

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)**

<p>VERIZON MARYLAND INC.,</p> <p>1 East Pratt Street Baltimore, MD 21202 Baltimore City</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">vs.</p> <p>MONTGOMERY COUNTY, MARYLAND,</p> <p>Executive Office Building 101 Monroe Street Rockville, MD 20850 Montgomery County</p> <p style="text-align:center">Defendant.</p>	<p>Civil No.: _____</p>
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Verizon Maryland Inc. (“Verizon”) brings this action to challenge Defendant Montgomery County’s (the “County”) unlawful scheme governing applications to provide cable television service. The County’s cable ordinance and regulations, on their face, violate the First Amendment to the United States Constitution, the federal Communications Act, and Maryland law. The County’s application of its cable laws to Verizon’s request for a cable franchise likewise is illegal under federal and state law. Verizon seeks relief to protect its

constitutional right to free expression and to enjoin the further application of the County's invalid and preempted cable requirements.

2. As part of a national initiative begun in 2004, Verizon has launched a campaign to upgrade its communications facilities in Maryland by extending fiber-optic cables to customers' premises ("Fiber-to-the-Premises" or "FTTP"). This effort will permit the delivery of both higher-speed Internet services and cable television programming over the same physical network used to provide telephone service to local consumers. Verizon's upgraded network is known as "FiOS."

3. Verizon's cable television offering—known as "FiOS TV"—is a sorely needed new alternative to the traditional cable television services offered in the County, which suffer from steeply rising prices and poor service due to the lack of competition. Verizon's FiOS TV offering promises lower prices, a far richer array of programming choices, and better service than is offered by incumbent cable operators. In those localities where a Verizon affiliate has been permitted to provide cable service, customers have flocked to the FiOS service, and incumbent cable operators have been forced to slash prices by 28-42 percent. Consumers in Montgomery County stand to reap similar benefits from Verizon's entry into the local cable market.

4. Although state and federal law authorize Verizon to construct and upgrade its fiber-optic telecommunications network in Montgomery County, a local cable ordinance requires Verizon to obtain a cable franchise from the County—an authorization identical to a permit or license—before making FiOS TV available to local consumers. In May 2005, Verizon approached Montgomery County and asked local officials to grant it such a franchise. Over one year later, the County still has failed to approve Verizon's request to provide cable service. Instead of welcoming Verizon's desire to provide FiOS TV as a boon to local consumers,

Montgomery County has used its power to withhold a necessary franchise to force Verizon to accede to the County's demands for payments, in-kind contributions, and burdensome local regulatory authority—all of which are illegal under federal law. County officials have made clear that unless Verizon agrees to the County's unlawful terms—and then waives its right to challenge the illegality of many of them—the County will indefinitely delay further consideration of Verizon's request for a franchise. The County's position is made possible by a county cable ordinance that vests local officials with boundless authority over whether and on what terms to award cable franchises.

5. Montgomery County's recalcitrance in preventing Verizon from competing with the incumbent cable operator stands in sharp contrast to the actions of other local governments. To date, Verizon affiliates have obtained cable franchises to offer FiOS TV service in roughly 100 jurisdictions throughout the country. In the Washington, D.C. metropolitan area, Verizon affiliates have obtained or are obtaining a franchise everywhere they have sought one, with the sole exception of Montgomery County. In Maryland, Howard County, Bowie, and Laurel have all granted Verizon a franchise; Anne Arundel County is expected to grant a franchise in the next few weeks. Negotiations with Prince George's County are proceeding well. In northern Virginia, a Verizon affiliate has obtained franchises from Arlington County, Loudoun County, Fairfax County, Herndon, the City of Fairfax, Falls Church, the Marine Corps Base at Quantico, and Prince William County. The company expects to receive a franchise from the remaining community, Leesburg, in the next few weeks.

6. Montgomery County's cable franchise system is illegal in many respects. First, the County's cable ordinance, on its face, violates the First Amendment. By adding cable television to its menu of communications services, Verizon seeks to engage in a form of speech

protected by the First Amendment. *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 636 (1994); *City of Los Angeles v. Preferred Commc'ns, Inc.*, 476 U.S. 488, 494 (1986). Montgomery County's cable ordinance operates as a prior restraint on this speech because it obligates entities like Verizon to obtain government approval before engaging in protected expression. The ordinance violates the First Amendment because it delegates to local authorities unbridled discretion to approve or withhold franchises at will, to charge any application-related fees they wish, to condition franchises on any demands they see fit, and to render franchise decisions on any timeline they choose.

