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December 6, 2006

EX PARTE

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

Re: 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, MB Docket No. 05-311

Dear Ms. Dortch:

On December 6, 2006, Ed Shakin and I met with Christopher Robbins, legal advisor to Commissioner Tate, to urge the Commission to adopt rules to implement Section 621(a). We discussed our recommendations for addressing some of the problems associated with the current video franchising process as outlined in our earlier comments in this proceeding. Specifically, we reviewed our positions regarding a time deadline by which local franchising authorities (LFAs) should be required to act on a franchise application, build-out requirements, franchise fees, PEG channels and regulation of our fiber optic network.

We also reviewed the status of our fiber-to-the-premises (FTTP) deployment and the availability of our FiOS video service and Internet access offerings. In this regard, we provided Christopher with the attached pamphlets describing our FTTP deployment and our video service offering. In addition, we discussed the negative impact on competitive entry of exclusive access agreements for multi-dwelling unit properties (MDUs) and private developments entered into by incumbent cable operators.

Sincerely,

A handwritten signature in black ink, appearing to read "Leora Hochstein".

Attachments

Verizon FiOS TV

VIDEO CHOICE FOR CONSUMERS



Verizon Wants to Bring Video Choice to Consumers The FCC Should Act to Encourage Innovation Without Unnecessary Delays.

In 2004, Verizon began a massive upgrade of its network to offer fiber to the premises (FTTP), an all-fiber network with sufficient capacity to meet consumers' voice, data, and video communications needs for decades to come. By the end of 2005, Verizon passed three million homes and businesses with FTTP in almost 1200 communities spread out over 16 states. Verizon plans to double this number to six million by the end of 2006 and expects to continue its deployment over the next several years. By the end of 2010, Verizon plans to pass 18 million premises with its FTTP network.

The customers served by Verizon's FTTP can receive voice service and Verizon's FiOS broadband data services – with download speeds currently ranging from 5 to 50 megabits-per-second. In September of 2005, Verizon launched its FiOS TV service in Keller, Texas.

As of the end of the third quarter 2006, Verizon offered video services to 1.2 million premises and had 118,000 FiOS TV subscribers—a nearly 10% penetration rate. Verizon's goal is to have

175,000 video subscribers by the end of the year, making the service available to 1.8 million households. By the end of the third quarter 2006, Verizon had more than 500,000 FiOS Internet customers, with the service available to 3.8 million premises. By the end of the year, Verizon seeks to have 725,000 FiOS Internet subscribers, with the service available to five million premises.



"[C]ommunities with overbuild competition experienced lower rates (an average of 23 percent lower for basic cable) and higher-quality service."

Source: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 05-255, FCC 06-11, ¶ 91 (rel. Mar. 3, 2006)

Verizon's FiOS TV has made a competitive splash. FiOS TV is more than cable. FiOS TV provides consumers with advanced features made possible by its fiber network and its state-of-the-art Internet Protocol (IP) Platform. Customers can currently receive nearly 200 digital video and music channels, more than 20 high definition channels, and nearly 3,000 video-on-demand titles. And Verizon's lead offer is competitively priced at \$42.99 per month. At this price, Verizon offers more channels at prices that are \$10 to \$20 lower than those of incumbent cable providers in most markets.

▼ The Competitive Response

As would be expected, competition has led to swift and substantial benefits for all customers in the newly competitive markets where FiOS TV is available. The Commission noted that "communities with overbuild competition experienced lower rates (an average of 23 percent lower for basic cable) and higher-quality service." *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, FCC 06-11, ¶ 91 (rel. Mar. 3, 2006).

▼ Franchising Impedes Entry

While Verizon's successes in bringing FiOS TV to market are important and show the consumer benefits of, and desire for, wireline video competition, they have to be viewed in light of Verizon's overall experience navigating the local franchising process. So far, Verizon has obtained more than 200 local cable franchises for FiOS TV from Local Franchising Authorities (LFAs) in California, Florida, Maryland, Massachusetts, New York, Pennsylvania, Texas, and Virginia. But Verizon estimates that it could need as many as 3,500 franchises to provide video services.

A number of states, including Texas, New Jersey, and California, have passed statewide, streamlined franchising legislation. However, in most of the country, franchise negotiations continue to occur only at the local level.

