

Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554



February 13, 2006

Re: *Notice of Ex Parte Presentation in MB Docket No. 05-192*

Dear Ms. Dortch:

Attached please find a recently released White Paper from Media Access Project, "The 'Switching Equation' and Its Impact On the Video Programming Market."

The attached White Paper provides a suitable framework for the Commission in its analysis of the proposed transaction and Applicants' assertions that the presence of potential competitors, such as DBS providers or cable overbuilders, essentially negates the ability of Applicants to exercise market power on a regional or national basis. The White Paper also addresses the defense posed by the Applicants that the availability of competitors ensures that Applicants cannot favor affiliated programming over better independent programming without losing customers to rivals.

Rather, as explained in the White Paper, switching costs and the ability of incumbents to use their existing market power thwart competition, negating the impact of competitors on the marketplace. While competitors can attract customers, Applicants retain the ability to use existing market share to reduce the value of competing offerings and artificially drive up costs to competitors.

Because the proposed transaction would increase the regional and national concentration of the Applicants, the Commission must impose conditions that directly address the enhanced market power of the Applicants that would flow from the transaction. These include safeguarding access to regional sports programming (to address the enhanced regional power of the Applicants to control high value programming and depress the ability of competitors to attract customers), addressing market power over independent programmers, and addressing enhanced power over broadband content and the broadband market generally by requiring open access (or at the least "net neutrality") and the unbundling of video and broadband services.

In addition to MAP clients Free Press, *et al.* and National Hispanic Media Coalition, *et al.*, the following entities have endorsed the attached White Paper and direct the attention of the Commission to it in support of their individual *Petitions to Deny*, Informal Objections, and Requests for Conditions.

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

In accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office. If you have questions, please do not hesitate to contact me.

Respectfully Submitted,

Harold Feld
Senior Vice President

CC: Leslie Marx (OSP), Roy Stewart (MB), Michele Ellison (OGC), Sarah Whitesell (MB), Royce Sherlock (MB), Julie Salovaara (MB), Neil Delar (OGC), Jamila Bess Johnson (MB), Tracy Waldron (MB), Amy Byett (MB), Patrick Webre (MB), Marcia Glauberman (MB), Daniel Shiman (MB), Jim Bird (MB), Wayne T McKee (MB), Jonathan Levy (OSP) and Ann Bushmiller (OGC), Fred Campbell, Jordan Goldstien, Rudy Brioche, Aaron Goldberger