

ATTACHMENT D

**DOCUMENTS SUBMITTED BY VERIZON AS PART OF,
OR IN SUPPORT OF, ITS APPLICATION**

1. 3/15/07 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village Clerk, Denise Ehrhart, enclosing Verizon's application for a cable television franchise and Verizon's proposed franchise agreement
2. 3/15/07 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village Attorney, Walter Sevastian, regarding Short Environmental Assessment Form
3. 3/15/07 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village officials regarding a senior citizens discount
4. 3/15/07 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village officials regarding the March 27 public hearing and Cablevision's anticipated claims
5. 3/23/07 Correspondence from Verizon's Senior Vice President, Monica Azare, to Village Mayor, Edward Traynor, regarding the March 27 public hearing and enclosing an information sheet outlining the Verizon FiOS TV service

Tab 1

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BY HAND

March 15, 2007

Denise Ehrhart
Village Clerk
Village of Piermont
Village Hall
478 Piermont Avenue
Piermont, New York 10968

Re: Application of Verizon New York Inc. for a Cable Television Franchise

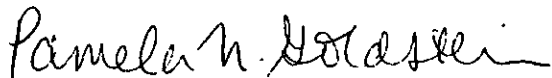
Dear Ms. Ehrhart:

Pursuant to the requirements of 16 N.Y.C.R.R. Section 894.5, please find enclosed the application of Verizon New York Inc. to the Village of Piermont for a cable television franchise.

Also enclosed is the proposed Cable Franchise Agreement by and between the Village of Piermont and Verizon New York Inc.

Please contact Mac Kerbey at (617) 628-3436 or me at (212) 548-2136 should you have any questions.

Very truly yours,



Pamela N. Goldstein

Enclosures

cc: Walter Sevastian, Esq., Village Attorney
Verizon New York Inc.

APPLICATION FOR A CABLE TELEVISION FRANCHISE

BY VERIZON NEW YORK INC.

Verizon New York Inc. ("Verizon NY") respectfully submits this application form ("Application") and requests the award of a cable television franchise from the Village of Piermont ("Municipality"). In this application, Verizon NY answers the questions set forth in Title 16, Chapter VIII, Part 894, Section 894.5, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended.

- (1) A description of the cable television system proposed to be constructed including information regarding (a) channel capacity, including both the total capability of the proposed system and the number of channels to be energized immediately; (b) television and radio broadcast signals which Verizon NY intends to carry on its system initially; (c) the extent and type of any origination cable casting to be undertaken, and the facilities, equipment and staff to be employed therein; and (d) the system layout or design, including where applicable: (i) location of antennae and headends; (ii) plans for a two-way capability including a proposed schedule indication when two-way capability will become available from particular points; (iii) location or origination points and origination facilities; (iv) extent and type of automated services to be provided; and (v) number of channels to be utilized for access cablecasting and the facilities, equipment, staff and other support to be available to access users including access utilization or production costs.

In response to the information requested in subsections 1(a) and (d)(i-ii), please see attached Exhibit 1, "Proposed Service Overview, Product Offers and Architecture." In response to question 1(b), please see the sample channel line up set forth in Exhibit 2, "Verizon FiOS TV – New York Area Channel Lineup."

In response to the information requested in subsection 1(c) and 1(d)(iii), Verizon NY does not currently plan to engage in origination cable casting.

In response to the information sought in subsection 1(d)(v), upon request of the Municipality, Verizon NY intends to provide capacity on its basic service tier for up to one (1) dedicated Public Access Channel, one (1) dedicated Educational Access Channel, and up to one (1) dedicated Government Access Channel.

- (2) The terms and conditions under which service is to be provided to educational and governmental entities.

Verizon NY will provide channel capacity to educational and governmental entities under terms and conditions consistent with applicable law, and as may be required by the Municipality.

- (3) The terms concerning rates and construction schedules.

Verizon NY's current cable television service rates and available packages are attached as Exhibit 3.

Verizon NY has completed the construction of its fiber to the premises ("FTTP") network to approximately 52% of the households in the Municipality. A full discussion of the construction requirements and central office conversion requirements to bring FTTP and cable television service to the Municipality is contained in Exhibit 1.

On June 15, 2005, the New York Public Service Commission ("NY PSC") "declared that Verizon NY's FTTP upgrade is authorized under its existing state telephone rights because the upgrade furthers the deployment of telecommunications and broadband services, and is consistent with state and federal law and in the public interest." The NY PSC determined that, unlike a company seeking to build an unfranchised cable television system, Verizon NY already has the necessary authority to use the rights-of-way to provide telecommunications service over its existing network. See Declaratory Ruling on Verizon Communication, Inc.'s Built-Out of its Fiber to the Premises Network, NY Public Service Commission, Case 05-M-0520/05-M-0247, June 15, 2005 at 4.

Verizon NY will continue to adhere to applicable lawful customary time, place and manner permitting requirements of the Municipality.

- (4) An indication of whether Verizon NY will provide service on the same terms and conditions as contained in the existing franchise in effect.

Verizon NY will provide service on terms and conditions consistent with the needs and interests of the Municipality and the level playing field requirement set forth in Title 16, Chapter VIII, Part 895, Section 895.3, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, in that the Verizon NY proposed franchise is comparable in its totality with the incumbent cable television provider's agreement. Verizon NY is applying for a cable television franchise in the Municipality in order to provide the residents of the Municipality with competitive choice.

As more fully described in Exhibit 1, Verizon NY is constructing its FTTP network pursuant to its authority as a common carrier under Title II of the Communications Act of 1934, as amended, and Section 27 of the New York Transportation Corporations Law. For this reason and others, certain terms and conditions may differ between the incumbent cable provider's franchise and Verizon NY's franchise.

- (5) A statement of Verizon NY's experience in the cable television field including, if applicable, the names and professional experience of the persons or organizations who

will be responsible for the construction, installation and operation of the proposed system.

Verizon NY and its predecessor entities have provided telecommunications services in the State of New York for over one hundred years. Consequently, Verizon NY has extensive experience and expertise in the telecommunications field. Generally, the current cable service operation of Verizon NY is similarly based on an extensive history. Specifically, Verizon NY has applied the comprehensive knowledge of current Verizon NY employees in the provision of telecommunications service, including in-depth knowledge and experience of employees who were involved in affiliated enterprises.

Verizon NY was awarded cable television franchise by the following municipalities: (1) Village of Massapequa Park (Nassau County); (2) Village of Nyack (Rockland County); (3) Village of South Nyack (Rockland County); (4) Village of Upper Nyack (Rockland County); (5) Town of Hempstead (Nassau County); (6) Village of Cedarhurst (Nassau County); (7) Town of Oyster Bay (Nassau County); (8) Village of Laurel Hollow (Nassau County); (9) Village of Grand View-on-Hudson (Rockland County); (10) Village of Lynbrook (Nassau County); (11) Town of Clarkstown (Rockland County); (12) Village of Mineola (Nassau County); (13) Village of East Rockaway (Nassau County); (14) Town of Greenburgh (Westchester County); (15) Town of Smithtown (Suffolk County); (16) Village of Irvington (Westchester County); (17) Village of Valley Stream (Nassau County); (18) Town of Huntington (Suffolk County); (19) Village of Farmingdale (Nassau County); (20) Village of Ardsley (Westchester County); (21) Village of Freeport (Nassau County); (22) Village of Dobbs Ferry (Westchester County); (23) Village of Tarrytown (Westchester County); (24) Town of Eastchester (Westchester County); (25) Town of Mount Kisco (Westchester County); (26) Village of Elmsford (Westchester County); (27) Village of Port Chester (Westchester County); (28) Village of Tuckahoe (Westchester County); and (29) Town of Orangetown (Rockland County).

The NY PSC granted the following Orders and Certificates of Confirmation for Verizon NY's approved franchises: (1) Massapequa Park - December 14, 2005; (2) Nyack - February 8, 2006; (3) South Nyack - February 8, 2006; (4) Upper Nyack - May 18, 2006; (5) Hempstead - May 18, 2006; (6) Cedarhurst - June 22, 2006; (7) Oyster Bay - June 23, 2006; (8) Laurel Hollow - August 24, 2006; (9) Grand View-on-Hudson - August 24, 2006; (10) Lynbrook - September 21, 2006; (11) Clarkstown - September 21, 2006; (12) Mineola - September 21, 2006; (13) East Rockaway - October 19, 2006; (14) Greenburgh - October 19, 2006; (15) Smithtown - November 10, 2006; (16) Irvington - November 10, 2006; (17) Valley Stream - November 10, 2006; (18) Huntington - November 10, 2006; (19) Farmingdale - November 10, 2006; (20) Ardsley - December 15, 2006; (21) Dobbs Ferry - December 15, 2006; (22) Freeport - December 15, 2006; (23) Tarrytown - December 15, 2006; (24) Eastchester - January 19, 2007; (25) Mount Kisco - January 19, 2007; and (26) Elmsford - February 16, 2007.

Furthermore, other subsidiaries of Verizon Communications Inc. were awarded cable television franchises by 649 franchising authorities in California, Delaware, Florida, Maryland, Massachusetts, New Jersey, Pennsylvania, Texas, and Virginia.

- (6) A statement indicating whether Verizon NY or any of its principals owns or operates any other cable television system, directly or indirectly, and a statement indicating the name of any such operations and the name and address of the chief executive officer of the franchising authority in which such system or station is located.

Verizon NY does not own or operate any other cable television system, directly or indirectly.

- (7) A documented plan for financing the proposed system, which plan shall indicate specifically every significant anticipated source of capital and any and all limitations or conditions with respect to the availability of the indicated sources of capital.

Verizon NY intends to finance the construction of the FTTP system and the provision of cable services over the FTTP system through a variety of internally and externally generated funds. Verizon NY is a financially stable company which has provided telecommunications services in New York State for more than a century. Its parent company, Verizon Communications Inc., is a Fortune 20 company, a Dow 30 Industrials company, and had 2005 revenues in excess of \$75 billion. A copy of The 2005 Form 10-K of Verizon Communications Inc. can be accessed via the following internet address:

http://investor.verizon.com/sec/sec_frame.aspx?FilingID=4275196.

A copy of the Verizon Communications Inc. 2005 Annual Report to Shareholders can be accessed via the following internet address:

<http://investor.verizon.com/financial/annual/2005/index.html>.

- (8) A statement indicating whether Verizon NY or any of its officers, directors and persons having a legal or equitable interest in 10% or more of the voting stock: (a) has ever been convicted of a crime involving moral turpitude (including criminal fraud) or is presently under indictment charging such a crime; (b) has ever been held liable by any court of competent jurisdiction in any civil action based on fraud, deceit or misrepresentation; or (c) has ever been punished or censured in any jurisdiction for any violation or attempted violation of any law, rule or order relating to cable television operations.

Verizon NY has no knowledge of any such finding of guilt toward Verizon NY, any person controlling Verizon NY, or any officer, director or major stockholder of Verizon NY.

PROPOSED SERVICE OVERVIEW, PRODUCT OFFERS AND ARCHITECTURE

- Overview of Fiber to the Premises (FTTP) Deployment
- Service Overview
 - Product Offer
 - Service Delivery/Connection Method
- FTTP System Architecture
 - End-to-End Architecture
 - Wide Area Transport

Overview of Fiber To The Premises (FTTP) Deployment

Fiber to the Premises (FTTP) is a key Verizon corporate initiative to provide voice, cable television and very high speed data services. FTTP uses fiber-optic cable and optical electronics to directly link homes and many businesses to the Verizon network. The fiber network being deployed can support cable television and, where appropriate, Verizon will seek to provide cable service to customers. Key objectives include, but are not limited to, the delivery of higher customer satisfaction, superior performance (network, applications & technical support), and an installation process that surpasses the Cable, DBS and DSL experience today.

- Verizon Communications companies began deploying FTTP in twelve states in 2004. Verizon passed six million homes with FTTP in sixteen states by the end of 2006.
- Cable television services deployment will be a subset that is ancillary to the voice and data FTTP services. Select FTTP-enabled wire centers will be deployed for cable service in the first instance.

Service Overview

The FTTP Network will enable provision of a feature rich and fully competitive cable television offering. The major components of the cable television services which Verizon will offer to consumers will include:

- Basic tier, including local and Educational and Government (EG) channels as requested by and as negotiated with the community
- Expanded Service tiers
- Premium channel tiers
- Pay Per View (PPV)
- HDTV channels
- Digital music channels
- Digital Video Recorder (DVR)

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- Interactive programming guide (IPG)
- Inside coax cable wire installation

Product Offers

For residential customers, Verizon will initially offer Broadcast Television, High Definition TV (HDTV), Digital Video Recorders (DVR), Interactive Programming Guide (IPG) and Pay Per View (PPV) Movies and Events. The Broadcast Television offering will consist of both a Basic Service tier and an Expanded Service tier. The Basic Service tier will include local, educational/government (EG) channels and select cable channels. The Expanded Service tier will include all channels carried on the Basic Service tier as well as additional cable channels, premium cable channels, Spanish language channels, international channels, digital music channels, an interactive program guide (IPG), HDTV programming (for subscribers with an HD STB) and PPV programming. Customers will be charged a monthly recurring fee for each set top box (STB) based upon model. The customer will be offered the option to upgrade STBs to include support for HDTV, or a combined HD DVR STB for additional monthly fees.

In addition to organizing and informing the customer of the programming line-up, the system is designed from its outset to be an active two-way system for subscriber interaction, if any, required for the selection or use of cable service. The IPG will support on-screen program control, parental controls, timers, search, and ordering of PPV services. Pay Per View allows subscribers to pay for and watch prescheduled programming events on an on-demand basis. PPV movies or events will be selected from the IPG. Authorization for billing will occur at the time of purchase. Events begin at pre-scheduled intervals (i.e., programming is not immediately available). Customers will purchase PPV either as discrete events or in pre-defined packages.

Service Delivery/Connection Method

Connection Method

At initial deployment, an installation and maintenance (I&M) technician will connect the Optical Network Terminal (ONT) to a central point of demarcation where a cable television I&M technician will make final connections to provide the cable television service. After the installation of the ONT, a cable television field technician will test the existing in-home coaxial cable to determine if it is technically acceptable and will connect the service. If no coaxial cable exists or the coaxial cable is unacceptable, the technician will install wiring to the first cable outlet, and will install new coaxial wiring to other locations identified by the customer at the customer's request and expense. The customer may choose to self-install such wiring, or to obtain inside wiring installation service from a third party or Verizon.

Connection Method – Set Top Box

The technician will have a set top box that will need to be installed near the TV. The technician will connect a coaxial cable from the wall outlet to the set top and another coaxial cable from the set top box to the TV. The technician will also connect the customer's VCR and/or DVD device and check for proper operation. A fee may be charged for non-standard installations involving

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multiple components such as surround sound systems or other electronic equipment. This process will be followed for any boxes installed.

When a set top box is installed the technician will call the service center at which point certain services previously ordered by the customer will be activated. A remote command will be issued to the set top box in real time to turn the purchased service(s) on.

Connection Method: - PPV

The set top box provides access to the service. Customers will use their remote control to purchase the programming they desire. Purchases will appear on the monthly bill.

Equipment Changes and Re-Configurations

When a customer changes the in-home configuration (e.g., moving a set top box from one TV to another), the customer will be able to accomplish this change without reconfiguring the set top box.

FTTP System Architecture

End-to-End Architecture

Figure 1 shows the architecture topology for supporting service across multiple market areas. A brief summary of the end-to-end architecture follows. Subsequent sections provide more information on each major component within the planned Verizon FTTP overlay architecture.

Figure 2 shows full build and overlay architecture. FTTP will be built instead of copper facilities in new communities. In existing communities, the existing copper network will continue to serve those customers who have not migrated to the FTTP network. The fiber is deployed from a Central Office location within a wire center area.

Figure 1-High Level End to End Architecture

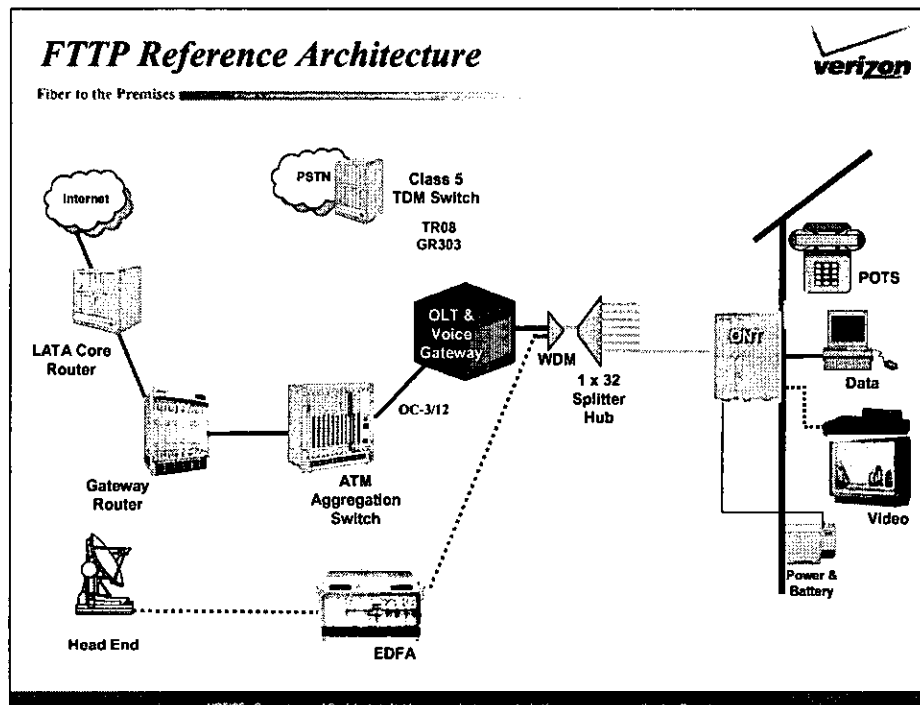
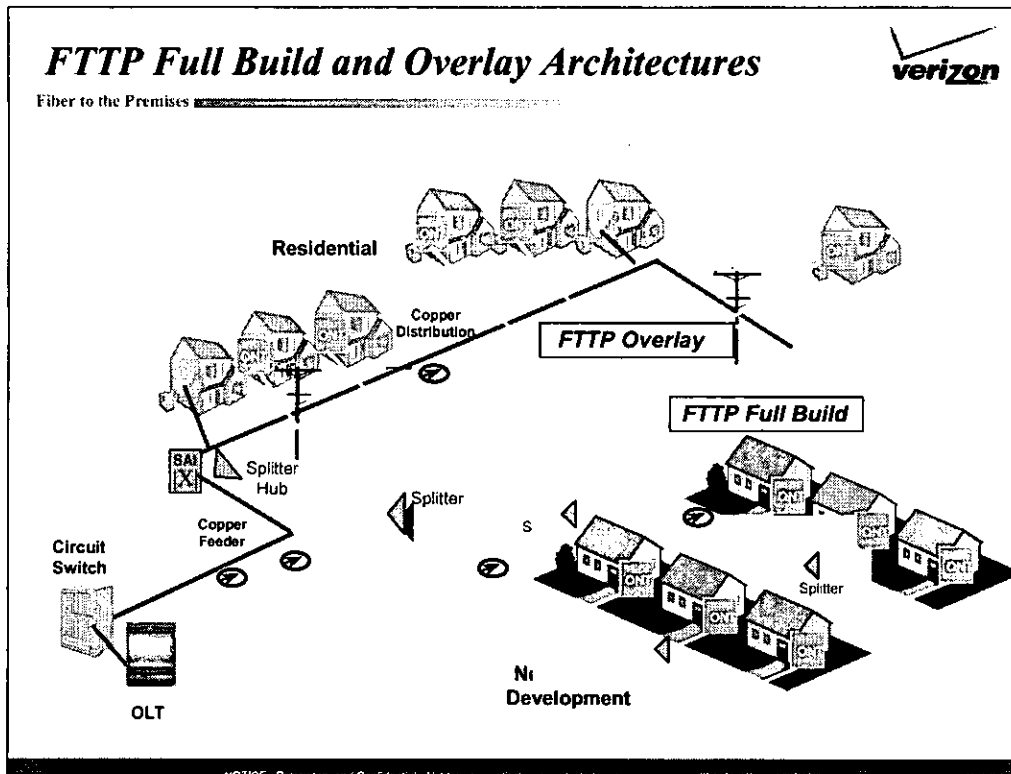


Figure 2-FTTP Full Build and Overlay Architectures



At the national or regional level, a “super” headend (SHE) (Temple Terrace, Florida with a backup in Bloomington, Illinois) shall serve as the single point of national content aggregation (see Figure 1). All content shall be encoded into MPEG2 streams and transported over nationwide SONET services. In each market where Verizon seeks to offer service, the broadcast cable television traffic is off loaded from the long haul network and terminated at a Video Hub Office (VHO). Network redundancy and route diversity shall extend from the SHE to the VHO.

The VHO serves as the metro or local point of aggregation. It is here that off-air and public, educational, and government (PEG) channels (where appropriate) are combined with the broadcast cable television coming from the SHE. Interactive Program Guides (IPG) shall be controlled from this site, also. The service that exits the VHO shall look like the final product viewed by the end user subscriber.

Cable television traffic is converted to optical signals at the VHO and transported over Verizon’s metro area, inter-office facilities (IOF) to Video Serving Offices (VSOs). Voice and high-speed data signals are combined with the cable television at this location for final transport to the subscriber premises over Verizon’s FTTP Passive Optical Network (PON).

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At the premise, the optical cable television signal is de-multiplexed and converted to an electrical signal, which meets cable television industry standards for cable services. Standard home wiring practices, using coaxial cables, as well as alternative media, shall distribute the signal to cable ready TVs and standard set top boxes.

There will be 24x7 control and surveillance of the cable television platform from a remote location. This Network Operations Center (NOC) will be centrally located and shall be responsible for the operation and maintenance of the Conditional Access System (CAS), which directs the encryption functions performed back at the VHO.

Super Headend (SHE)

A "super" headend (SHE) shall serve as the single point of national content aggregation. At general service availability, Verizon shall deploy a primary SHE and an additional SHE for redundancy.

Both the primary and redundant SHEs will be strategically located to ensure technical and environmental requirements are met.

The key functions of the SHE include:

Content Reception

Signal Processing

Encoding

Network Interface

The majority of cable television sources shall be individual content provider programming. A mix of standard and high definition formats shall be supported. All content shall be encoded into MPEG2 streams, formatted for SONET, and transported via an OC48c to a local point-of-presence (POP) for wide area (national) transport.

Wide Area Transport

In support of the cable television service, Verizon will use OC48c SONET facilities in the POPs serving target cable markets. Where multiple POPs exist within a market, redundancy options shall dictate if a single or multiple POPs shall be designated for supporting the cable television traffic.

In most cases, it is expected that the cable television traffic shall traverse multiple interconnected rings between the SHE and the destination market. Once the cable traffic reaches a POP located in a target market, it will be forwarded to an OC48c SONET interface connected to metro/local SONET facilities. These facilities shall connect the POP to a Video Hub Office (VHO). VHOs are capable of serving multiple communities within a target market. If more than one VHO is required, the metro SONET ring(s) would be deployed to cover multiple sites.

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Video Hub Office (VHO)

The VHO serves as the metro or local point of aggregation. The VHO location (Queens, NY) is based on a combination of technical factors, metro fiber/IOF availability, local channel reception characteristics, and municipal regulations (e.g., zoning ordinances).

Under current network design plans, the anticipated functions of the VHO include:

WAN Interface for Cable television Transport

Ad Insertion

PEG Content

Signal Grooming and Multiplexing

Emergency Alert Service

Interactive Program Guide

Conditional Access

Local Content

The VHO shall aggregate three basic sources of content: national broadcast channels, local broadcast channels, and public, educational, & government (PEG) channels. The national content is the traffic sent from the SHE and is delivered via an OC48c SONET interface from the SONETPOP. The local broadcast channels shall be received off-air via antennas or terrestrial fiber transport located at the VHO site. The PEG channels shall be collected via terrestrial connections from each local franchising area (LFA) served by the VHO.

The final collection of content is placed into the RF spectrum between 50 – 870 MHz as either an analog AM-VSB signal or, as part of a digital multiplex, into a 256-QAM modulated carrier. Digital content requiring encryption by the CAS shall also be multiplexed into QAM modulators and combined with other analog and digital carriers. In addition, an out-of-band downstream channel is generated which carries the Interactive Program Guide (IPG), provisioning, and management messages to STBs. The combined RF signal is converted to optics and fed into erbium-doped fiber amplifiers (EDFAs) at egress from the VHO. These optical cable television signals are transported on the 1550 nm wavelength of the G.983-specified Enhancement band to Verizon Video Serving Offices (VSOs).

As noted previously, it is intended that the broadcast cable television traffic/service that exits the VHO shall look like the final product viewed by the end user subscriber.

Metro Area Transport

The optical cable television signals coming from the VHO are transported on the 1550 nm wavelength over fiber available within Verizon's inter-office facilities (IOF).

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Video Serving Office (VSO) & Passive Optical Network (PON)

The Video Serving Office (VSO) is a location within the central office containing FTTP equipment. The VSO that will serve the Village of Piermont is located in Orangeburg, New York. If technically feasible or otherwise appropriate, PEG insertion may occur at these locations in the network.

The key function of the VSO is to combine Broadcast Cable television into the Voice and High Speed Data FTTP Network.

Once in the VSO, the optical cable television signal is sent through an EDFA and then to a Wave Division Multiplexer (WDM) combiner and splitter, which is used to add the cable signal to the voice and high-speed data signals' wavelength (1490nm) – coming from the Optical Line Terminal (OLT) – together with the cable wavelength onto a single optical source. This optical signal is then sent towards the subscriber premises via a PON. The VSO will also play a role in supporting upstream signals from the customer premises for pay-per-view services. Pay-per-view usage data uses the data service's 1310nm upstream wavelength. The upstream data communications shall be sent back to a subscriber database located in the Operations Center located in the VHO.

Customer Premises

At the premise, an Optical Network Terminal (ONT) de-multiplexes the 1550nm optical signal and simply converts it to a voice, data and cable television electrical signal, which meets cable television industry standards for cable services.

LEGAL AUTHORITY TO CONSTRUCT FIBER TO THE PREMISES

Verizon New York Inc. ("Verizon"), as a common carrier under Title II of the Communications Act of 1934 (the "Act"), is constructing its Fiber To The Premises (FTTP) network as an upgrade to its existing telecommunications network. Verizon has the requisite authority to upgrade its network for enhanced voice and broadband services for the reasons discussed, in part, below.

Verizon has the necessary Federal, state and local authorizations to upgrade its Title II telecommunications network, subject to customary time, place and manner permitting requirements. Specifically, Section 27 of the New York Transportation Corporations Law ("New York Telecom Law") grants Verizon the right to place its facilities upon, over or under any public streets within the State of New York. See New York Tel. Co. v. Town of North Hempstead, 41 N.Y.2d 691, 363 N.E.2d 694 (1977); New York Tel. Co. v. City of Amsterdam, 613 N.Y.S.2d 993, 994 (App. Div. 1994) (stating that Section 27 grants "an unconditional privilege to install, maintain and repair" telephone facilities in public streets).

The Title II services to be provided over Verizon's FTTP network are not subject to Title VI of the Act or Article 11 of the New York State Public Service Law ("New York Cable Law"), which regulate cable television service. Verizon plans to utilize FTTP to offer its customers enhanced voice and broadband data services. While FTTP may give Verizon the future capability of providing video service, the network is not subject to Title VI of the Act or the New York Cable Law (including any construction requirements that may be set forth therein) unless and until the network constitutes a "cable system" as defined in Section 602(7) of the Act or a "cable television system" as defined in Section 212(2) of the New York Cable Law. This is triggered only when cable services, such as video programming, are provided to multiple subscribers within a community. As stated in Section 602(7) the Act, "the term 'cable system' ... does not include ... (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this Act, except ... to the extent that such facility is used in the transmission of video programming directly to subscribers...." (emphasis added) 47 U.S.C. § 522(7)(C). See Nat'l Cable Television Ass'n v. FCC, 33 F.3d 66 (D.C. Cir. 1994) (concluding that the FCC "reasonably interpreted the Act to require that an entity obtain a cable franchise only when that entity selects or provides the video programming to be offered.") Moreover, Section 621(b)(3) of the Act (47 U.S.C. § 541(b)(3)) further specifically prohibits franchising authorities from requiring cable franchises for the provision of telecommunications service or in any way restricting or impeding the provision of such service.

Verizon has the requisite authority as a common carrier under Title II of the Act and Section 27 of the NY Telecom Law to construct its FTTP network. It need not seek supplemental authority to construct the network. However, as provided in Title VI of the Act and the New York Cable Law, a cable franchise would be required prior to Verizon using the FTTP network to provide video programming to multiple subscribers in a local franchise area.

Furthermore, on June 15, 2005, the New York Public Service Commission ruled that Verizon does not need to obtain a cable franchise before constructing its FTTP network. The

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Commission found that unlike cable companies, Verizon already has the necessary authority under state law to use the public rights-of-way. Thus, the Commission concluded that Verizon has the right to upgrade its telecommunications network to make it capable of providing cable service. See Declaratory Ruling on Verizon Communication, Inc.'s Built-Out of its Fiber to the Premises Network, NY Public Service Commission, Case 05-M-0520/05-M-0247, June 15, 2005.

EXHIBIT 2
APPLICATION FOR A CABLE TELEVISION FRANCHISE
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VERIZON NEW YORK INC.

VERIZON FiOS TV – NEW YORK AREA CHANNEL LINEUP

**NOTE: ALL INFORMATION PROVIDED
IS FOR THE NEW YORK AREA
AND IS SUBJECT TO CHANGE FOR THE MUNICIPALITY**

Verizon FIOS TV New York Area Channel Lineup

Local		Local		Local		Local		
Fios TV Local	2	CBS — WCBS-TV 2	Fios TV Premier	97	History Channel International	Fios TV Premier	200	Hallmark Channel
	4	NBC — WNBC-TV 4		98	History Channel		202	Family Net
	5	FOX — WNYW-TV 5		99	Biography Channel		203	AmericanLife TV
	6	WRNN-TV 48		100	Animal Planet		204	TV Land
	7	ABC — WABC-TV 7		101	TLC (The Learning Channel)		210	Disney
	8	Superstation — WGN-TV		110	Lifetime		211	Toon Disney
	9	My WWOR-TV 9		111	Lifetime Movie Network		212	Nickelodeon
	10	WLNY-TV 55		112	Lifetime Real Women		213	Nick Too
	11	CW — WPIX-TV 11		113	SoapNet		214	The Nicktoons Network
	12	Telemundo — WJUU-TV 47		114	Oxygen		215	GAS
Fios TV Premier	13	PBS — WNET-TV 13	Fios TV Premier	120	QVC	Fios TV Premier	216	Noggin
	17	WFTY-TV 67		121	HSN		217	Cartoon Network (ESP)*
	18	WMBC-TV 63		123	America's Store		218	Boomerang (ESP)*
	21	PBS — WLJW-TV 21		125	Jewelry		219	Discovery Kids
	23	PBS — WJUN-TV 50		127	Shop NBC		220	Varsity TV
	25	NYC-TV		130	Style		221	FUNimation
	29	PBS — WFME-TV 66		131	Discovery Health		230	BET
	31	iWPXN-TV 31		132	LIME		231	TV One
	32	Local Programming		133	Fit TV		232	Black Family Channel
	33	Local Programming		134	Food Network		233	MTV Tr3s
Fios TV Premier	34	Local Programming	135	HGTV (Home & Garden Television)	234	Galavisión		
	37	Local Programming	136	Fine Living	235	Mun2		
	38	Local Programming	137	DIY (Do It Yourself)	236	Si TV		
	41	Univision — WXTV-TV 41	138	Discovery Home	237	AZN Television		
	48	TV Guide	139	Wealth TV	240	EWTN		
	49	Weatherscan Local	140	Travel Channel	241	INSP		
	50	USA Network	150	Sci-Fi Channel	242	I-Life		
	51	TNT	151	A&E	243	Church		
	52	TBS	152	Crime & Investigation Network	244	JCTV		
	53	FX	153	Court TV	245	BYU		
Fios TV Premier	54	Spike TV	154	GSN	246	Three Angels		
	60	ESPN	155	Bravo	248	Daystar		
	61	ESPN Classic Sports	156	Sleuth	249	Smile of a Child		
	62	ESPNNews	157	Logo	250	TBN		
	63	ESPNU	158	Ovation	Sports	300	Fox College Sports — Atlantic	
	64	ESPN 2	159	BBC America		301	Fox College Sports — Central	
	65	YES	160	Comedy Central		302	Fox College Sports — Pacific	
	67	SportsNet NY	161	E! Entertainment Television		303	Tennis Channel	
	68	Speed Channel	162	Fox Reality		305	Golf Channel	
	69	NFL Network	163	Fuel		307	Outdoor Channel	
306	VERSUS	164	ABC Family	308		The Sportsman Channel		
70	CNN	170	MTV	311		Fox Sports en Español		
71	CNN Headline News	171	MTV2	312		Fox Soccer Channel		
72	Fox News	173	MTV Jams	313		GoTV		
Fios TV Premier	73	CNBC	174	MTV Hits		315	TVG (Horse Racing)	
	75	Bloomberg TV	175	VH1		316	Horse Racing TV	
	76	CNN International	176	VH1 Classic		318	Mav TV	
	77	CNBC World	177	VH1 Soul		319	Blackbelt TV	
	78	ABC News Now	178	IMF		320	G4	
	79	C-SPAN	179	BET Jazz	Movies	340	Starz	
	80	C-SPAN 2	180	CMT		341	Starz West	
	81	C-SPAN 3	181	CMT Pure Country		342	Starz Edge	
	89	The Weather Channel	182	Great American Country		343	Starz Edge West	
	90	Discovery Channel	183	Gospel Music Channel		344	Starz in Black	
91	National Geographic Channel	184	BET Gospel	345		Starz Kids & Family		
92	Science Channel	185	Soundtrack Channel	346		Starz Cinema		
93	Discovery Times	190	Turner Classic Movies	347		Starz Comedy		
94	Pentagon Channel	192	Fox Movie Channel	348		Encore		
95	Military Channel			349		Encore West		
96	Military History Channel			350		Encore Love		
Fios TV Premier	351	Encore Love West	Fios TV Premier	352	Encore Westerns	Fios TV Premier	353	Encore Westerns West
	353	Encore Westerns West		354	Encore Mystery		354	Encore Mystery
	355	Encore Mystery West		355	Encore Drama		355	Encore Drama
	356	Encore Drama		356	Encore Drama West		356	Encore Drama West
	357	Encore Action		357	Encore Action West		357	Encore Action West
	358	Encore Action West		358	Encore Action West		358	Encore Action West
	359	Encore Action West		359	Encore Action West		359	Encore Action West
	360	Encore WAM!		360	Encore WAM!		360	Encore WAM!
	361	Showtime		361	Showtime		361	Showtime
	362	Showtime West		362	Showtime West		362	Showtime West
Fios TV Premier	363	Showtime Showcase		363	Showtime Showcase		363	Showtime Showcase
	364	Showtime Showcase West		364	Showtime Showcase West		364	Showtime Showcase West
	365	Showtime Too		365	Showtime Too		365	Showtime Too
	366	Showtime Too West		366	Showtime Too West		366	Showtime Too West
	367	Showtime Beyond		367	Showtime Beyond		367	Showtime Beyond
	368	Showtime Beyond West		368	Showtime Beyond West		368	Showtime Beyond West
	369	Showtime Extreme		369	Showtime Extreme		369	Showtime Extreme
	370	Showtime Extreme West		370	Showtime Extreme West		370	Showtime Extreme West
	371	Showtime Women		371	Showtime Women		371	Showtime Women
	372	Showtime Women West		372	Showtime Women West		372	Showtime Women West
Fios TV Premier	373	Showtime Next		373	Showtime Next		373	Showtime Next
	374	Showtime Next West		374	Showtime Next West		374	Showtime Next West
	375	Showtime Family Zone		375	Showtime Family Zone		375	Showtime Family Zone
	376	Showtime Family Zone West		376	Showtime Family Zone West		376	Showtime Family Zone West
	377	The Movie Channel		377	The Movie Channel		377	The Movie Channel
	378	The Movie Channel West		378	The Movie Channel West		378	The Movie Channel West
	379	The Movie Channel Xtra		379	The Movie Channel Xtra		379	The Movie Channel Xtra
	380	The Movie Channel Xtra West		380	The Movie Channel Xtra West		380	The Movie Channel Xtra West
	381	Flix		381	Flix		381	Flix
	382	Flix West		382	Flix West		382	Flix West
Fios TV Premier	384	Sundance		384	Sundance		384	Sundance
	400	HBO		400	HBO		400	HBO
	401	HBO West		401	HBO West		401	HBO West
	402	HBO 2		402	HBO 2		402	HBO 2
	403	HBO 2 West		403	HBO 2 West		403	HBO 2 West
	404	HBO Signature		404	HBO Signature		404	HBO Signature
	405	HBO Signature West		405	HBO Signature West		405	HBO Signature West
	406	HBO Family		406	HBO Family		406	HBO Family
	407	HBO Family West		407	HBO Family West		407	HBO Family West
	408	HBO Comedy		408	HBO Comedy		408	HBO Comedy
Fios TV Premier	409	HBO Comedy West		409	HBO Comedy West		409	HBO Comedy West
	410	HBO Zone		410	HBO Zone		410	HBO Zone
	412	HBO Zone West		412	HBO Zone West		412	HBO Zone West
	413	HBO Latino		413	HBO Latino		413	HBO Latino
	414	HBO Latino West		414	HBO Latino West		414	HBO Latino West
	415	Cinemax		415	Cinemax		415	Cinemax
	416	Cinemax West		416	Cinemax West		416	Cinemax West
	417	More Max		417	More Max		417	More Max
	418	More Max West		418	More Max West		418	More Max West
	419	Action Max		419	Action Max		419	Action Max
Fios TV Premier	420	Action Max West		420	Action Max West		420	Action Max West
	421	Thriller Max		421	Thriller Max		421	Thriller Max
	422	Thriller Max West		422	Thriller Max West		422	Thriller Max West
	423	Women's Max		423	Women's Max		423	Women's Max
	424	At Max		424	At Max		424	At Max
	425	Five Star Max		425	Five Star Max		425	Five Star Max
	426	OuterMax		426	OuterMax		426	OuterMax
	430	Playboy TV		430	Playboy TV		430	Playboy TV
	431	Playboy TV en Español		431	Playboy TV en Español		431	Playboy TV en Español
	435	here!		435	here!		435	here!

*A Spanish-language Secondary Audio Program (SAP) is available for selection.

**Subscription to corresponding premium channels and packages required.

Fios TV frequently updates its channel offerings. To view our latest published channel lineup, please visit verizonfios.com/tv.

Verizon FiOS TV — New York Area Channel Lineup

Spanish Language	440	Galavisión	520	CNN Headline News	600	Showcase	818	HD Net Movies
	442	ESPN Deportes	521	Fox News	601	Today's Country	819	Universal HD
	443	Fox Sports en Español	522	CNBC	602	Classic Country	820	Discovery HD
	444	Go!TV	524	C-SPAN	603	Bluegrass	821	Wealth TV HD
	446	CNN en Español	525	Canal SUR	604	R&B and Hip-Hop	822	National Geographic Channel HD
	447	Canal SUR			605	Classic R&B	823	MTV HD
	448	TVE Internacional	529	TVE Internacional	606	Smooth R&B	HD Premium	
	452	History Español	530	History Español	607	R&B Hits	830	HBO HD
	453	Discovery en Español	531	Discovery Channel	608	Rap	831	Cinemax HD
	454	Viajar y Vivir	532	Discovery en Español	609	Metal	832	Showtime HD
La Conexión	456	Infinito	534	Animal Planet	610	Rock	833	TMC HD
	457	MTV Tr3s	535	TLC (The Learning Channel)	611	Arena Rock	834	Starz HD
	458	VH Uno	Women		612	Classic Rock	Local Plus	
	459	Telehit	537	Lifetime	613	Alternative	850	NBC Weather Plus
	462	De Película	538	Lifetime Movie Network	614	Retro-Active	851	Tube Music Network
	463	De Película Clásico	Shopping		615	Electronica	854	WNBC 4.4-Multicast
	464	Cine Latino	540	QVC	616	Dance	860	PBS — WLIW 21
	465	Cine Mexicano	541	HSN	617	Adult Alternative	861	PBS — WLIW CRTE
	468	La Familia	543	Shop NBC	618	Soft Rock	862	13 Kids
	469	TV Chile	Home & Leisure		619	Hit List	863	13 WORLD
International Premiums	470	TV Colombia	545	Discovery Health	620	Party Favorites	Fios On Demand	
	472	Sorpresa	546	Viajar y Vivir	621	90s	Kids FREE	
	473	Toon Disney Español	549	Infinito	622	80s	ALL FREE	
	474	Boomerang (ESP)*	550	Food Network	623	70s	Home & Leisure	
	475	Discovery Kids en Español	551	HGTV (Home & Garden Television)	624	Solid Gold Oldies	Info & Education	
	477	TBN Enlace	552	Travel Channel	625	Singers & Standards	Kids	
	478	EWTN Español	Kids		626	Big Band & Swing	Music	
	International Premiums		555	E! Entertainment Television	627	Easy Listening	News	
	480	SBTN (Vietnamese)	556	A&E	628	Smooth Jazz	Pop Culture	
	481	CCTV-4 (Mandarin Chinese)	557	SI TV	629	Jazz	Shopping	
La Conexión	482	CTI — Zhong Tian Channel (Chinese)	558	Mun2	630	Blues	Sports	
	483	TV Japan	559	Comedy Central	631	Reggae	Movies	
	484	MBC (Korean)	560	Sci-Fi Channel	632	Soundscapes	New Movies	
	485	The Filipino Channel	TV		633	Classical Masterpieces	New by Category	
	486	TV Asia	562	MTV Tr3s	634	Opera	All Movies	
	487	ART (Arabic)	563	MTV2	635	Light Classical	All Movies by Category	
	488	RAI (Italian)	564	Telehit	636	Show Tunes	In Theaters	
	489	TV 5 (French)	565	VH Uno	637	Contemporary Christian	En Español	
	490	TV Polonia	566	CMT	638	Gospel	Subscriptions	
	491	Rang A Rang (Farsi)	TV		639	Radio Disney	Cinemax	
La Conexión	492	RTN Russian	569	De Película	640	Sounds of the Seasons	HBO	
	493	Channel 1 Russian	570	De Película Clásico	641	Música Urbana	Showtime	
	496	Bridges TV	571	Cine Mexicano	642	Salsa y Merengue	Starz	
	497	MTV K	572	Cine Latino	643	Rock en Español	Sundance	
	498	MTV Chi	Family		644	Pop Latino	The Movie Channel	
	499	MTV Desi	574	ABC Family	645	Mexicana	WWE	
	La Conexión		575	La Familia	646	Americana	Karaoke	
	500	USA Network	576	TV Chile	HD Broadcast		Playboy	
	501	TNT	577	TV Colombia	801	CW — WPIX HD	Events	
	502	TBS	578	TV Land	802	CBS — WCBS HD	Hustler	
La Conexión	503	Galavisión	Children		803	PBS — WNET HD	Spice	
	504	FX	580	Nickelodeon	804	NBC — WNBC HD	TEN	
	505	Spike TV	581	Disney en Español	805	FOX — WNYW HD	Playboy Subscribers	
	La Conexión		582	Toon Disney Español	807	ABC — WABC HD	Fios TV Help	
	508	ESPN Deportes	583	Boomerang (ESP)*	809	My WWOR HD		
	510	YES	584	Cartoon Network (ESP)*	HD National			
	512	SportsNet NY	585	Sorpresa	810	TNT HD		
	513	Fox Sports en Español	586	Discovery Kids en Español	811	ESPN HD		
	514	Fox Soccer Channel	Religion		812	ESPN 2 HD		
	516	Go!TV	588	TBN Enlace	814	NFL Network HD		
La Conexión	518	CNN en Español	589	EWTN Español	817	HD Net		
	519	CNN						
	520	CNN						

*A Spanish-language Secondary Audio Program (SAP) is available for selection.

**Subscription to corresponding premium channels and packages required.

Programming services offered within each package are subject to change, and not all programming services will be available at all times. Blackout restrictions also apply.

Lifestyle Premiums Arts & Entertainment Sports Local Plus
 News & Information Music Choice PPV HD Fios On Demand



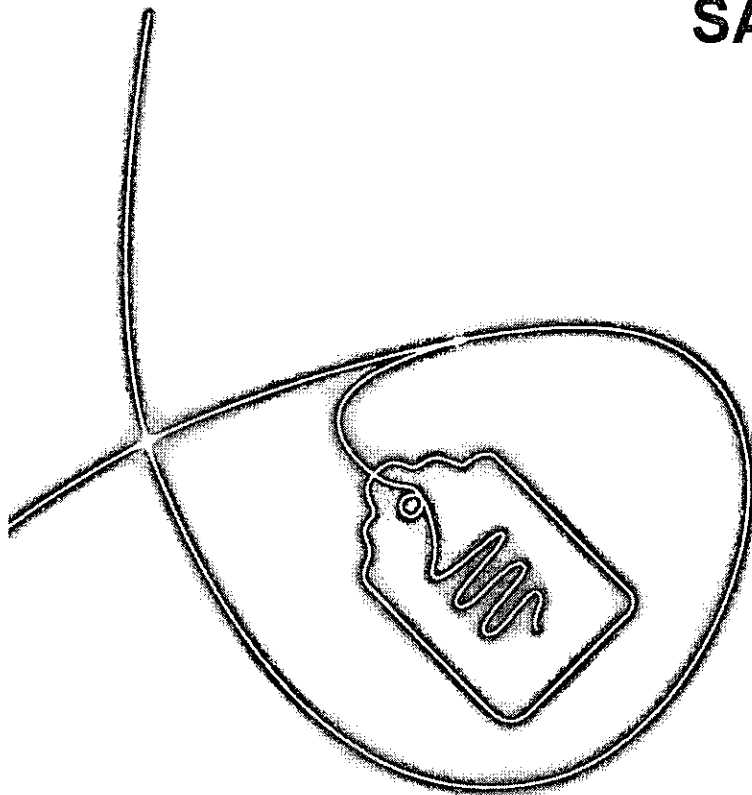
We never stop working for you.

EXHIBIT 3
APPLICATION FOR A CABLE TELEVISION FRANCHISE
VILLAGE OF PIERMONT/VERIZON NEW YORK INC.

Verizon FiOS TV

Rates & Packages

SAMPLE



Get more from your
fiber-optic experience.

SAMPLE

Here's everything you need to create your perfect FiOS TV package.
First, choose your service. Then, add to it from our selection of digital packages and premium channels below.

Refer to the Channel Lineup for a complete listing of the channels included in each package.

Service	Number of Channels	Monthly Price
FiOS TV Local ¹	15-35	\$12.99
Digital Service (Requires Set Top Box (STB) and Router ²)		
FiOS TV Premier ³	160 + FiOS TV Local	\$42.99
La Conexión ⁴	115 + FiOS TV Local	\$32.99

Now, add more channels for just a few dollars more.

Packages (Requires STB)	Number of Channels	Monthly Price
Sports	15	\$7.99
Movies	44	\$12.99
Sports/Movies Combination	59	\$15.99
Spanish Language	25	\$11.99

Premiums ⁵ (Requires STB)	Number of Channels	Monthly Price
HBO ⁶	14	\$15.99
Cinemax ⁷	12	\$15.99
HBO/Cinemax Combination	26	\$25.99
Playboy TV ⁸ /Playboy TV en Español	2	\$15.99
here!	1	\$7.99

International Premiums ⁹ (Requires STB)	Number of Channels	Monthly Price
International Premium Channels	17	Individually Priced

Video On Demand (VOD) and Pay Per View (PPV) (Requires STB)	Price
---	-------

On Demand Movies	
New Releases	\$3.99
Library	\$2.99

On Demand Subscriptions	
WWE	\$7.99/mo.
Karaoke	\$7.99/mo.

SAMPLE

On Demand Adult	\$14.99/mo.
PPV Events	Varies
PPV Sports	Varies
ESPN GamePlan — NCAA Football	\$21.99/daily, \$129.99 season*
ESPN FullCourt — NCAA Basketball	\$14.99/daily, \$109.99 season*

Set Top Box (STB)	Monthly Price
Standard Definition	\$4.99
High Definition (includes HD channels)	\$9.99
High Definition Digital Video Recorder (includes HD channels)	\$12.99
Home Media DVR (features Multi-Room DVR & Media Manager)	\$19.99

Initial Installation	One-Time Charges
Existing Outlet Hookup (up to 3)	No Charge
Additional Outlet/Set Top Box Hookup (existing outlet)	\$19.99
New Outlet Install/Existing Outlet Rewire (per outlet)	\$54.99
Outlet Relocation	\$54.99

Subsequent Installations/Charges	One-Time Charges
Set Top Box Addition or Upgrade/Downgrade	\$24.99
Premise Visit*	\$49.99
New Outlet Installation (per outlet)	\$54.99
Outlet Relocation (per outlet)	\$54.99
Setup of TV Equipment (new TV with existing STB)	\$49.99
Disconnect of Set Top Box [†]	\$24.99 + \$5.00/STB
Downgrade of Service from Digital to Analog	\$49.99 + \$5.00/STB
FIOS TV Service Disconnect	No Charge
FIOS TV Service Reconnect (up to 3 outlets)*	\$49.99

Other Services and Charges	One-Time Charges
Seasonal Service Suspension (charged at initiation, 1–6 months)*	\$24.99
Replacement Remote — Basic Universal	\$5.00 + Shipping & Handling
Replacement Remote — FIOS TV Universal	\$6.99 + Shipping & Handling
Unreturned/Damaged STB — Standard Definition	\$240.00
Unreturned/Damaged STB — High Definition	\$350.00
Unreturned/Damaged STB — Digital Video Recorder (DVR)	\$550.00

*In addition, early subscription and half season prices are available.

