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FCC Early Termination Fee (ETF) Hearing in Wireless Docket 05-194
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Thank you for inviting me to participate today and to discuss the benefits that *optional* long-term service commitments along with early termination fees can provide to cable customers.

I emphasize the word optional because the use of these forms of agreement by traditional cable companies has been very different than other industries.

Cable may, in fact, provide the FCC with a model of how such arrangements can best serve consumers. The key to cable's approach is to give customers more *options* when picking video, voice, data, or a combination of these services. The cable approach allows customers to shop around and compare different offers. And most importantly, residential offers that may include ETFs are always *optional*, and they always convey value, in the form of lower combined price over the life of the term, to the customer. Whether it's voice, video or data, a customer can always choose instead to go on a month-to-month basis – with the ability to change service providers whenever they choose, without charge. And more often than not, the advertised cable rates are month-to-month rates rather than rates offered only when a minimum term contract is required.

There is no uniform practice among cable operators regarding early termination fees. Different operators are experimenting with different approaches. But they share a fundamental characteristic: ETFs are always associated with *optional* long-term service plans. In no case does a cable operator *require* a customer to commit to more than a monthly service agreement in order to obtain any or all of the services – video, Internet and telephone – that it provides. The month-to-month approach (with no ETF) remains a viable and attractive option for consumers. In fact, the majority of cable customers today do not opt for long-term agreements. An informal survey of our larger members indicates that only around 5 to 7% of triple play customers have elected minimum term agreements.

Since long-term commitments can provide significant benefits and cost savings for cable operators, customers who do opt for such commitments receive significant benefits and price reductions as well.[1] In particular, long-term commitments reduce the costs associated with what cable operators refer to as "churn" – the coming and going of customers who choose to terminate some or all of their services and/or switch to alternative providers.

Churn can have several costly effects on providers. There are advertising and marketing costs to recruit new customers. There are transaction costs associated with signing up and cancelling subscribers. There may be truck rolls to disconnect and connect service. And in the case of new services like Internet and telephone service, there may be more substantial installation costs than compared to traditional cable service. Moreover, churn results in *uncertainty* regarding the expected revenue and profit from particular customers.

Long-term contracts can reduce these costs and uncertainty, promoting efficiency and investment. They can also enable operators to attract new customers and retain existing customers for their services.

In return for these cost savings and benefits, cable customers who opt for long-term commitments receive significant cost savings and benefits as well. Most obviously, the efficiencies, certainty and increased subscribership that accrue to cable operators enables them

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[1] *See generally* G. Houston and H. Green, *Assessing the Merits of Early Termination Fees, in Economics* of Antitrust: Complex Issues in a Dynamic Economy (Lawrence Wu, ed., 2007).

to offer customers guarantees of lower monthly prices throughout the term of the commitment. And the vigorous competition that exists today among providers of triple-play services seeking to win or retain customers maximizes the choices of discounts, guarantees and other inducements (for example, in some cases, HDTV television sets) available to customers willing to enter into various long-term service plans.

It would, however, make no sense to offer discounts or premiums in return for such long-term commitments if providers were not allowed to charge fees to recover some of the discounts or premiums that were enjoyed by the customer before he or she broke the commitment and terminated service before the term had expired. For instance if a provider offers an HDTV set when the customer agrees to a year-long contract, it would be unfair to allow a customer to be able to break the agreement after a month without the provider recovering something for the TV set. Moreover, if that were the rule, it would discourage innovative consumer offers.

After all, it is the long-term commitment, with its associated benefits and cost savings to cable operators, which enables and induces the operator to offer those discounts and other benefits – the value of which can far exceed the fees typically charged. Without any fees or penalties for early termination, long term commitments are not commitments at all. It is one thing if all customers are *required* to enter into such commitments in order to purchase a service. But cable customers are not and never have been required to do so. Long-term contracts offer customers a benefit in return for *choosing* to commit for a period of time. There is nothing unfair about a fee – disclosed and agreed to in advance -- which seeks to recover some of the benefit enjoyed by the customer if he does not fulfill his end of the deal.

The bottom line: The broadband marketplace is vigorously competitive today in *all* the services being offered, whether or not such services are purchased individually or on a bundled basis, and whether or not they are purchased on a month-to-month or longer term basis. There's no evidence or reason to believe that long-term contracts (with early termination fees) are being used to deter or inhibit such competition. Barring early termination fees would only serve to squelch the offering of additional long-term options – and to deny consumers the savings benefits that such options can provide.

Thank you.