Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| *In the Matter of* | ) | |
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| Implementation of the Cable Television Consumer Protection and Competition Act of 1992 | ) | |
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| Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act Licensees and their Affiliates; and | ) | MB Docket No. 07-29 |
| | ) | |
| Sunset of Exclusive Contract Prohibition | ) | |
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REPLY COMMENTS OF VERIZON


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## REPLY COMMENTS OF VERIZON[1]

## I. INTRODUCTION AND SUMMARY

Consistent with the overwhelming majority of the comments filed in this proceeding, the Commission should extend the exclusive contract prohibition. As Verizon explained in its opening comments, Congress adopted the exclusive contract prohibition as a targeted remedial measure, designed to remedy the historical practices of incumbent cable operators that sought to exploit their historical monopoly status in the video market to the detriment of their competitors.[2] Among other things, Congress was concerned that the large incumbent cable operators had a history of demanding an equity interest in programmers seeking carriage and requiring exclusive

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

[2] *See* Comments of Verizon at 1-2 ("Verizon Comments"); Comments of Echostar Satellite L.L.C. at 3 ("Echostar Comments").

carriage rights from programmers, thus denying competitors access to vital content that they would need in order to compete effectively. In light of this track record, Congress determined that the pro-consumer benefits that often accompany exclusive contracts were outweighed in this context by the potential harms to competition from allowing incumbent providers to lock up programming. Therefore, Congress determined that consumers would benefit from a narrow exception to the general rule allowing exclusive commercial agreements, which would remain in place only so long as necessary to allow video competition from competing multichannel video programming distributors ("MVPDs") firmly to take hold.[3]

Although video competition is developing, widespread competition has occurred more slowly than Congress envisioned, and only now are wireline video entrants such as Verizon poised to bring significant benefits to video consumers.[4] However, Verizon and other new entrants to the video market must have access to programming in order to compete effectively, and the exclusive contract prohibition remains important to ensuring such access. As the record reflects, when permitted to do so, incumbent cable operators and their vertically integrated programmers will use exclusive contracts to disadvantage competitors and harm competition, such as by denying access to critical high-definition ("HD") programming. Under the circumstances, allowing the exclusive contract prohibition to sunset at this juncture would

[3] ***See*** Verizon Comments at 1-2; Echostar Comments at **3;** Comments of The Coalition for Competitive Access to Content at 10-11 ("CA2C Comments").

[4] ***See,*** *e.g.*, Verizon Comments at **3;** Comments of AT&T, Inc. at 7-8 & 24 ("AT&T Comments"); Comments of DirecTV, Inc. at 4-5 ("DirecTV Comments"); Comments of Qwest Communications International Inc. at 6-7 ("Qwest Comments"); Comments of National Telecommunications Cooperative Association at 4 ("NTCA Comments"); Comments of United States Telecom Association at 4-5 ("USTA Comments").

undermine the Commission's efforts to promote broadband deployment and encourage wireline video competition.[5]

The only parties urging a sunset of the exclusive contract prohibition are the incumbent cable operators and their trade association. They essentially make the following four arguments in support of their position, none **of** which has merit: (1) the exclusive contract prohibition harms consumers by barring beneficial contractual arrangements; (2) federal antitrust law is sufficient to protect consumers; **(3)** sufficient video competition exists so as to make the exclusive contract prohibition unnecessary; and (4) the amount of vertically integrated programming is minimal and such programming is not required in order for new entrants to compete. Notwithstanding the incumbent cable operators' claims to the contrary, the exclusive contract prohibition remains necessary and should continue in effect until new wireline entrants are sufficiently established in the market, after which time the market can function without such regulation.

## II. DISCUSSION

### A. Although Exclusive Contracts Can Be Beneficial, They Are Subiect to Abuse by Incumbent Cable Operators. and Consumers Are Not Harmed bv the Narrow Prohibition Congress Has Enacted.

Verizon agrees that, in many circumstances, exclusive commercial contracts can provide "competitive benefits" and be economically "efficient."[6] However, as Congress recognized in adopting the prohibition on exclusive contracts here – and as at least one cable incumbent

[5] ***See,*** *e.g.*, AT&T Comments at **23;** Comments of American Cable Association at 13-14 ("ACA Comments"); CA2C Comments at 19; Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies & Independent Telephone and Telecommunications Alliance at 2,4 ("OPASTCO/ITTA Comments"); USTA Comments at 6-7.

