

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 07-269
Competition in the Market for the)	
Delivery of Video Programming)	

REPLY COMMENTS OF COMCAST CORPORATION

Joseph W. Waz, Jr.
COMCAST CORPORATION
One Comcast Center
Philadelphia, Pennsylvania 19103

Kathryn A. Zachem
James R. Coltharp
COMCAST CORPORATION
2001 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20006

Thomas R. Nathan
Catherine Fox
COMCAST CABLE COMMUNICATIONS, LLC
One Comcast Center
Philadelphia, Pennsylvania 19103

James L. Casserly
Megan Anne Stull
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006-1238

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Comcast Corporation (“Comcast”) hereby replies to the comments submitted in response to the above-captioned *Notice of Inquiry* and *Supplemental Notice of Inquiry*.¹ Comcast also updates the record with recent developments that further illustrate the vigorous competition and constant innovation in the current video marketplace.

I. INTRODUCTION AND SUMMARY

The record in this proceeding -- as in another proceeding recently resolved by the D.C. Circuit -- “is replete with evidence of ever increasing competition among video providers”² Direct broadcast satellite (“DBS”) providers have continued their rapid subscriber growth; the telephone companies have expanded their video offerings to millions of additional consumers; and the amount of video content that is available and being accessed online continues to skyrocket. In short, “[t]he options for the typical viewer are exploding.”³

¹ See *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 24 FCC Rcd. 750 (2009) (“*Notice*”); *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Supplemental Notice of Inquiry, 24 FCC Rcd. 4401 (2009) (“*Supplemental NOI*”).

² See *Comcast Corp. v. FCC*, No. 08-1114, slip op. at 14 (D.C. Cir. Aug. 28, 2009) (“*Comcast Corp. v. FCC*”).

³ Victor Godinez, *TV Remotes To Undergo Big Change*, Dallas Morning News, June 24, 2009 (quoting Juergen Schroter, an executive director for AT&T Labs), available at <http://www.dallasnews.com/sharedcontent/dws/bus/ptech/stories/062409dnbusremote.3c8d3e8.html>.

After three rounds of filings, the record in this proceeding provides abundant evidence and data of increased competition, innovation, and consumer choice. As the National Cable & Telecommunications Association (“NCTA”) explained:

Competition is evident at every turn: from the number of competitors, the number and variety of service and product offerings, the ever-changing host of new digital and IP video sources, the growth in high definition and diverse programming, and the drive to innovate and develop new business models to challenge existing services and attract customers.⁴

Dish Network confirmed these observations, noting that “consumers have more control over their video content than ever before. They can choose increasingly not only what they watch, but when they watch, on what device they watch, and where they watch.”⁵

Commenters described their intensifying, multi-front battles to attract and retain customers for their services. Multichannel video programming distributors (“MVPDs”) like DirecTV described the “substantial competition in the video marketplace, particularly from other MVPDs that offer video, audio, interactive programming, telephony, data, and other entertainment services.”⁶ Verizon described its efforts to “aggressively . . . deploy the competitive video services that it offers over its next-generation, all-fiber broadband network.”⁷ AT&T discussed its multi-billion dollar investment to “deploy new fiber-optic and state-of-the-art broadband facilities across its service territory, to deliver its U-verse TV Service” to

⁴ NCTA June 2009 Reply Comments at 1. Unless otherwise noted, all citations to comments and reply comments herein refer to comments and reply comments filed in MB Docket No. 07-269 on or around May 20, 2009; June 22, 2009; and July 29, 2009.

⁵ Dish Network June 2009 Reply Comments at 1.

⁶ DirecTV May 2009 Comments at 14.

⁷ Verizon May 2009 Comments at 2.

customers.⁸ And Comcast highlighted some of its numerous efforts to keep up with and stay ahead of the competition.

MVPDs are not only competing among themselves, but also against broadcasters and providers of content on mobile and Internet platforms. The National Association of Broadcasters (“NAB”) emphasized that “[b]roadcast television continues to be a competitive force in the video marketplace by offering a diverse array of free programming options.”⁹ DirecTV cited to the growing competition from “broadband service providers [and] wireless systems” that are increasingly providing video content to their subscribers.¹⁰ And NCTA observed that “[t]here is now an incredible variety of video programming available on the Internet, and applications and websites such as Hulu, Boxee and iTunes [to say nothing of Roku, Netflix, Amazon, Blockbuster, Xbox, Blinkx, and YouTube] make it easy for consumers to find and access such programming on demand.”¹¹ As one analyst put it, “The onslaught from competitors isn’t likely to stop anytime soon.”¹²

Yet, despite all this evidence, certain commenters continue to engage in the regulatory gamesmanship that has become all too familiar in the Commission’s video competition inquiries, presenting their stale prescriptions for monopoly-era regulations despite the undeniable growth of competition, innovation, diversity, and consumer choice. For example, despite their remarkable success over the past three years, Verizon and AT&T urge the Commission to ignore the Communications Act and extend the program access rules to terrestrial programming.

⁸ AT&T May 2009 Comments at 2.

⁹ NAB June 2009 Reply Comments at i.

¹⁰ DirecTV May 2009 Comments at 16.

¹¹ NCTA May 2009 Comments at 5.

¹² Patti A. Reali, *The Future of Video*, SNL Interactive, June 1, 2009, available at <http://www.snl.com/interactivex/article.aspx?ID=9584808&KPLT=2>.

WealthTV, having filed multiple program carriage complaints and had its day in court, urges the Commission to rewrite the rules to stack the deck against cable operators and make it easier for WealthTV to win. And NAB again urges the Commission to adopt multicast must-carry requirements that the Commission repeatedly has rejected as unnecessary and unlawful. These tired arguments have no place in the Commission's report to Congress.

The video marketplace is so vibrant today that even a recent snapshot is inevitably out of date. Developments in the past three months alone -- since Comcast filed its initial comments in this proceeding -- further demonstrate how aggressive, innovative, and responsive to consumer demands competitors must be to succeed in the current video marketplace. Comcast respectfully requests that the Commission's report to Congress reflect the undeniable dynamism in video businesses, and that the Commission refrain from lending any sense of legitimacy to certain commenters' claims that more regulation is needed.

II. RECENT DEVELOPMENTS DEMONSTRATE CONTINUED GROWTH IN COMPETITION AND CONSUMER CHOICE.

The initial comments in this proceeding included substantial evidence demonstrating that the video marketplace is extremely competitive. In the three months since those comments were filed, that competition has continued its rapid growth. Nearly every day, consumers were presented with more choices of what to watch, more options of where and when to watch it, and more sources from which to obtain it. Meanwhile, cable's competitors -- both old and new -- attracted new customers, lured subscribers away from cable operators, or drew eyeballs to computer screens or mobile devices and away from television sets. Comcast highlights just a few of these developments below.

A. Cable Competitors Continue To Attract More Subscribers.

In the past three months, despite the economic recession, cable's fiercest competitors -- DBS providers and telcos -- reported impressive growth in their net subscriber additions. In the

aggregate, DirecTV, Dish Network, Verizon, and AT&T gained nearly 800,000 additional video subscribers in the second quarter of 2009:

- Verizon netted 300,000 new FiOS TV subscribers and now serves 2.5 million FiOS TV subscribers. This now makes Verizon the 8th largest MVPD in the United States.¹³
- AT&T's U-verse TV service added 248,000 net subscribers, bringing its total number of subscribers to 1.6 million. AT&T is now the 10th largest MVPD in the country.¹⁴
- DirecTV added 224,000 subscribers and now serves 18.31 million U.S. multichannel subscribers.¹⁵ Dish Network added 26,000 subscribers and now serves 13.61 million U.S. multichannel subscribers.¹⁶ DirecTV and Dish Network remain the second and third largest U.S. MVPDs, respectively, dwarfing all other MVPDs except for Comcast and Time Warner.

B. Telcos Have Continued To Expand Their Video Service Footprints.

During the second quarter of 2009, the two largest telco video providers, Verizon and AT&T, continued to rapidly deploy their video products.

- FiOS TV service is currently available to 10.3 million households across 14 states.¹⁷ By the end of next year, however, Verizon expects its FiOS network, which passed 13.8 million homes at the end of the second quarter of 2009, to “pass more than 18 million homes.”¹⁸ In the last three months alone, Verizon announced that it will roll out

¹³ Press Release, Verizon Communications Inc., *Verizon Reports Revenue Growth and Continued Improvement in Cash Flow in 2Q* (July 27, 2009), available at <http://investor.verizon.com/news/view.aspx?NewsID=1000>; see also NCTA, *Statistics: Top 25 MSOs*, at <http://www.ncta.com/ContentView.aspx?contentId=73> (last visited Aug. 9, 2009).

¹⁴ Press Release, AT&T Inc., *Strong Wireless Growth, Continued Cost Discipline, Solid Free Cash Flow Highlight AT&T's Second-Quarter Results* (July 23, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26961>.

