

**TAB 1**

**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.

File No. \_\_\_\_\_

**FORMAL COMPLAINT AND LEGAL ANALYSIS**

July 26, 2016

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## COMPLAINT

To: The Commission.

I, Alex Nguyen, bring this complaint against Cellco Partnership & Affiliated Entities d/b/a Verizon Wireless (“Verizon”) for violating 47 USC §§ 201(b) and 202(a); 47 CFR §§ 8.3, 8.5, 8.11, and 27.16; and a 2012 Order and Consent Decree (“2012 Order and Consent Decree”)<sup>1</sup> by abusing its position as gatekeeper to interfere with my ability to use the devices and applications of my choice and edge providers' ability to make the devices and applications of their choice available to me.

### I. PARTIES

1. Complainant, Alex Nguyen, works as an engineer and pays for wireless service from Verizon. My mailing address, telephone number, and e-mail address are on the cover page of this complaint.

2. Defendant, Cellco Partnership & Affiliated Entities d/b/a Verizon Wireless, is a wireless service provider headquartered at One Verizon Way, Basking Ridge, NJ 07920. Verizon Wireless is a wholly-owned subsidiary of Verizon Communications Inc.

### II. BACKGROUND

#### A. The C Block Rules and the 2012 Order and Consent Decree

3. In 2007, the Commission adopted openness rules for licensees of spectrum in Block C of the 746–757 and 776–787 MHz bands. (In this complaint, “C Block” refers to the Upper 700 MHz Band C Block). Discussing the basis for these rules, the Commission recognized evidence that wireless service providers block or degrade consumer-chosen hardware and

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<sup>1</sup> *Cellco Partnership d/b/a Verizon Wireless*, File No. EB-11-IH-1351, Acct. No. 201232080028, FRN 0003290673, Order and Consent Decree, 27 FCC Rcd. 8932 (2012)

applications without an appropriate justification.<sup>2</sup>

4. For example, to compel customers to pay Verizon's fees for its Pix Messaging and Get It Now services, the carrier disabled Bluetooth and USB features Motorola built into its v710 phone. As Sascha Segan at PCMag reported, Verizon justified disabling these features as a “fraud prevention” tactic:

The other highlight feature is Bluetooth. If Bluetooth to you means headsets, you're set. The V710's Bluetooth also works as a modem for your laptop. But Verizon disabled the phone's Bluetooth file-transfer function, so you can't wirelessly transfer photos to your PC without using the carrier's for-pay Pix Messaging service. Verizon also disabled the built-in Bluetooth Serial Port function, so you have to buy a \$39.99 USB cable to sync the phone with your PC. With the USB cable, we synced our calendar and address book with Microsoft Outlook easily. But even with the USB cable, you can't get photos off the phone or transfer files between the phone and your PC. Verizon says that crippling Bluetooth implementation is a “fraud prevention” tactic to prevent strangers from sending unsolicited text messages to your phone. Whatever.<sup>3</sup>

5. Jonathan Zdziarski, a computer security researcher, questioned Verizon's specious allegation about the existence of a “security issue” in a discussion with Brenda Raney, executive director of corporate communications at the carrier:

**Q. Many people feel that Verizon has specifically disabled these features to force them to use your Get-it-Now and PIX Place service.**

*A. And your point is?*

**Q. Well, these features are available in phones from many other carriers, and people feel cheated.**

*A. Verizon does business unlike any other carrier, and we make no apologies for that. ... [Those features] don't work with our business model. Every customer is certainly entitled to their own feelings.*

**Q. Do you foresee that OBEX/OPP will be enabled anytime in the near**

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2 22 FCC Rcd. 15363 ¶¶ 200–201 (2007)

3 Sascha Segan. *Motorola V710 Review & Rating*.  
<http://www.pcmag.com/article2/0,2817,1639783,00.asp> (August 26, 2004)

**future?**

A. *No.*

**Q. The average joe can go out and fork over \$60 for a TransFlash card, which will allow them to transfer pictures, MP3s, whatever...and at no profit to Verizon...so why not just enable these features on the phone and give the customers a break?**

A. *That's where the security issue comes in.*

What Security Issue? I had heard this story from Verizon, which was that they were investigating security issues with the phone, but this appeared only to be an afterthought in comparison with Verizon's profitability needs. The story didn't appear to hold water, and I got the feeling she understood that. Bluetooth has some basic front-line security designed to prevent someone from arbitrarily transferring files to/from the phone without performing a "bonding" ritual. On top of this, the v710 sports a "stealth mode" where it will remain invisible from discovery unless the owner specifically makes it visible (at 60-second intervals) so there's little chance a stranger will even know it's there let alone have the MAC address...<sup>4</sup>

6. In 2005, customers sued the carrier for disabling features on the Motorola v710.

Verizon declined to comment on the lawsuit but acknowledged its position as gatekeeper:

"It's always the carrier's decision how a phone will reach the market and what form it will take," said Brenda Raney, the spokeswoman.<sup>5</sup>

7. Later, Verizon admitted that it disabled features to block customers from

downloading applications from sources other than Verizon:

The v710 includes Get It Now, our virtual mall of games and productivity tools that customers can download. The agreements we have with our content providers preclude our allowing anyone to download these applications beyond the phone. The open architecture of Bluetooth could also allow customers to download Get It Now applications beyond the phone.<sup>6</sup>

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- 4 Jonathan A. Zdziarski. *The Motorola v710: Verizon's New Crippled Phone*. <https://web.archive.org/web/20060703041009/http://www.nuclearelephant.com/papers/v710.html> (July 3, 2006)
- 5 Christopher Rhoads. *Cellphone Users Sue, Saying Carrier Cut Phone's Features*. <http://www.wsj.com/articles/SB110557581692624772> (January 13, 2005)
- 6 Shelley Solheim. *Verizon Wireless Users Sue Over Disabled Bluetooth Features*.



8. Verizon paid \$12,200,000 to settle with the plaintiffs<sup>7</sup> but continued to disable features. For example, Verizon compelled Motorola to disable multimedia and Internet connection features that would allow customers to use their own ringtones, images, and videos instead of purchasing them from Verizon. Motorola informed customers:

IMPORTANT NOTE: This downloadable software is fully supported for Cingular and T-Mobile customers. However, portions of this software's functionality have been disabled for Verizon or Nextel customers, so Motorola Phone Tools will not work fully with phones using those carriers. If you are a Verizon customer, all multimedia and internet connection features in this software will be disabled due to carrier request.<sup>8</sup>

9. To compel customers to purchase “approved” ringtones it says are “optimized for use on the Verizon Wireless network,” the carrier blocked customers from downloading ringtones from sources other than Verizon<sup>9</sup> (and continues to do so):

Can I download ringtones from other websites directly to my phone?

No. The ringtone apps offered through Media Center have approved tones that have been optimized for use on the Verizon Wireless network.<sup>10</sup>

10. For devices like the Palm Treo 700w, Verizon disabled built-in tethering features and charged \$60.00/month to re-enable them. Russ Brankley, director of data network services at the carrier, alleged that these devices didn't meet Verizon's “requirements” but refused to provide evidence, claiming that such information is “proprietary”:

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<http://www.eweek.com/c/a/Mobile-and-Wireless/Verizon-Wireless-Users-Sue-Over-Disabled-Bluetooth-Features> (January 14, 2005)

7 Verizon Wireless. V710 Settlement.

<https://www.verizonwireless.com/b2c/footer/legalNotices/v710.jsp> (March 21, 2006)

8 David Berlind. *Buyer Beware: Verizon Wireless and Spirex disabling features on handsets they sell*. <http://www.zdnet.com/article/buyer-beware-verizon-wireless-and-spirex-disabling-features-on-handsets-they-sell/> (August 2, 2006)

9 Eliot Van Buskirk, Sean Michaels. *Verizon Cripples New RAZRs*. [http://www.wired.com/2006/07/verizon\\_cripple/](http://www.wired.com/2006/07/verizon_cripple/)

10 Verizon Wireless. Media Center FAQs. <https://www.verizonwireless.com/support/media-store-faqs/> (March 16, 2016)

According to Verizon, the Treo doesn't currently meet requirements they specify for their network... He said that the currently-sold V CAST phones do not properly interact with their network when used as a modem, but refused to cite examples, claiming that such information is proprietary.<sup>11</sup>

11. To compel customers to pay \$9.99/month for its VZ Navigator service, Verizon blocked third-party access to GPS capabilities built into Windows Mobile,<sup>12</sup> BlackBerry,<sup>13</sup> and Palm<sup>14</sup> devices. A Verizon spokesperson admitted as much:

Although the spokesperson stated that “we do not intend to have a monopoly on GPS with Navigator for our devices,” she admitted that Verizon generally disables support for plain, old, standalone GPS in the smartphones that it uses. That effectively locks out GPS programs created without Verizon's participation.<sup>15</sup>

12. Section 27.16 of the Commission's rules sets forth openness obligations for C Block licensees. Paragraph (b) states that licensees shall not “deny, limit, or restrict the ability

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11 James M. Turner. *Verizon Prevents Treo Use As 3G Modem*. <http://www.informationweek.com/verizon-prevents-treo-use-as-3g-modem/d/d-id/1039511> (January 12, 2006)

12 Dieter Bohn, Brian Hart, HobbesIsReal, Malatesta, George Ponder, Nick Gebhardt, Phil Nickinson, Tim Ferrill. *Help us Save GPS on Windows Mobile*. <http://www.windowscentral.com/help-us-save-gps-windows-mobile> (January 3, 2009) [“What do we mean by 'locked down'? We mean that GPS is there, fully functional, yet hidden from the OS and third party applications by the carrier. With several devices, users have to resort to registry hacks or other, 3rd party programs to 'enable' GPS for Windows Mobile and 3rd party apps to access it. Verizon is by far the worst player in this little lock-down game, but the other carriers aren't innocent either.”]

13 James Kendrick. *Verizon: Please Stop Disabling GPS in Smartphones on Your Network*. <https://gigaom.com/2009/07/17/verizon-please-stop-disabling-gps-in-smartphones-on-your-network/> [The BlackBerry 8830 smartphone as released by Verizon has had this “full” GPS capability disabled at a software level. Verizon has indicated that they plan to release their own proprietary GPS mapping solution at a later time; possibly VZ Navigator. AT&T and T-Mobile have both taken similar routes with their 8800 series handhelds; locking out GPS access for 3rd party programs and only enabling access to the built-in receiver to the TeleNav program that they sell themselves.]

14 Jonathan I. Ezor. *Verizon Wireless to customers: GPS issue? What GPS issue?* <http://www.webosnation.com/verizon-wireless-customers-gps-issue-what-gps-issue> (September 14, 2010)

15 Lincoln Spector. *Verizon Locks Out GPS Competition, Customers Complain*. [http://www.pcworld.com/article/161019/verizon\\_locks\\_out\\_gps\\_competition.html](http://www.pcworld.com/article/161019/verizon_locks_out_gps_competition.html) (March 10, 2009)

of their customers to use the devices and applications of their choice” and paragraph (e) states, “No licensee may disable features on handsets it provides to customers.” Additionally, licensees must be transparent in their network management practices: paragraph (d)(1) requires licensees to provide customers the “relevant network criteria” for attaching devices and applications, paragraph (d)(2) requires licensees to specify “the basis for denying access,” and paragraph (f) states that licensees shall have the burden of proof to demonstrate that they have adopted reasonable network standards and reasonably applied them.

13. In 2008, Verizon won seven out of twelve C Block licenses at auction and said it would abide by the openness rules in 47 CFR § 27.16:

Verizon Wireless – and all the other participants in the recent 700 MHz spectrum auction – understood the FCC's rules for using that spectrum in advance of the auction. Of course we'll abide by those rules.<sup>16</sup>

14. At a conference held by the carrier and its commercial partners, Lowell McAdam, President and CEO of Verizon Wireless, addressed skeptics:

I'd like to welcome all the applications developers ... the hardware providers ... and ... welcome even to those of you that said today would never come and today is just a sham ... and ... you're looking to say, “I told you so.” I hope that you feel welcome and by the end of the day, you feel like there's substance to what we're doing, because there is.<sup>17</sup>

15. However, in spite of 47 CFR § 27.16(e), which states, “No C Block licensee may disable features on handsets it provides to customers,” Verizon disabled built-in tethering features (just as it had done with devices like the Palm Treo 700w<sup>18</sup>) and compelled customers to

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16 Jim Gerace. *Open Development and 700 MHz*.  
<https://web.archive.org/web/20090106122936/http://policyblog.verizon.com/PolicyBlog/Blogs/PolicyBlog/JimGerace9/461/Open-Development-and-700MHz.aspx> (May 6, 2008)

17 Lowell McAdam. Verizon Developer Community Conference.  
[https://www.youtube.com/watch?v=2kd1b0\\_TWgk](https://www.youtube.com/watch?v=2kd1b0_TWgk) (August 3, 2009)

18 *Supra* paragraph 10

pay an additional \$20.00/month to re-enable them by blocking third-party tethering applications.

16. Verizon denied that it had blocked third-party tethering applications and even suggested that Google was ultimately responsible for blocking them, but the carrier wouldn't say whether it asked Google to make them unavailable to customers:

A spokeswoman at Verizon suggested that any blocking of the free tethering apps is done by Android OS developer Google. However, she wouldn't say whether Google was doing so at the behest of Verizon or the other carriers.

“Google is ultimately responsible for what is in the marketplace,” the Verizon spokeswoman said.<sup>19</sup>

17. However, Google confirmed what Verizon wouldn't. Google made tethering applications unavailable at the request of Verizon and other wireless carriers:

Jeffrey Nelson, a Verizon spokesman, said the carrier does not block applications in the Android Market and that Google manages the Android Market....

[...]

The spokesman for Google said while it is not blocking the app in the Android Market, it is making it unavailable at the request of wireless carriers.<sup>20</sup>

18. In 2012, after the Commission's Enforcement Bureau investigated whether Verizon was violating its license obligations, the carrier paid \$1.25 million to terminate the investigation and agreed to comply with an Order and Consent Decree affirming that Verizon may not “explicitly or implicitly” request that applications be made unavailable to customers.<sup>21</sup> For its part, Verizon denied that it had “blocked” third-party tethering applications but alluded to

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19 Matt Hamblen. *Free Android tethering apps blocked by most carriers.*

<http://www.computerworld.com/article/2508454/mobile-wireless/free-android-tethering-apps-blocked-by-most-carriers.html> (May 3, 2011)

20 Phil Goldstein. *Group claims Verizon's ban of tethering apps violates 700 Mhz open access rules.* <http://www.fiercewireless.com/story/group-claims-verizons-ban-tethering-apps-violates-700-mhz-open-access-rules/2011-06-07>

21 27 FCC Rcd. 8940 ¶ 13 (2012)

the actions of “one employee.”<sup>22</sup>

19. Verizon stopped blocking third-party tethering applications in Google's application store, but for customers on its “Nationwide” and earlier plans, the carrier continues to disable built-in tethering features and charge an additional \$20.00/month to re-enable them.<sup>23</sup>

#### **B. The 2010 and 2015 Open Internet Orders**

20. In 2010, recognizing that carriers have the incentive and ability to limit openness and have done so, the Commission extended openness rules similar to those in 47 CFR § 27.16 to all broadband Internet access service (BIAS) providers. (However, the Commission chose to apply the “no unreasonable discrimination” rule only to fixed BIAS providers.) Verizon successfully challenged the Commission's authority to apply openness rules to fixed BIAS (which the Commission had classified as an “information service”) and mobile BIAS (which the Commission had classified as a “private mobile service”), and in 2014, the U.S. Court of Appeals for the D.C. Circuit vacated the “no blocking” and “no unreasonable discrimination” rules.<sup>24</sup>

21. In 2015, the Commission ruled that fixed BIAS is a “telecommunications service” and that mobile BIAS is a “commercial mobile service” and reapplied openness rules to both fixed and also mobile BIAS providers. However, the Commission chose to apply Sections 201, 202, 208, and related enforcement provisions of the Communications Act while forbearing from other provisions.<sup>25</sup> Petitioning the D.C. Circuit to vacate the *2015 Open Internet Order*, the

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22 Brian X. Chen. *F.C.C. Forces Verizon to Allow Android Tethering Apps*. <http://bits.blogs.nytimes.com/2012/07/31/fcc-verizon-tethering/> [“Rich Young, Verizon's director of media relations for human resources issues, sent a statement late Tuesday saying that the company had not blocked customers from using third-party apps. The company alluded to the actions of one employee who had been communicating with Google's Android app store operator about the tethering apps.”]

23 *Infra* section VI.A

24 *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014)

25 30 FCC Rcd. 5733 (2015)

U.S. Telecom Association (which calls itself the Broadband Association) argued broadband service isn't a telecommunications service, but on June 14, 2016, the Court affirmed the Commission's classification of fixed and mobile BIAS providers as common carriers.

22. Section 8.3 of the Commission's rules requires providers to be transparent in their network management practices and commercial terms; Section 8.5 prohibits providers from blocking non-harmful devices and applications; and Section 8.11 sets forth a “no unreasonable interference/disadvantage” standard.

23. Section 201(b) of the Communications Act declares unjust or unreasonable charges, practices, classifications, or regulations to be unlawful, and Section 202(a) declares unreasonable discrimination and preferences to be unlawful:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.<sup>26</sup>

24. To determine whether a carrier has violated Section 202(a), the Commission applies a three-step inquiry: whether the services at issue are “like”; whether the carrier discriminates in charges, practices, *etc.*; and whether such discrimination is reasonable.<sup>27</sup>

### **C. Device Providers Support LTE Band 13 for Compatibility with the Verizon Wireless Network**

25. Band 13 for the Long-Term Evolution (LTE) wireless communications standard makes use of spectrum in the Upper 700 MHz Band C Block. In 2008, Verizon won seven out of

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<sup>26</sup> 47 USC § 202(a)

<sup>27</sup> See, e.g., *MCI Telecommunications Corp. v. FCC*, 842 F.2d 1296, 1303 (D.C. Cir 1988); *National Communications Ass’n, Inc. v. AT&T Corp.*, 238 F.3d 124, 129-30 (2nd Cir. 2001).

twelve C Block licenses at auction.<sup>28</sup> (The winning bidders for the other five licenses were Club 42 CM Limited Partnership; Triad 700, LLC; and Small Ventures USA, L.P.) Because Verizon is the only national carrier making use of spectrum in the C Block, device providers support LTE Band 13 for compatibility with the Verizon Wireless network.

**D. Verizon Dominates Device Sales for Over 141 Million Subscriber Connections**

26. According to research firm Strategy Analytics, as of March 31, 2016, Verizon Wireless had 141.473 million subscriber connections.<sup>29</sup> In 2013, Consumer Intelligence Research Partners found that of the major carriers, Verizon gets the biggest proportion of device sales—57 percent—from its own stores.<sup>30</sup> From April 2013 to December 2014, carriers accounted for 57% of smartphone sales,<sup>31</sup> and in 2015, the share of Apple iPhones purchased from carriers rose from 65% to 75%.<sup>32</sup>

27. The blocking of third-party devices,<sup>33</sup> imposition of discriminatory pricing on bringing your own device,<sup>34</sup> misleading and deceptive statements about third-party devices,<sup>35</sup> lack of full implementation of device unlocking standards until February 11, 2015,<sup>36</sup> and dearth

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28 FCC. Auction 73 Winning Bids. 23 FCC Rcd. 15361 ¶¶ 4644–4645 (2008)

29 Mike Dano. *How Verizon, AT&T, T-Mobile, Sprint and more stacked up in Q1 2016: The top 8 carriers*. <http://www.fiercewireless.com/special-reports/how-verizon-att-t-mobile-sprint-and-more-stacked-q1-2016-top-8-carriers> (May 20, 2016)

30 Ina Fried. *Apple Store a Big Source of Cellphone Sales; Best Buy Is Key for Carriers*. <http://allthingsd.com/20131125/apple-store-a-big-source-of-cellphone-sales-best-buy-is-key-for-carriers/>

31 Consumer Intelligence Research Partners. *Mobile Carrier Stores Still Carry Retail* (April 1, 2015)

32 Daisuke Wakabayashi, Jack Nicas. *Apple Stores See Shrinking Share of iPhone Sales*. <http://www.wsj.com/articles/apple-stores-see-shrinking-share-of-iphone-sales-1460126178> (April 8, 2016)

33 *Infra* section III and paragraph 258

34 *Infra* section IV

35 *Infra* section VII

36 FCC. *Cell Phone Unlocking FAQs*. <https://www.fcc.gov/consumers/guides/cell-phone->

of advertising directing customers to purchase unlocked devices directly from device providers or independent retailers (compared with the abundance of advertising directing customers to purchase devices from carriers) help perpetuate Verizon's dominance of device sales.<sup>37</sup>

**E. Verizon Claims Its “Certification” Process Only Tests Network Connectivity**

28. After the Commission adopted the *700 MHz Second Report and Order* (and after Verizon dropped a lawsuit against the Commission to vacate the openness rules), Verizon announced it would finally allow customers to use devices and applications not offered by the carrier.<sup>38</sup> However, some consumer groups, including Public Knowledge and Media Access Project, predicted that Verizon would continue to discriminate against third-party devices and applications under the guise of “protecting” its network:

Through its testing process, Verizon will still ultimately decide which phones and applications can work on its network, they say, and customers could end up paying more to use outside products.<sup>39</sup>

29. Similarly, Dewayne Hendricks of Tetherless Access predicted:

“If you look at the final rules that the FCC put out there, whoever wins the spectrum basically defines what open access means,” said Hendricks. If, for instance, a carrier wanted to argue that a particular device or application poses a danger to the network -- an argument carriers have frequently made before -- it could ban that device or service from the network.<sup>40</sup>

30. Marguerite Reardon at CNET recognized Verizon's certification process would allow it to maintain control over devices:

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[unlocking-faqs](#) (November 3, 2015)

37 *Infra* sections III, IV

38 Nancy Stark, Jim Gerace. *Verizon Wireless To Introduce 'Any Apps, Any Device' Option For Customers In 2008*. <https://www.verizonwireless.com/news/2007/11/pr2007-11-27.html>

39 Kim Hart. *Verizon To Open Its Wireless Network*. <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/27/AR2007112701077.html>

40 Bryan Gardiner. *FCC Auction Ensures Open Access — If in Name Only*. [https://web.archive.org/web/20100818092720/http://www.wired.com/techbiz/it/news/2008/02/open\\_access](https://web.archive.org/web/20100818092720/http://www.wired.com/techbiz/it/news/2008/02/open_access)



Under this new model, Verizon still maintains control of which devices get on the network. This is completely different from how the traditional Internet operates. For example, Comcast and Verizon's DSL business do not certify laptops or any other Internet-enabled devices that connect to their broadband networks.<sup>41</sup>

31. For its part, Verizon said its certification process would “focus” only on basic technical standards, would cost little to run and would not be any sort of ordeal:

We do not expect this will be a difficult or lengthy process, since we will only be testing network connectivity.<sup>42</sup>

32. However, to compel customers to use Isis Wallet, a Verizon-backed mobile payment application, the carrier blocked Google Wallet, a competing application. Amir Efrati and Anton Troianovski at the Wall Street Journal reported:

Google Inc. said it would bow to a demand by Verizon Wireless, the nation's largest cellphone operator, and withhold Google's mobile payment technology from devices sold by the carrier....

Google claims Verizon is blocking its Google Wallet mobile payments app from being pre-loaded on its newest smartphone or being downloaded by consumers themselves.<sup>43</sup>

33. In 2011, Verizon stated that in order to work as architected by Google, Google Wallet needed to be integrated (by Verizon) into the secure element of phones the carrier claimed as its own and that Verizon was continuing “commercial discussions” with Google.<sup>44</sup> Verizon

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41 Marguerite Reardon. *Carriers keeping hands on the reins.*

<http://www.cnet.com/news/carriers-keeping-hands-on-the-reins/> (April 5, 2008)

42 Rob Pegoraro. *Verizon Wireless To Open Itself Up.*

[http://voices.washingtonpost.com/fasterforward/2007/11/verizon\\_wireless\\_to\\_open\\_itself.html](http://voices.washingtonpost.com/fasterforward/2007/11/verizon_wireless_to_open_itself.html)

43 Amir Efrati, Anton Troianovski. *Verizon Blocks Google Wallet on New Smartphones.*

<http://www.wsj.com/articles/SB10001424052970204770404577081610232043208>  
(December 11, 2011)

44 Seth Weintraub. *Verizon issues new statement on Google Wallet, “continuing discussions with Google”* <http://9to5google.com/2011/12/06/verizon-issues-new-statement-on-google-wallet-may-cave-to-pressure/> [“OUR Phones?” The Google Galaxy Nexus is now a Verizon phone, not a Google phone. So the Verizon iPhone isn’t Apple’s either it would seem.... Then to make the obvious more obvious, Verizon slips up in the final sentence. Right after

alleged it was working to have the “best security and user experience,” but Greg Sterling, founder of the consulting firm Sterling Market Intelligence, said Verizon was suppressing competition against Isis Wallet:

“It’s blocking a competitor’s product from getting to the market,” Sterling said in an e-mail. “I don’t think the security concerns are genuine.”

Sterling points to Sprint Nextel Corp., which doesn’t have a mobile payment product and sells Google’s Nexus S phones with NFC chips for Google Wallet.

“Sprint obviously didn’t express the same concern about security in allowing Google Wallet on the Nexus S, and so far there don’t seem to be any reports that indicate security has been a problem for users or the carrier,” said Sterling.<sup>45</sup>

34. Over 52 weeks later, Verizon stated that the secure element is “fundamentally separate from the device’s basic communications functions or its operating system” and that Verizon has a “straightforward process” under which it could elect to allow access to Google Wallet<sup>46</sup> (even though Verizon’s “certification” process allegedly only tests network connectivity). Verizon didn’t specify the “straightforward process” it alleged existed.

35. Isis Wallet also required secure element integration, but apparently, Verizon was able to promptly “certify” the Verizon-backed application.<sup>47</sup>

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saying the Wallet blockade is a technical issue (“needs to be integrated into a new, secure and proprietary hardware element”), they say that Verizon and Google are continuing COMMERCIAL (not technical) discussions about the app.]

45 Scott Moritz. *Verizon Wireless Blocks Rival Google Wallet, Citing Security*. <https://www.bloomberg.com/news/articles/2011-12-06/verizon-wireless-blocks-google-s-mobile-payment-system-on-security-concern>

46 Kellex. *Verizon Responds to FCC Complaint Over Blocking of Google Wallet, Says Google Needs to Change the App*. <http://www.droid-life.com/2012/12/10/verizon-responds-to-fcc-complaint-over-blocking-of-google-wallet-says-google-needs-to-change-the-app/>

47 Kellex. *Verizon is OK With Isis Mobile Wallet Accessing the Secure Element on Your Phone, Just Not Google Wallet*. <http://www.droid-life.com/2012/12/19/verizon-is-ok-with-isis-mobile-wallet-accessing-the-secure-element-on-your-phone-just-not-google-wallet/>

**F. Verizon Claims Its “Certification” Process Generally Takes Between Four and Six Weeks**

36. Verizon claims the typical amount of time to approve a device should be “weeks rather than months,”<sup>48</sup> and in response to complaints that it was blocking the Asus Nexus 7, the carrier elaborated that its certification process “generally takes between four and six weeks.”<sup>49</sup> (Verizon blocked the tablet for over 22 weeks.<sup>50</sup>)

**III. VERIZON INTERFERES WITH CUSTOMERS' ABILITY TO USE THE DEVICES OF THEIR CHOICE**

37. A subscriber identity module (SIM) is an entity that contains authentication information for wireless service:

The SIM used in Digital Cellular Telecommunications Systems like 3G or GSM is the entity that contains the identity of the subscriber. When the SIM is placed in a terminal or handset, users can register onto the network.

