prices will result in the average monthly bill exceeding $200 by 2020.[70] The impact goes beyond price. The agreements effectively deny consumers meaningful choice for their telecommunications services. Consumers in the Comcast footprint, for instance, who hoped to see some choice other than Comcast for its video and broadband services, will now have absolutely no hope.

Current competition between the MSOs and Verizon FiOS on price and quality would be eliminated. There is evidence that Comcast and Verizon, for example, are competing on price and quality today. This level of competition is especially evident when comparing the two companies' promotional triple play packages of cable TV, Internet, and voice.[71] The following table uses information from the Comcast and Verizon websites.[72] The promotional prices are for new customers contracting with either provider for two years.

[70] https://www.npd.com/wps/portal/npd/us/news/pressreleases/pr_120410.

[71] While both Comcast and Verizon offer these services individually and in a double play, many customers purchase the full triple play bundle. Both Comcast and Verizon attract new customers by providing deeply discounted promotional offerings. After the two-year contract commitment, the price can increase by up to 50 percent. The existence of competition may affect the post-promotion price. Customers may gain leverage when they have the ability to switch providers offering similar triple play products. This choice may allow the consumer to use the threat of switching as leverage to maintain the promotional offering longer and/or to mitigate the potential rate increase with their current provider. Conversely, the customer may actually switch to the competitor.

[72] The Comcast website is http://www.comcast.com/Corporate/Learn/Bundles/bundles.html. The Verizon website is http://www22.verizon.com/home/shop/shopping.html. The promotional offers are for Washington, D.C.

Promotional Triple Play Packages Offered by Comcast and Verizon					
Package	Comcast Promotional Price	Verizon Promotional Price	Comcast - Verizon	Comcast Package	Verizon Package
Top Tier	$189.99	$144.99	+$40 or 28%	HD Complete XF 200+ Channels, 5 Premium Channels	Ultimate HD 380+ Channels, 2 Premium Channels
				Burst up to 30/6 Mbps; but "normal" is 28/5[73]	75/35 Mbps
				Unlimited Phone	Unlimited Phone
Mid Tier	$149.99	$104.99	+$45 or 43%	HD Premier XF 200+ Channels, 2 Premiums	Extreme HD 290 + Channels 0 Premium
				Burst up to 30/6 Mbps; but "normal" is 28/5	50/25 Mbps
				Unlimited Phone	Unlimited Phone
Basic Tier	$89.00	$94.99	- $5.99 or - 6%	Starter XF 80+ Channels	Prime HD 210+ Channels
				Up to 20/4 Mbps; "normal" is 18/3	15/5 Mbps
				Unlimited Phone	Unlimited Phone
Sources: Comcast website (http://www.comcast.com/Corporate/Learn/Bundles/bundles.html) and Verizon website (http://www22.verizon.com/home/shop/shopping.html). Promotional offers in Washington DC.					

There is evidence that the trend is already beginning in VZW pricing of wireless plans. On June 12, 2012 VZW announced a new price structure for data plans. The plan "could save heavy users money as they attach phones, tablets and laptops to Verizon's network. But it also does away with the carrier's cheapest plans for new smartphone customers and pressures subscribers to give up their unlimited data packages when they upgrade to new phones."[74] Furthermore, VZW will force these consumers to purchase unlimited voice and text, despite the VZW's own evidence that customer use of voice and text is decreasing. Essentially VZW will use the demand for its data plan as the tying product to force consumers to continue to purchase more voice and text than they want.

B. Vertical Effects

The vertical effects of the merger take two forms. First, the merger will severely harm competition in multiple upstream and-downstream markets related to the Members' businesses. This list includes the markets for content and devices (both set-top and mobile). Second, the joint venture provides for **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted]

[73] Normal was defined by Comcast on their website. Comcast internet speeds are listed as "up to" but that is under optimal conditions. Actual speeds may be much slower depending on the amount of Internet traffic from Comcast customers.

[74] Anton Troianovski, *New Front Opens in Wireless Battle*, WALL STREET JOURNAL, June 12, 2012, *available at* http://online.wsj.com/article/SB10001424052702303901504577462241394886300.html.

[redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**This endeavor amounts to a patent pool that includes virtually every threat to competition that the DOJ has traditionally recognized as well as the evolving theories of harm that the DOJ is beginning to consider.

1. Harm in the Wireless Broadband and Bundled Wireless/Wireline Broadband Markets

The SpectrumCo/VZW transaction threatens substantially to harm competition in vertical markets by conferring monopoly and monopsony power on JOE members. The deal will lead to monopoly power for fixed line broadband in the Verizon FiOS footprint, as discussed in the previous section. The transaction will also likely lead to monopsony power in the wireless broadband and bundled wired/wireline broadband markets. In some of these monopsony situations, there already exist certain elements of direct horizontal restraints. For instance, Comcast is a competitor in the distribution of video services. Regardless of a horizontal component, these vertical issues are very important, as they position JOE to threaten direct competitors in the wireless and bundled wireless/wireline markets as well as suppliers. This is especially important given the likelihood that MSOs and VZW will seek expansion into these vertical markets, and are likely to use their monopsony position to facilitate this expansion.

MSOs will continue to make unilateral determinations about consumer entertainment viewing options, and will continue to impose restrictions on how, when, and under what terms customers are able to watch or stream content. Take for instance Comcast's actions with respect to applications on Xbox 360. Comcast was worried that consumers would circumvent the need for cable by watching television through its broadband (over the top, or "OTT"). To combat this, Comcast implemented a policy by which customers have a cap on the amount of data they can use to access OTT sources on devices connected to Comcast broadband. However, if a customer chooses to watch a Comcast-branded Xfinity video application service, the data used does not count against the data cap, provided the customers authenticate their viewing. Netflix cried foul, arguing that Comcast is favoring its affiliated programming over those of its competitors.[75] The net effect is to drive consumers away from non-Comcast video sources. With the JOE in place, Comcast (and the other JOE partners) will be able to authenticate a customer's viewing over the wireless service as well. This authentication may be pivotal in further disrupting switching between wireless and broadband access, as users on non-VZW devices will be forced to re-authenticate their sessions if they attempt to move to MSO WiFi, or vice versa.

[75] Wendy David, Watchdogs Cheer DOJ Probe of Comcast Data Caps, THE DAILY ONLINE EXAMINER, June 13, 2012, *available at* http://www.mediapost.com/publications/article/176793/watchdogs-cheer-doj-probe-of-comcast-data-caps.html.

The DOJ has already taken particular interest in the market for online video distributors ("OVD", also called "over-the-top"). In its competitive impact statement concerning the merger between Comcast and NBC Universal ("Comcast/NBCU"), the DOJ noted "the future growth of OVDs depends, in part, on how quickly ISPs expand and upgrade their broadband facilities and the preservation of their incentives to innovate and invest."[76] At the time, the DOJ did not consider the impact of *wireless* viewing of OVD content. The evolution of wireless broadband technology means that customers may soon have another alternative to wireline to access video, that is, through wireless. But this transaction threatens to eliminate this choice, and decimate an evolving market before it fully evolves. As the Antitrust Division explained in the Comcast-NBCU Competitive Impact Statement

> A merged firm can more readily harm competition when its rivals offer new products or technologies whose competitive potential is evolving. Nascent competitors may be relatively easy to quash. For example, denying an important input, such as a popular television show, to a nascent competitor with a small customer base is much less costly in terms of foregone revenues than denying that same show to a more established rival with a larger customer base. Even if a vertical merger only delays nascent competition, an increase in the duration of a firm's market power can result in significant competitive harm. [77]

As a result of this transaction, the MSOs and VZW will have the ability to specify the means by which specific content is accessed over both wired and wireless platforms through their control of the technology platform used to access the content. As a result of this transaction, the MSOs and VZW will have the ability to implement a three-pronged strategy to eliminate the threat posed by content-distribution competition such as Netflix. First, they will have the market power to increase the cost of their inputs, most notably access to content and access to wireless and wireline bandwidth. Second, they will bundle content with their wireless and wireline services, thereby making it nearly impossible for any non-vertically integrated competitor to compete on price. Third, they will impose data caps or penalty prices to access content that is not part of their own product bundles, thereby impacting downstream consumer demand. This will amount to a reprisal of the Xbox strategy, but imposed in the wireless world as well.

