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April 14, 2006

VIA ELECTRONIC FILING

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

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

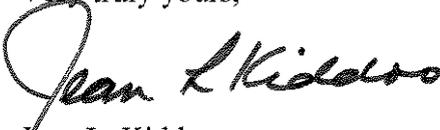
Dear Ms. Dortch:

On behalf of RCN Corporation (“RCN”), and pursuant to Section 1.1206 of the Commission’s Rules, 47 C.F.R. § 1.1206, this is to provide a copy of a written *ex parte* letter sent today by Richard Ramlall, RCN Corporation’s Senior Vice President, Strategic, External and Regulatory Affairs, to Chairman Kevin J. Martin, with copies to other Commissioners and Commission Staff as indicated on the letter (“FCC Recipients”). Mr. Ramlall’s letter is a follow up to letters sent to Chairman Martin by Senators Ted Stevens and Byron L. Dorgan on April 4, 2006, and by nineteen Members of the House of Representatives on February 21, 2006. Both of those letters expressed serious concerns about the proposed acquisition of Adelphia Cable by Comcast Communications and Time Warner, and asked that the Commission carefully consider whether program access conditions on the transactions are necessary in order to protect the public interest. RCN has supported program access conditions in its comments in the above referenced docket and Mr. Ramlall’s letter outlines four safeguards that the Commission should adopt as conditions to its approval of the Adelphia transactions that are the subject of MB Docket No. 05-192.

Marlene H. Dortch, Secretary
April 14, 2006
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Should any additional information be required with respect to this *ex parte* notice, please do not hesitate to contact me.

Very truly yours,



Jean L. Kiddoo

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cc (by electronic mail): FCC Recipients



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Senior V.P., Strategic & External Affairs

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April 14, 2006

VIA COURIER & ELECTRONIC MAIL

Chairman Kevin J. Martin
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: MB Docket No. 05-192 (Adelphia Transaction)

Dear Chairman Martin:

On behalf of RCN Corporation (“RCN”) and its operating subsidiaries, I am writing to follow up on the letter that Senators Ted Stevens and Byron L. Dorgan sent you on April 4, 2006 (“Senate Letter”) and the letter that nineteen Members of Congress sent you on February 21, 2006 (“House Letter”). Both letters expressed great concern about the proposed acquisition of Adelphia Cable by Comcast Communications and Time Warner.¹ The House Letter proposes that, to the extent the Commission decides to approve the Adelphia transactions, it should specifically condition such approval on agreement by Comcast and Time Warner not to enter into exclusive contracts for their local sports programming. The Senate Letter also expresses concerns about exclusivity, but also raises concerns about other anti-competitive practices, such as use of the so-called “terrestrial loophole” and conditions that result in *de facto* discrimination because they can only be met by affiliated cable operators and not competitors. The Senate Letter asks that the Commission carefully review all of the important issues regarding access to regional sports programming access, and that it examine whether conditions on the merger may be necessary to ensure a competitive marketplace.

¹ Copies of the Senate Letter and House Letter are attached hereto for inclusion in the above-referenced docket. The House Letter was signed by Rick Boucher, Stephanie Herseth, Marion Berry, Mike Ross, Mike Simpson, K. Michael Conaway, Charles H. Taylor, Ted Strickland, F. Allen Boyd, Jr., Michael T. McCaul, Chris Cannon, Lincoln Davis, Bud Cramer, Virgil Goode Jr., Bill Jenkins, Walter B. Jones, C. L. “Butch” Otter, Nick Rahall, and Robert Aderholt.

RCN believes that Senators Stevens and Dorgan and the nineteen signatories of the House Letter have identified the single most significant barrier to competition in the video marketplace – and one that is far more of a barrier than the local franchise process. Problems with access to “must have” programming have been ongoing throughout the 10+ years that RCN has been competing in the cable market, and RCN and numerous other competitive providers and consumer advocates have informed the Commission about difficulties encountered in gaining and keeping access to local programming, including regional sports programming, in their comments in this proceeding as well as in numerous earlier proceedings.² Indeed, just recently members of Congress have expressed concerns about the fact that Mid-Atlantic Sports Network (MASN), and therefore many Washington Nationals games, are not available to over half of the households in the region because of Comcast’s dispute with MASN, which is one more manifestation of Comcast’s ability to use critical regional sports and other ‘must have’ programming as commercial leverage.³

The Commission has itself previously recognized that access by competitive providers to certain local and regional programming is critical and that limits need to be created “to prevent cable operators, because of their subscriber reach, from unfairly impeding the flow of programming to consumers.”⁴ And as the Senate Letter points out,

