



July 22, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte
Presentation
Docket No. 05-192 & 92-264

Dear Ms. Dortch:

On July 20, 2005, Andrew Jay Schwartzman, President and CEO, Media Access Project, Harold Feld, Senior Vice President, Media Access Project, and Jennifer Scher, Intern, Media Access Project met with Donna Colemann Gregg, Acting Bureau Chief, Media Bureau, Roy J. Stewart, Senior Deputy Bureau Chief, Media Bureau, William H. Johnson, Deputy Bureau Chief, Media Bureau, Deborah Klein, Deputy Bureau Chief, Media Bureau, Barbara S. Esbin, Associate Bureau Chief, Media Bureau, Marcia A. Glauberman, Deputy Chief Industry Analysis Division, Media Bureau, and Julie B. Salovaara, Legal Counsel Industry Analysis Division, Media Bureau, regarding the above captioned dockets.

The Second Further Notice of Proposed Rulemaking in Docket 92-264¹ stated that an order to revise the attribution rules would soon follow. To date no order has been issued. Mr. Feld and Mr. Schwartzman asked when the Commission expected to publish and release the attribution order. Additionally, Mr. Schwartzman stressed that the Commission should advise when the new attribution rules would likely be implemented.

¹ *Second Further Notice of Proposed Rulemaking, In the Matter of the Commission's Cable Horizontal and Vertical Ownership Limits*. MM Docket No. 92-264, FCC 05-96, 2005 WL 1160211 (rel. May 17, 2005).

Mr. Feld stressed the importance of the attribution rules in relation to the pending Adelphia proceeding.² The uncertainty of the attribution rules place Petitioners to Deny the Application at a disadvantage because Petitioners are uncertain what standard will apply.

Mr. Schwartzman pointed out that attribution issues have already been put at issue in the recent complaints made by DirecTV and EchoStar relating to InDemand.

Next, Mr. Feld addressed the issue of timing in the above captioned dockets. Mr. Feld thanked the Commission for granting extensions in the proceeding. However, Mr. Feld noted that one month to respond to the complex and demanding issues raised by the proceedings, over the course of the summer, is unreasonable.

With respect to the Adelphia matter, Mr. Feld noted that the Applicants failed to file complete data and full responses were not received until recently. As a result, there has not been sufficient time to fully examine the data and respond.

Media Access Project and other interested parties are committed to providing a complete and detailed analysis, but in order to do this they must have access to the data and time to analyze it.

² *Applications and Public Interest Statement, In the Matter of Applications For Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corp., Time Warner Cable Inc., and Comcast Corp.*, MB Docket No.

Mr. Schwartzman spoke to the Bureau's failure to insist upon full data submission in broadcast, as well as cable, merger proceedings. Recent transfer and merger applications create a generic sense that Applicants need only provide a bare minimum amount of data and they need not submit complete information unless the staff specifically requests additional data. Mr. Schwartzman stressed that this is NOT a good message to send and Applicants should bear the burden of providing data necessary for review of the transfer or merger.³ Mr. Feld suggested that the Commission stop the clock in review of the Application whenever Applicants fail to provide sufficient data, so that the Applicants bear the burden of their failure to provide sufficient information.

Additionally, Applicants bear the burden of providing accurate data. Mr. Feld noted that in examining the data finally provided by the Adelphia Applicants, he found several anomalies in the data provided by Comcast. These differences may easily be explained, but it is important that the Commission examine these significant variances.

Mr. Schwartzman reminded the Commission of its duty to give the public an opportunity to respond to the cable ownership proceeding and to consider public comments in its decision-making process. By comparison, Mr. Feld discussed the significant public comments and petitions made in the broadcasting ownership proceeding. Mr. Feld noted that the Commission dismissed the anecdotal evidence and important issues raised by these public comments. Mr. Feld recognized that the Commission could not address each comment individually, but stressed that the Commission examine the issues and evidence as a whole, especially when the large quantity of comments provides valid statistical data.

Mr. Feld next addressed the difficulty of getting people to come forward with complaints because of a fear of retaliation or retribution. The Commission has the ability to address the important issues in the Adelphia matter, while protecting those fearful of coming forward. It is imperative that the Commission address all evidence and complaints of retaliation and retribution in a timely fashion, and to protect those parties that come forward. The Commission must take action by exercising power to obtain data in confidence when possible and fining or penalizing those who retaliate against those who come forward.

³*Memorandum Opinion and Order, In re Application of LUJ, Inc. and Long Nine, Inc. For Assignment of License of Station WYVR(FM), FCC 02-235, 17 FCCRcd 16,989 (rel. Aug. 22, 2002)*

Finally, Mr. Feld and Mr. Schwartzman reaffirmed their awareness of the difficulty and time-consuming nature of these proceedings, and the ultimate burden these proceedings place on the Media Bureau staff. Once again, Mr. Feld and Mr. Schwartzman thanked the Commission and the Media Bureau staff for their hard work in resolving these complex and significantly important proceedings.

In accordance with Section 1.1206(b), 47 C.F.R § 1.1206, this letter is being filed electronically with your office today.

Respectfully Submitted,

Andrew Jay Schwartzman
President and CEO

July 22, 2005
Legal Intern:
Jennifer Scher
Southwestern University School of Law