

October 8, 2003

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

*Ex Parte Notice*

Re: Annual Assessment of the Status of Competition in the Market for the Delivery  
of Video Programming, MB Docket No. 03-172.

Dear Ms. Dortch:

On behalf of our client, Comcast Corporation (“Comcast”), we are compelled to respond to the most recent reckless allegations by RCN Corporation (“RCN”) regarding Comcast. This is only the latest instance in what has become a pattern of misleading filings by RCN, and Comcast cannot let such allegations stand unchallenged.

On September 26, RCN filed reply comments in the above-captioned proceeding, alleging that “Comcast . . . continues to use its market power to engage in anti-competitive behavior” and citing as a “good example” of this claim the assertion that “Comcast has entered into *an exclusive arrangement* with the New England Sports Network (“NESN”) to provide sports programming broadcasts in high definition format to Comcast’s subscribers.” RCN Reply Comments at 2 (emphasis added). RCN further represented that “RCN is not able to provide to its customers, or offer to potential subscribers, this critical HDTV programming.” *Id.* RCN described this programming as “must have” programming, “especially in this historic year when the Red Sox are in the playoffs.” *Id.* at 3.

RCN’s assertions are erroneous and irresponsible.

Contrary to RCN’s assertion, Comcast does not have “exclusive” rights to NESN’s HDTV programming. Comcast’s carriage agreement with NESN confers no rights upon Comcast to prevent other multichannel video programming distributors (“MVPDs”) from negotiating carriage agreements; the only sense in which Comcast’s carriage of that programming was “exclusive” is that Comcast was the first party to negotiate a carriage arrangement with NESN. The reason that Comcast was the first MVPD to negotiate a carriage agreement is that Comcast stepped forward with substantial financial support, equipment, and promotional assistance to help create and launch NESN’s HDTV coverage.

(NESN offered no HDTV programming at all until September 15, when -- thanks to the combined efforts of NESN and Comcast -- this new programming first became available to Boston area cable customers; astonishingly, RCN now declares this new service to be "essential programming," *id.* at 3, just 11 days after it came into existence.) It has been public knowledge since September 14, the day *before* NESN and Comcast formally announced the availability of the new HD programming, that NESN was open to discussions with other MVPDs about carrying its HD programming. See Bill Griffith, *NESN, Comcast Are About To Redefine Sox Coverage*, Boston Globe, Sept. 14, 2003 ("[Red Sox Chairman Tom] Werner indicated that others, such as Cox, Charter, Adelphia, and Time Warner, have indicated great interest in carrying NESN's HD signal by the end of the year"). Notably, RCN did not claim that it had even *begun* efforts to negotiate a carriage agreement with NESN for the HD programming, much less gone through the negotiation process. If RCN had even bothered to inquire of NESN, it would have quickly learned that Comcast's rights are not exclusive. It is mystifying why RCN would make this unfounded charge without first making such an inquiry.

Beyond the fact that there is nothing anticompetitive about the situation just described, we ask the Commission to note that (i) only a tiny percentage of households (most estimates suggest the number is still below 5%) currently have the HDTV sets necessary to display HDTV pictures, and, most significantly, (ii) NESN's carriage of Red Sox games in high-definition format ended with the conclusion of the regular season on September 25. NESN does *not* have the rights to the Red Sox playoff games -- as RCN, a mature player in the MVPD industry in Boston, should have known -- and thus RCN's complaint that it is losing access to coverage of playoff games is plainly incorrect.

Comcast is proud of the role that it played in helping NESN to create HD programming that previously did not exist. This is precisely the kind of private investment that public policymakers have encouraged and should applaud. It enriches the lives of consumers and advances the digital transition. If RCN would invest its resources in the marketplace -- funding the development of new programming and new technology -- rather than on frivolous pleadings, it too could presumably make a useful contribution. But RCN would apparently prefer to game the regulatory process, making accusations without first attempting to ascertain the facts.

Comcast is compelled to respond to RCN's current charge at some length because of that company's pattern of reckless and irresponsible claims about Comcast in Commission proceedings. We note that RCN uncharacteristically refused comment on this filing when called by a trade press reporter. We are also advised that RCN local personnel have apologized to NESN officials for the filing (but not to Comcast, which is the party that RCN accused of behaving anticompetitively) and have now asked NESN to hold discussions on HDTV carriage (a request to which we understand NESN has agreed). In view of RCN's behavior in this matter -- and its pattern and practice of making intemperate allegations that are unsupported by fact -- Comcast respectfully urges the Commission to treat RCN's filings in this and other proceedings with the deep skepticism they deserve.

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This letter is filed pursuant to Section 1.1206(b)(2) of the Commission's rules. Please let me know if you have any questions.

Respectfully submitted,

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