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.

Case: 1:12-cv-01354 (RMC)

PLAINTIFF UNITED STATES'S RESPONSE TO PUBLIC COMMENTS

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), the United States hereby files the public comments concerning the proposed Final Judgment in this case and the United States's response to those comments. After careful consideration of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court, pursuant to 15 U.S.C. § 16(b)-(h), to enter the proposed Final Judgment after the public comments and this Response have been published in the *Federal Register* pursuant to 15 U.S.C. § 16(d).

I. PROCEDURAL HISTORY

On August 16, 2012, the United States and the State of New York filed a Complaint in this matter, alleging that certain agreements among 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") unreasonably restrain trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

Simultaneously with the filing of the Complaint, the United States filed a Competitive Impact Statement ("CIS"), a proposed Final Judgment, and a Stipulation and Order signed by the parties consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA. Pursuant to those requirements, the United States published the proposed Final Judgment and CIS in the Federal Register on August 23, 2012, *see* 77 Fed. Reg. 51048; and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, published in *The Washington Post* on August 18, 19, 20, 21, 22, 23, and 24 of 2012. The Defendants filed the statement required by 15 U.S.C. § 16(g) on August 27, 2012. The sixty-day period for public comments ended on October 23, 2012. The United States received four comments, as described below and attached hereto.

II. THE INVESTIGATION AND THE PROPOSED RESOLUTION

A. Investigation

In December 2011, Verizon Wireless and each of Comcast, Time Warner Cable, Bright House Networks, and Cox (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. In addition, Verizon Wireless and each of the Cable Defendants (except Cox) entered into an agreement (the "JOE Agreement") to develop integrated wireline and wireless telecommunications technologies through a research and development joint venture, Joint Operating Entity LLC ("JOE").

The proposed Final Judgment is the culmination of an investigation by the Antitrust Division of the United States Department of Justice ("Department") and the Office of the Attorney General of the State of New York into the Commercial Agreements and the JOE Agreement. The Department conducted dozens of interviews with the parties' wireline and wireless telecommunications competitors, media content suppliers, public interest groups, and other interested third parties. The Department obtained testimony from the Defendants' officers and employees and required the Defendants to respond to interrogatories and provide large quantities of documents. Throughout its investigation, the Department coordinated closely with the Federal Communications Commission, which conducted its own parallel investigation into the same agreements. The Department carefully analyzed the information obtained and thoroughly considered all of the relevant issues.

As a result of the investigation the Department filed a Complaint on August 16, 2012, alleging that aspects of the Commercial Agreements and the JOE Agreement were likely to unreasonably restrain competition. A proposed Final Judgment was filed concurrently with the Complaint that, if entered by the Court, would resolve the matter by remedying the violation alleged in the Complaint.

B. The Proposed Final Judgment

The proposed Final Judgment is designed to preserve competition in numerous local markets for broadband, video, and wireless services. In certain parts of the country, Verizon Wireless's parent company[1] Verizon offers fiber-based voice, video, and broadband services under the trade name "FiOS." Verizon offers FiOS service in numerous 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, the Commercial Agreements would have resulted in Verizon Wireless retail outlets selling two competing "quad-play"[2] 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, the Commercial Agreements and the JOE Agreement contained a variety of mechanisms that likely would have diminished Verizon's incentives and ability to compete vigorously against the Cable Defendants with its FiOS offerings.

The Commercial Agreements and the JOE Agreement also threatened the Defendants' long-term incentives to compete insofar as they created a product development partnership of potentially unlimited duration. Innovation and rapid technological change characterize the telecommunications industry, but the agreements failed reasonably to account for such change and instead would have frozen in place relationships that, in certain respects, may have been harmful in the long term. Exclusive sales partnerships and research and development

[1] Verizon Wireless is a joint venture owned by Verizon (55%) and Vodafone Group Plc (45%), but is operated and managed by Verizon.

[2] "Quad play" refers to a bundle of four telecommunications services: a "triple play" of wireline video, broadband, and telephone services, plus mobile wireless services.

collaborations between rivals which have no end date can blunt the long-term incentives of the Defendants to compete against each other, and others, as the industry develops.

The proposed Final Judgment forbids Verizon Wireless from selling the Cable Defendants' wireline telecommunications services ("Cable Services") in areas where Verizon offers, or is likely soon to offer, FiOS services,[3] and removes contractual restrictions on Verizon Wireless's ability to sell FiOS,[4] ensuring that Verizon's incentives to compete aggressively against the Cable Defendants remain unchanged. In addition, after December 2016 the proposed Final Judgment forbids Verizon Wireless from selling Cable Services to customers in areas where Verizon today sells Digital Subscriber Line ("DSL") Internet service (subject to potential exceptions at the Department's sole discretion),[5] thereby preserving Verizon's incentives to expand its FiOS network and otherwise compete using DSL or other technologies. Finally, the proposed Final Judgment limits the duration of JOE and other features of the agreements,[6] ensuring that the agreements will not dampen the Defendants' incentives to compete against one another over the long term.

