Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)))))	MB Docket No. 12-203

COMMENTS OF VERIZON

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I. INTRODUCTION AND SUMMARY.

The continued rollout of competitive video services by Verizon and other newer entrants in the video marketplace – some facilities-based and others over-the top – continues to expand the choices available to consumers and encourage increased innovation. Multichannel video programming distributors ("MVPDs") and other video providers continue to enhance their service offerings by adding more programming, rolling out new interactive features, and making available different means of accessing video content. These changes in the video programming marketplace have led to tangible consumer benefits.

Nonetheless, several obstacles still exist that get in the way of more widespread video competition and more meaningful consumer choice – obstacles the Commission should remove. First, the Commission should extend the prohibition on exclusive programming contracts by vertically-integrated incumbent cable operators, which continue to represent a significant threat to competition in the video programming marketplace. The Commission should not permit cable incumbents to withhold vital

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

programming, such as regional sports programming, to disadvantage their competitors and harm their customers.

Second, the Commission should reform the retransmission consent regime, which undermines competition and hurts consumers. Under the current regime, retransmission consent negotiations are skewed in favor of broadcasters, which translates into higher prices and increased service disruptions. The best remedy for the current negotiating imbalance is to eliminate all those rules and regulations that favor broadcasters and prevent the operation of true, free market negotiations – including must-carry rights, exclusivity rules, and channel placement preferences. The Commission also should amend its rules to strengthen the existing requirement that parties engage in good faith negotiations and should adopt specific procedures to reduce the likelihood that negotiations result in a disruption of service to consumers.

Third, the Commission should apply cancellation and retention marketing rules fairly and consistently to competing cable operators. Under the current regime, different rules govern the cable service cancellation process and the marketing permitted while a cancellation request is pending, depending upon whether an incumbent cable operator or a traditional telephone company is involved. Furthermore, the current rules that apply to incumbent cable operators make it more cumbersome for consumers to disconnect their service and switch to a competing video offering. With traditional telephone companies and cable incumbents now selling the same bundles of services, the same cancellation and retention marketing rules should apply to all.

Finally, in addition to removing existing obstacles to more robust video competition, the Commission should refrain from imposing new regulatory requirements, particularly on newer entrants in the video marketplace, that would hamper competition and stifle innovation. Specifically, the Commission should not: (i) dictate technology mandates on video service providers; (ii) impose traditional MVPD regulations on online video providers; or (iii) extend program carriage requirements on competitive video providers. Likewise, the Commission should proceed with caution when considering any new regulation of the video marketplace and should decline to adopt any regulation for which there is no compelling justification.

II. INCREASED COMPETITION AND INNOVATION IN THE VIDEO MARKETPLACE BENEFITS CONSUMERS.

With continued investment by newer entrants such as Verizon, consumers increasingly have a wireline alternative to the video services offered by the incumbent cable operators. Furthermore, with increased broadband deployment and adoption, consumers increasingly are accessing video programming online. The result is an increasing array of choices for video consumers.

Newer Entrants Face Ubiquitous Video Competition. Since first introducing its FiOS TV service in 2005, Verizon has invested billions of dollars to expand the availability of its next-generation, all-fiber broadband network to offer consumers cable as well as broadband and telephone services. The reach and adoption of FiOS TV continues to increase, as the following chart demonstrates:

As of:	FiOS TV – Subscribers	FiOS TV – Premises Open for Sale	FiOS TV – Penetration	FiOS – Premises Passed
June 30, 2007	515,000	3.9 million	13 %	7.6 million
Dec. 31, 2007	943,000	5.9 million	16%	9.3 million
June 30, 2008	1.4 million	7.0 million	19.7%	11 million
Dec. 31, 2008	1.9 million	9.2 million	20.8%	12.7 million
June 30, 2009	2.5 million	10.3 million	24.6%	13.8 million
Dec. 31, 2009	2.9 million	11.7 million	24.5%	15.4 million
June 30, 2010	3.2 million	12.4 million	25.9%	15.9 million
Dec. 31, 2010[2]	3.5 million	12.4 million	28%	15.6 million
June 30, 2011	3.8 million	12.9 million	29.9%	16.1 million
Dec. 31, 2011	4.2 million	13.3 million	31.5%	16.5 million
June 30, 2012	4.5 million	13.7 million	32.6%	17 million

Source: Verizon Investor Quarterly Bulletins, www22.verizon.com/idc/groups/public/documents/adacct.

With 17 million premises passed as of June 30, 2012, Verizon continued to make progress towards its current plan of extending its FiOS network past approximately 18 million premises.

Verizon's progress in rolling out FiOS TV service is even more impressive given the competition it faces from entrenched competitors in the areas in which Verizon operates. In every area where FiOS TV is available, Verizon faces competition from an incumbent cable operator that offers a bundle of video, broadband, and voice services as well as the two national direct broadcast satellite ("DBS") providers.[3] Verizon also faces

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[2] The Year-End 2010 numbers reflect the sale of certain FiOS lines to Frontier on July 1, 2010.

