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EX PARTE

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Implementation of Section 621(a) of the Cable Communications Policy Act of 1984, as Amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311

Dear Ms. Dortch:

NCTA's letter of May 4 claims that telephone company entry into video is unlikely to result in lower prices or other benefits for consumers.[1] Experience proves otherwise.

As an initial matter, the very fact that NCTA has written this letter contradicts its claims. NCTA seeks to downplay the benefits of telco entry in order to discourage the Commission from taking steps that would facilitate much-needed competition to NCTA's members. But if NCTA truly believed that telco entry would fail to provide such competition, it would have no reason to malign or oppose it. The fact that NCTA has campaigned against telco entry proves that it has something to lose and that its claims to the contrary here are entitled to no weight.

In any event, the evidence overwhelmingly proves NCTA wrong. As we demonstrated in our comments and reply comments, and as the Department of Justice recently recognized,[2] analyses by the Commission itself, the General Accounting Office, consumers groups, numerous

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[1] *See* Letter from Daniel Brenner, NCTA, to Marlene Dortch, FCC, MB Docket 05-311 (May 4, 2006).

[2] Ex Parte Submission of the Department of Justice at 3-4, MB Docket No. 05-311 (FCC filed May 10, 2006) (citations omitted) ("Although incumbent cable providers are subject to important intermodal competition from direct broadcast satellite ('DBS') providers, evidence in the record suggests that DBS is not fully effective in constraining incumbent cable providers and that additional competition, particularly from wireline providers, has the potential to provide lower prices, better quality services, and more innovation to consumers. ILEC deployment of extensive facilities to compete with the incumbent cable companies may induce not only additional competition in video distribution, but also quicker deployment of advanced broadband services to consumers."

economists, and independent analysts all confirm that telco entry into video results in significant benefits for consumers.[3]

- In its most recent report on cable pricing, the Commission noted that "[f]or communities [with wireline overbuild competition], the monthly cable rate and price per channel were, respectively, 15.7 percent lower and 27.2 percent lower than those averages for the noncompetitive group."[4]

- The GAO has found that wireline cable competition exists in less than 2 percent of all communities, but that in those areas, cable prices average approximately 15 percent lower while customer service improves.[5]

- The Consumers Union and Consumer Federation of America testified that "the entrance of the Bell operating companies into video distribution offers the promise of lower prices."[6] "Because the presence of actual facilities-based, video providers has lowered prices in markets where competition exists, there is reason to believe that a comparable effect will be experienced when the Bells enter previously monopoly markets."[7]

- The American Consumer Institute cited "circumstantial evidence that cable operators have dropped price to coincide with market entry."[8] According to its survey in Keller, Plano, and Lewisville, Tex., communities that had wireline-based

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[3] Verizon Comments at 4-5; Verizon Reply at 1-2, 5-8; Ex Parte Submission of the Department of Justice at 3-4, MB Docket No. 05-311 (FCC filed May 10, 2006).

[4] Report on Cable Industry Prices, *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, 20 FCC Rcd 2718, ¶ 12 (2005).

[5] U.S. General Accounting Office, *Telecommunications: Subscriber Rates and Competition in the Cable Television Industry*, Testimony of Mark L. Goldstein, Director of Physical Infrastructure Issues, Before the Senate Committee on Commerce, Science and Transportation, GAO-04-262T, at 6 (Mar. 25, 2004); U.S. General Accounting Office, *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, Report to the Chairman, Senate Committee on Commerce, Science and Transportation, GAO-04-8, at 3-4 (Oct. 24, 2003).

[6] Testimony of Gene Kimmelman, Vice President, Federal and International Affairs, Consumers Union, before the United States Senate Committee on Commerce, Science and Transportation (Jan. 31, 2006), at 4, *attached to* Comments of Consumers Union, *et al.*

[7] *Id.* at 6.