[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [redacted]

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[76] United States v. Comcast Corp., General Electric, and NBC Universal, Competitive Impact Statement, *available at* http://www.justice.gov/atr/cases/f266100/266158.htm.

[77] *Id.*

[78] **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**

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As explained previously, bundling is an important tool for MSOs to maintain their profit margins. Through bundles, MSOs are able to foreclose competition from rivals by forcing them either to struggle to offer a complete array of products or sell one competing product at a loss. In the context of vertical competition, bundling enables the JOE Members to sell the entire array of products without making customers feel like they are paying twice. VZW has less experience with bundling, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**

The implication is clear. The MSOs and VZW fear losing revenue and customers unless they are able to convince consumers to perceive the wireless and wireline broadband data services as complementary goods. Targeting a product "in its infancy" is anticompetitive conduct in its purest form. As the JOE Members prepare to develop this new technology, the most important element will be preventing others from arriving there first. By leveraging intellectual property and constraining the vertical markets, the JOE Members are most likely to be able to realize this strategy.

2. Creation of an Anticompetitive Patent Pool

The JOE agreement creates an anticompetitive patent pool that gives the parties enormous market power in the evolving wired/wireless broadband market. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted]

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[79] **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**
[80] **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**
[81] **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**
[82] **[BEGINHIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**

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While patent pooling may be procompetitive in certain situations, it is likely to harm competition when certain factors are present. Patent pools present greatest harm to competition when they are formed by actual or potential competitors, threaten to establish a standard (and therefore confer monopoly power to the pool), and/or contain restrictive exclusivity terms.

A contrast of the DOJ's enforcement decisions in the DVD-MPEG LA[83] patent pool and Summit Technology/VISX[84] is illustrative of the concerns raised by patent pools. In DVD-MPEG LA, the DOJ chose not to pursue enforcement actions against patent pools that sought to harmonize video data storage compression standards. The DOJ opted to permit the patent pools for several reasons. First, the DOJ determined that the technologies were complementary, not competing – meaning that each patent pool member's technology would be "useless absent a license to a separate patented product."[85] Second, the licenses were non-exclusive, and the pool "would not be a mechanism for requiring licensees to take a package of multiple licenses they did not want."[86] Third, the pool would use an independent expert to determine the patents that constitute Standard Essential Patents ("SEP").[87] Fourth, the patent pool promised equal access and equal terms for all licensees. Fifth, unilateral competition within the standard was permitted, meaning that the patent pool members were allowed to compete against each other for innovations outside of the pool. The DOJ also determined that the pool would generate procompetitive efficiencies.

The terms of the JOE violate every single redeeming feature identified by the DOJ in DVD-MPEG LA. First, these patents are not complementary. All of the companies involved currently develop and produce important technologies based on their existing patent portfolio. The patents are not useless, but rather very effective. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY**

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[83] Letter from Joel I. Klein, Acting Assistant Attorney General, Antitrust Division, Department of Justice, to Garrard R. Beeney, Esq. (June 26, 1997), *available at* http://www.justice.gov/atr/public/busreview/215742.htm; Letter from Joel I. Klein, Acting Assistant Attorney General, Antitrust Division, Department of Justice, to Garrard R. Beeney, Esq. (Dec. 16, 1998), *available at* http://www.usdoj.gov/atr/public/busreview/2121.htm.

[84] In re Summit Tech., Inc. & VISX, Inc., No. 9286 (FTC Mar. 24, 1998) (complaint), *available at* http://www.ftc.gov/os/1998/03/summit.cmp.htm.

[85] Steven C. Carlson, *Patent Pools and the Antitrust Dilemma*, 16 YALE L. J. ON REG. 359, 364 (1999) [hereinafter Carlson].

[86] Fed. Trade Comm. Commissioner Sheila M. Anthony, *Antitrust and Intellectual Property: From Adversaries to Partners*, 28 AILPA 1 (2000).