[6] Comments of Comcast Corporation at 16 ("Comcast Comments"); Comments of Cablevision Systems Corp. ("Cablevision Comments"), Declaration of Dr. Scott Wallsten at 4 ("Wallsten Declaration").

concedes[7] – it is not true that *all* exclusive deals provide such benefits, particularly for crucial inputs that are effectively locked up in advance of competitive entry. And in light of the established history of abuses by monopoly cable providers, Congress decided that a narrow exception to the general rule allowing exclusive commercial contracts was warranted until competition could take hold. Given the current status of video competition and incumbents' continued control of much valuable programming for which no reasonable substitutes exist, the benefits of prohibiting certain exclusives agreements in this context still outweighs the costs.

Cablevision's claim that the current prohibition is deterring investment in programming or denying consumer benefits is unsupported by the record and ignores protections built into the rules to prevent just that. See Cablevision Comments at 27-29; see *also* Wallsten Declaration at 26-27. Neither Cablevision nor its economist can point to a single instance of a video distributor opting not to develop new or innovative content as a result of the exclusive contract prohibition. Furthermore, as Cablevision's economist concedes, during the 15 years the exclusive contract prohibition has been in place, the amount of available video programming has grown exponentially, with the number of satellite-delivered programming networks increasing from 36 to 54 in 1992 to 531 as of 2005 and with 79 new planned programming services on the way. See Wallsten Declaration at 14 & 23. Therefore, no reasonable basis exists for the Commission to conclude that the exclusive contract prohibition has had or will have any adverse impact on the development of programming, particularly when experience proves otherwise.

The cable incumbents also ignore the fact that the Commission's rules already permit exclusives deals for programming when consumers would benefit. The exclusive contract

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[7] Comcast Comments at 21-22 (acknowledging that "situations" exist when a programming network may want to "foreclose opportunities" to sell its programming to certain distribution platforms, although not elaborating on what those situations would be).

prohibition does not bar all exclusive contracts between cable operators and vertically integrated programmers. Rather, such exclusive deals are permissible if a cable operator or programmer can show that the deal in question is in the public interest. ***See*** 47 U.S.C. §§ 548(c)(2)(D), 548(c)(4). **Thus,** to the extent a particular exclusive deal would "benefit consumers and competition," as one commenter claims, a cable operator could enter into that deal once it has made the requisite public interest showing to the Commission's satisfaction.[8]

For all the talk of the benefits of allowing exclusive deals with vertically integrated programmers, the cable incumbents ignore the marketplace abuses that led Congress to adopt this ban in the first place as well as the continuing evidence that incumbents have sought to use their control over must-have programming in order to frustrate market entry by new distributors. As Verizon explained in its initial comments, Cablevision's vertically integrated programming subsidiary, Rainbow Media Holdings, LLC, has refused to make available its HD feeds for certain regional sports programming, while at the same time Cablevision markets its ability to offer more local sports in HD than its competitors.' Verizon's experience is not unique. According to AT&T, Cox has refused to provide access to its affiliated local sports network featuring San Diego Padres games, while "using its exclusive access to Padres games as a prominent marketing tool." AT&T Comments at 17-18. Similarly, RCN has detailed the

[8] Comcast Comments at 13-14. That few cable operators or vertically integrated programmers have sought to make this showing during the fifteen years the exclusive contract prohibition has been in place speaks volumes about the alleged public interest benefits of the exclusive contracts in which they seek to enter. ***See Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition & Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition,*** Notice of Proposed Rulemaking, MB Docket No. 07-29 ¶ 3, n.19 (rel. Feb. 20,2007) (noting that only ten exclusivity petitions have been submitted to the Commission for approval since 1992).

[9] ***See*** Verizon Comments at 13-15; ***see also*** Echostar Comments (noting the new HD networks being launched by "vertically integrated cable conglomerates").

problems it experienced in obtaining access to regional sports as well as other "must have" programming." In short, there is ample evidence that, when given the opportunity to do so, incumbent cable operators and their vertically integrated programmers will use exclusive contracts in order to disadvantage competitors and harm competition.

