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January 8, 2010

Ex Parte

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

Re: <u>Program Access Proceeding, MB Docket Nos. 07-198, 07-29</u>

Dear Ms. Dortch:

On January 7, 2010, Will Johnson and I met with Jamila Bess Johnson and Joshua Cinelli, Legal Advisors to Commissioner Copps, to urge the Commission to adopt an across-the-board rule prohibiting cable operators and their affiliates from withholding access to regional sports programming (including the high-definition (HD) format of such programming), without the need for further proceedings. In the unique context of regional sports programming, the voluminous record in this proceeding already amply demonstrates that withholding regional sports programming is an unfair act or practice that has the purpose or effect of hindering significantly a competing multichannel video programming distributor ("MVPD") from providing a competing programming package to consumers and thus violates Section 628(b). As such, the Commission should adopt an across-the-board ruling prohibiting cable operators and their affiliates from withholding access to this unique form of programming, without the need for further proceedings, just as it did when it prohibited exclusive access arrangements in apartment buildings and condominiums. Alternatively, in the event the Commission determines that it is appropriate to address these issues in response to individual complaints, there are several pending complaint proceedings that already have fully developed records and are ripe for decision; any such complaints should be resolved no later than the time at which an order issues in this proceeding.

We also urged the Commission adopt a standstill requirement that maintains the status quo and allows continued carriage pending the completion of renewal negotiations, subject to the terms eventually agreed upon by the parties. The record in this proceeding, as well as recent events, demonstrates the need for such a rule in renewal negotiations to protect consumers from becoming the victims of brinksmanship.

We discuss our recommendations in greater detail in the attached ex parte.

Sincerely,

cc: Jamila Bess Johnson
Joshua Cinelli

ATTACHMENT

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January 6, 2010

VIA ELECTRONIC FILING

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

Re: Ex Parte Presentation
Program Access Proceeding, MB Docket Nos. 07-29, 07-198

Recent press reports suggest that the draft order now circulating in this proceeding will confirm that Section 628(b) of the Communications Act extends by its terms to cable-affiliated regional sports programming (and potentially other types of programming), irrespective of whether such programming is delivered via satellite or terrestrially. In addition, the press reports suggest that the draft order may establish a separate process for use in at least some circumstances to determine violations of this provision on a case-by-case basis.[1] And, separately, the need for a standstill provision such as the one we have supported throughout this proceeding to continue carriage pending completion of renewal negotiations is further supported by several recent examples in the context of retransmission consent negotiations.[2] This letter makes four points with respect to these issues:

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[1] *See, e.g.*, Jonathan Make, *FCC Consideration of Program Access Order Seen Increasing Closer to Vote*, Communications Daily, Dec. 30, 2009; Joelle Tessler, *FCC Seeking to Close Programming Access Loophole*, Dec. 15, 2009, The New York Times, *available at* http://www.nytimes.com/aponline/2009/12/15/business/AP-US-TEC-Cable-TV-Loophole.html (last visited Jan. 6, 2010); Cecilia Kang, *FCC Takes on Cable's Terrestrial Loophole, Which Keeps Sports Shows From Competitors*, Washingtonpost.com Post Tech, Dec. 15, 2009, http://voices.washingtonpost.com/posttech/2009/12/fcc_takes_on_cables_terrestria.html (last visited Jan. 6, 2010).

[2] *See, e.g.*, Juliana Gruenwald, *Cable, TV Disputes Drag On*, Tech Daily Dose, Jan. 4, 2010, http://techdailydose.nationaljournal.com/2010/01/cable-tv-disputes-drag-on.php (last visited Jan. 6, 2010); Nellie Andreeva, *More Network Cable-Operator Disputes on Horizon*, Yahoo! News, Jan. 4, 2010, http://news.yahoo.com/s/nm/20100104/media_nm/us_fox (last visited Jan. 6, 2010); *see also* FCC, News Release, FCC Chairman Julius Genachowski Statement on Fox/Time Warner and Sinclair/Mediacom Retransmission

- In the unique context of regional sports programming, the voluminous record in this proceeding already amply demonstrates that withholding regional sports programming is an unfair act or practice that has the purpose or effect of hindering significantly a competing multichannel video programming distributor ("MVPD") from providing a competing programming package to consumers and thus violates Section 628(b). As such, the Commission should adopt an across-the-board ruling prohibiting cable operators and their affiliates from withholding access to this unique form of programming, without the need for further proceedings, just as it did when it prohibited exclusive access arrangements in apartment buildings and condominiums.

- Alternatively, in the event the Commission determines that it is appropriate to address these issues in response to individual complaints, there are several pending complaint proceedings that already have fully developed records and are ripe for decision; any such complaints should be resolved no later than the time at which an order issues in this proceeding.

- While various parties have continued in the ex parte filings and presentations in this proceeding to take issue with the Commission's authority to address this critical issue, their arguments are misplaced.[3]

- In this proceeding, the Commission asked whether it should adopt a standstill requirement that maintains the status quo and allows continued carriage pending the completion of renewal negotiations, subject to the terms eventually agreed upon by the parties. The record in this proceeding, as well as recent events, demonstrate the need for such a rule in renewal negotiations to protect consumers from becoming the victims of brinksmanship.

1. The Commission has express statutory authority to address the anticompetitive withholding of regional sports programming, irrespective of whether that programming is delivered terrestrially or by satellite. *Cf.* Cablevision Nov. 13 Ex Parte at 11-12. Section 628(b) of the Communications Act flatly prohibits "unfair methods of competition" and "unfair . . . acts or practices" that have the "purpose or effect of . . . hinder[ing] significantly or . . . prevent[ing] an[other] [MVPD] from providing satellite cable programming or satellite broadcast programming to subscribers or consumers." 47 U.S.C. § 548(b). This language, by its terms, is not limited to programming *at all*, let alone a particular type of programming or mode of delivery. Indeed, that is the very conclusion the Commission reached when it prohibited cable

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Consent Negotiations, Jan. 1, 2010; FCC, News Release, FCC Chairman Julius Genachowski Statement on Retransmission Disputes, Dec. 31, 2009; FCC, News Release, William T. Lake, Chief, Media Bureau, Statement on Retransmission Dispute, Dec. 31, 2009.

[3] *See, e.g.*, Letter from Howard J. Symons, Mintz Levin, to Marlene H. Dortch, FCC, MB Docket Nos. 07-29, 07-198 (Nov. 13, 2009) ("Cablevision Nov. 13 Ex Parte"); *see also* Letter from Howard J. Symons, Mintz Levin, to Marlene H. Dortch, FCC, MB Docket Nos. 07-29, 07-198 (Dec. 29, 2009); Letter from Howard J. Symons, Mintz Levin, to Marlene H. Dortch, FCC, MB Docket Nos. 07-29, 07-198 (Dec. 23, 2009); Letter from Howard J. Symons, Mintz Levin, to Marlene H. Dortch, FCC, MB Docket Nos. 07-29, 07-198 (Dec, 18, 2009); Letter from Howard J. Symons, Mintz Levin, to Marlene H. Dortch, FCC, MB Docket Nos. 07-29, 07-198 (Dec. 7, 2009).

operators from entering into or enforcing exclusive access agreements with apartment buildings and condominiums and the D.C. Circuit expressly confirmed this conclusion in *National Cable & Telecommunications Ass'n v. FCC*, 567 F.3d 659, 664, 666 (D.C. Cir. 2009) ("*NCTA*"). *Cf.* Cablevision Nov. 13 Ex Parte at 10-16.[4]

The experiences of Verizon and other new entrants demonstrating that cable incumbents continue to exploit their control over critical, irreplaceable regional sports – including high definition ("HD") regional sports programming – to harm competition, and the resulting harm to consumer choice, have been extensively documented before the Commission.[5] The Commission's own previous, repeated recognition of the importance of regional sports programming, combined with the record here and the cable incumbents' own statements demonstrate that denying access to regional sports programming and, in particular, the HD format of such programming, has the "purpose or effect" prohibited by Section 628(b). Accordingly, it is clear that the Commission has ample authority and a sufficient record to take action to prevent the continuation of this behavior. The most effective way for the Commission to stem this type of anticompetitive conduct would be to prohibit it across-the-board by rule in the context of this proceeding, and the record is more than sufficient to support such an approach.

