Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Modernization of Media Regulation	)	MB Docket No. 17-105
	)	
Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services	)	MB Docket No. 14-261
	)	
Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees	)	MB Docket No. 14-127
	)	
Leased Commercial Access	)	MB Docket No. 07-42
	)	
Cable Television Technical and Operational Requirements	)	MB Docket No. 12-217
	)	
Implementation of Section 103 of the STELA Reauthorization Act of 2014: Totality of the Circumstances Test	)	MB Docket No. 15-216
	)	
Amendment of the Commission's Rules Related to Retransmission Consent	)	MB Docket No. 10-71
	)	
Petition for Rulemaking to Amend The Commission's Rules Governing Practices of Video Programming Vendors	)	RM-11728
	)	

COMMENTS OF VERIZON

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COMMENTS OF VERIZON[1]

I. INTRODUCTION AND SUMMARY.

Verizon supports the Commission's efforts to eliminate unnecessary media regulations that serve no useful purpose in today's video marketplace. Outdated regulations raise costs for

[1] The Verizon companies participating in this filing are the regulated, wholly-owned subsidiaries of Verizon Communications Inc.

consumers, impede innovation in this dynamic marketplace, and unnecessarily burden Multichannel Video Programming Distributors (MVPDs). Many of the Commission's legacy media regulations grew out of efforts to promote competition and consumer choice in the video distribution market – decades ago. The Commission should eliminate some of these costly and unnecessary regulations. The Commission should also protect one of the more competitive and dynamic parts of the marketplace by confirming that legacy cable regulations do not apply to today's marketplace disrupters, online video distributors (OVDs).

As the Commission's video competition reports reflect, competition is thriving among broadcasters, cable service providers, satellite broadcasters, and OVDs. Consumers can select from a boundless array of video options, including hundreds of linear video channels and tens of thousands of movie and TV titles from broadcast, satellite, cable, and online distributors as well as original programming from OVDs, such as Hulu, Amazon, and Netflix. And viewers can enjoy this diversity of content on the devices of their choice. In this competitive and consumer-driven environment, regulations can impede rather than promote the provision of service by existing video distributors and new entrants alike as they seek to offer even more content and new options for accessing video services.

Some of the Commission's media regulations – like video franchise reform, program access rules, and rules facilitating access to multiple dwelling unit properties – have stimulated video competition by facilitating Verizon's and other providers' entry into a market dominated by cable incumbents. Others rules, however, are bureaucratic hurdles that no longer serve their intended purpose and merely increase the costs of providing video service. For these reasons, Verizon welcomes the opportunity to recommend elimination or modernization of certain media regulations, and looks forward to participating in proceedings that address such regulations.[2]

In these comments, Verizon recommends that the Commission:

- Confirm that over-the-top video distributors are not subject to legacy cable regulation.
- Eliminate the obligation for cable providers to maintain a public inspection file (47 C.F.R. § 76.1700), or at least repeal several categories of information that are of little or no interest to consumers.
- Eliminate rate regulation, and rely instead on market forces, for commercial leased access (47 C.F.R. § 76.970(d)-(h)).
- Confirm that the signal quality (47 C.F.R. § 76.601) and signal leakage (47 C.F.R. § 76.611) requirements do not apply to digital cable systems, and refrain from adopting new regulations specifically for digital cable systems.
- Eliminate the network non-duplication and syndicated programming exclusivity rules (76 C.F.R. § 76.92 *et seq.*).
- Reform the retransmission consent regime to ensure greater balance in negotiations between broadcasters and MVPDs (47 C.F.R. § 76.65).
- Eliminate the Form 325 information collection for cable systems (47 C.F.R. § 76.403).

II. THE COMMISSION SHOULD CONFIRM THAT ONLINE VIDEO DISTRIBUTORS ARE NOT SUBJECT TO CABLE REGULATION.

The Commission should confirm that online video distributors (OVDs) are immune from legacy cable regulations. OVDs are expanding consumer options and offering increased competition to traditional video distributors, and should continue this trajectory unhampered by legacy regulations designed for monopoly cable systems.[3] A contrary result – such as requiring OVDs to negotiate franchise agreements across the country or otherwise subjecting these

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[2] *See Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4066 (2017).

[3] *See*, *e.g.*, Consumer Technology Association (CTA), *Content Consumption Milestone: Number of Streaming Video Viewers Now Equal To Paid TV Subscribers, Says CTA* (Mar. 7, 2017) (and the time consumers spend watching content on television sets is now roughly equal to time spent watching content on other consumer devices), https://cta.tech/News/Press-Releases/2017/March/Content-Consumption-Milestone-Number-of-Streaming.aspx (last visited July 5, 2017).

providers to burdensome regulations – would be inconsistent with law and the Commission's goal of facilitating the entry and growth of new competitors to traditional pay TV services.

Exempting OVDs from legacy cable regulation isn't just good policy – it follows squarely from the Cable Act. Cable regulation, including franchising, simply cannot apply to OVDs because the Internet is not a "cable system."[4] The definition of "cable system" requires "a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service…."[5] Consumers access over-the-top video content through the public Internet, rather than a provider's "closed transmission paths." And a broadband network does not include "associated signal generation, reception, and control equipment that is designed to provide a cable service" for an OVD.[6]

Confirming that over-the-top video services are not subject to cable regulation is also necessary as a matter of policy to ensure that OVDs thrive. While some may see a competitive or financial benefit in subjecting online video services to cable regulation, such regulation was designed for a much different purpose. Many of the Commission's cable regulations were intended to protect consumers from monopolistic behavior and pricing at a time when there were few video distributors and consumer choice was limited to a single local cable incumbent and broadcast TV.[7] The world has changed.

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[4] *See* Comments of Verizon, MB Docket No. 14-261, at 8-12 (filed Mar. 3, 2015).

[5] 47 U.S.C. § 522(7).

[6] The Commission has referred to such equipment as including "headend equipment." *See Telephone Co.-Cable Television Cross-Ownership Rules*, Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 5069, ¶ 24 (1992).

[7] *See*, *e.g.*, *Amendment to the Commission's Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 30 FCC Rcd 6574, ¶ 3 (2015) ("*Effective Competition Order*") ("In 1993, when the Commission implemented the [1992 Cable Act's] Effective Competition provisions, the existence of Effective Competition was the exception rather than the rule. Incumbent cable operators had captured approximately 95 percent of MVPD subscribers."); *Implementation of Sections of the Cable*

Today, OVDs have emerged as key players in the video marketplace, and consumer adoption of their services is surging. Over-the-top providers are innovating and flourishing in part because they do not have to seek franchises and comply with local, state, and federal cable requirements. Even the threat of having to meet cable regulatory requirements would deter innovation and investment, whether the OVD simply provides streaming video online or also owns the broadband connection used by some subscribers and provides a managed video service over the same facilities.

The Commission should also confirm that an over-the-top video service offered by a cable operator independent of its "cable service" is not subject to regulation by a local franchising authority (LFA) regardless of whether the online subscribers access the service within or outside of the provider's franchise footprint.[8] The Commission has already determined that an LFA's jurisdiction "applies only to the provision of cable services over cable systems"[9] and that "the provision of video services pursuant to a cable franchise does not provide a basis for customer service regulation by local law or franchise agreement of a cable operator's entire

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Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rule Making, 8 FCC Rcd 5631, ¶ 7 (1993) ("*1993 Rate Order*") (Congress enacted the 1992 Cable Act because prior legislation "was not successful in creating a competitive multichannel video distribution marketplace as cable systems continued to develop without direct multichannel video competitors.").

[8] Some LFAs have suggested they can extend their jurisdiction to OVD services offered by cable operators. *See* Comments of Anne Arundel County, Maryland, *et al.*, MB Docket No. 14-261, at 9-12 (filed Mar. 3, 2015).

[9] *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992,* Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, ¶ 121 (2007) ("*Section 621(a)(1) R&O*"); *see also Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Second Report and Order, 22 FCC Rcd 19633, ¶¶ 16-17 (2007) (applying findings with respect to mixed used networks to incumbent cable systems); *aff'd on recon.*, Order on Reconsideration, 30 FCC Rcd 810, ¶¶ 14-15 (2015).

network, *or any services beyond cable services.*"[10] The LFA's jurisdiction does not reach true over-the-top video services at all. A contrary conclusion would extend the jurisdiction of an LFA to video offerings that have no actual connection to – and place no additional burden on – use of the public rights-of-way.[11] While LFAs may desire to expand their sources of regulatory reach as competitive video services emerge, they simply have no statutory basis for regulating online video services offered by MVPDs.

The Commission has at least tentatively concluded, and should confirm, that over-the-top video distribution services are not subject to legacy cable regulation.[12] The Commission should make this determination without regard to whether the OVD is also a provider of a separate, managed cable service and/or broadband Internet access service.

III. THE COMMISSION SHOULD ELIMINATE THE PUBLIC INSPECTION FILE FOR CABLE SYSTEMS.

The Commission should eliminate the rule requiring cable operators to maintain a public inspection file because this requirement long ago outlived its usefulness.[13] The Commission adopted the public inspection file rule for cable systems in 1974[14] – two decades prior to widespread use of the Internet. Today, consumers have access to, and actually gather information from, cable operators' websites and other sources with much more extensive and useful material about MVPD products and services than the public inspection files. Because the

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[10] *Section 621(a)(1) R&O*, ¶ 122 (emphasis supplied).

[11] *See* 47 U.S.C. § 522(7)(B) (exempting from "cable system" definition "a facility that serves subscribers without using any public right-of-way").

[12] *See Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, 29 FCC Rcd 15995, ¶ 78 (2014).

[13] *See* 47 C.F.R. § 76.1700 ("Records to be maintained by cable system operators"). A cable system's political file is required by 47 U.S.C. § 315, and is not part of this proposal.

[14] *See Amendment of Part 76 of the Commission's Rules and Regulations Relative to Obligations of Cable Television Systems to Maintain Public Inspection Files and Permit System Inspections*, Report and Order, 48 F.C.C.2d 72 (1974).

mandated public file – even in its current online format – is simply not a reference point for consumers, the Commission should eliminate this burden for MVPDs.[15]

Initially, the purpose of the public inspection file was to make available "at least basic information about a local system's operations and proposals" that would allow "greater interaction between the Commission, the public, and the cable industry."[16] Despite this lofty goal, the public inspection file attracts little actual interest from the public for whom it is maintained. Verizon's public file has received about five visits *per year* since Verizon introduced Fios video service in 2005, confirming that the public file does not promote "greater interaction" or otherwise drive consumers to these mandatory disclosures.

The goal of informing consumers about the cable system and its services was long ago superseded by video providers' websites and other readily available sources of information about providers and their services, which offer much more information of use and interest to consumers. Today, Verizon and other MVPDs maintain websites that allow consumers to review channel line-ups, find service plans and prices, and locate news about the company and its service to the community, among other items of interest. Given that consumers now have multiple sources of information to research video providers and their services, there is little need today for a public inspection file designed for consumers in the heyday of "All in the Family"

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[15] The Commission has transitioned cable operators' public files from a local, bricks and mortar site to an online database hosted by the Commission. *See Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016). The fact that the public files are online does not change the fact that they do not contain information that today's consumers want or need.

[16] *Amendment of Part 76 of the Commission's Rules and Regulations Relative to Obligations of Cable Television Systems to Maintain Public Inspection Files, Keep Records of Subscribers, and Permit System Inspections*, Notice of Proposed Rulemaking, 45 F.C.C.2d 669, ¶¶ 2, 13 (1974).

and "The Six Million Dollar Man." It is time for the Commission to release MVPDs from the obligation of maintaining a public inspection file as it no longer serves a useful purpose.

If the Commission does not eliminate the public inspection file entirely, it should at least repeal a number of categories of information that are of no use or interest to consumers. Existing rules require cable systems to include in the public inspection file information on performance tests (47 C.F.R. § 76.1700(a)(4)), policies regarding indecent leased access programming (47 C.F.R. § 76.1700(a)(5)), availability of must carry signals (47 C.F.R. § 76.1700(a)(6)), operator interests in video programming (47 C.F.R. § 76.1700(a)(7)), omissions of sponsorship identification (47 C.F.R. § 76.1700(a)(8)), and compatibility with consumer electronics equipment (47 C.F.R. § 76.1700(a)(9)).

As a practical matter, very few people ever access the public inspection file itself, and these data do not provide consumers the kind of information they typically seek. In a competitive marketplace for video services, such haphazard public file requirements have outlived their utility. If needed, the Commission can request this information upon reasonable notice and time for production. The Commission should therefore eliminate the public inspection file entirely or at the very least eliminate the six listed categories of information and associated rules requiring placement in the public file.[17]

IV. THE COMMISSION SHOULD ELIMINATE RATE REGULATION FOR COMMERCIAL LEASED ACCESS CHANNELS.

In today's video market where opportunities to reach consumers with video content abound, leased access rate regulation is no longer necessary. In 1984, Congress established the commercial leased access regime, requiring monopoly cable operators to set aside channel

[17] *See* 47 C.F.R. §§ 76.1705; 76.1707; 76.1709; 76.1710; 76.1715; 76.630.

capacity for use by programmers not affiliated with the cable operator.[18] The purpose of leased access was to promote the availability of diverse sources of content, not subject to the editorial control of individual operators in a marketplace then characterized by monopoly cable systems.[19] In 1992, Congress established the Commission's authority to adopt maximum reasonable rates for commercial leased access, and the Commission proceeded to adopt rate regulations for commercial leased access on cable systems.[20] These rules include a formula for calculating the rates cable operators may charge leased access programmers for carriage on their systems.[21]

Fast forward 25 years – the leased access rate rules remain in effect, while a sea change has occurred in the market for video distribution. Consumers today obtain video content from an ever-increasing number of distribution platforms, including broadcasters, MVPDs, and online video providers, such as Netflix, Amazon, Hulu, and YouTube.[22] OVDs were on track to reach 65 million subscribers by the end of 2016, a staggering change in America's video viewing habits certainly not anticipated by Congress in 1984 or 1992.[23] Indeed, the number of subscribers to OVD services has caught up with the number for MVPDs.[24]

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[18] *See* Cable Communications Policy Act of 1984, Pub. L. 98-549, § 2, 98 Stat. 2779, 2782; 47 U.S.C. § 532.

[19] *See 1993 Rate Order*, ¶ 485; *cf.* 47 U.S.C. § 532(a) ("The purpose of this section is to promote competition in the delivery of diverse sources of video programming"), § 532(c)(2) ("A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section.").

[20] *See 1993 Rate Order* ¶¶ 512 *et seq.*; *cf.* 47 U.S.C. § 532(c)(4)(A)(i) (granting the Commission authority to "determine the maximum reasonable rates").

[21] *See* 47 C.F.R. §§ 76.970(d)-(h). The Commission substantially modified the commercial leased access rate formula in 2008. *See Leased Commercial Access*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 2909, ¶¶ 35 *et seq.* (2008).

[22] *See, e.g.*, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video* Programming, Eighteenth Report, 32 FCC Rcd 568, ¶¶ 17, 107-111, 132 (2017) ("*Eighteenth Report*").

[23] *See id.*, ¶ 180.

[24] *See* Consumer Technology Association (CTA), *Content Consumption Milestone: Number of Streaming Video Viewers Now Equal To Paid TV Subscribers, Says CTA* (Mar. 7, 2017) (and the

While these developments have been a boon for consumers, they also mean content owners now have multiple platforms available to distribute their video programming, including self-publishing on the Internet. For example, a programmer can build a YouTube channel, post content, and let viewers follow. Leasing access on an MVPD's network is no longer the only way to reach viewers. Video distribution has become more competitive, giving independent voices other means for delivering their content. But in a world where programmers can turn to the Internet or other distribution platforms to reach viewers and bottleneck access to consumers over monopoly cable providers has disappeared, the justification for mandated and regulated leased access has diminished. Indeed the constitutionality of these continuing requirements is questionable.[25] But, at minimum, continued rate regulation for access to MVPD systems is no longer necessary. The price for leased access should become the price the market demands.

As the Commission recognized twenty-five years ago, "[t]he Cable Act of 1992 generally provides that where competition is present, cable television rates shall not be subject to regulation by government but shall be regulated by the market. The Act contains a clear and explicit preference for competitive resolution of issues where that is feasible."[26] And its video competition reports also confirm that competitiveness extends to content owners and other distributors as well.

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time consumers spend watching content on television sets is now roughly equal to time spent watching content on other consumer devices), https://cta.tech/News/Press-Releases/2017/March/Content-Consumption-Milestone-Number-of-Streaming.aspx (last visited July 5, 2017).

[25] *Cf. Turner Broad. Sys. v. FCC*, 512 U.S. 622, 661 (1994) (explaining must-carry requirements are justified "by special characteristics of the cable medium: the bottleneck monopoly power exercised by cable operators and the dangers this power poses to the viability of broadcast television"); *Time Warner Entertainment v. FCC*, 93 F.3d 957 (D.C. Cir. 1996) (upholding leased access provisions).

[26] *1993 Rate Order* ¶ 2.

The Commission should now allow the market to set the maximum rates and eliminate the leased access rate formula it adopted in 1992. The Commission may not be able to roll back the statutory requirements for offering leased access, but it can determine that the maximum rates for leased access should be set by market forces rather than the Commission's current formula.[27] Now that content owners have access to multiple distribution platforms, they and MVPDs can pursue content carriage at the rate such content commands.

V. THE COMMISSION SHOULD CONFIRM THAT ITS SIGNAL QUALITY AND SIGNAL LEAKAGE TECHNICAL RULES DO NOT APPLY TO DIGITAL CABLE SYSTEMS.

The digital transition has rendered many of the Commission's technical rules for analog cable systems outdated and largely irrelevant as a technical matter, particularly for fiber-optic systems like Verizon's Fios.[28] And competitive forces made them unnecessary as a practical matter. The Commission should therefore eliminate any application of signal quality and signal leakage rules to digital systems, and should not adopt new rules specifically for digital systems.[29]

The ubiquitous competition that Verizon faces as a competitive entrant in the video marketplace is the best mechanism to ensure high signal quality, and there is no evidence that regulation would improve the consumer experience.[30] Competitive pressure creates strong incentives for new and incumbent providers to maintain the highest quality services; if they fail

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[27] The Commission has previously considered use of market-based rates. *See1993 Rate Order* ¶ 514; *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Leased Commercial Access*, Second Report and Order and Second Order on Reconsideration of the First Report and Order, 12 FCC Rcd 5267, ¶¶ 20-30 (1997) (deciding not to rely on market rates when an MVPD's leased access set aside is met).
[28] *See* Comments of Verizon, MB Docket No. 12-217 (filed Dec. 10, 2012).
[29] *See* 47 C.F.R. §§ 76.601 (performance tests), 76.611 (signal leakage).
[30] NCTA – The Television & Internet Association has recently explained why requiring any proof of performance testing for digital networks "would be unnecessary and should not be mandated." Letter from Diane Burstein, NCTA, to Marlene H. Dortch, FCC, MB Docket No. 12-217, at 2 (filed May 25, 2017).

to do so, their customers go elsewhere. Providers also face additional business incentives to maintain quality, such as contractual obligations to content providers. In rare cases of a service outage due to severing of an optical line or other significant damage to the system, Verizon can detect and resolve the issue quickly, and a testing regime provides no benefit.

With respect to signal leakage, Verizon has taken care to avoid any interference with other services using navigational, emergency, or aeronautic frequencies. Indeed, the Fios network has a very limited capacity for leakage, and generally does not include signals in the frequencies and at power levels that could cause any concern. Fios TV delivers signals to customer premises over fiber optic cables using optical wavelengths. The network does not present any threat of interference, because fiber optic cables do not use radio frequencies. The distribution plant of Verizon's all-fiber network thus poses no risk of harmful signal leakage, and there is no basis to require signal leakage testing of the network.

At customer premises, Verizon does use an optical network terminal (ONT) at the customer's home to convert the optical wavelengths into electrical signals that are distributed over the customer's inside wiring to set-top boxes, television sets, or other consumer equipment. Here too, however, the risks of harmful signal leakage are minimal and do not warrant signal leakage testing requirements. The ONT operates at a low power level – below the thresholds that would trigger testing under current signal leakage testing standards. Therefore, whether at the ONT or as the signal is distributed over the customer's inside wiring, the risk of harmful signal leakage is minimal. Applying signal leakage rules to the fiber-optic networks would unduly burden Verizon with no corresponding public safety or other benefit.

The Commission has an open proceeding to consider elimination or modification of its existing signal quality and signal leakage rules.[31] The record of that proceeding clearly reflects that it is not necessary or useful to attempt to apply such rules to digital systems.[32] The Commission should therefore eliminate these rules or confirm that they do not apply to digital cable systems. The Commission should also refrain from adopting new testing requirements specifically for digital systems. Because competition eliminates the need for signal quality tests, and fiber optic systems do not raise signal leakage issues, any new rules would simply burden MVPDs without providing a regulatory or public benefit.

VI. THE COMISSION SHOULD ELIMINATE ITS NETWORK NONDUPLICATION AND SYNDICATED PROGRAMMING EXCLUSIVITY RULES.

The Commission's network non-duplication and syndicated programming exclusivity rules have the effect of preventing an MVPD from importing broadcast programming from alternative sources when negotiations break down with a local broadcast station owner.[33] These rules effectively make one broadcast station the sole source of must-have programming. That station then enters into retransmission consent negotiations with an upper hand, allowing it to obtain higher fees than those to which it would be entitled if the parties negotiated access to such programming in a normally functioning marketplace with multiple sources competing for distribution on an MVPD's network.

The Commission adopted the network non-duplication and syndicated programming exclusivity rules at a time when a cable company did not need to obtain consent to retransmit a

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[31] *See Cable Television Technical and Operational Requirements*, Notice of Proposed Rulemaking, 27 FCC Rcd 9678 (2012).
[32] *See* Reply Comments of Verizon, MB Docket No. 12-217 (filed Jan. 25, 2013).
[33] *See* 47 C.F.R. §§ 76.92 *et seq.*

television broadcast station's signal.[34] A broadcast station may have held geographic exclusivity rights in a contract with either a network or syndicator, however, which it could enforce against an out-of-market station through contractual remedies. The addition of the Commission's exclusivity rules enabled the station to enforce those rights against the cable company.

Today, a cable company or other MVPD cannot carry a television station without its permission in electing either must-carry or retransmission consent rights.[35] To the extent that a broadcast station holds territorial rights to transmit network or syndicated programming, it can still enforce those rights against carriage of an out-of-market station – without the Commission's rules. By giving broadcast stations an "extra-contractual" method to enforce their territorial rights against MVPDs, the Commission's rules have the effect of reducing the costs and burden of pursuing whatever territorial rights a television station may hold. The station simply has to notify the MVPD of its contractual rights, without having to present a case against carriage of out-of-market programming, or to justify denying consumers access to the network or syndicated programming altogether.[36]

This intrusion into the market-based remedies available to the broadcast station primarily disadvantages MVPDs by making it easy for the broadcast station to enforce its contractual rights with a network or syndicator without even turning to its contractual remedies. And it provides a regulatory advantage for broadcasters in retransmission consent negotiations. Eliminating the network non-duplication and syndicated programming exclusivity rules will help move these negotiations toward a more balanced marketplace environment.

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[34] *See Amendment of the Commission's Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, ¶ 58 (2014) ("*2014 Retransmission Consent R&O*").
[35] *See id.*
[36] *See* 47 C.F.R. §§ 76.94, 76.105.

VII. THE COMMISSION SHOULD REFORM THE BROKEN RETRANSMISSION CONSENT REGIME.

For the past seven years, the Commission has been considering reforms to its rules implementing the good faith negotiation requirements of Section 325(b) of the Communications Act.[37] Verizon and other MVPDs have detailed how the rising costs of broadcast station programming and increasing blackouts of broadcast station signals harm consumers of MVPD services through increased subscription prices and periodic loss of desired programming.[38] The Commission has received numerous proposals that, if adopted, could be effective at remedying these harms and restoring certainty to consumers that they can receive broadcast station programing at reasonable prices from their choice of MVPD.

Verizon continues to recommend proposals that would restore balance to retransmission consent negotiations:

- The Commission should use its good faith standards to address unreasonable "bundling" of rights for retransmission of a broadcast station signal with other programming. A broadcaster may demand, directly or indirectly through the economics of pricing, the purchase of a bundle of programming that includes both the must-have broadcast station programming and less desirable programming channels that the MVPD might not otherwise choose to pursue. These bundling requirements tilt the negotiation toward increased fees for the broadcast programming and reduced discretion for the MVPD to select the best lineup or package of channels for its subscribers. This forced bundling results in bloated packages of programming that include channels consumers do not want to watch or pay for.[39]

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[37] *See Implementation of Section 103 of the STELA Reauthorization Act of 2014; Totality of the Circumstances Test*, Notice of Proposed Rulemaking, 30 FCC Rcd 10327 (2015); *2014 Retransmission Consent R&O*; *Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718 (2011); *Media Bureau Seeks Comment on a Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent*, Public Notice, 25 FCC Rcd 2731 (2010).

[38] *See* Comments of Verizon, MB Docket No. 10-71 (filed June 26, 2014) ("June 2014 Verizon Comments"); Comments of Verizon, MB Docket No. 10-71 (filed May 27, 2011); Comments of Verizon, MB Docket No. 10-71 (filed May 18, 2010); Comments of Verizon, *Mediacom Petition for Rulemaking to Amend the Commission's Rules Governing Practices of Video Programming Vendors*, RM-11728 (filed Sept. 29, 2014) ("Verizon Mediacom Comments").

[39] *See* Verizon Mediacom Comments, at 8-9.

- The Commission should find a violation of the good faith standard when a broadcaster expands programming blackouts to include customers of an MVPD's affiliated Internet access services. These customers may not even subscribe to the MVPD's video service, or may reside in a different local market. This action reaches beyond traditional video subscribers to harm broadband consumers with the goal of intensifying pressure on MVPDs to accede to a broadcaster's demands.[40]

- The Commission should find that one-sided scare advertisements violate the duty to negotiate in good faith. During negotiations, informing consumers of potential disputes may be unobjectionable, but running one-sided scare advertisements that encourage consumers to place pressure on MVPDs to accept the broadcasters' terms is not.[41]