### B. <u>The Exclusive Contract Prohibition Remains Necessarv. Despite the Availability of Federal Antitrust Laws.</u>

Even though Congress determined that the protections of the exclusive contract prohibition were necessary in order to facilitate video competition, some of the cable incumbents argue that the rule should expire because the antitrust laws are "wholly capable of addressing and remedying any potential anticompetitive use of exclusive contracts by vertically integrated programmers." Cablevision Comments at 18; see *also* Comcast Comments at 23-24. In adopting the exclusive contract prohibition in 1992, however, Congress determined that, despite the existence of antitrust laws that limit certain anticompetitive exclusive agreements, the additional remedial measure of prohibiting all such agreements (absent a public interest showing) in this particular, narrow context was necessary to remedy the cable industry's unique history of abuse." And Congress also decided that the targeted approach embodied in section 628 should remain in place until such time as competition had firmly taken hold, after which time such agreements would pose less of a threat to competition and the prohibition could sunset. Although it has perhaps taken longer than Congress had initially hoped, the industry now stands

[10] Comments of RCN Telecom Services Inc. at 9-11 ("RCN Comments") (noting Comcast's refusal to provide access to RSN in Philadelphia with controlling interest in the Philadelphia Flyers and Philadelphia 76ers, Cablevision's refusal to provide access to certain programming from its RSNs in New York, and the competitive harm suffered by RCN as a result of the difficulties caused by Comcast in making available PBS Kids Sprout programming).

[11] See David Saylor, *Programming Access And Other Competition Regulations Of The New Cable Television Law And The Primestar Decrees: A Guided Tour Through The Maze*, 12 Cardozo Arts & Ent. **L.J.** 321 (1994).

at a critical juncture where the promise of widespread, wireline video competition is becoming a reality. This spread of wireline competition is still in its early stages, however, and in light of the unique history surrounding access to programming and the cable incumbents' continued control over programming that new entrants need in order to compete effectively, Congress's and the Commission's goal of promoting competition will continue to be better served by the certainty and efficiency of the current prohibition.

### C. Wireline Competition to Cable Remains Limited.

Although the cable incumbents argue that the exclusive contract prohibition should sunset in light of the competition they face, the Commission is well aware that there can and should be more video competition, particularly from wireline competitors.[12] Competitive wireline providers such as Verizon are investing billions of dollars to deploy advanced broadband networks to offer competing video services, but that deployment is just now taking place,[13] and the vast majority of consumers do not yet have access to a second wireline video provider. ***See*** Qwest Comments at **3;** RCN Comments at 7. Although the market share of competitive MVPDs such as Direct Broadcast Satellite ("DBS") providers is growing,[14] the

[12] ***See, e.g., Implementation** of Section 621(a)(1) of **the Cable Commirnications Policy Act of 1984 as amended by the Cable Television Consumer Protection & Competition Act of** 1992,* Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 05-311, ¶ 2 (Mar. 5,2007) (eliminating unreasonable barriers to competitive entry into the cable market, which the Commission found would "benefit consumers by driving down prices and improving the quality **of** service offerings").

[13] ***See, e.g., See*** AT&T Comments at 4-5 (noting that AT&T had signed up 10,000 subscribers nationwide for its U-Verse video service as of March 2007); CA2C Comments at *5;* Echostar Comments at 8; Verizon Comments at 4 (noting that Verizon had 207,000 FiOS TV customers as of year-end 2006); ***see also*** Qwest Comments at 2-3; USTA Comments at 2.

[14] ***See*** Echostar Comments at **8** (MVPD market share of Comcast, Time Warner, **Cox,** and Cablevision increased from 34% in 2002 to 57% in 2006); Comcast Comments at 7 (DBS share of the MVPD market increased from 18% in 2002 to 30% today).

market share of competitive wireline providers has either declined or remained flat over the past several years.[15]

Notably, the opening comments confirm the particular consumer benefits that flow from increased wireline video competition.[16] And the Commission repeatedly has recognized this same fact.[17] Competition from a wireline competitor **serves** as an effective deterrent to rising basic cable rates, as customers in specific cable markets in which Verizon has entered experienced first hand.” The Commission should not threaten such competition by allowing the exclusive contract prohibition to sunset at this critical juncture when significant wireline competitors like Verizon are in the process of making widespread wireline video competition a reality for the first time.

