Decree Library at the address given above.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–20707 Filed 8–22–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging Sixth Amendment to Consent Decree Pursuant to The Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on August 20, 2012, a proposed Sixth Amendment To Consent Decree in *United States* v. *Sinclair Wyoming Refining Co., et al.,* Case No. 08–cv–020–WFD, was lodged with the United States District Court for the District of Wyoming.

The proposed Sixth Amendment To Consent Decree would resolve the United States' and State of Wyoming's claims that the Sinclair Wyoming Refining Company (''SWRC'') and the Sinclair Casper Refining Company (''SCRC'') violated certain provisions of the 2008 Consent Decree in *United States* v. *Sinclair Wyoming Refining Co., et al.,* Case No. 08–cv–020–WFD. Under the terms of the Sixth Amendment To Consent Decree, SWRC and SCRC will both install additional pollution control equipment to enable compliance with requirements of the 2008 Consent Decree and take other action to offset emissions that resulted from the alleged violations.

The Department of Justice will receive comments relating to the proposed consent decree amendment for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Sinclair Wyoming Refining Co., et al.,* Case No. 08–cv–020–WFD, and Department of Justice Reference No. 90–5–2–1–07793.

During the public comment period, the consent decree amendment may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.enrd@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $15.00 ($.25 per page) if exhibits are requested or $3.00 if exhibits are not requested, payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–20781 Filed 8–22–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. Verizon Communications Inc. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America et al.* v. *Verizon Communications Inc. et al.,* Civil Action No. 1:12–cv–01354. On August 16, 2012, the United States filed a Complaint alleging that the proposed commercial agreements among Verizon Communications Inc., Cellco Partnership d/b/a Verizon Wireless, Comcast Corporation, Time Warner Cable Inc., Cox Communications, Inc., and Bright House Networks, LLC, would violate Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed the same time as the Complaint, requires modifications to the commercial agreements and prohibits certain conduct in order to preserve the incentive and ability for Verizon Communications to compete aggressively with each of the cable companies.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the U.S. Department of Justice, Antitrust Division's Internet Web site, filed with the Court and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Lawrence M. Frankel, Assistant Chief, Telecommunications and Media Enforcement Section, Antitrust Division, Department of Justice, Washington, DC 20530, telephone: 202–514–5621.

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Department of Justice, Antitrust Division, 450 5th Street, N.W., Suite 7000, Washington, DC 20530, and STATE OF NEW YORK, Office of the Attorney General, 120 Broadway, New York, NY 10271, Plaintiffs, v. VERIZON COMMUNICATIONS INC., 140 West Street, 29th Floor, New York, NY 10007; CELLCO PARTNERSHIP, d/b/a VERIZON WIRELESS, One Verizon Way, Basking Ridge, NJ 07920; COMCAST CORPORATION, One Comcast Center, Philadelphia, PA 19103; TIME WARNER CABLE INC., 60 Columbus Circle, New York, NY 10023; COX COMMUNICATIONS, INC., 1400 Lake Hearn Drive, Atlanta, GA 30319, and BRIGHT HOUSE NETWORKS, LLC, 5000 Campuswood Drive, East Syracuse, NY 13057, Defendants.	Civil Action No.: Filed:

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the State of New York, acting under the direction of its Attorney General (collectively, ''Plaintiffs''), bring this civil antitrust action against Defendants Verizon Communications Inc. (''Verizon''); CellCo Partnership d/b/a Verizon Wireless (''Verizon Wireless''; collectively with Verizon, ''Verizon Defendants''); Comcast Corporation (''Comcast''); Time Warner Cable Inc. (''Time Warner Cable''); Cox Communications, Inc. (''Cox''); and Bright House Networks, LLC (''Bright House Networks''; collectively with Comcast, Time Warner Cable, and Cox, ''Cable Defendants'') to obtain equitable relief to prevent and remedy violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

Plaintiffs allege as follows:

I. INTRODUCTION

1. In December 2011, Verizon Wireless and the Cable Defendants entered into a series of commercial agreements (the ''Commercial Agreements'') that allow them to sell bundled offerings that include Verizon Wireless services and a Cable Defendant's residential wireline voice, video, and broadband services, including ''quad-plays.'' In addition, the Commercial Agreements allow the Defendants to develop integrated wireline and wireless telecommunications technologies through a research and development joint venture.[1]

2. In certain parts of the country, Verizon, which is Verizon Wireless's parent, offers fiber-based voice, video, and broadband services under the trade name ''FiOS.'' Verizon sells its wireline FiOS services in several geographic areas where one of the Cable Defendants also sells wireline voice, video, and broadband services, including parts of New York City, Philadelphia, and Washington, DC. In those areas of geographic overlap, the Commercial Agreements would result in Verizon Wireless retail outlets selling two competing quad-play offerings: one including Verizon Wireless services and a Cable Defendant's services and the other including Verizon Wireless services and Verizon FiOS services. In addition to setting up this unusual structure where one part of the Verizon corporate family (Verizon Wireless) must sell products in competition with another (Verizon Telecom), the Commercial Agreements contain a variety of mechanisms that are likely to diminish Verizon's incentives and ability to compete vigorously against the Cable Defendants with its FiOS offerings, and they create an opportunity for harmful coordinated interaction among the Defendants regarding, among other things, the pricing of competing offerings.

[1] At the same time that they negotiated the Commercial Agreements, the Cable Defendants agreed to sell to Verizon Wireless a significant number of wireless spectrum licenses that they purchased in 2006 but have not used. In June 2012, Verizon Wireless agreed to resell some of that spectrum to T-Mobile USA, the smallest of the nation's four nationwide wireless carriers. Plaintiffs are not here challenging those spectrum-related agreements, which facilitate the active use of an important national resource.

3. The Commercial Agreements also harm the Defendants' long-term incentives to compete insofar as they create an exclusive sales and product development partnership of potentially unlimited duration. Innovation and technological change mark the telecommunications industry, but the Commercial Agreements fail to reasonably account for such change and instead freeze in place relationships that, in certain aspects, may be harmful in the long term. For an unlimited term, the Cable Defendants collectively are restricted to one wireless partner, Verizon Wireless, and the participants in the joint technology venture are restricted to that forum—and limited to working with the partners in that venture—for integrated wireline and wireless product development. Moreover, Verizon Wireless's ability to sell Verizon's FiOS product is restricted to the currently planned FiOS footprint, even if in future years Verizon contemplates further FiOS expansion. Exclusive sales partnerships and research and development collaborations between rivals that have no end date can blunt the long-term incentives of the Defendants to compete against each other, and others, as the industry develops.

4. Through this suit, the United States and the State of New York ask this Court to declare the Defendants' Commercial Agreements illegal and enter injunctive relief to prevent and remedy violations of the antitrust laws.

II. DEFENDANTS

5. Verizon Communications Inc. is a Delaware corporation headquartered in New York. Verizon's consumer wireline segment, Verizon Telecom, is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

6. Cellco Partnership d/b/a Verizon Wireless is a Delaware general partnership headquartered in New Jersey, and is the nation's largest provider of wireless services. Verizon Wireless is a joint venture owned by Verizon Communications Inc. (55%) and Vodafone Group Plc (45%), but is operated and managed by Verizon Communications.

7. Comcast Corporation is a Pennsylvania corporation headquartered in Pennsylvania. It is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

8. Time Warner Cable Inc. is a Delaware corporation headquartered in New York. It is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

9. Cox Communications, Inc. is a Delaware corporation headquartered in Georgia. It is a large multi-state provider of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

10. Bright House Networks, LLC is a Delaware limited liability company headquartered in New York. It is a large multi-state provider of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

III. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

11. Plaintiff United States of America brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, to obtain equitable and other relief to prevent and restrain the Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

12. Plaintiff the State of New York, by and through its Attorney General and other authorized officials, brings this action in its sovereign capacity and as parens patriae on behalf of the citizens, general welfare, and economy of the State of New York under its statutory, equitable, and common law powers, and pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent the Defendants from violating Section 1 of the Sherman Act.

13. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

14. Each Defendant is engaged in interstate commerce and in activities that substantially affect interstate trade and commerce. The Cable Defendants and Verizon each sell broadband and video services in their respective regional footprints across the United States, and Verizon Wireless sells wireless services throughout the United States.

15. Each Defendant has consented to personal jurisdiction and venue in this judicial district.

IV. FACTUAL BACKGROUND

16. Residential voice, video, and broadband services are commonly purchased together in bundles with one another. For example, Verizon offers a triple-play bundle of voice, video, and broadband FiOS services, and over 90% of FiOS customers subscribe to some form of bundle. Similarly, over 60% of Comcast customers subscribe to some form of bundle.

17. Bundles are typically offered by providers that themselves provision each component service. However, some providers that cannot supply each component service partner with complementary providers to bundle their services in the marketplace.

18. Today, most consumers do not purchase wireless services in bundles including residential voice, video, and broadband services. For instance, Verizon sells some quad-play offerings in its FiOS territory, but its sales of quad-play bundles pale in comparison to the number of triple-play bundles it sells.

19. Technological developments, such as the advent of the smartphone and the increasing availability of and demand for streaming video content, have the potential to increase demand for integrated wireline and wireless services.

20. The Commercial Agreements enable the Defendants to offer bundles combining wireline and wireless services, including in many local markets where they are unable to do so on their own because they do not themselves sell all of the constituent services.

21. Specifically, in December 2011, Verizon Wireless and the Cable Defendants entered into a series of Commercial Agreements, which in combination (1) allow them to sell each other's services; (2) create a structure for them to develop new products and services that integrate wireline and wireless services; and (3) create a future option for the Cable Defendants to operate a virtual wireless network using Verizon Wireless's network:

a. On December 2, 2011, (1) Verizon Wireless and, respectively, Comcast, Time Warner Cable, and Bright House Networks entered into reciprocal ''Agent'' (sales agency) agreements to sell each other's products on a commission basis; (2) Verizon Wireless, Comcast, Time Warner Cable, and Bright House Networks entered into a Joint Operating Entity agreement (''the JOE'') to collectively develop and market integrated wireline and wireless products; and (3) Verizon Wireless and, respectively, Comcast, Time Warner Cable, and Bright House Networks entered into ''Reseller'' agreements to provide Comcast, Time Warner Cable, and Bright House Networks the option to operate a virtual wireless network using Verizon Wireless assets; and

b. On December 16, 2011, defendants Verizon Wireless and Cox entered into (1) reciprocal ''Agent'' (sales agency) agreements to sell each other's products on a commission basis; and (2) a ''Reseller Agreement'' to provide Cox with the option to operate a virtual wireless network using Verizon Wireless assets.

22. Provisions in the Commercial Agreements require Verizon Wireless to sell the Cable Defendants' products even where Verizon has its own directly competing FiOS products. Under these provisions, Verizon Wireless must sell the Cable Defendants' video and broadband services through its sales channels. Verizon currently uses a significant number of Verizon Wireless stores to sell FiOS. Under related provisions of the Commercial Agreements, Verizon Wireless is to receive a commission for each sale of one of the Cable Defendants' products, even in regions where Verizon offers competing FiOS services.

23. The Commercial Agreements also contain an explicit restraint on Verizon FiOS sales, providing that Verizon Wireless may only sell FiOS services if it also offers the Cable Defendants' services on an ''equivalent basis.'' The ''equivalent basis'' provision limits Verizon's ability to offer, promote, market, and sell FiOS services in competition with the Cable Defendants' services through any Verizon Wireless distribution channel.

24. The Commercial Agreements also contain an exclusivity provision that prohibits the Cable Defendants from partnering with any other wireless services company. Moreover, although the Commercial Agreements allow the Cable Defendants eventually to resell wireless services using Verizon Wireless's network under their own brands, the Cable Defendants must wait four years before they can do so.

