

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

In the Matter of)	File No.: EB-08-SE-546
)	
Cellco Partnership dba Verizon Wireless)	Acct. No.: 201232100022
)	
)	FRN: 0018506568

ORDER

Adopted: March 13, 2012

Released: March 14, 2012

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission and Cellco Partnership dba Verizon Wireless (Verizon Wireless). The Consent Decree resolves and terminates the Bureau's investigation into Verizon Wireless's compliance with the Commission's regulations in 47 C.F.R. Part 4 regarding the reporting of network outages.

2. The Bureau and Verizon Wireless have negotiated a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Verizon Wireless possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act,¹ and Sections 0.111 and 0.311 of the Rules,² the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 154(i).

² 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Mr. John T. Scott, III, Vice President and Deputy General Counsel, Verizon, Legal & External Affairs Department, 1300 I Street NW Suite 400-W, Washington, DC 20005 and to counsel for Verizon Wireless, David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, 2300 N Street, NW Suite 700, Washington, DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Cellco Partnership, dba Verizon Wireless, by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Cellco Partnership, dba Verizon Wireless violated Section 4.9(e) of the Commission's rules regarding the reporting of network outages.¹

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Communications Laws" means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Verizon Wireless is subject by virtue of its business activities, including but not limited to, the outage reporting requirements under Section 4.9 of the Commission's rules.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Compliance Plan" means the compliance obligations and compliance program described in this Consent Decree at Paragraph 8.
 - (g) "Effective Date" means the date on which the Bureau releases the Adopting Order.
 - (h) "Investigation" means the investigation covered by the Bureau's letters of inquiry dated June 24, 2008, September 24, 2008, December 29, 2008, April

¹ 47 C.F.R. § 4.9(e).

22, 2009, July 16, 2009, and October 20, 2009, regarding whether Verizon Wireless violated Section 4.9(e) of the Rules regarding the reporting of network outages.

- (i) “Parties” means Verizon Wireless and the Bureau, and each is a “Party.”
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (k) “Verizon Wireless” or “Company” means Cellco Partnership, dba Verizon Wireless and its subsidiaries offering commercial mobile radio service.

II. BACKGROUND

2. Pursuant to Section 4.9(e) of the Rules,² a wireless communications provider is required to submit to the Commission an electronic Notification within 120 minutes after discovering that it has experienced, on any facilities that it owns, operates, leases or otherwise utilizes, a network outage of at least 30 minutes duration that: (1) potentially affects at least 900,000 user minutes of either telephony or paging; (2) affects at least 1,350 DS3 minutes; (3) potentially affects any special offices or facilities, as defined in Section 4.5(b) of the Rules;³ or (4) potentially affects a 911 special facility, as defined by Section 4.5(e) Rules.⁴ Within 72 hours after discovering such an outage, a wireless communications provider is required to submit electronically an Initial Communications Outage Report, and within 30 days after discovering such an outage, a wireless communications provider is required to submit electronically a Final Communications Outage Report.⁵

3. On June 24, 2008, the Bureau issued a letter of inquiry to Verizon Wireless.⁶ The June 24, 2008 LOI directed Verizon Wireless to submit a sworn written response to a series of questions relating to Verizon Wireless’s compliance with the Commission’s network outage reporting rules. Verizon Wireless responded to the LOI on July 24, 2008.⁷ The Bureau issued a number of follow-up letters of inquiry to Verizon Wireless, the latest of which was issued October 20, 2009.⁸ Verizon

² 47 C.F.R. § 4.9(e).

³ 47 C.F.R. § 4.5(b).

⁴ 47 C.F.R. § 4.5(e).

⁵ 47 C.F.R. § 4.9(e).

⁶ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to John T. Scott, III, Vice President and Deputy General Counsel – Regulatory Law, Verizon Wireless (June 24, 2008) (“LOI”).

⁷ See Letter from John T. Scott, III, Vice President and Deputy General Counsel – Regulatory Law, Verizon Wireless, to Kathryn S. Berthot, Chief, Spectrum, Enforcement Bureau, Federal Communications Commission (July 24, 2008).

⁸ See Letters from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to John T. Scott, III, Vice President and Deputy General Counsel – Regulatory Law, Verizon Wireless (September 24, 2008, December 28, 2008, April 22, 2009, July 16, 2009, and October 20, 2009) (“Follow-up LOIs”).

Wireless responded to each of the Follow-up LOIs, most recently on November 16, 2009.⁹ The Bureau and Verizon Wireless executed tolling agreements to toll the statute of limitations.¹⁰

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** Verizon Wireless agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon release and provided that the Consent Decree is not rendered invalid by the Commission, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Verizon Wireless agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Verizon Wireless concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Verizon Wireless with respect to Verizon Wireless's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Verizon Wireless agrees to implement within thirty (30) calendar days after the Effective Date a Compliance Plan relating to Verizon Wireless's future compliance with those portions of the Act, the Commission's Rules, and the Commission's Orders related to the Commission's network outage reporting requirements; represents that it has one or more management employees in each of its business units who has responsibility for compliance with each of the Communications Laws that are relevant to its operations, that there are at least 20 such management employees, and that, collectively, these management employees exercise responsibility for the Company's compliance with all of the Communications Laws that are relevant to the operations of the Company. The Company agrees that it will either maintain this compliance structure, or, if it makes changes, shall ensure that it maintains equivalent management oversight over

⁹ See Letters from John T. Scott, III, Vice President and Deputy General Counsel – Regulatory Law, Verizon Wireless, to Kathryn S. Berthot, Chief, Spectrum, Enforcement Bureau, Federal Communications Commission (October 14, 2008, January 12, 2009, May 15, 2009, August 17, 2009, and November 16, 2009).