7. Second, the County's cable ordinance, together with its binding regulations, on their face subject Verizon's telecommunications facilities and its telecommunications and Internet access services—not just its *cable* services—to the jurisdiction of County authorities, including the obligation to pay to the County a fee of 5% of the revenues derived from such services. These obligations directly violate federal and state laws.

8. Third, in applying its cable ordinance to Verizon, the County has violated federal law. The County has unreasonably delayed Verizon's ability to engage in protected speech and has unlawfully required Verizon to agree to provide a host of services and fees, and to submit to a thicket of regulations, as a condition of granting it a franchise.

9. Fourth, the County's actions violate the federal antitrust laws. The County has entered into an agreement with the incumbent cable monopolist, Comcast, that ensures that the County will impose on any new cable entrant the same onerous terms and conditions to which Comcast has agreed. Because the costs of such terms are an unreasonable barrier to entry for a new competitor that has not yet signed up a single customer, the County's agreement with Comcast is an unlawful agreement in restraint of trade.

10. Although this action does not challenge the County's authority to require Verizon to obtain a franchise before providing cable service, Verizon seeks relief from the County's laws and actions implementing that franchise requirement. In particular, to protect its rights under the First Amendment, federal statute, and Maryland law, Verizon seeks a declaration that the County's cable laws are illegal on their face and an order directing the parties to engage in good-faith negotiations over the terms of a franchise agreement, with the objective of reaching agreement within sixty days, or to return to the Court for further relief in the event no agreement is reached.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the parties and subject matter at issue in this complaint.

12. Verizon's federal claims arise under the Constitution and laws of the United States, including the Supremacy Clause, the First Amendment, the Fourteenth Amendment, the federal Communications Act (47 U.S.C. §§ 151 *et seq.*), the federal Sherman Act (15 U.S.C. §§ 1 *et seq.*), and 42 U.S.C. § 1983. Jurisdiction is proper under 28 U.S.C. § 1331, 28 U.S.C. § 1337, 28 U.S.C. § 1343, and 47 U.S.C. § 555. This Court may enter declaratory relief under 28 U.S.C. §§ 2201-02. This Court has supplemental jurisdiction over Verizon's state law claims pursuant to 28 U.S.C. § 1367(a).

13. Venue in this district is proper under 28 U.S.C. § 1391(b) because the defendant resides here and because a substantial part of the events giving rise to Verizon's claims arose in this judicial district. Venue in this district is also proper under 47 U.S.C. § 555(a)(1).

PARTIES

14. Verizon is a local telephone company that offers voice and data services to consumers in Montgomery County and the state of Maryland pursuant to a franchise granted by the State of Maryland in 1884. That franchise, which is codified in Maryland statute and is perpetual in term, confers on Verizon the right to construct telecommunications facilities in the public rights-of-way within the state's borders. By exercising its rights under this franchise, Verizon has obtained easement rights that, among other things, entitle it to access its facilities for necessary repairs. Verizon currently provides service to over 250,000 households in Montgomery County. Verizon has its principal place of business at 1 East Pratt Street, Baltimore, Maryland 21202. Verizon is an indirect, wholly-owned subsidiary of Verizon Communications Inc.

15. Montgomery County, Maryland is a Charter County within the State of Maryland, having elected home rule pursuant to Article XI-A of the Constitution of Maryland and having adopted a Home Rule Charter, pursuant to which legislative power is vested in the County Council and executive authority is vested in the County Executive. The County Council and the County Executive are officially located in Rockville, Maryland, the County seat.

BACKGROUND

I. VERIZON WILL INTRODUCE MUCH-NEEDED CABLE COMPETITION TO MONTGOMERY COUNTY.

16. Verizon's FiOS TV offering will introduce much-needed competition for video services and create significant benefits for cable consumers in the County. In the communities where a Verizon affiliate has succeeded in obtaining a competitive cable franchise, consumers

have seen lower rates, improved service, and expanded programming diversity. The introduction of Verizon's FiOS TV in Montgomery County promises the same results for local consumers.