25. The Commercial Agreements create the Joint Operating Entity (''the JOE''), a joint venture to develop and market integrated wireline and wireless technologies. The JOE is to serve as its members' exclusive vehicle for research and development of certain wireline and wireless products: While they remain in the JOE, Defendants Verizon Wireless, Comcast, Time Warner Cable, and Bright House Networks cannot independently conduct any research and development on subjects within the JOE's exclusive field, even on projects that the JOE declines to pursue.

26. The Commercial Agreements are potentially unlimited in duration. The Agent agreements have an initial five-year term, which renews automatically for another five-year term, and is subject to automatic renewals every five years thereafter. The JOE agreement has no fixed expiration.

V. RELEVANT MARKETS

27. Video providers acquire the rights to transmit video content (e.g., broadcast and cable programming networks, television series, individual programs, or movies), aggregate that content, and distribute it to their subscribers or users. The distribution of professional video programming services to residential customers (''video services'') is a relevant product market.

28. Consumers purchasing video services select from among those firms that can offer such services directly to their home. Although direct broadcast satellite and online video services can serve customers across the United States, wireline video providers such as the Cable Defendants and Verizon are only able to offer services where they have, with the requisite approvals from local authorities, built out their networks to homes in a particular area. Thus the relevant geographic markets for video services include the local markets throughout the United States where Verizon offers, or is likely soon to offer, FiOS within the franchise territory of a Cable Defendant. A small but significant price increase by a hypothetical monopolist of video services in any of these geographic areas would not be made unprofitable by consumers switching to other services.

29. Residential broadband Internet services providers connect residential customers' electronic devices to the Internet at high speeds and in high data volumes, typically for a monthly fee. These services allow customers to access content containing large quantities of data, such as high-quality streaming video, gaming, applications, and various forms of interactive entertainment. The provision of broadband Internet services to residential customers (''broadband services'') is a relevant product market.

30. Consumers purchasing broadband services select from among those firms that can offer such services directly to their home. The relevant geographic markets for broadband services include the local markets throughout the United States where Verizon offers, or is likely soon to offer, FiOS within the franchise territory of a Cable Defendant. A small but significant price increase by a hypothetical monopolist of broadband services in any of these geographic areas would not be made unprofitable by consumers switching to other services.

31. Mobile wireless telecommunications services providers allow customers to engage in telephone conversations and obtain data services using radio transmissions without being confined to a small area during a call or data session and without requiring an unobstructed line of sight to a radio tower. Mobile wireless telecommunications services include both voice and data services (e.g., texting and Internet access) provided over a radio network and allow customers to maintain their telephone calls or data sessions wirelessly when travelling. The provision of mobile wireless services (''wireless services'') is a relevant product market.

32. Consumers typically purchase wireless services from providers that offer and market services where they live, work, and travel on a regular basis, and nationwide competition among wireless services providers affects those local markets. The relevant geographic markets for wireless services include the local markets throughout the United States where Verizon offers wireless services and the Cable Defendants offer wireline services. A small but significant price increase by a hypothetical monopolist of wireless services in any of these geographic areas would not be made unprofitable by consumers switching to other services.

VI. THE CABLE DEFENDANTS' MARKET POWER

33. The Cable Defendants are dominant in many local markets for both video and broadband services, with a reported national market share for incumbent cable companies of greater than 50% for both broadband and video services, although their shares may be higher or lower in any particular local market for any particular service. Each Cable Defendant has market power in numerous local geographic markets for both broadband and video services.

34. The concentrated nature of both the broadband and video services product markets, and the Cable Defendants' market power, are largely due to historical factors. In most geographic areas, the local cable network was originally constructed pursuant to a local franchise agreement that gave the cable carrier exclusive rights to provide service in that area in exchange for a commitment to build out broad cable coverage. The copper-wire telephone network was the only other telecommunications infrastructure built out to most households, and it too was subject to an exclusive license. For decades, the telephone companies were not permitted to offer cable services, and vice versa.

35. The Telecommunications Act of 1996 (the ''Act'') was intended to foster enhanced competition between the telephone companies and the cable companies. Among other changes to national telecommunications policy, the Act removed regulatory constraints on competition between the telephone and cable companies in each other's markets.

36. In 2005, Verizon began offering FiOS services over its newly constructed fiber-optic network. FiOS has been, and remains, a significant competitive threat to cable in the regions where it has been built. As Verizon has expanded FiOS to cover many millions of households, it has consistently

won significant market share in both broadband and video in the local markets where it offers those services. Verizon is still expanding FiOS, as it has additional build obligations pursuant to a number of local franchise agreements it signed with cities and counties in order to obtain the rights to provide local video services.

37. Well before entering into the Commercial Agreements, Verizon publicly announced its decision not to invest in further FiOS expansion beyond its obligated builds. Verizon's business plans with respect to future FiOS expansion have not changed significantly since it entered into the Commercial Agreements. Nonetheless, Verizon still considers, from time to time, whether to invest further in the expansion of its FiOS infrastructure. Its decision whether to do so will be affected by, among other things, whether technological or business conditions become more conducive to additional buildout in future years.

VII. ANTICOMPETITIVE EFFECTS

38. The Commercial Agreements, and in particular the following provisions thereof, harm competition in the markets for the provision of video and broadband services (and competition to provide bundles that include those products) in the areas in which Verizon's FiOS territory overlaps with the wireline territory of a Cable Defendant because they impair the ability and incentives for Verizon and the Cable Defendants to compete aggressively against each other:

a. Verizon is restrained from marketing or selling FiOS in Verizon Wireless stores unless it also sells a Cable Defendant's services on an ''equivalent basis.'' This restriction reduces Verizon's ability and incentives to compete aggressively against the Cable Defendants' products and facilitates anticompetitive coordination among the Defendants.

b. Verizon Wireless is required to sell each Cable Defendant's services in direct competition with FiOS, and Verizon Wireless is to receive a commission for each such sale. This requirement reduces Verizon's incentives and ability to compete aggressively against the Cable Defendants with FiOS and facilitates anticompetitive coordination among the Defendants.

39. The Commercial Agreements diminish the incentives and ability of Verizon and the Cable Defendants to compete in those areas where the Cable Defendants' territories overlap with those in which Verizon has built, or is likely to build, FiOS infrastructure. They transform the Defendants' relationships from ones in which Verizon and the Cable Defendants are direct, horizontal competitors to ones in which they are also partners in the sale of the Cable Defendants' services. Rather than having an unqualified, uninhibited incentive and ability to promote its FiOS video and broadband products as aggressively as possible, Verizon will be contractually required and have a financial incentive to market and sell the Cable Defendants' products through Verizon Wireless channels in the same local geographic markets where Verizon also sells FiOS. The Commercial Agreements deprive Verizon of the ability to exploit fully a valuable marketing channel and alter Verizon's incentives with respect to pricing, marketing, and innovation. They unreasonably diminish competition between Verizon and the Cable Defendants—competition that is critical to maintaining low prices, high quality, and continued innovation.

40. The Commercial Agreements also unreasonably diminish future incentives to compete for product and feature development pertaining to the integration of broadband, video, and wireless services. Although the JOE technology joint venture has the potential to produce useful innovations that benefit consumers, the JOE has a potentially unlimited duration, and it contains restrictions on its members' ability to innovate outside of the JOE. These aspects of the JOE agreement unreasonably reduce the Defendants' incentives and ability to compete on product and feature development, and create an enhanced potential for anticompetitive coordination.

41. The Commercial Agreements also unreasonably diminish the Cable Defendants' incentives and ability to pursue in the future—as they have in the past—their own wireless services offerings for their customers who want a bundle including such services. Although the agreements permit the Cable Defendants eventually to act as wireless competitors using Verizon Wireless's network at least in part, the Cable Defendants are explicitly prohibited from doing so for the first four years of the agreements, and meanwhile they may only offer Verizon Wireless services as sales agents. Whereas most wireless resellers do not serve as a significant competitive constraint on facilities-based providers, the Cable Defendants have extensive network facilities and other commercial advantages that could enhance their relevance as competitors, and they have explored how to leverage those assets to their advantage. A four-year delay in the ability of the Cable Defendants to develop their own wireless offerings, relying in part on Verizon Wireless's network, diminishes the incentive to invest in potential wireless offerings and inhibits the ability to bring those offerings to market in a timely manner.

42. The Commercial Agreements also unreasonably restrain future competition for the sale of broadband, video, and wireless services to the extent that the availability of these services as part of a bundle, including a quad-play bundle, becomes more competitively significant. Although the exclusivity provisions of the agreements may be reasonably necessary to bind the parties into a cooperative relationship for the next several years, the unlimited duration of the wireless exclusivity is unreasonable and unnecessarily restrains competition in the long term, when partnerships between the Cable Defendants and other wireless providers can serve as an important source of competition for the sale of integrated wireline and wireless bundles. Should the ability to offer integrated bundles develop into an important characteristic of competition, these agreements would unreasonably prevent wireless carriers from offering those bundles with the most significant providers of broadband and video services. The reduction in future competition to offer bundled products would result in harm in the markets for each constituent product.

43. The Commercial Agreements also significantly and adversely affect Verizon's long-term competitive incentives to reconsider, in future years, its pre-existing decision not to build out FiOS beyond its current commitments. Although Verizon's current plans do not contemplate additional FiOS buildout beyond the currently obligated areas—and therefore significant additional buildout is unlikely for at least the next several years—developments in the technology and economics of FiOS deployment, or macroeconomic changes, may cause Verizon to re-evaluate the possibility of additional buildout. The requirement and financial incentives for Verizon Wireless to sell the Cable Defendants' services, combined with the unlimited duration of the Commercial Agreements, creates a disincentive to additional buildout in areas within Verizon's wireline territory but outside the currently planned FiOS footprint, particularly in those Verizon DSL territories in which buildout might be most profitable.

44. The Commercial Agreements also unreasonably restrain competition due to ambiguities in certain terms regarding what conduct Verizon can, and cannot, engage in. As written, the ambiguous terms could be interpreted to prevent Verizon Wireless from engaging in certain competitive activities, including selling wireless services as a residential (as opposed to mobile) service and allowing Verizon to sell Verizon Wireless services along with other companies' services.

VIII. VIOLATION ALLEGED

Violation of Section 1 of the Sherman Act by Each Defendant

45. The United States hereby incorporates paragraphs 1 through 44.

46. The Commercial Agreements unreasonably restrain competition in numerous local markets for broadband, video, and wireless services throughout the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

47. The Commercial Agreements deny consumers the benefits of unrestrained competition between the Verizon Defendants and the Cable Defendants. The likely effect of the agreements is to unreasonably restrict competition for broadband, video, and wireless services.

IX. REQUESTED RELIEF

Plaintiffs request that:

a. the Court adjudge and decree that the aforesaid contract, combination, or conspiracy violates Section 1 of the Sherman Act, 15 U.S.C. § 1;

b. the Defendants be permanently enjoined and restrained from enforcing or adhering to existing contractual provisions that restrict competition between them;

c. the Defendants be permanently enjoined and restrained from enforcing or adhering to any other combination or conspiracy having a similar purpose or effect in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

d. Plaintiffs be awarded their costs of this action; and

e. the Court grant such other relief as the Plaintiffs may request and that the Court deems just and proper.

Dated:

Respectfully submitted,

For Plaintiff United States of America:

/s/ Joseph F. Wayland

Joseph F. Wayland,
Acting Assistant Attorney General.

/s/ Renata B. Hesse
Renata B. Hesse,
Deputy Assistant Attorney General.

/s/ Patricia A. Brink
Patricia A. Brink,
Director of Civil Enforcement.

/s/ Laury E. Bobbish
Laury E. Bobbish,
Chief, Telecommunications & Media Enforcement Section.

/s/ Lawrence M. Frankel
Lawrence M. Frankel
(D.C. Bar #441532),
Assistant Chief, Telecommunications & Media Enforcement Section.