¹⁵ Press Release, DirecTV, Inc., *The DirecTV Group Announces Second Quarter 2009 Results* (Aug. 6, 2009), available at <http://investor.directv.com/releasedetail.cfm?ReleaseID=401689>. DIRECTV is also now the world's largest MVPD with 24.2 million subscribers. See *id.*

¹⁶ Press Release, Dish Network Corp., *DISH Network Reports Second Quarter 2009 Financial Results* (Aug. 10, 2009), available at <http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=402219>.

¹⁷ See Verizon Communications Inc., *Verizon FiOS - Fact Sheet*, at <http://newscenter.verizon.com/kit/fios-symmetrical-internet-service/all-about-fios.html> (last visited Aug. 26, 2009).

¹⁸ See Todd Spangler, *FiOS TV Cracks 2.5 Million Subscribers*, Multichannel News, July 27, 2009, available at http://www.multichannel.com/article/316458-FiOS_TV_Cracks_2_5_Million_Subscribers.php.

FiOS TV services to additional communities in Florida, California, Massachusetts, Maryland, Texas, and New York.¹⁹

- AT&T's U-verse fiber network now passes almost 18 million households in 93 metropolitan areas across the United States.²⁰ Since the first comments were submitted in this proceeding, AT&T expanded its U-verse services to additional communities in Texas, Tennessee, Connecticut, and South Carolina.²¹ AT&T also announced that U-verse now reaches more than one million households in both Florida and Michigan.²²

In all, more than 28 million households nationwide can purchase multichannel video services from these two telcos alone -- meaning that this option is now available to more than ten times as many consumers as at the time of the Commission's last video competition report.²³ It

¹⁹ See, e.g., Press Release, Verizon Communications Inc., *TV Choice and Competition Near for Residents of Three More New York Communities* (Aug. 26, 2009), available at <http://newscenter.verizon.com/press-releases/verizon/2009/tv-choice-and-competition-7.html>; Todd Spangler, *FiOS TV Expands in SoCal*, Multichannel News, July 14, 2009, available at http://www.multichannel.com/article/315220-FiOS_TV_Expands_In_SoCal.php; Press Release, Verizon Communications Inc., *Thousands of Parrish, Fla. Residents Now Have Access to FiOS TV* (July 9, 2009), available at <http://newscenter.verizon.com/press-releases/verizon/2009/thousands-of-parrish-fla.html>; Press Release, Verizon Communications Inc., *More Cable TV Choice for Consumers in Marblehead, Mass.* (June 8, 2009), available at <http://newscenter.verizon.com/press-releases/verizon/2009/more-cable-tv-choice-for-2.html>; Press Release, Verizon Communications Inc., *TV Choice and Competition Near for Residents of Wrentham, Mass.* (June 4, 2009), available at <http://newscenter.verizon.com/press-releases/verizon/2009/tv-choice-and-competition-3.html>; Press Release, Verizon Communications Inc., *Verizon Makes FiOS TV Available to Nearly 8,000 Households in Charles County, Md., Following Recent Cable Franchise Approval* (June 1, 2009), available at <http://newscenter.verizon.com/press-releases/verizon/2009/verizon-makes-fios-tv.html>; Press Release, Verizon Communications Inc., *FiOS Broadband and TV Services Now Available to More Residential Consumers in North Texas* (May 26, 2009), available at <http://newscenter.verizon.com/press-releases/verizon/2009/fios-broadband-and-tv-services-now-available-to-more-residential-consumers-in-north-texas.html>.

²⁰ AT&T July 2009 Comments at 1.

²¹ See, e.g., Press Release, AT&T Inc., *AT&T U-verse Arrives in Corpus Christi* (June 26, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26886>; Press Release, AT&T Inc., *AT&T U-verse Arrives in Clarksville* (May 26, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26906>; Press Release, AT&T Inc., *AT&T U-verse Arrives in Jewett City* (May 26, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26893>; Press Release, AT&T Inc., *AT&T U-verse Arrives in Greenville* (Aug. 10, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26992>.

²² Press Release, AT&T Inc., *More Than 1 Million Florida Living Units Benefit from Video Choice with AT&T U-verse TV* (July 27, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26968>; Press Release, AT&T Inc., *More Than 1 Million Michigan Living Units Benefit from Video Choice with AT&T U-verse TV* (May 21, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26829>.

²³ See *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd. 542 ¶ 14 (2009) (stating that, "[a]t the end of 2006, Verizon reported that it offered video programming via FiOS to more than 2.4 million households in 200 cities in 10 states (footnote continued...)

bears emphasis that these telcos are bringing consumers a fourth or fifth MVPD option, in addition to those already available from established cable operators, DirecTV, Dish, and sometimes an “overbuilder” like RCN or WideOpenWest. DirectTV and Dish, of course, have long been available in every community served by cable.

C. Competing MVPDs Continue To Expand Consumers’ Programming Choices.

MVPD subscribers are receiving more channels and watching more television than ever before.²⁴ According to Nielsen Media, in 2008, the number of channels available in the average U.S. television household was 130, more than double the average of 61 channels per household in 2000.²⁵ This rapid increase in channel availability has been driven in part by MVPDs’ continuing race to distinguish their services by offering the most high-definition (“HD”) and unique programming. Since the May comment round:

- DirecTV announced that it will offer local broadcasters’ HD channels in seven new markets this summer.²⁶ With these additions, DirecTV will provide local HD broadcast stations in 133 cities, representing more than 91 percent of U.S. TV households,²⁷ and standard-definition (“SD”) broadcast channels in 151 markets.²⁸ In addition, DirecTV

(...footnote continued)

and served 207,000 subscribers[;] . . . AT&T had deployed its ‘U-verse’ product in approximately 11 cities in Texas, California, Indiana, and Connecticut[; and] BellSouth [held] . . . 20 franchises to provide cable overbuild service in its local telephone service area and its facilities-based video service [was] available to 200,000 households”).

²⁴ As the D.C. Circuit recently noted, since 1992, “there has been a dramatic increase both in the number of cable networks and in the programming available to subscribers.” *Comcast Corp. v. FCC*, slip op. at 14.

²⁵ Todd Spangler, *Typical U.S. TV Household Now Gets 130-Plus Channels*, Multichannel News Blog, July 20, 2009, available at http://www.multichannel.com/blog/BIT_RATE/19539-Typical_U_S_TV_Household_Now_Gets_130_Plus_Channels.php.

²⁶ Muhammad Haseeb, *DirecTV To Expand Local HD Channels to Seven New Markets*, SNL Interactive, July 2, 2009, available at <http://www.snl.com/InteractiveX/article.aspx?CDID=A-9729987-9304&KPLT=2>.

²⁷ *DirecTV Surpasses 130 Markets for High-def Locals*, The Sky Report, July 1, 2009, available at http://www.mediabiz.com/news/articles/?edit_id=11957.

²⁸ Press Release, DirecTV, Inc., *DIRECTV Delivers Local HD Programming to Customers in Roanoke-Lynchburg, Va* (July 29, 2009), available at <http://investor.directv.com/releasedetail.cfm?ReleaseID=399831>.

announced that it will offer ESPNU on a more widely distributed package, making it available to 46 million people.²⁹

- Dish Network added HD feeds for local broadcast channels in four new markets. With these additions, Dish now provides HD local stations to 150 DMAs, covering 92% of U.S. households.³⁰ In addition, Dish Network launched five new HD cable networks, bringing its total number of HD cable channels to more than 140.³¹ Dish Network also increased its international programming, launching three new channels in its Chinese programming lineup; it now offers 170 different international channels in more than 28 languages.³²
- AT&T announced the addition of six new HD channels from MTV Networks to its U-verse lineup, along with ShortsHD, a channel dedicated to showing “short movies”; Arabic Radio & Television, a channel specializing in Arabic-language programming; and RAITALIA, the international television service of Italy’s national public broadcaster.³³
- Verizon announced deals to carry Epix, a new movie service that will be made available in SD and HD on FiOS TV, as well as via FiOS Internet, wireless delivery, and video-on-demand (“VOD”);³⁴ and the SD feed of Hallmark Movie Channel (which also is carried in HD).³⁵ Verizon also expanded the local programming it offers by creating its own networks. Verizon launched two local channels, FiOS 1 Long Island and FiOS 1 New Jersey, featuring a mix of hard news, community features, and high school sports programming.³⁶ In addition, Verizon entered into deals with AMC, Disney Family

²⁹ Press Release, DirecTV, Inc., *DirecTV To Offer ESPNU in its Choice Package* (May 19, 2009), available at <http://dtv.client.shareholder.com/releasedetail.cfm?ReleaseID=385070>.

³⁰ MCN Staff, *Dish Dishes Out More Local HD Markets*, Multichannel News, July 3, 2009, available at http://www.multichannel.com/article/print/307446-Dish_Dishes_Out_Four_More_Local_HD_Markets.php.

³¹ Glen Dickson, *Dish Boosts HD Lineup*, Broad. & Cable, May 8, 2009, available at http://www.broadcastingcable.com/article/231818-Dish_Boosts_HD_Lineup.php.

³² Press Release, Dish Network Corp., *DISH Network Introduces Three New Chinese Channels* (July 16, 2009), available at <http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=397235>.

