

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Promoting the Availability of Diverse and) MB Docket No. 16-41
Independent Sources of Video Programming)

REPLY COMMENTS OF RFD-TV

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REPLY COMMENTS OF RFD-TV

RFD-TV hereby submits these reply comments in response to the *Notice of Inquiry* (“*NOI*”) issued in the above-captioned docket.¹

INTRODUCTION AND SUMMARY

RFD-TV has a passionate viewer base, is one of the top-100 most popular cable networks,² and has been consistently ranked as one of the best values available for distributors.³ Within the past three years, RFD-TV viewers have filed more than 100,000 comments with the Commission in support of rural- and senior-oriented programming such as that provided by RFD-TV.⁴ They are doing everything they can to speak out in favor of RFD-TV’s programming.

¹ *In the Matter of Promoting the Availability of Diverse and Independent Sources of Video Programming*, Notice of Inquiry, FCC 16-19 (rel. Feb. 18, 2016) (“*Notice of Inquiry*” or “*NOI*”).

² See, e.g., Michael Kossler, “RFD-TV’s Dramatic Fight for Rural Rights in Cable Rotation,” *Variety* (Apr. 14, 2016), <http://variety.com/2016/tv/features/rfd-tv-battles-for-rural-rights-1201752952/> (“According to Nielsen, RFD-TV averaged 132,000 viewers in primetime in February [2016], ranking 81st among just over 100 cable networks tracked.”) (attached as Attachment A).

³ See, e.g., Comments of RFD-TV, MB Docket No. 16-41, at 7-8 (filed Mar. 30, 2016) (“RFD-TV Comments”) (explaining that RFD-TV was ranked as a “Best Bargain” cable network for the third year in a row according to the 20th Annual Independent Cable Network Survey).

⁴ See *id.* at 32 (explaining that these viewers have filed comments in this proceeding, the AT&T-DIRECTV merger review proceeding, and the Comcast-Time Warner Cable merger review proceeding out of concern that, as the industry consolidates, there are fewer and fewer

Nevertheless, RFD-TV has faced several substantial distribution challenges in recent years. As a result, it has been blocked from carriage in 20 of the top 25 markets in the country, and in the process, been deprived of critical advertising revenues.⁵

The specific distribution challenges RFD-TV has faced include (1) discrimination against rural content by the few urban-focused MVPDs that dominate the video programming distribution market; (2) contractual provisions imposed by MVPDs that prevent independent programmers from pursuing alternative carriage arrangements; (3) lengthy subscriber contracts and early termination fees that impose high switching costs on consumers and insulate distributors from their decisions to drop popular independent channels; and (4) program bundling practices by media conglomerates that squeeze out independent channels.⁶

The record in this proceeding shows that RFD-TV is not alone in its experience. There is widespread agreement that independent programmers face significant obstacles in reaching consumers. This outcome is hardly surprising. The six MVPDs that have either severely limited or blocked distribution of RFD-TV—Comcast, Time Warner Cable, Verizon, Cox, Cablevision, and Bright House—control access to more than 47 million homes in the U.S. And as the FCC itself has found, the networks of seven media conglomerates account for roughly 95% of all television viewing hours in the country.⁷

opportunities for the distribution of rural, independent programming).

⁵ *See id.* at 17-19.

⁶ *See generally id.*

⁷ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, FCC 13-99, ¶ 329 (2013).

The victims of the above-mentioned practices are “not only the independent networks, whose commercial viability depends on having fair access to MVPDs’ platforms, but American television viewers.”⁸ As one independent programmer explains, “consumers often are forced to buy bundles of conglomerate programming they don’t want, and denied the opportunity to watch the independent programming channels they do want, that would provide them with genuinely diverse and differentiated sources of programming, and would cost them far less.”⁹

While MVPDs tout the diversity of their programming offerings, the reality is that a handful of urban-focused MVPDs are deciding for the American people what constitutes “diverse” programming. And their definition of “diversity” often excludes content, like RFD-TV’s content, that focuses on issues affecting large, underserved populations such as rural Americans and senior citizens. These MVPDs maintain their narrow view of “diversity” despite the fact that tens of thousands of consumers—including those from minority communities, from rural, urban, and suburban markets, and from all 50 states—have commented in this proceeding that they seek rural-oriented programming such as that on RFD-TV.

The Commission should use its authority under Section 616(a) of the Communications Act¹⁰ to act now and ensure the availability of diverse, independent programming. These actions should include (1) investigating whether Verizon’s decision to drop certain independent channels is based on a persistent bias against rural- and senior-oriented programming; (2) prohibiting most favored nation clauses and alternative distribution method clauses that preclude independent

⁸ Comments of INSP, MB Docket No. 16-41, at 7 (filed Mar. 30, 2016) (“INSP Comments”).

⁹ *Id.*

¹⁰ 47 U.S.C. § 536.

programmers from securing alternative carriage arrangements; (3) prohibiting MVPDs from enforcing early termination fees in subscriber contracts within 90 days of dropping programming, so that subscribers who enrolled on the promise of obtaining certain programming can switch to another MVPD; and (4) “breaking up the bundle” that large programming conglomerates force MVPDs and consumers to accept in lieu of the independent programming they would prefer. As discussed in RFD-TV’s initial comments, the Commission should also begin a rulemaking requiring MVPDs to devote a minimum percentage of their channel capacity to independent programmers and continually look for other procedural vehicles (*e.g.*, merger proceedings) to promote the availability of independent programming.¹¹ Without these actions, American consumers will continue to be deprived of a “diverse, robust, and competitive marketplace for the delivery of multichannel video programming.”¹²

DISCUSSION

I. THE RECORD DEMONSTRATES THE NEED FOR PROMPT COMMISSION ACTION TO ENSURE THE AVAILABILITY OF DIVERSE, INDEPENDENT PROGRAMMING, INCLUDING RURAL- AND SENIOR-ORIENTED PROGRAMMING

A. There is Widespread Agreement That Independent Programmers Face Significant Challenges in Reaching Consumers

The record in this proceeding makes clear that today’s video marketplace is failing to meet the needs of consumers seeking independent programming. Because that “marketplace remains one controlled by entrenched gatekeepers”¹³ (*i.e.*, the few large corporations that

¹¹ RFD-TV Comments at 30.

¹² *NOI* ¶ 2.

¹³ Comments of Free Press, MB Docket No. 16-41, at 4 (filed Mar. 30, 2016) (“Free Press Comments”).

dominate both distribution and programming), American consumers are often forced to pay for programming that they do not want and are often deprived of the opportunity to watch the independent programming they actually want.¹⁴ Stated differently, “every viewer is denied access to the range of programming that might be available in a more open marketplace.”¹⁵ The Commission must act now to address this critical problem. As Public Knowledge explains, a “more open and vibrant video marketplace would clearly benefit those voices which are underrepresented in traditional access outlets, and the people who want to hear those voices.”¹⁶

Those underrepresented voices include voices focused on rural America and seniors. Indeed, the comments demonstrate that the marketplace is failing to meet the needs of viewers seeking rural- and senior-oriented programming in particular. For example, ACA points out that while the many ACA members serving rural areas “seek programming tailored to rural needs and interests,” program bundling “requires them to offer the same homogenized programming offerings in rural areas as do urban cable systems.”¹⁷ And as the American Farm Bureau

¹⁴ See, e.g., INSP Comments at 7 (“[I]n the end, television consumers often are forced to buy bundles of conglomerate programming they don’t want, and denied the opportunity to watch the independent programming channels they do want, that would provide them with genuinely diverse and differentiated sources of programming, and would cost them far less.”); Comments of TheBlaze Inc., MB Docket No. 16-41, at 2 (filed Mar. 30, 2016) (“TheBlaze Comments”) (“Without further attention to the important issues addressed in the NOI, the channel line ups of nearly 100 million households will continue to be determined by a handful of large corporations, independent video programmers will continue to be shut out, and consumers will be deprived of a diverse, robust, and competitive marketplace for multichannel video programming.”).

¹⁵ Comments of Public Knowledge, MB Docket No. 16-41, at 4 (filed Mar. 30, 2016) (“Public Knowledge Comments”).

¹⁶ *Id.*

¹⁷ Comments of the American Cable Association, MB Docket No. 16-41, at 20 (filed Mar. 30, 2016) (“ACA Comments”).

Federation explains, “[i]f rural Americans lose access to RFD-TV, then they lose virtually the only source of television news programming that focuses on rural and agricultural policy issues.”¹⁸ Importantly, commenters also agree on the importance of bringing rural-oriented programming to urban and suburban areas.¹⁹ According to the American Farm Bureau Federation, programming such as RFD-TV’s “impacts more than just rural Americans because it brings rural and agricultural programs into the homes of urban and suburban viewers.”²⁰

In fact, consumers from across the country—including consumers in urban America—are seeking rural- and senior-oriented programming such as RFD-TV. As of today, over 35,000 comments have been filed by these consumers from all 50 states, including urban and suburban markets from New York to Los Angeles.²¹ Yet, as an independent programmer, RFD-TV has

¹⁸ Comments of American Farm Bureau Federation, MB Docket No. 16-41, at 1 (filed Mar. 28, 2016) (“Farm Bureau Comments”); *see also* Comments of Georgia Farm Monitor, MB Docket No. 16-41, at 1 (filed Mar. 23, 2016) (“Georgia Farm Monitor Comments”) (explaining that it “shudder[s] to think, where people would learn about agriculture if it were not for rural independent programming and RFD-TV”).

¹⁹ *See, e.g.*, Farm Bureau Comments at 1; Georgia Farm Monitor Comments at 1 (explaining that “television reaches both agriculture and non-agriculture audiences, rural citizens and citizens living in cities”).

²⁰ Farm Bureau Comments at 1 (filed Mar. 28, 2016).

²¹ *See, e.g.*, Comment of Eric Albert, MB Docket No. 16-41 (filed Mar. 16, 2016) (“I watch RFD-TV on DISH Network . . . in the New York City area While I am not engaged in agriculture directly, I like all Americans, benefit from this important activity. RFD’s programming provides me with insight so I may become informed and make better decisions about the food I eat.”); Comment of Diane Ekholm, MB Docket No. 16-41 (filed Mar. 23, 2016) (“Although I live in an urban area (Boston suburbs), my neighbors and I should know about what is important to those who live in rural areas. Other channels don’t provide that.”); Comment of William R. Hosna, MB Docket No. 16-41 (filed Feb. 29, 2016) (“I watch RFD-TV on Directv on a regular basis. I live in a suburb of Chicago, so I am not a rural viewer. I enjoy their wholesome programming”); Comment of Gene Dickens, MB Docket No. 16-41 (filed Mar. 22, 2016) (“I live in the Atlanta area and love the agricultural information available on RFD-TV.”)

faced substantial marketplace challenges in reaching these viewers. As detailed in RFD-TV's initial comments, taken together, Comcast, Time Warner Cable, Cox, Cablevision, and Bright House have shown a persistent unwillingness to distribute RFD-TV to more than 5% of their subscribers.²² As a result of this discrimination by large, urban-based MVPDs, RFD-TV has been blocked from distribution in 20 of the top 25 markets in the country.²³

B. Large, Urban-Based MVPDs are Failing to Adequately Promote Programming Diversity

In their comments, MVPDs tout the diversity of programming available today by pointing to their programming aimed at African-American, Hispanic, and Asian American populations.²⁴ While these efforts are commendable, they also reflect a limited view of what constitutes “diversity” in America. There is a wide array of underserved populations in America

You cannot get the in-depth agricultural information on any other source.”); Comment of June Snow, MB Docket No. 16-14 (filed Mar. 18, 2016) (“I live in Los Angeles County . . . and would like to point out that millions of horse owners in [California] are interested in this programming.”).

²² See RFD-TV Comments at 15-17.

²³ See *id.* at 17-19.

²⁴ See, e.g., Comments of Comcast Corporation and NBCUniversal Media, LLC, MB Docket No. 16-41, at 17 (filed Mar. 30, 2016) (“Comcast NBCUniversal Comments”) (“One hundred of the independent networks carried by Comcast are focused on diverse programming, including 54 networks geared toward Hispanics, seven cable networks geared toward the African-American community, and 22 cable networks geared toward the Asian-American audience.”); Comments of Verizon, MB Docket No. 16-41, at 2-3 (filed Mar. 30, 2016) (“Verizon Comments”) (“Today, Fios TV includes a host of independent and diverse programming, including 43 Spanish-language networks and 27 international independent channels.”); Comments of AT&T, MB Docket No. 16-41, at 8-9 (filed Mar. 30, 2016) (“AT&T Comments”) (“AT&T. . . is constantly evaluating new independent programming opportunities. For example, late last year, DIRECTV announced an agreement to carry the Impact Network, the fastest growing African-American Christian Network in the U.S., which is 100 percent independently owned. Additionally, in 2014, DIRECTV began carrying ¡Hola! TV, which offers Spanish language content aimed at U.S. Hispanic consumers. . . .”).

today, and a broad range of independent voices seeking to serve them. Having a small number of corporations focus only on their particular understanding of diversity—or the particular form of diversity that meets their business interests—is failing to vindicate the programming needs of *all* of America’s underserved populations. In fact, tens of thousands of consumers—including African Americans²⁵ and Native Americans²⁶—have shown through their comments in this proceeding that there is very strong demand in this country for rural-oriented programming like that on RFD-TV. Yet, Comcast and Verizon ignore this reality. The silence in their comments about any programming that focuses on rural America and senior citizens—two of the largest

²⁵ See, e.g., Comment of Rosalind Alexander, MB Docket No. 16-41 (filed Mar. 30, 2016) (“We are African Americans living in an urban community, and we find RFD-TV a breath of fresh air with its different content than other stations, positivity, and look into the rural setting. Please don’t squeeze out RFD-TV from the channel holdings.”); Comment of Sheron Bruno, MB Docket No. 16-41 (filed Mar. 15, 2016) (“As an African American woman who would not traditionally choose a channel like RFD-TV, I enjoy the cooking shows, rodeos and so much more than I expected.”); Comment of Charyn Koppelson, MB Docket No. 16-41 (filed Mar. 28, 2016) (“I am Black, but I am an American first, RFD-TV is about America!”); Comment of William Grooms, MB Docket No. 16-41 (filed Mar. 18, 2016) (“I want to say I am a black American male, RFD tv is what this country needs to help get us back on track with hard work and family values. I farm, work at a feed mill, I have had my own tractor and implements.”).

²⁶ See, e.g., Comment of Gail Montie, MB Docket No. 16-41 (filed Mar. 28, 2016) (“I am full blood American Indian & RFD is the only channel left at all where we can watch TRUE country and gospel.”); Comment of Gilbert Manuelito, MB Docket No. 16-41 (filed Mar. 28, 2016) (“I’m a native American living in the four corners area. I really enjoy . . . the information that is being provided by RFD. The information I gather helps me in my daily farming and ranching work.”); see also Comment of Barbara Palmer, MB Docket No. 16-41 (filed Mar. 29, 2016) (“We need to have access to Independent channels like RFD. They have many programs that are not carried on other channels, Hidden heritage, history of Native American Indians (my husband is part Indian) & Molly B polka show, features various bands, Polish, Check, German (I’m Polish & Uk.), many other shows.”).

underserved populations in the country—speaks volumes. As the record evidence demonstrates, these MVPDs are attentive only to a particular view of diversity that fits their urban focus.²⁷

Verizon’s casual statement to the Commission that “[c]ontent similar to RFD-TV remains available on the cable channel ‘Blue Highways’”²⁸ confirms its tone-deafness on the importance of rural- and senior-oriented programming. Verizon’s own description of BlueHighways’ prime time lineup is that it constitutes “comedy series and movies from the ‘90s.”²⁹ In fact, shortly before Verizon filed its comments, BlueHighways was replaced by the comedy channel LAFF TV on all distribution platforms.³⁰ Neither BlueHighways nor LAFF TV content is remotely a substitute for the programming on RFD-TV, as the numerous viewer comments in this docket demonstrate.³¹

²⁷ See, e.g., RFD-TV Comments at 10-15 (discussing Comcast’s justifications for dropping RFD-TV in Colorado and New Mexico and Verizon’s decision to drop RFD-TV throughout its territory); ACA Comments at 20 (explaining that “the more space [the many ACA members serving rural areas] must give begrudgingly to offerings such as the Esquire Network, which targets the ‘more upscale, affluent, urban-dwelling guy,’ the less available for channels like the World Fishing Network that subscribers actually want to watch”) (internal citation omitted).