/s/ Yvette F. Tarlov
Yvette F. Tarlov
(D.C. Bar #442452),
/s/ Jared A. Hughes
Jared A. Hughes,*
Michael Bonanno
(D.C. Bar #998208),
Alvin Chu,
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* Attorney of Record

For Plaintiff State of New York:

/s/ Scott Hemphill
Scott Hemphill, Esq.,
Chief, Antitrust Bureau, NYS Office of the Attorney General, 120 Broadway, New York, NY 10271, Telephone: (212) 416–8282, Facsimile: (212) 416–6015, E-mail: Scott.Hemphill@ag.ny.gov.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, and STATE OF NEW YORK, *Plaintiffs,* v. VERIZON COMMNICATIONS INC., CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, COMCAST CORP., TIME WARNER CABLE INC., COX COMMUNICATIONS, INC., and BRIGHT HOUSE NETWORKS, LLC, *Defendants.*	Civil Action No.:

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

The United States and the State of New York brought this lawsuit against Defendants Verizon Communications Inc. (''Verizon''), Cellco Partnership d/b/a Verizon Wireless (''Verizon Wireless''), Comcast Corporation (''Comcast''), Time Warner Cable Inc. (''Time Warner Cable''), Bright House Networks LLC (''Bright House Networks''), and Cox Communications, Inc. (''Cox'') on August 16, 2012, to remedy violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint alleges that certain agreements among Comcast, Time Warner Cable, Bright House Networks, Cox (collectively, ''Cable Defendants''), and Verizon Wireless unreasonably restrain trade and commerce.

At the same time the Complaint was filed, the United States also filed a Stipulation and Order, and a proposed Final Judgment, which is described in more detail in Section III below. The United States, the State of New York, and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. Introduction

Residential voice, video, and broadband services are often purchased and provisioned in bundles with one other; such product bundles are commonly referred to as ''double-plays'' or ''triple-plays.'' Telecommunications providers, such as the Defendants, have shown increasing interest in including mobile wireless services in these bundles, and creating integrated wireline-wireless bundles. These integrated wireline-wireless bundles include ''quad-plays,'' i.e., bundles of each residential telecommunications service—voice, video, and broadband—along with a subscription to mobile wireless services. Few consumers today purchase wireline-wireless bundles or quad-plays, more often opting to purchase their wireless services separately from their wireline services.

In December 2011, Verizon Wireless and the Cable Defendants entered into a series of commercial agreements (the ''Commercial Agreements'') that allow them to sell bundled offerings that include Verizon Wireless services and a Cable Defendant's residential wireline voice, video, and broadband services, including ''quad-plays.'' In addition, the Commercial Agreements allow Defendants to develop integrated wireline and wireless telecommunications technologies through a research and development joint venture, Joint Operating Entity LLC (''the JOE'').[2]

In certain parts of the country, Verizon, which is Verizon Wireless's parent, offers fiber-based voice, video, and broadband services under the trade name ''FiOS.'' Verizon sells its wireline FiOS services in several geographic areas where one of the Cable Defendants also sells wireline voice, video, and broadband services, including parts of New York City, Philadelphia, and Washington, D.C. In those areas of geographic overlap, the Commercial Agreements would result in Verizon Wireless retail outlets selling two competing quad-play offerings: one including Verizon Wireless services and a Cable Defendant's services and the other including Verizon Wireless services and Verizon FiOS services. In addition to setting up this unusual structure where one part of the Verizon corporate family (Verizon Wireless) must sell products in competition with another (Verizon Telecom), the Commercial Agreements contain a variety of mechanisms that are likely to diminish Verizon's incentives and ability to compete vigorously against the Cable Defendants with its FiOS offerings and create an opportunity for harmful coordinated interaction among the Defendants regarding, among other things, the pricing of competing offerings.

The Commercial Agreements also harm the Defendants' long-term incentives to compete insofar as they create a product development partnership of potentially unlimited duration. Innovation and technological change mark the telecommunications industry, but the Commercial Agreements fail to reasonably account for such change and instead freeze in place relationships that, in certain aspects, may be harmful in the long term. For an unlimited term, the Cable Defendants collectively are restricted to one wireless partner, Verizon Wireless, and the participants in the joint technology venture are restricted to that forum—and limited to working with the partners in that venture—for integrated wireline and wireless product development. Moreover, Verizon Wireless's

[2] At the same time that they negotiated the Commercial Agreements, the Cable Defendants agreed to sell to Verizon Wireless a significant number of wireless spectrum licenses that they purchased in 2006 but have not used. In June 2012, Verizon Wireless agreed to resell some of that spectrum to T-Mobile USA, the smallest of the nation's four nationwide wireless carriers. Plaintiffs are not here challenging those spectrum-related agreements, which facilitate the active use of an important national resource.

ability to sell Verizon's FiOS product is restricted to the currently planned FiOS footprint, even if in future years Verizon contemplates further FiOS expansion. Exclusive sales partnerships and research and development collaborations between rivals that have no end date can blunt the long-term incentives of the Defendants to compete against each other, and others, as the industry develops.

B. The Defendants

Verizon is a Delaware corporation headquartered in New York. Verizon's consumer wireline segment, Verizon Telecom, is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

Verizon Wireless is a Delaware general partnership headquartered in New Jersey, and is the nation's largest provider of wireless services. Verizon Wireless is a joint venture owned by Verizon (55%) and Vodafone Group Plc (45%), but is operated and managed by Verizon.

Comcast is a Pennsylvania corporation headquartered in Pennsylvania. It is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

Time Warner Cable is a Delaware corporation headquartered in New York. It is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

Cox is a Delaware corporation headquartered in Georgia. It is a large multi-state provider of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

Bright House Networks is a Delaware limited liability company headquartered in New York. It is a large multi-state provider of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

C. Industry Background

Residential voice, video, and broadband services are commonly purchased together in bundles with one another. For example, Verizon offers a triple-play bundle of voice, video, and broadband FiOS services, and over 90% of FiOS customers subscribe to some form of bundle. Similarly, over 60% of Comcast customers subscribe to some form of bundle. Telecommunications providers perceive several advantages to offering services in bundles: (1) Provisioning more than one service at a time often generates cost efficiencies for the provider; (2) purchasers of bundles tend to spend more; and (3) purchasers of bundles are less likely to switch to another provider. Consumers frequently choose bundled plans, which allow them to have a single relationship for customer service, installation, and billing. Bundles are typically offered by providers that themselves provision each component service. However, some providers that cannot supply each component service partner with complementary providers to bundle their services in the marketplace.

Today, most consumers do not purchase wireless services in bundles including residential voice, video, and broadband services. For instance, Verizon sells some quad-play offerings in its FiOS territory, but its sales of quad-play bundles pale in comparison to the number of triple-play bundles it sells.

Technological developments, such as the advent of the smartphone and the increasing availability and demand for streaming video content, have the potential to increase demand for integrated wireline and wireless services. Verizon recognizes this potential and perceives an opportunity for growth in the development of products and features that integrate wireline and wireless services. But Verizon cannot fully exploit the perceived growth potential presented by wireline-wireless bundles on its own. Although Verizon Wireless offers service almost nationwide, Verizon offers FiOS in only a limited portion of the country. The Cable Defendants are particularly attractive potential partners because they each have a large customer base, and together they cover a broad geographic footprint. The Cable Defendants also owned valuable unused wireless spectrum that Verizon Wireless wished to acquire. Ultimately, Verizon Wireless and the Cable Defendants agreed to enter into the Commercial Agreements as well as agreements for the sale of the Cable Defendants' wireless spectrum to Verizon Wireless.

D. The Commercial Agreements

The Commercial Agreements enable Defendants to offer bundles combining wireline and wireless services, including in many local markets where they are unable to do so on their own because they do not themselves sell all the constituent services.

Specifically, in December 2011, Verizon Wireless and the Cable Defendants entered into a series of Commercial Agreements, which in combination (1) allow Verizon Wireless and each Cable Defendant, respectively, to sell each other's services; (2) create a structure for them to develop new products and services that integrate wireline and wireless services; and (3) create a future option for each of the Cable Defendants to operate a virtual wireless network using Verizon Wireless's network.

a. On December 2, 2011, (1) Verizon Wireless and, respectively, Comcast, Time Warner Cable, and Bright House Networks entered into reciprocal ''Agent'' (sales agency) agreements to sell each other's products on a commission basis; (2) Verizon Wireless, Comcast, Time Warner Cable, and Bright House Networks entered into a ''Joint Operating Entity'' agreement to collectively develop and market integrated wireline and wireless products; and (3) Verizon Wireless and, respectively, Comcast, Time Warner Cable, and Bright House Networks entered into ''Reseller'' agreements to provide Comcast, Time Warner Cable, and Bright House Networks the option to operate a virtual wireless network using Verizon Wireless assets; and

b. On December 16, 2011, defendants Verizon Wireless and Cox entered into (1) reciprocal ''Agent'' (sales agency) agreements to sell each other's products on a commission basis; and (2) a ''Reseller Agreement'' to provide Cox with the option to operate a virtual wireless network using Verizon Wireless assets.

The Commercial Agreements contain a number of provisions that are likely to harm competition in the markets for broadband, video, and wireless services. First, the Commercial Agreements require Verizon Wireless to sell the Cable Defendants' products even where Verizon has its own directly competing FiOS products. Under these provisions, Verizon Wireless must sell the Cable Defendants' video and broadband services through its sales channels even though Verizon itself currently uses a significant number of Verizon Wireless stores to sell FiOS. In addition, Verizon Wireless receives a commission for each sale of one of the Cable Defendants' products, even in regions where Verizon offers competing FiOS services.

Second, the Commercial Agreements also contain an explicit restraint on Verizon FiOS sales, providing that Verizon Wireless may not market or sell FiOS services unless it also offers the Cable Defendants' services on an ''equivalent basis.'' The ''equivalent basis'' provision limits Verizon's ability to offer, promote, market, and sell FiOS services in competition with the Cable Defendants' services through any Verizon Wireless distribution channel.

Third, the Commercial Agreements contain a long-term exclusivity provision that prohibits the Cable Defendants from partnering with any other wireless company.

Fourth, although the Commercial Agreements allow the Cable Defendants eventually to resell wireless services using Verizon Wireless's network under their own brands, the Cable Defendants must wait four years before they can do so.

Finally, the Commercial Agreements create the JOE, a joint venture to develop and market integrated wireline and wireless technologies. The JOE is to serve as its members' exclusive vehicle for research and development of certain wireline and wireless products: While they remain in JOE, Defendants Verizon Wireless, Comcast, Time Warner Cable, and Bright House Networks cannot independently conduct any research and development on subjects within the JOE's exclusive field, even on projects that the JOE declines to pursue. The technology developed within the JOE is exclusively available for use by Verizon, the Cable Defendants that are members of the JOE, and potentially other cable companies that agree to sell Verizon Wireless services as agents.

The Commercial Agreements are potentially unlimited in duration. The Agent agreements have an initial five-year term, which renews automatically for another five-year term, and is subject to automatic renewals every five years thereafter. The JOE agreement has no fixed expiration.

E. Relevant Markets

1. Video Services

Video providers acquire the rights to transmit video content (e.g., broadcast and

cable programming networks, television series, individual programs, or movies), aggregate that content, and distribute it to their subscribers or users. The distribution of professional video programming services to residential customers (''video services'') is a relevant product market.

Consumers purchasing video services select from among those firms that can offer such services directly to their home. Although direct broadcast satellite and online video services can serve customers across the United States, wireline video providers such as the Cable Defendants and Verizon are only able to offer services where they have, with the requisite approvals from local authorities, built out their networks to homes in a particular area. Thus, the relevant geographic markets for video services include the local markets throughout the United States where Verizon offers, or is likely soon to offer, FiOS within the franchise territory of a Cable Defendant. A small but significant price increase by a hypothetical monopolist of video services in any of these geographic areas would not be made unprofitable by consumers switching to other services.