³³ See Press Release, AT&T Inc., *AT&T U-verse TV Lineup Expands To Include Six New HD Channels from MTV Networks* (May 15, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26820>; Press Release, AT&T Inc., *AT&T U-verse TV Adds ShortsHD and New International Channels* (July 20, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26954>.

³⁴ See Mike Reynolds, *Epix Lands a Home on Verizon’s FiOS TV*, Multichannel News, Aug. 3, 2009, available at http://www.multichannel.com/article/326199-Epix_Lands_A_Home_On_Verizon_s_FiOS_TV.php. Verizon is the first MVPD to agree to carry Epix.

³⁵ Mike Reynolds, *Hallmark Movie Channel Secures Standard-Definition Berth with FiOS*, Multichannel News, Aug. 6, 2009, available at http://www.multichannel.com/article/326670-Hallmark_Movie_Channel_Secures_Standard_Definition_Berth_With_FiOS.php.

Movies, 20th Century Fox, Univision, and others to expand its library of on-demand offerings.³⁷

D. Competing MVPDs Continue To Secure Exclusive Programming Rights To Distinguish Themselves from Their Competitors.

Cable's competitors announced a number of exclusive programming deals since May 2009.

- DirecTV offered its customers exclusive interactive coverage of eight golf and tennis tournaments, including interactive coverage of the Professional Golf Association's ("PGA") 2009 U.S. Open Championship, the Masters, PGA Championship, and the British Open, as well as tennis's Australian and French Opens and Wimbledon.³⁸
- DirecTV announced that football fans in Manhattan who are unable to receive satellite signals will be able to access the NFL Sunday Ticket via a broadband connection. DirecTV was granted the exclusive rights to the broadband-only format of the NFL Sunday Ticket when it renewed its contract with the NFL in March 2009. The New York offering is a pilot test, and this broadband offering is slated to be available nationally next year.³⁹

(...footnote continued)

³⁶ Press Release, Verizon Communications Inc., *Verizon Launches FiOS Channels on Long Island and in Northern New Jersey; Verizon FiOS Brings Consumers an Exciting, New Source for Hyper-Local Content with News, Sports, Traffic, Weather and So Much More* (June 22, 2009), available at <http://newscenter.verizon.com/press-releases/verizon/2009/verizon-launches-fios1.html>.

³⁷ Todd Spangler, *Verizon Pads FiOS VOD Lineup*, Multichannel News, Aug. 10, 2009, available at http://www.multichannel.com/article/327009-Verizon_Pads_FiOS_VOD_Lineup.php.

³⁸ DirecTV offered several exclusive interactive channels in addition to the coverage of the events provided on broadcast networks or ESPN. For instance, the interactive services available for the PGA's 2009 U.S. Open golf tournament included "a look at the top five leaders; the full leader board, with the ability to select any golfer for in-depth, hole-by-hole stats; a five-question, daily trivia contest on the history of the event; and a 'Tune To' menu item that allow[ed] the viewer to tune directly to" DirecTV's exclusive coverage or the main network feed. See Press Release, DirecTV, Inc., *DirecTV Atop the Pay TV Leader Board with Four Days of Exclusive Interactive Coverage of 2009 U.S. Open Championship* (June 10, 2009), available at <http://dtv.client.shareholder.com/releasedetail.cfm?ReleaseID=389020>; Linda Moss, *DirecTV Serves Up Interactive Coverage of Australian Open*, Multichannel News, Jan. 15, 2009, available at http://www.multichannel.com/article/162229-DirecTV_Serves_Up_Interactive_Coverage_of_Australian_Open.php.

³⁹ David Lieberman, *DirecTV Offers Sunday Ticket Via Internet in NY Trial*, USA Today, Aug. 17, 2009, available at http://www.usatoday.com/tech/news/2009-08-16-broadband-directv-football_N.htm.

- AT&T announced exclusive rights to the U.S. premiere of a new short film featuring the beloved clay characters Wallace and Gromit. AT&T offered the film in its U-verse TV On Demand library.⁴⁰

As Comcast has explained previously, carriage of exclusive offerings helps providers to distinguish themselves from competitors and to attract unique or niche subscriber bases.⁴¹

E. Competing MVPDs Continue To Improve and Aggressively Promote Product Bundles.

Competitors in the video marketplace have embraced the power of the product bundle to retain and attract subscribers. In the past three months:

- AT&T has partnered with DirecTV to offer video services in those areas in which AT&T does not offer U-verse. During the second quarter of 2009 -- the first full quarter of their partnership -- AT&T added more than 100,000 DirecTV subscribers.⁴²
- DirecTV and Verizon recently announced a cross-promotion in which Verizon DSL customers can receive DirecTV's marquee service offering, the NFL Sunday Ticket, as an incentive to sign up for a Verizon triple-play bundle that includes DirecTV's DVR. Specifically, the 2009 NFL Sunday Ticket will be offered at no additional cost to new customers who sign up for select packages of Verizon's high-speed Internet and voice services, as well as DirecTV's video service.⁴³
- DirecTV and Qwest extended their agreement to bundle DirecTV service with Qwest broadband and voice throughout Qwest's service areas for the next five years.⁴⁴

As NCTA aptly explained, "bundling in order to maximize value for consumers not only generally advances competition but is a hallmark and manifestation of the vigorous competition

⁴⁰ Press Release, AT&T Inc., *New Wallace and Gromit Short Film Makes Exclusive U.S. Premiere on AT&T U-verse TV* (May 28, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26836>.

⁴¹ See, e.g., Comcast Comments, MB Docket No. 07-29, at 13-18 (Apr. 2, 2007).

⁴² Todd Spangler, *AT&T: 100,000-Plus Subs Through DirecTV in Q2*, Multichannel News, July 23, 2009, available at http://www.multichannel.com/article/316211-AT_T_100_000_Plus_Subs_Through_DirecTV_In_Q2.php.

⁴³ Press Release, DirecTV, Inc., *Verizon and DirecTV Team Up To Offer Money-Saving Bundles* (July 29, 2009), available at <http://investor.directv.com/releasedetail.cfm?ReleaseID=399798>.

⁴⁴ Press Release, DirecTV, Inc., *Qwest and DirecTV Reach Agreement To Extend Strategic Alliance* (July 21, 2009), available at <http://investor.directv.com/releasedetail.cfm?ReleaseID=398159>.

that now exists among broadband providers.”⁴⁵ A study submitted by NCTA in this proceeding found that the consumer benefits from the cable industry’s transformation to providing multiple communications services approach an astounding \$35 billion annually.⁴⁶

F. Competing Providers Continue To Enhance the Interactive Services They Provide.

Consumers have embraced interactive technologies with on-demand functionalities that allow them to watch what they want, when they want. According to Rentrak, consumers watched 589 million video streams over VOD in June 2009, representing a 15 percent increase from May in overall VOD transactions, and a 16 percent increase in the number of unique set-top boxes accessing VOD content.⁴⁷ To keep up with this demand, cable’s competitors continue to improve the services they offer:

- Verizon launched more than 85 new VOD properties on FiOS TV in the last year and plans to add new content from Univision, Sony Entertainment, and others later this summer. Verizon partnered with more than 40 different programming networks to provide on-demand content on both FiOS TV and Verizon Wireless’s V-CAST service.⁴⁸
- Verizon launched two new interactive services -- the Widget Bazaar applications store and Internet Video on TV -- to “create [a] truly converged Internet-to-television experience that lets FiOS TV subscribers connect with others while watching TV, plus search and view a variety of online and personal, PC-based videos on their television screens.”⁴⁹ Verizon announced that it is planning an “open development platform to

⁴⁵ NCTA July 2009 Further Comments at 4-5.

⁴⁶ *Id.* at 1 (citing M. Pelcovits & A. Ferguson, MiCRA, *Benefits to Consumers from the Transformation of the Cable Industry*, at iii (2009)).

⁴⁷ Erik Gruenwedel, *Rentrak: June Tops for VOD Use*, Home Media Magazine, July 22, 2009, available at <http://www.homemediamagazine.com/vod/retrak-june-tops-vod-use-16476>.

⁴⁸ Press Release, Verizon Communications Inc., *Video That Is in Demand Is ‘On Demand’ from Verizon* (June 9, 2009), available at <http://newscenter.verizon.com/press-releases/verizon/2009/video-that-is-in-demand-is.html>.

⁴⁹ Press Release, Verizon Communications Inc., *Verizon Brings the Web to the TV with Facebook, Twitter, and Internet Videos* (July 15, 2009), available at <http://investor.verizon.com/news/view.aspx?NewsID=996>.

permit content partners to write interactive FiOS TV applications to be available through the Widget Bazaar.”⁵⁰

- AT&T U-verse subscribers with multi-room DVRs can now schedule and manage recordings from any of their U-verse receivers. AT&T also launched a new movie application, On Demand Top Picks, which makes recommendations to customers based on their past video rental history, and a web interface to schedule and manage DVR recordings.⁵¹ And AT&T rolled out a new application for the iPhone and iPod Touch that allows customers to set or manage DVR recordings remotely.⁵²

G. Consumers Continue To Take Their Viewing Mobile.

Evidence of the increasing popularity of mobile video continues to mount. In a survey released in July 2009, the Pew Internet and American Life Project found that Americans are increasingly using their mobile phones to record and watch video.⁵³ KPMG and the Mobile Entertainment Forum reached a similar conclusion, finding that nearly 40 percent of consumers have watched mobile video on their handsets.⁵⁴ Over the past three months, mobile video offerings continued to expand.