A. **Video Competition Is Currently Lacking in the County.**

17. Comcast is the dominant supplier of video service in Montgomery County. Approximately 65% of the approximately 347,000 households in the County purchase video services from Comcast. Among cable subscribers, approximately 95% subscribe to Comcast. Because of its dominant position and the lack of meaningful competition, Comcast has been able to raise prices over 25 percent since 2000, nearly three times the annual rate of inflation. From 2004 to 2005, Comcast raised prices by 6 percent.

18. Only meaningful wireline competition—that is, competition from an operator that provides video programming over a physical network of wires and cables—can constrain Comcast's ability to charge these supracompetitive prices. The Federal Communications Commission ("FCC"), in its most recent competition report released in March 2006, found that in the places where incumbent cable companies face competition from a wireline competitor, monthly cable rates are 15% lower. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, MB Docket No. 05-255, FCC 06-11, ¶ 41 (FCC rel. Mar. 3, 2006) ("*FCC Video Competition Report*"). The General Accounting Office similarly found that wireline competitors "induce incumbent cable operators to respond by providing more and better services and by reducing rates and offering special deals." U.S. General Accounting Office, Report to the Subcommittee on Antitrust, Competition Policy, and Consumer Rights, Committee on the Judiciary, U.S. Senate: Telecommunications, *Wire-Based Competition Benefited Consumers in Selected Markets* at 12 (Feb. 2004). The

availability of satellite television (also known as “Direct Broadcast Satellite”), by contrast, has lowered cable rates only slightly. *FCC Video Competition Report* ¶ 5.

19. In Montgomery County, the only wireline competitor for video service is RCN (formerly known as StarPower), which obtained a cable franchise from the County in 1999. Since that time, RCN has declared bankruptcy and has significantly scaled back its build-out plans in the County. RCN’s network reaches only 75,000 households in the Silver Spring area (the southern part of the County) and serves only about 15,000 customers. Most video customers in the County who do not subscribe to Comcast purchase service from satellite television providers.

20. The lack of wireline competition imposes enormous costs on consumers. Nationally, the delays in wireline competition for video service caused by the local cable franchise process are resulting in economic losses estimated at between \$8.2 billion and \$21.4 billion per year.

B. Verizon’s New FiOS Network Offers Significant Advantages Over Other Alternatives in the County.

21. Verizon and its affiliates are the first telecommunications carriers in the country to extend the next generation of telecommunications facilities—fiber-optic facilities—all the way to customers’ homes and businesses on a national scale. At a cost of several billion dollars, Verizon and its affiliates are upgrading their existing telecommunications facilities to create FiOS fiber-optic networks in Maryland and 15 other states. By the end of 2005, the FiOS network had reached three million homes nationwide. That number is expected to grow to six million homes by the end of 2006. In Montgomery County, FiOS now reaches approximately 142,000 households.

22. Verizon's FiOS network has superior capabilities that translate into wider programming choices and faster Internet speeds for consumers. In Montgomery County, Verizon's FiOS network will provide much greater capacity for transmitting video, music, and data than Comcast's traditional cable system.

23. Because of its technological advantage, Verizon will be able to offer local consumers more digital channels, more high-definition channels, and more features. Verizon customers will be able to choose from nearly 400 digital video and music channels and over 20 high-definition channels. By contrast, Comcast currently offers its Montgomery County customers only up to 240 digital video and music channels and 14 high-definition channels.

24. Verizon's FiOS TV will provide customers in the County many channels that Comcast does not currently offer, including: ESPNU (sports); CNN International, CNBC World, Bloomberg TV, and ABC News Now (news); Science Channel, Pentagon Channel, and Military History Channel (information); Lifetime Real Women and Oxygen (women); Shop at Home, America's Store, EXPO, Jewelry and Shop NBC (shopping); Wisdom, Fit TV, and Wealth TV (home and leisure); Crime & Investigation Network, Sleuth, Ovation, Fox Reality, and Fuel (pop culture); Gospel Music Channel, VH1 Country, BET Gospel, Great American Country, and Soundtrack Channel (music); Family Net and AmericanLife TV (family); Boomerang (children); Galavisión, Mun2, and Si TV (people and culture); and Church, I-Life, and JCTV (religion). In addition, Verizon will give customers in Montgomery County the opportunity to watch Washington Nationals baseball games on the Mid-Atlantic Sports Network—a channel that Comcast also does not offer.

25. Verizon will also offer customers diverse programming packages tailored to customers' particular entertainment interests. Whereas incumbent cable operators typically

