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VIA ELECTRONIC FILING

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

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

Dear Ms. Dortch:

On March 24, 2006, on behalf of Comcast Corporation, copies of the attached document were delivered to Fred Campbell, Legal Advisor to Chairman Kevin J. Martin for Wireless Issues; Jessica Rosenworcel, Senior Legal Advisor to Commissioner Michael J. Copps; Rudy Brioché, Legal Advisor to Commissioner Jonathan S. Adelstein for Media Issues; and Aaron Goldberger, Legal Advisor to Commissioner Deborah Taylor Tate.

Please contact me if you have any questions concerning the foregoing.

Respectfully submitted,

/s/ Martha E. Heller

Martha E. Heller
Counsel to Comcast Corporation

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RSN ALLEGATIONS RAISED AND REBUTTED IN MB DOCKET 05-192

DIRECTV has submitted a multitude of filings in this proceeding claiming that the proposed Transactions between Comcast, Time Warner, and Adelphia will dramatically and negatively impact the availability of regional sports networks (“RSNs”) to DIRECTV and other unaffiliated MVPDs. Based on these allegations, DIRECTV has sought to use the instant proceeding as an opportunity to have far-reaching RSN-related conditions imposed on the parties. Comcast consistently has refuted the allegations raised by DIRECTV by demonstrating (1) that they have no connection to the Transactions at issue in this proceeding and (2) that they are based on erroneous information and assumptions about Comcast’s incentives. What follows is a summary of the major allegations that DIRECTV has made on the record in this proceeding and Comcast’s rebuttal of each of these allegations.

RSN ALLEGATIONS RAISED AND REBUTTED IN MB DOCKET 05-192

ALLEGATION: The proposed Transactions will enable Comcast to “use local sports programming as a weapon against competitors.” (DIRECTV Feb. 14 *ex parte* at 1; DIRECTV Surreply at iii; DIRECTV Comments at iii)

REBUTTAL:

- In fact, as DIRECTV itself has acknowledged (*see Mar. 1 ex parte* at 3, 5), the proposed Transactions will result in minimal changes relevant to Comcast’s RSN interests. (Comcast Mar. 15 Response at 3; Surreply Response at 13; Applicants’ Reply at 56-59)
 - Comcast is not acquiring *any* new interest in *any* RSN through these Transactions.
 - There can be no transaction-specific effect in RSN service areas where there is no (or a *de minimis*) change in subscribers. Thus, the Transactions can have no effect whatsoever in the footprints covered by Comcast SportsNet Chicago (“CSN-Chicago”) and Comcast SportsNet West (“CSN-West”).
 - DIRECTV expressly acknowledges (*see DIRECTV Mar. 1 ex parte* at 3) that there can be no transaction-specific effects relating to either Comcast SportsNet Philadelphia (“CSN Philadelphia”) or Comcast/Charter Sports Southeast (“CCSS”), because DBS operators do not currently carry either network.
- Even if one were to assume the existence of the harms alleged by DIRECTV (which Comcast disputes), DIRECTV has ignored its obligation to tie alleged harms to the specific Transactions before the FCC. (Comcast Mar. 15 Response at 2; Surreply Response at 14)
 - As the Commission has stated, “[a]n application for a transfer of Commission licenses is not an opportunity to correct any and all perceived imbalances in the industry. Those issues are best left to broader industry-wide proceedings.”
 - Just five months ago in approving *SBC/AT&T* and *Verizon/MCI*, the FCC reiterated that it “will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.”

ALLEGATION: The same RSN conditions as were imposed on DIRECTV in *News Corp./DIRECTV* should be imposed here. (DIRECTV Comments at 44)

REBUTTAL:

- The instant Transactions are vastly different from News Corp.’s acquisition of a controlling interest over DIRECTV. The DIRECTV/News Corp. combination was unique in that it created, on a nationwide level, an entirely new vertical relationship

between the nation's largest DBS provider with the leading owner of RSNs; in contrast, the Transactions here are horizontal, with little change in ownership levels at the national level and no material vertical effects. (Applicants' Reply at 44)

