Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Expanding Consumers' Video Navigation Choices	)	MB Docket No. 16-42
	)	
Commercial Availability of Navigation Devices	)	CS Docket No. 97-80
	)	

COMMENTS OF VERIZON[1]

Introduction and Summary

Today's market for video services offers consumers more choices than ever before. The trends are clear: Consumers want to get their content from the provider of their choice using the device of their choice and when and where they want it. Competition and advances in technology are fueling these trends and will continue to disrupt the video marketplace. Verizon supports efforts to promote innovation and increase consumer choice throughout the video marketplace. As the Commission considers approaches to advance those goals in this proceeding,[2] it should also take steps to prevent unintended consequences that could undermine those goals and disrupt innovation and investment in video services, networks, and programming (including diverse and independent programming). Verizon encourages the Commission to reach results that promote consumer choice while also addressing the issues identified below.

Structured correctly, the Commission's proposals could hasten the inevitable demise of traditional set-top boxes. As a Multichannel Video Programming Distributor (MVPD) that

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

[2] *Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*, Notice of Proposed Rulemaking, 31 FCC Rcd 1544 (2016) ("*Navigation Device NPRM*").

leases millions of set-top boxes to our subscribers today, Verizon understands that new competition in this area will present challenges. We recognize however that the old video viewing model is already giving way to one where consumers increasingly control how, when, and where to view content. We understand that this emerging model promises many benefits to consumers and opportunities for innovative service providers. Verizon shares the goals of increased innovation and consumer choice and supports elements of the Commission's proposal. By offering more flexibility to MVPDs and not mandating a specific technology, the proposed rules avoid a number of the problems that plagued the failed CableCARD approach to assuring a commercial market for navigation devices, as the statute requires.[3]

As the Commission proceeds, however, it must act with caution to avoid unintended consequences that could harm consumers, threaten the economic viability of independent and diverse programmers, or undermine the goals of increased competition and innovation. We discuss some of these potential pitfalls below, as well as steps the Commission can take to avoid them. The Commission should:

- Ensure Consumers Get Their Full MVPD Service. The Commission should ensure that consumers receive the benefits of an MVPD's service innovations by relieving MVPDs of any obligation to deliver the three "Information Flows" identified under the proposed rules to navigation devices or applications that disrupt elements of the MVPD's programming content and/or presentation of that content – disruptions that could be particularly harmful to independent and diverse programmers;

- Not Create New Gatekeepers To Tax Innovation and Choice. The Commission should promote consumers' viewing choices and avoid creating new gatekeepers in the video marketplace by not requiring MVPDs to deliver the Information Flows to a third-party developer (or to apps that run on such a developer's platform or devices) if that third-party developer imposes an "app tax" or other surcharges for the MVPD to make its own stand-alone application available on the third-party's navigation device or in its affiliated app store;

[3] *See* 47 U.S.C. § 549.

- Encourage Universal Search. The Commission should not impose regulation on over-the-top video services through this proceeding, but it should examine ways to facilitate consumers' ability to conduct universal searches on the equipment they choose to watch video programming, whether supplied by an MVPD or a third-party developer;

- Promote Effective Customer Service. As more players have a role in how consumers receive their video services, the Commission should encourage ready access for consumers to the help and support functions from their MVPD to address service disruptions without regard to the source of their navigation device and to identify the source of any disruptions; and,

- Address Barriers to More Tailored Content Packages. Today, unreasonable requests from large programming owners result in bloated programming bundles that are out-of-step with consumer demand. The Commission should take action to enable video providers to offer more tailored packages that better meet consumer demand.

Effectively addressing these concerns will help ensure that any new rules actually improve the choices available to consumers and avoid unintended consequences that may harm competition and/or the consumer experience.

I. THE COMMISSION'S PROPOSALS SHOULD RESPOND TO CONSUMER DEMAND TO ACCESS CONTENT ON A VARIETY OF COMMERCIAL ELECTRONIC DEVICES.

