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Washington, D.C.

DOCKET NO.
RM 2007 1
COMMENT NO. 18

In the Matter of
Section 109 Report to Congress

Docket No. 2007-1

COMMENTS OF VERIZON

Verizon¹ hereby submits its comments in response to the Notice of Inquiry (“NOI”) issued by the Copyright Office on April 16, 2007² seeking “comment on issues related to the operation of, and continued necessity for, the cable and satellite statutory licenses under the Copyright Act.”³ As discussed more fully below, Verizon, as a new entrant to the market for video services, depends on the cable statutory license to enable it to provide the broadcast programming that is essential to its ability to compete with more established cable operators. Even if it were logistically possible, Verizon does not believe that it would be commercially viable to negotiate individual licenses for each copyrighted work contained within the scores of broadcast channels that it retransmits. Because the statutory license works in achieving important policy goals and a post-

¹ The Verizon companies (“Verizon”) participating in this filing are the regulated, wholly-owned affiliates of Verizon Communications Inc.

² See Section 109 Report to Congress, 72 Fed. Reg. 19,039 (Apr. 16, 2007) (“NOI”).

³ *Id.*

statutory system could severely cripple Verizon's fledgling video service, Verizon strongly supports maintaining the cable statutory license regime.⁴

I. VERIZON'S CUTTING EDGE FiOS TV SERVICE IS PROVIDING COMPETITION IN THE VIDEO DISTRIBUTION MARKETPLACE

Verizon is the only major U.S. telecommunications provider building an advanced, all-digital fiber-optic network all the way to customers' homes. Because Verizon's fiber to the premises ("FTTP") system is designed to overlay broadcast capacity on top of IP bandwidth, Verizon is able to provide consumers with video programming services along with high speed data and voice offerings. Verizon uses a unique combination of Quadrature Amplitude Modulation ("QAM") and Internet Protocol ("IP") technology for transmitting signals across its fiber plant. Verizon uses QAM technology to transmit its digital video services downstream to consumers. The IP functionality is used to enable a wide range of innovative services. For example, Verizon uses its IP platform to stream video-on-demand ("VOD") to subscribers' homes and to offer a unique new service called "FiOS TV Widgets" that allows subscribers to check weather and traffic reports directly on their television screens. Verizon's IP platform is also designed to accommodate new interactive features, such as a Games-on-Demand service that will work directly through a set-top box, as technology develops. Verizon also has the flexibility of moving away from QAM toward an all-IP approach.

⁴ As the Copyright Office notes, there have been calls over the years to revise certain definitions and other aspects of the license. In these comments urging retention of the statutory license regime, Verizon does not mean to suggest that the Copyright Office should not consider potential ways to make the licenses more effective. Because Verizon is still a relative newcomer to the statutory licensing system, it is still evaluating a number of those issues and looks forward to seeing the comments of others with more longstanding experience in this area.

Verizon has deployed its FTTP network in sixteen states throughout the country and has installed more than 417 million feet of fiber, passing nearly 6.8 million homes and businesses. The company expects to reach nine million homes by the end of 2007 and 18 million homes by the end of the decade.

Verizon's FiOS TV service delivers hundreds of digital video and music channels, high-definition programming, video-on-demand content, a robust interactive programming guide, and other customer-friendly features. The ability to offer FiOS TV service is a major component justifying the staggering investment Verizon is making in deploying its new, all-fiber network.

In order to provide its FiOS TV service, Verizon has obtained more than 800 franchises from local authorities. Through the end of March 2007, Verizon's all-digital FiOS TV service was being offered to 3.1 million premises in 11 states: California, Delaware, Florida, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Texas, and Virginia. Verizon had more than 500,000 FiOS TV customers in June 2007 and expects to serve 3 million to 4 million FiOS TV customers by 2010.

II. THE STATUTORY LICENSE IS CRITICAL TO VERIZON'S ABILITY TO COMPETE WITH TRADITIONAL CABLE OPERATORS.

By providing video over its advanced, all-digital FTTP network, Verizon is providing much needed competition in the video distribution marketplace, which benefits consumers by increasing product choice, putting pressure on prices for video services, and forcing all providers to be more responsive to the communications needs of the public. But these benefits depend on the ability of Verizon to use its FiOS TV service to

retransmit both distant and local broadcast signals that consumers have come to expect and demand from their providers.