² See, e.g., Comments of RCN Telecom Services, Inc., dated July 21, 2005, MB Docket No. 05-192, and proceedings and comments cited at note 25 therein (“RCN Comments”), Comments of DIRECTV, Inc., dated July 21, 2005, MB Docket No. 05-192, at p. 10; Comments of Echostar, Satellite L.L.C., dated July 21, 2005, MB Docket No. 05-192, at p. 4; see also, e.g., Petition of RCN Telecom Services, Inc., to Deny Applications or Condition Consent, dated April 29, 2002, MB Docket No. 02-70, In the Matter of Applications for Consent to the Transfer of Control of Licenses Comcast Corporation and AT&T Corporation, Transferors, to AT&T Comcast Corporation, Transferee, at pp. 19-21; Comments of RCN Telecom Services, Inc., dated September 19, 2005, MB Docket No. 05-255, In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, at pp. 7-8; and Comments of RCN Telecom Services, Inc., dated July 23, 2004, MB Docket No. 04-227, In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, at p. 10.

³ To be sure, the MASN dispute is a case where Comcast is on the purchasing end of the transaction as opposed to the selling end, but the mere fact that Congress has had to become involved underscores how such programming can be – and is – used as a powerful commercial weapon.

⁴ See *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferees, to AT&T Comcast Corporations, Transferors*, Memorandum Opinion and Order, 17 FCC Rcd 23246, ¶¶ 101, 103 (2002).

“the Adelphia acquisition could lead to even greater concentration for Comcast and Time Warner, resulting in these companies having both the ability and incentive to engage in anti-competitive behavior in these markets.”

Accordingly, for the reasons set forth in its comments and *ex parte* filings in this docket,⁵ and in response to the concerns raised in the Senate Letter and House Letter, RCN again respectfully urges the Commission to implement four simple safeguards as conditions to approval of the Adelphia transactions:

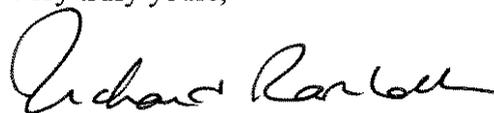
- Prohibit Exclusives
 - Applicants should be prohibited from entering into exclusive contracts, including conditions that preclude the use of techniques that create *de facto* exclusives, for programming provided by programmers in which they have an attributable interest (i.e. vertically integrated programmers) and for regional sports programming.
- Close the “Terrestrial Loophole”
 - The FCC should ensure that Comcast and Time Warner will not be allowed post-merger to invoke the terrestrial loophole to evade the program access rules, especially in view of the increased regional clustering that will occur if these transactions are approved, which will increase their opportunity to monopolize local sports.
- Mandate Contract Rate Transparency
 - Applicants should be required to disclose their contracts for programming upon request of a distributor alleging discrimination and, for contracts with vertically integrated programming affiliates, be required to disclose the effective rates paid by them for programming, after taking into account shared profits. Transparency is essential if a fully competitive, nondiscriminatory market for programming is to develop.
 - Programmers currently impose restrictive confidentiality and non-disclosure requirements on their contracts which foreclose other buyers from knowing whether the rates, terms and conditions offered them are consistent with the rates, terms and conditions provided to affiliated multichannel video programming distributors (MVPDs) and larger

⁵ See, e.g., RCN Comments and proceedings and comments cited at note 25 therein; RCN Telecom Services, Inc. Ex Parte Letter, dated March 3, 2006, MB Docket Nos. 05-311 and 05-192.

competitors. Clearly, the only basis for securing rates from disclosure is to keep other competitors from knowing whether they are being discriminated against. Absent transparency of rate information, normal market mechanisms that help level the playing field (including the arbitration provision set forth below) cannot work. Thus, the FCC should mandate that in the event of a programming dispute, parties must be granted access to the contractual terms necessary to determine whether unwarranted discrimination is occurring.

- Provide for Dispute Resolution
 - Program access disputes with the Applicants or their vertically integrated programming affiliates should be subject to arbitration. A cost-effective, timely mechanism for the resolution of programming disputes should be provided, similar to that imposed by the Commission in the NewsCorp/Hughes transaction, and should be paired with the transparency condition set forth above so that parties and arbitrators can ascertain whether contracts are discriminatory or would result in *de facto* discrimination.

Very truly yours,



Richard Ramlall
Senior Vice President, Strategic,
External and Regulatory Affairs

Attachments (Senate Letter and House Letter)

cc (w/atts.): Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Deborah Taylor Tate
Ms. Donna Gregg
Mr. Rudy Brioché
Mr. Ian Dillner
Ms. Heather Dixon
Mr. Aaron Goldberger
Mr. Jordan Goldstein
Ms. Royce Sherlock
Ms. Sarah Whitesell
Mr. Tracy Waldon

United States Senate
WASHINGTON, DC 20510

April 4, 2006

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Martin:

The proposed acquisition of Adelphia Cable by Comcast Communications and Time Warner is currently before the Federal Communications Commission. We are greatly concerned about a merger of such scope, and believe you should act carefully before approving such a merger. If this merger is to be approved, there are several important issues that we believe you should review, and we ask that you examine whether conditions may be necessary in order to ensure a competitive marketplace.