SAMPLE



We never stop working for you.

- 1 In order to be eligible for Movies or Sports, FiOS TV Premier or La Conexión is required. The Spanish Language package may be added to FiOS TV Local service, but requires a Set Top Box for access. The addition of a Set Top Box with FiOS TV Local service provides access to Video On Demand (VOD) and Pay Per View (PPV), as well as the ability to order Premiums and International Premiums.
- 2 Router provided will be a new or fully inspected, tested and warranted return unit. If service is cancelled within the first 12 months, router must be returned or \$99.99 equipment fee applies. If you maintain service for twelve (12) consecutive months, ownership of the router shall transfer to you, after which time all maintenance of the router shall be at your sole cost and expense, and the risk of loss will be yours should the router be damaged or stolen.
- 3 FiOS TV Premier includes all FiOS TV Local channels, additional all-digital programming, digital music channels and access to Pay Per View and Video On Demand. 30-day minimum billing period required for all digital packages.
- 4 La Conexión includes all FiOS TV Local channels, digital programming including popular English-language networks and Spanish-language networks, digital music channels, and access to PPV and VOD. La Conexión cannot be combined with the Spanish Language package. 30-day minimum billing period required for all digital packages.
- 5 Subscription VOD is included with all Premiums at no extra charge (where applicable). 30-day minimum billing period required for all Premiums.
- 6 A premise visit charge is assessed when a technician installation is required to set up a new or additional TV with an existing FiOS TV Set Top Box. A premise visit charge is not assessed when adding new, upgrading/downgrading existing, or disconnecting Set Top Box receivers.
- 7 The Set Top Box disconnect charge is assessed only when the customer maintains at least one FiOS TV Set Top Box. If all Set Top Box receivers are disconnected, the service downgrade charge applies.
- 8 The reconnect fee applies when establishing service after a service disconnect.
- 9 Seasonal service suspension requires a minimum suspension of one month and a maximum suspension of six months.

Programming services offered within each package are subject to change and the number of channels within each package are approximations. Not all programming services available at all times. Blackout restrictions also apply. In addition, the pricing of the packages and the terms and conditions regarding your use of Verizon FiOS TV are also subject to change. Pricing applies to residential use only within the United States. Not all services are available in all areas. Acceptance of FiOS TV Terms of Service is required in order to use FiOS TV, and a copy of the Terms of Service will be given to you at the time of installation. The customer is financially responsible for any damage to, or misuse of, any equipment or for the failure to return any equipment if service is terminated. Applicable franchise fees, regulatory fees and taxes apply. Other terms and conditions apply.

VEFIFF60157-1106

Cable Franchise Agreement
by and between
the Village of Piermont
and
Verizon New York Inc.

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EXHIBITS

EXHIBIT A: MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE
EXHIBIT B: SERVICE AREA
EXHIBIT C: PEG CHANNELS
EXHIBIT D: FORM OF PERFORMANCE BOND

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Piermont, a validly organized and existing political subdivision of the State of New York (the "Local Franchising Authority" or "LFA") and Verizon New York Inc., a corporation duly organized under the applicable laws of the State of New York (the "Franchisee").

WHEREAS, the LFA wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable system in the Franchise Area as designated in this Franchise;

WHEREAS, the LFA is a "franchising authority" in accordance with Title VI of the Communications Act, (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended;

WHEREAS, Franchisee is in the process of completing the upgrading of its existing telecommunications and information services network through the installation of a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area which transmits the Non-Cable Services pursuant to authority granted by Section 27 of the New York Transportation Corporations Law, as amended, and Title II of the Communications Act, which Non-Cable Services are not subject to the Cable Law or Title VI of the Communications Act;

WHEREAS, the FTTP Network occupies the Public Rights-of-Way within the LFA, and Franchisee desires to use portions of the FTTP Network to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee's plans for its Cable System are adequate and feasible in a full public proceeding affording due process to all parties;

WHEREAS, the LFA has found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has determined that in accordance with the provisions of the Cable Law, this Franchise complies with NY PSC's franchise standards and the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, the LFA and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the LFA's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of the LFA pursuant to and consistent with the Cable Law (as hereinafter defined), pursuant to the

terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

Except as otherwise provided herein, the definitions and word usages set forth in the Cable Law are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1. *Access Channel*: A video Channel, which Franchisee shall make available to the LFA without charge for Public, Educational, or Governmental noncommercial use for the transmission of video programming as directed by the LFA.

1.2. *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, the Franchisee.

1.3. *Basic Service*: Any service tier, which includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.

1.4. *Cable Law*: Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, to the extent authorized under and consistent with federal law.

1.5. *Cable Service* or *Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), as amended.

1.6. *Cable System* or *System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), as amended.

1.7. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), as amended.

1.8. *Communications Act*: The Communications Act of 1934, as amended.

1.9. *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of Franchisee's affairs.

1.10. *Educational Access Channel*: An Access Channel available for noncommercial use solely by local public schools and public school districts in the Franchise Area and other not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents in the Franchise Area as specified by the LFA in Exhibit C to this Agreement.

1.11. *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.12. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.13. *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA and such additional areas as may be annexed or acquired.

1.14. *Franchisee*: Verizon New York Inc. and its lawful and permitted successors, assigns and transferees.

1.15. *Government Access Channel*: An Access Channel available for the sole noncommercial use of the LFA.

1.16. *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee from the operation of the Cable System to provide Cable Service in the Service Area.

1.16.1. *Gross Revenue* includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) video on demand, including pay-per-view; (iv) revenues from the sale or lease of access channel(s) or channel capacity; and (v) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, subject to the exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

1.16.2. Gross Revenue shall not include:

1.16.2.1. Franchise Fees imposed on Franchisee by the LFA that are passed through from Franchisee as a line item paid by Subscribers; revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; any fees or charges collected from Subscribers or other third parties for any PEG grant or Franchise Grant payments; and

1.16.2.2. except as otherwise provided in Subsection 1.16.1, any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders. Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with

the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment.

1.17. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20), as amended.

1.18. *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.19. *Local Franchise Authority (LFA)*: The Village of Piermont, New York, or the lawful successor, transferee, or assignee thereof.

1.20. *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services and Telecommunications Services.

1.21. *Normal Business Hours*: Those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.22. *NY PSC*: The New York Public Service Commission.

1.23. *PEG*: Public, Educational, and Governmental.

1.24. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.25. *Public Access Channel*: An Access Channel available for noncommercial use solely by the residents in the Franchise Area on a first-come, first-served, nondiscriminatory basis.

1.26. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the LFA. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.27. *Service Area*: All portions of the Franchise Area where Cable Service is being offered as described in Exhibit B attached hereto.

1.28. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.29. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46), as amended.

1.30. *Title VI:* Title VI of the Communications Act, Cable Communications, as amended.

1.31. *Transfer of the Franchise:*

1.31.1. Any transaction in which:

1.31.1.1. a fifty percent ownership or other interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Franchisee is transferred; or

1.31.1.2. the rights held by Franchisee under the Franchise and the certificate of confirmation issued therefor by the NY PSC are transferred or assigned to another Person or group of Persons.

1.31.2. However, notwithstanding Sub-subsections 1.31.1.1 and 1.31.1.2 above, a *Transfer of the Franchise* shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

1.32. *Video Programming:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20), as amended.

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

2.1. *Grant of Authority:* Subject to the terms and conditions of this Agreement and the Cable Law, the LFA hereby grants the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2. *The FTTN Network:* Upon delivery of Cable Service, by subjecting Franchisee's mixed use facilities to the NY PSC's minimum franchise standards and the LFA's police power, the LFA has not been granted broad new authority over the construction, placement and operation of Franchisee's mixed-use facilities.

2.3. *Effective Date and Term:* This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise.

2.4. *Grant Not Exclusive:* The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the LFA reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

2.6. *No Waiver:*

2.6.1. The failure of the LFA on one or more occasions to exercise a right under this Franchise, the Cable Law, or other applicable state or federal law, or to require compliance or performance under this Franchise, shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance of this Agreement, nor shall it excuse Franchisee from compliance or performance, unless such right or such compliance or performance has been specifically waived in writing.

2.6.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise, the Cable Law, or other applicable state or federal law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or a waiver of performance of this Agreement, nor shall it excuse the LFA from performance, unless such right or such performance has been specifically waived in writing.

2.7. *Construction of Agreement:*

2.7.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.7.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 of the Communications Act, 47 U.S.C. § 545, as amended.

2.8. *Police Powers:* The LFA shall not enact any local laws that are inconsistent with this Franchise, provided, however, that nothing in this Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of the police powers of the LFA in a manner not materially in conflict with the privileges granted in this Franchise and consistent with all federal and state laws, regulations and orders.

2.9. *Restoration of Municipal Property:* Any municipal property damaged or destroyed shall be promptly repaired or replaced by the Franchisee and restored to pre-existing condition.

2.10. *Restoration of Subscriber Premises:* The Franchisee shall ensure that Subscriber premises are restored to pre-existing condition if damaged by the Franchisee's employees or agents in any respect in connection with the installation, repair, or disconnection of Cable Service.

3. **PROVISION OF CABLE SERVICE**

3.1. *Service Area:*

3.1.1. *Service Area:* Subject to the issuance of all necessary permits by the LFA, Franchisee shall offer Cable Service to significant numbers of Subscribers within residential areas of the Service Area and may make Cable Service available to businesses in the Service Area, within twelve (12) months and shall offer Cable Service to all residential areas of the Service Area within five (5) years, of the Effective Date of this Franchise, or, in both instances, such longer period as may be permitted by the Cable Law, except, in accordance with NY PSC rules and regulations: (A) for periods of Force Majeure; (B) for periods of delay caused by the LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in areas, developments or buildings where Franchisee cannot gain access after good faith efforts; (F) in areas, developments or buildings where the provision of Cable Service is economically infeasible because such provision requires nonstandard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density and other requirements set forth in Sub-subsection 3.1.1.1. and Section 3.2.

3.1.1.1. *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than twenty-five (25) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, Franchisee shall provide Cable Service to such area within twelve (12) months of receiving notice from the LFA that the density requirements have been met.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however,

that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual costs. Such costs shall be submitted to said Subscriber, in writing, before installation is begun.

3.3. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one aerial service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as may be designated by the LFA as provided in Exhibit A attached hereto; provided, however, that if it is necessary to extend Franchisee's aerial trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such aerial extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual costs. Such costs shall be submitted to said recipient, in writing, before installation is begun. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged.

3.4. *Contribution in Aid:* Notwithstanding the foregoing, Franchisee shall comply at all times with the requirements of Section 895.5 of the NY PSC rules and regulations.

4. **SYSTEM FACILITIES**

4.1. *Quality of Materials and Work:* Franchisee shall construct and maintain its System using materials of good and durable quality, and all work involved in the construction, installation, maintenance and repair of the Cable System shall be performed in a safe, thorough and reliable manner.

4.2. *System Characteristics:* During the term hereof Franchisee's Cable System shall meet or exceed the following requirements:

4.2.1. The System shall be designed and operated with an initial analog and digital carrier passband between 50 and 860 MHz and shall provide for a minimum channel capacity of not less than 77 channels on the Effective Date.

4.2.2. The System shall be designed to be an active two-way plant for subscriber interaction, if any, required for the selection or use of Cable Service.

4.3. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

4.4. *Emergency Alert System:* Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and the State of New York, including the NY PSC's rules and regulations and the current New York EAS Plan, in order that emergency messages may be distributed over the System.

5. **PEG SERVICES**

5.1. *PEG Set Aside:*

5.1.1. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide capacity on its Basic Service tier for up to one (1) dedicated Public Access Channel, one (1) dedicated Educational Access Channel, and up to one (1) dedicated Government Access Channel (collectively, "PEG Channels").

5.1.2. The programming to be carried on each of the PEG Channels set aside by Franchisee is reflected in Exhibit C attached hereto. The LFA hereby authorizes Franchisee to transmit such programming within and without LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

5.1.3. Franchisee shall provide the technical ability to play back pre-recorded programming provided to Franchisee consistent with this Section. Franchisee shall transmit programming consistent with the dedicated uses of PEG Access Channels. Franchisee shall comply at all times with the requirements of Section 895.4 of the NY PSC rules and regulations.

5.2. *Indemnity for PEG:* The LFA shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the LFA from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or

Channel. The LFA shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. § 531.

5.3. *Franchise Grant:* Franchisee shall pay a franchise grant to the LFA in the amount of NINE THOUSAND DOLLARS (\$9,000.00) (the "Franchise Grant"). Franchisee shall pay the Franchise Grant in fifteen (15) equal installments over the term of this Agreement, the first within sixty (60) days of the Effective Date, and annually thereafter on the anniversary of said Effective Date.

5.4. *Recovery of Costs:* To the extent permitted by federal law, the Franchisee shall be allowed to recover any costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the forgoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection and any franchise-related costs to Subscribers.

6. **FRANCHISE FEES**

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of five percent (5%) of annual Gross Revenue (the "Franchise Fee"). In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. Late payments for Franchise Fees shall be subject to interest at the then-current rate set forth in Section 5004 of Article 50 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum from the due date to the date that such payment is made.

6.2. *Supporting Information:* Each Franchise Fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation.

6.3. *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due, but cannot exceed the date of records retention reflected in Article 7.

6.4. *Bundled Services:* If Cable Services subject to the Franchise Fee required under this Article 6 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise Fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders.

7. REPORTS AND RECORDS

7.1. *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the LFA shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. The LFA shall treat any information disclosed by Franchisee as confidential and shall only disclose it to employees, representatives, and agents thereof who have a need to know, or in order to enforce the provisions hereof. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. § 551.

7.2. *Records Required:* Franchisee shall at all times maintain:

7.2.1. Records of all written complaints for a period of six (6) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

7.2.2. Records of outages for a period of six (6) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

7.2.3. Records of service calls for repair and maintenance for a period of six (6) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

7.2.4. Records of installation/reconnection and requests for service extension for a period of six (6) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

7.2.5. A map showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

7.3. *System-Wide Statistics:* Any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. **INSURANCE AND INDEMNIFICATION**

8.1. *Insurance:*

8.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

8.1.1.1. Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA.

8.1.1.2. Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

8.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of New York.

8.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$500,000 policy limit.

8.1.1.5. Excess liability or umbrella coverage of not less than ten million dollars (\$10,000,000).

8.1.2. The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 8 except Worker's Compensation Insurance, Employer's Liability Insurance, and excess liability or umbrella coverage.

8.1.3. Each of the required insurance policies shall be noncancellable except upon thirty (30) days prior written notice to the LFA. Franchisee shall not cancel any required insurance policy without submitting documentation to the LFA verifying that the Franchisee has obtained alternative insurance in conformance with this Agreement.

8.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

8.1.5. Upon written request, Franchisee shall deliver to the LFA Certificates of Insurance showing evidence of the required coverage.

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, provided that the LFA shall give Franchisee prompt written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

8.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 8.2.1, Franchisee shall provide the defense of any claims brought against the LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the LFA, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the LFA and the LFA does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the LFA shall in no event exceed the amount of such settlement.

8.2.3. The LFA shall hold harmless and defend Franchisee from and against and shall be responsible for damages, liability or claims resulting from or arising out of the willful misconduct or negligence of the LFA.

8.2.4. The LFA shall be responsible for its own acts of willful misconduct, negligence, or breach, subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify the LFA for acts of the LFA which constitute willful misconduct or negligence on the part of the LFA, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

9. **TRANSFER OF FRANCHISE**

9.1. *Transfer:* Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, as amended, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the LFA may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the

Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.31 above.

10. **RENEWAL OF FRANCHISE**

10.1. *Governing Law:* The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 12.11 below, the Cable Law and Section 626 of the Communications Act, 47 U.S.C. § 546, as amended.

10.2. *Needs Assessment:* In addition to the procedures set forth in Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Such assessments shall be provided to Franchisee by the LFA promptly so that Franchisee will have adequate time to submit a proposal under 47 U.S.C. § 546 and complete renewal of the Franchise prior to expiration of its term.

10.3. *Informal Negotiations:* Notwithstanding anything to the contrary set forth herein, Franchisee and the LFA agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the LFA and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the LFA may grant a renewal thereof.

10.4. *Consistent Terms:* Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law.

11. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

11.1. *Notice of Violation:* If at any time the LFA believes that Franchisee has not complied with the terms of the Franchise, the LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem in a reasonable time, the LFA shall then notify Franchisee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article, the "Noncompliance Notice").

11.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to remedy such noncompliance and notify the LFA of the steps being taken and the date by which Franchisee projects that it will complete cure of such noncompliance. Upon cure of any noncompliance, the LFA shall provide written confirmation that such cure has been effected.

11.3. *Public Hearing:* The LFA shall schedule a public hearing if the LFA seeks to continue its investigation into the alleged noncompliance (i) if Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (ii) if Franchisee has not remedied the alleged noncompliance within sixty (60) days or the date projected pursuant to Section 11.2(iii) above. The LFA shall provide Franchisee at least sixty (60) business days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

11.4. *Enforcement:* Subject to Section 12.11 below and applicable federal and state law, in the event the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

11.4.1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

11.4.2. Commence an action at law for monetary damages or seek other equitable relief; or

11.4.3. Exercise its rights under the security described in Section 11.6; or

11.4.4. In the case of a substantial noncompliance with a material provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.

11.5. *Revocation:* Should the LFA seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, the LFA shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the LFA has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a second public hearing. The LFA shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

11.5.1. At the designated public hearing, Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the LFA, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

11.5.2. Following the second public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions to the LFA in writing and thereafter the LFA shall determine (i) whether an event of default has occurred under this Franchise; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Franchisee. The LFA shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional

time to the Franchisee to effect any cure. If the LFA determines that it will revoke the Franchise, the LFA shall promptly provide Franchisee with a written determination setting forth the LFA's reasoning for such revocation. Franchisee may appeal such written determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the LFA.

11.5.3. The LFA may, at its sole discretion, take any lawful action that it deems appropriate to enforce the LFA's rights under the Franchise in lieu of revocation of the Franchise.

11.6. *Security:*

11.6.1. Prior to the Effective Date, the Franchisee shall provide to the LFA security for the performance of its obligations under this Agreement in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00). The form of this security may, at Franchisee's option, be a performance bond, letter of credit, cash deposit, cashier's check or any other security acceptable to the LFA. If the Franchisee posts a performance bond, it shall be substantially in the form of Exhibit D.

11.6.2. In the event that a performance bond provided pursuant to the Agreement is not renewed or is canceled, Franchisee shall provide new security pursuant to this Article within thirty (30) days of such cancellation or failure to renew.

11.6.3. Neither cancellation, nor termination, nor refusal by surety to extend the performance bond, nor inability of the Franchisee, as principal, to file a replacement performance bond or replacement security for its obligations, shall constitute a loss to the LFA, as obligee, recoverable under the performance bond.

11.7. *Abandonment of Service:* Franchisee shall not abandon any Cable Service or portion thereof without the LFA's prior written consent as provided in the Cable Law.

12. **MISCELLANEOUS PROVISIONS**

12.1. *Actions of Parties:* In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

12.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

12.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the LFA.

12.4. *Force Majeure:* Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

12.4.1. Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee that outweigh the benefit to be derived by the LFA and/or Subscribers.

12.5. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

12.5.1. Notices to Franchisee shall be mailed to:

Verizon New York Inc.
Jack White, Senior Vice President and General Counsel
Verizon Telecom
One Verizon Way
Room VC43E010
Basking Ridge, New Jersey 07920-1097

12.5.2. Notices to the LFA shall be mailed to:

Village Clerk
Village Hall
478 Piermont Ave
Piermont, New York 10968

12.6. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the LFA and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the

parties regarding the subject matter hereof. Any local laws or parts of local laws that materially conflict with the provisions of this Agreement are superseded by this Agreement.

12.7. *Amendments and Modifications:* Amendments and/or modifications to this Franchise shall be mutually agreed to in writing by the parties and subject to the approval of the NY PSC pursuant to the Cable Law.

12.8. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the articles, sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

12.9. *Severability:* If any section, subsection, sub-subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

12.10. *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

12.11. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the LFA or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

12.12. *NY PSC Approval:* This Franchise is subject to the approval of the NY PSC. Franchisee shall file an application for such approval with the NY PSC within sixty (60) days after the date hereof. Franchisee shall also file any necessary notices with the FCC.

12.13. *Rates and Charges:* The rates and charges for Cable Service provided pursuant to this Franchise shall be subject to regulation in accordance with federal law.

12.14. *Publishing Information:* LFA hereby requests that Franchisee omit publishing information specified in 47 C.F.R. 76.952 from Subscriber bills.

12.15. *Employment Practices:* Franchisee will not refuse to hire, nor will it bar or discharge from employment, nor discriminate against any person in compensation or in terms,

conditions, or privileges of employment because of age, race, creed, color, national origin, or sex.

12.16. *Customer Service:* Franchisee shall comply with the consumer protection and customer service standards set forth in Parts 890 and 896 of the NY PSC rules and regulations.

12.17. *Performance Review:* The LFA may, at its discretion but not more than once per twelve-month period, hold an informal performance evaluation session (the "Performance Review") that is not open to the public to review Franchisee's compliance with the terms and conditions of this Franchise. The information disclosed to the LFA by the Franchisee at the Performance Review shall be treated by the LFA as confidential. The LFA shall provide Franchisee with at least thirty (30) days prior written notice of the Performance Review to be held at a mutually agreeable time. Franchisee shall have the opportunity to participate in and be heard at the Performance Review. Within thirty (30) days after the conclusion of the Performance Review, the LFA shall provide Franchisee written documentation (the "Performance Review Report") setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise. The Performance Review Report shall not contain any confidential information disclosed by the Franchisee during the Performance Review.

12.18. *No Third Party Beneficiaries:* Except as expressly provided in this Agreement, this Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

12.19. *LFA Official:* The Clerk of the LFA is the LFA official that is responsible for the continuing administration of this Agreement.

[balance of page intentionally left blank]

12.20. *No Waiver of LFA's Rights:* Notwithstanding anything to the contrary in this Agreement, no provision of this Agreement shall be construed as a waiver of the LFA's rights under applicable federal and state law.

AGREED TO THIS ____ DAY OF _____, 2007.

LFA:

VILLAGE OF PIERMONT

By: _____
Title:

FRANCHISEE:

VERIZON NEW YORK INC.

By: _____
Title:

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: Form of Performance Bond

Exhibit List

Piermont/Verizon New York Inc.
Franchise Agreement/March 2007

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

1. Village Hall
478 Piermont Avenue
Piermont, NY 10968
2. Police Department
478 Piermont Avenue
Piermont, NY 10968
3. Tappan Zee Elementary School
561 Route 9W
Piermont, NY 10968
4. Dennis P. McHugh Piermont Public Library
Chiggelzby Street (street name will be changed to Fly Wheel West (Flywheel Park at Ash
Street, immediately behind M&T Bank))
Piermont, NY 10968

EXHIBIT B

SERVICE AREA

A map of the Service Area is attached hereto.

The construction of the Franchisee's FTTP Network has been completed to approximately 52% of the current households in the Franchise Area. At present, Franchisee's anticipated schedule calls for 52% deployment by July 2007, 54% deployment by January 2008, 70% deployment by July 2008, 70% deployment by January 2009, 75% deployment by July 2009, 80% deployment by January 2010, 85% deployment by July 2010, 90% deployment by January 2011, 95% deployment by July 2011, and 100% deployment by January 2012. This schedule is subject to further review and modification by the Franchisee consistent with Section 895.5(b)(1) of the NY PSC rules and regulations; provided, however, that Franchisee shall provide notice to the LFA and the NY PSC of any material change in this schedule.

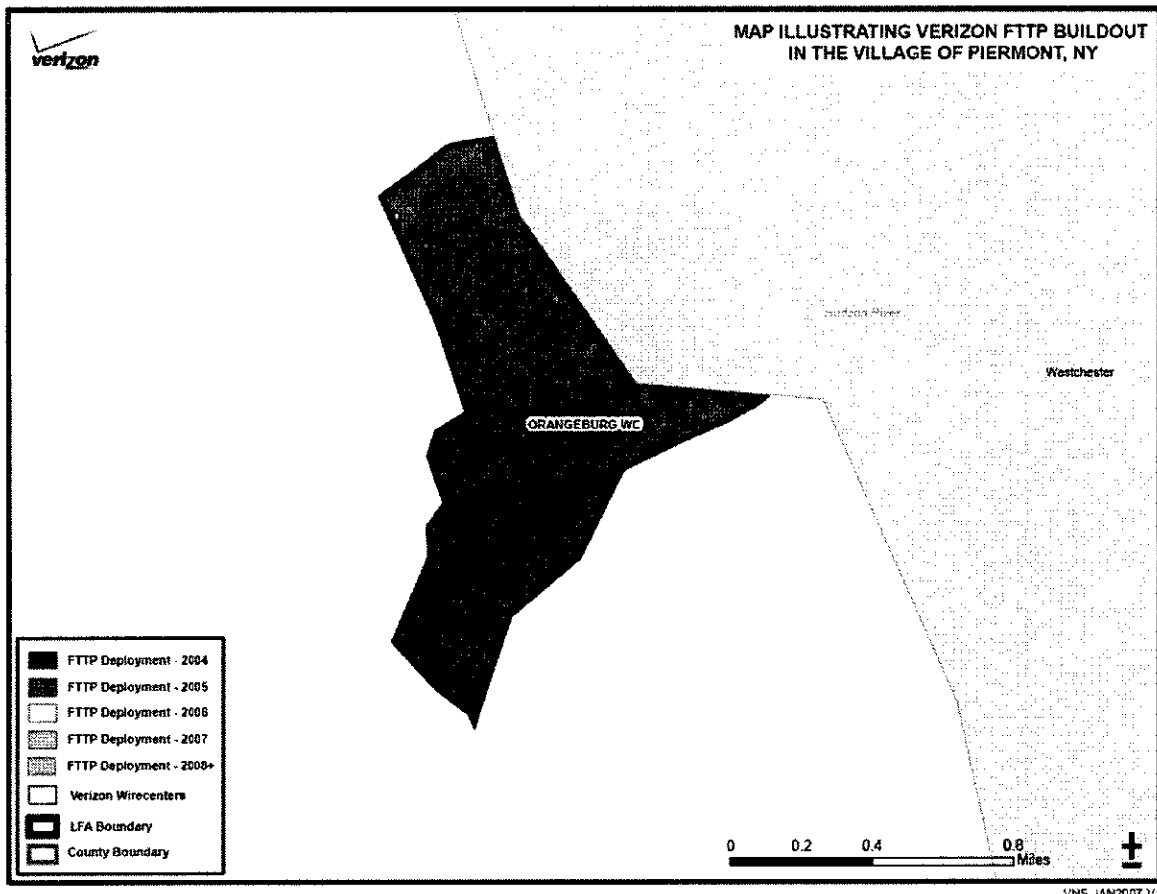


Exhibit B - 2 of 2

Piermont/Verizon New York Inc.
Franchise Agreement/March 2007

EXHIBIT C

PEG CHANNELS

Upon written request of the LFA, Franchisee shall make available on its Basic Service tier up to one (1) dedicated Public Access Channel, one (1) dedicated Educational Access Channel, and up to one (1) dedicated Government Access Channel.

EXHIBIT D

FORM OF PERFORMANCE BOND

Franchise Bond
Bond No. _____

KNOW ALL MEN BY THESE PRESENTS: That (name & address) (hereinafter called the Principal), and (name and address) (hereinafter called the Surety), a corporation duly organized under the laws of the State of (state), are held and firmly bound unto (name & address) (hereinafter called the Oblige), in the full and just sum of _____ Dollars (\$_____), the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal and Oblige have entered into a Franchise Agreement dated _____ which is hereby referred to and made a part hereof.

WHEREAS, the Principal is required to perform certain obligations under said Agreement.

WHEREAS, the Oblige has agreed to accept this bond as security against default by Principal of performance of its obligations under said Agreement during the time period this bond is in effect.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal fails to perform its obligations under said Agreement, then this obligation shall be void, otherwise to remain in full force and effect, unless otherwise terminated, cancelled or expired as hereinafter provided.

PROVIDED HOWEVER, that this bond is executed subject to the following express provisions and conditions:

1. In the event of default by the Principal, Oblige shall deliver to Surety a written notice of the details of such default within 30 days after the Oblige shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein.
2. This Bond shall be effective _____, 20____, and shall remain in full force and effect thereafter for a period of one year and will automatically extend for additional one year periods from the expiry date hereof, or any future expiration date, unless the Surety provides to the Oblige not less than sixty (60) days advance written notice of its intent not to renew this Bond or unless the Bond is earlier canceled pursuant to the following. This Bond may be canceled at any time upon sixty (60) days advance written notice from the Surety to the Oblige.
3. Neither cancellation, termination nor refusal by Surety to extend this bond, nor inability of Principal to file a replacement bond or replacement security for its obligations under said Agreement, shall constitute a loss to the Oblige recoverable under this bond.

Bond No. _____

4. No claim, action, suit or proceeding shall be instituted against this bond unless same be brought or instituted and process served within one year after termination or cancellation of this bond.
5. No right of action shall accrue on this bond for the use of any person, corporation or entity other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.
6. The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond remains in force or the amount or number of claims brought against this bond.
7. This bond is and shall be construed to be strictly one of suretyship only. If any conflict or inconsistency exists between the Surety's obligations as described in this bond and as may be described in any underlying agreement, permit, document or contract to which this bond is related, then the terms of this bond shall supersede and prevail in all respects.

This bond shall not bind the Surety unless it is accepted by the Obligee by signing below.

IN WITNESS WHEREOF, the above bounded Principal and Surety have hereunto signed and sealed this bond effective _____ day _____, 2007.

Principal

Surety

By: _____

By: _____, Attorney

Accepted by Obligee: _____
(Signature & date above - Print Name, Title below)

Tab 2

BY HAND

March 15, 2007

Walter Sevastian, Esq.
Law Offices of Frank Raso & Walter Sevastian
3 Main Street, Suite #1
Nyack, New York 10960

Re: Verizon New York Inc. Short Environmental Assessment Form

Dear Walter:

In connection with the application (the "Application") of Verizon New York Inc. ("Verizon") to the Village of Piermont ("Piermont" or the "Village") for a cable television franchise (the "Franchise"), enclosed is Verizon's completed Part I of the Short Environmental Assessment Form ("EAF"). Part II is to be completed by the Village as "Lead Agency," and Part III requires a certification by the Village concerning the existence or non-existence of a significant adverse environmental impact. Verizon does not believe that it is required to submit an EAF in support of its Application, and the EAF is submitted without prejudice to that position.

State Environmental Quality Review Act ("SEQRA") requirements are triggered only when an agency undertakes, funds, or approves an "action." Verizon is not proposing any "action" within the meaning of SEQRA. The basic fiber to the premises ("FTTP") facilities required to provide cable service within the Village are already in place, having been constructed pursuant to existing permissions and authorities. The New York Public Service Commission (the "NY PSC") has already determined that Verizon's construction of FTTP facilities does not by itself require a cable franchise.¹ Although further construction may be required in the future to extend FTTP facilities to other customers within the Piermont franchise area, it is Verizon's position that such construction activities would also be undertaken pursuant to Verizon's pre-existing permissions and authorities to deploy, extend, upgrade, repair, and maintain plant used for the provision of telecommunications and information services. Since Verizon will be providing cable service using independently authorized facilities, the key effect of the Franchise will be to authorize the delivery of video programming to subscribers using such facilities. Such delivery of video programming cannot by itself be an "action" under SEQRA, since it does not involve

¹ Cases 05-M-0250, *et al.*, "Declaratory Ruling on Verizon Communications, Inc.'s Build-Out of its Fiber to the Premises Network" (Issued and Effective June 15, 2005).

March 15, 2007

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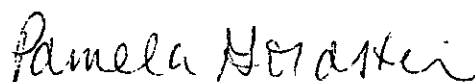
any physical alteration of the environment. Thus, the Village's approval of the Franchise is not subject to SEQRA.²

However, to the extent that the Village concludes that Verizon's offering of cable service in the Village is a SEQRA "action," that action is a "Type II" action, and Type II actions have been categorically determined *not* to have a significant impact on the environment.³ Type II actions do not require the submission of an EAF, or indeed any action on the part of the Village pursuant to SEQRA.⁴ The actions at issue here will not have a significant effect on the environment. Of course, the mere delivery of video programming to subscribers could not have any impact on the environment at all, much less a "significant" one. Even if the placement of additional fiber drops and extensions of existing FTTP routes were considered to be within the scope of the "action" being approved by the Village, such activities would be essentially identical to those routinely undertaken in connection with the provision of telephone service within the Village; and the impact of such activities would be minimal, as the NY PSC has concluded. Accordingly, if the Village determines that it needs to take any action at all under SEQRA, that action should be the issuance of a negative declaration.

Please call should you have any questions.

Best regards.

Sincerely,



Pamela N. Goldstein

Enclosure

cc: Denise Ehrhart, Village Clerk
Verizon New York Inc.

² We are mindful of the fact that in its recent orders confirming Verizon's franchises, the NY PSC treated approval of the franchises as an unlisted action under SEQRA (rather than a non-action or a Type II action), contrary to the position taken here. We respectfully disagree with that conclusion, and note that it may well be tied to the NY PSC's conclusion, in those orders, that Verizon's mixed-use FTTP facilities become "cable television systems" subject to Article 11 of the Public Service Law and the NY PSC's "minimum franchise standards" once they are used to deliver video programming to subscribers. The issue of the extent to which mixed-use FTTP facilities become a "cable system" under federal law (an issue that necessarily affects the question of how those facilities should be characterized under state law) is now pending before the Federal Communications Commission in its § 621(a) review. In any event, the NY PSC concluded in its confirmation orders for Verizon franchises that approval would not result in any significant adverse environmental impacts, and issued negative declarations under SEQRA.

³ See, e.g., 6 NYCRR § 617.5(c)(11) ("The following actions are not subject to review under this Part: . . . extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list.").

⁴ Even if this were deemed to be an "unlisted" action, submission of a long-form EAF is not required. See 6 NYCRR § 617.6(a)(3).

Appendix C

State Environmental Quality Review

SHORT ENVIRONMENTAL ASSESSMENT FORM

For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT/SPONSOR Verizon New York Inc.	2. PROJECT NAME Provision of cable service in Piermont, NY
3. PROJECT LOCATION: Municipality <u>Village of Piermont (the "Village")</u> County <u>Rockland County, NY</u>	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) There is no precise location. The project entails the provision of cable service throughout the Village.	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: Cable service will be provided within the territorial limits of the Village utilizing Fiber to the Premises ("FTTP") facilities. See cover letter.	
7. AMOUNT OF LAND AFFECTED: Initially <u>zero or minimal</u> acres Ultimately <u>zero or minimal</u> acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly No such restrictions are applicable to the Project.	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: Not applicable. See cover letter.	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: A permit (cable franchise) must be granted by the Village. Once the Village grants the cable franchise, Verizon will seek Public Service Commission confirmation of that franchise.	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: See Item 10 above.	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input type="checkbox"/> No Not applicable. See Item 10 above.	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>VERIZON NEW YORK INC.</u> Date: _____ Signature: <u>[Signature]</u>	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment



Tab 3

BY HAND

March 15, 2007

The Honorable Edward Traynor, Mayor
The Honorable Fred Devan, Deputy Mayor/Trustee
The Honorable Audie Moran, Trustee
The Honorable Joan Gussow, Trustee
The Honorable Chris Sanders, Trustee
c/o Denise Ehrhart, Village Clerk
Village of Piermont
Village Hall
26 Piermont Avenue
Piermont, New York 10968

**Re: Application of Verizon New York Inc. to the
Village of Piermont for a Cable Television Franchise**

Dear Mr. Mayor and Trustees:

Verizon New York Inc. ("Verizon") looks forward to appearing before you at the upcoming March 27, 2007 public hearing (the "Public Hearing") regarding its application to the Village of Piermont ("Piermont" or the "Village") for a cable television franchise. Verizon very much appreciates this opportunity.

Verizon understands that a discount for Piermont's senior citizens is of substantial concern to the Village. In fact, the Village's lawyer, Walter Sevastian, expressed this concern during negotiations. In response, Verizon's negotiators pointed out that competition will result in improved pricing for *all* Piermont residents. The purpose of this letter is to expand upon Verizon's position with respect to this issue.

Competition is defined as "[t]he effort of two or more parties acting, independently, to secure the business of a third party by offering the most favorable terms." With the introduction of unprecedented competition in the cable television space, the market will dictate pricing, and each company will be required to respond accordingly in order to secure or maintain consumers' business. In fact, the Federal Communications Commission (the "FCC") reported in its 2005 assessment of video programming competition that increased competition in the multichannel video programming distributor market has led to improvements in cable television services, and, *in the case of facilities-based competition – lower prices for customers*. Moreover, studies by the General Accounting Office ("GAO") in 2004 and the FCC in 2005 show that prices are 15 –

March 15, 2007

Page 2

16% lower when two wireline cable providers compete in the same market. FCC Chairman Kevin Martin proclaimed in February 2006 that "competition in the market for video programming serves to improve quality and customer service, increase consumer choice, decrease prices, and promote innovation." Competitive pricing can beat a situation where a regulated floor has been established. All Piermont consumers will benefit by the arrival of competition.

Please find enclosed for your reference the following documents: (1) a December 7, 2006 *Wall Street Journal* article entitled "Cable Rate Increases Are Smallest in Years;" (2) the 2004 GAO study referenced above; and (3) a similar study by the U.S. Public Interest Research Group entitled "The Failure of Cable Deregulation -- A Blueprint for Creating a Competitive, Pro-Consumer Cable Television Marketplace."

Verizon is excited to compete head-to-head for video subscribers in Piermont by introducing cable competition and offering Village residents the historic opportunity to vote with their wallets and choose among cable providers.

Verizon anticipates the Village's award of a cable franchise to Verizon at the Public Hearing. In the meantime, we remain available at any time to answer any questions that you may have. Mac Kerbey may be reached at (617) 823-9890 and I may be reached at (212) 548-2136.

Respectfully submitted,



Pamela N. Goldstein

Enclosures

cc: Walter Sevastian, Village Attorney
Denise Ehrhart, Village Clerk
Verizon New York Inc.

Cable Rate Increases Are Smallest in Years

Heightened Competition Offers Consumers Chance
To Play One Provider off Another; When to Bundle

By SARMAD ALI

December 7, 2006; Page D1

For years consumers have enjoyed falling phone rates thanks to increasing competition in the telecommunications business. Now competition is beginning to have a similar effect on how much households pay for television service.

With telephone companies pushing into the TV business, rate increases planned by cable operators for 2007 are going to be the most moderate in years. Next year, for example, **Comcast Corp.**, the country's largest cable operator by number of customers, will raise the cost of its most popular 75-channel analog package an average 4.5% -- from about \$41 a month to \$43 -- its lowest increase in more than a decade.

Other companies are planning minimal or even no price increases. While Time Warner Cable, the cable unit of **Time Warner Inc.**, is planning increases of the standard cable package in some markets, in Dallas and Los Angeles the rate will stay the same. **Cablevision Systems Corp.**, an operator serving the New York City area, isn't planning to raise its standard rate at all.

Meantime, consumers also are benefiting from the move by cable operators to offer new services, like phone and high-speed Internet, and bundle them with TV service at discounted rates. Many of the leading cable operators, including Comcast, Time Warner and Cablevision, have introductory bundle offers of all three products for just \$100 a month for the first year. Sold separately they would cost as much as \$125.

TRIM YOUR BILL

Some ways to save money on your cable-TV service:

- **Add other services.** Most cable-TV companies give discounts to customers who also take phone and high-speed Internet service.
- **Threaten to leave.** Many large companies will offer customers promotions, like a few months of free HBO, to keep them.
- **Switch to "basic cable."** Cable operators are required by law to offer a scaled-down service. It usually includes about 20 channels and costs \$15 to \$20 a month.

Consumers who are used to playing phone companies against each other to get better rates now have their eyes set on their TV bills. Six months ago, Denise Harrison, a 39-year-old house cleaner in West Chester, Pa., began buying all three products from Comcast partly for the price and partly because she likes having only one bill for three services. But she says she would likely switch to **Verizon Communications Inc.**, if the local telephone provider made a better offer. "It's all about saving money," she says.

The idea of saving money from a cable company may come as a shock to many consumers who remember how operators used to levy giant increases during the days they enjoyed near monopolies in the pay-TV business. Cable rates increased 93% between 1995 and 2005, according to the Federal Communications Commission.

But competition has slowly moderated this behavior. Cable companies got their first taste of it from satellite TV operators, such as **EchoStar Communications Corp.** and **DirecTV Group Inc.**, which lured away millions of cable customers with cheaper prices and more channels. Kagan Research, a division of JupiterKagan Inc., estimates that there will be 65.4 million cable subscribers at the end of this year compared with 29 million satellite subscribers.

Cable operators responded to this by beginning to ease up on boosting prices. Indeed last year, average satellite prices rose 8.1% compared to cable's 5.1%, according to Kagan. Next year satellite operators also may put on the brakes. For example, EchoStar's Dish Network's basic package that includes more than 80 channels costs \$29.99 a month now and will remain at that price next year, a company representative says.

Pressure on cable companies to raise TV rates also has eased as operators have opened up new revenue streams from new products like phone, high-speed Internet, digital cable, high-definition television and digital video recorders.

At the same time, phone companies are beginning to offer a similar palette of services, sometimes for less money than the local cable operator is charging. More than 100,000 households in eight states are subscribing to Verizon's new TV service, which includes 200 channels of TV and music. Verizon recently announced it was increasing the price of that offer to \$42.99 monthly from \$39.95, but existing customers will continue paying the lower price.

AT&T Inc. began offering its "U-verse" TV service earlier this year in Texas and says it is planning to add 13 new markets before the end of this year. The company is charging \$44 a month for one of its packages, which includes 100 channels. Both AT&T and Verizon also have cut deals with satellite-TV providers to offer TV in areas not reached by the phone companies' television services.

AT&T and Verizon have ambitious plans to expand their own TV services. But these plans will depend on how fast the phone companies can get permission from local governments to launch in their areas. Phone companies have been lobbying to pass federal and state legislation passed to expedite this process, arguing that it would lead to even more price competition. Cable companies have been resisting these efforts, claiming that phone companies are seeking special privileges that cable operators don't get.

Increases in cable rates vary among regions. Comcast customers in Savannah, Ga., for example, will pay \$49.99 next year for the standard analog package of about 75 channels, up from \$48.50, a 3.1% increase. Customers in Washington state, however, will pay \$48.27 per month, up 6.8% from \$45.18.

But cable companies that are facing the early waves of phone-company competition are showing the most restraint in raising prices. Cablevision, for example, which is facing threats from Verizon in much of its turf, has some of the lowest price increases in the business. A Cablevision spokesman also credited the company's "surge" in revenue from its phone and Internet businesses for its low price increases.

Also, cable operators that are raising analog rates are showing more restraint in increasing the price of their other products, especially those like high-speed Internet service that are facing stiff competition from phone companies. Comcast says its average subscriber will pay 3.1% more next year because more customers are taking multiple products, down from a 4.3% increase this year.

Time Warner subscribers in Milwaukee who take just the standard 80-channel analog package will see a 4.4% increase in their bill next year to \$48.15. But over one-third of Milwaukee's cable subscribers won't see any change in their bill because they're taking some form of bundled package, a company spokesman says.

Most of these cable rate increases are still well above the current overall rate of inflation. But cable operators say they have little choice because popular networks like ESPN have been sharply raising the costs of their programming. Cox Communications Inc., for example, said its programming costs have risen an average of 10% every year in the past three years. "We work hard to keep our prices reasonable, but simply must pass at least a portion of our costs on to our subscribers," a spokesman for the company says.

Meanwhile, many cable subscribers who took advantage of the bundle prices offered by many operators may suffer sticker shock when the introductory period expires. For example, Time Warner Cable charges \$99 for the bundle for the first year. When it elapses the price rises to \$115 to \$125 depending on the location. But even at those higher prices, the three products often cost slightly less in a bundle than what they would cost individually.

Consumers also might see other reasons to stick with the package after the year elapses. "It's easier to deal with one company that provides all three services as opposed to having three companies do it," says Richard Myers, 38, a researcher at a New York online service who is paying the higher price for the Time Warner Cable bundle plan.

Write to Sarmad Ali at sarmad.ali@wsj.com¹

Rate Plans

Some of the planned rate increases by cable-TV companies for a selection of cities.

CITY	OPERATOR	2006	2007	PERCENT INCREASE
Philadelphia	Comcast	\$50.75	\$52.55	3.5%
Washington State	Comcast	\$45.18	\$48.27	6.8
Milwaukee	Time Warner	\$46.10	\$48.15	4.4
Long Island, N.Y.	Cablevision	\$46.95	\$46.95	0
Los Angeles	Time Warner	\$50.26	\$50.26	0
Columbia, S.C.	Time Warner	\$48.99	\$50.49	3.1
San Diego	Cox	\$41.95	\$43.95*	4.7

Source: The companies *increase went into effect in June

GAO

Testimony

**Before the Committee on Commerce,
Science, and Transportation, U.S. Senate**

For Release on Delivery
Expected at 9:30 a.m. EST
Thursday, March 25, 2004

TELECOMMUNICATIONS

Subscriber Rates and Competition in the Cable Television Industry

Statement of Mark L. Goldstein, Director
Physical Infrastructure Issues





Highlights of GAO-04-262T, a testimony before the Committee on Commerce, Science, and Transportation, U.S. Senate

TELECOMMUNICATIONS

Subscriber Rates and Competition in the Cable Television Industry

Why GAO Did This Study

In recent years, rates for cable service have increased at a faster pace than the general rate of inflation. GAO agreed to (1) examine the impact of competition on cable rates and service, (2) assess the reliability of information contained in the Federal Communications Commission's (FCC) annual cable rate report, (3) examine the causes of recent cable rate increases, (4) assess the impact of ownership affiliations in the cable industry, (5) discuss why cable operators group networks into tiers, and (6) discuss options to address factors that could be contributing to cable rate increases.

GAO issued its findings and recommendations in a report entitled *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry* (GAO-04-8). In that report, GAO recommended that the Chairman of FCC take steps to improve the reliability, consistency, and relevance of information on cable rates and competition in the subscription video industry. In commenting on GAO's report, FCC agreed to make changes to its annual cable rate survey, but FCC questioned, on a cost/benefit basis, the utility of revising its process to keep the classification of effective competition up to date. GAO believes that FCC should examine whether cost-effective alternative processes could help provide more accurate information. This testimony is based on that report.

www.gao.gov/cgi-bin/getrpt?GAO-04-262T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Mark Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

What GAO Found

Competition leads to lower cable rates and improved quality. Competition from a wire-based company is limited to very few markets. However, where available, cable rates are substantially lower (by 15 percent) than in markets without this competition. Competition from direct broadcast satellite (DBS) companies is available nationwide, and the recent ability of these companies to provide local broadcast stations has enabled them to gain more customers. In markets where DBS companies provide local broadcast stations, cable operators improve the quality of their service.

FCC's cable rate report does not appear to provide a reliable source of information on the cost factors underlying cable rate increases or on the effects of competition. GAO found that cable operators did not complete FCC's survey in a consistent manner, primarily because the survey lacked clear guidance. Also, GAO found that FCC does not initiate updates or revisions to its classification of competitive and noncompetitive areas. Thus, FCC's classifications might not reflect current conditions.

A variety of factors contribute to increasing cable rates. During the past 3 years, the cost of programming has increased considerably (at least 34 percent), driven by the high cost of original programming, among other things. Additionally, cable operators have invested large sums in upgraded infrastructures, which generally permit additional channels, digital service, and broadband Internet access.

Some concerns exist that ownership affiliations might indirectly influence cable rates. Broadcasters and cable operators own many cable networks. GAO found that cable networks affiliated with these companies are more likely to be carried by cable operators than nonaffiliated networks. However, cable networks affiliated with broadcasters or cable operators do not receive higher license fees, which are payments from cable operators to networks, than nonaffiliated networks.

Technological, economic, and contractual factors explain the practice of grouping networks into tiers, thereby limiting the flexibility that subscribers have to choose only the networks that they want to receive. An à la carte approach would facilitate more subscriber choice but require additional technology and customer service. Additionally, cable networks could lose advertising revenue. As a result, some subscribers' bills might decline but others might increase.

Certain options for addressing cable rates have been put forth. Although reregulation of cable rates is one option, promoting competition could influence cable rates through the market process. While industry participants have suggested several options for addressing increasing cable rates, these options could have other unintended effects that would need to be considered in conjunction with the benefits of lower rates.

Mr. Chairman and Members of the Committee:

I am pleased to be here today to report on our work on cable rates and competition in the cable television industry. In recent years, cable television has become a major component of the American entertainment industry, with more than 70 million households receiving television service from a cable television operator. As the industry has developed, it has been affected by regulatory and economic changes. Since 1992, the industry has undergone rate reregulation and then in 1999, partial deregulation. Additionally, competition to cable operators has emerged erratically. Companies emerged in some areas to challenge cable operators, only to halt expansion or discontinue service altogether. Conversely, competition from direct broadcast satellite (DBS) operators has emerged and grown rapidly in recent years. Nevertheless, cable rates continue to increase at a faster pace than the general rate of inflation. As you know, on October 24, 2003, we issued a report to you on these issues, and issued a subsequent report to the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights on similar issues.¹ My statement today will summarize the major findings from our October 2003 report, and additional findings from our February 2004 report.

