



State of New Jersey
DIVISION OF RATE COUNSEL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

February 27, 2013

Electronically Filed

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

**Re: I/M/O Petitions of Comcast Cable Communications, LLC
For a Determination of Effective Competition in Communities in New Jersey
MB Docket No. 12-152, CSR-8649-E
MB Docket No. 12-159, CSR-8650-E
MB Docket No. 12-160, CSR-8651-E
MB Docket No. 12-161, CSR-8652-E
MB Docket No. 12-164, CSR-8655-E
MB Docket No. 12-165, CSR-8656-E
MB Docket No. 12-166, CSR-8657-E
MB Docket No. 12-180, CSR-8668-E
MB Docket No. 12-183, CSR-8671-E
MB Docket No. 12-190, CSR-8675-E**

**I/M/O Docket Established for Monitoring Recent Verizon Wireless Transactions,
WC Docket No. 12-234**

Reply on Motion to Dismiss

Dear Secretary Dortch:

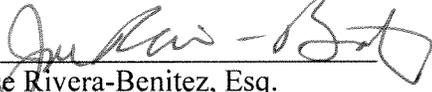
Enclosed for filing is a Reply on the Motion to Dismiss on behalf of the New Jersey Division of Rate Counsel in connection with the above referenced matter.

This Reply will be electronically filed through the Commission's Electronic Filing system. Service of the Motion will also be by electronic mail.

Very truly yours,

Stefanie A. Brand
Director, Division of Rate Counsel

By:



Jose Rivera-Benitez, Esq.
Assistant Deputy Rate Counsel

cc: Service List (via electronic mail)

CERTIFICATE OF SERVICE

I, Jose Rivera-Benitez, of full age, being duly sworn according to law, upon my oath depose and state:

I am an attorney at law in the State of New Jersey, in good standing, and an Assistant Deputy Rate Counsel, with the New Jersey Division of Rate Counsel in the Division's Telecommunications and Cable Section. I have on this 27th day of February 2013, sent a true and correct copy of the foregoing "Reply on Motion to Dismiss" via electronic mail to the following:

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Washington, DC 20554
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Eric Edgington, Esq. <eric.edgington@verizon.com>

All municipal franchises involved.


Jose Rivera-Benitez, Esq.
Assistant Deputy Rate Counsel
New Jersey Division of Rate Counsel

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
Comcast Cable Communications, LLC)	
On behalf of its subsidiaries and affiliates)	
For a Determination of Effective Competition in:)	
Beachwood, NJ–Area Franchise Areas	)	CSR-8650-E
	)	MB Docket No. 12-159
East Windsor, NJ–Area Franchise Areas,	)	CSR-8651-E
	)	MB Docket No. 12-160;
Hazlet, NJ (NJ0405),	)	CSR-8652-E
	)	MB Docket No. 12- 161
Chatham, NJ–Area Franchise Areas,	)	CSR-8657-E
	)	MB Docket No. 12-166
Buena, NJ–Area Franchise Areas,)	CSR-8656-E
)	MB Docket No. 12-165
Delaware, NJ–Area Franchise Areas,)	CSR-8668-E
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Berkeley Heights, NJ– Area Franchise Areas,)	CSR-8671-E
)	MB Docket No. 12-183
Bellmawr, NJ–Area Franchise Areas,)	CSR-8675-E
	)	MB Docket No. 12-190
North Arlington, NJ (NJ0298) &	)	CSR-8649-E
Rutherford, NJ (NJ0294),	)	MB Docket No. 12-152
Bordentown (City), NJ (NJ0511) &	)	CSR-8655-E
Bordentown (Township), NJ (NJ0461),	)	MB Docket No. 12-164
In the Matter of Docket Established for Monitoring	)	WC Docket 12-234
Recent Verizon Wireless Transactions)	

