Before the
Federal Communications Commission
Washington, DC 20554

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

REPLY COMMENTS OF VERIZON[1]

I. INTRODUCTION AND SUMMARY

The record here confirms the Commission's prior, consistent conclusions. Regional sports programming is unique, because it is both non-replicable and highly desired by consumers. And, because of the unique nature of that programming, there is a continuing need for protections to prevent cable incumbents from using their control over regional sports programming to handicap competitive providers and deny meaningful competitive choice to consumers. In fact, the Commission reaffirmed that important determination just days ago – and took an important step towards providing more consumers with a meaningful choice in video providers – by ordering Cablevision and MSG to provide Verizon with nondiscriminatory access to their high definitional regional sports programming. Tellingly, the only commenters to challenge the significance of this programming or the continuing need for protections are two cable incumbents, each with a long history of denying competitors access to this must-have programming. The Commission should continue to promote consumer choice by ensuring that competitive providers have access to this unique, non-replicable programming necessary to provide consumers a meaningful choice in video providers.

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

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

In Verizon's opening comments, we provided facts demonstrating the significance of regional sports programming to meaningful video competition and to consumers. Those facts confirm what the Commission has consistently found – that regional sports programming is unique, non-replicable, and highly valued by consumers, and that cable incumbents have abused their control over this must-have programming to harm competition and consumers. The comments of most other parties provide further support for this conclusion. Video providers of all types, including DBS providers,[2] small and rural cable operators,[3] a new video upstart with recent experience seeking regional sports,[4] and AT&T,[5] all agree that regional sports programming remains must-have for consumers, and that there remains a need for protections to prevent abuses by the large cable incumbents with exclusive control over much of this programming.

Indeed, the lone dissenters challenging the need for continuing protections to ensure that competitors gain access to the regional sports that consumers demand were Cablevision and Comcast – two parties familiar to the Commission for their long history of withholding regional sports. Indeed, even Comcast admits the harm that a distributor potentially faces if it "fail[s] to carry programming that consumers highly value and demand (and are willing to pay for)," and admits that it carries "nearly all of the RSNs available in Comcast's service areas." Comcast Comments at 2-3. And while Comcast disputes the need for regulatory protections, it suggests that programmers have "strong incentives to seek the broadest possible distribution of [their]

---

[2] *See* DirecTV Comments; Dish Network Comments.

[3] *See* American Cable Association Comments.

[4] *See* Hawaiian Telcom Services Company Comments.

[5] *See* AT&T Comments.

networks, including RSNs, in order to maximize per-subscriber license fees and advertising revenues," and that "RSNs seek to be distributed as broadly as possible to ensure a guaranteed revenue stream." *Id.* at 3-4. Thus, far from providing a defense justifying withholding regional sports, Comcast's own statements cast doubt on the validity of such practices.

In contrast, Cablevision continues to downplay the competitive significance of regional sports programming and defend its refusal to deal with competitive providers like Verizon. First, Cablevision argues that regional sports programming has become a less significant factor for consumers, given the variety of factors considered by consumers as they select a provider and the increasing prevalence of bundled services. *See* Cablevision Comments at 3-10. That consumers may be influenced by a variety of factors is both true and irrelevant, however, as the Commission concluded in its recent order.[6]

Of course, no single factor is determinative of all consumer choice, including something as significant as regional sports programming. But the record here confirms, as the Commission has repeatedly found, that for some significant set of consumers regional sports programming is critical and that the withholding of this non-replicable, must-have programming significantly hinders consumer choice. And although there may be myriad other factors that affect a consumer's choice of video provider – such as price, new technological features, or available bundles of services – video providers can and do compete with respect to those other factors, and they do not need permission from their entrenched competitor to provide features that a substantial number of consumers demand. Cablevision is equally capable of competing for consumers using bundled offerings as is Verizon or any other provider. But that is not the case

[6] *See, e.g.*, *Verizon Telephone Cos. and Verizon Services Corp. v. Madison Square Garden, L.P. and Cablevision Systems Corp.*, Order, File CSR- 8185-P, DA 11-1594, ¶ 64 (Sept. 22, 2011) ("Cablevision Order").

with respect to the non-replicable regional sports programming that Cablevision controls. And the fact that consumers may have choices on other dimensions of their services, but have no real choice in the case of non-replicable regional sports, makes this particular factor all the more important.

Moreover, in the context of ordering Cablevision to provide Verizon with access to MSG and MSG+ in HD, the Commission recently rejected precisely the argument that Cablevision makes here concerning the significance of bundling. The Commission noted that "[t]here is no empirical data in the record to support the claim that bundling of video, voice, data, and wireless service shrinks the importance of HD RSNs to consumers selecting a video provider," and noted that "Defendants' decision to emphasize the availability of MSG HD and MSG+ HD in its advertising indicates Defendants' view that this programming is significant to consumers despite bundling." Cablevision Order ¶ 64.

Next, Cablevision suggests that its withholding of unique, nonreplicable regional sports programming is simply pro-competitive differentiation. *See* Cablevision Comments at 11-13. But "product differentiation," while a valid interest in most contexts, does not provide cable incumbents with a free pass to engage in unfair acts that violate Section 628(b) by abusing their exclusive control over non-replicable sports programming. The Commission summed it up well when it said last week: "We do not dispute that product differentiation strategies may be procompetitive in many instances, but the key distinction here is that the product differentiation strategy involves non-replicable and popular RSN programming." Cablevision Order ¶ 29. Under the circumstances here, Cablevision's claim of "competitive differentiation" is insufficient to overcome the significance of protecting access to this must-have programming in order to ensure meaningful consumer choice.

In short, the record here fully confirms the significance of regional sports programming to consumers, and the Commission should continue to provide protections – as it did in its recent orders – to ensure that consumers receive the full benefits of video competition. Without such protections, Cablevision and other cable incumbents will continue to abuse their control over this must-have, non-replicable programming.

Respectfully submitted,

/s/ William H. Johnson

William H. Johnson
VERIZON
1320 North Courthouse Road
9th Floor
Arlington, Virginia 22201
(703) 351-3060

Of Counsel:
Michael E. Glover

September 26, 2011