The proposed settlement also requires the Commercial Agreements to be amended so that:

- Verizon retains the ability to sell bundles of services that include Verizon DSL and Verizon Wireless services as well as the video services of a direct broadcast satellite company (i.e., DirecTV or Dish Network);[7]

[3] Proposed Final Judgment, *United States et al. v. Verizon Communications Inc. et al.*, Civ. No. 1:12-cv-01354 (RMC), § V.A (D.D.C. filed Aug. 16, 2012) ("Proposed Final Judgment"), *available at* < http://www.justice.gov/atr/cases/f286100/286102.pdf >.

[4] *Id.* § IV.B.

[5] *Id.* § V.B.

[6] *Id.* §§ V.D, V.F.

[7] *Id.* § IV.C.

- The Cable Defendants may resell Verizon Wireless services using their own brand at any time, rather than having to wait for four years;[8] and

- Upon dissolution of JOE, all members receive a non-exclusive license to all of the venture's technology, and each may then choose to sublicense to other competitors.[9]

The proposed Final Judgment also forbids any form of collusion and restricts the exchange of competitively sensitive information.[10] Finally, Verizon is required to provide regular reports to the Department to ensure that the collaboration does not harm competition going forward.[11]

III. STANDARD OF JUDICIAL REVIEW

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
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> (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.

[8] *Id.* § IV.F.
[9] *Id.* § IV.E.
[10] *Id.* §§ V.J, V.K.
[11] *Id.* § VI.D.

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 (D.C. Cir. 1995); *see also 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 mechanisms to enforce the final judgment are clear and manageable.").

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States'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; *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed 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).[12] 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's "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 less 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

[12] *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'").

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 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 the United States District Court for the District of Columbia 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 to the Tunney Act,[13] Congress made clear its intent to preserve the practical benefits of using 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

[13] The 2004 amendments substituted "shall" for "may" in directing relevant factors for courts 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

evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). This language effectuates 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.[14]

IV. SUMMARY OF PUBLIC COMMENTS AND THE UNITED STATES'S RESPONSE

During the 60-day public comment period, the United States received comments from the following entities: the Communications Workers of America, a trade union representing workers in the telecommunications industry;[15] RCN Telecom Services, LLC, a facilities-based provider

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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).

[14] *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 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.").

[15] The Tunney Act Comments of the Communications Workers of America on the Proposed Final Judgment (Oct. 23, 2012) ("CWA Comments"), attached hereto as Exhibit A. On February 19, 2013 CWA submitted an "Addendum" to its comment, in which it alleges that Comcast and Verizon violated the proposed Final Judgment by exchanging competitively sensitive information pursuant to an FCC proceeding. Although the Addendum was submitted

of wireline voice, video, and broadband services;[16] Montgomery County, Maryland;[17] and the City of Boston, Massachusetts.[18] The following is a summary of the issues raised by the commenters and the United States's responses to them. Part A addresses issues that were raised by more than one commenter; Part B addresses issues raised by individual commenters.

A. Response to Issues Raised by Multiple Commenters

1. The Proposed Final Judgment Properly Prohibits Verizon Wireless from Selling Cable Services in All Geographic Markets at Risk of Reasonably Foreseeable Anticompetitive Effects

The proposed Final Judgment prohibits Verizon Wireless from selling Cable Services in areas where Verizon presently offers FiOS or is likely to do so in the foreseeable future. Each of the four commenters argues that the proposed Final Judgment should prohibit Verizon Wireless from selling Cable Services in a broader geographic area.[19] The commenters argue that unless Verizon Wireless is prohibited from selling Cable Services in areas where Verizon operates

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well outside the 60-day comment period specified in the statute, the Department includes it here as Exhibit B. The Department notes in response to CWA's Addendum that Verizon's disclosure of subscriber data to Comcast apparently occurred in late 2011, well before the proposed Final Judgment was filed with the Court and, therefore, cannot constitute a violation of the proposed decree. *See* Opposition to Motion to Dismiss of Comcast Cable Communications, LLC, *In the Matter of Comcast Cable Communications, LLC Petitions for Determination of Effective Competition in Communities in New Jersey*, FCC MB Docket Nos. 12-152 et al. (Feb. 19, 2013), *available at* < http://apps.fcc.gov/ecfs/comment/view?id=6017164408 >.

[16] Comments Regarding the proposed Final Judgment Submitted on Behalf of RCN Telecom Services, LLC (Oct. 22, 2012) ("RCN Comments"), attached hereto as Exhibit C.

[17] Opposition of Montgomery County, Maryland, to proposed Final Judgment (Oct. 22, 2012) ("Montgomery County Comments"), attached hereto as Exhibit D.

[18] Opposition of the City of Boston, Massachusetts to Proposed Settlement (Oct. 22, 2012) ("Boston Comments"), attached hereto as Exhibit E.

