

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Washington, DC**

**CELLCO PARTNERSHIP d/b/a  
VERIZON WIRELESS**

**and**

**Cases 21-CA-075867  
21-CA-098442**

**COMMUNICATIONS WORKERS OF  
AMERICA DISTRICT 9, AFL-CIO;  
COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO  
AIRTOUCH CELLULAR**

**and**

**Case 21-CA-115223**

**COMMUNICATIONS WORKERS OF  
AMERICA DISTRICT 9, AFL-CIO;  
COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO**

**GENERAL COUNSEL'S RESPONSE  
TO NOTICE TO SHOW CAUSE**

Counsel for the General Counsel files this response to the Notice to Show Cause that issued on May 15, 2020 seeking a position on why the complaint allegations involving the maintenance of allegedly unlawful work rules involving Sections 1.6 and 3.4.1 of Respondents' Code of Conduct should not be remanded to the administrative law judge for further proceedings as a result of the Board's decision in *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino*, 368 NLRB No. 143 (2019), including reopening the record, if necessary.

In *Purple Communications, Inc.*, 361 NLRB 1050 (2014), the Board held that employees, who have the rightful access to their employer's email systems for work, will have the right to use that same email system during nonworking time for communications protected by Section 7.

An employer may rebut the presumption by showing that special circumstances necessary to maintain production and discipline justify the restrictions on employees' rights. Recently, in *Caesars Entertainment, supra*, the Board overruled its decision in *Purple Communications*, and held that "an employer does not violate the Act by restricting the nonbusiness use of its IT resources *absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other.*" *Id.*, slip op. at 8 (emphasis added).

Since the parties to this proceeding have not had an opportunity to address the applicability of the *Caesars Entertainment* exception to the facts of this case, in the Notice to Show Cause the Board has asked the parties' position on remanding the aforementioned work rules to the administrative law judge for further processing in light of *Caesars Entertainment*.

Counsel for the General Counsel is of the view that the allegations involving 1.6 Solicitation and Fundraising (alleged at paragraph 5(a) of the Complaint) and Section 3.4.1 Prohibited Activities (alleged at paragraph 6(c) of the Complaint) should be remanded to the administrative law judge for further processing in light of *Caesars Entertainment*.<sup>1</sup>

Respectfully submitted

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Lisa E. McNeill  
Counsel for the General Counsel  
National Labor Relations Board, Region 21

Dated at Los Angeles, California this 29<sup>th</sup> day of May 2020.

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<sup>1</sup> The Notice to Show Cause also seeks a response regarding whether a remand on these complaint paragraphs are appropriate in light of *The Boeing Co.*, 365 NLRB No. 154 (2017). In *Boeing*, the Board determined whether legitimate employer interests associated with a rule would outweigh any interference with protected rights. As a result, *Boeing* does not apply here because the Board in *Caesars Entertainment* decided that an employer does not violate the Act by restricting use of its IT resources unless employees would otherwise be deprived of any reasonable means of communicating with each other.

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**AFFIDAVIT OF SERVICE OF GENERAL COUNSEL'S RESPONSE TO NOTICE TO SHOW CAUSE**

I hereby certify that a copy of the above-entitled document(s) has been submitted by E-filing to the Executive Secretary of the National Labor Relations Board, on May 29, 2020, and that each party was served with a copy of the same document addressed to them as indicated below:

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\_\_\_\_\_  
May 29, 2020

Date

\_\_\_\_\_  
Mara Estudillo Designated Agent of NLRB

Name

\_\_\_\_\_  
/s/ Mara Estudillo

Signature