- In June 2009, AT&T announced that it was expanding its AT&T Mobile TV product to roughly 20 new markets.⁵⁵

⁵⁰ *Id.*

⁵¹ Press Release, AT&T Inc., *AT&T Rolls Out More U-verse Enhancements at No Additional Cost to Customers* (June 16, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26864>.

⁵² Press Release, AT&T Inc., *New iPhone and iPod Touch Application from AT&T Lets Customers Schedule U-verse TV DVR Recordings on the Go* (June 25, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26877>.

⁵³ John Horrigan, Pew Internet & Am. Life Project, *Wireless Internet Use 2009*, at 5 (July 2009), available at <http://www.pewinternet.org/~media/Files/Reports/2009/Wireless-Internet-Use.pdf>.

⁵⁴ Tarmo Virki, *Apps a Nail in Coffin of Broadcast Mobile TV*, Reuters, July 9, 2009, available at <http://www.reuters.com/article/technologyNews/idUSTRE56801M20090709>.

⁵⁵ *AT&T Expands Charlotte Coverage*, Charlotte Bus. J., June 22, 2009, available at <http://www.bizjournals.com/charlotte/stories/2009/06/22/daily4.html>. The product, which is available in more than 50 cities nationwide, brings AT&T Wireless customers their favorite full-length TV programs, including content from CBS, Comedy Central, ESPN, FOX, NBC, MTV, and Nickelodeon, straight to their mobile phones. See AT&T, *Mobile TV FAQs*, at <http://www.wireless.att.com/learn/messaging-internet/mobile-tv/mobile-tv-faqs.jsp> (last visited Aug. 24, 2009).

- Blackberry introduced a new mobile video service from QuickPlay Media. The new subscription service, “PrimeTime2Go,” features content from ABC, Disney Channel, ESPN, and Discovery Channel.⁵⁶
- In June 2009, Major League Baseball’s (“MLB”) “At Bat” application streamed its first live baseball game -- the Cubs versus the White Sox -- directly to subscribers’ iPhones.⁵⁷
- Netflix reported that it will soon offer its video-streaming feature on Apple iPhones and iPod Touch devices, as well as on the Nintendo Wii gaming console.⁵⁸
- YouTube announced that uploads from mobile phones to YouTube jumped 1700% in six months.⁵⁹

H. The Internet Continues To Grow as a Vehicle for Distributing and Accessing Video Content.

A growing and diverse array of competitors in the video marketplace have been experimenting with Internet video models, and an increasing number of them are proving successful. The quality and quantity of video programming available online has continued to expand, particularly as broadcasters stream more of their linear content; video aggregating websites like Hulu and YouTube expand their libraries; consumer equipment increasingly provides Internet access; and end users furiously upload their own video creations to websites like Facebook, Twitter, and YouTube.

The following are just a few developments from the past three months:

- Panasonic announced that Amazon’s VOD service is available on all Viera Cast-enabled Blu-ray disc players.⁶⁰

⁵⁶ Glen Dickson, *Blackberries Get Video-on-Demand*, Broad. & Cable, May 5, 2009, available at http://www.broadcastingcable.com/article/231500-Blackberries_Get_Video_On_Demand.php.

⁵⁷ Michael Grotticelli, *MLB.com Streams First Live Baseball Game to Apple’s iPhone*, Broad. Engineering, June 25, 2009, available at <http://broadcastengineering.com/products/mlbcom-streams-live-baseball-apple-iphone-0626/>.

⁵⁸ Todd Spangler, *Netflix To Stream Videos to iPhone, Nintendo Wii: Source*, Multichannel News, July 31, 2009, available at http://www.multichannel.com/blog/BIT_RATE/20671-Netflix_to_Stream_Videos_to_iPhone_Nintendo_Wii_Source.php.

⁵⁹ YouTube Blog, *Mobile Uploads to YouTube Increase Exponentially*, June 25, 2009, available at http://youtube-global.blogspot.com/2009/06/mobile-uploads-to-youtube-increase_5122.html.

- Sony said that its Bravia Video Link provides access to content from more than 25 providers, including Amazon VOD, YouTube, Sports Illustrated, Sony Pictures, Crackle, Slacker, Epicurious.com, Concierge.com, Style.com, and Dailymotion.⁶¹
- Netflix announced that, beginning this fall, subscribers will be able to access more than 12,000 titles from Sony Bravia HDTVs with broadband connectivity.⁶² Netflix also expanded its partnership with Disney to make more ABC shows available instantly online through Netflix's streaming service.⁶³ And, Netflix announced that next month it will begin offering 2,500 titles from Starz's broadband subscription service on its web streaming service.⁶⁴
- YouTube launched YouTube XL, which is optimized to let users watch YouTube videos on any large screen.⁶⁵
- Hulu made ABC shows available online in July. Hulu's library now boasts a number of popular shows from various Disney-owned networks.⁶⁶
- Fox News's website expanded its streaming of live videos during the traditional business hours of 9:00 AM to 5:00 PM, aiming to capture the eyes of office workers.⁶⁷
- NBC Sports continued to increase the top-tier sports events that it makes available on the Internet, including the Wimbledon women's and men's finals, which were streamed live.⁶⁸

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⁶⁰ Taigh Khan, *Panasonic Offers Amazon VOD on Blu-ray Players*, SNL Interactive, Aug. 4, 2009, available at <http://www.snl.com/interactivex/article.aspx?ID=9874716&KPLT=2>.

⁶¹ Melissa J. Perenson, *Sony Adds Netflix Streaming Video*, PC World, July 9, 2009, available at <http://www.pcworld.com/printable/article/id.168149/printable.html>.

⁶² Todd Spangler, *Netflix Streams into Sony Bravia HDTVs*, Multichannel News, July 9, 2009, available at http://www.multichannel.com/article/311622-Netflix_Streams_Into_Sony_Braviva_HDTVs.php.

⁶³ Glen Dickson, *Disney Streams More Shows Through Netflix*, Broad. & Cable, Aug. 3, 2009, available at http://www.broadcastingcable.com/article/326270-Disney_Streams_More_Shows_Through_Netflix.php?nid=2228&source=title&rid=9813543.

⁶⁴ Sue Zeidler, *Netflix Would Like To Carry Epix, HBO, Showtime*, Reuters, July 23, 2009, available at <http://www.reuters.com/article/rbssConsumerGoodsAndRetailNews/idUSN2342851620090724>.

⁶⁵ Greg Sandoval, *YouTube Making Jump to TV Screens*, cnet News Digital Media, June 2, 2009, available at http://news.cnet.com/8301-1023_3-10254696-93.html. "XL is designed for people who have hooked up their TVs to their laptops or video game consoles, such as Xbox 360 or Sony PlayStation 3." *Id.*

⁶⁶ Alex Welprin, *Disney-ABC Programming Premieres on Hulu*, Broad. & Cable, July 6, 2009, available at http://www.broadcastingcable.com/article/307477-Disney_ABC_Programming_Premieres_On_Hulu.php; Hulu, at <http://www.hulu.com/network/abc> (last visited Aug. 28, 2009).

⁶⁷ Matthew Deegan, *FOX's Live Web Newscast Targets Office Workers, Online Advertisers*, SNL Interactive, May 29, 2009, available at <http://www1.snl.com/InteractiveX/article.aspx?ID=9569127&KPLT=2>.

- CBS “partnered with live video website Ustream to offer live streams of CBS newscasts and special reports.” CBS News’s own website tallied 10.8 million unique visitors in April 2009, “a 9% increase from April 2008.”⁶⁹
- After reporting a tenfold increase in traffic to Internet video content that had interactive games inserted, PBS announced that, this fall, it will use the Internet as a testing ground for some of its new children’s shows. If the shows prove to be popular online, PBS then plans to air them on television.⁷⁰

Not surprisingly, the availability of more compelling Internet content has led to more Internet video adopters. Nielsen recently reported that the time that U.S. consumers spent watching video online was up by an astonishing 48.9% year-over-year, and total streams were up almost 35%, or by more than 10 billion streams.⁷¹ According to comScore, a record 157 million people in the United States watched 19.5 billion online video clips, and watched an average of 7.6 hours of online video clips in June 2009.⁷² Even groups considered “older” by Internet standards have been getting into the act, with 30% of people between the ages of 55 and 64 watching online video weekly.⁷³ Cisco has predicted that Internet traffic will grow fourfold by 2013, driven in large part by increased video consumption; Cisco states that, while “[v]ideo now

(...footnote continued)

⁶⁸ David Goetzl, *NBC To Stream Wimbledon Online*, Media Post, June 23, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=108446.