ALLEGATION: The Transactions will give Comcast the incentive to temporarily withhold affiliated RSNs. (See DIRECTV Mar. 1 *ex parte* at 1,2,4,5, Lexecon at 3-13; DIRECTV Surreply at 17, Lexecon at 12; DIRECTV Comments at iii, 21-23)

REBUTTAL:

- DIRECTV effectively acknowledges (see DIRECTV Mar. 1 *ex parte* at 3 and 5, n.16) in its foreclosure analysis that transaction-specific temporary foreclosure is a possibility for, at most, *only one* Comcast-affiliated RSN—Comcast SportsNet Mid-Atlantic (“CSN Mid-Atlantic”). (Comcast Mar. 15 Response at 2-4; Applicants' Reply at 57-61)
- DIRECTV's economic analysis for CSN Mid-Atlantic is a non-event. According to DIRECTV's own analysis, the point at which temporary foreclosure allegedly would become profitable for Comcast is *identical* pre- and post-transaction. (Comcast Mar. 15 Response at 5-7)

ALLEGATION: The Transactions will give Comcast the incentive to permanently withhold affiliated RSNs. (See DIRECTV Mar. 1 *ex parte* at 1, 2, 5; Lexecon At 13-19; DIRECTV Feb. 14 *ex parte* at 2, 5; DIRECTV Surreply at 14, Lexecon at 8-12; DIRECTV Comments at iii, 13-18)

REBUTTAL:

- DIRECTV effectively acknowledges in its economic analysis (see DIRECTV Mar. 1 *ex parte* at 5) that transaction-specific permanent foreclosure is a possibility *only* for CSN Mid-Atlantic. (Comcast Mar. 15 Response at 2-4)
- DIRECTV's permanent foreclosure analysis for CSN Mid Atlantic presents an implausible scenario. The analysis shows that a very high percentage of CSN Mid-Atlantic's current DBS viewers would need to switch to cable in order for a permanent foreclosure to become profitable. DIRECTV provides no evidence that such a high percentage of subscribers would, in fact, be likely change MVPD providers in response to the withholding of CSN Mid-Atlantic. (Comcast Mar. 15 Response at 7-8)
- It is highly disingenuous for DIRECTV to discuss the effect of exclusivity on DBS operators without discussing the significant benefits that it has obtained from its own exclusivity agreements—of which NFL Sunday Ticket is only the most prominent example. Through its proposed conditions, DIRECTV is effectively trying to use this proceeding to hobble the ability of competitors to respond to its own moves—for example, in response to DIRECTV's far more significant NFL exclusivity. (Surreply Response at 30)

ALLEGATION: The Transactions will make the migration of affiliated RSNs to terrestrial delivery more likely. (See DIRECTV Surreply at 17-18)

REBUTTAL:

- The terrestrial delivery of CSN Philadelphia is not at issue in this proceeding. Given that the proposed Transactions will not cause any significant changes in the ability or incentives of Comcast to obtain exclusivity, any Commission review of this issue properly belongs in an industry-wide proceeding where the agency can take *all* of the relevant factors into account. (Comcast Mar. 15 Response at 3; Surreply Response at 30; Applicants' Reply at 51)
- Both a court and the FCC have found that legitimate business reasons underlie Comcast's decision to deliver CSN Philadelphia terrestrially. Many of these reasons were specific to the Philadelphia market (and Comcast's business therein) and are unlikely to be replicated elsewhere. For example:
 - The creation of CSN Philadelphia was part of a much larger transaction involving Comcast's acquisition of a majority interest in Philadelphia's NBA and NHL teams and their arenas. These purchases were an overall business strategy emphasizing Comcast's commitment to the Philadelphia region, where it is headquartered.
 - The market for CSN Philadelphia is especially suited for terrestrial delivery. Due to its location between the New York and Baltimore/Washington, D.C. metropolitan areas, CSN Philadelphia's footprint is much smaller than that typically served by regional networks.
 - Comcast had the opportunity to acquire a pre-existing terrestrial distribution network that had available capacity and already reached substantially the same base of operators that would carry CSN Philadelphia. This opportunity was directly related to the larger transaction, in which Comcast acquired not only the teams and arenas, but also the telecasting rights.
 - Terrestrial distribution of CSN Philadelphia was dramatically less expensive than satellite distribution. By using a terrestrial network, Comcast was able to deliver CSN Philadelphia at a cost of \$600,000 a year. In contrast, delivering CSN Philadelphia via a full band satellite transponder would have cost approximately \$2.28 million per year, and even a second-tier transponder would have cost approximately \$1.4 million per year. (Comcast Mar. 15 Response at 12; Applicants' Reply at 51-53)
- The terrestrial delivery of CSN Philadelphia is the exception, not the rule. Since Comcast acquired CSN Philadelphia eight years ago, Comcast has been involved in the launch of three new RSNs: CSN Chicago, CSN West, and "SportsNet New York