First, we are concerned that the potential for exclusive contracts for regional sports programming may unfairly impede competition. At a Senate Commerce Committee hearing on Video Content, held on January 31, 2006, several witnesses spoke of concerns about a dominant cable provider's ability to control the distribution of content to their competitors.

At the hearing we heard testimony that where Comcast and Time Warner have gained regional concentration, they have restricted access to regional sports programming, or charged discriminatory rates to potential competitors. We were told of cases of a Comcast-affiliated Regional Sports Network (RSN) being withheld from Direct Broadcast Satellite (DBS) competitors in Philadelphia, Pennsylvania, and Time Warner withholding an unaffiliated RSN in Charlotte, North Carolina through an exclusive arrangement negotiated as a result of its market power.

Regional sports programming cannot be duplicated and thus is critical to a video provider's ability to compete for subscribers. In markets where an RSN is only available from the dominant cable provider, DBS providers state that their penetration is substantially lower than in other Designated Market Areas (DMAs).

In the 1992 Cable Act, Congress adopted program access rules to promote diversity and competition in the video programming market. However, these rules do not apply if cable providers distribute their regional programming over fiber cable rather than satellite. In addition, while the program access rules require program carriage conditions to be nondiscriminatory, we have heard instances where de facto discrimination may be

occurring whereby cable-affiliated programmers offer programming with conditions so that they can only be met by cable operators, and not their non-cable competitors.

If Comcast and Time Warner, the nation's first and second largest cable companies, are allowed to purchase Adelphia, the nation's fifth largest cable operator, if the concerns raised during testimony before the Senate Commerce Committee are correct, the Adelphia acquisition could lead to even greater regional concentration for Comcast and Time Warner, resulting in these companies having both the ability and incentive to engage in anti-competitive behavior in these markets.

We thank you for considering our concerns. We ask that you examine the allegations of market power causing anti-competitive behavior, and if they are accurate, we urge you to take appropriate action in your review of the Adelphia transaction to prevent opportunities for anti-competitive behavior.

Sincerely,


Byron L. Dorgan
United States Senator


Ted Stevens
United States Senator

Cc: Commissioner Copps
Commissioner Adelstein
Commissioner Tate

Congress of the United States

Washington, DC 20515

February 21, 2006

The Honorable Kevin Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Martin,

We are writing to urge that if you decide to approve the proposed acquisition of Adelphia Cable by Comcast Corporation and Time Warner Cable, you condition the approval on Comcast's and Time Warner's agreeing not to enter into exclusive contracts for their local sports programming, so as to ensure that it is available to competing multichannel video programming providers.

Much attention to the proposed sale of Adelphia's systems has focused on the matter of exclusive contracts for providing local sports programming. Already, in Philadelphia, Pennsylvania and Charlotte, North Carolina, Comcast and Time Warner, respectively, have established exclusive deals that prevent those fans who choose an alternative video programming provider from viewing most of their local NBA team's games (and in Philadelphia, NHL and major league baseball games as well). The acquisition by Comcast and Time Warner of more systems in numerous markets across the country could enable the companies to enter into exclusive arrangements with even more local professional sports franchises.

These arrangements are troubling for fans throughout the market because they mean having to choose between subscribing to the video programming provider of their choice or accessing their favorite regional sports teams' games. This problem is compounded for rural residents, for whom switching to cable service may not even be an option because a cable operator may not be offering service in that area. If DBS companies are barred from carrying regional sports programming, it effectively bars many rural fans from viewing their teams.

The acquisition of Adelphia Cable by Comcast and Time Warner can have significant benefits, particularly for current Adelphia subscribers who have had to live with uncertainty about the provider's future for the past several years. However, on behalf of our constituents in rural communities throughout America and sports fans everywhere, we urge you to consider setting conditions for the merger that will protect consumer interests. Specifically, a condition that would prohibit exclusive contracts for local sports programming would ensure that consumers have true choice with respect to

electing a multichannel video programming provider, which is ultimately in the best interest of all involved.

Sincerely,

Dick Bowker

CC

Stephanie Joseph

Jill Dan

Marion Berry

Bob Connor

Mike Rose

Virgil Hoode Jr.

Mike Squire

Bill Jenkins

K. Mitchell Casey

Walter B. Jones

Charles H. Felt

Ed. Smith

Ed Strickland

Jim Ruff

F. Allen Boyd

Robert K. Whit

Mike O. T. McCard