[3] DBS services continue to expand, with DirecTV serving nearly 20 million subscribers in 2012, which represents an increase of 2 percent from 2011, while Dish currently serves more than 14 million subscribers, a 16 percent increase from 2011. *See* DirecTV, Press Release, *DirecTV Announces Second Quarter 2012 Results* (Aug 2,

further competition as consumers increasingly are turning to online services, such as Netflix, Hulu, iTunes, Amazon Video, YouTube, and Vuze for some or all of their video programming.

The increasing availability of online and traditional video services – and consumers' ability to mix-and-match between the various sources for their desired video content – creates an expanding array of consumer choices. MVPDs such as Verizon deliver video service to computers, tablets, and mobile phones, while online services such as Netflix and Amazon Video are available through apps on TVs and Blu-ray/DVD players that deliver high quality video over the Internet to a consumer's television screen.

Video Prices. Despite the rising cost of acquiring video programming – including as a result of increasing payments related to retransmission consent – consumers have benefitted from the direct competition between video providers. For example, in its recently-released cable pricing survey, the Commission found that "[t]he price per channel is 6.2 percent lower in effective competition communities than in noncompetitive communities."[4] In fact, over the 12 months ending on January 1, 2011, the price per channel decreased by 4.9 percent in effective competition communities compared to a 0.4 percent decrease in noncompetitive communities. *Cable Pricing Report* ¶ 3.

(footnote cont'd.)
2012), *available at* http://investor.directv.com/releasedetail.cfm?ReleaseID=697550; Dish Network, Press Release, *Dish Network Announces 2012 Second Quarter Financial Results* (Aug. 8, 2012), *available at* http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=69910.

[4] *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, Report on Cable Industry Prices, DA 12-1322, MM Docket No. 92-266 ¶ 3 (rel. Aug 13, 2012) ("*Cable Pricing Report*").

The Commission has found, and Verizon's experience confirms, that competition also results in greater choices for consumers. Although the Commission found that subscribers in competitive markets paid slightly higher total prices than consumers in noncompetitive markets, the difference, according to the Commission, is that "[o]perators in effective competition communities carry more channels on expanded basic service than in noncompetitive communities." *Id.* As such, the overall value to consumers in areas with multiple competitive options is greater, as discussed immediately below.

Expanded Content. Since its launch, Verizon has been at the forefront of providing sought after content to its FiOS TV subscribers. With more than 560 all-digital channels, including 145 HD channels and 35,000 monthly video-on-demand titles, FiOS TV provides subscribers with more of what they want, when they want it. With its enhanced carrying capacity, Verizon is able to offer unique programming packages tailored to subscriber's interests and to carry a wide range of programming, including diverse, independent, multicultural, and international channels.

The benefits of Verizon's all-digital, all fiber optic network were evident during the recent London 2012 Summer Olympics. Verizon provided coverage from NBCUniversal on multiple platforms, including live and on demand television, as well as digital, mobile, and tablet platforms.[5] Verizon also showcased its commitment to 3D TV, providing 242 hours of Olympic coverage to FiOS TV subscribers in 3D.

Beyond special events such as the Olympics, Verizon's constantly expanding channel lineup includes a wide range of independent, diverse and niche programmers,

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[5] *See* News Release, *Verizon FiOS Brings Customers NBCUniversal's Coverage of 2012 London Summer Olympic Games July 25-August 12* (July 23, 2012), *available at* http://newscenter.verizon.com/press-releases/verizon/2012/verizon-fios-brings-customers.html.

including many that have been unable to obtain carriage from the large, vertically-integrated incumbent operators.[6] For example, when the Longhorn Network – a channel dedicated to athletic programming and related activities at the University of Texas – launched in September 2011, Verizon was the first national operator to carry the network.[7]

Verizon also offers FiOS TV subscribers a wide range of foreign language content, including offerings in Arabic, Armenian, Balkan, Brazilian, Cambodian, Chinese (Cantonese and Mandarin), Farsi, Filipino, French, German, Greek, Italian, Japanese, Korean, Polish, Portuguese, Romanian, Russian, South Asian (Hindi and Punjab), Spanish, and Vietnamese. In fact, Verizon is the country's leading television provider of Spanish-language channels, offering up to 75 Spanish-language channels on FiOS TV.[8] In June 2012, Verizon launched 10 new Spanish-language channels in high definition, nine of which were offered by Olympusat Inc., the leading independent distributor of Hispanic content in the United States. Verizon also will be adding three new networks from Univision Communications Inc. -- Univision Deportes, which Verizon recently

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[6] *See, e.g.*, News Release, *Verizon Adds BBC AMERICA HD to FiOS TV Lineup* (Aug. 16, 2012) (announcing addition of another independent channel, BBC America, to its high definition lineup), *available at* http://newscenter.verizon.com/press-releases/verizon/2012/verizon-adds-bbc-america-hd.html.

[7] *See* News Release, *The Eyes of Texas Are Upon FiOS TV Subscribers* (Aug. 25, 2011), *available at* http://newscenter.verizon.com/press-releases/verizon/2011/the-eyes-of-texas-are-upon.html. Verizon also has launched a live online simulcast of the Longhorn Network for FiOS TV customers. *See* News Release, *Verizon FiOS Longhorn Network Launch New Online Service* (Nov. 30, 2011), *available at* http://newscenter.verizon.com/press-releases/verizon/2011/verizon-fios-and-longhorn.html.