SNNY.” Each of these is delivered by satellite and made available to all distributors. Thus, there is no “trend” toward terrestrial distribution. (Comcast Mar. 15 Response at 12-13)

- Virtually every RSN of consequence is delivered by satellite, and this practice does not appear to be affected by the presence of cable clusters, even where the RSNs are affiliated with cable operators. (Applicants’ Reply at 53)
- As the FCC has stated, to the extent that any party believes an RSN has been migrated to terrestrial delivery for purposes of evading the program access rules, such allegations are most appropriately considered in the context of a program access complaint, not in this proceeding. (Applicants’ Reply at 54)

ALLEGATION: DBS operators achieve significantly less penetration in markets where they lack RSN programming. (See DIRECTV Feb. 14 *ex parte* at 3; DIRECTV Surreply at 4, Lexecon at 5 and Attachment A)

REBUTTAL:

- There is no merit to allegations that DBS penetration is lower in Philadelphia than in other DMAs due to the fact that CSN Philadelphia is not available to DBS providers. According to Media Business Corp (“MBC”), which has been tracking DBS subscribership by DMA for years, DBS penetration in Philadelphia was 12.04% as of September 2005. (Comcast Mar. 15 Response at 13-14)
- An analysis of MBC’s current DBS penetration rates shows that DBS penetration in the Philadelphia DMA continues to increase every year. In addition, September 2005’s penetration rate of 12.04% is similar to that of a number of other urban areas. Indeed, the penetration rate in Philadelphia is higher than the rate in Boston (10.73%), a market where DBS carries Fox Sports New England, the region’s RSN. Philadelphia’s penetration rate is also higher than the rates for New Orleans (9.96%), Las Vegas (10.96%), San Diego (10.98%), El Paso (11.01%), and Palm Springs (11.80%), and comparable to the rates for New York (15.24%), Tampa (14.03%), Baltimore (14.15%), Milwaukee (15.08%), Norfolk (14.22%), and Harrisburg (13.29%). Thus, there appears to be no direct link between DIRECTV’s penetration rate in Philadelphia and its lack of access to CSN Philadelphia. (Comcast Mar. 15 Response at 13-14)
- DIRECTV’s penetration study cannot be used to reach any conclusion regarding the impact of RSN exclusives on DBS penetration. DIRECTV’s findings are based on an examination of the only three large DMAs—San Diego, New Orleans, and Philadelphia—in which RSN professional sports programming is available from cable firms but not from DBS operators. However, two of the three DMAs analyzed do not support DIRECTV’s conclusion:

- In San Diego, DIRECTV’s economists themselves indicate that the difference between actual and anticipated DBS penetration is not statistically significant.
- DIRECTV’s use of New Orleans as an example of the alleged harmful effects on DBS penetration of a “cable-only exclusive” is particularly egregious. Cox Sports Television, the New Orleans RSN, is delivered by satellite, and its web site and press reports indicate that it has always been available to DIRECTV. (Surreply Response at 30-31)

ALLEGATION: The FCC should extend program access regulations to CSN Philadelphia and any other RSN that may come into existence in the future as a condition of approving the proposed Transactions. (See DIRECTV Comments at 44)

REBUTTAL:

- Since the inception of CSN Philadelphia, the Commission has considered and rejected this very proposal on several occasions, and there is no basis for the agency to reverse course in this proceeding. In rejecting this same request in the past, the Commission has consistently held that:
 - Congress intended to exempt terrestrially delivered networks from program access requirements, and did so by careful choice of language;
 - Comcast’s decision to deliver CSN Philadelphia over a terrestrial network was made for legitimate business reasons; and
 - Any changes to the regulatory treatment of CSN Philadelphia (and terrestrially delivered services generally) are a matter for Congress to decide. (Applicants’ Reply at 45-50)

