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
	)	
Improving Competitive Broadband Access to Multiple Tenant Environments	)	GN Docket No. 17-142
	)	

REPLY COMMENTS OF VERIZON[1]

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

Verizon supports Commission action to eliminate obsolete and unnecessary media regulations that raise costs for consumers and hamper innovation by Multichannel Video Programming Distributors (MVPDs). The Commission adopted many of its existing media rules decades ago, in an effort to inject new competition into a market dominated by monopoly cable providers. Today, competition in many parts of the video distribution market is thriving, and consumers have greater opportunities than ever before to enjoy content from a variety of sources, including satellite providers, telcos, broadcasters, online video distributors (OVDs), and traditional cable operators.

In this environment, the Commission should eliminate or modernize rules it developed for a bygone era. At the same time, the Commission should promote further competition by confirming that OVDs are not subject to ill-fitting cable regulations. Imposing legacy cable rules, such as franchising obligations, on OVDs does not make sense for video services that are delivered over the Internet and do not disrupt public rights of way. Removing the threat of such regulation will pave the way for continued growth and consumer choice in the video market.

In its initial comments, Verizon made specific proposals for modernizing the Commission's media regulations, most of which found support among other commenters.[2] In reply, we reiterate those recommendations and note the other comments that made the same or similar proposals. We also urge the Commission to reject NCTA's proposal to reconsider and limit the scope of the Commission's rules and policies implementing the program access provisions of Section 628 of the Communications Act (47 U.S.C. § 548). The Commission's decisions under Section 628(b) to prohibit MVPDs from entering or enforcing exclusive service contracts with owners of multiple dwelling units and to entertain complaints regarding access to

[2] *See* Comments of Verizon (filed July 5, 2017).

terrestrially-delivered programming, such as regional sports networks, promote competition and should be retained.

I. THE COMMISSION SHOULD MODERNIZE ITS MEDIA REGULATIONS.

The record confirms that the Commission should update and modernize its media regulations in the following areas:

First, the Commission should confirm that over-the-top video distributors are not subject to legacy cable regulation. R Street Institute notes that the "complex regulations governing MVPDs were designed in an era when consumers had few, if any, options to access video content. Imposing those regulations on OVDs would significantly hamstring the consumer benefits brought about by the growth of these new services."[3] This is particularly true with respect to cable franchising obligations that were never intended to apply to over-the-top video services.

Traditional cable operators are subject to local franchise authorities (LFAs) and their management of the public rights of way. LFAs may have a role to play when entities seeking to deploy new cable services to subscriber homes dig up streets and sidewalks or otherwise disturb public rights of way. But over-the-top video services give consumers the ability to watch video programming from anywhere consumers can obtain an Internet connection, without regard to rights-of-way access. OVDs should not be required to seek permission from thousands of localities throughout the country in order to offer a video service that rides over the Internet. Not only is such a regulation inapt as a practical matter, but it is inconsistent with the Commission's goal of promoting video competition.

[3] Comments of R Street Institute, at 5 (filed July 5, 2016) (footnote omitted).

Second, NCTA and ACA agree with Verizon that the Commission should reconsider the need for the cable public inspection file, or at least certain types of information included in the public inspection file.[4] NCTA asserts that the Commission should "now eliminate or modernize several parts of the public inspection file, which are unnecessary, duplicative, or unduly burdensome."[5] Video providers' websites and other sources of information have served for years as the go-to authorities for information about MVPDs and their services, leaving the public inspection file as a relic of 20th Century regulation. At the very least, the Commission should no longer require cable systems to include the following information in their public files: performance tests, policies regarding indecent leased access programming, the availability of must-carry signals, operator interests in video programming, omissions of sponsorship identification, and compatibility with consumer equipment.[6]

Third, the Commission should also eliminate rate regulation for commercial leased access.[7] As we explained in our comments, content owners today have a variety of ways to reach viewers, such as self-publishing on the Internet, and do not rely solely on cable operators to distribute their programming. Given the many opportunities independent voices have for delivering their content, mandating that cable operators offer programmers access to their networks and that they do so at government-set rates is anachronistic at best and unjustified at worst. NCTA agrees that the Commission should reduce the burdens of the existing leased access regime and asks the Commission to clarify that cable operators need only reply to *bona fide* requests for leased access and can require a deposit to help defray the costs of responding to

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[4] *See* Verizon Comments at 6-8; Comments of American Cable Association (ACA), at 11-18 (filed July 5, 2016); Comments of NCTA, at 26-29 (filed July 5, 2017).
[5] NCTA Comments at 26.
[6] *See* Verizon Comments at 8.
[7] *See id.* at 8-11.

such requests.[8] These proposals would help ease the burden of responding to leased access requests.

Fourth, Verizon, NCTA, and ACA all recommend a review – and potential elimination – of the Commission's signal quality tests.[9] NCTA explains there is no longer a need for proof-of-performance testing:

> This type of intensive regulatory testing regime – adopted when cable operators were the only MVPDs in a community – is no longer justified. Nationwide MVPD competition provides a strong incentive to detect and correct any technical problems as soon as possible – and certainly not to wait until the next proof-of performance test.[10]

And NCTA agrees there is no need to adopt new tests specifically for digital cable systems.[11] Similarly, Verizon and NCTA ask the Commission to ease the burdens associated with signal leakage testing.[12]

Fifth, Verizon and R Street Institute recommend that the Commission eliminate the network non-duplication and syndicated programming exclusivity rules.[13] These "agreements between private parties for exclusive syndication or non-duplication rights do not require FCC enforcement. Private parties remain able to negotiate and enforce contracts even without FCC rules to enforce those contracts."[14] The record likewise supports reforms such as those we have proposed in our comments to the Commission's rules governing retransmission consent to protect consumers from broadcaster blackouts and rising programming costs.[15]

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[8] *See* NCTA Comments at 18-20.
[9] *See* Verizon Comments at 11-13; ACA Comments at 4-7; NCTA Comments at 24-25.
[10] NCTA Comments at 24.
[11] *See id.* at 25.
[12] *See id.*; Verizon Comments at 12.
[13] *See* Verizon Comments at 13-14; R Street Institute Comments at 6-8; *see also* Comments of NTCA, at 3-4 (filed July 5, 2017) (exemption for small MVPDs).
[14] R Street Institute Comments at 6.
[15] *See* Verizon Comments at 15-17; NTCA Comments, at 4-5.

Finally, Verizon, NCTA, and ACA all recommend that the Commission eliminate the Form 325 information collection for cable systems.[16] NCTA also suggests that the Commission consider whether MVPDs should be able to provide various notices to consumers electronically, as the Commission recently adopted for the cable annual notice.[17] Verizon agrees that electronic delivery should be available for required notices to subscribers and other parties.

II. THE COMMISSION SHOULD REJECT NCTA'S REQUEST TO ROLL BACK THE SCOPE OF SECTION 628.

The Commission should reject NCTA's request to roll back the well-considered scope of Section 628(b) – a provision that has been instrumental in the Commission's efforts to support and encourage competitive entry in the video distribution marketplace.[18] Section 628 allows the Commission to address "unfair methods of competition" that hinder MVPDs from providing to their subscribers "satellite cable programming or satellite broadcast programming."[19] The Commission ruled that Section 628(b) also authorizes it to prohibit MVPDs from entering into or enforcing exclusive service contracts in multiple dwelling units (MDUs) because such contracts would prevent the delivery of *any* programming by a competitive MVPD.[20] And the Commission also relied on Section 628(b) as authority to entertain complaints regarding access to terrestrially-delivered programming because blocking access to such programming could also

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[16] *See* Verizon Comments at 17-18; NCTA Comments at 29-30; ACA Comments at 26-27.
[17] *See* NCTA Comments at 4-11; *cf. National Cable & Telecommunications Association and American Cable Association Petition for Declaratory Ruling*, Declaratory Ruling, 32 FCC Rcd 5269 (2017).
[18] *See* NCTA Comments at 11-13.
[19] 47 U.S.C. § 548(b).
[20] *See Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20,235 (2007), *rev. denied*, *Nat'l Cable & Telecomm. Ass'n v. FCC*, 567 F.3d 659 (D.C. Cir. 2009).

result in preventing delivery of satellite-delivered programming.[21] The U.S. Court of Appeals for the District of Columbia Circuit upheld both Commission rulings.

NCTA offers no reason for the Commission to modify these rulings other than its own claim that Congress did not intend an "overreach of regulatory authority." NCTA suggests that the "substantial amount of competition that has developed in the MVPD marketplace" since the Commission made these decisions justifies changing them. We disagree. Commission reliance on Section 628(b) to facilitate competitive access to MDUs and to must-have programming is precisely the rationale that spurred competition in the video marketplace. Absent the Commission's rulings on the scope of Section 628, incumbent cable operators would have been permitted to enforce exclusive access arrangements with MDU owners, blocking competition and leaving consumers in apartments and condominiums with only one video service provider. In addition, if the Commission fails to enforce Section 628, content owners will not be required to provide competitive MVPDs access to terrestrially-delivered regional sports programming networks – a favorite practice by some cable incumbents to impede effective competition from newer entrants in the video marketplace. The Commission correctly decided the scope of Section 628(b), the court agreed, and these pro-competitive decisions should stand.

[21] *See Review of the Commission's Program Access Rules and Examination of Program Tying Arrangements*, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 746 (2010), *rev. denied in relevant part*, *Cablevision Sys. Corp. v. FCC*, 649 F.3d 695 (D.C. Cir. 2011).

III. CONCLUSION.

Verizon recommends that the Commission eliminate or modernize its existing regulations as described in Verizon's initial comments and above.

Respectfully submitted,

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