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House Committee on Energy and Commerce,
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Good morning Chairman Boucher, Ranking Member Stearns, and other members of the Subcommittee, and thank you for inviting me to address the topic of video competition. My name is Terry Denson, and I am Vice President of Content and Programming for Verizon. In that capacity, I am responsible for obtaining access to video programming to support Verizon’s consumer services, including FiOS TV. I am in charge of all negotiations with content providers to secure programming, including negotiations with broadcasters, programmers affiliated with cable incumbents, and independent programmers.

As you and other policymakers here D.C. consider issues related to video competition and broadband, Verizon and its more than 200,000 employees are leading the way with investments that will ensure that American consumers will have access to world-class services – including video – over both wireline and wireless networks.

Five years ago, Verizon embarked on an ambitious and unprecedented project to construct a broadband network that takes fiber-optics all the way to our customers’ homes and businesses. As the only American provider deploying fiber-to-the-premises on a large scale, we announced that we would invest approximately \$23 billion to pass 18 million premises in areas throughout our service territory with this next-generation network that we call FiOS. As of the end of June, we had already passed 13.8 millions homes and business with FiOS in parts of 16 states – over 40 percent of Verizon’s wireline footprint.

Consumers are reaping the rewards of our ongoing investment. Verizon's FiOS Internet access services already provide consumers the choice of services with maximum speeds ranging from 15 to 50 Mbps downstream, and 5 to 20 Mbps upstream. As consumers demand even higher speeds, Verizon's fiber network will allow us to offer them. We are already testing 100 Mbps services over FiOS in some areas, and even higher speed services will be possible in the future. More than 3 million Verizon customers already access the Internet using the FiOS network. We have also worked with our vendors to help develop innovations such as bendable fiber and new, smaller optical network terminals to ensure that the benefits of FiOS are available to the millions of Americans residing in apartments and condominiums.

Verizon has also continued to invest heavily to make mobile broadband services widely available to Americans. More than 280 million Americans have access to the third-generation (3G) mobile broadband services offered using EV-DO Revision A technology, and Verizon will soon begin the commercial launch of its fourth-generation (4G) mobile broadband service using LTE technology. This 4G service has the promise of typical download speeds of 5-12 Mbps, with much higher peak speeds. These capabilities will introduce additional competition that expands the choices available for consumers, while providing a robust platform for innovative, new services and devices. Verizon Wireless plans to offer LTE in 25-30 markets with 100 million people by the end of next year, and to extend the service nationwide, reaching more than 280 million people, by the end of 2013.

Verizon's investments in FiOS and LTE drive its competitors to engage in their own deployment and upgrades. For example, cable incumbents are now widely upgrading to DOCSIS 3.0, which allows for considerably more robust cable modem services. Areas where Verizon offers FiOS were among the first areas where cable incumbents upgraded to DOCSIS

3.0, and those upgrades are now widespread. Cablevision now offers DOCSIS 3.0 throughout its service territory, for example, and Comcast has indicated that it will do the same by the end of next year.¹ Likewise, competing wireless providers are spreading the reach of their mobile broadband services. All of the national wireless providers, including Sprint, AT&T, and T-Mobile now widely offer 3G wireless broadband services, as do a number of regional carriers, and most of the national providers either are already upgrading, or have announced plans to upgrade, to 3.5 or 4G services. Moreover, Clearwire (together with Sprint and several other partners including Google and Comcast) has now begun the rollout of its 4G service using Wi-MAX technology.

Of course, deploying next-generation networks like FiOS and LTE is not cheap. In fact, Verizon has invested over \$80 billion in capital expenditures over the last five years – more than any other American company over that period of time. To support a business case for this level of investment, Verizon cannot rely on Internet access revenues alone. Instead, additional services, with their potential revenue streams, are required. Importantly, such services not only help to fund networks, but they also provide consumers with new choices and innovators with new platforms for innovation.

Verizon's FiOS TV is one such service that is expanding the choices available for consumers and creating a new platform for independent programmers and other innovators. Verizon first introduced its FiOS TV service four years ago, bringing head-to-head wireline video competition to the cable incumbents for the first time in most places. FiOS TV provides consumers with a wide range of video content – including a robust line-up of high definition (HD) programming, independent programming, and international or multicultural content – in

¹ See Comments of Nat'l. Cable & Telecommunications Association, GN Docket No. 09-51, at 16-17 (June 8, 2009).

addition to innovative, new interactive features enabled by Verizon's technologically-advanced network.