[8] *See* News Release, *Verizon FiOS Becomes the Nation's Leading Provider of Spanish-Language Programming* (June 4, 2012), *available at* http://newscenter.verizon.com/press-releases/verizon/2012/verizon-fios-tv-becomes-the.html.

launched, and Univision tlnovelas and FOROtv, which Verizon has announced plans to include in its program lineup.

FiOS TV subscribers have the option to add niche programming to satisfy their specific programming needs. Options include Disney Family Movies, The Karaoke Channel, Anime Network, Saavn (Bollywood movies and music), and The Jewish Channel, which are available at prices starting at $5.99 per month.

In addition to providing a platform on which other providers can deliver their programming, Verizon also provides its FiOS 1 channel in the New York City and Washington, DC regions. FiOS 1 provides subscribers with local and hyper-local content, including local news, events, weather, traffic, and sports. FiOS 1 also offers unique, locally-produced programming such as local business programs Money & Main$treet and Restaurant Hunter on Long Island, local political show Caucus in New Jersey, and Push Pause, featuring local stories shot by citizen journalists, in Washington, DC.

Technology. One of the most significant developments in the video programming marketplace in recent years has been the introduction of new technologies that free subscribers from their television sets and traditional set-top boxes. Today's consumers frequently are on the move and want to watch video programming while on the go, and Verizon as well as other providers have responded. Consumers can watch certain FiOS TV content at home or on the road using their laptop computers, tablets, or even mobile devices. And the FiOS TV app delivers features once limited to the living room, such as the ability to schedule and delete DVR recordings wherever FiOS TV subscribers may be.

With FiOS and its all-fiber architecture, Verizon is able to deliver large quantities of data that customers increasingly demand.[9] For example, residential consumers can stream video, play online games, and download large files at speeds utilizing Verizon's new Quantum offerings that feature speeds of up to 300 Mbps downstream and 65 Mbps upstream, which are the nation's fastest, mass scale residential Internet speeds available.[10] Verizon's FiOS Quantum service likely will prompt competitors to increase the speeds of their broadband offerings.[11]

In addition to enabling faster download speeds to facilitate online viewing, FiOS TV service also is designed to combine the benefits of QAM technology with emerging IP-based technology. Like many traditional cable operators, Verizon delivers linear video programming to subscribers using QAM. However, Verizon differentiates its service through the use of IP technology to deliver certain video content, including video-on-demand services, as well as a variety of advanced features. These include Verizon's Widgets, which allow FiOS customers to access a variety of interactive and information services on their television set, such as localized traffic and weather, Pandora Internet radio, and social media sites like YouTube, Twitter, and Facebook. FiOS Widgets are

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[9] *See* FCC's Office of Engineering and Technology and Consumer and Governmental Affairs Bureau, *2012 Measuring Broadband America July Report*, at 46 (2012) (noting that consumers increasingly subscribe to higher broadband speed tiers as providers upgrade their networks to make available higher capacity services).

[10] *See* News Release, *Verizon Combines Insane Internet Speeds With Sensible Value in New FiOS Bundles* (June 18, 2012), *available at* http://newscenter.verizon.com/press-releases/verizon/2012/verizon-combines-insane.html.

[11] *See, e.g.*, Sean Buckley, *Comcast Counters Verizon's Quantum FiOS Offering with 305 Mbps Tier*, FierceTelecom (July 23, 2012), *available at* http://www.fiercetelecom.com/story/comcast-counters-verizons-quantum-fios-offering-305-mbps-tier/2012-07-23.

also highly customizable, allowing customers, for example, to track and update their fantasy football rosters or to build and follow their NCAA tournament brackets.[12]

FiOS TV's hybrid QAM/IP network allows Verizon to deliver these additional features using separate capacity on the network, meaning that Verizon does not have to take away from the capacity that it dedicates to linear channels using QAM to provide these new and innovative services. Whereas Verizon's competitors typically must accommodate their video-on-demand and Internet services by reducing the number of channels offered or engaging in compression, such practices are unnecessary on the FiOS network. Instead, Verizon can deliver new, high-bandwidth services such as 3D TV while simultaneously increasing the total number of channels that it delivers *and* increasing the IP-based features that it offers, including Internet broadband access speeds.

Verizon also has been able to harness its IP infrastructure to offer unique integration with customer's existing home networks. For example, Verizon's Media Manager allows subscribers to stream music, videos, and photographs stored on their home computer for viewing on their television. Verizon also was the first video provider to offer multi-room DVR service to its subscribers. With this service, subscribers can record a program in one room and watch it on any other set-top connected television in their home without the need for an additional DVR.

FiOS TV not only offers more content through its set top boxes, but also is increasingly freeing consumers from the need to use a set top box at all to access FiOS TV content and services. In late 2010, Verizon introduced Flex View, which allows

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12 *See* Verizon, News Release, *ESPN's 'Tournament Challenge' Offers Game-Changing Experience for Verizon FiOS TV Subscribers* (Mar. 14, 2012), *available at* http://newscenter.verizon.com/press-releases/verizon/2012/espns-tournament-challenge.html.

subscribers to select from more than 15,000 titles using any screen (TV, computer or mobile) and watch that content on up to five registered devices. And with FiOS TV Online, Verizon's subscribers have access to a wide range of content directly over the Internet, including programming and movies from ESPN, HBO, Cinemax, Showtime, CNN, TBS, TNT, Cartoon Network, Comedy Central, nick, and more.

