Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
The Regional Sports Network Marketplace	)	MB Docket No. 11-128
	)	

COMMENTS OF VERIZON

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I. INTRODUCTION AND SUMMARY[1]

The Commission has consistently recognized that regional sports programming is unique because it is both non-replicable and highly desired by consumers. As a large body of evidence demonstrates, when multichannel video programming distributors (MVPDs) are unable to obtain access to regional sports programming – including the high-definition (HD) feeds of such programming – they generally suffer significant harm and consumers are denied meaningful choice in video providers. Thus, the Commission has repeatedly concluded that regional sports programming is "must-have" for consumers and MVPDs alike. For the many consumers who insist on such programming, competitive providers lacking regional sports programming or the HD version of that programming do not provide a meaningful choice.

Verizon's experience as a new video entrant bears this out. Since entering the marketplace, Verizon has been denied access to the HD feeds of MSG and MSG+, which are owned by the Dolan family that also owns Cablevision, the largest cable operator in the New York City metropolitan area. As a result, the many consumers in New York and Buffalo who insist on watching their favorite local sports teams (including the NBA's Knicks and the NHL's Rangers and Sabres) in HD have been unable to obtain from Verizon access to these games in the high-definition format they demand, and thus have been denied a meaningful choice in competitive providers. Verizon and consumers now face the prospect of another season without this programming, the third since Verizon filed its pending program access complaint, unless the Commission acts promptly to resolve Verizon's complaint and orders Cablevision to immediately provide access to this programming.

[1] The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

Other recent marketplace developments further demonstrate the continued significance of regional sports programming. As detailed below, a number of new RSNs have formed in the past several years, including several that are owned in whole or part by incumbent cable operators (generally Comcast or Time Warner Cable). Incumbents' actions in this regard confirm the competitive significance of this programming, and its potential significance as a competitive weapon that can be used against competitors. These new networks have been able to demand very favorable carriage terms, including high per-subscriber fees, because MVPDs recognize the critical importance of carrying these networks in order to win and retain subscribers.

Although the Commission has taken important steps in strengthening its program access rules – most notably, by ensuring they apply to terrestrially delivered regional sports programming, including the HD format of such programming – it now must match this effort by enforcing the Commission's rules and putting a stop to anti-consumer practices. For example, Verizon's program access complaint has been pending for more than two years, and during this time Cablevision has been able to exploit its unfair competitive advantage and deny consumers the full benefits of video competition. Vertically integrated cable operators like Cablevision benefit from this withholding for as long as such complaints remain pending. Therefore, the Commission should promptly take action on Verizon's pending complaint, and order Cablevision immediately to provide Verizon access to MSG and MSG+ in HD.

II. REGIONAL SPORTS PROGRAMMING IS OF CRITICAL IMPORTANCE TO VIDEO PROVIDERS AND CONSUMERS

A. The Commission Has Consistently Held That Regional Sports Programming – Including the High-Definition Format of Such Programming – Is "Must-Have"

For at least the past nine years, including as recently as last year, the Commission has consistently held that regional sports programming is "must have" for consumers and MVPDs alike.[2] The Commission based this conclusion on its findings that "for [regional sports] programming, there are no readily acceptable close substitutes,"[3] given that regional sports networks have "exclusive rights to show sporting events and sports fans believe that there is no

[2] *See, e.g.*, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 17 FCC Rcd 12124, ¶ 47 (2002) (noting that "86 percent of 'must have' regional sports programming is vertically integrated"); *Implementation of the Cable Act of 1992*, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 17791, ¶ 41 (2007) ("*2007 Program Access Order*") (noting that "subscribers will be less likely to switch to [a] competitive MVPD" that lacks "must-have" sports programming), *petition for review denied*, *Cablevision Sys. Corp. v. FCC*, 597 F.3d 1306 (D.C. Cir. 2010); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses of Adelphia Communications Corp. to Time Warner Cable Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 8203, ¶ 145 (2006) ("*Adelphia Order*") ("Lack of access to RSN programming can decrease an MVPD's market share significantly."); *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, 25 FCC Rcd 746, ¶ 52 (2010) ("*Terrestrial Programming Order*"), *affirmed in part and vacated in part sub. nom. Cablevision Systems Corp. et al. v. FCC,* No. 10-1062 et al., __ F.3d __ (D.C. Cir. June 10, 2011) ("RSNs typically offer non-replicable content . . . considered 'must have' programming by MVPDs").