FiOS TV is an all-digital service that offers the best of both traditional digital cable technology and developing IPTV technology. This allows Verizon to offer more programming as well as new interactive features. Verizon uses its innovative and robust fiber network in order to provide consumers with an extremely attractive competitive alternative to traditional cable or satellite services. Verizon's current lead offer currently includes up to 290 digital video channels. FiOS TV provides subscribers with access to up to 400 digital channels, including more than 120 HD channels in all of its TV markets. FiOS TV also offers subscribers more than 17,000 video-on-demand (VOD) titles per month, more than 60 percent of which are free, and more than 2,400 HD VOD titles.

With its enhanced carrying capacity, Verizon also is able to offer unique programming packages tailored to subscribers' interests, and to carry a wide range of programming, including diverse, independent, multicultural and international channels. For example, Verizon's La Conexión package offers a combination of more than 40 popular English and 30 popular Spanish-language channels in one package. Verizon also offers customers a "movie package" that includes 47 premium movie channels, and additional premium options.

Verizon also provides a platform for a wide range of diverse, independent programming. For example, from the beginning Verizon has negotiated carriage deals with numerous independent programmers such as WealthTV, The America Channel, the NFL Network, and the Hallmark Channel, in addition to a wide range of other niche programmers, even as many of these programmers have struggled to convince cable incumbents to carry their channels. In addition, Verizon offers a wide range of international and foreign-language channels, including

offerings in Arabic, Armenian, Bosnian/Croatian/Serbian, Cambodian, Chinese, Farsi, Filipino, French, German, Hebrew, Hindi, Italian, Japanese, Korean, Polish, Portuguese, Punjabi, Romanian, Russian, Spanish, and Vietnamese. Verizon has a strong incentive to continue to carry a wide range of diverse programming in order to distinguish itself from its cable competitors.

Verizon also continues to improve and expand its innovative service offerings in order to attract customers to its FiOS services. With respect to our video service – FiOS TV -- we recently began offering new local programming options to subscribers in certain markets. Specifically, in June 2009, Verizon launched two new channels – FiOS1 Long Island and FiOS1 New Jersey – which give subscribers on Long Island in New York and subscribers in nine counties in northern New Jersey specialized local content that includes local news and sports, regular traffic and weather reports, and other community programming. To create this local content, we are partnering with several local institutions and entities, such as the North Shore - LIJ Health System on Long Island and The Star Ledger/NJ.com and NJN Public Television in New Jersey. These channels also provide a platform for mobile journalists – or MoJos – to produce and provide hyper-local content relevant to these communities. In addition, the FiOS 1 channels will carry selected high school sports games of interest to residents of these areas.

In addition to the platform provided by FiOS TV for a wide range of content, Verizon's advanced technological approach is also designed to enable a wide range of other innovative services. For example, the IP functionality of Verizon's network permits the company to offer a unique service called "FiOS TV Widgets" that allows consumers to access content in an interactive manner on their television, including some content and services from the Internet. Initially, Verizon offered Widgets that allowed interactive and customizable access to weather,

traffic, local and national news headlines, daily national sports headlines, community news or daily horoscopes. More recently, however, Verizon introduced additional Widgets that allow consumers to access some Web content, including from Facebook and Twitter. We plan to foster a “Widget Bazaar,” which is akin to an application store for FiOS that will enable third-parties to develop innovative new Widgets for FiOS customers. It is too soon to predict how this opportunity will develop, but we are optimistic that this will provide benefits both to our customers – who will have more choices and innovative, new features – and to third-party developers and content owners – who will have a new platform for innovation and for reaching consumers with their content and services.

In addition to Widgets, Verizon’s IP platform also enables Verizon’s Home Media DVR. This service allows up to six televisions in different rooms to access digitally recorded programs on a single server-DVR using IP as the communications medium to transmit the recorded programming. This includes viewing up to three separately recorded programs simultaneously on different TV sets, and the ability to pause recorded programming on one set and continue watching it on another. The Home Media DVR also allows Verizon to integrate the DVR with FiOS TV’s innovative and interactive media guide (IMG) using IP technology, thus enabling customers to easily find and access content from TV listings, VOD catalogs, recordings on their DVR, and their personal music and photos. Other features enabled by Verizon’s IP-based system include remote DVR management (allowing subscribers to remotely control their DVRs online or through certain Verizon Wireless handsets), free games, a “What’s Hot on FiOS TV” feature that provides information on the most-popular programs currently being watched in the region and the most popular VODs, a feature that allows consumers to pause live programming and then return after changing channels, and several different channel sorting options.

