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May 1, 2006

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

Re: Letter Submission in MB Docket No. 05-192

Dear Ms. Dortch:

The America Channel submits this letter ex parte in the Commission's MB Docket # 05-192.

SUMMARY

- I. THE COMMISSION SHOULD NOT BE DIVERTED FROM THE PUBLIC INTEREST QUESTION CENTRAL TO THIS TRANSACTION**
- II. THE TRANSACTION PARTIES' REBUTTAL REGARDING DISPARATE TREATMENT OF INDEPENDENT PROGRAMMERS IS INADEQUATE AND DIVERSIONARY**
- III. THE TRANSACTION PARTIES' RESPONSES TO THE INFORMATION REQUESTS ARE UNRESPONSIVE, AND CONTAIN ADMISSIONS OF DISCRIMINATION**
- IV. INCONSISTENCY OF COMCAST'S STATEMENTS**
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- I. THE COMMISSION SHOULD NOT BE DIVERTED FROM THE PUBLIC INTEREST QUESTION CENTRAL TO THIS TRANSACTION**

Adverse petitions in this proceeding have now been before the FCC for nearly ten months, and the transaction parties still have not adequately refuted the overwhelming evidence of discrimination in

programming decisions – decisions consistently favoring affiliated programming and disadvantaging independent programmers -- that has poured into the record.

Empirical evidence presented by The America Channel demonstrates that in a 2 ½ year study period only 1 out of 114 independent cable programmers secured national, non-premium carriage on Comcast and Time Warner -- while nearly 100% of Comcast-owned networks secured analog carriage on Comcast. Multiple academic and government studies on cable carriage and competition presented in this proceeding conclude that affiliation with an MVPD or broadcaster is a primary determinant of cable carriage and confirm severe discrimination in the marketplace, including by the transaction parties.¹

Against the sea of empirical data, scientific analysis, and direct statements by industry experts, the investment community and others filed in this Docket, the transaction parties on April 21, 2006 submitted a few pages of rebuttals professing that (1) they do not have the market power to bestow or deny viability on a network, and (2) they do not discriminate against independent networks. We will address the statements in their filing in more detail in the near future. We confine our comments here to some preliminary observations about the parties' latterly representations concerning the number of independent channels they claim to carry. *See infra*, Section II.

In their rebuttal document and throughout this process, the transaction parties have consistently attempted to divert the Commission's attention from the central public interest issues at hand, including by impugning The America Channel. We urge the Commission not to permit itself to be distracted by this tactic.

The relative merits of one programming network are not at issue here. Even if all of the transacting parties' allegations regarding the unsuitability of The America Channel for distribution on analog, digital or otherwise are accepted at face value, it would not change the necessity of imposing conditions on this transaction in order to safeguard market entry by independent networks and the increased competition that such entry brings. We urge the Commission to remain focused on the public interest question of how this transaction will negatively affect all independent programming in the U.S., and thereby negatively affect competition, consumer choice, diversity in programming, and cable prices.

In the face of overwhelming evidence of discrimination against independent programmers, and in the absence of a convincing rebuttal from the transaction parties, the Commission must conclude that severe market dysfunction exists. This dysfunction will be significantly enhanced and opportunities to independent channels will be permanently foreclosed as a result of the contemplated transactions. We urge again that the harms that are specifically linked to this transaction require the imposition of conditions to open the cable platform to competition from independent programmers.

¹ This includes a GAO study, several studies by independent researchers, our own study which covered a 2 ½ year period, as well as filings and statements by numerous other persons. Please see:

- Ownership Affiliation and the Programming Decisions of Cable Operators. Michael E Clements & Amy Abramowitz of the GAO.
- U.S. Government Accountability Office. Issues Related to Competition and Subscriber Rates in the Cable Television Industry. Report to the Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate. October 2003.
- *Vertical Foreclosure in the U.S. Cable Television Market: An Empirical Study of Program Network Carriage and Positioning*. by Dong Chen and David Waterman. October 2005. Filed in MB Docket 05-192 as part of Notice of CCVM, CWA, DIRECTV, Media Access Project, MASN, RCN and The America Channel. 1/27/2006.
- MB Docket 05-192, Petition of The America Channel dated July 21, 2005.

We submit that it is not enough to recognize that an issue exists and defer the solution to another proceeding in the future, such as the cable cross-ownership proceeding. The transacting parties have made this transaction about “geographical rationalization,” and the clustering strategy that they cite as a public interest benefit means a completion of the foreclosure of independent programmers from cable distribution.

The rancorous tone of the response of the transaction parties to The America Channel’s submissions in this proceeding and elsewhere make clear that independent programmers that oppose the interests of the transaction parties do so at great peril to their viability. Without relief to open the cable platform to independent programmers in this proceeding, it is unlikely that independent programmers will be motivated to come forward in the future. Comcast’s and Time Warner’s past discriminatory practices, when coupled with the increase in their dominant market power resulting from the merger with Adelphia Communications, pose at least as compelling a scenario for the imposition of conditions as the NewsCorp/DirecTV transaction of 2003.

In Appendix A of this document, we reiterate some of the market dysfunctions we previously cited, which are the real issues before the Commission in this transaction. Appendix B of this document includes relevant statements from multiple parties which should be considered by the Commission in its review of these transactions and their impact on the video programming market.

II. THE TRANSACTION PARTIES’ REBUTTAL REGARDING DISPARATE TREATMENT OF INDEPENDENT PROGRAMMERS IS INADEQUATE AND DIVERSIONARY

After nearly 10 months of declining to respond to the substantial evidence that The America Channel and others have contributed to the record pointing to discrimination and market dysfunction, on April 21, 2006 the transacting parties submitted a filing asserting in summary fashion that they have done lots of deals with independent channels. While a more comprehensive response to this filing is forthcoming, we respond here to two new assertions in it: that Time Warner has affiliation agreements with over 100 “independent” cable networks and that in the past three years Comcast has entered into affiliation agreements to carry well over 50 “independent” programming channels.²

To evaluate these assertions, the Commission and other parties will need additional specific information about the deals referred to, and below, we urge the Commission to require the parties to provide such information. But we believe the transacting parties’ statements do not refute the data submitted in our research study or the abundant evidence provided by other parties. We believe the Applicants may be using the term “independent” in the broadest manner possible -- to describe any network in which they individually do not have an attributable financial interest, including (we speculate) networks owned and operated by other cable operators (including by the other transacting parties themselves), or by the large broadcast conglomerates. We further speculate that each of Comcast and Time Warner may be considering channels owned by the other, as independent. Under this definition of the term, if each of Comcast and Time Warner one day own 50% of all channels (for a total of 100%), and each carries the other’s channels, then each could claim that 50% of the channels they carry are “independent.”

Comcast and Time Warner’s preferred definition of “independent” is not relevant for purposes of this proceeding. Congress has clearly and repeatedly stated that the promotion of diversity of information

² MB Docket 05-192, Notice of Adelphia Communications Corp., Comcast Corporation, Time Warner Inc. 4/19/2006 at 7

sources and views is of the highest order.³ In this proceeding, the Commission has a broad mandate and indeed a broad obligation, to advance the public interest. As such, the Commission is entitled and required to consider market power, diversity, true competition, consumer choice, consumer pricing and the national discourse. The past few years have shown that affiliation is a primary determining factor in carriage decisions. This is highly germane to the public interest question, in particular the health of competition, diversity of information sources, consumer choice, consumer pricing, and the national discourse.