The Commission has already concluded that "for [regional sports] programming, there are no readily acceptable close substitutes."[6] This is because regional sports networks "typically

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[4] Those who advocate a contrary view conflate the Commission's authority to enforce and adopt rules to implement Section 628(b), on the one hand, with the more particularized directive in Section 628(c) – entitled "minimum contents of regulations" – to promulgate rules "specify[ing] *particular conduct* that is prohibited" by Section 628(b), on the other. Although Congress set forth in Section 628(c)(2) *examples* of conduct relating to satellite-delivered programming to be addressed through rulemaking within 6 months of the passage of the 1992 Cable Act, it nowhere limited the Commission's authority under Section 628(b) to deal with *other* types of conduct that run afoul of the literal terms of that statutory subsection. 47 U.S.C. §§ 548(b), (c)(2); *see NCTA*, 567 F.3d at 665. Further, the D.C. Circuit in *NCTA* rejected contentions that the legislative history of Section 628 requires an overly narrow reading. *Cf.* Cablevision Nov. 13 Ex Parte at 12. The Court made clear that where, as here, statutory language reaches more broadly than legislative history might suggest, the plain language must be given effect, and concluded that, in any event, there was no indication "that Congress chose its language so as to limit the Commission solely to" addressing "unfair dealing over programming," much less satellite delivered programming. *NCTA*, 567 F.3d at 663, 665.

[5] *See, e.g.*, Letter from Michael E. Glover, Verizon, to Chairman Michael J. Copps, *et al.*, FCC, MB Docket Nos. 07-29, 07-198 (May 28, 2009), at 3 ("Verizon May 28 Ex Parte"); *see also AT&T Servs. Inc. v. CoxCom, Inc.*, CSR-8066-P, DA 09-530 (Media Bureau Mar. 9, 2009) (resolving dispute regarding Cox's withholding of programming from AT&T in San Diego). *But see* Cablevision Nov. 13 Ex Parte at 1-10.

[6] *In re General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee, For Authority to Transfer Control*, 19 FCC Rcd 473, 535 (¶ 133) (2004) ("*News Corp. Order*"); *see id.* ("We also have long recognized that the terrestrial distribution of programming – particularly regional sports programming – by vertically integrated cable operators could competitively disadvantage competing MVPDs if they were denied access to the terrestrially delivered programming."); *see also Implementation of the Cable Television Consumer Protection & Competition Act of 1992*, 22 FCC Rcd 17791, 17816-17 (¶¶ 38-39) (2007) ("*2007 Program Access Order*") ("The record reflects that numerous . . . [regional sports networks] . . . are cable-affiliated programming networks that are demanded by MVPD subscribers and for which there are no adequate substitutes. We find that access to this non-substitutable programming is necessary for competition in the video distribution market to remain viable.") (internal citation omitted); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Commc'ns Corp., Assignors to Time Warner Cable, Inc., Assignees, et al.*, 21 FCC Rcd 8203, 8259 (¶ 124) (2006)

purchase exclusive rights to show sporting events and sports fans believe that there is no good substitute for watching their local and/or favorite team play an important game." *News Corp. Order*, 19 FCC Rcd at 535 (¶ 133). The Commission has also previously found that the withholding of regional sports programming has a detrimental effect on consumer choice. Indeed, it has determined that the withholding of such programming in Philadelphia and San Diego from direct broadcast satellite ("DBS") providers has resulted in DBS penetration levels between 33% and 40% lower than what would otherwise be expected.[7]

The record here confirms these conclusions.[8] Large segments of consumers simply will not consider switching to an alternative MVPD provider that does not offer regional sports programming, or will switch to a provider that does offer such programming.[9] Recent consumer survey evidence further demonstrates the importance of regional sports programming to consumers. For example, in a survey of more than 850 pay television subscribers in the New York City and Buffalo designated market areas by Global Marketing Research Services ("GMRS") conducted on behalf of Verizon, more than half of those surveyed (55% in New York and 64% in Buffalo) indicated that the availability of regional sports channels constitutes an important factor in any decision whether to switch providers. *See* Attachment 1, Declaration of

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("[A]n MVPD's ability to gain access to [regional sports network]s and the price and other terms of conditions of access can be important factors in its ability to compete with rivals.").

[7] *2007 Program Access Order*, 22 FCC Rcd at 17814-20 (¶¶ 37-42) (finding that Comcast's withholding of its terrestrially-delivered Philadelphia regional sports network from DBS providers resulted in DBS penetration in Philadelphia "40[%] below what would otherwise be expected," and that Cox's similar actions in San Diego caused a "33[%] reduction in the households subscribing to DBS service").

[8] *See supra* note 5; *see also, e.g.*, Reply Comments of DISH Network, MB Docket Nos. 07-29, 07-198, at 3 (Feb. 12, 2008) (citing record evidence of anticompetitive withholding); Comments of United States Telecom Association, MB Docket Nos. 07-29, 07-198, at 6-7 (Jan. 4, 2008) (citing instances of anticompetitive withholding of regional sports programming of which the Commission was already aware, including incumbents' withholding of regional sports programming in Philadelphia and San Diego); Comments of the Coalition for Competitive Access to Content, MB Docket No. 07-198, at 8-9 (Jan. 4, 2008) (same); Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, the Independent Telephone and Telecommunications Alliance, the Western Telecommunications Alliance, and the Rural Independent Competitive Alliance, MB Docket Nos. 07-29, 07-198, at 4-5 (Jan. 4, 2008) (citing survey evidence indicating that 43% of responding rural MVPDs indicated that they could not obtain video content that is critical to their service offering).

[9] *See, e.g.*, Letter from Stacy Fuller, DirecTV, to Marlene H. Dortch, FCC, at Attachment 1 (Dec. 16, 2009) ("Market research has repeatedly confirmed that a televised game involving the home franchise is critical, non-substitutable programming within the local market of that home team."); Reply Comments of Discovery Communications, LLC, MB Docket Nos. 07-29, 07-198, Attachment A (Declaration of Jonathan M. Orszag) at 21 (Feb. 12, 2008) ("The Commission has found, based in part on empirical evidence provided by me and a colleague, that if an MVPD does not carry an RSN or a major broadcast network, a substantial number of subscribers switch from this MVPD to an MVPD that does carry these channels."). The record in past proceedings contained similar evidence. *See, e.g.*, Letter from Pantelis Michaloupolos and Rhonda M. Bolton, Steptoe & Johnson, to Marlene H. Dortch, FCC, MB Docket No. 03-124, at 3-6 (Dec. 15, 2003) (documenting harm suffered by Echostar due to the lack of access to regional sports programming); Letter from Kathy Cooper and L. Elise Dieterich, Swidler Berlin Shereff Friedman, LLP, to Marlene H. Dortch, FCC, MB Docket No. 03-124, at 4-5 (Oct. 24, 2003) (reporting that, according to one survey, between 40% and 58% of cable subscribers would be less likely to subscribe to an MVPD provider if it lacked local sports programming).