The primary function of the SIM is to authenticate the validity of a terminal when accessing the network. It also provides a means to authenticate the user and may store other subscriber-related information or applications.<sup>51</sup>

38. Just as CableCARDS allow customers to use the set-top boxes of their choice, SIM cards allow customers to use the mobile devices of their choice.

39. AT&T, T-Mobile, and many other carriers worldwide that collectively serve billions of customers<sup>52</sup> offer SIM cards separately from devices. Equipment manufacturers can

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48 Verizon Wireless. *FAQ: Open Network Certification*. <https://opennetwork.verizonwireless.com/content/open-development/faq.html> (November 27, 2015) [“What will be the typical amount of time to approve a device? We expect the typical lab time to be weeks rather than months.”]

49 Debi Lewis. *Statement on Verizon Wireless Device Certification*. <https://www.verizonwireless.com/news/article/2013/09/verizon-wireless-device-certification-statement.html>

50 *Infra* section III.A

51 ETSI. SIM. <http://www.etsi.org/technologies-clusters/technologies/smart-cards/sim> (November 17, 2015)

52 GSMA. *Market Data Summary*.

develop devices that meet open technical standards (established by independent standards-  
settings bodies that are open to participation by service providers, equipment manufacturers,  
application developers, consumer organizations, and other interested parties), and customers can  
purchase devices directly from equipment manufacturers and sales channels that have no  
commercial relationships with carriers. Whether or not a carrier elects to “certify” a device, if it's  
compatible with the carrier's network, a customer can insert the carrier's SIM card in the device  
for wireless service.

40. The LTE wireless communications standard makes use of SIM cards.

Accordingly, Verizon pre-installs SIM cards in the LTE devices it sells; however, Verizon blocks  
customers from ordering SIM cards for devices it doesn't elect to “certify.” On its Web site,<sup>53</sup>  
Verizon requires customers who want to bring their own devices to enter a device identifier, *e.g.*,  
International Mobile Equipment Identity (IMEI) number, to check against an undisclosed  
whitelist.<sup>54</sup> If a device is compatible with the Verizon Wireless network but the carrier hasn't  
elected to “certify” it, the Bring Your Own Device page states the device “is not compatible with  
the Verizon Wireless network.”<sup>55</sup>

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[https://web.archive.org/web/20091003071227/http://www.gsmworld.com/newsroom/market-data/market\\_data\\_summary.htm](https://web.archive.org/web/20091003071227/http://www.gsmworld.com/newsroom/market-data/market_data_summary.htm) (October 3, 2009)

53 Verizon Wireless. Bring Your Own Device.

<https://www.verizonwireless.com/b2c/nso/enterDeviceId.do> (February 20, 2016)

54 Tim Wu. *Wireless Carterfone*. International Journal of Communication, Vol. 1, p. 400, 2007, Columbia Public Law Research Paper No. 07-154 [The practice of Verizon Wireless is to block telephones that are not sold by Verizon itself. As one Verizon customer representative put it, “all the phones that work are already in our system.” The method of exclusion is a “whitelist” of Verizon phones which, by implication, prevents others from working. Without an approved ID number, telephones not sold by Verizon will not be recognized and cannot be used on the network. This effectively makes Verizon Wireless the gatekeeper of market entry for telephones on their network, like the AT&T of old.]

55 Crouching\_Dragon\_. *Switching to Verizon with unlocked devices not in IMEI database*.

[https://www.reddit.com/r/verizon/comments/36r5nc/switching\\_to\\_verizon\\_with\\_unlocked\\_devices\\_not\\_in/?sort=new](https://www.reddit.com/r/verizon/comments/36r5nc/switching_to_verizon_with_unlocked_devices_not_in/?sort=new) (May 21, 2015)

41. Before February 22, 2016, even if the device was whitelisted by Verizon, the Bring Your Own Device page didn't let customers order SIM cards online.<sup>56</sup> On February 22, 2016 (a month after I notified Verizon that I intended to file a formal complaint), Verizon changed its home page<sup>57</sup> to link to a new Bring Your Own Device page<sup>58</sup> that lets customers order SIM cards online but still requires customers to enter a device identifier to check against an undisclosed whitelist and still blocks customers from ordering SIM cards for devices Verizon doesn't elect to “certify.” (AT&T,<sup>59</sup> T-Mobile,<sup>60</sup> and many other carriers worldwide let customers order SIM cards for prepaid and postpaid service from their online stores without entering a device identifier to check against a whitelist.)

42. By blocking customers from ordering SIM cards for devices it doesn't elect to “certify,” Verizon inhibits edge providers from offering “unlocked” devices compatible with its network directly to customers without the carrier's participation (“commercial discussions”)<sup>61</sup> and compels customers to purchase devices preloaded with Verizon-backed applications from the carrier and affiliated retailers instead of competing sources (*e.g.*, Amazon, craigslist, eBay, other carriers, and independent retailers).

**A. Verizon Blocked Asus Nexus 7 Tablets for 22 Weeks**

43. The Nexus 7 is a tablet developed by Asus and Google that is compatible with the

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56 Verizon Wireless. Home page.

<https://web.archive.org/web/20160220194123/https://www.verizonwireless.com/>

57 Verizon Wireless. Home page.

<https://web.archive.org/web/20160222002005/https://www.verizonwireless.com/>

58 Verizon Wireless. Bring Your Own Device. <https://www.verizonwireless.com/activate-device/> (February 22, 2016)

59 AT&T. *SIM Cards*. <https://www.att.com/shop/wireless/devices/simcards.html> (March 20, 2016)

60 T-Mobile. SIM Card Starter Kit. <https://www.t-mobile.com/cell-phones/t-mobile-3-in-1-sim-starter-kit.html> (March 20, 2016)

61 *Supra* paragraphs 11, 33

wireless networks of AT&T, T-Mobile, Verizon, and other carriers. On June 13, 2013, the Commission's Office of Engineering and Technology (OET) granted certification for the Wi-Fi + Cellular model (FCC ID: MSQK009); on September 9, Google started selling it;<sup>62</sup> and on October 12, T-Mobile announced it would sell the tablet.<sup>63</sup> However, Verizon blocked customers from ordering SIM cards for the Nexus 7.<sup>64</sup> The carrier stated the tablet is “not part of our line up & can't be activated” (by Verizon).<sup>65</sup>

44. Jeff Jarvis, professor and director of the Tow-Knight Center for Entrepreneurial Journalism at the City University of New York's Graduate School of Journalism, complained that Verizon was abusing its “certification” process to protect its position as gatekeeper:

Let me be clear that in the end, the issue is not Verizon's certification or even the FCC's but the definition of “open” and whether any device complying with published standards can connect with this network. If the network is truly open as the Commission has decreed, then any device that meets standards for the network should be connected to it with no proprietary certification required. In the Nexus 7, Asus has manufactured a device that meets these standards, has been certified by the FCC, and works on any compatible network as clearly demonstrated with worldwide use. For Verizon to hide behind its claim of a right to certify only brings needless confusion to the Commission's rules and rulings about open networks. Please consider what happens when the modular phones envisioned by Phonebloks and Project Ara at Google and Motorola are offered and independent, open-hardware makers create devices that are built to open standards: Will Verizon demand to subject every device to months of alleged

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62 Ryan Whitwam. *The LTE-Equipped 2013 Nexus 7 Is Live In US Play Store With Free Shipping And A Month Of Data, Coming To T-Mobile Stores In October.*

<http://www.androidpolice.com/2013/09/09/the-lte-equipped-2013-nexus-7-is-live-in-us-play-store-with-free-shipping-and-a-month-of-data-coming-to-t-mobile-stores-in-october/>

63 T-Mobile. *T-Mobile Revolutionizes How Customers Buy and Use Tablets with Free Data for Life.* <https://newsroom.t-mobile.com/news/t-mobile-revolutionizes-how-customers-buy-and-use-tablets-with-free-data-for-life.htm> (October 23, 2013)

64 Jon Brodtkin. *Verizon blocks Nexus 7 and will probably get away with it.*

<http://arstechnica.com/tech-policy/2013/09/verizon-blocks-nexus-7-and-will-probably-get-away-with-it/>

65 Jeff Jarvis. *Verizon, caught red-handed.* <https://buzzmachine.com/2013/09/17/verizon-caught-red-handed/>

“certification”? How does that make a lie of open networks?<sup>66</sup>

45. On September 18, 2013, Verizon alleged the Nexus 7 entered its “certification” process in August. (Google announced the tablet's availability on July 24.<sup>67</sup>) Additionally, Verizon elaborated that its certification process “generally takes between four and six weeks” and is “focused” on guarding the safety and security of its network.<sup>68</sup> However, on November 6, the carrier alleged that because of a vague “systems issue” it uncovered, Google and Asus chose to release KitKat (version 4.4 of the Android operating system) before submitting the Nexus 7 to Verizon's “certification” process again. Verizon neither specified the “systems issue” it alleged existed nor provided any evidence that this alleged “systems issue” harmed the safety and security of its network. David Ruddock, editor at the Web site Android Police, predicted (correctly) that Verizon wouldn't offer an explanation:

As such, you'll probably still be waiting several weeks, if not substantially longer, before you can activate your Nexus 7 on Verizon's LTE network. We've asked Verizon for clarification on what the systems issue referred to was and when we can expect the update / certification to happen, though I wouldn't hold my breath on a detailed reply to either inquiry.<sup>69</sup>

46. On November 7, 2013, while it was still “certifying” the Asus Nexus 7, the carrier

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66 Jeff Jarvis. *The Verizon saga continues*. <https://buzzmachine.com/2013/11/06/the-verizon-saga-continues/>

67 Sundar Pichai. *From TVs to tablets: Everything you love, across all your screens*. <https://googleblog.blogspot.com/2013/07/from-tvs-to-tablets-everything-you-love.html> [“Nexus 7 (LTE) is coming soon with support for T-Mobile and Verizon in the coming weeks.”]

68 Debi Lewis. *Statement on Verizon Wireless Device Certification*. <https://www.verizonwireless.com/news/article/2013/09/verizon-wireless-device-certification-statement.html>

69 David Ruddock. *Verizon: Google, Asus Have Opted To Wait Until Nexus 7 Gets KitKat To Certify For Use On Network, “Systems Issue” With 4.3 To Blame*. <http://www.androidpolice.com/2013/11/06/verizon-google-asus-have-opted-to-wait-until-nexus-7-gets-kitkat-to-certify-for-use-on-network-systems-issue-with-4-3-to-blame/>

launched its own line of tablets by starting to sell the similarly-sized Verizon Ellipsis 7.<sup>70</sup> Ricardo Bilton at VentureBeat noted the convenience of Verizon's timing:

Verizon eventually backtracked on that line, noting that it had to ensure the Nexus 7 worked on its LTE network — despite the fact the FCC had already done so. The process, which the company said takes up to six weeks, started in mid-August. That was at least 10 weeks ago.

[...]

The reality is that the Nexus 7 may never get certified for Verizon's network — which makes it convenient that Verizon is filling its 7-inch tablet void this fall with one of its own.... While it's hard to prove that Verizon has kept the Nexus 7 in certification limbo just so it can sell its own tablet uncontested, that's exactly what it looks like from the outside.<sup>71</sup>

47. On November 14, 2013, Google released Android KitKat for the Wi-Fi + Cellular Nexus 7.<sup>72</sup> Thirteen weeks later, Verizon announced it would start selling the tablet (and accessories):

The Nexus 7 (Black, 32GB model) will be available starting Feb. 13 for \$349.99 online and in stores. For a limited time, users can purchase the Nexus 7 for \$249.99 with a new two-year activation....

[...]

To accessorize and protect the Nexus 7, the Nexus 7 Folio will be available in Black and Red color options for \$49.99. The Speck StyleFolio for Nexus 7 also lets users protect their new tablet and doubles as a stand, ideal for watching movies or doing work. The Speck StyleFolio will be available in Blue, Black and

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70 Albert Aydin. *Ellipsis 7 Tablet Available Nov. 7 Exclusively from Verizon Wireless*. <https://www.verizonwireless.com/news/article/2013/11/ellipsis-7-tablet.html>

71 Ricardo Bilton. *How convenient: Verizon announces its own 7-inch tablet, even as it locks the Nexus 7 in certification limbo*. <http://venturebeat.com/2013/11/06/how-convenient-verizon-announces-its-own-7-inch-tablet-even-as-it-locks-the-nexus-7-in-certification-limbo/>

72 Artem Russakovskii. *Android 4.4 KitKat Factory Images And Binaries Are Up For Nexus 4, All Variants Of Nexus 7 (2012 And 2013), And Nexus 10*. <http://www.androidpolice.com/2013/11/14/android-4-4-kitkat-factory-images-and-binaries-are-up-for-nexus-4-all-variants-of-nexus-7-2012-and-2013-and-nexus-10/>



Pink color options for \$34.99.<sup>73</sup>

48. On February 13, 2014 (over 22 weeks after Google started selling the Wi-Fi + Cellular Nexus 7), Verizon finally “certified” devices sold by Google but not the same models sold by T-Mobile.<sup>74</sup>

**B. Verizon Blocked Third-Party Apple iPhone 6 and iPhone 6 Plus Devices for 47 Weeks**

49. The iPhone 6 and iPhone 6 Plus are smartphones developed by Apple. All models (including those sold by other carriers) of the iPhone 6 and iPhone 6 Plus support the Verizon Wireless network. On September 9, 2014, Apple announced the smartphones; on the same day, certification grants for the iPhone 6 (FCC ID: BCG-E2816A) and iPhone 6 Plus (FCC ID: BCG-E2817A) became publicly available on the OET's Equipment Authorization System (EAS); and on September 19, Apple, carriers, and independent retailers started selling the smartphones.

50. However, Verizon both blocked customers from ordering new SIM cards for third-party iPhone 6 and iPhone 6 Plus devices and also imposed discriminatory pricing on customers who used third-party devices with existing SIM cards.<sup>75</sup> (See *infra* section IV.) Moreover,

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73 Albert Aydin. *Nexus 7 Available Feb. 13 on the Verizon Wireless Network*.

<https://www.verizonwireless.com/news/article/2014/02/google-nexus-7-tablet.html>

74 Shawn De Cesari. *PSA: CDMA Carriers Probably Won't Activate Your Nexus 6 Unless It Was Purchased From Google Play Or That Carrier (And What You Can Do About It)*.

<http://www.androidpolice.com/2014/11/22/psa-cdma-carriers-probably-wont-activate-your-nexus-6-unless-it-was-purchased-from-google-play-or-that-carrier-and-what-you-can-do-about-it/> [“Verizon did the exact same thing with the 2013 Nexus 7 LTE. Once it finally got around to whitelisting the Nexus 7's IMEI numbers five months after launch, they only did so for devices sold from Google Play and Verizon. If you bought from T-Mobile, you weren't going to activate it on Verizon through normal channels.”]

75 mattaz02. *not only is the iPhone 6 unlocked, but the t-mobile phones work on verizon!*

<https://discussions.apple.com/message/27768232#27768232> (March 5, 2015) [“Now since I brought my own phones I should be receiving the \$25 off per line on the more everything plan, but Verizon can't seem to get it to work in their system. They are saying that the codes they are using are not being accepted. If I put the sim card from one of the 6's into the 5c(Verizon phone) then they are able to add the discount, but once I put that sim card back

Verizon told customers switching from other carriers to purchase new iPhones from Verizon instead of using their existing iPhones.<sup>76</sup>

51. On August 13, 2015 (almost 47 weeks after release),<sup>77</sup> Verizon finally “certified” iPhone 6 and iPhone 6 Plus devices sold by competing sources.<sup>78</sup>

**C. Verizon Blocked Third-Party Motorola Nexus 6 Smartphones for 29 Weeks**

52. The Nexus 6 (XT1103) is a smartphone developed by Motorola and Google that is compatible with the wireless networks of AT&T, Sprint, T-Mobile, U.S. Cellular, Verizon, and other carriers. On October 15, 2014, Motorola and Google announced the smartphone,<sup>79</sup> and on October 24, certification grants for the Nexus 6 (FCC ID: IHDT56QD1) became publicly available on OET-EAS.

53. Google started accepting pre-orders on October 29, 2014,<sup>80</sup> and Motorola started

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- 76 memarkaz. *No Verizon Month to Month Discount With non-Verizon iPhone 6???* <http://www.howardforums.com/showthread.php/1851974-No-Verizon-Month-to-Month-Discount-With-non-Verizon-iPhone-6> (December 1, 2014) [“I was advised to sell my 2 phones and buy Verizon hardware as their hardware supports all features including month 2 month.”]
- 77 fanoffanless. *PSA: Verizon just whitelisted the iPhone 6 and 6 Plus from different carriers. iPads from different carriers are still not on the whitelist.* [https://www.reddit.com/r/verizon/comments/3gw0kw/psa\\_verizon\\_just\\_whitelisted\\_the\\_iphone\\_6\\_and\\_6/](https://www.reddit.com/r/verizon/comments/3gw0kw/psa_verizon_just_whitelisted_the_iphone_6_and_6/) (August 13, 2015)
- 78 mredcat43. *That day has finally arrived!!!* [https://www.reddit.com/r/verizon/comments/3h3k5t/that\\_day\\_has\\_finally\\_arrived/](https://www.reddit.com/r/verizon/comments/3h3k5t/that_day_has_finally_arrived/) (August 15, 2015)
- 79 Sundar Pichai. *Android: Be together. Not the same.* <https://googleblog.blogspot.com/2014/10/android-be-together-not-same.html> [“Nexus 6 will be available for pre-order in late October and in stores in November—with options for an unlocked version through Play store, or a monthly contract or installment plan through carriers, including AT&T, Sprint, T-Mobile, U.S. Cellular, and Verizon.”]
- 80 Kellex. *Nexus 6 Now Available for Pre-Order.* <http://www.droid-life.com/2014/10/29/nexus-6-now-available-for-pre-order/>

selling the Nexus 6 on November 6.<sup>81</sup> AT&T,<sup>82</sup> Sprint,<sup>83</sup> T-Mobile,<sup>84</sup> U.S. Cellular,<sup>85</sup> and independent retailers followed soon afterward. However, Verizon both blocked customers from ordering new SIM cards for third-party devices and also imposed discriminatory pricing on customers who used third-party devices with existing SIM cards. (See *infra* section IV.) As Shawn De Cesari at the Web site Android Police reported, even after Verizon started selling the Nexus 6 on March 12, 2015,<sup>86</sup> the carrier continued to block devices from competing sources:

It would appear that Verizon still has not added IMEI numbers for any Nexus 6 that wasn't purchased from Big Red. So, if you had the audacity to buy your Nexus 6 unlocked, you'll still have to jump through hoops to get a SIM card if you're a new customer, and once you have the device active, it'll show up on your account as "Non-VZW Device."<sup>87</sup>

54. Around May 25, 2015 (over 29 weeks after Google started accepting pre-orders), Verizon finally "certified" Nexus 6 smartphones sold by Google, Motorola, other carriers, and

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81 Kellex. *Nexus 6 Now Available From Motorola*. <http://www.droid-life.com/2014/11/06/nexus-6-now-available-from-motorola/>

82 AT&T. *AT&T Announces Nov. 12 Preorders for the Nexus 6 with Android 5.0 Lollipop*. [http://about.att.com/story/att\\_announces\\_nov\\_12\\_preorders\\_for\\_the\\_nexus\\_6\\_with\\_android\\_5\\_0\\_lollipop.html](http://about.att.com/story/att_announces_nov_12_preorders_for_the_nexus_6_with_android_5_0_lollipop.html) (November 11, 2014)

83 Sprint. *Get Nexus 6 on Nov. 14 with Sprint Family Share Pack - Best Value for Families Who Want Shared Data*. <http://newsroom.sprint.com/news-releases/get-nexus-6-on-nov-14-with-the-sprint-family-share-pack--the-best-value-for-families-who-want-shared-data.htm> (November 11, 2014)

84 T-Mobile. *Nexus 6 launches today at T-Mobile, Nexus 9 tablet coming soon*. <https://newsroom.t-mobile.com/news/nexus-6-launches-today-at-t-mobile-nexus-9-tablet-coming-soon.htm> (November 19, 2014)

85 U.S. Cellular. *U.S. Cellular Launches Nexus 6*. <http://www.uscellular.com/about/press-room/2014/USCellular-Launches-Nexus-6.html> (December 9, 2014)

86 Albert Aydin. *Nexus 6 with Android Lollipop and Verizon 4G LTE: Available March 12*. <https://www.verizonwireless.com/news/article/2015/03/nexus-6-with-android-lollipop-and-verizon-4g-lte-available-march-12.html>

87 Shawn De Cesari. *[Shocker] Even After Launching The Nexus 6, Verizon Still Won't Officially Activate One That Wasn't Purchased From The Carrier*. <http://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/>

independent retailers.<sup>88</sup>

#### D. Verizon Continues to Block Other Compatible Third-Party Devices

55. The following table lists devices that support LTE Band 13<sup>89</sup> and are compatible with the Verizon Wireless network:

Device (model)	FCC ID	Third-party devices blocked
Apple iPhone 5 (A1429)	BCG-E2599A	Sep 2012–Present
Apple iPad, 4 <sup>th</sup> Generation (A1460)	BCGA1460	Nov 2012–Present
Apple iPad mini (A1455)	BCGA1455	Nov 2012–Present
Asus Nexus 7 (K009)	MSQK009	Sep 2013–Feb 2014 (22 weeks)
Apple iPhone 5c (A1456, A1532)	BCG-E2644A	Sep 2013–Present
Apple iPhone 5s (A1453, A1533)	BCG-E2642A	Sep 2013–Present
Apple iPad Air (A1475)	BCGA1475	Nov 2013–Present
Apple iPad mini 2 (A1490)	BCGA1490	Nov 2013–Present
Apple iPhone 6 (A1549, A1586)	BCG-E2816A	Sep 2014–Aug 2015 (47 weeks)
Apple iPhone 6 Plus (A1522, A1524)	BCG-E2817A	Sep 2014–Aug 2015 (47 weeks)
Apple iPad Air 2 (A1567)	BCGA1567	Oct 2014–Nov 2015 (54 weeks)
Apple iPad mini 3 (A1600)	BCGA1600	Oct 2014–Nov 2015 (54 weeks)
Motorola Nexus 6 (XT1103)	IHDT56QD1	Oct 2014–May 2015 (29 weeks)
Microsoft Surface 3 (1657)	C3K1567	Jul 2015–Present
Apple iPad mini 4 (A1550)	BCGA1550	Sep 2015–Nov 2015 (8 weeks)
Apple iPhone 6s (A1633, A1688)	BCG-E2946A	Sep 2015–Nov 2015 (6 weeks)
Apple iPhone 6s Plus (A1634, A1687)	BCG-E2944A	Sep 2015–Nov 2015 (6 weeks)
LG Nexus 5X (H790)	ZNFH790	Sep 2015–Nov 2015 (6 weeks)
Huawei Nexus 6P (H1511)	QISH1511	Sep 2015–Nov 2015 (6 weeks)
Apple 12.9-inch iPad Pro (A1652)	BCGA1652	Nov 2015–May 2016 (26 weeks)
Apple iPhone SE (A1662)	BCG-E2945A	Mar 2016–May 2016 (6 weeks)
Apple 9.7-inch iPad Pro (A1674)	BCGA1674	Mar 2016–May 2016 (6 weeks)

*Table 1: Devices that are compatible with the Verizon Wireless network but that may be blocked by the carrier if sold by sources other than the carrier and affiliated retailers (as of June 27, 2016).*

88 Shawn De Cesari. *[Probably Not Ready Yet] Verizon Appears To Be Gearing Up To Activate Any Nexus 6 Through Normal Procedures, Not Just Ones Sold By The Carrier, And There's An OTA Going Out For It.* <http://www.androidpolice.com/2015/05/25/probably-not-ready-yet-verizon-appears-to-be-gearing-up-to-activate-any-nexus-6-through-normal-procedures-not-just-ones-sold-by-the-carrier-and-theres-an-ota-going-out-for-it/> [“I had cancelled my Verizon account a while back because I was annoyed with my \$15 month-to-month discount falling off my account regularly due to the fact that I had an unapproved device.... She scanned the SIM card, but then when she tried to assign a plan - in this case, an individual 2 GB data plan - it told her the device was invalid.”]

89 *Supra* section II.C

56. However, the carrier may block customers from ordering SIM cards for devices sold by sources other than the carrier and affiliated retailers.

57. For example, Microsoft announced the Surface 3 on March 31, 2015,<sup>90</sup> AT&T started selling it on July 24, T-Mobile started selling it on July 31, Microsoft started selling it on September 19,<sup>91</sup> and Verizon finally started selling it on November 12.<sup>92</sup> All Surface 3 (1657) devices support LTE Band 13 and are compatible with the Verizon Wireless network, but Verizon is still blocking customers from ordering SIM cards for devices sold by AT&T, T-Mobile, Microsoft, and independent retailers.<sup>93</sup>

58. See the exhibits attached to this complaint for examples of the carrier's Bring Your Own Device page claiming devices that are compatible with the Verizon Wireless network are not: 357993055204882 is the IMEI number of an Apple iPhone 5s (CDMA); 014376000005551, a Microsoft Surface 3; 014376005306285, a Microsoft Surface 3; and 353305070973850, an Apple 12.9-inch iPad Pro.

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90 Microsoft. *Microsoft introduces Surface 3: The thinnest and lightest Surface yet.* <http://news.microsoft.com/2015/03/31/microsoft-introduces-surface-3-the-thinnest-and-lightest-surface-yet/> ["Microsoft will offer Surface 3 (4G LTE) through T-Mobile and Verizon Wireless in the U.S. later this year."]

91 Brian Hall. *Surface 3 (4G LTE) now available in the U.S.!* <http://blogs.windows.com/devices/2015/07/24/surface-3-4g-lte-available-in-the-u-s/>

92 Albert Aydin. *Microsoft Surface 3 with Verizon 4G LTE now available for business professionals.* <https://www.verizonwireless.com/news/article/2015/11/microsoft-surface-3-with-verizon-4g-lte-now-available-for-business-professionals.html>

93 BrianFranklin. *If you have an unlocked Surface 3 LTE, can you check whether it's whitelisted by Verizon?* [https://www.reddit.com/r/Surface/comments/3t1btn/if\\_you\\_have\\_an\\_unlocked\\_surface\\_3\\_lte\\_can\\_you/](https://www.reddit.com/r/Surface/comments/3t1btn/if_you_have_an_unlocked_surface_3_lte_can_you/) (November 16, 2015) ["I bought mine via Microsoft Store unlocked and Verizon tells me: The phone associated with the Device ID you entered is not compatible with the Verizon Wireless network."]

#### IV. VERIZON IMPOSES DISCRIMINATORY PRICING ON BRINGING YOUR OWN DEVICE

59. Verizon offers subsidies to customers on its “Nationwide” and earlier plans who purchase devices through the carrier and sign two-year service contracts (but doesn't offer line access discounts for customers who forgo device subsidies by bringing their own devices). For example, a customer on a plan with a data transfer cap of 2 GB who wants a smartphone that sells for \$650 would pay \$200 down, and Verizon would recover the cost of the \$450 subsidy (and more) over two years by bundling the cost in a \$40/month line access charge<sup>94</sup> (plus a \$40 “upgrade fee” or \$40 “activation fee”). After it recovers the cost of the subsidy, Verizon doesn't decrease the customer's line access charge: the carrier keeps charging \$40/month.

