



Federal Communications Commission  
Washington, D.C. 20554

December 1, 2016

Kathleen Grillo  
Senior Vice President and Deputy General Counsel  
Public Policy and Government Affairs  
Verizon  
1300 I Street, NW  
Suite 400 West  
Washington, DC 20005

RE: Verizon's Zero-Rating Program

Dear Ms. Grillo:

I am writing to express concern about the potential impact of Verizon's "FreeBee Data 360" sponsored data program on competition for mobile video services. Based on public reports as well as information you have orally provided to us, the Wireless Telecommunications Bureau ("the Bureau") believes that the FreeBee Data 360 offering to edge providers unaffiliated with Verizon, combined with Verizon's current practice of zero-rating its affiliated edge services for Verizon subscribers, has the potential to hinder competition and harm consumers. We request that you respond to address this concern by no later than December 15, 2016.

Based on our understanding, FreeBee Data 360 allows edge providers to purchase data in bulk from Verizon so that Verizon subscribers can access the edge providers' services on a zero-rated basis (*i.e.*, without such usage counting against subscribers' monthly data allowances under their mobile service plans).<sup>1</sup> We understand that the primary participant in FreeBee Data 360 to date is Verizon's affiliated video service offering "Go90," a subscription-free video product that offers a variety of third-party, original, and live programming, including sports, to subscribers of any mobile service provider.<sup>2</sup> Go90 operates separately from Verizon's FiOS MVPD service, and neither FiOS nor the FiOS TV mobile app participate in FreeBee Data 360 at this time, although nothing would prevent FiOS from doing so should Verizon wish to zero-rate usage of FiOS services. Verizon customers also have exclusive access to certain NFL programming, on a zero-rated basis, through the NFL Mobile app.

Our concern is not with zero-rating *per se*. In the *2015 Open Internet Order*, the Commission acknowledged that some zero-rating programs may "increase choice and lower costs for consumers."<sup>3</sup>

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<sup>1</sup> Verizon Wireless, *FAQs About FreeBee Data*, (last visited Dec. 1, 2016), <http://freebee.verizonwireless.com/business/support/faqs>. In addition to FreeBee Data 360, Verizon's FreeBee Data program includes a click-based offering where an edge provider pays Verizon a fee to sponsor specific content (such as 30 seconds of video or 30 minutes of audio).

<sup>2</sup> Go90 also contains some content that is available for an additional fee. Verizon Wireless, *Go90 FAQs*, (last visited Dec. 1, 2016), <https://www.verizonwireless.com/support/go90-faqs/>.

<sup>3</sup> *Protecting and Promoting the Open Internet*, 30 FCC Rcd 5601, 5666-67, para. 151 (2015) (*2015 Open Internet Order*), *aff'd*, *United States Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016), *pets. for reh'g pending*.

The Commission explained that it would “look at and assess such practices under the no-unreasonable interference/disadvantage standard, based on the facts of each individual case, and take action as necessary.”<sup>4</sup> Consistent with this guidance, the focus of this letter is the specific impact that Verizon’s zero-rating practice could have on competition.

As we understand it, the zero-rating of Go90 through FreeBee Data 360 is a key element of the Go90 offerings. Press reports have described the Verizon position as follows: “FreeBee Data 360 is an open, non-exclusive service available to other content providers on a non-discriminatory basis” and “[t]he same ability to sponsor data is available to any other content provider with the same pricing.”<sup>5</sup> Based on these statements, we understand that Verizon views Go90’s participation in FreeBee Data 360 as nondiscriminatory because it is on equal footing with that of third parties who elect to participate in the program.

The position that the participation of Go90 in FreeBee Data 360 is the same as that of third parties, however, fails to take account of the notably different financial impact on unaffiliated edge providers. For example, while there is no cash cost on a consolidated basis for Verizon to zero-rate its own affiliated edge service, an unaffiliated edge provider’s FreeBee Data 360 payment to Verizon is a true cash cost that could be significant. Unaffiliated edge providers not purchasing FreeBee Data 360 would likewise face a significant competitive disadvantage in trying to serve Verizon’s customer base without zero-rating. Their potential subscribers would have to take into account the total cost they would incur by using the unaffiliated provider’s service - which would include not only the proportional monthly usage costs of their Verizon data plan, but also overage fees and/or reduced transmission speeds if their consumption of the third party’s video content results in data usage in excess of the maximum allowed under their plan. Verizon customers subscribing to Verizon’s own zero-rated Go90 services would not encounter these costs or impacts.

Under either option for competing with Verizon’s Go90 or other affiliated edge services, unaffiliated edge providers appear to confront significant disadvantages when trying to compete with Verizon from the combined impact of Verizon’s FreeBee Data 360 fees and zero-rating of its own Go90 offerings. We are therefore concerned that this combination could present anti-competitive effects.

Charges and practices by telecommunications carriers that risk such harms have long been the subject of review by the Commission to determine whether they are unjust, unreasonable or unreasonably discriminatory. Specifically, with respect to zero-rating, the Commission has noted that mobile broadband providers’ zero-rated plans have “the potential to distort competition.”<sup>6</sup> Section 8.11 of the Commission’s rules prohibits broadband providers from engaging in practices that unreasonably interfere with or unreasonably disadvantage consumers or video providers.<sup>7</sup> When applying this standard, one of the specifically identified factors in the analysis is the effect of a provider’s practices on competition.<sup>8</sup>

The Commission anticipated that broadband providers’ “incentives to interfere with and disadvantage the operation of third-party Internet-based services that compete with the providers’ own services”

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<sup>4</sup> 2015 *Open Internet Order* at 5668, para. 152.

<sup>5</sup> Jon Brodtkin, *Verizon’s mobile video won’t count against data caps – but Netflix does*, *Ars Technica*, (Feb. 5, 2016), <http://arstechnica.com/business/2016/02/verizons-mobile-video-wont-count-against-data-caps-but-netflix-will/>.

<sup>6</sup> 2015 *Open Internet Order*, 30 FCC Rcd at 5668, para. 152; *see also id.* at 5667, para. 151.

<sup>7</sup> 47 CFR § 8.11.

<sup>8</sup> 2015 *Open Internet Order*, 30 FCC Rcd at 5662, para. 140.

would lead them to seek to “gain economic advantages by favoring their own or affiliated content over [content from] third-party sources.”<sup>9</sup> Accordingly, the Commission cautioned that it would “review the extent of an entity’s vertical integration as well as its relationships with affiliated entities” when assessing whether a practice harms competition.<sup>10</sup>

Verizon’s practices appear to mirror these harmful scenarios, in that Verizon seems to be “acting in ways that may harm the open Internet, such as preferring [its] own or affiliated content [and] demanding fees from edge providers.”<sup>11</sup> We therefore request that Verizon address the concerns expressed in this letter no later than December 15, including providing clarification if you believe that we have misunderstood relevant aspects of Verizon’s offerings.

I look forward to your response. Please contact me with any questions.

Sincerely,



Jon Wilkins  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission

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<sup>9</sup> *Id.* at 5632, 5662, paras. 82, 140.

<sup>10</sup> *Id.* at 5662, para. 140.

<sup>11</sup> *Id.* at 5629, para. 80.