The ability to retransmit broadcast signals depends, in turn, on the cable statutory license. As the Copyright Office has noted, the statutory license was designed to resolve several problems that resulted from Congress's decision to impose copyright liability on cable operators for the first time in the Copyright Act of 1976.⁵ In particular, Congress recognized that cable operators provided "multiple over-the-air broadcast signals containing programming owned by scores of copyright owners."⁶ Under a system of full copyright liability, cable operators would be forced to identify the existence of each copyrighted work embedded in the broadcast signals they wished to retransmit, identify the owner of each copyright, and individually negotiate the terms and conditions of a license to use each work. Moreover, cable operators and other multichannel video programming distributors cannot know in advance all of the programs that will be included in any given broadcast and thus face the "obvious difficulty . . . of obtaining advance clearance for all of the copyrighted material contained in a broadcast."⁷

Congress recognized that this process "was not realistic for cable operators"⁸ and that "it would be impractical and unduly burdensome to require every cable system to

⁵ See NOI, 72 Fed. Reg. at 19,045.

⁶ Hearing Before the Subcomm. on Courts, the Internet and Intel. Prop. of the House Comm. on the Judiciary, 108th Cong., 2d Sess. (2004) (statement of Marybeth Peters, Register of Copyrights).

⁷ U.S. Copyright Office, Supplementary Register's Report on the General Revision of the U.S. Copyright Law at 42 (1965).

⁸ Statement of Marybeth Peters, Register of Copyrights, *supra* n.6.

negotiate with every copyright owner whose work was retransmitted by a cable system.”⁹ Congress concluded that the only workable solution that compensated copyright owners and enabled the continued retransmission of broadcast programming to consumers was the statutory license.

Over the years, the statutory license has proved to be a well-considered and workable solution to the “difficult problem of determining the copyright liability of cable television systems.”¹⁰ The success of the statutory license lies in its capacity to ensure, on the one hand, that copyright owners are duly compensated for the use of their works and, on the other hand, that the American public is not deprived of access to broadcast programs.

In the NOI, the Copyright Office asks “whether the statutory licenses are still justified by their initial purposes” and “whether they should be eliminated.”¹¹ Verizon submits that the factors that led Congress to adopt the statutory license in 1976 are still very much in effect today and that the licenses should be maintained.

First, of course, the salutary effects of the license are evident in Verizon’s operations: it has enabled Verizon to provide competitive programming over its FiOS TV service. In exchange for the right to use the copyrighted works embedded in the broadcast programming it retransmits, Verizon has been filing semi-annual statements of account and paying royalties to be distributed to copyright owners since it first began providing video service in 2005. The elimination of the statutory license would seriously

⁹ H.R. Rep. No. 94-1476, at 89 (1976).

¹⁰ *Id.*

¹¹ *NOI*, 72 Fed Reg. at 19049, 19052.

injure Verizon's FiOS TV service and cause substantial damage not only to the industry but to the viewing public.

Today, Verizon's FiOS TV systems carry nearly 200 broadcast channels, each of which contains the works of numerous copyright owners. Verizon does not control the selection of the programming and has no relationship with the copyright owners. Just as in 1976, Verizon would incur significant costs in identifying each copyright owner and negotiating for the right to retransmit the programming over its FiOS TV systems. Even then, it would have difficulty ensuring that it had obtained the rights to all programming that might be retransmitted, since broadcasters may change their line-up within a few weeks—or even on the day—of broadcast.

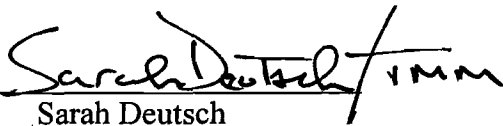
Nor is there any mechanism currently in place that could overcome these obstacles. Given that the statutory license has proven to be an effective mechanism for enabling the retransmission of broadcast signals and compensating copyright owners, it is incumbent on those that would seek to eliminate the license to demonstrate that those goals could be achieved in a more cost-effective manner.

III. CONCLUSION

In sum, Verizon urges the Copyright Office to recommend to Congress that the statutory copyright licensing scheme applicable to the retransmission of broadcast programming be maintained.

Respectfully submitted,

VERIZON

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