60. On July 18, 2013, Verizon announced its Edge financing plan. In addition to its existing \$40/month line access charge (that bundles in the cost of device subsidies), the carrier imposed a new device payment charge (*e.g.*, \$27.08/month for a smartphone that sells for \$650). As Thomas Gryta at the Wall Street Journal wrote, Verizon effectively charged customers twice for their devices:

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.<sup>95</sup>

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94 Thomas Gryta. *Verizon to Offer More Frequent Phone Upgrades if Subscribers Forgo Subsidies*. <http://www.wsj.com/articles/SB10001424127887324448104578613612706427942> (July 18, 2013) [“Under regular wireless contract plans, subscribers get discounted smartphones—typically for \$200 or less—in exchange for signing a two-year contract. Under those plans, carriers aim to recover the cost of subsidies that can top \$400 per phone through the monthly service fee.”]

95 *Id.*

61. Nilay Patel at The Verge wrote:

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....

[...]

In the end, what AT&T and Verizon are doing is simple: ... instead of competing to provide better service at lower prices, the two major carriers in America are competing to find innovative ways of maintaining their historically inflated prices while boosting their revenue and providing substantially less value to their customers.<sup>96</sup>

62. On one hand, Verizon CFO Fran Shammo didn't expect the carrier could sucker many customers into paying twice for devices; on the other hand, he said Verizon wouldn't decrease its \$40/month line access charge for customers who forgo device subsidies. Research analyst Craig Moffett said “you'd have to be out of your mind” to accept such a plan.<sup>97</sup>

63. On February 13, 2014, Verizon reversed itself: the carrier announced it would shift from two-year service contracts to two-year device contracts (equipment installment plans)<sup>98</sup> and finally decrease line access charges for customers who forgo device subsidies:

The monthly line access charge if you have a smartphone with Verizon Edge or are on a month-to-month agreement:

- \$25 if you have a MORE Everything Plan with a data allowance up to 4 GB. However, it will show up on your bill as a \$40 charge with an offsetting \$15 credit.
- \$15 if you have a MORE Everything Plan with a data allowance of 6 GB or

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96 Nilay Patel. *Verizon's Edge phone upgrade plan is the same bad ripoff as AT&T Next.* <http://www.theverge.com/2013/7/18/4535068/verizons-edge-phone-upgrade-plan-same-bad-ripoff-as-att-next>

97 Sinead Carew. *Verizon rules out service fee changes in new phone offer.* <http://www.reuters.com/article/us-verizon-edge-idUSBRE96H10S20130718> (July 18, 2013)

98 Debi Lewis. *MORE Everything Gives Customers More From Their Wireless Plans.* <https://www.verizonwireless.com/news/article/2014/02/more-everything-plans.html>



higher. However, it will show up on your bill as a \$40 charge with an offsetting \$25 credit.<sup>99</sup>

64. Customers who complete service contracts, fully pay Verizon for devices up front, or bring their own devices are on month-to-month agreements. The carrier's main public-facing Web page for the MORE Everything plan explicitly stated (without even mentioning discounts) that for customers who bring their own devices, the line access charge is \$25/month for data transfer caps up to 4 GB and \$15/month for data transfer caps of 6 GB or higher.<sup>100</sup>

65. Despite what it had publicly stated, Verizon didn't actually apply month-to-month line access discounts for customers on month-to-month agreements who brought their own smartphones: the carrier imposed effective line access charges of \$40/month rather than \$25/month or \$15/month. Shawn De Cesari at the Web site Android Police reported:

If you're on a More Everything Plan, and you're getting a month-to-month discount for having your own device and not being under contract (which would probably be most people bringing their own Nexus 6 to Verizon in the first place), you could lose it. That discount cannot be applied if your phone is a "Non-VZW Device." Further, if you put your SIM card into a recognized phone, then call and have a rep add the credit back onto your account, it might not last long. As soon as you put your SIM back into your rogue Nexus 6, the discount could fall off your account anywhere from the following day to the day that your bill cycle resets. I had this issue personally, and I'm definitely not alone. 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>101</sup>

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99 Verizon Wireless. *The MORE Everything Plan FAQs*.

<https://web.archive.org/web/20150624052403/https://www.verizonwireless.com/support/more-everything-plan-faqs/>

100 Verizon Wireless. *MORE Everything Plan*.

<https://web.archive.org/web/20150814011508/https://www.verizonwireless.com/landingpages/more-everything/>

101 Shawn De Cesari. *[Shocker] Even After Launching The Nexus 6, Verizon Still Won't Officially Activate One That Wasn't Purchased From The Carrier*.

<http://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/>



66. See the exhibits attached to this complaint for more customer testimonials.

67. On March 10, 2016, Verizon retroactively classified the line access discounts it had offered to all customers who forgo device subsidies since announcing its MORE Everything plans as “promotional” and restricted them to customers financing devices through Verizon.<sup>102</sup> (The carrier quietly disclosed this change to employees a couple days before imposing it on customers.<sup>103</sup>) For customers it didn't grandfather as eligible for “promotional” discounts for forgoing device subsidies, the carrier reverted to imposing “out of your mind” line access charges of \$40/month: Verizon is imposing line access charges that bundle in the costs of device subsidies on customers who forgo device subsidies by bringing their own devices.<sup>104</sup> One customer said, “Boggles the mind that you would pay more after paying off your phone.”<sup>105</sup>

68. For example, on MORE Everything plans with data transfer caps of 6 GB or higher, the effective line access charge (after any discount) is \$15/month to finance a smartphone through Verizon but \$40/month to bring your own smartphone from a competing source. Over 24 months, the effective line access charge is \$360 to finance a smartphone through Verizon but \$960 to bring your own smartphone.

69. Additionally, before November 15, 2015, Verizon waived “activation fees” for customers financing devices through the carrier but charged \$40 for customers bringing their

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102 Verizon Wireless. *The MORE Everything Plan FAQs*.

<https://www.verizonwireless.com/support/more-everything-plan-faqs/> (March 12, 2016)

103 tzw9373. PSA: M2M Discounts on More Everything are now grandfathered.

[https://www.reddit.com/r/verizon/comments/49wntv/psa\\_m2m\\_discounts\\_on\\_more\\_everything\\_are\\_now/](https://www.reddit.com/r/verizon/comments/49wntv/psa_m2m_discounts_on_more_everything_are_now/) (March 10, 2016) [BumWarrior69: “We never received word that the month to month discount was going away. Source: Also indirect.” Rawtashk: “it's in the newsletter and OST100846”]

104 *Supra* paragraphs 59–62

105 aokusman. *Very disappointed – no more month-to-month discount?*

<http://www.howardforums.com/showthread.php/1881315-Very-disappointed-no-more-month-to-month-discount?p=16644253#post16644253> (April 16, 2016)

own devices from competing sources. The carrier standardized this practice in July 2014<sup>106</sup> but had done so on a limited-time basis, December 2013–January 2014<sup>107</sup> and January 2014–March 2014.<sup>108</sup> On November 15, 2015, Verizon closed the difference by eliminating the waiver but decreasing the full “activation fee” to \$20. This change increased the effective “activation fee” (after any waiver) for financing a device through the carrier from \$0 to \$20<sup>109</sup> and decreased the full “activation fee” (without any waiver) for bringing your own device from \$40 to \$20.<sup>110</sup>

**V. VERIZON INTERFERES WITH EDGE PROVIDERS' ABILITY TO MAKE THE DEVICES OF THEIR CHOICE AVAILABLE TO CUSTOMERS**

**A. Verizon Disables (or Compels Edge Providers to Disable) FM Radio Capabilities**

70. Verizon claims “there are no requirements that prevent Verizon's handset suppliers from providing an FM radio chip in their devices.”<sup>111</sup> Although the carrier may not prevent handset suppliers from *providing* FM radio chips, since at least September 11, 2009, Verizon has compelled handset suppliers to *disable* FM radio chips. For example, HTC confirmed that

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106 Verizon Wireless. *Verizon Edge*.

<https://web.archive.org/web/20140721200602/https://www.verizonwireless.com/wcms/consumer/devices/edge.html> [“No Upgrade or Activation Fees: With Verizon Edge you don't pay either of these fees.”]

107 Verizon Wireless. *Verizon Edge*.

<https://web.archive.org/web/20131213133510/https://www.verizonwireless.com/wcms/consumer/devices/edge.html>

108 Verizon Wireless. *Verizon Edge*.

<https://web.archive.org/web/20140119151109/https://www.verizonwireless.com/wcms/consumer/devices/edge.html>

109 Kellex. *Verizon to Introduce \$20 Activation Fee on Device Payment Plans Starting November 15*. <http://www.droid-life.com/2015/11/11/verizon-activation-fee-device-payment-plan/>

110 ab2525. *VZ Brings back \$20 DPP Activation Fee, Reduces BYOD to \$20*.

[https://www.reddit.com/r/verizon/comments/3sqd2v/vz\\_brings\\_back\\_20\\_dpp\\_activation\\_fee\\_reduces\\_byod/](https://www.reddit.com/r/verizon/comments/3sqd2v/vz_brings_back_20_dpp_activation_fee_reduces_byod/) (November 13, 2015)

111 Verizon. Company Policies. <https://www.verizon.com/about/responsibility/policies> (March 23, 2016)

Verizon requested that HTC disable the FM radio built into its Touch Pro2 smartphone and that HTC “cannot go against the wishes of” Verizon:

The FM radio being disabled is not a choice that was made by HTC; each carrier makes their own specifications for their devices. In this case, Verizon requested that the FM radio not be available on their version of the Touch Pro2. It is possible that they have their own radio software; it is possible that it is something they will make available in a future update. However, there is nothing that HTC Technical Support can do to unlock this feature, as we cannot go against the wishes of the carrier who purchased the device from us.<sup>112</sup>

71. Verizon acknowledged its marketing department's position as gatekeeper:

Decisions on what applications and functions will be available on our phones are made by our Marketing Department, and can not be overridden. There are no current plans to offer FM Radio on this device in the future.<sup>113</sup>

72. AT&T, Sprint, T-Mobile, and other carriers sold HTC One M8 smartphones (released March 25, 2014) preloaded with FM tuner applications, but Verizon blocked HTC from preloading its FM tuner application and stripped any mention of FM radio capabilities from its manuals:

A further example is the HTC One. The M8 version of this smartphone has the FM radio enabled across all major U.S. carriers, but with different apps on different carriers: Sprint ships it with NextRadio pre-installed, AT&T and T-Mobile provide a native HTC-supplied FM tuner app (without hybrid radio capability), and Verizon ships it with no FM app (and no mention in the manual that the phone has FM capability).<sup>114</sup>

73. Verizon completely blocked (or compelled HTC to block) FM radio capabilities HTC built into its One M9 smartphone (released April 10, 2015):

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

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112 oneders65. *What HTC and Verizon say about disabled FM radio...* <http://forum.xda-developers.com/showpost.php?p=4576551> (September 21, 2009)

113 *Id.*

114 NAB Labs. *Research Shows Increased Diversity in FM Radio on Smartphones.* <http://www.nab.org/xert/sciTech/2015/RD05182015.pdf> (May 15, 2015)

purposefully blocks the user accessing the device's FM radio capability via a downloaded app. Contrary to the Verizon version of the M8, where the FM radio was functional although not readily available to the consumer, this new version of the Verizon HTC One cannot be activated by downloading an Android FM radio app.<sup>115</sup>

74. Verizon also disabled (or compelled LG to disable) FM radio capabilities LG built into its G4 (released June 4, 2015)<sup>116</sup> and G5 (released April 1, 2016) smartphones. David Ruddock, editor at the Web site Android Police, reported:

Yep: 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).<sup>117</sup>

75. Currently, Verizon is the only national carrier blocking (or compelling edge providers to block) FM radio capabilities built into devices:

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.<sup>118</sup>

76. As the National Association of Broadcasters notes, carriers like Verizon have the incentive and ability to block customers' ability to access local radio:

Some believe this is because carriers make a significant amount of money off of data streaming, and might lose some of that revenue if customers had the ability to access local radio on their phone for free.

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115 *Id.*

116 Jared Dipane. *Here are the things the Verizon LG G4 doesn't have that other variants do: Verizon does it again.* <http://www.androidcentral.com/here-are-things-verizon-lg-g4-doesnt-have-other-variants-do> (June 5, 2015)

117 David Ruddock. *5 Things I Love About The LG G5.* <http://www.androidpolice.com/2016/04/29/5-things-i-love-about-the-lg-g5/>

118 National Association of Broadcasters. *Expand Access to Emergency Information: Unlock FM.* <http://www.nab.org/advocacy/issue.asp?id=2354&issueid=1082> (March 23, 2016)

Americans are asking why the mobile phone gatekeepers are resistant to offering a free entertainment option that will also provide lifesaving emergency information in times of crisis, especially since the top 10 best-selling smartphones already contain the chip that allows broadcast radio reception; it simply needs to be activated.<sup>119</sup>

77. According to a survey conducted by NAB in 2012, only 2% of phones sold by Verizon had broadcast radio capabilities.<sup>120</sup> By contrast, 21% of phones sold by AT&T and T-Mobile had them, and 57% of phones sold in the United Kingdom by the carrier O2 had them.

78. As with tethering<sup>121</sup> and Samsung Pay,<sup>122</sup> Verizon repeated its claim that it doesn't prohibit handset suppliers from *incorporating* FM radio chips, but the carrier didn't say whether it asked handset suppliers to *disable* FM radio chips.<sup>123</sup>

**B. Verizon Disables (or Compels Apple to Disable) Embedded Apple SIMs**

79. On March 21, 2016, Apple announced the 9.7-inch iPad Pro. The Embedded Apple SIM built into the 9.7-inch iPad Pro (A1674) lets customers switch carriers without physically acquiring and switching SIM cards. However, as Ina Fried (The Orange County Register, The Orange County Business Journal, CNET, All Things Digital, Re/code) reported, Verizon disables Embedded Apple SIMs:

Once again, though, while Apple is trying to give users easy built-in options, not all service providers are keen on the notion.

T-Mobile and Sprint are fully supporting the built-in Apple SIM feature. AT&T, however, will tie the Apple SIM to its network if you buy your iPad at one of its

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119 National Association of Broadcasters. *Other countries' offerings of mobile phones with radio capability dwarf the U.S.* [http://www.nab.org/documents/radio/International\\_Radio\\_Phone\\_Facts.pdf](http://www.nab.org/documents/radio/International_Radio_Phone_Facts.pdf) (March 23, 2016)

120 *Id.*

121 *Supra* paragraph 17

122 *Infra* paragraph 111

123 Letter from Verizon Assistant General Counsel Ann Rakestraw to Alex Nguyen (May 11, 2016)

retail stores. Verizon, meanwhile, will require a separate SIM card and disable the built-in embedded Apple SIM on the iPads it sells.

[...]

The ability to choose among multiple carriers from a single device is not unique to Apple, but it is definitely not the norm in the U.S., where carriers continue to play a big role and many devices are sold within the providers' retail stores.<sup>124</sup>

80. (Verizon's retail operations dominate device sales for over 141 million subscriber connections.<sup>125</sup>)

81. The carrier “justified” disabling Embedded Apple SIMs by vaguely mentioning “reasonable technical requirements” but neither specified the requirements it alleges exist nor provided any evidence that the SIMs can harm its network.<sup>126</sup>

## **VI. VERIZON INTERFERES WITH CUSTOMERS' ABILITY TO USE THE APPLICATIONS OF THEIR CHOICE AND EDGE PROVIDERS' ABILITY TO MAKE THE APPLICATIONS OF THEIR CHOICE AVAILABLE TO CUSTOMERS**

### **A. Verizon Disables Built-in Tethering Features and Charges an Additional \$20.00/Month to Re-Enable Them**

82. In 2012, after the Commission's Enforcement Bureau investigated whether Verizon was violating its license obligations by “requesting” that Google make third-party tethering applications unavailable to customers, the carrier paid \$1.25 million to terminate the investigation and agreed to comply with an Order and Consent Decree affirming that Verizon may not “explicitly or implicitly” request that applications be made unavailable to customers.<sup>127</sup>

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124 Ina Fried. *Latest iPad Pro Makes It Even Easier to Switch Wireless Carriers*.

<https://recode.net/2016/03/22/latest-ipad-pro-makes-it-even-easier-to-switch-wireless-carriers/>

125 *Supra* section II.D

126 Letter from Verizon Assistant General Counsel Ann Rakestraw to Alex Nguyen (May 11, 2016)

127 *Supra* paragraphs 15–18

Verizon stopped blocking third-party tethering applications in Google's application store, but for customers on its “Nationwide” and earlier plans,<sup>128</sup> the carrier continues to disable built-in tethering features and charge an additional \$20.00/month to re-enable them:

Data packages may not be used to tether your smartphone to a computer or tablet, or as a Wi-Fi hotspot, unless you subscribe to Mobile Hotspot/Mobile Broadband Connect.<sup>129</sup>

83. Mobile Hotspot/Mobile Broadband Connect is the \$20.00/month “service”

Verizon “provides” by re-enabling the built-in tethering features it disables.<sup>130</sup>

84. Verizon doesn't disable the video calling application FaceTime or impose additional charges on customers paying for bandwidth-based (“unlimited”) data plans<sup>131</sup> to use the high-bandwidth application:

All Verizon Wireless customers will be permitted to use the data-intensive application with no additional charges, including those remaining on unlimited data plans, according to a company spokeswoman.<sup>132</sup>

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128 Although Verizon doesn't disable built-in tethering features and charge an additional \$20.00/month to re-enable them on its “MORE Everything” and “Verizon” plans, the carrier continues to do so on its “Nationwide” and earlier plans.

129 Verizon Wireless. *Services Terms and Conditions*. <https://www.verizonwireless.com/support/iphone-service-legal/> (November 28, 2015)

130 Karl Bode. *Verizon Cripples Embedded Android Hotspot Functionality – Making Your Device Less Useful and More Expensive*. <https://www.dslreports.com/shownews/Verizon-Cripples-Embedded-Android-Hotspot-Functionality-115097> (July 11, 2011)

131 Under bandwidth-based data plans, customers pay more money for more bandwidth. For example, a provider might charge \$30/month for 3 Mbps service, \$45/month for 30 Mbps service, and \$60/month for 300 Mbps service. Under cap-and-overflow data plans, customers pay a fixed rate that isn't proportional with data transfer volume under some provider-determined cap, plus an inflated “overflow” rate that is proportional with data transfer volume over the cap. For example, on a plan with a data transfer cap of 3 GB and an “overflow” rate of \$15/GB, Verizon charges \$45/month if customers transfer nothing, \$45/month if customers transfer 3 GB, \$60 if customers transfer 3–4 GB, \$75/month if customers transfer 4–5 GB, \$90/month if customers transfer 5–6 GB, *etc.*

132 Thomas Gryta. *Verizon Wireless to Include Cellular FaceTime on All Data Plans*. <http://blogs.wsj.com/digits/2012/09/12/verizon-wireless-to-include-cellular-facetime-on-all-data-plans/>

85. However, for customers on its “Nationwide” and earlier plans,<sup>133</sup> Verizon continues to impose application-specific discrimination against tethering, even though tethering isn't necessarily a high-bandwidth application and can't utilize more bandwidth than any other application can. One can tether a smartphone's Internet connection to a tablet, for example, to take advantage of the tablet's larger screen for high-bandwidth applications like FaceTime or low-bandwidth applications like e-mail.

**B. Verizon Compelled Customers to Use FamilyBase and Blocked Samsung from Enabling Blocking Mode**

86. Verizon's FamilyBase service charges \$5.00/month to block incoming calls from more than five contacts.<sup>134</sup> Blocking Mode is a smartphone feature developed by Samsung that can block incoming calls from any number of people (for no additional fee). However, Verizon compelled Samsung to disable Blocking Mode on its smartphones, including the Galaxy Note II<sup>135</sup> (released on November 29, 2012) and Galaxy S4<sup>136</sup> (released on May 23, 2013).

**C. Verizon Compelled Samsung to Preload Isis Wallet and Blocked Pay with PayPal**

87. Verizon compelled Samsung to preload Isis Wallet<sup>137</sup> on its Galaxy S5

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133 30 FCC Rcd. 5700 ¶ 216 (2015) [“For a practice to even be considered under this exception, a broadband Internet access service provider must first show that the practice is primarily motivated by a technical network management justification rather than other business justifications. If a practice is primarily motivated by such an other justification, such as a practice that permits different levels of network access for similarly situated users based solely on the particular plan to which the user has subscribed, then that practice will not be considered under this exception.”] (Internal citations omitted.)

134 Verizon Wireless. *Block Numbers*. <https://www.verizonwireless.com/support/block-numbers/> (March 15, 2016)

135 Kellex. *How to: Enable “Blocking Mode” on Verizon's Galaxy Note 2*. <http://www.droid-life.com/2012/12/02/how-to-enable-blocking-mode-on-verizons-galaxy-note-2/>

136 jonnyg100. *Galaxy S4 does not have Blocking Mode where it should be!* <http://forums.androidcentral.com/verizon-samsung-galaxy-s4/286986-galaxy-s4-does-not-have-blocking-mode-where-should.html> (June 8, 2013)

137 Eugene Kim. *Samsung Galaxy S5 (Verizon Wireless) Review & Rating*.



smartphones and blocked Pay with PayPal, a competing service (just as Verizon had done with Google Wallet<sup>138</sup>). On April 11, 2014 (the day Samsung released the Galaxy S5), Kellex at the

Web site Droid Life reported:

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.<sup>139</sup>

88. Stephen Schenck at the Web site Pocketnow wrote:

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.

There's also an app called the NNL Fingerprint Passport that Samsung requires GS5 owners to download from its app store to enable this PayPal functionality, and while other GS5 models have no issue downloading, installing, and getting set up, the Verizon GS5 returns an error explaining that the app isn't compatible with the phone.<sup>140</sup>

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<http://www.pcmag.com/article2/0,2817,2456980,00.asp> (April 24, 2014) ["There are over 10 Verizon-branded apps, including Verizon Tones and the completely redundant VZ Navigator. On top of that, there are four Amazon apps, IMDb, Slacker Radio, Polaris Office, and Isis Wallet. None of these are removable, and Verizon also pushes its services to the forefront, making the Verizon-branded Messages+ app the default for SMS."]

138 *Supra* paragraphs 32–35

139 Kellex. *Verizon Disabled Paypal Fingerprint Payment Support on the Galaxy S5, Google Wallet Works Though*. <http://www.droid-life.com/2014/04/11/verizon-disabled-paypal-fingerprint-support-on-the-galaxy-s5-google-wallet-works-though/>

140 Stephen Schenck. *More US carrier GS5 shenanigans: Verizon blocks fingerprint for PayPal*. <http://pocketnow.com/2014/04/11/verizon-gs5-fingerprint-scanner>

89. Verizon said it was “evaluating” Pay with PayPal but didn't specify what it was evaluating.<sup>141</sup>

90. By April 21, Verizon had stopped blocking Samsung from offering Pay with PayPal as a separate download from its Samsung Apps store (which Verizon also blocked Samsung from preloading) but continued to block Samsung from preloading Pay with PayPal, so customers needed to “sideload” applications to enable the feature.<sup>142</sup> (Consequently, PayPal had to create separate instructions to show how to access Pay with PayPal: one set for Verizon subscribers and one set for everyone else.<sup>143</sup>)

**D. Verizon Compelled Samsung to Preload Verizon Cloud and Blocked Samsung from Preloading Microsoft OneDrive**

91. Verizon compelled Samsung to preload Verizon-backed applications like Verizon Cloud on its Galaxy S6 smartphones and blocked Samsung from preloading competing Microsoft applications like OneDrive. Verizon Cloud and OneDrive are cloud storage services, and at the time, Verizon Cloud offered 250 GB of storage for \$17.99/month;<sup>144</sup> OneDrive offered 1 TB of storage for \$6.99/month.<sup>145</sup> (Verizon was charging over two-and-a-half times what Microsoft was charging for a quarter of the storage Microsoft was offering.) Eric M. Zeman at the Web site Phone Scoop wrote:

Third, Microsoft OneDrive is ... oh, wait, Verizon doesn't seem to care for

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141 *Id.*

142 Kellex. *How to: Setup Paypal Fingerprints on the Verizon Galaxy S5.* <http://www.droid-life.com/2014/04/21/how-to-setup-paypal-fingerprints-on-the-verizon-galaxy-s5/>

143 PayPal. *Use Your Fingerprint and PayPal to Shop.* <https://www.paypal-pages.com/samsunggalaxys5/us/index.html> (April 21, 2014)

144 Verizon Wireless. *Verizon Cloud.* <https://web.archive.org/web/20150414012358/https://www.verizonwireless.com/wcms/consumer/products/verizon-cloud.html>

145 Microsoft. *OneDrive Plans.* <https://web.archive.org/web/20150409090319/https://onedrive.live.com/about/en-us/plans/>

Samsung's relationship with Microsoft, and didn't preload OneDrive (or any other Microsoft apps) at all. Sprint and T-Mobile's variants of the S6 have OneDrive preloaded....

There are so many apps on this phone it should be a crime. Many of them cannot be deleted, which I find frustrating, but at least you can hide them. There's ... Caller Name ID, Verizon Cloud, My Verizon Mobile, NFL Mobile, Slacker Radio, VZ Navigator, VZ Protect, ...<sup>146</sup>

92. All preloaded apps quoted above are from Verizon or its commercial partners.

93. On April 15, 2015, Shira Ovide at the Wall Street Journal reported that spokeswomen for Samsung, Microsoft, and Verizon declined to say why the Microsoft apps wouldn't be preloaded.<sup>147</sup>

94. Verizon denied that it had “blocked” Microsoft applications but admitted that if Samsung were to preload Microsoft applications on its devices, Verizon would refuse to sell such devices.<sup>148</sup> Since April 10, 2015, Samsung has preloaded Microsoft applications on its Galaxy S6 smartphones compatible with the wireless networks of Sprint, T-Mobile, and other carriers but not on ones Verizon has elected to “certify.”

95. Even though Verizon blocked Microsoft from offering OneDrive, OneNote, and Skype as preloaded applications, because it didn't block Microsoft from offering them as separate downloads, Verizon says it didn't “block” Microsoft applications.<sup>149</sup>

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146 Eric M. Zeman. *Review: Samsung Galaxy S6 for Verizon Wireless : Extras.*

<http://www.phonescoop.com/articles/article.php?a=15275&p=6453> (April 30, 2015)

147 Shira Ovide. *Verizon and AT&T Won't Preinstall Three Microsoft Apps on Samsung S6.*  
<http://blogs.wsj.com/digits/2015/04/15/verizon-and-att-wont-pre-install-three-microsoft-apps-on-samsung-s6/>

148 Letter from Verizon Assistant General Counsel David Haga to Alex Nguyen (January 18, 2016)

149 *Id.*

**E. Verizon Compelled Samsung to Preload Android Pay and Blocked Samsung Pay**

96. On September 9, 2014, Apple announced Apple Pay, a mobile payment service that lets customers use their mobile devices to pay at terminals that support near field communication.<sup>150</sup> Apple Pay launched a month later, and notably, Apple had enough leverage to preload the application on its devices without carrier interference:

Shoppers in the U.S. have so far failed to widely adopt mobile payment schemes like Google Wallet or ones derived from the wireless carriers themselves, but industry analysts and executives believe Apple can change that. One key difference here is Apple makes both its phones and its operating system, so wireless carriers can't block customers from using Apple's mobile payment technology as they did with Google. Apple's mobile payment system will be fully integrated in its phones, and if a carrier wanted to block the technology, it would have to stop selling the new iPhones altogether. That's not going to happen.<sup>151</sup>

97. Three years earlier, AT&T, T-Mobile, and Verizon had blocked Google Wallet,<sup>152</sup> but ironically, to contend with Apple Pay, these carriers announced on February 23, 2015 a deal allowing Google to preload its mobile payment service if Google gave them a greater cut of revenue:<sup>153</sup>

The three wireless carriers are more willing to work with Google these days, because they get no revenue from Apple Pay, the people familiar with the matter say. Mr. Freed-Finnegan said that's created an incentive for Google and the carriers to cooperate. "Certainly Apple isn't working with the carriers," he said.