### D. <u>Vertically Integrated Proerammers Continue to Control “Must Have” Programming.</u>

Although the percentage of national programming networks vertically integrated with cable operators has declined, that fact does not obviate the continued need for the exclusive contract prohibition, as the incumbent cable operators claim.” The cable incumbents continue to

[15] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503,2617 (2006) *(“Twelfth Annual Report”).*

[16] *See, e.g.,* AT&T Comments at 22-23; Comments of Broadband Service Providers Association at 2-3 (“BSPA Comments”); RCN Comments at 7; CA2C Comments at 7-9; Qwest Comments at 6; USTA Comments at 4-5, 17-18; Verizon Comments at 5.

[17] *See. e.g., Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, & Equipment,* 21 FCC Rcd 15087, 15087 (2006) (noting that in areas where two or more wireline video providers are competing, customers are likely to enjoy rates approximately 17 percent lower than customers in markets without this competition).

[18] Verizon Comments at 5-6; see AT&T Comments at 3; BSPA Comments at 2-3; CA2C Comments at 7-8; Qwest Comments at 3; USTA Comments at 17.

[19] Cablevision Comments at 19; Comcast Comments at 11-12; Comments of National Cable & Telecommunications Association at 5, 7 (“NCTA Comments”).

possess considerable leverage by virtue of their control of programming that the Commission considers to be "must have" for competitive providers.[20] As the Commission found in 2002, the ability of cable operators to foreclose competition through exclusive contracts hinges on the popularity and importance of the programming they own, not on its pervasiveness relative to unaffiliated programming.[21]

**As** noted by a wide variety of commenters, vertically integrated programming controlled by incumbent cable operators continues to be the most popular programming.[22] Key subscription premium networks such as HBO, which the Commission has found "make an important contribution" to an MVPD's profitability, remain vertically integrated. ***Extension Order,*** 17 FCC Rcd at 12138; *see **also*** AT&T Comments at 13. Incumbent cable providers also retain considerable control over regional networks, particularly regional sports networks ("RSNs").[23]

The Commission already has rejected Cablevision's assertion that there is no such thing as "must have" programming.[24] In fact, the Commission consistently has recognized the

[20] ***See*** AT&T Comments at 8, 13; BSPA Comments at 4-5; CA2C Comments at **4,** 14-15; RCN Comments at 8-9.

[21] ***See Implementation of the Cable Television Consumer Protection & Competition Act of 1992,*** Report and Order, 17 FCC Rcd 12124, 12138 (2002) ("*Extension* ***Order")*** (despite the decline in the percentage of vertically integrated programming, such content nonetheless constituted a large part of the most popular programming); *see also* AT&T Comments at 10-11; DirecTV Comments at 7; Echostar Comments at 7.

[22] Verizon Comments at 8-9; AT&T Comments at 11-12; Echostar Comments at 6-8; RCN Comments at 4-6. ***See also Twelfth Annual Report,*** 21 FCC Rcd at 2654 (showing that six **of** the top 20 programming services by subscribership are vertically integrated with incumbent cable operators).

[23] Verizon Comments at 9-10 (noting that 80% of the regional networks Verizon offers as part **of** FiOS TV are vertically integrated with cable operators); ACA Comments at 5; Echostar Comments at 6, 8; Qwest Comments at 4; USTA Comments at 14.

[24] Cablevision Comments, 2-3 & 8-26; Wallsten Declaration at 20-22.

existence and importance of "must have" programming for which there is no close substitute,[25] finding in particular that regional sports programming is a critical component of a competitive MVPD's success.[26] That an MVPD may be able to offer Chicago Cubs baseball games would do nothing to attract a customer who is a diehard San Diego Padres fan.[27] Likewise, just because customers can view certain sporting events on the Internet or through league-owned networks does not change the fact that a new entrant unable to offer such "must have" programming would be at a significant competitive disadvantage in seeking to wrest subscribers away from the entrenched incumbent cable operator."

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[25] ***See Extension Order,*** 17 FCC Rcd at 12139 (finding that if competitive MVPDs "were to be deprived of only some of [the vertically integrated] 'must have' programming, their ability to retain subscribers would be jeopardized.").