2. Residential Broadband Internet Services

Residential broadband Internet services providers connect residential customers' electronic devices to the Internet at high speeds and in high data volumes, typically for a monthly fee. These services allow customers to access content containing large quantities of data, such as high-quality streaming video, gaming, applications, and various forms of interactive entertainment. The provision of broadband Internet services to residential customers (''broadband service'') is a relevant product market.

Consumers purchasing broadband services select from among those firms that can offer such services directly to them at their homes. The relevant geographic markets for broadband services include the local markets throughout the United States where Verizon offers, or is likely to soon offer, FiOS within the franchise territory of a Cable Defendant. A small but significant price increase by a hypothetical monopolist of broadband services in any of these geographic areas would not be made unprofitable by consumers switching to other services.

3. Mobile Wireless Telecommunications Services

Mobile wireless telecommunications services allow customers to engage in telephone conversations and to obtain data services using radio transmissions without being confined to a small area during a call or data session, and without requiring an unobstructed line of sight to a radio tower. Mobile wireless telecommunications services include both voice and data services (e.g., texting and Internet access) provided over a radio network and allow customers to maintain their telephone calls or data sessions wirelessly when travelling. The provision of mobile wireless services (''wireless services'') is a relevant product market.

Consumers typically purchase wireless services from providers that offer and market services where they live, work, and travel on a regular basis; hence geographic markets are local. However, the largest and most successful wireless providers have national footprints and offer pricing, plans, and devices that are available nationwide. Therefore, nationwide competition among wireless services providers affects competition across local markets. The relevant geographic markets for wireless services include the local markets throughout the United States where Verizon offers wireless services, and where the Cable Defendants offer wireline services. A small but significant price increase by a hypothetical monopolist of wireless services in any of these geographic areas would not be made unprofitable by consumers switching to other services.

F. The Cable Defendants' Market Power

The Cable Defendants are dominant in many local markets for both video and broadband services, with a reported national market share for incumbent cable companies of greater than 50% for both broadband and video services, although their shares may be higher or lower in any particular local market for any particular service. Each Cable Defendant has market power in numerous local geographic markets for both broadband and video services.

The concentrated nature of both the broadband and video services product markets, and the Cable Defendants' market power, are largely due to historical factors. In most geographic areas, the local cable network was originally constructed pursuant to a local franchise agreement that gave the cable carrier exclusive rights to provide service in that area in exchange for a commitment to build out broad cable coverage. The copper-wire telephone network was the only other telecommunications infrastructure built out to most households, and it too was subject to an exclusive license. For decades, the telephone companies were not permitted to offer cable services, and vice versa.

The Telecommunications Act of 1996 was intended to foster enhanced competition between the telephone companies and the cable companies. Among other changes to national telecommunications policy, the Act removed regulatory constraints on competition between the telephone and cable companies in each other's markets.

In 2005, Verizon began offering FiOS services over its newly constructed fiber-optic network. FiOS has been, and remains, a significant competitive threat to cable in the regions where it has been built. Verizon's FiOS offerings have been aggressive in terms of both price and quality, and the cable companies have reacted to FiOS by upgrading their broadband networks and improving the quality of their video products. As Verizon has expanded FiOS to cover millions of households, it has consistently won significant market share in both broadband and video in the local markets where it offers those services.

Verizon continues to build FiOS infrastructure pursuant to a number of local franchise agreements. Well before entering into the Commercial Agreements, Verizon publicly announced its decision not to invest in further FiOS expansion beyond its obligated builds. Verizon's business plans with respect to future FiOS expansion have not changed significantly since it entered into the Commercial Agreements. Nonetheless, Verizon still considers, from time to time, whether to invest further in the expansion of its FiOS infrastructure. Its decision whether to do so will be affected by, among other things, whether technological or business conditions become more conducive to additional buildout in future years.

G. Anticompetitive Effects of the Agreements

The Commercial Agreements, and in particular the following provisions thereof, harm competition in the video, broadband, and wireless markets because they impair the ability and incentives for Verizon and the Cable Defendants to compete aggressively against each other:

a. Verizon is restrained from marketing or selling FiOS in Verizon Wireless stores unless it also sells a Cable Defendant's services on an ''equivalent basis.'' This restriction reduces Verizon's ability and incentives to compete aggressively against the Cable Defendants' products and facilitates anticompetitive coordination among the Defendants.

b. Verizon Wireless is required to sell each Cable Defendant's services in direct competition with FiOS, and Verizon Wireless receives a commission for each such sale. This requirement reduces Verizon's incentives and ability to compete aggressively against the Cable Defendants with FiOS and facilitates anticompetitive coordination among Defendants.

The Commercial Agreements diminish the incentives and ability of Verizon and the Cable Defendants to compete in those areas where the Cable Defendants' territories overlap with those in which Verizon has built, or is likely to build, FiOS infrastructure. They transform the Defendants' relationship from one in which the firms are direct, horizontal competitors to one in which they are also partners in the sale of the Cable Defendants' services. Rather than having an unqualified, uninhibited incentive and ability to promote its FiOS video and broadband products as aggressively as possible, Verizon will be contractually required and have a financial incentive to market and sell the Cable Defendants' products through Verizon Wireless channels in the same local geographic markets where Verizon also sells FiOS. The Commercial Agreements deprive FiOS of the ability to exploit fully a valuable marketing channel and alter Verizon's incentives with respect to pricing, marketing, and innovation. They unreasonably diminish competition between Verizon and the Cable Defendants—competition that is critical to maintaining low prices, high quality, and continued innovation.

The Commercial Agreements also unreasonably diminish future incentives to compete for product and feature development pertaining to the integration of broadband, video, and wireless services. Although the JOE technology joint venture may produce useful innovations that benefit consumers, the JOE has a potentially unlimited duration, and it contains

restrictions on its members' abilities to innovate outside of the JOE or to collaborate using JOE technology with any partner that is not also a member of the JOE. These aspects of the JOE unreasonably reduce the incentives and ability of Defendants to compete on product and feature development, and create an enhanced potential for anticompetitive coordination.

The Commercial Agreements also unreasonably restrain the ability of the Cable Defendants to offer wireless services on a resale basis. Although the agreements permit the Cable Defendants eventually to act as wireless competitors using Verizon Wireless's network at least in part, the Cable Defendants are explicitly prohibited from doing so for the first four years of the agreements, and meanwhile they may only offer Verizon Wireless services as sales agents. Whereas most wireless resellers do not serve as a significant competitive constraint on facilities-based providers, the Cable Defendants have extensive network facilities and other commercial advantages that could enhance their relevance as competitors, and they have explored how to leverage those assets to their advantage. A four-year delay in the ability of the Cable Defendants to develop their own wireless offerings, relying in part on Verizon Wireless's network, diminishes their incentive to invest in potential wireless offerings and inhibits their ability to bring those offerings to market in a timely manner.

The provisions of the Commercial Agreements that make Verizon Wireless the exclusive wireless partner of the Cable Defendants also unreasonably restrain competition in the market for wireless services. Although the exclusivity provisions of the agreements may be reasonably necessary to bind the parties into a cooperative relationship for the next several years, the unlimited duration of the wireless exclusivity is unreasonable and unnecessarily restrains competition in the long term, if the ability to sell wireless services in combination with video or broadband services becomes an important component of wireless competition. Should the ability to offer integrated bundles develop into an important characteristic of competition for wireless services, these agreements would unreasonably prevent wireless carriers from offering those bundles with the most significant providers of video and broadband services.

The Commercial Agreements also significantly and adversely affect Verizon's long-term competitive incentives to reconsider, in future years, its pre-existing decision not to build out FiOS beyond its current commitments. Although Verizon's current plans do not contemplate additional FiOS buildout beyond the currently obligated areas—and therefore significant additional buildout is unlikely for at least the next several years—developments in the technology and economics of FiOS deployment and competition in the markets for video and broadband services more broadly, may cause Verizon to re-evaluate the possibility of additional buildout. The requirement and financial incentive for Verizon Wireless to sell the Cable Defendants' services, combined with the unlimited duration of the Commercial Agreements, could, in the long-term, create a disincentive to additional buildout in some areas within Verizon's wireline territory but outside the currently planned FiOS footprint.

The Commercial Agreements also unreasonably restrain competition due to ambiguities in certain terms regarding what conduct Verizon can, and cannot, engage in. As written, the ambiguous terms could be interpreted to prevent Verizon Wireless from engaging in certain competitive activities, including selling wireless services as a residential (as opposed to mobile) service and allowing Verizon to sell Verizon Wireless services along with other companies' services.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is designed to remedy the violation alleged in the Complaint while, at the same time, minimizing interference with possible procompetitive benefits of the agreements and maintaining flexibility to account for changing market conditions and technology. In particular, the proposed Final Judgment contains relief designed to eliminate the anticompetitive provisions, or aspects, of the Commercial Agreements while at the same time allowing the aspects that might be procompetitive to proceed. In a number of instances, the proposed Final Judgment contains a prohibition of certain conduct that goes into effect several years into the future, but allows the Defendants to petition the United States to continue that conduct, thereby allowing the restrictions of the decree to adjust depending on future developments.

The proposed Final Judgment sets forth (1) certain prohibited conduct, (2) certain amendments required to be made to the Commercial Agreements, (3) anti-collusion provisions and compliance training requirements, and (4) reporting requirements to enable the United States to ensure the Defendants' compliance with the proposed Final Judgment.

A. Prohibited Conduct

1. No Sales of Cable Services in the FiOS Footprint

Sections V.A and V.B of the proposed Final Judgment seek to maintain Verizon's incentives to aggressively market FiOS against the Cable Defendants in the areas in which both services are available and to ensure vigorous competition in the future. These sections prohibit Verizon Wireless from selling the Cable Defendants' services (''Cable Services'') in areas in which Verizon offers, or is likely to offer in the near term, FiOS service. This is necessary to ensure that Verizon receives no financial return from sales diverted from FiOS to the Cable Defendants.[3] Specifically, Verizon Wireless is barred by Section V.A from (a) selling Cable Services to residents who live within the FiOS Footprint; and (b) selling Cable Services in Verizon Wireless retail stores located within the FiOS Footprint.

The ''FiOS Footprint'' is defined to include not only areas that are currently served by FiOS, but those areas for which Verizon has a legal obligation to build FiOS facilities or is authorized to do so.[4] Verizon has publicly stated that it does not presently intend to build FiOS beyond the areas it has committed to local authorities to build. However, the proposed Final Judgment accounts for the possibility that developments in the technology and economics of FiOS deployment may in the future make additional buildouts profitable. It does this in two ways. First, any new areas where Verizon acquires additional authorizations to build FiOS also are included in the definition of ''FiOS Footprint.'' This ensures that if Verizon does build out FiOS in additional areas, its incentive to aggressively market and sell FiOS will not be blunted by the commissions it receives from the Cable Defendants for selling their competing products. Second, Section V.B extends the prohibition on Verizon Wireless's selling of Cable Services more broadly on the five year anniversary of the agreements. After December 2, 2016,[5] Verizon Wireless is prohibited from selling Cable Services both to residents who live within the ''DSL Footprint'' and in DSL Footprint Stores. The DSL Footprint consists of territory, other than the FiOS Footprint, where Verizon Telecom provides DSL service to more than a de minimis number of customers. Section V.B thus ensures that, as its planned buildout of FiOS is completed, Verizon's decision whether to extend the FiOS network will not be affected by its ability to sell, on a commission basis, Cable Services in lieu of developing its own products.

Verizon Wireless may, at least 120 days before December 2, 2016, petition the United States to allow it to continue to sell Cable Services in the DSL Footprint or some portion thereof. Upon such a request, the United States shall, in good faith, expeditiously examine market conditions in the relevant area to determine whether such sales will adversely impact competition and decide, in its sole discretion, whether to approve such a request.[6] This provision gives

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[3] The proposed Final Judgment does not bar the Cable Defendants from selling Verizon Wireless services anywhere. The Cable Defendants do not have their own wireless products and do not have any reduced incentive to market their various offerings as a result of these agreements. Therefore, there is no significant competitive concern with the Cable Defendants selling Verizon Wireless and the proposed Final Judgment does not interfere with these sales.

