

TAB 4

December 28, 2015

Tamara Preiss
Vice President, Federal Regulatory and Legal Affairs
Verizon Communications Inc.
1300 I Street, NW, Suite 400 West
Washington, DC 20005

Re: Notification of Intent to File Formal Complaint Against Verizon Wireless for Violations of 47 USC § 202(a) and 47 CFR §§ 8.3, 8.5, 8.11, and 27.16.

Dear Ms. Preiss:

Pursuant to 47 CFR §§ 1.721(a)(8) and 8.13(d), this letter hereby notifies you that I intend to file a formal complaint with the Federal Communications Commission against Celco Partnership d/b/a Verizon Wireless (“Verizon”) for violating Section 202(a) of the Communications Act and Sections 8.3, 8.5, 8.11, and 27.16 of the Commission's rules by unreasonably interfering with and disadvantaging end users' ability to select, access, and use the applications, services, and devices of their choice, and edge providers' ability to make applications, services, and devices available to end users:

- 47 CFR § 8.3 requires providers of broadband Internet access service to publicly disclose accurate information regarding their network management practices. However, Verizon deceives end users by stating third-party devices that are compatible with its network are not. For example, all domestic Apple iPhone 6 and 6 Plus models are compatible with Verizon's network, but Verizon states that end users switching from other carriers can't use their existing iPhones.¹
- 47 USC § 202(a) and 47 CFR §§ 8.5 and 27.16(b) prohibit carriers from blocking non-harmful devices. However, Verizon has blocked end users from ordering new SIM cards for compatible third-party devices. Even though Verizon sells the same models other carriers and retailers sell, Verizon blocked third-party Apple iPhone 6 and 6 Plus devices for 47 weeks and Motorola Nexus 6 devices for 29 weeks.
- 47 CFR §§ 8.3 and 27.16(f) require carriers to offer specific explanations for denying network access. However, Verizon has repeatedly failed to satisfy its burden of proof. For example, before eventually “certifying” third-party Motorola Nexus 6 devices, Verizon alleged the existence of vague software variations but neither specified them nor provided any evidence that they harmed its network.
- 47 USC § 202(a) and 47 CFR §§ 8.11 and 27.16(b) prohibit unreasonable

¹ Verizon Wireless. *Apple iPhone FAQs*. <https://www.verizonwireless.com/support/iphone-faqs/> (December 28, 2015) [“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.”]

discrimination in charges. However, before November 15, 2015, Verizon charged an “activation fee” of \$40.00 to end users who brought their own devices but not to end users who financed devices through Verizon. Moreover, Verizon didn't apply discounts for eligible end users on month-to-month agreements who brought their own devices and used existing SIM cards.²

- 47 USC § 202(a) and 47 CFR §§ 8.11 and 27.16(b) prohibit carriers from unreasonably interfering with or disadvantaging edge providers' ability to make applications and services available to end users. However, Verizon blocked Samsung from preloading Microsoft applications, including OneDrive (which competes with Verizon Cloud),³ and Samsung Pay (which competes with Android Pay, a service backed by Verizon) on Samsung devices.

On May 20, 2015, I filed an informal complaint with the Commission that addressed the Motorola Nexus 6, blocking, transparency, and discriminatory pricing. Verizon alleged Google didn't have a way to deliver “Verizon Wireless software” to third-party Motorola Nexus 6 devices, even though Google has been able to deliver such software to third-party Asus Nexus 7 devices since at least February 13, 2014.⁴ Verizon eventually “certified” third-party Motorola Nexus 6 devices but still hasn't provided any evidence that the software variations the carrier alleged existed harmed its network. (Others have filed informal complaints with the Commission against Verizon for unreasonably interfering with or disadvantaging edge providers' ability to make applications and services available to end users.⁵)

I respectfully request the following:

- Verizon should let end users order SIM cards for prepaid and postpaid service separately from devices (without checking a device identifier like an IMEI against a whitelist) on its online store. AT&T,⁶ T-Mobile,⁷ and many other carriers do; Verizon

2 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/> [“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.”]

3 Shira Ovide. *Verizon and AT&T Won't Pre-Install 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/>

4 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.]

