

Case #5098 (10/22/09)

**Comcast Cable Communications, LLC
Comcast Fiber-Optic Network**

Challenger: Verizon Communications, Inc.

Product Type: Telecommunication Products/Services

Issues: Product Description

Disposition: Referred

Basis of Inquiry: Verizon Communications, Inc. (“Verizon” or “the challenger”) challenged the claim made by Comcast Cable Communications, LLC. (“Comcast” or “the advertiser”) that Comcast provides services over a “fiber-optic network.”

Challenger’s Position: The challenger took issue with the advertiser’s claim to provide services to customers over a “fiber optic network.” The challenger contended that the advertiser—like other cable companies—utilizes what is known as a hybrid-fiber-coax (or HFC) network. The challenger contended that an HFC network transmits data over a fiber-optic cable network to a neighborhood node and then relies on coaxial cable to connect to customers’ homes. In contrast, the challenger contended, Verizon offers its FiOS service over a state-of-the-art network that connects to each customer’s home with a fiber-optic cable.

Advertiser’s Position: The advertiser declined to participate in the self-regulatory process, citing a concern—contested by the challenger and its counsel—that although the challenger’s counsel does not presently represent the advertiser, the challenger’s counsel may have access to the advertiser’s confidential and proprietary information as per a written agreement relating to a multi-district litigation unrelated to the instant NAD proceeding. The advertiser contended that this agreement precludes the challenger’s counsel from representing the challenger in the present proceeding against the advertiser, although the challenger and its counsel disagreed with this characterization.

Decision: While NAD appreciates the sincerity and good faith of both parties and takes no position on the merits of the dispute over confidentiality, NAD is disappointed that the outcome is non-participation in the self-regulation process. Section 2.1 (F)(iii) of the NAD/NARB Procedures provides that where an advertiser declines to participate in the self-regulatory forum, NAD shall refer this matter to the appropriate governmental agency. NAD will therefore refer this matter.