[19] *See* CWA Comments at 14; RCN Comments at 6-10; Montgomery County Comments at 23; Boston Comments at 10.

wireline facilities but does not offer FiOS, Verizon will have no incentive to expand its FiOS network.[20]

The Department carefully considered the potential impact of the Commercial Agreements on the likelihood that Verizon would expand its FiOS network. Under its existing franchise obligations, Verizon is required to build FiOS to millions of additional households over the next few years, and as discussed further below, these households are covered by the proposed remedy. However, the Department's investigation also found that, well before entering into the Commercial Agreements at issue in this matter, Verizon had decided not to build its FiOS network throughout its entire wireline footprint.[21] As early as March 2010, Verizon publicly stated that it had no plans to obtain additional franchise agreements or build beyond where it is obligated under existing agreements, and had chosen to focus on increasing its penetration in areas where it has already obtained cable franchise agreements.[22] Accordingly, it appears unlikely that Verizon would have expanded FiOS significantly beyond areas with existing franchise agreements for at least the next several years even in the absence of the Commercial Agreements. Thus, competitive harm resulting from the Commercial Agreements appears unlikely in these areas, and it would be very difficult for the Department to prove a significant risk of such harm.

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[20] *See, e.g.,* Boston Comments at 9; Montgomery County Comments at 12-13.

[21] *See Competitive Impact Statement, United States et al. v. Verizon Communications Inc. et al.*, Civ. No. 1:12-cv-01354 (RMC), at 15, 17-18 (D.D.C. filed Aug. 16, 2012) ("CIS"), *available at* <http://www.justice.gov/atr/cases/f286100/286108.pdf>; *see also* Boston Comments at 6 (showing that in 2008 Verizon planned to build FiOS only to certain parts of the Boston metropolitan area).

[22] *See* Yu-Ting Wang & Jonathan Make, *Cities Seek Alternatives as Verizon Halts Further FiOS Expansion*, COMMC'NS DAILY, Mar. 31, 2010, at 4.

The proposed Final Judgment therefore takes a bifurcated approach to areas that do not currently have FiOS: (1) In areas where FiOS buildout is likely in the next few years (e.g., areas with franchise agreements or build commitments), the decree immediately prohibits Verizon Wireless from selling Cable Services; and (2) in areas where Verizon does not have a franchise agreement or build commitment, but does offer DSL service as of the date of entry of the Final Judgment—areas in which it is unlikely to build FiOS for at least the next several years—the decree prohibits Verizon Wireless from selling Cable Services after December 2, 2016.

With respect to the first category, the proposed Final Judgment ensures that Verizon will retain whatever incentive it has to maintain and expand its FiOS network in areas where such an expansion is plausible. Section V.A prohibits Verizon Wireless from selling Cable Services to households in the "FiOS Footprint," as well as from selling Cable Services in stores that are located in the FiOS Footprint. Contrary to what the comments may suggest, the FiOS Footprint is defined broadly to include not only areas where Verizon currently offers FiOS, but all areas in which it is either obligated or authorized to provide any fiber-based video service. [23] Thus defined, the FiOS Footprint includes all of New York City and Washington, DC, despite the fact that Verizon has only just begun to build FiOS in those cities. Verizon thus has the same incentive to fully build out in those cities, and in other areas where it is authorized but has not yet built, as it had before entering into the Commercial Agreements.

[23] *See* Proposed Final Judgment § II.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.").

With respect to the second category, although it appears unlikely that Verizon would, in at least the next few years, expand FiOS beyond the areas where it currently has authorization to build, the Department recognized that developments in the technology and economics of FiOS deployment may make additional expansion attractive. Accordingly, Section V.B of the proposed Final Judgment expands the prohibition on Verizon Wireless's sale of Cable Services to include the "DSL Footprint" as of December 2, 2016.[24] Thus, even in areas where Verizon has no plans to expand FiOS, and FiOS expansion is unlikely for the foreseeable future, the proposed Final Judgment has the added protection that Verizon may be prohibited from selling Cable Services beyond the end of 2016 if such selling would adversely impact competition (e.g., by adversely affecting the incentives to engage in additional expansion of FiOS).

The Department believes that, taken together, Sections V.A and V.B preserve Verizon's incentives to continue to invest in FiOS, and that the alternatives proposed by the commenters are overbroad and unjustified by the facts. For instance, the City of Boston and Montgomery County would ban Verizon Wireless from selling Cable Services, and the Cable Defendants from selling Verizon Wireless services *anywhere* in California or Texas, even though Verizon offers wireline services in only a small portion of those states.[25] Such a prohibition would deprive millions of consumers in those states of a potentially attractive quad-play offer of wireline voice, video, and broadband services along with wireless services, despite the fact that those areas have no prospect of being served by Verizon wireline services.

[24] *See id.* § II.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 [Verizon], but excluding any territory in the FiOS Footprint. Verizon Wireless may petition the United States to allow continued sales of Cable Services in the DSL Footprint or subsets thereof, which the United States shall grant or deny in its sole discretion.").