[3] Letter from William H. Johnson to Marlene H. Dortch, MB Docket Nos. 07-29, 07-198, at 3 (Jan. 6, 2010) ("Jan. 6, 2010 Letter") (citing *General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473, ¶ 133 (2004) ("*News Corp. Order*"); *see also 2007 Program Access Order* ¶¶ 38-39 ("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); *Adelphia Order*, ¶ 124 ("[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.").

good substitute for watching their local and/or favorite team play an important game."[4] The Commission found that this programming is unique in that it is "very likely to be both non-replicable and highly valued by consumers."[5]

These findings were based on a substantial mass of historical evidence demonstrating the import of regional sports programming to consumers, the non-replicable nature of that programming, and its substantial impact on their purchasing decisions. The record evidence demonstrated that 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.[6] It found, for example, that the withholding of regional sports programming in Philadelphia and San Diego from direct broadcast satellite (DBS) providers resulted in DBS penetration levels between 33 percent and 40 percent lower than what would otherwise be expected.[7] The Commission also reviewed consumer survey

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[4] *News Corp. Order*, ¶ 133.

[5] *Terrestrial Programming Order*, ¶ 52; *see also Adelphia Order* ¶ 189 ("the programming provided by RSNs is unique because it is particularly desirable and cannot be duplicated").

[6] Jan. 6, 2010 Letter, at 4 (citing December 16, 2009 *ex parte* letter from Stacy Fuller, DirecTV: "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"; and the Orszag Declaration attached to Discovery Communications February 12, 2008 reply comments: "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, EchoStar Satellite Corp., 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 L. Cooper and L. Elise Dieterich, RCN Corp., to Marlene H. Dortch, FCC, MB Docket No. 03-124, at 4-5 (Oct. 24, 2003) (reporting that, according to one survey, between 40 percent and 58 percent of cable subscribers would be less likely to subscribe to a provider if it lacked local sports programming).

[7] Jan. 6, 2010 Letter at 4 (citing *2007 Program Access Order*, ¶¶ 37-42: Comcast's withholding of Philadelphia regional sports network from DBS providers resulted in DBS penetration in

evidence that demonstrated the importance of regional sports programming and HD programming to consumers.[8]

The Commission's findings with respect to regional sports programming apply with equal force to the HD feeds of such programming. The Commission noted the "substantial evidence" regarding "consumers' preference for HD programming," including the fact that "MVPD subscribers do not consider SD programming to be an acceptable substitute for HD programming."[9] In reaching that finding, the Commission had received evidence showing that a substantial and growing percent of American households have an HD television set, and that HD homes have higher levels of sports viewing and engagement compared to U.S. households as a whole.[10] It also reviewed substantial proof that incumbent cable operators have focused their attention on the HD format of regional sports programming, including evidence that demonstrated the impact on consumers from the withholding of the HD formats of regional sports programming.[11]

Philadelphia "40[%] below what would otherwise be expected," and Cox's similar action in San Diego caused a "33[%] reduction in the households subscribing to DBS service").

[8] *See* Reply Comments of Verizon, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, Exh. 1 (Stella Decl.) at 8 (Aug. 28, 2009).

[9] *Terrestrial Programming Order* ¶ 54; *see also id.* ¶ 54 n.216 (summarizing evidence regarding rapid growth in HDTV sales and the importance of HD programming to sports fans).

[10] Nielsen Special Report, *2008 a Banner Year in Sports* at 3-4 (2008).