Verizon's experience demonstrates that while some jurisdictions act quickly on franchise requests, obtaining a competitive franchise regularly takes fifteen months or more. Of Verizon's franchise negotiations that are currently pending (not including Texas, New Jersey, and California, where statewide franchising laws have been passed), **74% have been going on for fifteen months or more**, and a majority of them (56%) for eighteen months or more. A full 83% of pending negotiations have been under way for one year or more.



Franchise Facts

- Verizon estimates that it could need up to **3,500** franchises. To date, Verizon has a total of over **200** franchises. This figure represents only a fraction of the franchises that Verizon could need.
- Verizon has been engaged in the franchising process now for over two years. To date, our experience suggests that:
 - In a limited number of cases we secure a franchise in **6 months**.
 - In most cases the process lasts more than **15 months**.
 - Counting pre-negotiation preparations and discussions, which are required for each community, the entire process often takes **18 – 24 months**.

▼ *The FCC's Authority*

The FCC has the authority to adopt rules to interpret and enforce the provisions of the Cable Act, and to preempt State or local laws that are contrary to federal law. As the Commission itself tentatively concluded in the Notice of Proposed Rulemaking, it has the authority to implement Section 621(a)(1) of the Cable Act. This section prevents Local Franchise Authorities (LFAs) from unreasonably refusing to award competitive franchises.

▼ *Steps to Foster Competition*

As an initial matter, Verizon has made it very clear that it supports several legitimate local government interests. Verizon has committed to paying franchise fees and providing PEG channel capacity consistent with the Cable Act's provisions, and has agreed that, like other cable operators, it should be subject to the prohibition on discriminating against groups of potential residential subscribers because of the income of the residents of the local area. Verizon also agrees that local governments should retain authority to manage public rights-of-way, and Verizon will work with them in that regard, as it has always done. Consistent with these goals, however, the Commission should address a number of persistent problems with the franchising process that serve no legitimate purpose and that prevent video choice.

1. The FCC should adopt rules that prevent unnecessary delay in the awarding of competitive franchises.
2. The FCC should clarify that unreasonable and anti-competitive build-out requirements are a significant barrier to entry.
3. The FCC should confirm that demands for fees or concessions beyond those permitted by the Cable Act unreasonably burden competitive entry and should preempt any attempt by an LFA to impose such fees and concessions that are in excess of the 5% franchise fee limitation. This must include many of the demands for in-kind contributions that LFAs frequently make of a franchise applicant, except to the extent those demands fall within one of the narrow exceptions to the "franchise fee" definition.

4. As mentioned above, Verizon will provide reasonable capacity for PEG channels designated by LFAs. The Commission should confirm, however, that the Cable Act prohibits many of the other demands that some LFAs attribute to “PEG support” -- such as the 3 percent “PEG fee” that some LFAs demand on top of the 5 percent franchise fee. The Cable Act is very specific in the types of PEG demands that an LFA is permitted to make of a new entrant, and the Commission should enforce those limitations.

5. Citing their authority with respect to “institutional networks,” some LFAs make as a condition of franchise approval that the competitive entrant construct broadband data networks for a municipality, or offer free data services to the municipality or to other people or organizations selected by the LFA. The Commission should confirm that these demands go well beyond what the Cable Act permits and are prohibited.

6. Some cable companies have argued that LFAs can impose unreasonable or unlawful conditions because of so-called “level playing field” requirements, which require a new entrant to accept any agreement that a monopoly incumbent has accepted. Many incumbents and some LFAs cite these protectionist rules to justify imposing additional costs and requirements on new entrants. The Commission should recognize that these rules cannot be used to change the character of an otherwise unlawful demand. The Commission must preempt these monopolist-protection requirements if they unreasonably burden competitive entry or otherwise would impose conditions on a new entrant that are contrary to what the Cable Act permits.

7. Finally, the Commission should confirm that local assertions of regulatory control over non-cable services or facilities as a condition of franchise approval are barred. For example, some LFAs have demanded that, as a condition of receiving a franchise, Verizon pay additional fees, or submit to other regulatory control, over the telephone and data services provided over FTTP. Such demands are contrary to federal law.



Fiber!

to the People

Verizon's ambitious fiber-to-the-premises initiative transforms customers' experiences with innovative voice, data, and video services.

On May 19, 2004, Verizon announced that it was embarking on the most significant transformation in over a century of the technology used to carry phone calls, data, and video to and from homes and businesses. This new technology – known as fiber to the premises (FTTP) – uses fiber-optic cable and optical electronics to directly link homes and businesses to Verizon's network.