5 timmyc123. *FCC complaint against Verizon filed*. https://www.reddit.com/r/GalaxyS6/comments/3lzwue/fcc_complaint_against_verizon_filed/ (September 22, 2015)

6 AT&T. *SIM Cards*. <https://www.att.com/shop/wireless/devices/simcards.html> (December 28, 2015)

7 T-Mobile. *SIM Card Starter Kit*. <https://www.t-mobile.com/cell-phones/t-mobile-3-in-1-sim-starter-kit.html> (December 28, 2015)

does for prepaid service⁸ but not for postpaid service.

- To rectify deceptive statements about the compatibility of third-party devices, Verizon should prominently advertise for at least 24 months that end users can order SIM cards separately from devices (“bring your own device”).
- Verizon should refund all “activation fees” it charged to end users who brought their own devices and retroactively apply all appropriate discounts Verizon should’ve but didn’t apply for end users on month-to-month agreements.
- Verizon should stop blocking device providers from preloading applications that don’t harm the network.

Should you have any questions, please contact me.

Sincerely,



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⁸ Verizon Wireless. *4G SIM Activation Kit*. <https://www.verizonwireless.com/accessories/4g-sim-activation-kit/>
(December 28, 2015)



David Haga
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January 18, 2016

Alex Nguyen
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Re: *Notification of Intent to File Formal Complaint*

Dear Mr. Nguyen:

I am writing in response to your December 28, 2015 letter to Verizon's Tamara Preiss, in which you discuss certain issues regarding end users' ability to use third party devices on Verizon's wireless network and edge providers' ability to make applications and services available on devices in certain circumstances. You previously raised some of these issues in an informal complaint you submitted to the Federal Communications Commission ("FCC") on May 20, 2015, stemming from your desire to use on Verizon's wireless network a Motorola Nexus 6 that you purchased from a company other than Verizon. Verizon responded to that informal complaint, indicating that you are able to use that Nexus 6 device on our network. Below, I address the remainder of the issues you raise about the use of third party devices, software, and applications on Verizon's network, which hopefully resolves any remaining concerns you may have.

Verizon's Network Management. As you can appreciate, Verizon's wireless network operations are complex and involve unique network architecture and technology. Verizon manages its network to certain service levels and technical requirements, which may vary from those of other service providers and third parties. Verizon therefore must be careful when dealing with third party devices, software, and applications to ensure they do not interfere with the proper functioning of its network and to safeguard its customers and their communications.

The governing regulations recognize as much. The FCC's mobile network access rules allow for reasonable network management practices and permit carriers to require compliance with the technical standards necessary to protect their networks. For example, the spectrum rules governing access for Block C in the 746-757 and 776-787 MHz bands specifically state that providers operating in this spectrum are not required to grant access to devices and applications that do not comply with the technical standards reasonably necessary for the management or protection of their networks. See 47 C.F.R. § 27.16(b)(1). Similarly, the rules governing the use of third party devices, services, and applications on mobile broadband Internet networks are "subject to reasonable network management" (47

C.F.R. §§ 8.5(b)), which includes “taking into account the particular network architecture and technology of the broadband Internet access service.” 47 C.F.R. § 8.11(d). In short, providers are not required to grant access to third party devices, services, and applications unless and until they can meet the providers’ appropriate technical standards and can be used – and used safely – on their networks.

That said, Verizon is committed to providing safe and reasonable access for its customers and works with third parties to ensure that, when possible, their devices and applications can be used on Verizon’s wireless network. Indeed, after working through technical compatibility and other issues, Verizon allowed Motorola Nexus 6 devices (the subject of your informal complaint last year) onto the Verizon Wireless network.

