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Jon Wilkins
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Verizon's FreeBee Program

Dear Mr. Wilkins:

We were disappointed by your December 1, 2016, letter about Verizon's free data service, FreeBee. As you know, Verizon first rolled out our FreeBee sponsored data program last January. We discussed the program with you then, and have communicated regularly with you and your staff to answer any questions, address any concerns, and to keep you apprised as we gained experience with FreeBee and as the program has evolved. Only now, almost a year after we deployed this innovative offering and during a time of transition to a new Administration, you write to express concern with FreeBee, and specifically with the participation of go90 – Verizon's mobile-first, over-the-top video service. As explained below, FreeBee is a non-discriminatory program that fully complies with the Commission's Open Internet rules.¹ There is no evidence that FreeBee – or go90's participation in FreeBee – has injured or could harm consumers or competition. In fact, FreeBee data provides tangible benefits to consumers by increasing the amount of what they can do and watch online, at no cost to them.

Your letter suggests that Verizon's FreeBee offering "seems to be acting in ways that may harm the open Internet."² However, in addition to being an open and nondiscriminatory program that complies with the FCC's net neutrality rules, FreeBee benefits consumers by providing them with new content and services without it counting against their data plan.

¹ See *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) ("*Open Internet Order*")

² Letter from Jon Wilkins, FCC, to Kathleen Grillo, Verizon, Re: Verizon's Zero-Rating Program (Dec. 1, 2016) ("*Wilkins Letter*") (quoting *Open Internet Order*, ¶ 80).

Specifically, go90, which participates in FreeBee, is a new entrant into the video marketplace. go90 offers live sports (such as some NFL, NBA, and world-class soccer games) and concerts. Consumers who download go90 can also access independent programming, including exclusive original series from digital producers such as AwesomenessTV and VICE. go90 is an ad-supported service, so consumers benefit from access to go90 content without having to pay subscription fees for the service.

Offering customers free services is a well-known competitive tactic. FreeBee and other free or sponsored data services work much like toll-free calling, where the provider of the content, instead of its consumer, pays the cost. It's similar to the over-the-air broadcast TV model, where advertisers pick up the expenses, and to newspapers, where the bulk of the costs are covered by advertisers. It's also analogous to free shipping for online purchases, where the retailer covers the shipping costs to make the shopping experience more convenient. In all of these instances, consumers benefit as costs are shifted away from the consumer and onto the willing advertiser or provider of the product or service who voluntarily picks up the tab.

Most of the major mobile service providers in the United States now offer free data programs or plans to customers, and surveys say that consumers overwhelmingly support these offers.³ Providers are experimenting with new types of free or sponsored data services to see what both appeals to customers and provides value to sponsors. For example, T-Mobile allows customers to stream video or music using its Binge-On service without affecting their monthly data allowance. AT&T has its Data Free TV and DirectTV Now, which offer content similar to a traditional broadcast cable package. go90, in contrast, is focused on live sports and events and on original content that is designed primarily to be viewed on mobile devices. And FreeBee offers providers the opportunity to give consumers the ability to view a particular website or sports event for free, or to download an application or program without it being counted against their plan. While providers experiment with different approaches, one thing that these free data offerings have in common is that they allow consumers to try out new content, explore new websites, or use more data on services they choose without concern about whether they might use up their monthly allotment or incur additional costs. The variety of such offerings showcases the innovation that is driving development and more consumer choice.

Verizon gives third parties nondiscriminatory access to FreeBee, offering content providers both large and small a new way to attract an audience. The program allows providers to be involved at a variety of levels, from sponsoring just a single short commercial to covering the cost of data for all content coming from a particular source. The same commercial terms apply both to Verizon's affiliates, like go90, and to third parties seeking to sign up for FreeBee. There are no content- or application-based limits on who might participate, nor is FreeBee traffic

³ See, e.g., Multicultural Media, Telecom and Internet Council, *Understanding and Appreciating Zero-Rating: The Use and Impact of Free Data in the Mobile Broadband Sector*, at http://mmtconline.org/WhitePapers/MMTC_Zero_Rating_Impact_on_Consumers_May2016.pdf, (May 2016); see also William P. Rogerson, *The Economics of Data Caps and Free Data Services in Mobile Broadband*, <http://www.ctia.org/docs/default-source/default-document-library/081716-rogerson-free-data-white-paper.pdf>, at 26 (Aug. 17, 2016).

prioritized within Verizon's network. Moreover, consumers are fully informed about FreeBee and receive notice on their monthly bills of how much data was sponsored.

Free data offerings like Verizon's are fully consistent with FCC rules. Yet your letter appears to take issue with go90's participation in FreeBee, asserting that there is a "notably different financial impact"⁴ on the affiliate program versus unaffiliated edge providers. But under that logic, no provider could ever participate in its own paid free data program – which can't be the case. Such a regulation would only allow providers to offer third parties this benefit if the provider itself did not partake. Otherwise, under the letter's reasoning, providers would be prohibited from ever charging a third party to participate in a free data offering. That argument doesn't make sense. Indeed, well-established telecommunication and competition laws consistently recognize the legitimacy of arrangements where providers charge their affiliates the same price for the same services they provide to competitors.⁵

The FCC should not apply its *Open Internet* rules by denying consumers the benefits of new services and more choices, or by curtailing experimentation and innovation. As we've said before, Verizon is committed to an open Internet. It's right for consumers and is vital to our business. Verizon's FreeBee offering, and go90's participation in it, is fully consistent with an open and vibrant Internet. FreeBee benefits consumers by shifting costs away from them, while allowing content providers of all sizes new ways to connect with users. Viewers get more value from their existing data plan, without any additional cost. That's good for them, good for content creators, and good for the Internet as a whole.

Please contact me with any further questions.

Sincerely,



Kathleen M. Grillo

⁴ Wilkins Letter, at 2.

⁵ See, e.g., *Open Internet Order*, ¶ 311 (observing that the *Computer Inquiry* rules required providers to offer on a common carrier basis the transmission component underlying their enhanced services that they or their own affiliates used) (internal citation omitted); see also 47 U.S.C. § 272(e)(3) (rules requiring a local carrier to charge its affiliate or impute to itself "an amount for ... exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such services.").