Through their broad statements, the Applicants also incorrectly suggest to the Commission that all carriage agreements should be viewed equally regardless of the number of subscribers reached. Our study found that networks affiliated with MVPDs and broadcasters were granted significantly greater carriage than their unaffiliated counterparts – 11x on a median basis and 2x on a mean basis. Applicants provide no quantitative data to show that this disparity does not apply to the referenced deals as well. The applicants similarly provide no data as to whether these agreements are regional or national, and whether the network was placed on analog, digital basic, or a specialized tier.

Moreover, it appears that many of the deals counted in these numbers may be old and therefore not relevant to events in recent years – in particular the abuse of consolidated market power to prevent new independent channels from launching. Neither party provides a breakdown to show how many *newly launching* channels were granted carriage over the last three years (which was the focus of our study). Starz! Encore, for example, cited in Comcast’s rebuttal, has been distributed on cable in various forms since 1991. In addition, at least in the case of Time Warner, the figure presented may include agreements regardless of their age.

The Commission’s review of this transaction must be forward-looking. We demonstrated that in a study period which commenced January 1, 2003, that the top two cable operators have foreclosed competition from new independent channels. Thus, counting an existing deal from the 1990’s has little relevance to the health of competition now and going forward. What is much more relevant is the trend over the past several years, and the current and escalating policy of restricting competition by independents described in this and other filings in this proceeding.⁴

As the Applicants’ rebuttal opens more questions than it answers, the Commission should require Applicants to provide additional, relevant information. Specifically, Applicants should report to the Commission:

- The specific networks included in Time Warner’s count of 100 and Comcast’s count of 50 independent networks;
- The dates of the affiliation agreements;

³ Section 613(f)(2)(G) of the Communications Act requires the Commission to ensure that any limits imposed do not “impair the development of diverse and high quality video programming.” And Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources. (47 U.S.C. § 532(g). This provision was added to the Communications Act by the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779.) The importance of diversity as a consideration in rulemaking was upheld by the *Time Warner I* court, which found that Congress reasonably concluded that dramatic concentration in the cable industry “threatened the diversity of information available to the public and could form a barrier to the entry of new cable programmers.” (*Time Warner Entertainment Co. v United States*, 211 F.3d at 1320 (D.C. Cir. 2000)) The *Time Warner II* court concurred, stating that although diversity should not be the sole justification for ownership limits, it is a factor entitled to consideration. (*Time Warner Entertainment Co. v. FCC*, 240 F.3d at 1135)

⁴ See MB Docket 05-192 Comments of The America Channel 04/24/06.

- The number of subscribers each network receives as a result of the affiliation agreement;
- The tier placement of each network;
- Which networks were given carriage commitments, and which received hunting licenses.

This additional data is important in the Commission’s review, particularly in light of the Chen and Waterman study, which concluded that both Comcast and Time Warner engage in various forms of vertical foreclosure even with networks that have a master carriage agreement with the MSO. The foreclosure occurs through distribution to fewer systems or subscribers, or through placement on a tier which reaches fewer households.⁵

III. THE TRANSACTING PARTIES’ RESPONSES TO THE INFORMATION REQUESTS ARE UNRESPONSIVE, AND CONTAIN ADMISSIONS OF DISCRIMINATION

It is rudimentary in proceedings such as these that the transaction parties must supply responsive answers to the Commission’s information requests. This is important not only for the Commission’s own decision making, but also for other interested parties’ informed participation in the proceeding. Here, the transaction parties were not responsive to the Commission’s information request dated December 5, 2005, and we urge the Commission to require further supplementation.

Section III.H. of the information request asked the following:

[E]xplain the process by which the Company makes decisions regarding carriage of specific programming networks, in particular the extent to which carriage decisions are made at the corporate level and/or by individual system managers. Respond to allegations of The America Channel (“TAC”) that some networks seeking carriage are given so-called “hunting licenses” authorizing them to negotiate for carriage with System managers, whereas networks affiliated with Comcast are given carriage “commitments” that do not require negotiations for carriage on individual Systems.

The request thus seeks information in two areas: the process for carriage decisions, and the granting of hunting licenses. We address each of these below:

1. The Process for Carriage Decisions

Adelphia did not respond to this request at all, although the Commission’s definitions and instructions clearly require it to do so. Comcast, predictably, asserts that The America Channel is not worthy of carriage, and then recites a series of standards that it says it applies evenhandedly to affiliated and independent channels. Time Warner likewise says that it has standards, and that they are applied evenly to affiliated and independent programmers. But these assertions are unsupported by the record: over a 2 ½ year study period, less than 1% of independent channels secured national, non-premium carriage at either Comcast or Time Warner (1 out of 114 independent channels), and only 7% of independents received any kind of local carriage by either operator; affiliated networks launching during the study period also achieved considerably greater distribution than independents – 11x greater on a median basis, and more than 2x greater on a mean basis; and in contrast 100% of Comcast-owned networks secured linear carriage on Comcast, including close to 100% (if not 100%) on analog in at least one or more markets.

⁵ *Vertical Foreclosure in the U.S. Cable Television Market: An Empirical Study of Program Network Carriage and Positioning.* by Dong Chen and David Waterman. October 2005.

Furthermore, the transacting parties provide the Commission with no evidence to support their assertion of equal application of these standards regardless of network ownership. We note for example that: (i) Comcast committed broad distribution to Comcast-owned networks, before those networks secured funding, hired key management personnel, or secured carriage at other cable operators;⁶ (ii) Comcast aggressively distributes Comcast-owned networks, even on analog, in spite of clear evidence of lack of consumer acceptance;⁷ (iii) Comcast launches networks in programming genres filled with direct competitors; and (iv) Comcast networks otherwise failed to meet several of Comcast's "standards."

The Commission should require a more thorough and responsive answer to the operative facts in the record. We urge the Commission to issue a Further Request for Additional Information in this proceeding, asking the following:

- (a) If Comcast applies its "standards" evenhandedly, and affiliation is not the dominant factor, then how does Comcast explain the severe empirical discrepancies cited above?
- (b) What are the specific measurements within each "standard" that determine whether that standard has been met? Can Comcast provide evidence that affiliated networks to which it has granted carriage met these measurements prior to their carriage commitment?
- (c) What is the average number of subscribers committed to a Comcast-owned or Time Warner-owned network prior to or at launch? What is the average number of subscribers that Comcast grants its own networks?
- (d) Are there any Comcast owned channels or Time Warner-owned channels that do not have analog carriage?
- (e) What standards were applied in deciding that Comcast affiliate G4 should be granted analog carriage, and be distributed in 50 million homes in little more than 3 years, in spite of evidence that G4 is one of the lowest rated channels on television?⁸
- (f) How were Comcast's standards applied when Comcast recently decided to upgrade all of Comcast's national networks in the L.A. area (E!, Style, G4, TV One, Golf), from digital to analog, in advance of the Time Warner system swap pursuant to the proposed transactions – thereby occupying capacity equivalent to 50 digital channels.
- (g) How are the standards applied to Comcast-affiliated networks that have been launched or are planned for launch, in determining the number of subscribers and tier placement of each channel.