²⁸ Verizon Comments n.10.

²⁹ Verizon FiOS TV Channel Lineup, <http://www.verizon.com/home/responsive/channellineup?splan=2> (last visited Apr. 19, 2016) (providing channel descriptions for all channels available in a plan, including “BlueHighways TV”).

³⁰ See BlueHighways TV, <http://www.bluehighwaystv.com/index.php> (last visited Apr. 19, 2016) (stating that “LAFF TV will replace BlueHighways TV on all Broadcast platforms effective March 21, 2016.”).

³¹ See, e.g., Comment of Kim Parkinson, MB Docket No. 16-41 (filed Mar. 23, 2016) (“I was able to watch RFD TV on Verizon, until they dropped RFD. It was programming that I looked forward to watch, that was very diverse and uplifting. Now they have replaced RFD TV with Blue Highways TV, which has the same programming as LAFF TV. This is not fair to me.”); Comment of Maurine Kostkowski, MB Docket No. 16-41 (filed Mar. 28, 2016) (“We have missed watching RFD-TV on our cable carrier. It has been replaced with what they say is ‘Blue

Verizon’s actions also contradict its claim that “[s]ubscriber input . . . helps guide programming decisions, either for specific channels or a genre of programming.”³² If that were true, RFD-TV—which had more than 50,000 viewers complain to Verizon’s New York offices about its plan to drop the channel³³—would have been a prime candidate for continued carriage on Verizon.

Fundamentally, the MVPDs’ comments raise the question of whether a small number of urban-based media conglomerates with bottleneck control over the distribution of programming³⁴ should be deciding what constitutes “diverse” programming. These MVPDs do not deny that the diverse programming that they promote is programming to which they alone control access, and the independent programming that is carried today remains at their mercy. Their comments thus confirm the need for Commission action to ensure that a genuinely diverse array of independent programming serves the needs of *all* consumers.

Highways.’ Actually we now get two stations with the programming of LAFF TV. The shows are reruns of 80’s programs that we didn’t watch when they were first run!!”); Comment of Bill Holcomb, MB Docket No. 16-41 (filed Mar. 28, 2016) (“[RFD-TV] was replaced with a channel called Blue Highways which offers only old reruns of situation comedy and other out dated programs.”).

³² Verizon Comments at 6.

³³ RFD-TV Comments at 13.

³⁴ See, e.g., *id.* at 16 (showing that together, Comcast, Cox, Bright House, Time Warner Cable, Cablevision, and Verizon control access to more than 47 million homes in the U.S.); Free Press Comments at 7 (explaining that “runaway media consolidation has left us with . . . a highly concentrated cable industry controlled by a cabal of incumbent video programmers and distributors”).

II. THE RECORD DEMONSTRATES THAT A NUMBER OF MVPD PRACTICES ARE IMPEDING THE DISTRIBUTION OF DIVERSE, INDEPENDENT PROGRAMMING

A. Most Favored Nation Clauses (“MFNs”) and Alternative Distribution Method Clauses (“ADMs”) Disproportionately Harm Independent Programmers

Numerous comments also clearly demonstrate that MFNs and ADMs inhibit the distribution of diverse, independent programming and disproportionately harm independent programmers. Public interest groups and smaller cable operators agree with independent programmers on this point.³⁵ As several of these programmers discuss, the combination of these MFNs and ADMs (1) precludes distribution of independent programming through alternative outlets such as over-the-top (“OTT”) platforms; (2) prevent independent programmers from entering into innovative carriage arrangements; and (3) deny these programmers the flexibility to respond to changing market conditions.³⁶ The Commission should therefore prohibit MFNs and ADMs that prevent independent programmers from pursuing alternative carriage arrangements.

³⁵ *See, e.g.*, INSP Comments at 16 (filed Mar. 30, 2016); Comments of Aspire Channel, LLC and UP Entertainment, LLC, MB Docket No. 16-41, at 4-5 (“Aspire/UP Comments”); TheBlaze Comments at 5-6; Comments of Altitude Sports & Entertainment, Outdoor Channel, Sportsman Channel and World Fishing Network, MB Docket No. 16-41, at 6 (filed Mar. 30, 2016) (“Altitude Sport & Entertainment et al. Comments”); Public Knowledge Comments at 18-20; ACA Comments at 34 (“Several [ACA members] report that one or more independent programmers have sought carriage on their systems, but have been unable to accept terms they otherwise would have accepted because of an MFN with a large MVPD.”).

³⁶ *See, e.g.*, Aspire/UP Comments at 4-5 (“The combination of these provisions, as a practical matter, severely limits or precludes the distribution of independent programming to alternative media such as OTT distributors. If an independent programmer saddled with these provisions agrees to innovative carriage arrangements, it risks losing the carriage commitments of major MVPDs.”); Altitude Sport & Entertainment et al. Comments at 6 (“[T]he interplay between restrictive MFN and ADM provisions effectively precludes independent programmers from distributing their programming to OTT distributors and platforms at any price or experimenting with new distribution models. Faced with the prospect of a major distributor’s exercise of self-

Comcast and other large MVPDs assert that these contractual provisions are pro-competitive.³⁷ That may be true in cases where the MVPD is negotiating with one of the few multi-channel conglomerates with similar leverage. However, that is certainly not the case when a large MVPD is negotiating with smaller, independent programmers such as RFD-TV, which are forced to accept MFNs and ADMs proposed by MVPDs regardless of how harmful they may be. As another independent programmer explains with respect to MFNs in particular, “[t]he most onerous MFNs are imposed on networks with the least countervailing leverage – particularly smaller, independent programmers, which lack the bargaining power to resist MVPDs’ demands for unreasonable and unfair MFN treatment.”³⁸ And “[a]ppplied in this fashion, MFNs cause significant harm not only to independent programmers but also their viewers, including higher prices and delay in the introduction of new program offerings.”³⁹

B. Lengthy Subscriber Contracts and Early Termination Fees (“ETFs”) Restrict Consumer Choice and Reduce the Disciplining Effect of Competition

As RFD-TV explained in its initial comments, multi-year subscriber contracts and ETFs prevent consumers from switching providers after an MVPD drops “must have” independent programming like RFD-TV.⁴⁰ Accordingly, the Commission should initiate a rulemaking proposing to prohibit MVPDs from enforcing termination fees within 90 days of dropping

help based upon a claimed MFN violation, independent programmers are denied any flexibility to respond to changing market conditions.”).

³⁷ See, e.g., Comcast NBCUniversal Comments at 26; AT&T Comments at 12-13.

³⁸ INSP Comments at 16.

³⁹ *Id.*

⁴⁰ See RFD-TV Comments at 25-27.

programming, so that consumers who enrolled on the promise of obtaining certain programming can switch to a competing MVPD. Otherwise, consumers will remain powerless to respond to such drops by changing providers and large MVPDs will remain insulated from their decisions to drop independent channels.

C. Program Bundling Practices Prevent Independent Voices From Being Heard

The record in this proceeding makes abundantly clear that program bundling demands impede the distribution of diverse, independent programming. Independent programmers, public interest groups, and MVPDs alike agree on this point.⁴¹ As INSP explains, “[w]hen, for example, an MVPD is coerced to carry all 21 of Viacom’s channels, all 21 of Disney’s channels, all 18 of Liberty Media’s channels, all 15 of News Corporation’s channels, and all 14 of CBS’ channels, the MVPD has committed 89 slots to just five programming sources, and thereby has foreclosed scores of independent programmers’ access to those channel positions.”⁴² The Commission should therefore take action in its pending good faith retransmission consent proceeding to “break up the bundle.”⁴³

While Verizon concurs that program bundling is a substantial obstacle to fostering a diverse video programming marketplace, Verizon is not justified in portraying itself as the

⁴¹ See, e.g., TheBlaze Comments at 8 (“When large media companies force MVPDs to carry (and pay for) networks with little consumer demand (or audience) as a condition to renewing or carrying networks that appeal to broader audiences or may include ‘must have’ programs, it drains essential bandwidth and capital that could otherwise be deployed on diverse voices.”); Free Press Comments at 12 (“Expansive bundling requires MVPDs to devote outsized financial resources to purchasing incumbents’ undesirable programming, crowding out capacity and financial resources that cable distributors could commit instead to independent and diverse programs.”); Verizon Comments at 4; AT&T Comments at 14-15.