[11] Jan. 6, 2010 Letter at 5 n.11 (citing brief comments filed by Verizon customer William L. Aprea explaining the importance of HD regional sports programming; AT&T's submission of evidence of the unlawful purpose and effect of the withholding of HD regional sports programming by incumbent cable operators in San Diego and Connecticut; and the Consumer Union's August 12, 2008 *ex parte* letter: "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"); *see also id.*, 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

B. Verizon's Experience Confirms That Regional Sports Programming, Including the HD Format of Such Programming, Are "Must-Have"

Verizon's experience confirms that the Commission's findings with respect to regional sports programming, including the HD format of such programming, remain equally true today. Since the time that it rolled out its FiOS TV service in New York, Verizon has been unable to obtain access to the high-definition feeds of MSG and MSG+, which carry the games of New York Knicks, New York Rangers, Buffalo Sabres, New York Islanders, and New Jersey Devils. As Verizon has demonstrated at length, this programming has been withheld from Verizon so that Cablevision – whose owners, the Dolan family, also own MSG and MSG+ – can maintain a competitive advantage in the marketplace.[12] As summarized below, substantial evidence

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regional sports programming in HD, to the detriment of consumer choice, and documenting such withholding by Cablevision); Comments of United States Telecom Association, MB Docket Nos. 07-29, 07-198, at 6-7 (Jan. 4, 2008) (citing instances of unlawful withholding of HD sports programming of which the Commission was already aware, including Cablevision's withholding of HD regional sports programming in New York). *See also* Jan. 6, 2010 Letter at 5 n.12 (citing Letter from Michael E. Glover, Verizon, MB Docket Nos. 07-29, 07-198, at 3 & Attachment (May 28, 2009)).

[12] *See* Program Access Complaint, *Verizon Telephone Companies and Verizon Services Corp., Complainants, v. Madison Square Garden, L.P. and Cablevision Systems Corp., Defendants,* File No. CSR-8185-P (FCC filed July 7, 2009) ("Verizon Program Access Complaint"); Reply of Verizon to Answer to Program Access Complaint, *Verizon Telephone Companies and Verizon Services Corp., Complainants, v. Madison Square Garden, L.P. and Cablevision Systems Corp., Defendants*, File No. CSR-8185-P (FCC filed Aug. 13, 2009) ("Verizon Reply to Answer to Program Access Complaint"); Supplement to Program Access Complaint, *Verizon Telephone Companies and Verizon Services Corp., Complainants, v. Madison Square Garden, L.P. and Cablevision Systems Corp., Defendants*, File No. CSR-8185-P (FCC filed June 28, 2010) ("Verizon Supplement to Program Access Complaint"); Opening Brief of Verizon, *Verizon Telephone Companies and Verizon Services Corp., Complainants, v. Madison Square Garden, L.P. and Cablevision Systems Corp., Defendants*, File No. CSR-8185-P (FCC filed Oct. 12, 2010) ("Verizon Program Access Opening Brief"); Reply Brief of Verizon, *Verizon Telephone Companies and Verizon Services Corp., Complainants, v. Madison Square Garden, L.P. and Cablevision Systems Corp., Defendants*, File No. CSR-8185-P (FCC filed Oct. 22, 2010) ("Verizon Program Access Reply Brief"); Letter from William H. Johnson, Verizon, to Marlene Dortch, FCC, MB Docket No. 07-198, File No. CSR-8185-P (June 29, 2011).

confirms that this is the purpose and effect of such conduct, that consumers have suffered as a result of this conduct, and that Verizon has suffered significant harm.

