

**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

Civil Action No.:

Filed:

BRIGHT HOUSE NETWORKS, LLC,
5000 Campuswood Drive
East Syracuse, NY 13057,

Defendants.

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.

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

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.

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

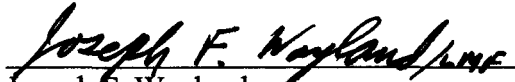
conspiracy violates Section 1 of the Sherman Act, 15 U.S.C. § 1;


- 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: August 16, 2012

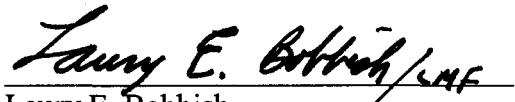
Respectfully submitted,

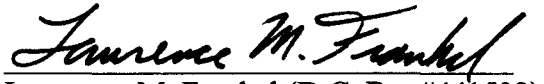
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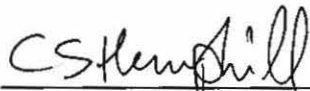

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A handwritten signature in black ink, appearing to read "CS Hemphill", is written over a horizontal line.

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