RCN's proposal to ban Verizon Wireless's sales of Cable Services in entire Designated Marketing Areas ("DMAs") where FiOS is authorized to be offered to 10% of residents[26] is less sweeping, but nonetheless overbroad. RCN argues that "the most logical and economical area for FiOS expansion is adjacent to the area that [FiOS] presently serves or is authorized to serve."[27] Although Verizon is likely to expand FiOS in the areas in which Verizon already is authorized to build (and, therefore, the prohibition on Verizon Wireless selling Cable Services immediately applies to those areas), expansion beyond those areas is unlikely to occur in the near term. To the extent further FiOS expansion does eventually occur, the most promising areas are likely within the DSL Footprint, much of which is adjacent to the FiOS Footprint, and thus, beginning on December 2, 2016, the prohibition on Verizon Wireless selling Cable Services expands to Verizon's entire DSL Footprint.

Ultimately, there is little or no justification to expand the immediate prohibition on Verizon Wireless's sale of Cable Services to areas where it is unlikely—and hence the Department could not prove—that Verizon would build out FiOS in the absence of the Commercial Agreements.

2. National and Regional Advertising of Cable Services by Verizon Wireless Will Not Undermine the Proposed Final Judgment

CWA and RCN each argue that Section V.C of the proposed Final Judgment undermines the prohibition on Verizon Wireless's sale of Cable Services by allowing Verizon Wireless to advertise Cable Services in national or regional advertising that may reach households in the

[25] Boston Comments at 11; Montgomery County Comments at 24.
[26] RCN Comments at 9-10.
[27] *Id.* at 9.

FiOS Footprint.[28] This, they argue, will "inevitably result in Verizon marketing Cable Services to large numbers of residents who live within the FiOS Footprint."[29]

Section V.C states:

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

Importantly, Section V.C does nothing to eviscerate the prohibition on Verizon Wireless selling Cable Services. Rather, Section V.C relates solely to advertising. Even if customers within the FiOS Footprint receive regional or national advertising, Verizon Wireless is nonetheless prohibited by Sections V.A and V.B from selling them Cable Services.

Section V.C, like the rest of the proposed Final Judgment, is designed to balance the Commercial Agreements' potential to result in procompetitive outcomes against their potential to bring about anticompetitive effects. It is possible that the Commercial Agreements will enable the Defendants to create innovative new products that integrate wireline and wireless

[28] RCN Comments at 10-13; CWA Comments at 10.

[29] RCN Comments at 11; *see also* CWA Comments at 10 ("The inclusion of this loophole is the functional equivalent of not having included any prohibited conduct in the first place.").

technologies. Should the Defendants wish to bring such products to market, one expects that they would advertise the products as broadly as possible in order to attract customers from their competitors.[30] Section V.C allows Verizon Wireless to market the availability of Cable Services in national or regional advertising that may reach households within the FiOS Footprint or DSL Footprint, provided that Verizon Wireless does not specifically target advertising of Cable Services to those areas. Absent Section V.C, Verizon Wireless would be prohibited from all national advertising of Cable Services, despite the fact that it is prohibited from selling Cable Services only in a relatively small subset of the nation. Regional and national advertising is generally much more efficient than advertising that can reach only a small, limited audience. Without the ability to efficiently advertise Cable Services, Verizon Wireless would have less ability to market, and ultimately less incentive to develop, innovative technologies through JOE. The proposed Final Judgment properly addresses the need for Verizon Wireless to purchase advertising on an economically efficient scale, while nonetheless preventing Verizon Wireless from conducting marketing activities specifically targeted to areas where it is prohibited from selling Cable Services.

3. Verizon Wireless's Ability to Provide Information About Cable Services on a Voluntary and Uncompensated Basis Will Not Undermine the Proposed Final Judgment

CWA and RCN argue that Section V.C(ii) of the proposed Final Judgment, which allows Verizon Wireless to provide information about Cable Services in Verizon Stores, undermines the prohibition against Verizon Wireless selling Cable Services.[31] The Department believes that allowing Verizon Wireless to provide information about the availability of Cable Services will

[30] Indeed, as one of the Defendants' competitors, RCN appears to be concerned about this very possibility. *See* RCN Comments at 12-13.

not cause any anticompetitive harm of the type alleged in the Complaint. The proposed Final Judgment is intended to preserve competition between the respective Cable Defendants and FiOS; it does not require every customer who desires a quad play with Verizon Wireless to purchase FiOS instead of Cable Services. There may be many instances, in fact, when the proposed Final Judgment prevents Verizon Wireless from selling Cable Services to consumers who do not even have the *option* of purchasing FiOS. For example, there will be some customers who live within the FiOS Footprint but do not yet have FiOS available at their homes, and others who live outside the FiOS Footprint but shop at FiOS Footprint Stores.[32] Although the proposed Final Judgment prevents Verizon Wireless from selling Cable Services in those situations, there is no reason to prohibit Verizon Wireless from providing information about the availability of Cable Services on a purely voluntary basis. Indeed, allowing Verizon Wireless to provide this information benefits consumers who visit Verizon Wireless retail stores and are interested in a quad play, but for whom FiOS services are not available.

