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January 6, 2004

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

Ex Parte Notice

Re: Carriage of Digital Television Broadcast Signals, CS Docket No. 98-120
(also CS Docket Nos. 00-96 and 00-2)

Dear Ms. Dortch:

On January 5, 2004, representatives of Comcast Corporation ("Comcast") discussed digital must-carry issues with Commissioner Copps and his Senior Legal Advisor, Jordan Goldstein. Comcast was represented by James R. Coltharp, Chief Policy Advisor, FCC & Regulatory Policy, Comcast, David Rudd, Palmetto Group, and the undersigned.

Our presentation to Commissioner Copps and Mr. Goldstein covered topics that have been extensively discussed in previous *ex parte* submissions by Comcast. In particular, we emphasized that the debate over multicast must-carry requires a careful assessment of statutory language and congressional findings, competitive marketplace realities (which are dramatically different today than in 1992, 1994, or 1997), constitutional considerations, and judicial guidance (these topics were discussed at length in our submissions of October 16 and November 18, 2003). We stressed the heavy burden that these considerations place on those who favor enabling government rather than cable operators to decide what programming cable operators will offer to consumers.

We also discussed Comcast's success in reaching voluntary digital carriage agreements (including multicast carriage arrangements) with numerous public broadcasters and Comcast's continuing efforts to work with other public broadcasters to devise practical and mutually satisfactory approaches. We also affirmed Comcast's willingness to discuss carriage of additional channels of programming planned by commercial broadcasters but stressed that these proposals should compete, on the merits, against programming proposals formulated by entities that are not affiliated with broadcast licensees. We explained that multicasting must-carry differs from mandatory carriage of a single channel of programming in promoting "the widespread availability of information from a multiplicity of sources," and noted that these differences are even greater in an environment in which media ownership rules allow a single entity to hold two or even three TV broadcast licenses in the same geographic area. We also explained that expanding broadcasters' must-carry rights could

compound problems that have repeatedly arisen in retransmission consent negotiations, *e.g.,* by giving broadcasters additional leverage to use in seeking carriage of and payment for their affiliated cable programming networks. In short, we concluded, expanded must-carry rights for broadcasters are not needed from a policy perspective, nor sustainable from a legal perspective.

We also discussed the interplay between the digital must-carry proceeding and proposals to give substance to the obligations of broadcasters to use their digital broadcast spectrum in ways that serve the public interest. In this regard, we noted that Comcast takes no position on the public interest responsibilities that should attach to broadcasters' right to use valuable *public* resources (*i.e.,* the public airwaves), but then went on to explain that even the establishment of significant public interest responsibilities for digital broadcasting would not justify granting broadcasters expanded rights to infringe on the free speech, free press, and property rights of *private* cable operators.

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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James L. Casserly

cc: Commissioner Copps
Jordan Goldstein