

**FEDERAL COMMUNICATIONS COMMISSION**  
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**Re: Edward Ryan v. Cellco Partnership d/b/a Verizon Wireless, Proceeding No. 14-219 File No. EB-14-MD-009**

Dear Counsel:

This letter ruling terminates the mediation between the parties and establishes a schedule for briefing.

In this dispute, Edward Ryan (Ryan) filed a formal complaint against Verizon Wireless alleging that Verizon violated the Commission's C-block rules (47. C.F.R. § 27.16) by delivering an operating system software update that effectively disabled the free tethering application on Ryan's Verizon cell phone.<sup>1</sup> The parties then filed responsive and reply pleadings, and they exchanged discovery.<sup>2</sup>

On October 7, 2016, Commission staff asked the parties to propose a briefing schedule.<sup>3</sup> Having received no response by October 20, 2017, Commission staff again requested a proposed briefing schedule.<sup>4</sup> The parties initially set the schedule on October 28, 2016, then sought to postpone those deadlines on

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<sup>1</sup> See Complaint, File No. EB-14-MD-009 (filed July 28, 2014).

<sup>2</sup> See Answer of Cellco Partnership, File No. EB-14-MD-009 (filed Aug. 7, 2014); Complainant's Reply to Verizon's Answer, File No. EB-14-MD-009 (filed Sept. 22, 2014).

<sup>3</sup> Email from J. Adam Suppes, FCC Enforcement Bureau, MDRD (Suppes) to David Haga, counsel for Verizon (Haga), and Frederic Jennings, counsel for Ryan (Jennings) (dated Oct. 7, 2016).

<sup>4</sup> Email from Suppes to Haga and Jennings (dated Oct. 20, 2016).

January 10, 2017, February 17, 2017, and April 18, 2017, explaining that they were in settlement talks.<sup>5</sup> Commission staff granted the first two requested extensions,<sup>6</sup> but after the third request Commission staff took the briefing off-schedule and proposed to the parties that they engage in staff-supervised mediation.<sup>7</sup> On April 20, 2017, during a conference call, the parties agreed to the mediation.<sup>8</sup>

The mediation that has continued since April 20, 2017, has seen the parties negotiate independently and hold several *ex parte* mediation sessions with Commission staff.<sup>9</sup> While settlement of this dispute would be desirable, efforts toward that goal have been unsuccessful. On December 12, 2017, Commission staff wrote the parties, informing them that the mediation would be terminated unless, within one month of that date, the parties reported on their progress toward settlement or identified specific ways in which Commission staff can further the mediation toward a resolution of this dispute.<sup>10</sup> Staff received no substantive response to this message. Accordingly, we terminate the mediation and establish the following briefing schedule:

- Ryan's Opening Brief due: February 16, 2018
- Verizon's Response Brief due: March 9, 2018
- Ryan's Reply due: March 16, 2018

Additional requests for extension of deadlines in this case will not be granted except in unusual circumstances supported with evidence. Further, the Commission may dismiss this case if Ryan fails to file an opening brief. Alternatively, should the parties wish to continue negotiating without the limits this schedule imposes, they may agree to convert the pending formal complaint to an informal complaint and preserve the original filing date.

This letter ruling is issued pursuant to Sections 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, Sections 1.720-1.736 of the Commission's rules, 47 CFR §§ 1.720-1.736, and the authority delegated in Sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311.

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<sup>5</sup> Email from Jennings to Haga and Suppes (dated Oct. 28, 2016); Email from Jennings to Haga and Suppes (dated Jan. 10, 2017); Email from Jennings to Haga and Suppes (dated Feb. 17, 2017); Email from Jennings to Haga, Christopher Killion, FCC Enforcement Bureau (Killion), Rosemary McEnery, FCC Enforcement Bureau, MDRD (McEnery), and Suppes (dated Apr. 18, 2017).

<sup>6</sup> Email from Suppes to Haga and Jennings (dated Jan. 11, 2017); Email from Suppes to Haga and Jennings (dated Feb. 17, 2017).

<sup>7</sup> Email from Suppes to Haga and Jennings (dated Apr. 19, 2017).

<sup>8</sup> See Letter Order to Edward Ryan and Verizon Wireless, File No. EB-14-MD-009 (entered Apr. 20, 2017).

<sup>9</sup> See, e.g., Email from Jennings to Haga, Tamara Preiss (Preiss), Suppes, and William Wallace (Wallace) (dated May 3, 2017); Email from Haga to Preiss, Suppes, and Wallace (dated June 21, 2017).

<sup>10</sup> See Email from Suppes to Haga, Mark Jaffe, Jennings, Preiss, and Wallace (dated Dec. 12, 2017).

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