December 9, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20054

Re: Notice of Ex Parte Presentation

CS Docket Nos. 98-82, 96-85
MM Docket Nos. 92-264, 94-150, 92-51, 87-154
MB Docket No. 04-227

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, The America Channel, LLC ("The America Channel") hereby submits this notice of three separate oral ex parte meetings which occurred on December 8, 2004 -- one meeting with each of the following FCC staff: Jon Cody, Johanna Shelton, and Jordan Goldstein -- in the above- captioned docketed proceedings. The following matters were discussed:

I. Media Ownership Limits and Further Industry Consolidation

The America Channel was asked whether further media consolidation or relaxed ownership limits would hurt or help The America Channel's prospects for securing carriage with the large cable operators.

The America Channel remains hopeful that the large cable operators will take a leadership role by promoting competition, serving the public interest, and making available high-quality, family-friendly independent networks that have demonstrated market demand -- like The America Channel. In the absence of securing carriage with the large cable operators, The America Channel believes that further media consolidation or relaxed ownership limits would be harmful to The America Channel's prospects.

II. Process of Launching an Independent Network

The America Channel elaborated on the process of launching an independent network, and how that process differs from that of a cable-owned or conglomerate-owned network.

A. The Independent Network: A Three-Party Transaction

The launch of an independent network requires three types of parties: the network, the cable operator, and the investor. The independent network requires institutional investors to provide necessary funding to take the network to operational breakeven. An independent network

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requires a critical mass of carriage in order to attract investors -- in anticipation of what the investors believe will be sufficiently large returns within 5 to 7 years to justify such an investment. It is our view that when considering investment in a new digital network, investors desire a scalable model that reaches at least 50 million subscribers within 5 to 7 years. Typically, new networks require $100-125 million to reach operational breakeven. The America Channel's models, prepared by the same firm that built the models for the Golf Channel, SciFi Channel and others, call for $65 million to reach operational breakeven. There are a fairly large number of institutional investors with experience in the content space; and The America Channel's investment bank is Waller Capital, a well-known firm in the cable industry.

B. Concurrent Rather Than Sequential Processes

Independent networks must overcome a classic "chicken and egg" problem that does not exist in the non-independent world: Cable operators are reluctant to formally commit to a yet unfunded network (a problem unique to, though common among, independent networks), and institutional investors will not fund a network in the absence of formal cable commitments or at the very least "hunting licenses." One solution to this problem is to bring the three parties together concurrently rather than sequentially. On the distribution side, rather than first securing final, formal agreements, the independent network finds it easier to employ a gradated process – by first reaching informal and nonbinding understandings, whether by way of term sheets or other mechanisms; which then enable the network to commence the process of marketing to the institutional investor base. Over time, as investors conduct diligence and progress on the path to invest, cable operators negotiate full blown agreements with the network, which are concluded *concurrently* with signature of funding commitments by investors. Concurrent rather than sequential processes can make it easier for the independent network to successfully conclude the carriage and finance processes.

C. The Non-Independent: A Two-Party or One-Party Transaction

In contrast to the independent, launch of an operator-owned or conglomerate-owned network does not require three categories of parties. The independent institutional investor category does not enter into the equation, as the operator or conglomerate self-funds. And of course, in some cases, the network, investor, and distributor, are one and the same company.

In addition, The America Channel noted the problem of circularity -- when a cable operator delays agreeing to carry a network until that network has obtained carriage agreements from other operators. Because of the small number of leading cable operators, if that were the response of every large cable operator to an independent network's request for carriage, no independent network would ever be carried. Having stated this, The America Channel remains hopeful as to the prospects for securing carriage.

III. Top Cable Operators Represent Critical Mass for Independent Network

The America Channel notes that competition from other MVPDs does not guarantee that a programming network will be carried by an operator. Cable MVPDs generally do not compete with one another, and therefore programming decisions of other cable MVPDs do not create such competition. Competition could only come from satellite.

Stated differently, if the large cable operators decline to provide a "hunting license" permitting an independent to compete and market itself to their cable systems, the independent network would likely not launch on *any* platform -- and the "competition" referenced in the above statement,

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would not be created. Institutional investors are unlikely to support an investment target which, from the outset, has been forced to cede a substantial percentage of the entire cable subscriber base. Further, other distributors who may be genuinely interested in carrying the network, will be reluctant to dedicate the bandwidth, marketing and other resources necessary, to a product which cannot secure at least one of the top cable operators – as the viability of such network, and its ability to secure launch funding, would be in doubt. In simple terms, the world watches what the top cable operators do.

IV. Statutory Basis for Requesting More Information

The America Channel reiterates its belief that the Commission should adduce information related to the treatment by cable operators of requests for carriage by independent programmers, and that the same is within the Commission's authority. Again, we are not envisioning that information as a predicate for more regulation but rather as enabling the Commission and Congress to develop a system of rewards for cable operators promoting diversity and competition.

The Commission's jurisdiction to collect more information derives from at least two sources. First, Section 616 of the Communications Act, 47 U.S.C. § 536, requires the Commission to "establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming vendors." While the statute also prescribes what such rules should "include," that list is certainly not exhaustive. The cable operators' treatment of carriage requests is certainly a "related practice" falling within that section.

Second, Section 628 (g) of the Act, 47 U.S.C. § 548 (g), requests the Commission to report annually to Congress "on the state of competition in the market for the delivery of video programming." In our view, the information on the treatment of carriage requests by cable operators is necessary for the Commission to authoritatively report on such matters.

To be clear, we have not advocated government supervision of the commercial decisions of MVPDs – but rather fact finding and information gathering. Further regulatory measures should only be considered if information gathering results in the conclusion, based on evidence, that decisions with respect to carriage of networks are based on factors such as non-market forces or ownership of product.

Finally, our favorable experiences with some cable operators and a DBS operator lead us to conclude that any such measures are *not* necessary for all MVPDs.

V. Conclusion

Pursuant to 47 C.F.R. § 1.1206(b)(2), one copy of this notice has been filed electronically in the Commission's electronic comment filing system under each of the above docket numbers.

Respectfully submitted,

Doron Gorshein
President and CEO
The America Channel, LLC

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