Verizon also recently launched the My FiOS mobile application, which provides consumers with a single point of access to FiOS services including FiOS Mobile Remote, Verizon's Home Monitoring and Control Service, Media Manager, and Flex View.[13] Subscribers can use the My FiOS app at home or on the go to view a live camera feed of their residence, watch a movie, schedule a DVR recording, or share personal photos and videos with family and friends.

Verizon also continued to innovate and expand subscribers' ability to access video programming without the need for a set top box. For example, FiOS TV subscribers with Xbox consoles can view select live TV channels through their Xbox system. Consumers can even control their TV experience with voice and gesture commands through Kinect for Xbox 360.[14] And FiOS TV subscribers with Samsung Smart TVs and Smart Blu-ray players can use the FiOS TV app to access 26 live TV

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13 *See* News Release, *Verizon Simplifies Remote Access to Broad Range of Entertainment Services and Customer Tools With New 'MY FiOS' Application* (Oct. 18, 2011), *available at* http://newscenter.verizon.com/press-releases/verizon/2011/verizon-simplifies-remote.html.

14 *See* News Release, *Live Verizon FiOS TV Coming Soon to Xbox, Complete With Kinect Voice and Gesture Controls* (Nov. 29, 2011), *available at* http://newscenter.verizon.com/press-releases/verizon/2011/live-verizon-fios-tv-coming.html.

channels and more than 10,000 video-on-demand titles, without any additional hardware.[15]

Meanwhile, the Verizon Media Server, which Verizon will begin rolling out in coming months, will further expand the ability for consumers to access content on their choice of devices, and without unwanted set-top boxes. The Verizon Media Server will be a single device that will serve as an entertainment hub for the home, streaming media to other Internet-connected devices in the home, including laptops, gaming systems, tablets, mobile phones, and even TVs that would communicate directly with the server over Wi-Fi.[16] Because not all TVs are IP-enabled at this time, additional TVs may be outfitted with small set-top boxes, which are more energy efficient. To facilitate this migration to television service without wires, Verizon currently is testing the ability to stream 3D HD video – the highest capacity video currently available for consumer devices – over Wi-Fi using the its media server technology. By offering these additional viewing options, Verizon will give its customers added convenience at lower cost.

III. THE COMMISSION'S REGULATORY FRAMEWORK SHOULD CONTINUE TO ENCOURAGE VIDEO COMPETITION AND NOT INHIBIT INNOVATION.

Notwithstanding the benefits to consumers from the competition being brought to the video marketplace by Verizon and other newer entrants, the Commission should take action to facilitate more widespread competition. Specifically, the Commission should

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15 Verizon, News Release, *Samsung to Offer Verizon FiOS TV App on Smart TVs and Smart Blu-ray Players in 2012* (Jan. 12, 2012), *available at* http://newscenter.verizon.com/press-releases/verizon/2012/samsung-to-offer-fios-smart.html.

16 *See* Alberto Canal, *The Future of TV is Looking* Green, Verizon at Home, http://forums.verizon.com/t5/Verizon-at-Home/The-Future-of-TV-is-Looking-Green/ba-p/389229 (last visited Aug. 30, 2012).

extend existing program access protections, particularly in the case of must-have content such as regional sports programming, and should reform the retransmission consent regime as well as the Commission's cancellation and retention marketing rules. By the same token, the Commission should avoid unnecessary regulation, such as technology mandates, the extension of traditional regulation to online video services, an expansion of program carriage requirements to competitive video providers, or the adoption of other unwarranted regulatory requirements.

A. The Commission Should Extend The Prohibition on Exclusive Programming Contracts.

The Commission should extend the prohibition on exclusive programming contracts by vertically-integrated incumbent cable operators, which continue to represent a significant threat to more widespread and effective competition in the video programming marketplace. In enacting the 1992 Cable Act which directed the Commission to adopt the exclusive contract prohibition,[17] Congress was responding to a unique competitive threat to video competition. Namely, during a time when most cable incumbents had exclusive franchise agreements that completely shielded them from competition, they exploited that position to gain interests in valuable programming that any future competitors would need to compete. At the time, Congress recognized "the cable industry's 'stranglehold' over programming," which created "unfair hurdles" for

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[17] *See* 47 U.S.C. § 548; *see generally* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460.

new competitors "attempting to gain access to the programming hey need in order to provide a viable and competitive multichannel alternative to the American public."[18]

The prohibition on exclusive contracts has created a landscape in which video competition has begun to emerge. However, vertically-integrated incumbent cable operators continue to extend the benefits of their former monopoly franchises and remain well positioned to use their control over critical video programming to stifle competition if the exclusive contract prohibition is permitted to lapse. Cable operators are affiliated with 115 national programming networks, including seven of the top 20 networks, ranked by subscribership or by prime time ratings.[19] Cable's control over sports programming is even more pronounced, with cable operators vertically integrated with 57 of the 109 regional sports networks nationwide. *NPRM* at App. C. Accordingly, as the Commission has recognized, cable operators maintain the ability to deny access to competitive MVPDs, thereby "adversely affect[ing] competition in the video distribution market."[20] In fact, as demonstrated by Verizon's successful program access complaint against Cablevision and its affiliated programming network, MSG, incumbent cable

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18 *Implementation of Section 302 of the Telecommunications Act of 1996*; *Open Video Systems*, Second Report and Order, 11 FCC Rcd 18,223, ¶ 189 (1996) (quoting 138 Cong. Rec. H6540 (daily ed. July 23, 1992) (statement of Rep. Eckart)).