[87] Any patents licensed by JOE Members and derivative patents prosecuted by JOE that enable integration of wireless/wireline technologies will qualify as SEP. It is a

CONFIDENTIAL INFORMATION]While TWC has filed a patent for WiFi roaming technology,[88] it is not clear whether such technology is necessary.

Second, unlike the lack of exclusivity requirements in the DVD-MPEG LA patent pool, the SpectrumCo/VZW transaction requires strict exclusivity. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**The terms make it very unlikely any meaningful competitor would be granted access to any of the technology. Clearly it is unlikely the JOE would grant equal access and equal terms for market participants.

With respect to the remaining DVD-MPEG LA redeeming features, there is no indication of an outside expert to determine SEPs or even any language governing SEPs as opposed to ancillary patents. This plays into the final aspect, as there is no reason to believe that the JOE would refrain from forcing potential licensees (assuming there would be any) from purchasing access to an entire arsenal of patents rather than only the SEPs.

Instead, JOE is more similar to Summit Technology/VISX. In Summit, two companies licensed their patents to a shell company, who then licensed the patents back to the parents, but only to the parents. The FTC alleged that the pooling arrangement eliminated competition between the two companies, restricted competitors' access to the technology by limiting the parents' incentives to license the technology, and established a functional price floor for the market. JOE is similar to this arrangement, though admittedly not a shell company **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]** However, the legal analysis of

[88] Steve Donahue, Time Warner Cable Files WiFi Roaming Patent Application, FIERCE CABLE, Apr. 13, 2012, *available at* http://www.fiercecable.com/story/time-warner-cable-files-wifi-roaming-patent-application/2012-04-13.

foreclosing competitors by restricting access to necessary technology, and creating a de facto price floor by having competitors coordinate on output and access rings true for JOE. In Summit the companies maintained the price floor and restricted competition by having the shell corporation charge a nominal fee for each time a patented procedure was performed. Because the JOE has no easily countable mechanism such as number of procedures, the JOE participants fortify the price floor with MFN clauses, as discussed earlier in the paper.

Arguably the DVD-MPEG LA and Summit cases are substantially simpler than the SpectrumCo/VZW transaction. With that in mind, perhaps the most fitting analysis occurred in a patent-driven merger in an industry with substantial barriers to entry and a race to innovation that mirrors telecommunications: branded pharmaceuticals. In Novartis[89] companies were merging to create a gene therapy treatment which did not exist at the time. The two merging firms each had sets of patents which could be used to develop technologies for gene therapy. The FTC recognized that a transaction centered on the transfer of patents which *may well lead to the creation of a helpful new product* is not immune from antitrust scrutiny when there is reason to believe the transacting parties will monopolize the market and curtail future innovation in that market. Much like JOE, the parties in Novartis were creating a new product that likely would evolve into a separate product market. FTC Chairman Pitofsky and Commissioners Steiger, Starek, and Varney even felt compelled to issue a separate statement, and explained that the case presented "a post-merger picture of potentially life-saving therapies whose competitive development could be hindered by the merged firm's control of substantially all of the proprietary rights necessary to commercialize gene therapy products," and added "Preserving long-run innovation in these circumstances is critical."[90] The remedies were modest yet effective. The FTC required Novartis to grant all requestors SEP licenses on competitive terms, with royalties included, and forbade Novartis from imposing exclusivity requirements. Novartis was permitted to seek cross-licensing agreements in lieu of royalties, thereby maintaining its ability and incentive to compete with licensees.

The question of how antitrust law fits into SEP patent rights held by a dominant competitor is among the biggest challenges facing modern antitrust enforcement. Many firms, especially in the high-technology space, have evolved to use patents as an affirmative means of disadvantaging competitors. The interoperability requirements, economies of scale, and barriers to entry compel industries to identify SEPs as part of competitive standards. Furthermore, the mere ownership of high patent volume enables firms to engage in an endless stream of patent infringement lawsuits. However, there is frequently little hope in coercing fair play or open access across these technologies, and the result is that dominant firms use patent license terms and patent infringement lawsuits to raise rivals' costs and prevent future competition.

