IN THE UNITED STATES COURT OF APPEALS
FOR THE DISCTICT OF COLUMBIA CIRCUIT

MOZILLA CORPORATION, et al.,

Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION and UNITED STATES OF
AMERICA,

Respondents.

Case No. 18-1051 (Lead)

Consolidated with Nos. 10-1052, 18-1053, 18-1054, 18-1055, 18-1056, 18-1061, 18-1062, 18-1064, 18-1065, 18-1066, 18-1067, 18-1068, 18-1088, 18-1089, 18-1105

DECLARATION OF FIRE CHIEF ANTHONY BOWDEN

I, Anthony Bowden, declare:

1.   I make this declaration in support of the Brief of the County of Santa Clara ("County") in the matter referenced above. I know the facts herein of my own personal knowledge and if called upon to do so, I could competently testify to them under oath.

2.   I was recently appointed the Fire Chief for the Santa Clara County Central Fire Protection District ("County Fire"). As Fire Chief, I also serve as Fire Marshal for Santa Clara County and as the California Office of Emergency Services (OES) Operational Area Fire and Rescue Coordinator. In these roles, I am responsible for the coordination of mutual aid resources in Santa Clara County. This includes the coordination of all fire resources to significant events, such as wildfires, throughout the State, when those resources are requested from Santa Clara County's operational area. I have worked in fire protection for more than two decades, and in that time, I have held every rank at County Fire.

ADD1

3.   Established in 1947, County Fire provides fire services for Santa Clara County and the County's communities of Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, and Saratoga. The department also provides protection for the unincorporated areas adjacent to those cities. Wrapping in an approximately 20-mile arc around the southern end of Silicon Valley, County Fire has grown to include 15 fire stations, an administrative headquarters, a maintenance facility, and several other support facilities, and covers 128.3 square miles. The department employs almost three hundred fire prevention, suppression, investigation, administration, and maintenance personnel; daily emergency response consists of more than sixty employees. County Fire also contributes resources to all-hazard response outside Santa Clara County and around the state. For example, County Fire has deployed equipment and personnel in response to the ongoing Mendocino Complex Fire, the largest fire in California's history.

4.   County Fire relies upon Internet-based systems to provide crucial and time-sensitive public safety services. The Internet has become an essential tool in providing fire and emergency response, particularly for events like large fires which require the rapid deployment and organization of thousands of personnel and hundreds of fire engines, aircraft, and bulldozers. During these events, resources are marshaled from across the state and country—in some cases, even from other countries. In these situations, a key responsibility of emergency responders, and of County Fire in particular, is tracking those resources and ensuring they get to the right place as quickly and safely as possible. County Fire, like virtually all other emergency responders, relies heavily on the Internet to do both of these things.

5.   As I explain below, County Fire has experienced throttling by its ISP, Verizon. This throttling has had a significant impact on our ability to provide emergency services. Verizon imposed these limitations despite being informed that throttling was actively impeding County Fire's ability to provide crisis-response and essential emergency services.

6.   Only a few weeks ago, County Fire deployed OES Incident Support Unit 5262 ("OES 5262"), to the Mendocino Complex Fire, now the largest fire in state history. OES 5262

ADD2

is deployed to large incidents as a command and control resource. Its primary function is to track, organize, and prioritize routing of resources from around the state and country to the sites where they are most needed. OES 5262 relies heavily on the use of specialized software and Google Sheets to do near-real-time resource tracking through the use of cloud computing over the Internet.

7.   Resources tracked across such a large event include personnel and equipment supplied from local governments across California; the State of California; federal agencies including the Department of Defense, the Bureau of Land Management, the U.S. Forest Service; and other countries. As of Monday, August 13, 2018, the response effort for the wildfires burning across California included 13,000 firefighters, multiple aircraft, dozens or hundreds of bulldozers, and hundreds of fire engines. The wildfires have resulted in over 726,000 acres burned and roughly 2,000 structures destroyed. With several months left in what is a "normal" fire season, we fully expect these numbers to rise.

8.   OES 5262 also coordinates all local government resources deployed to the Mendocino Complex Fire. That is, the unit facilitates resource check-in and routing for local government resources. In doing so, the unit typically exchanges 5-10 gigabytes of data per day via the Internet using a mobile router and wireless connection. Near-real-time information exchange is vital to proper function. In large and complex fires, resource allocation requires immediate information. Dated or stale information regarding the availability or need for resources can slow response times and render them far less effective. Resources could be deployed to the wrong fire, the wrong part of a fire, or fail to be deployed at all. Even small delays in response translate into devastating effects, including loss of property, and, in some cases, loss of life.