19 *See Revision of the Commission's Program Access Rules, et. al*, Notice of Proposed Rulemaking, 27 FCC Rcd 3413, at App. B (2012) ("*NPRM*").

20 *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 17,791, ¶ 37 (2007).

operators continue to have the incentive and ability to use their control over programming to disadvantage their competitors.[21]

At an absolute minimum, the Commission should extend the exclusive contract prohibition for non-replicable programming, including RSNs. Maintaining access to non-replicable programming is critical to preserving competition in the video marketplace, given that the withholding of such programming is "uniquely likely to significantly impact the MVPD market."[22] Survey evidence that Verizon submitted in its program access dispute with Cablevision and MSG confirms the importance of access to non-replicable programming, finding that 54 percent of all viewers and 77 percent of sports fans consider the availability of regional sports channels in HD an important factor in deciding whether to switch video providers.[23] And while competitive providers may be able to replicate or find substitutes for some types of programming, that is not the case for such programming as exclusive RSN programming.

Indeed, the exclusive contract prohibition remains essential to competition. For example, Time Warner Cable recently entered into a 20-year agreement for distribution rights to Lakers games in Los Angeles, and announced plans to launch two new regional sports channels.[24] Without access to such sports programming, other MVPDs would be

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21 Verizon Telephone Companies and Verizon Services Corp., v. Madison Square Garden, L.P. and Cablevision Systems Corp., Memorandum Opinion and Order, FCC 11-167 (rel. Nov. 10, 2011).

22 *See Cablevision Systems Corp. v. FCC*, 649 F.3d 695, 717 (D.C. Cir. 2011).

23 *See* Verizon Reply Ex. 1 (Stella Decl.), Ex. A at 9, *Verizon Tel. Cos. v. Madison Square Garden, L.P.*, File No. CSR-8185-P (Oct. 22, 2010).

24 *See* News Release, *Time Warner Cable and the Los Angeles Lakers Sign Long-Term Agreement for Lakers Games, Beginning With 2012-2013 Season* (Feb. 14, 2011), *available at* http://ir.timewarnercable.com/phoenix.zhtml?c=207717&p=irol-newsArticle&ID=1528805&highlight.

unable to compete effectively against Time Warner Cable. Accordingly, to foster an environment that continues to facilitate video competition, the Commission should extend the exclusive contract prohibition or, at a minimum, extend the prohibition for non-replicable programming, such as RSNs.

B. <u>The Commission Should Reform the Broken Retransmission Consent Regime.</u>

The retransmission consent regime is broken and represents an increasing threat to video competition and consumer well being. Retransmission consent negotiations between broadcasters and video providers occur in a marketplace skewed in favor of broadcasters as a result of government-imposed regulations. The result is a lose-lose proposition for consumers: either a video provider capitulates to the demands of broadcasters for what have become unjustifiable increases in compensation, which translates into higher prices for customers, or the video provider holds firm, resulting in actual or threatened disruptions to customers' service.[25]

Retransmission disputes are directly affecting consumers to an increasing degree. As of July 2012, television stations had pulled their signals from MVPDs on 69 occasions in six months, an increase of 35 percent from the previous year. Verizon's customers became the victim of the retransmission consent regime earlier this year, when Newport Television withheld its signals in a retransmission consent dispute, denying FiOS TV subscribers access to the ABC affiliate in Syracuse, New York, the Fox affiliate in Albany, New York, and the CBS, MyNetworkTV, and CW stations in Harrisburg,

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[25] *Amendment of the Commission's Rules Related to Retransmission Consent,* Notice of Proposed Rulemaking, MB Docket No. 10-71 ¶ 17 (rel. March 3, 2011) (recognizing that subscribers become the "innocent bystanders adversely affected" when retransmission consent negotiations break down) ("*Retransmission Consent NPRM*").

Pennsylvania.[26] Although Verizon ultimately reached a deal with Newport three days later, current government policies tolerate, if not encourage, such service disruptions.

The problem is a series of unnecessary governmental preferences that distort the marketplace for video distributors' carriage of broadcast channels. These preferences effectively grant monopoly status to local broadcasters. For example, the Commission's current network non-duplication and syndicated exclusivity rules prevent a video provider from obtaining broadcast programming from alternative sources when negotiations break down. Thus, while a broadcaster engaged in a retransmission consent dispute can encourage viewers to change video service providers, MVPDs are prohibited from seeking the equivalent recourse. As a result, broadcasters enter retransmission consent negotiations with an upper hand, allowing them to extract higher fees than those to which they would be entitled in a truly competitive marketplace.