2. Hunting Licenses

In industry parlance, a hunting license is a cable MSO's authorization to a programmer to visit and poll individual systems of the MSO to explore interest and conclude carriage deals.

⁶ In January 2003, TV One had not yet hired a CEO, head of programming or other key positions; it had not gained distribution with any MVPDs; and it had not begun producing programming or announced any significant programming acquisitions. Yet on January 13, 2003 Comcast's CEO stated "we have committed to launch this channel across a significant number of our markets and to work with other cable and satellite providers to reach as many total viewers as possible." (Corporate release, January 13, 2003) Comcast's ownership stake in TV One is reported to be 38.8%.

⁷ *The Wall Street Journal* reported on August 31, 2005, that Comcast's G4 launched little more than 3 years ago, and today has over 50 million subscribers. Yet the *Wall Street Journal* reports that G4 "still has a relatively tiny audience – so tiny that the channel won't release ratings data." In spite of poor performance by this Comcast affiliate, indeed so poor that Comcast does not release ratings data, Comcast dramatically accelerated distribution, including the recent migration of G4 in Los Angeles, from digital to analog.

⁸ *id.*

With respect to the process, as we understand it (based in part on discussions with other independent programmers), it was used by the old AT&T systems prior to their acquisition by Comcast. The hunting license process gave local systems a measure of autonomy to make their own decisions with respect to carriage, based on local tastes and preferences. Based on information and belief, Comcast subsequently centralized the decision-making processes with respect to carriage and hunting licenses already granted, so that local systems could no longer decide on their own what channels to carry. The effect of this was to neutralize existing hunting licenses already granted to independent programmers.

Comcast's response to question III.H. of the information request states that in recent years, "it has become increasingly common" for a "new programmer" to receive a hunting license. This response is especially confusing because Comcast officials have told us as well as other parties that hunting licenses are no longer granted. And our own experience is that even if local systems react favorably and positively to a channel, and communicate the same to Corporate, the Corporate office makes carriage decisions on the basis of other factors. Further, we believe that by "new programmer" Comcast really means a programmer not affiliated with Comcast or a broadcaster – since, for example, we are not aware of any new Comcast-owned channel that received a hunting license.

In their responses, the transacting parties failed to describe in what cases a channel is given a hunting license rather than a commitment, or what are the criteria by which they decide to grant a hunting license rather than a commitment.

Indeed the transacting parties failed to provide any quantitative data which would assist the Commission to assess whether there is disparate treatment of affiliated and independent channels in the so-called "hunting license" process – for example which networks received hunting licenses, and what is the breakdown of affiliated and unaffiliated channels that received commitments instead of hunting licenses.

Importantly, Comcast concedes that "With respect to Comcast-affiliated networks, Comcast does provide varying carriage commitments at the corporate level." We are not aware of any Comcast-owned or Time Warner-owned channels that received hunting licenses from these MSOs – instead they receive broad carriage commitments.

We urge the Commission to ask the transaction parties to answer the following questions clearly and directly:

1. In the past 3 years, how many hunting licenses have you issued?
2. Of that number, how many were issued to independent programmers, i.e., programmers with no ownership interest held by a cable or broadcast company?
3. When hunting licenses were issued, how many local system requests for carriage were accepted by the corporate office, and how many were rejected? In those cases where carriage was granted as a result of a hunting license, how many subscribers were gained by the network?
4. Have any Comcast-owned and Time Warner-owned networks (i.e., networks in which Comcast or Time Warner has a majority or minority ownership interest) secured hunting licenses rather than carriage commitments and, if so, which channels?
5. Have the transacting parties ever discouraged local systems and/or local programming executives from endorsing or requesting an independent channel?

IV. INCONSISTENCY OF COMCAST'S STATEMENTS

At the Bear Stearns conference on February 28, 2006, Comcast's CFO stated: "We've got a huge amount of bandwidth capacity that's going to allow us to continue to grow, continue to drive out new products,

and it's those new products that are going to drive growth and growth both in unit terms and in operating cash flow terms for years ahead." Indeed, page 3 of the Comcast PowerPoint presentation from the Bear Stearns conference, which was submitted to the record in this proceeding by RCN on March 3, 2006, boasted that Comcast has "Significant Capacity for Future Products."

Yet, in numerous communications with us, Comcast cited the opposite as a reason for declining carriage - that Comcast has *limited* bandwidth.⁹

Comcast's PowerPoint further states, on the slide entitled "Building Shareholder Value," the following: "Build Value in Existing and New Cable Networks." In spite of this declared strategy, Comcast's executive vice president of content acquisition recently told an audience at the NCTA National Show, "In the near-term, there's not a lot of room for linear networks."¹⁰

The inconsistency of Comcast's statements sends a clear message: Comcast will continue its aggressive strategy of launching and expanding the distribution of its own channels, at the expense of independent channels.

Comcast's position and its actions have contributed greatly to the exodus of new investment from the cable space that we have previously reported in this proceeding.¹¹ Investors recognize that the top two cable operators have stifled innovation and excluded entrepreneurial potential competitors. As further confirmation of the evidence we previously presented that investors have been driven away -- regarding the cable National Show, on April 17, 2006 *Broadcasting & Cable* quoted Bank of America analyst Doug Shapiro: "The turnout from the financial community was the lowest we've seen in a decade."¹²

V. COMMUNICATIONS WITH COMCAST; REFUSAL TO ADD AMERICA CHANNEL TO FAMILY TIER

Last summer, during an important phase of the continuing national debate on quality of content and family programming tiers, we offered The America Channel to Comcast for free for a three year term. We provide for the record an exchange of letters with Comcast: Comcast's letter dated August 26, 2005, and our response dated September 12, 2005, attached to this document as Appendix D.

Comcast's letter dated August 26, 2005 rebuffed our offer, stating that our product did not meet Comcast's requirements for "content and theme of the network," or for the "necessity or desirability of its presentation as a linear network." Comcast said that it was "by no means denigrating [The America Channel's] notion that...good programming can be based on 'fascinating stories about real people and places.'" It added that there is insufficient evidence "to establish the merit of a would-be 24-hour linear network centered solely on 'telling the ever-unfolding story of America through the eyes of real Americans.'"

The America Channel disagrees, of course, with Comcast's narrow judgment about whether families would enjoy and be enriched by watching our programming. But we wrote to Comcast again to try to learn more about what in their judgment made the "content and theme" of The America Channel inappropriate. Comcast would not provide us with further information.

⁹ Including Comcast's letter to The America Channel dated July 21, 2005, which we previously submitted in the record in this proceeding, which stated that "[t]he bandwidth on [Comcast's] cable system is limited".

¹⁰ *Multichannel News*. "For Nets, Nothing's Certain" April 17, 2006, attached hereto as Exhibit A.

¹¹ MB Docket 05-192, Comments of The America Channel, July 21, 2005 at 35.

¹² *Broadcasting & Cable*, "National Show Notes," April 17, 2006.

Shortly after this exchange, we learned that Comcast's affiliated channel E! was promoting a new prime time series: "*The Girls Next Door: Life Inside the Playboy Mansion*."¹³

We then visited the web sites of Comcast's affiliated E!, G4 and Style channels, to try and learn what in Comcast's judgment is appropriate "content and theme" which is "suitable for presentation as a linear channel." Attached as **Appendix C** is a list containing examples of what we found.

We also note that according to Comcast's G4 web site (www.G4tv.com), Comcast tells advertisers that the network targets youth aged 13-17, as well as the young adult demographic of 18-34. Yet despite being marketed to minors, G4's website contains video, audio and other content which is labeled by G4 as inappropriate for audiences under the age of 18. Prior to the explicit content being displayed, the user is warned that continuing will expose them to "adult material not suitable for anyone under the age of 18."

Later, when Comcast announced plans for a family friendly tier of channels, we contacted Comcast again on December 20, 2005 and applauded them for their support of a family tier. We also told Comcast that carriage of The America Channel, a free product (the pricing benefit of which could be passed on to the consumer), would demonstrate sincerity and commitment to a family tier. We wrote:

"We remain committed to... provide Americans with a unique forum in which to celebrate our communities, local heroes, and ordinary people who accomplish the extraordinary. In our judgment, our society does not have enough of this kind of content, and nothing on television could be more beneficial for the national discourse.

"Recent events have confirmed the need for more of our brand of content. In response to the will of the American people, Congress and the FCC, you recently expressed support for the idea of a family-friendly tier of programming. We applaud this. And what better way to further this objective, than to carry The America Channel."

Comcast declined our offer.

Comcast's reluctance to carry a free, independent programming service directly targeted to family viewing, should inform the Commission's view about the level of commitment that Comcast has, despite its public statements, to an affordably priced family tier – independent programming having been shown throughout the record in this proceeding to exert a salutary, downward pressure on cable prices.¹⁴

¹³ "The Girls Next Door." *The Hollywood Reporter*. 8/5/2005

¹⁴ Indeed, Comcast's pricing of their family tier is \$14.95 for 16 channels, an average charge per channel of \$0.93 per channel. Assuming each channel costs Comcast an average of \$0.10 per subscriber per month, Comcast's profit margin on each channel is 830 %.

Similarly, with respect to Time Warner's family package, Multichannel News reported on December 19, 2005 that: "Time Warner's choice is costly to consumers. Each channel on its new [family] tier costs consumers 87 cents. That compares to as little as 60 cents per channel for basic-cable service on Time Warner systems; and 51 cents for expanded-basic service...."

Very truly yours,

//signed//

**Kathleen Wallman
Kathleen Wallman PLLC
Counsel to The America Channel**

APPENDIX A

SUMMARY RESEARCH FINDINGS

A. SEVERE DISCRIMINATION

The two largest cable operators have demonstrated a pattern of abuse of gate-keeping authority, by restricting market entry and preventing competition from better and cheaper independent channels. Regarding the real issue before the Commission -- the public interest question -- we summarize some of the statistical evidence previously provided to the Commission:

- **91 of the top 92 cable channels studied secured carriage from both Comcast and Time Warner.**
- **1 of the top 92 secured carriage from one of Comcast or Time Warner -- but it also secured carriage from Adelphia.**
- **Not a single cable channel** was able to reach the critical first viability milestone of 20 million homes, without 2 of the 3 transacting parties. After the Adelphia transaction, it will therefore be empirically impossible for an independent cable channel to be viable without both of Comcast and Time Warner.
- **Post-Adelphia, Comcast and Time Warner will serve consumers in 23 of the top 25 markets (DMAs) and 38 of top 40 DMAs.** The top 25 DMAs contain nearly half of US television households. More importantly, they are disproportionately valued by advertisers. Nearly 60% of all TV advertising spend is placed in these 25 markets, which means that advertisers spend 20% more to reach each household in these top markets than they do the average household. (The top 11 DMAs, all of which are served by the transacting parties, receive 33% more advertising per household). Foreclosure from top markets cripples a network's ability to sell advertising and puts network survival in doubt. Comcast and Time Warner, because of their size and dominance of top television markets, wield unreasonable power over network survival. Carriage by both operators is required for the success of any advertising supported network. Their market power to kill competitive, independent networks vastly exceeds their market share, and will increase with the proposed dissolution of Adelphia.
- Over a 2 ½ year study period, less than 1% of independent channels secured national, non-premium carriage at either Comcast or Time Warner (1 out of 114 independent channels), and only 7% of independents received any kind of local carriage by either operator. In contrast, Comcast and Time Warner granted carriage to nearly two-thirds (63%) of affiliated channels which launched during the study period.
- Overall, 95% of networks affiliated with an operator or broadcaster received carriage of some kind vs. 13% of independents.
- Affiliated networks launching during the study period also achieved considerably greater distribution than independents – **11x greater on a median basis, and more than 2x greater on a mean basis.**
- **Researchers from the GAO found that overall, networks owned by a cable operator are 62% more likely to be carried than unaffiliated networks.**

Comcast and Time Warner have economic incentives to discriminate against independents:

- Independent networks compete against affiliated networks for carriage, advertising dollars, tier placement and asset appreciation.

- New, cheaper independent channels create downward pricing pressure on affiliated channels. Time Warner for example derives 28.6% of its revenue from cable subscriptions, but 40% from its channels – so it has a strong incentive to prevent access by better and cheaper independent channels.
- The value to an operator of carrying an independent network, even a network who gives partial ownership to the operator in exchange for carriage and shares advertising revenue with the operator, cannot approach the value of carrying a channel which is owned completely – 100% of the equity and revenue of an affiliate, versus 5% of an independent.
- Independent channels are direct competitors to cable-affiliated channels on several fronts -- For viewers, ad dollars, technical capacity, and the asset value is independently owned. New independent channels also create downward pricing pressure on affiliated channels. The availability of independent channels promotes competition, better consumer pricing, greater consumer choice, and improves diversity of ideas and the national discourse. It is therefore clear why the top cable operators have a severe disincentive to carry new independent channels.

B. EXCLUSION OF INDEPENDENT CHANNELS LEADS TO HIGHER CABLE PRICES

- Cable rates have risen 86% in the last 10 years. This is only matched by one other consumable.
- A study of 123 channels in Kagan Research's annual report concluded that **channels affiliated with MVPDs charge license fees that are 225% greater than those of independent channels**, and *increase* these fees at a faster rate than independents.
- Time Warner derives 40% of its operating income from its affiliated channels, and therefore has an interest in protecting increasing rates for those channels.

Average license Fees

- The average license fee in 2005 for networks **affiliated** with MVPDs is **225% greater** than the average license fee for independent networks.
- The average 2005 license fee for networks (excluding ESPN) that are **affiliated** with a media company is **161% greater** than the average 2005 license fee for independent networks.
 - Including ESPN, the average 2005 license fee received by networks affiliated with a media company, is **203% greater** than that for independent networks.
- The average 2005 license fee for **Time Warner** owned networks is **341% greater** than the average 2005 license fee for independent networks.
- The average 2005 license fee for **Comcast** owned networks is **121% greater** than the average 2005 license fee for independent networks.

License Fee Increases, 2002 to 2005

- Over the past three years (2002 to 2005), the license fees charged by networks affiliated with an MVPD or broadcaster increased more, on average, than did the fees charged by independent networks.
 - The average license fee increase from 2002 to 2005 for a network **affiliated** with an MVPD **was 88% greater** than that of an independent network.

- The average license fee increase for a **Time Warner** affiliated network was 5.1¢, **more than double** that of an independent network.
- The average license fee increase for a **Comcast** affiliated network was 3.3¢, **more than 30% greater** than that of independent networks.
- Excluding ESPN (which posted the highest increase in license fees), the average license fee increase for a network **affiliated** with any media company (MVPD or broadcaster) was **40% greater** than that of an independent network. The percentage was higher when including ESPN.

APPENDIX B

STATEMENTS RELATED TO INDEPENDENT CHANNELS

1. U.S. GOVERNMENT ACCOUNTABILITY OFFICE (GAO)

“Our model results indicate that ownership affiliation does influence the carriage of cable networks, as both broadcaster affiliation and cable operator affiliation are associated with a greater probability of a cable network being carried on a cable franchise.”

“Holding constant certain other factors that might influence the likelihood of a cable network being carried by a cable operator—such as the popularity of the network or the type of programming the network carries—we found that operators were more likely to carry cable networks that were majority-owned by either cable operators or by broadcasters than to carry other cable networks.”¹⁵

2. HON. HERB KOHL, SENATOR FROM WISCONSIN

“Our democracy depends on the ability of independent voices to be heard. We should be deeply concerned when only programmers affiliated with cable companies or the broadcast networks seem to get carried on the cable giants.”

“[G]overnment should consider the following actions --

“First, a careful review of the Adelphia deal by the Federal Trade Commission and FCC to ensure that it does not lead to excessive market concentration in local geographic markets. Central to this review should be a serious consideration of conditions to ensure that competitors have access to programming that consumers demand, as was done in NewsCorp/DIRECTV;

“Second, closing loopholes in the program access law to ensure that competitors have access to essential programming owned by the cable incumbents; and

“Third, revising the existing rules so that independent programmers have a fair shot at getting carried.”¹⁶

3. HON. F. JAMES SENSENBRENNER, CHAIRMAN OF THE HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY

“The proposed acquisition of Adelphia Communications by Comcast and Time Warner underlines the importance of thoroughly investigating competitive aspects of this consolidation and its impact on cable prices and viewer choice. The diminishing pool of cable distributors, coupled with increasingly vertically-integrated programming and distribution assets within the cable industry may reduce the transmission of quality, independently-owned cable channels to the American viewing public, stifle consumer choice, and artificially increase cable prices.

¹⁵ U.S. Government Accountability Office. Issues Related to Competition and Subscriber Rates in the Cable Television Industry. Report to the Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate. October 2003.

¹⁶ Hearing Statement on Video Competition, at Senate Judiciary, Subcommittee on Antitrust, October 19, 2005.

“A competitive cable marketplace must provide independently owned channels an equal opportunity to compete with channels in which large cable operators have a financial interest. Large cable operators that exercise limited or controlling ownership of a large number of channels may have considerable market incentive to occupy limited bandwidth with channels in which they have a financial stake. The resulting scarcity of channel bandwidth may provide operators with more market leverage to raise fees for residual channel bandwidth, placing additional costs on independently owned channels and ultimately upon consumers.”¹⁷

4. CLEMENTS & ABRAMOWITZ, U.S. GENERAL ACCOUNTABILITY OFFICE (GAO)

“Most importantly for this research, we also find that cable networks affiliated with either a cable operator or a broadcaster are significantly more likely to be carried than are independently owned cable networks.”

“When a cable operator owns a cable network... that network is 27.8 percentage points more likely to be carried by the cable operator than an unaffiliated cable network; our model predicts that cable owned networks are carried 72.4 percent of the time compared to 44.6 percent of the time for unaffiliated networks.” [Phrased differently, a cable-operator owned network is 62.3% more likely to be carried than an unaffiliated network.]

“These results can also indicate the foreclosure of competition in the upstream cable network market, as independent cable networks are less likely to be carried than are affiliated networks.”¹⁸

5. CADCAT (Competition and Diversity Coalition on the Adelphia Transaction)

“The creation of regional monopolies will give Comcast and Time Warner both the means and the incentive to structure exclusive arrangements for the broadcast of “must-have” content, particularly regional sports. The acquisition also will enable them to deny competitors access to affiliated programming; act as gate-keepers for independent programmers; and make it more difficult for local authorities to ensure fair pricing, quality customer service, and other important public interest requirements.”¹⁹

6. JONATHAN RINTELS, Center for Creative Voices in Media

“Without significant conditions attached, the proposed purchase of Adelphia by Comcast and Time Warner Cable will solidify their gatekeeper power over television, preventing not just their own subscribers but all Americans from accessing independent and diverse voices and viewpoints. It will make a mockery of Congress’s goal of a ‘level playing field’ in cable that will not unfairly impede the flow of video programming to consumers.”²⁰

¹⁷ Letter from Chairman of House of Representatives Committee on the Judiciary, to Federal Trade Commission, May 12, 2005

¹⁸ Ownership Affiliation And The Programming Decisions Of Cable Operators. Michael E Clements & Amy Abramowitz of the GAO

¹⁹ PR Newswire: Competitive Video Distributors, Consumer Interest Groups, Media Artists, And Independent Programmers Unite To Form The Competition And Diversity Coalition On The Adelphia Transaction (Cadcat) To Preserve A Competitive Video Marketplace. January 18, 2006

²⁰ PR Newswire: Competitive Video Distributors, Consumer Interest Groups, Media Artists, And Independent Programmers Unite To Form The Competition And Diversity Coalition On The Adelphia Transaction (Cadcat) To Preserve A Competitive Video Marketplace. January 18, 2006

7. JOHN MALONE, CEO OF LIBERTY MEDIA

“Basically, the consolidation of the business has got to the point where I don’t believe that an independent programmer has any chance whatsoever of doing anything unless he’s heavily invested in and supported by one of the major distributors.”²¹

“TCI was never big enough that we could stop anything... But there’s no way on earth that you can be successful in the U.S. distributing a channel that Brian Roberts doesn’t carry, particularly if he has one that competes with it.”²²

8. CHEN & WATERMAN (Academic Study Of Vertical Foreclosure By Cable Operators)

This independent research paper by Professors Chen and Waterman demonstrates that Comcast and Time Warner engage in vertical foreclosure of several programming networks which directly compete with networks owned by these MSOs.

“In each of the four network groups studied – basic outdoor entertainment, basic cartoon, basic movie and premium movie networks – vertically affiliated networks were almost uniformly favored by Comcast, Time Warner, and AT&T in terms of higher carriage and/or more frequent positioning on analog program tiers that are more widely available to consumers. In a majority of cases, unaffiliated networks that we identified to be rivals to these integrated networks were carried less frequently and they were more often placed on limited-access digital tiers.”

“Exclusion of rival networks reduces the amount and the variety of information that is available to the public. Such a reduction in the diversity of opinions (e.g., in the case of cable news networks) can in itself be a concern from a broader social point of view, as evidenced by a history of federal legislation, FCC rulings and other constraints on media firms.”