The DOJ's recent investigation of patent acquisitions by Google, Rockstar Bidco – a partnership of RIM, Microsoft, Apple, Ericsson and Sony – led the Antitrust Division to consider

[89] *In re* Ciba-Geigy, Ltd., 123 F.T.C. 842 (1997).

[90] *Id.*

the potential harm posed by dominant players accumulating thousands of patents, many of which are vital to modern telecommunications devices. The DOJ openly questioned open source and RAND licensing commitments, and even commented that "During the course of the division's investigation, several of the principal competitors, including Google, Apple and Microsoft, made commitments concerning their SEP licensing policies. The DOJ's concerns about the potential anticompetitive use of SEPs was lessened by the clear commitments by Apple and Microsoft to license SEPs on fair, reasonable and non-discriminatory terms, as well as their commitments not to seek injunctions in disputes involving SEPs. Google's commitments were more ambiguous and do not provide the same direct confirmation of its SEP licensing policies." This statement is important for two reasons. First, it shows that the DOJ is wary when firms refrain from committing to RAND licensing terms. Second, in light of recent developments suggesting that Microsoft is circumventing its commitments by selling patents to non-manufacturing entities and allowing them to engage in patent infringement lawsuits,[91] it suggests that the creativity of the industry is still ahead of that of regulators. This of course comes on the heels of nearly a decade of patent litigation between numerous companies relating to mobile telephone devices and operating systems, including Microsoft, Google, Motorola, Barnes and Nobles, Oracle, Samsung, Apple, and others. For each of these companies, the result was (and still is) millions of dollars in litigation costs, and business uncertainty. For consumers the result is higher prices with fewer firms competing to develop the next best thing.

The JOE members could find themselves in the position of Microsoft, Apple, or others that control numerous patents upon which other companies rely. If the government waits until the technology exists and market participants are clamoring for reasonable licensing terms, it will be too late. It is imperative to strike down the provisions of the agreement that form the infrastructure through which VZW and the MSOs will be able to create the system for anticompetitive use of intellectual property.

V. Remedies

There are several remedial measures the DOJ should take to address the competitive harms likely to result from this transaction. Steps the DOJ should take to protect competition and consumers include the following:

1. Prohibit cross-marketing agreements in any part of the Verizon Communications landline footprint.

2. Require meaningful commitments in the JOE that would allow current and future competitors access to Standard Essential Patents (SEPs) owned, developed, and licensed by JOE, including the right to select licenses that only include SEPs. Prohibit JOE members from engaging in frivolous patent infringement litigation concerning non-SEP

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[91] Derrick Harris, *Are Microsoft and Nokia Closet Patent Trolls? Let the EC Decide*, GIGACOM, May 31, 2012, *available at* http://gigaom.com/2012/05/31/are-microsoft-and-nokia-closet-patent-trolls-let-the-ec-decide/.

patents. Require Verizon Wireless and the Cable Companies to make certain services they provide and intellectual property they develop together under the Agreements available on a nonexclusive basis.

3. Require Verizon Communications to continue to offer FiOS broadband Internet access service, expand in-region deployment to cover at least 95 percent of residential ling units and households within the Verizon in-region territory, and require that a certain percentage of incremental deployment after closing will be to rural areas and low-income living units, with timetables, data reporting, and penalties for non-compliance.

VI. Conclusion

This transaction will result in widespread harm to consumers and competition. Regulators must recognize the very real likelihood that this transaction spells the end of telecommunications competition and concedes one of the most dynamic industries in the United States to a conglomerate of dominant firms eager to monopolize the future. The parties seek to freeze the status quo through cross-marketing agreements that will enable all JOE Members to redirect their focus from competition to collusion and allow the JOE Members to become familiar with each others' businesses. The JOE eliminates all competition between the Members as it relates to the development of new technology or collaboration with other industry players. The exclusivity provisions of the JOE promise firmly to entrench the resulting cartel with monopoly power for the foreseeable future.