First, formal and informal surveys demonstrate the importance of the withheld programming to consumers. For example, Verizon has previously collected samples of messages posted to an online website from actual or potential customers in which these consumers stress that MSG and MSG+ in HD are important in both their choice of provider and their satisfaction with that provider.[13] Verizon also commissioned a formal consumer survey of more than 850 pay television subscribers in the New York City and Buffalo Designated Market Areas (DMAs) performed by Global Market Research Services that confirmed the importance of HD regional sports programming, such as MSG and MSG+, to consumers.[14] That survey revealed that, for current MSG and MSG+ subscribers, more than 70 percent (71 percent in New York City, 76 percent in Buffalo) would not be likely to consider switching to a provider that did not carry that programming in HD.[15] In fact, regardless of whether they currently subscribed to MSG and MSG+, more than half of New York City and Buffalo paid TV subscribers, and even more sports fans, were "not likely at all" to consider switching to a provider that does not provide regional sports channels in HD, even if by switching they were to receive more channels at the same price.[16] Consistently, 54 percent of those surveyed indicated that the availability of regional sports channels in HD was an important factor in any decision whether to switch providers, and

[13] *See* Verizon Program Access Complaint, Attach. A, Declaration of Terry Denson and Benjamin Grad, ¶ 9; *see also* Verizon Program Access Opening Brief, Appendix D.

[14] *See* Verizon Reply to Answer to Program Access Complaint, Ex. 1 (Stella Decl.), Ex. A at 4.

[15] *See id.* at 6.

[16] Verizon Reply to Answer to Program Access Complaint, at 24-26 & Stella Decl., Ex. A at 2, 5, 11; *compare Terrestrial Programming Order* ¶ 56.

among sports fans, that number grew to 77 percent.[17] The significance of the HD MSG and MSG+ programming in particular and regional sports in HD generally is buttressed by the survey's finding that the strong preference of large majorities of subscribers is to watch regional sports channels in HD (67 percent in New York City, 51 percent in Buffalo).[18]

Second, Cablevision's statements confirm that the purpose and effect of its conduct is to give it a competitive advantage that limits consumer choice. For example, Cablevision's COO, Tom Rutledge, has touted Cablevision's competitive advantage by virtue of its control over HD regional sports programming, bragging that for regional sports in New York, "[i]f you want to see them in HD, you have to get them from us."[19] Mr. Rutledge asserted that not only does Cablevision "currently carry more regional HD than any of our competitors," but that Cablevision has "more HD and On Demand HD that our competitors can't replicate."[20] On another occasion, Mr. Rutledge cited as one of the "factors that he believed would slow or reverse any subscriber flow to FiOS," that "FiOS' video product lacks key components, specifically the HD versions of *MSG* and *Fox Sports NY* [now MSG+]."[21]

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[17] *See* Verizon Reply to Answer to Program Access Complaint, Stella Decl., Ex. A at 9.

[18] *See id.* at 5.

[19] Statement of Tom Rutledge, COO, Cablevision Systems Corp., Thomson StreetEvents *Cablevision Systems Corp. at UBS Global Media and Communications Conference* at 9 (Dec. 8, 2008) ("Rutledge Statement"); *Cablevision Q3 2007 Earnings Conference Call Transcript* (Nov. 8, 2007); *see also* Shirley Brady, *Cablevision Launches MLB Extra Innings*, Cable360.net (May 4, 2007), http://www.cable360.net/video/23310.html (quoting Cablevision executive vice president of programming Marc Budill: Cablevision's digital services offering "is the best choice for New York-area sports fans, featuring leading national sports programming, all four regional sports networks, and the most local sports in high-definition."); Verizon Program Access Complaint ¶ 30.

[20] Rutledge Statement at 9.

[21] Craig Moffett *et al.*, Bernstein Research, *Cablevision (CVC): Management Commentary Supports Bullish View . . . Capital Intensity Falls, and Margins Rise* at 4 (Apr. 5, 2007).

Third, Cablevision's advertising and marketing campaigns demonstrate the critical importance that consumers place on this programming, and further confirm the purpose and effect of denying Verizon access to this programming is for Cablevision to maintain a competitive advantage. For the past several years,[22] Cablevision has taken to the airwaves and various print media to tout the fact that Cablevision has exclusive access to MSG HD and MSG+ HD, and that Verizon's FiOS service cannot match that offering. For example, Cablevision trumpets in repeated ads that "No one has more NY sports in HD than iO TV":[23] Multiple other advertisements boast that Cablevision (with its iO TV product), has "every HD game of all 9 NY sports teams."[24] And Cablevision reiterates this theme in print, television, radio, online, direct mail, and other ads.[25] Cablevision would not invest large sums on advertising specifically targeted to this programming and its advantage in HD sports if it did not believe that it would have a meaningful impact on its ability to win or retain customers vis-à-vis Verizon.