[26] ***See Id.*** at 12138 ("[T]he increased prominence of vertically integrated regional programming services, particularly sought-after and non-duplicable regional sports programming, strengthens the overall importance of vertically integrated programming to competitive MVPDs."); ***Applications for Consent to the Assignment and/or Transfer of Control of Licenses: Adelphia Communications Corp. (and subsidiaries, debtors-in-possession), Assignors to Time Warner Cable Inc. (subsidiaries), Assignees: Adelphia Communications Corp. (and subsidiaries, debtors-in-possession), Assignors and Transferors to Comcast Corp. (subsidiaries). Assignees and Transferees: Comcast Corp.. Transferor, to Time Warner, Inc., Transferee; Time Warner, Inc., Transferor, to Comcast Corp.. Transferee,*** Memorandum Opinion and Order, 21 FCC Rcd. 8203, 8258-59 (2006) (noting "the lack of adequate substitutes for regional sports programming" due to "the unique nature of its core component: RSNs typically purchase exclusive rights to show sporting events, and sports fans believe that there is no good substitute for watching their local and/or favorite team play an important game" ) (quoting ***General Motors Corp. and Hughes Electronics Corp. Transferors. & The News Corp. Lt'd, Transferee,*** Memorandum Opinion and Order, 19 FCC Rcd 473, 535 ¶ 133 (2004)).

[27] ***See,*** *e.g.*, ACA Comments at 6; AT&T Comments at 15-16; BSPA Comments at 17; Qwest Comments at 4; NTCA Comments at 4-5 (stating that "[l]ocal subscribers expect [sports programming] and are unlikely to switch to a new provider who is unable to provide it"); RCN Comments at 4, 9-10 (pointing out that an RCN survey found that approximately 40-58% of subscribers would refuse to switch from cable to a new entrant if the latter did not carry local sports programming).

[28] Cablevision Comments at 23-26. Cablevision's claims that it remained a "strong competitor" in the New York market despite being unable to offer Yankees games in 2002 is irrelevant. ***Id.*** at 24. The loss of a few subscribers by an entrenched incumbent cable operator due to the unavailability of programming pales in competitive significance to the inability of a new entrant to attract subscribers in the first place because it cannot offer "must have" programming offered by the entrenched cable incumbent.

Indeed, MVPDs' continued dependence on access to vertically integrated "must have" programming, including in particular regional sports programming, was a prominent theine in the opening comments.[29] Although incumbent cable operators would have the Commission believe that consumers are indifferent to whether a provider carries particular programming:' this simply does not reflect market reality. The record demonstrates that subscribers continue to be focused on content and programming, which remains "the lifeblood of the multichannel video business," especially for wireline video providers. USTA Comments at 6; see Qwest Comments at 5. In fact, according to one commenter, a cable operator would be able to influence consumer buying decisions with "exclusive access to *only one* 'must have' programming service in each of the major buying segments." BSPA Comments at 4; ***see*** CA2C Comments at **14.**

Access to programming, particularly "must have" programming, is no less crucial to new entrants such as Verizon and AT&T, as the incumbent cable operators argue.[31] That a new video entrant may have a large market capitalization or a sizeable number of telephone customers does not ensure competitive success in the video market when the entrant cannot offer the

[29] See, *e.g.*, Verizon Comments at 6; AT&T Comments at 11; CA2C Comments at 9; DirecTV Comments at 6-7; Comments of Eatel Video, LLC at 4-5 ("Eatel Video Comments"); Echostar Comments at 7; NRTC Comments at 7; OPASTCO/ITTA Comments at 4-5; Qwest Comments at 5; RCN Comments at 3-4; Surewest Comments at 2-3; USTA Comments at 14; ACA Comments at 4.

[30] Cablevision Comments at 20-21 (claiming that "consumers today focus more on whether a provider offers a 'double' or 'triple' play of video, voice and data than whether it carries any particular programming network").