It is not enough that this deal could result in innovative new technologies that integrate wired and wireless data communications. The JOE is much more than a research and development collaboration and a joint marketing arrangement. The goal of the JOE is to create the next stage of evolution in media technology by combining wired and wireless telecommunications. While these may be lofty aspirations, the very structure through which the parties contemplate this collaboration creates the next stage of media technology at the expense of competition. This will put an end to the cross-platform competition that undergirds the deregulatory framework of the Telecommunications Act and violates our nation's antitrust laws.

There is a small window for meaningful remedies. Unraveling this transaction will be very difficult once the parties have begun sharing technology. The DOJ, in concert with the FCC, must adopt remedies to protect consumers and the public interest against the considerable harm that would result from this transaction.

Appendix A

[BEGIN HIGHLY CONFIDENTIAL INFORMATION][redacted]

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IMAGE REDACTED

IMAGE REDACTED

Appendix B

Market Share Data for Cable Television

		Subscribers (thousands)	Market share
1	**Comcast**	**22,230**	**22.3%**
2	DTV	19,960	20.0%
3	DISH	13,960	14.0%
4	**Time Warner Cable**	**12,045**	**12.1%**
5	**Cox (est)**	**4,631**	**4.6%**
6	Charter	4,302	4.3%
7	**Verizon**	**4,199**	**4.2%**
8	AT&T	3,808	3.8%
9	Cablevision	3,254	3.3%
10	**Bright House**	**2,101**	**2.1%**
11	Mediacom	1,088	1.1%
12	Frontier (formerly FiOS)	80	0.1%
	Other	8,175	8.2%
	Total Video subscribers	**99,834**	**100.0%**
	VZ/CableCo	**45,207**	**45.3%**

Appendix C

Market Share Data for Broadband Internet

Rank	Company	Subscribers (thousands)	Market Share
1	***Comcast***	***18,086***	***22.2%***
2	AT&T	16,546	20.3%
3	***Time Warner Cable***	***10,306***	***12.7%***
4	***Verizon***	***8,685***	***10.7%***
5	CenturyTel	5,519	6.8%
6	***Cox (est)***	***4,368***	***5.4%***
7	Charter	3,616	4.4%
8	Cablevision	2,963	3.6%
9	Frontier	1,739	2.1%
10	***Bright House (est)***	***1,619***	***2.0%***
11	Windstream	1,355	1.7%
12	Mediacom	859	1.1%
13	Fairpoint	315	0.4%
14	Cincinnati Bell	218	0.3%
	Other	5,132	6.3%
	Total Broadband subscribers	**81,325**	**100.0%**
	VZ/CableCo	**43,064**	**53.0%**

Appendix D

Market Share Data for Wireline Voice

		Subscribers (thousands)	Market share
1	AT&T	39,062	34.6%
2	**Verizon**	**24,047**	**21.3%**
3	CenturyTel	14,536	12.9%
4	**Comcast**	**9,336**	**8.3%**
5	Frontier	5,270	4.7%
6	**Time Warner Cable**	**4,678**	**4.1%**
7	**Cox (estimated)**	**3,709**	**3.3%**
8	Windstream	2,911	2.6%
9	Cablevision	2,355	2.1%
10	Charter	1,862	1.6%
11	Fairpoint	1,032	0.9%
12	**Bright House**	**1,028**	**0.9%**
13	Cincinnati Bell	555	0.5%
14	Mediacom	348	0.3%
	Other	2,206	2.0%
	Total Wireline Voice subscribers	**112,933**	**100.0%**
	VZ/CableCo	**42,797**	**37.9%**

Appendix E[1]

Market Share Data for Retail Mobile Wireless Services

Wireless Market - 2011						
		Subscribers (thousands)	**Market Share (by subscriber)**	**Service Revenue ($ millions)**	**Market Share (by revenue)**
1	Verizon Wireless	109,902	33.9%	$55,629	34.0%
2	AT&T Mobility	104,063	32.1%	$53,510	32.7%
3	Sprint	54,937	17.0%	$25,894	15.8%
4	T-Mobile	33,612	10.4%	$18,733	11.4%
5	MetroPCS	9,474	2.9%	$3,690	2.3%
6	LEAP	5,940	1.8%	$2,483	1.5%
7	US Cellular	5,932	1.8%	$3,913	2.4%
	Total	**323,861**	100.0%	**$163,851**	100.0%

[1] Goldman Sachs & Co., Wireless Industry Model, 11/11/2011; US Cellular 10-Q Form, period ending September 30, 2011.