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150 Apple. *Apple Announces Apple Pay*. <https://www.apple.com/pr/library/2014/09/09Apple-Announces-Apple-Pay.html>

151 Jason Del Rey. *Apple Introduces Apple Pay to Try to Replace Your Wallet*. <https://recode.net/2014/09/09/apple-introduces-apple-pay-to-try-to-replace-your-wallet/>

152 *Supra* paragraphs 32–35

153 Jason Del Rey. *Google Strikes Mobile Payments Deal With Big Wireless Carriers, Buys Softcard Technology*. <https://recode.net/2015/02/23/google-strikes-deal-with-big-wireless-carriers-buys-softcard-technology/> ["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."]

The three carriers and Softcard declined to comment.

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.<sup>154</sup>

98. On March 1, 2015, Samsung announced it would launch Samsung Pay—a mobile payment service that lets customers use their mobile devices to pay at both terminals that support near field communication and also terminals that support magnetic stripe cards—by summer.<sup>155</sup>

On June 3, Samsung announced it would delay launching Samsung Pay until September.<sup>156</sup> On August 21, Samsung announced Samsung Pay would launch on September 28 and would be available on devices compatible with the wireless networks of AT&T, Sprint, T-Mobile, and U.S.

Cellular. Verizon said that it was “evaluating” Samsung Pay:

But this is familiar territory for Verizon, and not in a good way. For years, the carrier hindered Google Wallet's efforts in the US by blocking the app from its phones or, at a minimum, disabling NFC payments. And yet in 2015, Verizon will soon be backing Google's payment solution in a big way — and may cut off Samsung Pay in the process. Launching without Verizon in its corner wouldn't be great for Samsung; Apple didn't have to deal with this sort of roadblock when rolling out Apple Pay.<sup>157</sup>

99. Verizon said it was extensively “testing” Samsung Pay but didn't specify what it was testing:

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154 Alistair Barr. *To Revive Wallet, Google Tries to Wrangle Unruly Partners.*

<http://www.wsj.com/articles/to-revive-wallet-google-tries-to-wrangle-unruly-partners-1424392928> (February 20, 2015)

155 Samsung. *Samsung Announces Samsung Pay, A Groundbreaking Mobile Payment Service.* <https://www.samsungmobilepress.com/2015/03/02/Samsung-Announces-Samsung-Pay,-A-Groundbreaking-Mobile-Payment-Service>

156 Jungah Lee. *Samsung Delays Start of Mobile Payment Service to September.* <http://www.bloomberg.com/news/articles/2015-06-03/samsung-delays-planned-start-of-new-smartphone-payments-service>

157 Chris Welch. *Verizon might not support Samsung Pay at launch.* <http://www.theverge.com/2015/8/21/9189377/verizon-not-supporting-samsung-pay>

Verizon Wireless is actively reviewing and testing the Samsung Pay option. While we do not have a release date I can currently give you, ... evaluation of the service has not been completed as of yet. The extensive testing we do ensures our customers continue to enjoy the best network and services available in the market.<sup>158</sup>

100. Verizon-backed Android Pay launched on September 10, 2015, and the carrier told customers that while it was “evaluating” Samsung Pay, they could use Android Pay instead:

Verizon continues to evaluate Samsung Pay. Interested in mobile payments?  
Android Pay is now avail[able] [vz.to/1FkQgbi](https://www.verizon.com/1FkQgbi)<sup>159</sup>

101. On September 28, 2015, Samsung launched Samsung Pay and preloaded the application on its devices compatible with the wireless networks of AT&T, Sprint, T-Mobile, and U.S. Cellular via a software update, but Verizon was still “evaluating” Samsung Pay, so Verizon subscribers couldn't use Samsung Pay (as a preloaded application or as a separate download).<sup>160</sup>

102. Letters to me<sup>161</sup> and others<sup>162</sup> indicate Verizon was “evaluating” how to suppress competition against Android Pay. The carrier denied that it had “blocked” Samsung Pay but admitted that if Samsung were to preload Samsung Pay on its devices, Verizon would refuse to sell such devices. A Samsung Pay executive said Verizon blocked Samsung Pay over “economics”:

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158 Tracy G. Response to complaint.

[https://www.reddit.com/r/Android/comments/3hnmtv/i\\_sent\\_an\\_email\\_to\\_various\\_verizon\\_executives/](https://www.reddit.com/r/Android/comments/3hnmtv/i_sent_an_email_to_various_verizon_executives/) (August 19, 2015)

159 Verizon. Tweet on September 18, 2015.

<https://twitter.com/VerizonNews/status/644943722543714304>

160 Sean O'Kane. *Samsung Pay launches in the United States*.

<http://www.theverge.com/2015/9/28/9408749/samsung-pay-united-states-launch> [“Almost all of the major carriers do already support it, though. The only holdout is Verizon, which continues to say that it is “in the process of evaluating Samsung Pay.”]

161 Letter from Verizon Assistant General Counsel David Haga to Alex Nguyen (January 18, 2016)

162 Mark B. Response to informal complaint.

[https://www.reddit.com/r/GalaxyS6/comments/3lzwue/fcc\\_complaint\\_against\\_verizon\\_filed/](https://www.reddit.com/r/GalaxyS6/comments/3lzwue/fcc_complaint_against_verizon_filed/) (October 2, 2015)

A Samsung Pay executive said this summer at a press briefing that the holdup with Verizon was over “economics,” but declined to comment further.<sup>163</sup>

103. On September 29, 2015, Will Graylin, global co-general manager of Samsung Pay, tweeted that Samsung Pay would “soon” be available as a separate download. Tim-o-tato at the Web site Droid Life questioned why Samsung would offer Samsung Pay as a separate download instead of just preloading the application on its devices:

I could be completely off base here, but the tweet sounds very iffy to me. Not only has Verizon not given any inclination that they are ready to announce support for Samsung’s mobile payment service, but Graylin claims that the Samsung Pay app will be downloadable via Google Play. As most Samsung device owners should know, this app is not available via Google Play for anyone, or even from the Galaxy Apps application. The app comes preinstalled on the newest Galaxy devices, and is not available via 3rd-party stores anywhere, at least right now.<sup>164</sup>

104. At least as early as September 8, 2015<sup>165</sup> and at least as late as September 29, 2015.<sup>166</sup> Samsung had stated that it would preload Samsung Pay on its devices and that the application would not be available as a separate download:

Can I download Samsung Pay from Google Play™ store or Galaxy Apps?

Samsung Pay will be preloaded on future compatible Samsung devices and will not be available for download in Google Play store or Galaxy Apps.

105. Nevertheless, on October 21, 2015, Samsung “partnered” with Verizon to “bring

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163 Jason Del Rey. *Samsung Pay Eliminates Big Hurdle by Snagging Verizon as Partner*. <https://recode.net/2015/10/21/samsung-pay-eliminates-big-hurdle-by-snagging-verizon-as-partner/>

164 Tim-o-tato. *Samsung's GM of Samsung Pay Claims Verizon Owners Might Have Access in the “Next Week or So”* <http://www.droid-life.com/2015/09/29/samsung-pay-verizon-tweet/>

165 Samsung. *Can I download Samsung Pay from Google Play™ store or Galaxy Apps?* <https://web.archive.org/web/20150908210752/http://www.samsung.com/us/support/answer/ANS00043831/997409700>

166 Sparky1306. *No Samsung Pay?* <http://forum.xda-developers.com/showpost.php?p=63055014&postcount=71> (September 29, 2015) [“Samsung’s website currently states “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 Pay to Verizon customers”:<sup>167</sup> Verizon stopped blocking Samsung from offering Samsung Pay as a separate download but continued to block Samsung from preloading the application on its devices.<sup>168</sup> Soon afterward, Samsung announced a promotion apparently influenced by this “partnership”: most Samsung device users who registered at least one credit or debit card with Samsung Pay could receive a free wireless charging pad from Samsung, but Verizon subscribers had to purchase a wireless charging pad from Verizon to receive a rebate.<sup>169</sup>

106. Just as PayPal had to do for Pay with PayPal,<sup>170</sup> Samsung had to create a separate set of instructions to show Verizon subscribers how to access Samsung Pay.<sup>171</sup>

107. For the Galaxy S7 and Galaxy S7 edge, Verizon compelled Samsung to preload Android Pay and again blocked Samsung from preloading Samsung Pay. On March 8, 2016, David Ruddock, editor at the Web site Android Police, reported that Verizon demanded that Samsung remove Samsung Pay from its phones and strip any mention of the application from its manuals (just as Verizon had done with FM radio capabilities<sup>172</sup>):

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167 Bertel King, Jr. *Samsung Pay App Arrives In The Play Store For The Four Already Compatible Devices*. <http://www.androidpolice.com/2015/10/21/samsung-pay-app-arrives-in-the-play-store-for-the-four-already-compatible-devices/>

168 Andrew Martonik. *Update enabling Samsung Pay now hitting compatible Verizon phones*. <http://www.androidcentral.com/update-bringing-samsung-pay-now-hitting-compatible-verizon-phones> (October 16, 2015) [“According to the update notes, after the update is complete you’ll be able to download and install the Samsung Pay app once it is available in Google Play Play — though we don’t know when that will be. Phones on other carriers have simply had the app installed via the system update.”]

169 John Callahan. *Samsung Pay users can get a free wireless charging pad or rebate until Nov. 8*. <https://www.androidcentral.com/samsung-pay-users-can-get-free-wireless-charging-pad-or-rebate-until-nov-8> (October 31, 2015)

170 *Supra* paragraph 90

171 Samsung. *How do I get Samsung Pay for my Verizon Galaxy S6 edge+, Galaxy Note5, Galaxy S6 edge, or Galaxy S6?* <http://www.samsung.com/us/support/answer/ANS00046542/997442381> (February 22, 2016)

172 *Supra* paragraph 72



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.

Why? Well, given that Verizon is a member of the now-defunct Softcard group that is currently partnered with (read: taking money from) Android Pay, it seems probable that Samsung wasn't willing to cut Verizon in on Samsung Pay revenue - if there is any - to the degree they desired. And so, Verizon strong-armed Samsung into removing the app. This is objectively dumb. Searching the Play Store or Galaxy Apps from Verizon's S7 or S7 edge for "Samsung Pay" yields no results.

[...]

Samsung Pay is not pre-loaded on Verizon models, unlike some other US carriers, and Verizon does not advertise the app - and even went so far as to strip it from the user manuals of its versions of the S7 and S7 edge ...<sup>173</sup>

108. Samsung told technology journalist Walt Mossberg (The Wall Street Journal, All Things Digital, Re/code, The Verge) that Verizon blocked Samsung from preloading Samsung Pay on its devices.<sup>174</sup>

109. Daniel P. at the Web site Phone Arena wrote, "carriers have removed apps they don't see fit with their business strategy."<sup>175</sup> Robert Nazarian at the Web site Digital Trends noted that Verizon has the incentive and ability to compel Samsung to preload Android Pay on its devices and block Samsung from preloading Samsung Pay:

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173 David Ruddock. *Verizon, Who Are A Bunch Of Jerks, Took Samsung Pay Off The Galaxy S7 And S7 Edge*. <http://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/>

174 Walt Mossberg. *Mossberg: Samsung's New Galaxy S7 Phones Are Beautiful*. <https://recode.net/2016/03/08/mossberg-samsungs-new-galaxy-s7-phones-are-beautiful/> ["Samsung says Verizon barred including Samsung's browser and Samsung Pay out of the box."]

175 Daniel P. *Verizon has kicked Samsung Pay out of the Galaxy S7 and S7 edge*. [http://www.phonearena.com/news/Verizon-has-kicked-Samsung-Pay-out-of-the-Galaxy-S7-and-S7-edge\\_id79123](http://www.phonearena.com/news/Verizon-has-kicked-Samsung-Pay-out-of-the-Galaxy-S7-and-S7-edge_id79123) (March 9, 2016)

This isn't the first time Verizon blocked a mobile pay app. The carrier blocked Google Wallet (now Android Pay) from being installed on its devices because it partly owned Softcard (formerly Isis), another mobile payment service. However, Softcard was purchased by Google in February 2015. We can only assume that Verizon prefers that customers use Android Pay because it most likely receives royalties from Google. Verizon is banking on the hope that most customers won't know about Samsung Pay and as a result won't even look for it.<sup>176</sup>

110. Karl Bode, editor at DSLReports, also noted this:

Verizon receives commission payments from Google for pushing Android Pay, and if users don't know that Samsung Pay exists, that's more money in Verizon's pocket by default.<sup>177</sup>

111. Just as it had done with tethering,<sup>178</sup> Verizon denied that it had blocked Samsung Pay but wouldn't say whether it asked Samsung to make Samsung Pay unavailable to customers. However, Samsung confirmed what Verizon wouldn't. Samsung made Samsung Pay unavailable at the request of Verizon:

Verizon declined to confirm that it had opted not to pre-load the app into the Galaxy S7, though, and didn't say why Samsung Pay isn't pre-loaded on its S7 phones.

A Samsung representative confirmed Verizon's decision not to include Samsung Pay in Verizon S7 phones. The representative told FierceWireless though that "all the other major carriers do preload Samsung Pay."

[...]

Regardless of its motive, Verizon's lack of support for certain mobile payments solutions is nothing new. The carrier actively blocked Google Wallet when it was pursuing Softcard (which was then known as Isis), although it claimed to do so on technical grounds.<sup>179</sup>

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176 Robert Nazarian. *No Samsung Pay on Verizon Galaxy S7 and S7 Edge*. <http://www.digitaltrends.com/mobile/verizon-removes-samsung-pay/> (March 9, 2016)

177 Karl Bode. *Verizon, Being Verizon, Pulls Samsung Pay From New Galaxy S7*. <https://www.dslreports.com/shownews/Verizon-Being-Verizon-Pulls-Samsung-Pay-From-New-Galaxy-S7-136471> (March 10, 2016)

178 *Supra* paragraphs 15–19

179 Colin Gibbs. *Confirmed: Verizon only major U.S. carrier that is not pre-loading Samsung Pay on Galaxy S7*. <http://www.fiercewireless.com/story/confirmed-verizon-only-major-us->

112. Verizon said it was “testing” Samsung Pay (again<sup>180</sup>) but didn't specify what it was testing.<sup>181</sup>

113. Even though Verizon outright blocked Samsung Pay (even as a separate download) until October 21, 2015 and continues to block Samsung from preloading Samsung Pay on its devices, because it stopped blocking Samsung from offering Samsung Pay as a separate download after Samsung “partnered” with the carrier, Verizon says it didn't “block” Samsung Pay.<sup>182</sup>

#### **F. Verizon Blocked Samsung Internet 4.0**

114. On June 23, 2015, Verizon acquired AOL and its advertising business. To target advertising, AOL uses cookies, Web beacons, and other tracking technologies to collect profiles on people, including where they live and what Web pages they view. The company's Web site provides an example of targeting a user who lives in an area with high prevalence of diabetes or high blood pressure to show “related ads.”<sup>183</sup>

115. On January 22, 2016, Samsung released version 4.0 of its Web browser, Samsung Internet, which introduced support for content blocker extensions. Adblock Fast,<sup>184</sup> Adblock

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[carrier-not-preloading-samsung-pay-galaxy/2016-03-09](#)

180 *Supra* paragraph 99

181 Jeffrey Nelson (VP, Communications at Verizon). Tweet on March 9, 2016.

<https://twitter.com/JNels/status/707679902175248384>

182 Letter from Verizon Assistant General Counsel David Haga to Alex Nguyen (January 18, 2016)

183 AOL. *Advertising, Analytics, and Privacy*. <http://privacy.aol.com/advertising-and-privacy/> (March 15, 2016) [“Similarly, a user who lives in an area with high prevalence of diabetes or high blood pressure, or who views content related to diabetes or high blood pressure might later be shown related ads.”]

184 Adblock Fast. Home page. <http://adblockfast.com/> (March 11, 2016)

Plus,<sup>185</sup> Crystal,<sup>186</sup> and other such extensions can reduce data transfer volume by filtering out advertising and tracking elements used by companies like AOL/Verizon. These elements can account for as much as 79% of data transfer volume and can quickly lead to expensive “overage” charges imposed by carriers like Verizon:

Researchers found that ads made up 18 to 79 percent of any given page's data load. They also found that JavaScript elements were rarely associated with article content and that they added 6 to 68 percent to that load. All that serves to sap consumers' data plans and jack up load times.<sup>187</sup>

116. On one of its plans, Verizon charges \$15 for every 200 MB over the cap (or \$75 for every 1 GB over the cap).<sup>188</sup>

117. On March 11, 2016, Samsung released the Galaxy S7 and Galaxy S7 edge and preloaded Samsung Internet 4.0 on its devices compatible with the wireless networks of AT&T, Sprint, T-Mobile, and other carriers. However, Verizon blocked customers from using Samsung Internet 4.0 as a preloaded application<sup>189</sup> or as a separate download.<sup>190</sup>

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185 Job Plas. *Adblock Plus now available for Samsung devices.*

<https://adblockplus.org/blog/adblock-plus-now-available-for-samsung-devices> (February 1, 2016) [“Enabling Adblock Plus on Samsung devices will speed up browsing, remove intrusive ads and save data.”]

186 Crystal. Home page. <http://crystalapp.co/> (March 11, 2016) [“Crystal blocks adverts from being downloaded, saving 53%\* data on average. Perfect if you are on a capped plan or have poor signal.”]

187 Jules Wang. *Adblocker guilt? Not when news sites pack up to half their pages with ads.* <http://pocketnow.com/2016/03/17/adblockers-news-sites-data>

188 Verizon Wireless. *The MORE Everything Plan FAQs.* <https://www.verizonwireless.com/support/more-everything-plan-faqs/> (March 19, 2016) [“What are the data overage rates for The MORE Everything Plan?”]

189 Walt Mossberg. *Mossberg: Samsung's New Galaxy S7 Phones Are Beautiful.* <https://recode.net/2016/03/08/mossberg-samsungs-new-galaxy-s7-phones-are-beautiful/> [“Samsung says Verizon barred including Samsung's browser and Samsung Pay out of the box.”]

190 horizontalrain. *Samsung internet blocked by Verizon on S7. But yeah, it's not Verizons fault. /s.* [https://www.reddit.com/r/verizon/comments/4av4ea/samsung\\_internet\\_blocked\\_by\\_verizon\\_on\\_s7\\_but/](https://www.reddit.com/r/verizon/comments/4av4ea/samsung_internet_blocked_by_verizon_on_s7_but/) (March 17, 2016)

118. On March 28, 2016, Dan Thorp-Lancaster at the Web site Android Central reported that Verizon stopped blocking Samsung from offering Samsung Internet 4.0 as a separate download.<sup>191</sup> However, the carrier continues to block Samsung from preloading the application on its devices.

119. Chrome, the only Web browser preloaded on Galaxy S7 and Galaxy S7 edge smartphones Verizon has elected to “certify,” doesn't let users filter out advertising and tracking elements used by companies like AOL/Verizon.

**G. Verizon Compelled Samsung to Preload Caller Name ID and Blocked Samsung from Integrating Whitepages**

120. Verizon's Caller Name ID service charges \$2.99 per month, per line to display a name and an image when receiving a call (if the caller is also a Verizon subscriber and has provided this information to the carrier).<sup>192</sup> On February 21, 2016, Whitepages announced it would partner with Samsung to integrate caller identification features into the Galaxy S7 and Galaxy S7 edge.<sup>193</sup> Three weeks before Samsung would release the smartphones, Shawn De Cesari at the Web site Android Police predicted that Verizon would continue its long tradition of suppressing competition against Caller Name ID:

i wonder which US carriers will have Samsung disable these features.  
\*cough\*Verizon\*cough\* \*cough\*AT&T\*cough\*<sup>194</sup>

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191 Dan Thorp-Lancaster. *Samsung's web browser now available for the Verizon Galaxy S7 and S7 edge*. <http://www.androidcentral.com/samsung-browser-now-available-verizon-galaxy-s7-and-s7-edge> (March 28, 2016)

192 Verizon Wireless. *Caller Name ID FAQs*. <https://www.verizonwireless.com/support/caller-name-id-faqs/> (March 15, 2016)

193 Andrew Martonik. *Galaxy S7 dialer integrates Whitepages database to identify callers, prevent scam calls*. <http://www.androidcentral.com/galaxy-s7-dialer-integrates-whitepages-database-identify-callers-prevent-scam-calls> (February 21, 2016)

194 Ryan Whitwam. *Samsung Galaxy S7 Dialer Will Include Caller ID and Search Powered by Whitepages*. <http://www.androidpolice.com/2016/02/21/samsung-galaxy-s7-dialer-will-include-caller-id-and-search-powered-by-whitepages/>

121. He predicted correctly: Samsung didn't integrate Whitepages into Galaxy S7 and Galaxy S7 edge smartphones Verizon has elected to “certify.”<sup>195</sup>

**VII. VERIZON MISLEADS AND DECEIVES CUSTOMERS BY STATING THIRD-PARTY DEVICES THAT ARE COMPATIBLE WITH ITS NETWORK ARE NOT**

122. The Apple iPhones sold by Verizon are the same models sold by other carriers: An iPhone 6 sold by Verizon is the same A1549 model as an iPhone 6 sold by AT&T. An iPhone 6s sold by Verizon is the same A1688 model as an iPhone 6s sold by T-Mobile. However, at least as early as April 23, 2015, Verizon had inaccurately stated that customers switching from other carriers can't use their existing iPhones:

I currently have iPhone with AT&T or another carrier. Can I keep my current iPhone when I switch to Verizon?

No, you'll need an iPhone that is built to work on the Verizon Wireless network.<sup>196</sup>

123. After I notified Verizon that I intended to file a formal complaint, the carrier acknowledged in a letter dated January 18, 2016 (over 69 weeks after Apple released the iPhone 6 and iPhone 6 Plus) that it publicly disclosed misleading and deceptive information and needed to update its Web site.<sup>197</sup> Verizon's Web site now states:

I currently have iPhone with AT&T or another carrier. Can I keep my current iPhone when I switch to Verizon?

Yes, if you have iPhone 6 or newer, you'll be able to use it on the Verizon Wireless network.

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195 TeK9samurai. *Samsung + Whitepages*. <http://forum.xda-developers.com/verizon-galaxy-s7/help/samsung-whitepages-t3331984> (March 9, 2016)

196 Verizon Wireless. *Apple iPhone FAQs*. <https://web.archive.org/web/20150423130433/https://www.verizonwireless.com/support/iphone-faqs/>

197 Letter from Verizon Assistant General Counsel David Haga to Alex Nguyen (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.]

iPhone 5s or earlier versions [*sic*] can't be used on the Verizon Wireless network because they're not the same as the similar models built to work on the Verizon Wireless network.<sup>198</sup>

124. However, Verizon's updated statement is *still* misleading and deceptive. First, third-party devices don't have to be the *same* as devices sold by Verizon to support LTE Band 13<sup>199</sup> or be compatible with its network. Second, contrary to what Verizon inaccurately states, earlier iPhones *are* compatible with its network: for example, an iPhone 5 sold by NorthwestCell is the *same* (not just similar) A1429 model as an iPhone 5 sold by Verizon.

125. More generally, the carrier continues to inaccurately state third-party devices that are compatible with its network are not.<sup>200</sup>

### **VIII. VERIZON OFFERS VAGUE AND SPECIOUS ALLEGATIONS (INSTEAD OF SPECIFIC EXPLANATIONS) FOR DENYING NETWORK ACCESS**

126. When Verizon blocked the Asus Nexus 7 because of a vague “systems issue” it allegedly uncovered, the carrier neither specified the “systems issue” it alleged existed nor provided any evidence that this alleged “systems issue” harmed its network. Jeff Jarvis sent the following complaint to Robert Ratcliffe, the Acting Chief of the Enforcement Bureau at the time:

Mr. Ratcliffe,

I would ask that the Commission seek from Verizon Wireless an explanation of what this “systems issue” is and an explanation of why this issue has not had any apparent impact on any of the many other LTE networks on which many Nexus 7s are running now. I would also ask that this exchange be made public. The Commission still needs to define “open” and its limits and whether this certification is justified.

I would further ask the Commission to examine the anticompetitive questions around Verizon’s delay in regards to the announcement of its own seven-inch LTE

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198 Verizon Wireless. *Apple iPhone FAQs*. <https://www.verizonwireless.com/support/iphone-faqs/> (February 22, 2016)

199 *Supra* section II.C

200 *Supra* paragraph 40

tablet in competition with Google's.

Thank you for your continued attention. I look forward to your and the Commission's response.<sup>201</sup>

127. Neither Verizon nor the Commission responded.<sup>202</sup>

128. In response to a complaint the Commission forwarded to Verizon on April 9, 2015, the carrier admitted the hardware is "the same for all domestic Nexus 6 devices" but justified blocking devices from competing sources by alleging the existence of vague software variations:

To date, the only version of the Nexus 6 that has been certified for operation of the Verizon Wireless network is the version with Verizon Wireless installed software. While Google has confirmed for Verizon Wireless that the Nexus 6 hardware is the same for all domestic Nexus 6 devices, the software installed by Google in the device varies between carriers.<sup>203</sup>

129. Verizon neither specified the software variations it alleged existed nor provided any evidence that these alleged software variations harmed its network. Additionally, the carrier alleged Google didn't have a way to deliver "Verizon Wireless software" to devices not sold by the carrier:

Further, Google does not currently have a way to deliver Verizon Wireless software to a Nexus 6 device on which a different carrier's software was originally installed by Google. Accordingly, [his] Nexus 6 device is not approved for use on the Verizon Wireless network. While inserting a compatible SIM card that is already active on the Verizon Wireless network into [his] Nexus 6 device may allow it to be used on the Verizon Wireless network, such a procedure is not authorized by Verizon Wireless because the software on the device would remain

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201 Jeff Jarvis. *The Verizon saga continues*. <https://buzzmachine.com/2013/11/06/the-verizon-saga-continues/>

202 Eric Mack. *Did Verizon block the Nexus 7 to push its Ellipsis 7 tablet?* <http://www.cnet.com/news/did-verizon-block-the-nexus-7-to-push-its-ellipsis-7-tablet/> (November 6, 2013)

203 Andrea Mattia. Response to informal complaint. <http://forum.xda-developers.com/showpost.php?p=60499191&postcount=224> (May 3, 2015)



the software for another carrier.<sup>204</sup>

130. However, in an interview on October 22, 2014 (over 23 weeks earlier),<sup>205</sup> Dave Burke, VP of engineering for the Android platform and Nexus devices at Google, said:

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.<sup>206</sup>

131. Even earlier, Google clearly had a way to deliver “Verizon Wireless software” to third-party devices: coincidentally, Google was able to deliver such software to third-party Asus Nexus 7 tablets just as Verizon started to sell the tablet (and accessories) on February 13, 2014.<sup>207</sup>

**IX. COUNT ONE: VIOLATIONS OF 47 USC § 202(a) AND 47 CFR §§ 8.5, 8.11, AND 27.16 FOR INTERFERING WITH CUSTOMERS' ABILITY TO USE THE DEVICES OF THEIR CHOICE**

132. I incorporate the preceding paragraphs of this complaint as if fully set forth herein.

133. All of Verizon's conduct discussed in section III of this complaint violated 47 CFR § 27.16. As the Commission recognized, the openness rules in 47 CFR § 27.16 “overlap in significant parts” with the openness rules adopted by the *2015 Open Internet Order*,<sup>208</sup> and

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204 Martha Haecherl. Response to informal complaint.