At the request of this committee, we have (1) examined the impact of competition on cable rates and service; (2) assessed the reliability of the information contained in the Federal Communications Commission's (FCC) annual cable rate report on the cost factors underlying cable rate increases, FCC's current classification of cable franchises regarding whether they face effective competition, and FCC's related findings on the effect of competition; (3) examined the causes of recent cable rate increases; (4) assessed whether ownership of cable networks (such as CNN and ESPN) may indirectly affect cable rates through such ownership's influence on cable network license fees or the carriage of cable networks; (5) discussed why cable operators group networks into tiers, rather than package networks so that customers can purchase only those networks they wish to receive; and (6) discussed options to address factors that could be contributing to cable rate increases.

¹See U.S. General Accounting Office, *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8 (Washington, D.C.: Oct. 24, 2003) and U.S. General Accounting Office, *Telecommunications: Wire-Based Competition Benefited Consumers in Selected Markets*, GAO-04-241 (Washington, D.C.: Feb. 2, 2004).

To address these issues, we developed an empirical model (our cable-satellite model) that examined the effect of competition on cable rates and service using data from 2001;² conducted a telephone survey with 100 randomly sampled cable franchises that responded to FCC's 2002 cable rate survey, and asked these franchises a series of questions about how they completed a portion of FCC's survey that addresses cost factors underlying annual cable rate changes; interviewed representatives of the cable operator, cable network, and broadcast industries; and developed empirical models that examined whether ownership of cable networks by broadcasters or by cable operators influenced (1) the level of license fee (our cable license fee model) or (2) the likelihood that the network will be carried (our cable network carriage model) based on data from 2002. For a more detailed description of our scope and methodology, see appendix I.

This testimony is based on our report issued October 24, 2003, for which we did our work from December 2002 through September 2003. We provide additional information based on our report issued February 2, 2004, for which we did our work from May 2003 to December 2003. We preformed our work for both assignments in accordance with generally accepted government auditing standards.

My statement will make the following points:

- Wire-based competition is limited to very few markets; according to FCC, cable subscribers in about 2 percent of all markets have the opportunity to choose between two or more wire-based operators. However, in those markets where this competition is present, cable rates are about 15 percent lower than cable rates in similar markets without wire-based competition in 2001. In our February 2004 report, we examined 6 markets with wire-based competition in depth and found that cable rates in 5 of these 6 markets were 15 to 41 percent lower than similar markets without wire-based competition in 2003. DBS operators have emerged as a nationwide competitor to cable operators, which has been facilitated by the opportunity to provide local broadcast stations. Competition from DBS operators has induced cable operators to lower cable rates slightly, and DBS provision of local broadcast stations has induced cable operators to improve the quality of their service.

²Our model was based on data from 2001 since this was the most recent year for which we were able to acquire the required data on cable rates and services and DBS penetration rates when we began our analysis.

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- As we mentioned in our May 6, 2003, testimony before this Committee, certain issues undermine the reliability of information in FCC's cable rate report, which provides information on cable rates and competition in the subscription video industry.³ Because the Congress and FCC use this information in their monitoring and oversight of the cable industry, the lack of reliable information in FCC's cable rate report may compromise the ability of the Congress and FCC to fulfill these roles. To improve the quality and usefulness of the data FCC collects annually, we recommend that the Chairman of FCC take steps to improve the reliability, consistency, and relevance of information on rates and competition in the subscription video industry
 - We found that a number of factors contributed to the increase in cable rates. On the basis of data from 9 cable operators, programming expenses and infrastructure investment appear to be the primary cost factors that have been increasing in recent years. During the past 3 years, the cost of programming has increased at least 34 percent. Also, since 1996, the cable industry has spent over \$75 billion to upgrade its infrastructure.
 - Some industry representatives believe that certain factors related to the nature of ownership affiliations may also indirectly influence cable rates. We did not find that ownership affiliations between cable networks (such as CNN and ESPN) and broadcasters (such as NBC and CBS) or between cable networks and cable operators (such as Time Warner and Cablevision) are associated with higher license fees—that is, the fees cable operators pay to carry cable networks. However, we did find that both forms of ownership affiliations are associated with a greater likelihood that a cable operator would carry a cable network.
 - Today, subscribers have little choice regarding the specific networks they receive with cable television service. Adopting an à la carte approach, where subscribers could choose to pay for only those networks they desire, would provide consumers with more individual choice, but could require additional technology and could alter the current business model of the cable network industry wherein cable networks obtain roughly half of their overall revenues from advertising. A move to an à la carte approach could result in reduced advertising revenues and might result in higher per-channel rates and less diversity in program choice. A variety of factors—such as the pricing of à la carte service, consumers' purchasing

³See U.S. General Accounting Office, *Telecommunications: Data Gathering Weaknesses In FCC's Survey Of Information on Factors Underlying Cable Rate Changes*, GAO-03-742T (Washington, D.C.: May 6, 2003).

patterns, and whether certain niche networks would cease to exist with à la carte service—make it difficult to ascertain how many consumers would be better off and how many would be worse off under an à la carte approach.

- Certain options for addressing factors that may be contributing to cable rate increases have been put forth. Some consumer groups have suggested that reregulation of cable rates needs to be considered, although others have noted problems with past efforts at regulation. Other options put forth include reviewing whether modifications to the program access rules would be beneficial, promoting wireless competition, and reviewing whether changes to the retransmission consent process should be considered. Any options designed to help bring down cable rates could have other unintended effects that would need to be considered in conjunction with the benefits of lower rates. We are not making any specific recommendations regarding the adoption of these options.

Background

Cable television emerged in the late 1940s to fill a need for television service in areas with poor over-the-air reception, such as mountainous or remote areas. By the late 1970s, cable operators began to compete more directly with free over-the-air television by providing new cable networks, such as HBO, Showtime, and ESPN. According to FCC, cable's penetration rate—as a percentage of television households—increased from 14 percent in 1975 to 24 percent in 1980 and to 67 percent today. Cable television is by far the largest segment of the subscription video market, a market that includes cable television, satellite service (including DBS operators such as DIRECTV and EchoStar), and other technologies that deliver video services to customers' homes.

To provide programming to their subscribers, cable operators (1) acquire the rights to carry cable networks from a variety of sources and (2) pay license fees—usually on a per-subscriber basis—for these rights. The three primary types of owners of cable networks are large media companies that also own major broadcast networks (such as Disney and Viacom), large cable operators (such as Time Warner and Cablevision), and independent programmers (such as Landmark Communications).

At the community level, cable operators obtain a franchise license under agreed-upon terms and conditions from a franchising authority, such as a local or state government. During cable's early years, franchising authorities regulated many aspects of cable television service, including subscriber rates. In 1984, the Congress passed the Cable Communications

Policy Act, which imposed some limitations on franchising authorities' regulation of rates.⁴ However, 8 years later in response to increasing rates, the Congress passed the Cable Television Consumer Protection and Competition Act of 1992. The 1992 Act required FCC to establish regulations ensuring reasonable rates for basic service—the lowest level of cable service, which includes the local broadcast stations—unless a cable system has been found to be subject to effective competition, which the act defined.⁵ The act also gave FCC the authority to regulate any unreasonable rates for upper tiers (often referred to as expanded-basic service), which include cable programming provided over and above that provided on the basic tier.⁶ Expanded-basic service typically includes such popular cable networks as USA Network, ESPN, and CNN. In anticipation of growing competition from satellite and wire-based operators, the Telecommunications Act of 1996 phased out all regulation of expanded-basic service rates by March 31, 1999. However, franchising authorities can regulate the basic tier of cable service where there is no effective competition.

As required by the 1992 Act, FCC annually reports on average cable rates for operators found to be subject to effective competition compared with operators not subject to effective competition. To fulfill this mandate, FCC annually surveys a sample of cable franchises regarding their cable rates. In addition to asking questions that are necessary to gather information to provide its mandated reports, FCC also typically asks questions to help the agency better understand the cable industry. For example, the 2002 survey included questions about a range of cable issues, including the cost factors underlying changes in cable rates, the percentage of subscribers purchasing other services (such as broadband Internet access and telephone service), and the specifics of the programming channels offered on each tier.

⁴Under the 1984 Act and FCC's subsequent rulemaking, over 90 percent of all cable systems were not subject to rate regulation.

⁵Under statutory definitions in the 1992 Act, substantially more cable operators were subject to rate regulations than had previously been the case.

⁶Basic and expanded-basic are the most commonly subscribed to service tiers—bundles of networks grouped into a package—offered by cable operators. In addition, customers in many areas can purchase digital tiers and also premium pay channels, such as HBO and Showtime.

Some franchise agreements were initially established on an exclusive basis, thereby preventing wire-based competition to the initial cable operator. In 1992, the Congress prohibited the awarding of exclusive franchises, and, in 1996, the Congress took steps to allow telephone companies and electric companies to enter the video market. Initially unveiled in 1994, DBS served about 18 million American households by June 2002. Today, two of the five largest subscription video service providers are DIRECTV and EchoStar—the two primary DBS operators.

Competition Leads to Lower Cable Rates and Improved Quality and Service among Cable Operators

Competition from a wire-based provider—that is, a competitor using a wire technology—is limited to very few markets, but where available, has a downward impact on cable rates. In a recent report, FCC noted that very few markets—about 2 percent—have been found to have effective competition based on the presence of a wire-based competitor.⁷ Our interviews with cable operators and financial analysis firms yielded a similar finding—wire-based competition is limited. However, according to our cable-satellite model that included over 700 cable franchises throughout the United States in 2001, cable rates were approximately 15 percent lower in areas where a wire-based competitor was present. With an average monthly cable rate of approximately \$34 that year, this implies that subscribers in areas with a wire-based competitor had monthly cable rates about \$5 lower, on average, than subscribers in similar areas without a wire-based competitor. Our interviews with cable operators also revealed that these companies generally lower rates and/or improve customer service where a wire-based competitor is present.

For our February 2004 report to the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, we developed an alternative methodology to examine the relationship between cable rates and wire-based competition. In particular, we developed a case-study approach that compared 6 cities where a broadband service provider (BSP)—new wire-based competitors that generally offer local telephone, subscription television, and high-speed Internet services to consumers—has been operating for at least 1 year with 6 similar cities that do not have such a competitor. We compared the *lowest price available* for cable

⁷See Federal Communications Commission, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Ninth Annual Report*, FCC 02-338 (Washington, D.C.: Dec. 31, 2002).

service in the market with a BSP to the price for cable service offered in markets without a BSP.

We found that cable rates were generally lower in the 6 markets we examined with a BSP present than in the 6 markets that did not have BSP competition. However, the extent to which rates were lower in a BSP market compared to its “matched market” varied considerably across markets. For example, in 1 BSP market, the monthly rate for cable television service was 41 percent lower compared with the matched market, and in 2 other BSP locations, cable rates were more than 30 percent lower when compared with their matched markets. In two other BSP markets, rates were lower by 15 and 17 percent, respectively, in the BSP market compared to its matched market. On the other hand, in 1 of the BSP markets, the price for cable television service was 3 percent *higher* in the BSP market than it was in the matched market.

In recent years, DBS has become the primary competitor to cable operators. The ability of DBS operators to compete against cable operators was bolstered in 1999 when they acquired the legal right to provide local broadcast stations—such as over-the-air affiliates of ABC, CBS, Fox, and NBC—via satellite to their customers.⁶ On the basis of our cable-satellite model, we found that in areas where subscribers can receive local broadcast stations from both primary DBS operators, the DBS penetration rate is approximately 40 percent higher than in areas where subscribers cannot receive these stations from the DBS operators. In terms of rates, we found that a 10 percent higher DBS penetration rate in a franchise area is associated with a slight rate reduction—about 15 cents per month. Also, in areas where both primary DBS operators provide local broadcast stations, we found that the cable operators offer subscribers approximately 5 percent more cable networks than cable operators in areas where this is not the case. During our interviews with cable operators, most operators told us that they responded to DBS competition through one or more of the following strategies: focusing on customer service, providing bundles of services to subscribers, and lowering prices and providing discounts.

⁶In 1999, the Congress passed the Satellite Home Viewer Improvement Act, which allows satellite operators to provide local broadcast stations to their customers. Prior to this act, satellite operators were limited to providing local broadcast stations to *unserved areas* where customers could not receive sufficiently high-quality, over-the-air signals. This practice had the general effect of preventing satellite operators from providing local broadcast stations directly to customers in most circumstances.

Concerns Exist about the Reliability of FCC's Data for Cable Operator Cost Factors and Effective Competition

As we mentioned in our May 6, 2003, testimony before this Committee, weaknesses in FCC's survey of cable franchises may lead to inaccuracies in the relative importance of cost factors reported by FCC. Cable franchises responding to FCC's 2002 survey did not complete in a consistent manner the section pertaining to the factors underlying cable rate increases primarily because of a lack of clear guidance. These inconsistencies may have led to unreliable information in FCC's report on the relative importance of factors underlying recent cable rate increases. Overall, we found that 84 of the 100 franchises we surveyed did not provide a complete or accurate accounting of their cost changes for the year. As such, an overall accurate picture of the relative importance of various cost factors, which may be important for FCC and congressional oversight, may not be reflected in FCC's data.

FCC's cable rate report also does not appear to provide a reliable source of information on the effect of competition. FCC is required by statute to produce an annual report on the differences between average cable rates in areas that FCC has found to have effective competition compared with those that have not had such a finding. However, FCC's process for implementing this mandate may lead to situations in which the effective competition designation may not reflect the actual state of competition in the current time frame. In particular, FCC relies exclusively on external parties to file for changes in the designation. Using data from FCC's 2002 survey, we conducted several tests to determine whether information contained in franchises' survey information—which was filed with FCC in mid-2002—was consistent with the designation of effective competition for the franchise in FCC's records. We found some discrepancies. These discrepancies may explain, in part, the differential findings regarding the impact of wire-based competition reported by FCC, which found a nearly 7 percent reduction in cable rates, and our finding of a 15 percent reduction in cable rates.

Because the Congress and FCC use this information in their monitoring and oversight of the cable industry, the lack of reliable information in FCC's report on these two issues—factors underlying cable rate increases and the effect of competition—may compromise the ability of the Congress and FCC to fulfill these roles. Additionally, the potential for this information to be used in debate regarding important policy decisions, such as media consolidation, also necessitates reliable information in FCC's report. As a result, we recommended that the Chairman of FCC improve the reliability, consistency, and relevance of information on cable rates and competition in the subscription video industry by (1) taking immediate steps to improve its cable rate survey and (2) reviewing the

commission's process for maintaining the classification of effective competition.⁹ In commenting on our report, FCC agreed to make changes to its annual cable rate survey in an attempt to obtain more accurate information, but questioned, on a cost/benefit basis, the utility of revising its process to keep the classification of effective competition in franchises up to date. We recognize that there are costs associated with FCC's cable rate survey, and we recommend that FCC examine whether cost-effective alternative processes exist that would enhance the accuracy of its effective competition designations.

A Variety of Factors Contribute to Cable Rate Increases

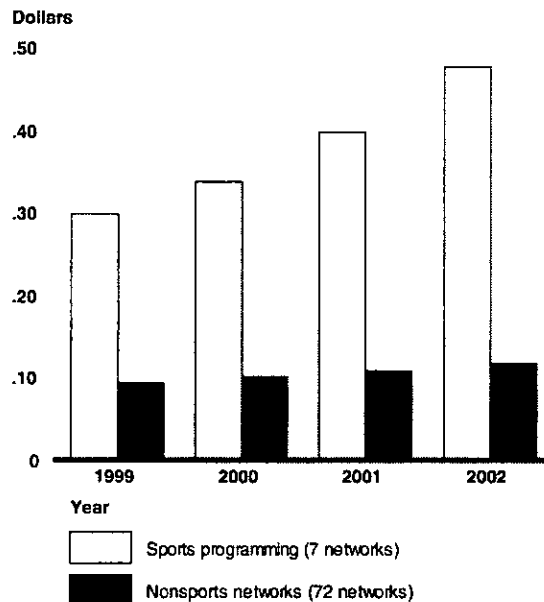
Increases in expenditures on cable programming contribute to higher cable rates. A majority of cable operators and cable networks, and all financial analysts that we interviewed told us that high programming costs contributed to rising cable rates. On the basis of financial data supplied to us by 9 cable operators, we found that these operators' yearly programming expenses, on a per-subscriber basis, increased from \$122 in 1999 to \$180 in 2002—a 48 percent increase.¹⁰ Almost all of the cable operators we interviewed cited sports programming as a major contributor to higher programming costs. On the basis of our analysis of Kagan World Media data, the average license fees for a cable network that shows almost exclusively sports-related programming increased by 59 percent, compared to approximately 26 percent for 72 nonsports networks, in the 3 years between 1999 and 2002.¹¹ Further, the average license fees for the sports networks were substantially higher than the average for the nonsports networks (see fig. 1).

⁹See U.S. General Accounting Office, *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8 (Washington, D.C.: Oct. 24, 2003), page 45 for a full discussion of our recommendations.

¹⁰Using data from Kagan World Media, we found that the average fees cable operators must pay to purchase programming (referred to as license fees) increased by 34 percent from 1999 to 2002.

¹¹The seven national sports networks that we included in our analysis were ESPN, ESPN Classic, ESPN2, FOX Sports Net, The Golf Channel, The Outdoor Channel, and the Speed Channel.

Figure 1: Average Monthly License Fees per Subscriber—Sports Networks v. Nonsports Networks, 1999-2002



Source: GAO analysis of Kagan World Media data.

The cable network executives we interviewed cited several reasons for increasing programming costs. We were told that competition among networks to produce and show content that will attract viewers has become more intense. This competition, we were told, has bid up the cost of key inputs (such as talented writers and producers) and has sparked more investment in programming. Most notably, these executives told us that networks today are increasing the amount of original content and improving the quality of programming generally.

Although programming is a major expense for cable operators, several cable network executives we interviewed also pointed out that cable operators offset some of the cost of programming through advertising revenues. Local advertising dollars account for about 7 percent of the total revenues in the 1999 to 2002 time frame for the 9 cable operators that supplied us with financial data. For these 9 cable operators, gross local advertising revenues—before adjusting for the cost of inserting and selling

advertising—amounted to about \$55 per subscriber in 2002 and offset approximately 31 percent of their total programming expenses.¹²

In addition to higher programming costs, the cable industry has spent over \$75 billion between 1996 and 2002 to upgrade its infrastructure by replacing degraded coaxial cable with fiber optics and adding digital capabilities. As a result of these expenditures, FCC reported that there have been increases in channel capacity; the deployment of digital transmissions; and nonvideo services, such as Internet access and telephone service.¹³ Many cable operators, cable networks, and financial analysts we interviewed said investments in system upgrades contributed to increases in consumer cable rates.

Programming expenses and infrastructure investment appear to be the primary cost factors that have been increasing in recent years. On the basis of financial data from 9 cable operators, we found that annual subscriber video-based revenues increased approximately \$79 per subscriber from 1999 to 2002. During this same period, programming expenses increased approximately \$57 per subscriber. Depreciation expenses on cable-based property, plant, and equipment—an indicator of expenses related to infrastructure investment—increased approximately \$80 per subscriber during the same period. However, because these infrastructure-related expenses are associated with more than one service, it is unclear how much of this cost should be attributed to video-based services. Moreover, cable operators are enjoying increased revenues from nonvideo sources. For example, revenues from Internet-based services increased approximately \$74 per subscriber during the same period.

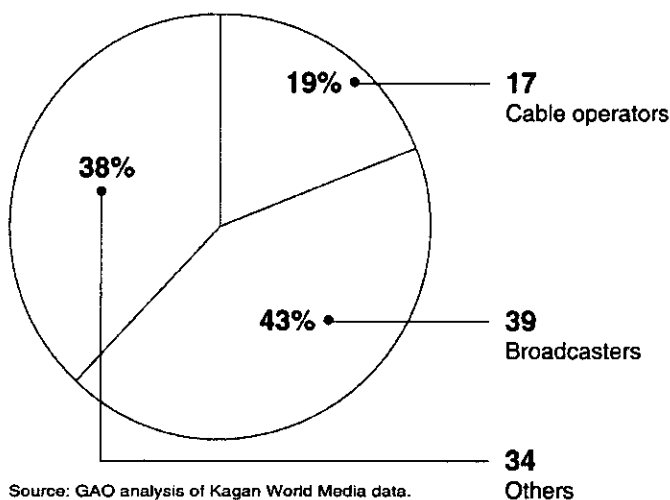
¹²Advertising sales revenues net of expenses incurred to insert and sell local advertising would offset a lower percentage of cable operators' programming expenses.

¹³For example, FCC reported that approximately 74 percent of cable systems had system capacity of at least 750 MHz, and that approximately 70 percent of cable subscribers were offered high-speed Internet access by their cable operator in 2002.

Some View Ownership Affiliations as an Important Indirect Influence on Cable Rates

Several industry representatives and experts we interviewed told us that they believe ownership affiliation may also influence the cost of programming and thus, indirectly, the rates for cable service. Of the 90 cable networks that are carried most frequently on cable operators' basic or expanded-basic tiers, we found that approximately 19 percent were majority-owned (i.e., at least 50 percent owned) by a cable operator, approximately 43 percent were majority-owned by a broadcaster, and the remaining 38 percent of the networks are not majority-owned by broadcasters or cable operators (see fig. 2).

Figure 2: Ownership Affiliation of the 90 Most Carried Cable Networks



Note: Cable networks were assumed affiliated if the ownership interest was 50 percent or greater.

Despite the view held by some industry representatives with whom we spoke that license fees for cable networks owned by either cable operators or broadcasters tend to be higher than fees for other cable networks, we did not find this to be the case. We found that cable networks that have an ownership affiliation with a broadcaster did not have, on average, higher license fees (i.e., the fee the cable operator pays to the cable network) than cable networks that were not majority-owned by broadcasters or cable operators. We did find that license fees were statistically higher for cable networks owned by cable operators than was the case for cable networks that were not majority-owned by broadcasters or cable operators. However, when using a regression analysis (our cable license fee model) to hold constant other factors that could influence the level of the license fee, we found that ownership affiliations—with

broadcasters or with cable operators—had no influence on cable networks' license fees.¹⁴ We did find that networks with higher advertising revenues per subscriber (a proxy for popularity) and sports networks received higher license fees.

Industry representatives we interviewed also told us that cable networks owned by cable operators or broadcasters are more likely to be carried by cable operators than other cable networks. On the basis of our cable network carriage model—a model designed to examine the likelihood of a cable network being carried—we found that cable networks affiliated with broadcasters or with cable operators are more likely to be carried than other cable networks. In particular, we found that networks owned by a broadcaster or by a cable operator were 46 percent and 31 percent, respectively, more likely to be carried than a network without majority ownership by either of these types of companies. Additionally, we found that cable operators were much more likely to carry networks that they themselves own. A cable operator is 64 percent more likely to carry a cable network it owns than to carry a network with any other ownership affiliation.

Several Factors Generally Lead Cable Operators to Offer Large Tiers of Networks Instead of Providing À La Carte or Minitier Service

Using data from FCC's 2002 cable rate survey, we found that with basic tier service, subscribers receive, on average, approximately 25 channels, which include the local broadcast stations. The expanded-basic tier provides, on average, an additional 36 channels. In general, to have access to the most widely distributed cable networks—such as ESPN, TNT, and CNN—most subscribers must purchase the expanded-basic tier of service. Because subscribers must buy all of the networks offered on a tier that they choose to purchase, they have little choice regarding the individual networks they receive.

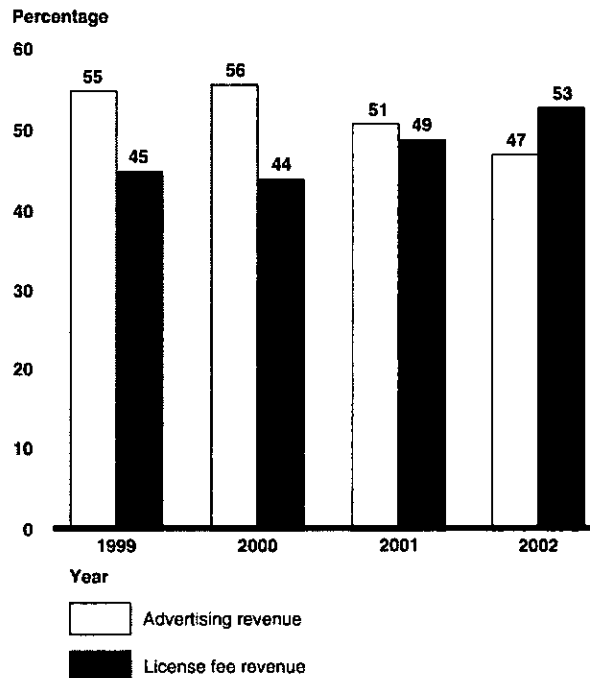
If cable operators were to offer all networks on an à la carte basis—that is, if consumers could select the individual networks they wish to purchase—additional technology upgrades would be necessary in the near term. In particular, subscribers would need to have an addressable converter box on every television set attached to the cable system to unscramble the signals of the networks that the subscriber has agreed to purchase.

¹⁴In the cable license fee model, we regressed the average monthly license fee for 90 cable networks on a series of variables that might influence the license fee. See GAO-04-8 for a list of variables included in that model.

According to FCC's 2002 survey data, the average monthly rental price for an addressable converter box is approximately \$4.39. Although cable operators have been placing addressable converter boxes in the homes of customers who subscribe to scrambled networks, many homes do not currently have addressable converter boxes or do not have them on all of the television sets attached to the cable system. Since cable operators may move toward having a greater portion of their networks provided on a digital tier in the future, these boxes will need to be deployed in greater numbers, although it is unclear of the time frame over which this will occur. Also, consumer electronic manufacturers have recently submitted plans to FCC regarding specifications for new television sets that will effectively have the functionality of an addressable converter box within the television set. Once most customers have addressable converter boxes or these new televisions in place, the technical difficulties of an à la carte approach would be mitigated.

If cable subscribers were allowed to choose networks on an à la carte basis, the economics of the cable network industry could be altered. If this were to occur, it is possible that cable rates could actually increase for some consumers. In particular, we found that cable networks earn much of their revenue from the sale of advertising that airs during their programming. Our analysis of information on 79 networks from Kagan World Media indicates that these cable networks received nearly half of their revenue from advertising in 2002; the majority of the remaining revenue is derived from the license fees that cable operators pay networks for the right to carry their signal (see fig. 3).

Figure 3: Percentage of Cable Network Advertising Revenue Compared with License Fee Revenues for 79 Cable Networks, 1999 – 2002



Source: GAO analysis of Kagan World Media data.

Note: Although cable networks have other sources of revenues, advertising and license fee revenues comprise the vast majority of cable network revenues.

To receive the maximum revenue possible from advertisers, cable networks strive to be on cable operators' most widely distributed tiers because advertisers will pay more to place an advertisement on a network that will be viewed, or have the potential to be viewed, by the greatest number of people.¹⁵ According to cable network representatives we interviewed, any movement of networks from the most widely distributed tiers to an à la carte format could result in a reduced amount that advertisers are willing to pay for advertising time. To compensate for any decline in advertising revenue, network representatives contend that cable

¹⁵Most contracts negotiated between cable networks and cable operators specify the tier that the network must appear on. We were told that cable networks include these provisions in their contracts because their business models are developed on the basis of a wide distribution of their network.

networks would likely increase the license fees they charge to cable operators. Because increased license fees, to the extent that they occur, are likely to be passed on to subscribers, it appears that subscribers' monthly cable bills would not necessarily decline under an à la carte system. Moreover, most cable networks we interviewed also believe that programming diversity would suffer under an à la carte system because some cable networks, especially small and independent networks, would not be able to gain enough subscribers to support the network.

The manner in which an à la carte approach might impact advertising revenues, and ultimately the cost of cable service, rests on assumptions regarding customer choice and pricing mechanisms. In particular, the cable operators and cable networks that discussed these issues with us appeared to assume that many customers, if faced with an à la carte selection of networks, would choose to receive only a limited number of networks, which is consistent with the data on viewing habits. In fact, some industry representatives had different views on the degree to which consumers place value on networks they do not typically watch. While two experts suggested that it is not clear whether more networks are a benefit to subscribers, others noted that subscribers place value in having the opportunity to occasionally watch networks they typically do not watch. Additionally, the number of cable networks that customers choose to purchase will also be influenced by the manner in which cable operators price services under an à la carte scenario. Thus, there are a variety of factors that make it difficult to ascertain how many consumers would be made better off and how many would be made worse off under an à la carte approach. These factors include how cable operators would price their services under an à la carte system; the distribution of consumers' purchasing patterns; whether niche networks would cease to exist, and, if so, how many would exit the industry; and consumers' true valuation of networks they typically do not watch.

Industry Participants Have Cited Certain Options That May Address Factors Contributing to Rising Cable Rates

Industry participants have suggested the following options for addressing the cable rate issue. This discussion is an overview, and we are not making any specific recommendations regarding the adoption of any of these options.

- Some consumer groups have pointed to the lack of competition as evidence that reregulation needs to be considered because it might be the only alternative to mitigate increasing cable rates and cable operators' market power. However, some experts expressed concerns about cable regulation after the 1992 Act, including lowering of the quality of

programming, discouragement of investment in new facilities, and imposition of administrative burdens on the industry and regulators.

- The 1992 Act included provisions to ensure that cable networks that have ownership relationships with cable operators (i.e., vertically integrated cable operators) generally make their satellite-delivered programming available to competitors. Some have expressed concern that the law is too narrow because it applies only to *the satellite-delivered programming* of vertically integrated cable operators and it does not prohibit exclusive contracts between a cable operator and an independent cable network. Given these concerns, some have suggested that changes in the statutory program access provisions might enhance the ability of other providers to compete with the incumbent cable operators while others have noted that altering these provisions could reduce the incentive for companies to develop innovative programming.
- DBS operators have stated that they are currently not able to provide local broadcast stations in all 210 television markets in the United States because they do not have adequate spectrum to do so while still providing a wide variety of national networks. As part of the so-called carry one, carry all provisions, these companies are required to provide all local broadcast stations in markets where they provide any of those stations. Some suggest modifying the *carry one, carry all* provisions to promote carriage of local stations in more markets. However, any modifications to the DBS carry one, carry all rules would need to be examined in the context of why those rules were put into place—that is, to ensure that all broadcast stations are available in markets where DBS providers choose to provide local stations.
- In the 1992 Act, the Congress created a mechanism, known as retransmission consent, through which local broadcast station owners (such as local ABC, CBS, Fox, and NBC affiliates) could receive compensation from cable operators in return for the right to carry their broadcast stations. Today, few retransmission consent agreements include cash payment for carriage of the local broadcast station. Rather, agreements between some large broadcast groups and cable operators generally include provisions for carriage of broadcaster-owned cable networks. As a result, cable operators sometimes carry cable networks they otherwise might not have carried. Alternatively, representatives of the broadcast networks told us that they did not believe that cable networks had been dropped and that they accept cash payment for carriage of the broadcast signal, but that cable operators tend to prefer carriage options in lieu of a cash payment. Certain industry participants with whom we met advocated the removal of the retransmission consent provisions and told

us that this may have the effect of lowering cable rates, but others have stated that such provisions serve to enable television stations to obtain a fair return for the retransmitted content they provide and that retransmission rules help to ensure the continued availability of free television for all Americans.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

Contact and Acknowledgments

For questions regarding this testimony, please contact Mark L. Goldstein on (202) 512-2834 or goldsteinm@gao.com. Individuals making key contributions to this testimony included Amy Abramowitz, Stephen Brown, Julie Chao, Michael Clements, Andy Clinton, Keith Cunningham, Bert Japikse, Sally Moino, Mindi Weisenbloom, and Carrie Wilks.

Appendix I: Scope and Methodology

To respond to the first issue—examine the impact of competition on cable rates—we used an empirical model (our cable-satellite model) that we previously developed that examines the effect of competition on cable rates and services.¹ Using data from the Federal Communications Commission's (FCC) 2001 cable rate survey, the model considers the effect of various factors on cable rates, the number of cable subscribers, the number of channels that cable operators provide to subscribers, and direct broadcast satellite (DBS) penetration rates for areas throughout the United States. We further developed the model to more explicitly examine whether varied forms of competition—such as wire-based, DBS, multipoint multichannel distribution systems (MMDS) competition—have differential effects on cable rates. In addition, we spoke with an array of industry stakeholders and experts (see below) to gain further insights on these issues.

The second issue consists of two parts. To respond to part one—assess the reliability of the cost justifications for rate increases provided by cable operators to FCC, we conducted a telephone survey (our cable franchise survey), from January 2003 through March 2003, of cable franchises that responded to FCC's 2002 cable rate survey. We drew a random sample of 100 of these cable franchises; the sample design was intended to be representative of the 755 cable franchises that responded to FCC's survey. We used data from FCC, and conversations with company officials, to determine the most appropriate staff person at the franchise to complete our survey. To ensure that our survey gathered information that addressed this objective, we conducted telephone pretests with several cable franchises and made the appropriate changes on the basis of the pretests. We asked cable franchises a series of open-ended questions regarding how the franchise staff calculated cost and noncost factors on FCC's 2002 cable rate survey, how well the franchise staff understood what FCC wanted for those factors, and franchise staff's suggestions for improving FCC's cable rate survey. All 100 franchises participated in our survey, for a 100 percent response rate. In conducting this survey, we did not independently verify the answers that the franchises provided to us.

Additionally, to address part two of the second issue—assess FCC's classifications of effective competition—we examined FCC's classification of cable franchises regarding whether they face effective competition.

¹See U.S. General Accounting Office, *Telecommunications: Issues in Providing Cable and Satellite Television Services*, GAO-03-130 (Washington, D.C.: Oct. 15, 2002).

Using responses to FCC's 2002 cable rate survey, we tested whether the responses provided by cable franchises were consistent with the various legal definitions of effective competition, such as the low-penetration test. Further, we reviewed documents from FCC proceedings addressing effective competition filings and contacted franchises to determine whether the conditions present at the time of the filing remain in effect today.

To address the third, fourth, fifth, and sixth issues (examine reasons for recent rate increases, examine whether ownership relationships between cable networks and cable operators and/or broadcasters influence the level of license fees for the cable networks or the likelihood that a cable network will be carried, examine why cable operators group networks into tiers rather than sell networks individually, and discuss options to address factors that could be contributing to cable rate increases), we took several steps, as follows:

- We conducted semistructured interviews with a variety of industry participants. We interviewed officials and obtained documents from FCC and the Bureau of Labor Statistics. We interviewed 15 cable networks—12 national and 3 regional—from a listing published by the National Cable and Telecommunications Association (NCTA), striving for a mixture of networks that have a large and small number of subscribers and that provide varying content, such as entertainment, sports, music, and news. We interviewed 11 cable operators, which included the 10 largest publicly traded cable operators and 1 medium-sized, privately held cable operator. In addition, we interviewed the four largest broadcast networks, one DBS operator, representatives from three major professional sports leagues, and five financial analysts that cover the cable industry. Finally, we interviewed officials from NCTA, Consumers Union, the National Association of Broadcasters, the National Association of Telecommunications Officers and Advisors, the American Cable Association, the National Cable Television Cooperative, and the Cable Television Advertising Bureau.
- We solicited the 11 cable operators we interviewed to gather financial and operating data and reviewed relevant Securities and Exchange Commission filings for these operators. Nine of the 11 cable operators provided the financial and operating data we sought for the period 1999 to 2002. We also acquired data from Kagan World Media, which is a private communications research firm that specializes in the cable industry. These data provided us with revenue and programming expenses for over 75 cable networks.

-
- We compared the average license fees among three groups of networks: those that are majority-owned by a broadcaster, those that are majority-owned by a cable operator, and all others. We performed t-tests on the significance of these differences. We also ran a regression (our cable license fee model) in which we regressed the license fee across 90 cable networks on the age of the network, the advertising revenues per subscriber (a measure of network popularity), dummy variables for sports and news programming, and a variety of factors about each franchise.
 - We conducted several empirical tests on the channel lineups of cable operators as reported to FCC in its 2002 cable rate survey. We developed an empirical model (our cable network carriage model) that examined the factors that influence the probability of a cable network being carried on a cable franchise, including factors such as ownership affiliations and the popularity of the network. Further, we developed descriptive statistics on the characteristics of various tiers of service and the channels included in the various tiers.

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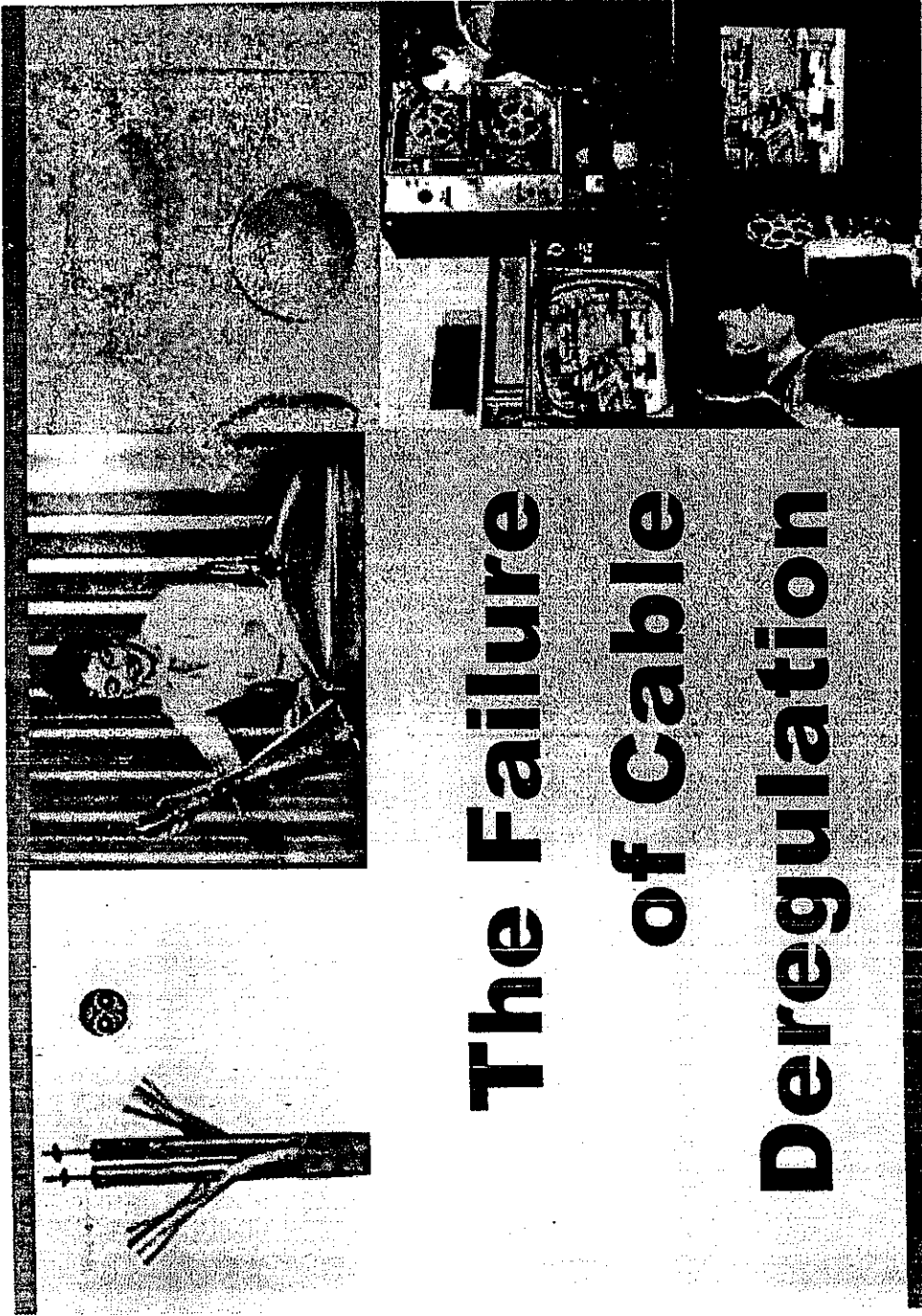
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The Failure of Cable Deregulation

**A Blueprint For Creating A
Competitive, Pro-Consumer
Cable Television Marketplace**

**U.S. Public Interest Research Group
August 2003**

The Failure of Cable Deregulation:

A Blueprint For Creating a Competitive, Pro-Consumer Cable Television Marketplace

U.S. PIRG

August 2003

Written by Jay Halfon, Esq., President, New York Public Interest Research Group Fund, for the U.S. Public Interest Research Group, with Edmund Mierzwinski, U.S. PIRG Consumer Program Director.

Special thanks to Mark Cooper, Ph.D., Research Director, Consumer Federation of America, Jeffrey Chester, Executive Director, Center for Digital Democracy, and Andrew Schwartzman, President, Media Access Project, for their invaluable assistance.

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Photo descriptions: From top left: (1) Early coaxial cable for television (1938); (2) Comparing new wider angle picture tube, allowing television set to be less bulky, to older model (1957); (3) Demonstrating conversion of television signal for, (4) playback on tape (1960).

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SUMMARY AND RECOMMENDATIONS

THE PROBLEM: DEREGULATION OF THE CABLE INDUSTRY HAS FAILED

The Telecommunications Act of 1996 restructured the entire telecommunications industry and left virtually all cable subscribers without protection from unrestricted rate hikes. Since the Act was signed into law, cable rates have skyrocketed; service levels have declined; cable concentration has heavily increased; vertical integration between critical programming developers and cable distributors has gone unabated; wireline cable competitors have faced enormous obstacles going head-to-head with cable incumbents; incumbent cable operators have effectively exploited statutory loopholes in order to deny vital programming content to emerging competitors; and the cable industry now also dominates the broadband residential high-speed Internet market.

Cable Rate Hikes Persist

Since enactment of the 1996 Act that deregulated cable rates, consumer cable prices have been rising at three times the rate of inflation and even faster for basic and expanded basic service, which is the choice of the overwhelming majority of cable subscribers. These rates have risen by more than 50 percent.

Individual markets have suffered much larger increases. For example, New York consumers have been particularly hard hit. In the few years since enactment of the 1996 Act, New York City cable subscribers have seen their bills for the most popular programming tier soar. Cablevision customers in New York City have experienced a cumulative increase of 93.7 percent – nearly doubling monthly bills. Even on the “low” end, Staten Island Cable customers have seen their bills rise 52.5 percent.

Cable price increases have been restrained by competition only when a wireline competitor, often referred to as an overbuilder, enters a market to challenge the incumbent. Where such overbuilder competition exists, the effect is dramatic: The General Accounting Office (GAO) reports that cable rates are 17 percent lower where there is an overbuilder in a franchise area. By contrast, national competition from satellite providers – notwithstanding their increasing market share – has not resulted in lower cable rates.

Although cable operators argue that they face serious competition from the nation's two Direct Broadcast Satellite (DBS) providers, data compiled by the Federal Communications Commission (FCC) also confirm that DBS, while growing in subscribers, appeals primarily to limited subsets of consumers, and is unable to restrain cable's prices charged to consumers at large. Wireline competitors have proven effective at forcing cable operators to restrain their prices, but these competitors have entered only a very limited number of markets, due in large part to cable's concerted anti-competitive efforts to keep them at bay.

With near universality, cable operators have blamed their skyrocketing rates on increases in their programming costs, despite the fact that the principal cable operators receive the most favorable pricing from programmers *vis-à-vis* overbuilders and satellite providers. Most importantly, augmented advertising revenues and revenues from new services more than cover any programming cost increases. Moreover, 40 percent of the top cable channels – which command the highest prices – are owned in whole or in part by cable operators themselves or by companies with large ownership interests in cable operators.

According to FCC data, price increases have occurred even on a per-channel basis, which proves that cable's "more channels" argument is simply wrong. The cable industry's "better programming" argument is equally implausible. A number of major cable operators have clearly pushed things in exactly the opposite direction by moving very popular channels off the lower tiers of service and on to the higher tiers, extending the cable strategy of bundling services to "drive consumers to buy bigger and bigger packages of programs at higher prices."

One way to raise prices is to do so directly; another way is to allow service quality to deteriorate. Cable companies have done both. When it comes to customer service, the cable industry has one of the worst track records of any service industry in the country. The latest American Customer Satisfaction Index – an annual survey by one of the nation's leading business schools – found that some of the largest cable companies "*now rank among the worst rated businesses in the history of the ACSI.*"

In reality, ever-escalating consumer rates have flowed profitably to the cable industry's bottom line. The industry-wide operating margin is anticipated to be nearly \$19 billion for 2002, up nearly 60 percent from 1997. And operating revenues per subscriber have commensurately jumped to \$273 per year in 2002 from \$190 in 1996. For the industry's largest player, Comcast, this has meant a nearly 36 percent increase in operating cash flow (to \$1.597 billion) and operating cash flow margins – "profits" to most people – have reached 36.5 percent in the second quarter of 2003 despite a stagnant national economy and a depressed communications market.

The Cable Monopoly Continues

One reason for all the rate hikes that is supported by the facts is the rapid consolidation of the cable industry. These unabated rate increases reflect cable's enduring dominance in the multichannel video programming market. The FCC's most recent video competition report found that cable continues to corner the consumer market, controlling more than *three-quarters* of all subscribers to multichannel video services. The number of cable subscribers has increased in each of the last 25 years and now stands at approximately 72 million – more than three and one-half times as many as cable's closest rival, DBS.

The 10 largest cable operators serve about 85 percent of all cable subscribers. And the three largest cable operators – Comcast, Time Warner and Charter – together serve approximately 56 percent of all cable subscribers, up from 48 percent in 1996. Consolidation

in the cable industry has been justified on the grounds that bigger companies would operate more efficiently and incur lower costs, which would translate into lower rates.

However, industry consolidation has not led to cost savings for consumers. Comparing rates across small and large cable systems, the FCC expected "to find lower average monthly rates due to increasing economies of scale." But it found just the opposite – the larger the cable company and the greater the dominance of a region through clustering of systems, the higher its rates.

DBS is widespread, has attracted millions of subscribers and may hold future promise to be a more serious competitor to cable. As the FCC's data show, however, DBS is not providing effective competition to cable in the most important segments of the market. Rather, even in areas where DBS has achieved significant penetration, "there is no measurable effect on . . . the price of cable service." Even the cable industry's own economic experts have acknowledged that "[t]he demand for cable is rather insensitive to . . . the DBS price," which "indicate[s] that DBS is not a particularly good substitute for cable in the minds of consumers." Indeed, cable prices have continued to rise steadily over the last decade, even as DBS penetration has risen and its prices have fallen.

This failure of DBS to restrain cable prices also reflects the fact that DBS is popular primarily at two edges of the market – in rural areas where there is no cable service at all, and among the minority of consumers that are willing to pay stiff premiums to receive large numbers of sports channels. DBS also has serious shortcomings that limit its appeal to many cable subscribers. DBS cannot reach many urban customers who lack a direct line of sight to the southern sky, and dishes are often difficult to install in the multi-family dwelling units that house approximately 30 percent of the U.S. population. DBS is still not able to offer local broadcast channels in many markets. Surveys indicate that 47 percent of cable subscribers would not subscribe to satellite service for that reason alone. DBS is also unable to offer customers the same bundles as cable operators, including telephone services, and has been extremely slow in offering efficient two-way high-speed Internet access services. Making matters worse, as the major cable operators have completed their nationwide upgrades to digital facilities, DBS loses the quality advantage it previously could offer to lure high-end subscribers.

Thwarting Competition

Cable operators have the incentive and ability to thwart competition in several respects. As FCC reports show, "where permitted, vertically integrated programmers will use foreclosure of programming to provide a competitive edge to their affiliated cable operators." For example, they continue to deny competing video distributors access to terrestrially (land-based) delivered programming that they own and control, exploiting loopholes in a federal law originally designed to prohibit such anti-competitive conduct. Not only do they own 40 percent of the most popular programming, but of the top 26 channels in terms of subscriber and prime-time ratings, all but one (the Weather Channel) is affiliated with either a principal

cable operator or a broadcast network and eighty-six percent of "must have" regional sports programming is also vertically integrated.

The cable incumbents refuse, or create obstacles, to carry a large amount of programming that is owned or controlled by their competitors. And these operators aggressively attempt to deny competitively vital *independent* programming to new market entrants through the use of programming contracts, cable-owned content distribution networks and exclusive agreements for equipment, software or other technology.

Cable's emerging competitors are facing increasing difficulty in obtaining access to cable-owned programming. In New York, for example, Cablevision obtained control of seven of the nine local professional sports teams and still denied an overbuilder, RCN, access even to the overflow programming (games not featured on Cablevision's Madison Square Garden network) when more than one of the seven teams is playing simultaneously. By contrast, Cablevision did give RCN access to the same sports channels for distribution in those parts of New Jersey where Cablevision is not the dominant provider of cable service.

The recent battle between Cablevision and the YES Network over carriage of Yankee baseball games in the New York metropolitan area is a glaring example of how large incumbent cable operators can and do exercise enormous leverage over new and competing content providers, to the detriment of consumers. Using the impetus of the recent Cablevision-YES dispute in New York, at least one cable incumbent is proposing that Congress allow it to coercively "re-tier" programming that it does not control, particularly sports programming. For example, such a proposal would prohibit programmers from negotiating the carriage of their programming on a specific tier. This proposal does nothing to advance consumer interests, will not reduce cable prices and only benefits cable operators in their bargaining with programmers. The incumbent cable company could favor affiliated programming by placing it on a "preferred tier" at the expense of competing programming.

