



December 16, 2005

Marlene Dortch, Esq,  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, DC 20554

**Re: Ex Parte Letter in MB Docket No. 05-192**

Dear Ms. Dortch:

On December 9, 2005, Adelphia filed a lengthy response to an ex parte letter that The America Channel previously filed on November 8, 2005. We supply this brief response to Adelphia's letter to clarify the record in this proceeding.

1. We stand by everything stated in our November 8, 2005 filing, including our statements that: (a) Adelphia promised that it would sign the Affiliation Agreement if there was favorable reception to The America Channel in at least one of Adelphia's five regional offices; and (b) Adelphia subsequently told The America Channel that Adelphia could not sign the agreement until after Comcast and Time Warner's signature of affiliation agreements with The America Channel.
2. Adelphia has in essence acknowledged the relevant substance of TAC's assertions in this matter. Adelphia does not deny it sent TAC a draft affiliation agreement, or that contract negotiation may have followed, but argues that this is somehow routine or meaningless.<sup>1</sup> Adelphia does not deny that Adelphia personnel reacted positively to TAC, but argues that their statements are outside the scope of their authority.<sup>2</sup> Adelphia does not deny that personnel contacted TAC to express further interest in a 2005 launch, but similarly dismisses its relevance.<sup>3</sup> Adelphia does not deny that TAC was the only unlaunched channel to present

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<sup>1</sup> Both Ms. Aronsohn and Mr. Gorshein came to the May 2004 meeting, separately in possession of copies of the draft contract, and proceeded to negotiate the outstanding terms and conditions. (Adelphia confirmed that it "may have discussed potential carriage terms.")

<sup>2</sup> For example Adelphia did not deny the writing to TAC from the South Region Director of Sales and Marketing that "[Y]our product looks incredible. It seems to be highly regarded in terms of content, and if ever I had to bet on a channel, The America Channel seems to be a favored winner." Further, Adelphia did not deny the writing from a senior Adelphia regional official, which, we reported earlier, authorized and encouraged The America Channel to commence the hunting' process. On March 23, 2004 Adelphia's Western Regional Vice President of Sales and Marketing (representing Adelphia systems in California, Colorado, Arizona, Washington, Idaho, Wyoming, Kansas, Montana, and Oklahoma) wrote: "Thank you for lunch today and a great overview of your new channel. Attached you will find the GM list for the Western Region. Feel free to contact any or all of these GMs and use my name."

<sup>3</sup> On 9/16/04, Adelphia's South Region Director of Sales and Marketing (representing about 700,000 Adelphia subscribers in Florida, South Carolina, Georgia, North Carolina, Mississippi and Alabama) wrote: "I'm in the throws [sic] of preparing programming line up additions for 2005 and America Channel came to my mind. Can you send me your most recent programming package with market research?"

to the 2004 Corporate Conference, but characterizes such an event as routine or unimportant. Adelphia's account of what happened differs insofar as it now says that the actions their representatives took and the things they said were routine, meaningless, polite, or outside the scope of their authority.

3. We stand by our statement in the November 8 ex parte that Adelphia refused to sign a contract until after Comcast and Time Warner had done so. Adelphia took this position in a meeting in May 2004. Ms. Aronsohn's affidavit acknowledges that the subject of other carriage agreements typically would have been discussed, that she typically inquired about carriage agreements with other cable operators, and that she may have discussed contract terms and conditions. Ms. Aronsohn denies that she said Adelphia's carriage decision was dependent on Comcast's and Time Warner's decisions; however, contrary to the representation in Ms. Aronsohn's affidavit, Adelphia's Corporate Senior Vice President of Programming Judy Meyka did not attend the meeting, and thus would be unable to corroborate Ms. Aronsohn's account.
4. Adelphia attacks TAC's credibility by pointing to an email in which TAC's CEO reported having a deal with Comcast, in contrast to TAC's recent statements that it has no deal. When the emails were sent in 2004, TAC believed that it had a deal with Comcast, because Comcast told TAC that it had a deal. Comcast's Senior Vice President of Programming told TAC's sales representative that Comcast would carry The America Channel. Later, Comcast abruptly reneged on that commitment. With respect to our 2004 email reference to EchoStar, we believed it to be true at the time.
5. Adelphia states it is "inconceivable that anyone from Adelphia would promise to sign a carriage agreement at such an early stage in the negotiations," because "After all, *the February 2004 meeting was the very first meeting between Adelphia and TAC.*" [Italics included by Adelphia.] In fact, TAC's CEO and several of TAC's senior team members met with Judy Meyka, Adelphia Corporate Senior Vice President of Programming, seven (7) months earlier on July 23, 2003, at Adelphia's corporate headquarters in Englewood, Colorado; and thereafter kept Ms. Meyka apprised of further developments.

In conclusion, nothing in the Adelphia letter, or in any of the transaction parties' prior filings over the past six months, persuasively refutes the evidence that The America Channel and other parties have adduced to show that the transaction is not in the public interest. We trust that the Commission will not be diverted from the public interest question by Adelphia's unfounded attack on an adverse petitioner's integrity. Such attacks make no contribution to the record upon which the FCC must weigh the public interest implications of the transaction.

Respectfully submitted,

//signed//

Kathleen M.H. Wallman  
Counsel