Consumers have more choices than ever before in how they access and view video programming, and the era of the traditional set-top box is already fading. Today's consumers enjoy access to video content from multiple sources and platforms. Consumers subscribe not only to competing cable and satellite broadcast TV services but also to over-the-top video distributors, such as Amazon Prime, Hulu, Netflix, and Verizon's own go90.[4] MVPDs and manufacturers have designed and distributed applications that enable consumers to access content with their own devices, including smartphones, tablets, game consoles, and Smart TVs,

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[4] *See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Sixteenth Report, 30 FCC Rcd 3253 (2015).

using standard operating systems such as Android, iOS, and Windows.[5] All major MVPDs have developed and deployed such applications, and consumers have initiated over 50 million downloads of MVPD apps to mobile devices and Smart TVs.[6] Over-the-top video distributors such as Amazon and Netflix also use application technology, further enhancing the utility of consumer-owned devices.[7] To a large extent, the video marketplace already provides an environment in which "MVPD subscribers [can] watch what they pay for wherever they want, however they want, and whenever they want."[8]

Given these developments, it is not surprising that consumers are increasingly watching video programming without the traditional set-top box. Over 50 percent of consumers now live in households with at least one Internet-connected TV or other device.[9] Increasing choices among sources of programming also drive consumer demand for tailored programming packages rather than the traditional pay TV packages.[10] These trends reflect reactions to marketplace demand, and ensure that consumer demand – together with continued advances in technology – will continue to drive MVPDs and other video distributors to develop new and innovative methods to make content accessible without set-top boxes and bloated programming packages of 300+ channels.

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[5] *See* DSTAC Final Report, WG-2 at 12, WG-4 at 127 *et seq.* (Aug. 28, 2015), *available at* https://www.fcc.gov/dstac. The DSTAC Final Report consists of a "DSTAC Summary Report" and four Working Group ("WG") reports. References are to the page numbers of the Working Group reports.

[6] *See* WG-2 at 13-14 *see also id.* at 11-17 (describing additional technologies such as "VidiPath" from the Digital Living Network Alliance and Remote User Interface from RVU).

[7] *See id.* at 12-13.

[8] *Navigation Device NPRM*, ¶ 11.

[9] *See, e.g.*, J. Palenchar, "Internet-Connected TVs Reach Age of Majority," TWICE (Apr. 4, 2016), *available at* http://www.twice.com/internet-connected-tvs-reach-age-majority/61004.

[10] *See*, *e.g.*, A. Crupi, "TV Goes A La Carte Lite: Verizon Fios Rolls Out Customizable 'Skinny Bundle'," Advertising Age (Apr. 17, 2015), available at http://adage.com/article/media/verizon-fios-rolls-skinny-bundle-programming-model/298110/.

As the Commission considers new rules in this area, it must take into account these existing dynamics and ensure that any new rules enhance, not impede, innovation and consumer choice in this marketplace. The proposals to move away from technology mandates and the "common reliance" framework of the failed CableCARD regime are steps in the right direction. But the Commission should take the additional measures outlined below to avoid potential unintended impairments to competitive choice and the consumer experience.

II. CONSUMERS SHOULD CONTINUE TO RECEIVE THE BENEFITS OF INNOVATION IN MVPD SERVICES.

MVPDs like Verizon continue to roll out new services and technologies that benefit their subscribers, which they should enjoy using either MVPD-supplied or third-party navigation devices. For example, MVPDs generally are moving from standard definition (SD) to high definition (HD) to ultrahigh definition (4K) video delivery services, and have adopted network architectures that maximize the home viewing experience for their subscribers. The Commission should ensure that any new rules do not slow these advances or otherwise undermine or disrupt the services consumers buy from MVPDs. Likewise, the Commission should ensure that any new rules do not undermine the availability of independent and diverse programming included in MVPDs' offerings today. Instead, consumers should continue to get the full benefits of the services they purchase from MVPDs.