9.   In the midst of our response to the Mendocino Complex Fire, County Fire discovered the data connection for OES 5262 was being throttled by Verizon, and data rates had been reduced to 1/200, or less, than the previous speeds. These reduced speeds severely interfered with the OES 5262's ability to function effectively. My Information Technology staff

ADD3

communicated directly with Verizon via email about the throttling, requesting it be immediately lifted for public safety purposes. That email exchange is attached here as Exhibit A. We explained the importance of OES 5262 and its role in providing for public and first-responder safety and requested immediate removal of the throttling. Verizon representatives confirmed the throttling, but, rather than restoring us to an essential data transfer speed, they indicated that County Fire would have to switch to a new data plan at more than twice the cost, and they would only remove throttling after we contacted the Department that handles billing and switched to the new data plan.

10.   In the interim, County Fire personnel in were forced to use other agencies' Internet Service Providers and their own personal devices to provide the necessary connectivity and data transfer capability required by OES 5262. While Verizon ultimately did lift the throttling, it was only after County Fire subscribed to a new, more expensive plan.

11.   In light of our experience, County Fire believes it is likely that Verizon will continue to use the exigent nature of public safety emergencies and catastrophic events to coerce public agencies into higher cost plans ultimately paying significantly more for mission critical service—even if that means risking harm to public safety during negotiations.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 17, 2018 at San José, California.

_____
Anthony Bowden

1825293

ADD4

EXHIBIT A

Zimbra   **daniel.farrelly@sccfd.org**

Re: [E] Verizon Account for OES 5262

From : Silas Buss <silas.buss@verizonwireless.com>   Mon, Jul 30, 2018 01:50 PM

Subject : Re: [E] Verizon Account for OES 5262   📎1 attachment

To : daniel farrelly <daniel.farrelly@sccfd.org>

Hi Dan,

Just left you a message. The below plans are what I would suggest - it's $99.99 for the first
20GB and $8/GB thereafter. To get the plan changed immediately, I would suggest calling in
the plan change to our customer service team at 800-922-0204. Let me know if you have any
questions - I'll be available by phone for at least the next hour or so.

Public Sector Mobile Broadband Share Plans: Government Subscribers Only

The calling plans below reflect the monthly access fee discount. No additional discounts apply.

Public Sector Mobile Broadband	5 Gigabytes	10 Gigabytes	20 Gigabytes
Monthly Access Fee	$39.99 (90239)	$59.99 (90240)	$99.99 (90241)
Shared Domestic Data Allowance	5GB	10GB	20GB
Overage Per Gigabyte		$8.00 Per Gigabyte	

Note: This plan is available for domestic data only devices, on the Verizon Wireless network only. **Data Sharing:** At the end of each bill cycle, any unused data allowances for lines sharing on the same account will be applied to the overages of the other lines on the same account beginning with the line with the lowest overage need. Plan changes may not take effect until the billing cycle following the change request. Current NationalAccess and Mobile Broadband coverage details can be found at www.verizonwireless.com. New activations on these service plans require 4G LTE devices. Existing customers transitioning to one of these service plans are able to utilize existing 3G devices. The 5GB, 10GB, and 20GB Public Sector Mobile Broadband Plans are able to share with each other.

Silas Buss
Major Accounts Manager - Govt.
201 Spear St. Suite 700 San Francisco, CA 94105

M 408.204.6611 | silas.buss@verizonwireless.com

verizon✓

On Mon, Jul 30, 2018 at 10:00 AM Daniel Farrelly <daniel.farrelly@sccfd.org> wrote:

> Silas,
>
> Please work with us. All we need is a plan that does not offer throttling or caps of any kind.
>
> Dan
>
> ---
>
> **From:** "Daniel Farrelly" <daniel.farrelly@sccfd.org>
> **To:** "Silas Buss" <silas.buss@verizonwireless.com>
> **Cc:** "tony bowden" <tony.bowden@sccfd.org>, "Justin Stockman" <justin.stockman@sccfd.org>,
> "Todd Garde" <todd.garde@sccfd.org>, "Garrett Chan" <garrett.chan@verizonwireless.com>
> **Sent:** Sunday, July 29, 2018 9:38:28 PM
> **Subject:** Re: [E] Verizon Account for OES 5262
>
> Silas,
>
> Remove any data throttling on OES5262 effective immediately.