C. Recent Marketplace Developments Confirm That Regional Sports Programming Remains Critically Important

Recent marketplace developments further demonstrate the continuing importance of RSNs, including the efforts by the largest cable operators to gain or retain control of this programming in order to entrench their competitive advantage over newer entrants. The Notice asks about change in the "the number of RSNs affiliated with a cable operator" in the five years since the *Adelphia Order*.[26] Although Verizon has not conducted a comprehensive survey, it has

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[22] *See* Verizon Program Access Opening Brief, Appendix C at DEF000002.

[23] *See id.*, Appendix A at VZ-MSG-0000001.

[24] *See id.*, Appendix A at VZ-MSG-0000066.

[25] *See id.*, Appendix A.

[26] Public Notice, *Media Bureau Seeks Comment on the Regional Sports Network Marketplace*, MB Docket No. 11-128, DA 11-1238, at 4 (July 26, 2011) ("Notice").

identified at least five new RSNs that have been launched (or that plan to be launched) since that time and that are affiliated with an incumbent cable operator. These are:

- MountainWest Sports Network was launched on September 1, 2006 and carries football, basketball, and other intercollegiate games of the Mountain West Conference.[27] Comcast owns 50 percent of the network (the other half is owned by College Sports TV Network), and Comcast SportsNet manages the network.[28]

- Comcast SportsNet Northwest was launched on November 1, 2007[29] and carries the games of the Portland Trailblazers, Vancouver Canucks, and San Jose Sharks.[30] The network is owned and operated by Comcast SportsNet.[31]

- Comcast SportsNet Houston is planned to launch in 2012. It is jointly owned by Comcast (22.5 percent) and the Houston Astros and Houston Rockets (77.5 percent).[32] The network will begin to air Rockets games beginning in the fall of 2012 and Astros games beginning in 2013.[33]

- In February 2011, Time Warner Cable announced that it had struck a 20-year agreement with the Los Angeles Lakers to create two new regional sports networks (one in English

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[27] *See* MountainWest Sports Network, *About The Mtn.*, http://www.themtn.tv/pages/aboutthemtn; *see also MountainWest Sports Network*, http://www.ncta.com/OrganizationType/CableNetwork/Mountain-West-Sports.aspx (The network "annually produces and airs more than 160 collegiate sporting events, including football, basketball, Olympic sports, and Conference championship coverage. The Mtn.'s expanded coverage includes news programming, coaches' shows, pre and post game analysis and feature programming about Mountain West Conference athletics.").

[28] *MSTAR Launches Highly Anticipated College Sports Channel Lineup*, Business Wire, Sept. 1, 2006, http://www.businesswire.com/news/home/20060901005525/en.

[29] *See Comcast Sports Net Northwest,* http://www.ncta.com/OrganizationType/CableNetwork/Comcast-Sports-Net-Northwest.aspx.

[30] *Comcast SportsNet, Blazers Create Network*, Portland Bus. J. (May 21, 2007), http://www.bizjournals.com/portland/stories/2007/05/21/daily12.html; *Comcast SportsNet Northwest Launches in Seattle Area*, PR Newswire (Oct. 2, 2008).

[31] *Comcast SportsNet, Blazers Create Network*, Portland Bus. J. (May 21, 2007), http://www.bizjournals.com/portland/stories/2007/05/21/daily12.html.

[32] David Barron, *Go Back to the Future When the Astros and Rockets Launch Their Channel, It Likely Will Remind Viewers of HSE*, Houston Chronicle, Nov. 8, 2010, http://www.chron.com/sports/rockets/article/Astros-Rockets-network-likely-to-resemble-old-1705389.php.

