The Walt Disney Company

Susan L. Fox
Vice President
Government Relations

November 8, 2004

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB204
Washington, DC 20554

Ex Parte Presentation in MB Docket 04-207

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, an original and one copy of this letter are being filed as notice that representatives of The Walt Disney Company (Disney) attended a meeting on November 4, 2004 with Commissioner Kevin Martin and Elizabeth Andrion, Special Advisor to Commissioner Martin. Representing Disney were Ed Durso, Executive Vice President of Administration, ESPN, Ben Pyne, Executive Vice President, Disney ESPN Networks, Susan Fox, Vice President and Mitch Rose Vice President.

The above-captioned proceeding is not restricted. During the meeting, the parties discussed the points made on the attached briefing sheet.

Sincerely,

Susan L. Fox
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Vice President, Government Relations

cc: Commissioner Martin
Elizabeth Andrion, Special Advisor to Commissioner Martin

1150 17th Street, NW, Suite 400 / Washington, DC 20036 / 202-222-4780 / Fax 202-222-4799 / susan.fox@abc.com

The Walt Disney Company
November 4, 2004 -- MB 04-207

1. ESPN and Disney ABC Cable Accommodate the Needs of Small Cable Operators.

- NCTC represents over 8 million ESPN subscribers. Under the NCTC umbrella, its members are treated as the equivalent of the nation's 5th largest MVPD. Over 1,000 cable operators (representing 95% of the NCTC's members) participate in the recent ESPN deal offering lower rates for a long term commitment.
    - "We just felt the economics of it were reasonable." Brad Mefferd, Buckeye EVP.[1]
    - "It was a classic case of both sides meeting as close as they could in the middle." Jerry McKenna, VP of Strategic Marketing for Cable One, Inc.[2]

- If a small cable operator chooses not to participate in the NCTC deal, it can choose to take single or multiple ESPN services.
    - Approximately 280 small cable operators take only ESPN or ESPN and ESPN2. The price offered to any such operator for either of these services is the same no matter how many other ESPN services are also provided.

- Disney ABC Cable also has a deal with the NCTC, offering a volume discount to small cable operators for any or all of the four Disney ABC Cable services. Under the NCTC deal, the price for each service is the same regardless of whether or not an operator takes one or all of the Disney ABC Cable services. If a small cable operator chooses not to participate in the NCTC deal, it can choose to take single or multiple Disney ABC Cable services at the standard rate for each service.

2. There is No Reason For Any Revision of Retransmission Consent.

- The law confirms that content creators are entitled to compensation for their work.

- ABC offers each MVPD a stand-alone price to carry only the ABC owned television stations, without any obligation to carry any other channel. The economic study attached to Disney's comments demonstrates that the fair market value of the ABC local station signal alone is in the range of $2.00 to $2.09 per subscriber per month (way in excess of the stand-alone price asked by ABC).

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[1] Linda Moss, *Small Ops Face Deadline to Opt Into ESPN Deal*, Multichannel News, June 14, 2004.
[2] Linda Moss, *What a Year It's Been for Affiliates*, Multichannel News, May 3, 2004.

3. Voluntary A La Carte is NOT VOLUNTARY for Programmers.

- Proposals for "voluntary" a la carte would insert a regulatory directive into the negotiating process between programmers and MVPDs that dictates to programmers how their channels could be sold.
- Therefore, voluntary A La Carte would ONLY be voluntary for MVPDs.
- Such a MANDATORY programmer directive would involve the same harms as other mandatory a la carte proposals: increased marketing and transaction costs, decreased advertising and subscription revenues, and decreased programming quality. Another (ill-fated) attempt at government price regulation also would be inevitable.

4. Disney Channel's Experience Migrating from A La Carte Premium to Expanded Basic Confirms the Pro-Consumer Nature of the Expanded Basic Tier.

- Penetration of Disney Channel as a Premium Service hovered around 9-10%, at an estimated price point of $10-$16. Subscriber turnover (or "churn") was in the range of 5%-6.5% per month (or 60%-78% per year).
- Disney Channel expended significant resources on telemarketing, subscriber acquisition programs (e.g., free previews, cable bill inserts, consumer premiums), and retention programs (e.g., Disney Channel Magazine).
- Disney Channel attempted a hybrid approach (offered both as a premium and a packaged service) and it failed because it was too inefficient and costly to sustain long-term.
- Since transitioning to Expanded Basic, Disney Channel's programming expenditures increased by over 38%, and Disney Channel's original programming expenditures increased by over 109%, resulting in an increased quality and diversity of programming, as well as accolades from franchising authorities. Carriage on Expanded Basic also has created a broader reach for Disney Channel's extensive pro-social kids initiatives, such as Learning Together (a joint project with cable operators to encourage childrens development through family involvement).