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Ex Parte

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Must Carry Rights for Class A Low Power Stations, MB Docket Nos. 07-294, 06-121, 02-277, 01-235, 01-317, 00-244, 04-228

Dear Ms. Dortch:

In light of a recent press account inaccurately characterizing Verizon's recent reply comments filed in these dockets,¹ the purpose of this letter is to make doubly sure that there is no confusion concerning Verizon's position. Contrary to this report: a) Verizon's comments did not suggest that the video marketplace is fully competitive nationally – particularly in areas that lack head-to-head wireline competition; b) Verizon's reply comments addressed only a single narrow issue – the question of whether new must-carry rights should be created for Class A low power television stations that go beyond what is authorized by statute; c) Verizon's comments did not address at all the existing must-carry obligations that are authorized by statute. In this final regard, our comments were limited to the policy and legal reasons that the Commission should not adopt new must carry rights for Class A low power stations, and why any such expansion is particularly unwarranted in the case of competing new entrants such as Verizon.

First, Verizon did not suggest that the video marketplace is now fully competitive across the country, nor is it. On the contrary, as the Commission has recognized, the vast majority of consumers are still served by entrenched cable incumbents, and relatively few consumers live in areas with a choice in wireline video providers. This fact is significant because the Commission and the Government Accountability Office have both recognized the significant competitive benefits to consumers that result from wireline competition.² While such competition is now emerging – thanks in part to the steps taken by the Commission to remove regulatory obstacles to competitive entry and to address vestiges of the formerly exclusive monopoly franchises that

¹ See Ted Hearn, "Must-Carry Mandates Outdated: Verizon," Multichannel News (Sep. 2, 2008).

² 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, and Equipment, 21 FCC Rcd 15087, ¶¶ 3, 48 (2006) (finding that in areas with two or more wireline video competitors, rates are likely to be 17% lower than in markets without such competition); Government Accountability Office, Telecommunications: Wire-Based Competition Benefited Consumers in Selected Markets, GAO-04-241, at 4 (Feb. 2004) (finding that rates were 15% to 41% lower in markets in which a wireline video competitor was present).

continue to pose significant obstacles to competitive entry – it is still in its infancy. Of course, in those areas where new competitive entrants have entered or are entering, those entrants face ubiquitous competition from entrenched incumbents and those entrants self-evidently do not have – and have never had – any “bottleneck” control. And this latter point is the one made in our reply comments (at 11).

Second, the sole issue addressed in our reply comments is the question of whether the Commission should create *new* must-carry obligations for Class A low power stations that go beyond those authorized by statute. As we explained, while we share the Commission’s interest in promoting diverse and local programming, creating new must-carry rights for Class A stations could undermine those interests by crowding out diverse programming – including multicultural, multilingual, or niche programming. We also noted that Verizon already voluntarily carries many diverse sources of programming, including low power stations, that provide quality programming to our subscribers, and that a primary reason that Verizon (and other operators) do not carry more low power stations is that their carriage often would increase programming costs. This is because the signals of these stations are often considered “distant” – and thus subject to increased royalty fee assessments – under current Copyright rules. Therefore, absent Congressional reform of these Copyright rules, mandatory carriage obligations would result in increased costs for consumers, while reform of those rules would encourage the carriage of low power stations. Finally, we explained that given the express limitations in the Cable Act – as well as the Commission’s previous consideration of this issue and First Amendment problems in the case of new entrants – there are significant legal impediments to the Commission creating new must carry requirements for these Class A low power stations that go beyond what is authorized by the statute.

Third, our reply comments did not even address, let alone argue that the Commission can or should do anything to change, the existing must-carry obligations authorized by statute. Indeed, the requirement for cable operators to carry local commercial television stations and certain qualified low power stations is established in Section 614 of the Cable Act, and those requirements have been upheld by the Supreme Court. Instead, as explained above, our comments addressed only the question of whether there were grounds to create new requirements that go beyond the existing rules and beyond what the statute authorizes

We trust that this letter ensures that there is no confusion about what Verizon did – and did not – argue in these dockets.

Sincerely,



cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Daniel Gonzalez

Elizabeth Andrion
Amy Blankenship
Rudy Brioché
Rick Chessen
Rosemary Harrold
Monica Desai