

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

ALEX NGUYEN  
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Complainant,

v.

CELLCO PARTNERSHIP &  
AFFILIATED ENTITIES d/b/a  
VERIZON WIRELESS

Defendant.

Proceeding No. 16-242  
File No. EB-16-MD-003

**UPDATE**

July 3, 2018

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## UPDATE

Seven months ago, the current Commission voted 3-2 to adopt its *Title I Order*,<sup>1</sup> which declared Internet access is not a telecommunications service but an information service like electronic publishing.<sup>2</sup> The *Title I Order* retained the Transparency Rule (47 CFR § 8.1, as of June 11, 2018) set forth by the *2010 Open Internet Order*<sup>3</sup> and *2015 Open Internet Order*<sup>4</sup> but restored Internet service providers' freedom to block and throttle edge providers, engage in paid prioritization, and otherwise interfere with or disadvantage competitors. Three weeks ago, the *Title I Order* took effect (but Congressional and judicial review are pending).

This update to the above-captioned formal complaint (*Complaint*) accounts for the legal authorities affected by the *Title I Order*: 47 CFR §§ 8.1 and 8.5–8.19 (June 12, 2015–June 11, 2018) / 80 Fed. Reg. 19847–19849 (April 13, 2015). Below, I maintain Cellco Partnership & Affiliated Entities d/b/a Verizon Wireless (“Verizon”) violated the legal authorities not affected

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- 1 “Restoring Internet Freedom”; WC Docket No. 17-108; Declaratory Ruling, Report and Order, and Order; 33 FCC Rcd. 311 (2018) (*Title I Order*)
  - 2 47 USC §§ 153(24) (‘The term “information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.’) and 274(h) [‘The term “electronic publishing” means the dissemination, provision, publication, or sale to an unaffiliated entity or person, of any one or more of the following: news (including sports); entertainment (other than interactive games); business, financial, legal, consumer, or credit materials; editorials, columns, or features; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other like or similar information.’]
  - 3 *Preserving the Open Internet, Broadband Industry Practices*; GN Docket No. 09-191, WC Docket No. 07-52; Report and Order; 25 FCC Rcd. 17905 (2010) (*2010 Open Internet Order*)
  - 4 *Protecting and Promoting the Open Internet*; WC Docket No. 14-28; Report and Order on Remand, Declaratory Ruling, and Order; 30 FCC Rcd. 5601 (2015) (*2015 Open Internet Order*)

by the order: the license obligations for spectrum in the Upper 700 MHz Band C Block,<sup>5</sup> a Consent Decree affirming Verizon’s license obligations,<sup>6</sup> and the Transparency Rule.

**I. I maintain Verizon disabled FM radio features and applications and disclosed misleading, deceptive, and false information.**

1. In spite of 47 CFR § 27.16(f) and the Transparency Rule, Verizon claimed devices that do have FM tuners don’t,<sup>7</sup> (on its public Web site) blamed manufacturers that didn’t “choose to include” FM radio chips,<sup>8</sup> and denied that Verizon blocked FM radio capabilities or applications after purchase.<sup>9</sup>

2. However, the record shows that all of Verizon’s claims are false and that in spite of 47 CFR §§ 27.16 (b) and (e) and the *Consent Decree*, Verizon disabled FM radio features and applications included in devices by manufacturers to push more expensive cellular data plans and commercial partners like Slacker (an Internet music service).<sup>10</sup> The National Association of

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5 *Service Rules for the 698–746, 747–762 and 777–792 MHz Bands et al.*; WT Docket No. 06-150 *et al.*; Second Report and Order; 22 FCC Rcd. 15289 (2007) (*700 MHz Second Report and Order*) and 47 CFR § 27.16 (*C Block Rules*)

6 *Cellco Partnership d/b/a Verizon Wireless*, File No. EB-11-IH-1311, Acct. No. 201232080028, FRN 0003290673, Order and Consent Decree, 27 FCC Rcd. 8932 (2012) (*Consent Decree*)

7 Verizon, Re: Notification of Intent to File Formal Complaint at 1–2, <https://ecfsapi.fcc.gov/file/10726214500114/2016-07-26-correspondence-merged.pdf#page=17> (May 11, 2016) (“The HTC One M9 that Verizon sells does not have an FM tuner.”)

8 Verizon, *Company Policies*, <https://web.archive.org/web/20160907012045/https://www.verizon.com/about/responsibility/policies> (“There are no requirements that prevent Verizon’s handset suppliers from providing an FM radio chip in their devices.... Verizon will continue to support the sale of devices from manufacturers that choose to include an FM radio chip. If this is a feature that receives greater consumer demand, more manufacturers will likely choose to include it.”)

9 Verizon, Answer at 39 ¶ 72 (September 22, 2016) (“Verizon denies that it blocked HTC from providing FM tuner capability on devices sold by Verizon.... Verizon may sell devices that include an FM radio chip but do not include preloaded FM radio applications. However, Verizon does not block such applications after purchase.”)

