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May 29, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
455 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Presentation

**In the Matter of Implementation of the Cable Television Consumer
Protection and Competition Act of 1992: Development of Competition and
Diversity in Video Programming Distribution: Section 628(c)(5) of the
Communications Act**

CS Docket No. 01-290

Dear Ms. Dortch:

On May 28, 2002, Lee Schroeder of Cablevision Systems Corporation and the undersigned met with Commissioner Kathleen Abernathy and Stacy Robinson, her legal advisor, in connection with the above-captioned proceeding.

Consistent with Cablevision's written and reply comments submitted in this proceeding, we urged the Commission not to reimpose exclusivity restriction set forth in section 628(c)(2)(D) of the Communications Act. We explained that the restriction was no longer "necessary" in light of the growth and viability of DBS and other multichannel video programming distributors, even in markets such as New York where Rainbow's Metro service is available exclusively to cable operators. We also noted the role of exclusivity in facilitating competition among distributors and programming diversity. We argued that, if the Commission determines not to let the exclusivity ban sunset entirely, the language of section 628(c)(5) ("unless the Commission finds . . . that such prohibition *continues to be necessary*") requires the Commission to reimpose the ban only insofar as it is shown to be necessary. We suggested that, at a minimum, applying the

Ms. Marlene H. Dortch

May 29, 2002

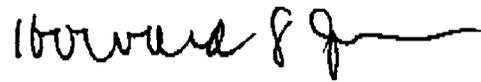
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exclusivity ban to contracts with EchoStar and DirecTV would not meet the statutory “necessary” standard, particularly given the recent judicial interpretations of that term in *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002) and *United States Telephone Assn. v. FCC*, ___ F.3d ___ (D.C. Cir. 2002). In support of this point, we provided the attached paper.

Pursuant to sections 1.1206(b)(1)-(2) of the Commission’s rules, a copy of this notice and the attachment has been filed electronically with the Secretary’s office. Copies of both have also been transmitted electronically to the Commission participants in the meeting.

Please do not hesitate to contact the undersigned should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard J. Symons", with a long horizontal flourish extending to the right.

Howard J. Symons

Attachment

cc: Hon. Kathleen Q. Abernathy
Stacy Robinson