The best remedy for the imbalance in the market for broadcast programming is to eliminate all those rules and regulations that tilt negotiations in broadcasters' favor. Although a comprehensive approach would require action by Congress, which maintains authority over the broadcast preferences embodied in the Communications Act, and other policymakers, such as the Copyright Office, the Commission can act to eliminate the unnecessary and harmful regulations directly within its purview, such as network non-duplication and syndicated exclusivity, as the Commission has proposed to do. *Retransmission Consent NPRM* ¶¶ 42-45. Even this marginal shift in negotiating power

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[26] *See* Steve Donohue, *Verizon Loses Stations in Albany, Syracuse, Harrisburg in Retransmission Dispute*, FierceCable (Jan. 13, 2012), *available at* http://www.fiercecable.com/story/verizon-loses-stations-albany-syracuse-harrisburg-retransmission-dispute/2012-01-13.

would help level the playing field by providing MVPDs with an alternative to capitulation, reducing consumer harm from service disruptions and increased prices.

There are additional steps that the Commission can take to reduce the likelihood of consumer harm from retransmission consent disputes. *First*, the Commission can and should amend its rules to strengthen the existing requirement that parties engage in good faith negotiations. For example, a party's refusal to respond in a timely and reasonable manner to a proposal on relevant issues should constitute bad faith. And while informing consumers about potential disputes is warranted, running one-sided scare advertisements that encourage consumers to place pressure on an MVPD is not and should be viewed as strong evidence of bad faith. *Second*, the Commission can adopt specific procedures to reduce the likelihood that negotiations result in a disruption of service to consumers. One option is to implement a mandatory standstill and cooling off period, during which the parties can continue to negotiate toward a resolution without placing consumers at risk of losing their service. Alternatively, the Commission can implement a mediation or arbitration requirement that would encourage parties to negotiate in good faith toward a reasonable result.

Until the Commission acts to reverse the one-sided nature of retransmission consent negotiations, increased consumer disruptions and higher cable rates are likely to result.

C. The Commission Should Apply Its Cancellation And Retention Marketing Rules Fairly To All Competing Service Providers.

Even though traditional cable companies and telephone companies compete directly for the provision of the "triple play" of services, they are subject to different rules with respect to the service cancellation process and the marketing that is permitted while a request to cancel is pending. This lack of parity distorts competition in favor of the cable incumbents. It also is a matter of customer convenience, as the current process for disconnecting service from an incumbent cable operator is cumbersome and unnecessary.

In 2008, Verizon sought to facilitate the ability of customers to switch video providers by asking the Commission to declare that cable incumbents must accept disconnect orders from the new provider acting as the authorized agent for the customer.[27] Verizon also asked the Commission to confirm that the same marketing rules apply to incumbent cable operators as apply to incumbent telephone companies while a disconnect order is pending. The Commission has yet to act on Verizon's petition.

Commission action is necessary because the existing procedures for submitting disconnect orders when customers choose to change telephone and video providers are very different and confusing to customers. From the customer's perspective, the process to switch *telephone* providers is simple. Over ten years ago, the industry, with Commission approval, established procedures through which the new provider can submit a disconnect order as the authorized agent for the customer and the old provider must promptly cancel that customer's service. Once a customer agrees to accept service from the new provider, the customer need not do anything more. These practices have

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27 *See Petition of Verizon for Declaratory Ruling Confirming That Incumbent Cable Companies Must Accept Subscriber Cancellation Orders When Delivered by Competitive Multichannel Video Programming Distributors as Lawful Agents* (filed Mar. 26, 2008). This nondocketed Petition is attached to Ex Parte Letter from Ann Berkowitz, Verizon, to Marlene Dortch, FCC, Local Number Portability Porting Interval and Validation Requirements; Implementation of the Cable Television Consumer Protection *and Competition Act of 1992*; *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, WC Docket No. 07-244, MB Docket Nos. 07-29 & 07-198 (Apr. 24, 2009).

proven to work well, enhancing customer convenience while facilitating the ability of competitive carriers to transfer customers between them.

However, the process to switch *video* providers is far more cumbersome for a consumer. Cable incumbents do not accept disconnect orders from the new provider, requiring instead that the customer contact them directly to cancel service after choosing a new video provider. The incumbent cable operators' refusal to accept the subscriber's cancellation from the competitive provider causes substantial inconvenience to the customer, unnecessarily extends the time necessary to convert the customer to the new service, and interferes with the ability of the new provider to compete. It also fundamentally tilts the competitive playing field in favor of cable incumbents that benefit from the streamlined processes applicable when they win a telephone customer but refuse to do the same with respect to video services.

Likewise, although Verizon remains convinced that all consumers receive the greatest benefit when they are able to receive complete information about all the competitive options available to them, the Commission has reached a different conclusion with respect to departing customers for voice *telephone* service.[28] As a result, Verizon's ability to market to departing customers is strictly limited, while cable incumbents are not subject to such limitations. If fact, cable incumbents can engage in aggressive retention marketing when the customer calls to schedule the cancellation of the service and throughout the period that the change is being effected. In addition, due to the different cancellation processes for video and voice described above, cable providers have the

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[28] *See In the Matter of Bright House Networks, LLC, et al. v. Verizon California, Inc., et al.*, 23 FCC Rcd 10704 (June 23, 2008).

ability to speak live and market to *all* of their customers before canceling service, while voice providers must cancel service regardless of whether they speak to their customers.

With telephone companies and cable incumbents selling the same bundles of services to an increasing number of customers, the cancellation and retention marketing rules do not affect cable incumbents and telephone companies equally. Telephone companies' retention marketing efforts would most frequently be directed at departing *voice* customers; cable's retention marketing efforts at departing *video* customers. While many customers switching voice service from traditional telephone companies do not purchase other services from that company, a relatively small percentage of cable incumbents' voice customers are voice-only. Thus, customers departing from telephone companies typically cannot receive retention offers while customers departing from cable companies typically can – even though both companies would be attempting to sell the same bundle of voice, video, and broadband services. While Verizon still believes that customers benefit from having all available information about competitive offerings, the same rules should apply to all.[29]

[29] See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Reconsideration, 19 FCC Rcd 15856, ¶ 21 (2004) (the effect of maintaining disparities between the regulation of video and voice services will be to "reduce competition in the provision of triple play services and result in inefficient use of communications facilities"). When it prohibited telecommunications carriers from entering into exclusive access contracts with residential multiple tenant environment owners, the Commission noted that doing so was necessary to "create parity for the provision of telecommunications services to customers," reasoning that "the importance of regulatory parity is particularly compelling" in "an environment of increasingly competitive bundled service offerings." *Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, 23 FCC Rcd 5385, ¶¶ 1, 5 (2008).

D. <u>The Commission Should Not Adopt Unnecessary Rules To Govern The Video Marketplace.</u>

As the Commission considers new regulations or the expansion of existing regulations over the video programming industry, it must carefully consider the effects that such regulations will have on innovation and competition. The Commission currently has pending proceedings in which it is considering several proposed regulations that, if implemented, would threaten to undermine many of the positive competitive developments and would stifle future innovation in the marketplace. Although, as identified above, there remain a few, discrete areas where regulation is necessary to address documented competitive problems, the Commission should not adopt any regulation that would interfere with a properly functioning marketplace.

1. The Commission should refrain from imposing technological mandates on MVPDs.

In this era of increasing competition and rapid technological innovation, the Commission should proceed with caution when imposing technology mandates on video service providers, and it generally should refrain from doing so. Video providers rapidly are developing ways to deliver more content to more subscribers in more places. This private sector innovation will benefit consumers in ways that government mandates cannot. For instance, in 2010, the Commission issued a notice of inquiry on AllVid, which would have mandated the use by MVPDs of a universal adapter to facilitate the delivery of video programming to any number of third-party devices. While the Commission's goal – facilitating innovative methods for the delivery of cable programming and integrating Internet-based and traditional cable platforms – was noble, the one-size-fits-all approach would hinder rather than encourage such an outcome.

As described above, Verizon is at the forefront of integrating IP technology with traditional QAM technology, allowing Verizon to offer innovative features that integrate Internet services including Pandora Internet Radio, Facebook, and Twitter with Verizon's FiOS TV Service; Flex View, which allows subscribers to rent or purchase videos for viewing on up to five devices; and FiOS TV Online, which allows viewers to watch channels such as HBO, ESPN, and other programming from a variety of Internet-connected devices. The upcoming Verizon Media Server will provide new ways for subscribers to view video programming within their homes without a physical connection or any external devices. These developments are possible because of the flexibility provided by the Commission's current approach. Should the Commission mandate a specific technological solution, such as AllVid, it would threaten to derail efforts by Verizon and other providers to move beyond the set-top box in offering video programming.

Likewise, in the case of the Commission's existing technical requirements on video providers – including the IP output requirements set out in 47 C.F.R. § 76.640 – the Commission should allow providers broad flexibility, and leeway in terms of timing, as they determine how to satisfy the regulatory requirements. Such an approach is necessary in the face of the fast-evolving technology and standards, growing competition, and changing consumer demand.

2. The Commission should not impose MVPD regulations on over-the-top video providers.

The Commission also should refrain from imposing traditional MVPD regulations on online video providers. Faced with this very question, the Media Bureau previously found that Sky Angel, an over-the-top, IP-based video service, was not an MVPD.[30] This was the appropriate legal conclusion under the Communications Act definitions of "MVPD," "channel," and "video programming." More importantly, perhaps, it was the appropriate policy result to encourage the continued deployment of broadband services and the proliferation of innovative IP-based services that encourage customers to subscribe to broadband.

Over-the-top video is emerging as a legitimate alternative or companion to traditional video programming services. For example, Netflix, which by far is the largest provider of over-the-top video service, currently has more subscribers than the nation's largest MVPD, Comcast.[31] MVPDs also are exploring opportunities to partner with over-the-top video providers to offer consumers access to additional programming. For example, Verizon recently announced the creation of a joint venture with Redbox that will offer a competitive, over-the-top, IP-based video service that will allow consumers to stream video from a large content library.[32]

Any efforts to extend traditional MVPD regulations to these over-the-top providers could have unintended consequences and derail continued innovation by this developing industry. For example, several online video distributors are experimenting

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30 *See Sky Angel, U.S., LLC, Emergency Petition for Temporary Standstill*, Order, 25 FCC Rcd. 3879, ¶ 7 (MB 2010).

31 *See* Letter from Reed Hastings, Netflix CEO, and David Wells, Netflix CFO, to Shareholders (July 24, 2012), *available at* http://ir.netflix.com/common/download/download.cfm?companyid=NFLX&fileid=585175&filekey=818f7f39-011e-4227-ba2f-7d30b8ad3d23&filename=Investor Letter Q2 2012 07.24.12.pdf.

32 *See* News Release, *Verizon and Coinstar's Redbox Form Joint Venture to Create New Consumer Choice for Video Entertainment* (Feb. 6, 2012), *available at* http://newscenter.verizon.com/press-releases/verizon/2012/verizon-and-coinstars-redbox.html.

with original content, offering a true alternative to traditional cable networks. Additionally, the proliferation of over-the-top video services, which require high-speed connections to deliver consumers the best picture and audio quality, are helping drive broadband demand and encouraging companies such as Verizon to continue to invest in broadband networks.

Importantly, the Commission must recognize that a provider of an over-the-top video service should not be considered an MVPD even if the same provider is an MVPD for the purpose of other, independent services that it offers. For example, although Verizon's FiOS TV service is an MVPD, this should not hinder Verizon's efforts to offer an over-the-top video service on the same playing field as other over-the-top providers. Verizon's joint venture with Redbox will be available to consumers whether or not they subscribe to wired broadband or television service from Verizon. This service will not come with an integrated transmission path and will be offered only on a narrowcast, point-to-point basis. Because the service will be available over any Internet service, whether or not provided by Verizon, it is by definition not an MVPD. Nevertheless, the Commission can provide certainty and encourage continued innovation in the over-the-top video marketplace by clarifying that such services will not be subject to traditional MVPD regulation.

3. The Commission should not extend its program carriage rules to competitive video providers.

Today, the Commission's program carriage protections appropriately are limited to vertically-integrated cable operators that have the incentive and the ability to discriminate against independent programmers. As the Commission considers whether and how to reform its rules, it should continue to recognize the distinction between newer entrants that compete against vertically-integrated programmers, and those incumbent providers that control a substantial amount of content.

Because competitive video providers, such as Verizon, control little of their own content, these providers play an important role in expanding the diversity of available programming. As relatively new entrants, these providers have incentives to assemble attractive programming packages that provide consumers with more of the programming they want. The result is a budding alliance between competitive video providers and independent programmers that increases the diversity of programming, as evidenced by Verizon's deals with such independent programmers as the Hallmark Channel, Wealth TV, the Longhorn Network, and BBC America.

In its recent notice of proposed rulemaking, the Commission properly recognized the benefit that competitive video providers such as Verizon provide to consumers by challenging vertically-integrated cable operators. As a result, the Commission properly exempted competitive providers from any expansions to the program carriage rules.[33]

The Commission should ensure that it takes no action that would hinder the ability of competitive entrants to compete. For example, any expansion of the program access rules should recognize that competitive providers may continue to develop local programming channels, such as FiOS 1, without being subject to the program carriage rules. Additionally, any new rules should recognize that competitive providers such as Verizon have no incentive to discriminate in favor of vertically-integrated cable operators and therefore should not be subject to complaint proceedings for not carrying

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[33] *See Revision of the Commission's Program Carriage Rules; Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order in MB Docket No. 07-42 and Notice of Proposed Rulemaking in MB Docket No. 11-131, 26 FCC Rcd. 11494 (2011).

programming that they independently determine not to include in their channel lineups. Such interference with the ability of competitive providers to structure their service offerings would only serve to discourage differentiation and competition.

4. The Commission should only regulate the video marketplace when there is a valid and compelling justification for doing so.

As demonstrated above, consumers increasingly are gaining access to a wider range of competitive choices for video programming. In recognition of the success of its light regulatory approach, the Commission should proceed with caution when considering any new regulation of the video marketplace and should refrain altogether from any regulation for which there is no compelling justification.

One such example is the Commission's recently-issued *Technical Standards NPRM* which seeks to adopt new technical standards for digital video under the premise that "[t]he cable industry is rapidly transitioning to digital service."[34] Yet, as the Commission recognized, several cable system operators, including Verizon, already have migrated to "all digital" service. *See id.* ¶ 2. The *Technical Standards NPRM* does not identify any problem that these "all digital" operators have experienced with signal quality or signal leakage that would warrants additional regulation. Thus, to the extent the Commission's existing regulations do not apply, they should be repealed, not revised. Such an approach will ensure that competitive providers have the freedom to innovate free of regulation, providing consumers with the ultimate benefits that stem from robust competition in the video marketplace.

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[34] *See Cable Television Technical and Operational Requirements*, Notice of Proposed Rulemaking, MB Docket No. 12-217, FCC 12-86, ¶ 2 (rel. Aug. 3, 2012) ("*Technical Standards NPRM*").

IV. **CONCLUSION.**

For the foregoing reasons, the Commission should remove the remaining obstacles to increased competition and innovation in the video marketplace and refrain from adopting new, unnecessary regulations.

Respectfully submitted,

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