ADD6

Santa Clara County Fire Department

Daniel Farrelly - Acting IT Officer
o: 408.341.4468 | c: 408.966.6156
e: daniel.farrelly@sccfd.org

From: "Justin Stockman" <justin.stockman@sccfd.org>
To: "Silas Buss" <silas.buss@verizonwireless.com>
Cc: "daniel farrelly" <daniel.farrelly@sccfd.org>, "tony bowden" <tony.bowden@sccfd.org>, "Todd Garde" <todd.garde@sccfd.org>, "Garrett Chan" <garrett.chan@verizonwireless.com>
Sent: Sunday, July 29, 2018 8:32:50 PM
Subject: Re: [E] Verizon Account for OES 5262

Chief Bowden,

I just wanted to provide an update to those who were involved in this originally. OES 5262 is deployed again, now to the Mendocino Complex (CA-MEU-008674), and is still experiencing the same throttling. As I understood it from our previous exchange regarding this device, the billing cycle was set to end 7/23, which should have alleviated the throttling. In a side by side comparison, a crew members personal phone using verizon was seeing speeds of 20Mbps/7Mbps. The department verizon device is experiencing speeds of 0.2Mbps/0.6Mbps, meaning it has no meaningful functionality.

I've sent an email to Dan trying to identify a rapid solution for OES 5262.

Thank you,

Justin Stockman
Fire Captain
B Shift Relief
650-465-2485
Justin.Stockman@sccfd.org

From: "Silas Buss" <silas.buss@verizonwireless.com>
To: "daniel farrelly" <daniel.farrelly@sccfd.org>
Cc: "tony bowden" <tony.bowden@sccfd.org>, "steve prziborowski" <steve.prziborowski@sccfd.org>, "FRED SCHULENBURG" <fred.schulenburg@sccfd.org>, "tamera haas" <tamera.haas@sccfd.org>, "Justin Stockman" <justin.stockman@sccfd.org>, "Todd Garde" <todd.garde@sccfd.org>, "Dave Morrisey" <dave.morrisey@sccfd.org>, "Maggie Eddy" <maggie.eddy@sccfd.org>, "Garrett Chan" <garrett.chan@verizonwireless.com>
Sent: Monday, July 9, 2018 1:38:10 PM
Subject: Re: [E] Verizon Account for OES 5262

Hi Dan,

ADD7

I'll give the short response below to some of your questions, but I would certainly suggest we follow-up with a call to discuss in greater detail. Here's my availability this week: **Tues: 1PM, Weds 3PM, Thurs 9AM-11:30AM**

In short, Verizon has always reserved the right to limit data throughput on unlimited plans. All unlimited data plans offered by Verizon have some sort of data throttling built-in, including the $39.99 plan. Verizon does offer plans with no data throughput limitations; these plans require that the customer pay by the GB for use beyond a certain set allotment. Attached is the list of public sector plans, see pgs. 10-18 for data plans. Also attached is the State of CA plans which offers the $37.99 unlimited data plan (pg. 1). We can talk about these plans to find the solution that best fits the needs of your department.

To my knowledge, there have not been any large scale changes to the price plans for the fleet as requested by SCC Fire. As I recall, there were some plan changes made on about 10 of the 400 or so mobile broadband lines from the $39.99 plan to the $37.99 - this was back in January or February. I'd just like to point out that Verizon will never change plans/service without advance customer consent and/or notice. If you'd like to know what those changes were, we can reach out to Asa Pierce, your account advisor, to see what was done at the time.

Service will not disconnect on the unlimited plans after 25GB of use. Depending on which plan is active, after 25GB of use, the data throughput is limited to 200Kbps or 600Kbps.