Verizon is building this network of the future to provide customers with unmatched network reliability, incredible speed, and exciting new options for voice, data, and video connections. Fiber-optics unleashes a range of advanced communications services. This new suite of fiber-optic services is called Verizon FiOSSM.

While the use of fiber-optic technology is common throughout the telecom industry, Verizon is the first company to use fiber to directly connect homes and businesses on a widespread scale.

Since rolling out its FTTP network in 2004, Verizon has passed over 5 million homes and businesses with the new technology. Verizon is on track to pass a total of 6 million premises by the end of 2006. Verizon is now building its FTTP

network in 16 states – California, Connecticut, Delaware, Florida, Indiana, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, and Washington.

To help build the network across the country, Verizon has hired about five thousand new employees and opened customer call centers in Providence, RI, Dallas, TX, Hampton, VA, Thousand Oaks, CA, and Dewitt, NY.

FiOS delivers!

"Keller sits at the forefront of the fiber frontier, and our citizens and businesses stand to benefit from an entirely new era of technology that will positively impact their quality of life."

Julie Tandy, Mayor of Keller, TX

"Verizon's fiber-to-the-premises initiative expands the company's broadband capabilities and will create more union jobs. Verizon is giving the CWA access to jobs of the future and the opportunity to be a vital part of a promising growth area." *Andy Milburn, Vice President, District 6, Communications Workers of America*

▼ *FiOS Internet Service*

Verizon is offering groundbreaking high-speed Internet services over its fiber-to-the-premises network. FTTP delivers data speeds of up to 30 megabits-per-second (Mbps), which is at least 10 times faster than consumer broadband speeds typically available today. FTTP has the capability to provide nearly unlimited bandwidth.

Connection speeds (downstream / upstream) and pricing offered to FiOS Internet consumers are:

- 5 Mbps / 2 Mbps for \$34.95 a month as part of a package or with an annual service agreement, or \$39.95 month-to-month.
- 15 Mbps / 2 Mbps for \$44.95 a month as part of a package or with an annual service agreement, or \$49.95 month-to-month.
- 30 Mbps / 5 Mbps for \$179.95 a month as part of a package or with an annual service agreement, or \$199.95 month-to-month.

All FiOS Consumer Internet service packages include:

- Free wireless router
- Choice of online services: Verizon Yahoo! or MSN® Premium
- 24/7 live technical support
- Up to nine verizon.net e-mail accounts
- Access to newsgroups
- Personal Web space of 10 MB
- 30-day money-back guarantee

Small businesses in parts of California, Delaware, Florida, Maryland, New Jersey, Pennsylvania, Texas, and Virginia also can sign up for FiOS Internet:

- 15 Mbps / 2 Mbps for \$59.95 (dynamic IP address) and \$99.95 (static IP address).
- 5 Mbps / 5 Mbps for \$169.95 (dynamic IP address) and \$209.95 (static IP address).
- 30 Mbps / 5 Mbps for \$349.95 (dynamic IP address) and \$389.95 (static IP address).

All FiOS Business Internet service packages include:

- 24/7 business-grade technical support
- 20 Mb of Web space
- Unlimited remote dial-up access

Digital subscriber line (DSL) service will remain Verizon's most widely available form of high-speed Internet access for the foreseeable future, as the company ramps up FTTP deployment.

▼ *FiOS TV Service*

Verizon's FiOS TV, the future of television, is available now in select communities in California, Florida, Maryland, Massachusetts, New York, Texas and Virginia. Verizon will add new markets in 2006. FiOS TV offers customers a competitive alternative to cable TV or satellite. Customers can buy FiOS TV as a stand-alone service or packaged with voice and/or FiOS Internet service.

This next-generation technology has customers watching television in a whole new light. Fiber delivers amazingly sharp pictures and sound, and has the capacity to transmit a wide array of high-definition programming (HDTV) that is so clear and intense it seems to leap from the TV screen. Verizon's network design includes backup facilities not common to traditional cable systems, such as duplicate "head ends" where the TV service receives national programming.

And customers can control it all with Verizon's powerful interactive programming guide. Even more, a digital video recorder (DVR) is available to give customers more control over their viewing experience, allowing them to record, pause, and rewind programs – even live TV. With an abundant library of video on demand (VOD) titles,

customers can watch what they want, whenever they want. And they have other features like pay-per-view and parental controls.