[4] Verizon has legally binding agreements with several local authorities to continue building its FiOS network. Should Verizon build out its network only so far as those agreements require, it will reach over 19 million homes by the end of 2018. The ''FiOS Footprint'' as defined in the proposed Final Judgment thus includes all areas covered by those commitments.

[5] This date is five years after the signing of several of the Commercial Agreements, and is the initial term set by the agreements, absent a renewal.

[6] The proposed Final Judgment requires the United States to grant or deny petitions under this section, and several others, within sixty (60) days. Should the United States require more time to make a decision due to lack of sufficient information, it

Continued

the United States important flexibility in administering the proposed Final Judgment to adapt to changes in technology or business models over the next several years. For instance, to the extent that Verizon is reasonably able to expand its ability to compete against the Cable Defendants using its own video and broadband products (with either FiOS or some other technology) within the DSL Footprint or any subset thereof, and would have the incentive to do so in the absence of the Commercial Agreements, the United States may deny any request from Verizon Wireless under this provision. In making this determination, the United States may rely in part on the periodic reports that Verizon is required to submit under Section VI.D, as discussed in more detail below.

The proposed Final Judgment permits Verizon Wireless to engage in certain limited activities that do not adversely affect competition. Section V.C provides that Verizon Wireless may advertise Cable Services in national or regional advertising that may reach residents of the FiOS Footprint or DSL Footprint, as long as it does not specifically target such advertising in local areas where Verizon Wireless is prohibited from selling Cable Services pursuant to Sections V.A and V.B. This provision preserves the ability of Verizon Wireless to engage in advertising to an efficient-sized area while, at the same time, preventing any advertising directed specifically at areas where Verizon Wireless is not permitted to sell Cable Services. To the extent that Verizon Wireless engages in such advertising and, as a result, a customer seeks to acquire Cable Services from a Verizon Wireless store in the FiOS (or DSL) Footprint, Verizon Wireless is permitted to provide factual information about Cable Services, as discussed further below, but may not sell Cable Services in such stores. Rather, Verizon Wireless will promote Verizon's services where available.

Verizon Wireless stores also may provide customers who purchase wireless services through one of the Cable Defendants' sales channels with the actual device that the customer purchased. This provision enables a customer who has already made the decision to purchase Verizon Wireless service from a Cable Defendant, and indeed has done so, to have a convenient way of obtaining the purchased device. Because the Cable Defendants do not operate retail stores on a widespread basis, they may rely on Verizon Wireless stores to actually deliver wireless devices to customers who purchase wireline-wireless bundles from them. The consumer benefits from being able to obtain a wireless device from a store; competition is not harmed because the Verizon Wireless store merely acts as a distribution outlet for a device that has already been acquired.

Finally, Verizon Wireless may provide information to potential customers regarding Cable Services in the FiOS (or DSL) Footprint, as long as Verizon Wireless receives no compensation for making such information available. This provision is designed to enable Verizon Wireless to provide limited factual information to a customer who wishes to purchase Cable Services but is confused about a particular Verizon Wireless store's ability to sell those services.

2. Limited Duration, and Other Restrictions, on the JOE

While the JOE technology joint venture has the potential to produce useful innovations that benefit not only the JOE members, but consumers as well, the unlimited term of the JOE agreement threatens to lessen competition among its members. As the Department of Justice and Federal Trade Commission have stated before, in general, the longer that would-be competitors collaborate with one another on a joint venture, the less likely they are to compete against one another.[7] Accordingly, Section V.F requires the Defendants who are members of the JOE to withdraw from the JOE by December 2, 2016. This provision is designed to allow the JOE time to develop wireline-wireless technologies that could benefit consumers, while ensuring that any procompetitive benefits are not outweighed by possible exclusionary or collusive conduct. Any Defendant that is a member of the JOE may, at least 180 days before December 2, 2016 and prior to 150 days before December 2, 2016, petition the United States for permission to continue its participation in the JOE. Upon such a request, the United States shall, in good faith, expeditiously examine market conditions to determine whether the Defendant's continued participation in the JOE will adversely impact competition. In making this determination, the United States may rely in part on the periodic reports that Verizon Wireless is required to submit under Section VI.D, which will contain information regarding the products and technologies under development by the JOE.

The proposed Final Judgment also ensures that the JOE Agreement does not unreasonably restrict its members from independently developing new services or working with non-JOE members after a member exits the JOE or the JOE is dissolved. Under the JOE Agreement, each JOE member is prohibited from independently developing technologies within the ''exclusive field,'' which consists, *inter alia,* of the integration of wireline and wireless services. As the JOE's primary owners, Verizon Wireless (50% ownership) and Comcast (31.8%) set its product roadmap and development priorities, with input from Time Warner Cable and Bright House Networks. If, for example, Time Warner Cable were to prioritize a particular product or feature as high but Verizon Wireless prioritizes it as low, then the JOE could decide not to develop the feature and leave Time Warner Cable with no path to develop the feature on its own. Section IV.D thus requires the Defendants to amend the JOE Agreement to allow Time Warner Cable and Bright House Networks to independently develop any technology that Time Warner Cable or Bright House Networks has presented to the JOE for potential development but that the joint venture has declined or ceased to pursue.

Section IV.E requires that, upon exiting the JOE, the exiting Defendant will be granted an immediate, irrevocable, perpetual, royalty-free fully paid-up non-exclusive license with immediate rights to sublicense, exploit, and commercialize any intellectual property then owned by the JOE. Section IV.E thus permits the Cable Defendants to license JOE-developed technology to other wireless carriers if they choose to do so upon leaving the JOE.

3. Ban on Wireless Exclusivity

Exclusivity may have procompetitive benefits, such as preserving incentives to invest and preventing free-riding. Under the Commercial Agreements, Verizon Wireless is the exclusive wireless partner of the Cable Defendants. This could, potentially, have procompetitive benefits, particularly in the short term while integrated wireline-wireless offerings are in their infancy and most customers do not buy wireline and wireless services together in a bundle. However, because the Verizon Wireless Agent Agreements can be renewed indefinitely, the exclusivity here is of an unreasonably long—potentially unlimited—duration. Depending on how the marketplace develops, particularly with respect to the success of wireline-wireless bundles (e.g., ''quad plays''), the exclusivity could unnecessarily and unreasonably restrict wireless competition in the future by foreclosing other wireless carriers from access to the most valuable wireline partners long-term. This could reduce the number of competing bundles, as well as the ability of various wireless carriers to provide constituent parts of those bundles. Accordingly, Section V.D prohibits Verizon Wireless from enforcing any exclusivity provisions of the Commercial Agreements that would bar any of the Cable Defendants from selling wireless services on behalf of a carrier other than Verizon Wireless after December 2, 2016.

Verizon Wireless may, at least 120 days before December 2, 2016, petition the United States for permission to continue its exclusive sales agreements with the Cable Defendants. Upon such a request, the United States shall, in good faith, expeditiously examine market conditions to determine, in its sole discretion, whether the Cable Defendants' continued exclusivity to Verizon Wireless will adversely impact competition. In making this determination, the United States may rely in part on the periodic reports that Verizon is required to submit under Section VI.D, as discussed in more detail below. Because competitive conditions may change more than four years hence, this provision allows the United States flexibility to determine at that time whether continued exclusivity would be beneficial or harmful to competition going forward.

may deny the petition without prejudice until such information is available.

[7] See U.S. Dep't of Justice & Fed. Trade Comm'n, *Antitrust Guidelines for Collaborations Among Competitors* § 3.34(f) (Apr. 2000), *available at http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf* (''The Agencies consider the duration of the collaboration in assessing whether participants retain the ability and incentive to compete against each other and their collaboration. In general, the shorter the duration, the more likely participants are to compete against each other and their collaboration.'').

4. No New Agreements

To prevent the Defendants from frustrating the purpose of the proposed Final Judgment, Sections V.G and V.H prohibit the Defendants from modifying the Commercial Agreements without prior written approval of the United States in its sole discretion. Section V.G also ensures that the amendments made to satisfy the requirements of the proposed Final Judgment are implemented in a way that satisfies the United States that they achieve the decree's purposes. Sections V.E, V.G, V.H, and V.I prohibit the Defendants from entering new agreements that would serve a similar purpose, or have similar effects, as the Commercial Agreements without prior written approval of the United States in its sole discretion.

B. Required Amendments to the Agreements

As originally written, the Commercial Agreements allowed Verizon Wireless to market FiOS, but only on an ''equivalent basis'' with its marketing of Cable Services, and they did not allow Verizon Wireless to market other Verizon wireline products at all. As noted above, these provisions would impede Verizon's ability to market its wireline products in competition with the Cable Defendants by unreasonably depriving it of the unfettered use of an important marketing channel; they also could lead to enhanced coordination. Accordingly, Section IV.B requires the Defendants to amend the Commercial Agreements such that there is unambiguously no restriction or condition on Verizon Wireless's ability to sell Verizon's wireline products, including DSL. Although the proposed Final Judgment already also prohibits Verizon Wireless from selling Cable Services in areas where FiOS operates, or is likely to operate in the future, Section IV.B ensures that the Defendants actually modify the problematic agreements and do not condition Verizon Wireless's ability to sell Verizon's wireline services on Verizon Wireless's efforts or success in selling Cable Services in the areas where it remains able to make such sales.

The Defendants disagree among themselves about the meaning of certain terms in the Commercial Agreements. Because these terms could be interpreted in a way that results in diminished competition, they are potentially unreasonable. Sections IV.A and IV.C require the Defendants to amend the Commercial Agreements to clarify these terms and to do so in a way that enhances rather than restricts competition. As written, the Commercial Agreements could be interpreted to prevent Verizon Wireless from selling wireless services as a residential (as opposed to mobile) service in competition with the Cable Defendants. The Commercial Agreements also arguably prohibit Verizon Telecom from selling Verizon Wireless services along with other video services. The proposed Final Judgment requires the Defendants to resolve these ambiguities in such a way as to make clear that Verizon Wireless is free to engage in these competitive activities. If these provisions were left unchanged, the Cable Defendants could threaten to enforce the offending provisions in order to prevent Verizon Wireless from taking competitive actions against them.

Under the Commercial Agreements, the Cable Defendants may eventually elect to become resellers of Verizon Wireless's service. As resellers using, at least in part, Verizon Wireless's network,[8] the Cable Defendants could provide additional competition in wireless as well as, potentially, wireline-wireless bundles, but they are unreasonably prohibited from doing so—even if they would otherwise find it commercially feasible and profitable—until March 2016. Meanwhile they may only offer Verizon Wireless services as sales agents.

Section IV.F requires the Defendants to modify the Commercial Agreements so that a Cable Defendant electing to operate as a reseller of Verizon Wireless services shall have the right to make such services commercially available six months after making such election. However, the amended Commercial Agreements may condition a particular Cable Defendant's election to operate as a reseller of Verizon Wireless Services on another Cable Defendant's first making such election. For ease of administration, the original Commercial Agreements gave certain Cable Defendants the right to elect to become resellers of Verizon Wireless Services only after a lead Cable Defendant made such an election, and tied the choice for one Cable Defendant to the choice made by another Cable Defendant. Section IV.F preserves that structure while ensuring that, once a Cable Defendant is authorized to elect to become a reseller and in fact makes such an election, it may begin reselling Verizon Wireless Services soon thereafter.

C. Anti-Collusion Provisions and Compliance Program

The proposed Final Judgment prohibits any form of anticompetitive collusion and contains provisions designed to ensure the Defendants' compliance. This is particularly important because the implementation of the Commercial Agreements, and realization of legitimate business objectives, will require some communication between Verizon Wireless and the Cable Defendants. In order to ensure that such communications are limited to legitimate business purposes and do not extend to anticompetitive collusion, the proposed Final Judgment contains certain safeguards discussed below.