Silas Buss
Major Accounts Manager - Govt.
201 Spear St. Suite 700 San Francisco, CA 94105
M 408.204.6611 | silas.buss@verizonwireless.com

verizon✓

On Fri, Jul 6, 2018 at 11:54 AM Daniel Farrelly <daniel.farrelly@sccfd.org> wrote:
> Silas,
>
> Can confirm that after using 25GB of data, our service drops to zero. This is unacceptable and needs to be fixed. Let me know when you are available.
>
> Dan

From: "Daniel Farrelly" <daniel.farrelly@sccfd.org>
To: "Silas Buss" <silas.buss@verizonwireless.com>
Cc: "tony bowden" <tony.bowden@sccfd.org>, "steve prziborowski" <steve.prziborowski@sccfd.org>, "FRED SCHULENBURG" <fred.schulenburg@sccfd.org>, "tamera haas" <tamera.haas@sccfd.org>, "justin stockman" <justin.stockman@sccfd.org>, "todd garde" <todd.garde@sccfd.org>, "dave morrisey" <dave.morrisey@sccfd.org>, "Maggie Eddy" <maggie.eddy@sccfd.org>, "Garrett Chan" <garrett.chan@verizonwireless.com>
Sent: Thursday, July 5, 2018 10:23:47 AM
Subject: Re: [E] Verizon Account for OES 5262

Silas,

I am back at County Fire full-time and would like to discuss the plans we have with Verizon.

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As far as I know all our data plans were originally signed up for a $39.99 plan which offered no data caps or throttling...

However, when I look up the same device on the Verizon portal, there seems to be a 25GB limitation...

I am assuming this is what Justin ran into on OES 5262. Yes, there may be unlimited data, but after 25GB speeds throttle down.

My major concern is that there may have been changes to the data plans we use for public safety, and that these changes might start adversely affecting our fleet. As I mentioned earlier, none of our devices should have any sort of data caps or throttling. Also, speed is essential for the services we utilize. Moving OES 5262 to a $34.99 plan offering 600Kbps is not an adequate solution for devices that require 4G access to data.

With that said, please provide a list of all applicable public safety plans that provide 4G data without any caps or data throttling limitations. Our goal is to have all our devices on one plan that offers both unlimited use and unlimited bandwidth and no data throughput limitations.

If you would like talk direct, feel free to contact me at any time,

Santa Clara County Fire Department
—
Daniel Farrelly - Systems Analyst
o: 408.341.4468 | c: 408.966.6156
e: daniel.farrelly@sccfd.org

From: "Silas Buss" <silas.buss@verizonwireless.com>
To: "steve prziborowski" <steve.prziborowski@sccfd.org>
Cc: "Garrett Chan" <garrett.chan@verizonwireless.com>, "justin stockman" <justin.stockman@sccfd.org>, "todd garde" <todd.garde@sccfd.org>, "dave morrisey" <dave.morrisey@sccfd.org>, "tony bowden" <tony.bowden@sccfd.org>, "Maggie Eddy" <maggie.eddy@sccfd.org>, "daniel farrelly" <daniel.farrelly@sccfd.org>, "FRED SCHULENBURG" <fred.schulenburg@sccfd.org>, "tamera haas" <tamera.haas@sccfd.org>
Sent: Friday, June 29, 2018 2:17:56 PM
Subject: Re: [E] Verizon Account for OES 5262

Hello Steve,

As Garrett mentioned, we have a call set at 2:30 to discuss, I hope you'll join.

The short of it is, public safety customers have access to plans that do not have data throughput limitations. However, the current plan set for all of SCCFD's lines does have data throttling limitations. We will need to talk about making some plan changes to all lines or a selection of lines to address the data throttling limitation of the current plan.

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On Fri, Jun 29, 2018 at 1:31 PM Steve Prziborowski <steve.prziborowski@sccfd.org> wrote:

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Hi Silas;

Justin Stockman made me aware of the Internet bandwidth challenges we are having for our apparatus (OES 5262).

Before I give you my approval to do the $2.00 a month upgrade, the bigger question is why our public safety data usage is getting throttled down? Our understanding from Eric Prosser, our former Information Technology Officer, was that he had received approval from Verizon that public safety should never be gated down because of our critical infrastructure need for these devices. Justin articulates that quite well below in his forwarded email.

The unit we are discussing is basically a fire engine (minus the water, hoses and ladders) but with tools and equipment that is used to support incident operations at major emergencies and/or disasters. It is currently assisting the Incident Command Team at the Pawnee Fire in Lake County, to ensure that all of the apparatus and personnel can effectively mitigate that major wildfire.

If I need to talk to a supervisor or account manager to not have to pay the extra $2 per month and instead, have our account be unlimited and protected from being gated down, please let me know who that person would be.

Thanks for any assistance you can offer us, I look forward to hearing back from you.