10 Verizon, <https://www.verizon.com/about/news/vzw/2014/10/verizon-wireless-delivers->

Broadcasters (NAB) and application providers like NextRadio confirmed that devices Verizon claims don't have FM tuners do,<sup>11</sup> that manufacturers did include FM radio chips but Verizon chose to “purposefully block[]” them,<sup>12</sup> and that Verizon did block FM radio capabilities and applications after purchase: I and other Verizon subscribers were able to listen to FM radio using applications like NextRadio and Spirit with the FM radio chips included in smartphones like the HTC One M8 (available March 2014),<sup>13</sup> but the applications stopped working after Verizon

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[more-customizable-user-music-options-with-slacker-radio](#)

- 11 NAB, <https://www.nab.org/xert/sciTech/2015/RD05182015.pdf> [The HTC One M9 is a Class 1 smartphone: ‘FM receiver hardware (“FM Chip”) is onboard but not wired to function, and/or required software is not installed.’]
- 12 *Id.* at 3–4 [“It has recently been determined that the newly released successor model, the HTC One M9, is being shipped by Verizon with a different software load, which purposefully blocks the user accessing the device’s FM radio capability via a downloaded app.... This new version of the Verizon HTC One cannot be activated by downloading an Android FM radio app. (Meanwhile, other carriers’ versions of the M9 mirror their provisioning of the M8.)”]; Jared Dipane, *Here are the things the Verizon LG G4 doesn’t have that other variants do: Verizon does it again*, <https://www.androidcentral.com/here-are-things-verizon-lg-g4-doesnt-have-other-variants-do> (June 5, 2015) (“Some of the features that are missing from the Verizon version include ... FM radio.... There are some complaints that Verizon users can’t get the 100GB of storage from Google Drive either, which is a shame.”); David Ruddock, <https://www.androidpolice.com/2016/04/29/5-things-i-love-about-the-lg-g5/> [“FM radio is a legitimately useful add-on, and one that basically every smartphone *should* support, but that has nearly been destroyed by the profit motives of the music streaming and wireless carrier industries. LG’s unlocked G5s should all ship with FM radio enabled as far as I know - my unlocked EU version has the FM radio app installed by default. Unfortunately, I already know Verizon has disabled it on their G5, but it does appear to be active on Sprint’s (you’ll apparently have to download an app to use it, though).”]; NAB, *Expand Access to Emergency Information: Unlock FM*, <https://web.archive.org/web/20161028152608/https://www.nab.org/advocacy/issue.asp?id=2354&issueid=1082> (“Virtually all smartphones are manufactured with hardware capable of receiving free FM radio signals. However, one major U.S. wireless carrier - Verizon - blocks this feature that can save consumers battery life and data charges, while also providing a critical lifeline during times of emergency.”)
- 13 Skip Pizzi and Stephanie Christel, *FM Radio in Smartphones: A Look Under the Hood*, <https://nabpilot.org/wp-content/uploads/2016/06/2015-BEC-Paper-FM-Radio-in-Smartphones-FINALr4.pdf> [“All other required software for FM reception is included in the phone, however (as it is on all versions of this phone worldwide, including as delivered by other U.S. wireless carriers), so if the consumer downloads the NextRadio app (see below) from an Android store and installs it on the phone, the FM receiver on the phone will be

pushed software updates in 2016 that retroactively blocked them.<sup>14</sup>

**II. I maintain Verizon interfered with and disadvantaged customers'/edge providers' ability to use/make available the applications of their choice and disclosed misleading, deceptive, and false information.**

3. In spite of 47 CFR §§ 27.16 (b) and (e) and the *Consent Decree*, Verizon blocked (and continues to block) Samsung Cloud because it competes against Verizon Cloud;<sup>15</sup> blocked (and continues to block) Samsung from integrating robocall blocking (“Smart Call”) from Whitepages/Hiya, a competitor to Verizon’s \$3/month robocall protection plan;<sup>16</sup> blocked

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fully enabled.”]