Motorola Nexus 6. As Verizon explained in response to your informal complaint, when the Nexus 6 initially launched, the only version that was certified for use on the Verizon network as satisfying Verizon’s technical standards was the version loaded with software specific to Verizon.¹ Google initially was unable to provide a means of delivering that software to other versions of the Nexus 6, so that Nexus 6 devices purchased for use on other networks and loaded with other software were not certified for use with Verizon’s network and systems. Indeed, without the necessary software, Verizon’s systems could not identify what those devices were or whether they posed a threat to the network – even with the insertion of an active Verizon SIM card. Those devices could have some limited functionality with a Verizon SIM card, but – without the right software – they were not fully functional and could not be certified as meeting the technical standards necessary for the management and protection of the Verizon network. For example, the software was necessary to ensure that Voice over LTE worked on the device when a Verizon SIM was inserted.

For those reasons, Verizon initially did not allow customers to purchase SIM cards for Nexus 6 devices purchased from companies other than Verizon. But, following the initial launch, Google and Verizon worked to develop a solution to deliver the necessary software to those devices. With that solution, you and other customers were able to use those devices on our wireless network.

Apple iPhone 6 and 6 Plus. Verizon went through a similar process to certify the Apple iPhone devices that you discuss in your December 28, 2015 letter. It is unclear from your letter whether you personally had sought to use an iPhone purchased from another company on Verizon’s network. But, initially, Apple iPhone 6 and 6 Plus devices that were purchased from companies other than Verizon could not be identified on the Verizon network, even with the insertion of a Verizon SIM card. In particular, the Verizon network requires the International Mobile Equipment Identity (“IMEI”) number for each device to identify valid devices that have gone through Verizon’s certification testing. Verizon initially did not have access to the IMEI numbers for iPhone 6 devices that were purchased from companies other than Verizon. Without that identifier, Verizon’s systems could not identify the devices as iPhone 6 devices and could not determine whether they might be harmful to the

¹ See Letter from Verizon Wireless Executive Relations to Sharon Bowers, FCC, and Alex Nguyen (June 11, 2015); Letter from Nicole R., Analyst, Verizon Wireless Executive Relations, to Sharon Bowers, FCC, and Alex Nguyen (July 27, 2015).

network. Verizon worked with Apple to obtain the necessary IMEI ranges and, once Apple provided them, a customer then could use a third party iPhone 6 and 6 Plus on the Verizon network.

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. And we have now updated those FAQs to state that customers who purchased an iPhone 6 or newer model from a company other than Verizon can use it on the Verizon Wireless network.²

Activation Fees and Discounts. Your December 28, 2015 letter claims that Verizon in the past (*i.e.*, “before November 15, 2015”) engaged in “unreasonable discrimination” against customers who brought their own devices and/or used existing SIM cards by charging them a fee to activate those devices on the Verizon network and by not providing a discount on their month-to-month service agreements. In support of this claim, your letter cites to 47 U.S.C. § 202(a) and 47 C.F.R. §§ 8.11 and 27.16(b). But 47 C.F.R. §§ 8.11 and 27.16(b) do not address price differentials, and Verizon’s practices are not the type of “unreasonable discrimination in charges” contemplated by 47 U.S.C. § 202(a).

In assessing the activation fee, Verizon does not draw a distinction between customers who bring their own devices and those who do not. Verizon generally charges all customers an activation fee, including customers who purchase devices from Verizon. But Verizon has waived that fee for customers who purchase their devices through Verizon’s device payment plan program. That does not constitute any form of prohibited “discrimination.” Rather, that is simply a permitted incentive offer to encourage customers to purchase their devices through Verizon’s device payment program.

Similarly, Verizon did not “discriminate” against customers who brought their own devices and used existing SIM cards by failing to provide them with monthly discounts. These customers were using phones that had not yet been certified on Verizon’s network or for which Verizon had not yet received the necessary IMEI numbers. 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.

Microsoft Applications. Your December 28, 2015 letter (at 2) also asserts that Verizon “blocked” Samsung from preloading Microsoft applications, including OneDrive and Samsung Pay on Samsung devices. That is not true. These applications initially were available only as preloaded applications on certain Samsung devices. Verizon simply elected not to sell the Samsung devices with the preloaded applications itself, and it has no regulatory obligation to sell particular

² See Apple iPhone FAQs, <https://www.verizonwireless.com/support/iphone-faqs/>. As these FAQs explain, iPhone 5s or earlier versions purchased from companies other than Verizon “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.”

devices. But Verizon has no influence on whether these applications were preloaded on Samsung devices available for purchase from other companies or on other companies' decisions about what devices (and with which applications) they will sell. However, Verizon will support such applications on certain Samsung devices after purchase with a free software update.