Chris Stella, Exhibit A, at 8. Among sports fans, an overwhelming majority – more than 80% (82% in New York and 87% in Buffalo) – identified the availability of regional sports channels as an important factor in any such decision. *See id.*

Moreover, just as access to regional sports is critical in order to provide consumers a meaningful choice of providers, so too is access to the *high definition* format of this critical programming.[10] The record confirms this conclusion as well, and shows that incumbent cable operators have focused their anticompetitive actions on the HD format of regional sports programming in recognition of this fact.[11] Indeed, Verizon has previously submitted evidence demonstrating the impact on consumers flowing from the anticompetitive withholding of the HD formats of regional sports programming, including web postings complaining of the unavailability of the HD feeds of those channels on FiOS and indicating that customers are likely to switch as a result.[12] And, recent consumer research underscores the competitive importance of HD regional sports. For example, the GMRS survey discussed above revealed that half of those surveyed (54% in New York City and 49% in Buffalo) indicate that they watch regional sports channels in HD "always" or "usually." *See* Attachment 1, Declaration of Chris Stella, Exhibit A, at 4. Large majorities of subscribers likewise indicate their strong preference to watch regional sports channels in HD (67% in New York City, 51% in Buffalo). *Id.* at 5. These preferences translate into purchasing decisions, as more than half of New York City subscribers (57%) and nearly half of Buffalo subscribers (49%) say they are "not likely at all" to consider switching to a provider that did not provide regional sports channels in HD. *Id.* Moreover, among sports fans – a large and important[13] demographic – the results are even more dramatic.[14] Indeed, 77% of

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[10] *E.g.*, Kent Gibbons, *High (Definition) Time for Change*, Multichannel News (July 20, 2009), http://www.multichannel.com/article/315715-High_Definition_Time_for_Change.php?q=high+definition+time+for+change ("High-definition, especially for sports, is the new standard. If it weren't so important to sports fans, Cablevision wouldn't advertise its HD exclusivity so prominently.") (last visited Dec. 14, 2009); Bill Simmons, *12 Years Later…*, ESPN The Magazine (July 13, 2009), http://sports.espn.go.com/espn/page2/story?id=4300289 (stating that HD is "a new world for sports fans: an intimacy that can't be found otherwise") (last visited Dec. 14, 2009).

[11] *See, e.g.*, Letter from Christopher M. Heimann, AT&T, to Marlene H. Dortch, FCC, MB Docket No. 07-198 (Dec. 16, 2009) (submitting evidence of the anticompetitive purpose and effect of the withholding of HD regional sports programming by incumbent cable operators in San Diego and Connecticut); Letter from Joel Kelsey and Chris Murray, Consumers Union, to Marlene H. Dortch, FCC, MB Docket No. 07-198, at 4 (Aug. 12, 2008) ("denying high definition digital programming to a competitor that has invested in digital infrastructure undermines the quality of that service and undermines the competition such a service could otherwise bring – clearly frustrating important public interest aims"); Letter from Leora Hochstein, Verizon, to Marlene H. Dortch, FCC, MB Docket Nos. 07-29, 07-198 (July 17, 2008) (explaining that incumbents have taken advantage of increased consumer demand for HD programming by attempting to withhold regional sports programming in HD, to the detriment of consumer choice, and documenting such withholding by Cablevision); Brief Comment of William L. Aprea, MB Docket No. 07-198 (Sept. 21, 2009) (comment of Verizon customer explaining importance of HD regional sports programming); Comments of United States Telecom Association, MB Docket Nos. 07-29, 07-198, at 6-7 (Jan. 4, 2008) (citing instances of anticompetitive withholding of HD sports programming of which the Commission was already aware, including Cablevision's withholding of HD regional sports programming in New York).

[12] *See* Verizon May 28 Ex Parte at 4 & Attachment.

[13] Evidence demonstrates that sports fans are a prime reason for the increasing number of HD television sales in the United States. *See* Consumer Electronics Association, Second Annual CEA Study Highlights High-Def Sports as

sports fans cited the availability of regional sports in HD as an important factor in deciding whether to switch away from their current provider. *Id.* at 2.[15]

In addition, cable incumbents themselves have elsewhere unabashedly touted the competitive significance of regional sports and, in particular, HD regional sports programming. For example, Cablevision has acknowledged that "[c]lose substitutes do not exist" for NHL hockey in general, and the New York Rangers (which it has owned since 1994, before meaningful MVPD competition took hold) in particular, and that "watching . . . major league men's professional ice hockey is not reasonably interchangeable with watching . . . other sports or other leisure activities."[16] Further, when asked how Cablevision intends to fend off competition from Verizon, its chief operating officer immediately pointed to the competitive importance of HD regional sports programming, explaining that: "We have our sports channels in high definition. So four of the nine professional sports teams in New York. If you want to see them in HD, you have to get them from us."[17] Cox similarly has emphasized its exclusive

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Key Driver to HDTV Sales, *available at* http://digitaltvcenter.com/news/2007/01/09/second-annual-cea-study-hd-sports-drive-hdtv-sales/ (last visited Jan. 6, 2010) (finding that "nearly 50 percent of sports fans purchased a HDTV for the purpose of watching a specific sporting event"); Consumer Electronics Association, Super Bowl Will Drive 2.6 Million HDTV Sales, Says CEA, *available at* http://ce.org/Press/CurrentNews/press_release_detail.asp?id=11679 (last visited Jan. 6, 2010).

[14] Specifically, 74% of sports fans in New York City and 62% of sports fans in Buffalo (as compared to 67% and 51% in the general population) indicate a "strong preference" for watching regional sports networks in HD, and a full 65% of New York City subscribers and over half of Buffalo subscribers (54%) (in comparison to 57% and 49% in the general population) say that they are "not likely at all" to consider switching to a provider that did not offer regional sports channels in HD. Attachment 1, Declaration of Chris Stella, Exhibit A, at 5. Similarly, 63% of New York City sports fans and 66% of Buffalo sports fans (as compared to 59% and 58% in the general population) state that they are unlikely to switch to a provider offering more channels at the same price, absent regional sports channels in HD. *Id.* at 11.

[15] In addition, the fact that Verizon has invested in its own programming to compete with Cablevision where doing so is possible by introducing its own network that carries local news and other local content in parts of New York and New Jersey and creating other original programming, *see* Cablevision Nov. 13 Ex Parte at 6-7, 9-10, is beside the point. This possibility exists only because, unlike the sports teams which cable incumbents own or acquired exclusive access to before competition was a reality, cable incumbents do not own or have exclusive rights to the news or other programming that is or will be carried on these Verizon networks. By contrast, Verizon cannot possibly duplicate coverage of the sporting events to which Cablevision and other cable incumbents have exclusive access *at all*, and certainly cannot offer sports fans coverage of those events in HD.

[16] *Madison Square Garden, L.P. v. Nat'l Hockey League*, Complaint ¶ 31, No. 07-CIV-8455 (S.D.N.Y.) (filed Sept. 28, 2007); *see* Verizon May 28 Ex Parte at 3 (noting that Cablevision has described its regional sports networks as carrying the "most valued and popular sports programming" in New York) (quoting R. Ortega and J. Furse, *Cable War Strands Mets Fans*, New York Daily News (Aug. 2, 2004) (quoting Mike McCarthy, President, MSG Network)).

[17] Verizon May 28 Ex Parte at 3 (quoting Statement of Tom Rutledge, COO, Cablevision Systems Corp., Thomson StreetEvents, *CVC- Cablevision Systems Corp. at UBS Global Media and Communications Conference*, at 9 (Dec. 8, 2008)).

offering of HD regional sports programming, stating that "[w]e are thrilled to be the only cable provider in Rhode Island delivering NESNplus HD to our customers this season."[18]

The Commission's own previous findings, combined with the record in this proceeding and cable incumbents' own admissions, are thus more than adequate to support an across-the-board finding that the withholding of regional sports programming (including in HD format) is unlawful. Such conduct, by its very nature, necessarily has the purpose and effect of hindering the ability of competing MVPDs to provide a competing package of video programming to consumers – including the large amount of satellite-delivered programming in any such package – in violation of Section 628(b).

