State of New York Department of Law, and delivered to:

Andrew M. Cuomo
Attorney General of the State of New York
120 Broadway
New York, New York 10271
Attention: Justin Brookman, Internet Bureau

23. Nothing contained in this Assurance shall estop or otherwise deprive the OAG of its standing or of any other right it may have to bring any claim on behalf of any person or entity except that the OAG releases any civil claim seeking disgorgement, restitution, damages, penalties, or any other monetary or equitable relief against Verizon Wireless and all of its past and present subsidiaries, successors, assigns, officers, directors, employees, and shareholders, regarding the deceptive or illegal marketing of its Data Access Plans, where such claim arose prior to the date of execution of this Order. All other rights and claims on the part of the OAG, whether arising prior to or after the date of this Assurance, shall remain unaffected.

24. Nothing contained in this Assurance shall be construed to alter or enhance any existing legal rights of any consumer or to deprive any person or entity of any existing private right under the law with the exception of the waiver and release referenced in paragraph 18. Nothing in this Assurance shall in any way affect, restrict, or otherwise govern any rights of recourse Verizon Wireless may have or seek to assert against any non-party to this Assurance.

25. Any violation of the terms of this Assurance shall constitute prima facie evidence of a violation of the applicable law in any civil action or proceeding thereafter commenced against Verizon Wireless by the Attorney General in connection with the subject matter of this Assurance.

26. Nothing contained herein shall be construed as relieving Verizon Wireless of the obligation to comply with all state and federal laws, regulations, or rules, nor shall any of the provisions of this Assurance be deemed permission to engage in any act or practice prohibited by such law, regulation, or rule.

27. The acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of Verizon Wireless's business practices, and Verizon Wireless shall make no

representation to the contrary.

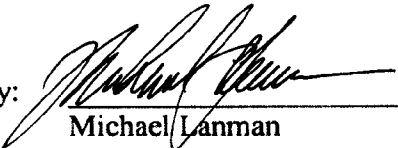
28. Verizon Wireless may make changes to its Data Access Plans and its advertisements for such plans so long as, to the extent applicable, such changes comply with the terms of this Assurance. Other than changes covered by the preceding sentence, if Verizon Wireless believes that any material modifications to any term of this Assurance are necessary or appropriate in light of changed technology or other circumstances, Verizon Wireless may request that OAG modify Verizon Wireless's obligations under this Assurance, and the OAG shall give due consideration to such requests.

29. This Assurance is expressly conditioned upon the truthfulness and accuracy of all representations made by Verizon Wireless and its counsel during this investigation.

30. The execution date of this Assurance shall be October 22nd, 2007.


WHEREFORE, the following signatures are affixed hereto this 22nd day of October 2007.

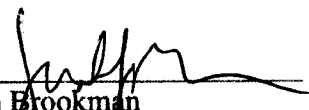
CELLCO PARTNERSHIP
d/b/a as VERIZON WIRELESS

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