Comparison of Verizon, Comcast and Time Warner Promotional Triple Play Rates and Quality

Appendix D

REDACTED - FOR PUBLIC INSPECTION

Communications Workers of America
AFL-CIO, CLC

501 Third Street, N.W.
Washington, D.C. 20001-2797
202/434-1100

Comparison of Verizon, Comcast and Time Warner Promotional Triple Play Rates and Quality

Verizon has been competing against Comcast and Time Warner both in terms of the price and quality of their offerings. This level of competition is especially evident when comparing the companies' promotional triple play packages.[1] A triple play package combines cable TV, Internet and phone services.[2] The following tables use information available from the Comcast, Time Warner and Verizon websites.[3] The promotional packages listed in each table are for new customers contracting with either provider for a period of two years.

The impact of competition between Comcast and Verizon can be seen in a quick comparison between the comparable triple play packages identified in the following table.

- Top Tier. **The Comcast top tier package is priced $40 or twenty-eight percent (28%) higher than the comparable Verizon package.** The Comcast package has 1 more premium channel but 180 fewer overall channels and significantly slower Internet speeds than the Verizon package.
- Mid-Tier. **The Comcast mid-range tier package is priced $45 or forty-three percent (43%) higher than the comparable Verizon package.** The Comcast package has 2 more premium channels but 90 fewer overall channels and significantly slower Internet speeds than the Verizon package.
- Basic Tier. The Comcast basic tier package is priced $5.99 or six percent (6%) lower than the Verizon package. However, the Comcast package has 130 fewer channels than the Verizon package. In relation to Internet speeds, Comcast has a slightly higher download speed while Verizon has a higher upload speed.

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[1] The triple play bundles are very important. For example, more than 75 percent of Verizon's TV customers have the triple play. Francis Shammo, Verizon's Chief Financial Officer stated the following: "In FiOS Video, we added 194,000 subscribers in the quarter, bringing our total to 4.2 million and increasing our penetration to 32%. Within our FiOS subscriber base, about 3.5 million customers are triple play and FiOS ARPU increased in the fourth quarter to more than $148 per month. In terms of our deployment, we ended the year with 16.5 million premises passed, adding just over 900,000 in 2011. We had 13.6 million homes open for sale for Internet and 3.3 million for video." Transcript, Verizon 4th Quarter 2011 Earnings Call, January 24, 2012.

[2] Both Comcast and Verizon offer individual services like cable only and also a double play combination of any two of the three services.

[3] The Comcast website is http://www.comcast.com/Corporate/Learn/Bundles/bundles.html. The data is for Washington, D.C. The Verizon website is http://www22.verizon.com/home/shop/shopping.html. The Time Warner website is https://order.timewarnercable.com/OfferList.aspx.

Verizon Promotional Triple Play Packages Offer Substantial Price Discounts, More Channels, and Higher Internet Speeds than Comcast Triple-Play Packages

Comcast Promotional Price	Verizon Promotional Price	Difference between Comcast and Verizon Promotional Price
TOP TIER		
$189.99	$144.99	+$40 or 28%
Verizon *Ultimate HD*: 380+ channels, 4 premium channels. Internet: 75/35 Mbps. Unlimited phone **Comcast** *Complete XF*: 200+ channels, 5 premium channels. Internet: Burst up to 30/6 Mbps but "normal" is 28/5.[4] Unlimited phone		
MID TIER		
$149.99	$104.99	+$45 or 43%
Verizon *HD Premier XF* 200+ Channels, 2 Premiums. Internet: 50/25 Mbps. Unlimited phone **Comcast** *Extreme HD,* 290 + Channels, 0 Premium. Burst up to 30/6 Mbps, but "normal" is 28/5. Unlimited phone		
BASIC TIER		
$89.00	$94.99	- $5.99 or - 6%
Verizon *Prime HD,* 210+ channels. Internet 15/5 Mbps. Unlimited phone **Comcast** *Starter XF,* 80+ channels. Internet up to 20/4 Mbps but "normal is 18/3 Mbps. Unlimited phone		
Sources: The Comcast website is http://www.comcast.com/Corporate/Learn/Bundles/bundles.html. The Verizon webiste is http://www22.verizon.com/home/shop/shopping.html		