CONCLUSION

I hope that this information addresses all of the issues in your December 28, 2015 letter. But please let me know if you have any additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Haga", enclosed in a thin black rectangular border.

David Haga

January 20, 2016

Christopher Killion, Chief
Rosemary McEnery, Deputy Chief
Lisa Griffin, Deputy Chief
Market Disputes Resolution Division, Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
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Re: Petition for a Waiver of Certain Requirements of the Commission's Rules for Formal Complaints.

Dear Mr. Killion, Ms. McEnery, and Ms. Griffin:

Pursuant to 47 CFR § 1.3, I respectfully submit this petition for a waiver of certain requirements of the Commission's rules for formal complaints. I intend to file a formal complaint against Cellco Partnership & Affiliated Entities d/b/a Verizon Wireless (“Verizon”) for unreasonably interfering with and disadvantaging end users' ability to select, access, and use the applications, services, and devices of their choice, and edge providers' ability to make applications, services, and devices available to end users:

- Verizon blocked end users from ordering new SIM cards for compatible third-party devices. For example, even though Verizon sells the same models other carriers and retailers sell, Verizon blocked third-party Apple iPhone 6 and 6 Plus devices for 47 weeks and Motorola Nexus 6 devices for 29 weeks.
- Verizon imposed discriminatory pricing on end users who brought their own compatible devices and used existing SIM cards.¹
- Verizon blocked Samsung from preloading Microsoft applications, including OneDrive (which competes with Verizon Cloud),² and Samsung Pay (which competes with Android Pay, a service backed by Verizon)³ on Samsung devices.
- Verizon has repeatedly failed its transparency obligations. For example, before eventually “certifying” third-party Motorola Nexus 6 devices, Verizon alleged the

1 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/> [“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.”]

2 Shira Ovide. *Verizon and AT&T Won't Pre-Install 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/>

3 Chris Welch. *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.”]

existence of vague software variations but neither specified them nor provided any evidence that they harmed its network.

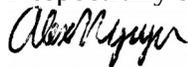
All of Verizon's conduct specified above is subject to Section 27.16 (and Section 8.3) of the Commission's rules; some of Verizon's conduct is additionally subject to similar openness rules set forth by the *2015 Open Internet Order* that took effect on June 12, 2015. Because some of Verizon's conduct occurred before June 12, 2015, Enforcement Bureau staff suggested that I should consider a Section 208 formal complaint (pursuant to 47 CFR §§ 1.720–1.736) instead of an Open Internet formal complaint (pursuant to 47 CFR §§ 8.12–8.16). However, the procedural rules for Section 208 formal complaints are more burdensome:

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.⁴

As the Commission recognized in the 2015 Open Internet Order, complainants are likely to be consumers with limited resources.⁵

Because the Commission adopted its Section 27.16 rules before its Part 8 rules and because Sections 8.3–8.11 and 27.16 set forth similar openness rules, I respectfully ask the Commission to apply less burdensome procedural rules and waive both 47 CFR §§ 1.721(a) (5), (6), (10) and also 47 CFR §§ 1.735(c), requiring complainants to serve complaints by hand delivery. (I intend to serve the complaint by e-mail.)

Respectfully submitted,



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⁴ 30 FCC Rcd. 5713 note 652 (2015)

⁵ *Id.* at 5713 ¶ 252 [“Although comparable to the section 208 formal complaint rules, the open Internet rules are less burdensome on complainants, who in this context are likely to be consumers or small edge providers with limited resources.”]



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January 21, 2016

Rosemary McEnery
Federal Communications Commission
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Rosemary.McEnery@fcc.gov

Re: *Request for Waiver (Alex Nguyen)*

Dear Ms. McEnery:

I am writing in response to your January 20, 2016 email to Tamara Preiss, in which you sought comment from Verizon regarding a request for waiver that Alex Nguyen submitted to the Commission. Mr. Nguyen sought waiver of certain rules associated with the filing of a formal complaint that he indicated he wished to file against Verizon.