Cable operators enter into agreements with unaffiliated programming providers with the effect of creating exclusive rights to deliver the programmer's content. Cable operators are now adapting that practice to lucrative video-on-demand (VOD) services. A number of major cable operators have formed a consortium called iN DEMAND that obtains VOD content from the major Hollywood studios, as well as other attractive programming content (such as sporting events), which is then made available exclusively to the cable operators' own subscribers. Cable operators are also denying potential competitors access to VOD content indirectly by forming exclusive agreements with equipment suppliers that expressly deny rivals the technology (equipment, software, etc.) necessary to deliver VOD programming.

Cable operators have successfully undermined the leased-access provision of the cable act. Federal law requires cable operators to set aside up to 15 percent of their channel capacity so that unaffiliated programmers may offer competing service packages to consumers. As Congress envisioned it, the purpose of this requirement "is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public." Instead the FCC, with the

support of the cable industry, has successfully undermined this mandate by adopting a pricing methodology that sanctions a per channel rate that no competing programmer could pay and still remain commercially viable.

Extending the Anticompetitive Model to the Internet

Cable operators now also dominate the broadband Internet market, comprising a huge new source of profits. Cable now has nearly twice as many subscribers as its nearest broadband competitor, DSL (digital subscriber line). Comcast, the largest cable operator in the nation, has become the largest provider of broadband services, adding 350,900 subscribers in the second quarter of 2003 for a total of approximately 4.4 million subscribers, with its revenue from these services increasing 56.6 percent (to \$548 million) over second quarter 2002.

As the largest providers of broadband Internet service, cable operators have become a critical link in the public's ability to participate in the Internet's growing virtual "town square" of American discourse and civic activities. The danger that cable's reign poses to the diversity and democracy of the Internet is quite simple: Cable operators are not required to share their networks with competitive Internet service providers (ISP's). Independent ISP's will not be able to provide cable broadband Internet services because they will not have access to cable wires, unless cable operators open their wires and networks to competitors. They will either have to provide DSL reseller service from phone companies or attempt to negotiate access with a cable operator, which is at the discretion of such operators.

Cable operators have taken anti-competitive action to limit access to certain streaming video content to prevent or limit broadcast quality streaming video over their broadband Internet cable modem service as a means of blocking current and future competition for video content. This has created significant concern on behalf of many of the Internet's leading content providers and e-commerce websites. Some cable operators have also apparently opted to condition the carriage of a video channel upon the provider's agreement not to distribute the same content over the Internet at all.

THE SOLUTION: MOVE DECISION MAKING OUT OF WASHINGTON, GIVE CONSUMERS REAL CHOICES AND CREATE CONDITIONS THAT GIVE COMPETITION A CHANCE

Since its inception and growth throughout the second half of the 20th century, cable television service has brought an enormous amount of popular news and entertainment programming into the living rooms of America. The cable industry has used public rights of ways to access those homes and in turn made huge profits. This report makes clear that the cable industry has not lived up to its public and civic responsibilities as holders of valuable public franchises and licenses. Congress, the FCC, and state and local governments must examine the recommendations made in this report and take appropriate action to restore competition to the multichannel video market. Fortunately, the harmful effects of cable deregulation are not insurmountable. Consumers could still reap the benefits of the 1996 Act's

pro-competitive intent through a new model. The building blocks of a truly pro-competitive model are as follows:

Congress must empower state public utility commissions (PUC) to regulate all cable rates and charges for video services until meaningful competition emerges. Congress should grant state public utility commissions the authority to regulate all cable rates and charges and to combat anti-competitive predatory-pricing business practices. With the 1996 Act's deregulation, rates for the cable programming tier to which the vast majority of consumers subscribe have inflated without restraint. Consumer rate protections at the state level are needed, but state PUC rate regulation is only necessary and desirable until robust competition that actually disciplines cable prices emerges.

Return authority to local communities. Preemptive provisions of the Act have thwarted attempts by local communities to protect cable subscribers from the worst of the industry's depredations. These preemptive provisions must be abolished so that policy control may be returned to community leaders who are closest to consumers and who are most committed to ensuring that their communities have access to multiple providers of competitively priced video services.

Introduce *à la carte* programming requirement to expand consumer choices. Consumers should be able to choose their own suite of programming, rather than being force-fed the programming tiers that cable operator want them to purchase. Consumers must be given the right to purchase every individual channel on an *à la carte* basis at fair, reasonable and nondiscriminatory prices.

Adopt reasonably priced leased-access rates. Cable operators have avoided their obligation to lease channel capacity to independent programmers by setting the prices so high that no competing provider could possibly pay current fees and remain commercially viable. In order to promote competition with diverse and independent programming, reasonably priced leased access must be adopted. This pro-competitive pricing should be based upon the FCC's existing rate-setting methodology, which was designed to promote competition in the telecommunications market.

Ensure consumer input with a public board member. A public member representing subscribers should be placed on the board of directors of any cable operator with a greater than four percent market share of cable households as a condition of franchise or FCC approval. Such a public member should have no current or prior affiliation with a cable, broadcast or DBS distributor or programmer, or any of their industry trade associations, and should be barred from joining such a board as a public member for five years after serving in any such affiliation. Public members should be selected by a committee of outside directors and approved by the shareholders. This would ensure better consumer input and assist in preventing insider dealing and financial mismanagement, as has occurred with some of the nation's leading cable operators.

Empower the viewers and citizens. Citizen-viewers should have a direct voice in the process of cable regulation and the opportunity to use that voice to create their own well-funded news and public affairs channels. When cities negotiate franchise agreements with cable companies, they should require that cable operators include billing inserts that invite consumers to join a local Cable Action Group that would operate a local Audience Channel, well-funded and equipped by the cable company. Such a group would serve a dual purpose: operating the local channel and organizing consumers into a mobilized interest group to advocate for pro-consumer and pro-democracy media policy. Alternatively, local or state governments could assist in fundraising for the Cable Action Group, by collecting membership dues through inserts in tax or license renewal mailings. Illinois Citizen Utility Board (CUB) is funded in this manner and represents the interests of Illinois gas, electric, phone and other utility ratepayers.

Ensure access to vital programming. Newly formed competitors cannot survive, let alone thrive, if cable operators are allowed to continue their anti-competitive practices of locking up must-have programming, such as sports and other regional channels. The existing federal program-access law must be modified to eliminate loopholes that have allowed the cable industry to continue these anti-competitive practices and undermine the emergence of wireline competitors. Additionally, cable operators should be prohibited from entering into exclusive contracts for equipment or other technical services that prevent competitor access to such programming.

Prohibit cable broadband content restrictions to allow consumers full use of the Internet. Cable operators have a long history of restricting consumer access to content that cable operators disfavor. With the cable industry's ongoing dominance of the broadband market, cable operators must be prohibited from restricting consumer access to Internet content based on the source or nature of the consumer's request.

HISTORY AND BACKGROUND

Cable television started in 1948 as a means of providing signals of local television stations to rural and mountainous areas that could not receive adequate reception of those signals through conventional over-the-air antennas.¹ It was known as Community Antenna Television, and it used large antennas to capture the signals of nearby television stations and then retransmit those signals to homes through coaxial cables owned by the cable operators.

Currently, cable operators must obtain a franchise from a local governmental authority, which permits them to run cables along specified public rights-of-way. The Copyright Revision Act of 1976² grants cable operators a permanent license that allows them to transmit over-the-air television signals through their cable systems. During the 1970s, however, satellite technology developments enabled video signals to be transmitted economically via satellites, leading to the development of new cable networks, such as HBO and CNN, designed to be distributed via satellite to cable systems throughout the country. While broadcast networks gain revenues largely through advertising, these cable networks are supported through advertising, fees paid by cable operators, and in the case of premium pay networks such as HBO and Showtime, by subscriber fees. The cable operator primarily receives three kinds of signals: (1) over-the-air broadcasts by local TV stations from TV towers in the area, (2) signals via satellite from cable networks and (3) terrestrial (land-based) microwave transmissions or delivery over fiber-optic cable. All of these signals are provided to subscribers through the cable system's wires.

In 1984, Congress adopted the Cable Communications Policy Act of 1984.³ The act deregulated the rates that cable operators can charge to most consumers. It also standardized the procedure for franchise renewal that gave operators relatively certain renewal and capped franchise fees at 5 percent. In 1992, in response to escalating cable rates following the 1984 act, Congress did an about-face and regulated cable rates as part of the 1992 Cable Act.⁴ This statute, passed over a presidential veto, established a benchmark above which cable rates will be deemed excessive. The FCC required that any rates deemed excessive were required to be lowered 17 percent or reduced to the FCC benchmark.

In 1996, Congress did another about-face. It passed the Telecommunications Act of 1996,⁵ which deregulated rates for basic cable service (the least expensive tier that includes local over-the-air broadcasts) in areas with "effective competition." It is estimated that 11 percent of all cable subscribers subscribe only to basic cable service.⁶ The Act allowed local franchise authorities to continue to regulate basic cable service, within the limits of FCC rules, where effective competition did not exist. This is true for the overwhelming number of cable franchises across the country. According to the FCC, it is estimated that only 2 percent of all cable households reside in areas with effective competition,⁷ and only 1.1 percent of consumers subscribe to the services of an overbuilder.⁸

The Act also established March 31, 1999, as the date for an across-the-board end to federal price regulation of the cable programming service tier (enhanced basic), the tier chosen overwhelmingly by cable subscribers – whether or not there was competition in the

area. In addition, under the 1996 Act, small cable operators are partially or wholly exempt from rate regulation. A "small cable operator" is defined to include any operator that serves fewer than 1 percent of all subscribers in the United States and that is not affiliated with entities that have gross annual revenues exceeding \$250 million. In any franchise area where a small cable operator serves fewer than 50,000 subscribers, rate regulation does not apply to the operator's cable programming services tiers or to its basic tier if it was the only tier subject to regulation as of December 31, 1994. The 1996 Act also authorized phone companies to provide cable services for the first time⁹ and established an "open video system" regime,¹⁰ under which an operator can avoid some of the regulatory requirements applied to traditional cable operators in exchange for making a specified percentage of its channels available to unaffiliated video programmers.¹¹

Congress passed the Satellite Home Viewer Improvement Act of 1999,¹² facilitating the ability of satellite video providers to beam local broadcast signals back to their home markets. This was important and helpful in the development of DBS. However, it has not led to decreases in cable rates.

The multichannel video distribution industry has evolved into three principal types of service providers, due in part to and certainly enabled by regulatory incentives and disincentives that favor the large incumbent cable operators. The three types of service providers are as follows:

1. MSO – The large incumbent cable operator, also known as a principal multiple system operator (MSO) or principal cable operator, operating cable systems in multiple localities. It usually has a high-capacity, bi-directional, highly interactive wireline network that supports multiple video products, as well as interactive TV, high-speed data, voice and other services. These companies dominate the multichannel video distribution industry.
2. Overbuilder – These are emerging *wireline* cable providers that build their own cable infrastructure over public rights-of-ways – hence *overbuilders* – in communities in order to compete with the established incumbent cable operator. It uses the same, or very similar, bi-directional interactive wireline network structure. They are the only competition to incumbent cable operators that has been found to impact price. However, overbuilders hold a very small percentage of the consumer market.
3. DBS – This is direct broadcast satellite. It has been most effective in reaching noncable-served customers in rural areas and enthusiast consumers (e.g., heavy sports users). This provider can compete on certain video products but is limited in its ability to compete for other products such as Internet and telephony supported on a wireline system. EchoStar is the "Dish" network; DIRECTV is the other major satellite network. DBS refers to both of these companies.

Today, several cable operators dominate the cable industry. They are Comcast, Time Warner Cable (part of AOL Time Warner), Charter, Cox Communications, Adelphia Communications, Cablevision, Advance/Newhouse, Mediacom Communications, Insight Communications and CableOne.¹³ These companies control approximately 85 percent of all cable subscribers.¹⁴ The largest three companies control 56 percent of all cable subscribers.¹⁵ These companies never compete against one another. The National Cable and Telecommunications Association (NCTA) is the major trade association representing these companies. There are also hundreds of smaller noncompetitive cable operators. The American Cable Association, which represents the interests of owners of independent cable television businesses and smaller cable systems, has a membership of approximately 900 franchised cable businesses, ranging in size from several hundred thousand subscribers to fewer than 100.¹⁶ Today, cable companies claim that about 97 percent of homes in the United States have access to a cable system, and approximately 66 percent of these households subscribe to a cable service.¹⁷

The only *wireline* cable franchisees to directly challenge and compete with the major incumbent cable operators are overbuilders. These companies account for approximately 1.3 percent of the cable subscribers nationally.¹⁸ Overbuilder competition is the only competition associated with restraining price increases in cable rates. The two largest overbuilders are RCN (the 11th largest cable company) and WideOpenWest (the 13th largest cable company), serving 506,700 and 310,000 subscribers respectively.¹⁹ Overall, the Broadband Service Provider Association (BSPA), the overbuilder trade association, reports that it serves more than one million subscribers, with franchises authorizing them to serve more than 17 million homes.²⁰

Currently there are two major DBS companies competing with cable television – Hughes Electronics' DIRECTV and EchoStar's DISH Network.²¹ Cablevision, the nation sixth largest cable operator,²² has announced its intention to establish a competing DBS service in the fall of 2003.²³

Since the small parabolic "dish" antennae was first marketed in 1994, home subscribership to DBS had grown markedly. Currently, DBS has more than 20 percent of overall multichannel video subscribers as compared to cable's 76.09 percent. DIRECTV has approximately 12 percent of overall video subscribers and EchoStar has more than 8 percent of overall subscribers.²⁴ Historically, this growth has occurred in rural areas or in areas not traditionally served by cable. Although DBS is marketing aggressively, DBS market penetration has unfortunately not led to price competition with cable.²⁵

General Motors, owners of Hughes Electronics' DIRECTV, recently announced its intention to sell DIRECTV to Rupert Murdoch's News Corp., to be integrated into the Fox Entertainment Group.²⁶ Given Mr. Murdoch's and News Corp.'s close ties to the cable television industry, were this deal to go forward, it could significantly increase cable's programming dominance and diminish further DBS's ability to compete. EchoStar announced an agreement with SBC Communications, the nation's second largest local phone company,

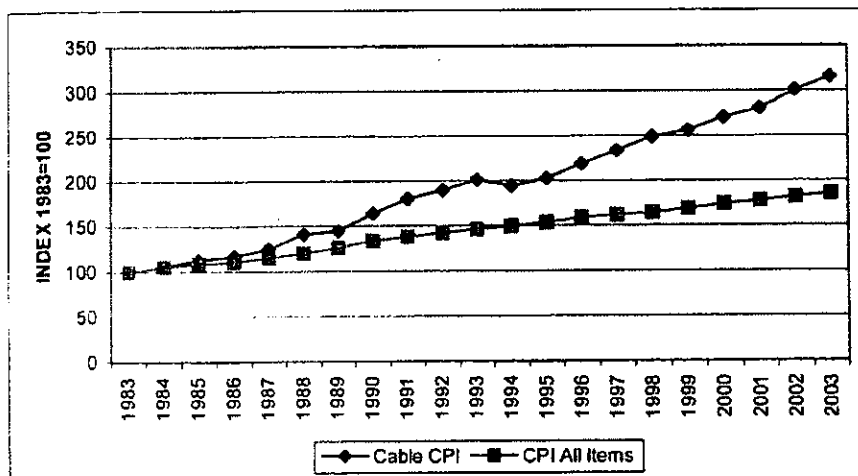
to offer DBS as part of a package of telecommunications services on a single bill.²⁷ If this bundling effort is successful and expands, it could enhance DBS competitiveness.

CABLE RATE HIKES CONTINUE

NATIONAL PRICE TRENDS

Congress deregulated cable rates in 1984 as part of broad legislation aimed at establishing a national policy for the rapidly growing cable industry.²⁸ Within a few years, a chorus of consumer complaints,²⁹ an FCC Study (1990)³⁰ and congressional surveys (in 1989, 1990 and 1991) all concluded that cable rates had increased considerably faster than inflation. See Figure 1.³¹ Figure 1 shows the increase in the total package of services purchased by consumers. Average monthly rates for basic, enhanced and premium services increased by 55 to 60 percent between 1986 and 1991 – nearly three times faster than the Consumer Price Index (CPI).³² Between 1986 and 1989 alone, the price of basic cable service rose 40 percent.³³

Figure 1: Long Term View of Cable Price Increases



Source: See Figure Notes

The 1992 Cable Act authorized the FCC to roll back cable rates that were too high.³⁴ The Commission established a benchmark; rates above the benchmark would be deemed excessive.³⁵ The FCC ordered cable operators to reduce their rates to the benchmark or to cut them by 17 percent.³⁶ The short period of rate relief resulting from the 1992 Act is evident in Figure 1 – the *brief* respite enjoyed by consumers during 1993-95.

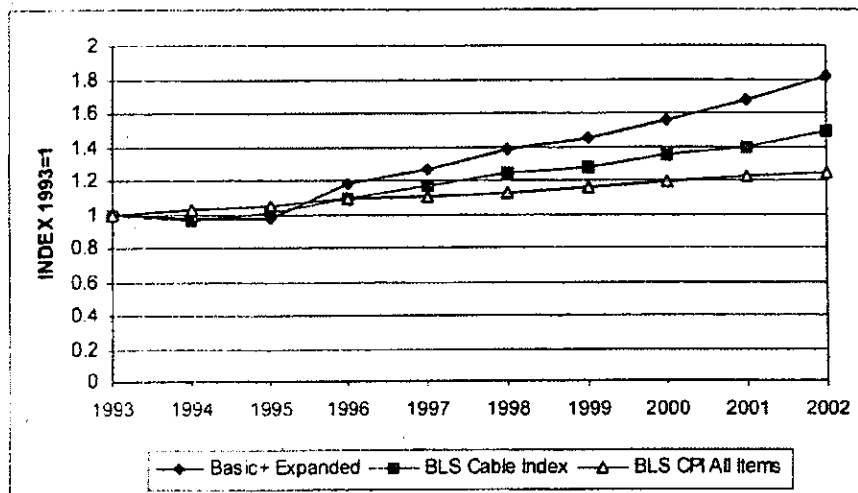
On February 8, 1996, President Clinton signed the Telecommunications Act of 1996.³⁷ This bill restructured the entire telecommunications industry and left most cable television consumers without protection from unrestricted rate hikes. Since the 1996 Act was signed into

law, cable rates have skyrocketed; industry concentration has heavily increased; vertical integration between critical programming and cable distributors has gone unabated; overbuilders have faced enormous obstacles going head to head with cable incumbents; and the cable industry has now begun to dominate the residential broadband high-speed Internet market.

The 1996 Act established March 31, 1999 as the date for an across-the-board end to federal price regulation of all service tiers above the basic tier, including the cable programming service tier (often called the “enhanced basic” package),³⁸ the tier chosen by the overwhelming majority of cable subscribers.³⁹ It also authorized the FCC to stop regulating the prices immediately for the few cable operators that could demonstrate that their “basic” service tier faced effective competition. Additionally the 1996 Act authorized phone companies to begin providing competing video services, although few have done so.

In 1992, Congress, concerned about rising cable rates, directed the FCC to publish an annual report on cable industry prices including to what extent competition is successfully restraining prices.⁴⁰ According to those FCC reports, cable rates for basic and expanded basic service have risen by 53 percent nationwide since 1996. See Figure 2. Backing out inflation, real rate increases have been nearly 35 percent since 1996.⁴¹

Figure 2: Details on Cable Rate Increases After the 1992 Act



Source: See Figure Notes

Not surprisingly, approximately two-thirds of the post-1996 Telecom Act increases occurred from 1999 to 2002, after the “cable programming services” tier was completely deregulated.

According to the FCC's most recent analysis — released in July 2003 — cable rates rose over 8 percent during the period from July 2001 to July 2002 — from \$37.06 a month to over \$40.⁴² The FCC price report released the prior year examined the impact of wireline overbuilder competition on cable rates. The FCC found that cable offers a lower rate only when an overbuilder enters a market to challenge the incumbent.⁴³ That year, the FCC found cable service tiers are on average 6.3 percent lower in areas where incumbent operators face effective competition from overbuilders.⁴⁴ In its most recent report the FCC found that cable service tiers were on average 6.4 percent lower in areas where incumbent operators face effective competition from overbuilders.⁴⁵

Even more drastically, an October 2002 report by the United States General Accounting Office (GAO) found that “the presence of a second cable franchise (known as an overbuilder) does appear to restrain cable prices. In franchise areas with a second cable provider, cable prices are approximately 17 percent lower than in comparable areas without a second cable provider.”⁴⁶ These findings by the FCC and GAO confirm the importance of promoting wireline competition as the only documented means of restraining cable rates for consumers.⁴⁷

The FCC and GAO reports do not take into account the most recent cable rate hikes. In what has become an “annual holiday tradition,” the nation’s major cable operators announced in December 2002 a new round of cable rate hikes, which took effect at the beginning of 2003.⁴⁸ The latest hikes are typically in the range of 5 to 8 percent,⁴⁹ and in some cases as high as 10 percent.⁵⁰ These hikes are well above historical averages. In fact, according to one trade press report, “[r]ate increases in 2001 were about 150 percent above the average increase since 1955.”⁵¹

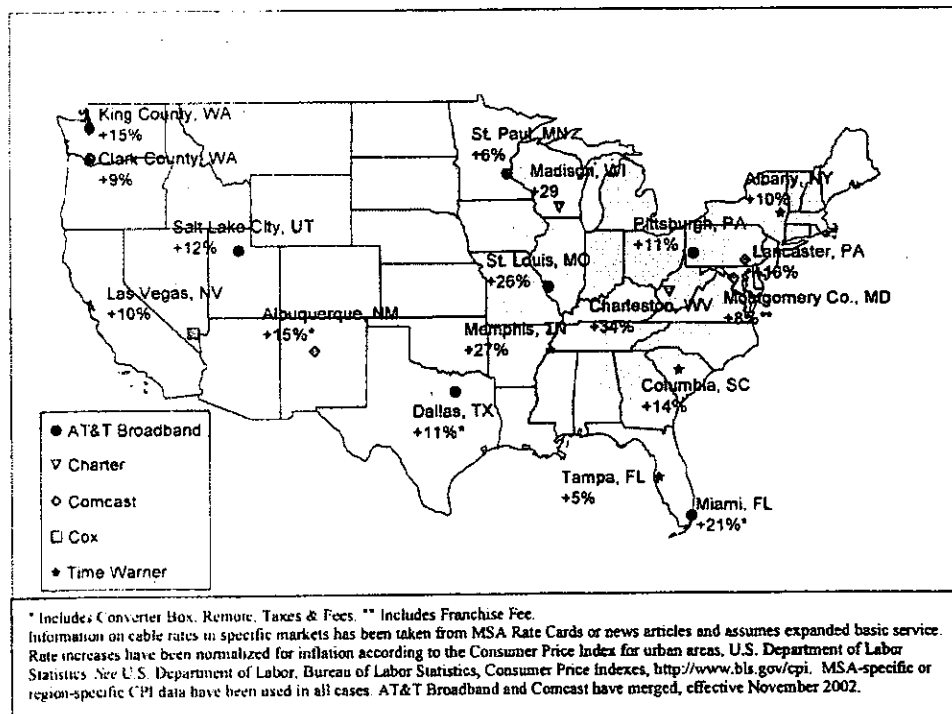
Consumer groups have reached the same conclusion as the FCC regarding cable rates. According to the Consumer Federation of America and Consumers Union, “cable operators moved aggressively to increase prices upon deregulation,” and that “[t]heir behavior was consistent with the exercise of market power.”⁵²

Figure 2 suggests this exercise of market power in another way. The very large increase in basic and expanded basic prices reflects two factors: increases in the number of channels, and the ability of companies with pricing power to engage in price discrimination. Basic and expanded basic rates increase more rapidly because consumers are less able to reduce their demand.

MANY LOCAL PRICE INCREASES HAVE BEEN EVEN LARGER

Nationally, the Consumers Union says the cost of “expanded basic” service has jumped 45 percent since 1996. That’s nearly triple the rate of inflation.⁵³ The Consumer Federation of America called the recent “holiday round of cable rate hikes” an “unwelcome gift to consumers” that “is part of a troubling trend that dates back to 1996,” and proves that “cable deregulation is not benefiting consumers as promised.”⁵⁴ A sampling of selected markets shows that cable rates have been rising across the country. See Figure 3.

Figure 3: Cable Rate Hikes: 1999-2002, Selected Markets



Sources: See Figure Notes.

New York consumers have been particularly hard hit by ever-escalating cable rate increases. For the most popular tier of cable programming – to which all but a handful of customers subscribe – New York City cable subscribers saw increases ranging from 93.7 percent for Cablevision customers to 52.5 percent for Staten Island Cable customers during the period since enactment of the Telecommunications Act of 1996. See Table 1.

Table 1. New York City Cable Rates			
Cable Company	Rate in effect		Nominal Rate Increase
	February 1996	February 2003	
Cablevision	\$28.01	\$54.24	93.65 percent
Staten Island Cable (Time Warner)	\$30.34	\$46.28	52.54 percent
Time Warner Manhattan North	\$30.18	\$46.77	54.97 percent
Time Warner Manhattan South	\$30.18	\$46.77	54.97 percent
Time Warner Brooklyn-Queens	\$30.51	\$47.17	54.61 percent
Rates are for the "cable programming tier" – the service tier to which a vast majority of cable customers subscribe.			
Source: City of New York, Department of Information Technology and Telecommunications Office of Franchise Administration and Planning			

As described in more detail below, these unabated rate increases reflect cable's enduring dominance in the multichannel video programming market. As one leading analyst succinctly noted, "[c]able is one of the few sectors of the broader market that has demonstrated *consistent pricing power* in recent years."⁵⁵ Indeed, the FCC's 2002 video competition report found that cable continues to corner the consumer market, being available to 97.6 percent of all TV households⁵⁶ and controlling more than *three-quarters* of all subscribers to multichannel video services.⁵⁷ As of June 2002, the number of cable subscribers has increased in each of the last 25 years, and, according to the FCC, stands at approximately 72 million – over three and a half times as many as DBS, cable's closest rival.⁵⁸

Ever escalating consumer rates have flowed profitably to the cable industry's bottom line. The industry-wide operating margin is anticipated to be nearly \$19 billion for 2002. And operating revenues per subscriber have commensurately jumped to \$273 per year in 2002, from \$208 in 1997.⁵⁹ For the industry's largest player, Comcast, this has meant a 35.7 percent increase in operating cash flow (to \$1.597 billion) and operating cash flow margins – "profits" to most people -- have reached 36.5 percent for the second quarter of 2003 despite a stagnant national economy and a depressed communications market.⁶⁰

Many local regulators – who have been stripped of their authority to regulate rates for the programming tier to which the vast majority of consumers subscribe – have expressed

outrage over recent cable rate hikes. Cable operators are often "the only game in town, so they can get away with it"⁶¹ - there's nothing local regulators can do but sit back and "look forward to rate hikes and service cutbacks."⁶² See Table 2. In response to Comcast's recent announcement of a 7.8 percent rate hike in Boston, the director of the city's cable TV office stated "[w]e're frustrated by this. . . These rate increases are a lot more than what the Bureau of Labor Statistics is saying the cost-of-living increase has been this year."⁶³

Table 2. Local Regulators are Helpless and Outraged	
Enterprise, AL	"I am extremely disappointed that Adelphia is raising cable rates at a time when corporate greed and owner misconduct have forced them to file bankruptcy . . . It gives the appearance of requiring Enterprise cable subscribers to pay for the transgressions of Adelphia owners." - Mayor Tim Alford
Los Angeles, CA	"We're disappointed that consumers have to pay for the financial problems at Adelphia [through rate increases]. . . We hope they reconsider their decision, and the mayor is going to continue to work to see if that can come about." - Deputy Mayor Matt Middlebrook
Oakland, CA	"Oakland already has higher rates and fewer channels than other Bay Area cities. . . [AT&T hasn't] done anything to justify the rate increase." - City Clerk Ceda Floyd
Simi Valley, CA	"This is an unconscionable way for Adelphia to enter our community, increasing rates over which we, as a city council, have no control and stripping our ability to protect our community's cable customers from escalating costs." - Mayor Bill Davis
Colorado Springs, CO	"It's a black hole . . . I would want us to be able to say we're monitoring it to the public." Councilmember Jim Null regarding the lack of restrictions on cable rate increases
Jacksonville, FL	"When I picked up Saturday's paper, I was fried. Dumbfounded." - Mayor John Delaney on reading AT&T's full-page ad announcing higher prices
Jacksonville, FL	"I had worked hard . . . to build a bridge, to build a relationship, to try to solve the problem. . . We're [not] even asking for perfection. But you like to at least have good-faith effort, and we haven't been getting that." - Council President Matt Carlucci
Dubuque, IA	"Lo and behold [Mediacom] stopped paying their [franchise fees], then they turn around and raise their rates. It seems an odd logic." - Cable-franchise administrator Merrill Crawford
Boise, ID	"We've received more than a hundred calls in the last month, but there's not a lick we can do about it. . . This happens whenever the cable company makes changes or raises rates. But the city can't do anything about rates." - City budget director Alec Andrus
Sycamore City, IL	"I feel this is really an in-your-face reactive approach . . . It leaves a bad taste in our mouths, especially with the franchise agreement coming up within the next year, and we will remember this." - City Administrator Bill Nicklas on AT&T raising cable rates on short notice
Barnstable, MA	"The only option you've got is to find competition" (which Barnstable officials have not been able to do). - Chairman of the Cable Advisory Committee David Cole
Worcester, MA	"They're the only game in town so they can get away with it." - Councilor-at-large Michael C. Perotto, member of the Public Service and Transportation Committee
Montgomery County, MD	"We viewed the [AT&T/Comcast] transfer as a very unwise decision. . . We're going to be at great risk for the company failing, and it's not going to be good for residents along the way . . . We can look forward to rate hikes and service cutbacks." - Cable Communications Advisory Committee member Don Libes

Table 2. Local Regulators are Helpless and Outraged	
Montgomery County, MD	"I was extremely disappointed to learn that Comcast has decided to institute another rate increase, the second in nine months, especially following two successive years in which complaints to the County's Cable Office more than doubled and reached the highest level ever." - Councilmember Marilyn Praisner
Holland, MI	"I think it's arrogant of [AT&T] to pass this along just because they can...It simply is gouging an overpriced system." - Community Access Television Advisory Commissioner Carl Heideman
Sedalia, MO	"They [Charter] run the whole show, and we have nothing to say." - Councilmember Lawrence Roe
Gulfport, MS	"I didn't know anything about the rates going up until I opened my mail...They were at a City Council meeting two weeks ago, and they didn't mention anything about it at all... Most people think the city can do something about it. The truth is, our hands are tied." - Mayor Ken Combs
Cary, NC	"The rates are absolutely outrageous...Unfortunately, we have very little control over them at the local level." - Mayor Koka Booth
Akron, NY	"The deregulation of the cable industry has given us in rural areas a monopoly over which there is no control of the prices charged." - Mayor Michael Charles
Buffalo, NY	"As a result of deregulation, cable rates have risen astronomically, both locally and nationally. We don't have authority to approve or reject the increase. We do have a right to complain." - Common Council President James W. Pitts
Dallas, TX	"You come down here and rub our noses in this rate increase... Your service is lousy, but I really think your public relations is as lousy as your rate increase request." - Councilmember Donna Blumer to AT&T
Sources: See Table Notes. (AT&T purchased by Comcast Dec. 2002)	

Congress has begun to take notice again as well. Soon after the FCC released its rate survey in April 2002, Senator John McCain (R-Ariz.) requested that the GAO initiate another independent review of the basis for cable rate increases.⁶⁴ On May 6, 2003, Senator McCain, Chairman of the Committee on Commerce, Science & Transportation, held a hearing on "pricing and competition in the programming and distribution market." While the GAO's witness testified that work remains ongoing and that the agency's report would not be issued until October, he was unequivocal that the "FCC's 2002 survey does not provide a reliable source of information on the cost factors underlying cable rate increases."⁶⁵

In other words, the FCC's finding that cable systems subject to wireline competition exhibit only a 6.3 percent "competitive differential" is suspect, particularly compared to GAO's findings that wireline competition keeps cable rates lower by an average of 17 percent.

Senator McCain has reacted with considerable concern to these cable price hikes: "[T]he FCC released its annual report on cable rate increases in which it has found that the cable industry raised its rates an astounding 8.2% during the 12-month period ending July 1, 2002. By comparison, the Consumer Price Index increased 1.5%. This means that cable rates increased an unbelievable 5½ times faster than inflation. The cable industry has risen to new heights in their apparent willingness and ability to gouge the American consumer. ... These

increases defy logic.⁶⁶ Indeed, while awaiting the GAO's anticipated report in September, the Senator says that "something is going to have to be done because apparently competition isn't working."⁶⁷

CABLE PRICES AND PROGRAMMING QUALITY

That cable prices have risen sharply since 1996 is beyond dispute. The cable industry argues, however, that price increases have been justified by the provision of more channels and better quality programming,⁶⁸ and increases in their own programming costs from content providers such as ESPN.⁶⁹ This chapter examines each of these claims in turn.

ADDITIONAL CHANNELS DO NOT JUSTIFY CABLE'S RATE HIKES

The "more channels" argument is plainly wrong. The FCC analyzes prices on both a per-channel and a service-tier basis, and finds price increases both ways.⁷⁰ While the FCC has found per-channel price increases on a *national* basis, analysis of cable rate increases at the local level demonstrate the impact of rate hikes on consumers. In Denver, for example, AT&T's *per-channel* rates increased 6.9 percent in 2001; in Montgomery County, Maryland, they rose 5.6 percent. In 2001, Cablevision "le[d] the industry with its rate increases for basic cable service," even though at the time it was "the only major operator that has not yet launched digital video."⁷¹ Industry analysts have concluded that, despite ongoing industry consolidation, "there was little reason to expect either a burst of new programming choices or any slackening in the fast pace of rate increases."⁷²

Equally telling with regard to the "more channels" argument is the FCC's finding that, "[i]n areas where a wireline overbuild is present, cable subscribers receive more channels at lower prices . . ."⁷³ Indeed, the FCC concludes that rates are 6.3 percent lower in the aggregate and 9.4 percent lower *per channel* in markets where a cable company faces competition from an overbuilder, not just from satellite.⁷⁴ "In those areas where a cable operator faces effective competition from an overbuilder . . . operators tend to offer more channels at a lower rate."⁷⁵

Since 1999, when rates were officially and finally deregulated, prices have increased in each year-to-year comparison considered by the FCC's cable price reports.⁷⁶ The average annual increase for noncompetitive systems was about twice as large as the increase for competitive systems. This strongly reinforces the conclusion that the problem is lack of competition, not higher programming costs. The only other plausible explanation is that cable incumbents that do face competition are engaged in predatory pricing against challengers in the few markets where wireline challengers exist.

BETTER QUALITY PROGRAMMING DOES NOT JUSTIFY CABLE'S RATE HIKES

The "better programming" argument is equally implausible. To begin with, a number of major cable operators have clearly pushed things in exactly the opposite direction by moving very popular channels off the lower tiers of service and on to the higher tiers. The cable subscribers targeted with this migration strategy are abruptly informed that favorite

channels (like HBO for *The Sopranos* or *Sex and the City*) have been removed entirely from the analog tiers of service and are now available only on the digital tier of service.⁷⁷ As the Consumer Federation/Consumers Union report concluded, the cable industry has used new bundling arrangements to "driv[e] consumers to buy bigger and bigger packages of programs at higher prices."⁷⁸ See Table 3.

Table 3. Cable Operators Move Popular Channels from Analog to Digital Tiers	
Operator – System	Channels Moved to Digital Tier
AT&T – Oakland, CA	Premium channels
AT&T – Palo Alto, CA	Turner Classic Movies, Ovation, Independent Film Channel, Sundance Channel
AT&T – Richmond, VA	Sci-Fi Channel, Turner Classic Movies, Trinity Broadcasting, Fox Movie Channel
AT&T – San Carlos, CA	HBO, Showtime, Starz!
AT&T – Seattle, WA	Premium channels, including HBO, Cinemax and Showtime
Charter – Northern Nevada	All premium movie channels, including HBO, Cinemax and Showtime
Charter – Sulamancu, NY	Premium channels, including HBO, Cinemax and Showtime
Cox – Fairfax, VA	BET on Jazz, CNNfn/CNN International, ESPNNews, Fox Sports World, HBO Family, HBO 2, HBO Signature, More Max, Ovation, Showtime 2, Tech TV, The Golf Channel
Insight – Springfield, IL	Sci-Fi Channel, Court TV, Turner Classic Movies
Time Warner – Memphis, TN	Premium channels, including HBO, Cinemax and Showtime
Time Warner – Milwaukee, WI	HBO Plus
Sources: See Table Notes. (AT&T purchased by Comcast Dec. 2002)	

As discussed above, the Bureau of Labor Statistics, which tracks cable rates in parallel with the FCC, adjusts prices for both the number *and the quality* of channels offered – and it too has consistently concluded that cable prices have been rising faster than inflation.⁷⁹

While popular programming is being moved to the digital tier, this tier is expensive. Access to the digital tier costs an extra \$15 per month⁸⁰ including service and the set top converter. These prices have been rising at about 5 percent per year since 1999.⁸¹

HIGHER PROGRAMMING COSTS DO NOT JUSTIFY CABLE'S RATE HIKES

Cable industry claims of increasing costs of their programming inputs – particularly Disney-owned ESPN – cannot justify their ever-increasing consumer rates. As FCC Commissioner Adelstein explained in his concurrence to the 2002 report on cable industry prices released in July of 2003, the cable industry's justification is suspect on its face: "[F]or this year's Report, cable operators attributed an average of 65.8 percent of their rate increases to programming costs, yet the Commission has not conducted even minimal audits to ensure the accuracy of this information. In rough calculations using this figure, if programming costs comprise about 30 percent of total costs, and rates went up an average of 8.2 percent, this would imply that all programming costs went up an average of 17.9 percent, which appears to be an unusually high increase."⁸²

If rising programming costs are having an effect on cable rates, they have yet to harm cable's bottom line. To the contrary, "[o]perating margins have been increasing dramatically since 1997," during the same period that programming costs supposedly rose the most.⁸³

In 2002, the operating margin for the cable industry was nearly \$19 billion, up nearly 60 percent from 1997.⁸⁴ Operating revenues per subscriber have increased by more than 30 percent during that same period.⁸⁵ Cable companies' costs for digital programming are still nearly 25 percent lower than what DBS pays.⁸⁶

In reality, augmented advertising revenues and revenues from new services are more than offsetting any programming cost increases that the major cable operators currently may be experiencing. Indeed, since 1996, increases in cable advertising revenues alone have far outpaced any programming cost increases – by more than \$2.6 billion. See Table 4. And while the cable industry points specifically to ESPN programming cost increases, with the substantial penetration of ESPN and other sports programming services, sports advertising revenues have nearly doubled, from \$231 million to \$455 million.⁸⁷

Table 4. Increased Revenues Outpace Costs			
Cable Advertising Revenues		Programming Costs	
1996	\$ 6.79 billion	1996	\$ 5.66 billion
2002	14.71 billion	2002	10.99 billion
Source: See Table Notes.			

The industry's *positive* position is reflected in individual company results.⁸⁸ Comcast, which released its second quarter earnings report for 2003 and had large gains in its cable division, demonstrates that augmented advertising revenues and revenues from new services more than cover any programming cost increases. *Pro forma* Comcast revenue for the quarter ended June 30, 2003, was \$5.685 billion, representing a 9.2 percent increase from the second quarter of 2002. Operating income rose to \$611 million.⁸⁹

For 2003, it is estimated that Comcast will generate in excess of \$17.6 billion in cable revenues, reflecting a 9.8 percent growth, and approximately \$6.3 billion in earnings before interest, taxes, depreciation and amortization (EBIDTA), or 40.8 percent growth.⁹⁰ Indeed, for the second quarter of 2003, Comcast had over 350,000 net additions to its cable modem subscriber base, with a total of nearly 4.4 million.⁹¹ Additionally, Comcast announced it had added 56,900 new basic-service subscribers during the first quarter and 12,100 basic subscribers in the second quarter,⁹² and was projecting as many as 100,000 new subscribers for 2003.⁹³ Comcast has well over 21 million cable subscribers, giving it approximately 30 percent of the nation's cable business. Of these, Comcast has a total of 6.787 million digital subscribers, reflecting 169,000 additions to these new and most profitable services.⁹⁴

The \$1 billion that Comcast earns in advertising revenue places it in the same league as the ABC and NBC networks, according to Comcast Communications president Steve Burke, and Comcast plans to be "the No. 1 source for local advertising."⁹⁵ Comcast may be well on its way to meeting this goal, having experienced an 8 percent growth in advertising revenue in the first quarter of 2003.⁹⁶ And Comcast intends to continue to fuel this growth with its foray into video-on-demand (VOD), which will reach 50 percent of Comcast's subscribers by year-end 2003 and 80 percent by year-end 2004. Burke says the VOD technology "is perfect for advertising."⁹⁷

In reality, the principal cable operators – Comcast, AOL Time Warner, Charter, Cox, Adelphia, and Cablevision – receive the most favorable pricing from programmers *vis-à-vis* overbuilders and satellite providers.⁹⁸ The programming expenses for DBS operators are in the range of 37-40 percent of their monthly revenue while programming costs for the major cable operators are estimated to be 29 percent for basic programming and 28 percent for digital programming of monthly revenue.⁹⁹ Due to volume discounts and other concessions that the major cable operators are able to extract from programmers, even increases in programming costs benefit these incumbent operators from a competitive standpoint.

Cable companies have managed to thrive despite rising costs in part because they themselves own many of the channels carried on their systems.¹⁰⁰ As consumer groups have recently exposed: "Of the 26 top cable channels in subscribers' and prime time ratings, all but one of them (the Weather Channel) has ownership interest of either a cable operator or a broadcast network"¹⁰¹ and "40 percent of the top channels . . . which command the highest prices, are owned in whole or in part by cable operators or companies that have large ownership stakes in cable companies."¹⁰² Holding companies that own both cable systems and programming arms don't lose money when they boost cash flows from one subsidiary to another. See Table 5. Many of the cable networks are also supported by advertisers, thereby adding to – not subtracting from – the cable company's bottom line.¹⁰³ Thus, cable is using the classic tactic of moving revenues from one pocket to another.

Table 5. Cable Ownership of National Programming Networks			
Programming Network (Top 20 Rank)	Cable Operator Ownership (Interest)	Programming Network (Top 20 Rank)	Cable Operator Ownership (Interest)
Action Max	AOL Time Warner (100 percent)	HBO	AOL Time Warner (100 percent)
AMC (19)	Cablevision (60 percent)	HBO Latino	AOL Time Warner (100 percent)
Animal Planet	Cox (19.7 percent)	HBO 2	AOL Time Warner (100 percent)
@Max	AOL Time Warner (100 percent)	HBO Signature	AOL Time Warner (100 percent)
Cartoon Network	AOL Time Warner (100 percent)	HBO Comedy	AOL Time Warner (100 percent)
Cinemax	AOL Time Warner (100 percent)	HBO Family	AOL Time Warner (100 percent)
CNN (6)	AOL Time Warner (100 percent)	HBO Zone	AOL Time Warner (100 percent)
CNN En Español	AOL Time Warner (100 percent)	iN DEMAND	Comcast (55 percent), AOL Time Warner (33 percent), Cox (11 percent)
CNN Headline News	AOL Time Warner (100 percent)	Independent Film Channel	Cablevision (60 percent)
CNN International	AOL Time Warner (100 percent)	MoreMAX	AOL Time Warner (100 percent)
CNNin	AOL Time Warner (100 percent)	Much Music USA	Cablevision (75 percent)
Comedy Central	AOL Time Warner (50 percent)	Outdoor Life Network	Comcast (100 percent)
Court TV	AOL Time Warner (50 percent)	OuterMax	AOL Time Warner (100 percent)
Discovery Channel (4)	Cox (24.6 percent)	Ovation: The Arts Network	AOL Time Warner (4.2 percent)
Discovery Civilization	Cox (12.3 percent)	Product Info. Network (PIN)	Cox (45 percent)
Discovery En Español	Cox (24.6 percent)	QVC (13)	Comcast (57 percent) (however, sale of stake to Liberty Media Corp. pending.)
Discovery Health	Cox (24.6 percent), Comcast (20 percent)	Style	Comcast (50 percent)
Discovery HD Theatre	Cox (24.6 percent), Comcast (20 percent)	TBS (1)	AOL Time Warner (100 percent)
Discovery Home & Leisure	Cox (24.6 percent)	TLC (16)	Cox (24.6 percent)
Discovery Kids	Cox (24.6 percent)	Thriller Max	AOL Time Warner (100 percent)
Discovery Science	Cox (24.6 percent)	TNT (6)	AOL Time Warner (100 percent)
Discovery Wings	Cox (24.6 percent)	Travel Channel	Cox (24.6 percent)
E! Entertainment	Comcast (50 percent)	Turner Classic Movies	AOL Time Warner (100 percent)

Table 5. Cable Ownership of National Programming Networks			
Programming Network (Top 20 Rank)	Cable Operator Ownership (Interest)	Programming Network (Top 20 Rank)	Cable Operator Ownership (Interest)
5StarMax	AOL Time Warner (100 percent)	Viewers Choice 1-10 and Hot Choice (11 multiplexed channels)	Cox (20 percent), AOL Time Warner (17 percent)
Fox Sports Net (2 channels)	Cablevision (50 percent)	WE	Cablevision (60 percent)
G4 Video Gaming Network	Comcast (94 percent)	WMAX	AOL Time Warner (100 percent)
Golf Channel	Comcast (91 percent)		
Sources: NCTA, <i>Top 20 Cable Networks</i> , http://www.ncta.com/industry_overview/top20networks.cfm?indOverviewID=59 (accessed on Aug. 8, 2003) (top 20 networks as of Feb. 28, 2003); <i>Ninth Video Competition Report</i> , App. C at Table C-1 (ownership data).			

CABLE PRICES AND SERVICE QUALITY

One way to raise prices is to do so directly; another way is to allow service quality to deteriorate. Cable operators have done both. When it comes to customer service, the cable industry has one of the most criticized track records of any service industry in the country.

Although Congress set out to deregulate the cable industry in 1984, it was persuaded by cable's history of poor customer service to preserve the right of local franchise authorities to require, as part of a franchise, provisions for the enforcement of customer service requirements.

By 1992, however, Congress found that poor customer service in the cable industry was as prevalent as ever. "[C]able operators frequently break installation and repair appointments, subject customers to frequent service interruptions, fail to answer customer calls or place customers on hold for extended periods, and ignore or are slow to respond to customer billing inquiries."¹⁰⁴

A Consumer Reports survey at that time found that "consumers are less satisfied with their local cable system than with any other type of service Consumer Reports has rated."¹⁰⁵ Congress accordingly concluded that leaving cable customer service up to local authorities was not sufficient. It directed the FCC to establish new federal customer service standards that local authorities could enforce.¹⁰⁶ The new standards were to include, at a minimum, requirements governing cable systems' office hours and telephone availability; installations, outages and service calls; and communications between cable companies and subscribers, including standards governing bills and refunds.¹⁰⁷ Although Congress decided to deregulate cable rates in 1996, it left these service-quality provisions in place.

Despite these regulatory efforts, cable's customer service remains abysmal. The May 2002 American Customer Satisfaction Index (ACSI) – an annual survey by the University of Michigan Business School – found that three of the then nation's largest cable companies –

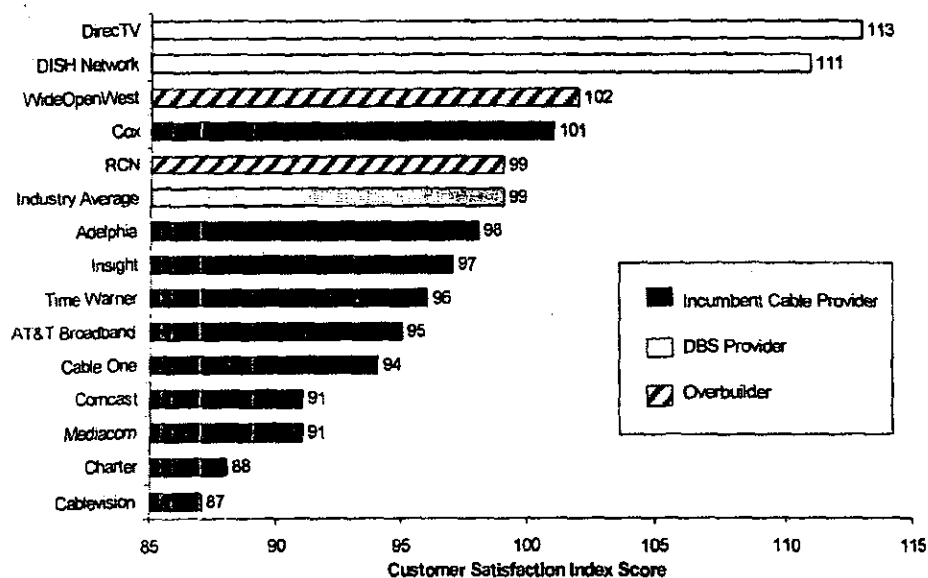
AT&T Broadband, Comcast and Charter – “now rank among the worst rated businesses in the history of the ACSI.”¹⁰⁸

The May 2003 ACSI report confirmed this trend, stating:

The customer satisfaction scores for Cable TV remain dismal. No other industry in the ACSI has lower scores. Comcast (down 2%) and Charter Communications (up 4%) both score 55, which is lower than the Internal Revenue Service. That doesn't mean that people enjoy paying taxes more than they do watching cable TV, but in the context of what these organizations do, the former offers more satisfactory assistance than the latter. Obviously, the nature of the “product” colors the experience, which is why it is all that more remarkable for any company to have such low levels of customer satisfaction. In most competitive situations, such scores are not sustainable: Either the firms improve or they are forced out of business. Things appear to be different in the cable TV industry. Whereas many industries lack pricing power today, this is not the case for Cable TV. Prices have gone up more than in just about any other sector in the economy. Price hikes in the absence of satisfied customers are possible only if consumer choice is restricted.¹⁰⁹

A recent study by J.D. Power and Associates found that incumbent cable companies consistently score below overbuilders and DBS providers in customer satisfaction.¹¹⁰ See Figure 4. Other independent studies have reached similar conclusions.¹¹¹ And cable operators themselves have acknowledged that “[f]rom a customer care perspective, we weren't doing a really good job,”¹¹² that they are “embarrassed about the service problems”¹¹³ and have “dropped the ball on some issues.”¹¹⁴

Figure 4: J.D. Power 2002 Cable/Satellite TV Customer Satisfaction Study



Source: J.D. Power and Associates News Release, J.D. Power and Associates Reports: Satellite TV Grows in Consumer Popularity, Cable Service Sees Slight Decline (Sept. 5, 2002).