Time Warner and Verizon also are competing both in terms of price and the quality of their triple play promotional offerings.[5] The following table uses information readily available from the Time Warner and Verizon websites.[6] The prices listed in the table are promotional prices for new customers contracting with either provider for a period of two years.

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[4] Normal is defined by Comcast agents on their website. Comcast internet speeds are listed as "up to" but that is under optimal conditions. Actual speeds may be much slower depending on the amount of Internet traffic from Comcast customers.

[5] Both Time Warner and Verizon offer individual services like cable only and also a double play combination of any two of the three services.

[6] The Time Warner website is. The Verizon website is http://www22.verizon.com/home/shop/shopping.html.

Verizon Promotional Triple Play Packages Offer Substantial Price Discounts, More Channels, and Higher Internet Speeds than Time Warner

Time Warner Promotional Price	Verizon Promotional Price	Difference Between Time Warner and Verizon Promotional Price
TOP TIER		
$199.99	$144.99	+$55 or 38%
Verizon *Ultimate HD* 380+ Channels, 4 Premium Channels. Internet: 75/35 Mbps. Unlimited phone **Time Warner** 200+ Channels. Internet: Burst up to 50 Mbps; but "normal" is less. Unlimited phone		
MID TIER		
$164.99	$104.99	+$60 or 57%
Verizon *Extreme HD,* 290+ Channels, 0 Premium. Internet: 50/25 Mbps. Unlimited phone. **Time Warner** 200+ Channels, 4 Premium Channels. Internet: Burst up to 20 Mbps, but "normal" will be lower. Unlimited Phone		
BASIC TIER		
$89.99	$94.99	-$5 or 5%
Verizon *Prime HD,* 210+ Channels. Internet: 15/5 Mbps. Unlimited phone **Time Warner** 200+ Channels. Internet: Up to 10/1 Mbps but "normal" will be less. Unlimited phone		
Sources: the Time Warner website is https://order.timewarnercable.com/OfferList.aspx. The Verizon website is http://www22.verizon.com/home/shop/shopping.html		

The impact of competition can be seen in a quick comparison between the comparable triple play packages identified in the table.

- Top Tier. **The Time Warner top tier package is priced $55 or thirty-eight percent (38%) higher than the comparable Verizon package.** The Time Warner package has 180 fewer overall channels, no premium channels (Verizon offers 4 premium channels) and significantly slower Internet speeds than the Verizon package.

- Mid-Tier. **The Time Warner mid-range tier package is priced $60 or fifty-seven percent (57%) higher than the comparable Verizon package.** The Time Warner package has 4 more premium channels but 90 fewer overall channels and significantly slower Internet speeds than the Verizon package.

- Basic Tier. The Time Warner basic tier package is priced $5 or five percent (5%) lower than the Verizon package. However, the Verizon package has 10 more channels and significantly higher download speeds.

Comcast, Time Warner and Verizon attract new customers by providing deeply discounted promotional offerings. In addition to the discounted prices, they require a two (2) year contract commitment where at the end of the contract period, the promotional rates can be increased to the currently applicable standard rate ("rate card"). Such rate increases can range up to 50%. In the promotional offerings on the companies' internet sites, the companies do not advertise the rate card price but only the promotional offerings. Consumers are not made aware of the inherent price increases they will experience after the two year promotional period.

The existence of competition may affect the post-promotion price paid by consumers. Customers may gain leverage when they have the ability to switch from one provider to another provider offering similar triple play products. This choice may allow the consumer to use the threat of switching to the competitor as leverage to maintain the promotional offering longer and/or to mitigate the potential rate increase with their current provider. Conversely, the customer may actually switch to the competitor's promotional offerings for lower prices.