⁶⁹ Matthew Deegan, *CBS Aims Live Streaming at Younger Crowd, Reports Says*, SNL Interactive, June 2, 2009, available at <http://www1.snl.com/interactivex/article.aspx?ID=9595136&KPLT=2>; Brian Stelter, *CBS News To Let a Web Site Pick Up Its Live Coverage*, NY Times, June 1, 2009, available at <http://www.nytimes.com/2009/06/02/business/media/02cbs.html>.

⁷⁰ Tim Doyle, *‘Shovelware’ Just the Beginning for Online Video*, SNL Interactive, June 26, 2009, available at <http://www.snl.com/InteractiveX/article.aspx?CDID=A-9707919-9313&KPLT=2>.

⁷¹ Gavin O’Malley, *Report: Consumers Making More Time for Video*, Media Post, June 15, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=107966.

⁷² Todd Spangler, *MJ Death, Iran Unrest Drive Online Video in June*, Multichannel News, Aug. 14, 2009, available at http://www.multichannel.com/article/327642-MJ_Death_Iran_Unrest_Drive_Online_Video_In_June.php?nid=2226&source=link&rid=9813543.

⁷³ Matthew Deegan, *Online Video Audience Starting To Age, Study Suggests*, SNL Interactive, July 10, 2009, available at <http://www2.snl.com/interactivex/article.aspx?Id=9752927&KPLT=2>.

accounts for a third of consumer Web traffic,” it “will jump to 91 percent by 2013.”⁷⁴ Given the increasing importance of Internet video, it is not surprising that consumer electronics manufacturers have begun to develop more televisions with the capability to connect directly to the Internet, which will inevitably stimulate more demand for video downloading and streaming.⁷⁵

III. COMCAST CONTINUES TO OFFER CONSUMERS MORE CHOICES AND TO UNVEIL EXCITING NEW INNOVATIONS.

As the above developments demonstrate, Comcast’s competitors are aggressively innovating and improving their service offerings to attract more and more consumers. Comcast is keeping pace. Comcast has responded to the competitive challenge by launching new services, delivering its customers even more programming options, and deploying innovative technologies.

Specifically, Comcast is launching a new online platform to allow its cable customers to access a wide array of programming over the Internet, continuing to increase the video choices available On Demand, and adding new sports programming for fans’ favorite teams. Comcast is pressing ahead with its efforts to reclaim bandwidth used for analog transmission, and to repurpose that bandwidth to provide vastly more cable choices to consumers. In addition, Comcast has continued its rapid rollout of DOCSIS 3.0 technology and its promotion of product

⁷⁴ Rochelle Garner, *Cisco To Introduce Video-Chat for Televisions*, Bloomberg News, July 6, 2009, available at <http://www.bloomberg.com/apps/news?pid=20601204&sid=aWi3gc0Dqx1k>.

⁷⁵ See, e.g., Tim Doyle, *CEA Study Finds Consumers Ready for Web-enabled TVs*, SNL Interactive, June 29, 2009 (citing CEA research indicating that, “[i]n the next year, 14.5 million adults plan to buy a TV with Internet access, and 32% of those adults said being able to interact with Internet video would be a benefit”), available at <http://www2.snl.com/interactivex/article.aspx?ID=9713727&KPLT=2>; Sarah Reedy, *Can Original Internet Video Work on the TV?*, Telephony Online, May 28, 2009 (explaining that TV manufacturers are integrating the ability to watch original Internet content on TV directly into their sets), available at <http://telephonyonline.com/video/commentary/internet-video-content-television-0528/>.

bundles that make communications more cost-effective for consumers, especially in tough economic times. Comcast takes this opportunity to elaborate on these and other developments.

On Demand Online. In June 2009, Comcast and Time Warner Inc. announced a partnership to develop principles for “TV Everywhere” -- a consumer-friendly, pro-competitive, and non-exclusive model to enable increased distribution of TV content over the Internet.⁷⁶ TV Everywhere is premised on the following principles:

- (1) Existing cable subscribers should be able to watch programming from their favorite TV networks online for no additional charge;
- (2) Existing cable subscribers should be able to access this content using any broadband connection;
- (3) Programmers should make their best and highest-rated programming available online;
- (4) Both networks and video distributors should provide high-quality, consumer-friendly sites for viewing broadband content with easy authentication;
- (5) A new process should be created to measure ratings for online viewing; and
- (6) TV Everywhere is open and non-exclusive; cable, satellite, or telco video distributors can enter into similar agreements with other programmers.⁷⁷

In connection with the announcement of the TV Everywhere principles, Comcast announced its intention to conduct a national technical trial of its “On Demand Online” service in July carrying programming from Time Warner’s Turner networks, TNT and TBS.

The On Demand Online initiative will empower existing MVPD subscribers to access over the Internet the programming that they already pay for in their video subscription. The appeal of this model is apparent from the large and growing number of programmers that have agreed to join the On Demand Online trial: premium channels such as HBO, Cinemax, and

⁷⁶ A couple of commenters have raised concerns regarding TV Everywhere, but these concerns are based on misconceptions. TV Everywhere contemplates *nonexclusive* arrangements that provide existing cable subscribers another avenue to access content that they already pay for as a part of their cable subscription.

⁷⁷ Press Release, Comcast Corp., *Time Warner Inc. Announces Widespread Distribution of Cable TV Content Online* (June 24, 2009), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=883>.

Starz; cable networks A&E, AMC, BBC America, Discovery, DIY Network, Fine Living Network, Food Network, Hallmark, HGTV, History, IFC, MGM Impact, Sundance Channel, WE tv, E!, The Style Network, G4, and FearNet; and broadcast networks like CBS.⁷⁸

VOD. Helping subscribers beat the heat, this summer, Comcast offered 1,000 episodes from more than 200 popular television series on Comcast On Demand.⁷⁹ Through partnerships with major film studios, more than half of Comcast's new VOD movie selections are now available on the same day on which they are released on DVD.⁸⁰ And, to better serve young viewers, Comcast is providing exclusive access to episodes, behind-the-scenes clips, and movies of the popular children's show *The Wiggles* on Comcast On Demand.⁸¹ Comcast also continues to expand its local VOD offerings.⁸²

⁷⁸ Glen Dickson, *It's Not TV, It's HBO Everywhere*, Broad. & Cable, July 13, 2009, available at http://www.broadcastingcable.com/article/315042-It_s_Not_TV_It_s_HBO_Everywhere.php?nid=2228&source=link&rid=9813543; Press Release, Comcast Corp., *Comcast Adds 17 More Cable Networks to On Demand Online Trial* (July 14, 2009), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=894>; Press Release, Comcast Corp., *CBS to Participate in Comcast's On Demand Online Nationwide Trial* (July 14, 2009), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=893>; Claire Atkinson, *Discovery Confirms it Will Join Comcast OnDemand Online Trial*, Broad. & Cable, Aug. 13, 2009, available at http://www.broadcastingcable.com/article/327520-Discovery_Confirms_It_Will_Join_Comcast_OnDemand_Online_Trial.php?nid=2228&source=title&rid=9813543.

⁷⁹ Press Release, Comcast Corp., *Comcast Offers Endless Summer Entertainment with More Than 1,000 Episodes from 200+ Popular TV Series* (June 23, 2009), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=881>.

⁸⁰ Press Release, Comcast Corp., *Comcast Brings You More Hollywood Hits Same Day as DVD with Titles Like 'He's Just Not That Into You' And 'Gran Torino' - All in HD* (June 2, 2009), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=870>.

⁸¹ Press Release, Comcast Corp., *Comcast Brings Exclusive Wiggles Content to On Demand* (Aug. 11, 2009), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=912>.

⁸² For instance, in the Washington, D.C. area, Comcast provides locally-themed VOD programming in folders called Inside the Beltway, which focuses on local and regional news and politically themed programming offerings, and Get Local, where subscribers can access a police blotter, pets available for adoption in the area, and profiles of local sports teams and figures.

Sports Programming. Comcast renewed long-term carriage deals with NHL Network,⁸³ NBA TV,⁸⁴ and NFL Network⁸⁵ and moved them from its Sports Entertainment Package to a more widely-distributed digital cable tier. Customers will also be able to access NFL Network content On Demand, and Comcast will offer NFL's RedZone Channel beginning September 13, 2009.⁸⁶ Comcast also added collegiate sports channel ESPNU to its digital tier.⁸⁷ For its High-Speed Internet customers, Comcast signed a deal with ESPN to provide access to ESPN360.com.⁸⁸ And, Fox Sports Detroit and Comcast announced plans to launch Tigers On Demand, a feature on Detroit-area Comcast systems that will provide the most recent Tigers game and original Tigers programming on demand for no extra charge.⁸⁹

International Programming. Comcast increased its offerings for multi-cultural audiences by obtaining U.S. distribution rights to more than 140 ethnic TV channels.⁹⁰ It also

⁸³ Press Release, Comcast Corp., *Comcast to Offer Fans More Access to NHL Network Programming* (June 2, 2009) (noting that Comcast will add NHL Network to its Digital Classic level, reaching two-thirds of Comcast's digital subscriber base. In addition to live NHL games, customers will have access to more NHL On Demand programming, including condensed games, player profiles, and historic games.), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=873>.

⁸⁴ Press Release, Nat'l Basketball Ass'n, *Comcast To Add NBA TV to More Popular Distribution Tier* (June 4, 2009), available at <http://www.nba.com/2009/news/06/03/comcast/index.html>.

⁸⁵ Press Release, Comcast Corp., *Comcast and National Football League Reach Long-Term Carriage Agreement for NFL Network* (May 19, 2009) (noting that Comcast will carry NFL Network on its Digital Classic tier), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=867>.

⁸⁶ See NFL Network News, *Comcast, DISH to Carry New 'NFL Red Zone'* (Aug. 24, 2009), available at <http://www.nfl.com/nflnetwork/story?id=09000d5d8121da06&template=without-video&confirm=true>.

⁸⁷ Press Release, Comcast Corp., *Comcast Adds ESPNU and ESPN360.com to Line Up With Content On Television, On Demand, and Online* (May 19, 2009) (noting that Comcast will add ESPNU to its Digital Classic tier in time for the fall college football season -- providing more than 550 live events annually from Division I conferences, including the ACC, Big East, Big Ten, Big 12, MAC, SEC, Sun Belt, and WAC), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=868>.

⁸⁸ *Id.*

⁸⁹ Jason Beck, *Tigers Games to be Shown On Demand*, MLB.com, Aug. 8, 2009, available at http://mlb.mlb.com/news/article.jsp?ymd=20090808&content_id=6316584&vkey=news_mlb&fext=.jsp&c_id=mlb.

⁹⁰ See David Jenson, *A New Day is Dawning*, Comcast Voices Blog (May 27, 2009) (describing how Comcast has obtained distribution rights to carry 140 different multi-cultural channels, and is in the process of rolling out a
(footnote continued...)

began rolling out “large, compelling and diverse offerings for every major ethnic group in each of [its] major markets.”⁹¹

Analog Reclamation. Comcast has continued its efforts to reclaim bandwidth from inefficient analog delivery to efficient digital delivery. Portland, Oregon became the first Comcast market to go “all-digital,” and the reclaimed bandwidth was immediately put to use to provide additional services that benefit consumers.⁹² When certain additional channel launches occur next month, Comcast’s digital migration will have brought Portland viewers 65 new HD channels (for a total of more than 100 HD channels in the Portland system), more than 20 new Spanish-language channels (for a total of more than 45 Spanish-language channels), four new international premium channels, and six new SD channels.⁹³ Today, 10% of the company has completed its conversion to “all-digital” and more than one-third of all Comcast systems are actively engaged in the process of converting. By the end of this year, one-third of Comcast systems will have completed the conversion process.⁹⁴

Broadband. Comcast has made significant strides in deploying faster broadband Internet capabilities. In June 2009, Comcast announced the launch of Extreme 50 Mbps High-Speed

(...footnote continued)

package of over 60 Spanish channels, and 30 other ethnic TV channels), *available at* <http://www.comcastvoices.com/2009/05/a-new-day-is-dawning.html>.

⁹¹ *Id.*

⁹² Comcast uses “all-digital” to refer to the conversion of Expanded Basic service to digital-only delivery. For the time being, Comcast is maintaining analog delivery of its standard basic tier, for those customers who want a very affordable but limited array of channel choices.

⁹³ Comcast’s subscribers in the Bay Area likewise are reaping the benefits of their systems’ conversion to digital. The Bay Area is getting 51 more HD channels (for a total of 92), 13 new Spanish-language channels, 14 new international premium networks, and two SD channels, Hallmark Movie Channel, and Retirement Living TV as a result of the conversion. See Todd Spangler, *Comcast Rides 51 HD Channels Into S.F. Bay Area*, Multichannel News, July 10, 2009, *available at* http://www.multichannel.com/article/314752-Comcast_Rides_51_HD_Channels_Into_S_F_Bay_Area.php.

⁹⁴ See Comcast Corporation Q2 2009 Earnings Call Transcript (Aug. 6, 2009), *available at* <http://seekingalpha.com/article/154406-comcast-corporation-q2-2009-earnings-call-transcript?page=-1>.

Internet service in the Washington, D.C. metro area,⁹⁵ and Comcast has now deployed DOCSIS 3.0 across approximately half of its entire footprint. In markets where DOCSIS 3.0 is deployed, Comcast is doubling High-Speed Internet speeds for most existing customers at no additional cost. And, earlier this month, Comcast raised its initial goal of deploying DOCSIS 3.0 from 65 percent to 80 percent of its service footprint by the end of the year.⁹⁶

Wireless Broadband. Comcast kicked off the nationwide rollout of its high-speed wireless data service, Comcast High-Speed 2go, with launches in Portland and Atlanta.⁹⁷ Offered as part of Comcast's "Fast Pack" bundle,⁹⁸ this 4G wireless broadband service, which is provided in partnership with Clearwire, is the fastest wireless Internet service available via wireless data cards in the nation. Comcast is offering two different data plans: the Metro data plan that uses only the 4G service and the Nationwide plan that uses 4G service where available

⁹⁵ Press Release, Comcast Corp., *Comcast Rolls Out Extreme 50 Mbps High-Speed Internet Service in Washington, D.C. and Metro Area* (June 9, 2009) (quoting D.C. Mayor Adrian Fenty: "I applaud Comcast for bringing this innovative technology to the District and to our neighborhoods east of the river first . . . Residents, especially those who are tech-savvy, will be thrilled about their ability to enjoy this next generation of technology."), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=876>. The entire Washington, D.C. market is expected to have wideband by the end of the year. *Id.*

⁹⁶ Sean Michael Kerner, *Comcast: DOCSIS 3.0, WiMAX Coming*, internetnews, Aug. 7, 2009, available at <http://www.internetnews.com/bus-news/article.php/3833721/Comcast+DOCSIS+30+WiMAX+Coming.htm/>

⁹⁷ Press Release, Comcast Corp., *Comcast Begins National Rollout of High-Speed Wireless Data Service* (June 29, 2009), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=887>; Todd Spangler, *Comcast Throws Out WiMax Pitch in Atlanta*, Multichannel News, July 28, 2009, available at http://www.multichannel.com/article/316643-Comcast_Throws_Out_WiMax_Pitch_In_Atlanta.php. The High-Speed 2go service will be provided via the Clearwire network, and the 3G service will be provided by Sprint's nationwide 3G network. Comcast is one of the first investors in Clearwire to bring the service to market and expects that it will continue to add value to existing bundled products. Press Release, Comcast Corp., *Comcast Begins National Rollout of High-Speed Wireless Data Service* (June 29, 2009), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=887>.

⁹⁸ Todd Spangler, *supra* note 92. "Fast Pack Metro service includes Comcast's 12-Mbps home Internet service, a Wi-Fi router for mobility and extended coverage in the home, and 4G service that provides up to 6 Mbps average download speeds outside the home. For an additional \$20 per month, customers can upgrade to the Nationwide plan." *Id.*

and 3G service coast-to-coast.⁹⁹ Comcast plans to deploy Comcast High-Speed 2go in additional markets, including Chicago and Philadelphia, later this year.

Mobile Applications. Comcast announced the launch of a mobile application for the iPhone or iPod Touch that consumers can download for free. The application provides access to a unified inbox with Comcast.net email, visual voice mail, and address book synch; real-time TV listings; and trailers of movies available on Comcast’s On Demand service.¹⁰⁰

These are only some of the most significant highlights of Comcast’s efforts over the past few months. And, while Comcast’s total basic cable subscribers declined during this time period, the numbers of digital cable, High-Speed Internet, and Comcast Digital Voice (“CDV”) customers continued to grow. The chart below provides Comcast’s latest subscriber numbers:

Selected Comcast Subscriber Data as of June 30, 2009

VIDEO	
Homes Passed (000’s)	50,900
Basic Subscribers (000’s)	23,891
Basic Penetration	46.9%
Digital Subscribers (000’s)	17,542
Digital Penetration	73.4%
HIGH-SPEED INTERNET	
Homes Passed (000’s)	50,615

⁹⁹ *Id.*

¹⁰⁰ Press Release, Comcast Corp., *Comcast Launches Free Mobile Application for iPhone and iPod Touch* (July 16, 2009), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=900>.

Subscribers (000's)	15,322
Penetration of Homes Passed	30.3%
VOICE (CDV)	
Homes Passed (000's)	47,654
Subscribers (000's)	7,002 ¹⁰¹
Penetration of Homes Passed	14.7%

In short, Comcast's ongoing investments in innovative programming and services have made -- and will continue to make -- its service offerings even more appealing and competitive, all to the benefit of consumers.

IV. THE COMMISSION SHOULD REJECT CERTAIN COMMENTERS' REQUESTS THAT IT INTERFERE IN THE VIDEO MARKETPLACE TO TIP THE SCALES OF COMPETITION IN THEIR FAVOR.

In what has unfortunately become a video competition inquiry tradition, numerous commenters again have seized on the opportunity to air grievances about a panoply of issues, all arguing for yet more intrusive regulation of cable operators than was practiced back when the marketplace was vastly less competitive. These pleadings "fail [] adequately to take account of the substantial competition that cable operators face,"¹⁰² and they address issues that are the subject of pending Commission proceedings where the merits (or lack thereof) of the pleaders' claims can and should be addressed. Comcast incorporates by reference its filings in those proceedings and offers only the briefest responses here:

¹⁰¹ Comcast serves a total of 7,004,000 voice subscribers -- 7,002,000 of whom subscribe to CDV and 2,000 of whom subscribe to Comcast's circuit-switched voice service (which is in the process of being phased out).

¹⁰² See *Comcast Corp. v. FCC*, slip op. at 17.

- **The Terrestrial Exemption.** Several commenters urge the Commission to eliminate the so-called “terrestrial loophole” in the program access rules.¹⁰³ Some commenters called for the Commission to rely on Section 628(b) of the Act to expand the coverage of the program access rules to terrestrially-delivered HD feeds of RSN programming.¹⁰⁴ The Commission, however, consistently has found, and the D.C. Circuit has affirmed, that the express language of the statute as well as the legislative history clearly *exempt* terrestrially-delivered programming from the program access rules.¹⁰⁵ As Comcast previously noted, Congress gave specific consideration to which types of programming should be covered, and the Commission has no authority to second-guess Congress’s decision.¹⁰⁶
- **Program Carriage.** A handful of commenters reiterate requests for various changes to the program carriage complaint process and rules that they have repeatedly presented in the Commission’s pending program carriage rulemaking.¹⁰⁷ Despite the inappropriateness of using a competition inquiry for this purpose, it is clear that these are “solutions” in search of a problem.¹⁰⁸ MVPDs and programmers negotiate thousands of

¹⁰³ See AT&T May 2009 Comments at 5; DirecTV May 2009 Comments at 25; Verizon May 2009 Comments at 19; Dish Network June 2009 Reply Comments at 8; Consumers Union June 2009 Reply Comments at 4; OPASTCO July 2009 Comments at 17.

¹⁰⁴ See, e.g., AT&T May 2009 Comments at 9; Verizon May 2009 Comments at 22; OPASTCO July 2009 Comments at 17.

¹⁰⁵ See *In re EchoStar Communications Corp. v. Comcast Corp. et al.*, Memorandum Opinion and Order, 14 FCC Rcd. 2089 ¶ 21 (Cable Servs. Bureau 1999), *aff’d*, *In re DIRECTV, Inc. v. Comcast Corp. et al.*, Memorandum Opinion and Order, 15 FCC Rcd. 22802 (2000); *EchoStar Communications Corp. v. Comcast Corp.*, 292 F.3d 749 (D.C. Cir. 2002); see also *In re Implementation of the Cable Television Consumer Protection & Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution; Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition*, Report & Order, 17 FCC Rcd. 12124 ¶ 73 (2002) (internal citations omitted).

¹⁰⁶ See, e.g., Comcast Comments, MB Docket No. 07-198, at 6-12 (Jan. 4, 2008); Comcast Reply Comments, MB Docket No. 07-29, at 29-30 (Apr. 16, 2007).

¹⁰⁷ See HDNet June 2009 Reply Comments at 2; Consumers Union June 2009 Reply Comments at 6-7; Consumers Union July 2009 Comments at 5; WealthTV Ex Parte, MB Docket No. 07-269, at 2-4 (July 23, 2009). WealthTV raises many of the same allegations it raised in its pending carriage complaints against four cable operators (which have been soundly refuted by Comcast and its co-defendants). See Defendants’ Joint Proposed Findings of Fact and Conclusions of Law, MB Docket No. 08-214, FCC File Nos. CSR-7709-P, CSR-7822-P, CSR-7829-P, CSR-7907-P (June 2, 2009); Defendants’ Joint Proposed Reply Findings of Fact and Reply Conclusions of Law, MB Docket No. 08-214, FCC File Nos. CSR-7709-P, CSR-7822-P, CSR-7829-P, CSR-7907-P (June 24, 2009). WealthTV has had its day in court -- a two-week hearing in April of this year before the Commission’s Chief Administrative Law Judge. The hearing was conducted “consistent with the mandates of fairness and due process,” *Herring Broad., Inc. v. Time Warner Cable Inc.*, Order, 24 FCC Rcd. 1581 ¶ 2 (2009), and a recommended decision is pending. The Commission’s video competition inquiry is not an appropriate proceeding to re-air these baseless allegations.

¹⁰⁸ As Comcast has explained, changes to the program carriage rules are unnecessary in a marketplace characterized by robust competition and a growing number of distribution outlets for content. See, e.g., Comcast Comments, MB Docket No. 07-42, at 24-34 (Sept. 11, 2007); Comcast Reply Comments, MB Docket No. 07-42, at 21-22 (Oct. 12, 2007). As the D.C. Circuit explained, “Cable operators . . . no longer have the bottleneck power over programming that concerned the Congress in 1992.” See *Comcast Corp. v. FCC*, slip op. at 14.

deals every year without incident. When an occasional problem does arise, programmers that believe Commission rules have been violated are free to invoke the existing carriage complaint process to prove their claims and seek a remedy. More importantly, as Comcast detailed in its comments in May, there has been no shortage of carriage of independent networks. Far from it. In fact, in recent years, Comcast has struck carriage deals with scores of channels in which it lacks any ownership interest.¹⁰⁹

- **Product Bundles.** Montgomery County, Maryland asserts that “while bundling gives consumers more choices, it does not advance competition.”¹¹⁰ This statement plainly was made in disregard of the facts. As NCTA has previously demonstrated, “[w]hen consumers purchase cable service in a bundle that also includes high-speed Internet service and telephone service – as they increasingly do – the bundled price is significantly lower than the combined price of much less robust cable, Internet access and telephone services a decade ago.”¹¹¹ Bundling has resulted in increased choices and lower prices that clearly have benefited consumers,¹¹² and is, as AT&T aptly stated, the “very hallmark of competition.”¹¹³ This is particularly true in Montgomery County, which is nearly bursting at the seams with choice: the county boasts at least five MVPDs, each of which offers numerous programming packages and tiers of service, and three of which offer the “triple play” of voice, video, and Internet service.¹¹⁴
- **Prices.** Montgomery County complains that cable prices, in particular the fees that cable operators collect for equipment, continue to rise and that “wireline competition does not restrain rates.”¹¹⁵ As noted above, Montgomery County is one of the most competitive video markets in the country -- consumers can choose from five MVPDs, which also compete for viewers with over-the-air broadcasters and Internet video providers. In this environment, an MVPD could not risk charging above-market prices because subscribers would simply migrate to a cheaper competitor. The fact that the DBS providers, Verizon, RCN, and Comcast all have had to raise prices (Comcast by the least amount)

¹⁰⁹ Comcast May 2009 Comments at 64-67.

¹¹⁰ Montgomery County, Maryland May 2009 Comments at 12.

¹¹¹ NCTA July 2009 Further Comments at 3.

¹¹² Comcast has previously pointed out how consumers have been quick to embrace product bundles, which offer increased product choice at economical rates. *See* Comcast Comments, MB Docket No. 06-189, at 14-16, 45, 71-72 (Nov. 29, 2006).

¹¹³ *See* AT&T June 2009 Reply Comments at 6.

¹¹⁴ Residents of Montgomery County, Maryland can receive services from Comcast (voice, video, and Internet), Verizon (voice, video, and Internet), RCN (voice, video, and Internet), DirecTV (video), and Dish Network (video).

¹¹⁵ Montgomery County July 2009 Comments at 2.

demonstrates that the costs of offering service for all MVPDs continue to grow. Despite that, Comcast continues to offer subscribers high value for their dollars.¹¹⁶

- **Broadband Regulation.** Montgomery County requests that the Commission “expressly endorse local regulation” of broadband Internet access services by permitting “local governments to handle Internet customer service matters.”¹¹⁷ Comcast agrees with Verizon that this subject is beyond the scope of the *Supplemental NOI*,¹¹⁸ and that Montgomery County’s proposal would violate extensive precedent finding that broadband Internet service is an interstate information service not subject to local regulation.¹¹⁹ Furthermore, adoption of Montgomery County’s proposals would result in a glut of overlapping and conflicting regulations that would vary by locality and would run afoul of Congressional goals to have the Internet develop unfettered by regulation.¹²⁰
- **Low-Power TV (“LPTV”) Must-Carry.** LPTV broadcasters once again urge the Commission to ignore the Communications Act and extend must-carry status to *all* LPTV stations. This issue, however, is the subject of a pending rulemaking that already has been fully briefed,¹²¹ and, as Comcast explained in that proceeding, the statute simply does not empower the Commission to grant LPTV stations additional must-carry rights.¹²² Any attempt to expand cable operators’ must-carry obligations would further

¹¹⁶ In its initial comments, Montgomery County discussed the growing number of options that are available to consumers, pointing out that Comcast offers “two tiers of analog cable service . . . plus nine digital cable packages, additional add-on digital services . . . , and over a dozen separate premium services, not including pay-per-view, [plus] three levels of high-speed Internet service [and] four triple-play packages.” Montgomery County, Maryland May 2009 Comments at 11. Needless to say, whether or not Montgomery County finds this a source of “bewilderment,” Congress, the Commission, and consumers all recognize that more choice is better. As for Montgomery County’s suggestion that the Commission require operators to offer a standard group of channels selected by the government, *id.* at 12, this would be a violation of the Communications Act and the U.S. Constitution and would jeopardize the business model that has enabled so many diverse networks to emerge and thrive.