<http://www.aegisdoctrine.org/otherstuff/FCCN6Letter1.jpg> (April 30, 2015)

205 Ron Amadeo. *Hands-on with the Nexus 6 and Nexus 9, Google's shot at “premium” flagships*. <http://arstechnica.com/gadgets/2014/10/hands-on-with-the-nexus-6-and-nexus-9-googles-shot-at-premium-flagships/>

206 Ron Amadeo. *Transcript: Ars talks to Android execs about Lollipop and the Nexuses*. <http://arstechnica.com/gadgets/2014/10/transcript-ars-talks-to-android-execs-about-lollipop-and-the-nexuses/>

207 Jerry Hildenbrand. *Nexus 7 LTE getting Verizon compatibility update*. <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.]

208 30 FCC Rcd. 5612 ¶ 39 (2015)

Verizon's conduct that began or continued after June 12, 2015 additionally violated 47 USC § 202(a) and 47 CFR §§ 8.5 and 8.11. Specifically, Verizon blocked customers from ordering SIM cards for Apple iPhone 6 and iPhone 6 Plus devices sold by competing sources from September 19, 2014 to August 13, 2015. The carrier continues to block other third-party devices. (See Table 1 on page 23 for dates.) For example, Verizon is still blocking Microsoft Surface 3 devices sold by AT&T, T-Mobile, Microsoft, and independent retailers.<sup>209</sup>

**A. Verizon Denies, Limits, and Restricts the Ability of Its Customers to Use the Devices of Their Choice**

134. Section 27.16(b) of the Commission's rules sets forth network access requirements for C Block licensees:

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 choice on the licensee's C Block network, except:

- (1) Insofar as such use would not be compliant with published technical standards reasonably necessary for the management or protection of the licensee's network, or
- (2) As required to comply with statute or applicable government regulation.

135. By blocking customers from ordering SIM cards for third-party devices, Verizon denies, limits, and restricts the ability of its customers to use the devices of their choice. The Asus Nexus 7, Apple iPhone 6 and iPhone 6 Plus, Motorola Nexus 6, and other third-party devices in Table 1 comply with technical standards, statute, and applicable government regulation, as certified by the Commission's Office of Engineering and Technology. However, Verizon blocked third-party devices (that are the same models sold by Verizon) without providing any evidence that they violate technical standards, statute, or applicable government

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<sup>209</sup> *Supra* section III.D

regulation.<sup>210</sup> Discussing the requirements of 47 CFR § 27.16 in the *700 MHz Second Report and Order*, the Commission stated:

Standards for third-party applications or devices that are more stringent than those used by the provider itself would likewise be prohibited.... Finally, C Block licensees may not deny access to a customer’s device solely because that device makes use of other wireless spectrum bands, such as cellular or PCS spectrum.<sup>211</sup>

136. Moreover, the Commission called out manipulative whitelisting:

We expect that any standards adopted by a C Block licensee will be non-proprietary, such that they would be open to any third party vendors and that the standards applied to third parties will be no more restrictive than those applied to the provider’s preferred vendors. We believe that standards transparency should greatly reduce the potential for manipulative “white-listing,” *i.e.*, providers creating complex and vague qualification and approval processes for third parties before approval to attach devices or run applications on the network.<sup>212</sup>

137. Although Verizon claimed otherwise,<sup>213</sup> the carrier's “standards” for third-party devices are clearly more stringent and restrictive than those used by Verizon itself, as the carrier promptly “certified” devices sold by Verizon but blocked the same models sold by competing sources.

#### **B. Verizon Blocked Non-Harmful Devices**

138. Section 8.5 of the Commission's rules prohibits BIAS providers from blocking non-harmful devices:

A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not block lawful content, applications, services, or non-harmful devices, subject to reasonable network management.

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210 *Supra* section VIII

211 22 FCC Rcd. 15371 ¶ 222 (2007)

212 *Id.* at 15372 ¶ 224

213 Amol Sharma, Dionne Searcey. *Verizon to Open Cell Network to Others' Phones*. <http://www.wsj.com/articles/SB119617188870905241> (November 28, 2007) [The carrier's standards for devices on its open network won't be “nearly as extensive” as those for the devices it certifies for its own retail stores, Chief Marketing Officer John Stratton added.]

139. The Asus Nexus 7, Apple iPhone 6 and iPhone 6 Plus, Motorola Nexus 6, and other devices in Table 1 are non-harmful, as certified by the Commission's Office of Engineering and Technology. However, Verizon blocked third-party devices (that are the same models sold by Verizon) without providing any evidence that they harm its network.

**C. Blocking Third-Party Devices Limits Consumer Choice**

140. Section 8.11 of the Commission's rules sets forth a “no unreasonable interference/disadvantage” standard:

Any person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not unreasonably interfere with or unreasonably disadvantage end users' ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice, or edge providers' ability to make lawful content, applications, services, or devices available to end users. Reasonable network management shall not be considered a violation of this rule.

141. In the *2015 Open Internet Order*, the Commission discussed factors to guide application of Rule 8.11. Practices that limit end-user control likely violate the standard:

The Commission has long recognized that enabling consumer choice is the best path toward ensuring competitive markets, economic growth, and technical innovation. It is therefore critical that consumers' decisions, rather than those of service providers, remain the driving force behind the development of the Internet.<sup>214</sup>

142. By blocking customers from ordering SIM cards for third-party devices, Verizon limited customers' ability to use the devices of their choice and edge providers' ability to make the devices of their choice available to customers.

**D. Blocking Third-Party Devices Has Anti-Competitive Effects**

143. Practices that have anti-competitive effects likely violate the “no unreasonable interference/disadvantage” standard:

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214 30 FCC Rcd. 5661–5662 ¶ 139 (2015) (Internal citations omitted.)

Practices that have anti-competitive effects in the market for applications, services, content, or devices would likely unreasonably interfere with or unreasonably disadvantage edge providers' ability to reach consumers in ways that would have a dampening effect on innovation, interrupting the virtuous cycle. ... In examining the effect on competition of a given practice, we will also review the extent of an entity's vertical integration as well as its relationships with affiliated entities.<sup>215</sup>

144. Verizon has a high degree of vertical integration: besides providing wireless service, the carrier dominates device sales for over 141 million subscriber connections with its retail operations, sells its own line of devices (Droid smartphones and Ellipsis tablets), owns or backs applications (Android Pay, Caller Name ID, NFL Mobile, Slacker Radio, VZ Cloud, VZ Navigator, VZ Protect, *etc.*), runs an advertising business, runs a video service (go90), and even ran an electronic news-publishing operation that censored coverage of surveillance and net neutrality.<sup>216</sup> Verizon has the incentive and ability to push its own retail operations, devices, applications, services, and opinions (and inhibit those of others), and as the record reflects, has done so.

145. Blocking the Asus Nexus 7 (released September 9, 2013) for 22 weeks suppressed competition against Verizon's Ellipsis 7 tablet (released November 7, 2013).<sup>217</sup>

146. On April 4, 2015, customers could purchase a Nexus 6 with 32 GB of storage

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215 *Id.* at 5662 ¶ 140

216 Patrick Howell O'Neill. *Verizon is launching a tech news site that bans stories on U.S. spying.* <http://www.dailydot.com/politics/verizon-sugarstring-us-surveillance-net-neutrality/> (October 28, 2014) ["There's just one catch: In exchange for the major corporate backing, tech reporters at SugarString are expressly forbidden from writing about American spying or net neutrality around the world, two of the biggest issues in tech and politics today.... Other reporters, who asked not to be named, have confirmed that they have received the same recruiting pitch with the same rules: No articles about surveillance or net neutrality."]

217 *Supra* paragraph 46

from Amazon for \$583.90<sup>218</sup> or from Verizon for \$649.99 before sales tax,<sup>219</sup> but the carrier both blocked customers from ordering new SIM cards for third-party devices and also imposed discriminatory pricing on customers who used third-party devices with existing SIM cards. Additionally, blocking third-party Nexus 6 smartphones (released October 29, 2014) suppressed competition against Verizon's Droid Turbo smartphone (released October 30, 2014).

147. Similarly, blocking third-party Apple iPhone 6 and iPhone 6 Plus devices for 47 weeks compelled customers to purchase devices from Verizon and affiliated retailers at prices higher than those offered by competing sources.

**E. Blocking Third-Party Devices (that are the Same Models Sold by Verizon) isn't Reasonable Network Management**

148. In the 2010 and 2015 Open Internet Orders, the Commission offered guidance on network management practices that may be reasonable: ensuring network security and integrity, addressing traffic unwanted by end users, and alleviating network congestion.<sup>220</sup> Verizon hasn't provided any evidence that it blocked third-party devices (that are the same models sold by Verizon) to ensure network security and integrity, address traffic unwanted by end users, alleviate network congestion, or achieve some other legitimate network management purpose.

**F. Verizon Unreasonably Discriminates against Third-Party Devices**

149. Even though Verizon claims its “certification” process only tests network

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218 Michael Crider. *[Deal Alert] Amazon Has The Blue 32GB Nexus 6 For As Low As \$584 (\$66 Off), 32GB And 64GB White Models Discounted Too.* <http://www.androidpolice.com/2015/04/04/deal-alert-amazon-has-the-blue-32gb-nexus-6-for-as-low-as-584-66-off-32gb-and-64gb-white-models-discounted-too/>

219 Ryan Whitwam. *The Verizon Nexus 6 Order Page Is Live, Ships On March 18th For \$249.99 With 2-Year Contract.* <http://www.androidpolice.com/2015/03/11/the-verizon-nexus-6-order-page-is-live-ships-on-march-18th-for-249-99-with-2-year-contract/>

220 25 FCC Rcd. 17954–17955 ¶¶ 88–91 (2010)

connectivity and generally takes between four and six weeks,<sup>221</sup> Verizon blocked Asus Nexus 7 tablets for 22 weeks, blocked third-party Apple iPhone 6 and iPhone 6 Plus devices for 47 weeks, blocked third-party Motorola Nexus 6 smartphones for 29 weeks, and continues to block other third-party devices in Table 1. Applying the Commission's three-step inquiry for determining whether a carrier has violated Section 202(a) of the Communications Act shows Verizon unreasonably discriminates against third-party devices. First, no difference in services is at issue. Second, the carrier blocks customers from ordering SIM cards for third-party devices that are the same models sold by Verizon. Third, Verizon has the burden of proving such discrimination is reasonable but has only offered vague and specious allegations for denying network access.<sup>222</sup>

**G. Verizon's Claim that It Blocked Customers from Ordering SIM Cards for Third-Party Devices to Protect Its Network Lacks Merit**

150. Suppressing competition from third parties under the guise of “protecting” their networks is tradition for carriers like AT&T (see *Hush-A-Phone Corporation v. United States*,<sup>223</sup>

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221 *Supra* sections II.E and II.F

222 *Supra* section VIII

223 *Hush-A-Phone Corporation v. United States*, 238 F.2d 268 note 9 (D.C. Cir. 1956) [“It also tends to raise another question which we do not reach, namely, the reasonableness of a tariff which places control over petitioners' business in the hands of intervenors in the first instance.”]

the *Carterfone* decision,<sup>224</sup> the *Computer Inquiries*,<sup>225</sup> and *United States v. AT&T*<sup>226</sup>) and Verizon (see *supra* section II). Whereas AT&T (and after the 1984 divestiture, Regional Bell Operating Companies like NYNEX and Bell Atlantic) directly manufactured equipment (or resold equipment manufactured by affiliated suppliers) and unreasonably required unnecessary

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224 *Use of the Carterfone Device in Message Toll Telephone Service; Thomas F. Carter and Carter Electronics Corp., Dallas, Tex. (Complainants), v. American Telephone and Telegraph Co., Associated Bell System Companies, Southwestern Bell Telephone Co., and General Telephone Co. of the Southwest (Defendants)*, Docket Nos. 16942, 17073, Decision, 13 FCC 2d 424 (1968) [“There has been no adequate showing that nonharmful interconnection must be prohibited in order to permit the telephone company to carry out its system responsibilities. The risk feared by the examiner has not been demonstrated to be substantial, and no reason presents itself why it should be.”], recon. denied, 14 FCC 2d 572–573 (1968) [“Basic to our holding was a rejection of A.T. & T.’s position that because A.T. & T. cannot control the interconnected private system, interconnection is by definition a degradation of the message toll telephone system ... without regard to actual harmful effects.... As is the case with the question of technical harm, a tariff is unreasonable if it assumes *a priori* a conclusion as to such an issue.”]

225 *Computer I*, 28 FCC 2d 267 (1971); *Computer II*, 77 FCC 2d 384 (1980); *Computer III*, 104 FCC 2d 958 (1986)

226 *United States v. AT&T*, 524 F.Supp. 1350–1351 (D.C. Cir. 1981) [“The government’s proof further indicated that defendants were unable ever to find empirical support for the proposition that the PCA policy was necessary to prevent actual harm to the telecommunications network.... But these contentions must be examined in light of the overriding consideration that, by controlling who could obtain PCAs, when, and at what cost, Bell was in a position to control the entry of potential competitors into the market—much as if it controlled the only source of a raw material essential to the manufacture of a particular product, or an essential facility such as a bridge or a stadium which competitors needed to use to conduct their business.... Although the record at this point contains many suggestions that the interconnection of inferior equipment *may* cause harm to the network, it does not show that the actual, or even the potential, harms associated with such interconnection were sufficiently substantial to render a practice so fraught with anticompetitive implications as the PCA tariffs reasonable under the antitrust laws.”] (Internal citations omitted.)



hardware (protective connecting arrangements,<sup>227</sup> data access arrangements,<sup>228</sup> point-of-termination bays,<sup>229</sup> repeaters,<sup>230</sup> etc.) for third-party attachments, Verizon is unreasonably withholding necessary hardware (SIM cards) for third-party devices and abusing its position as gatekeeper (in particular, its retail operations and its “certification” process) to interfere with customers' ability to use the devices of their choice and edge providers' ability to make the devices of their choice available to customers.

151. Neglecting to specify how devices already certified by the Commission's Office of Engineering and Technology as non-harmful could harm its network, Verizon claimed that it blocked postpaid customers from ordering SIM cards for third-party devices to “protect” its network.<sup>231</sup> This claim lacks merit.

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227 *United States v. AT&T*, 552 F.Supp. 162 (D.C. Cir. 1982) [“On the other hand, the government's evidence indicated that A.T. & T. required PCAs for equipment that in all probability could not harm the network; that there were delays in providing PCAs; that the PCAs were over-designed and over-engineered, and, thus, over-priced; that PCAs were required for competitive equipment while identical equipment sold by A.T. & T. did not require their use; and that PCAs could not guard against all four potential harms to the network.”], 191 note 244 [“In addition, the Operating Companies retain the ability to discriminate against equipment manufactured by others with respect to types of interconnections, testing, maintenance and similar matters.”]

228 James L. Pelkey. *A History of Computer Communications: 1968–1988*. <http://www.historyofcomputercommunications.info/Book/3/3.3ATTComputerInquiryI-69.html> (2007) [Where was the logic that made it possible for independent manufacturers to sell a modem to a telephone company, which could sell it to a customer, while that very same modem manufacturer could not sell the same modem to that same customer? In response, AT&T claimed: “If we provide it, we maintain it and we know it's going to work right. If the customer provides it, he might not maintain it, and a short might cause a voltage surge on the line which might kill somebody.”]

229 Teleport Communications Group. *The “POT Bay”: Several BOCs Attempt to Obstruct Interconnection ... Again*. Staten Island, NY (July 1993)

230 Teleport Communications Group. *The “POT Bay”: Phase II. Ameritech Takes a Step in the Right Direction*. Staten Island, NY (August 1993)

231 Letter from Verizon Assistant General Counsel David Haga to Alex Nguyen (January 18, 2016) [“For those reasons, Verizon initially did not allow customers to purchase SIM cards for Nexus 6 devices purchased from companies other than Verizon.... Without that identifier, Verizon's systems could not identify the devices as iPhone 6 devices and could

152. First, Verizon blocked third-party devices that are the same models sold by Verizon. Even though the carrier claims its “certification” process only tests network connectivity and generally takes between four and six weeks,<sup>232</sup> Verizon blocked Asus Nexus 7 tablets for 22 weeks, blocked third-party Apple iPhone 6 and iPhone 6 Plus devices for 47 weeks, blocked third-party Motorola Nexus 6 smartphones for 29 weeks, and continues to block other third-party devices in Table 1. Customers used third-party devices (which had already been certified by the Commission’s Office of Engineering and Technology as non-harmful) with existing SIM cards before Verizon elected to “certify” them,<sup>233</sup> but the carrier hasn’t provided any evidence that such usage harmed its network.

153. Second, following standard practice in the prepaid service market, Verizon offers SIM cards for prepaid service separately from devices: customers can purchase them from the carrier’s online store<sup>234</sup> or from retail stores like Walmart,<sup>235</sup> without entering a device identifier to check against a whitelist. AT&T,<sup>236</sup> T-Mobile,<sup>237</sup> and many other carriers worldwide that collectively serve billions of customers offer SIM cards for both prepaid and also postpaid service separately from devices, and clearly, they can still protect their networks.

154. How customers pay for service has no bearing on Verizon’s ability to protect its

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not determine whether they might be harmful to the network.”]

232 *Supra* sections II.E and II.F

233 Kellex. *Nexus 6 Working on Verizon Out of the Box*. <http://www.droid-life.com/2014/10/31/nexus-6-working-on-verizon-out-of-the-box/>

234 Verizon Wireless. *Verizon 4G SIM Activation Kit*. <http://www.verizonwireless.com/accessories/4g-sim-activation-kit/> (March 20, 2016)

235 Walmart. *Verizon BYOD 4FF SIM Card Kit*. <http://www.walmart.com/ip/Verizon-BYOD-4FF-SIM-Card-Kit/40716598> (March 20, 2016)

236 AT&T. *SIM Cards*. <https://www.att.com/shop/wireless/devices/simcards.html> (March 20, 2016)

237 T-Mobile. *SIM Card Starter Kit*. <https://www.t-mobile.com/cell-phones/t-mobile-3-in-1-sim-starter-kit.html> (March 20, 2016)

network: If Verizon can protect its network and offer SIM cards for *prepaid* service without requiring customers to enter a device identifier to check against a whitelist, then Verizon can protect its network and offer SIM cards for *postpaid* service without requiring customers to enter a device identifier to check against a whitelist.

155. However, to protect its position as gatekeeper for over 141 million subscriber connections (the vast majority of which are on postpaid agreements), Verizon blocks postpaid customers from ordering SIM cards for devices it doesn't elect to “certify.”

**X. COUNT TWO: VIOLATIONS OF 47 USC § 202(a) AND 47 CFR §§ 8.5, 8.11, AND 27.16 FOR IMPOSING DISCRIMINATORY PRICING ON BRINGING YOUR OWN DEVICE**

156. I incorporate the preceding paragraphs of this complaint as if fully set forth herein.

157. All of Verizon's conduct discussed in section IV of this complaint violated 47 CFR § 27.16. Verizon's conduct that began or continued after the *2015 Open Internet Order* took effect on June 12, 2015 additionally violated 47 USC § 202(a) and 47 CFR §§ 8.5 and 8.11. Specifically, Verizon imposed discriminatory effective “activation fees” (after any waivers) on bringing your own device December 2013–January 2014, January 2014–March 2014, and July 2014–November 2015.<sup>238</sup> The carrier continues to impose discriminatory effective line access charges (after considering subsidies/discounts) on bringing your own device.<sup>239</sup>

158. The following table summarizes the effective “activation fees” (after any waivers) Verizon imposed on customers financing devices through the carrier versus customers bringing their own devices from competing sources:

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238 *Supra* paragraph 69

239 *Supra* paragraphs 59–68

<b>Period</b>	<b>Effective “activation fee” for financing a device through Verizon</b>	<b>Effective “activation fee” for bringing your own device</b>
Dec 2013–Jan 2014	\$0	\$35
Jan 2014–Mar 2014	\$0	\$35
Mar 2014–Jul 2014	\$35	\$35
Jul 2014–Feb 2015	\$0	\$35
Feb 2015–Nov 2015	\$0	\$40
Nov 2015–Present	\$20	\$20

*Table 2: Effective “activation fees” Verizon imposed on customers financing devices through the carrier versus customers bringing their own devices from competing sources.*

159. The following table summarizes the effective line access charges (after any discounts) Verizon imposed for customers financing smartphones through the carrier versus customers bringing their own smartphones from competing sources:

<b>Period</b>	<b>Effective line access charge over 24 months for financing a smartphone through Verizon</b>	<b>Effective line access charge over 24 months for bringing your own smartphone</b>
Feb 2014–Apr 2014	\$20/month	\$40/month
Apr 2014–Present	\$15/month	\$40/month

*Table 3: Effective line access charges Verizon imposed for MORE Everything plans with data transfer caps of 10 GB or higher.*

160. Just considering effective line access charges (after any discounts), Verizon's discriminatory pricing makes bringing your own smartphone from a source other than the carrier or affiliated retailer up to \$600 more expensive over 24 months than financing a smartphone through Verizon.

**A. Verizon Disadvantages the Ability of Customers to Use the Devices of Their Choice**

161. Section 27.16(b) of the Commission's rules states that C Block licensees shall not “deny, limit, or restrict the ability of their customers to use the devices” of their choice. Discussing the requirements of this rule in the *700 MHz Second Report and Order*, the Commission stated:

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>240</sup>

162. Verizon imposed discriminatory one-time pricing by waiving “activation fees” for customers who financed devices through the carrier but charging \$40 for customers who brought their own devices from competing sources. Verizon imposed discriminatory recurring pricing by applying effective line access charges (after any discounts) of \$25/month or \$15/month for financing a smartphone through the carrier but \$40/month for bringing your own smartphone from a competing source.

**B. The “No Blocking” Rule Prohibits Discriminatory Pricing**

163. As the Commission recognized in the 2010<sup>241</sup> and 2015<sup>242</sup> Open Internet Orders, the “no blocking” rule prohibits discriminatory pricing; otherwise, carriers could effectively block devices and applications by imposing inefficiently high fees. Although the Open Internet Orders specifically address edge providers' ability to make content, applications, and services available to customers, 47 CFR § 8.5 clearly protects customers' ability to use non-harmful devices.

**C. Imposing Discriminatory Pricing on Bringing Your Own Device Has Anti-Competitive Effects**

164. Section 8.11 of the Commission's rules states that BIAS providers shall not unreasonably disadvantage customers' ability to use the devices of their choice. Practices that

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240 22 FCC Rcd. 15371 ¶ 222 (2007)

241 25 FCC Rcd. 179543–17944 ¶ 67 (2010) [“To the extent that a content, application, or service provider could avoid being blocked only by paying a fee, charging such a fee would not be permissible under these rules.”]

242 30 FCC Rcd. 5649 ¶ 113 (2015) [“Finally, as with the 2010 no-blocking rule, today's no-blocking rule prohibits broadband providers from charging edge providers a fee to avoid having the edge providers' content, service, or application blocked from reaching the broadband provider's end-user customer.”]

have anti-competitive effects likely violate this rule.<sup>243</sup> Customers could have saved money by purchasing third-party devices at prices lower than those offered by Verizon and affiliated retailers,<sup>244</sup> but the discriminatory pricing discussed in section IV suppressed this competition. Before November 15, 2015, Verizon waived “activation fees” for customers financing devices through the carrier but charged \$40 for customers bringing their own devices from competing sources.

165. For customers on MORE Everything plans with data transfer caps of 6 GB or higher, the effective line access charge (after any discount) is \$15/month to finance a smartphone through Verizon but \$40/month to bring your own smartphone from a competing source. Over 24 months, the effective line access charge is \$360 to finance a smartphone through Verizon but \$960 to bring your own smartphone.

**D. Verizon Unreasonably Discriminated against Bringing Your Own Device**

166. Applying the Commission's three-step inquiry for determining whether a carrier has violated Section 202(a) of the Communications Act shows Verizon unreasonably discriminated against bringing your own device. First, no difference in services is at issue. (The only “difference” at issue is between devices sold by Verizon and the same models sold by competing sources.) Second, Verizon imposed discriminatory effective “activation fees” (after any waivers) and effective line access charges (after considering subsidies/discounts) on bringing your own device. Third, Verizon has the burden of proving such discrimination is reasonable but has failed to do so.

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243 *Id.* at 5662 ¶ 140

244 *Supra* section IX.D

**E. According to Its Own Public Disclosures, Verizon Should've Applied Line Access Discounts for Customers who Brought Their Own Devices**

167. Verizon says it didn't "discriminate" against customers who brought their own devices by failing to apply month-to-month line access discounts for them:

For example, these could have been customers that were using a Nexus 6 or iPhone 6 before those phones were identifiable and certified for use on Verizon's network, as discussed above. Because those phones were not compatible with Verizon's network and/or could not be confirmed to be certified for use on Verizon's network, Verizon did not provide a discount on those accounts.<sup>245</sup>

168. Even ignoring Verizon's misleading and deceptive statement that third-party Nexus 6 and iPhone 6 devices (that are the same models sold by Verizon) were not compatible with and/or "could not be confirmed [by Verizon] to be certified [by Verizon]" for use on its network, Verizon's argument fails the laugh test. A support page on the carrier's Web site stated that Verizon applies line access discounts "if you have a smartphone with Verizon Edge or are on a month-to-month agreement," and the main public-facing Web page for the MORE Everything plan explicitly stated (without even mentioning discounts) that for customers who bring their own devices, the line access charge is \$25/month for data transfer caps up to 4 GB and \$15/month for data transfer caps of 6 GB or higher.<sup>246</sup> Additionally, customer bills list the discounts by name (\$15 or \$25 off "month to month line access discount").<sup>247</sup>

169. According to its own public disclosures, Verizon should've applied its appropriately-named month-to-month line access discounts for customers on month-to-month agreements, but (in response to complaints) it invented a farcical discriminatory condition to deny the discounts for customers who purchased devices from sources other than the carrier and

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245 Letter from Verizon Assistant General Counsel David Haga to Alex Nguyen (January 18, 2016)

246 *Supra* section IV

247 See the exhibits attached to this complaint.

affiliated retailers (devices that “could not be confirmed [by Verizon] to be certified [by Verizon]”).

**F. Verizon's Semantic Gymnastics Don't Make Imposing Discriminatory Pricing on Bringing Your Own Device a “Permitted Incentive”**

170. Discussing the requirements of 47 CFR § 27.16 in the *700 MHz Second Report and Order*, the Commission stated:

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>248</sup>

171. Nevertheless, Verizon says it didn't discriminate *against* using third-party devices; the carrier says it provided a “permitted incentive” *for* financing devices through Verizon.<sup>249</sup>

172. Verizon's semantic gymnastics fail the laugh test.

173. First, except for the limited times when it *actually* provides a permitted incentive (for example, by selling devices at prices lower than manufacturers' suggested retail prices), Verizon sells devices at MSRP. Customers could have saved money by purchasing third-party devices at prices lower than those offered by Verizon and affiliated retailers,<sup>250</sup> but the discriminatory pricing discussed in section IV suppressed this competition.

174. Second, as noted in section X.B, the Commission's openness rules that prohibit blocking also prohibit imposing discriminatory pricing; otherwise, Verizon could circumvent the Commission's prohibitions against disadvantaging customers' ability to use the devices of their choice by charging arbitrary fees for bringing a third-party device but waiving them as a “permitted incentive” for purchasing a device from Verizon.