- 14 NextRadio, <https://helpcenter.nextradioapp.com/hc/en-us/articles/210009633-I-have-an-HTC-One-M8-on-Verizon-Why-did-NextRadio-stop-working-> (“HTC includes FM support in several of their devices regardless of wireless carrier.... NextRadio works on Marshmallow. We adhered to Google’s Marshmallow compatibility guidelines, and worked with device manufacturers to ensure the app performs well. Unfortunately, when Verizon pushed the Marshmallow update to their M8 phones, they appear to have removed the FM hardware API, so NextRadio is no longer able to control the FM receiver chip. Several other carriers also sell the M8, and have also updated them to Android Marshmallow. NextRadio still works on the M8 sold through all carriers except Verizon.”); *VZW Marshmallow Update - FM Warning*, <https://forums.androidcentral.com/htc-one-m8/654609-vzw-marshmallow-update-fm-warning.html> (April 8, 2016) [“Verizon has removed the functionality, so Apps like Next Radio will no longer function. It was my favorite app to use during work, but I discovered this morning it no longer works.... I do know that they are partnered with certain radio apps, slacker radio being the one that comes to mind. (It was downloaded on my phone as a default app) It makes sense that they would want to optimize the revenue and usage of anyone they are in business with.”]
- 15 Alex Nguyen, Reply and Legal Analysis at 47 ¶ 95 (October 31, 2016) (*Reply*); Kellen Barranger, <https://www.droid-life.com/2016/08/22/verizons-galaxy-note-7-another-example-carriers-interfering-no-good-reason/> (“As you can see below, there is no section for Samsung Cloud in the backup and reset area of the phone on Verizon. Since Samsung Cloud isn’t a 3rd party app at this time, I just simply cannot use it because Verizon decided they didn’t want me to ...”)
- 16 *Complaint* § VI.G; *Reply* § VI.G; Taylor Soper, <https://www.geekwire.com/2017/samsung-galaxy-s8-will-business-search-capability-within-dialer-app-via-hiya-partnership/> (“The feature will be available to users in 27 countries, including the U.S., where all carriers will support the integration except Verizon.”); *How do we get Samsung Smart Call?* <https://community.verizonwireless.com/thread/936804> (“All other carriers that provide S8 allow this feature, how come Verizon doesn’t? Why are you making us pay for the caller ID in your own app?”)

Samsung Pay because it competes against Verizon-backed Android Pay;<sup>17</sup> blocked Pay with PayPal, a competitor to Verizon-backed ISIS;<sup>18</sup> blocked Samsung Internet 4.0, the first version of the Web browser that enabled customers to filter out advertising and tracking elements from Verizon; blocked Samsung from preloading Microsoft OneDrive, a competitor to Verizon Cloud;<sup>19</sup> disabled tethering features built into devices by device/operating system providers and charged additional fees to re-enable them (for subscribers on Verizon’s Nationwide “unlimited” data plans); and disabled Samsung’s Blocking Mode, which included features for which Verizon

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- 17 Jason Del Rey, <https://www.recode.net/2015/2/23/11559296/google-strikes-deal-with-big-wireless-carriers-buys-softcard> (“The partnership and purchase marks an ironic turn of events for all parties. One of the main reasons Google Wallet never took off as a tap-and-pay option in brick-and-mortar stores is because the wireless carriers had blocked the technology from working on their phones.”)
- 18 Stephen Schenck, *More US carrier GS5 shenanigans: Verizon blocks fingerprint for PayPal*, <http://pocketnow.com/2014/04/11/verizon-gs5-fingerprint-scanner> (“Time and time again, smartphones roll off the assembly line with all these cool features baked-in, and then carriers go and get uppity about them for one reason or another, and leverage the largely undeserved power they hold over OEMs to force the deactivation of specific abilities.... On most Galaxy S5 handsets, the “Pay with PayPal” option shows up under the phone’s settings menu for the fingerprint scanner. On the Verizon edition: no such option.”); Kellen Barranger, <https://www.droid-life.com/2014/04/11/verizon-disabled-paypal-fingerprint-support-on-the-galaxy-s5-google-wallet-works-though/> (‘After spending only a few minutes with the Verizon variant of the GS5, we have already discovered that Big Red has pulled Paypal payments authorized with your fingerprint, another of the major features promoted by Samsung for their 2014 flagship. It was also announced this morning by Paypal. I noticed the missing feature, because in our video yesterday on how to setup the fingerprint scanner in the Galaxy S5 on the AT&T model, Paypal is listed as one of the features that can be used. On the Verizon model, that entire option is gone, along with any chance of getting it installed.... I should point out that I tried to install the NNL Fingerprint Passport app on the Verizon variant through Samsung’s app store and was told that it “will not work on your device.” Somehow, installation is being blocked.’)
- 19 Shira Ovide, <https://blogs.wsj.com/digits/2015/04/15/verizon-and-att-wont-pre-install-three-microsoft-apps-on-samsung-s6/> (“Microsoft announced last month a deal [with Samsung] to push its mobile apps into as many hands as possible.... AT&T and Verizon Wireless, the two biggest U.S. wireless carriers, aren’t onboard with the arrangement to include three Microsoft apps on Samsung’s Galaxy S6, the flagship products of the world’s biggest maker of smartphones.... Spokeswomen for Samsung, Microsoft and Verizon Wireless declined to say why the apps wouldn’t be pre-installed on the Samsung S6.”)

charged \$5/month.

4. In spite of 47 CFR § 27.16(f) and the Transparency Rule, Verizon claimed Samsung Pay was not available to me and other Verizon subscribers for most of 2015 because Verizon was “evaluating” Samsung Pay for unspecified technical issues. However, no other carrier claimed technical issues with Samsung Pay, and the unspecified technical issues claimed by Verizon curiously evaporated after Samsung submitted to “partnering” with Verizon. For most of 2015, Samsung had announced it would preload Samsung Pay via a software update,<sup>20</sup> and no other carrier blocked Samsung from doing so,<sup>21</sup> but under the “partnership” to which Samsung submitted, Verizon continued to block Samsung from preloading Samsung Pay.

