

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

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| In the Matter of |) | |
| |) | |
| Dr. Bonnie O'Day, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | File No. EB-03-TC-F-001 |
| |) | |
| Cellco Partnership d/b/a/ Verizon Wireless, |) | |
| |) | |
| Defendant. |) | |

ORDER

Adopted: September 2, 2004

Released: September 3, 2004

By the Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau:

1. In this Order, we grant the Joint Motion to Dismiss Formal Complaint with Prejudice (“Joint Motion”) filed on August 27, 2004, by Complainant Dr. Bonnie O’Day and Defendant Celco Partnership d/b/a Verizon Wireless (“Verizon Wireless”).¹ With the mediation assistance of Commission staff, O’Day and Verizon Wireless have settled the formal complaint filed with the Commission pursuant to Section 255 of the Communications Act of 1934, as amended (the “Act”).² We find that granting the parties’ Joint Motion to dismiss the formal complaint, in the manner described herein, will ensure the most efficient use of the parties’ and the Commission’s resources without materially prejudicing either party.

I. BACKGROUND

2. On February 21, 2003, pursuant to Section 255 of the Act and the Commission’s implementing rules and orders,³ Dr. Bonnie O’Day (“O’Day”) filed a formal complaint against defendant

¹ See Notice of Settlement and Joint Motion to Dismiss Formal Complaint with Prejudice, File No. EB-03-TC-F-004, filed Aug 27, 2004.

² See 47 U.S.C. § 255. Section 255 provides, in pertinent part, that providers of telecommunications services, as well as manufacturers of telecommunications equipment or customer premises equipment, must make their products and services “accessible” to and usable by individuals with disabilities, if “readily achievable.”

³ Sections 6.1 – 7.23 of the Commission’s rules, 47 C.F.R. §§ 6.1 – 7.23, implement Section 255. See also *Implementation of Sections 255 and 251(a)(2) of the Communications Act, Access to Telecommunications Service*,

Verizon Wireless.⁴ In her complaint, O'Day contends that Verizon Wireless violated Section 255 of the Act by, among other things, failing to make features of its wireless products and services accessible to O'Day, a visually-impaired user. O'Day requests that the Commission require Verizon Wireless to make its wireless products and services accessible to the blind and visually-impaired users.⁵

3. On June 12, 2003, as proposed by O'Day in the companion proceeding,⁶ the Commission held a technical conference, at which the parties, together with their engineers, technical experts, and legal personnel, discussed accessibility issues at length. Commission staff facilitated the discussion and encouraged participants to discuss potential settlement opportunities.

4. Since the technical conference, O'Day and Verizon Wireless have engaged in extensive settlement discussions, with assistance from Commission staff, to resolve the disputed issues raised in O'Day's formal complaint. As a result of these discussions, the parties recently executed a settlement agreement and filed the above-referenced Joint Motion for dismissal of O'Day's formal complaint against Verizon Wireless.

II. DISCUSSION AND ORDERING CLAUSES

5. The Commission has broad discretion to conduct complaint proceedings "in such manner as will best conduce to the proper dispatch of business and to the ends of justice."⁷ Although the Commission does not have a specific rule relating to the dismissal of formal complaints, we generally follow the well-established principle that dismissal should be allowed unless it will materially prejudice either party.⁸

6. Under the circumstances of this case, dismissing the complaint with prejudice is appropriate and does not materially prejudice either O'Day or Verizon Wireless. Dismissal is in the public interest because it ensures the efficient use of the Commission's formal complaint process and eliminates the need for further litigation and expenditure of additional time and resources of the parties and the Commission. Hence, we find that the parties have shown good cause for us to dismiss O'Day's formal complaint with prejudice.

Telecommunications *Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order, 16 FCC Rcd 6417 (1999) ("*Section 255 Order*"). In the *Section 255 Order*, the Commission noted that "[p]rompt and efficient enforcement of Section 255 and the rules adopted in this Order is a crucial component of successful implementation of the accessibility requirements" *Section 255 Order*, 15 FCC Rcd at 6441.

⁴ O'Day's formal complaint was supported by the American Council for the Blind, a national advocacy organization for blind and visually-impaired persons. At the same time, O'Day filed a similar formal complaint against Audiovox Communications Corp., File No. EB-03-TC-F-004. This Order deals only with O'Day's formal complaint against Verizon Wireless.

⁵ See O'Day Formal Complaint, File No. EB-03-TC-F-001, filed Feb. 21, 2003.

⁶ See O'Day Reply of Complainant to Defendant's Answer to Complaint, File No. EB-03-TC-F-004, filed April 18, 2003.

⁷ 47 U.S.C. § 4(j); see also *id.* 4(i).

⁸ See Wright & Miller, *Federal Practice & Procedure: Civil 2d* § 2364.

7. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 208, section 1.727 of the Commission's rules, 47 C.F.R. § 1.727, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the Joint Motion to Dismiss Formal Complaint with Prejudice filed by the parties to this proceeding IS GRANTED.

8. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 208, section 1.727 of the Commission's rules, 47 C.F.R. § 1.727, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that O'Day's formal complaint is hereby DISMISSED WITH PREJUDICE and that the above-captioned formal complaint proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Kurt A. Schroeder
Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau