

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Revision of the Commission’s Program Access) MB Docket No. 12-68
Rules)
)

REPLY COMMENTS OF GOOGLE FIBER INC.

Google Fiber Inc. (“Google Fiber”), by its attorneys, files these reply comments in response to the *Further Notice of Proposed Rulemaking* released by the Federal Communications Commission (“Commission”) regarding proposed revisions to the program access rules.¹ Google Fiber is taking an exciting approach to facilities-based Internet and video competition. In Kansas City, Kansas, and Kansas City, Missouri, Google Fiber’s offerings include Gigabit Internet service, high-definition multichannel video, and Free Internet providing 5 mbps downloads with no monthly charge. Google Fiber’s innovations are giving users new options and attracting start-up companies and other businesses to the Kansas City area. As a result, Google Fiber is being embraced as a welcome addition to the community.

The Commission noted in its recent *Program Access Report and Order* that “the potential for anticompetitive conduct resulting from vertical integration between cable operators and programmers remains a concern,” particularly with respect to regional sports network (“RSN”) programming.² The incumbent cable industry disagrees with

¹ *Revision of the Commission’s Program Access Rules*, Further Notice of Proposed Rulemaking, MB Docket No. 12-68, FCC 12-123 (rel. Oct. 5, 2012) (“*Program Access FNPRM*”).

² *Revision of the Commission’s Program Access Rules*, et al., Report and Order, MB Docket Nos. 12-68, 07-18, 05-192, ¶¶ 2, 3 (rel. Oct. 5, 2012).

this observation, contending that due to a “change in marketplace circumstances” there should now be “a presumption . . . that an exclusive [programming] contract is *not* anticompetitive.”³ The cable incumbents further assert that “there is no basis for presuming that exclusive contracts involving cable-affiliated RSNs are ‘unfair.’”⁴ Google Fiber’s experience in Kansas City illustrates that the cable industry’s assertions are far from true: The incumbent cable operator in Kansas City, Time Warner Cable (“TWC”), is withholding its RSN, causing Google Fiber users to not have access to it. Because Google Fiber’s experience confirms the Commission’s understanding of lingering market conditions, Google Fiber supports the Commission’s proposals to strengthen the program access rules pertaining to RSNs.⁵

DISCUSSION

As a new entrant, Google Fiber is taking an innovative approach to facilities-based competition. Among its offerings is the Gigabit + TV package, which includes a high-definition TV lineup and Gigabit Internet service that is more than 100 times faster than the broadband speeds available to most Americans.⁶ Gigabit + TV subscribers receive a network box with two terabytes of data storage, a Nexus 7 tablet that also can serve as a remote control, as well as one terabyte of storage on the Google Drive cloud. Google Fiber also offers a package with Gigabit Internet service only, which includes the

³ Comments of NCTA to *Further Notice of Proposed Rulemaking* in MB Docket No. 12-68, at 4 (filed Dec. 14, 2012) (“NCTA Comments”) (emphasis in original).

⁴ NCTA Comments at 5.

⁵ See generally *Program Access FNPRM*.

⁶ Comparison is based on average American download speeds of 5.8 mbps according to Akamai’s “The State of the Internet, 4th Quarter, 2011 Report.” See Frederic Lardinois, *Akamai: Global Average Connection Speed Dropped 14% In Q4 2011, Down 5.3% in U.S.*, TECHCRUNCH, Apr. 30, 2012, <http://techcrunch.com/2012/04/30/akamai-global-average-connection-speed-dropped-14-in-q4-2011-down-5-3-in-u-s/> (last visited Jan. 14, 2013).

same broadband speeds as the Gigabit + TV offering for a monthly fee of \$70. Users alternatively can choose Google Fiber's Free Internet offering, which provides a network box and standard Internet access service (with download speeds of up to 5 mbps and upload speeds of 1 mbps) for no recurring monthly charge, guaranteed for at least seven years.⁷

Google Fiber's service is catalyzing local business success and entrepreneurship in Kansas City,⁸ and has ignited the migration of start-up businesses to "Silicon Prairie."⁹ In addition, Google Fiber is partnering with local organizations to provide digital literacy grants and training to historically underserved areas.¹⁰ Not surprisingly, residents of Kansas City, Kansas, and Kansas City, Missouri, have embraced Google Fiber as a valued civic asset.¹¹