The Commission should promptly confirm that this is the case and adopt a rule that definitively prohibits the ongoing withholding of this unique type of programming. Regional sports programming is competitively significant, as the record amply demonstrates, and the Commission thus has discretion, based on this record, to adopt a rule requiring access to this unique type of programming. That is the same conclusion the Commission reached in the MDU context, a conclusion which the D.C. Circuit upheld.[19] In any event, to the extent that there might be unique circumstances in which it can be shown that withholding regional sports programming would not violate Section 628(b), the Commission could grant waivers of the prohibition, similar to the approach that Section 628(c)(2)(D) requires in the context of exclusive programming agreements. *See* 47 U.S.C. § 548(c)(2)(D). Indeed, the Commission's rules allow it to waive its requirements for good cause,[20] and the D.C. Circuit has made clear that an "agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances."[21]

In short, the harm to consumers caused by the incumbent cable operators' documented practices continues to accrue – particularly now that new basketball and hockey seasons are well underway and consumers are experiencing the direct impact of cable incumbents'

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[18] Cox Communications, *Cox Adds NESNplus and NESNplus HD to Lineup*, PR NewsWire (Apr. 10, 2009) (quoting Doreen Studley, Cox Vice President of Marketing), *available at* http://www/prnewswire.com/news-releases/cox-adds-nesnplus-and-nesnplus-hd-to-lineup-61792692.html (last visited Jan. 6, 2010).

[19] *See Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments, Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 20235, 20253-54 (¶ 38), *petition for review denied, Nat'l Cable & Telecomms. Ass'n v. FCC*, 567 F.3d 659 (D.C. Cir. 2009). Contrary to Cablevision's passing assertion, the D.C. Circuit's decision in *Comcast Corp. v. FCC*, 579 F.3d 1 (D.C. Cir. 2009), has no bearing on the issues presented in this proceeding. *See* Cablevision Nov. 13 Ex Parte at 11. Unlike the horizontal ownership cap in Comcast, the underlying concern addressed by the program exclusivity restriction is not cable's power over *programmers'* access to video *customers* but the distinct concern about video competitors' ability to access "must have" *programming* controlled by cable incumbents. Further, in contrast to the record in *Comcast*, here the Commission has ample evidence that cable operators continue to use their hold on "must have" programming regional sports programming to hobble competition.

[20] 47 C.F.R. § 1.3.

[21] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

anticompetitive practices – and the Commission should take action expeditiously to bring these practices to an end without the need for further proceedings. Consumers have been deprived of a meaningful choice for long enough, and the Commission can prevent continued injury by finally declaring these practices unlawful.

2. Alternatively, while an across-the-board rule ensuring access to regional sports would most effectively ensure meaningful competitive choice for consumers, some press reports suggest that the Commission may instead confirm that Section 628(b) applies in this context but determine whether that provision has been violated on a case-by-case basis. If the Commission proceeds with that approach, it should at the very least act on the pending program access complaints that have a fully developed record at the same time – if not before – it adopts its order. The pending complaint proceedings have well-developed records fully documenting the effect of the practices at issue in those cases; in most cases they have been pending for many months and in one case for more than a year.

Moreover, the resolution of pending complaints brought under Section 628(b) would be appropriate even if the Commission decides in the order to issue legislative rules interpreting Section 628(b). Complaints that have been litigated under that statutory provision itself do not depend on any extension of the program access rules and do not seek relief – retroactive or otherwise – under any new legislative rule the Commission may adopt. These complaint proceedings are thus ripe for decision and can be decided irrespective of any action taken in this proceeding. At a minimum, the Commission should act to end the harm accruing to consumers daily from the specific anticompetitive practices of cable incumbents that have been documented in the pending complaint proceedings.

3. Also ripe for decision is the need for a standstill requirement to protect consumers and prevent unfair brinksmanship in the context of renewal negotiations. The notice in this proceeding sought comment on such a rule, and Verizon and other competitive providers have repeatedly documented that such a rule is needed. A standstill requirement would protect consumers and preserve the status quo while disputes concerning negotiations for renewal of carriage agreements are resolved, subject to true up to the terms eventually agreed upon by the parties.[22] Such a requirement would ensure that a competing video provider's subscribers are not deprived of access to programming while renewal negotiations are completed and would avoid the harm that could be caused by allowing negotiating parties to place consumers in the middle of their disputes. As Verizon has explained before, a standstill provision is warranted because cable incumbents have not hesitated to employ anticompetitive tactics in order to deny competitive providers the programming that consumers demand, or to agree provide such programming only at unreasonably high prices in the context of program carriage renewal negotiations.[23] The recent examples in the retransmission consent context further amplify the risk to consumers when one party or the other engages in brinksmanship when existing

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[22] *See, e.g.*, Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, MB Docket Nos. 07-29, 07-42, 07-198, at 1-2 (Dec. 3, 2008) ("Verizon December 3 Ex Parte"); Comments of Verizon, MB Docket No. 07-29 at 16-17 (Apr. 2, 2007).

[23] *See* Verizon December 3 Ex Parte at 2.

agreements expire. In this proceeding, the Commission sought comment on a standstill requirement more than two years ago in the context of program access renewal disputes, and this issue is fully ripe for decision. Furthermore, given the recent controversies demonstrating similar unfair, anticompetitive and anti-consumer practices in the context of retransmission consent, the Commission also should consider whether to adopt a standstill requirement in the retransmission consent context.

4. To the extent that some parties continue to argue that the Commission lacks authority to address the anticompetitive withholding of regional sports programming, particularly in HD format, simply because such programming may be delivered terrestrially, none of their arguments are availing. First, Cablevision extols the potential consumer benefits of exclusivity arrangements, and notes Verizon's recognition of the general value of exclusivity in certain areas of its diversified business. *See, e.g.*, Cablevision Nov. 13 Ex Parte at 4, 8-9, 15. As a general matter, Verizon does not disagree that exclusivity can be beneficial in many instances. But for reasons already recognized by Congress and the Commission – and again fully documented in the record in this proceeding – cable incumbents' use of exclusive agreements to deny new entrants access to an important and unique component for a truly competitive video offering provides the exception to that general rule. Indeed, regional sports programming providing live or near live coverage of the home town sports teams is unique in and of itself and cannot be replicated by any level of investment, and the long and documented history of cable incumbents' abuse of their local monopolies to obtain exclusive access to this critical programming and to then use it as a weapon against new entrants is similarly unique. In adopting Section 628(b), Congress legislated against the backdrop of the cable incumbents' historical bottleneck monopoly (which they enjoyed as a result of their exclusive franchises), their use of market power to extract exclusive contracts with and ownership interests in programmers in exchange for carriage, and their exploitation of control over programming to deny it to competitors in order to inhibit entry into MVPD markets to the detriment of consumer choice.[24] Here, Congress weighed the various policies at stake and determined – in light of the particular circumstances and cable's demonstrated history – to broadly prohibit unfair conduct having the purpose or effect specified in Section 628(b), including the withholding of critical programming regardless of how it is delivered.[25]

Second, Cablevision argues, as it has before, that the Commission should create an exception to the exclusivity ban in markets where competition has reached a certain (albeit ill-defined) level. *See* Cablevision Nov. 13 Ex Parte at 3-10. But the arguments that Cablevision advances in favor of its requested exception are nothing new; it previously raised the same

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[24] *See* Pub. L. No. 102-385 § 2(a)(5) (finding vertical integration stifled competition); *see also* H.R. Rep. No. 102-628, at 26-27 (1992) ("Since passage of the Cable Act, however, competition to cable from alternative multichannel video technologies largely has failed to materialize. . . . A principal goal of H.R. 4850 is to encourage competition from alternative and new technologies, including competing cable system, wireless cable, direct broadcast satellites, and satellite master antenna television services.").

