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February 15, 2006

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication in MB Docket No 05-192

Dear Ms. Dortch:

This is to inform you that, on February 14, 2006, Stacy Fuller and undersigned counsel on behalf of DIRECTV, Inc. ("DIRECTV") met with Fred Campbell, Legal Advisor to Chairman Martin, to discuss DIRECTV's comments in the above-captioned proceeding as reflected in the attached materials. In particular, DIRECTV discussed how Comcast Corp. ("Comcast") and Time Warner Cable Inc. ("Time Warner") have arranged to withhold or raise the cost of key regional sports programming in a number of markets, and why approval of the transactions at issue in this proceeding without appropriate conditions would enable Comcast and Time Warner to pursue similar strategies in many more markets. In addition, outside the presence of Ms. Fuller, undersigned counsel provided Mr. Campbell with copies of the two *ex parte* letters filed by DIRECTV on February 14 discussing Highly Confidential Information produced by the Applicants in this proceeding, and reviewed their contents with him.

In accordance with the Commission's *ex parte* rules, 47 C.F.R. § 1.1206, I am filing a copy of this letter electronically. If you have any questions concerning this letter, please contact me.

Respectfully submitted,

/s/________________________
William M. Wiltshire
Counsel to DIRECTV, Inc.

Enclosure

cc: Fred Campbell

Anticompetitive Concerns Raised by the Acquisition of Adelphia Cable by Comcast and Time Warner

In these transactions, Comcast and Time Warner propose to divide up the cable systems of bankrupt Adelphia, and to swap their own systems, with the stated goal of increasing regional concentration. By doing so, Comcast and Time Warner will make it easier to withhold, or raise the price of, regional programming – particularly "must have" local sports programming. At the same time, the purported "public interest benefits" claimed to flow from the transaction are exaggerated at best.

If the Commission is to approve the transactions, it should address the public interest harms by (1) prohibiting exclusive deals (including "cable only" exclusives) for RSN programming, regardless of delivery mechanism or affiliation, in regional markets where the transaction will create market power; and (2) allowing MVPDs to seek binding arbitration where carriage negotiations with the Comcast or Time Warner affiliated RSN fail, and to carry the RSN pending the outcome of such arbitration.

I. Where Comcast and Time Warner have gained sufficient regional concentration in the past, they *have* withheld "must have" programming, or have raised the price for DBS operators.

A. *Pure withholding of affiliated RSN – Comcast in Philadelphia.* For years, Comcast SportsNet Philadelphia has refused to make its programming available to DBS.

B. *Pure withholding of unaffiliated RSN – Time Warner in Charlotte. W*hen Carolina Sports and Entertainment Television ("C-SET") launched last year with rights to Charlotte Bobcats games, it gave Time Warner an exclusive deal, even though it was not affiliated with the cable provider. Even this year (after C-SET went off the air), Bobcats games continue to be offered to cable, but not DBS.

C. *Uniform price increase of affiliated RSN – Comcast in Chicago.* After Comcast acquired AT&T's cable systems, it bought the RSN and doubled the rates DIRECTV would have been paying. Comcast is willing to pay the increased price because it's only an intra-company transfer.

D. *"Stealth discrimination" of affiliated RSN – Comcast in Sacramento.* After Comcast acquired AT&T's cable systems in Sacramento and San Francisco, it created an RSN with rights to Sacramento Kings games. Comcast concocted a scheme in which satellite has to pay for subscribers that can't even watch the Kings games. Under this scheme, 60% of the subscribers that DIRECTV is paying for cannot watch the games, accounting for one-third of the total license fees paid for the network.

E. *The trend continues . . .*

- In December 2005, Time Warner (which will dramatically increase its Ohio market share through this transaction) struck a deal to carry a new RSN showing only the Cleveland Indians. The new RSN – marketed by Time Warner -- proposed a rate for their one team that is almost 90% of what DIRECTV was paying for four teams: the Indians, Cavaliers, Reds and Blue Jackets. Further, the new RSN will not even operate on a 24/7 basis.

- Comcast and Time Warner each have an ownership interest in Sports Net New York, the new Mets RSN. The Mets RSN is charging a higher price than the YES Network, on a per professional game, per subscriber basis, despite the fact that ratings for the Mets games have historically been about 1/3 of the ratings for the Yankees games, and the Yankees post-game show had higher ratings than the actual Mets games.