Because the proposed Final Judgment prohibits Verizon Wireless from receiving any compensation from the Cable Defendants to provide such information, Verizon Wireless has no significant incentive to promote Cable Services in lieu of Verizon products where available, nor is it likely that Verizon Wireless will spend significant resources informing consumers about a product that it cannot actually sell.[33] Section V.C(ii) merely allows Verizon Wireless to provide

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[31] CWA Comments at 10-11; RCN Comments at 13-15.

[32] For example, the City of Alexandria, VA is outside the FiOS Footprint, but Alexandria residents likely shop in nearby Arlington, VA or Washington, DC, which are within the FiOS Footprint.

[33] RCN argues that Verizon Wireless has an incentive, independent of commissions, to promote the use of JOE-developed technologies. RCN Comments at 12-13. This is likely true. But within the FiOS Footprint, Verizon Wireless will have a greater incentive and ability to promote JOE technologies deployed by FiOS than those deployed by the Cable Defendants.

potentially helpful information to consumers on those occasions when it chooses to do so, perhaps, for instance, to enhance customer satisfaction. The provision does not undermine Verizon Wireless's incentives to promote and sell Verizon's own FiOS products, which was the harm alleged in the Complaint.

B. Responses to Issues Raised by Individual Commenters

1. Communications Workers of America

a. Sections IV.A and IV.B Adequately Ensure that Verizon Wireless Will Be Permitted to Sell Verizon Wireless and Verizon Telecom Services

Sections IV.A and IV.B of the proposed Final Judgment clearly require that the Commercial Agreements be amended to remove any restrictions on Verizon Wireless's ability to sell Verizon Wireless and Verizon Telecom[34] services. Nevertheless, CWA argues that Section IV.C somehow "dismantles" these requirements.[35] CWA's complaint appears rooted in a misreading of the proposed Final Judgment, because Section IV.C addresses a different issue than Sections IV.A and IV.B.

The proposed Final Judgment is designed to address the competitive concerns outlined in the Complaint, which predominantly relate to the effect of the Commercial Agreements on direct horizontal competition between Verizon and the Cable Defendants rather than its incentives to promote third-party products. Accordingly, Sections IV.A and IV.B are designed to ensure that Verizon Wireless—the Verizon entity that is party to the Commercial Agreements—is freely able to sell Verizon Wireless and Verizon Telecom services. Those two Sections are not

[34] Verizon Telecom is the business unit through which Verizon offers consumer wireline services, including FiOS services as well as DSL and traditional telephone services.

[35] CWA Comments at 8.

intended to interfere with restrictions on Verizon Wireless's ability to sell third-party video and wireline broadband services.[36]

Section IV.C addresses another issue, namely, what Verizon *Telecom* may or may not sell. As explained in the CIS, Section IV.C serves to remove an ambiguity in the Commercial Agreements, which, as originally drafted, arguably prohibited Verizon *Telecom*—which is not a party to the Commercial Agreements—from selling Verizon Wireless along with third-party video services.[37] Thus, Section IV.C requires the Defendants to amend the Commercial Agreements to clarify that the Commercial Agreements do not restrict Verizon Telecom's ability to sell a bundle that includes Verizon Telecom services, Verizon Wireless services, and third-party video services.[38] The language cited by CWA simply clarifies that the Commercial Agreements may restrict Verizon *Wireless* from actively marketing this form of combined sale by Verizon Telecom. Thus, Verizon Telecom may resell Verizon Wireless services as part of a triple- or quad-play bundle, but the Commercial Agreements may restrict Verizon Wireless's ability to initiate bundled sales with broadband, telephony, or video services from any firm other than Verizon Telecom or the firms that are parties to the Commercial Agreements.

[36] The Commercial Agreements as originally drafted authorized Verizon Wireless to sell Cable Services as agents of the Cable Defendants but prohibited Verizon Wireless from selling other third-party video or wireline broadband services (except for FiOS Services).

[37] *See* CIS at 24.

[38] For example, Verizon Telecom markets DirecTV service in its DSL service area; should Verizon Telecom wish to offer a quad-play bundle including Verizon Wireless services and DirecTV, Section IV.C ensures that it will be able to do so. *See* Proposed Final Judgment § IV.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." (emphasis added)).

b. Verizon Wireless's Ability to Service, Provide, and Support Verizon Wireless Equipment Sold by the Cable Defendants Will Not Undermine the Proposed Final Judgment

CWA also objects to Section V.C(i) of the proposed Final Judgment, which permits Verizon Wireless to "service, provide, and support Verizon Wireless Equipment sold by a Cable Defendant." As explained in the CIS, the Cable Defendants do not operate retail stores on a widespread basis.[39] Instead, most of the Cable Defendants' sales of video and broadband services are generated through telephone, Internet, and door-to-door sales channels, and it is likely that their sales of Verizon Wireless products will be as well. Customers who purchase Verizon Wireless handsets through the Cable Defendants might wish to obtain their devices, or seek assistance with setting up their service, at a Verizon Wireless store. Section V.C(i) makes clear that Verizon Wireless will not violate the proposed Final Judgment by providing such services at Verizon Wireless stores within the FiOS Footprint or to customers who live in the FiOS Footprint.