Today, delivering many of these innovations often requires a level of integration with the equipment that the MVPD places in the subscriber's home. With new rules aimed at encouraging more choices in navigation devices and applications, consumers should continue to receive the full benefits of the MVPD's services, whether they use their MVPD's devices or applications or instead opt for the offerings of competing third-party developers. For that to work, MVPDs will need flexibility to develop and implement technical standards suitable to their particular networks and services. Verizon thus supports the Commission's technology neutral approach that does "not prescribe a particular solution [for delivery of MVPD content and data streams] that may impede the MVPD industry's technological progress"[11] and does "not dictate the MVPD's decision whether to rely on hardware or software to make the Information Flows available."[12] Allowing "each MVPD [the] flexibility to choose the standard [for delivery of content and data in the Information Flows] that best aligns with its system architecture" should ensure that the technological advances offered by the MVPD will be available to third-party equipment and the consumers that choose to use such equipment.

Adhering to this principle is also necessary to protect the MVPD's network. For example, some providers deliver programming to subscribers through multicast technology. If a third-party manufacturer attempted to change the Information Flows for unicast delivery, the network could suffer, resulting in harm to the network and other users. For this reason also, the MVPD – not the third-party manufacturer – must dictate "the standard that best aligns with its system architecture."

Similarly, allowing MVPDs to use industry standards for content protection systems supports innovation in the video distribution marketplace and "affords MVPDs significant flexibility to protect their content, evolve their content protection, and respond to security concerns."[13] The Commission's rules should support the ongoing evolution toward an environment in which consumers will not need to use separate navigation devices to access MVPD content. As explained above, consumers can already access MVPD programming through a host of consumer devices using applications, and the day is coming when traditional

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[11] *Navigation Device NPRM*, ¶ 32.
[12] *Id.* ¶ 35.
[13] *Id.* ¶ 58.

set-top boxes will be relegated to the technology dustbin next to rotary telephones and analog television sets.

Although the Commission has proposed rules that protect an MVPD's content as delivered to third-party navigation devices, the proposals also contemplate that third-party developers will "offer innovative user interfaces and functionality to consumers" on these devices.[14] The Commission says that it has insufficient evidence that third parties will use this power to "disrupt elements of service presentation (such as agreed-upon lineups and neighborhoods), replace or alter advertising, or improperly manipulate content," and so proposes to take no action to address these concerns.[15] This would be a mistake.

The Commission should address these concerns now rather than waiting until competitive navigation devices in the market impede, rather than enhance, competition by disrupting the consumer experience and/or the commitments MVPDs may have to content owners (including independent and diverse programmers), local franchising authorities, and their subscribers.[16] As the Commission recognizes, third-party devices must protect the content rights that the MVPD negotiated with program owners. But the potential also exists for third-party navigation devices to modify or disrupt important elements of an MVPD's programming service presentation, such as overwriting the advertising that MVPDs insert to help fund the service, degrading video quality, obscuring or displacing independent or diverse programming, or not delivering PEG programming to consumers. MVPDs also use channel placement to benefit and protect their subscribers' interests, e.g., not placing child-friendly video-on-demand channels next to adult programming channels, and they may have contractual obligations to content providers about

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[14] *Id.* ¶ 26.
[15] *Id.* ¶ 80.
[16] *Id.* ¶ 79.

how content is positioned within the channel line-up. And actions that disrupt an MVPD's service presentation may disproportionately affect independent and diverse programmers that may lack the resources to attract the attention of third-party device developers or negotiate favorable placement.[17]

MVPDs should not have to resort to the courts for relief from actions by third-party manufacturers who change an MVPD's programming services or presentation of its content. Third-party navigation device developers can seek permission from the MVPDs to make changes to the content or programming service; they should not be able to rely on Commission rules to authorize such changes, or to claim such changes are part of the third party's "user interface." To ensure third-party navigation devices receive an MVPD's "service presentation" without unauthorized changes, the Commission should not require MVPDs to deliver the Information Flows to a navigation device or application that "disrupts elements of service presentation." Such an approach does not preclude a developer from offering a unique user interface or other functionality on its navigation device for consumer access to the MVPD's programming service, but would help ensure that consumers get all of the benefits of the MVPD services that they pay for.

III. THE COMMISSION SHOULD NOT ENABLE NEW GATEKEEPERS IN THE VIDEO DISTRIBUTION ECOSYSTEM WHO COULD LIMIT INNOVATION AND CONSUMER CHOICE.