5. Unable to substantiate the technical issues it fabricated, Verizon gave up on trying to provide a credible alibi for blocking Samsung Pay and insisted it “simply elected not to sell” Samsung devices preloaded with Samsung applications that happen to compete against Verizon-backed applications.<sup>22</sup> However, technology journalists David Ruddock and Walt Mossberg (*The Wall Street Journal*, *All Things Digital*, *Recode*, *The Verge*) confirmed that in spite of 47 CFR §§ 27.16 (b) (“Licensees offering service on spectrum subject to this section shall not deny, limit, or restrict the ability of their customers to use the devices and applications of their

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20 Samsung, <https://web.archive.org/web/20150929060500/http://www.samsung.com/us/support/answer/ANS00043831/997409700/> (“Samsung Pay will be preloaded on future compatible Samsung devices and will not be available for download in Google Play store or Galaxy Apps. Samsung Galaxy S6 and Samsung Galaxy S6 edge users will receive a software update with Samsung Pay when the service is made available later this year in the U.S.”)

21 Andrew Martonik, <https://www.androidcentral.com/update-bringing-samsung-pay-now-hitting-compatible-verizon-phones> (October 16, 2015) (“Phones on other carriers have simply had the app installed via the system update.”)

22 Verizon, Re: Notification of Intent to File Formal Complaint at 3, <https://ecfsapi.fcc.gov/file/10726214500114/2016-07-26-correspondence-merged.pdf#page=7> (January 18, 2016)



choice”) and (e) and the *Consent Decree* (“Verizon [must] not explicitly or implicitly request that [Applications] be made unavailable to Verizon’s C Block customers”),<sup>23</sup> Verizon “barred” Samsung from including Samsung Pay (and Samsung Internet)<sup>24</sup> and “demanded” Samsung Pay be removed:

Verizon, long known in the carrier business for being a bunch of jerks, have once again proven their general aptitude for jerkery with a pretty annoying modification to their versions of the Galaxy S7 and S7 edge. Specifically? They removed Samsung Pay. We verified this on our own devices, and reviewers are now citing Samsung in saying that Verizon demanded it be removed from the phones.<sup>25</sup>

6. And business journalist Jason Del Rey (*Inc., Advertising Age, All Things Digital, Recode*) confirmed Verizon blocked Samsung Pay over “economics”:<sup>26</sup> Verizon gets a cut of revenue from a pay-to-play arrangement with Google to push Android Pay.<sup>27</sup>

7. For integrated features like Samsung Cloud and Smart Call that are not downloadable from Google Play or Samsung’s Galaxy Apps store, *blocking device providers*

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23 *Consent Decree* at 8940 ¶ 13(b)

24 Walt Mossberg, *Samsung’s New Galaxy S7 Phones Are Beautiful, But software and carrier intrusion undermine the experience*, <https://www.theverge.com/2016/3/8/11176606> (“Samsung says Verizon barred including Samsung’s browser and Samsung Pay out of the box.”)

25 David Ruddock, <https://www.androidpolice.com/2016/03/08/verizon-who-are-a-bunch-of-jerks-took-samsung-pay-off-the-the-galaxy-s7-and-s7-edge-but-you-can-sideload-it/>

26 Jason Del Rey, <https://www.recode.net/2015/10/21/11619830/samsung-pay-eliminates-big-hurdle-by-snagging-verizon-as-partner> (‘A Samsung Pay executive said this summer at a press briefing that the holdup with Verizon was over “economics,” but declined to comment further.’)

27 Alistair Barr, <https://www.wsj.com/articles/to-revive-wallet-google-tries-to-wrangle-unruly-partners-1424392928> (February 20, 2015) (“They [AT&T, Verizon and T-Mobile] also [had] blocked the service [Google Wallet] from accessing a chip that stored credit-card information, because they were working on their own payment service.... In talks with the carriers, Google is offering to pay them to feature Wallet prominently on their Android phones and is dangling the promise of more revenue from advertising tied to Google searches made on the phones, according to the people familiar with the matter.... That could drive up ad prices, and carriers would share in the gains.”)

from preloading them is blocking them outright.

8. Verizon said the Commission’s rules don’t prohibit Verizon from charging additional fees for services Verizon provides and claimed Verizon provides its own “tethering service” in connection with its Nationwide “unlimited” data plans.<sup>28</sup> I agree the *C Block Rules* and *Consent Decree* don’t prohibit Verizon from charging additional fees for services Verizon provides, but *tethering is a device feature* (provided by device/operating system providers like Apple, Google, and Microsoft), not a “service” provided by Verizon or any other carrier:

A number of people seem to buy this logic, not understanding that this is functionality that comes embedded in the phone and/or OS by default, and Verizon is creating a false fee layer by disabling the device’s ability to function as a modem or hotspot -- then pretending they provide it as a “service.” The result is users paying a substantial monthly fee for Verizon doing absolutely nothing.<sup>29</sup>

