

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CELLCO PARTNERSHIP d/b/a  
VERIZON WIRELESS

and

SARA PARRISH, an Individual

Case No. 28-CA-145221

**CELLCO PARTNERSHIP’S MOTION FOR REPLY AND REPLY  
INSTANTER IN SUPPORT OF THE COMPANY’S  
RESPONSE TO THE BOARD’S NOTICE TO SHOW CAUSE**

Cellco Partnership respectfully requests that the Board permit it a brief reply to the Charging Party’s respective response to the Board’s Notice to Show Cause, and in support of the Company’s position that the Board should retain jurisdiction over the allegations in this case pertaining to Sections 1.6 or 3.4.1. The reply will assist the full and fair consideration of this matter.

As Cellco Partnership demonstrated in its response to the Board’s May 18, 2020 Notice to Show Cause, remand of the allegations pertaining to Code of Conduct Sections 1.6 and 3.4.1 is unwarranted unless a party: (a) states an intent to argue that the rules are subject to the “rare” exception to the *Register Guard* rule, and (b) makes a substantial proffer suggesting that such an argument would not be a futility. Charging Party Sara Parrish<sup>1</sup> did not do this. Rather, in her response, Parrish indicated that she hopes to raise arguments inapposite to *Register Guard/Caesars*.

Parrish first stated that, if this case is remanded, she will seek “the recusal of all Board members.” Response to Notice to Show Cause at 1. She identifies no possible basis for recusal

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<sup>1</sup> The General Counsel did not do so either – he did not file a response to the Notice to Show cause at all.

of Chairman Ring and Member Kaplan, as there is none. With respect to Member Emanuel, Parrish states that “his firm continues to represent Purple Communications and related litigation.” *Id.* That, even if true, is an irrelevancy. Purple Communications is not a party to this case. And Littler Mendelson – the law firm of which Member Emanuel was part between 2004 and 2017 – is not a party and does not represent any party to this litigation. *See Caesars Entertainment Corp.*, 368 NLRB No. 143, at \*3 n. 11 (2019).

Next, Parrish states that she will raise various arguments under “the *Boeing* standard.” Response to Notice to Show Cause at 1. In their relevant parts, however, Sections 1.6 and 3.4.1 address employee use of Cellco’s email system. As such, and as Cellco demonstrated in its response, questions regarding them are controlled by the *Register Guard/Caesars* standards. *See Caesars Entertainment*, 368 NLRB No. 143, at \*1 (“return[ing] to the standard announced in *Register Guard*,” under which employees have “no statutory right to use employer equipment, including IT resources”). In *Boeing*, by contrast, the Board established standards for assessing claims that facially neutral work rules interfere with protected rights. *See Boeing Co.*, 365 NLRB No. 154, at \*3 (2017). In matters (such as access to employer IT systems) where employees do not have protected rights in the first instance, then, *Boeing* is inapplicable.

Furthermore, the specific *Boeing* arguments that Parrish hopes to raise are particularly groundless in light of *Register Guard* and *Caesars*. For example, Parrish contends that there is “no business justification” for Sections 1.6 and 3.4.1 Parish Br. at 1-2; *see also id.* at 2 (“If the rule were to prohibit solicitation to support trump and his cronies, that would have a legitimate business justification. But the rule isn’t that narrow.”). But in *Register Guard* and *Caesars*, the Board recognized the multiple sound business reasons that employers limit non-business use of their IT systems. *See Caesars*, 368 NLRB No. 143, at \*3, n.32 (noting that such limitations

protect productivity and the integrity of IT system”); *Register Guard*, 351 NLRB at 1114 (noting employers’ “legitimate business interest in maintaining the efficient operation of [their] e-mail system” and “valid concerns about such issues as preserving server space, protecting against computer viruses and dissemination of confidential information, and avoiding company liability for employees’ inappropriate e-mails”).

Similarly, Parrish contends that Sections 1.6 and 3.4.1 are unlawful because Cellco permits employees to use its email system “for very important business purposes.” Response to Notice to Show Cause at 2-3 (noting that employees use email to “distribute business-related material” and “information about products and services all the time”). But so what? Cellco maintains its IT systems to facilitate its business, and *Register Guard* and *Caesars* foreclose any claim that employees have a presumptive Section 7 right to use IT systems for non-business uses. *Caesars*, 368 NLRB No. 143, at \*1.<sup>2</sup>

### **CONCLUSION**

Parrish’s Response to the Board’s Notice To Show Cause only underscores that fact that remand of the allegations related to Sections 1.6 and 3.4.1 would be a misuse of the Agency’s and the Parties’ resources. For the reasons stated here and in Cellco’s June 1, 2020 Response, the Board should not remand the complaint allegations related to Sections 1.6 and 3.4.1 to an Administrative Law Judge. It should retain those allegations and dismiss them.

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<sup>2</sup> To the extent that Parrish intends to rehash her claims that this case should have been tried on a discrimination theory, she will again fail. The General Counsel’s Complaint alleges only maintenance claims, not as-applied claims, and Parrish has no right to expand the General Counsel’s theory by adding discrimination claims not alleged in the complaint. *See, e.g., Zurn/N.E.P.C.O.*, 329 NLRB 484, 486 (1999) (providing that a charging party may not “enlarge upon or change the General Counsel’s theory of the case”); *see also Roadway Express, Inc.*, 355 NLRB 197, 201 n.16 (2010).

Dated: June 4, 2020

Respectfully submitted,

*/s/ E. Michael Rossman*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 4<sup>th</sup> day of June, 2020, I electronically filed the foregoing document with the National Labor Relations Board. In addition, a copy of the document was sent via email and to the following:

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