¹⁰ See, e.g., Tolling Agreement Extension, File No. EB-08-SE-546, executed by and between John D. Poutasse, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and David H. Solomon, Counsel for Verizon Wireless (Feb. 8, 2012).

compliance with all Communications Laws that are applicable to the operations of the Company. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Officer.** Within thirty (30) calendar days of the Effective Date, Verizon Wireless shall designate a senior corporate manager to serve as the Compliance Officer for FCC network outage reporting, who will be responsible for implementing and administering Verizon Wireless's Compliance Plan.
- (b) **Compliance Training Program.** Verizon Wireless shall establish and maintain an FCC outage reporting training program addressing FCC network outage reporting requirements, as detailed below, for all employees and agents of Verizon Wireless who are responsible for analyzing technical information regarding Verizon Wireless's network outages, entering such information into any Verizon Wireless database(s) and/or record(s) that form the basis of Verizon Wireless's reporting of network outages to the Commission, and compiling and/or submitting Verizon Wireless's outage reports to the Commission (each employee or agent of Verizon Wireless who performs any of the foregoing duties shall be referred to herein as a "Covered Employee").
 - i. Verizon Wireless's network outage training program shall address, at a minimum, the following subjects in order to facilitate compliance with the FCC's network outage reporting Rules: (A) the Rules governing the reporting of network outages; (B) the information and calculations required by the Rules or otherwise necessary to determine whether an outage is reportable under the Rules; (C) the time periods within which notifications and reports of reportable outages must be submitted to the FCC; and (D) the standard internal operating procedures adopted by Verizon Wireless to identify and report those network outages that satisfy the FCC's reporting criteria ("Operating Procedures"). Verizon Wireless shall ensure such Operating Procedures are in effect before beginning to administer the training required by this paragraph, and these Operating Procedures must ensure that network operations center ("NOC") personnel are available or accessible at all times to receive, review, and promptly act upon, if necessary, communications to the NOC containing information or analyses relevant to a determination of whether a particular outage is reportable.
 - ii. Verizon Wireless shall prepare and provide to all Covered Employees a Verizon Wireless network outage internal on-line training course that summarizes each of the subjects addressed above. After completion of the training, Covered Employees will have the ability to access the network outage internal online training course on demand for reference purposes. Covered Employees also shall be advised of the regulatory consequences in the event that Verizon Wireless fails to comply with the FCC's outage reporting requirements.
 - iii. Covered Employees as of the Effective Date shall complete the network outage training program within sixty (60) calendar days of the Effective Date. New or re-assigned employees of Verizon Wireless who become Covered Employees thirty (30) days or more after the Effective Date shall complete the Compliance Training Program within thirty (30) calendar days of the date of their employment or re-assignment.
 - iv. Verizon Wireless shall repeat such training annually, and shall take such steps as are reasonable, necessary and appropriate to update and enhance the network outage internal on-line training course to ensure that it is accurate and complete.

- (c) **Outage Reporting.** Beginning sixty (60) calendar days after the Effective Date and thereafter, Verizon Wireless shall include in any NORS report filed with the Commission the date and time that Verizon Wireless discovered the outage was reportable using the following two separate fields: (1) Date Outage Determined Reportable and (2) Local Time Outage Determined Reportable (24 hr clock (nnnn)).
- (d) **Compliance Reports.** Verizon Wireless shall file Compliance Reports with the Bureau six (6) months after the Effective Date, twelve (12) months after the Effective Date and twenty-four (24) months after the Effective Date.
- i. Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Verizon Wireless, stating that the Compliance Officer has personal knowledge that Verizon Wireless (A) has established and implemented the Compliance Plan; (B) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (C) is not aware of any instances of non-compliance with the terms and conditions of this Consent Decree.
 - ii. The certification shall be accompanied by a statement explaining the basis for the Compliance Officer's certification and must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
 - iii. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Verizon Wireless, shall provide the Commission with a detailed explanation of (A) each instance of non-compliance; (B) the steps that Verizon Wireless has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (C) the steps that Verizon Wireless has taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
 - iv. All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, and Linda Nagel at Linda.Nagel@fcc.gov.
- (e) **Progress Assessment.** Beginning on the Effective Date, Verizon Wireless shall, at the request of the Bureau, meet with the Bureau once each 60-day period during the term of the Compliance Plan to discuss Verizon Wireless's adherence to the Compliance Plan and its performance under the Part 4 Rules. Verizon Wireless agrees to provide the Bureau with information the Bureau requests concerning these topics.
- (f) **Termination.** The provisions of this paragraph shall remain in effect for two (2) years from the Effective Date.

9. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against Verizon Wireless or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's

adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Verizon Wireless with the Act, the Rules, or Commission Orders.

10. **Voluntary Contribution.** Verizon Wireless agrees that it will make a voluntary contribution to the United States Treasury in the amount of one hundred and ten thousand dollars (\$110,000). The contribution will be made within thirty (30) days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Verizon Wireless will also send electronic notification on the date said payment is made to JoAnn.Lucanik@fcc.gov, Linda.Nagel@fcc.gov, and Sam.Peoples@fcc.gov.

11. **Waivers.** Verizon Wireless waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. Verizon Wireless shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Verizon Wireless nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Verizon Wireless shall waive any statutory right to a trial *de novo*. Verizon Wireless hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

12. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

13. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Verizon Wireless does not expressly consent), that provision will be superseded by such Commission Rule or order.

14. **Successors and Assigns.** Verizon Wireless agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

15. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

16. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

17. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

18. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

19. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

John T. Scott, III
Vice President and Deputy General Counsel
Verizon

Date