9. A sworn declaration by Worldcall Interconnect CEO Lowell Feldman confirms:

AT&T and Verizon, for their own internal reasons, will not allow a Hotspot Function from the Nexus 7.... They built into the framework of **all the Nexus 7 devices** a hidden disabling function for the Nexus 7 Hotspot function. The hidden framework disables the hotspot based on the Band Plan request made by the SIM/USIM.<sup>30</sup>

10. And Google’s source code repository for the Android operating system shows AT&T and Verizon required device/operating system providers like Google and Motorola to disable tethering features and re-enable them only after checking with AT&T or Verizon (*e.g.*, whether a Nationwide “unlimited” data plan subscriber like me is paying an additional fee to

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28 Verizon, Answer at 14 ¶ 115 (September 22, 2016) [“Verizon does offer its own tethering service (Mobile Hotspot/Mobile Broadband Connect) in connection with certain (older) data plans, for which Verizon has charged a fee.”]

29 Karl Bode, <https://www.dslreports.com/shownews/Verizon-Cripples-Embedded-Android-Hotspot-Functionality-115097> (July 11, 2011)

30 *Worldcall Interconnect, Inc. v. AT&T Mobility LLC*, Docket No. 14-221, Bureau ID No. EB-14-MD-011, Reply Declaration of Lowell Feldman at 81–85, <https://ecfsapi.fcc.gov/file/60000988538.pdf> (November 21, 2014)

Verizon to re-enable *a device feature not provided by Verizon*):

AT&T (and Verizon apparently) also managed to talk Google and/or Motorola into [baking a subscription check into the ROM](#) at AOSP-level as a prerequisite for enabling tethering. Because it's built into the firmware, the hotspot check happens on any Nexus 6 that has an AT&T [or Verizon] SIM card in it, regardless of where it was purchased.<sup>31</sup>

11. See Google's source code repository,<sup>32</sup> *Complaint* §§ VI.A and XII.H, *Reply* §§ VI.A and XII.H, and 47 CFR § 27.16(c)(1).<sup>33</sup>

**III. I maintain Verizon disabled Apple SIMs and disclosed misleading, deceptive, and false information.**

12. In spite of 47 CFR §§ 27.16 (b) and (e) (“No licensee may disable features on handsets it provides to customers ... nor configure handsets it provides to prohibit use of such handsets on other providers’ networks”), Verizon disabled Apple SIMs embedded in devices it provided to me and other customers (and continues to do so).<sup>34</sup> In spite of 47 CFR § 27.16(f) and the Transparency Rule, Verizon claimed “the GSMA industry standards for smartphones and tablets that Verizon follows do not provide for accommodation and support of a nonstandard, proprietary, embedded SIM” but neglected to substantiate how requiring a Verizon-only SIM is a “technical issue” or why including a Verizon-only SIM requires disabling a separate embedded

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31 Shawn De Cesari, <https://www.androidpolice.com/2014/11/24/the-stark-contrast-nexus-6-on-sprint-and-t-mobile-vs-att/>

32 <https://android.googlesource.com/device/asus/deb/+f0130356a775005cca71008b26a5ad4a0ca50bdb> (“Per AT&T requirements, disable tethering and MHS for all AT&T MCC/MNC combinations.”); <https://android.googlesource.com/device/moto/shamu/+c1109e92e2765111e4e17c5766fde42a6bd19784> (“Overlay change for ATT MCC/MNC list and replaced Verizon entitlement APP with Common Entitlement APP for Verizon MCC/MNC”)

33 “The potential for excessive bandwidth demand alone shall not constitute grounds for denying, limiting or restricting access to the network.”

34 Ina Fried, <https://www.recode.net/2016/3/22/11587182/latest-ipad-pro-makes-it-even-easier-to-switch-wireless-carriers> (“AT&T, however, will tie the Apple SIM to its network if you buy your iPad at one of its retail stores. Verizon, meanwhile, will require a separate SIM card and disable the built-in embedded Apple SIM on the iPads it sells.”)

SIM (eSIM).<sup>35</sup> Other GSMA members like Sprint, T-Mobile, GigSky, SmarTone, Three, and Truphone that serve more than 180 countries and regions don't prohibit customers from using Apple SIMs to switch to other providers' networks, and Verizon already discredited its own insinuation that devices with Apple SIMs left enabled could somehow harm its network when Verizon admitted it provides accommodation and support for connecting to its network devices purchased from retailers that don't disable Apple SIMs.<sup>36</sup>

13. Verizon's ability to cripple eSIM technology is enabled by the carrier's collusion at standards-setting bodies like the GSMA<sup>37</sup> and power over device providers. *Supra* ¶¶ 4–7: Just as Verizon compelled Apple to disable Apple SIMs, Verizon exploited an opaque “certification” process to fabricate “technical issues” and compelled Samsung to remove Samsung Pay, Samsung Internet, Microsoft OneDrive, *etc.* by refusing to make Samsung devices available to customers unless Samsung submitted to Verizon's demands to remove competitors to Verizon-backed applications.

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35 Verizon, Responses to Complainant's Interrogatories at 7–8 (April 21, 2017)

36 Verizon, Legal Analysis at 20 (September 22, 2016) (“Verizon does not prohibit customers from connecting to its network 9.7-inch iPad Pro devices purchased from other retailers with the Apple SIM technology.”)

37 Cecilia Kang, <https://www.nytimes.com/2018/04/20/technology/att-verizon-investigate-esim.html> (“AT&T and Verizon together control about 70 percent of all wireless subscriptions in the United States. A technology that made it easy to switch carriers could lead to more turnover and fewer subscribers for them.... After the formal complaints against AT&T and Verizon were filed, several device makers and other wireless companies voiced similar concerns to the agency about the carriers' actions around eSIM, four people familiar with the investigation said.... In a private meeting of a task force called G.S.M.A. North America this year, AT&T and Verizon pushed for the ability to lock phones to their networks, bypassing the purpose of eSIM technology, said Harold Feld, a senior vice president of Public Knowledge, a nonprofit consumer group, who was briefed on the meeting.”)

**IV. I maintain Verizon interfered with and disadvantaged customers’/edge providers’ ability to use/make available the devices of their choice and disclosed misleading, deceptive, and false information.**

14. In spite of 47 CFR § 27.16(b), Verizon refused to activate new SIMs for devices not sold through Verizon or Verizon’s retail partners and imposed discriminatory pricing on customers using existing SIMs with devices not sold through Verizon or Verizon’s retail partners.

15. Verizon blocked Google Nexus 7 tablets (available September 2013) for 22 weeks to suppress competition against Verizon’s Ellipsis 7 tablets (available November 2013); blocked iPhone 6 and iPhone 6 Plus sold by Apple and retailers not partnered with Verizon for 47 weeks to suppress competition against Verizon stores selling the same models (Model A1549/FCC ID: BCG-E2816A and Model A1522/FCC ID: BCG-E2817A); blocked Google Nexus 6 phones sold by Google and retailers not partnered with Verizon (available October 2014) for 29 weeks to suppress competition against Verizon stores selling the same models (Model XT1103/FCC ID: IHDT56QD1) and Verizon’s Droid Turbo (available October 2014); and continues to block other compatible devices.<sup>38</sup>

16. The *700 MHz Second Report and Order* declared, “C Block licensees may not impose any additional discriminatory charges (one-time or recurring) or conditions on customers who seek to use devices or applications outside of those provided by the licensee.”<sup>39</sup> However, even though Verizon knew which subscribers were on month-to-month agreements (subscribers who weren’t on service contracts or equipment installment plans), Verizon denied month-to-

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38 For example, Verizon continues to refuse to activate a new SIM for my Microsoft Surface 3 with unlocked 4G LTE that I bought at a Microsoft Store that is the same model (Model 1657/FCC ID: C3K1657) sold through Verizon stores. See *Complaint* § III and *Reply* § III.

39 *700 MHz Second Report and Order*, 22 FCC Rcd. 15371 ¶ 222

month line access discounts<sup>40</sup> to me and other subscribers on month-to-month agreements who wanted to use devices on which Verizon didn't disable features/block applications and did *not* want to use devices on which Verizon foisted its \$3/month Caller Name ID, \$5/month VZ Navigator, go90, Verizon Cloud, or "gaudy, jarring full-screen Verizon ad[s] urging [us] to send retail gift cards via messaging".<sup>41</sup>

So, if you want the privilege of using a non-Verizon device on its network, you could be stuck paying a full \$40 monthly access fee on top of your data plan, rather than \$15 or \$25 as you would with a recognized device.<sup>42</sup>

17. Later, Verizon claimed applying month-to-month line access discounts for subscribers using devices sold through Verizon but not subscribers using devices sold by retailers not partnered with Verizon was not a discriminatory charge but a "permitted incentive" because Verizon claimed its base \$40/month service charge per smartphone on its Nationwide plans<sup>43</sup> and

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40 Verizon, <https://web.archive.org/web/20150207062727/https://www.verizonwireless.com/support/more-everything-plan-faqs/> ("Yes, the following discounts on the monthly line access charge are available if you have a smartphone with Verizon Edge or are on a month-to-month agreement: \$25 off the monthly line ac[c]less charge if you have a MORE Everything Plan with a data allowance of 6 GB or greater; \$15 off the monthly line access charge if you have a MORE Everything Plan with a data allowance of 4 GB or less.")

41 Walt Mossberg, *Samsung's New Galaxy S7 Phones Are Beautiful, But software and carrier intrusion undermine the experience*, <https://www.theverge.com/2016/3/8/11176606> ('And, speaking of Verizon, my test unit running on that carrier had a folder with eight of the carrier's apps in it. The setup process also guided me to using Verizon's messaging app rather than Samsung's and a Verizon backup service. It even warned me I might lose important stuff if I didn't sign up for the Verizon service. At one point, I received a gaudy, jarring full-screen Verizon ad urging me to send retail gift cards via messaging. I also received a notification urging me to let Verizon show me how to speed up visits to its stores. Samsung said other U.S. carriers are less aggressive than Verizon, and defended the company's practice of maintaining "close" relations with its carriers. But these kinds of premium devices shouldn't be vehicles for carrier come-ons. And Samsung says that there isn't an unlocked S7 model available that lacks carrier software.')