“...[V]ertical foreclosure remains a persistent phenomenon in the U.S. cable television industry--in spite of great increases in channel capacity and digitization, as well as competition from DBS.”²³

9. HON. PATRICK LEAHY, SENATOR FROM VERMONT

“Ever-tightening bonds between corporate control of content and of distribution are having an anticompetitive effect on what consumers can see on their screens, and likely on how much they have to pay for it. This has been, and continues to be, an area of great concern to me...”²⁴

10. HON. RUSS FEINGOLD, SENATOR FROM WISCONSIN

“I believe this is a very important consumer issue that is at a critical stage with proposed mergers and evolving technology changing the marketplace in very significant ways. The unanswered

²¹ Broadcasting & Cable. April 4, 2005. *From Darth Vader to Yoda*. Mark Robichaux

²² id.

²³ *Vertical Foreclosure in the U.S. Cable Television Market: An Empirical Study of Program Network Carriage and Positioning*. by Dong Chen and David Waterman. October 2005

²⁴ Statement of Senator Leahy United States Senate Committee on the Judiciary. Hearing Before the Subcommittee on Antitrust, Business Rights, and Competition. 10/19/2005

question is whether these changes will provide consumers with more choices, a greater diversity of voices, enhanced local content, and better value for their money.”²⁵

11. ROBERT J. SPAGNOLETTI, Attorney General for the District of Columbia

“In conclusion, the time, expense, and uncertainty of an effort to secure cable carriage under the Commission’s present standards pose a significant barrier to independent programmers. By lowering the proof burdens faced by independent programmers seeking carriage, the Commission can reduce the risk that a Comcast/Adelphia/Time Warner combination will lead to exercises of market power that restrict consumer access to a broad range of desired programming.”²⁶

12. INVESTMENT COMMUNITY

An April CableWORLD article reported on the Venture Capital community’s hesitation to fund cable startups.²⁷ Excerpts from the article include:

“VCs are holding back. Their No. 1 hurdle: Any cable-related venture that seeks funding must have a deal in place with Comcast or Time Warner Cable. If one or both multi-system operators isn't on board, kiss the capital goodbye.”

"If you're selling into the cable space and you're not selling this in with one of those guys, you don't have a business," says Alan Beasley, a partner in Redpoint Ventures, a Silicon Valley venture capital firm... "We've gotten to know Comcast and Time Warner very well, along with Cox, and it would be very unlikely for us to enter into a cable venture without their support."

“Sure, there are other big MSOs and plenty of small or midsize operators VCs could approach with a promising enterprise. "The problem is, so many of the other MSOs wait until [they see] what Comcast or Time Warner does. So that creates a problem," says Gary Lauder, who runs Lauder Partners, a California-based VC firm with a long track record in cable investment.”

“Venture capitalists also haven't seen much evidence of MSOs embracing new, independent ventures, whether tech or content, Lauder says. "There was a time when cable operators were willing to buy products from small companies," he says. "There was more willingness to take risks with small companies. That's not the attitude these days.””

13. NATIONAL ASSOCIATION OF BROADCASTERS

“Expanding opportunities for video programmers unaffiliated with cable operators will further Congress’ goals in passing the Cable Television Consumer Protection and Competition Act of 1992, and will “promot[e] the widespread dissemination of information from a multiplicity of sources,” including those not under the control of cable operators. Especially given past challenges to the vertical and horizontal cable ownership limits, the Commission should act to enhance the ability of unaffiliated programming networks to reach viewers through means other than traditional cable operators.”²⁸

²⁵ Statement of Senator Feingold. United States Senate Committee on the Judiciary. Hearing Before the Subcommittee on Antitrust, Business Rights, and Competition. 10/19/2005

²⁶ MB Docket 05-192 ex parte filing. 9/13/2005.

²⁷ CableWORLD. *How Come Vultures Don't Flock to Cable*. April 5, 2005. Simon Applebaum.

²⁸ MB Docket 05-311 Comments of NAB 2/13/2006

14. AMERICAN CABLE ASSOCIATION

“...We [American Cable Association members] would like the opportunity to put more independent, diverse programming on our cable systems that our customers are asking for but we can’t because of the way the system works. Because of the way the programming contracts and wholesale practices work today that basically, Mr. Chairman, require us to carry content on expanded basic. We do not have the ability to provide any other type of tier or any other kind of tiered service because the contracts that we receive from the major networks that own more than two-thirds of the programming, dictate that we carry the programming on expanded basic.”²⁹

“Not only that, but I come back to the point of using broadcast signals to tie and bundle affiliated programming. The effect of that, Mr. Chairman, is to keep independent programmers, other diverse programmers that are trying to actually come into the market with more family friendly viewing - with more family oriented programming - out because there is just not capacity for them to be carried. Our cable systems are not infinite -- we only have a certain amount of space and particularly in our markets which are small or rural, we have smaller systems that do not have the capacity and the shelf space and the number of channels that some of the systems do in the urban systems -- so consequently the vast majority of the content we carry is owned by one of the major four networks that require us to carry that programming on expanded basic. So that is a significant problem.”³⁰

15. MEDIACOM COMMUNICATIONS, 8th largest MSO

“From the perspective of Mediacom and the hundreds of other non-vertically integrated, independent cable companies, consolidation of the media industry has been largely negative. Among other things, it has resulted in higher cable rates, the use by media giants of their vast market power to tie carriage of weak networks with popular programming, and fewer channels available for carriage of independent programming services.”³¹

16. HAROLD FELD, MEDIA ACCESS PROJECT

“Without Congressional action to promote competition and reduce the ability of incumbents to exercise market power, cable operators will continue to raise prices above competitive levels and make programming decisions based on affiliation rather than quality... Using the market power of their existing subscribers, they [the few large cable operators who dominate top markets] can take steps to make it much harder for these customers to switch to competitors and can therefore raise prices, deny programming to rivals, and favor affiliated programming over unaffiliated programming... [I]t is rather far fetched that the incumbent cable operator will seriously fear that denying carriage to independents will cost so many subscribers as to overcome the other economic advantages of favoring affiliated programming... The Supreme Court has said that ensuring to the people of the United States a video distribution system that provides needed news and diverse views to all Americans is “a government purpose of the highest order.” If Congress and the FCC intend to rely upon competition to ensure that the nation’s video distribution systems are affordable and provide innovative and informative programming reflecting the diversity of

²⁹ Testimony of Matt Polka, President and CEO, American Cable Association. Senate Committee on Commerce, Science and Transportation, Open Forum on Decency. Tuesday, November 29 2005

³⁰ *id.*

³¹ MM Docket 02-227 Comments of Mediacom. 02/03/2003

our citizenry, then they must craft policies that genuinely promote competition in the MVPD market.”³²

17. JERALD FRITZ, ON BEHALF OF THE NATIONAL ASSOCIATION OF BROADCASTERS

“A number of cable programming networks and regional sports networks have previously expressed concern that large, consolidated cable operators are increasingly able to exclude independent programming networks from their systems and, thus, from the marketplace. *See, e.g., Twelfth Annual Report* at ¶¶ 173, 184. The rapid deployment of a competitive video distribution platform will ameliorate such problems, thereby also benefiting consumers through additional, diverse programming options.³³