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248 22 FCC Rcd. 15371 ¶ 222 (2007)

249 Letter from Verizon Assistant General Counsel David Haga to Alex Nguyen (January 18, 2016)

250 *Supra* section IX.D



**XI. COUNT THREE: VIOLATIONS OF 47 USC § 201(b) AND 47 CFR §§ 8.5, 8.11, AND 27.16 FOR INTERFERING WITH EDGE PROVIDERS' ABILITY TO MAKE THE DEVICES OF THEIR CHOICE AVAILABLE TO CUSTOMERS**

175. I incorporate the preceding paragraphs of this complaint as if fully set forth herein.

176. All of Verizon's conduct discussed in section V of this complaint violated 47 CFR § 27.16. Verizon's conduct that began or continued after the *2015 Open Internet Order* took effect on June 12, 2015 additionally violated 47 USC § 201(b) and 47 CFR §§ 8.5 and 8.11. Specifically, since at least September 11, 2009, Verizon has compelled edge providers to disable FM radio capabilities. Since at least March 21, 2016 (the day Apple announced the 9.7-inch iPad Pro), Verizon has disabled (or compelled Apple to disable) Embedded Apple SIMs.

177. Section 27.16(e) of the Commission's rules states:

No licensee may disable features on handsets it provides to customers, to the extent such features are compliant with the licensee's standards pursuant to paragraph (b) of this section, nor configure handsets it provides to prohibit use of such handsets on other providers' networks.

178. Additionally, in spite of the *700 MHz Second Report and Order* (which requires C Block licensees to allow “customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice”<sup>251</sup>), 47 CFR § 8.5 (which states that BIAS providers shall not block applications), 47 CFR § 8.11 (which states that BIAS providers shall not unreasonably interfere with edge providers' ability to make the devices of their choice available to end users), and Section 201(a) of the Communications Act (which declares unjust or unreasonable practices to be unlawful), Verizon disables (or compels edge providers to disable) FM radio capabilities and Embedded Apple SIMs.

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251 22 FCC Rcd. 15361 ¶ 195 (2007)

179. Although customers can use 9.7-inch iPad Pro tablets on other providers' networks by physically acquiring and switching SIM cards, Verizon disables (or compels Apple to disable) Embedded Apple SIMs (which allow customers to use devices on other providers' networks without physically acquiring and switching SIM cards) built into devices it provides to customers.

**XII. COUNT FOUR: VIOLATIONS OF 47 USC § 202(a); 47 CFR §§ 8.5, 8.11, AND 27.16; AND THE 2012 ORDER AND CONSENT DECREE FOR INTERFERING WITH CUSTOMERS' ABILITY TO USE THE APPLICATIONS OF THEIR CHOICE AND EDGE PROVIDERS' ABILITY TO MAKE THE APPLICATIONS OF THEIR CHOICE AVAILABLE TO CUSTOMERS**

180. I incorporate the preceding paragraphs of this complaint as if fully set forth herein.

181. All of Verizon's conduct discussed in section VI of this complaint violated 47 CFR § 27.16. Verizon's conduct that began or continued after July 31, 2012 additionally violated the *2012 Order and Consent Decree*. Verizon's conduct that began or continued after the *2015 Open Internet Order* took effect on June 12, 2015 additionally violated 47 USC § 201(b) and 47 CFR §§ 8.5 and 8.11. The following table lists applications and services the carrier preloaded or compelled customers to use and competing applications and services the carrier blocked:

<b>At least as early as</b>	<b>Verizon preloaded or compelled customers to use</b>	<b>And blocked</b>
Dec 5, 2011	Isis Wallet	Google Wallet
Nov 29, 2012	Verizon FamilyBase	Blocking Mode
Apr 11, 2014	Isis Wallet	Pay with PayPal
Apr 15, 2015	Verizon Cloud	Microsoft OneDrive
Sep 28, 2015	Android Pay	Samsung Pay
Mar 11, 2016	Chrome	Samsung Internet
Mar 11, 2016	Caller Name ID	Whitepages

*Table 4: Applications and services Verizon preloaded or compelled customers to use and competing applications and services Verizon blocked.*

182. After the 2012 *Order and Consent Decree* took effect on July 31, 2012, Verizon stopped blocking third-party tethering applications in Google's application store, but for customers on its “Nationwide” and earlier plans, the carrier continues to disable built-in tethering features of devices using Google's Android operating system<sup>252</sup> and other devices (including Apple iPhones<sup>253</sup>) and charge an additional \$20.00/month to re-enable them. (Third-party tethering applications aren't available in Apple's application store, so Verizon effectively has a monopoly on tethering for iPhones.)

**A. Verizon Limits Customers' Ability to Use the Devices and Applications of their Choice and Edge Providers' Ability to Develop the Devices and Applications of Their Choice**

183. Section 27.16(b) of the Commission's rules states that C Block licensees shall not “deny, limit, or restrict the ability of their customers to use the devices and applications of their choice”; Section 27.16(e) states, “No licensee may disable features on handsets it provides to customers”; and the *700 MHz Second Report and Order* requires C Block licensees to allow “customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice.”<sup>254</sup> Nevertheless, Verizon preloaded or compelled customers to use Verizon-backed applications and blocked applications that compete

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252 coonwhiz. [ROOT] Tether Verizon Moto X on 5.1 Lollipop.

[https://www.reddit.com/r/MotoX/comments/3m2usi/root\\_tether\\_verizon\\_moto\\_x\\_on\\_51\\_lollipop/cvbl9bl](https://www.reddit.com/r/MotoX/comments/3m2usi/root_tether_verizon_moto_x_on_51_lollipop/cvbl9bl) (September 23, 2015) [“They started having it be free if you had anything from when they started doing their family sharing plan a few years ago up until the present. Anything older, metered or unlimited was not grandfathered. I had a plan where they gave me 4gb of data for \$30 and couldn't tether.”]

253 under\_green\_. *Why does Verizon control whether a phone can be used for a hotspot or not?*

[https://www.reddit.com/r/verizon/comments/2jg1gv/why\\_does\\_verizon\\_control\\_whether\\_a\\_phone\\_can\\_be/clbf0hl](https://www.reddit.com/r/verizon/comments/2jg1gv/why_does_verizon_control_whether_a_phone_can_be/clbf0hl) (October 16, 2014) [“So basically Apple and Verizon are buddy buddy and have made it such that my only option is to pay for the service (change my plan)? How did we end up in such a world?”]

254 22 FCC Rcd. 15361 ¶ 195 (2007)

against Verizon-backed applications.

**B. Verizon Requested that Applications be Made Unavailable to Customers**

184. Contrary to what Verizon claims, I am *not* asserting that Verizon must preload particular applications.<sup>255</sup> I *am* asserting that Verizon mustn't interfere with *edge providers'* choice to preload applications that compete against Verizon-backed applications or their choice to not preload Verizon-backed applications.<sup>256</sup> Although the *2012 Order and Consent Decree* states, “Nothing herein obligates Verizon ... to make any particular Application available to its customers,” it also affirms Verizon may not “explicitly or implicitly” request that applications be made unavailable to customers.<sup>257</sup>

185. Although the *2012 Order and Consent Decree* specifically addresses application store operators, the C Block rules (which don't explicitly mention application store operators) clearly apply to *all* edge providers: Section 27.16(e) of the Commission's rules states, “No licensee may disable features on handsets it provides to customers,” and the *700 MHz Second Report and Order* requires C Block licensees to allow “customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice.”<sup>258</sup> Nevertheless, Verizon willfully and repeatedly flouted the Commission's rules.

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255 Letter from Verizon Assistant General Counsel Ann Rakestraw to Alex Nguyen (May 11, 2016) [Most of your claims allege that Verizon is “blocking” applications because it does not choose to preload the same applications as other carriers.] Indeed, the *2012 Order and Consent Decree* states: “Nothing herein obligates Verizon to take affirmative steps, such as including any particular Third Party Application in any Application Store that Verizon Wireless itself operates, to make any particular Application available to its customers on the C-Block network or to design the devices it offers customers to work with or accommodate any particular Application.”

256 *Cf.* 30 FCC Rcd. 5661–5662 ¶ 139 (2015) [“It is therefore critical that consumers' decisions, rather than those of service providers, remain the driving force behind the development of the Internet.”]

257 27 FCC Rcd. 8940 ¶ 13 (2012)

258 *Id.*

186. Just as it had done with tethering, Verizon denied that it had blocked Google Wallet; however, Google said it bowed to a demand by Verizon to withhold the application on handsets it provides to customers.<sup>259</sup>

187. Similarly, Verizon denied that it had “blocked” Microsoft OneDrive (which competes against Verizon Cloud) and Samsung Pay (which competes against Verizon-backed Android Pay); however, Samsung told technology journalist Walt Mossberg that Verizon blocked Samsung from preloading Samsung Internet and Samsung Pay on its devices, a Samsung Pay executive said Verizon blocked Samsung Pay over “economics,” and Verizon admitted that if Samsung were to preload Microsoft OneDrive or Samsung Pay on its devices, Verizon would refuse to sell such devices.<sup>260</sup>

188. The record reflects that Verizon explicitly *and* implicitly requested that applications be made unavailable to customers.

### **C. Verizon Outright Blocked Applications**

189. Section 8.5 of the Commission's rules prohibits BIAS providers from blocking applications. However, Verizon blocked customers from using Pay with PayPal (to suppress competition against Isis Wallet), Samsung Pay (to suppress competition against Android Pay), and Samsung Internet (to inhibit customers from filtering out advertising and tracking elements used by companies like AOL/Verizon) both as preloaded applications and also as separate downloads:

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259 *Supra* paragraphs 15–19

260 *Supra* sections VI.D, VI.E, VI.F

<b>Application</b>	<b>General availability date</b>	<b>Date available as a separate download for Verizon subscribers</b>
Pay with PayPal	Apr 11, 2014	Apr 21, 2014
Samsung Pay	Sep 28, 2015	Oct 21, 2015
Samsung Internet 4.0	Mar 11, 2016	Mar 28, 2015

*Table 5: Verizon outright blocked applications.*

190. The carrier outright blocked Pay with PayPal for at least 10 days, Samsung Pay for at least 23 days, and Samsung Internet 4.0 for at least 17 days.

**D. Blocking Applications that Compete against Verizon-Backed Applications Limits Consumer Choice**

191. Section 8.11 of the Commission's rules states that BIAS providers shall not “unreasonably interfere with or unreasonably disadvantage” end users' ability to use the applications of their choice or edge providers' ability to make the applications of their choice available to end users. Practices that limit end-user control likely violate Rule 8.11:

The Commission has long recognized that enabling consumer choice is the best path toward ensuring competitive markets, economic growth, and technical innovation. It is therefore critical that consumers’ decisions, rather than those of service providers, remain the driving force behind the development of the Internet.<sup>261</sup>

192. However, Verizon blocked applications that compete against Verizon-backed applications.

**E. Blocking Applications that Compete against Verizon-Backed Applications Has Anti-Competitive Effects**

193. Practices that have anti-competitive effects likely violate the “no unreasonable interference/disadvantage” standard:

Practices that have anti-competitive effects in the market for applications, services, content, or devices would likely unreasonably interfere with or unreasonably disadvantage edge providers’ ability to reach consumers in ways that would have a dampening effect on innovation, interrupting the virtuous cycle.

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261 30 FCC Rcd. 5661–5662 ¶ 139 (2015) (Internal citations omitted.)

... In examining the effect on competition of a given practice, we will also review the extent of an entity's vertical integration as well as its relationships with affiliated entities.<sup>262</sup>

194. As noted in section IX.D, with its high degree of vertical integration, Verizon has the incentive and ability to push its own retail operations, devices, applications, services, and opinions (and inhibit those of others), and as the record reflects, has done so. Indeed, Verizon is engaging in the same practices the D.C. Circuit, in *United States v. AT&T*, warned would not be in the public interest.

195. The Court warned there was a real danger that through the use of cross-subsidization and customer discrimination, AT&T might use its control of the network to disadvantage competing "electronic publishers."<sup>263</sup> Verizon zero-rates its own video service (go90) and charges competing services for similar exemption from the cap-and-coverage pricing Verizon imposes.<sup>264</sup>

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262 *Id.* at 5662 ¶ 140

263 *United States v. AT&T*, 552 F.Supp. 181 (D.C. Cir. 1982) ["A.T. & T. could discriminate against competing electronic publishers in a variety of ways. It could, for example, use its control over the network to give priority to traffic from its own publishing operations over that of competitors. A second concern is that, inasmuch as A.T. & T. has access to signalling and traffic data, it might gain proprietary information about its competitors' publishing services. Furthermore, it appears that A.T. & T. would have both the incentive and the opportunity to develop technology, facilities, and services that favor its own publishing operations and the areas served by these operations rather than the operations of the publishing industry at large. Similarly, A.T. & T. could discriminate in interconnecting competitors to the network and in providing needed maintenance on competitors' lines. Finally, A.T. & T. might submit tariffs that would have the effect of favoring AT & T's publishing operations to the disadvantage of competing concerns."]

264 T.C. Sottek. *Verizon just blatantly betrayed net neutrality by excluding its video app from data caps.* <http://www.theverge.com/2016/2/5/10924268/verizon-go90-net-neutrality> ["Verizon and other carriers have argued that zero-rating programs, like the one snuck in today, are beneficial to consumers and do not violate the FCC's net neutrality rules — but their arguments are based on a market of artificial scarcity they have created, and now intend to exploit. The endgame of zero-rating programs is a two-way tollbooth that Verizon controls: first Verizon receives payment from customers for access to the network, then it receives payment from content providers who want unlimited access to customers, or from

196. The Court noted a trend toward control of the media and warned that AT&T's entry into the electronic publishing market would threaten the First Amendment principle of diversity.<sup>265</sup> Verizon ran a “news” operation (SugarString) that censored coverage of surveillance and net neutrality and tried to hide Verizon's influence.<sup>266</sup> Currently, Verizon zero-rates content from a joint venture between Verizon and news/media conglomerate Hearst.

197. More generally, the Court warned that permitting the Bell Operating Companies to provide their own information services would give them the incentive to discriminate against competing providers.<sup>267</sup> Verizon abused its position as gatekeeper (in particular, its retail

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whatever other revenue sources it can draw from hosting an exclusive video bundle that won't count against data caps. The upshot of creating punitive data caps, like the ones you can see in the photo above, is that you can then reap juicy tolls from people who provide services that require a lot of data. This scheme is exactly what the principles of net neutrality are designed to prevent, but Verizon and its peers are doing it anyway.”]

265 *United States v. AT&T*, 552 F.Supp. 183–185 (D.C. Cir. 1982) [“At the same time, a prohibition on electronic publishing does not impose an undue burden on A.T. & T. The company is free to enter all the other computer, computer-related, and information services markets; and it will simply be barred from the creation or control of the information to be transmitted. A.T. & T. may thus fulfill its traditional function of providing a delivery system for information which others wish to transmit, and it may also manufacture and market equipment for the electronic publishing industry and provide transmission services for other electronic publishers.”] (Internal citations omitted.)

266 David Carr. *Journalism, Independent and Not*. <http://www.nytimes.com/2014/11/03/business/media/journalism-independent-and-not.html> [“You can guess why. Thanks to Edward Snowden, we know that Verizon turned over the phone records of millions of people to the American government without their consent. And Verizon is hardly neutral on the issue of net neutrality, having successfully sued to keep the F.C.C. from blocking efforts to charge for a fast lane for data traffic.... Of the many attempts at new approaches to publishing — native advertising, custom content, sponsored content — SugarString sets a new low. It was a bad idea with a pratfall of a rollout, a transparent attempt to project brand might into a very controversial conversation. The fact that the name of the corporation bringing you the information is at the bottom of every story, not the top, is an attempt to hide the fundamental intent.”]

267 *United States v. AT&T*, 552 F.Supp. 189 (D.C. Cir. 1982) [“All information services are provided directly via the telecommunications network. The Operating Companies would therefore have the same incentives and the same ability to discriminate against competing information service providers that they would have with respect to competing interexchange carriers. Here, too, the Operating Companies could discriminate by providing more



operations and its “certification” process) to compel device providers to preload Verizon-backed applications and block device providers from preloading applications that compete against Verizon-backed applications.

#### **F. Verizon Stifles Adoption of Innovative Applications**

198. Practices that stifle innovation likely violate the “no unreasonable interference/disadvantage” standard:

As the *Verizon* court recognized, Internet openness drives a “virtuous cycle” in which innovations at the edges of the network enhance consumer demand, leading to expanded investments in broadband infrastructure that, in turn, spark new innovations at the edge. As such, practices that stifle innovation, investment, or broadband deployment would likely unreasonably interfere with or unreasonably disadvantage end users’ or edge providers’ use of the Internet under the legal standard we set forth today.<sup>268</sup>

199. For example, by blocking Samsung Pay, Verizon stifled adoption of an innovative application. Verizon-backed Android Pay doesn't work at terminals that only support magnetic stripe cards, but Samsung Pay works at both terminals that support near field communication and also terminals that support magnetic stripe cards. On March 1, 2015, Samsung announced it

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favorable access to the local network for their own information services than to the information services provided by competitors, and here, too, they would be able to subsidize the prices of their services with revenues from the local exchange monopoly.... If the Operating Companies are excluded from the information services market, they will have an incentive, as time goes on, to design their local networks to accommodate the maximum number of information service providers, since the greater the number of carriers the greater will be the Operating Companies' earnings from access fees. Thus, competition will be encouraged from the outset. If, however, the Operating Companies were permitted to provide their own information services, their incentive would be the precise opposite: it would be to design their local networks to discourage competitors, and thus to thwart the development of a healthy, competitive market.... The restriction on the provision of information services by the Operating Companies has been attacked on the ground that it will remove their incentive to upgrade the local networks and will cause them to become technological backwaters. This claim underrates the role of the Operating Companies under the proposed decree.”] (Internal citations omitted.)

268 30 FCC Rcd. 5663 ¶ 142 (2015) (Internal citations omitted.)

would launch Samsung Pay by summer, but at a summer press briefing, an executive said Verizon held up Samsung Pay over “economics.” Verizon blocked Samsung from offering Samsung Pay (even as a separate download) until after Android Pay eventually launched on September 10, 2015 and even after Samsung Pay launched for devices compatible with the wireless networks of AT&T, Sprint, T-Mobile, and U.S. Cellular on September 28, 2015.

200. Verizon stopped blocking Samsung from offering Samsung Pay as a separate download after Samsung “partnered” with the carrier on October 21, 2015 but continues to block Samsung from preloading Samsung Pay on its devices.

#### **G. Verizon's Practices Are Primarily Motivated by Business Reasons**

201. The Commission's rules discussed in this section are subject to an exception for practices primarily motivated by technical reasons:

For a practice to even be considered under this exception, a broadband Internet access service provider must first show that the practice is primarily motivated by a technical network management justification rather than other business justifications. If a practice is primarily motivated by such an other justification, such as a practice that permits different levels of network access for similarly situated users based solely on the particular plan to which the user has subscribed, then that practice will not be considered under this exception.<sup>269</sup>

202. Before Verizon stopped blocking Samsung from offering Pay with PayPal and Samsung Pay as separate downloads, the carrier suggested it was “evaluating” and extensively “testing” them for technical reasons but didn't specify what it was evaluating or testing. The record indicates Verizon was actually “evaluating” how to suppress competition against Verizon-backed Isis Wallet and Android Pay: Samsung told technology journalist Walt Mossberg that Verizon blocked Samsung from preloading Samsung Internet and Samsung Pay on its devices, a Samsung Pay executive said Verizon blocked Samsung Pay over “economics,” and Verizon

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<sup>269</sup> *Id.* at 5700 ¶ 216 (Internal citations omitted.)

admitted that if Samsung were to preload Samsung Pay on its devices, the carrier would refuse to sell such devices.

#### **H. Tethering is a Device Feature, not a “Service” Provided by Verizon**

203. The Commission's rules clearly prohibit application-specific<sup>270</sup> discrimination against tethering:

- 47 CFR § 27.16(e) states, “No licensee may disable features on handsets it provides to customers.”
- The *700 MHz Second Report and Order* states, “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.” (Third-party tethering applications aren't available in Apple's application store, so Verizon effectively has a monopoly on tethering for iPhones.)
- 47 CFR § 8.5 prohibits BIAS providers from charging a fee to avoid having an application blocked. (See sections X.B and X.F.)

204. Nevertheless, Verizon suggests disabling built-in tethering features and charging an additional \$20.00/month to re-enable them is reasonable network management:

Debra Lewis, Verizon's director of public relations, said in an e-mail: “The tethering fee charged by Verizon Wireless reflects the fact that customers who tether multiple devices may be expected to use more data than customers who do not.”

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270 *Id.* at 5663 note 344 [“A network practice is application-agnostic if it does not differentiate in treatment of traffic, or if it differentiates in treatment of traffic without reference to the content, application, or device. A practice is application-specific if it is not application-agnostic. Application-specific network practices include, for example, those applied to traffic that has a particular source or destination, that is generated by a particular application or by an application that belongs to a particular class of applications, that uses a particular application- or transport- layer protocol, or that has particular characteristics (e.g., the size, sequencing, and/or timing of packets).”]

She added: “Under the terms of the unlimited data plans, customers are not limited in the amount of data they can use with a single device, but if they choose to tether additional devices they are required to pay an additional fee to account for the greater usage. Our service is called Mobile Broadband Connect.”<sup>271</sup>

205. In a self-contradictory letter, the carrier says it doesn't “disable” built-in tethering features and charge to re-enable them but admits that unless customers on its “Nationwide” and earlier plans pay an additional \$20.00/month, built-in tethering features (that Verizon compels device providers to disable) “ordinarily will not work”:

Rather, the **\$20 “tethering” charge** referred to in your letter is associated with providing Verizon Wireless service—Mobile Hotspot—to certain data plans. Thus, although Verizon Wireless does not “disable” tethering features in customer devices, a device may send a “check” to the Verizon Wireless network to see if the customer is provisioned for Mobile Hotspot service before it will turn the tethering function on. Therefore, unless a customer has subscribed to Mobile Hotspot service, either as part of the customer's plan or pursuant to a separate feature, the tethering feature on the device ordinarily will not work.<sup>272</sup>

206. Again, Verizon's semantic gymnastics fail the laugh test.

207. First, just as Wi-Fi is a feature of routers (from edge providers like Cisco, Motorola, Netgear, *etc.*), not a “service” provided by fixed Internet service providers (like AT&T, Charter, Comcast, Verizon, *etc.*), tethering is a feature of mobile devices (from edge providers like Apple, Google, Microsoft, *etc.*), not a “service” provided by Verizon or any other carrier. (The only “service” Verizon “provides” is re-enabling built-in tethering features if customers pay additional fees. Verizon and other carriers compel device providers to alter built-in tethering features to check this.) As Karl Bode, editor at DSLReports, recognized:

In Verizon's case, they cleverly pretended the functionality in a number of these

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271 Steven J. Vaughan-Nichols. *Verizon: No free tethering for unlimited data plan customers.* <http://www.zdnet.com/article/verizon-no-free-tethering-for-unlimited-data-plan-customers/> (August 1, 2012)

272 Letter from Verizon Assistant General Counsel Ann Rakestraw to Alex Nguyen (May 11, 2016)

phones was ... a “special feature” they were offering free access to for a limited time, so it looked less crooked when they crippled the devices at a later date and forced users to pay for functionality traditionally embedded in Android for free. 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>273</sup>

208. Second, however much data Verizon may *expect* customers will transfer doesn't justify prophylactically disabling built-in tethering features and charging an additional \$20.00/month to re-enable them. (As Commission Chairman Tom Wheeler suggested, Verizon *should* expect that customers on unlimited data plans are paying, after all, for unlimited service.<sup>274</sup>) Section 27.16(c)(1) of the Commission's rules explicitly states, “The potential for excessive bandwidth demand alone shall not constitute grounds for denying, limiting or restricting access to the network.” Otherwise, Verizon could arbitrarily disadvantage applications that compete against Verizon-backed applications. For example, customers who use Netflix may be expected to transfer more data than customers who use Verizon's go90 video service (because Netflix has more compelling content than go90), but zero-rating go90 and charging Netflix for similar exemption from the cap-and-overflow pricing Verizon imposes clearly aren't reasonable network management practices.

209. Third, Verizon jumps from *expecting* customers who tether will transfer more data than customers who do not tether to *assuming* so. (“If they choose to tether additional devices

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273 Karl Bode. *Verizon Cripples Embedded Android Hotspot Functionality – Making Your Device Less Useful and More Expensive*. <https://www.dslreports.com/shownews/Verizon-Cripples-Embedded-Android-Hotspot-Functionality-115097> (July 11, 2011)

274 Jon Brodtkin. *FCC chair accuses Verizon of throttling unlimited data to boost profits*. <http://arstechnica.com/business/2014/07/fcc-chair-accuses-verizon-of-throttling-unlimited-data-to-boost-profits/> [“Reasonable network management” concerns the technical management of your network; it is not a loophole designed to enhance your revenue streams.]

they are required to pay an additional fee to account for the greater usage.”) Contrary to what Verizon assumes, customers who tether may transfer less data than customers who do not tether, because tethering isn't necessarily a high-bandwidth application and can't utilize more bandwidth than any other application can. One can tether a smartphone's Internet connection to a tablet, for example, to take advantage of the tablet's larger screen for high-bandwidth applications like video calling or low-bandwidth applications like e-mail. Verizon doesn't disable the video calling application FaceTime or impose additional charges on customers paying for bandwidth-based (“unlimited”) data plans to use the high-bandwidth application,<sup>275</sup> but for customers on its “Nationwide” and earlier plans, Verizon continues to impose application-specific discrimination against tethering.

210. Fourth, Verizon controls how much bandwidth it provisions for all customers (including those paying for bandwidth-based data plans), so tethering can't utilize more bandwidth than the carrier allows. Steven J. Vaughan-Nichols, contributing editor at ZDnet, wrote:

In the case of Verizon, the company started charging users a \$20 per month tethering charge even if they had an “unlimited” plan....

I never understood Verizon's restrictive tethering policy.... If you wanted to use that bandwidth to say your Verizon smartphone and your Wi-Fi only Apple iPad tablet and Lenovo ThinkPad laptop why should Verizon object? The \$20 fee was always about trying to squeeze the customer for the maximum amount of income with the minimum amount of service.<sup>276</sup>

211. In fact, compared with connecting multiple devices to Verizon's network, tethering *alleviates* network congestion by multiplexing multiple connections (over Wi-Fi) into

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275 *Supra* paragraph 84

276 Steven J. Vaughan-Nichols. *Let my Wi-Fi go: FCC rules Verizon can't charge for Wi-Fi tethering*. <http://www.zdnet.com/article/let-my-wi-fi-go-fcc-rules-verizon-cant-charge-for-wi-fi-tethering/> (July 31, 2012)

one connection over Verizon's network. Verizon's application-specific discrimination against tethering is tantamount to a fixed ISP prohibiting Wi-Fi unless customers pay additional fees.<sup>277</sup>

In practice, most fixed ISPs don't disable Wi-Fi features built into routers and charge additional fees to re-enable them because:

- They know connecting multiple devices over Wi-Fi can't utilize more bandwidth than they allow, and
- They neither control certification of nor dominate sales of devices for fixed network access (desktop/notebook computers, modems, routers, *etc.*).<sup>278</sup>

212. However, Verizon can (and does) disable built-in tethering features and charge an additional \$20.00/month to re-enable them because it controls “certification” of and dominates sales of devices for mobile Internet access (smartphones, tablets, hotspots, *etc.*).<sup>279</sup>

213. Finally, after Commission Chairman Tom Wheeler inquired why Verizon wanted to limit customers who are paying, after all, for unlimited service, the carrier admitted that it doesn't need to impose even a limited approach to throttle customers paying for bandwidth-based data plans:

We asked Verizon if the net neutrality rules had any effect on its decision, but the company did not give a yes or no answer. A spokesperson said, “We make these types of business decisions all the time—because it was such a small subset of customers who were being impacted, we made the call to discontinue even a limited approach to manage throttling.”<sup>280</sup>

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277 Comcast. *Program Terms & Conditions*.