42 Shawn De Cesari, <https://www.androidpolice.com/2015/03/28/shocker-even-after-launching-the-nexus-6-verizon-still-wont-officially-activate-one-that-wasnt-purchased-from-the-carrier/>

43 Verizon's base \$40/month service charge per smartphone on its Nationwide plans was the total of \$10/month for "line access" and \$30/month for its base "data package" (2 GB).

\$40/month line access charge per smartphone on its MORE Everything plans did not bundle in or reflect the cost of any device subsidy,<sup>44</sup> even though the fact that these base service/line access charges bundled in and reflected the costs of device subsidies was recognized by *The Wall Street Journal*,<sup>45</sup> *The Verge*,<sup>46</sup> *Reuters*,<sup>47</sup> the Commission,<sup>48</sup> and Verizon itself, in statements to investors and the Securities and Exchange Commission.<sup>49</sup> See *Complaint* § IV and *Reply* § IV.

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44 Verizon, Ambio Declaration at 2 ¶¶ 4 and 6 (September 22, 2016)

45 Thomas Gryta, <https://www.wsj.com/articles/SB10001424127887324448104578613612706427942> (July 18, 2013) (“The catch is that like AT&T, Verizon isn't offering lower monthly service fees to people who enroll in the new plan. That approach has rankled some followers of the telecom industry who argue existing service plans already bundle in the cost of hefty subsidies for smartphones. Users of the new plan, then, are effectively paying twice for their devices: the existing bundled charge for the subsidy, plus the new device financing charge.”)

46 Nilay Patel, <https://www.theverge.com/2013/7/18/4535068/verizons-edge-phone-upgrade-plan-same-bad-ripoff-as-att-next> [“But scratch past that surface layer and the Edge plan is just the same shell game as AT&T Next, designed to sucker customers into paying both the device subsidy built into Verizon's already high monthly fees and the full retail price of their phones. (Like AT&T, Verizon discloses that the subsidy exists in its SEC filings, but declined to divulge the exact amount when I asked.)”]

47 Sinead Carew, <https://www.reuters.com/article/us-verizon-edge-idUSBRE96H10S20130718> (July 18, 2013) [“Analysts said customers would effectively be paying for their smartphone twice under Verizon’s plan and a similar offering announced by No. 2 U.S. mobile service provider AT&T Inc (T.N) on Tuesday.”]

48 *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*; WT Docket No. 09-66; Fourteenth Report; 25 FCC Rcd. 11593–11594 ¶ 312–314 (2010) (*Fourteenth Annual Mobile Wireless Competition Report*) (“However, when customers bring an unlocked device to a postpaid plan, they generally do not receive a device subsidy from the provider nor do they typically receive a lower-priced service plan that would reflect the fact that the provider does not have to recoup the cost of the subsidy.”)

49 Fran Shammo, Verizon Communications Inc Earnings Call, Q3 2015 (“What we have said going forward is, look, the better measurement here is not service margin EBITDA but regular EBITDA percent on total revenue because that kind of normalizes out the fact that we are now recording 100% of the revenue upfront for the sale of the equipment rather than a subsidy and then recouping that through service pricing over a period of time.”); Verizon Communications Inc., SEC Form 10-K for the fiscal year ended December 31, 2015 at 7 (“Wireless providers recovered those subsidies through higher service fees.”)

18. In spite of 47 CFR § 27.16(f) (“Once a complainant sets forth a *prima facie* case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards in the complainant’s case”) and the Transparency Rule, Verizon provided misleading, deceptive, and false responses to me, others who filed informal complaints, and Commission staff.

19. Verizon falsely claimed devices sold by retailers not partnered with Verizon that are the *same* (not just “similar”) models sold through Verizon stores weren’t compatible with its network. After I challenged Verizon’s false claims formally, the carrier admitted its public Web site “needed to be updated.”<sup>50</sup> (Technology journalist Walt Mossberg revealed Apple does its Verizon certification tests independently<sup>51</sup> to obviate Verizon’s habit of claiming “technical issues” to hold up devices and applications for commercial motives.<sup>52</sup> *Supra* ¶ 6: Verizon claimed

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50 Verizon, Re: Notification of Intent to File Formal Complaint at 3, <https://ecfsapi.fcc.gov/file/10726214500114/2016-07-26-correspondence-merged.pdf#page=7> (January 18, 2016) (‘In that respect, you are correct that the “Apple iPhone FAQs” on our website needed to be updated to the extent they suggested that a customer switching from another carrier to Verizon could not use his or her existing iPhone 6 or 6 Plus.’)

51 Walt Mossberg, *Ctrl-Walt-Delete: Walt and Nilay on the Edge* at 29:05, <https://www.theverge.com/2016/3/10/11193170> (‘And they [Verizon] fumbled around and said, “Oh, well, Apple does its Verizon certification tests itself in its own lab ... but we have an engineer there!” And Apple just doesn't do that, doesn't let its phones be a sales tool for the carriers, and Samsung feels like it has to...’)