[31] Cablevision Comments at 5; Comcast Comments at 8. While supporting extension of the exclusive contract prohibition, ACA's assertion that Verizon and AT&T "are more formidable competitors that even the largest MSOs" is contradicted by the facts. ACA Comments at 8-9. The wireline video competitors are just now emerging, and the incumbent cable operators have a considerable competitive advantage, which they readily acknowledge and actively seek to exploit. AT&T Comments at 4 (quoting Comcast's Chairman and CEO as saying that cable companies "will run the table" before getting competitive pushback from the phone companies).

programming subscribers want to see.[32] Because customers demand particular programming, a competing MVPD such as Verizon would be placed at a significant competitive disadvantage if it were unable to offer such programming.

Of course, at some point a competitor has a sufficient market presence to make most withholding strategies unprofitable, at which time the need for rules requiring access are diminished or nonexistent. As discussed above, however, wireline video competitors are just now emerging, so that time has not yet arrived.

### E. The Commission Should Reiect Efforts to Contort the Scope of the Exclusive Contract Prohibition.

Several commenters propose various modifications to the scope of the exclusive contract prohibition in the event the Commission decides to extend the prohibition. The Commission should reject these proposals.

First, there is no legal support for Comcast's suggestion that the protections afforded by the exclusive contract prohibition should not be made available to: (1) "any company that itself exploits exclusive contracts for competitive advantage"; (2) companies with "extensive resources," which, according to Comcast would be those with over 10 million customers or a market capitalization of more than $100 billion; or (3) companies that have been in the video distribution business for more than five years. Comcast Comments at 26. In assessing an extension of the exclusive contract prohibition, the Commission held five years ago that the appropriate inquiry for judging the propriety of an extension must focus on the conduct of vertically integrated programmers, not the characteristics of the competing MVPD that stands to

[32] AT&T Comments at 2-3; USTA Comments at 6-7; Verizon Comments at 3. Rather, as one commenter observed, when a programmer is able to refuse a profitable conglomerate like AT&T access to San Diego Padres games, the "market power of exclusive arrangements should be apparent." Comments of Rural Independent Competitive Alliance at 4 ("RICA Comments").

be harmed by the denial of programming. *Extension Order,* 17 FCC Rcd at 12130. Furthermore, adopting Comcast's approach would result in denying program access to the very competitors such as Verizon that have the capital resources necessary to offer a viable competing wireline video service on a widespread basis. Therefore, such an approach would significantly undermine the Commission's goals of extending video competition and broadband deployment to more consumers.

Second, Cablevision attempts to resurrect a content-based approach to the exclusive contract prohibition, arguing that only certain types of programming should be subject to the prohibition. Cablevision Comments at 31. The Commission previously considered and rejected such an approach in its *Extension Order,* concluding that: (i) it would be difficult to develop "an objective process of general applicability to determine what programming may or may not be essential to preserve and protect competition"; and (ii) "designating certain programming as more essential than others" would "raise constitutional questions." *Extension Order,* 17 FCC Rcd at 12156. There is no reason for the Commission to revisit these conclusions, and Cablevision offers none.

### F. <u>The Commission Should Modifv Its Program Access Complaint Procedures as Proposed bv Verizon.</u>

Numerous commenters support Verizon's proposal that the Commission establish a firm deadline by which program access complaints must be resolved.[33] Although the timeframes proposed by the parties vary, the critical point upon which there is considerable consensus is that

[33] ***See,*** *e.g.,* AT&T Comments at 27-28 (proposing 90-day deadline for resolving program access disputes); Echostar Comments at 25 (proposing 45-day deadline); CA2C Comments at 21-22 (proposing 120-day deadline); USTelecom Comments at 21-25 (denial of programming proceedings should be resolved in three months, and all other proceedings should be resolved in six months).

program access disputes can and should be resolved promptly by **a** date certain after the filing of **a** complaint.

Other commenters also support Verizon's proposal that the Commission adopt a "standstill" requirement to ensure continued access to programming during the pendency of program access complaints. ***See*** USTelecom Comments at 27-29; BSPA Comments at 14. As Verizon previously explained, such a requirement would help deter misconduct by vertically integrated programmers as well as protect consumers during the pendency of a program access complaint.

## III. CONCLUSION

**For** the foregoing reasons, the Commission should extend the prohibition in section 628(c)(2)(D) and should modify its program access complaint procedures by adopting Verizon's proposals.

Respectfully submitted,


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