18. JULIA JOHNSON, CHAIRPERSON VIDEO ACCESS ALLIANCE

In a competitive and open market, video distribution networks will provide more opportunities for independent programmers to distinguish their service from their competitors. This will lead to greater content choice for consumers. The FCC found that cable television providers offer at least 6 percent fewer programs in the absence of competition. The mere presence of competing providers would give independent networks—like my members—more opportunities and give consumers greater choice.³⁴

We believe that expanded video distribution networks will result in lower consumer prices, higher quality consumer programming and greater consumer choice. Moreover, we know that with this expansion come greater opportunities for independent, minority and emerging networks to be distributed into all communities.³⁵

19. JEANNINE KENNEY, CONSUMERS UNION

Six media giants, including the top four broadcasters, dominate the programming landscape, accounting for three-fourths of the channels that dominate prime time. Four are networks (ABC, CBS, FOX and NBC) and two are cable operators (Time Warner and Comcast). The networks use the retransmission consent negotiations for carriage of the local stations they own and operate to leverage local cable carriage of their other channels. These six companies also completely dominate the expanded basic tiers and the realm of networks that have achieved substantial cable carriage. These six entities account for almost 80 percent of the more than 90 cable networks with carriage above the 20 million subscriber mark.³⁶

20. RICHARD BILOTTI, CABLE ANALYST FOR MORGAN STANLEY

³² THE “SWITCHING EQUATION” AND ITS IMPACT ON THE VIDEO PROGRAMMING MARKET AND MVPD PRICING, February 6, 2006.

³³ Statement of Jerald N. Fritz Hearing before the House Subcommittee on Telecommunications and the Internet March 30, 2006

³⁴ Statement of Julia Johnson, Chairperson of the Video Access Alliance. Hearing before the House Subcommittee on Telecommunications and the Internet March 30, 2006 at 2.

³⁵ *Id* at 4

³⁶ Statement of Jeanine Kenney, Representing Consumer Federation, Consumers Union and Free Press. Hearing before the House Subcommittee on Telecommunications and the Internet March 30, 2006 at 8.

“Without distribution from Comcast, it would be virtually impossible for any network to be profitable.”³⁷

21. CONSUMERS UNION, CONSUMERS FEDERATION

“[I]t is apparent that, despite the dramatic increase in the number of cable channel available on most systems, the diversity of programming from independent/unaffiliated sources available to consumers is inadequate. Moreover, there is no prospect of significant improvement under the current regulatory regime.”³⁸

As the Commission considers how best to address the myriad obstacles that currently stand between consumers and programming from independent/unaffiliated sources, it should not lose sight of the common genesis of those obstacles: the ability of the highly concentrated cable industry to engage in monopsony, bundling and vertical leverage.³⁹

22. ECHOSTAR

A glance at a Multichannel Video Programming Distributor’s (“MVPD”) electronic program guide is enough to spot the main problem hampering the statutory goal of programming source diversity. The MVPD offerings are dominated by families of networks controlled by the same entity. Some of these networks are must-see programming for most or many consumers, or answer the strong preferences of a small niche. Others do not fit in any of these categories. Rather, they ride the coattails of their popular siblings into consumer homes: the programmers bundle them with the more popular content. Because of the problem of scarce bandwidth and soaring programming costs, however, there is only a finite number of channels that an MVPD platform can carry in a meaningful way. This means in turn that unwanted or less-wanted fare offered by the large programmers displaces independent networks or thwarts independent programmers from even launching new ventures. Diversity of information sources, the core concern of the statutory provision, suffers as a direct result.⁴⁰

23. VERIZON

Encouraging more speakers – and additional and competing platforms to carry speech – is the most effective way of “provid[ing] a diversity of information sources.” And this is particularly true in this context because, unlike many of the large MSOs who are vertically integrated with content providers and who have an incentive to favor their own content, competitive video providers have an incentive to distinguish their services by carrying a diverse array of programming, including desirable, independent programming that the incumbents do not carry.⁴¹

24. AIVF (Association of Independent Video Filmmakers), ALLIANCE FOR COMMUNITY MEDIA, BENTON FOUNDATION, CENTER FOR CREATIVE VOICES IN MEDIA, CENTER FOR DIGITAL DEMOCRACY, COMMON CAUSE, CONSUMERS UNION, CONSUMER FEDERATION OF AMERICA, HAWAII CONSUMERS, NATIONAL ALLIANCE FOR MEDIA ARTS AND CULTURE, and MEDIA ALLIANCE

³⁷ Source: “Is Comcast Too Big?” *Broadcasting & Cable*, July 25, 2005.

³⁸ MB Docket 05-255. Reply Comments of Consumers Union, Consumer Federation and Free Press at 5

³⁹ *id.*

⁴⁰ MB Docket 05-255 Reply Comments of Echostar Satellite LLC. at 3

⁴¹ MB Docket 05-255 Reply Comments of Verizon at 4

On The Commission's obligation to promote programming diversity:

“Congress emphasizes **throughout** the 1984 House Report that the intent and statutory objective of the Act is to provide for a diversity of information sources. For example, the House Report clearly states in its Purpose and Summary that the Act “contains provisions to assure that cable systems provide the *widest possible* diversity of information services and sources to the public consistent with the First Amendment’s goal of a robust marketplace of ideas...” H.R. Rep. 98-934, at 19 (1984) (emphasis added). *See also id.* at 22 (franchise process has significant national impact in “the delivery of the widest diversity of information sources”); *id.* at 30 (a “requirement of reasonable third-party access to cable systems will mean a wide diversity of information sources for the public – the fundamental goal of the First Amendment”); *id.* at 32 (structural regulation “foster[s] a greater diversity of information sources”); *id.* at 35 (access channel requirements “ensure a diversity of information sources”); *id.* at 36 (consumer access to cable is integral for “requiring diverse information sources and services”); *id.* at 40 (legislation is “intended to assure that cable systems provide the widest possible diversity of information services and sources to the public”); *id.* at 79 (“access by the public to as wide a diversity of electronic information sources and services is critical to” realizing the goals of the First Amendment).⁴²

On entry of independent programmers:

“As discussed in numerous dockets, programming networks unaffiliated with cable operators or broadcasters generally cannot fight their way onto the cable platform. While a rare exception such as former Vice President Al Gore’s “Current” may, from time to time, emerge, this means as little to genuine diversity as lottery tickets do to “wealth creation.” That the lottery generates a few lucky winners does not make it a reliable investment. Similarly, that the current system produces the occasional “lottery winner” such as Current does not address the wealth of empirical studies demonstrating the continuing power of incumbent cable operators (now shared with incumbent broadcasting networks) to determine which networks succeed. Indeed, even such “lottery winners” as Current must rely upon the two industry leaders, Time Warner and Comcast, for success.”⁴³

⁴² MB Docket 05-255 Reply Comments of AIVF, et al. 04/25/06 at 4

⁴³ MB Docket 05-255 Comments of AIVF, et al. 04/03/06 at 19

APPENDIX C PROGRAMMING FOUND ON COMCAST-OWNED NETWORKS

Current and recent series running on Comcast owned networks

E! Entertainment Television

1. **The Girls Next Door**: A reality program that takes viewers inside the Playboy Mansion and glorifies the life of a playboy “bunny”.