According to CWA, this provision "eliminates the marketing advantage held by Verizon FiOS, which otherwise may have been able to capitalize on the retail presence of Verizon Wireless."[40] The Department disagrees. FiOS still will have a marketing advantage in the FiOS Footprint. Verizon Wireless stores in the FiOS Footprint will be able to advertise and sell FiOS, but will be prohibited from selling Cable Services. In addition, the proposed Final Judgment allows the Cable Defendants to sell Verizon Wireless services to customers who live in the FiOS Footprint using their own sales channels—indeed, inhibiting them from doing so would deprive customers in the FiOS Footprint of a choice of quad-play offers. But once a customer chooses to

[39] CIS at 19-20.
[40] CWA Comments at 10.

purchase a quad play from a Cable Defendant instead of a FiOS-based quad play from Verizon, there is no reason not to allow that customer to seek support for his wireless services at a Verizon Wireless store.

c. The Proposed Final Judgment Prohibits, Rather Than Permits, Collusion

CWA objects to Sections V.I[41] and V.J[42] on the grounds that they permit the Defendants to collude on price.[43] To the contrary, these provisions are designed to enable the Department to monitor the Defendants' compliance with the proposed Final Judgment without unreasonably burdening either the Department or the Defendants. The Department brought its Complaint in this matter to prevent harm to competition arising from the implementation of the Commercial Agreements. Section V.I is intended to prohibit the Defendants from entering into new agreements that might also threaten competition, or even simply executing new versions of the Commercial Agreements, without notifying, and receiving approval from, the Department.

Section V.I does contain enumerated exceptions, but these are not anticompetitive "loopholes," as CWA argues.[44] Instead, they are categories of agreements that the Department has determined to be likely to occur in significant volume, but unrelated to the sorts of agreements that are the subject of the Complaint and therefore unlikely to pose significant

[41] Section V.I states in relevant part that "[n]o 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." Section V.I excludes certain types of agreements from its coverage. *See infra* page 21.

[42] Section V.J states in relevant part that "[n]o 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." Section V.J excludes certain types of agreements from its coverage. *See infra* page 22.

[43] CWA Comment at 13.

competitive concerns. For instance, Section V.I excepts "content agreements between the Verizon Defendants and Cable Defendants who provide video content." Absent this exception, Verizon and the Cable Defendants would need to seek prior approval from the Department before entering into, extending, or amending an agreement for FiOS to carry channels owned by Comcast. The Defendants will likely enter into dozens of such agreements over the term of the proposed Final Judgment, none of which are likely to pose the sorts of competitive concerns identified in the Complaint. Rather than burden the Department with reviewing each such transaction, and the Defendants with waiting for the Department's approval, Section V.I allows the Defendants to continue entering into video content agreements without undue delay.

Unlike Section V.I, Section V.J prohibits certain agreements outright, rather than conditioning them on the prior approval of the Department. Section V.J's exceptions were designed to allow generally benign transactions between the Defendants while ensuring that anticompetitive conduct does not go unnoticed or unpunished. Section V.J prohibits the Defendants from entering into agreements that relate to the "price, terms, availability, expansion, or non-expansion of VZT Services or Cable Services," with exceptions for certain categories of agreements: "(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." As CWA notes, "[i]t is impossible for the Defendants to discuss these topics without discussing

[44] CWA Comments at 13.

'price, terms, availability, expansion, or non-expansion of VZT or Cable Services.' "[45] That is precisely the point. Strictly construed, absent the exceptions enumerated above Section V.J would prohibit the Defendants from entering into even routine interconnection agreements. But interconnection agreements do not implicate the type of harm alleged in the Complaint and are unlikely to be anticompetitive in most circumstances. Prohibiting them would serve no useful purpose but would greatly disrupt the functioning of the Internet.