<https://web.archive.org/web/20150323053335/https://www.internetessentials.com/content/program-terms-conditions> [“The price of the Covered Service is limited to a single outlet and basic modem.”]

278 Nevertheless, many compel customers to indefinitely rent provider-supplied modems for Internet service and set-top boxes for television service.

279 *Supra* section II.D

280 Jon Brodtkin. *Verizon stopped throttling 3G data when net neutrality rules took effect*. <http://arstechnica.com/information-technology/2015/08/verizon-finally-stopped-throttling->

214. Less than one percent of Verizon subscribers still have bandwidth-based data plans, and the number is only shrinking.<sup>281</sup> However, despite advertising that its network capacity is two times better than used to be<sup>282</sup> and admitting that it doesn't need to impose even a limited approach to throttle customers paying for bandwidth-based data plans, Verizon continues to disable built-in tethering features and charge an additional \$20.00/month to re-enable them.

**I. Verizon Unreasonably Discriminates against Applications that Compete against Verizon-Backed Applications**

215. Applying the Commission's three-step inquiry for determining whether a carrier has violated Section 202(a) of the Communications Act shows Verizon unreasonably discriminates against applications that compete against Verizon-backed applications. First, no difference in services is at issue. Second, the carrier preloads or compels customers to use Verizon-backed applications and blocks applications that compete against Verizon-backed applications. Third, Verizon has the burden of proving such discrimination is reasonable but has failed to do so.

**J. Blocking Device Providers from Preloading Applications is Blocking**

216. Even though Verizon blocked Microsoft from offering OneDrive, OneNote, and

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[3g-phones-on-unlimited-data-plans/](#)

281 Marguerite Reardon. *Verizon promises an open road for unlimited-data customers.*

<http://www.cnet.com/news/verizon-promises-an-open-road-for-unlimited-data-customers/> (October 20, 2015) [“The company hasn't made it easy on these people, crafting policies to discourage as many customers as possible from hanging on to the plans. Verizon has required unlimited subscribers to pay full price for new devices when upgrading. It also instituted the \$20 price hike, which goes into effect next month and will bring the total cost of the service to around \$100 a month for most customers. The policies were meant to encourage people to switch to tiered plans with a set amount of data that can be used each month. The efforts have paid off, with less than 1 percent of Verizon subscribers still on an unlimited-data plan.”]

282 Paul Macchia. *XLTE by the Numbers.*

<https://www.verizonwireless.com/news/article/2014/05/xlte-by-the-numbers-infographic.html>



Skype as preloaded applications, because it didn't block Microsoft from offering them as separate downloads, Verizon says it didn't "block" Microsoft applications. Similarly, even though Verizon outright blocked Samsung Pay (even as a separate download) until October 21, 2015 and continues to block Samsung from preloading Samsung Pay on its devices, because it stopped blocking Samsung from offering Samsung Pay as a separate download after Samsung "partnered" with the carrier, Verizon says it didn't "block" Samsung Pay.

217. Again, Verizon's semantic gymnastics fail the laugh test.

218. Section 27.16(e) of the Commission's rules states, "No C Block licensee may disable features on handsets it provides to customers." Because of evidence that wireless service providers block or degrade third-party devices and applications without an appropriate justification,<sup>283</sup> the Commission required C Block licensees to allow "customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice" to foster "greater balance between device manufacturers and wireless service providers":

As a result, in light of the evidence suggesting that wireless service providers are blocking or degrading consumer-chosen hardware and applications without an appropriate justification, we believe that it is appropriate to take a measured step to encourage additional innovation and consumer choice at this critical stage in the evolution of wireless broadband services, by removing some of the barriers that developers and handset/device manufacturers face in bringing new products to market. By fostering greater balance between device manufacturers and wireless service providers in this respect, we intend to spur the development of innovative products and services.<sup>284</sup>

219. Discussing the requirements of 47 CFR § 8.5 in the *2015 Open Internet Order*, the Commission prohibited BIAS providers from charging fees to avoid having content, services, or

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283 *Supra* section II.A

284 22 FCC Rcd. 15363 ¶ 201 (2007)

applications blocked.<sup>285</sup> Verizon allowed Google to preload Android Pay after Google agreed to give a greater cut of revenue to the carrier. Verizon blocked Samsung Pay (even as a separate download) until Samsung “partnered” with the carrier and continues to block Samsung from preloading Samsung Pay on its devices.<sup>286</sup>

**K. Even if Edge Providers Try to Offer Devices Directly to Customers, Verizon Can Still Block Them**

220. Verizon says that it “simply elected not to sell” Samsung devices preloaded with Samsung Pay and that it has “no influence” on whether Samsung Pay is preloaded on Samsung devices available for purchase from other companies.

221. Verizon's refusal to sell Samsung devices preloaded with Samsung Pay in Verizon's retail operations, which dominate device sales for over 141 million subscriber connections,<sup>287</sup> clearly influenced Samsung to not preload Samsung Pay on its devices. Even if Samsung tried to offer devices preloaded with Samsung Pay directly to customers, as the record reflects, Verizon could retaliate not only by refusing to sell these devices but also by delaying “certification” (while pushing Verizon-backed devices and applications from more submissive edge providers) and blocking customers from ordering SIM cards for these devices.

**XIII. COUNT FIVE: VIOLATIONS OF 47 CFR § 8.3 FOR STATING DEVICES THAT ARE COMPATIBLE WITH ITS NETWORK ARE NOT**

222. I incorporate the preceding paragraphs of this complaint as if fully set forth herein.

223. Section 8.3 of the Commission's rules states that BIAS providers shall publicly disclose accurate information regarding their network management practices:

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285 30 FCC Rcd. 5649 ¶ 113 (2015)

286 *Supra* section VI.E

287 *Supra* section II.D

A person engaged in the provision of broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.

224. Discussing the requirements of this rule in the *2010 Open Internet Order*, the Commission expected that effective disclosures will likely include timely information related to “any restrictions on the types of devices” providers have.<sup>288</sup> In 2014, the Enforcement Bureau issued advisory guidance affirming the importance of accuracy:

Accuracy is the bedrock of the Transparency Rule. Under the rule, all disclosures that broadband Internet access providers make about their network management practices, performance, and commercial terms of broadband services must be accurate.... Accurate disclosures ensure that consumers—as well as the Commission and the public as a whole—are informed about a broadband Internet access provider’s network management practices, performance, and commercial terms. Thus, the Transparency Rule prevents a broadband Internet access provider from making assertions about its service that contain errors, are inconsistent with the provider’s disclosure statement, or are misleading or deceptive.<sup>289</sup>

225. In the *2015 Open Internet Order*, the Commission clarified that providers need to maintain the accuracy of their disclosures:

Thus, whenever there is a material change in a provider’s disclosure of commercial terms, network practices, or performance characteristics, the provider has a duty to update the disclosure in a manner that is “timely and prominently disclosed in plain language accessible to current and prospective end users and edge providers, the Commission, and third parties who wish to monitor network management practices for potential violations of open Internet principles.”<sup>290</sup>

226. Since at least December 17, 2010,<sup>291</sup> Verizon has inaccurately stated third-party

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288 25 FCC Rcd. 17938 ¶ 56 (2010)

289 29 FCC Rcd. 8607 (2014)

290 30 FCC Rcd. 5671 ¶ 161 (2015)

291 Verizon Wireless. *Check Your Device*.

<https://web.archive.org/web/20101217044726/http://www.verizonwireless.com/b2c/estore/certifieddevice/cd>

devices that are compatible with its network are not. At least as early as April 23, 2015, Verizon had inaccurately stated that customers switching from other carriers can't use their existing iPhones. (In 2007, Lowell McAdam, President and CEO of Verizon Wireless, said, "If somebody wants to bring a device over from any other CDMA carrier or somewhere else, if it passes the test and operates on our frequencies, they can."<sup>292</sup>) After I notified Verizon that I intended to file a formal complaint, the carrier acknowledged in a letter dated January 18, 2016 (over 69 weeks after Apple released the iPhone 6 and iPhone 6 Plus) that it publicly disclosed misleading and deceptive information and updated its Web site. However, Verizon's Web site still inaccurately states that iPhone 5/5c/5s devices sold by other carriers can't be used on the Verizon Wireless network.<sup>293</sup>

**XIV. COUNT SIX: VIOLATIONS OF 47 CFR §§ 8.3 AND 27.16 FOR OFFERING VAGUE AND SPECIOUS ALLEGATIONS (INSTEAD OF SPECIFIC EXPLANATIONS) FOR DENYING NETWORK ACCESS**

227. I incorporate the preceding paragraphs of this complaint as if fully set forth herein.

228. Section 27.16(d) of the Commission's rules requires C Block licensees to provide customers the "relevant network criteria" for attaching devices and applications and to specify "the basis for denying access":

If a licensee determines that a request for access would violate its technical standards or regulatory requirements, the licensee shall expeditiously provide a written response to the requester specifying the basis for denying access and providing an opportunity for the requester to modify its request to satisfy the licensee's concerns.

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292 Wilson Rothman. *Verizon Says You Can Port From Sprint, Build Your Own Phone*. <http://gizmodo.com/326896/verizon-says-you-can-port-from-sprint-build-your-own-phone> (November 27, 2007)

293 *Supra* section VII

229. Section 27.16(f) of the Commission's rules states that C Block licensees shall have the burden of proof to demonstrate that they have adopted reasonable network standards and reasonably applied them:

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.

230. Discussing the requirements of 47 CFR § 8.3 in the *2010 Open Internet Order*, the Commission required mobile BIAS providers “to clearly explain their criteria for any restrictions on use of their network; and to expeditiously inform device and application providers of any decisions to deny access to the network or of a failure to approve their particular devices or applications.”<sup>294</sup>

231. However, Verizon blocked the Asus Nexus 7 for 22 weeks because of a vague “systems issue” it allegedly uncovered, but the carrier neither specified the “systems issue” it alleged existed nor provided any evidence that this alleged “systems issue” harmed its network.<sup>295</sup>

232. In response to a complaint the Commission forwarded to Verizon on April 9, 2015, the carrier admitted the hardware is “the same for all domestic Nexus 6 devices” but justified blocking devices from competing sources by alleging the existence of vague software variations. However, Verizon neither specified the software variations it alleged existed nor provided any evidence that these alleged software variations harmed its network. Additionally, the carrier alleged Google didn't have a way to deliver “Verizon Wireless software” to devices

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294 25 FCC Rcd. 179559 ¶ 98 (2010)

295 *Supra* section III.A

not sold by the carrier, but in an interview on October 22, 2014 (over 23 weeks earlier), Dave Burke, VP of engineering for the Android platform and Nexus devices at Google, said otherwise. Even earlier, Google clearly had a way to deliver “Verizon Wireless software” to third-party devices: coincidentally, Google was able to deliver such software to third-party Asus Nexus 7 tablets just as Verizon started to sell the tablet (and accessories) on February 13, 2014.<sup>296</sup>

233. Discussing the transparency obligations of 47 CFR § 27.16 in the *700 MHz Second Report and Order*, the Commission required providers to “expeditiously” review requests to employ third-party devices and applications and offer opportunities to amend requests to accommodate providers' concerns:

We believe that standards transparency should greatly reduce the potential for manipulative “white-listing,” *i.e.*, providers creating complex and vague qualification and approval processes for third parties before approval to attach devices or run applications on the network. In addition to publishing any applicable standards, providers must establish a reasonable process for expeditiously reviewing requests from manufacturers, application developers and consumers to employ devices and applications on their networks. If a provider denies such a request, it must offer a specific explanation and an opportunity for amendment of the request to accommodate the provider's concerns. Finally, the Commission will ensure the sufficient openness of any network management practices and selected technical standards in the event the approach outlined above proves unsatisfactory.<sup>297</sup>

234. However, even though Verizon claims its “certification” process generally takes between four and six weeks, the carrier blocked third-party iPhone 6 and iPhone 6 Plus devices (that are the same models sold by Verizon) for 47 weeks. At least as early as September 22, 2014 (three days after Apple released the devices),<sup>298</sup> customers sought approval to order SIM cards for devices sold by competing sources, but until August 13, 2015, Verizon refused such requests and

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296 *Supra* paragraphs 128–131

297 22 FCC Rcd. 15372 ¶ 224 (2007)

298 rigormortis. *not only is the iPhone 6 unlocked, but the t-mobile phones work on verizon!* <https://discussions.apple.com/thread/6552532> (September 22, 2014)

compelled customers to purchase devices from Verizon and affiliated retailers (at higher prices):

I have been talking with a bunch of support people for hours in the last two days, and apparently they don't have a way to do this.

And the only solution I was offered was to trade in my brand-new-phone for \$350 and get a new one from Verizon. I really hope that was a joke.<sup>299</sup>

235. (In 2007, Lowell McAdam, President and CEO of Verizon Wireless, said the “bring-your-own” phone service is meant to cater to customers who want to switch to a new service provider without having to buy a new phone.<sup>300</sup>)

236. Additionally, Verizon violated 47 CFR § 8.3 by publicly disclosing misleading and deceptive information. For example, although the carrier claims “there are no requirements that prevent Verizon's handset suppliers from providing an FM radio chip in their devices,” Verizon has compelled handset suppliers to *disable* FM radio chips. Also, Verizon suggested it was “evaluating” and extensively “testing” Pay with PayPal and Samsung Pay for technical reasons even though it was actually “evaluating” how to suppress competition against Verizon-backed Isis Wallet and Android Pay. (In 2008, Verizon said, “We're not restricting any applications because we're not looking at them.”<sup>301</sup>)

## **XV. PRAYER FOR RELIEF**

237. Wherefore, I respectfully ask the Commission to take enforcement action that will deter Verizon from continuing to interfere with my ability to use the devices and applications of

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299 melgax. *Impossible to get new sim card with Verizon.*

[https://www.reddit.com/r/verizon/comments/2kohk7/impossible\\_to\\_get\\_new\\_sim\\_card\\_with\\_verizon/?sort=top](https://www.reddit.com/r/verizon/comments/2kohk7/impossible_to_get_new_sim_card_with_verizon/?sort=top) (October 29, 2014)

300 Kim Hart. *Verizon to Open Its Wireless Network.* [http://www.washingtonpost.com/wp-dyn/content/article/2007/11/27/AR2007112701077\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/11/27/AR2007112701077_pf.html)

301 Matt Buchanan. *Verizon's Open Door Policy: What It Actually Means.* <http://gizmodo.com/369961/verizons-open-door-policy-what-it-actually-means> (March 20, 2008)

my choice and edge providers' ability to make the devices and applications of their choice available to me:

**A. Declare that Verizon Willfully and Repeatedly Violated 47 USC § 202(a); 47 CFR §§ 8.3, 8.5, 8.11, and 27.16; and the 2012 Order and Consent Decree**

238. A declaration that Verizon violated 47 USC § 202(a); 47 CFR §§ 8.3, 8.5, 8.11, and 27.16; and the *2012 Order and Consent Decree* will affirm that the practices discussed in this complaint are unlawful and deter other carriers from engaging in the same practices.

**B. Ensure Edge Providers Can Independently Certify Devices and Applications**

239. As Laura M. Holson at the New York Times reported back in 2008, Verizon is “open” only to devices and applications it elects to “certify” (those that don't pose competitive threats):

Consumers will also come to realize that “open” comes with an asterisk. The word means what the carriers, handset makers and software developers want it to mean. For example, Verizon’s open system is “open” only to phones it has certified.<sup>302</sup>

240. In its recent *Navigation Devices NPRM*, the Commission recognized the importance of ensuring unaffiliated vendors can build compatible devices without obtaining approval from service providers:

Third, unaffiliated vendors must be able to build competitive navigation devices, including applications, without first obtaining approval from MVPDs or organizations they control. Senators Markey and Blumenthal found that MVPDs take in approximately \$19.5 billion per year in set-top box lease fees, so MVPDs have a strong financial incentive to use an approval process to prevent development of a competitive commercial market and continue to require almost all of their subscribers to lease set-top boxes.<sup>303</sup>

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302 Laura M. Holson, *Applications Spur Carriers to Relax Grip on Cellphones*.

<http://www.nytimes.com/2008/08/04/technology/04open.html>

303 31 FCC Rcd. 1560 ¶ 28 (2016)



241. In 2015, Verizon Wireless took in \$16.924 billion in equipment revenues,<sup>304</sup> so it has a strong financial incentive to compel customers to purchase devices preloaded with Verizon-backed applications from its own retail operations (and inhibit edge providers from offering unlocked devices compatible with its network directly to customers).

242. Moreover, the Commission stated:

We do not believe that each MVPD should have its own testing and certification processes.<sup>305</sup>

243. Verizon has its own “testing” and “certification” processes, and when the carrier announced them, it said that fees would be “surprisingly reasonable” and that home engineers could build devices that meet Verizon's requirements:

If somebody has the technical capability of building a device on a breadboard and they want to bring it to be tested, the philosophy of this program says “Have at it!” If it is tested and passes, it can get on the network. Does it make it hard to be the small guy on the block? Not now, with availability of components, etc. The provider of the device would have some fee that they would pay. I think it's going to be surprisingly reasonable - it's not gonna have many many zeroes on the back. They will be very reasonable fees for professional services rendered.<sup>306</sup>

244. On September 17, 2015, Nextbit, a company led by people who worked on smartphones at Google and HTC, announced it had made a version of its Robin smartphone compatible with the Verizon Wireless network.<sup>307</sup> Although Nextbit was able to ship a version of

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304 Verizon Communications Inc., SEC Form 10-K for the fiscal year ended December 31, 2015.

305 *Id.* at 1578 ¶ 72

306 Wilson Rothman. *Verizon Says You Can Port From Sprint, Build Your Own Phone*. <http://gizmodo.com/326896/verizon-says-you-can-port-from-sprint-build-your-own-phone> (November 27, 2007)

307 Nextbit. *Big News: Robin for Verizon and another color for Robin*. <https://www.kickstarter.com/projects/nextbit/robin-the-smarter-smartphone/posts/1355999> (September 17, 2015) [“We received tons of fan mail asking us to make a Verizon compatible version of Robin. We’ve been working our tails (get it? tails?) off to bring you a version of Robin that can properly support the Verizon network and we’re happy to tell you we’ve done it!”]

Robin compatible with the wireless networks of AT&T, T-Mobile, and other carriers directly to customers on February 18, 2016, CEO Tom Moss announced on March 17 that Nextbit had to cancel the Verizon-compatible version it had made after the cost of “certification” ballooned to millions of dollars:

In a letter to backers, Nextbit CEO Tom Moss said the company was too bullish and didn't fully realize the cost of getting the CDMA version of the Robin to work on Verizon's network.... “What people at the carriers, in good faith given our need for quick answers, thought would take ‘weeks’ has turned into ‘months,’” he continued. “What they thought would cost ‘hundreds of thousands of dollars’ has turned into ‘millions’. And we’re still not there.”

[...]

But despite an innovative feature to address one of tech's biggest issues, and a creative design that intrigued enough users to raise over a million dollars on Kickstarter, it still wasn't enough to deal with the hassle that is getting a phone approved on Verizon's network. And that may say more about the carrier than the company.<sup>308</sup>

245. Nextbit chief product and design officer Scott Croyle said “certification” is a pretense for carriers to compel device providers to preload carrier-backed applications (“bloatware”):

“Because the direct-to-consumer [model] is kinda growing pretty quickly, what you’re having is the existing business model where you as a [manufacturer] sell to the carrier as opposed to us as people is fundamentally broken,” Croyle said. “The cost to go through the carrier lab, the staff to man them... and at the end of the day, the consumer gets a bunch of bloatware.”<sup>309</sup>

246. Chinese companies told technology journalist Walt Mossberg that the power of Verizon and other carriers to interfere with or disadvantage their ability to make devices

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308 Micah Singleton. *Nextbit cancels the Verizon and Sprint version of the Robin, issues refunds: Verizon's approval process was too much for the startup.*

<http://www.theverge.com/2016/3/17/11253400/nextbit-cancels-verizon-sprint-robin-refunds>

309 Nicholas Deleon. *The High Cost of Carrier Certification Is Killing Unique Smartphones.* <https://motherboard.vice.com/read/nextbit-cancels-verizon-robin> (March 17, 2016)

available to customers stopped them from entering the U.S. market:

Second, something like Google's bold but failed original Nexus plan is going gangbusters — in China. Multiple home-grown phone makers there, notably Xiaomi, sell often surprisingly classy phones largely online at low prices. They don't worry about carriers. Consumers buy the phones, then separately buy plans from carriers and pop the relevant SIM card into their shiny new handsets.

[...]

A few months ago, while in Beijing and Shenzhen visiting some of the top makers of Chinese-branded smartphones, I was repeatedly told that the number one thing that stopped these companies from entering the U.S. market was the power of the carriers.<sup>310</sup>

247. The CEO of an American company told Mossberg that clearing “certification” processes at the four big U.S. carriers would cost more than building and selling the first major production run of a new handset:

So why should the owners and sellers of the networks even have vast chains of stores? Why should they sell phones and tablets and subtly or otherwise steer customers to certain models? Why should they be able to dictate certain hardware and software features (like bloatware apps for carrier services) to weaker or more pliable manufacturers (pretty much every manufacturer not named Apple)?

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.

And why should Android updates, including those that enhance security, be delayed for months by carriers?

“The first customer of a smartphone maker in the U.S. today has to be the carrier, and that's not good for the consumer,” said David Morken, CEO of Republic Wireless, a small carrier that mainly routes calls and texts over Wi-Fi rather than cellular towers.

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310 Walt Mossberg. *Mossberg: It's Time to Free the Smartphone*.  
<https://recode.net/2015/09/16/mossberg-its-time-to-free-the-smartphone/>

Think about this for a minute. Does your home landline broadband provider sell laptops or Rokus 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 networks. No, and no.

So why should wireless carriers be any different?<sup>311</sup>

248. On the March 10, 2016 episode of the Ctrl-Walt-Delete show, Mossberg revealed that Apple is the only smartphone provider that independently certifies its devices and doesn't let Verizon abuse its “certification” process to foist Verizon-backed applications (“crap”):

**Walt Mossberg:** There's no Verizon crap on the iPhone. None! In fact, years ago, I went to a Verizon test lab ... I went and visited it, and I looked around, and they were very proud. They were showing me the test lab. There were a bunch of phones lying around. I saw Motorola, Samsung, BlackBerry, whatever, and I said to them, “How come there are no iPhones lying around?” And they 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....<sup>312</sup>

249. Co-host Nilay Patel noted that Apple—which has its own retail stores and is the most valuable company and brand in the world—has enough leverage to offer unlocked devices compatible with the Verizon Wireless network directly to customers (and at the same time, sell devices inside Verizon's retail operations) but Samsung—the largest mobile phone manufacturer in the world—doesn't. Samsung told Patel that offering unlocked devices directly to customers would piss off Verizon and the other carriers, which could retaliate by delaying “certification” (while pushing devices from more submissive handset manufacturers) and blocking customers from ordering SIM cards for these devices:

**Nilay Patel:** They sell a lot of them. They have some market power. It's Apple.

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311 *Id.*

312 Walt Mossberg. Nilay Patel. *Ctrl-Walt-Delete: Walt and Nilay on the Edge* at 29 minutes, 5 seconds. <http://www.theverge.com/2016/3/10/11193170/ctrl-walt-delete-samsung-galaxy-s7-edge>

They're going to release their own phones. This is really interesting to me: unlike Samsung, Apple sells the unlocked phones. You cannot buy an unlocked, carrier-free Galaxy S7.

**Walt Mossberg:** You know, I had an editor on my column who asked me, “Is there an unlocked one?” ... I made a quick call to check, and I quickly responded, “No, there's no unlocked one!” And this editor said, “That is insanity!”

**Nilay Patel:** That is crazy! But Apple at least retains this secondary leverage. We'll just tell everybody to buy the unlocked [devices]. If they want to use Verizon, buy the unlocked one, put the SIM card in it, and it's free of the junk, but Samsung won't do that. When I talk to Samsung about it, they're like ... we got to do what we got to do. The alternative is pissing off the carriers and not having them help us market and sell the phones. That's just crazy to me.<sup>313</sup>

250. Apple didn't always have this leverage. The late Steve Jobs wanted to bypass carriers<sup>314</sup> (but signed a five-year exclusivity deal with AT&T after Verizon rejected the iPhone).

Before Apple launched the iPhone, he complained about having to go through “orifices” (carriers) to make devices available to end users:

We're not very good at going through orifices to get to the end users....

The carriers now have gained the upper hand in terms of the power of the relationship with the handset manufacturers. And they're starting to tell the handset manufacturers what to build. And if Nokia and Motorola don't listen to them, well, Samsung and LG will. So the handset manufacturers are really getting these big thick books from the carriers, telling them “here's what your phone's gonna be.”<sup>315</sup>

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313 *Id.*

314 Chris Davies. *Jobs schemed Apple WiFi carrier plot for original iPhone.* <http://www.slashgear.com/jobs-schemed-apple-wifi-carrier-plot-for-original-iphone-16195619/> (November 16, 2011) [Still, the networks haven't taken Apple's attempts lying down. Rumored plans to use an embedded SIM in future iPhone models, that would allow Apple to directly activate the smartphone for consumers and then switch them between networks with little to no contact with the actual carriers themselves were supposedly junked after operators revolted. Apple execs “have been sent back to the drawing board with their tails between their legs” sources close to negotiations claimed, with the threat of subsidies being removed forcing them to reconsider.]

315 Nilay Patel. *Five years after the iPhone, carriers are the biggest threat to innovation.* <http://www.theverge.com/2012/7/5/3138711/five-years-after-the-iphone-carriers-are-the-biggest-threat-to-innovation-editorial>

251. Verizon's disabling and AT&T's locking of Apple SIMs confirm even Apple still must endure the “incredibly backward” processes these carriers abuse to inhibit competition.<sup>316</sup>

252. To foster a *truly* open market in which edge providers can offer devices and applications directly to me on their own schedules (not Verizon's),<sup>317</sup> the Commission should ensure edge providers can certify that devices and applications meet Verizon's requirements without the carrier's participation (“commercial discussions”).<sup>318</sup> As suggested by P.J. Gretter in the *Indiana Law Journal*,<sup>319</sup> if Verizon denies, limits, or restricts customers' ability to use the devices and applications of their choice or edge providers' ability to make the devices and applications of their choice available to customers, Verizon must explain the reasons for its decision to not only customers<sup>320</sup> and edge providers<sup>321</sup> but also the Enforcement Bureau.<sup>322</sup>

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316 *Id.* [It's even bad for Apple: one source close to the iPhone calls the carrier process “incredibly backward.” But it's not just about frustrated manufacturers. Increased carrier control over customers and devices has stunted competition and stalled innovation — sometimes fatally so.]

317 *Id.* [“Google won't comment about a 4G version of the Nexus 7 on the record, but it's fair to say relations between the search giant and carriers are strained: multiple sources say that Verizon purposefully delayed shipment on the LTE Galaxy Nexus after announcing the Motorola Droid RAZR, forcing Google to send US journalists unlocked HSPA+ review units to be used on AT&T when the phone launched internationally. And when Verizon did eventually release the Nexus, it was stripped of Google's Wallet functionality — forestalling the growth of Google's mobile payment system while Verizon works on its own solution.”]

318 *Supra* paragraphs 11, 33

319 P.J. Gretter. *Verizon's “Certification Process” and Why the FCC Needs to Take a Stand.* *Indiana Law Journal*: Volume 90; Issue 3, Article 11 (2015)

320 47 CFR § 27.16(d)(2) [“If a licensee determines that a request for access would violate its technical standards or regulatory requirements, the licensee shall expeditiously provide a written response to the requester specifying the basis for denying access and providing an opportunity for the requester to modify its request to satisfy the licensee's concerns.”]