To the extent Mr. Nguyen is seeking to assert claims under the *2015 Open Internet Order* and/or 47 CFR §§ 8.3-8.11, Verizon certainly has no objection to proceeding under 47 CFR §§ 8.12-8.16 for those claims. However, to the extent Mr. Nguyen is seeking to assert claims for conduct prior to the effective date of the *2015 Open Internet Order* and/or the Part 8 rules, Verizon cannot agree that those rules and standards should apply retroactively – either as a matter of substance or procedure.

Similarly, if Mr. Nguyen intends to assert claims under 47 CFR § 27.16, Verizon believes that it is appropriate to proceed under the formal complaint procedures provided for in the rules (47 CFR § 1.721) for alleged violations of that section. As a general matter, these formal complaint procedures serve an important gatekeeping function to ensure that only potentially viable claims are brought before the Commission and that neither the Commission nor respondents are inundated with meritless or vexatious complaints. Likewise, these procedures ensure that a respondent has sufficient notice of the relevant facts and legal theories asserted against it, such that it can prepare an adequate defense. For example, it is essential that any complainant comply with the requirement under 47 C.F.R. §§ 1.721(a)(5) to provide a complete statement of facts which, if proven true, would constitute an actionable violation. Likewise, any complainant must present a legal analysis relevant to the claims and arguments set forth in the complaint as required by 47 C.F.R. §§ 1.721(a)(6).

That said, if Mr. Nguyen seeks to assert claims under the formal complaint procedures in 47 CFR § 1.721 and reasonably believes that any particular aspects of those procedures may be burdensome in this case, Verizon is willing to discuss

those particular aspects and see if some sort of accommodation can be made. For example, Mr. Nguyen specifically referred to 47 CFR § 1.735, which requires service of the complaint by hand delivery. Verizon is willing to waive any such service requirements in this case and accept service of any complaint by email.

Thank you for your consideration. Please let me know if you have any additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Haga", enclosed in a thin black rectangular border.

David Haga

cc: Alex Nguyen
Christopher Killion
Adam Suppes
Tamara Preiss

FEDERAL COMMUNICATIONS COMMISSION
445 12th St., S.W.
Washington, D.C. 20554

February 2, 2016

Copy by Email; Original by U.S. Mail

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David Haga
Verizon
1320 N. Courthouse Road
Arlington, VA 22201

Re: Request For Waiver – Alex Nguyen

Counselors:

In this letter, we grant in part, and deny in part, Mr. Nguyen's request for waiver of certain formal complaint procedural rules. Mr. Nguyen has indicated that he intends to file a formal complaint against Cellco Partnership & Affiliated Entities d/b/a Verizon Wireless (Verizon) alleging violations of 47 C.F.R. § 27.16 (C-block rules), 47 C.F.R. § 8.3 (transparency), and certain provisions of the 2015 Open Internet Order.¹ Mr. Nguyen requests that we apply the procedural rules at 47 C.F.R. §§ 8.12-16, rather than those at 47 C.F.R. §§ 1.720-36, and in any event, that we waive sections 1.721(a)(5), (6), and (10) and 1.735(c) for purposes of his complaint filing.²

Formal complaints alleging violations of the C-block rules are subject to the procedural rules at 47 C.F.R. §§ 1.720-36.³ Complaints alleging violations of the transparency rule and the 2015 Open Internet Order are governed by the procedural rules at 47 C.F.R. §§ 8.12-16. To the extent Mr. Nguyen intends to include a claim under the C-block rules in his complaint, he must utilize the somewhat more comprehensive complaint procedural rules at 47 C.F.R. §§ 1.720-36.

Both sets of formal complaint rules are designed not only to provide defendants with adequate notice of a claim, but also to ensure development of a complete record on which the Commission may issue a ruling. In addition, the rules are intended to provide due process to all parties involved.

¹ Letter from Alex Nguyen to Christopher Killion, FCC (dated Jan. 20, 2016).

² *Id.*

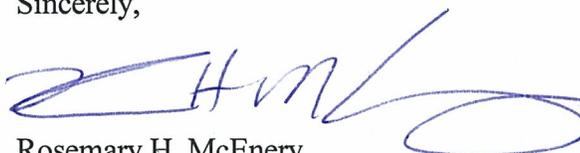
³ See *In the Matter of Serv. Rules for the 698-746, 747-762 & 777-792 MHz Bands*, Second Report and Order, 22 F.C.C. Rcd. 15289, 15364 ¶ 229, n517 (2007).

In an effort to accommodate Mr. Nguyen, who is proceeding *pro se*, however, we waive the following provisions as requested:

- 47 C.F.R. § 1.721(a)(5), to the extent it requires complainant to provide an affidavit explaining the basis for any allegation made on information and belief. Complainant, however, must comply with the remaining portions of 1.721(a)(5) requiring, among other things, that the complaint contain a complete statement of facts which, if proven true, would constitute a violation; that all material facts be supported by relevant affidavits and documentation; and that the statement of facts include a detailed explanation of the manner and time period in which the defendant has allegedly violated the Commission order or rule in question.
- 47 C.F.R. § 1.721(a)(6), to the extent it requires that the complaint contain proposed findings of fact and conclusions of law. The complaint, however, must contain a legal analysis.
- 47 C.F.R. § 1.721(a)(10).
- 47 C.F.R. § 1.735(c), requiring hand-delivery of the complaint. Verizon has agreed to accept service by e-mail.

This letter ruling is issued pursuant to sections 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, sections 1.3, 1.724, 1.726, 1.729, and 1.733 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.724, 1.726, 1.729, 1.733, and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.3114(i).

Sincerely,



Rosemary H. McEnery
Deputy Chief
Markets Disputes Resolution Division
Enforcement Bureau

cc: Tamara Priess, Verizon
Christopher Killion, FCC

April 13, 2016

Tamara Preiss
Vice President, Federal Regulatory and Legal Affairs
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Washington, DC 20005

Re: Notification of Intent to File Formal Complaint Against Verizon Wireless for Violations of 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.

Dear Ms. Preiss:

On December 28, 2015, pursuant to 47 CFR §§ 1.721(a)(8) and 8.13(d), I sent a letter (“December 28, 2015 Letter”) to you to notify that I intend to file a formal complaint with the Federal Communications Commission against Cellco Partnership d/b/a Verizon Wireless (“Verizon”). This letter (“April 12, 2016 Letter”) hereby notifies that I intend to assert additional violations of the Commission’s rules by Verizon. For example:

- Although HTC built FM chips into its One M8 and One M9 smartphones and preloads its own FM tuner application on devices compatible with the wireless networks of AT&T, T-Mobile, and other carriers, Verizon blocked HTC from preloading its own FM tuner application on One M8 smartphones Verizon provides to customers. Verizon completely blocked FM radio capabilities on One M9 smartphones Verizon provides to customers.¹
- Verizon disabled Embedded Apple SIMs built into 9.7-inch Apple iPad Pro tablets Verizon provides to customers.²
- Although Verizon stopped blocking *third-party* applications in Google’s application store after July 31, 2012, for customers on its Nationwide plans, Verizon continues to disable *built-in* tethering features and charge an additional \$20.00 to re-enable them.
- Although Samsung preloads Samsung Internet on Galaxy S7 and Galaxy S7 edge smartphones compatible with the wireless networks of AT&T, Sprint, T-Mobile, and other carriers, Verizon blocked Samsung from preloading its own Web browser on Galaxy S7 and Galaxy S7 edge smartphones Verizon provides to customers.
- Similarly, Verizon blocked Samsung from integrating Whitepages into its Galaxy S7 and Galaxy S7 edge smartphones Verizon provides to customers.

1 NAB Labs. *Research Shows Increased Diversity in FM Radio on Smartphones*.
<http://www.nablab.org/techcheck/archive/radioarchive/2015/051815.pdf>

2 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/>

In addition to 47 CFR § 27.16(e), which provides that “no licensee [of spectrum in the Upper 700 MHz Band C Block] may disable features on handsets it provides to customers,” I intend to cite 47 CFR §§ 8.5 and 8.11, 47 USC § 201(b), and a 2012 Order and Consent Decree between the Commission's Enforcement Bureau and Verizon.³

I respectfully request that Verizon cease and desist from the conduct discussed above.