52 Walt Mossberg, <https://www.recode.net/2015/9/16/11618620/mossberg-its-time-to-free-the-smartphone> (‘Why, in an era when networks are well understood and most components standardized, should handset makers be required to undergo onerous “certification” processes that allow carriers to demand changes to the design of their devices if they want to use them on the network? One small-company American tech CEO told me the other day that it will cost him more to clear “certification” processes at the four big U.S. carriers than to build and sell the first major production run of a new handset he’s planning to launch.... Think about this for a minute. Does your home landline broadband provider sell laptops or Roku or iPads or any of the other things that make use of the Wi-Fi or wired connections it provides? Does it require Dell or HP to “certify” that their devices work with their



technical issues to hold up Samsung Pay, but business journalist Jason Del Rey confirmed Verizon blocked Samsung Pay over “economics.”)

20. To rationalize its refusal to attach Google Nexus devices sold by Google, Verizon claimed Google had the means to deliver software to Google Nexus devices sold through Verizon but didn’t have the means to deliver software to the same models sold by Google (until Verizon and Google “worked together to develop a solution”).<sup>53</sup> However, Google obviously had a solution (the Internet) already to deliver software to Google Nexus devices sold by Google.<sup>54</sup>

21. Later, Verizon provided a new alibi: the carrier claimed it needed to ensure Voice over LTE (VoLTE) worked. If you assume Verizon’s false claim that Google couldn’t use the Internet to deliver software to Google Nexus devices sold by Google isn’t false, Verizon’s parallel construction for blocking devices sold by retailers not partnered with Verizon *could* sound plausible ... unless you know Verizon’s proprietary implementation of VoLTE was in testing, wasn’t required for certification, and didn’t work on most devices at the time. For example, VoLTE didn’t work on Verizon’s Droid Turbo and remained buggy for months into

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networks. No, and no. So why should wireless carriers be any different?)

53 Verizon, Legal Analysis at 28 (September 22, 2016) (“Google initially was unable to provide a means for delivering the necessary software that met Verizon’s technical standards to versions of the Nexus 6 purchased from other sources. After the initial launch of the device, however, Verizon and Google worked together to develop a solution to deliver the necessary software to those devices.”); Verizon, Answer at 53–54 ¶ 131 (“The fact that Google was able to deliver software to the Asus Nexus 7 tablets that allowed them to work on the Verizon network is irrelevant to its ability to deliver software necessary to allow the Nexus 7 to work on Verizon’s network.”)

54 Jerry Hildenbrand, <https://www.androidcentral.com/nexus-7-lte-getting-verizon-compatibility-update> (February 12, 2014) (‘Your LTE-equipped Nexus 7 should be seeing an update today that adds “Full compatibility with Verizon’s 4G LTE network” — though plenty of people are using it with no issues and no update.’); Ron Amadeo, <https://arstechnica.com/gadgets/2014/10/transcript-ars-talks-to-android-execs-about-lollipop-and-the-nexuses/> (“What happens now is when you’ve got a Verizon SIM in the device, it actually installs Verizon apps as part of the setup flow, and then you can remove them if you want as part of the Play Infrastructure. And Verizon can update it.”)

2015,<sup>55</sup> yet Verizon apparently “certified” it before the 2014 holiday season anyway. See *Complaint* §§ III.C and IX.A and *Reply* §§ III.C and IX.A.

22. After I filed the above-captioned *formal* complaint, Verizon cried “security” and “reasonable network management” and gave up on trying to substantiate its claims.

**V. ASIDE: Verizon’s Lowell McAdam addresses the necessity of its “certification” process; Google’s Eric Schmidt responds.**

We went to Google and said, “Look we want to be open. We want to have devices on our network that we don’t necessarily certify.” Eric [Schmidt] looked at me across the table and he says, “Yeah, right.” I mean, he was basically saying bullshit in a polite way.<sup>56</sup>

**VI. PROCEDURAL MATTERS**

23. I file this update pursuant to Section 1.720(g) of the Commission’s rules.

Respectfully submitted,



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July 3, 2018

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55 Kellen Barranger, <https://www.droid-life.com/2014/10/30/fyi-droid-turbo-cant-currently-do-simultaneous-voice-and-data/>; Kellen Barranger, <https://www.droid-life.com/2015/02/23/minor-droid-turbo-21-44-12-update-fixes-a-couple-of-bugs-here-is-the-changelog/> (“The update is indeed software version 21.44.12 and it fixes three bugs. Those three bugs involve call volumes, the email application, and the DROID Command Center Widget. Verizon’s list of changes doesn’t even mention VoLTE or Advanced Calling 1.0.”)

56 Ivan Seidenberg, Scott McMurray; *Verizon Untethered: An Insider’s Story of Innovation and Disruption*; New York, NY; Post Hill Press, 2018; p. 236