In order to avoid any misunderstanding that Section V.J's exceptions serve to condone anticompetitive agreements, as CWA is concerned, the provision contains a savings clause making clear that "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." This savings clause ensures that an agreement that falls within Section V.J's exceptions may nonetheless violate the decree if it violates the antitrust laws.

d. The Court Did Not Refuse to Enter the Proposed Final Judgment in *United States v. Comcast Corp.*

CWA urges the Court to refuse to enter the proposed Final Judgment, citing the example of *United States v. Comcast Corp*. CWA misrepresents that case. In *Comcast*, U.S. District Judge Richard Leon held a hearing in which he raised concerns about arbitration provisions in the proposed Final Judgment in that matter. However, Judge Leon did not "determin[e] that the binding arbitrations are not in the public interest," as CWA asserts.[46] Judge Leon entered the proposed Final Judgment, but also issued a Memorandum Order setting forth certain reporting

[45] *Id.* at 14.
[46] *Id*.

requirements "to ensure that the Final Judgment is, and continues to be, in the public interest[.]"[47]

2. RCN

a. The Mandatory Licensing of JOE Technology Is Not Justified Based on the Harms Alleged in the Complaint

RCN urges the Court to require that "products developed by JOE [] be available to other wired broadband providers on a commercially reasonable and nondiscriminatory basis."[48] RCN believes that "because of the size of the participants in the JOE, the technology that it develops for the exclusive use of its members will become the industry standard for integration of wired and wireless technologies, and those that have no ability to use that technology will find themselves unable to compete."[49] RCN thus believes that JOE could harm competition among wireline firms by foreclosing some of them from access to JOE-developed technologies.

As RCN notes, the proposed Final Judgment does not address this concern. That is because the Department did not allege such harm in its Complaint. Instead, the Complaint alleges that JOE may unreasonably restrict the JOE members' abilities to innovate outside the joint venture.[50] JOE's exclusivity provisions and unlimited duration could reduce the Defendants' incentives and abilities to compete against one another through product development.

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[47] *United States et al. v. Comcast Corp. et al.*, 808 F. Supp. 2d 145, 150 (D.D.C. 2011).
[48] RCN Comments at 18.
[49] *Id.*
[50] Complaint, *United States et al. v. Verizon Communications Inc. et al.*, Civ. No. 1:12-cv-01354 (RMC), ¶ 40 (D.D.C. filed Aug. 16, 2012) ("Complaint"), *available at* < http://www.justice.gov/atr/cases/f286100/286100.pdf >.

The proposed Final Judgment addresses this harm in two ways. First, Section V.F requires each JOE member to exit the joint venture by December 2, 2016, unless the Department decides in its sole discretion that the member's participation will not adversely impact competition. In exercising its discretion, the Department may rely in part on periodic reports on the activities of JOE that Verizon Wireless is required to furnish to the Department under Section VI.A. Second, Section IV.E requires the Defendants to amend the JOE Agreement to ensure that parties exiting JOE will take with them any intellectual property rights owned by JOE as of the date they exit. Defendants exiting JOE (including those exiting JOE pursuant to Section V.F) each will be free to license any such technologies to other firms, including RCN. These two provisions address the harm identified in the Complaint by ensuring that (1) the joint venture does not lock its members into an exclusive partnership that reduces their incentives to compete with one another over the long term, and (2) each member is free immediately to use the fruits of the venture upon its dissolution without anticompetitive interference by the others. Any further mandatory licensing requirement that would require the Court to determine whether any given set of licensing terms is "commercially reasonable" is unnecessary here and unjustified by the competitive harm that the Department alleged in its Complaint.

b. RCN's Desired Backhaul Remedies Are Not Justified Based on the Harms Alleged in the Complaint

RCN complains that the Commercial Agreements require Verizon Wireless to give the Cable Defendants preferential treatment when purchasing backhaul services, the means by which data are carried from wireless cell sites to the core wireline networks that underlie the wireless communications infrastructure. Backhaul services are provided by wireline network operators,

including the Cable Defendants, cable overbuilders (e.g., RCN), and traditional telephone carriers (e.g., Verizon, AT&T, CenturyLink).

The proposed Final Judgment does not address this issue because the United States's Complaint does not allege any anticompetitive harm relating to backhaul services. Absent any such allegation, there is no justification for a remedy relating to backhaul services.

c. The Definition of "FiOS Footprint" Unambiguously Includes the District of Columbia

RCN argues that the phrase "non-statewide franchise" in the proposed Final Judgment's definition of "FiOS Footprint" creates ambiguity as to the District of Columbia. According to RCN, Verizon could "take the position that its franchise to provide service throughout the District of Columbia is not a 'non-statewide franchise' because the District of Columbia has many of the attributes of a State."[51]

The FiOS Footprint is defined in the proposed Final Judgment to mean "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."[52] Even if, as RCN argues, there is ambiguity as to whether Verizon's franchise to provide service in the District of Columbia is a "statewide" or "non-statewide" franchise, there is no ambiguity as to whether Verizon "has a legally binding commitment in effect to build out the capability to deliver FiOS Services" there. Verizon's

[51] RCN Comments at 20.

video franchise agreement with the District of Columbia requires it to offer video service to residential areas throughout the District by 2018.[53] The entirety of the District of Columbia is therefore unambiguously included within the definition of the FiOS Footprint.

3. Montgomery County, Maryland

a. Mandatory Build Out Requirements Are Not Justified Based on the Harms Alleged in the Complaint

Montgomery County asks that "[a]s a condition of approval, Verizon and the Cable Defendants should be ordered to provide a 100 percent build out of their respective service footprints without any limitations."[54] The proposed Final Judgment does not place any requirements on Verizon or the Cable Defendants to extend or upgrade their networks.

