January 27, 2006

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

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

Dear Ms. Dortch:

The undersigned hereby submit this Letter ex parte in the FCC proceeding in MB Docket No. 05-192.

Numerous filings in this proceeding have demonstrated that the proposed transactions will provide the top two cable operators with an unacceptably high ability and incentive to: (a) structure exclusive arrangements for the broadcast of "must-have" content, particularly regional sports; (b) prevent access to affiliated programming by discriminating against competitors on the basis of distribution platform or other technological differences; (c) act as gate-keepers for independent programmers and prevent them from reaching consumers and fairly competing; and (d) make it more difficult for local authorities to ensure fair pricing, quality customer service and other important public interest requirements. Conditions must be established to mitigate the severe public harms that will result from consummation of the proposed transactions.

We now respectfully raise to the Commission's attention, an October 2005 academic research study published by Dong Chen of the School of Economics at Peking University in Beijing, China, and David Waterman of the Department of Telecommunications at Indiana University in Bloomington, Indiana, entitled "*Vertical Foreclosure in the U.S. Cable Television Market: An Empirical Study of Program Network Carriage and Positioning*." The research paper is attached hereto as Exhibit A.

The study confirms foreclosure of opportunities for unaffiliated channels by the top two cable operators Comcast and Time Warner: "[V]ertically affiliated networks were almost uniformly favored by Comcast [and] Time Warner… in terms of higher carriage and/or more frequent positioning on analog program tiers that are more widely available to consumers." [1] Unaffiliated networks were carried less frequently and were more often placed on limited-access digital tiers." [2] The study concluded that the top cable operators "have the ability to reduce competition for their affiliated networks, or to disadvantage rival networks, in a variety of ways other than the yes-or-no carriage decision—notably tier placement." [3]

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1 "*Vertical Foreclosure in the U.S. Cable Television Market: An Empirical Study of Program Network Carriage and Positioning*." Dated October 2005 by Dong Chen of the School of Economics at Peking University in Beijing, China, and David Waterman of the Department of Telecommunications at Indiana University in Bloomington, Indiana., at p. 34.

2 Id at p. 34.

3 Id at pp. 34-35.

The authors concluded that “foreclosure in cable television is a persistent phenomenon,” [4] and that “more frequent carriage of affiliated networks and less frequent carriage of rival networks, a pattern identified by previous empirical studies, persists in spite of extensive channel capacity expansion and digitization of cable systems, as well as new competition from DBS -- developments that might be expected to reduce or eliminate vertical foreclosure effects.” [5]

These anticompetitive practices when combined with consummation of the proposed transactions, will have severe adverse effects on competition, consumer pricing, consumer choice, and the national discourse. The undersigned reiterate their previous requests that the Commission establish conditions which will mitigate these public harms.

Sincerely,

Media Access Project
MASN
DIRECTV
RCN
Communications Workers of America
Center for Creative Voices in Media
The America Channel

[4] Id at p. 34.
[5] Id at page 2.

Attachment -- Exhibit A:

Vertical Foreclosure in the U.S. Cable Television Market: An Empirical Study of Program Network Carriage and Positioning

Dong Chen and David Waterman, October 2005