⁴² INSP Comments at 13.

⁴³ RFD-TV Comments at 30.

victim. That portrayal is baseless given Verizon’s size; Verizon has a market capitalization of *more than \$200 billion*,⁴⁴ and cannot plausibly maintain that it is squelching independent channels like RFD-TV because others have “outsized negotiating power” over it.⁴⁵

Contrary to Verizon’s suggestions to the Commission,⁴⁶ program bundling and the associated high cost of certain programming in no way explain Verizon’s decision to drop RFD-TV. Indeed, as discussed in RFD-TV’s initial comments, Verizon told its subscribers that it was “necessary” to remove RFD-TV from its lineup because “[e]ach year, the cost of content increases substantially.”⁴⁷ But RFD-TV had offered to *reduce* the already low monthly rate it charged Verizon by 25 percent.⁴⁸ Verizon’s claims to the Commission and to consumers are thus belied by the facts. The Commission should therefore investigate whether Verizon’s recent decisions to drop certain independent channels are based on a persistent bias against rural-and senior-oriented programming.⁴⁹

III. THE COMMISSION HAS THE LEGAL AUTHORITY TO ENSURE THE AVAILABILITY OF DIVERSE, INDEPENDENT PROGRAMMING, INCLUDING RURAL- AND SENIOR-ORIENTED PROGRAMMING

As RFD-TV explained in its initial comments, the Commission has the legal authority under Section 616 of the Communications Act to take action to ensure the availability of

⁴⁴ Verizon Communications Inc., MarketWatch (last visited Apr. 19, 2016), <http://www.marketwatch.com/investing/stock/vz>.

⁴⁵ Verizon Comments at 3.

⁴⁶ *Id.* at 3-4.

⁴⁷ RFD-TV Comments at 14 (internal citation omitted).

⁴⁸ *Id.*

⁴⁹ *See id.* at 29.

independent programming.⁵⁰ Section 616(a) contains a broad grant of authority for the Commission to “establish regulations governing program carriage agreements and related practices between cable operators or other [MVPDs] and video programming vendors.”⁵¹ AT&T argues that the Commission lacks authority to take action unless an MVPD has engaged in conduct that violates the enumerated subsections of Section 616(a).⁵² However, Section 628(c) of the Act has a parallel structure to that of Section 616, and the D.C. Circuit has confirmed that the specific regulations mandated in Section 628(c) create a floor, not a ceiling, for the Commission’s authority.⁵³ The Commission should therefore conclude that, like Section 628(c), the specific regulatory requirements under Section 616(a) are simply minimum requirements. Accordingly, they do not preclude the agency from relying on Section 616(a) to establish regulations to ensure the availability of diverse, independent programming.

Notably, Comcast does not state that the Commission lacks authority to take action in this proceeding under Section 616.⁵⁴ Instead, Comcast invokes policy arguments and “serious[ly] questions . . . whether the Commission has a legitimate role to play” in ensuring the availability

⁵⁰ *Id.* at 31-32.

⁵¹ 47 U.S.C. § 536(a).

⁵² *See* AT&T Comments at 17.

⁵³ *See Cablevision Systems Corp. v. FCC*, 649 F.3d 695, 705 (2011); *see also* Comments of ITTA – the Voice of Mid-Size Communications Companies, MB Docket No. 16-41, at 8-9 (filed Mar. 30, 2016).

⁵⁴ *See* Comcast NBCUniversal Comments at 38-39.

of diverse, independent programming.⁵⁵ As the record in this proceeding clearly demonstrates, however, the answer to this question is a resounding yes.

CONCLUSION

For the third time in three years (in the Comcast-Time Warner Cable merger review proceeding, in the AT&T-DIRECTV merger review proceeding, and now in this proceeding), tens of thousands of consumers have demonstrated that there is very strong demand in this country for rural- and senior-oriented programming such as that provided by RFD-TV. Yet, the largest MVPDs have shown a persistent bias against such programming. Indeed, Verizon dropped RFD-TV from carriage throughout its entire footprint in February 2016 and other urban-based MVPDs—Comcast, Time Warner Cable, Cox, Cablevision, and Bright House—have not distributed RFD-TV to more than 5% of their subscribers. The Commission should ensure that the voices of consumers in this proceeding—as well as those of the numerous independent programmers, public interest groups, and smaller cable operators that have filed comments in favor of promoting diverse, independent programming—are heard. Consistent with the foregoing reply comments and RFD-TV’s initial comments, the Commission should act now to make a “diverse, robust, and competitive marketplace for the delivery of multichannel video programing”⁵⁶ a reality.