FiOS TV subscribers can choose from three simple-to-understand service offerings, each with built-in choice and value. They can then choose from packages and premium channels with programming that meets their special interests. Information on packages, programming and local channel lineups is available at www.verizon.net/fiostv.

Verizon offers three set-top boxes: standard definition for \$4.99 per month; high definition, which includes HD channels, for \$9.99 per month; and a digital video recorder set-top box with HD channels for \$12.99 per month.

The services include:

- **Basic** – With access to 15-35 local broadcast, weather and community channels, as well as video-on-demand, for \$12.99 per month. The service is digital with a set-top box. Basic is also available as an analog service that does not require a set-top box for viewing.
- **Expanded Basic** – Verizon's lead offer, delivers more than 180 video and music channels for \$42.99 a month. This tier includes access to more than 2000 on-demand titles. This service requires a standard-definition set-top box or a high-definition set-top box for HD channels.
- **La Conexión** – A tier designed for bilingual households who enjoy TV programs in English and Spanish, for \$32.99 per month. The package includes nearly 140 channels with English- and Spanish-language programming and access to more than 2000 on-demand titles.

Discounts of up to \$10 off the monthly price for FiOS TV are offered to subscribers who also sign-

up for Verizon's FiOS Internet service and the Freedom voice service.

FiOS TV subscribers can also choose from packages and premium channels with programming that meets their special interests:

- A 15-channel sport-package is available for \$7.99 a month.
- A movie package, with 44 channels of Starz, Showtime, Encore, The Movie Channel, Flix and Sundance is \$12.99 a month.
- Customers can buy the sports and movie packages together for \$15.99 a month.
- Verizon also offers 14 HBO channels and 12 Cinemax channels as premium services, with each set of channels available for \$15.99. Subscribers who want both HBO and Cinemax pay \$25.99 per month.

Programming choices for African-American, Asian, Russian and other multicultural and ethnic audiences are available in every market. Because FiOS TV has so much capacity, it will also be an outlet for emerging and independent networks to showcase their diverse programming.

▼ *Hardware / Software Partners*

Westell Technologies manufactures the Verizon One™ communications command center, which



fully integrates voice and data services into a single device. Verizon One – available for \$149.99 with a one-year DSL service agreement or at a retail price of \$199.99 – includes a DSL modem, 802.11g wireless router, 5.8 Ghz cordless telephone, and a color touch screen.

Using the touch screen, customers can:

- Call with one touch from their online address book or SuperPages directory listings.
- Check the weather, news headlines, movie listings, sports scores, stocks, and more.
- Leave notes for other household members with the free-style memo pad.
- Access and manage an online calendar.

Verizon One is also configured to support additional features for customers subscribing to Verizon's iobiSM Home service, which lets customers manage all of their communications via a single user interface.

Tellabs and **Motorola** provide the central office and customer premises optical electronics for the project – such as Optical Line Terminals, Optical Network Terminals, and video-optimized Optical Amplifiers – also known as the “active” elements of FTTP technology. Motorola also helps build the video capability of the FTTP network, providing head-end technology and digital set-top boxes.

ADC, **Corning Cable Systems**, **3M**, **Prysmian Communications Cables and Systems USA**, **Preformed Line Products**, **Sumitomo Electric Lightwave**, and **Tyco Electronics** provide the fiber-optic cabling and other outside plant equipment for the project, also known as the “passive” elements of FTTP technology.

Verizon's IP-based video-on-demand service is powered by the **SeaChange** IP Video System, the most widely used media platform for on-demand television, with capabilities to support interactive advertising, games-on-demand and other new applications.

Yahoo! provides a fully integrated web portal to Verizon Online's FiOS and DSL subscribers.

▼ *The Basics of Fiber Optics*

How does FTTP work? Fiber-optic cables consist of bundles of hair-thin glass strands. Laser-generated pulses of light transmit voice, data, and video signals via the fiber at speeds far exceeding today's copper-wire systems.

What are the advantages of FTTP? Fiber has a number of advantages over copper-wire:

- FTTP provides nearly unlimited bandwidth.
- FTTP provides more reliable service that is less susceptible to inclement weather and is easier to maintain.
- FTTP enables a wide variety of uses, from interactive content and home shopping to telecommuting to telemedicine and audio / video on demand.
- FTTP is extremely flexible to meet customer preferences – new products and services can be activated remotely, either permanently or on demand.



December 1, 2006