¹¹⁷ *Id.* at 30-31.

¹¹⁸ See Verizon June 2009 Reply Comments at 7.

¹¹⁹ See *id.* at 8 (explaining that the Commission “has held on four separate occasions that broadband Internet access services are interstate information services”) (citing to *In re Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd. 4798 ¶¶ 34-59 & 95 (2002), *rev’d by Brand X Internet Servs. v. FCC*, 345 F.3d 1120 (9th Cir. 2003), *rev’d by National Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 125 U.S. 2688, 2710 (2005); *In re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order & Notice of Proposed Rulemaking, 20 FCC Rcd. 14853 (2005); *In re United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, Memorandum Opinion and Order, 21 FCC Rcd. 13281 (2006); *In re Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd. 5901 (2007)).

¹²⁰ See 47 U.S.C. § 230(b); Verizon June 2009 Reply Comments at 7-8.

¹²¹ See *In re Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd. 5922 ¶ 99 (2008).

¹²² See Comcast Reply Comments, MB Docket No. 07-294, at 1-2 (Aug. 29, 2008).

infringe on cable operators' editorial discretion and would violate the First Amendment. In any event, additional LPTV must-carry is not necessary -- Comcast already carries many LPTV stations pursuant to voluntary marketplace agreements where those stations provide programming that subscribers want.¹²³

- **Multicast Must-Carry.** NAB urges the Commission once again to consider forcing cable operators to carry all of broadcasters' multicast streams.¹²⁴ Comcast has long opposed multicast must-carry obligations,¹²⁵ and the Commission repeatedly has rejected these arguments as inconsistent with the Communications Act and the First Amendment.¹²⁶ The only time that multicast carriage is warranted is when a cable operator and broadcaster negotiate for such carriage in the free marketplace.¹²⁷ Such negotiations frequently have been successful and a substantial amount of high-quality multicast content is available to cable subscribers under such arrangements.
- **Leased Access.** Commenters rehash arguments about the effectiveness of the leased access rules and proposed potential "fixes" to those rules.¹²⁸ As Comcast and others have argued in multiple venues,¹²⁹ leased access is rooted in a business model that is simply

¹²³ As Comcast previously informed the Commission, Comcast has negotiated retransmission consent arrangements covering over 100 LPTV stations, of which more than 50 are Class A stations. *See id.* at 4.

¹²⁴ *See* NAB July 2009 Comments at 16-17. Cable operators that have not transitioned to digital already have to carry, in effect, three versions (HD, SD, and analog) of the same broadcaster's signal. *See In re Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 22 FCC Rcd. 21064 (2007).

¹²⁵ *See, e.g.*, Comcast Opposition to Petitions for Reconsideration, CS Docket No. 98-120, at 14-28 (May 26, 2005); Letter from James L. Casserly, Willkie Farr & Gallagher LLP, to Marlene H. Dortch, Secretary, FCC, CS Docket No. 98-120, at 1-10 (Feb. 3, 2005).

¹²⁶ *See In re Carriage of Digital Broadcast Signals et al.*, First Report & Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 2598 ¶ 57 (2001); *In re Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules*, Second Report & Order and First Order on Reconsideration, 20 FCC Rcd. 4516 ¶ 33 (2005) ("*Recon Order*").

¹²⁷ The Commission acknowledged that cable companies and broadcasters were voluntarily entering into multicast agreements. *See Recon Order*. ¶ 38 ("There is evidence from the record, as well as news accounts, that cable operators are voluntarily carrying the multiple streams of programming of some broadcast stations, including public television stations, that are currently multicasting. Indeed, the Association of Public Television Stations and the NCTA recently announced an agreement that involves cable operators carrying up to four programming streams of at least one public TV station in a DMA during the transition from analog to digital technology, and every public TV station in a DMA after the transition, subject to certain nonduplication contingencies. Under these circumstances, the interests of over-the-air television viewers appear to remain protected.") (emphasis in original).

¹²⁸ Consumers Union June 2009 Reply Comments at 6; Consumers Union July 2009 Comments at 5; Heritage Media Services Comments at 4-6 (Apr. 22, 2009).

¹²⁹ *See, e.g.*, Comcast Comments, MB Docket No. 07-42, at 17-18 (Sept. 11, 2007); NCTA Comments, MB Docket No. 07-42, at 4-5 (Sept. 11, 2007); Comcast Reply Comments, MB Docket No. 07-42, at 9-11 (Oct. 12, 2007); NCTA Reply Comments, MB Docket No. 07-42, at 9-10 (Oct. 12, 2007); Letter from Thomas R. Nathan, Comcast Cable Communications, LLC, to Nicholas A. Fraser, OMB, at 2-3 (May 28, 2008). The Commission's *Leased Access Order* was disapproved in its entirety by the Office of Management and Budget ("*OMB*") and stayed by the United States Court of Appeals for the Sixth Circuit. *See United Church of Christ Office of Communication, Inc. v. FCC*, Nos. 08-3245/08-3369/08-3370/08-3450/08-3452/08-3694, Order (6th Cir. May 22, 2008) (staying the

(footnote continued...)

unworkable for most national programming networks and that cannot be repaired through regulatory modifications. That is because leased access turns the normal programming business model on its head by having the programmer pay the cable operator for carriage. In today's marketplace, the vast majority of programmers have no need for leased access; they have reached carriage agreements with cable operators, telcos, overbuilders, or DBS providers or posted their content to the Internet for free. Despite leased access's faults, many programmers continue to use the service, particularly for local programming targeted on a system-by-system or regional basis or for home shopping presentations that allow programmers to recoup their expenditures for leasing space. Comcast will continue to comply with its obligations to offer access to all comers at the legally-prescribed, well-below-market rates.

- **Retention Marketing.** Despite its enormous size and robust growth, Verizon has resurrected arguments that the Commission should create regulations regarding retention marketing practices in the video business.¹³⁰ The Commission soundly rebuffed Verizon on this issue in the past,¹³¹ a decision that was upheld by the United States Court of Appeals for the District of Columbia Circuit.¹³² The Commission should pay no heed to these arguments here.

V. CONCLUSION

The marketplace for video programming has never offered more programming or more ways in which to consume that programming than now, and, by all counts, that trend will continue into the future. As one industry analyst has said, "It's getting more personal, more social and more interactive. The trend line calls for more of everything, including digital HD channels, streaming or over-the-top video, more digital media devices in the household, and

(...footnote continued)

effectiveness of the FCC's *Leased Access Order*); Notice of Office of Management and Budget Action, OMB Control Number 3060-0568, ICR Reference Number 200804-3060-012 (July 9, 2008) (disapproving the rules in the FCC's *Leased Access Order*), available at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200804-3060-012. The 6th Circuit appeal has been held in abeyance given OMB's disapproval of the rules. *See United Church of Christ Office of Communication, Inc. v. FCC*, Nos. 08-3245/08-3369/08-3370/08-3450/08-3452/08-3694, Order (6th Cir. July 25, 2008) (holding appeal in abeyance pending OMB approval of FCC rules).

¹³⁰ Verizon May 2009 Comments at 1-2, 26-28; Verizon June 2009 Reply Comments at 6.

¹³¹ *See In re Bright House Networks, LLC v. Verizon California, Inc.*, Memorandum Opinion & Order, 23 FCC Rcd. 10704 (2008) (subsequent history omitted).

¹³² *See Verizon California, Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009).

consumption of on-demand and time-shifted digital content.”¹³³ In short, the competitive pressures for all stakeholders are stronger than ever before. Comcast renews its call for the Commission’s report to Congress to reflect the proliferation of video options in the marketplace, thereby setting the stage for removing unnecessary and stifling regulation of the cable industry.

Joseph W. Waz, Jr.
COMCAST CORPORATION
One Comcast Center
Philadelphia, Pennsylvania 19103

Kathryn A. Zachem
James R. Coltharp
COMCAST CORPORATION
2001 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20006

Thomas R. Nathan
Catherine Fox
COMCAST CABLE COMMUNICATIONS, LLC
One Comcast Center
Philadelphia, Pennsylvania 19103

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Respectfully submitted,

/s/ James L. Casserly
James L. Casserly
Megan Anne Stull
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006-1238
(202) 303-1000

Attorneys for Comcast Corporation

¹³³ Patti A. Reali, *The Future of Video*, SNL Interactive, June 1, 2009, available at <http://www.snl.com/interactivex/article.aspx?ID=9584808&KPLT=2>.