Steve

= = =

Steve Prziborowski
Deputy Chief / Training
Santa Clara County Fire Department
14700 Winchester Blvd.
Los Gatos, CA 95032-1818

- 408-341-4476 (office)
- 408-896-6890 (cellular)
Email: steve.prziborowski@sccfd.org
Website: www.sccfd.org

From: "Justin Stockman" <justin.stockman@sccfd.org>
To: "Steve Prziborowski" <steve.prziborowski@sccfd.org>
Sent: Friday, June 29, 2018 12:15:59 PM
Subject: Fwd: [E] Throttled Device

Chief,

We're having an issue with 5262. 5262 has a device that connects to the internet using a verizon sim card. Data usage on the device is supposed to be unlimited. The reason for this need is that 5262 performs an important public safety function by supporting CalOES region chiefs at large disasters. This device spends months where it sits unused and uses zero data. When it does get used it uses a tremendous

ADD10

amount of data, on the order of 5-10 gigabytes/day. Verizon throttles normal consumer "unlimited devices" around 23 gigabytes. Throttling means that the device that can normally act like a modern broadband internet connection is slowed to the point of acting more like an AOL dial up modem from 1995. Verizon is currently throttling OES 5262 so severely that it's hampering operations for the assigned crew. This is not the first time we have had this issue. In December of 2017 while deployed to the Prado Mobilization Center supporting a series of large wildfires we had the same device with the same sim card also throttled. I was able to work through Eric Prosser at the time to have service to the device restored and Eric communicated that Verizon had properly re-categorized the device as truly "unlimited".

In the email below Verizon is stating that they can restore the device for an extra $2/month. I obviously lack the authority to make such an approval. If we could get Verizon that approval I would appreciate it.

Respectfully,

Justin Stockman
Fire Captain
B Shift Relief
650-465-2485
Justin.Stockman@sccfd.org

From: "Silas Buss" <silas.buss@verizonwireless.com>
To: "Justin Stockman" <justin.stockman@sccfd.org>
Cc: "Garrett Chan" <garrett.chan@verizonwireless.com>
Sent: Friday, June 29, 2018 11:35:46 AM
Subject: Re: [E] Throttled Device

Hi Justin,

To get the data speeds restored on this device, will you please reply that you approve moving the plan on line 408-438-4844 from the $37.99 (84356) plan to the $39.99 (84357) plan?

We'll talk about what's going on here in the call this afternoon.

Silas Buss
Major Accounts Manager - Govt.
201 Spear St. Suite 700 San Francisco, CA 94105
M 408.204.6611 | silas.buss@verizonwireless.com
verizon✓

---------- Forwarded message ---------
From: **Justin Stockman** <justin.stockman@sccfd.org>
Date: Fri, Jun 29, 2018 at 9:05 AM
Subject: [E] Throttled Device
To: Garrett M Chan <garrett.chan@verizonwireless.com>

Hi Garrett,

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The device we're having an issue with is a Cradlepoint AER 2100. It is deployed on the Pawnee fire as part of an OES support unit that is providing essential operational coverage for mutual aid resources deployed on that fire. The challenge of this device is that it is normally off, and consumes little to no data on a monthly basis. When the unit gets deployed it used a decent amount of data for a few days to a few weeks. On the order of 5-10gb a day. The crew was getting around 50/10mbps and is current getting 30/130kbps.

Info I have for the device is:
MEID A000005A866927
IMEI 353547064027397
NAI 6692210322@vzims.com
ICCID 89148000002567273591
Mobiel Subscriber ID 4084384844
IMSI 311480257790168
PRI ID 9903437
Cell ID 7844630 (0x77b316)

Hopefully that's more info than you need. Sorry if i'm over supplying, i'm not familiar with a lot of this info.

Justin Stockman
Fire Captain
B Shift Relief
650-465-2485
Justin.Stockman@sccfd.org

--

Verizon

Garrett Chan
Manager Solutions Engineer
Silicon Valley - Northern California/Nevada

2870 Zanker Road, Suite 100
San Jose, CA 95134

O 925.872.0620 I M 925.872.0620
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24 hrs DATA TECHNICAL ASSISTANCE
contact the BGCO **1-800-922-0204**

Product Information:

IoT Private Network Overview

IoT Private Network White Paper

IoT Security Services | Verizon Enterprise Solutions

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