To: Secretary, FCC

Chief, Media Bureau

Chief, Wireline Competition Bureau

REPLY OF NEW JERSEY DIVISION OF RATE COUNSEL
ON MOTION TO DISMISS

On February 8, 2013, the New Jersey Division of Rate Counsel (“Rate Counsel”) filed and electronically served a Motion to Dismiss (“Motion”) on the above captioned Petitions filed on behalf of Comcast Cable Communications, LLC (“Comcast”). On February 25, 2013, Rate Counsel received via U.S. Mail, Comcast’s Opposition to the Motion (“Opposition”). Rate Counsel herein submits its Reply to said Opposition.¹ For the reasons stated within, the Opposition simply fails to show that the relief requested by Rate Counsel is not appropriate and the arguments in opposition to the Motion lack merit. Therefore, the Media Bureau should grant Rate Counsel’s Motion. The sharing household served is proprietary data covered by the conditions that preclude sharing of competitively sensitive data. Comcast and Verizon compete for cable customers in each of the franchise areas and the elimination of rate regulation benefits both parties since Verizon’s competitor, Comcast, is free to raise basic service rates if effective competition is granted. Cooperation and sharing of proprietary data in areas where Comcast and Verizon compete is prohibited under the conditions agreed to by Verizon and Comcast. Absent a determination by the Wireline Competition Bureau or the Commission revising the conditions in the Spectrum Decision², the Media Bureau must at this time grant Rate Counsel’s Motion.

The private agreement between Comcast and Verizon, through legal counsel, on the exchange of competitively sensitive subscriber data cannot trump the disclosure

^{1/} See postmarked receipt of Comcast Opposition annexed hereto as Attachment A.

^{2/} *I/M/O Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC, etc.*, Memorandum Opinion and Order and Declaratory Ruling, FCC 12-95, WT Docket No. 12-4, ULS Files Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598, WT Docket No. 12-175 (Released August 23, 2012). (“*Spectrum Decision*”).

prohibitions announced in the Spectrum Decision and Consent Decree absent a revision of those conditions by the Commission. The cooperation between Verizon and Comcast in this filing only occurred after Verizon and Comcast entered into an agreement for the transaction, which culminated in the Spectrum Decision. Verizon and Comcast negotiated their agreement in 2011 and filed for its approval on December 21, 2011, months before the filings in this proceeding. But for their agreement, the data relied upon would not have been shared.

Comcast's assertion that the Verizon subscriber numbers by franchise bear no nexus to non-public information relating to price, terms, availability or marketing plans for VZT services,³ is irrelevant and ignores that the subject information is confidential information. First, Comcast and Verizon by their actions have admitted that such data is non-public proprietary information since Verizon would not freely permit its release to Comcast or Rate Counsel. Second, Comcast counsel erroneously suggests that counsel operates independent of its client, Comcast.⁴ The unregulated use of competitively sensitive Verizon subscriber information that may provide an advantage to either Verizon or Comcast, without the express permission of the Commission, was the type of harm the restrictions in the Spectrum Decision were designed to protect against.

Last, but not least, Comcast's disregard for the effects of natural disaster on New Jersey households is appalling. Hurricane Sandy visited upon numerous New Jersey households a harsh reality that remains. The comeback, however well intended, is slow and well accounted in the media. Indeed, the Commission heard direct testimony from

^{3/} Comcast Opposition at 4.

^{4/} Comcast Opposition at 5.

New Jersey and New York on the consequences of this massive storm. Yet, Comcast says in effect “so what” – the rules are static and a static result they must yield. That perspective must be rejected and Comcast required to refile with current data, as posited by Rate Counsel in the Motion.

Accordingly, since Comcast’s Opposition fails to rebut Rate Counsel’s Motion, the Media Bureau should grant Rate Counsel’s Motion.

Respectfully submitted,

STEFANIE A. BRAND
Director,
New Jersey Division of Rate Counsel

By:



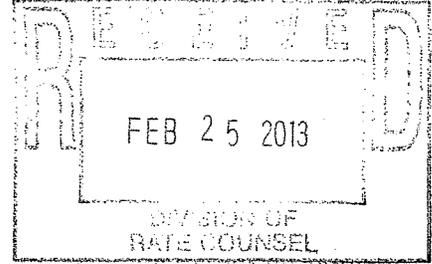
Jose Rivera-Benitez
Assistant Deputy Rate Counsel
New Jersey Division of Rate Counsel

Dated: February 27, 2013

ATTACHMENT

A

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554



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To: Secretary, FCC
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