ALLEGATION: Comcast engages in discriminatory RSN pricing. (See DIRECTV Mar. 1 *ex parte* at 5-6; DIRECTV Feb. 14 *ex parte* at 3, 9-12; DIRECTV Surreply at 9, 12-14; DIRECTV Comments at 19-21, 23-25)

REBUTTAL:

- **CSN Chicago:**
 - DIRECTV’s claim that increased concentration in the Chicago DMA enabled Comcast to “raise RSN prices dramatically” (DIRECTV Surreply at 14) for CSN Chicago is demonstrably false. In its first year of operations, CSN Chicago is charging all MVPDs prices that are substantially identical to the prices charged to Comcast and other cable operators by Fox Sports Net Chicago (“FSN Chicago”) for the last year of its carriage. (Surreply Response at 22)

- The sum and substance of DIRECTV’s complaint is that it should not now have to pay the same price that every other MVPD pays for CSN Chicago, but rather a highly advantageous price similar to one it enjoyed under its carriage agreement for FSN Chicago. The Applicants understand that DIRECTV had an agreement with Rainbow Media, the parent of FSN Chicago, which governed DIRECTV’s carriage of all Rainbow-affiliated sports networks nationwide. This contract was entered into when DIRECTV was significantly smaller than it is today. The contract provided for a flat payment for all of the Rainbow RSNs. As DIRECTV grew over time, its “per subscriber net effective rate” significantly decreased, although its monthly payment remained constant (if calculated for each individual Rainbow RSN). When viewed on a per-subscriber basis, the price DIRECTV paid for FSN Chicago was substantially below the price then being paid by Comcast and other MVPDs. (Surreply Response at 22)
- **CSN West:**
 - There is no basis to DIRECTV’s claim that Comcast’s pricing structure for CSN West imposes a higher effective price on DBS operators than cable operators. (DIRECTV March 1 *ex parte* at 5-6; DIRECTV Surreply at 9) When CSN West was formed, the “footprint” that was established for the service was substantially identical to that of Fox SportsNet Bay Area (“FSN Bay Area”). Because of league-imposed restrictions, the area in which CSN West is authorized to distribute the Kings’ games is smaller than the network’s overall footprint. Due in large part to this fact, CSN West established three pricing territories consistent with the customary practice of other RSNs. (Comcast Mar. 15 Response at 11-12; Surreply Response at 24-25)
 - CSN West applies its carriage requirement on a non-discriminatory basis to all MVPDs. Comcast sets the rates for CSN West at the levels it believes the market will bear, and charges the same rates based on the same distribution requirements to each operator with subscribers in a particular pricing zone. (Comcast Mar. 15 Response at 12)
- **SNNY:**
 - DIRECTV also claims that SNNY will “on a cost per game per subscriber” basis be the “nation’s most expensive RSN programming.” (DIRECTV Surreply at 9) Comcast believes that the pricing for SNNY is reasonable and comparable to what MVPDs would have paid for the programming under any renewed agreement between the Mets and the network that previously carried the Mets—and is certainly within the range of what RSNs typically charge today for their services. The network will be priced below the rate for the competing YES Network in the same footprint, and will carry college sports programming as well as the Mets. (Surreply Response at 25-26)
- In general, discriminatory pricing strategies are potentially very costly. The areas covered by non-competing MVPDs comprise a significant share of RSN footprints. If

Comcast attempts to raise license fees, it will potentially lose distribution on the systems of these non-competing MVPDs (cable distributors) and thus run the risk that the RSN will be wholly unavailable in large portions of the network's service area. (Applicants' Reply at 61)

ALLEGATION: The Transactions could enable Comcast to form new RSNs and "lure" away professional sports teams from other networks. (See DIRECTV Mar. 1 *ex parte* at 2; DIRECTV Feb. 14 *ex parte* at 3; DIRECTV Surreply at 10)

REBUTTAL:

- The hypothetical scenarios that DIRECTV conjures up are purely speculative and do not account for the real-world limits that Comcast would face. (Comcast Mar. 15 Response at 9-10; Surreply Response at 20-21)
 - In most RSN territories in which Comcast is acquiring subscribers as a result of these Transactions, News Corp. or another existing entity has long-term contracts either with all of the local teams or with a sufficient number such that it would be difficult or impossible for Comcast or a third party to launch a new RSN and "lure" the teams away from an incumbent RSN any time soon. For example:
 - ⇒ Los Angeles: In Los Angeles, News Corp. owns Fox Sports Net West. The Applicants understand that this RSN has contracts with the Angels through 2008, the Kings through 2010 or 2012, and the Lakers through 2013. News Corp. also owns Fox Sports Net West 2. The Applicants understand that this RSN has contracts with the Clippers through 2007 or 2008, the Mighty Ducks through 2008, and the Dodgers through 2010.
 - ⇒ Minneapolis-St. Paul: In Minneapolis-St. Paul, News Corp. owns Fox Sports Net North. The Applicants understand that this RSN has a contract with the Twins through 2012 and contracts with the Minnesota Wild and Timberwolves through an undetermined date. Without access to the Twins, it appears highly unlikely that a competitive RSN could be formed prior to 2012.
 - ⇒ Miami: In Miami-Ft. Lauderdale, News Corp. owns Sun Sports Network. The Applicants understand that this RSN has a contract with the Miami Heat through 2012. News Corp. also owns Fox Sports Net Florida, which has contracts with the Tampa Bay Devil Rays through 2009 and the Florida Marlins through 2010. The Applicants have not been able to determine the expiration date News Corp.'s contract with the Florida Panthers. However, given the expiration dates of the other three contracts, it is unlikely that a new RSN could be formed prior to 2010 at the earliest.

⇒ Pittsburgh: In Pittsburgh, News Corp. owns Fox Sports Net Pittsburgh. The Applicants understand that this RSN has contracts with the Penguins through 2013 and the Pirates through 2011. Accordingly, it appears highly unlikely that any new competing RSN could be formed prior to 2011 at the earliest.

⇒ Denver: Denver is served by Altitude, a team-owned network, which is unlikely to make a decision to leave the RSN market. In particular, Altitude is carried by Comcast and has multi-year deals with both DIRECTV and EchoStar.

- News Corp. has succeeded in building and maintaining its leading position as a supplier of RSN programming in many regions in which Comcast has a significant share of MVPD subscribers, even though News Corp. had *no* MVPD subscribers at the time it obtained the programming rights. DIRECTV has provided no evidence to suggest that the Transactions will fundamentally alter News Corp.’s leading position in the RSN marketplace or render News Corp. unable to continue to compete for sports rights. (Surreply Response at 19-20)
- **Wooing teams away from an incumbent RSN is a tactic with which News Corp. is intimately familiar—and a tactic News Corp. has employed without the benefit of a single cable cluster or even a single MVPD subscriber.** News Corp.’s behavior in Detroit in 1997 highlights the point. After attempting unsuccessfully to acquire the incumbent RSN, Pro-Am Sports Systems (“PASS”), News Corp. set about to lure the Tigers, Pistons, and Red Wings away from PASS. Within three months, News Corp. had locked up the TV rights to the three Detroit teams, driven PASS out of business, and launched its own service, Fox Sports Net Detroit. (Surreply Response at 27)

ALLEGATION: The Transactions could place Comcast in a better position to enter into exclusive arrangements with unaffiliated RSNs. (See DIRECTV Comments at 29)

REBUTTAL:

- There is little or no risk that Comcast will negotiate exclusive RSN deals in any of the areas in which News Corp. controls the incumbent RSN. (Surreply Response at 19)
 - The *News Corp./DIRECTV Order* prohibits News Corp. from entering into exclusive arrangements for its RSNs with any MVPD, including Comcast.
 - Even without the prohibition, News Corp.’s ownership of the incumbent RSNs makes exclusive deals highly unlikely for a simple and quite compelling reason: DIRECTV is a direct and vigorous competitor of Comcast. Therefore, News Corp., DIRECTV’s controlling parent, would have a strong incentive – and clear ability – *not* to enter into exclusive arrangements for its RSNs with Comcast.