The Complaint alleges harm to competition resulting from the Commercial Agreements' diminishing the incentives to compete between Verizon, on the one hand, and a relevant Cable Defendant, on the other. The purpose of the proposed Final Judgment is therefore to ensure that Verizon and the Cable Defendants have the same incentives to compete against each other, including by extending and upgrading their respective networks, as they had before they entered the Commercial Agreements. The proposed remedy accomplishes this. The proposed Final Judgment is not a vehicle for Montgomery County to obtain through this Court what it has been unable to obtain as a local franchising authority.[55] The County heretofore has not required Comcast, Verizon, or RCN for that matter, to build their networks to every single residential unit

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[52] Proposed Final Judgment § II.M.

[53] Cable Franchise Agreement Between the District of Columbia and Verizon Washington, DC Inc. (Apr. 30, 2009), *available at* < http://www.oct.dc.gov/information/legal_docs/verizon/doc_viewer.asp?document=Verizon_DC_Franchise_Agrement_2009.pdf >.

[54] Montgomery County Comments at 25.

[55] *See* Montgomery County Comments at 5-8.

in the county "without any limitations,"[56] and indeed such a requirement would be extraordinary and inappropriate to this proceeding.

b. The Proposed Final Judgment Properly Balances the Potential Benefits of Cooperation with the Need for Strong Protections of Competition

Montgomery County asserts that the proposed Final Judgment is not in the public interest because it allegedly permits an "[u]nprecedented [l]evel [o]f [c]ooperation [a]nd [c]ollaboration" among competitors and will lead to the "allocation" of wireless and wireline markets.[57]

The Department carefully considered the potential impact of the Commercial Agreements and the JOE Agreement on the likelihood and intensity of competition among the parties in the future. The Department's investigation did not uncover any anticompetitive "allocation" of markets. Moreover, the Department's investigation revealed that the cooperation and collaboration enabled by the Commercial Agreements have the potential both to benefit competition and consumers (e.g., through the introduction of new products) but also to create competitive risks. The proposed Final Judgment seeks to allow the realization of the benefits from the Commercial Agreements while, by imposing certain restrictions, minimizing the potential competitive risks. For example, recognizing risks from indefinite collaboration, the Department included in the proposed Final Judgment automatic time limits on participation in JOE and certain exclusivity provisions of the Commercial Agreements.[58] It also mandated vigorous reporting requirements, document retention, and mandatory antitrust education for all

[56] *See id.* at 6 n.13.

[57] *See id.* at 11-19; *see also* Boston Comments at 9-10 (arguing that the Commercial Agreements will enable Verizon Wireless and the Cable Defendants to "remain the dominant players in their respective broadband markets avoiding direct competition with each other").

[58] *See, e.g.*, Proposed Final Judgment §§ V.D, V.F.

Defendants.[59] The Department reserves the right to pursue any illegal conduct, and stands ready and willing to enforce the antitrust laws should violations occur in the future.

c. Montgomery County's Grievances with the Contemporary Practice of Bundling Are Irrelevant to the Harms Alleged in the Complaint

Montgomery County devotes a substantial portion of its comments to explaining how, in its view, bundled sales tend to work to the benefit of producers rather than consumers.[60] These remarks are irrelevant to the question of whether the proposed Final Judgment adequately remedies the harms alleged in the Complaint and is therefore "within the reaches" of the public interest.[61] The Complaint filed by the Department alleges no harm resulting from the bundling of wireless and wireline services. Montgomery County is not entitled to substitute its own hypothetical complaint for the one filed in this case by the Department of Justice.[62]

d. The Proposed Final Judgment Is Workable and Enforceable

Finally, Montgomery County suggests that the proposed Final Judgment is "obviously fraught with problems," "will lead to consumer confusion," and "will be difficult to monitor, interpret, and enforce."[63] However, the County provides no explanation as to why it believes the proposed Final Judgment will be unworkable or unenforceable. The Department of Justice has carefully crafted the proposed Final Judgment exactly so that it will be understandable and enforceable throughout the life of the decree, and does not foresee any significant difficulties with its interpretation or enforcement.

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[59] *See, e.g., id.* §§ VI, VIII.
[60] *See* Montgomery County Comments at 19-23.
[61] *See Microsoft,* 56 F.3d at 1461.
[62] *See id.* at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20.

V. CONCLUSION

After reviewing the public comments, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comments and this response are published in the *Federal Register*.

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Respectfully submitted,

/s/ Jared A. Hughes
Jared A. Hughes
Trial Attorney

U.S. Department of Justice
Antitrust Division
Telecommunications & Media Section
450 Fifth Street N.W., Suite 7000
Washington, DC 20530
Telephone: (202) 598-2311
Facsimile: (202) 514-6381
Jared.Hughes@usdoj.gov

[63] *See* Montgomery County Comments at 23-24.