[25] Further, Cablevision ignores the fact that certain portions of Verizon's network *are* subject to forced sharing. Where the Commission has concluded that network elements satisfy the correct statutory standard, Verizon must make them available to competitors on far more draconian terms, including price regulation, than cable incumbents would have to do here.

argument in the Commission proceeding concerning the sunset of the exclusivity ban. *See* Comments of Cablevision Systems Corp., MB Docket No. 07-29 at 31-32 (Apr. 2, 2007). To be sure, as a general rule, regulatory restrictions should be removed when and where competition is present. But again, access to critical programming needed to compete – including regional sports programming – is the exception to that rule, as the Commission properly concluded. *See 2007 Program Access Order*, 22 FCC Rcd at 17841 (¶ 72). In addition, the examples of anticompetitive withholding of regional sports programming that have been documented before the Commission all occurred in markets with MVPD competitors and several occurred in the very market on which Cablevision focuses its request for exemption. That demonstrated history of anticompetitive behavior in the very markets that Cablevision would remove from the protections of the exclusivity ban, together with the statutory and practical problems that its proffered exemption would engender, require rejecting Cablevision's argument here again.

In sum, based on the real consumer harm resulting from cable incumbents' withholding of regional sports programming (or the HD feed of such programming) – conduct that denies consumers a meaningful competitive choice – the Commission should take prompt action to definitively put an end to this ongoing anticompetitive practice. The Commission also should adopt a standstill requirement to protect consumers pending completion of renewal negotiations, subject to true up to the terms that are ultimately agreed upon by the parties.

Sincerely,

William H. Johnson

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

VERIZON TELEPHONE COMPANIES AND VERIZON SERVICES CORP. Complainants, v. MADISON SQUARE GARDEN, L.P. AND CABLEVISION SYSTEMS CORP., Defendants.	File No. CSR-8185-P

DECLARATION OF CHRIS STELLA

1. My name is Chris Stella. My business address is **712 East New Haven Ave. Melbourne, FL 32901**. I am a employed as a Senior Project Manager for Global Marketing Research Services (GMRS). In this capacity, I am responsible for public opinion research, sample design, and telephone surveys conducted by GMRS on issues of public opinion. I have worked for GMRS in this capacity for more than 10 years, and am qualified to perform these tasks.

2. GMRS is a survey research and political consulting firm based in Melbourne, Florida, with an additional office in Decatur, Georgia. GMRS has conducted thousands of market research projects by phone, internet, and person to person, over the past 23 years. GMRS is an accredited member of the American Association of Public Opinion Research (AAPOR) and the Marketing Research Association (MRA).

3. GMRS was retained to conduct surveys on behalf of Verizon concerning the views of pay television service subscribers in the New York City and Buffalo designated market areas (DMAs) related to the significance of regional sports programming and high definition programming.

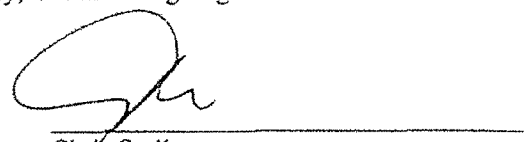
4. GMRS conducted two telephone surveys of adult subscribers to paid video programming service (e.g., cable, satellite) in the New York City and Buffalo DMAs between July 28th and August 4th, 2009. Each survey was conducted using Random Digit Dialing, which ensures that all possible subscribers had an equal opportunity to be called to complete the survey, thus ensuring a representative and unbiased survey. The sample for each survey was drawn randomly from within each DMA, defined by county. Minor weighting was applied to the results where necessary to make sure they are representative for each DMA.

5. In the New York City DMA, a total of 851 interviews were conducted, and in Buffalo a total of 658 interviews were conducted. Based on these sample sizes, the survey data have a margin of error of +/-3.4% for the NY DMA sample and +/-3.8% for the Buffalo DMA sample at a confidence interval of 95%. Put another way, this means that the results of our NYC data, for example, are accurate within 3.4 percentage points 95 times out of 100. The margin of error will be higher for sub-groups.

6. The methods and procedures employed by GMRS in conducting these surveys are consistent with the market survey guidelines and standards established by AAPOR and the MRA.

7. Attached hereto as Exhibit A are the results of the surveys conducted by GMRS as well as an overview of those results.

I declare, under penalty of perjury, that the foregoing is true and correct.



Chris Stella

August 13, 2009

EXHIBIT A

OVERVIEW

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Global Marketing Research Services Survey of Paid Television Subscribers in NY and Buffalo Designated Market Areas

August 7, 2009

Overview

Global Marketing Research Services (GMRS), on behalf of Verizon, conducted two surveys among paid TV subscribers (henceforth "subscribers") in the New York City and Buffalo Designated Market Areas (DMAs) in order to get a better view of the value subscribers placed on regional sports programming, high definition programming, and the ability to watch games of the teams they follow in high definition broadcast. The following is a brief overview of the results of these surveys:

1) Subscribers place a high degree of importance on the availability of both regional sports programming and high definition programming.
2) "Sports fans[1]," those who follow a professional sports team and place a strong degree of importance on being able to view games on TV of the teams they follow, are even more likely to value regional sports programming and high definition programming, particularly for their regional sports channels.
3) Roughly three in four subscribers – and an even greater percentage of sports fans – suggest it is unlikely they would consider switching to a "new provider that did not provide sports channels in HD." Fewer than one in five indicated they would even consider switching to a provider that didn't offer HD regional sports programming.
4) MSG and MSG Plus watchers are even more strongly opposed to considering any kind of switch to a provider without those channels in HD – particularly MSG Plus watchers.
5) Regardless of whether they currently have access to regional sports channels, both subscribers and sports fans – by an overwhelming majority in both cases – suggest an intense unlikelihood of switching to a provider that doesn't offer regional sports programming in HD, *even if the provider offers more channels at the same price.*

[1] "Sports fans" are defined for present purposes as those subscribers who indicated in Q. 5 that they considered themselves a fan of professional sports, and additionally indicated in Q. 6 that it was either "very" or "somewhat" important to be able to watch a game on TV being played by a team they closely followed.

Findings

In the two geographic markets surveyed, data shows that the majority of subscribers are sports fans who enjoy watching game broadcasts on regional sports programming channels. In the New York City DMA, three in five subscribers (62%) have access to regional sports programming in their home; in Buffalo, that percentage is slightly lower, at 53%.

Regardless of home access to regional sports programming, the ability to watch programming on regional sports channels is important to subscribers in both markets, with 72% of NYC DMA subscribers and 71% of Buffalo subscribers indicating they personally watch an regional sports channels at least a few times a year; 39% of NYC subscribers and 32% of Buffalo subscribers watch a regional sports channel at least several times a week.

The ability to watch regional sports programming in HD is also very important; half of subscribers (54% in NYC, 49% in Buffalo) indicate they watch regional sports channels in HD "always" or "usually." And large majorities of subscribers indicate their strong preference to watch regional sports in HD (67% in NY, 74% among NYC sports fans; 51% in Buffalo, 62% among Buffalo sports fans).

There is one noteworthy instance of differentiation between subscribers in general and sports fans in particular: when asked specifically about the importance of regional sports channels in HD when considering a potential switch away from their current provider, while majorities among subscribers in New York and Buffalo (54%) indicate this would be an important consideration in deciding whether or not to switch, among sports fans this percentage was considerably higher. More than three of four sports fans in both markets (77% in both) indicate this is an important factor in their decision of whether to switch away from their current provider.

Given the high level of importance subscribers in these two markets ascribe to regional sports channels in HD, it should come as little surprise that three-quarters of New York City DMA subscribers and more than four in five Buffalo subscribers indicate they would be unlikely to switch to a provider that did not offer regional sports in HD. What is even more remarkable is the level of intensity behind these feelings. More than half of NYC subscribers (57%) and half of Buffalo subscribers (49%) say they are "not likely at all" to consider switching to a provider that did not provide sports channels in HD. This level of intensity is even higher among sports fans (65% in NY, 54% in Buffalo), particularly those who currently receive MSG and MSG Plus. When asked directly if they would consider switching to a provider that did not offer MSG and MSG Plus in HD, 71% of NYC subscribers and 76% of Buffalo subscribers indicated they weren't likely to switch, more than half "not likely at all."