While local regulators retain some limited authority to monitor cable's customer service, getting cable to live up to its obligations has proven extremely difficult. Local regulators throughout the country continue to express frustration over the large and increasing numbers of consumer complaints they receive. See Table 6. In Los Angeles, for example, formal consumer complaints about cable service increased 117 percent in 2001, "an escalating trend that city regulators expect to continue, according to a preliminary report from the city."¹¹⁵

Table 6. Local Regulators are Plagued by Cable Complaints	
Los Angeles, CA	Complaints from AT&T Broadband customers have risen over the last three years . . . Many of the calls related to lapses in cable connections and lengthy delays in talking to a customer service agent . . . AT&T has been given three months to improve service for its 20,000 subscribers or risk a \$100 daily fine. -- Los Angeles Telecommunications Manager Gerald Verwolf
Los Angeles, CA	"Whenever there's a change, we get a flood of calls for both information and formal complaints." -- Telecommunications Regulatory Officer Stacy Bumette on cable upgrades, high-speed data offerings and consolidation
San Francisco, CA	"Generally, customer service has gone downhill under AT&T . . . It has been really hard to get through to a human being." -- Dept. of Telecommunications and Information Services Deputy Director Denise Brady
Boca Raton, FL	There have been complaints about poor customer service and property damage done by cable installers. Those complaints don't count service problems that were reported directly to the cable company. -- Boca spokesperson Constance Scott
Port St. Lucie, FL	"That [fine] was for [previous service] outages . . . Now it's mushroomed into a different problem. Now it's much larger than that . . . My biggest concern is their response to the customers . . . It's totally unacceptable." -- Councilmember Jack Kelly
Port St. Lucie, FL	"Adelphia has violated the city's noise and litter laws and failed to provide adequate insurance." -- Deputy City Manager Victor Granello
Chicago, IL	"They just make an attempt here and an attempt there" (with no real improvement). -- Trustee Lloyd Baker on AT&T's answering of customer service calls
Amherst, MA	"The level of frustration we experience comes, I think, from a large corporation that seems inaccessible to customers." -- Director of Administration and Finance Nancy Maglione on AT&T's poor customer service, lack of responsiveness and rate increases
Lakeville, MA	AT&T is "definitely below standard . . . It takes an average call well over half a minute to reach a live person. They have the rights under deregulation laws to change their rates and their channels, but we can attack them on their poor customer service." -- Selectman Chawner Hurd
Sudbury, MA	"As a committee, we still feel that AT&T could improve their customer service, and the sense that we have is that the local people felt that way as well." -- Cable Committee Chair Jeff Winston
Dearborn Heights, MI	"People are frustrated. They still call and complain, but they have to understand that we have almost no control over anything that affects the basic customer." -- Dearborn Heights Assistant Corporate Attorney Kurt Heise on consumer complaints concerning cable customer service
Suffolk, VA	"They don't deliver basic cable service the way they're supposed to . . . It's time for Charter to go." -- Councilmember Thomas Woodward Jr.
Sources: See Table Notes (AT&T purchased by Comcast Dec. 2002)	

Many local authorities have begun to take action. Some have prescribed customer-service standards that are more stringent than those the FCC has prescribed.¹¹⁶ Others have

threatened fines unless service quality improves.¹¹⁷ Still others have demanded moratoriums on rate increases.¹¹⁸ Some have threatened to revoke or fail to renew the incumbent's franchise altogether.¹¹⁹ And in at least one state, cable's practices have prompted a statewide investigation by the state attorney general.¹²⁰ But even these actions have done virtually nothing to reform the cable industry.

Cable's main defense of its poor customer-service quality has been to point to the large amounts of capital it has invested to upgrade its systems to provide new services – such as digital cable, cable modem service and cable telephony.¹²¹

The National Cable & Telecommunications Association (NCTA) estimates that the cable industry has invested more than \$70 billion to provide consumers new services since passage of the 1996 Act through 2002.¹²² While that may seem like a large amount at first glance, it is less compared to the amount that other segments of the communications industry have invested during the same period. Wireless companies, for example, have invested more than \$80 billion since the 1996 Act through June 2002.¹²³

Many local franchising authorities are indeed complaining that cable has not invested fast enough and is not fulfilling its promises to implement system upgrades. *See* Table 7. Increasingly, cable operators are opting to cut costs by slowing the build-out process, even when doing so puts them in breach of franchise agreements and other regulatory commitments and obligations. Local regulators are responding with stiff fines.¹²⁴ Some have demanded refunds for cash already paid to help fund upgrades.¹²⁵ Others have attempted to block national mergers (e.g., AT&T/Comcast) on the grounds that a merged company would have even less financial commitment to completing upgrades already promised.¹²⁶

In any event, upgrades in new services cannot logically be used to explain declining service quality for existing ones. The amount spent on cable upgrades pays for itself with the brand-new revenue streams they create. Cable companies have indeed admitted that they are recovering their upgrade expenses – and increasing their profits – with revenues from their new services.¹²⁷

Table 7. Local Regulators Are Frustrated with Cable's Failure To Upgrade	
Los Angeles, CA	Adelphia is under heavy criticism in Los Angeles for its failure to deliver promised system upgrades.
Monterey County, CA	The AT&T/Comcast merger was rejected for failure to complete upgrades AT&T promised to deliver when it was granted the franchise in 1998. AT&T Broadband has been fined.
Oakland, CA	\$10 million in damages sought for AT&T's failure to wire some parts of the city for basic cable services. AT&T has stated that it may take a year or two to wire those residents, even though the original deadline was March 2001.
San Francisco, CA	AT&T started a five-year plan to upgrade networks throughout the region in 1998; AT&T's upgraded network passed only about 15 percent of homes through June 2002.
San Jose, CA	The city has threatened to award its franchise to a competitor if AT&T does not agree to upgrade the entire city for high-speed Internet access, which it has been extremely reluctant to do.
San Jose, CA	Numerous towns in the area (including Sonoma County, Santa Rosa, Rohnert Park and Calistoga) have filed a joint suit against AT&T for failure to upgrade its systems.

Table 7. Local Regulators Are Frustrated with Cable's Failure To Upgrade	
Vernon, CT	AT&T was to have completed its upgrades for town schools by May 2001 but instead asked for an 18-month extension. AT&T then ran out of money when only 25 percent of the upgrades had been completed.
Waterbury, CT	AT&T agreed, in its franchise agreement, to build out service to a total of 110 miles. By June 2001, it was to have been extended by 80 miles, but only 24 miles were completed. AT&T is seeking to alter the franchise agreement to upgrade instead of building out basic service.
De Kalb County, GA	AT&T Broadband failed to meet its upgrade schedule for De Kalb County, as well as providing poor service, and, as a result, the county denied AT&T's request to transfer control to AT&T Comcast.
Fayette County, GA	Began fining AT&T Broadband \$700/day in Apr. 2001 for failure to complete upgrades, which were to have been completed by Nov. 2000.
Peachtree City, GA	AT&T was to have completed upgrades by Dec. 2001, but were pushed back to Mar. 2002. Customers have complained of hour-long waits to complain about poor reception and cable outages during the upgrades.
Clay County, FL	Recently increased the fines it can charge cable operators because there had been so many complaints about the quality of cable services, and AT&T and other companies have postponed system upgrades for years.
Fort Lauderdale, FL	Rejected a 10-year franchise agreement with AT&T because of poor customer service and disagreements over whether AT&T had promised to upgrade its systems there.
Martin County, FL	Adelphia has been accused of violating numerous provisions of its franchise agreement, including failing to upgrade systems on time and providing horrible customer service.
Miami, FL	Began fining AT&T \$2000/day on Sept. 1, 2001 for failure to complete upgrades on time. AT&T estimated that the upgrade would be completed by Sept. 2002, at which time it would owe the city about \$730,000 in fines.
Dupage, IL	AT&T was supposed to have completed upgrades two years ago but now states they will be completed by year end 2002.
Tri-Cities (Chicago), IL	AT&T has announced systems upgrades numerous times, but in each instance has backed away from its pledges. The cities are looking into creating their own cable company.
Boston, MA	AT&T failed to meet deadlines for upgrading systems set forth in its franchise agreement. A compromise was reached under which AT&T must complete upgrades by June 2003 or face fines of up to \$1,000/day thereafter.
Boston, MA	Numerous towns in the Boston area (including Barnstable, Cambridge, New Bedford and Wellesley) denied AT&T's request to transfer control to AT&T Comcast because AT&T had failed to upgrade their systems and had provided poor customer service.
Gardner, MA	AT&T was to have completed its upgrades by Dec. 2001, but as of Sept. 2002, had not completed the project because it could not borrow the \$6 million or \$7 million because of the economy.
Massachusetts	AT&T has said that it cannot afford to upgrade the systems in 39 towns in Massachusetts that were acquired from Cablevision.
Newmarket, NH	MediaOne had promised to complete upgrades by June 2001, but those plans were shelved after the AT&T merger. AT&T has announced that it will complete the upgrade, but local officials are doubtful that this will actually happen any time soon.
Clifton, NJ	Cablevision has come under harsh criticism for taking too long to upgrade its systems.
Washington County, OR	AT&T was to have completed upgrades by year-end 2001 but could not and was given a six-month extension, after which, it will face a \$100,000 fine plus \$1,000/day in additional fines along with shortening of its franchise.
Pittsburgh, PA	AT&T Broadband admitted, in June 2002, that it could not complete the upgrades to the cable system by the end of June as promised. In fact, AT&T Broadband, in May 2002, only 25 percent of the upgrade had been completed. AT&T could face fines of \$5,000/month until the upgrades are complete.
Fairfax County, VA	In July 2002, Fairfax County officials voted to fine Cox \$2,000/day and up to \$2 million more for failure to complete promised upgrades to the county cable system.
Suffolk, VA	Charter has reneged on commitments it made in its franchise agreement, leading the city to fine Charter \$255,000 for various violations, including failure to upgrade.

Sources: See Table Notes.

A NONCOMPETITIVE INDUSTRY STRUCTURE

ONLY WIRELINE COMPETITION RESULTS IN LOWER CABLE RATES

As discussed above, the only markets where cable prices have held steady, or simply not risen as fast, or in some cases fallen, are those in which cable operators face direct, *wireline* competition from overbuilders. The national statistics compiled by the FCC and summarized earlier do not fully convey the dramatic changes that have occurred in certain markets. See Table 8. In Dearborn, Michigan, for example, Comcast dropped prices from \$33.95 to \$21.95 per month for customers who expressed an interest in switching to WideOpenWest (WOW).¹²⁸ In Kansas City, Time Warner offered customers discounts as deep as 45 percent to forestall defections to Everest Connections.¹²⁹

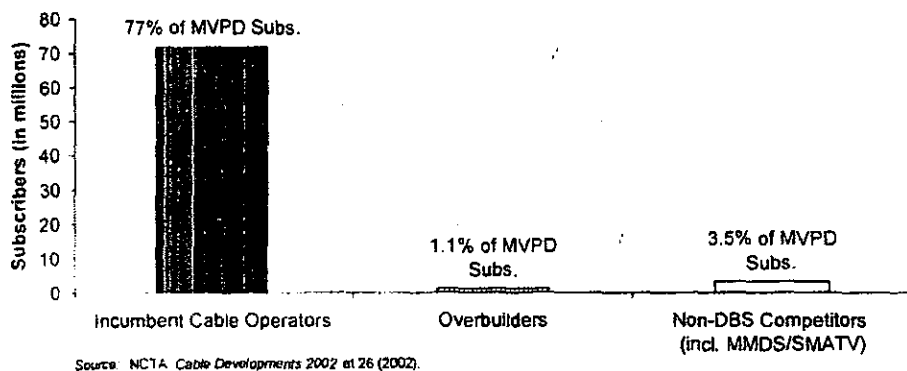
In some cases, cable's attempts to lower prices in response to overbuilders have been so blatant that, in September 2002, the Department of Justice confirmed that it is investigating an unnamed cable company for predatory pricing practices.¹³⁰ More recently, overbuilder WOW has filed a complaint with the FCC, alleging that Comcast is improperly targeting price reductions in the areas that WOW serves in Warren, Michigan.¹³¹ According to WOW, Comcast is attempting to negotiate private rates with select subscribers that are so low that "they wouldn't be able to stay in business if everyone in the market got that deal."¹³² The FCC is currently considering the complaint, and in the meantime, has put the cable industry "on notice" of its concerns.

In approving the AT&T/Comcast merger, the FCC found that cable operators "have the incentive and ability to target pricing in an anti-competitive manner," and that AT&T and Comcast "may well have engaged in questionable marketing tactics and targeted discounts designed to eliminate MVPD competition."¹³³ While the cable operators argued that the practice of targeting pricing decreases enhances competition, the FCC found that such practices would instead "keep prices artificially high for consumers who do not have overbuilders operating in their areas because of the overbuilder's inability to compete against an incumbent who uses such strategies."¹³⁴

Table 8. Overbuilders Force Cable Incumbents To Reduce Prices Sharply	
Adelphia (Los Angeles, CA)	Offered "minute-by-minute" short-term rate cuts to dissuade customers from switching to overbuilder Altio after Altio entered the market in November 2001.
Charter (West Point, GA)	Engaged in "bare knuckled" pricing wars with Knology, an overbuilder, until expanded basic service was offered for approximately \$20 – well below the national average. Charter's discounting was limited to areas in which it faced competition from Knology; expanded basic service in noncompetitive areas ranged to more than \$35 per month for expanded basic service. Charter offered a cash payment of \$200 and free installation to Knology customers.
Charter (Scottsboro, AL)	Offers programming that costs Charter approximately \$37 per month to Scottsboro customers for \$20-\$25 per month. Charter charges residents in nearby communities \$72.90-\$77.90 for the same services. Charter also offered Scottsboro Electric Power Board's customers \$200 to switch to Charter cable service and an additional \$200 if they switched to Charter high-speed Internet service. (Scottsboro Electric Power Board operates a municipal cable system.)
Charter (Montgomery, AL)	Offered Knology customers \$300 to switch to Charter, as well as a "digital complete basic" service – including expanded basic programming, 50 digital channels and digital music channels – for less than \$23 per month. Forgave customers' debt incurred with Charter and other cable providers.
Comcast (Montgomery County, MD)	Discreetly offered Starpower customers win-back promotions (e.g., 64 movie channels for six months at no charge) and aggressively campaigned to keep potential Starpower customers.
Comcast (Washington, DC)	Distributed fliers to residents of MDUs served by Starpower, offering discounts and free services (e.g., digital cable at less than \$30 per month for three months, with two months of seven Starz! channels at no charge).
Comcast (Warren, MI)	Offered customers threatening to switch to WideOpenWest the Comcast digital package for \$21.95 per month for six months, more than a 50 percent discount off regular rates.
Comcast (Folcroft, PA)	Shortly before RCN launched service, Comcast gave its representatives significant incentives to encourage customers to sign 18-month contracts, locking them into Comcast service, in exchange for lower cable rates. Comcast succeeded in signing up 80 percent of existing subscribers in Folcroft to long-term contracts.
Time Warner (New York, NY)	Adopted an aggressive bulk discount plan for apartment buildings targeted for service by RCN.
Time Warner (Lenexa, KS)	Offered MDU residents served by overbuilder a \$60 package (standard service, three premium channels and high-speed Internet service) that is offered elsewhere in the Kansas City metropolitan area for \$120. Also offered three months of service for the price of one month.
Time Warner (Overland Park, KS)	Offered MDU residents served by overbuilder an \$80 package (standard service, three premium channels and high-speed Internet service), including three months free that is offered elsewhere in the Kansas City metropolitan area for \$120.
Sources: See Table Notes	

Incumbent cable operators dominate the market. Approximately 6 percent of cable households nationwide are served by cable operators that face what the FCC defines as "effective competition" from non-satellite providers.¹³⁵ Non-DBS wireless competitors, such as MMDS (a microwave wireless based cable system), and Home Satellite Dishes (HSD or C-band), and SMATV (private cable operators serving large residential complexes without using public rights-of-way), serve less than 4 percent of MVPD subscribers nationwide.¹³⁶ Overbuilders hold only slightly more than 1 percent of the MVPD market, while incumbent cable operators control more than 76 percent of the market. DBS holds about 20 percent of the MVPD market. See Figure 5.

Figure 5. Cable Faces Very Little Overbuild Competition



According to the FCC, "of the 33,246 cable community units nationwide, 671, or approximately 2 percent have been certified by the Commission as having effective competition as a result of consumers having a choice of more than one wireline MVPD."¹³⁷ Conversely, the rapid consolidation of cable operators since 1996 has clearly pushed prices up in the vast majority of markets where cable operators retain their monopoly. The 10 largest cable companies serve about 85 percent of all cable subscribers.¹³⁸ The three largest cable companies today – Comcast, Time Warner and Charter – together serve approximately 56 percent of all cable subscribers.¹³⁹ In 1996, by contrast, the three largest cable companies served only 48 percent of all cable subscribers.¹⁴⁰ As the FCC has recently concluded, the market "continues to be highly concentrated."¹⁴¹

INDUSTRY CONSOLIDATION HAS NOT LED TO COST SAVINGS FOR CONSUMERS

The industry's consolidation has been justified on the grounds that bigger companies would operate more efficiently and incur lower costs, which would translate into lower rates.¹⁴² Comparing rates across small and large cable systems, the FCC expected "to find lower average monthly rates due to increasing economies of scale."¹⁴³ But it found just the opposite – the larger the cable company, the higher its rates.¹⁴⁴ Similarly, in the FCC's most recent price report (2002), released in July 2003, the FCC also found that large cable systems have higher prices than medium or small cable systems.¹⁴⁵

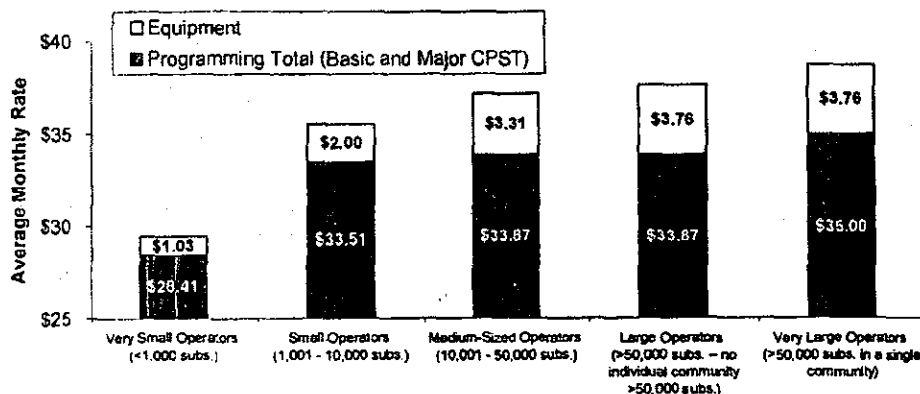
The Consumer Federation of America and Consumer's Union have reached the same conclusion: "[O]wnership of multiple systems by a single entity, large-size cable systems and clustering of cable systems all result in higher prices."¹⁴⁶ In their July 2000 study, the GAO

likewise found that "[c]able rates were slightly higher if the owner of a system in a particular franchise area was one of the larger national cable companies."¹⁴⁷

In the cable industry, the costs of programming should be dropping – with consolidation, bargaining power continues to shift steadily toward cable operators and away from video programmers. For example, AT&T and Comcast argued that their merger would permit them to save between \$250 million and \$450 million a year on license fees negotiated with programming networks.¹⁴⁸ Now that the merger is complete, Comcast has begun efforts to “squeeze” programming fees by insisting that the prices it pays for programming are reduced by 10 percent or more and are “going to drop channels to get this.”¹⁴⁹ It remains to be seen if Comcast will pass any of these possible savings along to consumers.

Cable has been raising prices in spite of increasing scale for some time. The FCC finds that, as of July 2001, “operators with two or more systems, on average, had rates that were approximately 23 percent higher than single system operators.”¹⁵⁰ Cable systems rated “large and very large” had the highest rates of all.¹⁵¹ In the 2002 FCC price report (released in July 2003), the trend towards higher cable prices in larger cable operators continues. For combined programming rates (basic and enhanced basic) and equipment charges, monthly rates for very large operators was \$41.89, the rates for large operators was \$41.20, the rates for medium operators was \$40.26, the rates for small operators was \$38.25, and the rates for very small operators were \$31.86.¹⁵²

Figure 6: Large Cable Companies Charge More



Source: 2001 Report on Cable Prices at Attachment B-3 (noncompetitive markets)

DBS IS LIMITED AS A COMPETITOR AND DOES NOT REDUCE CABLE RATES

DBS now serves approximately 20 percent of all multichannel video programming subscribers. DBS holds out promise to be a serious competitor to cable. Up to now however, it has not been so. Even in areas where DBS has achieved significant penetration, "there is no measurable effect on . . . the price of cable service."¹⁵³ Consistent with this finding, the GAO also found that the provision of local broadcast channels by DBS companies has not led to lower cable prices.¹⁵⁴ However, the GAO did find that where DBS companies provide local broadcast networks to their customers, cable operators provide more channels than in areas where DBS companies do not provide local broadcast channels. Presumably this is because the GAO "also found that DBS providers obtain a substantially higher level of subscribers in areas where they are providing local broadcast channels."¹⁵⁵

Consumer groups have likewise concluded that "the presence of DBS has no statistically significant or substantial effect on cable prices, penetration or quality," and that "[t]he higher the penetration of satellite, the higher the price of cable."¹⁵⁶ Even the cable industry's own economic experts have acknowledged that "[t]he demand for cable is rather insensitive . . . to the DBS price," which "indicate[s] that DBS is not a particularly good substitute for cable in the minds of consumers."¹⁵⁷

Cable prices have continued to rise steadily over the last decade, even as DBS penetration has risen and prices have fallen.¹⁵⁸ Churn rates for cable service – the measure of the extent to which consumers switch their providers – are extremely low, "just 1.3 percent per year during the past five years, suggesting that former cable customers make up less than one-third of DBS's current customer base."¹⁵⁹ And most of the cable churn – "more than 95 percent" according to J.P. Morgan – "is caused by factors other than DBS competition."¹⁶⁰ Comcast, for its part, added approximately 57,000 new subscribers in the first quarter of 2003, reversing a prior year-over-year decline of 2.7 percent.¹⁶¹ For the second quarter of 2003, Comcast added another 12,100 basic subscribers.¹⁶²

Another sign that DBS is not an effective competitor to cable is the fact that it has had no impact on cable's advertising revenues, which now constitute approximately 30 percent of total cable industry revenues.¹⁶³ As an analyst at PricewaterhouseCoopers has recently noted, "[w]e don't see any near-term to medium-term impact on local cable advertising" as a result of DBS, and over the long term, "cable will continue to dominate the market."¹⁶⁴ Cable's share of ratings is instead "stronger than ever," as "satellite has not caused one blip for cable."¹⁶⁵

While DBS is adding subscribers more quickly than cable, this is unsurprising given their much later start in the market. Moreover, the major cable operators have been focusing more on profitability than on gross subscriber additions. As one industry analyst has explained, cable operators "are willing to sacrifice subscriber growth in exchange for higher revenue and cash flow growth."¹⁶⁶ This is not to say that the cable industry is unable or unwilling to attack satellite as a nettlesome competitor, particularly when the weapon of choice is government intervention. Recognizing satellite's recent gains, an effort to impose

another level of taxation on satellite video services is underway in a number of states.¹⁶⁷ If the cable industry is successful in this regard, it will drive up DBS provider costs and widen even further cable's cost advantages over satellite.

The limited success of DBS in obtaining market share reflects the fact that DBS is popular primarily at the two edges of the market – in rural areas where there is no cable service at all¹⁶⁸ and among the minority of consumers that are willing to pay stiff premiums to receive large numbers of sports channels.¹⁶⁹ More than eight years after the introduction of DBS, approximately 20 to 30 percent of DBS subscribers still reside in the rural areas where cable service remains unavailable.¹⁷⁰ DBS penetration remains heavily weighted in favor of rural markets, and the share of DBS's customers from such markets actually increased in the period 2000-2002.¹⁷¹ See Table 9. Cable companies typically compare their digital tiers – and not their basic services – against satellite.¹⁷²

Table 9. Top 10 Satellite Markets By State (market penetration)

Vermont 29.07 percent	Mississippi 23.48 percent
Montana 27.95 percent	Arkansas 22.85 percent
Wyoming 25.09 percent	Missouri 22.68 percent
Idaho 24.80 percent	North Dakota 20.95 percent
Utah 24.29 percent	Georgia 20.85 percent
Source: See Table Notes	

Further, DBS can't reach many urban customers who lack a direct line of sight to the southern sky,¹⁷³ and dishes are often difficult to install in the multi-family dwelling units that house approximately 30 percent of the U.S. population and that are responsible for about 20-23 percent of cable revenues.¹⁷⁴ DBS is still not able to offer local broadcast channels in many markets.¹⁷⁵ One survey indicates that 47 percent of cable subscribers would not subscribe to satellite service for that reason alone.¹⁷⁶

DBS is also unable to match cable company service bundles. DBS has been slow to provide efficient two-way high-speed Internet access services. The former broadband Internet partner of EchoStar, StarBand, filed for bankruptcy in May 2002.¹⁷⁷ In the wake of the failure of the EchoStar/Hughes merger, DIRECTV announced that it was abandoning the resale of DSL service it had been offering in an attempt to compete with cable's video/broadband bundle.¹⁷⁸ It does, however, continue to offer two-way Internet service through its DirecWay brand.¹⁷⁹ DBS also has no ability to provide telephony services,¹⁸⁰ which cable companies now offer to at least 12 percent of all homes passed by their networks,¹⁸¹ and now serves 2,500,000 residential customers.¹⁸² In the meantime, cable companies may gain an advantage over DBS by bundling cable video services with telephone by reducing their prices for

customers that purchase cable broadband and telephony together with cable's video offerings.¹⁸³

Despite a rising customer base, satellite's 19 million subscribers are still less than the 20 to 21 million households now served by digital cable, and digital cable's penetration is rising faster than satellite's.¹⁸⁴ As cable operators upgrade to digital facilities, DBS loses the quality advantage it previously could offer to lure high-end subscribers. Digital cable facilities have now moved ahead of DBS in channel capacity and picture quality (cable systems, unlike satellite dishes, aren't vulnerable to rain and snow) and are far better than satellite in providing broadband Internet service, voice telephone service, VOD service and all other interactive services. Analysts generally agree that digital cable has "competitive advantages over . . . direct-broadcast satellite," and that DBS providers will "continue losing competitive ground" to cable companies.¹⁸⁵ Upgraded cable systems now give the cable industry "tangible competitive advantages over the DBS companies."¹⁸⁶ Cable is now winning the majority of subscribers that sign up for digital service;¹⁸⁷ analysts expect cable to capture "most of the growth" in the video market over the next 10 years.¹⁸⁸

CABLE COMPANIES ABUSE THEIR MARKET POWER TO DEFEND THEIR MONOPOLY

For many years, regulators protected and favored cable on the theory that it was the only video distribution medium that could broadly challenge the (then dominant) over-the-air broadcasters and the lock they held on video content. Local broadcasters and the networks that fed them much of their content were so dominant that almost anything that was good for cable would be good for competition. Thus, local regulators didn't hesitate to grant exclusive franchises to cable operators and were generally sympathetic to rules that barred various forms of non-cable competition, such as the satellite master antenna systems (SMATV) operated by some landlords to serve multi-tenant dwellings. A 1981 FCC study concluded that deregulating cable would promote much-needed competition in video programming.¹⁸⁹

By 1984, however, it was apparent that cable had already superseded over-the-air broadcasting as the dominant distributor of video programming. In 1985, a federal appellate court struck down an exclusive franchise requirement on First Amendment grounds.¹⁹⁰ By 1992, Congress had concluded that far from spurring competition, the 1984 Act had permitted cable companies to seize control of video markets, and use their market power to suppress competition by others.¹⁹¹ In the 1992 Cable Act, Congress therefore reversed course and declared that a franchising authority "may not unreasonably refuse to award an additional competitive franchise."¹⁹²

But cable operators have successfully used regulatory lobbying and a variety of pricing and other tactics to deter competitive entry and maintain their monopolies. The cable incumbents have let it be known that every competitive threat will be met "swiftly and forcefully."¹⁹³ For these reasons, magnified by capital cost of entry, exclusive franchising – *de facto* if not *de jure* – has remained the norm to this day. As discussed below, only a tiny fraction of markets are served by two or more cable systems.

A LONG HISTORY OF DISCRIMINATORY PRACTICES BASED ON PROGRAMMING

As cable operators grew and consolidated in the 1980s, they built up their own programming operations. Several bought production studios and film libraries. By 1988, cable operators had taken a minority equity interest in "virtually every new programming channel that has started in the past two years."¹⁹⁴ A year later, Congress would receive testimony that it was "almost impossible . . . to start a new cable system service without surrendering equity to the owners of the monopoly cable conduits."¹⁹⁵ By 1990, almost two-thirds of newly launched cable channels were affiliated with cable companies.¹⁹⁶ By 1992, 10 of the 15 most popular (non-premium) cable networks were owned or controlled by cable companies.¹⁹⁷ Cable companies controlled virtually all of the regional sports networks and four of the top five pay-movie services.¹⁹⁸ TCI, then the largest owner of cable properties, had financial interests in CNN, TBS, TNT, Headline News, the Cartoon Network, the Learning Channel, the Discovery Channel, the Box, Cable Health Club, the Family Channel, BET, E!

Entertainment Network, Court TV, Home Shopping Network, QVC Networks, Inc., Prime Sports Channel Networks and Encore.¹⁹⁹

By acquiring such dominant positions in the markets for video content, cable operators have put themselves in a position where they can easily block the development of competitive distribution media, such as overbuilders, satellite or new terrestrial wireless services. See Table 10. Congress has attempted to address these problems step-by-step but only in a piecemeal fashion and with mixed success.

The 1988 Satellite Home Viewer Act gave satellite providers a copyright license to retransmit broadcast network programming only to those customers who could not adequately receive broadcast signals over the air via traditional rooftop antennas.²⁰⁰

In a related move to preempt new distribution media competition, almost every major cable company then joined a consortium – Primestar – that leased the only available medium-power satellite. The consortium then launched a satellite of its own, unequivocally signaling to all potential satellite competitors that the cable incumbents would use satellites themselves to crush satellite-based competition. The Department of Justice recognized this for what it was – a scheme to “block DBS entry by any other firm.”²⁰¹

In follow-up hearings in 1992, Congress concluded that cable operators were still using several different strategies to suppress competition in video markets. The companies refused to carry new channels that competed most directly with those in which the cable companies themselves owned equity interests.²⁰² They also refused to sell their programming to competing distributors like satellite carriers or sold them on discriminatory terms calculated to suppress competition.²⁰³ Cable companies were using other coercive tactics to depress the value of independent video channels.²⁰⁴

Accordingly, the 1992 Cable Act prohibited exclusive contracts between cable companies and affiliated satellite, cable and broadcast programmers, absent express FCC approval.²⁰⁵ These rules, sometime referred to as the “program-access” rules, require that any cable network programming that is at least in part owned by a cable operator and delivered by satellite must be made available to any other multichannel video competitor, whether it be an overbuilder or DBS company. (However, satellite-delivered programming can still be subject to exclusive contracts when the programmer and the cable operator are not affiliated.) The FCC’s rules were scheduled to end in October 2002, but the FCC decided to extend them for another five years.²⁰⁶ The FCC found that “marketplace evidence . . . tends to confirm that, where permitted, vertically integrated programmers will use foreclosure of programming to provide a competitive edge to their affiliated cable operators. The evidence suggests that the ability to foreclose vertically integrated programming is especially significant in the regional programming market, which is not covered by the program-access rules if the programming is distributed terrestrially. This type of programming has in fact been withdrawn from DBS competitors.”²⁰⁷ The cable industry has effectively exploited this “terrestrial” or non-satellite loophole by denying content to competitors when their affiliated programming is delivered terrestrially rather than by satellite.

Table 10. Maintaining the Monopoly through the Control of Programming	
Date	Action Taken
1990	Cable operators (TCI, Time Warner, MediaOne, Comcast, and Cox) form Primestar Partnership to "[d]o our best to keep core services off Hughes DBS to minimize long-term competitive bypass threat."
1990	In the 1990 <i>Cable Report</i> , FCC finds that cable had restricted wireless cable systems' access to numerous channels (including HBO, ESPN, Showtime and TNT) and had charged between 36 and 70 percent more than cable operators were charged for access to these channels in the few instances that such access was granted.
1990	Turner Broadcasting and ESPN refuse to allow Glasgow, KY municipal cable system to carry programming from TNT and ESPN.
1993	Department of Justice and state attorneys general file antitrust suits against Primestar and its respective members, stating that the cable industry has engaged in "anti-competitive conduct with the effect of delaying, if not pre-empting, cable-competitive entry into DBS by imposition of unreasonable restraints on the availability of programming to DBS entrants."
1993	Viacom claims that TCI has used its dominant position as a cable company to impede competition in cable programming. The suit is dropped in 1995 after TCI agrees to purchase Viacom's cable systems.
1998	DIRECTV files a complaint with the FCC against Comcast because Comcast will not grant access to Comcast Sportsnet as it is not satellite-delivered programming. EchoStar files a similar complaint in 1999.
1999	RCN files a complaint against Cablevision for refusing to provide RCN access to overflow sports programming that it carries on its "MetroChannels."
1998-1999	Seren Innovations, during the AT&T-MediaOne merger proceedings, states that it is being denied access to the Midwest Sportschannel, the Game Show Network and MSNBC in the Minneapolis market due to exclusive contract arrangements between AT&T and programmers.
2001	Everest has been unable to gain access to Time Warner's Metro Sports channel (the Kansas City regional sports network) because it is accessed via a terrestrial feed. Everest also states that the Metro Sports channel is offered on Comcast's Kansas systems through a terrestrial interconnection agreement with Time Warner.
2001	Qwest Broadband Services states that Cox "hold[s] exclusive cablecasting rights to a popular professional sports franchise in Phoenix [and] settled an antitrust complaint by agreeing to make the games available for display to competitive MVPDs. However, the incumbent has subsequently changed its terms and now demands a rate for such games that exceeds the rate for ESPN. Further, as a condition of carrying such games, the buyer must agree to carry Cox's local cable origination channel full time."
2001	CT Communications Network, a video over DSL provider, states that "AT&T is refusing to sell HITS to any company using DSL technology to deliver video services over existing phone lines because such companies would directly compete with AT&T's entry into the local telephone market using both its own cable systems and the cable plant of unaffiliated cable operators."
2001	Paul Bunyan, an Open Video System operator competing with Charter in numerous Minnesota markets, is denied access to the Disney Channel because Charter has an exclusive contract with Disney.
Sources: See Table Notes. (AT&T Purchased by Comcast Dec. 2002)	

The 1992 Act also directed the FCC to adopt rules to prevent cable operators from requiring a financial interest in programming as a condition of carriage – to prohibit cable companies from “coercing” exclusive rights from a programmer and to forbid unreasonable discrimination in favor of affiliated programmers.²⁰⁸

Cable’s video-content abuses have triggered a series of antitrust actions as well. In a 1993 suit, Viacom accused TCI of impeding competition in cable programming.²⁰⁹ The suit was dropped in 1995 after TCI agreed to purchase Viacom’s cable systems.²¹⁰ In 1993, the Department of Justice and more than 40 state attorneys general filed antitrust suits against some of the larger cable operators, alleging that the defendants engaged in a continuing agreement, combination and conspiracy to restrain competition in multichannel subscription TV service by forming Primestar to block other firms from entering the DBS business. The effect of the Primestar venture, the attorneys general claimed, had been to delay, if not prevent, entry into the DBS market through the restriction of access to programming owned or controlled by the venture’s companies to other DBS companies.²¹¹ These anti-competitive abuses are similar to those found by Congress.²¹² The Justice Department brought another action against TCI when it attempted to merge with Liberty Media. All of these actions culminated in consent decrees that limited, in varying degrees, cable’s right to discriminate in favor of affiliated video programmers or to deny programming to unaffiliated video distributors.²¹³ See Table 11.

Table 11. The Suppression of Cable Programming
<p>Cable TV’s “monopolistic practices” have made the public “captives of cable.” “Our investigation found that the cable industry used threats and intimidation to place itself as the gatekeeper in control of the price and distribution of virtually all subscription television programming.”</p> <p>– New York Attorney General Robert Abrams (1993)</p>
<p>“The cable marketplace is choked to death because would-be competitors are prevented from being in the game. Any new programmer who comes into the cable business is going to be coughing up a share of his company (to cable operator) as the price of showing his wares to the public.”</p> <p>– Tennessee Senator Al Gore (1992)</p>
<p>“For competitors to cable, such as satellite dishes or wireless cable, to be effective, they had to offer the most popular programming, such as HBO, CNN and ESPN . . . But when a programmer considered selling to cable competitors, the cable companies threatened to drop the channels from their systems.”</p> <p>– Pennsylvania Attorney General Ernie Preate, Jr. (1993)</p>
<p>“Without adequate programming, a service competitive with existing cable monopolies can’t get off the ground . . . Prime-Star’s formation made programming much more difficult to obtain, and deferred entry by others.”</p> <p>– Acting Assistant Attorney General, Antitrust Division, John Clark (1993)</p>
<p>Sources: See Table Notes.</p>

EXPLOITING THE NON-SATELLITE DISTRIBUTION LOOPHOLE

A decade ago, virtually all cable programming was distributed by satellite, and Congress thus made reference to "satellite cable programming" in the 1992 Act's program-access provisions of the new law.²¹⁴ The 1992 Act's program-access provisions, as noted above, left open a significant loophole that cable operators are now exploiting aggressively. For example, fiber-optic cable is now readily available to move local sports events from the stadium to the cable company's local head-end, and with no satellite in the loop, cable operators are once again able to monopolize key programming to suppress competition by competing video distributors. A federal appellate court recently accepted that a cable incumbent could therefore avoid the program access requirements by moving programming from satellite to terrestrial delivery.²¹⁵ This form of delivery has been developed on a national scale.

How the Loophole Works on a National Scale

Incumbent cable operators can now replicate the regional non-satellite loophole on a national scale by using a new terrestrial-based national fiber network. In an effort to undermine the federal program-access requirements, Jerry Kent, President and CEO of Sequel III, teamed with Corves Corporation in February 2003 to purchase the assets of high-speed data and telecom provider Broadwing Communications for \$129.3 million. Broadwing has an intelligent optical-switched network, reaching 150 markets. Kent has said his decision to buy an optical network with a national footprint could help operators avoid federal program-access laws: "The cable industry can develop its own programming and deliver it via our Broadwing network and take programming exclusivity."²¹⁶

Broadwing has 18,700 miles of interconnected fiber covering over 130 U.S. major markets and overlays much of the top four cable providers' major clusters. Cable operators have been distributing exclusive, regional content over metro fiber rings; Broadwing expands this tactic to a nationwide footprint. Broadwing's network clusters, as of July 2002,²¹⁷ overlay a minimum of 15 out of the top 25 cable clusters in the continental United States, served by Comcast, Cox and Time Warner Cable, based on 2000 year-end data.

How the Loophole Works on a Local Scale

In the New York area, Cablevision has obtained control of seven of the nine local professional sports teams, and it denies overbuilder RCN access, not only to the event being aired but even to the overflow programming (games not featured on the Madison Square Garden network) when more than one of the seven teams is playing simultaneously. These programs are delivered terrestrially and hence subject to the non-satellite loophole. By contrast, Cablevision did give RCN access to the same sports channels for distribution in New Jersey, where Cablevision doesn't compete.²¹⁸ Comcast threatened to use similar tactics in Philadelphia but backed off when the Department of Justice began a review of Comcast's proposed acquisition of Home Team Sports in Washington.²¹⁹ Seren Innovations, an

overbuilder in Minneapolis, encountered similar problems with AT&T.²²⁰ The list of cable competitors running into similar difficulties is now growing rapidly. See Table 12.

Table 12. Maintaining the Monopoly by Limiting Access to Regional Networks	
AT&T	During the review of the AT&T-MediaOne merger, Seren Innovations, an overbuilder in Minneapolis, had raised issues regarding access to AT&T's exclusive contract to carry lucrative sports programming in Minnesota. AT&T had promised, in response, to reach a reasonable accommodation. But after the merger was approved, AT&T simply reasserted its exclusivity rights to this programming.
AT&T	CT Communications Network (CTCN), a subsidiary of Champaign Telephone is testing providing video service over DSL lines in its ILEC (incumbent local exchange carrier) territory. AT&T has refused to provide CTCN with its HITS transport service. CTCN stated that "AT&T is refusing to sell HITS to any company using DSL technology to deliver video services over existing phone lines because such companies would directly compete with AT&T's entry into the local telephone market using both its own cable systems and the cable plant of unaffiliated cable operators."
AT&T	Braintree Electric Light Department (BELD) has been denied access to the New England Cable News network because it is AT&T-owned and provisioned via a terrestrial feed.
Cablevision	In New York, Cablevision has obtained control of programming for seven of the nine local professional sports teams; it denies overbuilder RCN access to overflow programming when more than one of the seven teams is playing simultaneously.
Comcast	In Philadelphia, Comcast threatened to deny RCN long-term access to local sports programming and backed off only when the Department of Justice began a review of Comcast's proposed acquisition of Home Team Sports in Washington. And while multi-year programming contracts are standard in the industry, Comcast still won't sign any contract with RCN that runs longer than three months.
Cox	Qwest Broadband Services states that Cox, "holding exclusive cablecasting rights to a popular professional sports franchise in Phoenix, settled an antitrust complaint by agreeing to make the games available for display to competitive MVPDs. However, the incumbent has subsequently changed its terms and now demands a rate for such games that exceeds the rate for ESPN. Further, as a condition of carrying such games, the buyer must agree to carry Cox's local cable origination channel full time."
Time Warner	Everest Connections, in Kansas City, KS, has been unable to gain access to the Time Warner's Metro Sports (the Kansas City regional sports network) channel because it is accessed via a terrestrial feed. The Metro Sports channel is offered on Comcast's Kansas systems through a terrestrial interconnection agreement with Time Warner.
Sources: See Table Notes. (AT&T purchased by Comcast in Dec. 2002)	

Local programming -- especially sports programming -- is crucial in the video distribution market. RCN estimates that it will lose half or more subscribers without it, pushing subscription rates "so low that no entrepreneur would be willing to risk the hundreds of millions of dollars required to overbuild an urban area with a modern fiber optic plant."²²¹ In the Philadelphia area, DBS subscription rates are less than half the national average for the

top 20 cities (other than Philadelphia), where Comcast has refused to license its regional sports network to competing DBS providers.²²² Cable clearly recognizes the importance of local programming – in particular local sports.

As the FCC found in its 2001 report, 86 percent of “must have”²²³ regional sports programming is vertically integrated.²²⁴ In its 2002 report, the FCC recognized the concerns of emerging competitors that, “despite the presence of the program access rules, lack of access to programming, especially sports programming, remains a significant barrier to entry and an impediment to the successful development of a competitive MVPD business.”²²⁵ While national sports programming is dominated by ESPN, regional sports distribution is dominated by Fox Sports Net, which owns 60 percent of all regional sports networks and is jointly owned by the sixth largest cable operator, Cablevision, and News Corp.²²⁶ Indeed, local programming in general is “significantly more vertically integrated than national programming services.”²²⁷

To date, attempts to close the non-satellite distribution loophole have been singularly unsuccessful. In Los Angeles, both the cable industry²²⁸ and the motion picture industry²²⁹ have vehemently opposed adoption of a local program-access ordinance that would address the deficiencies in federal law. This opposition comes in the face of a city attorney opinion confirming that Los Angeles has the right to adopt such an ordinance²³⁰ and city council direction that a local program access ordinance be drafted.²³¹ Nonetheless, the cable industry has been able to thwart such action.

Correcting the deficiencies in the current program-access rules will take congressional action – action that is now long overdue.²³² Congress must act to close the loopholes through which the major cable operators continue to distort the video-programming market and maintain their dominance in the provision of video programming to consumers.

A CASE STUDY OF CABLE LEVERAGE OVER INDEPENDENT PROGRAMMERS: CABLEVISION AND THE YANKEES

The recent situation regarding carriage of the Yankees Entertainment and Sports Network, LLC (“YES”) in the New York City region illustrates what happens when a relatively powerful and large incumbent cable operator – Cablevision – collides with an independent content provider that controls decisional sports programming. The YES Network is currently aired throughout parts of New York, Connecticut, New Jersey and Pennsylvania.

Cablevision is the nation’s sixth largest cable operator.²³³ It currently operates the nation’s single largest cable cluster, serving 3 million households in the New York metropolitan area.²³⁴ Cablevision owns Madison Square Garden and its teams, the Knicks, Rangers and the WNBA Liberty.²³⁵ In addition, Cablevision’s programming arm, Rainbow, is a 50 percent partner in Fox Sports Net and owns five regional sports channels outside of the New York market.²³⁶ Cablevision has also recently announced its interest in acting as a partner in the purchase of Vivendi’s U.S. entertainment businesses, including Universal

Studios, Universal Music and the USA and Sci-Fi cable channels.²³⁷ It also has stated its intention to start a DBS system in the fall of 2003.²³⁸

Cablevision held the cable rights to the Yankees in its subscriber footprint for several years through the 2001 season.²³⁹ Thereafter, the YES network was established and now controls the rights to air the Yankees on both cable and satellite in the New York area. YES was asking cable operators to pay approximately \$2.00 per subscriber and was requiring that YES be placed on the cable-programming tier (enhanced basic), as opposed to a more expensive digital tier or as a pay channel. Cablevision refused, saying that the programming costs were high and that it would air YES as a separate pay channel for those subscribers who wanted to pay for it.²⁴⁰ In other words, YES preferred that the Yankees be aired at no extra cost to most subscribers. Cablevision argued that those who did not want to see the Yankees should not have to bear possibly higher subscriber costs, even though Cablevision carried the Yankees without extra charge in prior years when they had held Yankee rights. Moreover, while Cablevision wanted to carry the Yankees on its digital tier (costing additional subscriber fees for most consumers), it intended to keep its own sports programming on the expanded basic tier. In contrast, competing cable overbuilder RCN had agreed to carry Yankees games without additional charge to subscribers, as did neighboring New York cable incumbent, Time Warner.²⁴¹

A very high profile standoff between Cablevision and YES followed, with all parties taking losses – Yankee fans most of all. Cablevision subscribers did not see Yankee games for the entire 2002 season. This loss angered many New Yorkers, who switched from Cablevision to overbuilder RCN or satellite services. YES estimates that Cablevision lost as many as 40,000 subscribers in the first two months of the standoff alone; Cablevision says it was only 5,400 subscribers.²⁴² At the same time, the standoff cost the YES network vital distribution in its first year of operation.

The standoff ended only hours before the 2003 opening game, after extensive and repeated mediation efforts first by New York City's mayor and finally by New York State's attorney general, as well as by proposals introduced in state legislatures in both New Jersey and New York to enact program-access legislation. The deal allowed Cablevision to keep YES off its enhanced basic cable programming tiers and offer it as part of a special-pay sports tier, which includes two other Cablevision-owned sports networks, for \$4.95 per month. Alternatively, subscribers could choose to pay \$1.95 per month to purchase YES alone.²⁴³ The deal helps Cablevision draw subscribers to its more lucrative digital tier and gain profits by selling new digital set-top boxes. Consumers will now have to pay an additional \$3.24 per set box. That means if a consumer has three television sets, the cost will be an additional \$13.62 per month for set top boxes.²⁴⁴

Although many sports fans were enormously frustrated and inconvenienced by Cablevision's refusal to carry YES, the ultimate resolution of this dispute appears positive for consumers in at least two respects: *first*, Cablevision customers who want to watch the Yankees now have multiple choices for doing so, whether by subscribing to a premium tier (the new all-sports tier) or by buying YES on an *à la carte* basis; and *second*, and most

importantly, by preventing Cablevision from discriminating against YES in favor of its own sports networks to the competitive detriment of an independent programmer by placing each network on the same tier. Of course, due to Cablevision's insistence, subscribers will pay an additional charge above their cable-programming tier to view the Yankees, where previously the Yankees were aired as part of the cable programming tier at no additional cost.