- Sample episode description: *This week brings another birthday bash... And it's in Vegas, baby! After waking up at 4:30 a.m. for the trip, the girls (sans Hef) help Sin City live up to its name. They stay at the exclusive Hugh Hefner Suite at the Palms Hotel, flash a window washer, enjoy some cake and cocktails, hang at the pool and engage in a bit of wet 'n' wild group frolicking in the suite's custom shower.*



2. **Taradise** – Actress and international party girl Tara Reid takes viewers around the globe as she parties with Paris Hilton and other celebrities. For example, the description of one episode includes the following: *“There's a big bash just for Tara where a bunch of American basketball players show up and get down with the queen of good times. Tara then shows the athletes her special pole-dancing skills. She's such a pro.”*



3. **Party at the Palms** -- A reality television show which covers the hedonistic Las Vegas party life. From series description: *“There are so many porn stars, dancers and hot girls involved we're not even counting anymore.”*

- Sample Segment description: *“**Real or Fake** – The Party crew takes one well-endowed woman, one big question and finds plenty of people willing to give a squeeze in the name of science (“science” being telling difference between real and fake breasts).”*



4. **Dr. 90210** -- This series follows the exploits of a real Beverly Hills plastic surgeon.
 - Sample episode description: **Episode 7 “Model Madness”** *This episode introduces us to a sexy lingerie model--and her friend--who comes to Dr. Rey seeking breast augmentation. Then we meet an actress who wants Dr. Diamond to perform some cosmetic work. Not only do we get a peek at the lives and careers of these patients, but we also get to spy on the Reys as they go house hunting for an even bigger spread. After all that stress, we blow off some steam on the golf course with Dr. Diamond. Tune in--this won't hurt a bit.*
5. **Love Chain** – This show’s purpose is to chronicle the sex lives of various celebrities, particularly when those sex lives involve other celebrities. Each episode is centered on a single

celebrity and takes the audience on a chronological recounting of that individual's romantic encounters and relationships.

6. **Kill Reality** – Series description: *Kill Reality* follows the behind-the-scenes chaos of some of the biggest names and fiery personalities from reality TV as they live, work and (who knows?) maybe even sleep together during the production of Creative Light Entertainment's real-life independent horror flick, *The Scorned*.

7. **The Gastineau Girls**: They're a mother-daughter duo of New York socialites. Lisa, the mother, is a former model who made her money via a divorce settlement with NFL star Mark Gastineau. Brittany, the daughter, "hasn't worked a day in her life." They're "both looking for fame, fortune, happiness and true love--not really in that order." In the first episode alone, "the mom and daughter pose for a naked photo shoot, have a surprise birthday party for Lisa and, oh yeah, shop a lot."



Howard Stern: The famous shock jock brings his infamous radio program to television, complete with farting contests, porn star interviews, and other Stern staples.

G4

From *Wall Street Journal* 8/31/2005:

"G4's latest weapon is its new late-night lineup, which it is calling "Barbed Wire Biscuit." Judging by sneak previews that have run recently, much of the programming seems to have been inspired by "The Simpsons" characters "Itchy and Scratchy," though without the wit, or MTV's "Jackass," without the subtlety. In one show, an animated chipmunk finds new and gross ways to disable himself. A "science" program asks the compelling question of which floats better, an au pair or a fake pair.

Asked whether the content on "Barbed Wire Biscuit" is a little too raunchy, even for a channel devoted to young men, Mr. Green said he didn't think it was "anything edgier than what is being done on 'South Park.' "

Perhaps not, but South Park manages to be compelling and clever while pushing the limits of taste; a lack of ingenuity just looks like vulgarity for vulgarity's sake."

Sample Programming

1. **Cinemattech: Nocturnal Emissions** A show which highlights cinematic scenes from video games which are "too dark and naughty for prime-time"
 - Episode description (in part): "If your main complaint about Cinemattech in the past was that there weren't enough babes to satisfy your lascivious desires, you're



bound to get in some good ogling time in this episode.”

2. **Happy Tree Friends:** a “strange and twisted collection of animated shorts”

- Sample segment: *Hard Drinkin' Lincoln*
“Abraham Lincoln: statesman, leader, beloved President - and America's favorite boozehound! "Hard-Drinkin' Lincoln" shows us the real Honest Abe: a loud, lewd, obnoxious guy in a big hat -- the kind of guy you sit behind in the theater and just want to shoot. So come knock one back with The Great Emancipator!”



3. **Video Game Vixens** Series description: “The hottest, sexiest and most lethal video game babes will get your heart racing and your palms sweating in G4's irreverent new awards show.”
(Sample categories of “awards” given to these animated women: Best Booty, Dirtiest Dancer, Biggest Guns, Dangerous Curves, and Kinkiest Accessory)



4. **The Man Show** This variety show unabashedly appeals to the lowest common denominator. Hosted by two comedians and several scantily-clad women called “The Juggies,” each episode features several segments such as porn star interviews, “Ask a Lesbian,” “Sock Puppet Porn” and “Meet Charlton Heston’s Penis.”

www.G4tv.com

According to G4’s web site (www.g4tv.com), the network targets young people aged 13-17 (as well as the young adult demographic of 18-34). Yet despite being promoted to teenagers, G4’s website contains video, audio and other content which has been labeled by G4 as being inappropriate for audiences less than 18 years of age. Prior to the explicit content being displayed, the user is warned that continuing will expose them to “adult material not suitable for anyone under the age of 18.” However, the user is not asked to affirm in any way that they indeed are of age.



Style Network

1. **Diary of an Affair** Series Description: “*Imagine hearing true confessions of real women and men who strayed from their partner to pursue perilous and provocative acts with another. Diary of an Affair allows you to live vicariously through the intimate details of an infidel's torrid tale. Each steamy episode recounts real stories from real people. The excitement, the fear, the passion, the remorse, the pain and the eventual resolve of the rendezvous--all in their own words!*”

2. **Dr. 90210** (rebroadcasting of the E! original series mentioned above) This series follows the exploits of a real Beverly Hills plastic surgeon.
 - Sample episode description: **Episode 7 “Model Madness”** *This episode introduces us to a sexy lingerie model--and her friend--who comes to Dr. Rey seeking breast augmentation. Then we meet an actress who wants Dr. Diamond to perform some cosmetic work. Not only do we get a peek at the lives and careers of these patients, but we also get to spy on the Reys as they go house hunting for an even bigger spread. After all that stress, we blow off some steam on the golf course with Dr. Diamond. Tune in--this won't hurt a bit.*
3. **The Gastineau Girls** (rebroadcasting of the E! original series mentioned above): They're a mother-daughter duo of New York socialites. Lisa, the mother, is a former model who made her money via a divorce settlement with NFL star Mark Gastineau. Brittany, the daughter, “hasn't worked a day in her life.” They're “both looking for fame, fortune, happiness and true love--not really in that order.” In the first episode alone, “the mom and daughter pose for a naked photo shoot, have a surprise birthday party for Lisa and, oh yeah, shop *a lot*.”