Section V.J prohibits the Defendants from facilitating or reaching any agreement between Verizon's wireline segment and any Cable Defendant relating to the price, terms, availability, expansion, or non-expansion of wireline telecommunications services. This provision makes clear that although Verizon Wireless and the Cable Defendants will work together to deliver bundled wireless and wireline services to consumers, such joint efforts must not include any agreements between Verizon's wireline segment that would lessen competition with the Cable Defendants.

[8] The Cable Defendants could, for example, use their own Wi-Fi assets to supplement their use of Verizon Wireless's network in offering retail wireless services.

Section V.K ensures that no competitively sensitive information passes between the Cable Defendants and Verizon's consumer wireline business, in order to prevent collusion or other lessening of the intensity of the competitive rivalry between FiOS and the Cable Defendants. To the extent that the Cable Defendants share competitively sensitive information with Verizon Wireless, Verizon Wireless must take precautions to prevent such information from reaching Verizon Telecom. To that end, no employee of Verizon or Verizon Wireless may have access to both competitively sensitive Verizon Telecom information and competitively sensitive information from a Cable Defendant, except in certain limited, specifically enumerated circumstances. First, Section V.K allows the exchange of certain aggregated information pursuant to firewall provisions in the existing Commercial Agreements. Second, employees or officers of Verizon Wireless who are responsible for implementing or evaluating joint offers between (1) Verizon Wireless and the Cable Defendants, and (2) Verizon Wireless and Verizon Telecom, may have access to nonpublic information regarding both Verizon Telecom and the Cable Defendants, but in no event may these officers and employees share the nonpublic information of any Cable Defendant with Verizon Telecom, or vice versa. These officers and employees will be required to participate in the antitrust compliance and education program, described further below, which will help ensure that they understand their obligations under the proposed Final Judgment.

Section VI.A requires each Defendant to describe to the United States and New York the actions it has taken to comply with the proposed Final Judgment. Section VI.B requires each Verizon Defendant to submit a proposed compliance plan to the United States and New York, which the United States will either approve or reject. Should the United States and a Verizon Defendant be unable to agree on a compliance plan, the Court may be called upon to determine whether the Verizon Defendant's proposed compliance plan is reasonable. These provisions are important to ensure that Defendants take all the steps necessary to adhere to the proposed Final Judgment's substantive requirements, and that the United States is fully aware of these steps.

Section VI.C requires each Defendant to furnish to the United States and New York copies of any amendment to the Agreements along with a narrative explanation of the purposes and effect of such amendment. This provision allows the Plaintiffs to monitor future amendments to ensure they do not violate the decree.

Section VIII sets forth various mandatory procedures to ensure Defendants' compliance with the proposed Final Judgment, including a requirement that the Defendants (a) provide each of its officers, directors, senior executives, and employees whose responsibilities involve management of the JOE or the implementation of any of the Commercial Agreements with copies of the proposed Final Judgment and this Competitive Impact Statement; and (b)

annually furnish to each such person a description and summary of the meaning and requirements of the proposed Final Judgment and the antitrust laws generally.

D. Reporting Requirements

Section VI.D of the proposed Final Judgment requires Verizon and Verizon Wireless to make periodic reports to the U.S. Department of Justice and the Federal Communications Commission to allow those agencies to better monitor the state of competition during the pendency of the decree. Verizon Wireless must submit reports regarding its sales of Cable Services, its sales of FiOS services, and the activities of the JOE. Verizon must submit reports regarding its ongoing FiOS buildout and its sales of DSL service. These reports will enable the United States to monitor the development of competition over the term of the proposed Final Judgment, in order to allow it to determine whether to grant or deny any requests made by a Defendant for relief from any provision in the proposed Final Judgment. The reports will also be useful in alerting the United States to potential violations of the decree that would merit investigation.

Section VII includes standard provisions allowing the United States to obtain information from the Defendants in order to investigate potential violations of the proposed Final Judgment, as well as to determine whether the proposed Final Judgment should be modified or vacated, or to exercise any discretion granted by the proposed Final Judgment. To facilitate the exercise of these compliance inspection and visitorial powers, Sections VI.E and VI.F require the Defendants to collect and maintain all communications relating to the Agreements between a Verizon Defendant on the one hand and a Cable Defendant on the other hand.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States, the State of New York, and the Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's Internet Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Lawrence M. Frankel, Assistant Chief, Telecommunications & Media Enforcement Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 7000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against the agreements in their entirety. The United States is satisfied, however, that the revisions to the agreements described in the proposed Final Judgment, along with the prohibition of sales by Verizon Wireless of the Cable Defendants' services in areas where Verizon offers FiOS in competition with the Cable Defendants, will preserve competition for the provision of video and residential broadband service in the relevant markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); see generally United States v. SBC Commc'ns, Inc., 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[9]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); InBev, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed

[9] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. § 16(e) (2004), with 15 U.S.C. § 16(e)(1) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[10] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' SBC Commc'ns, 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' SBC Commc'ns, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and the APPA does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459; see also InBev, 2009 U.S. Dist. LEXIS 84787, at *20 (''The 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Microsoft, 56 F.3d at 1459–60. As this Court recently confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc'ns, 489 F. Supp. 2d at 11.[11]

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 16, 2012

Respectfully submitted,

/s/Jared A. Hughes
Jared A. Hughes,
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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, and STATE OF NEW YORK, Plaintiffs, v. VERIZON COMMNICATIONS INC., CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, COMCAST CORP., TIME WARNER CABLE INC., COX COMMUNICATIONS, INC., and BRIGHT HOUSE NETWORKS, LLC, Defendants.	Civil Action No.:

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiffs, United States of America and the State of New York, filed their Complaint on August 16, 2012, Plaintiffs and Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, Plaintiffs require Defendants to agree to undertake certain actions and refrain from certain conduct for the purposes of remedying the unlawful restraints of trade alleged in the Complaint;

AND WHEREAS, Defendants have represented to Plaintiffs that actions and conduct restrictions can and will be undertaken and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against

[10] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). See generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'''').

[11] See *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

Defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II. Definitions

As used in this Final Judgment:

A. ''BHN'' means defendant Bright House Networks, LLC, a Delaware limited liability company with its headquarters in East Syracuse, New York, its successors and assigns, and its Subsidiaries, divisions, groups, Partnerships and Joint Ventures, and their directors, officers, managers, agents, and employees.

B. ''Broadband Internet services'' means the provision to end-users of high-speed (capable of download speeds exceeding 760 kbps) connectivity to the Internet.

C. ''Cable Defendants'' means Comcast, TWC, BHN, and Cox, acting individually or collectively, as appropriate.

D. ''Cable Service'' means any wireline Broadband Internet service, telephony service, or Video Programming Distribution service offered by a Cable Defendant, or any bundle thereof, provided over facilities owned or operated by such Cable Defendant.

E. ''Comcast'' means defendant Comcast Corporation, a Pennsylvania corporation with its headquarters in Philadelphia, Pennsylvania, its successors and assigns, and its Subsidiaries, divisions, groups, Partnerships and Joint Ventures, and their directors, officers, managers, agents, and employees.

F. ''Commercial Agreements'' means: (1) the Reseller Agreement for Comcast Cable Communications, LLC, by and between VZW and Comcast Cable Communications, LLC, (2) the Comcast Agent Agreement, dated December 2, 2011 by and between Comcast Cable Communications, LLC and VZW, (3) the VZW Agent Agreement, dated December 2, 2011, by and between VZW and Comcast Cable Communications, LLC, as amended by Amendment Number 1, effective as of December 2, 2011, (4) the Reseller Agreement for Time Warner Cable Inc., by and between VZW and TWC, (5) the TWC Agent Agreement, dated December 2, 2011 by and between TWC and VZW, (6) the VZW Agent Agreement, dated December 2, 2011, by and between VZW and TWC, as amended by Amendment Number 1, effective as of December 6, 2011 and Amendment Number 2, effective as of June 4, 2012, (7) the BHN Agent Agreement, dated December 2, 2011 by and between BHN and VZW, (8) the VZW Agent Agreement, dated December 2, 2011, by and between VZW and BHN, (9) the Reseller Agreement for Bright House Networks, LLC, by and between VZW and BHN, (10) the Cox Agent Agreement, dated December 16, 2011 by and between Cox and VZW, (11) the VZW Agent Agreement, dated December 16, 2011, by and between VZW and Cox, as amended by Amendment Number 2, effective as of May 14, 2012, (12) the Reseller Agreement for Cox, by and between Cox and VZW, and (13) all schedules, exhibits, and amendments variously thereto.

G. ''Competitively Sensitive Cable Information'' means any non-public information relating to the price, terms, availability, or marketing plans of Cable Services.

H. ''Competitively Sensitive VZT Information'' means any non-public information relating to the price, terms, availability, or marketing plans of VZT Services.

I. ''Cox'' means defendant Cox Communications, Inc., a Delaware corporation with its headquarters in Atlanta, Georgia, its successors and assigns, and its Subsidiaries, divisions, groups, Partnerships and Joint Ventures, and their directors, officers, managers, agents, and employees.

J. ''DSL Footprint'' means any territory that is, as of the date of entry of this Final Judgment, served by a wire center that provides Digital Subscriber Line (''DSL'') service to more than a de minimis number of customers over copper telephone lines owned and operated by VZT, but excluding any territory in the FiOS Footprint.

K. ''DSL Footprint Store'' is any Verizon Store that shares a 5-digit zip code with any street address in the DSL Footprint, but excluding any FiOS Footprint Stores.

L. ''Defendants'' means Verizon, Verizon Wireless, Comcast, TWC, BHN, and Cox, acting individually or collectively, as appropriate.

M. ''FiOS Footprint'' means any territory in which Verizon at the date of entry of this Final Judgment or at any time in the future: (i) has built out the capability to deliver FiOS Services, (ii) has a legally binding commitment in effect to build out the capability to deliver FiOS Services, (iii) has a non-statewide franchise agreement or similar grant in effect authorizing Verizon to build out the capability to deliver FiOS Services, or (iv) has delivered notice of an intention to build out the capability to deliver FiOS Services pursuant to a statewide franchise agreement.

N. ''FiOS Footprint Store'' is any Verizon Store that shares a 5-digit zip code with any street address in the FiOS Footprint.

O. ''FiOS Service'' means any wireline Broadband Internet service, telephony service, or Video Programming Distribution service offered by Verizon that operates over fiber to the home over facilities owned or operated by Verizon.

P. ''JOE Agreement'' means the Limited Liability Company Agreement of Joint Operating Entity, LLC, dated December 2, 2011, among JOE LLC, Comcast, VZW, Time Warner Cable LLC, and BHN, and all schedules, exhibits, and amendments thereto.

Q. ''JOE LLC'' means Joint Operating Entity, LLC, a Delaware limited liability company, its successors and assigns, and its Subsidiaries, divisions, groups, Partnerships and Joint Ventures, and their directors, officers, managers, agents, and employees.

R. ''Non-Verizon Wireless Service'' means any wireless service provided to an end-user over any network operating over wireless spectrum licensed by the Federal Communications Commission (''FCC'') pursuant to the FCC's rules and offered by an entity other than Verizon Wireless.

S. ''Person'' means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

T. ''Sell'' (including the correlative terms ''Sale'' and ''Selling'') means offer, promote, market, or sell.

U. ''Subsidiary,'' ''Partnership,'' and ''Joint Venture'' refer to any person in which there is partial (25 percent or more) or total ownership or control between the specified person and any other person, provided that (1) BHN is not a Subsidiary, Partnership, or Joint Venture of TWC for any purpose of this Final Judgment; (2) Hulu, LLC is not a Subsidiary, Partnership, or Joint Venture of Comcast for any purpose of this Final Judgment; (3) Midcontinent Communications is not a Subsidiary, Partnership, or Joint Venture of Comcast for any purpose of this Final Judgment; (4) JVL Ventures, LLC is not a Subsidiary, Partnership, or Joint Venture of Verizon Wireless for any purpose of this Final Judgment; and (5) TCM Parent, LLC (d/b/a Travel Channel) is not a Subsidiary, Partnership, or Joint Venture of Cox for any purpose of this Final Judgment.