⁵⁵ *Id.* at 39.

⁵⁶ *NOI* ¶ 2.

Respectfully submitted,

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April 19, 2016

ATTACHMENT A



RFD-TV's Dramatic Fight for Rural Rights in Cable Rotation

Michael Kosser (<http://variety.com/author/michael-kosser/>)



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STEVE SWAIN/RFD-TV

For more than 15 years [RFD-TV](#) has been sending its rural-interest programming, powered by farming and livestock shows, rodeo and roots American music, to millions around the country. Most of its viewers live in small-town and rural areas, but it's also available to America's largest cities. And yet every so often a big city-headquartered cable carrier will announce that it is dropping the Nashville-based network from its programming.

That's when RFD-TV president [Patrick Gottsch](#) has to battle to keep his list of carriers intact for his viewers. He turns to those viewers for help and they never fail to respond. The latest battle involves the January announcement by [Verizon](#) FiOS that it was dropping the RFD-TV network from its network lineup.

"There's a disconnect, and it's a growing disconnect, between city and country," Gottsch says, "where the urban media executives and advertising executives just don't have the connection with rural America like they used to have."

Two years ago, he says, he went through a similar situation in Washington, D.C., with the Comcast/Time-Warner merger. "We were called before the Department of Justice. We met with numerous congressmen and senators, especially those with rural ties, and everyone was educated, we thought, about the importance of carrying rural content, and the importance of connecting city with country again. Apparently Verizon FiOS wasn't paying attention."

Instead, Gottsch felt blindsided when Verizon dropped the channel. "We had no hint that this was coming," he says. "I did see last year where they dropped the Outdoor Channel, the Weather Channel and the Sportsman Channel, and I was concerned that they appeared to be dropping rural content. I flew to New York on July 14 last year and met with them, and flat out asked them face to face, 'Are (you) getting rid of rural content?' They assured me that they were not. Nothing else was said until Christmas Eve, when we started getting letters and emails from Verizon customers saying that Verizon announced that they were dropping RFD-TV. That was the first we heard of it."

RFD-TV BY THE NUMBERS	
\$12.5m	Average viewership per week
132k	Average nightly viewership in primetime
47.3m	Pay TV households

According to Billy Frey, chief marketing officer for RFD-TV, the network is available to almost half the cable and satellite viewers in the U.S., and typically is watched by about 12.5 million people per week, an increase of 8% over 2014. "This type of entertainment is their life," says Frey, referring to the millions of loyal viewers. "That's why we fight, so it will always be there for them."

According to Nielsen, RFD-TV averaged 132,000 viewers in primetime for February, ranking 81st among just over 100 cable networks tracked.

On Jan. 28, Gottsch fought back on RFD-TV's evening show, "Rural America Live." The format felt a bit like a telethon, with Gottsch fielding calls from viewers all over the country. Cameras focused on a huge pile of binders containing thousands of letters from angry viewers. Many of the letter writers and callers vowed to cancel Verizon FiOS if the company followed through and dropped RFD-TV, even if it meant losing their only source of cable because, they said, RFD-TV was the only source of news and entertainment that responded to their lifestyle.

The following day large ads appeared on the pages of the New York Times and the Washington Post, reading: "Drop Us? Drop You, Verizon." The ad posed the question, "Does Verizon have a bias against rural independent content?" and suggested that Verizon chairman & CEO Lowell McAdam should resign.

All RFD-TV efforts to continue their Verizon FiOS relationship were for naught. At the end of January, Verizon FiOS dropped the net from its lineup. However, there may be promising news to come following the Federal Communications Commission's vote to adopt a Notice of Inquiry to study how independent programmers fare in today's contracting world of cable companies. The FCC press release stated: "This action will help the Commission assess the current state of video programming diversity and determine whether further action is needed to promote independent programming sources."