Verizon has also introduced several innovative offerings using its video on demand platform. For example, Verizon has enabled new programmers such as WealthTV, MavTV, and Film Fest Channel . Web video providers such as Sony’s Crackle and Minisodes, Blastro and Howcast are also available through the VOD menu. Verizon has also made its VOD platform available for diverse and niche programming, such as Si TV, here!, Inspiration, The Jewish Channel, Shalom TV and Catholic TV. Verizon’s VOD services also offer robust parental controls that enable parents to shield their children from content to which they object. Verizon was also the first provider to enable Internet streaming video direct to the television through Media Manager, including from Veoh, Dailymotion, and blip.tv .

As with our Internet access services, FiOS TV also has spurred cable incumbents to improve their offerings and service in order to keep or attract customers. For example, competition has driven our competitors to increase their HD offerings or to carry additional independent and diverse programming in response to FiOS TV. Our competitors have also started to offer their own interactive features to their customers. Time Warner Cable, for example, rolled out its “Start Over” service – a service that allows customers to restart a show from the beginning – in parts of New York and New Jersey where FiOS was available, and also expanded its local news offerings in areas where Verizon has introduced FiOS 1. Other cable incumbents have increased the depth of their international and independent programming in response to FiOS. In other words, consumers are benefitting in numerous ways from the additional competition that FiOS TV provides.

Of course, as relatively new entrants to the video marketplace, we also necessarily face continuing challenges. For one, for historical reasons that no longer apply, many of our competitive services are subject to a variety of regulations that do not apply to the cable incumbents with whom we compete. To cite just one example, we remain subject to restrictions on our ability to provide departing voice customers with marketing materials that would allow these consumers to make truly informed choices among the various alternatives available to them, but cable companies are not subject to similar restrictions with respect to departing video customers. As we all now compete for consumers across a range of services, parity of regulatory treatment is an important issue in order to ensure that consumers receive the benefit of fair competition.

Another ongoing challenge that we face relates to programming costs. The cost of programming continues to be the most significant category of expense we incur. As relatively new entrants, we typically must pay higher rates for programming than do the incumbents.. Controlling programming costs while fielding a competitive and attractive range of offerings is a constant challenge that we and other new entrants face. At Verizon, we are doing our best to control these costs by negotiating aggressively with our content suppliers to get the best deal possible for our customers, and, as a general matter, we believe that these issues should remain the subject of commercial negotiations against the backdrop of existing rules.

There is one limited and unique type of programming where this approach has proven inadequate, however. Specifically, obtaining access to popular regional sports programming presents unique and significant problems. Regional sports is among the most popular programming to consumers, many of whom are loyal sports fans and insist on the ability to see the games of their local teams. Given its very nature, this programming is unique and cannot be

duplicated by new entrants who are denied access. Whereas a new entrant may be able to create a competing entertainment or news channel if denied access to such programming – as Verizon has done in the case of its FiOS 1 channels that carry local news and events – a new entrant simply cannot create new local sports teams or substitute games from other sports or other cities. For consumers who are Knicks or Rangers fans, the games of other teams or other sports are no substitute, and a competitive provider lacking those games – or lacking them in HD – will not be meaningful alternative at all. The FCC has repeatedly recognized as much, concluding that many consumers view regional sports programming as “must have.”²

Some incumbent providers have exploited their control over this “must have” programming – including the “HD feeds” of that programming – to handicap new entrants. Cable incumbents know full well that a new entrant lacking regional sports or lacking the HD format of that programming will have a much tougher time attracting customers and competing effectively. And because many cable incumbents acquired the rights to this vital programming long before competition was present, they often have it within their unilateral power to deny new entrants this necessary component to fielding a meaningful alternative for consumers. Of course, to the extent this programming is delivered to distributors by satellite, the current program access rules ensure that competitors can obtain access. But in many cases, cable incumbents have sought to exploit the so-called “terrestrial loophole” in an effort to deny competitive providers’ access to this “must have” programming.