Subsequent to the Cablevision – YES resolution, Time Warner announced that effective July 29, 2003, that it would permit New York-area customers to choose not to receive the YES network and reduce their bill by \$1.00.²⁴⁵ This was viewed by YES as a breach of its agreement with Time Warner who called the decision "unfair and discriminatory" and further stated "Time Warner was treating YES differently from the way it treats channels owned by its parent company AOL."²⁴⁶

Cablevision's refusal to carry YES is an industry strategy not limited to New York. Taking a page from the Cablevision playbook, Time Warner ceased carriage of the Sunshine Network in Florida in January 2003. In pulling the Sunshine Network, Time Warner blacked out the NBA's Miami Heat and Orlando Magic, the NHL's Tampa Bay Lightning, and the Florida State Seminoles and University of Florida Gators sports for its Sunshine State customers. Instead of continued carriage, Time Warner offered the Sunshine Network an unwanted *à la carte* arrangement. Only after a 71-day standoff did Time Warner return the Sunshine Network and its popular sports programming to the air.²⁴⁷

In the aftermath of the YES battle, Cablevision has proposed in testimony before the United States Senate that independent programmers be prohibited from distributing programming conditioned on the cable operator placing such programming on a specified cable tier or pay channel.²⁴⁸ The problem with this proposal is that it gives further power to cable operators at the expense of independent programmers. As we have seen, Cablevision was able to keep YES off the air for quite some time, and, achieved its objective of keeping YES off its expanded basic programming tier.

Moreover, nothing in Cablevision's proposal prevents a cable operator from placing competitor programming on more expensive and less-watched tiers, while placing programming they own or control on the most widely viewed tiers, or any other tiering configuration that suits their interests. Thus, the proposal would have negative impacts on independent programmers.

While Cablevision's re-tiering proposal is anti-competitive and anti-consumer, a true *à la carte* regime would be both pro-competition and pro-consumer. Consumers should be able to choose their own suite of programming, rather than being force-fed the programming "tiers" that cable operators want them to purchase. This is true consumer choice. Offering *à la carte* programming is good for consumers, as long as such programming is offered in a fair and nondiscriminatory manner.²⁴⁹

À la carte programming is fiercely opposed by most cable networks, including powerful programmers such as ESPN, and is often prohibited by contract. Recently Liberty

Media Corp. Chairman John Malone used his appearance during an annual conference for investors to wade into the escalating debate over *à la carte* pricing of cable programming. In his remarks, Mr. Malone said *à la carte* pricing would jeopardize ESPN's business model. "End of story. End of Disney," he told investors, adding that in retrospect he wishes he had imposed *à la carte* pricing on ESPN, and set an industry standard, when he had a contractual window to do so as the head of TCI Cable in the mid-1990s, before he sold to AT&T.²⁵⁰ Recently, the American Cable Association (ACA), the trade association representing small and mid-sized independent cable operators, has argued that *à la carte* pricing will allow "small systems to control sky rocketing program costs and that if programmers don't voluntarily agree to such packaging, the government should step in."²⁵¹

ENLISTING REGULATORS

As noted earlier, cable operators historically enjoyed an exclusive franchise – direct competition was either expressly barred, or effectively barred, by local licensing policies that made entry by a second player extremely difficult. By the 1980s, exclusivity had become the almost universal,²⁵² though often unwritten, practice. In urban markets, cable waged lengthy battles against SMATV that landlords attempted to operate as competitive cable networks for apartment buildings.²⁵³

Although exclusive franchise laws are no longer expressly on the books, cable operators have nevertheless been remarkably successful in enlisting the help of regulators to limit direct competition by overbuilders. And where cable does not get its way, there is little hesitation to haul the local franchising authority into court.²⁵⁴

Until 1996, phone companies were barred from providing cable video services by a series of decrees.²⁵⁵ FCC regulations²⁵⁶ and federal statutes.²⁵⁷ See Table 13. By 1992, the FCC was formally recommending that Congress repeal the ban.²⁵⁸ The Department of Justice reached a similar conclusion,²⁵⁹ as did the National Telecommunications and Information Administration (NTIA).²⁶⁰ In 1996, Congress finally did so.²⁶¹

Table 13. Maintaining the Monopoly through Regulation	
Date	Regulation
1956	<i>United States v. Western Elec.</i> (D.N.J.): Telephone companies were prohibited from offering anything other than rate-regulated "common carrier" services, and the FCC had ruled in <i>Frontier Broadcasting Co.</i> that cable providers are not "common carriers" because they determine the content of what is being communicated.
1968	FCC: Telephone companies could not construct or operate cable TV facilities or provide common carrier channel services to local cable TV operators without first obtaining FCC permission.
1970	FCC: Telephone companies were prohibited from providing "cable television service to the viewing public in its telephone area," either "directly or indirectly through an affiliate." 47 C.F.R. § 64.601(a) (1970)
1982	<i>United States v. AT&T</i> (D.C. Cir.): The Justice Department viewed cable television as an "information service" within the meaning of the decree. While this restriction was removed in its entirety in late 1991, the decree's interLATA restriction prohibited Bell company provision of video services.
1984	Section 613(b) of the 1984 Cable Act codified the FCC's 1970 cross-ownership restrictions. "It shall be unlawful for any common carrier . . . to provide video programming directly to subscribers in its telephone service area, either directly or indirectly through an affiliate owned by, operated by, controlled by or under common control with the common carrier." 47 U.S.C. § 533(b)
Sources: See Table Notes.	

Cable incumbents have encouraged many local regulators to enact "level playing field" laws that typically require new entrants to build-out their networks to serve the entire market.²⁶² These local regulations sharply raise entry barriers – the exact opposite of the policy that Congress has required to promote competitive entry into multichannel video markets.

According to overbuilders, cable operators also routinely interfere with the cable-franchise process itself. For example, RCN has claimed that Comcast's "interference with its local franchise negotiations in Prince George's County, Maryland, and in Philadelphia, Pennsylvania, kept RCN from securing a cable franchise."²⁶³

Elsewhere, cable incumbents have successfully lobbied to require competitors to contribute to the subsidy of "public, educational and government" channels not in proportion to their relative market share but rather, dollar for dollar with the incumbents.²⁶⁴ These, and other similar demands that the incumbents make of local regulators, have been backed by threats of litigation if any competitor is allowed to enter on terms less burdensome than those imposed on the monopolist incumbent.²⁶⁵

Similarly, at the federal level, cable has backed Congress in imposing even more onerous must-carry obligations on satellite providers than it has imposed on cable. If a DBS operator delivers even a single local broadcast signal in a market, it must carry all of them.²⁶⁶ The must-carry obligation for cable, by contrast, recognizes a channel-capacity limit. Satellite starts out at a substantial disadvantage in this regard, because a single satellite beam covers a

substantial fraction of the continent. There are approximately 1,650 television stations within the 210 Nielsen Designated Market Areas (DMAs)²⁶⁷ – an average of eight per market, with some markets having up to 24. There are thus many more local stations than there are available channels on the geostationary satellites used for DBS operations.²⁶⁸ The problem can be solved, up to a point, using “spot beams” from the satellite that direct local stations to smaller clusters of local markets, but there are still definite limits to how far spot-beam fixes can be pushed.

The cable incumbents have been particularly aggressive in their efforts to limit competition in apartment buildings and other multiple dwelling units. They have asked many landlords to sign “easement agreements.” These agreements purport to comply with FCC rules that give building owners the freedom to replace the incumbent with an overbuilder but actually have the opposite effect. As one overbuilder has noted, landlords that have signed these agreements now fear the threat of contract litigation “if they allow a competitor onto their property” and are therefore not invoking the FCC’s rules.²⁶⁹ The incumbents have also signed “exclusive marketing agreements” with landlords that reward the landlords generously for giving the incumbent operator exclusive access to the premises.²⁷⁰ The aggressive marketing of these agreements begins as soon as a competitor announces its plans to enter the market.²⁷¹ See Table 14.

Table 14. Maintaining the Monopoly through Access to Multiple Dwelling Units (MDU)	
Comcast (Indianapolis, IN)	Less than one month after a cable franchise was awarded to TOTALink, Comcast sent out a mass mailing to property owners and management companies controlling MDUs, attaching a new 15-year exclusive service agreement for the owners and managers to sign immediately. In conjunction, Comcast offered to pay \$75 for each resident apartment covered under the agreement.
Comcast (Washington, DC)	Starpower has encountered numerous instances of MDUs where Comcast has received exclusive building rights for a number of years.
Comcast (Washington, DC)	Distributed fliers to residents of MDUs served by Starpower, offering discounts and free services (e.g., digital cable at less than \$30 per month, for three months, with two months of seven Starz! channels at no charge).
Comcast and Time Warner (Kansas City, KS)	Offered MDU property owners highly profitable revenue sharing agreements only after it became apparent that a competitive MDU provider would soon be offering service in the area.
Time Warner (Charlotte, NC)	Carolina BroadBand surveyed owners and managers of MDUs in Charlotte, NC, and found that 80 percent of the units surveyed there had committed to a long-term exclusive agreement with Time Warner.
Time Warner (Lenexa, KS)	Offered MDU residents a \$60 package that is offered elsewhere in the Kansas City metropolitan area for \$120. Time Warner also offered three months of service for the price of one month.
Time Warner (Overland Park, KS)	Offered MDU residents an \$80 package (including three months free) that is offered elsewhere in the Kansas City metropolitan area for \$120.
Sources: See Table Notes	

CABLE OPERATORS HAVE SUCCESSFULLY UNDERMINED THE LEASED-ACCESS PROVISION OF THE CABLE ACT

Federal law requires cable operators to set aside up to 15 percent of their channel capacity so that unaffiliated programmers may offer competing service packages to consumers.²⁷² As Congress envisioned it, the purpose of this requirement "is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public."²⁷³ The cable industry has successfully undermined this mandate and thwarted congressional intent.

The industry's strategy has been a simple one: Cause the FCC, which has authority to regulate the prices for leased access, to adopt a methodology that sanctions a per-channel rate that essentially no competing programmer could pay and remain commercially viable.²⁷⁴ The FCC's action in this regard is particularly troubling and stands in stark contrast to its commitment to viable intramodal competition in the telecommunications sector.²⁷⁵ In addition, further undermining congressional intent, the FCC has prohibited programmers seeking to utilize the leased-access provision of the Act for the purpose of providing a competitive Internet access service from doing so.²⁷⁶

By undermining the Act's leased access mandate, cable operators have also "limit[ed] the availability of diverse local minority programming and allow[ed] for potential discrimination against individual speakers or specific points of view."²⁷⁷ For this reason, the United States Conference of Mayors is calling on the FCC to act to ensure reasonable rates for independent programmers who desire to utilize leased access from cable networks.²⁷⁸ The most effective way for the FCC to accomplish this would be to set rates for channels that cable operators are required to make available pursuant to the leased-access provision of the Cable Act via its existing unbundled network element pricing methodology.

EXTENDING THE CABLE MONOPOLY TO OTHER MARKETS AND PRODUCTS

DOMINATING BROADBAND INTERNET SERVICE

Cable operators now dominate the broadband Internet market, constituting a huge new source of earnings. Since the Internet is now present in approximately 60 percent of American homes,²⁷⁹ consumer expectations about availability and speed of Internet access have changed. Many Americans, once content with dial-up connections with slow speeds, have now demanded always-on connections at higher speeds. Hence "broadband Internet" service through a digital "cable modem" has now become an enormous and unanticipated new profit center for the cable industry. According to the FCC's latest national broadband data, "[a]t the end of 2002, the number of high-speed lines connecting homes and businesses to the Internet was nearly 20 million compared to 2.8 million at the end of 1999."²⁸⁰ This trend is only expected to continue, with the majority of this growth captured by broadband cable providers.

Cable operators have been bringing coaxial cable into homes for decades. Once the World Wide Web exploded into daily lives, cable operators quickly realized that they could allocate merely a small part of the bandwidth on the coaxial cable and offer an always-on connection with much higher speeds than dial-up. The only potential competitors in this market were local telephone companies who offered digital subscriber lines (DSL) with similar service to broadband Internet service offered by cable operators. However, cable operators had a much easier time implementing their service than the phone companies had with DSL service.

Phone companies currently are required to market DSL as a common carrier (meaning their lines are open to other competitors). Cable operators are not common carriers. As a result, even as phone companies have recently announced price discounts for DSL, cable now overwhelmingly leads the broadband Internet market. Cable franchises either provide Internet connectivity themselves or select a proprietary Internet service provider (ISP) pursuant to contract to offer service over their networks, such as EarthLink or AOL.²⁸¹ However, most of the cable industry charges extra for using an ISP other than the provider of the cable modem service.²⁸²

Both cable and phone companies (particularly the Bell companies) are vigorously advocating deregulation of their broadband services. The regulatory status of cable modems is currently unsettled, with the FCC having ruled them to be an interstate "information service"²⁸³ – and hence subject to virtually no regulation – but various federal courts have taken a different view.²⁸⁴ The FCC's ruling is now being reviewed by a federal appellate court, and a decision in the matter is imminent.²⁸⁵ Because cable's broadband services are essentially deregulated, the Bell companies are demanding similar treatment and release from their common carrier obligations.²⁸⁶ But deregulation of broadband Internet services is precisely the wrong answer and would result in no less deleterious consequences than has deregulation of cable's video offerings. Phone companies should continue to be required to

offer DSL on a common carrier basis as a telecommunications service, and cable modem service should also be defined as a telecommunications service and thus available to all requesting customers on a common carrier basis.

Moreover, cable can promote tie-in arrangements that offer video and broadband Internet service together in packages, while DSL providers cannot. Recently, Consumers Union and Consumer Federation of America asked the Federal Trade Commission and the Justice Department to investigate such tie-in arrangements as a potential antitrust violation. Mark Cooper, research director of CFA stated, "[I]f there was ever a candidate for an investigation of predatory pricing under the anti-trust laws, this would be it. Even if the government concludes that the price is not predatory in the classic sense, it must be deeply concerned about anti-competitive tie-in."²⁸⁷

Cable's first attempt, in 1995, to dominate the broadband Internet sector with Excite@Home ended in bankruptcy (see below). However, the broadband Internet business is now surging, and cable operators are currently estimated to control almost 60 percent of the business. The largest cable operators are expected to see their Internet subscriber growth double by 2005.²⁸⁸ Cable moved quickly into this area after upgrading much of its service to fiber optics, initially as a means of distinguishing itself from DBS. DBS hasn't perfected its broadband technology as of yet and to date only offers limited forms of the service.²⁸⁹ Cable now has more than twice as many residential subscribers as DSL, with about 10.4 percent of residences using cable modems and 4.6 percent using DSL.²⁹⁰ The FCC's latest broadband data shows cable modems with 11.4 million subscribers (57.3 percent) versus 6.5 million subscribers (32.7 percent) for DSL.²⁹¹

Comcast, the largest cable company in the nation, has become the largest provider of broadband services. Comcast Chief Executive Officer Brian Roberts stated that he predicts that by the end of 2003, his company will have five million broadband Internet customers. That would make it the third largest Internet provider in the country of any kind – tied with EarthLink, following AOL and MSN. As Roberts stated, "High-speed data is now the hottest property we have," with the product growing by 40 percent a year.²⁹² On May 8, 2003, Comcast announced that it added 417,000 broadband Internet subscribers in the first quarter of 2003 alone, and that "it expects to add 1.6 million high-speed Internet subscribers this year, a 33 percent increase from the number in 2002."²⁹³ Comcast's dominance was further confirmed when it released its second quarter results on July 31. In the second quarter, Comcast added another 350,900 broadband Internet subscribers, for a current total of 4.4 million subscribers, and reaffirmed its target of 1.6 million additions in 2003.²⁹⁴ From a financial perspective, Comcast's revenue from these services increased 56.6 percent (to \$548 million) from second quarter 2002.²⁹⁵

As regulators and cable operators have both recognized, video services can now be distributed via broadband digital connections to the Internet. Cable's dominance in broadband has created concern that it may stifle development of competing streaming video technologies, limit access to Internet sites and other content, or steer home shopping activities in favor of their proprietary interests.

The hardware and software to deliver streaming video over the Internet are already available, and every advance in bandwidth and compression technology makes video distribution over the Internet more feasible. A growing number of TV and radio stations are already being widely distributed over the Internet, albeit slowly and with variable quality.

On March 17, 2003, Yahoo! Inc. "unveiled its newest subscription service, Yahoo! Platinum, a premium online video and audio service featuring branded programming from leading entertainment, sports and news providers for both broadband and narrowband consumers. The new subscription service provides premium video and audio content from CBS' *Survivor Insider*, Fox's *American Idol*, NASCAR.com, CBS Sports' coverage of the NCAA Division I Men's Basketball Championship through its Internet rights holder SportsLine.com, ABC News, CBS MarketWatch and The Weather Channel, among other providers. In coming weeks, Yahoo! Platinum plans to add programming from CNBC Dow Jones Business Video, National Geographic, Warren Miller Entertainment and much more. With the launch of Yahoo! Platinum, Yahoo! continues to deliver on its strategy to be the most compelling entertainment, sports and news destination on the Web."²⁹⁶

Countless other providers are now providing broadcast-like audio and video services via the Web. One study reports that 35 percent of Americans, more than 80 million people, have tried streaming audio or video, up from 30 percent in 2000.²⁹⁷

These developments threaten the cable incumbents at two levels. They lose control over creators of video content because it is so easy to link servers of digital video content to the Web. And they lose subscriber fees, pay-per-view revenues and general market share as a cornucopia of new video content comes on line. Advertising and pay-per-view revenues are directly threatened by Internet capabilities. Cable operators are also potentially threatened as the broadband Internet creates new content and potentially competing distribution outlets. Economists have noted, "...the Internet is the next potential source of widespread competition to cable television in the distribution of video programming."²⁹⁸

The cable industry initially responded by deliberately crippling the software that makes Internet-delivered streaming video possible – the industry boldly announced a limit on the technical capabilities of streaming video software used over cable facilities. At that time, major cable operators were joint owners of a company called @Home, to which they had assigned the power to administer the delivery of all broadband digital data services over the cable networks owned by those operators. @Home simply told its cable subscribers that they were not permitted to stream more than 10 minutes of video through their cable modems. Time Warner imposed an identical restriction on companies seeking to provide content over its Road Runner service.²⁹⁹

This was too brazen even for cable, and the 10-minute restrictions have since been dropped. Time Warner abandoned its limit as part of its Memorandum of Understanding when it merged with AOL.³⁰⁰ AT&T committed to allow video streaming in the MediaOne merger proceeding.³⁰¹

This has not stopped cable, however, from attempting to undermine the migration of competing programming content to the Internet. See Table 15. Several cable operators have once again “started adding language to their programming contracts that limits the amount of streaming a network can offer via the Internet.”³⁰² Other cable companies have apparently opted instead to condition the carriage of a video channel on the provider’s agreement not to distribute the same content over the Internet at all.³⁰³ Yet another approach now under active consideration, according to the trade press, is to impose “speed tiers” and “bandwidth-usage” fees “because of the potential threat posed by providers of Internet-based telephony and video-on-demand services that want to distribute their offerings over high-speed cable connections. MSOs fear that broadband service providers might end up competing with them by using cable’s very own fat pipes.”³⁰⁴ AT&T Broadband introduced tiered pricing to serve “power users” who “set up home networks, send or receive large files, such as when downloading software, or enjoy other bandwidth-intensive applications.”³⁰⁵

Table 15. Maintaining the Monopoly by Preventing Broadband Internet Distribution of Programming	
1996 - present	Cable operators begin providing broadband service over cable lines but severely limit the amount of bandwidth available for the broadband service. Economists have noted that the “typical cable system has a capacity of 744 MHz but only 6 MHz goes to broadband.”
1998	Cable operators, through their broadband subsidiaries (Road Runner and @Home), impose a 10-minute limit on streaming video over cable broadband connections.
2001	Charter and other cable operators attempt to condition the carriage of non-affiliated programming on their systems through the programmer’s consent not to distribute the same content over the Internet.
2002	Press reports indicate that the incumbents have once again “started adding language to their programming contracts that limits the amount of streaming a network can offer via the Internet.”
2002	AT&T Broadband introduces tiered pricing to serve “power users” who “set up home networks, send or receive large files such as when downloading software, or enjoy other bandwidth-intensive applications.”
2002	Other cable operators are considering imposing consumption or bandwidth-usage fees because of the threat of distribution of video programming content over high-speed cable connections.
Sources: See Table Notes (AT&T purchased by Comcast Dec. 2002)	

The concern that cable will deny consumers access to competitively supplied Internet-delivered content has become so acute in recent months that a broad coalition of content providers – including Amazon, Yahoo!, Walt Disney, eBay, Microsoft and Apple – have asked the FCC to take steps to ensure that cable operators do not “encumber the relationships . . . between their customers and destinations on the network.”³⁰⁶ As Amazon has explained, the reason for the rising concern is that the broadband world is “much more hospitable than

the present environment to discriminatory behavior.”³⁰⁷ The cable industry has responded by offering subscribers unrestricted access to Internet content but refusing to agree to any rules that would enforce such practices.³⁰⁸

Finally, there has been cable operators’ straightforward decision to limit digital bandwidth altogether. Cable operators have been deploying coaxial cable for as long as they have been offering cable service. Coaxial has *much* more capacity than the twisted-pair copper wires that phone companies have traditionally deployed to carry voice, yet cable’s broadband Internet service is, for the most part, no faster than telephone-company DSL service. This is because though coaxial cable can carry more than a hundred video channels, cable operators have opted to use only two of those channels (one for downstream traffic, another for upstream) for cable modem service.³⁰⁹ Upgraded cable systems – i.e., those that are capable of providing cable Internet service – typically have a bandwidth of between 550 and 750 MHz. Most systems are now at the higher level. As economists George Bittlingmayer and Tom Hazlett have noted, “cable systems could increase broadband access speeds by allocating more spectrum.”³¹⁰ In fact, overbuilders “effectively under-price monopoly systems by allotting users substantially higher system capacity for broadband.”³¹¹

UNDERMINING COMPETITIVE ACCESS TO VITAL CONTENT, EQUIPMENT AND SERVICES

Cable operators enter into agreements with unaffiliated programming providers for the exclusive rights to deliver the programmer’s content. Cable operators are now adapting that practice to the next battleground for subscribers – VOD services. As was stated in *The New York Times*, “[t]he most prominent addition to the panoply of digital services is video on demand.”³¹² Cable operators have also denied potential competitors access to VOD content indirectly by forming exclusive agreements with equipment suppliers that expressly deny rivals the technology (equipment, software, etc.) necessary to deliver VOD programming.³¹³

Several large cable operators – Time Warner, Advance/Newhouse Partnership, Comcast and Cox Communications – are partners in a consortium called iN DEMAND. This venture has already signed content distribution deals with major entertainment producers (Artisan, Universal, DreamWorks, Sony, Twentieth Century Fox, ESPN and Hallmark) and sports leagues (hockey, basketball, tennis, and NASCAR, among others).³¹⁴ While the content developer contracts do not appear to be exclusive, the iN DEMAND service, according to wireline competitors, is offered only to cable customers that subscribe to the services of iN DEMAND’s owners.³¹⁵ See Table 16.

In apparent response, at least one overbuilder, RCN, has recently started a service called RCN Impulse On-Demand, now available in Philadelphia, New York City, Boston, and Lehigh Valley, Pa.³¹⁶

Overbuilders find it difficult or impossible to obtain the content that is essential to make their cable, wireless or IP distribution alternatives competitive. Intertainer, a competing provider of Internet-based VOD service, recently filed an antitrust suit “against AOL Time

Warner, Sony, Universal and Movielink . . . who control more than 50 percent of the theatrical motion picture business and more than 60 percent of the music business,"³¹⁷ for "attempt[ing] to hinder and delay the emergence and expansion of IP VOD services . . . in order to protect and control their revenues."³¹⁸

Table 16. Maintaining the Monopoly by Controlling Video-on-Demand Services

VOD Provider	Cable Affiliation	Exclusion of Competitors
iN DEMAND (service)	Joint venture of four cable operators -Time Warner, Advance/Newhouse, Comcast and Cox	"[iN DEMAND] indicated that they could not do business with Everest because they had exclusive agreements with their owners, who are large cable operators." WideOpenWest, another overbuilder, was informed that VOD servers were "unavailable in any market where WideOpenWest competes with a named incumbent cable operator."
Concurrent (equipment)	N/A	RCN: "Seachange and Concurrent, have shown an affinity for the largest cable providers that have impeded RCN's efforts to negotiate acceptable contracts for the deployment of their technology . . . [Time Warner Cable] has exerted its monopsony buying power to negotiate exclusive noncompete clauses in its contracts with both companies that prevent RCN from deploying technology provided by either Seachange or Concurrent in any market in which Time Warner operates"
SeaChange (equipment)	Comcast has an Equity Investment in SeaChange and a Video-on-Demand Purchase Agreement	See Concurrent above
Sources: See Table Notes		

Another recent attempt by cable to curtail competition by limiting access to content has centered on electronic programming guides (EPG). These guides provide customers with on-screen listings of the available cable channels and programs, together with interactive features that enable customers to do things such as program favorite channels, search for shows by subject, set reminders for when programs are on, and block channels from children. These guides have become increasingly important as digital cable has rapidly expanded the number of available channels.

At least one overbuilder has been informed that it might not be permitted to use an interactive programming guide in any market where it competed directly against an unspecified incumbent.³¹⁹ RCN was told that it couldn't license TV Gateway in any market where RCN competes against that guide's owners, Comcast, Charter, Adelphia and Cox.³²⁰ And the incumbents have also taken anti-competitive actions against the only interactive EPG

that competes against their own. Time Warner has "invaded broadcast signals transiting its systems . . . to remove Gemstar's EPG data" in the past and has threatened to do so again in the future.³²¹

At the other end of the distribution line, cable operators have contrived to limit the use of cable converter boxes located on customer premises to decode content delivered by other providers. The 1996 Act required open standards for set-top boxes.³²² But consumer groups have complained in the past that cable operators have effectively evaded these requirements "[b]y slow-rolling the technical standard and forcing would-be set-top box competitors to sign an egregious licensing agreement whereby the company signing the agreement would have to virtually forfeit their intellectual property. The cable companies have killed any near-term possibility of an open set-top market."³²³ This has allowed cable operators to continue charging above-cost prices on the set-top boxes themselves and to lower the threat that DBS or overbuilders could break into the market at a lower cost by inviting consumers to use the set-top box they already own to decode another provider's signal. Several cable operators have even negotiated deals with set-top box manufacturers that forbid sales of the same equipment to competing wireline providers.³²⁴

Overbuilders have also complained that cable incumbents have hindered their ability to build-out systems, interfering with the process of hiring contractors.³²⁵ Some cable operators have apparently required contractors to sign non-compete clauses in their contracts and have threatened any contractors found working for overbuilders with reprisals.³²⁶

CONCLUSION

DEREGULATION OF THE CABLE INDUSTRY HAS FAILED

Cable television has become the primary means for Americans to receive entertainment, news and information. Additionally, large cable operators have become the vital link in our nation's ability to access broadband Internet, which will continue to grow as a virtual "town square" for American discourse. As with many other vital industries that have developed in America, e.g., railroads, petroleum, telephone service, when a handful of companies dominate the market, consumers are gouged, competitors are stifled, and regulators are stymied.

This report documents the continuing trend of large cable operators to raise prices since deregulation. The FCC has once again confirmed this trend with the July 2003 release of its 2002 Report on Cable Prices. Moreover, the GAO has confirmed the same. Both agencies have agreed that only the presence of a wireline competitor has an effect on prices. DBS has not yet had any such impact. The problem is that overbuilders serve only a tiny fraction of homes in America. In effect, there is no price competition for cable service. And it remains clear that incumbent cable operators have not and, at least for the foreseeable future, will not ever compete against one another. To the contrary, they work hard through joint ventures and industry trade associations to coordinate various marketing and technology programs.

Large cable operators remain vertically integrated. They own or control much of the decisional programming in America, including critical regional sports programming. This enables them to decrease their programming costs; however, it has not inspired them to decrease the consumers' bills. It has enabled vertically integrated cable operators to discriminate against cable competitors when such programming is delivered terrestrially, denying competitors the opportunity to air critical programming.

The cable industry has become enormously concentrated in a few large operators. Three incumbents control 56 percent of the market. These large operators are also geographically clustered, becoming the main providers of video services in a community. This allows a cable operator to dominate the news, information and entertainment choices for their subscribers. The concentration and clustering of the cable market has not prevented price increases for consumers. This is not what Congress intended when the cable industry was deregulated.

Cable operators are now the largest providers of broadband Internet service. This is a huge new profit center for cable operators, but these profits have not led to price decreases for consumers either. What is of great concern, but cannot be entirely predicted at this time, is what impact the dominance of broadband will have on the future development of the nation's virtual town square. Will content be limited? Will competitors be allowed to access cable operator's bandwidth? Will low-income consumers be locked out of broadband communications? These and many other questions must be examined as broadband grows.

Just as over-the-air broadcast for radio and television were dominant providers of information in an earlier era, and as cable television is now, certainly broadband Internet is likely to reach that level of influence. Given the anti-competitive history of cable operators, policy makers and consumers should monitor these developments very closely.

Since its inception and growth throughout the second half of the 20th century, cable television service has brought an enormous amount of popular news and entertainment programming into the living rooms of America. The cable industry has used public rights of ways to access those homes, and in turn, made huge profits. This report has made it clear that the cable industry has not lived up to its public and civic responsibilities as holders of valuable public franchises and licenses.

The failure of the Federal Communications Commission and other federal agencies to recognize, admit and take effective steps to prevent the pervasive pattern of anti-consumer and anticompetitive behavior of the cable companies is shocking. Evidence of the abuse of market power abounds in both the video and high-speed Internet markets, yet the FCC insists that competition is vigorous in the industry.

The time has come for Congress and state and local governments, to take action. Responsibility for oversight of the industry must be moved out of Washington, where regulators have demonstrated an inability to recognize or address the pervasive anti-competitive, anti-consumer practices of the powerful cable corporations. The problems documented in this report demand action to restore and create competition in the multichannel video market and an environment in which consumer choice drives corporate decisions and the public interest is promoted.

MOVE DECISION MAKING OUT OF WASHINGTON AND CREATE CONSUMER CHOICE

Congress must empower state public utility commissions (PUC) to regulate all cable rates and charges for video services until meaningful competition emerges.

Congress should allow state public utility commissions the authority to regulate all cable rates and charges and to combat anti-competitive predatory-pricing business practices. With the 1996 Act's deregulation, rates for the cable programming tier to which the vast majority of consumers subscribe have inflated without restraint. Consumer rate protections at the state level are needed, but state PUC rate regulation is only necessary and desirable until robust competition that actually disciplines cable prices emerges.

Return authority to local communities.

Preemptive provisions of the Act have thwarted attempts by local communities to protect cable subscribers from the worst of the industry's depredations. These preemptive provisions must be abolished so that policy control may be returned to community leaders

who are closest to consumers and who are most committed to ensuring that their communities have access to multiple providers of competitively priced video services.

Introduce à la carte programming requirement to expand consumer choices.

Consumers should be able to choose their own suite of programming, rather than being force-fed the programming tiers that cable operator want them to purchase. Consumers must be given the right to purchase every individual channel on an *à la carte* basis at fair, reasonable and nondiscriminatory prices.

Ensure consumer input with a public board member.

A public member representing subscribers should be placed on the board of directors of any cable operator with a greater than four percent market share of cable households as a condition of franchise or FCC approval. Such a public member should have no current or prior affiliation with a cable, broadcast or DBS distributor or programmer, or any of their industry trade associations, and should be barred from joining such a board as a public member for five years after serving in any such affiliation. Public members should be selected by a committee of outside directors and approved by the shareholders. This would ensure better consumer input and assist in preventing insider dealing and financial mismanagement, as has occurred with some of the nation's leading cable operators.

Empower the viewers and citizens. Citizen-viewers should have a direct voice in the process of cable regulation and the opportunity to use that voice to create their own well-funded news and public affairs channels. When cities negotiate franchise agreements with cable companies, they should require that cable operators include billing inserts that invite consumers to join a local Cable Action Group that would operate a local Audience Channel, well-funded and equipped by the cable company. Such a group would serve a dual purpose: operating the local channel and organizing consumers into a mobilized interest group to advocate for pro-consumer and pro-democracy media policy. Alternatively, local or state governments could assist in fundraising for the Cable Action Group, by collecting membership dues through inserts in tax or license renewal mailings. Illinois Citizen Utility Board (CUB) is funded in this manner and represents the interests of Illinois gas, electric, phone and other utility ratepayers.

CREATE CONDITIONS THAT PROMOTE REAL COMPETITION

Ensure access to vital programming.

Newly formed competitors cannot survive, let alone thrive, if cable operators are allowed to continue their anti-competitive practices of locking up must-have programming, such as sports and other regional channels. The existing federal program-access law must be modified to eliminate loopholes that have allowed the cable industry to continue these anti-competitive practices and undermine the emergence of wireline competitors. Additionally,

cable operators should be prohibited from entering into exclusive contracts for equipment or other technical services that prevent competitor access to such programming.

Adopt reasonably priced leased-access rates.

Cable operators have negated their obligation to lease channel capacity to independent programmers by setting the prices so high that no competing provider could possibly pay current fees and remain commercially viable. In order to promote competition with diverse and independent programming, reasonably priced leased access must be adopted. This pro-competitive pricing should be based upon the FCC's existing rate-setting methodology, which was designed to promote competition in the telecommunications market.

Prohibit cable broadband content restrictions to allow consumers full use of the Internet.

Cable operators have a long history of restricting consumer access to content that cable operators disfavor. With the cable industry's ongoing dominance of the broadband market, they must be prohibited from restricting consumer access to Internet content or application based on the source or nature of the consumer's request.

GLOSSARY OF TERMS

1934 Communications Act – The Communications Act of 1934, 47 U.S.C. §151 *et seq.* The 1984 Cable Act, the 1992 Cable Act and the 1996 Telecommunications Act are all amendments to the 1934 Communications Act. The cable provisions of the statute appear in Title VI of the Communications Act, 47 U.S.C. §521 *et seq.*

1984 Cable Act – The Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984).

1992 Cable Act – The Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

1996 Telecommunications Act – The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

American Cable Association – Association of independent cable television businesses and owners of smaller cable systems that work together to ensure the future competitiveness and viability of their businesses. Association members primarily serve customers in small towns and rural areas across America. For more information, see web site: www.americancable.org.

American Customer Satisfaction Index (ACSI) – The Voice of the Nation's Consumer™, the ACSI is a uniform and independent measure of household consumption experience. A powerful economic indicator, the ACSI tracks trends in customer satisfaction and provides valuable benchmarking insights of the consumer economy for companies, industry trade associations, and government agencies. For more information, see web site: www.theacsi.org.

Bandwidth – The width of a communications channel and an expression of capacity of a communication link.*

Broadband – A transmission facility providing bandwidth greater than 45 MBPS, generally fiber optic in nature.*

Broadband Service Provider Association (BSPA) – An overbuilder trade association.

Bundling – A marketing term used by a variety of customer service providers, including local, long-distance companies and cable operators, whereby several services are offered to consumers combined in one package with a discount from the aggregate per-service price or some other benefit attendant the package.

Cable operator – A statutory definition, *see* 47 U.S.C. §522(5). Generally, one who provides and owns or controls a cable service over a cable system.

Cable service – A statutory definition, *see* 47 U.S.C. §522(6). Generally, the transmission to subscribers of video programming, or other programming services, and any subscriber interaction required for the selection or use of such programming.

Cable system – A statutory definition, *see* 47 U.S.C. §522(7). Generally, a facility and equipment designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community over any public right-of-way.

Churn rates – Monthly cancellation rate of subscribers as a percentage of total subscribers. This is a metric used for service companies as an indication of how successful they are at retaining customers.*

Community Antenna Television (CATV) – Originally, signals from distant TV stations are picked up by a large antenna, typically located on a hill, then amplified and piped all over the community below on coaxial cable.* This term is now largely in disuse, having been supplanted by either "cable service" – when referring to the video programming offering being made to consumers – or "cable system" – when referring to the facilities utilized to provide such service.

Consumer Federation of America (CFA) – CFA is first and foremost an advocacy organization, working to advance pro-consumer policy on a variety of issues before Congress, the White House, federal and state regulatory agencies, and the courts. Its staff works with public officials to promote beneficial policies, to oppose harmful policies, and to ensure a balanced debate on important issues in which consumers have a stake. For more information, see web site: www.consumerfed.org

Consumer Price Index (CPI) - Defined by U.S. Department of Labor. The CPI is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. It is one of the most widely used measure of inflation. For more information, see web site: www.bls.gov/cpi/home.htm.

Consumers Union - Publisher of Consumer Reports, CU is an independent, nonprofit testing and information organization serving only consumers. Consumers Union's advocates tackle consumer issues that are regional, national, and even international in. They testify before Federal and state legislative and regulatory bodies, petition government agencies, and file lawsuits on behalf of the consumer interest. For more information, see web site: www.consumersunion.org/aboutcu/about.html.

Coaxial Cable - Coaxial cable is the capacious wire used to transmit data between end-user homes and a cable company's headend facilities.

Digital Subscriber Line (DSL) – A generic name for a family of digital lines being provided by competitive local exchange carriers and local telephone companies to their local subscribers.*

Direct Broadcast Satellite (DBS) – Refers to satellite television systems in which the subscribers receive signals directly from geostationary satellites via small and relatively inexpensive dish antennas typically mounted on either the roofs or sides of houses.* The principal providers of DBS in the United States are DIRECTV and EchoStar.

DMA – Designated Market Area. The Designated Market Area is A. C. Nielsen's geographic market design, which defines each television market. DMAs are composed of counties (and possibly also split counties) and are updated annually by the A. C. Nielsen Company based on historical television viewing patterns. There are currently 210 DMAs in the US.

EBITDA – An acronym for "earnings before interest, taxes, depreciation and amortization."*

Federal Communication Commission (FCC) – The federal agency established by the Communications Act of 1934 with authority to regulate interstate communications. The FCC is an independent agency and not a part of the Executive Branch although the five commissioners are presidential appointees.

Franchise – The right, granted by a government entity, or local franchise authority, (i.e., a municipality, city government, etc.), to a cable operator to provide service to a given area using public right of ways.

General Accounting Office (GAO) – an administrative arm of Congress that frequently responds to requests from U.S. Senator or Representative for information and analysis.

Internet Service Provider (ISP) – A vendor who provides access for customers to the Internet and the World Wide Web.*

Local Franchising Authority (LFA) – The governmental entity empowered to grant a cable franchise. *See* 47 U.S.C. §522(10).

MMDS – Multichannel Multipoint Distribution System. MMDS systems use wireless technology, such as microwave, to transmit cable television signals, (actually data packets - audio, video or data) from a single transmitting point to multiple receiving points.

Monopsony – A situation in which there is one purchaser of a good for which there are multiple suppliers. In this situation, the purchaser has significant negotiating leverage over the competing suppliers.

MSO – Multiple System Operator. A cable company that operates more than one cable system. The principal MSOs, by current market share, are Comcast, Time Warner Cable (a division of AOL Time Warner), Charter, Cox Communications, Adelphia Communications, Cablevision, Advance/Newhouse, Mediacom Communications, Insight Communications and CableOne.

Multichannel Video Programming Distributors (MVPD) – statutory definition, *see* 47 U.S.C. §522(13). This definition includes both cable operators (including cable overbuilders), DBS, SMATV, and MMDS providers.

Multiple Dwelling Unit (MDU) – Any housing structure that is broken into more than one living area to accommodate multiple family units, e.g., apartments.*

Must Carry – The provisions of the Cable Act that require carriage of certain local channels without charge to the channel provider. *See* 47 U.S.C. § 534. Local channels that have must carry rights opt either for free carriage or “retransmission consent,” by which they grant consent to be carried usually in exchange for a fee (and oftentimes other consideration). *See* 47 C.F.R. Part 76, Subpart D, §76.51 *et seq.* Disputes have broken out between cable operators and popular channels when negotiations for retransmission consent have broken down, sometimes resulting in cable operators removing a particular channel from their offerings in one or more communities.

National Cable Television Association (NCTA) – The NCTA, formerly the National Cable Television Association, is the principal trade association of the cable television industry in the United States. For more information, see web site: www.ncta.com

Overbuilders – Usually refers to emerging *wireline* cable providers that build their own facilities – hence *overbuilders* – in communities in order to compete with the established or incumbent cable operator (which is usually an MSO).

Program access – A provision of the 1992 Cable Act designed to prohibit (among other things) the establishment of exclusive arrangements in most circumstances between a cable operator and an affiliated video programming vendor if such programming is delivered via satellite. *See* 47 U.S.C. §548. This provision is often referred to as “Section 628” because it was adopted as Section 628 of the 1992 Cable Act.

Public Utility Commission (PUC) – Administrative agencies generally established by state legislatures to regulate certain specified industries usually including intrastate telecommunications (e.g., local phone service) and occasionally including cable services. The actual title of an agency in a particular state may be somewhat different – e.g., in New York: Public Service Commission; in Massachusetts: Department of Public Utility Control; in Illinois: Illinois Commerce Commission; in Iowa: Iowa Utilities Board. Commissioners may be appointed or elected as provided by state law.

Satellite Broadcasting & Communications Association (SBCA) – The principal trade association of DBS providers, see web site: www.sbca.com.

Satellite Master Antenna Television (SMATV) – A distribution system that feeds satellite signals to hotels, apartments, etc., in which facilities (e.g., wires) do not cross the public rights of way. Sometimes referred to as “private cable” since the service is not subject to local franchising requirements.

Spectrum – Radio frequency spectrum. Spectrum is assigned by the FCC and is used to provide various services by transmitting data over radio waves.

Streaming – With streaming, a user can watch or listen to audio or video without downloading the whole file onto their computer (*i.e.*, the file will start playing immediately upon the start of downloading) delivered using Internet Protocol (IP).

Terrestrial Delivery – Programming delivered from land via microwave, coaxial cable, or fiber optic cables in the ground as opposed to delivery via satellite, which has been the dominant method of delivery.

Vertically Integrated – A firm is vertically integrated when it has an ownership interest in or controls a firm in an upstream or downstream market. FCC rules define when a cable operator and a video programming vendor are vertically integrated, *i.e.*, when the programming vendor is deemed “affiliated with” the cable operator for regulatory purposes, such as being subject to the program access provision (Section 628) of the 1992 Cable Act.

Video-On-Demand (VOD) – A pay-per-view subscription-based service provided by cable and satellite operators which allows consumers to order and watch movies, concerts, and other events at any time through their television’s graphic user interface.

Video Programming – A statutory definition, *see* 47 U.S.C. §522(20).

Wireline competitor – A video service provider that uses hybrid fiber/coax networks or similar networks that are right-of-way enabled and are much easier to add interactive and two-way services to – as opposed to satellite or MVDS service. This term usually refers to a wireline overbuilder, but may also include providers that already have facilities in place (*e.g.*, local telephone companies) that do not require new build outs.

** As defined by Newton’s Telecom Dictionary, 19th edition (copyright 2003 Harry Newton, www.TechnologyInvestor.com).*

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FIGURE SOURCES

Figure 1. Long Term View of Cable Price Increases

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Figure 2. Details on Cable Rate Increase After the 1992 Act

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Satellite TV Grows in Consumer Popularity, Cable Service Sees Slight Decline (Sept. 5, 2002)

Figure 5. Cable Faces Very Little Overbuild Competition
NCTA, *Cable Developments 2002* at 26 (2002).

Figure 6. Large Cable Companies Charge More
2001 Report on Cable Prices at Attachment B-3 (noncompetitive markets).

ENDNOTES

- ¹ U.S. Government Accounting Office (GAO), *Telecommunications: The Changing Status of Competition to Cable Television* (July 1999), at 5; <http://www.cablecenter.org/history> (accessed April 13, 2003).
- ² See, Copyright Revision Act of 1976, 17 U.S.C. §§ 101-118.
- ³ Amendment to the Communications Act of 1934, the *Cable Communications Policy Act*, Pub. L. No. 98-549, 98 Stat. 2779 (1984).
- ⁴ See *Cable Television Consumer Protection and Competition Act of 1992*, Pub. L. No. 102-385, 106 Stat. 1460, § 623(b) (1992).
- ⁵ *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996), S. Rept. No. 230, 104th Cong. 2nd Sess. (1996).
- ⁶ Report on Cable Industry Prices, 17 FCC Rcd 6301, 6302 n. 9 (2002) ("2001 Report on Cable Prices").
- ⁷ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Ninth Annual Report, 17 FCC Rcd 26901 (released December 31, 2002) ("Ninth Video Competition Report") at ¶ 115.
- ⁸ There often is confusion in the citing of statistics for wireline competition. Using the FCC's "effective competition" test, 671 -- or approximately 2 percent -- of the 33,246 cable community units nationwide have been found to meet this test. *Id.* From the perspective of the actual number of subscribers that choose an overbuilder as their service provider, there are approximately 1 million such subscribers -- 1.3 percent -- out of a base of 89.9 households that subscribe to multichannel video programming services. See *Ninth Video Competition Report* at ¶¶ 5, 105.
- ⁹ *Telecommunications Act of 1996*, Pub. L. No. 104-104, § 302(b), 110 Stat. 124, repealing 47 U.S.C. § 533(b).
- ¹⁰ *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 121, § 302(a), adding 47 U.S.C. § 573.
- ¹¹ *Id.*, 47 U.S.C. § 573(c). But see *City of Dallas v. FCC*, 165 F.3d 341 (5th Cir. 1999) (preserved local franchising authority and thus made clear that an OVS certification could not be used to evade local right-of-way authority and thus obviate the need for reaching agreement with local communities for the use of their property).
- ¹² Pub. L. No. 106-113, 113 Stat. 1501 (1999).
- ¹³ National Cable and Telecommunications Association, http://www.ncta.com/industry_overview/top50mso.cfm, (accessed April 13, 2003) (NCTA).
- ¹⁴ *Ninth Video Competition Report* at ¶ 14.
- ¹⁵ See NCTA, *Top 25 MSOs*, http://www.ncta.com/industry_overview/top50mso.cfm (accessed Jan. 27, 2003) (top 25 MSOs as of September 2002); NCTA, *Industry Statistics*, http://www.ncta.com/industry_overview/indStat.cfm?indOverviewID=2 (accessed Jan. 27, 2003) (basic cable households as of July 2002).
- ¹⁶ American Cable Association, <http://www.americancable.org>, (accessed April 13, 2003).
- ¹⁷ See GAO, *Telecommunications: The Changing Status of Competition to Cable Television*, at 6.
- ¹⁸ *Ninth Video Competition Report* at ¶¶ 5, 105.
- ¹⁹ *Id.* at ¶¶ 103, 104.
- ²⁰ *Id.* at ¶ 105.
- ²¹ *Id.* at ¶ 53.
- ²² See NCTA, *Top 25 MSOs*, http://www.ncta.com/industry_overview/top50mso.cfm (accessed July 17, 2003).
- ²³ See, *Cablevision's New Venture With Satellite Stirs Skeptics*, New York Times at C6 (July 17, 2003).
- ²⁴ See *Ninth Video Competition Report* at ¶ 58.
- ²⁵ See *2001 Report on Cable Prices* at ¶ 10.
- ²⁶ See *News Corp. Adds to Empire With Control of DirectTV*, New York Times, at C1 (April 10, 2003).
- ²⁷ See *EchoStar Deal Lets SBC Offer Satellite TV On Phone Bill*, New York Times, at C1 (July 23, 2003).
- ²⁸ See D. Brenner, M. Price & M. Meyerson, *Cable Television and Other Nonbroadcast Video*, at 2-37 (2002).
- ²⁹ See, e.g., *Television Consumer Reports* at 576 (Sept. 1991); Nat'l League of Cities, *The State of America's Cities Ninth Annual Opinion Survey of Municipal Elected Officials* at 9 (Jan. 1993).
- ³⁰ See *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, Report, 5 FCC Rcd 4962, at ¶¶ 19-34 (1990) ("Cable Competition Report").

³¹ See GAO, *Telecommunications: 1989 Survey of Cable Television Rates and Services*, Report to the Chairman, Subcomm. on Telecommunications and Finance, Comm. on Energy and Commerce, House of Representatives 47 (Aug. 1989); GAO, *Telecommunications: Follow-up National Survey of Cable Television Rates and Services*, Report to the Chairman, Subcomm. on Telecommunications and Finance, Comm. on Energy and Commerce, House of Representatives (June 1990); GAO, *Telecommunications: 1991 Survey of Cable Television Rates and Services*, Report to the Chairman, Subcomm. on Telecommunications and Finance, Comm. on Energy and Commerce, House of Representatives (July 1991).

³² See GAO, *Telecommunications: 1991 Survey of Cable Television Rates and Services*, Report to the Chairman, Subcomm. on Telecommunications and Finance, Comm. on Energy and Commerce, House of Representatives, Appendix I, Table I.1 (July 1991); Department of Labor, Bureau of Labor Statistics, Consumer Price Index -- All Urban Consumers, All Items, <http://www.bls.gov/cpi> (accessed Jan. 27, 2003). Cable rate increase versus CPI calculated as follows: Nov. 1986 CPI = 110.4; Apr. 1991 CPI = 135.2; $(135.2 - 110.4)/110.4 = 22$ percent increase in CPI versus 55.7 to 60.8 percent increase in cable rates from Nov. 1986 to Apr. 1991.