In addition, to protect consumers from programming disruptions, the Commission should adopt a standstill requirement that maintains the *status quo* and allows continued carriage of a broadcast station signal as long as the parties are engaged in good-faith negotiations for renewal of a retransmission consent agreement. A standstill requirement ensures that consumers will not lose access to desired broadcast station programming while the parties continue to negotiate in good faith.[42]

The Commission has recognized the benefits of a standstill requirement in the context of program access complaints. It noted that a standstill requirement has "several benefits, such as minimizing the impact on subscribers who may otherwise lose valued programming pending resolution of a complaint," and "limiting the ability of vertically integrated programmers to use temporary foreclosure strategies (*i.e.*, withholding programming to extract concessions from an MVPD during renewal negotiations)."[43] The Commission has also found it appropriate to allow MVPDs to invoke a standstill requirement in program access disputes with a broadcaster with

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[40] *See* June 2014 Verizon Comments, at 10-11.
[41] *See id.* at 10.
[42] *See* Comments of Verizon, MB Docket No. 15-216, at 5-6 (filed Dec. 1, 2015).
[43] *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, 25 FCC Rcd 746, ¶ 71 (2010).

newly increased market power to ensure continued carriage of programming while the parties continue to negotiate.[44] The same benefits hold true for retransmission consent negotiations, and the Commission should apply that same reasoning in this context.

VIII. THE COMMISSION SHOULD ELIMINATE THE FORM 325 INFORMATION COLLECTION.

The Commission should eliminate cable service Form 325.[45] This form was designed to collect information on traditional monopoly cable systems. The information collected does not fit competitive video providers, like Verizon, and the way these companies market their services. For example, Form 325 requires selected cable systems to report information that is of little relevance in today's competitive video market place, such as upstream and downstream transmission capacities. Indeed, the last time the Commission reviewed the relevance and need for the various information collections on Form 325 was in 1999.[46]

Moreover, the Form 325 information collection is no longer even useful by itself to evaluate the status of competition in the video marketplace. First, the Commission recently adopted a rebuttable presumption that cable systems nationwide are subject to "competing provider effective competition."[47] The Commission can collect data on competition in specific markets not subject to effective competition when needed. Second, information on subscriber counts and "homes passed" by cable systems does not reflect consumer video viewing patterns or the competitive nature of the video distribution market. Any consumer with a computer or smartphone can access multiple video distribution services from both traditional cable providers

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[44] *See Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 4238 at App. A, § VII(A)(5) (2011).
[45] *See* 47 C.F.R. § 76.403.
[46] *See 1998 Biennial Regulatory Review – "Annual Report of Cable Television Systems," Form 325, filed pursuant to Section 76.403 of the Commission's Rules*, Report and Order, 14 FCC Rcd 4720 (1999).
[47] *See Effective Competition Order*, ¶ 7.

and a host of new over-the-top entrants in the marketplace. Counts of cable subscribers and "homes passed" are statistics that were relevant 25 years ago, but simply do not provide a clear picture of today's video distribution ecosystem.

Finally, while the Commission can collect information for the services it regulates, it cannot rely on that information alone to develop a complete picture of the video distribution marketplace. As the Commission notes:

> In addition, we rely on a variety of publicly available sources of industry information and data including: Securities and Exchange Commission filings; data from trade association and government entities; data from securities analysts and other research companies and consultants; company news releases and websites; newspaper and periodical articles; scholarly publications; vendor product releases; white papers; and various public Commission filings, decisions, reports, and data. We make use of both individual company data and industry-wide data.[48]

Given the availability of much more comprehensive information from multiple sources, the Commission should ease the burden on regulated entities and eliminate Form 325 and its associated data collection.

[48] *Eighteenth Report*, ¶ 16.

IX. CONCLUSION.

Verizon recommends that the Commission consider elimination or modernization of its existing regulations as described above.

Respectfully submitted,

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