II. These Tactics Have Resulted in Less Choice and Higher Prices.

A. Where Comcast and Time Warner have withheld regional sports programming, consumer choice has been reduced. For example, DBS subscribers in Philadelphia and Charlotte cannot watch their local teams. And those that want to watch their local teams lose the option of subscribing to competitive MVPD providers.

B. Where Comcast and Time Warner have withheld regional sports programming, they have prevented competition on the merits.

1. DBS penetration in Philadelphia, San Diego and New Orleans, where an RSN is available from cable, but not DBS, is substantially lower than in other DMAs throughout the country. In March 2005, DBS penetration for the U.S. was 25.1%, whereas DBS penetration in Philadelphia was 10.3%, San Diego – 12.8%, and New Orleans – 11.5%.

2. Much of the disparity in these markets cannot be explained by other characteristics (e.g., the number of multiple dwelling units in the market), and thus is likely caused by the absence of the RSN.

C. This foreclosure reduces the ability of DBS to constrain cable pricing.

D. DBS subscribers pay more when Comcast and Time Warner raise the price of regional sports programming. In DIRECTV's case, because it has national pricing, *all* subscribers pay when CSN-Chicago raises its rates.

III. The proposed transactions will create "regional monopolies" giving Comcast and Time Warner the ability and incentive to engage in anticompetitive behavior in many more markets.

A. The transactions will dramatically increase concentration in key regions, creating regional monopolies.

- HHI measure (greater than1800 in a market and change of more than 100 equals presumption of market power):

RSN	HHI	HHI Change
C-SET	4,210.6	403.7
Comcast SportsNet Philadelphia	4,156.7	376.9
FSN Florida	2,529.2	580.7
Sun Sports	2,515.2	578.0
FSN Ohio	2,395.7	837.8
FSN West/West 2	2,216.9	740.5
Mid-Atlantic Sports Network	2,168.7	358.6
Comcast/Charter Sports Southeast	2,148.6	325.8
Comcast SportsNet MidAtlantic	2,126.4	390.8
FSN Pittsburgh	2,080.1	576.9

- Market Share: Comcast will have over 75% of Boston, 70% of Pittsburgh, and 67% of West Palm Beach MVPD markets, while Time Warner's share in the LA market will go from 9% to 48% and in the Cleveland, Cincinnati and Columbus MVPD markets, Time Warner's market share will be 60% or more.

B. This increase in market power will make it profitable for Comcast and Time Warner to engage in anticompetitive conduct, just as they have in regions where they already have such power.

IV. The public interest benefits claimed to flow from this transaction are exaggerated at best.

A. Comparisons to Adelphia service are not transaction specific.

- Only transaction-specific public interest benefits are cognizable – those "likely to be accomplished as a result of the [transaction] *but unlikely to be realized by other means that entail fewer anticompetitive effects*."

- *Any* non-bankrupt cable operator can credibly claim to improve Adelphia's service and in any event, such claims do not apply to Time-Warner/Comcast swaps (25% of subscribers involved).

B. Claimed benefits of clustering are unsubstantiated.

- Comcast and Time Warner have been clustering for years, but have not submitted any data demonstrating that clustering has resulted in lower prices, whereas an FCC study of issue suggests that clustering leads to higher prices.

C. Bankruptcy does not trump competition concerns.

- Certainly, getting Adelphia out of bankruptcy is a benefit, but there are any number of ways Adelphia could emerge that would not raise the competitive concerns associated with Comcast and Time Warner.

V. DIRECTV has proposed narrowly tailored conditions to address these anticompetitive effects.

A. Neither Comcast nor Time Warner may enter into or continue to maintain an exclusive agreement (including a "cable only" exclusive) with an RSN in a regional market where the transaction will create or enhance market power, nor may they directly or indirectly cause an RSN to refuse to deal with a rival MVPD.

B. If negotiations fail to produce a mutually acceptable set of price, terms and conditions for carriage of an RSN in which Comcast or Time Warner holds an attributable interest, an MVPD may choose to submit the dispute to commercial arbitration (with RSN carriage required during the arbitration process).