³³ See GAO, *Telecommunications: Follow-up National Survey of Cable Television Rates and Services*, Report to the Chairman, Subcomm. on Telecommunications and Finance, Comm. on Energy and Commerce, House of Representatives, Appendix I, Table I.1 (June 13, 1990).

³⁴ See *Cable Television Consumer Protection and Competition Act of 1992*, Publ. L. 102-385, 106 Stat. 1460, § 623(b) (1992).

³⁵ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 at ¶ 213 (1993).

³⁶ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119 at ¶¶ 115, 119 (1994).

³⁷ *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56, (1996), S. Rept. No. 230, 104th Cong. 2nd Sess. (1996).

³⁸ See 47 U.S.C. § 543(c)(4); FCC News Release, *Cable Services Action; Cable Television Upper Tier Rate Regulation Ends March 31, 1999*, Report No. CS 99-4 (Mar. 29, 1999).

³⁹ See *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992: Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, Report on Cable Industry Prices, 17 FCC Rcd 6301 & n. 9 (2002) ("2001 Report on Cable Prices"). There are four "tiers" of service -- packages of programming channels -- generally referred to by regulation. The primary level of cable television service is commonly referred to as "basic service" tier ("BST") and must be taken by all subscribers. The content of "basic" service varies widely among cable systems but, pursuant to the Cable Act, must include all local television signals and public, educational, and governmental access channels and, at the discretion of the cable operator, may include other video programming services. One or more expanded tiers of service, known as cable programming service tiers ("CPST") for purposes of regulation, and often (usually) designated as "expanded basic" by cable operators, also may be offered to subscribers. These expanded tiers of service usually include programming channels delivered to the cable operator via satellite, such as TBS, CNN, USA Network, etc. Premium services are cable networks provided by a cable operator to subscribers on a per channel basis for an extra monthly fee, and usually include such channels as HBO, Showtime, etc. Pay-per-view ("PPV") services are cable networks provided on a per program basis. PPV service is a separate category from premium service. See *Ninth Annual Video Competition Report* at nn. 12, 13.

⁴⁰ See 47 U.S.C. § 543(k).

⁴¹ Compare 2001 Report on Cable Prices, Att. B-1 with *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992: Statistical Report on Average Basic Rates for Basic Services, Cable Programming Services, and Equipment*, Report on Cable Industry Prices, 12 FCC Rcd 22756 at Table 1 (1997); *Ninth Video Competition Report* at ¶ 9 & n. 7; Department of Labor, Bureau of Labor Statistics, Consumer Price Index -- All Urban Consumers, All Items, <http://www.bls.gov/cpi> (accessed Jan. 27, 2003). Noncompetitive cable system rate increases calculated according to the following methodology: July 1996 rate = \$26.57; July 2001 rate = \$37.13; rate increase from 2001 to 2002 = 6.3 percent. June 2002 rate = $\$37.13 \times 1.063 = \39.47 . Increase from July 1996 to June 2002 = $(39.47 - 26.57)/26.57 = 48.55$ percent. Noncompetitive

programming and equipment rate increases in constant dollars calculated according to the following methodology: July 1996 CPI = 157, June 2002 CPI = 179.9, June 2002 rate in 1996 dollars = $(39.47) \times (157/179.9) = 34.45$. Increase from July 1996 to June 2002 in constant 1996 dollars = $(34.45 - 26.57)/26.57 = 29.64$ percent. Calculations for competitive cable systems using the same methodology yield a 49.24 percent real rate increase and a 30.24 percent adjusted rate increase.

⁴² See *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992; Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, Report on Cable Industry Prices at ¶ 24 (2002) ("2002 Report on Cable Prices").

⁴³ See 2001 Report on Cable Prices at ¶ 10; Table 15, *infra*.

⁴⁴ See 2001 Report on Cable Prices at ¶ 8.

⁴⁵ See 2002 Report on Cable Prices at ¶ 28.

⁴⁶ GAO, *Telecommunications: Issues in Providing Cable and Satellite Television Services* (Oct. 2002), at 9.

⁴⁷ The FCC's methodology that led to "competitive differential" of only 6.2 percent, in contrast to the GAO's finding of 17 percent, has been harshly criticized. See Testimony of William B. Shear, Acting Director, Physical Infrastructure, General Accounting Office, before the Senate Committee on Commerce, Science and Transportation, May 6, 2003, available at http://www.senate.gov/~commerce/hearings/testimony.cfm?id=749&wit_id=2016 (accessed May 6, 2003) ("Shear Testimony") at 1 ("FCC's 2002 survey does not provide a reliable source of information on the cost factors underlying cable rate increases.").

⁴⁸ Consumers Union Press Release, *'Tis the Season for Higher Cable Bills* (Nov. 26, 2002).

⁴⁹ See, e.g., *id.*; K.C. Neel & S. Kramer, *Cable's Rate Hikes are Starting to Hit the Streets*, Cableworld (Dec. 2, 2002); P. Howe, *AT&T's Cable Rates Rising 7.8 percent On Average*, Boston Globe (Nov. 23, 2002).

⁵⁰ See H. Berkowitz, *For Most, 9.9 percent Cable Hike*, New York Newsday (Dec. 2, 2002).

⁵¹ See J. Blum, *How High is Up?*, Cableworld (Dec. 2, 2002).

⁵² M. Cooper, Consumer Federation of America, *The Failure of 'Intermodal' Competition in Cable Markets* (Apr. 2002), at 4 ("2002 CFA/CU Study").

⁵³ See Consumer's Union Press Release, *Cable Price Hikes, Broken Promises Prompt Call for New Oversight* (July 24, 2002).

⁵⁴ Consumers Union Press Release, *'Tis the Season for Higher Cable Bills* (Nov. 26, 2002).

⁵⁵ Salomon Smith Barney, *Industry Note: Cable: Healthy Rate Increases a Positive Sign for Cable, Part II* (Dec. 3, 2002), at 2 ("SSB Cable Industry Report").

⁵⁶ See Ninth Video Competition Report at ¶ 19 & Table 1.

⁵⁷ See *id.* at ¶ 4 & App. B, Table B-1.

⁵⁸ See NCTA, *Industry Statistics*, http://www.ncta.com/industry_overview/indStat.cfm?indOverviewID=2 (accessed July 17, 2003); See *id.* at Table B-1; NCTA, *Cable Television Developments 2002* at 4.

⁵⁹ M. Cooper, Consumers Union/Consumer Federation of America, *Cable Mergers, Monopoly Power and Price Increases* (Jan. 2003), at 3 & exhibits 2-3 ("2003 CU/CFA Study").

⁶⁰ Press Release, *Comcast Reports Second Quarter 2003 Results*, July 31, 2003, available at <http://www.cmcsk.com/news/20030731-115180.cfm?ReleaseID=115180> (accessed August 7, 2003).

⁶¹ B.B. Kush, *Over Rated? Residents Dissatisfied With Cable Price Hikes*, Sunday Telegram, at A1 (Feb. 10, 2002) (quoting Worcester Councilor-at-large Michael C. Perotto, a member of the Public Service and Transportation Committee).

⁶² A. Gowen, *County Panel Questions Cable Switch*, Washington Post (Aug. 8, 2002), <http://www.washingtonpost.com/wp-dyn/articles/A57327-2002Aug7.html> (accessed on Jan. 23, 2003) (quoting Montgomery County Cable Communications Advisory Committee member Don Libes).

⁶³ P. Howe, *AT&T's Cable Rates Rising 7.8 percent On Average*, Boston Globe (Nov. 23, 2002).

⁶⁴ See Press Release of Senator John McCain (Ariz.), *McCain Requests GAO Review of Soaring Cable Rates* (Apr. 16, 2002), available at

http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.Viewpressrelease&Content_id=265.

⁶⁵ See *Shear Testimony*.

⁶⁶ Press Release of Senator John McCain (Ariz.), *McCain Decries Cable Industry 8% Rate Increase* (July 8, 2003), available at <http://www.senate.gov/~commerce/newsroom/printable.cfm?id=205862> (accessed August 7, 2003).

⁶⁷ TR Daily, *McCain Contemplates Cable Regulation After FCC Releases Rate Report* (July 8, 2003).

⁶⁸ See, e.g., Comments of the National Cable & Telecommunications Association at 9, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 02-145 (FCC filed July 29, 2002).

⁶⁹ See, e.g., Testimony of James R. Robbins, President & CEO, Cox Communications, before the U.S. Senate Committee on Commerce, Science and Technology, May 6, 2006, available at http://www.senate.gov/~commerce/hearings/testimony.cfm?id=749&wit_id=2017 (accessed May 6, 2003).

⁷⁰ See 2002 Report on Cable Prices at Table 1; See also 2001 Report on Cable Prices at Table 1.

⁷¹ See M. Scanlon, *Digital Delay Leaves Cablevision Behind*, Cable World (May 14, 2001) (citing ABN Amro cable analyst John Martin).

⁷² See G. Fabrikant, *AT&T's Cable Deal: The Impact; Expect More Mergers, Experts Say, at Expense of Consumers*, New York Times, at C-8 (Dec. 21, 2001).

⁷³ 2001 Report on Cable Prices at ¶ 47.

⁷⁴ See id. at ¶ 8.

⁷⁵ Id. at ¶ 10.

⁷⁶ See 2000 Report on Cable Prices at Tables 5 and 6; 2001 Report on Cable Prices at Tables 4 and 5; 2002 Report on Cable Prices at Tables 4 and 5.

⁷⁷ See, e.g., C. Siern, *Stay Tuned for Still-Higher Cable Bills*, Washington Post, at A01 (Jan. 10, 2002); D. Lieberman, *Premium Cable May Go Digital Only, Cost More*, USA Today (May 21, 2002).

⁷⁸ 2002 CFA/CU Study at 18.

⁷⁹ See 2001 Report on Cable Prices at ¶ 22; Bureau of Labor Statistics, U.S. Dep't of Labor, *Consumer Price Indexes: Cable Television*, <http://www.bls.gov/cpi/cpifact9.htm> (accessed on Jan. 27, 2003).

⁸⁰ 2001 Report on Cable Prices at Table 13; 2002 Report on Cable Price, at Table 10.

⁸¹ See 2000 Report on Cable Prices; 2001 Report on Cable Prices; 2002 Report on Cable Prices.

⁸² Report on Cable Industry Prices, Adopted by FCC June 16, 2003, *Adelstein concurrence*, at p. 26 ("2002 Report on Cable Prices").

⁸³ 2003 CU/CFA Study at 3.

⁸⁴ See id.

⁸⁵ See id.

⁸⁶ See D. Shapiro, Banc of America, *Broadband Brief: Is Multichannel Video Destined for a Price War?* at Figure 3 (Nov. 27, 2002) (estimating DBS' programming cost as 37-40 percent of programming revenue); D. Shapiro, et al., Banc of America, *Initiating Coverage of DBS Sector* at Figures 8 & 9 (Sept. 19, 2002) (same); R. Bilotti, et al., Morgan Stanley, Deun Winter, *Broadband Cable: Truth, Lies, and Truck Rolls: Understanding Product Profitability* at 27 (estimating cable's digital programming cost as 28-31 percent of digital revenue); J. Higgins, *Comcast Puts Squeeze on Programming Fees*, Broadcasting & Cable (Jan. 13, 2003) (cost of programming is 28 percent of revenue).

⁸⁷ See NCTA Industry Statistics: *Cable Advertising Revenue*, <http://www.ncta.com/legislative/legAffairs.cfm?legRegID=17>, <http://ncta.com/industry/overview/indStats.cfm?statID=10> (accessed May 28, 2003).

⁸⁸ For example:

Time Warner Cable second quarter 2003 results highlights:

- Operating income up 6 percent
- Revenues up 9 percent
- Subscription revenues up 13 percent

See AOL Time Warner Post Second Quarter 2003 Results, available at

http://www.aoltimewarner.com/investors/quarterly_earnings/2003_2q/pdf/release.pdf (accessed August 7, 2003).

Cox second quarter 2003 results highlights:

- Operating cash flow up 20 percent

- Revenues up 14 percent
- 112,452 broadband Internet subscribers added, for a total of 1.7 million, reflecting 50% year-over-year growth'

See Cox Communications Announces Second Quarter Financial Results for 2003, available at <http://www.cox.com/PressRoom/attachments/Q2ProForma.pdf> (accessed August 7, 2003).

⁸⁹ Press Release, *Comcast Reports Second Quarter 2003 Results*, July 31, 2003, available at <http://www.emcsk.com/news/20030731-115180.cfm?ReleaseID=115180> (accessed August 7, 2003).

⁹⁰ Banc of America Securities, *Analysis of Sales/Earnings, Comcast Corporation* (May 8, 2003), at 4. In the same vein, Cox Communications has issued guidance for 2003 of 14-15 percent revenue growth and 17-18 percent operating cash flow growth. See <http://www.cox.com/PressRoom/06302003Q2Financials.asp>, (accessed Aug. 7, 2003). See also *The Winning Strategy: Positioning Us for Future Growth*, Cox Communications, Inc., Lehman Brothers Conference (May, 2003), available at <http://www.cox.com/investor> (accessed May 10, 2003).

⁹¹ Press Release, *Comcast Reports Second Quarter 2003 Results*, July 31, 2003, available at <http://www.emcsk.com/news/20030731-115180.cfm?ReleaseID=115180> (accessed August 7, 2003); See also Banc of America Securities, *Analysis of Sales/Earnings, Comcast Corporation* (May 8, 2003), at 2.

⁹² Press Release, *Comcast Reports Second Quarter 2003 Results*, July 31, 2003, available at <http://www.emcsk.com/news/20030731-115180.cfm?ReleaseID=115180> (accessed August 7, 2003).

⁹³ *Comcast Says Loss Wicked But Forecast Looking Up*, New York Times, at C5 (May 9, 2003). Comcast's desire to retain customers has led to some criticized practices, including the company's policy requiring presentation of a death in order to close the account of a deceased subscriber. See D. Oldenburg, *Comcast Can't Stand To Lose a Customer*, Washington Post, at C09 (May 20, 2003).

⁹⁴ Banc of America Securities, *Analysis of Sales/Earnings, Comcast Corporation* (May 8, 2003), at 3.

⁹⁵ J. Forkam, *Burke Talks Up Local Advertising Revenue*, Multichannel News (May 19, 2003).

⁹⁶ Banc of America Securities, *Analysis of Sales/Earnings, Comcast Corporation* (May 8, 2003), at 2.

⁹⁷ J. Forkam, *Burke Talks Up Local Advertising Revenue*, Multichannel News (May 19, 2003).

⁹⁸ With respect to DBS, see Banc of America Securities, *Cable Industry 1Q03 Preview and Industry Outlook* (April 29, 2003), at 28 figure 15 (showing 2002 programming expenses for Echostar and DIRECTV at 37 percent and 40 percent of monthly programming revenue, respectively) and Morgan Stanley, *Broadband Cable* (October 4, 2002), at 84 exhibit 72 (showing cable operator 2002E programming expenses at 29.4 percent of basic revenue). With respect to overbuilders, the major MSOs – Comcast, AOL Time Warner, Charter, Cox, Adelphia, Cablevision – also have a competitive advantage vis-à-vis smaller cable operators because of their bargaining power over programmers. See, e.g., Testimony of James M. Gleason, President & COO, CableDirect, before the U.S. Senate Committee on Commerce, Science and technology, May 6, 2006, available at http://www.senate.gov/~commerce/hearings/testimony.cfm?id=749&wit_id=2020 (accessed May 6, 2003).

⁹⁹ *Id.* comparing Banc of America and Morgan Stanley programming expense analyses.

¹⁰⁰ *Ninth Video Competition Report*, App. C at Tables C-1, C-3.

¹⁰¹ Testimony of Gene Kimmelman, Senior Director for Advocacy and Public Policy, Consumers Union, before the U.S. Senate Committee on Commerce, Science and Technology, May 6, 2006, at 6, available at http://www.senate.gov/~commerce/hearings/testimony.cfm?id=749&wit_id=2019 (accessed May 6, 2003).

¹⁰² 2003 CU/CEA Study at 6.

¹⁰³ See, e.g., S. Beatty, *Rainbow Media Remains Optimistic Despite Low Spending by Advertisers*, Financial Express (Mar. 28, 2001), <http://www.financialexpress.com/fe/daily/20010328/fst28033.html> (accessed Jan. 27, 2003); Cable Television Advertising Bureau Press Release, *Advertising Revenues for National Cable Networks Rise in Third Quarter* (Nov. 14, 2002).

¹⁰⁴ H.R. Rep. No. 628, 102nd Cong., 2nd Sess. (1992).

¹⁰⁵ *Id.*

¹⁰⁶ See 47 U.S.C. § 552.

¹⁰⁷ See *id.*; 47 C.F.R. § 76.309; *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Consumer Protection and Customer Service*, Report and Order, 8 FCC Rcd 2892 (1993).

¹⁰⁸ *Cable Overseer Hounds AT&T*, Sacramento Bus. J. (May 31, 2002) (citing Wall St. J. article); http://www.theacsi.org/scores_commentaries/commentaries/Q1_02_comm.htm.

¹⁰⁹ See American Customer Satisfaction Index Q1, 2003: Transportation/Communications/Utilities & Service, May 21, 2003, http://www.theacsi.org/scores_commentaries/commentaries/Q1_03_comm.htm (accessed July 18, 2003).

¹¹⁰ J.D. Power and Associates News Release, *J.D. Power and Associates Reports: Satellite TV Grows in Consumer Popularity; Cable Service Sees Slight Decline* (Sept. 5, 2002).

¹¹¹ See, e.g., T. Wallack, *Rough Reception For AT&T Cable*, San Francisco Chronicle at A1 (Aug. 11, 2002).

¹¹² S. Brady, *Deep in the Heart of AT&T Dallas*, Cable World at 37 (Oct. 7, 2002) (quoting Lucy Noonan, vice president of customer care and sales, AT&T).

¹¹³ B. Cravey, *Cable TV Causing Static in Green Cove; Angry Residents Say They're Tired of Poor Service*, Florida Times-Union at M1 (June 9, 2001) (quoting Bill Watson, AT&T, area director of operations for Green Cove, Florida).

¹¹⁴ *Cox Officials Face Angry Fairfax Board*, Richmond Times-Dispatch at B2 (Jan. 8, 2002) (quoting Gary McCollum, Cox's regional general manager for Northern Virginia).

¹¹⁵ A. Figler, *Los Angeles Reports Rapid Rise in Cable Customer Complaints*, Cable World (Mar. 4, 2002).

¹¹⁶ See, e.g., City and County of Denver, Office of Telecommunications, *Customer Service Standards*, <http://www.denvergov.org/Telecom/template1361.asp> (accessed Aug. 5, 2003).

¹¹⁷ B. Martinez, *AT&T Given Three Months To Improve Cable TV Service; Council Considers Imposing Fine, Survey To Measure Customer Satisfaction*, Orange County Register (Mar. 21, 2002).

¹¹⁸ C. Stern, *Cox Internet Users to See Rate Increase*, Washington Post at T03 (Apr. 11, 2002).

¹¹⁹ See, e.g., J. Sorentruc, *City Takes Action Against Adelphia*, Stuart News/Port St. Lucie News (Stuart, FL) at A1 (Mar. 26, 2002); H. Nedd, *Suffolk, Va., Eyes Unplugging Cable Firm over Customer Service Complaints*, Virginian-Pilot at B2 (Aug. 15, 2002).

¹²⁰ M. Gialnor, *Cable Rates Going Up, But Still No Deal AT&T Broadband Tells City Hike Set for Sept. 1*, Florida Times-Union at A-1 (Aug. 10, 2002).

¹²¹ See, e.g., D. Lazar, *Viewers Criticize Adelphia*, Union Leader at B1 (Apr. 30, 2002).

¹²² See American Customer Satisfaction Index Q1, 2003; See, *Industry Statistics*, <http://www.ncta.com/industry/overview/indStat.cfm?indOverviewID=2> (accessed July 18, 2003); See Letter from Robert Sachs, President & CEO, NCTA, to the Honorable Member of Congress (Feb. 8, 2002);

¹²³ See, C.TIA, *CTIA's Semi-Annual Wireless Industry Survey Results: June 1985 - June 2002*, <http://www.wow.com.com/pdf/june2002release.pdf> (accessed Jan. 27, 2003).

¹²⁴ See, e.g., L. McNatt, *Suffolk Fines Cable Firm, May Revoke Its Franchise*, Virginian-Pilot at B2 (Nov. 7, 2001); L. Rein, *Fairfax to Fine Cable Firm for Upgrade Failure*, Washington Post at B1 (July 23, 2002); O. Corral, *City's Gripe with AT&T Turns Costly*, Miami Herald at 5B (Dec. 12, 2001).

¹²⁵ See, e.g., L. Rein, *Fairfax to Fine Cable Firm for Upgrade Failure*, Washington Post at B1 (July 23, 2002).

¹²⁶ See, e.g., *County Rejects AT&T-Comcast Cable Merger*, Monterey County Herald (July 31, 2002), <http://www.brandon.com/mld/mcherald/3770578.htm> (accessed Jan. 27, 2003); L. Haugsted, *Ga. County Denies Comcast Transfer*, Multichannel News at 3 (July 22, 2002).

¹²⁷ See, e.g., Comcast, *Cable Commerce Content*, presentation before the Merrill Lynch 5th Annual Media & Entertainment Conference (June 13, 2002), <http://www.cmcsk.com/downloads/ML-6-12.ppt> (accessed Aug. 5, 2003) ("Upgraded Network + New Services + Double-Digit [Operating Cash Flow] Growth = Significant Free Cash Flow Generation." Comcast estimated its free cash flow from the upgraded network at between \$800 million and \$1 billion in 2002.); Cox Press Release, *Cox Communications Surpasses Half Million Customers For Residential Digital Telephone Service* (Apr. 16, 2002) ("Already, we're seeing a significant contribution from Cox Digital Telephone. Less than five years after it was introduced, the service generated operating margins in the mid-twenty- percent range in 2001, and is expected hit margins in the mid-thirties this year.").

¹²⁸ B. Rios, *Competitor Says Comcast Unfair*, Detroit Free Press (April 2 2002), http://www.freep.com/money/business/cable2_20020402.htm (accessed Aug. 5, 2003).

¹²⁹ L. Haugsted, *Everest Piqued Over K.C. Discounts*, Multichannel News (March 25, 2002), http://www.multichannel.com/index.asp?layout=story_stocks&articleId=CA202623&pubdate=03/25/2002&stt=001&display=searchResults (accessed Aug. 5, 2003).

¹³⁰ P. McClintock, *DOJ Focused on EchoStar DIRECTV*, Daily Variety at 8 (Sept. 20, 2002); See also *Overbuilders Ask F.E.s to Deal With Predatory Pricing by MSOs*, Communications Daily (Apr. 5, 2002).

¹³¹ See B. McConnell, *Has Comcast Got a Deal For You: Overbuilders Eye WOW Complaint For Direction On Pricing Competition*, *Broadcasting & Cable* at 18 (Dec. 2, 2002).

¹³² See *id.*

¹³³ *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70 (FCC released Nov. 14, 2002) at ¶ 120 ("AT&T Comcast Order").

¹³⁴ *AT&T Comcast Order* at ¶ 121; see *Ninth Video Competition Report* at ¶ 110, n. 377.

¹³⁵ See *2001 Report on Cable Prices* at n.12 ("We estimate that competitive and noncompetitive operators serve, respectively, approximately 6 percent and 94 percent of cable households nationwide."); See 47 U.S.C. § 543(l)(1)(A-D) (defining "effective competition" standard).

¹³⁶ See *Ninth Video Competition Report* at App. B, Table B-1; *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 17 FCC Rcd 12124 at ¶ 23 (2002).

¹³⁷ *Ninth Video Competition Report* at ¶ 115.

¹³⁸ *Id.* at ¶ 14. In contrast, in 1995 -- the year prior to enactment of the 1996 Act -- the top 10 cable operators controlled 73.22 percent of all cable subscribers. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Second Annual Report ("Second Video Competition Report"), App. G at Table 2, 11 FCC Rcd 2060, 2182 (1995).

¹³⁹ See NCTA, *Top 25 MSOs*, http://www.ncta.com/industry_overview/top50mso.cfm (accessed Jan. 27, 2003) (top 25 MSOs as of September 2002); NCTA, *Industry Statistics*, http://www.ncta.com/industry_overview/indStat.cfm?indOverviewID=2 (accessed Jan. 27, 2003) (basic cable households as of July 2002).

¹⁴⁰ *Compare Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Fourth Annual Report, App. B-12 at Table 7B, CS Docket No. 97-141, FCC 97-423 (Jan. 13, 1998) (TCI, Time Warner, MediaOne) with NCTA, *Top 25 MSOs*, http://www.ncta.com/industry_overview/top50mso.cfm (accessed Jan. 27, 2003) (AT&T/Comcast, Time Warner Cable, Charter). See also *Second Video Competition Report*, 11 FCC Rcd at 2182, App. G at Table 2.

¹⁴¹ *Ninth Video Competition Report* at ¶ 113.

¹⁴² See, e.g., Applications and Public Interest Statement at 31, *Applications for Consent to Transfer of Control of Licenses Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70 (FCC filed Feb. 28, 2002); Reply Comments of AT&T Corp. and MediaOne Group, Inc. at 7, *Applications for Consent to the Transfer of Control of Licenses MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 99-251 (FCC filed Sept. 17, 1999).

¹⁴³ *2001 Report on Cable Prices* at ¶ 42.

¹⁴⁴ See *2001 Report on Cable Prices* at ¶ 45 ("as the number of subscribers belonging to the MSO of which the cable operator is a part increases, the rates charged by that MSO also increase"); *2000 Report on Cable Prices* at 31 ("as clustering increased, average monthly rates also increased").

¹⁴⁵ See *2002 Report on Cable Prices* at Table 4.

¹⁴⁶ *2002 CEA/CU Study* at 6.

¹⁴⁷ U.S. General Accounting Office Report to Congressional Requesters, *Telecommunications: The Effect of Competition from Satellite Providers on Cable Rates*, GAO/RCED-00-164 at 7 (July 2000). The GAO's study examined 1998 cable rates.

¹⁴⁸ *AT&T Comcast Order* at ¶ 45.

¹⁴⁹ J. Higgins, *Comcast Puts Squeeze on Programming Fees*, *Broadcasting & Cable* at 1 (Jan. 13, 2003) (quoting network executive).

¹⁵⁰ *2001 Report on Cable Prices* at ¶ 36.

¹⁵¹ *2001 Report on Cable Prices* at ¶ 24, Table 3.

¹⁵² *2002 Report on Cable Prices* at Att. 5.

¹⁵³ *2001 Report on Cable Prices* at ¶ 47.

¹⁵⁴ U.S. General Accounting Office, *Telecommunications: Issues in Providing Cable and Satellite Television Services*, Report to the Subcommittee on Antitrust, Competition, and Business and Consumer Rights, Committee on the Judiciary, U.S. Senate, GAI-03-130 at 9 (Oct. 2002) ("GAO, *Issues in Providing Cable and Satellite Television Services*").

¹⁵⁵ See *Shear testimony* at 4.

¹⁵⁶ 2002 CFA CU Study at 4, 6.

¹⁵⁷ See 2002 CFA CU Study at 4.

¹⁵⁸ Compare Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers, Cable Television (indicating an annual average increase of roughly 6 percent) with Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers, All Items (indicating an average annual increase from 1992-2001 of less than 3 percent), <http://www.bls.gov/cpi> (accessed Jan. 27, 2003). A nationally representative survey of direct broadcast satellite subscribers finds that the median total cost (including installation charges) of a DBS system was \$300 in 1998; \$195 in 1999; and \$150 in 2000. Yankee Group, *DBS Subscriber Study 2000* at 17 (2000). According to AT&T's expert, DBS "routinely" offers promotions that entirely eliminate these up-front installation charges. Declaration of Janusz A. Ordovery ¶ 81, attached to Reply to Comments and Petitions to Deny Applications for Consent to Transfer Control, *Applications for Consent to Transfer Control of Comcast Corp. and AT&T Corp. to AT&T Comcast Corp.*, MB Docket No. 02-70 (FCC filed May 21, 2002).

¹⁵⁹ J.P. Morgan Securities Inc., *The Cable Industry*, at 4 (Nov. 2, 2001).

¹⁶⁰ *Id.*

¹⁶¹ Banc of America Securities, *Analysis of Sales/Earnings, Comcast Corporation*, May 8, 2003, at 2.

¹⁶² Press Release, *Comcast Reports Second Quarter 2003 Results*, July 31, 2003, available at <http://www.cmesk.com/news/20030731-115180.cfm?ReleaseID=115180> (accessed August 7, 2003).

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¹⁶⁸ See U.S. General Accounting Office Report to Congressional Requesters, *Telecommunications: The Effect of Competition from Satellite Providers on Cable Rates*, GAO/RCED-00-164 at 14 (July 2000); See GAO, *Issues in Providing Cable and Satellite Television Services* at 4. See also NCTA, *History of Cable Television*, http://www.ncta.com/industry_overview/aboutIND.cfm?indOverviewID=58 (accessed Aug. 5, 2003).

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- ²⁴⁸ Testimony of Charles F. Dolan, Chairman, Cablevision, before the U.S. Senate Committee on Commerce, Science and Technology, May 6, 2006 ("Dolan Testimony") at 2, available at http://www.senate.gov/~commerce/hearings/testimony.cfm?id=749&wit_id=2018 (accessed May 6, 2003). It remains to be seen whether Comcast is on board with this strategy, as CEO Brian Roberts told an analysts' conference on May 16, 2003 that: "I don't think there is a need for regulation or new laws. This should be something you can work out in the marketplace." M. Farrell, *Roberts: Ops, Programmers Are Partners*, Multichannel News (May 16, 2003).
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- ²⁶⁰ See Comments of NTIA at 8, *Telephone Company-Cable Television Cross-Ownership Rules*, No. 87-266 (FCC filed Feb. 3, 1992); NTIA Infrastructure Report, NTIA Special Publication 91-26, *Telecommunications in the Age of Information* 235 (Oct. 1991).
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- ²⁹² *Trying to Close Technology Divide As Satellite Operators Battle Cable*, New York Times at C1, C4 (April 15, 2003).
- ²⁹³ *Comcast Says Loss Widened But Forecast Looking Up*, New York Times at C5 (May 9, 2003).
- ²⁹⁴ Comcast Corporation Press Release, *Comcast Reports Second Quarter 2003 Results*, July 31, 2003, available at <http://www.cmcsk.com/news/20030731-115180.cfm?ReleaseID=115180> (accessed August 7, 2003).
- ²⁹⁵ *Id.*

²⁹⁶ Yahoo! Press Release Yahoo! Unveils Its Premium Online Video And Audio Service, Yahoo! Platinum, (March 15, 2003) available at <http://yhoo.client.shareholder.com/ReleaseDetail.cfm?&ReleaseID=104618>, (accessed April 15, 2003).

²⁹⁷ Arbitron/Edison Media Research, *Internet 9: The Media and Entertainment World of Online Consumers* at 11 (Sept. 5, 2002).

²⁹⁸ Declaration of Robert W. Crandall, at ¶ 20, attached to Petition to Deny of Verizon Telephone Companies and Verizon Internet Solutions d/b/a Verizon.net, *Applications for Consent to Transfer of Control of Licenses Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70 (FCC filed Apr. 29, 2002); see also Declaration of Janusz A. Ordovery and Robert D. Willig, ¶ 117, attached to Reply Comments of AT&T Corp. and MediaOne Group, Inc., *Applications for Consent to Transfer Control of Licenses, MediaOne Group, Inc. Transferor, to AT&T Corp., Transferee*, CS Docket No. 99-251 (FCC filed Sept. 17, 1999).

²⁹⁹ Declaration of Robert W. Crandall, at ¶ 21; *Do They Have Anything in Common?*, The Economist at 61 (Feb. 13, 1999); FCC En Banc Hearing Regarding Telecom Mergers, tr. at 27 (Oct. 22, 1998); T. Hearn, *Rivals Demand Access to AT&T-TCI Networks*, Multichannel News at 2 (Nov. 2, 1998).

³⁰⁰ See Memorandum of Understanding between Time Warner Inc. and America Online, Inc. Regarding Open Business Practices at ¶ 6, CS Docket No. 00-30 (Feb. 29, 2000), <http://www.fcc.gov/mb/aoltw/mou.doc> (accessed Jan. 23, 2003).

³⁰¹ See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp. Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816 at ¶ 121 (2000); see also *id.*, Statement of Chairman William E. Kennard at 2.

³⁰² J. Baumgartner, *Eluding the Gatekeeper*, CED (Apr. 1, 2002).

³⁰³ See, e.g., S. Olsen, *Battle Brews over Web Streaming*, CNET News.com (May 31, 2001), <http://news.com.com/2100-1023-267638.html> (accessed Aug. 6, 2003); *ESPN-Charter Dispute Shows Cable Fears of Video Streaming*, Comm. Daily (July 5, 2001); R. Umstead and S. Donohue, *Making Tenses Times Worse, Charter Ruises 'Stream' Bar*, Multichannel News at 1 (June 4, 2001); N. Thompson, *The Future of Ideas: The Fate of the Commons in a Connected World*, Review, Washington Monthly (Nov. 1, 2001).

³⁰⁴ A. Breznick, *Cable Operators Seek to Corral Bandwidth Hogs*, Cable Datacom News (Oct. 1, 2002).

³⁰⁵ L. Dignan, *AT&T Broadband Ops for Tiered Pricing*, CNET News.com (Aug. 1, 2002), available at <http://news.com.com/2100-1023-947559.html> (accessed Aug. 5, 2003).

³⁰⁶ Ex Parte Letter from the Coalition of Broadband Users and Innovators to Michael Powell, Chairman, FCC, and Commissioners, CS Docket No. 02-52, *et al.*, at 1 (Nov. 18, 2002).

³⁰⁷ B. Hammond, *Amazon.com Wants Protections on Access to Info Over Broadband Networks*, TRDaily, Dec. 2002.

³⁰⁸ Ex Parte Letter from Robert Sachs, President, NCTA, to Michael Powell, Chairman, FCC, and Commissioners, CS Docket No. 02-52, *et al.*, at 2-3 (Dec. 10, 2002).

³⁰⁹ See *Overview of Cable Modem Technology and Services*, Cable Datacom News, <http://cabledatcomnews.com/cm/cmic1.html> (accessed Aug. 6, 2003).

³¹⁰ See G. Bittlingmayer and T. Hazlett, *The Political Economy of Cable "Open Access"*, AEI-Brookings Joint Center for Regulatory Studies, Working Paper 01-06, at 13-17 (May 2001).

³¹¹ *Id.*

³¹² *Cable or Satellite? Please Stay Tuned*, New York Times at C1 (July 31, 2003).

³¹³ See Petition of RCN Telecom Services, Inc. to Deny Applications or Condition Consent, *Applications for Consent to the Transfer of Control of Licenses Comcast Corporation and AT&T Corporation, Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70 (FCC filed Apr. 29, 2002). But see also, http://www.seachange.com/Customers/Customers_main.asp, where SeaChange now lists RCN as a customer along with many long time cable incumbents.

³¹⁴ IN DEMAND, *Company Background*, <http://www.indemand.com/about/who.jsp> (accessed Aug. 6, 2003).

³¹⁵ See Comments of Utilicorp Communications Services, Everest Connections Corporation and Exop of Missouri, Inc. at 8, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129 (FCC filed Aug. 2, 2001) ("*Utilicorp/Everest Connections/Exop Comments*") (IN DEMAND "indicated they could not do business with Everest because they had exclusive

arrangements with their owners.”); See Reply Comments of WideOpenWest Holdings, LLC at 8- 9, *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 01-129 (FCC filed Jan. 15, 2002).

³¹⁶ http://www.rcn.com/corpinfo/PA/philadelphia_cable_VOD.php; <http://www.rcn.com/corpinfo/press.php> (accessed April 15, 2003); <http://www.rcn.com/cabletv/impulse/index.php>, (accessed Aug. 6, 2003).

³¹⁷ Intertainer, *Corporate Information*, http://www.intertainer.com/set_corp.html (accessed Jan. 27, 2003).

³¹⁸ Complaint § I.VII, *Intertainer Inc. v. AOL Time Warner Inc., et al.*, Case No. 02-CV-7406 (C.D.Cal. filed Sept. 23, 2002).

³¹⁹ See Reply Comments of WideOpenWest Holdings, LLC at 9, *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 01-129 (FCC filed Jan. 15, 2002).

³²⁰ Petition of RCN Telecom Services, Inc., To Deny Applications or Condition Consent, *Applications for Consent to the Transfer of Control of Licenses, Comcast Corporation and AT&T Corporation, Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70 (FCC filed Apr. 29, 2002).

³²¹ Reply Comments of Gemstar-TV Guide International, Inc. at iii, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 02-145 (FCC filed Aug. 30, 2002).

³²² See Telecommunications Act of 1996, § 304; 47 U.S.C. § 549(a); *Implementation of Section 304 of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 14775, ¶ 29 (1998).

³²³ Statement of the Consumer Federation of America, *et al.*, on the AT&T-Comcast Merger, Submitted to the Subcommittee on Antitrust, Business Rights and Competition, Senate Judiciary Committee (Apr. 23, 2002). See also Comments of the Consumer Electronics Association at 2-3, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129 (FCC filed Aug. 3, 2001).

³²⁴ See *Utilicorp Everest Connections/Exop Comments* at 8; Reply Comments of WideOpenWest Holdings, LLC at 9, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129 (FCC filed Jan. 15, 2002); Petition of RCN Telecom Services, Inc., To Deny Applications or Condition Consent, *Applications for Consent to the Transfer of Control of Licenses, Comcast Corporation and AT&T Corporation, Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70 (FCC filed Apr. 29, 2002).

³²⁵ *Ninth Video Competition report* at ¶¶ 110-111.

³²⁶ *Id.*

Tab 4

BY HAND DELIVERY

March 15, 2007

The Honorable Edward Traynor, Mayor
The Honorable Audie Moran, Trustee
The Honorable Joan Gussow, Trustee
The Honorable Fred Devan, Trustee
The Honorable Chris Sanders, Trustee
c/o Denise Ehrhart, Village Clerk
Village of Piermont
Village Hall
26 Piermont Avenue
Piermont, New York 10968

**Re: Cable Franchise Agreement by and between the Village of
Piermont and Verizon New York Inc. (the "Verizon Franchise")**

Dear Mr. Mayor and Members of the Village Board:

On behalf of Verizon New York Inc. ("Verizon"), thank you for affording Verizon the opportunity to appear before you at the upcoming March 27, 2007 public hearing (the "Public Hearing") regarding its application (the "Application") to the Village of Piermont ("Piermont" or the "Village") for a cable television franchise.

EXECUTIVE SUMMARY

- *The Village and Verizon have worked diligently to introduce the benefits of cable competition to Piermont residents. The incumbent cable service provider will lobby to protect its pecuniary interest by asking the Board to delay Piermont residents' ability to choose an alternate cable provider.*
- *A level playing field analysis requires a review of competitive franchises "taken as a whole." Cablevision continues to raise level playing field objections despite the NY PSC's consistent repudiation of same.*
- *Verizon has decades of independent authority to conduct activities in the public rights-of-way. Cablevision's sole authority to conduct activities*

in the public rights-of-way derives exclusively through its "communications system" franchise.

- *Verizon's "Force Majeure" definition is substantially narrower than Cablevision's description of "force majeure" events.*
- *Verizon's "Gross Revenue" definition is comprehensive, unambiguous and significantly broader than Cablevision's "Gross Receipts" definition.*
- *Neither Verizon nor Cablevision can abandon cable service without the Village's prior written consent.*
- *Verizon is required to comply with the stringent customer service regulations that the NY PSC imposes on cable service providers. Further, as a competitive provider, Verizon will be held to a higher standard by consumers seeking improved customer service.*

INTRODUCTION AND BACKGROUND

The Village and Verizon have worked diligently to introduce the benefits of cable competition to Piermont residents. The incumbent cable service provider will lobby to protect its pecuniary interest by asking the Board to delay Piermont residents' ability to choose an alternate cable provider.

The Public Hearing represents the culmination of a substantial effort on the part of the Village and Verizon to introduce cable competition and its attendant benefits to Piermont. Verizon has made the significant capital investments necessary to upgrade its telecommunications network to enable it to deliver a new generation of ultra-high-speed broadband services, including video service, to Piermont residents over a "fiber to the premises" network (the "FTTP Network"). The FTTP Network is an innovative new technology that uses fiber-optic cable and optical electronics to link homes and businesses *directly* to Verizon's network. The FTTP Network enables Verizon to provide Piermont residents with lightning-fast internet access and superior telephone service. Additionally, the FTTP Network provides next-generation technology that has virtually limitless capacity to deliver *state-of-the art* cable television service to Village residents, which will open the market to unprecedented competition.

The Village has demonstrated a strong commitment to benefit its residents through the introduction of cable competition. The Village's negotiator has labored industriously with Verizon to reach an agreement that is legally sound, fulfills Piermont's cable-related needs and interests, and will enable Verizon to compete with the incumbent on a competitively-neutral basis.

While the Village and Verizon have worked closely to advance the public interest by introducing the benefits of cable competition, the incumbent cable service provider Cablevision has unfortunately engaged in a vigorous campaign designed to thwart the creation of a competitive market in the Village and elsewhere. This campaign is designed to intimidate the Village in order to prevent, or at least delay, the introduction of cable competition and to deprive your constituents of the opportunity to choose a real alternative video service provider. This is a self-serving effort *designed solely* to protect Cablevision's pecuniary interest and market dominance. Cablevision's objections are not offered in the spirit of championing the Village's interests but rather to preclude Piermont residents from having the opportunity to switch providers. It is essential that the Village evaluate the merits of Cablevision's complaints and objections against this backdrop.

Cablevision's tactics violate the spirit of the fundamentally pro-competitive federal and state law, which are designed to reduce regulatory barriers to market entry and to *encourage* companies like Verizon to make the significant capital investments necessary to deliver a new generation of services.

DISCUSSION

Verizon anticipates that Cablevision will propound the same arguments to the Village that it has repeatedly propounded throughout the process in each municipality where Verizon jeopardizes its monopoly position. Cablevision insinuates, contrary to multiple NY PSC orders, that the Verizon Franchise violates the level playing field requirement due to perceived deficiencies in the following primary areas – rights of way management and local authority, build out, force majeure, indemnification, enforceability, and customer service. Cablevision further intimates that the definition of “gross revenue” contained in the Verizon Franchise is deficient. Although Verizon maintains the position that Cablevision's arguments are wholly without merit, to assist in your analysis, Verizon respectfully provides the following information and attached chart in support of the Village's commitment to deliver competition to its residents. This information also includes discussion to address any level playing field concerns that the Village may have.

LEVEL PLAYING FIELD

A level playing field analysis requires a review of competitive franchises “taken as a whole.” Cablevision continues to raise level playing field objections despite the NY PSC's consistent repudiation of same.

The NY PSC renumbered and amended its cable television rules two years ago, intending to “reflect a more competitive environment and changes in federal law that occurred in 1984 and 1996.”¹ The amended rules include a “level playing field” provision codified in 16 NYCRR § 895.3. This provision provides that “[n]o municipality may award or renew a franchise for cable television service which contains economic or regulatory burdens, which *when taken as a whole*,

¹ Case 01-V-0381, “Memorandum and Resolution Adopting 16 NYCRR Parts 890 Through 899” (Issued and Effective April 4, 2005) at 1.

are greater or lesser than those burdens placed on another cable franchise operating in the same area.” 16 NYCRR § 895.3 (emphasis added). The central question in a level playing field analysis is not whether there is a perceived disparity between the burdens imposed by specific franchise provisions considered in isolation, but whether the burdens on the two franchises, *when taken as a whole*, are so materially disproportionate as to preclude fair competition between providers. The regulation does not propose a side-by-side comparison of discrete provisions that are immaterial and/or inconsequential to the day-to-day operations of a business that delivers video and other services to subscribers. As the NY PSC observed in adopting the regulation,

[t]he level playing field provision does not preclude different franchise terms for different companies. Rather, it requires that economic and regulatory burdens *taken as a whole*, shall not be greater for one company than another. The language is intended to maintain flexibility for municipalities in attracting competitive companies while ensuring fairness to all companies competing in an area.²

Cablevision will likely assert that NY PSC regulations contemplate a role for the incumbent cable operator because it is entitled to a level playing field. Most significantly, however, the NY PSC has overruled Cablevision’s identical claim by holding consistently that Verizon’s proposed franchise agreement for various municipalities “does not violate the Commission’s level playing field rule.”³ The NY PSC stated further that a level playing field analysis

does not compel us to undertake a term for term comparison of the respective franchise agreements. Nor will we review the franchise agreements in isolation. Our rule does not preclude the existence of different franchise terms for different companies as they roll out their cable service in various municipalities, should events and circumstances so warrant.⁴

In each case in which the NY PSC addressed Cablevision’s level playing field claim, the NY PSC modified the Verizon franchises by imposing certain conditions and found that, with respect to a comparison between the Cablevision and Verizon franchises,

the remaining discrepancies do not, when taken as a whole, substantiate a level-playing field violation. The differences are immaterial, speculative, ill-defined in terms of economic impact

² *Id.* at 4 (emphasis added).

³ Case 05-V-1263, “Order and Certificate of Confirmation” (Issued and Effective December 15, 2005) (the “*Massapequa Park Order*”) at 23, Case 05-V-1570, “Order and Certificate of Confirmation” (Issued and Effective February 8, 2006) (the “*Nyack Order*”) at 13, Case 05-V-1571, “Order and Certificate of Confirmation” (Issued and Effective February 8, 2006) (the “*South Nyack Order*”) at 13, and Case No. 06-V-0875, “Order and Certificate of Confirmation” (Issued and Effective September 21, 2006) (the “*Lynbrook Order*”) at 7.

⁴ *Id.*

and counterbalanced by other obligations (e.g., other telephone related oversight obligations) and the fact that Verizon is a new entrant in the cable market.⁵

Notwithstanding the foregoing, Cablevision attempts to muddy the waters by conveniently ignoring the NY PSC's level playing field analyses and conclusions. Cablevision merely tries to couch its objections in a different light so as not to implicate the NY PSC's dispositive determinations on this issue.

Finally, Cablevision will claim that its contractual level playing field provision grants it unilateral authority to remove provisions from its existing franchise with the Village. Nevertheless, the NY PSC has repeatedly ordered, *including in the case of Cablevision's recent Piermont renewal agreement*, that Cablevision's contractual attempts to mirror the NY PSC's level playing field requirement must be construed in a manner consistent with the 16 NYCRR 895.3.⁶

LOCAL RIGHT OF WAY AUTHORITY; INDEMNIFICATION

Verizon has decades of independent authority to conduct activities in the public rights-of-way. Cablevision's sole authority to conduct activities in the public rights-of-way derives exclusively through its "communications system" franchise.

In an attempt to create an appearance of inequality between the Verizon Franchise and its current franchise⁷, Cablevision will likely insinuate that the Verizon Franchise somehow shields Verizon's facilities from the type of local oversight and control that is required by law and in the Cablevision Franchise. This argument is plainly wrong and ignores the numerous telecommunications regulations applicable to Verizon's facilities. Verizon's activities are governed by a substantial body of federal, state and local law. For more than 100 years, Verizon has been constructing, accessing and maintaining facilities in the public rights of way throughout New York State pursuant to a comprehensive regulatory regime. The NY PSC explicitly acknowledged this fact in its February 8, 2006 orders conditionally confirming the Nyack and South Nyack franchises:

⁵ *Nyack Order* at 13 and *South Nyack Order* at 13. See also *Massapequa Park Order* at 23 and *Lynbrook Order* at 7-8.

⁶ See, e.g., Case 05-V-0171 – Application of Cablevision of Southern Westchester, Inc. d/b/a Cablevision for Approval of the Renewal of its Cable Television Franchise for the Town of Eastchester (Westchester County) (Issued and Effective October 30, 2006), Case No. 05-V-0413 – Application of Cablevision Systems Long Island Corporation d/b/a Cablevision for Approval of the Renewal of its Cable Television Franchise in the Village of Floral Park (Nassau County) (Issued and Effective June 1, 2006), Case 06-V-0028 – Application of Cablevision of Wappingers Falls, Inc. d/b/a Cablevision for Approval of the Renewal of its Cable Television Franchise in the Village of Fishkill (Dutchess County) (Issued and Effective June 1, 2006), Case 05-V-1144 – Application of Cablevision of Rockland/Ramapo, LLC d/b/a Cablevision for Approval of the Renewal of its Cable Television Franchise for the Village of Airmont (Rockland County) (Issued and Effective January 17, 2006), Case 04-V-1583 – Application of Cablevision of Rockland/Ramapo, Inc. d/b/a Cablevision for Approval of the Renewal of its Cable Television Franchise for the Village of Piermont (Rockland County) (Issued and Effective February 22, 2007).

⁷ A Franchise Renewal Agreement between the Village of Piermont, Rockland County, State of New York and Cablevision of Rockland/Ramapo, LLC (the "Cablevision Franchise").