V. ''TWC'' means defendant Time Warner Cable Inc., a Delaware corporation with its headquarters in New York, New York, its successors and assigns, and its Subsidiaries, divisions, groups, Partnerships and Joint Ventures, and their directors, officers, managers, agents, and employees.

W. ''Verizon'' means defendant Verizon Communications Inc., a Delaware corporation with its headquarters in New York, New York, its successors and assigns, and its Subsidiaries, divisions, groups, Partnerships and Joint Ventures, and their directors, officers, managers, agents, and employees.

X. ''Verizon Defendants'' means Verizon and Verizon Wireless, acting individually or collectively, as appropriate.

Y. ''Verizon Store'' is any retail store, kiosk, or other physical location open to the public that is in any part owned or operated, directly or indirectly, by Verizon or Verizon Wireless. Stores that are authorized to sell Verizon Wireless Services but that are not in any part owned or operated by Verizon or Verizon Wireless are not Verizon Stores.

Z. ''Verizon Wireless'' or ''VZW'' mean defendant Cellco Partnership d/b/a Verizon Wireless, a joint venture between Verizon Communications Inc. and Vodafone Group, plc.

AA. ''Verizon Wireless Equipment'' means any end-user equipment designed to allow a user to access a Verizon Wireless Service.

BB. ''Verizon Wireless Service'' means any retail wireless service offered by Verizon Wireless and provided to an end-user over any network operating over wireless spectrum licensed by the Federal Communications Commission (''FCC'') pursuant to the FCC's rules.

CC. ''Video Programming Distribution'' means the distribution of professional video programming to residential customers.

DD. ''VZT'' means any subsidiary or entity within Verizon that offers consumer wireline services in the United States.

EE. ''VZT Service'' means any Broadband Internet service, telephony service, Video Programming Distribution service, or any other consumer service offered by VZT, or any bundle thereof, including FiOS Services, over facilities owned, operated, or leased by VZT.

FF. ''Wireless Exclusivity Provision'' means any contractual provision that restricts or prohibits the sale of a Non-Verizon Wireless Service by a Cable Defendant.

III. Applicability

This Final Judgment applies to Verizon, Verizon Wireless, Comcast, TWC, BHN, and Cox, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Required Conduct

Within thirty (30) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later:

A. Defendants shall amend the Commercial Agreements so that there is unambiguously no restriction or condition on the sale by Verizon Wireless of any Verizon Wireless Service. Under the amended Commercial Agreements, Verizon Wireless shall be free to sell Home Fusion, Home Phone Connect, or any other Verizon Wireless Service.

B. Defendants shall amend the Commercial Agreements so that there is unambiguously no restriction or condition on the sale by Verizon Wireless of any VZT Service. Under the amended Commercial Agreements, Verizon Wireless shall not be required to sell Cable Services on an ''equivalent basis'' as VZT Services, nor shall Verizon Wireless's freedom to sell VZT Services relate in any way to Verizon Wireless's efforts or successes in selling Cable Services.

C. Defendants shall amend the Commercial Agreements so that there is unambiguously no restriction on Verizon Wireless's ability to authorize, permit, or enable VZT to sell a Verizon Wireless Service in combination with VZT Services or any Person's Broadband Internet, telephony, or Video Programming Distribution service. Notwithstanding the foregoing, the amended Commercial Agreements may prohibit Verizon Wireless from initiating or marketing such a combined Sale.

D. Verizon Wireless, Comcast, TWC, and BHN shall amend the JOE Agreement to give each of TWC and BHN the right to independently develop any technology that TWC or BHN has first presented to the Board of Managers of JOE LLC. The amended JOE Agreement may, however, prohibit TWC or BHN from developing such technology that JOE LLC has determined to pursue for so long as JOE LLC continues to actively pursue such technology.

E. Verizon Wireless, Comcast, TWC, and BHN shall amend the JOE Agreement to clarify that any member of JOE LLC that exits JOE LLC shall, upon exit from JOE LLC (including an exit required pursuant to V.F), be granted an irrevocable, perpetual, royalty-free fully paid-up non-exclusive license with immediate rights to sublicense, exploit, and commercialize any intellectual property rights owned by JOE LLC as of the applicable exit date, except that if JOE LLC dissolves, the members at the time of dissolution may receive joint ownership of the intellectual property rights owned by JOE LLC as of the date of dissolution instead of receiving such a license. Notwithstanding the foregoing, any such license may be subject to (i) any restrictions contained in any third-party licenses granted to JOE LLC, (ii) obligations of confidentiality with respect to trade secrets (including source code) of JOE LLC, and (iii) termination based on the licensee or any of its affiliates bringing certain intellectual property infringement claims against JOE LLC or any of its other direct or indirect licensees.

F. Defendants shall amend the Commercial Agreements so that a Cable Defendant electing to operate as a reseller of Verizon Wireless Services shall have the right to make such services commercially available six (6) months after such an election. Notwithstanding the foregoing, the amended Commercial Agreements may condition a particular Cable Defendant's election to operate as a reseller of Verizon Wireless Services on another Cable Defendant's first making such an election.

G. Defendants shall amend the Commercial Agreements to incorporate the prohibitions reflected in V.A, V.B, and V.D.

V. Prohibited Conduct

A. Verizon Wireless shall not sell any Cable Service: (a) for a street address that is within the FiOS Footprint or (b) in a FiOS Footprint Store. Verizon Wireless shall not permit any other Person to sell any Cable Service in a FiOS Footprint Store.

B. Verizon Wireless shall not, after December 2, 2016, sell any Cable Service: (a) for a street address that is within the DSL Footprint or (b) in a DSL Footprint Store. Verizon Wireless shall not, after December 2, 2016, permit any other Person to sell any Cable Service in a DSL Footprint Store. Verizon Wireless may, at any time prior to 120 days before December 2, 2016, petition the United States to allow sales of Cable Services in any subset or subsets of the DSL Footprint (up to and including the entire DSL Footprint) after December 2, 2016. Upon such a request, the United States shall, in good faith, expeditiously examine market conditions in each subset of the DSL Footprint proposed by Verizon Wireless, to determine whether such sales will adversely impact competition. If the United States determines, in its sole discretion, that such sales in any or all of the subsets of the DSL Footprint proposed by Verizon Wireless will adversely impact competition, it may deny the petition as to those subsets. The United States shall grant or deny such a petition within sixty (60) calendar days of receiving each such petition. This provision is without prejudice to and does not limit any Defendant's right to seek any modification of the Final Judgment pursuant to Fed. R. Civ. P. 60(b)(5).

C. Notwithstanding V.A and V.B, Verizon Wireless may market Cable Services in national or regional advertising that may reach or is likely to reach street addresses in the FiOS Footprint or DSL Footprint, *provided that* Verizon Wireless does not specifically target advertising of Cable Services to local areas in which Verizon Wireless is prohibited from selling Cable Services pursuant to V.A and/or V.B. Further notwithstanding V.A and V.B, Verizon Wireless may, in any Verizon Store:

i. service, provide, and support Verizon Wireless Equipment sold by a Cable Defendant; and

ii. provide information regarding the availability of Cable Services, provided that Verizon Wireless does not enter any agreement requiring it to provide and does not receive any compensation for providing such information in any Verizon Store where Verizon Wireless is prohibited from selling Cable Services pursuant to V.A and/or V.B.

D. Verizon Wireless shall not enforce any Wireless Exclusivity Provision after December 2, 2016. Verizon Wireless may, at any time prior to 120 days before December 2, 2016, petition the United States to allow Verizon Wireless to enforce one or more Wireless Exclusivity Provisions after December 2, 2016. Upon such a request, the United States shall, in good faith, expeditiously examine market conditions to determine whether such exclusivity will adversely impact competition. If the United States determines, in its sole discretion, that such exclusivity will adversely impact competition, it may deny the petition. The United States shall grant or deny such a petition within sixty (60) calendar days of receiving each such petition. This provision is without prejudice to and does not limit any Defendant's right to seek any modification of the Final Judgment pursuant to Fed. R. Civ. P. 60(b)(5). Nothing in the foregoing requires any Cable Defendant to enter into an agreement with any wireless carrier or to otherwise engage in activities that would have violated any Wireless Exclusivity Provision if such provision had continued in effect after December 2, 2016.

E. Defendants shall not at any time, without the prior written approval of the United States in its sole discretion, enter any technology-development Joint Venture or Partnership that will as a result of such entry include both a Verizon Defendant and a Cable Defendant.

F. Any Defendant that is a member of JOE LLC shall not, without the prior written approval of the United States, remain in the JOE LLC after December 2, 2016. However, any Defendant that is a member of JOE LLC may, at any time after 180 days before December 2, 2016, and prior to 150 days before December 2, 2016, petition the United States for permission to remain a member of JOE LLC. Upon such a request, the United States shall, in good faith, expeditiously examine market conditions to determine whether the Defendant's continued membership in JOE LLC will adversely impact competition. If the United States determines, in its sole discretion, that such continued membership will adversely impact competition, it may deny the petition. The United States shall grant or deny each such a petition within sixty (60) calendar days of receiving such petition. This provision is without prejudice to and does not limit any Defendant's right to seek any modification of the Final Judgment pursuant to Fed. R. Civ. P. 60(b)(5).

G. Defendants shall not, without the prior written approval of the United States in its sole discretion, enter into or execute any amendment, supplement, or modification to the Commercial Agreements or the JOE

Agreement (including any amendments necessary to comply with this Final Judgment). This provision does not apply to: (1) agreements expressly permitted by V.I(1) or V.I(2) below, or (2) agreements changing the compensation that a Cable Defendant receives from Verizon Wireless for selling Verizon Wireless Services, provided that such changes are broadly implemented for both Cable Defendant and non-Cable Defendant agents of Verizon Wireless. The United States shall grant or deny a request for an exercise of its sole discretion pursuant to this paragraph within sixty (60) calendar days of receiving such a request.

H. Defendants shall not, without the prior written approval of the United States in its sole discretion, effect any change in any compensation Verizon Wireless receives from any Cable Defendant for selling Cable Services, except as otherwise provided for in the Commercial Agreements. The United States shall grant or deny a request for an exercise of its sole discretion pursuant to this paragraph within sixty (60) calendar days of receiving such a request.

I. No Verizon Defendant shall enter into any agreement with a Cable Defendant nor shall any Cable Defendant enter into any agreement with a Verizon Defendant providing for the sale of VZT Services, the sale of Verizon Wireless Services, the sale of Cable Services, or the joint development of technology or services without the prior written approval of the United States in its sole discretion. This provision does not apply to (1) agreements executed in connection with ordinary course implementation or operations of the Commercial Agreements or the JOE Agreement; (2) agreements executed in the ordinary course in connection with the sale of products or services pursuant to the Commercial Agreements or the JOE Agreement; (3) the negotiation of and entering into content agreements between the Verizon Defendants and Cable Defendants who provide video programming content; (4) the purchase, sale, license or other provision of commercial or wholesale products or services (including advertising and sponsorships) and the lease of space in the ordinary course among or between the Defendants; (5) any interconnection agreement between any Cable Defendant and the Verizon Defendants; or (6) any agreement in connection with broad-based industry technology development consortia or standards setting organizations. The United States shall grant or deny a request for an exercise of its sole discretion pursuant to this paragraph within sixty (60) calendar days of receiving such a request.