As the Commission considers steps to ensure that consumers enjoy the full benefits of a competitive marketplace for navigation devices – and video services more generally – it must ensure that its actions do not inadvertently create or empower "gatekeepers" in the video

[17] *See, e.g.,* Letter from Larry E. Strickling, Assistant Secretary for Communications and Information, U.S. Department of Commerce, to Hon. Tom Wheeler, Chairman, FCC, MB Docket No. 16-42 (filed April 14, 2016) at 5 (urging FCC to consider the potential effect of proposed rules on "specialized and minority programmers that may lack the finances or audience to attract the attention of competitive navigation providers").

consumption ecosystem. Today, there is a relatively small group of developers and manufacturers likely to support the devices and applications that could provide competitive alternatives to traditional set-top boxes. For example, just two companies control the vast majority of mobile devices, mobile operating systems, and the app stores in which consumers access video distributors' applications. Mobile access to content is particularly important today because consumers increasingly access video content on mobile devices, such as tablets and smart phones, using mobile applications.[18] If the Commission adopts new rules facilitating third-party devices or applications designed to access MVPDs, it is likely that these existing platforms will support these new devices and applications and become even more powerful. For developers seeking to take advantage of the new regime proposed by the Commission, the Commission should take steps now to ensure that those same entities do not undermine innovation or limit consumer choice.

The proposed rules would require MVPDs to deliver their content streams to these developers if the developers offer consumers navigation devices.[19] Yet these developers often impose an "app tax" if an MVPD seeks to place its own application on these developers' devices (*e.g.*, a gamebox) or in their app stores (for download by mobile tablet users). The "app tax" may take the form of an upfront payment for the privilege of allowing consumers to access the MVPD app on the developer's platform or in the app store and/or a cut of all revenues generated

[18] *See, e.g.*, B. Munson, "Study: 59 Percent of People Watch Mobile TV," CED Magazine (July 22, 2015) (reporting on Arris' 2015 Consumer Entertainment Index), *available at* http://www.cedmagazine.com/news/2015/07/study-59-percent-people-watch-mobile-tv; J. Brustein, "We Now Spend More Time Staring at Phones than TVs," Bloomberg (Nov. 19, 2014), *available at* http://www.bloomberg.com/news/articles/2014-11-19/we-now-spend-more-time-staring-at-phones-than-tvs.

[19] *See Navigation Device NPRM*, ¶¶ 63-69.

by consumers who make purchases (e.g., video-on-demand movies) through the MVPD's application on the developer's platform.

These app taxes could create an uneven playing field that could limit consumer choice or affect the pace of innovation. MVPDs and others who seek access to these platforms must negotiate with these entities to get an application onto devices or in their app stores. And application developers (including MVPDs who seek to promote applications) may have to pay to gain access to consumers. The negotiations for access to popular platforms could become even more challenging when the Commission requires MVPDs to deliver their programming streams to these same entities *at no charge*. To the extent that MVPDs are not able to get their own applications on these devices or in app stores – either because of these demands or because the platform provider unnecessarily delays review and approval – that could effectively take away consumers' ability to choose to use the applications, and associated user interface and features, developed by their MVPD. In the environment supported by the Commission's proposals, consumers may want the capability to use their MVPD's application in addition to third-party applications; impeding that choice could cause consumer frustration and confusion.

The Commission should ensure that any new rules do not result in consumers having fewer choices on the navigation devices they use to access video programming. To offset this risk, the Commission should not require delivery of the Information Flows by MVPDs to a third-party developer (or to apps that run on such a developer's platform or devices) if that third-party developer imposes surcharges for the MVPD to make its own stand-alone application available on the third party's navigation device or in its affiliated app store, or otherwise unreasonably impedes consumer access to the MVPD's application, such as unreasonably not approving an app for an app store or delaying that approval. An MVPD should have no obligation to deliver the Information Flows to a third-party developer that refuses to honor this condition. This modest step would ensure a more level playing field that would maximize the choices available to consumers on the devices of their choice.

IV. THE COMMISSION SHOULD FACILITATE CONSUMER ACCESS TO UNIVERSAL SEARCH FOR VIDEO CONTENT.

By adopting new navigation device rules, the Commission hopes to ensure that consumers have more equipment options and can "pay less" to watch the pay TV services to which they subscribe.[20] But that alone may not be sufficient to solve some frustrations inherent in the current customer experience.

