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January 13, 2006

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**Re: Comcast-Time Warner-Adelphia Applications for Consent to the Assignment and/or Transfer of Control of Licenses, MB Docket No. 05-192**

Dear Ms. Dortch:

Comcast Corporation (“Comcast”) hereby responds to the December 23, 2005 *ex parte* filed by EchoStar Satellite L.L.C. (“EchoStar”) in the above-referenced proceeding.<sup>1</sup> EchoStar urges the Commission to impose various program access-related conditions on the transactions under review in this proceeding (the “Transactions”). For the reasons set forth below, the Commission should reject these proposals.

As Comcast, Time Warner, and Adelphia (the “Applicants”) have previously demonstrated, there is no basis for applying such conditions. EchoStar has already made a number of filings in this proceeding that raise the same issues about access to cable-affiliated programming.<sup>2</sup> Applicants have fully responded to these allegations.<sup>3</sup> In short, Applicants have demonstrated that EchoStar’s arguments are speculative, lack economic support, and are not relevant to the Transactions. Consequently, EchoStar’s proposed conditions should be dismissed.

In its *ex parte* letter, EchoStar also makes allegations regarding iN DEMAND’s INHD programming services. These allegations are already the subject of a program access complaint

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<sup>1</sup> Letter from David K. Moskowitz, Executive Vice President and General Counsel, EchoStar Satellite L.L.C., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in MB Dkt. No. 05-192 (Dec. 23, 2005) (“EchoStar *ex parte*”).

<sup>2</sup> *See, e.g.*, EchoStar Comments, filed in MB Dkt. No. 05-192 (July 21, 2005); Letter from David Goodfriend, EchoStar Satellite L.L.C., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in MB Dkt. No. 05-192 (Dec. 13, 2005).

<sup>3</sup> *See* Applicants’ Reply, filed in MB Dkt. No. 05-192, at 43-71 (Aug. 5, 2005). DIRECTV has made similar allegations in this proceeding. *See, e.g.*, DIRECTV Comments, filed in MB Dkt. No. 05-192 (July 21, 2005); DIRECTV Surreply, filed in MB Dkt. No. 05-192 (Oct. 12, 2005). Applicants have already addressed and refuted DIRECTV’s allegations as well. *See* Applicants’ Response to DIRECTV Surreply, filed in MB Dkt. No. 05-192 (Nov. 1, 2005).

pending at the Commission.<sup>4</sup> Applicants understand that EchoStar and iN DEMAND are now in settlement discussions regarding this carriage issue and that the parties are keeping the Media Bureau updated on the status of these negotiations. In now raising the iN DEMAND dispute in this proceeding, EchoStar ignores longstanding Commission precedent that merger proceedings are not the appropriate fora for considering carriage complaints.<sup>5</sup> In sum, consideration of EchoStar's allegations regarding iN DEMAND in the instant proceeding would be a duplicative and entirely unnecessary waste of agency resources.

For the above reasons, Comcast urges the Commission to reject the conditions suggested by EchoStar.<sup>6</sup>

Sincerely,

/s/ James R. Coltharp  
James R. Coltharp  
Comcast Corporation

cc: Donna Gregg  
Sarah Whitesell  
Tracy Waldon  
Royce Sherlock  
Marcia Glauberman  
Julie Salovaara

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<sup>4</sup> The complaint has been fully briefed by the parties in that proceeding. See EchoStar Complaint, filed in CSR-6913-P (Aug. 9, 2005); iN DEMAND Answer and Motion to Dismiss, filed in CSR-6913-P (July 25, 2005); EchoStar Reply, filed in CSR-6913-P (Aug. 9, 2005).

<sup>5</sup> See *Applications of Continental Cablevision, Inc., Transferor; U.S. West, Inc., Transferee, For Transfer of Control of Cable Television Relay Service Station Licenses*, Memorandum Opinion and Order, 11 FCC Rcd 16314, ¶ 5 (1996) (“The orderly process of license transfers should not be delayed in order to relitigate or review issues unrelated to the transfer of CARS licenses, especially where the petition in the instant matter is based upon arguments that have been specifically considered ... in another proceeding.”). See also *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Comcast Corporation and AT&T Corp. Transferors, to AT&T Comcast Corp., Transferee*, Memorandum Opinion and Order, 17 FCC Rcd 23246, ¶ 104 (2002) (dismissing Minority TV’s petition to deny on the ground that allegations of program access violations “should be resolved using the process set forth in the Commission’s program access rules”); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816, ¶ 36 (2000) (noting that if a party believes a programming arrangement violates the Commission’s rules, it is “free to file a complaint detailing the alleged infraction”).

<sup>6</sup> Comcast notes that Time Warner and Adelphia agree with this response to the EchoStar *ex parte*.

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