[8] The American Consumer Institute, *Does Cable Competition Really Work? A Survey of Cable TV Subscribers in Texas* (Mar. 2, 2006).

competition for less than six months, "[s]ome consumers stayed with their incumbent provider and reported to have saved, on average, $26.83 per month off their average cable TV bill, as a direct result of competition."[9]

- Economist Yale Braunstein observed that "[t]here is very little direct competition in the cable industry, but where there is, consumers generally see both lower prices and additional service offerings."[10]

- Analyst Jeff Kagan noted that, in Sarasota and Manatee Counties, Fla., Comcast decided to not raise rates for the first time in a decade, following Verizon's entry in Manatee County and pending franchise negotiations in Sarasota County. "For them to not raise rates is historical."[11]

- Comcast opened a new call center in November 2005 to improve customer service for customers in three Maryland counties where Verizon deployed FiOS Internet but cannot yet offer video – Anne Arundel, Calvert, and Charles counties.[12]

- Analysts at SG Cowen noted that "[c]able has tried to maintain its premium by rapidly increasing the transmission speed of its highest priced product. From an initial speed of 1.5 Mbps two years ago, cable companies are rapidly upping their standard offering to 3 Mbps. Some cablecos have also followed telcos' lead by tiering; however, they are introducing more tiers at the top end, rather than at the bottom end, in some cases raising standard transmission speeds to 15 Mbps (Cablevision) in select areas."[13]

NCTA's claims also are belied by the recent actions of its members in areas where Verizon has begun providing video services. Bank of America's most recent study of seven geographic areas where FiOS is available found that in five of these areas, the cable incumbent offered discounts of up to 38 percent for video services compared to the incumbent's regional or Web-advertised price.[14] In six of these seven areas, the cable incumbent offered discounts of up to 24

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[9] *Id.*

[10] Yale M. Braunstein, School of Information, University of California, Berkeley, *Expected Consumer Benefits from Wired Video Competition in California* at 2 (Apr. 2006).

[11] L. Mayk, *A Cable TV Rate Shocker: No Boost*, Sarasota Herald-Tribune at A1 (Apr. 26, 2006).

[12] D. Leiva, *Comcast Call Center Aims To Boost Service*, Capital at B1 (Nov. 20, 2005).

[13] T. Watts, *et al.*, SG Cowen & Co., *RBOC Rally: Signs of a Brighter Future, or Path to Inevitable Decline?* at 17 (Mar. 16, 2006).

percent for its bundle of video, Internet, and phone service as compared to its regional or Web-advertised market.[15]

The experience of telephone and cable companies competing for high-speed Internet services further contradicts NCTA's claims. Cable modem companies and DSL providers are competing aggressively, and cable companies are reducing the per-megabit price of their high-speed Internet access services.[16] For example, in November 2005, Cablevision increased the speed of its cable modem service from 10 Mbps downstream to 15 Mbps downstream at no additional cost, and added two premium tiers that will offer download speeds of 30 and 50 Mbps.[17] Comcast has also increased the speed of its basic broadband offering.[18] Cox and Adelphia have done so as well.

NCTA ignores all of this, and instead relies on a single quote from a Verizon executive that, even as distorted by NCTA, does not support its arguments. NCTA cites Verizon as stating that Verizon will price its FiOS service "'competitively, but not at a discount,' since it's 'worth somewhat more than cable.'" But it is basic economics that price and quality are two sides of the same coin and that where a service provider decides to offer higher quality service at the same price, it forces competitors to respond by adjusting either the quality or price of their service in order to remain competitive. And as demonstrated above, this is exactly what has already occurred in the areas where Verizon has begun providing video services to date.

Sincerely,

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[14] D. Barden, *et al.*, Bank of America, *Battle for the Bundle: Consumer Wireline Services Pricing* at 15 (Apr. 18, 2006).

[15] *Id*.

[16] *See, e.g.*, C. Moffett, *et al.*, Bernstein Research, *Broadband Update: "Value Share" and "Subscriber Share" Have Diverged* at Exhibit 2 (Apr. 7, 2006) (estimating a two-percent decline in cable modem average revenue per unit, and a three-percent decline in DSL average revenue per unit from third-quarter to fourth-quarter 2005).

[17] *See* Cablevision News Release, *Cablevision Introduces New Optimum Online Speeds for the Next Generation of High-Speed Internet Products* (Nov. 7, 2005).

[18] *See* D. Barden, *et al.*, Banc of America Securities, *Consumer Wireline Services Pricing* at 2 (Oct. 18, 2005).