Consumers today look to a wide range of service providers and sources for video entertainment, and as a result even the most evolved device experience reflects video silos. These silos impede consumers' ability to search for and discover content across all the sources and platforms available to them. For example, a consumer should be able to search for a movie and find it on a linear TV channel, in an MVPD's video-on-demand catalogue, or from an over-the-top service. But today a consumer typically has to search for that movie within each of those sources – one at a time – leading to a tiresome and frustrating experience, one that does not facilitate comparison shopping for the best deal, and ultimately does not enable consumers to "pay less."

The Commission's proposed rules would not resolve this frustration. Under the proposed rules, MVPDs must deliver the required Information Flows to third-party devices or applications, but there would be no obligation for those third parties to do the same. Even if the third party itself is an over-the-top video distributor, such as a Hulu or Netflix, that provider would be able to provide its subscribers the ability to search for and access programming available from their

[20] *Id.* ¶ 11.

MVPD without enabling the MVPD to offer the same search capability to subscribers. Similarly, an over-the-top video distributor can make a deal with a third-party navigation device manufacturer to enable search of its content, but decline to do so for an MVPD. A consumer with a competitive navigation device thus may have ready access to MVPD and over-the-top video platforms for its search, but subscribers with an MVPD-supplied navigation device would not. That result could reduce consumer choice because non-MVPD video distributors have access by virtue of regulation to multiple MVPD platforms, but MVPDs would have no reciprocal rights to offer consumers improved search.

The Commission claims that "consumers should be able to choose how they access the multichannel video programming to which they subscribe," but its proposals in their current form do not give consumers a true choice among equivalent navigation devices.[21] The Commission therefore should condition delivery of an MVPD's programming streams to the navigation device of a non-MVPD video distributor on a reciprocal grant of rights that enables search using the MVPD's devices and applications. Otherwise the Commission's proposed rules will not promote the universal search ability that consumers desire.

V. THE COMMISSION SHOULD ENSURE THAT SUPERIOR CONSUMER EXPERIENCE ACCOMPANIES INCREASED CONSUMER CHOICE.

In the future, consumers may access an MVPD's video service through multiple third-party applications and devices. But increased choice should not degrade the quality of the customer experience or inconvenience consumers.

Today, most consumers benefit from watching television at home from a single source because the consistent high quality experience they receive is the result of tight integration between the application on the TV in the living room and the MVPD's network. Breaking that

[21] *Id.* ¶ 26.

integration – by allowing access to the MVPD's services through multiple devices and applications – could adversely affect the customer experience unless customers can continue to readily access support functions from their MPVD.

In today's more tightly integrated environment, MVPDs have visibility into the health of consumer's devices in the home and the network serving those devices, and can remotely diagnose and repair many common problems disrupting the consumer's viewing experience. In the future, while viewing an MVPD's service on third-party equipment, the questions facing consumers will be: (1) who should they contact if/when their viewing experience suffers, and (2) will that provider offer a remedy for whatever problem they may be experiencing?

More choices for consumers should not require them to forego access to help and diagnostic functions when their viewing experience goes awry or otherwise make it more difficult or burdensome for consumers to get any problems addressed. These functions are not integrated into the content streams that an MVPD must deliver to third-party devices and applications and their configuration may vary depending on the devices or applications receiving the MVPD's content streams. But the Commission should anticipate that consumers in these situations will call first the entity delivering the video service, that is, their MVPD.

The Commission should therefore make clear that its new navigation device rules do not foreclose an MVPD from offering and providing to its subscribers the help and diagnostic tools necessary to identify and resolve viewing experience problems, to the extent the MVPD's diagnostic tools have visibility into the network and devices on the network. Among other things, these diagnostic tools could help inform a consumer whether a service disruption is being caused by the network connection, the device, or something else. MVPDs of course cannot troubleshoot third-party devices, and third-party manufacturers are responsible to consumers for the equipment they provide. This condition in no way relieves third-party equipment suppliers of that responsibility. However, as a condition of gaining access to an MVPD's information flows, third-party devices and applications should be required to support an MVPD's capabilities that help solve problems consumers may encounter.

VI. THE COMMISSION SHOULD FACILITATE MVPDS' ACCESS TO CONTENT THAT MEETS CONSUMERS' DEMAND FOR TAILORED PROGRAMMING PACKAGES.

Even as the Commission addresses consumer choice for video navigation devices, there is more that the Commission can and should do to address obstacles that make it more difficult for competitive MVPDs like Verizon to better meet consumer demand. Today, many consumers want smaller, more tailored, TV bundles, but large programming owners demand that MVPDs – and their subscribers – purchase inflated bundles of programming channels. The Commission should take steps to address this impediment to meeting consumer choice.

As Verizon has detailed in other proceedings, large content owners – many affiliated with cable incumbents and/or broadcasters – frequently negotiate distribution rights for must-have programming channels with demands to carry less desirable, affiliated channels.[22] These bundles often come with minimum penetration obligations or tag-along rights, which require Verizon to provide certain channels to the vast majority of our subscribers, and, if we offer certain channels to a subscriber, we must offer many other channels in the same bundle.

These bundling arrangements can increase the rates for the programming to MVPDs and their subscribers and result in supersized packages that may be of little interest to most consumers. While offering a diverse array of programming is important for a competitive MVPD like Verizon, "bundle inflation" limits a provider's discretion to select what it feels is the best

[22] *See* Comments of Verizon on Mediacom Petition for Rulemaking, RM-11728, at 8-9 (Sept. 29, 2014).

lineup or package of channels.[23] And these arrangements limit the ability to give customers what they want: the ability to choose a programming lineup tailored to their interests.

The Commission has existing statutory authority to address some of these market failures that thwart consumer preferences. For example, pursuant to Section 325(b) of the Communications Act, the Commission can "govern the exercise by television broadcast stations of the right to grant retransmission consent."[24] Adopting rules to rein in broadcasters' unreasonable negotiating tactics related to bundling can ultimately improve the content selection options for MVPDs and consumers.[25] The record is complete in the retransmission consent rulemaking proceeding,[26] and the Commission should act now to adopt targeted reforms to the broken retransmission consent negotiation process. Prompt and effective action in that proceeding would increase competitive MVPDs' ability to meet consumer demand for content from sources other than the major cable programmers and broadcast networks.

The program access protections in Section 628 of the Communications Act (47 U.S.C. § 548) provide another opportunity for the Commission to protect consumers by ensuring that competitive MVPDs have reasonable – including economically reasonable – access to the programming their customers demand, much of which remains under the control of cable incumbents.[27] Ensuring competitive MVPDs can access programming held by incumbent cable

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[23] *Cf. Promoting the Availability of Diverse and Independent Sources of Video Programming*, Notice of Inquiry, 31 FCC Rcd 1610, ¶ 15 (2016) (noting complaints that forced bundling arrangements "drain the resources and monopolize the channel capacity of MVPDs to the detriment of independent programming").

[24] 47 U.S.C. § 325(b)(3)(A).

[25] *See* Comments of Verizon, MB Docket No. 15-216, at 3-4 (Dec. 1, 2015); Comments of the American Television Alliance, MB Docket No. 15-216, at 44-47 (Dec. 1, 2015).

[26] *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).

[27] *See Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, 25 FCC Rcd 746, ¶¶ 50-57 (2010).

operators on reasonable terms can again free up resources to allow these MVPDs to offer consumers a tailored array of competitive video programming choices.

VII. CONCLUSION.

Verizon supports the Commission's efforts to increase consumer choice in navigation devices for accessing video distribution services. The Commission should, however, modify these proposals in accordance with the recommendations above for improving consumers' access to MVPD content, their experience viewing that content, and competition in the market for navigation devices and video programming.

Respectfully submitted,

_/s/ *William D. Wallace*___

Tamara L. Preiss
Leora L. Hochstein
William D. Wallace
1300 I Street, NW
Washington, DC 20005
(202) 515-2535

Attorneys for Verizon

William H. Johnson,
Of Counsel

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