[33] David Barron, *Astros, Rockets Finalize Deal To Launch TV Network*, Houston Chronicle, Oct. 29, 2010, http://www.chron.com/default/article/Astros-Rockets-finalize-deal-to-launch-TV-network-1710865.php.

and one in Spanish). The agreement begins with the 2012-2013 season and covers all preseason, regular-season, and postseason games that are not nationally telecast.[34]

- Time Warner Cable Sports 32 was launched in February 2007 in Wisconsin.[35] It features "several high school, college, professional and amateur sports," including the Green Bay Gamblers, Marquette University, Milwaukee Admirals, Milwaukee Wave -Green Bay, and UW-Milwaukee.[36]

The continued proliferation of RSNs – including those owned by incumbent cable operators – demonstrates that incumbents continue to take steps to gain exclusive control, generally for extended periods of time, over this unique, non-replicable content.[37] Their efforts to do so demonstrate the continued competitive significance of such programming, as well as their ongoing ability to use their exclusive access to such programming as a competitive weapon to hinder significantly the threat of new competitors.

Even where the incumbents are willing to negotiate access to this programming to their competitors, as the *New York Times* recently reported in an in-depth look at RSNs, these networks have become "money-printing operations" for these providers.[38] This is evident from

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[34] Joe Flint, *Time Warner Cable, Lakers Strike 20-Year TV Deal*, L.A. Times (Feb. 14, 2011), http://articles.latimes.com/2011/feb/14/sports/la-sp-0215-lakers-time-warner-20110215 (last visited Sept. 9, 2011).

[35] Sportsday Productions, Inc., *Affiliates*, http://www.sportsdayproductions.com/affiliates.php (select "TWCSports32").

[36] Time Warner Cable Sports 32, http://www.sports32.com/about; *see also* http://www.sports32.com/partners.

[37] In addition to those new RSNs affiliated with an incumbent cable operator, there have also been a number of non-vertically integrated RSNs that have launched in the past five years, including Fox Sports Wisconsin (launched in April 2007), Fox Sports Tennessee (October 2008), Fox Sports Oklahoma (October 2008), Fox Sports Kansas City (January 2008), Fox Sports Carolinas (2008), Fox Sports Indiana (fall 2006), Big Ten Network (August 2007), and the PAC-12 network (to be launched in 2012).

[38] Richard Sandomir, *Regional Sports Networks Show the Money*, N.Y. Times (Aug. 19, 2011), http://www.nytimes.com/2011/08/20/sports/regional-sports-networks-show-teams-the-money.html?pagewanted=all (last visited Sept. 9, 2011).

the very high and increasing per-subscriber fees RSNs are demanding.[39] For example, Time Warner Cable reportedly will be looking for "more than $3.50" per month per subscriber for its new Lakers network.[40] FS Houston recently signed a deal to carry the Texas Rangers that is estimated at as much as $1.6 billion, and receives an estimated $2.50 per month per subscriber in the Houston area.[41] Comcast SportsNet Northwest charges more than $2 per subscriber per month,[42] and the fees are set to increase more than 20 percent over the next three years to $32.16 annually by the end of 2012-2013.[43] A recent analyst report by SNL Kagan similarly found that per subscriber license fees for RSNs have risen at an annual rate of 8.9% over the last five years.[44] Verizon's experience confirms that the licensing fees associated with RSNs generally are among the highest of all channels, and that the rates for gaining access to this programming continue to skyrocket at a pace that exceeds other programming.

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[39] According to data from SNL Kagan, total revenue at RSNs increased 6.6% in 2009 to $4.6 billion, slightly outperforming the 4.8% total revenue growth of basic and HD cable networks. SNL Kagan data shows that all 36 RSNs posted positive revenue growth. *See* Pete Toms, *Last Week in Bizball: The Importance of Regional Sports Networks*, The Biz of Baseball, Aug. 23, 2010, http://www.bizofbaseball.com (follow "Articles From The Staff" to "Pete Toms").

[40] Flint, *supra*.