Local governments have presumably been able to manage the telephone facilities that have utilized the public rights-of-way and need not attempt to exercise additional authority in the cable franchise to govern the construction, placement, and operation of mixed-use facilities that will be used to provide video services.⁸

In these confirmation orders, the Commission cited its Declaratory Ruling⁹ in which it recognized that local governments have oversight authority for facilities in the public rights-of-way, even if they are used exclusively for telephone services. Therefore, the NY PSC concluded, “[b]y subjecting Verizon’s mixed-use facilities to the Commission’s minimum franchise standards and local government’s police power, we do not believe that local governments have been granted broad new authority over the construction, placement and operation of Verizon’s mixed-use facilities.”¹⁰ Consistent with this regulatory guidance, Section 2.2 of the Verizon Franchise provides:

The FTTP Network: Upon delivery of Cable Service, by subjecting Franchisee’s mixed-use facilities to the NY PSC’s minimum franchise standards and the LFA’s police power, the LFA has not been granted broad new authority over the construction, placement and operation of Franchisee’s mixed-use facilities.

Cablevision will doubtlessly object to this language, as it has objected to nearly identical language in other municipalities (without success).¹¹ For example, in the case of the Town of Hempstead, the NY PSC emphatically rejected Cablevision’s position with respect to Section 2.2 as a non-issue:

as it relates to the right-of-way management provision in 2.2 of the proposed agreement, we *do not agree* with Cablevision that the language limits local police powers and violates our prior orders. *Provision 2.2 is merely the parties’ effort to incorporate our prior rulings in the Nyack and South Nyack confirmations. The language does not create a significant limitation and will be construed consistent with our prior rulings.*¹²

⁸ *Nyack Order* at 8 and *South Nyack Order* at 8.

⁹ Cases 05-M-0250 and 05-M-0247, “Declaratory Ruling on Verizon Communications, Inc.’s Build-Out of its Fiber to the Premises Network, NY Public Service Commission” (issued and effective June 15, 2005) (“*Declaratory Ruling*”).

¹⁰ *Nyack Order* at 7-8, *South Nyack Order* at 7-8.

¹¹ See, e.g., Section 2.2 of Verizon’s franchise with the Town of Hempstead, which provides: “2.2 *The FTTP Network:* Upon delivery of Cable Service, by subjecting the Franchisee’s mixed-use facilities to the NY PSC’s minimum franchise standards and the LFA’s police power local governments have not been granted broad new authority over the construction, placement and operation of the Franchisee’s mixed-use facilities.”

¹² Case 06-V-0427, “Order and Certificate of Confirmation” (Issued and Effective May 18, 2006) (the “*Hempstead Order*”) at 6-7 (emphasis added).

Therefore, Cablevision's suggestions that the Verizon Franchise imposes significant limitations on a municipality's management of right-of-way authority are improper and misleading.

In a similar vein, Cablevision may recommend to the Village that it should demand that Verizon add to the indemnification provisions of the Verizon Franchise an acknowledgement that "construction and maintenance of its FTTP Network is conduct undertaken pursuant to this Franchise." This recommendation flies in the face of the Commission's *Declaratory Ruling* and its subsequent orders confirming Verizon's franchises:

Verizon has already obtained the legal right to use the rights-of-way to upgrade and maintain its existing telephone system. Verizon has maintained its telecommunications network for years under its existing authorizations and consents. The record here suggests that Verizon has the requisite authority from local governments to use the public rights-of-way and that municipalities have sufficient legal authority over Verizon's upgrade activities as a telephone company to properly manage their rights-of-way. Verizon has represented in its pleadings that it is subject to municipal oversight. Municipal governance over rights-of-way is still in effect and Verizon must adhere to those requirements.¹³

Further, the NY PSC established in the *Nyack* and *South Nyack Orders* that "[a]ttempts by municipal governments to impose construction or operating requirements in cable franchises that would apply to mixed-use facilities that go beyond its traditional police powers or minimum cable requirements could unduly inhibit competition and may well be deemed unreasonable under the Public Service Law and federal law."¹⁴

Unlike Cablevision, which has authority to utilize the public rights of way *exclusively through its cable franchise*, Verizon's construction and maintenance of the FTTP Network is undertaken pursuant to its decades of independent authority as a common carrier under Title II of the Communications Act of 1934, as amended, and pursuant to Section 27 of the New York State Transportation Corporations Law. The NY PSC affirmed Verizon's independent authority to upgrade and maintain its existing telecommunications network in the *Declaratory Ruling*. As Verizon noted in its Application, construction of the FTTP Network in the Village is substantial. Verizon maintains the network routinely. Cablevision's anticipated proposal represents an unseemly and deceitful attempt to ensnare the full range of activities related to the FTTP Network in the Verizon Franchise. Cablevision's suggestion will likely be artfully designed to imply that Verizon's indemnification obligation is deficient by failing to adequately protect the

¹³ *Declaratory Ruling* at 20-21.

¹⁴ *Nyack Order* at 8, *South Nyack Order* at 8.

Village; a transparent objective to create a level playing field violation where none exists.¹⁵ Verizon's indemnification obligations exceed the NY PSC's minimum indemnification requirements and fully protect the Village. Any argument by Cablevision to the contrary is disingenuous.

BUILDOUT

Consistent with its practice in other municipalities, Cablevision will probably challenge Verizon's commitment to serve every Village resident with false allegations that the Verizon Franchise does not require Verizon to provide ubiquitous service. This argument has no basis in fact. Once the franchise is approved by the Village and confirmed by the NY PSC, Verizon will offer cable television service to each Village resident within the built out area. Any additional construction consists of feeder lines to individual properties that require permits or are the ongoing subject of property access negotiations with third parties (such as multiple dwelling unit owners), a process over which Verizon has little control.

Verizon complies with the law and does not engage in redlining or other illegal discriminatory practices. Verizon makes this unequivocal commitment to the Village in Section 3.2 of the Verizon Franchise. Discriminatory conduct violates Verizon's deployment practices. Moreover, it only makes financial sense for Verizon to exercise its best efforts to serve every Village resident as soon as possible. Toward that end, Verizon is actively seeking access to all private and public multi-dwelling units in the Village and other locations where property access must be negotiated. Once property access negotiations are successfully concluded and all required permits and easements have been granted, subject to the conditions set forth in the Verizon Franchise, Verizon will be able to offer service to each Village resident. Verizon is committed to ensuring that the benefits of cable competition will be made available to *all* Village residents.

FORCE MAJEURE

Verizon's "force majeure" definition is substantially narrower than Cablevision's description of "force majeure" events.

Verizon's "Force Majeure" definition is narrower than Cablevision's description of "force majeure" events in its franchise. Section 8.4 of the Cablevision Franchise provides:

In no event, and notwithstanding any contrary provision in this section or elsewhere in this Agreement, shall this Agreement be

¹⁵ We note further that, unlike the Verizon Franchise, which defines the Cable System using the federal definition, the Cablevision Franchise does not contain a "cable system" definition. Instead, the Cablevision Franchise defines a "communications system" or "system" as "the facility, which is the subject of this Franchise, consisting of antennae, wire, coaxial cable, amplifiers, towers, microwave links, wave guide, optical fibers, optical transmitters and receivers, satellite receive/transmit antennae, and/or other equipment designed and constructed for the purpose of producing, receiving, amplifying, storing, processing, or distributing analog and/or digital audio, video, or other forms of electronic, electromechanical, optical, or electrical signals." *Cablevision Franchise* § 1.4.

subject to default, revocation or termination, or Franchisee be liable for non-compliance with or delay in the performance of any obligation hereunder, where its failure to cure or to take reasonable steps to cure is directly attributable to formal U.S. declaration of war, government ban on the affected obligation, U.S. government sponsored or supported embargo, civil commotion, strikes or work stoppages (except those against Franchisee and its affiliates), fires, any acts of God or of nature or *other events beyond the immediate control of Franchisee.* (emphasis added)

By contrast, Section 1.12 of the Verizon Franchise narrowly defines "Force Majeure" as:

Force Majeure: An event or events *reasonably* beyond the ability of Franchisee to *anticipate and control*. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary. (emphasis added)

As noted above, Verizon's definition is narrower because it contemplates Verizon's ability to "*anticipate and control*" a situation, while Cablevision's description contains the broader catch all "*or other events beyond the immediate control of Franchisee.*"

Cablevision may urge the Village to revise the "Force Majeure" definition by deleting the phrase "or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary." Nevertheless, such descriptive circumstances are appropriately included in the definition.

Cablevision may urge the Village to revise the "Force Majeure" definition by deleting the phrase "or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary." Nevertheless, such descriptive circumstances are highly appropriate.

First, utility poles in Rockland County are shared by Verizon and the power company Orange and Rockland Utilities, Inc. ("O&R"), with maintenance responsibilities allocated among

the parties. If O&R fails to service, monitor or maintain one or more poles for which it bears responsibility, there is a possibility that Verizon may face work delays as a result.

Second, Verizon is a telecommunications company, not an equipment manufacturer. Second, as last year's merger announcement regarding Nokia Corp. and Siemens AG suggests, there is a wave of consolidation in the electronics equipment manufacturing industry. As a result of changes in the industry, it may be possible that materials become unavailable from time to time. Additionally, the FTTP Network is cutting-edge technology, so there is likelihood that, as the technology evolves, the industry may experience temporary shortages of materials.

Moreover, unlike Cablevision's employees, Verizon's employees are represented by organized labor unions, and work is allocated pursuant to Verizon's obligations under collective bargaining agreements. Therefore, even absent the events of strike, labor disturbance or dispute, there may be situations where Verizon faces an unavailability of qualified labor to perform the work necessary.

GROSS REVENUE

Verizon's "Gross Revenue" definition is comprehensive, unambiguous and significantly broader than Cablevision's "Gross Receipts" definition.

Cablevision will likely try to manufacture a level playing field violation by claiming that the definition of "Gross Revenue" in the Verizon Franchise is not as broad as the "Gross Receipts" definition contained in the Cablevision Franchise. This argument is incorrect.

Consistent with federal law, Verizon defines "Gross Revenue" as "[a]ll revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee from the operation of the Cable System to provide Cable Service in the Service Area." *Verizon Franchise §1.16*. Cablevision's very narrow definition, by way of contrast, is limited to "total annual *subscription payments . . . for video programming service*, and revenue received from advertising sales and home shopping commissions." (emphasis added) *Cablevision Franchise §1.9*. Significantly, Cablevision defines "cable service" using the federal definition; however, it limits the range of receipts contained in "Gross Receipts" to those obtained for "video programming" service rather than cable service.

Additionally, unlike the Cablevision Franchise, the Verizon Franchise unequivocally provides that:

[s]hould revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such

service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment. *Verizon Franchise §1.16.*

This provision provides the Village with significant revenue protections in the event of future changes in law. There is no equivalent protection afforded to the Village in the Cablevision Franchise.

Verizon's definition of "Gross Revenue" is comprehensive and unambiguous. Rather, it is Cablevision's "Gross Receipts" definition that is clearly deficient.

EVASION OF PERFORMANCE

Neither company can abandon cable service without the Village's prior written consent.

Cablevision will likely imply that the Verizon Franchise contains provisions that could be used by Verizon to avoid inconvenient franchise obligations. This is a veiled insinuation that the Verizon Franchise places lesser economic and regulatory burdens on Verizon than those imposed on Cablevision.

Section 11.7 of the Verizon Franchise provides "[f]ranchisee shall not abandon any Cable Service or portion thereof without the LFA's prior written consent as provided in the Cable Law." This language is substantially similar to Section 8.6 of the Cablevision Franchise, which provides: "[f]ranchisee shall not abandon any service or portion thereof required to be provided pursuant to the terms of this Agreement without the prior written consent of the Village."

As it has done in the case of each effective Verizon Franchise, Cablevision will predictably campaign for the deletion of Verizon Franchise § 12.4.1. Cablevision has raised this issue at both the local level and during NY PSC confirmation proceedings, alleging that this provision is an "escape clause" that Verizon may use to avoid inconvenient franchise obligations. Cablevision wrongly asserts that Verizon is exempt from monetary sanctions or possible termination due to its failure to comply with franchise obligations that would cause Verizon "practical difficulties" or "hardship." Cablevision presents this provision in a purposefully misleading and deceptive manner.

The referenced section, 12.4.1, is hardly an 'escape clause.' Instead, it only protects Verizon from a situation in which the Village attempts to rely on a minor failure as a basis for imposing the ultimate sanction of "forfeiture or revocation of the Franchise." Section 12.4.1 of the Verizon Franchise provides:

[f]urthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the

Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee that outweigh the benefit to be derived by the LFA and/or Subscribers.

The Village may still avail itself of the remedy of revocation in the event of "substantial noncompliance with a material provision of" the Verizon Franchise pursuant to § 11.4.4:

Enforcement: Subject to Section 12.11 below and applicable federal and state law, in the event the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may . . .

In the case of a substantial noncompliance with a material provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.
Verizon Franchise §§11.4 and 11.4.4.

As a practical matter, § 12.4.1 is unlikely to be a significant factor in the overall burdens imposed upon Verizon by the franchise. It is difficult to imagine a circumstance severe enough to warrant Village action under § 11.4.4, which would nevertheless be insignificant enough to warrant a Verizon claim to relief under § 12.4.1. Thus, although § 12.4.1 may provide some benefit to Verizon in rare circumstances, the likelihood that such circumstances will materialize during the term of the franchise is *de minimis*, and the provision does not materially alleviate Verizon's burdens under the franchise.

Most significantly, however, and not disclosed by Cablevision, the NY PSC rejected Cablevision's objection to Section 12.4.1, ordering that "no modification or conditioning" of this provision was required "because no Commission rule prevents the parties from agreeing to such a provision."¹⁶

CUSTOMER SERVICE

Verizon is required to comply with the stringent customer service regulations that the NY PSC imposes on cable service providers. Further, as a competitive provider, Verizon will be held to a higher standard by consumers seeking improved customer service.

Cablevision will probably recommend that the Village seek to include a provision stating that "[t]he LFA shall have the right to promulgate new, revised or additional consumer protection standards, and penalties for Franchisee's failure to comply therewith, consistent with

¹⁶ *Hempstead Order* at 6.

the authority granted under Section 632 of the Cable Act (47 U.S.C Sec. 552)." This additional provision is entirely unnecessary. First, Section 2.5 of the Verizon Franchise clearly states that the franchise is "subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act." Second, Piermont already has the rights under 47 U.S.C § 552 to establish and enforce customer service requirements and to enact and enforce consumer protection laws.

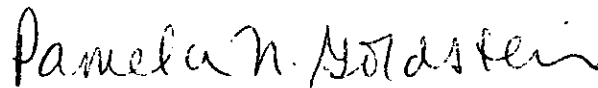
Finally, as a competitive market entrant, Verizon will be held to a higher standard by consumers seeking improved customer service. If Verizon's customer service is not exemplary, subscribers will return to the incumbent. At the present time, Village residents are left with no choice. As a result of competition, customer service will improve across the board, and all Village consumers will benefit.

CONCLUSION

Verizon is eager to introduce cable competition to Piermont and to offer Piermont residents the opportunity to choose among cable providers. To fulfill their commitment to bring choice to Village residents, the Village and Verizon have worked diligently to negotiate an agreement that is fair and that complies with all applicable laws. As explained in greater detail above, Cablevision's anticompetitive tactics are designed solely to protect its market dominance by denying Piermont residents the benefits of a competitive alternative. The incumbent's self-serving assertions relate not to the inherent fairness of permitting Verizon to compete head-to-head for video subscribers in Piermont, but instead solely to promote Cablevision's pecuniary interest in forestalling Verizon's entry into the market at all costs. It is imperative that the Village review Cablevision's grievances in this very narrow context.

Verizon anticipates the Village's award of a cable franchise at the Public Hearing and is excited to benefit Village residents through the introduction of cable competition. In the meantime, we remain available at any time to answer any questions that you may have. Mac Kerbey is available at (617) 628-3436 and I am available at (212) 548-2136.

Respectfully submitted,



Pamela N. Goldstein

cc: Denise Ehrhart, Village Clerk
Walter Sevastian, Esq., Village Attorney
Verizon New York Inc.

**Verizon New York Inc. ("Verizon") Response to
Cablevision's Anticipated Objections to the
Cable Franchise Agreement by and between the Village of Piermont and Verizon
(the "Verizon Franchise")**

Issue	Likely Cablevision Claim	Verizon Response
Service to Everyone in the Village on Request	Cablevision will likely claim that Verizon is attempting to evade its obligation to serve every Village resident.	Consistent with the requirements of Sections 895.1(b) and 895.5 of the New York Public Service Commission ("NY PSC") rules and regulations, Verizon must offer cable service to significant numbers of subscribers within twelve months and to all residential areas of Piermont within five years. Section 3.1 of the Verizon Franchise essentially mirrors the language in these regulations.
Maximizing Franchise Fees	<p>Cablevision will likely argue that the Village will lose revenue based on Verizon's "Gross Revenue" definition.</p> <p>Cablevision will likely assert, among other things, that Verizon's definition of "non-cable services" deviates from federal law.</p>	<p>Verizon's "Gross Revenue" definition covers a broad, clearly-defined range of revenue sources and ensures clarity with respect to Verizon's financial obligations to the Village: "all revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee from the <i>operation of the Cable System to provide Cable Service</i> in the Service Area." In contrast, Cablevision's franchise with the Village narrowly limits "Gross Receipts" to "the total annual subscription payments . . . for <i>video programming services</i> . . . and revenue received from advertising sales and home shopping commissions." Even though Cablevision uses the federal definition of "Cable Service," it limits its gross receipts to subscription payments for video programming services rather than cable service.</p> <p>Additionally, Verizon's "gross revenue" definition provides the Village with substantial protection in the event of future changes in law regarding classifications of non-cable services as cable services. The Verizon Franchise distinctly provides: "Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the</p>

Verizon New York Inc./Village of Piermont
March 2007

**Verizon New York Inc. ("Verizon") Response to
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(the "Verizon Franchise")**

Issue	Likely Cablevision Claim	Verizon Response
Maximizing Franchise Fees (continued)		exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment." There is no equivalent protection for the Village in Cablevision's franchise.
Protection of Rights of Way	Cablevision will likely represent that Verizon's agreement impedes the Village's authority to protect its rights-of-way and enforce its local laws.	<p>Unlike Cablevision, which has authority to utilize the public rights of way <i>exclusively</i> through its <i>cable franchise</i>, Verizon's construction and maintenance of its "Fiber to the Premises Network" is undertaken pursuant to (a) its pre-existing independent authority as a common carrier under Title II of the Communications Act of 1934, as amended (the "Communications Act") and (b) Section 27 of the New York State Transportation Corporations Law.</p> <p>Both cable franchise agreements comply with NY PSC rules and regulations with respect to police powers provisions; <u>however</u>, because Verizon is a common carrier regulated under Title II of the Communications Act, the Village has <i>two</i> regulatory regimes under which it can oversee Verizon's activities and facilities in the public rights-of-way.</p> <p>Conversely, Cablevision's provision of telephone service in the Village is <i>wholly unregulated</i>.</p>

**Verizon New York Inc. ("Verizon") Response to
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Issue	Likely Cablevision Claim	Verizon Response
Force Majeure	Cablevision will likely claim that "force majeure" provisions are typically reserved for very unusual events outside of party's control.	<p>First, unlike most contractual "force majeure" provisions, Verizon's "force majeure" definition imposes a "reasonableness" standard <u>and</u> includes Verizon's ability to "<i>anticipate and control</i>" a situation. Cablevision's "force majeure" provision is substantially broader, because it includes "other events beyond the immediate control of Franchisee." Practically any event can fall into such catch-all category.</p> <p>Finally, <i>unlike Cablevision's workforce</i>, Verizon's employees are represented by organized labor unions, and work is allocated pursuant to Verizon's obligations under collective bargaining agreements. Therefore, even absent the event of a strike, there may be situations involving labor disputes and/or Verizon may face an unavailability of qualified labor to perform essential work.</p>
Enforcement	Cablevision will likely insinuate that Verizon has planted an "escape clause" within its franchise agreement.	<p>Section 12.4.1 of the Verizon Franchise is limited and merely recognizes that the Village does not intend to revoke the agreement for minor delays in performance of <i>non-material</i> provisions. For situations that would actually create a hardship for either the Village or Verizon subscribers, the Village has multiple remedies available, including a \$7,500 security provision, and, for most egregious violations, revocation of the franchise.</p> <p>By contrast, there is no security requirement in Cablevision's franchise.</p>

**Verizon New York Inc. ("Verizon") Response to
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Issue	Likely Cablevision Claim	Verizon Response
Senior Discount	Cablevision will likely argue that senior subscribers will receive no discount from Verizon.	<p><i>All Village consumers will benefit through cable competition.</i></p> <p>With the introduction of unprecedented competition in the area of cable television, the market will dictate pricing and each cable provider will be required to respond accordingly in order to secure or maintain consumers' business. In fact, the Federal Communications Commission (the "FCC") reported in its 2005 assessment of video programming competition that increased competition in the multichannel video programming distributor market has led to improvements in cable television services, and, <i>in the case of facilities-based competition – lower prices for customers.</i> Moreover, studies by the General Accounting Office in 2004 and the FCC in 2005 show that prices are <i>15 – 16% lower</i> when two wireline cable providers compete in the same market. FCC Chairman Kevin Martin proclaimed just last year that "competition in the market for video programming serves to improve quality and customer service, increase consumer choice, decrease prices, and promote innovation." Competitive pricing can beat a situation where a regulated floor has been established.</p>
Level Playing Field	<p>Cablevision will likely claim that the measure of the level playing field is Verizon's agreement with other New York State municipalities.</p> <p>Cablevision will likely argue further that Cablevision, <i>rather than the Village or the NY PSC</i>, is the sole arbiter of a level playing field determination.</p>	<p>The NY PSC has repeatedly ordered the following in conducting a level field analysis:</p> <p><i>"[T]his analysis does not compel us to undertake a term for term comparison of the respective franchise agreements. Nor will we review the franchise agreements in isolation. Our rule does not preclude the existence of different franchise terms for different companies as they roll out their cable service in various municipalities, should events and circumstances so warrant."</i></p>

Verizon New York Inc./Village of Piermont
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**Verizon New York Inc. ("Verizon") Response to
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Issue	Likely Cablevision Claim	Verizon Response
Level Playing Field (continued)		<p>The NY PSC's level playing field analysis requires Verizon's agreement with the Village to be compared in its totality to Cablevision's agreement with the Village, <u>not</u> to other Verizon's agreements with other municipalities.</p> <p>Finally, <i>the NY PSC</i> has repeatedly ordered that Cablevision's contractual level playing field provisions <i>must be read in a manner consistent with the NY PSC's level playing field requirement set forth in Section 895.3</i> (of the NY PSC rules and regulations).</p>

Tab 5



Monica F. Azare
Senior Vice President
State Public Policy and Government Affairs – NY/CT

140 West Street, 30th Floor
New York, NY 10007

Phone 212 321-8140
Fax 212 791-0526
monica.f.azare@verizon.com

March 23, 2007

The Honorable Edward Traynor
Village Hall
478 Piermont Avenue
Piermont, New York 10968

Dear Mayor Traynor:

Verizon is looking forward to the public hearing on Tuesday, March 27th in the Village of Piermont to consider approval of Verizon's video franchise application. It is a step in a comprehensive review process that will open the door to cable choice and advanced video technology for the residents of Piermont.

I respect and thank you and those who negotiated on behalf of the Village of Piermont for your determined efforts in reaching this high point in the franchise process. The results are commendable. Together, we have crafted a franchise agreement that is fair and equitable, competitively neutral, and consistent with Public Service Commission rulings as well as all state and federal laws and regulations.

As you prepare for the upcoming hearing, please know that Verizon is committed to meeting the needs of the community and, more importantly, to delivering a competitive, next-generation cable technology and entertainment platform to the residents of Piermont. I trust that the franchising team has answered all of your questions. Please feel free to contact me at the number above if there is additional information that you need.

I have enclosed information outlining the extraordinary benefits of Verizon FiOS TV - the service that awaits the approval of you and your trustees.

Again, thank you for your commitment to bringing cable choice and a new video technology to the Village of Piermont.

Sincerely,

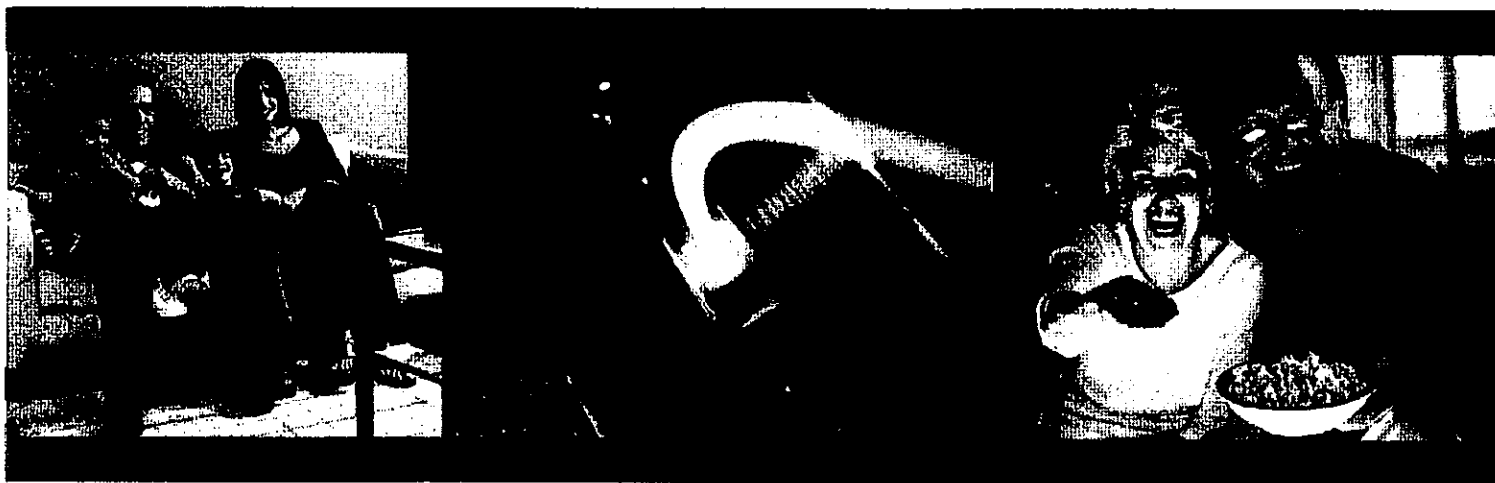


Monica Azare

cc: The Honorable Audie Moran
The Honorable Joan Gussow
The Honorable Fred Devan
The Honorable Vince O'Brien
Walter Savestain, Town Attorney

Verizon FiOS TV

Village of Piermont, NY



www.verizon.com/ny



We never stop working for you.

The Village of Piermont Can Advance New York's Broadband Revolution.

Favorable action on Verizon's proposed cable franchise agreement positions the Village of Piermont to be among the first group of communities in New York to open the doors to the robust competition underway in New York's television and video marketplace. A win for the community -- and its residents.

- **Benefits to the community:** The competitive cable TV franchise agreement under consideration will deliver:
 - **Homebuyers who actively seek out the Village of Piermont** – Fiber to the home has become an important criterion to customers in the housing market. In communities where Verizon has deployed its fiber optic network, homebuyers favor properties served by it.
 - **Competitive Consumer Prices** – Cable rates increase less in places where cable operators face real wireline competition.
 - According to the FCC, rates for basic and expanded basic cable TV service rose by about 5% in 2005, to \$43. Those rates are up 93% over the past decade.
 - The remedy? Competition! The FCC's December 2006 report shows that in areas where there is land-based competition like Verizon FiOS TV, prices are 17% below average.
 - And in areas where Verizon is offering FiOS TV, Cablevision has offered freebies, like free DVR service or free HBO, and steep discounts to keep customers from disconnecting. And they're offering new customers the triple play bundle for \$89.95 monthly with a one year contract. It's amazing what a little competition can do for consumers!

The Village of Piermont is among the first.

- **Deployment Commitment:** Piermont is among the first communities in New York to benefit from Verizon's fiber-to-the-premises (FTTP) initiative. Today, this network offers the Village of Piermont the largest ever voice, data, and video pipeline into the home, resulting in clearer, more reliable voice connections and lightning-fast Internet connections - far faster than the most powerful cable modem connections.
- **Personnel and Resource Commitment:** Verizon has hired new full-time employees and contractors to deliver fiber to the home in the area.
- **Quality Commitment:** Verizon is delivering the best video offering on the market to downstate New York – and intends to do the same for the residents of Piermont.

Broadband. The Village of Piermont a lot riding on it.



We never stop working for you.



Power to the people who have fiber-optic TV!

Verizon FiOS TV takes entertainment to a level you never imagined.

More Value

FiOS TV is all about simple packages and competitive prices. FiOS TV Premier delivers an unmatched lineup with nearly 200 channels of television and music entertainment. It's an even better value when bundled with our FiOS Internet Service.

A Superior Network

Our 100% fiber optic network delivers an all digital experience with better picture and sound quality, more choices and more control. The FiOS network has far more capacity than cable's and is less vulnerable to weather outages and electrical interference - advantages that add up to a vast new dimension of bandwidth, speed and power.

On Demand

With FiOS TV, you have instant access to a library of approximately 4,000 of the latest titles; blockbuster movies, kids' shows, sporting events and much more, all at a touch of a button.

HDTV

FiOS TV offers more than two dozen high definition channels, with all of your favorite channels like ESPN, Discovery, HD Net and more!

More Control

Parental Controls allow you to block access to shows either by channel, rating or category. You can also selectively block Pay Per View and On Demand purchases, and choose to show or hide programs from the TV Listings. And these easy to use features come at no additional charge to digital service customers.

Dual-tuner, Home Media DVRs, and FiOS TV Widgets

FiOS TV gives you the freedom to pause and rewind live TV, record one show while watching another - and fast forward to your favorite part - all without a VCR, tapes or DVDs. And our Home Media DVR allows you to view recorded programs from any room in the house with a television and set-top box and easily access photos and music from your personal computer and play them on your entertainment center. FiOS TV Widgets gives you local weather and traffic on your TV screen at the touch of a button, without interrupting what you're watching.

Global Reach

FiOS TV's multicultural lineup is unmatched in the industry. Whether you choose our Spanish language tier, La Conexión, or any of the popular international premium channels, you stay connected to the world.

More channels. More choices. Verizon FiOS TV.

* Programming and prices are subject to change. Applicable franchise fees, regulatory fees and taxes apply. Other terms and conditions apply.

Verizon FiOS TV — New York Area Channel Lineup

Local	
2	CBS — WCBS-TV 2
4	NBC — WNBC-TV 4
5	FOX — WNYW-TV 5
6	WRNN-TV 48
7	ABC — WABC-TV 7
8	Superstation — WGN-TV
9	My WWOR-TV 9
10	WLNY-TV 55
11	CW — WPIX-TV 11
12	Telenovela — WNUJ-TV 47
13	PBS — WNET-TV 13
17	WFTY-TV 67
18	WMBC-TV 63
21	PBS — WLW-TV 21
23	PBS — WJMN-TV 50
26	NYC-TV
29	PBS — WFME-TV 66
31	iWPKX-TV 31
32	Local Programming
33	Local Programming
34	Local Programming
37	Local Programming
38	Local Programming
40	Local Programming
41	Univision — WXTV-TV 41
48	TV Guide
49	Weatherman Local
Entertainment	
50	USA Network
51	TNT
52	TBS
53	FX
54	Spike TV
60	ESPN
61	ESPN Classic Sports
62	ESPN News
63	ESPNU
64	ESPN 2
65	YES
66	MSG
67	SportsNet NY
68	Speed Channel
69	NFL Network
304	Fox Sports Net NY
306	VERSUS
321	MSG 2
322	Fox Sports Net NY2
70	CNN
71	CNN Headline News
72	Fox News
73	CNBC
75	Bloomberg TV
76	CNN International
77	CNBC World
78	ABC News Now
79	C-SPAN
80	C-SPAN 2
81	C-SPAN 3
89	The Weather Channel
90	Discovery Channel
91	National Geographic Channel
92	Science Channel
93	Discovery Times

94	Pentagon Channel
95	Military Channel
96	Military History Channel
97	History Channel International
98	History Channel
99	Biography Channel
100	Animal Planet
101	TLC (The Learning Channel)
Women	
110	Lifetime
111	Lifetime Movie Network
112	Lifetime Real Women
113	SoapNet
114	Oxygen
129	WE
Shopping	
120	QVC
121	HSN
123	America's Store
125	Jewelry
127	Shop NBC
Home & Lifestyle	
130	Style
131	Discovery Health
132	LIME
133	Fit TV
134	Food Network
135	HQTV (Home & Garden Television)
136	Fine Living
137	DIY (Do It Yourself)
138	Discovery Home
139	Wealth TV
140	Travel Channel
Sports	
150	Sol-Fi Channel
161	A&E
162	Crime & Investigation Network
163	Court TV
164	GSN
165	Bravo
166	Sleuth
167	Logo
168	Ovation
169	BBC America
180	Comedy Central
181	E! Entertainment Television
182	Fox Reality
183	Fuel
184	ABC Family
Music	
170	MTV
171	MTV2
173	MTV Jams
174	MTV Hits
175	VH1
176	VH1 Classic
177	VH1 Soul
178	IMF
179	BET Jazz
180	CMT
181	CMT Pure Country
182	Great American Country
183	Gospel Music Channel
184	BET Gospel
185	Soundtrack Channel
186	FUSE

Movies	
180	Turner Classic Movies
182	Fox Movie Channel
201	AMC
200	Hallmark Channel
202	Family Net
203	AmericanLife TV
204	TV Land
Children	
210	Disney
211	Toon Disney
212	Nickelodeon
213	Nick Too
214	The Nicktoons Network
216	GAS
216	Noggin
217	Cartoon Network (ESP)*
218	Boomerang (ESP)*
219	Discovery Kids
220	Varsity TV
221	FUNimation
222	PBS KIDS Sprout
Religion & Culture	
230	BET
231	TV One
232	Black Family Channel
233	MTV Tr3s
234	GalaVision
235	Muz2
236	Si TV
237	AZN Television
Religion	
240	EWTN
241	INSP
242	iLife
243	Church
244	JCTV
245	BYU
246	Three Angels
248	Daystar
249	Smile of a Child
250	TBN
Sports	
300	Fox College Sports — Atlantic
301	Fox College Sports — Central
302	Fox College Sports — Pacific
303	Tennis Channel
305	Golf Channel
307	Outdoor Channel
308	The Sportsman Channel
311	Fox Sports en Español
312	Fox Soccer Channel
313	GolfTV
315	TVG (Horse Racing)
316	Horse Racing TV
318	Mav TV
319	Blackbelt TV
320	G4
Movies	
340	Starz
341	Starz West
342	Starz Edge
343	Starz Edge West
344	Starz In Black
345	Starz Kids & Family
346	Starz Cinema

347	Starz Comedy
348	Encore
349	Encore West
350	Encore Love
351	Encore Love West
352	Encore Westerns
353	Encore Westerns West
354	Encore Mystery
355	Encore Mystery West
356	Encore Drama
357	Encore Drama West
358	Encore Action
359	Encore Action West
360	Encore WAM!
361	Showtime
362	Showtime West
363	Showtime Showcase
364	Showtime Showcase West
365	Showtime Too
366	Showtime Too West
367	Showtime Beyond
368	Showtime Beyond West
369	Showtime Extreme
370	Showtime Extreme West
371	Showtime Women
372	Showtime Women West
373	Showtime Next
374	Showtime Next West
375	Showtime Family Zone
376	Showtime Family Zone West
377	The Movie Channel
378	The Movie Channel West
379	The Movie Channel Xtra
380	The Movie Channel Xtra West
381	Flix
382	Flix West
384	Sundance
385	IFC
HBO**	
400	HBO
401	HBO West
402	HBO 2
403	HBO 2 West
404	HBO Signature
405	HBO Signature West
406	HBO Family
407	HBO Family West
408	HBO Comedy
409	HBO Comedy West
410	HBO Zone
412	HBO Zone West
413	HBO Latino
414	HBO Latino West
Cinemax**	
415	Cinemax
416	Cinemax West
417	More Max
418	More Max West
419	Action Max
420	Action Max West
421	Thriller Max
422	Thriller Max West
423	Women's Max
424	At Max
425	Five Star Max
426	OuterMax

*A Spanish-language Secondary Audio Program (SAP) is available for selection.

**Subscription to corresponding premium channels and packages required.

FiOS TV frequently updates its channel offerings. To view our latest published channel lineup, please visit verizonfios.com/tv.

FiOS TV Local

Arts & Entertainment

Sports

News & Information

Lifestyle

Premiums

Verizon FiOS TV — New York Area Channel Lineup

Other Premiums**						
430 Playboy TV	514 Fox Soccer Channel	688 TBN Enlace	812 ESPN 2 HD			
431 Playboy TV en Español	516 GoTV	689 EWTN Español	814 NFL Network HD			
435 heret			816 YES HD			
En Español**		Music Choice				
440 Galavisión	518 CNN en Español	800 Showcase	817 HD Net			
442 ESPN Deportes	519 CNN	801 Today's Country	818 HD Net Movies			
443 Fox Sports en Español	520 CNN Headline News	802 Classic Country	819 Universal HD			
444 GoTV	521 Fox News	803 Bluegrass	820 Discovery HD			
446 CNN en Español	522 CNBC	804 R&B and Hip-Hop	821 Wealth TV HD			
447 Canal SUR	524 C-SPAN	805 Classic R&B	822 National Geographic Channel HD			
448 TVE Internacional	525 Canal SUR	806 Smooth R&B	823 MTV HD			
452 History Español		807 R&B Hits	HD Premium**			
453 Discovery en Español	529 TVE Internacional	808 Rap	830 HBO HD	Local Plus		
454 Viajar y Vivir	530 History Español	809 Metal	831 Cinemax HD			
456 Infinito	531 Discovery Channel	810 Rock	832 Showtime HD			
457 MTV Tr3s	532 Discovery en Español	811 Arena Rock	833 TMC HD			
458 VH Uno	534 Animal Planet	812 Classic Rock	834 Starz HD			
459 Toohit	535 TLC (The Learning Channel)	813 Alternative				
462 De Película	Women					
463 De Película Clásico	537 Lifetime	814 Retro-Active				
464 Cine Latino	538 Lifetime Movie Network	815 Electronica	850 NBC Weather Plus	Local Plus		
466 Cine Mexicano	Shopping		851 Tube Music Network			
468 La Familia	540 QVC	816 Dance	854 WNBC 4.4-Multicast			
469 TV Chile	541 HSN	817 Adult Alternative	860 PBS — WLW 21			
470 TV Colombia	543 Shop NBC	818 Soft Rock	861 PBS — WLW CRTE			
472 Sorpresa	Home & Lifestyle		862 13 Kids			
473 Toon Disney Español	545 Discovery Health	819 Hit List	863 13 WORLD			
474 Boomerang (ESP)*	546 Viajar y Vivir	820 Party Favorites	FIOS ON DEMAND**			
475 Discovery Kids en Español	549 Infinito	821 90s	Kids FREE			
477 TBN Enlace	550 Food Network	822 80s				
478 EWTN Español	551 HGTV (Home & Garden Television)	823 70s				
	552 Travel Channel	824 Solid Gold Oldies				
International Premiums**		825 Singers & Standards	ALL FREE			
480 SBTN (Vietnamese)	Pop Culture					
481 CCTV-4 (Mandarin Chinese)	555 E! Entertainment Television	826 Big Band & Swing				
482 CTI — Zhong Tian Channel (Chinese)	556 A&E	827 Easy Listening				
483 TV Japan	557 SI TV	828 Smooth Jazz	Movies			
484 MBC (Korean)	558 Mun2	829 Jazz				
486 The Filipino Channel	559 Comedy Central	830 Blues				
488 TV Asia	560 Sci-Fi Channel	831 Reggae				
487 ART (Arabic)	Movies		Now by Category			
488 RAI (Italian)	562 MTV Tr3s	832 Soundscapes				
489 TV 5 (French)	563 MTV2	833 Classical Masterpieces				
490 TV Polonia	564 Toohit	834 Opera				
491 Rang A Rang (Farsi)	565 VH Uno	835 Light Classical	Subscriptions			
492 RTN Russian	566 CMT	836 Show Tunes				
493 Channel 1 Russian	Family					
496 Bridges TV**	568 De Película	837 Contemporary Christian				
497 MTV K	570 De Película Clásico	838 Gospel	All Movies by Category			
498 MTV Chi	571 Cine Mexicano	839 Radio Disney				
499 MTV Desi	572 Cine Latino	840 Sounds of the Seasons				
Entertainment		841 Musica Urbana				
500 USA Network	Children		FIOS TV Help			
501 TNT	574 ABC Family	842 Salsa y Merengue				
502 TBS	575 La Familia	843 Rock en Español				
503 Galavisión	576 TV Chile	844 Pop Latino				
504 FX	577 TV Colombia	845 Mexicana	Adult			
505 Spike TV	578 TV Land	846 Americana				
508 ESPN Deportes		701 TVN Events				
510 YES		702-707 ESPN-NCAA Sports/GamePlan/Full Court				
511 MSG		HD Broadcast				
512 Fox Sports Net NY		801 CW — WPIX HD	Events			
513 Fox Sports en Español		802 CBS — WCBS HD				
		803 PBS — WNET HD				
		804 NBC — WNBC HD				
		805 FOX — WNYW HD	Playboy Subscribers			
		807 ABC — WABC HD				
		809 My WWOR HD				
		HD National**				
		810 TNT HD	Events			
		811 ESPN HD				

*A Spanish-language Secondary Audio Program (SAP) is available for selection.

**Subscription to corresponding premium channels and packages required.

***Subscription not required.

Programming services offered within each package are subject to change, and not all programming services will be available at all times. Blackout restrictions also apply.

Lifestyle
 Premiums
 Arts & Entertainment
 Sports
 Local Plus
 News & Information
 Music Choice
 PPV
 HD
 FIOS On Demand

We never stop working for you.

NY-1pg-12/08

VEFIV70019

verizon

Why stroll through a video store when you can scroll through one?

Scroll through a library of approximately 4,000 movies and shows that are waiting for you to watch. Use your remote and the Interactive Programming Guide to browse, then make your selection - it's that easy. Need to pause to get more popcorn? Fast forward to skip the scary part or rewind to see it again? No problem! You can do it all from your remote any time you want, day or night.

Free On Demand	Choose from a selection of over 2,400 titles from sports, home & leisure, music, pop culture and more with our FiOS TV library. Channels include Disney, Discovery, ESPN, Home & Garden, MTV and many others.
Movies On Demand	Find the blockbuster movies and your old favorites at the press of a button for a fraction of the cost of a movie ticket.
Premium On Demand	When you subscribe to HBO, Cinemax or the Movie Package, you automatically have access to past and present episodes of original programming and shows. Not to mention, the hottest movie releases - anytime you want.
Pay Per View	Get a front row seat (your couch) to the most anticipated sporting events, concerts, movies and much more in entertainment with our Pay Per View listings.

You got the killer high def TV. Now get the killer high def channels to go with it.

Brilliant picture. Room-shaking sound. Abundance of HD choices. The stunning capacity of fiber optic cable delivers more of the high def programming you love, with spectacular picture, hyper-real color, and amazing clear sound. Watch your favorite sports, movies, and TV shows come alive on your screen.

FiOS TV with HDTV programming offers:

- Images up to 5x sharper than regular TV
- Unparalleled picture/sound quality and a wide-screen format
- An expansive and growing list of HDTV channels
- Easy installation from the FiOS TV HD Set Top Box
- Dolby 5.1 digital surround sound

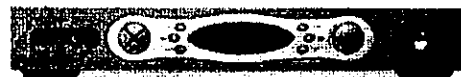
To get started with HDTV, you'll need a HD ready television and a FiOS TV HD Set Top Box.

Finally, regularly scheduled programs for your irregularly scheduled life.

FiOS TV brings you so many choices, you'll probably find yourself wanting to watch more than one show at a time. Or you might have seen something so incredible, you just have to hit instant replay to see it again. (Sports fans take note.) No tapes. No discs. No hassle. The days of waiting for a commercial break to get a snack are long gone with the FiOS TV DVR.

With a FiOS TV DVR you can:

- Rewind, pause or record live TV
- Record up to 85 hours of standard definition programming
- Record one show while watching another or record two shows at the same time while watching a third recorded show



Home Media DVR with Media Manager

- Lets customers view recorded programs from any room in the house with a television and set-top box
- Supports up to six additional televisions, with simultaneous viewing of up to three recorded shows
- Easily access photos and music from your personal computer and play them on your entertainment center where they look and sound the best

Verizon FiOS TV

Here's everything you need to create your perfect FiOS TV package. First, choose your service. Then, add to it from our selection of digital packages and premium channels below.

Service Tiers	Channels	Monthly Price
FiOS TV Local	15 - 35	\$12.99
FiOS TV Premier *	160 + Local	\$42.99
La Conexión *	115 + Local	\$32.99
Packages *	Channels	Monthly Price
Sports	15	\$ 7.99
Movies	44	\$12.99
Sports / Movies Combo	59	\$15.99
Spanish-Language	25	\$11.99
HBO	14	\$15.99
Cinemax	12	\$15.99
HBO / Cinemax Combo	26	\$25.99
Playboy / Playboy en Español	2	\$14.95
here!	1	\$ 7.99
International Premiums *	Channels	Monthly Price
International Channels	17	Individually Priced
Video on Demand (VOD) *		
New Releases		\$ 3.99
Library Title		\$ 2.99
Pay Per View (PPV) *		
WWE (Wrestling)		\$ 7.99 / month
PPV Movies		\$ 3.95 each
PPV Events		Prices Vary
PPV Sports		Prices Vary
Karaoke		\$ 7.99 / month

Verizon FiOS TV Service is provided by Verizon and Verizon Online and is not available in all areas. Service availability subject to final confirmation by Verizon. Verizon installation required. Programming and prices are subject to change. Refer to the channel lineup for a complete listing of channels included in each package.

Set Top Box	Monthly Rental
Standard	\$ 4.99
High Definition (HD)	\$ 9.99
DVR (includes HD)	\$12.99
Home Media DVR **	\$19.99
Installation and Service Fees	One-Time Charge
Install Up To 3 Existing Outlets	No Charge
Additional Outlet / STB Hookup	\$19.99
New Outlet Install / Existing	\$54.99 per outlet
Outlet Rewire	
Outlet Relocation	\$54.99 per outlet
STB Addition/Upgrade/Downgrade	\$24.99
Premises Visit	\$49.99
Setup of TV Equipment	\$49.99 (New TV w/ STB)
STB Disconnect	\$24.99 + \$ 5.00 / STB
Downgrade from Digital to Analog	\$50.00 + \$ 5.00 / STB
Service Disconnect	No Charge
Service Reconnect	\$49.99 (Up to 3 outlets)
Seasonal Service Suspension	\$24.99 (1-6 months)
Replacement Remote	\$ 5.00 + S&H
Unreturned / Damaged STB	\$240.00 Standard \$350.00 HD \$550.00 DVR

* FiOS TV Premier and La Conexión service tiers, as well as Packages, Premium Channels, International Premium Channels, VOD and PPV require a set top box.

** A Set Top Box is required to view recorded programming and a monthly fee of \$3.95 per Set Top Box applies. Multi-room features are supported on standard Model 2500 Set Top Boxes only and will support up to six additional televisions, with simultaneous viewing of up to three recorded shows.



We never stop working for you.

More Choices. Right Before Your Eyes.

Top 10 Reasons Why New Yorkers Want FiOS TV

- 10 It's affordable.** FiOS TV is priced to compete. And that's important. The FCC has found that cable television rates have increased 93 percent over the last decade.
- 9 It's state-of-the-art.** Verizon's programming rides over an all-digital fiber-optic network to the home – with the fastest connections available in the industry.
- 8 It's in demand.** FiOS TV was available to about 2.4 million homes at the end of 2006, and the company expects to attract 3-4 million customers by 2010.
- 7 It comes with other great services.** Customers in parts of our service territory are surfing the web at up to 50 Mbps using FiOS Internet Service. Customers also tell us that phone calls placed over our FiOS fiber optic network are clearer than ever.
- 6 It's future proof.** The network has enough capacity for the most demanding consumers today and plenty more for applications still on the drawing board.
- 5 Lots of HDTV.** There's nearly unlimited high-definition channel capacity on the FiOS TV network. FiOS TV customers today have access to twice as many HD channels as many cable providers.
- 4 It's diverse.** FiOS TV offers one of the most diverse and exciting multicultural channel lineups in the industry.
- 3 Lots of channels.** Verizon's channel lineup offers more than 400 total channels, with more on the way.
- 2 It's better.** Our analog and digital television signals travel over a pipeline far more robust than cable's. Cablevision and other providers must add voice and data service to their pipeline too, leading to a tradeoff between Internet speeds or enhancing cable TV service.
- 1 It's from Verizon.** We offer the most advanced and reliable network in the country along with a legacy of providing outstanding service in New York for more than a century.

Competition Works!

You get to choose which company to use for your wireline or wireless phone service. You get to choose your Internet Service Provider. You should have the same freedom of choice for cable TV. It's choice and competition that benefit you the most.

When a true wireline television competitor challenges cable, prices for basic and expanded basic cable TV service are 17% below average. (Source: FCC Report on Cable Industry Prices, Dec 2006)

Delaying video entry by one year would cost New Yorkers \$458 million in lost consumer savings from video services alone, and these losses increase with each year of delay. (Source: Phoenix Center Policy Bulletin No. 13, Jan 2006)

Incumbent cable companies have responded with service price cuts of 28 - 42% in some areas where FiOS TV is available. (Source: Bank of America Equity Research: Consumer Wireline Services Pricing, Jan 2006)

Support change. Let's bring true cable TV competition to New York now – not years from now. Let your voice be heard. Urge your local elected officials to vote "YES" in favor of TV choice and competition!

For more information, visit:
www.verizon.com/ny