J. No Defendant shall participate in, encourage, or facilitate any agreement or understanding between VZT and a Cable Defendant relating to the price, terms, availability, expansion, or non-expansion of VZT Services or Cable Services. The foregoing does not apply to (1) intellectual property licenses between JOE LLC and VZT, (2) the negotiation of and entering into content agreements between Verizon Defendants and Cable Defendants who provide video programming content, (3) the purchase, sale, license or other provision of commercial or wholesale products or services (including advertising and sponsorships) and the lease of space in the ordinary course among or between the Defendants, or (4) any interconnection agreement between any Cable Defendant and the Verizon Defendants. However, in no event shall a Defendant participate in, encourage, or facilitate any agreement or understanding between VZT and a Cable Defendant that violates the antitrust laws of the United States.

K. No Verizon Defendant shall disclose competitively sensitive VZT information to any Cable Defendant, nor shall any Cable Defendant disclose any competitively sensitive Cable information to VZT. If a Cable Defendant discloses competitively sensitive Cable information to Verizon Wireless, Verizon Wireless shall take reasonable precautions to prevent such information from being communicated or otherwise made available to VZT. No employee of a Verizon Defendant shall have access to both competitively sensitive VZT information and competitively sensitive Cable information, except (1) to the extent sharing aggregated information is expressly permitted by the Commercial Agreements or the JOE Agreement, or (2) by Verizon Wireless officers or employees responsible for implementing or evaluating joint offers between Verizon Wireless and the Cable Defendants, and joint offers between Verizon Wireless and VZT.

VI. Document Retention and Disclosures

A. Within forty (40) calendar days of the filing of the Complaint in this matter, or ten (10) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, each Defendant shall deliver to the United States and the State of New York an affidavit that describes in reasonable detail all actions it has taken to comply with Sections IV and V of this Final Judgment. In the case of Verizon Wireless, such affidavit should include, but not be limited to, a description of the systems in place to identify whether a street address is within the FiOS Footprint prior to any sale of a Cable Service by Verizon Wireless. Each Defendant shall deliver to the United States and the State of New York an affidavit describing any changes to the efforts and actions outlined in its earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented. Notwithstanding the foregoing, Defendant Cox shall have no obligation to provide any such affidavits to the State of New York.

B. Within forty (40) calendar days of the filing of the Complaint in this matter, or ten (10) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, each Verizon Defendant shall submit to the United States and the State of New York a document setting forth in detail the procedures implemented to effect compliance with Section V.K of this Final Judgment. The United States shall notify the Defendant within ten (10) business days whether it approves of or rejects the Defendant's compliance plan, in its sole discretion. In the event that a Verizon Defendant's compliance plan is rejected, the reasons for the rejection shall be provided to the Defendant and that Defendant shall be given the opportunity to submit, within ten (10) business days of receiving the notice of rejection, a revised compliance plan. If the United States and the Defendant cannot agree on a compliance plan, the United States shall have the right to request that the Court rule on whether the Defendant's proposed compliance plan is reasonable.

C. Within ten (10) calendar days of executing any amendment or modification to the Commercial Agreements or the JOE Agreement, any Defendant that is a party to the amended or modified agreement shall furnish to the United States and the State of New York a copy of such amendment or modification, along with a narrative explanation of the purpose and effect of such amendment or modification. Notwithstanding the foregoing, Defendant Cox shall have no obligation to provide any such amendment, modification, or narrative explanation to the State of New York.

D. The Verizon Defendants shall furnish the periodic reports described in Appendix A by the respective deadlines established therein. Such reports may be modified by agreement between the United States and the Verizon Defendants. The obligation to furnish such reports shall expire ninety (90) calendar days after the later of: (1) the termination of all of the Commercial Agreements and (2) the date on which no Defendant is a member of JOE LLC.

E. The Cable Defendants shall collect and maintain all communications with the Verizon Defendants relating to the Commercial Agreements or the JOE Agreement. A Cable Defendant's obligation to collect and maintain such documents may be modified by agreement between the United States and the Cable Defendant. A Cable Defendant's obligation to collect and maintain such documents shall expire ninety (90) calendar days after the later of: (1) the termination of all of the Commercial Agreements and (2) the date on which no Defendant is a member of JOE LLC.

F. The Verizon Defendants shall collect and maintain all communications with the Cable Defendants relating to the Commercial Agreements or the JOE Agreement. The obligation to collect and maintain such documents may be modified by agreement between the United States and the Verizon Defendants. The obligation to collect and maintain such documents shall expire ninety (90) calendar days after the later of: (1) the termination of all of the Commercial Agreements and (2) the date on which no Defendant is a member of JOE LLC.

VII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, of determining whether the Final Judgment should be modified or vacated, or of exercising any discretion granted by this Final Judgment, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division and, in conjunction with the United States, the Antitrust Bureau of the Office of the New York Attorney General, including consultants and other persons retained by the

United States and the State of New York, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or, in conjunction with the United States, the Antitrust Bureau of the Office of the New York Attorney General, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States and the State of New York, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section or pursuant to Section VI shall be divulged by the United States or the State of New York to any person other than an authorized representative of the (1) executive branch of the United States, (2) the Federal Communications Commission, or (3) the Office of the New York Attorney General, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States or the State of New York, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States or the State of New York shall give Defendants ten (10) business days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. Antitrust Compliance and Education Program

Each Defendant shall:

A. Furnish a copy of this Final Judgment and related Competitive Impact Statement within sixty (60) calendar days of entry of the Final Judgment to its officers, directors, and senior executives, and to its employees whose job responsibilities involve management of JOE LLC or the implementation of any of the Commercial Agreements;

B. Furnish a copy of this Final Judgment and related Competitive Impact Statement to any person who succeeds to a position described in Section VIII.A within thirty (30) days of that succession;

C. Annually furnish to each person designated in Sections VIII.A and VIII.B a description and summary of the meaning and requirements of this Final Judgment and the antitrust laws generally. Such annual description and summary shall make clear that no provision of this Final Judgment permits conduct that would violate the antitrust laws, including but not limited to agreements related to prices or future build-out plans; and

D. Obtain from each person designated in Sections VIII.A and VIII.B, within sixty (60) days of that person's receipt of the Final Judgment, a certification that he or she (1) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (2) is not aware of any violation of the Final Judgment that has not been reported to the Defendant; and (3) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against each Defendant and/or any person who violates this Final Judgment.

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

X. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XI. No Limitation on Government Rights

Nothing in this Final Judgment shall limit the right of the United States or the State of New York to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any past, present, or future conduct, policy, or practice of the Defendants; provided, however, that nothing in this Final Judgment shall be construed to waive any jurisdictional defense of Defendant Cox to any investigation, claim, or action of the State of New York.

XII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Anti trust Procedures and Penalties Act, 15 U.S.C. § 16

_____

United States District Judge

Appendix A—Periodic Reports

1) Verizon Wireless shall furnish to the United States (with a copy to the FCC and, as to information for the State of New York, to the Antitrust Bureau of the Office of the New York Attorney General) a periodic report regarding the sales of Cable Services by Verizon Wireless. Such report shall state, separately for each calendar month since January 2012, for each Cable Defendant, and for each geographic area (as agreed to by the United States in its sole discretion), the number of sales of each Cable Service. Verizon Wireless shall furnish such report within thirty (30) calendar days of the entry of this Final Judgment, and every three (3) months thereafter.

2) Verizon Wireless shall furnish to the United States (with a copy to the FCC and, as to information for the State of New York, to the Antitrust Bureau of the Office of the New York Attorney General) a periodic report regarding the sales of VZT Services by Verizon Wireless. Such report shall state, separately for each calendar month since January 2012 and for each geographic area (as agreed to by the United States in its sole discretion), the number of sales of each VZT Service. Verizon Wireless shall furnish such report within thirty (30) calendar days of the entry of this Final Judgment, and every three (3) months thereafter.

3) Verizon shall furnish to the United States (with a copy to the FCC and, as to information for the State of New York, to the Antitrust Bureau of the Office of the New York Attorney General) a periodic report regarding the areas where Verizon has built out the capability to deliver FiOS Services. Such report shall contain the number of houses in each geographic area (as agreed to by the United States in its sole discretion) where FiOS Services are available, the number of houses in each geographic area (as agreed to by the United States in its sole discretion) where FiOS Services have become available for the first time in the previous twelve months, an estimate of the actual costs incurred by Verizon to make FiOS Services available to such houses, a disclosure of any franchise agreement entered into by Verizon within the previous twelve months, a disclosure of any request by Verizon to modify or cancel a franchise agreement in the previous twelve months, a disclosure of any breach of an obligation to build out the capability to deliver FiOS Services in the previous twelve months, an estimate of the number of houses in each geographic area (as agreed to by the United States in its sole discretion) where FiOS Services are expected to become available for the first time in the next twelve months, and an estimate of the number of houses in each geographic area (as agreed to by the United States in its sole discretion) that are expected to become available for the first time in the next five years. Verizon shall furnish such report within ninety (90) calendar days of the entry of this Final Judgment, and every year thereafter.

4) Verizon shall furnish to the United States (with a copy to the FCC and, as to information for the State of New York, to the Antitrust Bureau of the Office of the New York Attorney General) a periodic report regarding Verizon's DSL service. Such report shall state, separately for each month since January 2010, where available, and for each wire center, the number of households where Verizon offers DSL service, the average data revenue per Verizon residential DSL account, the number of lines subscribing to Verizon DSL service, the number of lines initiating Verizon DSL service, and the number of lines disconnecting Verizon DSL service. Such report shall further state, separately for each month since January 2010, where available, and for each of the United States, the number of lines subscribing to Verizon DSL service by speed tier, and the number of Verizon DSL lines identified in Verizon's system as disconnected to subscribe to a FiOS Service. Verizon shall furnish such report within ninety (90) calendar days of the entry of this Final Judgment, and every six (6) months thereafter.

5) Verizon Wireless shall furnish to the United States (with a copy to the FCC and to the Antitrust Bureau of the Office of the New York Attorney General) a periodic report regarding the activities of JOE LLC. Such report shall contain, at a minimum, a description of the technology and products under development by JOE LLC, a description of any products for sale employing technology developed by JOE LLC, a list of any pending patent applications assigned to JOE LLC, and a summary of any intellectual property licensing agreements entered into by JOE LLC. Verizon Wireless shall furnish such report within ninety (90) calendar days of the entry of this Final Judgment, and every year thereafter.

[FR Doc. 2012–20740 Filed 8–22–12; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,317]

Dana Holding Corporation, Power Technologies Group Division, Including On-Site Leased Workers From Manpower, Milwaukee, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated June 28, 2012 (received on July 6, 2012), the United Autoworkers Union requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Dana Holding Corporation, Power Technologies Group Division, Milwaukee, Wisconsin (subject firm). The negative determination was issued on April 30, 2012, and the Department's Notice of Determination will soon be published in the **Federal Register.**

The initial investigation resulted in a negative determination based on the findings that the subject firm did not shift production of gaskets and exhausts to a foreign country nor did the subject firm or its customers increase reliance on imports during the relevant period.

The request for reconsideration alleged that increased aggregate imports of gaskets (and like and directly competitive articles) in 2011 and 2012, loss of business with a firm that employed a worker group eligible to apply for TAA, and increased imports of finished articles containing foreign-produced component parts like or directly competitive with the gaskets and exhausts produced by workers at the subject firm, contributed importantly to worker separations at the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of August, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–20767 Filed 8–22–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,475]

Huntington Foam LLC, Fort Smith, AR; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated May 21, 2012, the State Workforce Office requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The negative determination was issued on May 16, 2012. Workers at the subject firm were engaged in activities related to the production of expandable polystyrene.

The initial investigation resulted in a negative determination based on the findings that the subject firm did not shift production of polystyrene to a foreign country, nor did the subject firm or its customers report an increased reliance of imports of articles like or directly competitive with polystyrene.

The State has asserted that the subject firm supplied a component part to a firm that employed a worker group eligible to apply for TAA.

The Department has carefully reviewed the request for reconsideration and the existing record and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of August, 2012.

Del Min Amy Chen

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–20766 Filed 8–22–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *August 6, 2012 through August 10, 2012.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially