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April 24, 2009

**Ex Parte**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Local Number Portability Porting Interval and Validation Requirements (WC Docket No. 07-244); Implementation of the Cable Television Consumer Protection and Competition Act of 1992 (MB Docket No. 07-29); Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements (MB Docket No. 07-198)**

Dear Ms. Dortch:

Yesterday, Dee May and Karen Zacharia of Verizon met separately with Jennifer Schneider and Rick Chessen, Legal Advisors to Acting Chairman Copps, and Rosemary Harold and Nick Alexander, Legal Advisors to Commissioner McDowell to discuss issues related to the above proceedings. With regards to local number portability, Verizon stated the Commission should not shorten the current standard porting interval but rather enforce the existing standards. However, should the Commission shorten the porting interval, Verizon urged the Commission to apply the same standards to all carriers regardless of porting method and to provide a sufficient transition period and implementation time for changing the interval.

On the issue of video competition, we asked the FCC to address our attached Petition for Declaratory Ruling on video service cancellations. In addition, we urged the Commission to find that cable incumbents' practice of withholding from competitors regional sports programming, including the high definition feeds of such programming, violates the Communications Act, even if delivered terrestrially.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann D. Berkowitz".

Attachment

cc: Nick Alexander  
Rick Chessen  
Rosemary Harold  
Jennifer Schneider

Mark J. Montano  
Assistant General Counsel

FILED/ACCEPTED  
MAR 26 2008  
Federal Communications Commission  
Office of the Secretary



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March 26, 2008

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

**RE: Petition of Verizon for Declaratory Ruling Confirming That Incumbent Cable Companies Must Accept Subscriber Cancellation Orders When Delivered by Competitive Multichannel Video Programming Distributors as Lawful Agents**

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.2, Verizon is filing an original and four copies of its Petition for Declaratory Ruling as noted above. Please date stamp and return the extra copy for our records.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "Mark J. Montano".

Mark J. Montano  
Assistant General Counsel

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

In the Matter of

Petition of Verizon for Declaratory Ruling  
Confirming That Incumbent Cable Companies  
Must Accept Subscriber Cancellation Orders  
When Delivered by Competitive Multichannel  
Video Programming Distributors as Lawful  
Agents

MB Docket No. 08-\_\_\_\_\_

**PETITION OF VERIZON FOR DECLARATORY RULING**

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*Counsel for Verizon*

March 26, 2008

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

In the Matter of

Petition of Verizon for Declaratory Ruling  
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MB Docket No. 08-\_\_\_\_\_

**PETITION OF VERIZON FOR DECLARATORY RULING**

**I. INTRODUCTION AND SUMMARY**

Verizon<sup>1</sup> respectfully requests a declaratory ruling that cable incumbents are required to accept video-service cancellations from a new provider that has won the customer. Such a ruling will ensure a convenient process for consumers and will make it possible for consumers to change video service providers as easily as they can change telephone providers today.

The existing procedures for submitting disconnect orders when customers choose to change telephone and video providers are very different and confusing to customers. From the customer's perspective, the process to switch telephone providers is simple. There are long-established procedures under which the new provider can submit a disconnect order as the authorized agent for the customer. Once a customer agrees to accept service from the new provider, the customer need not do anything more. These practices have proven to work well,

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<sup>1</sup> The Verizon companies ("Verizon") filing this petition are the regulated, wholly owned affiliates of Verizon Communications Inc.

enhancing customer convenience while facilitating the ability of competitive carriers to transfer customers between them.

The process to switch video providers is more cumbersome for a consumer. Cable incumbents do not accept disconnect orders from the new provider; instead, they require the customer to contact them directly to cancel service after choosing a new video provider and to return any equipment. This significantly complicates the process of switching video providers for the customer, thereby entrenching the cable incumbents' dominant market position.

There is a simple solution here: to issue a declaratory ruling confirming that cable incumbents must accept disconnect orders from the new provider acting as the authorized agent for the customer. Because such a ruling will establish parity in the processes for cancelling telephone and video services, it will facilitate the ability of customers to switch video providers, thereby enhancing competition both in video services and in the "triple play" of bundled services of which video is an integral component. It is well within the Commission's authority to make this declaratory ruling that will foster robust competition between cable incumbents and other video providers.

## **II. ARGUMENT**

### **A. It Is Both Unfair and Anticompetitive to Maintain a Disparity Between the Process For Canceling Telephone Service and That For Canceling Video Service**

There is a sharp disparity in the way competing providers manage customer changes for telephone service as compared to video services. On the telephone side of the ledger, there are long established procedures under which the new provider can submit a disconnect order as the authorized agent for the customer. But on the video side, there are no such processes, and cable incumbents require customers to submit their disconnect orders directly rather than allowing the

new provider to submit these orders on the customers' behalf. This complicates the process for the customer, makes it harder to change service providers, and acts as an obstacle to competition. Moreover, it is fundamentally unfair for cable incumbents to benefit from the streamlined processes applicable when they win a telephone customer but refuse to do the same with respect to video services.

For more than ten years, telecommunications carriers have followed the guidelines established by the North American Numbering Council concerning local number portability ("LNP"), which interpret a port request to constitute as well a customer's request to cancel service. Specifically, those guidelines have required carriers to follow a process whereby a "New Service Provider" becomes the end user's agent and then notifies the "Old Service Provider" of the end user's desire to cancel and transfer service. The "Old Service Provider" is then required to return a firm order confirmation to the "New Service Provider" within 24 hours of receiving a local service request and then to cancel the end user's service on the date requested by the "New Service Provider."<sup>2</sup>

The telephone industry practice of accepting cancellation orders from competitive providers is not limited to LNP. Incumbent local exchange carriers have been required since the mid-1980s to cancel telephone service when such orders are delivered by a competitive carrier acting as the subscriber's agent. Beginning with post-divestiture presubscription, the Commission has struck a balance between making it easy for a customer to choose an alternative

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<sup>2</sup> See Report of the North American Numbering Council's Local Number Portability Administration Selection Working Group (Apr. 25, 1997), Inter-Service Provider LNP Operations Flows – Provisioning, <http://www.fcc.gov/wcb/cpd/Nanc/gnflw14.ppt#256,1,Slide1>.

carrier and protecting a customer against unauthorized changes (slamming).<sup>3</sup> The solution that the Commission devised was simple and effective: on one hand, it required the submitting carrier to obtain a letter of agency from the subscriber – separate and apart from any promotional materials – that would provide clear evidence that the subscriber wishes to change his or her preferred carrier.<sup>4</sup> On the other hand, the Commission established a clear obligation on the part of the *executing* carrier to “execut[e] promptly and without unreasonable delay changes that have been verified by the submitting carrier.”<sup>5</sup> Significantly, the Commission expressly prohibits an executing carrier charged with carrying out the submitting carrier’s order from independently verifying whether the subscriber did, indeed, select the particular telecommunications provider that the submitting carrier has indicated.<sup>6</sup> This principle has been a fundamental element of the Commission’s approach beginning with the original implementation of the equal access regime.<sup>7</sup>

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<sup>3</sup> See Memorandum Opinion and Order, *Investigation of Access and Divestiture Related Tariffs*, 101 F.C.C.2d 911 (1985); see also 47 U.S.C. § 258.

<sup>4</sup> See Report and Order, *Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, 10 FCC Rcd 9560, ¶ 27 (1995). The Commission’s current regulations require a submitting carrier first to obtain authorization from the subscriber and then to verify such authorization using either a written letter of agency (which may be written or electronic) or, if the carrier has used a telemarketer to solicit the customer, through prescribed, third-party verification procedures. See 47 C.F.R. §§ 64.1120(c), 64.1130(a).

<sup>5</sup> Third Report and Order and Second Order on Reconsideration, *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, 15 FCC Rcd 15996, ¶ 77 (2000); see also Second Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, 14 FCC Rcd 1508, ¶ 54 (1998) (“*Slamming Second Report and Order*”).

<sup>6</sup> See 47 C.F.R. § 64.1120(a)(2) (“An executing carrier shall not verify the submission of a change in a subscriber’s selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures described in this part shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.”); see also *Slamming Second Report and Order* ¶ 98

Both the LNP process and the history of interexchange presubscription reflect a consensus in the industry that it is appropriate both to allow a new carrier to submit a cancellation request on behalf of the subscriber and to require the old carrier promptly to cancel the subscriber's service. This industry consensus among telecommunications carriers has safeguarded competition while protecting subscribers against slamming.

In contrast to this fair and reasonable practice, incumbent cable providers refuse to accept cancellation orders from competitive video providers, thereby frustrating competition and harming consumers. They continue to enjoy the legacy of their former exclusive monopoly franchises that completely foreclosed competition, and through unfair and anticompetitive practices, they seek to extend the benefits of their former monopolies and to insulate themselves from competition.<sup>8</sup> Where the competitive video provider has obtained authorization from the subscriber and has assumed responsibility for returning all equipment to the cable incumbent, there is no legitimate business purpose for the cable incumbents' refusal to cancel the service upon receiving appropriate notice from the competitive video provider. The incumbent cable operators' refusal to accept the subscriber's cancellation from the competitive provider causes

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("Although executing carriers do not have verification obligations under our rules, they do have a responsibility to ensure that subscribers' carrier changes are executed as soon and as accurately as possible, using the most technologically efficient means available.").

<sup>7</sup> *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *cert. denied*, 460 U.S. 1001 (1982).

<sup>8</sup> Although the Commission has recently recognized that "LECs and other wire-based providers have begun entering the video service business on a large scale," it has also acknowledged that unfair and anticompetitive conduct, "especially when used in current market conditions by incumbent cable operators," may be particularly harmful to this fragile competition. See Report and Order and Further Notice of Proposed Rulemaking, *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, 22 FCC Rcd 20235, ¶¶ 13, 26 (2007) ("MDU Order"), *petition for review pending sub nom., National Cable & Telecomms. Assoc. v. FCC*, Case No. 08-1016 (D.D.C. filed Jan. 16, 2008).

substantial inconvenience to the customer, unnecessarily extends the time necessary to convert the customer to the new service, and interferes with the ability of the new provider to compete.

Unless incumbent cable providers follow procedures similar to those followed by telephone companies when they receive cancellation orders from their customers' agents, the cable providers will continue to enjoy an unlevel playing field in the provision of bundled services. If an incumbent telephone company must accept an order to cancel service when submitted by a competing carrier on behalf of a telephone subscriber, then an incumbent cable company should also have to accept an order to cancel cable service when submitted by a competing video provider on behalf of a subscriber to video services.

The Commission has recognized that the goal of regulatory parity is particularly important now that cable companies and telephone companies are competing directly for the provision of the "triple play" of services: "We believe this competition for delivery of bundled services will benefit consumers by driving down prices and improving the quality of service offerings. We are concerned, however, that traditional phone companies seeking to enter the video market face unreasonable regulatory obstacles, to the detriment of competition generally and cable subscribers in particular."<sup>9</sup> As telephone companies and cable companies compete for the "triple play," it is essential, therefore, that new entrants and incumbents enjoy a level playing field across all three services – voice, video, and broadband Internet access. The Commission itself has concluded that, where a telephone company is able to offer only voice and broadband

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<sup>9</sup> Report and Order and Further Notice of Proposed Rulemaking, *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*, 22 FCC Rcd 19633, ¶ 2 (2007) ("621 Order"); see also MDU Order ¶ 20 ("The offering of, and competition in, the triple play brings to consumers not just advanced telecommunications capability, but also a simplicity and efficiency that is proving to be highly attractive in the marketplace.").

Internet access on a fair and equal basis with incumbent cable companies – while the provision of video services continues to be subjected to unfair and anticompetitive practices – these companies will find entry less attractive and consumers will be harmed. The result of maintaining disparities between the regulation of video and voice services will be to “reduce competition in the provision of triple play services and result in inefficient use of communications facilities.”<sup>10</sup>

**B. The Commission Should Declare That Incumbent Cable Providers Must Accept Disconnect Orders From Competitive Providers Acting as Their Customers’ Agents**

For the same reasons that the Commission struck down existing exclusivity arrangements in multiple-dwelling units, clarifying that cable incumbents must deal directly with competitive video providers when cancelling service to subscribers “will prohibit the continuation and proliferation of an anticompetitive cable practice that has erected a barrier to the provision of

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<sup>10</sup> *MDU Order* ¶ 21. The Commission has repeatedly recognized the importance of parity between direct competitors offering the same service. For example, the Commission just recently prohibited exclusive contracts for telecommunications services in apartment buildings on the ground that such an “order provides regulatory parity between telecommunications and video service providers in the increasingly competitive market for bundled services.” News Release, *FCC Bans Exclusive Contracts For Telecommunications Services In Apartment Buildings* (Mar. 19, 2008), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-280908A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280908A1.pdf). Moreover, in the broadband context, the Commission has identified the importance of adopting rules that further “the goal of developing a consistent regulatory framework across platforms by regulating like services in a similar functional manner.” Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, ¶ 1 (2005), *petitions for review denied*, *Time Warner Telecomms. v. FCC*, 507 F.3d 205 (3rd Cir. 2007); *see also id.* ¶ 17 (describing its regulatory goal of “crafting an analytical framework that is consistent, to the extent possible, across multiple platforms that support competing services”). And most recently, in the context of wireless broadband internet access, the Commission established a regulatory approach that “furthers [its] efforts to establish a consistent regulatory framework across broadband platforms by regulating like services in [a] similar manner.” Declaratory Ruling, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, 22 FCC Rcd 5901, ¶ 2 (2007).

competitive video services.”<sup>11</sup> The cable incumbents’ refusal to accept cancellation orders from competitive video providers is a vestige from the era of the exclusive franchise, when cable incumbents were free to ignore the interests of competitive providers as well as those of their own subscribers. Congress prohibited the exclusive franchise in 1992, and the Commission recognized that Congress did so because “increased competition in the video programming industry would curb excessive rate increases and enhance customer service, two areas in particular which Congress found had deteriorated because of the monopoly power of cable operators . . . .”<sup>12</sup> Ensuring that cable incumbents execute cancellation orders fairly and efficiently – regardless of whether they are submitted by new providers on behalf of customers or by the customers themselves – will guard against the de facto expansion of the cable incumbents’ monopoly franchise.

The Commission has expressly recognized the competitive significance of ensuring that customers can quickly and efficiently change video providers. The long history of the Commission’s inside-wiring rules confirms that, as the prospects for competition among competing video providers have grown, so has the need to ensure that impediments to such competition are swept away. Over ten years ago, the Commission acknowledged, for example, that “it would streamline and expedite the process of changing service providers if alternative service providers and MDU owners were permitted to act as subscribers’ agents in providing

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<sup>11</sup> *MDU Order* ¶ 46; *see also id.* ¶ 43 (condemning the practice of using exclusivity clauses as “an unfair method of competition or unfair act or practice because it can be used to impede the entry of competitors into the market and foreclose competition based on the quality and price of competing service offerings”).

<sup>12</sup> *621 Order* ¶ 8.

notice of a subscriber's desire to change services."<sup>13</sup> Indeed, with respect to the unit-by-unit disposition of home run wiring in MDUs, the Commission's rules expressly provide that "[t]he alternative provider or the MDU owner may act as the subscriber's agent in providing notice of a subscriber's desire to change services, consistent with state law."<sup>14</sup> And when it first established the procedures for the disposition of cable home wiring – *i.e.*, the process by which a cable operator may exercise the option of either removing or selling to the subscriber the wiring within the subscriber's premises upon receiving notice by the subscriber that he or she wishes to terminate service – the Commission made clear that any reference to the cable "subscriber" was not "intend[ed] to prohibit a subscriber from delegating to an agent the task of terminating service and authorizing the purchase of home wiring on his or her behalf."<sup>15</sup> The Commission has, therefore, already recognized the importance to video competition of allowing agents to cancel service on a subscriber's behalf. The cable incumbents' refusal to accept cancellation orders when delivered by a subscriber's lawful agent is inconsistent with the Commission's longstanding view.

Competitive video providers are seeking only parity, not some kind of relative advantage. So, for example, while the cancellation order is pending, cable incumbents should be permitted to engage in the same kinds of pro-competitive retention marketing that incumbent telephone companies may pursue when their telephone customers have cancelled service. Indeed,

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<sup>13</sup> Report and Order and Second Further Notice of Proposed Rulemaking, *Telecommunications Services Inside Wiring; Customer Premises Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Cable Home Wiring*, 13 FCC Rcd 3659, ¶ 50 (1997).

<sup>14</sup> 47 C.F.R. § 76.804(b)(4).

<sup>15</sup> First Order on Reconsideration and Further Notice of Proposed Rulemaking, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring*, 11 FCC Rcd 4561, ¶ 18 (1996).

customers benefit most when all providers remain free to inform customers of the best terms available, and that is as true for video providers as it is for telephone companies. At the same time, however, cable incumbents should be subject to any and all marketing limitations that apply to telephone incumbents. The point is that the same processes should apply equally.

The Commission should make clear that a cable incumbent should handle a cancellation order from the subscriber's agent with the same speed and efficiency as it handles such orders directly from the subscriber. The cable incumbent should cancel the service without independently verifying the change request, just as the incumbent carrier is required to do in the telecommunications context. Because the competitive video provider, as the subscriber's agent, will assume the subscriber's responsibility to return all of the cable incumbents' equipment, there is no legitimate reason why the incumbent cable operator cannot efficiently execute the cancellation order.

The Commission has the authority to address unfair methods of competition, and the current disparity is an example of just such unfairness. The plain language of section 628(b) prohibits "unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers."<sup>16</sup> As the Commission made clear in its recent *MDU Order*, section 628(b) prohibits not only unfair or deceptive practices that deny competitive video providers access to programming, but it also prohibits anticompetitive practices that hinder or prevent

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<sup>16</sup> 47 U.S.C. § 548(b).

competitive video providers from providing programming to consumers.<sup>17</sup> Moreover, granting this petition will promote video competition and the broader purposes of the Communications Act, including those of section 706 of the Telecommunications Act of 1996 to encourage broadband deployment and advanced video services.<sup>18</sup>

The Commission should declare pursuant to Commission Rules 1.2 and 76.7(a)(1) that, under the circumstances described above, incumbent cable companies may not refuse to accept from competitive video providers orders cancelling the incumbent's service. Declaring such conduct to be unlawful and anticompetitive would serve the public interest, for it would preclude a practice that impedes the entry of competitors into the market and frustrates competition based on the quality and price of competing service offerings.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should declare that it constitutes an unfair method of competition or an unfair practice for an incumbent cable operator to refuse to accept its subscriber's order to cancel video service when such a cancellation request is communicated by a competing video provider as the subscriber's lawful agent.

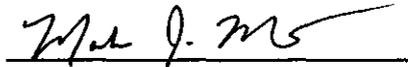
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<sup>17</sup> See *MDU Order* ¶ 44. The pro-competitive goals of section 628(b) are consistent not only with the principal goal of the 1992 Cable Act to "promote competition in cable communications," 47 U.S.C. § 521(6), but also with the overriding purpose of the Communications Act itself – "to make available, so far as possible, to all the people of the United States . . . a rapid, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges." *MDU Order* ¶ 47 (quoting 47 U.S.C. § 151).

<sup>18</sup> See 47 U.S.C. § 157 nt (directing the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans"); see also *MDU Order* ¶ 47.

Respectfully submitted,

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*Of Counsel*



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