321 25 FCC Rcd. 179559 ¶ 98 (2010) [“We nonetheless require mobile broadband providers to ... expeditiously inform device and application providers of any decisions to deny access to the network or of a failure to approve their particular devices or applications.”]

322 *Cf. Charter Communications, Inc.*, Acct. No. MB-201641410003, FRN 0003746468, Order and Consent Decree, FCC 16-512 at 6–7 ¶ 12(c) (rel. May 10, 2016) [“If Charter prohibits the attachment of any Retail Cable Modem for any reason at any time, Charter will notify the [Media] Bureau within 14 calendar days by electronic submission to the Chief, Policy

253. Pursuant to this objective, the Commission should ask Apple, HTC, LG, Microsoft, Nextbit, Samsung, Sony, and other edge providers about their experiences regarding “certification” processes.

**C. Ensure Verizon Doesn't Interfere with My Ability to Use the Devices and Applications of Their Choice or Edge Providers' Ability to Make the Devices and Applications of Their Choice Available to Me**

254. I respectfully ask the Commission to:

- Ensure Verizon doesn't interfere with edge providers' ability to make FM radio capabilities available to me,
- Ensure Verizon doesn't interfere with Apple's ability to provide and enable Apple SIMs on devices Verizon provides to customers (or lock them as AT&T does),<sup>323</sup>
- Ensure Verizon doesn't disable built-in tethering features; compel edge providers to disable built-in tethering features; or charge additional fees for customers, including but not limited to those paying for bandwidth-based (“unlimited”) data plans, to tether,<sup>324</sup> and
- Ensure that device providers like Samsung can preload the applications of their choice (Microsoft OneDrive, Samsung Pay, Whitepages, *etc.*) on their devices and

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Division, Martha Heller at Martha.Heller@fcc.gov, copying Lyle Elder at Lyle.Elder@fcc.gov, and it will explain the reasons for its decision to prohibit the attachment of the modem.”]

323 *Supra* section V.B

324 As discussed in section XII.H, tethering is a feature of mobile devices (from edge providers like Apple, Google, Microsoft, *etc.*), not a “service” provided by Verizon or any other carrier. After Commission Chairman Tom Wheeler inquired why Verizon wanted to limit customers who are paying, after all, for unlimited service, the carrier admitted that because such a small subset of customers still have bandwidth-based data plans, it doesn't need to impose even a limited approach to throttle them.

that Verizon doesn't abuse its position as gatekeeper (in particular, its retail operations and its “certification” process) to compel them to preload Verizon-backed applications like Verizon Cloud, Android Pay, Caller Name ID, *etc.*

255. Additionally, to fulfill its promise to foster “greater balance between device manufacturers and wireless service providers,”<sup>325</sup> the Commission should ensure Verizon doesn't interfere with or disadvantage edge providers' ability to make unlocked devices compatible with its network directly to customers. (For example, LG built the Nexus 5 for compatibility with the wireless networks of AT&T, Sprint, T-Mobile, and other carriers.<sup>326</sup> Even though AT&T didn't “certify” or sell the smartphone, customers could purchase it from Google, Sprint, T-Mobile, or independent retailers and insert an AT&T SIM card for wireless service.<sup>327</sup>)

256. In 2016, almost nine years after Verizon announced it would allow customers to use third-party devices and applications, customers can use only a handful of smartphones not offered by the carrier. (See Table 1 on page 23. All are built by developers with a business-to-business relationship with Verizon.<sup>328</sup>) Worse, as discussed in section III, Verizon allowed

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325 22 FCC Rcd. 15363 ¶ 201 (2007)

326 Brian Klug. *Potential Nexus 5 FCC Approval Reappears – LG-D820*.

<http://www.anandtech.com/show/7283/potential-nexus-5-fcc-disclosure-reappears-lgd820> (September 5, 2013) [“What's interesting about the LG-D820 approval is that it includes almost all of the bands you'd want for a North American SKU that covers LTE, CDMA, and HSPA+ for AT&T, T-Mobile, and Sprint. There's no Verizon LTE (Band 13) in this band coverage. Non inclusion of Verizon LTE banding in an upcoming Nexus isn't much of a surprise after relationship issues following Galaxy Nexus (CDMA/LTE), inclusion of Sprint is a bit of one, but not as much (Google Voice, Google Wallet).”]

327 Brian Bennet. *Nexus 5 coming to Sprint, T-Mobile, will also work on AT&T's network*. <http://www.cnet.com/news/nexus-5-coming-to-sprint-t-mobile-will-also-work-on-at-ts-network/> (October 31, 2013)

328 *Cf.* 31 FCC Rcd. 1557 ¶ 23 (2016) [“Moreover, we do not believe that the goals of Section 629 would be met if the commercial market consisted solely of Navigation Devices built by developers with a business-to-business relationship with an MVPD, because such an approach would not lead to Navigation Device developers being able to innovate independently of MVPDs.”]



customers to use them only after it had blocked them long enough to protect sales at its own retail operations. (For example, the carrier blocked Apple iPhone 6 and iPhone 6 Plus devices sold by competing sources for 47 weeks.)

257. Just as the Commission adopted 47 CFR § 76.1202 in the *First Plug and Play Report and Order* to prohibit service providers from interfering with customers' ability to use the set-top boxes of their choice by interfering with equipment suppliers' ability to make them available to customers,<sup>329</sup> the Commission should ensure Verizon doesn't abuse its position as gatekeeper (in particular, its retail operations and its “certification” process) to block or delay edge providers from offering unlocked devices compatible with its network directly to me.

258. Samsung Galaxy S7 and Galaxy S7 edge smartphones sold by Verizon are the same hardware (FCC IDs: A3LSMG930US, A3LSMG935US) sold by other carriers,<sup>330</sup> and HTC 10 smartphones sold by Verizon are the same hardware (FCC ID: NM82PS6500) sold by

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329 13 FCC Rcd. 14786 ¶ 30 (1998) [“In addition to being directly restrained from attaching navigation equipment, consumers must also not be precluded from the possibility of obtaining equipment from commercial outlets by virtue of contractual or other restrictions on the availability of equipment that the service provider might seek to directly impose on suppliers of equipment. The rules (§76.1202) thus additionally enforce the right to attach by precluding contractual or other arrangements, other than those involving equipment performing conditional access or security functions, that prevent navigation devices from being made available to subscribers from retailers, manufacturers, or other vendors that are unaffiliated with that such service provider.”]

330 Rich Brome. *Samsung Galaxy S7 Clears FCC with Single Approval*. <http://www.phonescoop.com/articles/article.php?a=17201> (February 4, 2016) [“The common FCC ID means a very standard hardware design across all carrier variants. FCC documents indicate that the carrier variants will be sold in a state limited to that carrier's network bands, presumably via low-level firmware.”]

AT&T, T-Mobile, and HTC.<sup>331</sup> However, network support is disabled in firmware<sup>332</sup> for devices sold by competing sources.

259. Pursuant to this objective, the Commission should interview Apple, HTC, LG, Microsoft, Nextbit, Samsung, Sony, Whitepages, and other edge providers to investigate how Verizon interferes with their ability to make the devices and applications of their choice available to customers.

**D. Require Verizon to Equalize Pricing between Purchasing a Device through Verizon and Bringing Your Own Device**

260. Just as the Commission requires multichannel video programming providers to equalize pricing between customers who pay for provider-supplied set-top boxes and customers who bring their own set-top boxes,<sup>333</sup> the Commission should require Verizon to equalize pricing between purchasing a device through Verizon and bringing your own device. As Rob Frieden, professor of telecommunications and law at Penn State University, recognized, offering subsidies/discounts to customers who purchase handsets from Verizon and affiliated retailers but not offering corresponding subsidies/discounts to customers who acquire handsets from sources

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331 Mo Versi (VP, Product Management at HTC). Tweet on March 9, 2016.

<https://twitter.com/moversi/status/722195818313179136> [mspector22: “Why won't the unlocked HTC 10 work on Verizon? It supports all the right bands (850, 1900 MHz for CDMA and 2,4, 13 for LTE)” moversi: “Yes, unfortunately it won't. I can't provide specifics, but you can purchase directly from the carrier soon!”]

332 Michael Crider. *The GSM-LTE Unlocked Version of the HTC 10 Will Work On Verizon After A Simple Radio Flash*. <http://www.androidpolice.com/2016/05/11/the-gsm-lte-unlocked-version-of-the-htc-10-will-work-on-verizon-after-a-simple-radio-flash/>

333 47 CFR § 76.1205(b)(5)(ii)(B)(2) [“For any bundled offer combining service and an operator-supplied navigation device into a single fee, including any bundled offer providing a discount for the purchase of multiple services, such provider shall make such offer available without discrimination to any customer that owns a navigation device, and, to the extent the customer uses such navigation device in lieu of the operator-supplied equipment included in that bundled offer, shall further offer such customer a discount from such offer equal to an amount not less than the monthly rental fee reasonably allocable to the lease of the operator-supplied navigation device included with that offer.”]

other than Verizon and affiliated retailers inhibits competition from alternative handset providers and sales channels that have no commercial relationships with Verizon:

In light of declining Average Return Per User (ARPU) for basic services, a wireless carrier has a keen interest in offering new services and thwarting subscriber access to alternatives available from ventures that have no obligation to share revenues with the carrier.

Bundling handset sales with two-year service commitments forecloses development of a market for used handsets, or for handsets having unconditional access to third-party sources of content and services. Subscribers opting to continue using a previously purchased handset, or to acquire one outside the carrier's subsidized channel of distribution, accrue no cost savings despite reducing the carrier's customer acquisition costs. Wireless carriers do not offer a lower monthly service rate for existing or prospective customers who trigger no handset subsidy burden.<sup>334</sup>

261. Verizon already applies equal line access charges for all customers who forgo device subsidies on its current "Verizon" plans, so it can simply do the same for customers on its other plans. Specifically, for its "MORE Everything" plans, the carrier should decrease effective line access charges from \$40/month to \$15/month for all customers on month-to-month agreements (not just customers financing devices through Verizon).<sup>335</sup> Similarly, for its "Nationwide" and earlier plans, the carrier should decrease line access charges from \$40/month to \$20/month for all customers on month-to-month agreements.

262. Requiring Verizon to equalize pricing between purchasing a device through

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334 Rob Frieden. *Hold the Phone: Assessing the Rights of Wireless Handset Owners and Carriers*, 69 *Pittsburg Law Review*, 692–693 (2008). (Internal citations omitted.)

335 Since announcing its MORE Everything plans on February 13, 2014, Verizon has stated that customers who forgo device subsidies by bringing their own devices are eligible for line access discounts (relative to the \$40/month line access charge for customers who accept device subsidies from the carrier). However, Verizon didn't actually apply month-to-month line access discounts for customers who brought their own devices. On March 10, 2016, Verizon retroactively classified the line access discounts it had offered to all customers who forgo device subsidies since announcing its MORE Everything plans as "promotional" and restricted them to customers financing devices through Verizon. See *supra* section IV.

Verizon and bringing your own device will limit the carrier's ability to deter me from purchasing unlocked devices from equipment manufacturers, other carriers, and independent retailers (instead of devices preloaded with Verizon-backed applications from the carrier and affiliated retailers).

**E. Order Verizon to Offer SIM Cards for Postpaid Service Separately from Devices at Its Online Store, Retail Stores, and by Phone**

263. As discussed in sections IX.G, following standard practice in the prepaid service market, Verizon offers SIM cards for prepaid service separately from devices: customers can purchase them from the carrier's online store or from retail stores like Walmart, without entering a device identifier to check against a whitelist. However, to protect its position as gatekeeper for over 141 million subscriber connections (the vast majority of which are on postpaid agreements), Verizon blocks postpaid customers from ordering SIM cards for devices it doesn't elect to “certify.” (AT&T, T-Mobile, and many other carriers worldwide that collectively serve billions of customers offer SIM cards for both prepaid and also postpaid service separately from devices.)

264. The Commission should order Verizon to offer SIM cards for postpaid service separately from devices (without requiring customers to check a device identifier against a whitelist) at its online store, retail stores, and by phone, without requiring customers to check a device identifier against a whitelist. This relief will help ensure I can use the devices of my choice.

**F. Order Verizon to Widely and Prominently Advertise that It Will Give SIM Cards to Customers who Bring Their Own Devices**

265. In the *First Plug and Play Report and Order*, the Commission recognized that “commercial availability is furthered only if consumers are aware of the availability of

equipment from alternative sources.”<sup>336</sup> Given Verizon's misleading and deceptive statements about third-party devices,<sup>337</sup> the Commission should order the carrier to widely (via television, radio, print, and the Internet) and prominently (in large print, not fine print) advertise that it will give SIM cards to customers who bring their own devices (without requiring them to check a device identifier against a whitelist).

266. Also, the Commission should ensure Verizon doesn't abuse its position as gatekeeper (in particular, its retail operations) to interfere with or disadvantage the ability of any edge provider to widely and prominently advertise that customers can purchase unlocked devices from the edge provider and independent retailers (instead of purchasing devices from Verizon and affiliated retailers).

267. Rectifying Verizon's misleading and deceptive statements will help further commercial availability of third-party devices and edge providers' ability to make them available to me.

**G. Evaluate whether Verizon Possesses the Basic Character Qualifications to Obtain Additional Commission Licenses and Authorizations**

268. Given Verizon willfully and repeatedly violated the Commission's rules (and denied violating them with specious allegations and semantic gymnastics), the Commission should evaluate whether Verizon possesses the basic character qualifications to obtain additional Commission licenses and authorizations<sup>338</sup> and consider referrals for criminal prosecution of and imprisonment of Verizon officers who did anything prohibited by the Commission's rules or omitted or failed to do anything required by the Commission's rules.<sup>339</sup>

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336 13 FCC Rcd. 14782 ¶ 17 (1998)

337 *Supra* sections VII and VIII

338 47 USC § 312

339 47 USC § 501

## H. Award Damages

269. Verizon's blocking of third-party devices artificially segments the market into devices Verizon elects to “certify” (devices sold by the carrier and affiliated retailers) and devices Verizon doesn't elect to “certify” (devices sold by competing sources). This market segmentation appears to inhibit price competition for *all* devices. For example:

- In April 2015—five months after release but one month before Verizon allowed Nexus 6 devices sold by competing sources—I could've purchased a new unit with 64 GB of storage from Amazon for \$671.17, just \$28 off MSRP.<sup>340</sup> (Verizon was selling units with 32 GB of storage for the MSRP of \$649.99 before sales tax.)
- In May 2015—just before Verizon allowed Nexus 6 devices sold by competing sources—I purchased a used unit with 64 GB of storage via craigslist for \$575. (Prices in the South San Francisco Bay Area for new units with 64 GB of storage were around \$625, just \$74 off MSRP.)
- In June 2015—one week after Verizon allowed Nexus 6 devices sold by competing sources—I could've purchased a new unit with 64 GB of storage from Google for \$549.<sup>341</sup>
- In July 2015—one month after Verizon allowed Nexus 6 devices sold by competing sources—I could've purchased a new unit with 64 GB of storage from Motorola for

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340 Michael Crider. *[Deal Alert] Amazon Has The Blue 32GB Nexus 6 For As Low As \$584 (\$66 Off), 32GB And 64GB White Models Discounted Too.*  
<http://www.androidpolice.com/2015/04/04/deal-alert-amazon-has-the-blue-32gb-nexus-6-for-as-low-as-584-66-off-32gb-and-64gb-white-models-discounted-too/>

341 David Ruddock. *[Deal Alert] Google Drops Price Of Nexus 6 On Play Store By \$150, Offers Nexus 9 With \$50 Play Store Gift Card.*  
<http://www.androidpolice.com/2015/06/02/deal-alert-google-drops-price-of-nexus-6-on-play-store-by-150-offers-nexus-9-with-50-play-store-gift-card/>

\$529.<sup>342</sup>

- In September 2015—three months after Verizon allowed Nexus 6 devices sold by competing sources—I could've purchased a new unit with 64 GB of storage from Amazon for \$399.99.<sup>343</sup>
- In November 2015—five months after Verizon allowed Nexus 6 devices sold by competing sources—I could've purchased a new unit with 64 GB of storage from Amazon for \$259.99.<sup>344</sup> Verizon was still selling units with 32 GB of storage near the initial MSRP (\$648.00 before sales tax).<sup>345</sup>

270. Similarly, disabling network support in firmware for devices that support multiple networks in hardware<sup>346</sup> artificially segments the market for devices that are otherwise the same. Additionally, Verizon's misleading and deceptive statements about third-party devices tainted public awareness of equipment from sources other than Verizon, and the carrier's imposition of discriminatory pricing on bringing your own device not only had direct monetary effects on me and other customers but also contributed to the anti-competitive effects discussed above.

271. Altogether, if Verizon hadn't inhibited competition in the market for devices,

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342 Ryan Whitwam. *[Deal Alert] Moto X Down To \$299.99 Unlocked, Plus Get \$20-40 Off Other Motorola Products (Including Nexus 6) With Coupon Code.*

<http://www.androidpolice.com/2015/07/07/deal-alert-moto-x-down-to-299-99-unlocked-plus-get-20-40-off-other-motorola-products-including-nexus-6-with-coupon-code/>

343 Michael Crider. *[Deal Alert] Amazon Chopped Another \$150 Off The Nexus 6: 32GB Is Now \$350, 64GB Is Now \$400.* <http://www.androidpolice.com/2015/09/04/deal-alert-amazon-chopped-another-150-off-the-nexus-6-32gb-is-now-350-64gb-is-now-400/>

344 Jeff Beck. *[Lightning Deal Alert] 32GB Nexus 6 \$199.99, 64GB \$259.99 On Amazon Lightning Deal, Live NOW! GOGOGO!!!*

<http://www.androidpolice.com/2015/11/26/lightning-deal-alert-32gb-nexus-6-199-99-64gb-259-99-amazon-lightning-deal-live-now-gogogo/>

345 Verizon Wireless. *Google Nexus 6.*

<https://web.archive.org/web/20151126133508/https://www.verizonwireless.com/smartphones/google-nexus-6/>

346 *Supra* paragraph 258

extrapolating from historical prices of Nexus 6 devices sold by sources other than Verizon, I estimate I could've saved at least \$200 on a Nexus 6 (64 GB) I purchased in May 2015, \$100 on an iPhone 5 (32 GB) I purchased in May 2015, \$100 on an iPhone 6 (64 GB) I purchased in August 2015, \$100 on an iPhone 5s (16 GB) I purchased in October 2015, \$100 on an iPad mini (LTE, 64 GB) I purchased in October 2015, and \$100 on a Microsoft Surface 3 (LTE, 128 GB) I purchased in December 2015.

272. Verizon also inhibited competition in the market for wireless service. In particular, disabling Apple SIMs (which allow customers to switch carriers without physically acquiring and switching SIM cards) inhibited greater competition between network providers and limited downward pressure on the prices I and other customers paid for wireless service.<sup>347</sup> Comparing prices between Verizon's service plans and comparable service plans in the United Kingdom—where “SIM only” plans (paying for service separately from devices) are common and where customers can choose EE and Three (two of the four major facilities-based providers) via Apple SIM—for example, can provide guidance on how much greater competition could affect prices:

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347 Nilay Patel. *Five years after the iPhone, carriers are the biggest threat to innovation.* <http://www.theverge.com/2012/7/5/3138711/five-years-after-the-iphone-carriers-are-the-biggest-threat-to-innovation-editorial> [And carriers rarely want what's best for their customers. “The carriers have always been wary of 'excessive' innovation in the mobile space because of the danger that it might make mobile service cheaper,” says Columbia Law School professor and *The Master Switch* author Tim Wu. If companies like HTC and Samsung were able to compete directly at the consumer level, the carriers would turn into dumb pipes — and AT&T and Verizon would be forced to raise their service levels and lower their monthly fees to effectively compete against each other.]



<b>Data transfer cap</b>	<b>Three “SIM only” plan for one smartphone (12 months)</b>	<b>The Verizon Plan for one smartphone</b>
1 GB	£16.00/month = \$21.12/month	\$50.00/month
12 GB	£27.00/month = \$35.64/month	\$100.00/month
30 GB	£30.00/month = \$39.60/month	\$245.00/month

*Table 6: Comparison of comparable service plans between Verizon and Three. The exchange rate of £1.00 = \$1.32 and service prices were taken on June 27, 2016.*

273. If Verizon hadn't inhibited competition in the market for wireless service, I estimate I could've saved at least \$25/month on service charges.

274. Instead of attempting to quantify other damages like Verizon's interference with edge providers' ability to make FM radio capabilities and innovative applications like Samsung Pay available to me, I pray for recovery of \$225 for the formal complaint filing fee, \$700 for inhibiting competition in the market for devices, \$25/month for every month since May 2015 for inhibiting competition in the market for wireless service, \$40 for Verizon's discriminatory “activation fee,” and all other relief as the Commission may deem appropriate.

**I. Initiate an Investigation of Verizon's Conduct and Impose Forfeitures**

275. In the *700 MHz Second Report and Order*, the Commission stated it would “vigorously enforce” its openness requirements:

We intend to vigorously enforce the requirement adopted in this section. A person or entity who believes that the C Block licensee’s refusal to attach a proposed device or application is a violation of the rules we adopt here may file a complaint pursuant to the Commission’s existing enforcement rules, including the Commission’s formal and informal complaint processes, where applicable. Through review of complaints and other relevant information, we will monitor the ability of consumers, device manufacturers, and application developers to use or develop devices and applications for C Block networks. We will take appropriate enforcement action where necessary pursuant to the remedies available under our statutory authority as appropriate, including forfeitures, license revocations, and cease-and-desist orders.<sup>348</sup>

276. I respectfully ask the Enforcement Bureau to initiate its own investigation of

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348 22 FCC Rcd. 15373–15374 ¶ 229 (2007)

Verizon's conduct and impose forfeitures payable to the Treasury. After the *2015 Open Internet Order* took effect on June 12, 2015, the Commission reclassified mobile BIAS from a “private mobile service” to a “commercial mobile service” subject to common carrier regulations. At the time of writing, Section 503(b)(2)(B) of the Communications Act authorizes the Commission to assess a forfeiture of up to \$160,000 for each applicable violation.<sup>349</sup> Multiplying this statutory maximum (justified by Verizon's willful and repeated violations) by Verizon's 141.473 million subscriber connections (as of March 31, 2016) leads to a figure over \$22 trillion. However, I respectfully suggest that a moderated forfeiture of \$81 billion—approximately 25% of total operating revenues from October 1, 2012<sup>350</sup> to June 30, 2016<sup>351</sup>—would still be consistent with the Commission's *Forfeiture Policy Statement*<sup>352</sup> and sufficient to deter Verizon from continuing an over decade-long pattern of abusing its position as gatekeeper to limit consumer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission.

## **XVI. PROCEDURAL MATTERS AND SUPPORTING MATERIALS**

277. Recognizing that “the evidence necessary to apply the open Internet rules is

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349 47 CFR § 1.80(b)(2)

350 I suggest October 1, 2012 to avoid overlapping with the third quarter of 2012 (in which the *2012 Order and Consent Decree* took effect). I select this date for guidance and don't intend to imply Verizon's violations didn't precede October 1, 2012.

351 See SEC Forms 10-K and 10-Q for Verizon Communications Inc. In the three months ended December 31, 2012, Verizon Wireless took in \$19.994 billion in total operating revenues; in the fiscal year ended December 31, 2013, \$81.023 billion; in the fiscal year ended December 31, 2014, \$87.646 billion; in the fiscal year ended December 31, 2015, \$91.680 billion; in the three months ended March 31, 2016, \$22.004 billion; in the three months ended June 30, 2016, \$21.704 billion.

352 12 FCC Rcd. 17099 ¶ 24 (1997) [“In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level.... For this reason,... we intend to ... guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business.”]

predominantly in the possession of the broadband provider”<sup>353</sup> and that complainants are likely to be consumers with limited resources,<sup>354</sup> the Commission adopted formal complaint rules in 47 CFR §§ 8.12–8.17 that are less burdensome on complainants than the rules in 47 CFR §§ 1.720–1.736:

The section 208 rules, for example, require complainants to submit information designations, proposed findings of fact and conclusions of law, and affidavits demonstrating the basis for complainant’s belief for unsupported allegations and why complainant could not ascertain facts from any source. See, e.g., 47 C.F.R. §§ 1.721(a) (5), (6), (10). The open Internet formal complaint rules do not contain similar requirements.<sup>355</sup>

278. Although the Commission recognized that the openness rules in 47 CFR § 27.16 “overlap in significant parts” with the openness rules adopted by the *2015 Open Internet Order*, when the Commission adopted the *700 MHz Second Report and Order* in 2007, it applied the existing formal complaint rules in 47 CFR §§ 1.720–1.736.<sup>356</sup>

279. Pursuant to 47 CFR § 1.3, the Commission agreed to waive provisions of 47 CFR §§ 1.721(a) (5), (6), (10) and 1.735(c) for this complaint.<sup>357</sup> Still:

- Pursuant to 47 CFR § 1.720(a)–(c) and 1.721(a)(5), the complaint includes detailed explanations of how and when Verizon violated the Communications Act and Commission orders and regulations, the complaint contains facts that are sufficient to constitute violations, and all material facts are supported by relevant documentation

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353 25 FCC Rcd. 17988 ¶ 157 (2010)

354 30 FCC Rcd. 5713 ¶ 252 (2015)

355 *Id.* note 652

356 22 FCC Rcd. 15373–15374 ¶ 229 (2007) [“A person or entity who believes that the C Block licensee’s refusal to attach a proposed device or application is a violation of the rules we adopt here may file a complaint pursuant to the Commission’s existing enforcement rules, including the Commission’s formal and informal complaint processes, where applicable.”]

357 See the February 2, 2016 letter from Rosemary McEnery (Deputy Chief, Market Disputes Resolution Division) to Alex Nguyen and David Haga (Assistant General Counsel, Verizon).

or affidavit.

- Pursuant to 47 CFR § 1.721(a)(6), the complaint contains legal analysis relevant to the claims and arguments set forth.

280. Included with the complaint are:

- A transmittal letter, Formal Complaint Intake Form, proof of paying the formal complaint filing fee, and certificate of service,<sup>358</sup>
- News articles, customer testimonials, and other documents upon which I intend to rely to support the facts alleged and legal arguments made in the complaint,
- Excerpts from the March 10, 2016 episode of the Ctrl-Walt-Delete show with technology journalists Walt Mossberg and Nilay Patel,
- Correspondence with Verizon and the Commission, and
- The first set of interrogatories from me to Verizon.

281. Pursuant to Section 1.721(a)(8) of the Commission's rules, I certify that I have, in good faith, discussed or attempted to discuss the possibility of settlement with Verizon prior to the filing of this complaint. On December 28, 2015 and April 13, 2016, I mailed a certified letter outlining the allegations that form the basis of the complaint I anticipated filing with the Commission to Verizon or one of Verizon's registered agents for service of process that invited a response within a reasonable period of time. Both letters respectfully requested that Verizon cease and desist from engaging in the practices discussed in the letters. However, Verizon denied violating the Commission's rules and didn't attempt to discuss the possibility of ceasing or desisting from engaging in the practices.

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358 12 FCC Rcd. 22524 ¶ 56 (1997) ["We also require the complainant to attach to each copy of the intake form, a photocopy of its fee payment (check, etc.) as well as a certificate of service."]

282. Pursuant to Section 1.721(a)(9) of the Commission's rules, I state that I haven't filed any separate action with the Commission, any court, or other government agency that is based on the same claim or same set of facts. This complaint doesn't seek prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission.

July 26, 2016

A handwritten signature in black ink that reads "Alex Nguyen". The signature is written in a cursive, flowing style.

Alex Nguyen  
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