Finally, concerning the likelihood that a subscriber would switch to a provider lacking regional sports channels in HD, the surveys asked:

> "Regardless of whether you currently have access to regional sports channels at home, let's say for a moment you are a paid TV service subscriber with regional sports channels in high definition. If another provider were to offer you more channels at the same price, but without HD regional sports channels, how likely would you be to switch to the provider offering more channels but no HD sports channels?"

After hearing this statement, 59% of NYC subscribers and 58% of Buffalo subscribers say they are unlikely to switch to the provider offering more channels at the same price, *absent HD regional sports programming*. For sports fans, the unlikelihood is even higher (63% for NYC sports fans, 66% among Buffalo sports fans).

Conclusions

In the New York City and Buffalo DMAs, subscribers in general, and sports fans in particular, show a clear preference for regional sports channels in high definition.

They also show a clear preference for providers who offer these regional sports channels in high definition, and a company that is unable to provide similar content is going to have a more difficult time attracting these consumers. Data in these two surveys show that there is a direct link between competitiveness and the ability to offer high definition regional sports programming. The surveys also show this to be true specifically in the case of MSG and MSG Plus – with a large majority of subscribers indicating a lack of willingness to switch to a provider that lacks these channels in high definition.

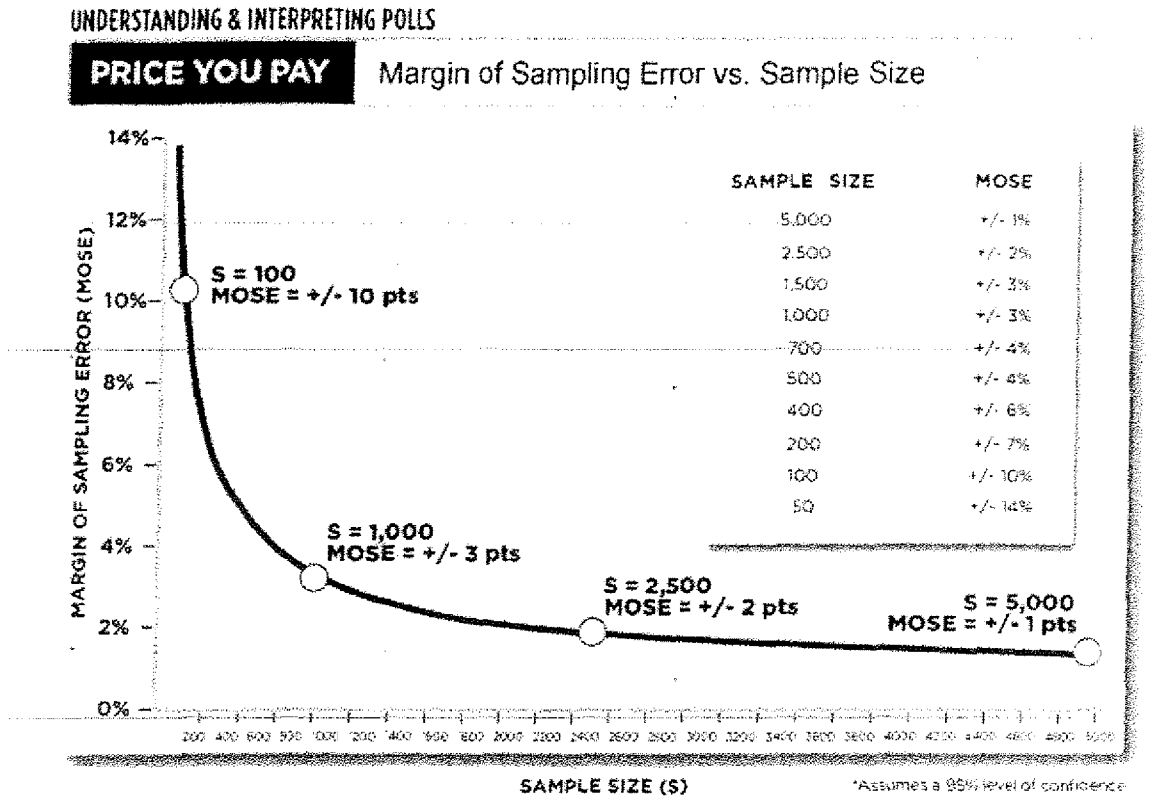
Methodology

Global Market Research Services (G.M.R.S.), on behalf of Verizon Communications, conducted two telephone surveys of adult, paid television service subscribers in the New York City and Buffalo DMAs between July 28th and August 4th, 2009. Each of the surveys was conducted using Random Digit Dialing, which ensures that all possible subscribers had an equal opportunity to be called to complete the survey, thus ensuring a representative survey. The sample for each survey was drawn randomly from within each DMA, defined by county. Minor weighting was applied to the results where necessary to make sure they are representative for each DMA.

In the New York City DMA, a total of 851 interviews were conducted, and in Buffalo a total of 658 interviews were conducted. Based on a sample of these sizes, the survey data have a margin of error of +/-3.4% for the NY DMA sample and +/-3.8% for the Buffalo DMA sample at a confidence interval of 95%. Put another way, this means that the results of our NYC data, for example, are accurate within 3.4 points 95 times out of 100. The margin of error will be higher for sub-groups.

According to the American Association of Public Opinion Research (AAPOR):

> "Publicly released polls almost always (and should always) have a margin of sampling error (MOSE) specified in any report of the results. That is the + or – 3 percentage points, or + or – 2 percentage points you generally see at the end of a method statement. (We often talk about a MOSE as if it applies to the whole survey, but note that in reality it applies to each answer in the survey as you see in all the examples.)
>
> Basically, the margin of sampling error is the price you pay for not talking to everyone in your population group. The MOSE describes the range that the answer likely falls between if we had talked to everyone instead of just a sample. For example, for a telephone sample of 1000 randomly selected adults nationwide, the finding from the poll will be within plus or minus 3 percentage points of the answer we would have gotten had we talked to all 210 million adults. So if one of the findings of the poll was that 58% approved of the job their Governor was doing, we would know that the true value would lie somewhere between 55% and 61% if we had talk to the whole population in the state.
>
> To be technically correct, we really only have some degree of confidence around the MOSE we calculate for probability based samples. Generally, pollsters calculate the MOSE using a 95%confidence level. That is, in 95 times out of a 100, we expect the answer we get from the survey is reflective of the true answer within the MOSE."



G.M.R.S. is a survey research and political consulting firm based in Melbourne, Florida, with an additional office in Decatur, Georgia. G.M.R.S. has conducted thousands of market research projects by phone, internet, and person to person, over the past 23 years. G.M.R.S. is an accredited member of the American Association of Public Opinion Research and the Marketing Research Association. The Senior Project Manager for these studies was Mr. Chris Stella. Mr. Stella has worked at G.M.R.S. for more than 10 years, and is an expert in the field of public opinion research, sample design, and telephone survey methodology.

[2] http://www.aapor.org/marginofsamplingerror

Verizon FiOS - New York and Buffalo DMA Paid TV Telephone Survey
Topline Report
NY DMA: 7/28/09-8/2/09, 851 Interviews, Margin of Error = ±3.4%
Buffalo DMA: 7/30/09-8/4/09, 658 Interviews, Margin of Error = ±3.8%

***indicates less than 1%**
Note: percentages may not add up to 100% due to rounding

Screeners

S1. Are you, or is anyone in your household, employed in market or public opinion research, advertising, public relations, marketing, on a political campaign or in the media?

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
No	100%	100%	100%	100%

S2. Are you, or is anyone in your household, employed by a cable or satellite TV company, a local, long distance, or wireless telephone company, or with any organization related to the telecommunications industry?

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
No	100%	100%	100%	100%

S3. Are you responsible for or do you share responsibility for making decisions about such household issues as which telephone, cable, or internet provider you use?

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
No	100%	100%	100%	100%

Technology Usage

1. Does your household currently have a subscription to a paid TV service, such as cable or satellite?

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
No	100%	100%	100%	100%

2. Who is your current paid TV service provider? (READ LIST)

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Cablevision	35%	n/a	37%	n/a
Time Warner	23%	49%	22%	52%
Verizon (or FIOS)	12%	6%	13%	8%
Comcast	10%	2%	10%	2%
Direct TV	10%	25%	8%	25%
Dish	2%	15%	1%	13%
AT&T	*	n/a	*	n/a
RCN	2%	*	3%	*
Other (SPECIFY, DO NOT READ)	5%	4%	5%	2%
Don't Know/Refused	-	-	-	-

3. Do you own a high definition television; that is, you can watch high definition channels on it?

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Yes	67%	57%	73%	64%
No	32%	42%	27%	34%
Don't know/Refused	1%	1%	*	2%

4. And regardless of whether you own an HD-compatible TV, do you currently have access to HD channels in your home, through either your cable or Satellite TV provider?

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Yes	84%	71%	90%	73%
No	12%	23%	9%	23%
Don't know/Refused	4%	6%	2%	5%

5. Would you consider yourself a fan of professional sports? Please consider such sports as football, hockey, basketball, baseball, and so on. (IF YES): For which professional sports teams are you a fan? (PRECODED OPEN-END, ACCEPT MULTIPLE RESPONSES)

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
New York Yankees	27%	15%	46%	27%
New York Giants	21%	3%	39%	6%
New York Mets	16%	5%	27%	10%
New York Knicks	10%	2%	17%	3%
New York Jets	9%	2%	17%	4%
New York Rangers	5%	1%	9%	2%
New York Nets	3%	-	5%	-
New York Islanders	2%	1%	5%	1%
New Jersey Devils	2%	*	4%	1%
New York Red Bulls	1%	1%	3%	3%
New York Liberty	1%	*	2%	1%
Buffalo Sabres	*	23%	*	44%
Buffalo Bills	n/a	40%	-	73%
Other	12%	15%	20%	9%
Not a sports fan	39%	33%	-	-
Don't know/Refused	2%	3%	-	-

6. If you were aware of a game being played on TV by a team you closely follow, how important is it to you to be able to watch that game? Is it...

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very important	29%	31%	53%	53%
Somewhat important	29%	35%	47%	47%
Not very important	14%	13%	-	-
Not important at all	25%	19%	-	-
Don't know/Refused	4%	2%	-	-
Important (NET)	**58%**	**66%**	**100%**	**100%**
Not important (NET)	**38%**	**32%**	-	-

7. Do you currently have access to any of the following regional sports channels in your home? (READ AND ROTATE LIST, ACCEPT MULTIPLE RESPONSES)

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Yes Network	42%	35%	56%	48%
MSG	38%	41%	55%	60%
SportsNet New York	20%	16%	29%	25%
MSG Plus	17%	11%	24%	16%
None	23%	31%	12%	21%
Other	2%	4%	3%	2%
Don't know/Refused	15%	16%	5%	7%

8. How often would you say you personally watch a regional sports channel? Would you say...

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
More than once a day	8%	6%	15%	9%
Once a day	12%	7%	22%	11%
Several times a week	19%	19%	31%	30%
Several times a month	14%	16%	17%	25%
Just a few times a year	19%	23%	12%	17%
Never	27%	27%	3%	7%
Don't know/Refused	1%	2%	1%	1%

9. And when you do watch a regional sports channel, how often would you say you watch it in HD? Would you say...

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Always	42%	37%	50%	39%
Usually	12%	12%	12%	14%
Sometimes	11%	8%	10%	9%
Rarely	7%	5%	5%	3%
Never	24%	34%	19%	31%
Don't know/Refused	4%	3%	4%	4%
Often (NET)	**54%**	**49%**	**62%**	53%
Not often (NET)	**31%**	**47%**	**24%**	43%

10. Given a choice, is your preference to watch programming on a regional sports channel in HD or in standard? (IF CHOICE): Would that be strongly or somewhat?

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Strongly prefer HD	49%	41%	59%	52%
Somewhat prefer HD	18%	10%	14%	9%
Somewhat prefer standard	6%	9%	3%	7%
Strongly prefer standard	7%	7%	7%	7%
Have no preference	18%	28%	15%	22%
Don't know/Refused	3%	6%	2%	3%
HD (NET)	**67%**	**51%**	**74%**	62%
Standard (NET)	**13%**	**15%**	**10%**	14%

11. How likely would you be to consider switching to a new provider that did not provide sports channels in HD?

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very likely	6%	5%	5%	6%
Somewhat likely	7%	11%	7%	12%
Not very likely	17%	21%	17%	20%
Not likely at all	57%	49%	65%	54%
Depends	6%	8%	4%	6%
Don't know/Refused	8%	7%	3%	3%
Likely (NET)	**13%**	**16%**	**11%**	18%
Not Likely (NET)	**74%**	**69%**	**82%**	74%

MSG OR MSG PLUS SUBSCRIBERS ONLY

12. And how likely would you be to consider switching to a provider that did not have MSG or MSG Plus, the regional sports channels that cover the Knicks, Devils, Rangers, and Islanders in HD?

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very likely	5%	4%	5%	3%
Somewhat likely	13%	14%	14%	15%
Not very likely	15%	15%	14%	16%
Not likely at all	56%	61%	58%	64%
Depends	4%	1%	4%	1%
Don't know/Refused	7%	5%	6%	1%
Likely (NET)	18%	18%	19%	19%
Not Likely (NET)	71%	76%	72%	79%

ASK ALL

13. Generally speaking, how satisfied are you with your current paid TV service provider - such as cable or satellite?

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very satisfied	48%	50%	47%	52%
Somewhat satisfied	37%	41%	38%	42%
Somewhat dissatisfied	8%	5%	10%	2%
Very dissatisfied	4%	4%	4%	3%
Don't know/Refused	2%	*	1%	*
Satisfied (NET)	86%	91%	85%	94%
Dissatisfied (NET)	12%	9%	14%	5%

For each of the following categories, how satisfied are you with what your current paid TV service provider offers? First…

14. Availability of regional sports channels

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very satisfied	35%	37%	48%	48%
Somewhat satisfied	33%	35%	40%	41%
Somewhat dissatisfied	3%	3%	4%	5%
Very dissatisfied	3%	2%	2%	1%
Don't know/Refused	26%	24%	6%	6%
Satisfied (NET)	68%	71%	88%	89%
Dissatisfied (NET)	6%	5%	6%	6%

15. Availability of movie channels

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very satisfied	46%	41%	47%	39%
Somewhat satisfied	36%	38%	38%	41%
Somewhat dissatisfied	7%	5%	6%	7%
Very dissatisfied	3%	4%	2%	2%
Don't know/Refused	9%	12%	7%	12%
Satisfied (NET)	**82%**	**79%**	**85%**	**80%**
Dissatisfied (NET)	**9%**	**8%**	**8%**	**8%**

16. Availability of regional sports channels in high definition

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very satisfied	31%	27%	43%	38%
Somewhat satisfied	28%	33%	34%	39%
Somewhat dissatisfied	2%	2%	3%	1%
Very dissatisfied	3%	2%	3%	1%
Don't know/Refused	36%	36%	18%	21%
Satisfied (NET)	**59%**	**60%**	**77%**	**77%**
Dissatisfied (NET)	**5%**	**4%**	**6%**	**2%**

17. Availability of movie channels in high definition

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very satisfied	40%	31%	44%	36%
Somewhat satisfied	34%	31%	34%	28%
Somewhat dissatisfied	4%	3%	4%	5%
Very dissatisfied	2%	2%	1%	2%
Don't know/Refused	21%	32%	17%	29%
Satisfied (NET)	**73%**	**62%**	**78%**	**64%**
Dissatisfied (NET)	**6%**	**6%**	**5%**	**7%**

18. Affordability or cost

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very satisfied	23%	22%	19%	20%
Somewhat satisfied	40%	46%	43%	48%
Somewhat dissatisfied	22%	20%	24%	26%
Very dissatisfied	13%	10%	12%	6%
Don't know/Refused	2%	2%	2%	-
Satisfied (NET)	**63%**	**68%**	**62%**	**68%**
Dissatisfied (NET)	**35%**	**30%**	**36%**	**32%**

19. Customer service

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very satisfied	46%	56%	44%	56%
Somewhat satisfied	39%	34%	40%	35%
Somewhat dissatisfied	6%	5%	7%	4%
Very dissatisfied	5%	2%	7%	2%
Don't know/Refused	4%	3%	3%	4%
Satisfied (NET)	**85%**	**90%**	**84%**	**90%**
Dissatisfied (NET)	**11%**	**7%**	**14%**	**5%**

Let's say for a moment that for whatever reason, you were considering a switch away from your current paid TV service provider. Please tell me how important each of the following might be in making your decision in who to switch to. If you don't have a choice in provider, please tell me how important each of these would be to you if you did.

20. Availability of regional sports channels

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very important	30%	33%	47%	50%
Somewhat important	26%	31%	34%	37%
Not very important	13%	13%	9%	8%
Not important at all	25%	19%	7%	5%
Don't know/Refused	6%	5%	2%	*
Important (NET)	**55%**	**64%**	**82%**	**87%**
Not important (NET)	**38%**	**31%**	**16%**	**12%**

21. Availability of movie channels

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very important	45%	29%	47%	29%
Somewhat important	33%	44%	34%	46%
Not very important	11%	16%	11%	20%
Not important at all	8%	9%	6%	5%
Don't know/Refused	3%	2%	2%	*
Important (NET)	**78%**	**74%**	**80%**	**75%**
Not important (NET)	**19%**	**24%**	**18%**	**25%**

22. Availability of regional sports channels in high definition

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very important	29%	28%	45%	44%
Somewhat important	25%	26%	33%	33%
Not very important	13%	14%	9%	10%
Not important at all	26%	24%	9%	9%
Don't know/Refused	7%	8%	5%	4%
Important (NET)	**54%**	**54%**	**77%**	**77%**
Not important (NET)	**39%**	**38%**	**18%**	**19%**

23. Availability of movie channels in high definition

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very important	34%	25%	35%	25%
Somewhat important	36%	36%	41%	38%
Not very important	13%	19%	10%	21%
Not important at all	12%	15%	10%	12%
Don't know/Refused	6%	6%	4%	3%
Important (NET)	**70%**	**61%**	**76%**	**64%**
Not important (NET)	**25%**	**34%**	**20%**	**34%**

24. Affordability or cost

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very important	77%	82%	76%	83%
Somewhat important	17%	15%	19%	16%
Not very important	1%	1%	2%	1%
Not important at all	3%	1%	3%	1%
Don't know/Refused	2%	1%	1%	-
Important (NET)	**94%**	**97%**	**94%**	**99%**
Not important (NET)	**4%**	**2%**	**4%**	**1%**

25. Customer service

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very important	76%	77%	76%	78%
Somewhat important	19%	18%	20%	18%
Not very important	2%	2%	2%	1%
Not important at all	1%	1%	1%	1%
Don't know/Refused	2%	2%	1%	1%
Important (NET)	**94%**	**95%**	**96%**	**97%**
Not important (NET)	**4%**	**3%**	**3%**	**2%**

26. Company reputation

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very important	52%	48%	54%	49%
Somewhat important	29%	36%	32%	39%
Not very important	10%	10%	7%	9%
Not important at all	6%	5%	5%	4%
Don't know/Refused	3%	1%	3%	-
Important (NET)	**81%**	**84%**	**86%**	**88%**
Not important (NET)	**16%**	**15%**	**12%**	**12%**

27. Regardless of whether you currently have access to regional sports channels at home, let's say for a moment you are a paid TV service subscriber with regional sports channels in high definition. If another provider were to offer you more channels at the same price, but without HD regional sports channels, how likely would you be to switch to the provider offering more channels but no HD sports channels? Would you be...

	NY Total	Buff Total	NY Sports Fans	Buff Sports Fans
Very likely	11%	10%	10%	8%
Somewhat likely	21%	27%	21%	22%
Not very likely	19%	25%	22%	31%
Not likely at all	40%	33%	41%	35%
Don't know/Refused	8%	5%	6%	4%
Likely (NET)	**33%**	**37%**	**31%**	**30%**
Not Likely (NET)	**59%**	**58%**	**63%**	**66%**

Demographics

28. Gender (OBSERVE, DO NOT ASK GENDER)

	NY Total	Buff Total
Male	44%	48%
Female	56%	52%

29. What is your age?

	NY Total	Buff Total
18-24	4%	10%
25-29	3%	3%
30-34	4%	9%
35-39	11%	8%
40-44	12%	15%
45-49	9%	9%
50-54	10%	10%
55-59	9%	10%
60-64	11%	11%
65-74	12%	7%
75 and over	12%	7%
Don't know/Refused	4%	1%

30./31.What is your race?

	NY Total	Buff Total
Hispanic	17%	4%
White	59%	92%
Black	24%	3%
Asian	1%	-
Other	1%	2%
Don't know/Refused (DO NOT ASK)	2%	1%

32. What is the last grade you completed in school?

	NY Total	Buff Total
Grade School	*	2%
Some high school	4%	3%
High school graduate	20%	31%
Technical/vocational	2%	3%
Some college	17%	25%
Graduated college	35%	21%
Professional/Post Graduate	20%	15%
Don't know/Refused (DO NOT ASK)	2%	1%

33. Are there any children under the age of 18 living at home? (IF YES ASK): Can you please tell me how many?

	NY Total	Buff Total
Yes	34%	38%
No	65%	61%
Refused	1%	2%

34. For statistical purposes only, in which of the following categories does your **total** annual household income fall?

	NY Total	Buff Total
$25,000 or less	6%	12%
Between $25,000 and $49,999	13%	21%
Between $50,000 and $74,999	14%	16%
Between $75,000 and $99,999	13%	17%
Between $100,000 and $149,999	11%	8%
Over $150,000	10%	4%
Don't know/Refused	33%	23%

35. Are you currently employed full-time outside the home, employed part-time, self-employed, looking for a job, or are you a homemaker, a student or retired?

	NY Total	Buff Total
Employed full-time	44%	46%
Employed part-time	7%	6%
Self-employed	6%	5%
Looking for work/unemployed	5%	4%
Homemaker	7%	6%
Student	2%	4%
Retired	27%	26%
Don't know/Refused	3%	2%

REGIONS: NY DMA (BY COUNTY)

New York City: 39%

Bronx, NY
Kings (Brooklyn), NY
New York (Manhattan), NY
Queens, NY
Richmond (Staten Island), NY

New York/CT: 30%

Nassau, NY
Orange, NY
Putnam, NY
Fairfield, CT
Dutchess, NY
Rockland, NY
Suffolk, NY
Sullivan, NY
Ulster, NY
Westchester, NY

New Jersey/PA: 33%

Bergen, NJ
Essex, NJ
Hudson, NJ
Hunterdon, NJ
Middlesex, NJ
Monmouth, NJ
Morris, NJ
Ocean, NJ
Passaic, NJ
Somerset, NJ
Sussex, NJ
Union, NJ
Warren, NJ
Pike, PA

REGIONS: BUFFALO DMA (BY COUNTY)

Buffalo: 48%

Erie, NY

South/West Buffalo: 27.9%

Alleghany NY
Mckean PA
Potter PA
Cattaraugus NY
Chautauqua NY

North/East Buffalo: 24.1%

Genesee NY
Niagara NY
Orleans NY
Wyoming NY