

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

In the Matter of)	
)	
Exclusive Service Contracts for Provisions of)	MB Docket No. 07-51
Video Services in Multiple Dwelling Units and)	
Other Real Estate Developments)	
)	
To: The Commission)	

REPLY COMMENTS



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I. Introduction.

The American Cable Association (“ACA”) files this Reply in response to Verizon’s comments in this docket.¹ In its Comments, Verizon audaciously requests that the Commission toss out existing exclusive MDU agreements - but only until five years after a “new provider” (presumably, Verizon) has chosen to enter and wield its market power in a franchise area. Five years after Verizon enters a market, the Commission’s prohibition would sunset, and Verizon would then be free to further entrench its market power through exclusive agreements.²

As explained in ACA’s Comments in this docket,³ the small and rural markets served by ACA’s members are already intensely competitive. In these markets, cable operators compete with ILECs,⁴ SMATVs and private cable operators, and often serve a smaller percentage of MVPD subscribers than DBS giants DirecTV and Echostar. As a result, ACA’s members lack market power in their service areas, and have had to make significant investments to compete for potential customers in MDUs. ACA’s members – over half of which serve fewer than 1,000 subscribers – should not have their investments wiped out by the Commission so that they can be trampled over by a

¹ *In the Matter of: Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments, Comments of Verizon on Exclusive Access Contracts*, MB Docket No. 07-51 (filed July 2, 2007) (“Verizon’s Comments”).

² *Verizon’s Comments* at 13 and note 2.

³ *In the Matter of: Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments, Comments of American Cable Association*, MB Docket No. 07-51 (filed July 2, 2007) (“ACA’s Comments”).

⁴ In recent years, advances in IPTV technology have allowed independent telcos to enter the MVPD market in large numbers. Approximately 30% of ACA’s 1,100 members are independent telcos providing video services.

company with a market capitalization exceeding \$120 billion.⁵ For these reasons, ACA opposes Verizon's rule, however:

If the Commission promulgates a rule similar to that requested by Verizon, it should exempt small and medium-sized cable operators from the rule.

About ACA. ACA represents nearly 1,100 small and medium-sized cable companies that serve more than 8 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators that focus on serving smaller markets. More than half of ACA's members serve fewer than 1,000 subscribers. All ACA members face the challenges of upgrading and operating broadband networks in lower-density markets.

II. Contrary to Verizon's assertions, video competition is strong in the markets served by ACA's members.

The rationale behind Verizon's "narrowly tailored rule"⁶ is that video competition has not "firmly take[n] hold,"⁷ and that Verizon is "offer[ing] consumers a meaningful alternative – often for the first time – to the cable incumbents..."⁸ To the contrary, competition – especially DBS competition – is booming in the markets served by ACA's members.

⁵ See <http://quote.morningstar.com/Quote/Quote.aspx?ticker=VZ> (viewed August 30, 2007).

⁶ *Verizon Comments* at 13. Verizon has tailored its rule so narrowly that it can benefit only Verizon.

⁷ *Verizon's Comments* at 1.

⁸ *Verizon's Comments* at 3.

The Commission has recognized that DBS competition first took hold in the small and rural markets served by ACA's members,⁹ and that DBS subscribership continues to grow swiftly. In fact, DBS providers have had more subscribers than cable operators in rural communities for some time.¹⁰ The 26 million DBS subscribers¹¹ prove false Verizon's statement that competition has not "firmly take[n] hold," or that there is no "meaningful alternative" to incumbent cable providers in small and rural markets. Moreover, wireline competition is also thriving in these small and rural markets, especially with the growing number of ILECs providing IPTV services.¹²

In short, there is no need for Verizon's proposed rule.

That said, if the Commission does implement a rule similar to that proposed by Verizon, it should provide an exemption for small and medium-sized cable operators.

III. If the Commission implements a rule similar to that proposed by Verizon, it should provide an exemption for small and medium-sized cable operators.

Verizon's proposed rule would void existing exclusive agreements. Such a rule would wipe out the significant investments made by ACA's members to serve MDUs¹³ and endanger these independent operators' financial well-being. Further, as shown

⁹ *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Twelfth Annual Report*, 21 FCC Rcd. 2503, ¶ 72 (2006) ("*Twelfth Annual Competition Report*").

¹⁰ *In the Matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, *Comments of the American Cable Association* at 3-4 (filed Sept. 19, 2005), *citing* Leichtman Research Group, Inc., *DBS Now the Leading Video Provider in Rural America*, Research Notes, at 3-4 (2Q 2005), at http://www.leichtmanresearch.com/research/notes06_2005.pdf.

¹¹ *Twelfth Annual Competition Report*, ¶ 72.

¹² See *supra* note 3. See also *Twelfth Annual Competition Report*, ¶¶ 122-125.

¹³ See *ACA's Comments* at 2-3.

above, and in *ACA's Comments* in this docket, these operators do not have market power under any definition.¹⁴

For these reasons, many small and medium-sized cable operators cannot remain competitive if their investments are wiped out and they are forced to compete from a weakened position with their larger and better-financed rivals – like the \$120 billion behemoth that is Verizon. Accordingly, the Commission should exempt small and medium-sized cable operators from Verizon's proposed rule.¹⁵ Ample authority exists to justify such relief.¹⁶

IV. Conclusion.

The Commission must not jeopardize the significant investment that small and medium-sized cable operators have made to provide video, broadband and VoIP services to MDUs in low-density markets. ACA opposes Verizon's rule, however, if the Commission promulgates a rule similar to that requested by

¹⁴ See *ACA's Comments* at 5-6.

¹⁵ In the alternative, the Commission could exempt small cable systems from any such rule.

¹⁶ Congress and the Commission have consistently expressed special concern for small cable systems and the public interest in a viable independent cable sector. The 1992 Cable Act and the 1996 Telecommunications Act both contain Congress' express recognition of this public interest through inclusion of specific small cable provisions. Likewise, extensive Commission action has demonstrated the importance to the public interest of maintaining viable smaller cable companies and the need to provide regulatory relief to further this public interest. See, e.g., 47 USC § 543(i) ("In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers."); Section 301(c) 1996 Telecommunications Act (providing greater deregulation for small systems), codified at 47 USC § 543(m). For a summary of these efforts in the context of rate regulation, see *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd. 7393, ¶¶ 25-42 and 55-62 (1995); for special small cable leased access rules, see *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Leased Commercial Access, Second Report and Order and Second Order on Reconsideration of the First Report and Order*, 12 FCC Rcd. 5267, ¶¶ 128-130 (1997).

Verizon, it should exempt small and medium-sized cable operators from the rule.

Respectfully submitted,



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