[41] David Barron, *FSN May Lose Astros, Rockets: FSN May Lose Out to Sweeter Deals*, Houston Chronicle, May 28, 2010, http://www.chron.com/sports/article/TV-Radio-Notebook-FSN-may-lose-Astros-Rockets-1708446.php; Barron, *Go Back to the Future*, *supra*.

[42] *Comcast's Stance Denies U-M Fans Access to Big Ten Network*, Ann Arbor News (Sept. 2, 2007); *see also* Jason Bazinet et al., Citi, *Comcast Corp (CMCSA),* at 7-8 (May 26, 2011) ("While NBCU's national cable networks fetch, on average, affiliate fees of about $0.25 per sub per month . . . , the RSNs generate fees of about $1.90 per sub per month. . . . We expect the RSN affiliate fees to increase about 9% per annum. But we do expect a larger bump in 2012/13 when NBCU's Houston RSN take[s] over for the Astros and the Rockets.").

[43] John Canzano, *Frustration With Comcast Grows*, The Oregonian, Aug. 9, 2010, http://www.oregonlive.com/sports/oregonian/john_canzano/index.ssf/2010/08/canzano_frustration_with_comca.html.

[44] http://www.snl.com/InteractiveX/article.aspx?CDID=A-13239839-12329&KPLT=2.

III. ENFORCEMENT OF THE PROGRAM ACCESS RULES IS NECESSARY TO CURB ANTICOMPETIVE ABUSES BY VERTICALLY INTEGRATED MVPDS

The Commission's rule changes – and, in particular, its holding that Section 628(b) of the Act applies to terrestrially delivered programming, and that program-access complainants may invoke a rebuttable presumption that an unfair act involving a terrestrially delivered, cable-affiliated RSN has the purpose or effect set forth in Section 628(b) – were an important first step for promoting competition in the MVPD marketplace.[45] Now it is time for the Commission to act on pending complaints under the new rules and to increase the number of meaningful competitive choices available to consumers.

On July 7, 2009, Verizon filed a program access complaint against Madison Square Garden, L.P. and Cablevision Systems Corp. regarding their refusal to provide access to the HD versions of MSG and MSG+.[46] In the wake of the *Terrestrial Programming Order*, and in accordance with the procedures set forth in that order, on June 28, 2010, Verizon filed a supplement to its program access complaint to include an allegation "that the defendant has engaged in an unfair act (such as further refusal to provide programming) after the effective date of the rules."[47] As described above, and as Verizon has demonstrated at length in the complaint proceeding, consumers in New York have been denied access to two full NBA and NHL seasons in the high-definition they demand, and a third season is just weeks away. The Commission

[45] *Terrestrial Programming Order* ¶ 1 (ruling that complainants may "pursue program access claims involving terrestrially delivered, cable-affiliated programming similar to the claims that they may pursue with respect to satellite-delivered, cable-affiliated programming, where the purpose or effect of the challenged act is to significantly hinder or prevent the complainant from providing satellite cable programming or satellite broadcast programming"); *see also* 47 U.S.C. § 548(b); 47 C.F.R. § 76.1001(a); *Terrestrial Programming Order* ¶¶ 48-49, 57.

[46] *See* Verizon Program Access Complaint.

[47] *Terrestrial Programming Order* ¶ 64 n.237; *see* Verizon Supplement to Program Access Complaint.

should promptly resolve Verizon’s program access complaint and put a stop to Cablevision’s unfair efforts to limit the competitive choices available to consumers and stymie competition.

Delay in resolving complaints will only serve to encourage Cablevision and other vertically-integrated cable operators to take their chances by withholding this must-have programming in the future, as delay works in their favor by allowing them to maintain a competitive advantage for the duration of such proceedings. As long as incumbents can drag out the process, they maintain a significant advantage in winning and retaining customers, while consumers who demand this programming will be denied the choice, as a practical matter, of switching to competitive providers.

The Commission should accordingly act promptly to resolve Verizon’s pending complaint. And the Commission should also make clear that, going forward, program access complaints will be resolved on an expeditious basis.

Respectfully submitted,

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