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BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: MB Docket No. 05-192

Dear Ms. Dortch:

Last week, Time Warner Inc. ("Time Warner") submitted a letter regarding its pending sale of the Turner South programming network to Fox Cable Networks ("FCN"), an affiliate of DIRECTV, Inc. ("DIRECTV").[1] This sale, according to Time Warner, "further undermine[s] the claims by . . . DIRECTV that its access to regional sports programming might be harmed as a result of the transactions . . . that are the subject of this proceeding." According to Time Warner, its willingness to sell Turner South to an affiliate of one of its cable systems' largest competitors contradicts DIRECTV's assertion that the Transactions will create incentives for Time Warner and Comcast to use new or existing regional sports networks ("RSNs") to gain an advantage over competing MVPDs.[2]

This is a curious assertion, given that Time Warner has previously taken the position in this proceeding that Turner South is "a regional general interest and lifestyle network rather than a regional sports network."[3]

More fundamentally, however, Time Warner's argument is nonsense. DIRECTV has never asserted that *every* cable-affiliated RSN would have the incentive and ability to pursue a foreclosure strategy against its affiliates' rivals. Rather, DIRECTV has demonstrated that *as a cable operator increases market share within an RSN's footprint*, such a strategy becomes more profitable, and thus more likely. By contrast, where an MVPD (such as DIRECTV) controls relatively little market share, a withholding strategy is less profitable, and thus less likely.

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1 *See* Letter from Arthur H. Harding to Marlene Dortch (Mar. 3, 2006) ("TWC Letter").

2 *Id.* at 1.

3 *See* Letter from Arthur H. Harding to Marlene H. Dortch at 10 (Dec. 19, 2005).

Time Warner's sale of Turner South confirms, rather than "undermines," this point. Time Warner has a 13.2% MVPD market share in the service "footprint" where Turner South programming is available, and the Transactions will actually lower that figure to 12.3%.[4] Accordingly, even assuming this channel is "must have" programming, Time Warner does not have sufficient market share to make foreclosure of Turner South from its rivals a rational (*i.e.*, profitable) strategy. (In this regard, one might compare Time Warner's share in this footprint to its 57.6% share within the footprint of the Charlotte Bobcats RSN, or Comcast's 60.3% share within the footprint of Comcast SportsNet Philadelphia, both of which are available exclusively to cable operators.) By the same token, the fact that the Transactions decrease Time Warner's market share within Turner South's footprint is consistent with Time Warner's willingness to part with this channel – plainly, Turner South was never going to be the lynchpin of an RSN foreclosure strategy.

Finally, Time Warner asserts yet again that the Transactions do not pose a threat to competition because the Applicants' largest subscriber additions would occur in areas where FCN owns the RSN and so will continue to make it available to DIRECTV.[5] This is cold comfort to DIRECTV subscribers in areas where Comcast and/or Time Warner has used its dominant market position to acquire sports rights that had previously been licensed to FCN. These include Chicago and Sacramento, where Comcast launched two new RSNs after acquiring AT&T Broadband's cable systems, and New York, where Comcast and Time Warner have combined forces to form the new Mets RSN. Similarly, it is no coincidence Time Warner is involved with the new RSN being launched by the Cleveland Indians in an area that the Transactions will dramatically increase Time Warner's already considerable market share. In each of these areas, the newly-cable affiliated RSN has raised the price of this programming significantly above competitive levels. Thus, while it may be true that Comcast and Time Warner do not *yet* own RSNs in many of the areas where large subscriber additions will occur, the Transactions will make it possible for Comcast and Time Warner to acquire sports rights currently held by FCN and launch *new* RSNs to use as weapons against DIRECTV and other rivals. This, in turn, will result in higher prices and reduced consumer choice in regions across the country. Unlike Time Warner, the Commission cannot turn a blind eye to these clearly foreseeable effects of the Transactions as it makes its public interest determination.

4 Source: Media Business Corp. subscriber data.

5 *See* TWC Letter at 1.

Should you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

/s/

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