Sincerely,



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³ *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)



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May 11, 2016

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Re: Notification of Intent to File Formal Complaint

Dear Mr. Nguyen,

This letter is in response to your April 13, 2016 letter to Tamara Preiss. In a January 18, 2016 letter, David Haga responded to previous issues you raised regarding the use of third party devices, software, and applications on the Verizon Wireless network. Below I will respond to your most recent concerns.

Most of your claims allege that Verizon Wireless is “blocking” applications because it does not choose to preload the same applications as other carriers. There is no regulatory requirement that all companies offer the same devices or capabilities, however, much less that they preload particular applications onto devices. Of course, it would be physically impossible for carriers and original equipment manufacturers to preload *every* third party application. The Federal Communications Commission does not require that Verizon Wireless preload any particular applications on the devices it offers its customers. Nor is there any regulatory requirement that Verizon Wireless design or reengineer the devices it offers to accommodate all third party applications. Verizon Wireless customers are free to download any lawful third-party applications, including the **HTC FM tuner application; third-party tethering applications; Samsung’s Web browser; and Samsung’s Whitepages**, and Verizon Wireless does not block such applications on devices offered to its customers. To the extent they are available and technically compatible, you and other customers are free to download and use them. Thus, there is no basis for asserting that Verizon Wireless’ failure to preload these applications on devices is a violation of Commission rules.

In addition, your allegation that Verizon Wireless “completely blocked **FM radio capabilities on the One M9 smartphones**” is also wrong. While you are correct that the HTC One M9 that Verizon Wireless sells does not have an

FM tuner, Verizon Wireless did not prohibit HTC from incorporating such a tuner. Instead, because of limited consumer demand for such tuners, Verizon Wireless simply does not have device specifications requiring FM tuners in the smartphones it sells, including the HTC One M9. Again, it is not a violation of Commission rules for device manufacturers to provide different versions of devices to different carriers.

You also have accused Verizon Wireless of violating Commission rules by “disabling” **Embedded Apple SIMs** on 9.7 inch Apple iPad Pro tablets. It is unclear what rule you claim Verizon Wireless is violating. Verizon Wireless is permitted to set reasonable technical requirements for accessing its network, including requirements for SIM cards that enable attachment of devices to Verizon Wireless’s network in a secure way, and Verizon Wireless is not required to configure its software to function with a manufacturer’s Embedded SIM cards. Apple iPad Pro Tablets purchased from Verizon Wireless can be used on the Verizon Wireless network using a Verizon Wireless SIM card, or on other carriers’ compatible networks using their SIM solutions. Moreover, there is no “feature” of the device that customers are prohibited from using under 47 C.F.R. § 27.16(e).

Finally, your tethering complaint also is misplaced. Verizon Wireless does not block the use of third-party tethering applications, and you may use any that are available for your device. Verizon Wireless also does not disable tethering features on devices and charge to re-enable them. Rather, the **\$20 “tethering” charge** referred to in your letter is associated with providing Verizon Wireless *service* – Mobile Hotspot – to certain data plans.¹ 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 functionality 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 functionality on the device ordinarily will not work. There is no prohibition on carriers charging customers for tethering services. Indeed, the Commission expressly acknowledged the fact that Verizon Wireless charges “an additional monthly fee” for tethering service, but stated no concern with that practice in the tethering consent decree.²

¹ The \$20 charge does not apply for customers who have Verizon Wireless’s MORE Everything Plan or Verizon Plan, which include Mobile Hotspot without additional fee.

² See generally Consent Decree, *In the Matter of Cellco Partnership d/b/a Verizon Wireless*, DA 12-1228, ¶ 4 (2012) (describing Verizon Wireless’ monthly fee for tethering).

I hope that this answers the concerns raised in your April 13, 2016 letter. If you have any additional questions, please feel free to contact me and I would be happy to discuss further.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. R. Khan" or similar, written in a cursive style.