In line with its commitment to the Kansas City area, Google Fiber seeks to provide its video service users with access to live regional sports programming. But the incumbent cable operator, TWC, is leveraging its control over a local RSN to impede

⁷ Gigabit + TV is available for a monthly fee of \$120. Users choosing Free Internet pay only the standard \$300 construction fee (or make twelve monthly payments of \$25, plus taxes and fees). None of Google Fiber's service plans are subject to data caps.

⁸ See KC Gig Ideas – GoogleConnectsKC, <http://www.googleconnectskc.com/GoogleInAction.aspx> (last visited Jan. 14, 2013).

⁹ See *Internet Start-Ups Thrive in Kansas City*, CNN, Dec. 4, 2012, <http://www.cnn.com/video/#/video/bestoftv/2012/12/05/ac-kansas-internet-startups.cnn> (last visited Jan. 14, 2013); see also John Eligon, *Tech Start-Ups Find a Home on the Prairie*, NEW YORK TIMES, Nov. 21, 2012, http://www.nytimes.com/2012/11/22/us/silicon-prairie-takes-root-in-the-great-plains.html?_r=2&adxnnl=1&ref=global-home&adxnnlx=1353529667-S/tAvsTGGjitGT051FXulQ& (last visited Jan. 14, 2013).

¹⁰ See Letter from Megan Anne Stull to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket Nos. 12-68, 07-18, 05-192, at 1 (filed Oct. 5, 2012).

¹¹ Shortly after Google Fiber selected the Kansas City area for network deployment, Mayors Sly James (Kansas City, Missouri) and Joe Reardon (Kansas City, Kansas) appointed a bi-state innovation team to develop a playbook for creative ways the community can use Google Fiber to spark economic development, advance opportunities, and improve daily life in Kansas City. See Mayors' Bistate Innovations Team, <http://marc.org/MBIT/> (last visited Jan. 14, 2013).

Google Fiber's entry into the marketplace. Google Fiber has been attempting to obtain carriage rights to TWC's terrestrially delivered RSN, Metro Sports.¹² Metro Sports' programming includes regional NCAA Division I college football and basketball games, as well as local high school football and basketball games and coaches shows. TWC initially signaled a willingness to contract with Google Fiber for access to the Metro Sports network. Ultimately, however, after delaying negotiations for months, TWC backtracked from any willingness to license its Metro Sports channel to Google Fiber. By contrast, Google Fiber successfully negotiated a license agreement with Fox Networks for its regional sports programming, including the Fox Sports Kansas City network, which is not cable-affiliated.

Google Fiber is continually striving to add new channels to its TV offering and increase choice for its users. While Google Fiber already has contributed to the competitive landscape and spurred incumbents to enhance their services in the Kansas City area – reports indicate that in the wake of Google Fiber's entry, TWC announced that it will be offering improved Internet speeds¹³ and its representatives have even been paying house calls to TWC customers to see if they are satisfied with their service¹⁴ – TWC's conduct with regard to Metro Sports highlights the continuing necessity for strong, enforceable program access protections for new entrants.

¹² TWC owns two RSNs with the "Metro Sports" name – Metro Sports 1 and Metro Sports 2. Although Google Fiber originally sought access to both networks, the following discussion relates to Google Fiber's negotiations for access to Metro Sports 1 (hereinafter "Metro Sports").

¹³ Alyson Raletz, *Google Helps Time Warner Feel the Need for Speed*, KANSAS CITY BUSINESS JOURNAL, Dec. 14, 2012, <http://www.bizjournals.com/kansascity/news/2012/12/14/google-helps-time-warner-feel-the-need.html> (last visited Jan. 14, 2013).

¹⁴ Christopher Robbins, *Is Google's New Cable/Internet Service Making Time Warner Sweat?*, GOTHAMIST, Nov. 26, 2012, http://gothamist.com/2012/11/26/googles_new_cableinternet_service_m.php (last visited Jan. 14, 2013).

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