There is a long record documenting that cable incumbents and their programming affiliates have denied access to regional sports programming in order to handicap competitive providers. DirecTV and Echostar have long been denied access to Phillies games in Philadelphia

² See, e.g., Report and Order and Notice of Proposed Rulemaking, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd 17791 ¶¶ 39, 115 (2007).

and Padres games in San Diego, with significant impact on their competitiveness in those areas. AT&T has similarly been denied access to Padres games in San Diego, prompting it to require consumers to provide signed acknowledgements of this fact before installing its U-Verse service in that area so there is no confusion.

Verizon also has experienced this problem firsthand when Cablevision and its vertically integrated programming subsidiaries refused to provide access to regional sports networks – MSG and MSG Plus – in the New York City metropolitan area. This includes local coverage of the Knicks’, Rangers’, Islanders’, and Devils’ games. Verizon was unable to obtain even the standard definition format of this sports programming until it filed a complaint with the FCC. While we ultimately were able to obtain the standard-definition format of this programming after we filed our FCC complaint, Cablevision has steadfastly refused to even discuss providing Verizon access to MSG and MSG Plus in HD on any terms. Instead, Cablevision claims that the “HD feed” is not covered by the existing program access rules because it is not satellite-delivered, and flatly refuses to provide access on any terms. Remarkably, Cablevision even refuses to provide sports programming to Verizon in HD format in Buffalo, even though Cablevision itself is not a cable operator in that area and should have every reason to want to maximize distribution of its programming there.

By refusing to provide access to regional sports programming in HD, Cablevision is seizing on the growing importance of HD technology to consumers, particularly in the context of sports programming. A recent consumer survey conducted for Verizon confirmed the consumer impact of denying regional sports programming in HD. Large majorities of subscribers indicate their strong preference to watch regional sports channels in HD (67% in New York City, 51% in Buffalo). These preferences translate into purchasing decisions, as more than half of New York

City subscribers (57%) and nearly half of Buffalo subscribers (49%) say they are “not likely at all” to consider switching to a provider that did not provide regional sports channels in HD.

Cablevision’s actions leave little doubt about its motive. Around the time Cablevision first denied HD access to Verizon, Mr. Rutledge, Cablevision’s Chief Operating Officer, noted as the first of three “factors he believed would slow or reverse any subscriber flow to FiOS,” that “FiOS’ video product lacks key components, specifically the HD formats of *MSG* and *Fox Sports NY* [now *MSG Plus*], . . .”³ Again more recently at an analyst conference, Mr. Rutledge again linked his company’s refusal to provide Verizon the “unique” HD regional sports channels to Cablevision’s success in forestalling competition from Verizon’s FiOS. Rutledge explained Cablevision’s strategy as follows:

[W]e have things unique to us. . . . We have our sports channels in high definition. So four of the nine professional sports teams in New York. If you want to see them in HD, you have to get them from us.⁴

Similarly, Cablevision’s advertisements trumpet to consumers that it is the only source for this regional sports programming in HD.

To be clear, Verizon simply seeks access on commercially reasonable, negotiated terms to this vital and unique programming so that consumers can choose for themselves among competitive options without having to give up access to their local sports teams. We do not seek access to this or any other programming at government-established, regulated rates. But when

³ Craig Moffett et al., Bernstein Research, *Cablevision (CVC): Management Commentary Supports Bullish View . . . Capital Intensity Falls, and Margins Rise*, 4 (Apr. 5, 2007) (quoting Mr. Rutledge).

⁴ Thomson StreetEvents Final Transcript, *Cablevision Systems Corp. at UBS Global Media and Communications Conference*, at 9 (Dec. 8, 2008) (quoting Mr. Rutledge).

incumbents flatly deny access to unique regional sports programming, however, “negotiations” can never come into play.

We have urged the FCC to take actions to address the anticompetitive withholding of sports programming by cable incumbents like Cablevision. In particular, we believe that such actions are the types of unfair practices that hinder or prevent entrants from providing competing video services to consumers that Congress prohibited in Section 628(b). Indeed, denying access to this programming denies any meaningful choice at all to many consumers for whom local sports are critical. In any event, in order to eliminate any disputes and further the goal of increasing video competition and consumer choice, Congress should adopt a narrow legislative fix to address this demonstrated problem by preventing cable incumbents and their affiliates from denying competitors access to the unique regional sports programming that consumers demand.

By addressing this narrow but important roadblock to more effective video competition, policymakers could expand the range of choices available to consumers and could further national goals concerning both video competition and broadband.

I look forward to answering any questions the Committee may have. Thank you.