

## **APPENDIX D**

### **EXCHANGE OF LETTERS WITH COMCAST**

1. August 26, 2005 letter from Comcast to The America Channel
2. September 12, 2005 letter from The America Channel to Comcast



Comcast Cable  
1500 Market Street  
Philadelphia, PA 19102

August 26, 2005

Mr. Doron Gorshein  
Chairman and CEO  
The America Channel  
Suite 220  
120 International Parkway  
Heathrow, FL 32746

Re: The America Channel

Dear Mr. Gorshein:

I was glad to have the opportunity to meet with you on August 9 to continue our discussions regarding Comcast's carriage of The America Channel ("TAC"). I also appreciate your carriage proposal, and all the information you provided regarding the channel, its contemplated programming, its staffing, and its current carriage status.

Having reviewed the information you provided in the meeting, together with your proposed terms for carriage and the information you provided by subsequent email, we are not inclined, at least at the present time, to enter into a carriage agreement for TAC.

When selecting among hundreds of networks and would-be networks seeking distribution agreements, Comcast and other multichannel video programming distributors necessarily consider a number of variables. These variables include the content and theme of the network, the necessity or desirability of its presentation as a linear network, the financing of the network, the experience and proven capability of the management team to effectuate the vision, the distribution secured by the network elsewhere, and the fees and terms of carriage. TAC does not adequately meet any of the foregoing variables in our judgment.

By no means are we denigrating your notion that good programming can be based, in the words of your website, on "fascinating stories of real people and places." Indeed, dozens of such stories are presented every day on the scores of networks that we carry. But that alone is not sufficient to establish the merit of a would-be 24-hour linear network centered solely on "tell[ing] the ever-unfolding story of America through the eyes of real Americans," and whatever the merits of that idea, we must consider also TAC's capability to translate that idea into worthwhile programming. With all due respect to your passion for the project, TAC has not made a sufficiently compelling case, at this stage, that there is market demand for a network based on this idea, or that it can execute on its plans in a way that will create a compelling viewer experience.

TAC has virtually no in-house programming expertise, and has produced neither a network nor programming for the network. You have asked Comcast to commit bandwidth to carriage of TAC to all digital subscribers, and to ultimately pay fees to you for carriage. This is an obviously significant commitment, and at this point your network does not exist, your company has not launched any other network, has not produced programming, and has neither secured funding nor significant distribution elsewhere. We do not accept your proposition that Comcast is obligated to commit to your network, before it even exists, simply because Comcast distributes other networks that, unlike TAC, have funding, distribution, proven programming, or a track record of success. Your belief that no channel can launch or secure carriage without first obtaining a commitment from Comcast is patently erroneous, and belied by the many networks that have launched, or obtained deals from other distributors, without any distribution commitment from Comcast.

In addition, your business plan provides no indication of likely success in a marketplace where TAC would be competing for viewer attention with hundreds of other programming options. TAC has no reliable source of financing, and future funding is apparently contingent on securing widespread distribution *first*. So far as we know, your only firm carriage agreements, after more than two years of marketing to distributors that are eager to find differentiated content they can use to attract and retain customers, are with a telephone company and a single cable company serving 150,000 homes.

Doron, please be assured that it is not our intention to close the door to further discussions with TAC, and I hope you will agree to continue discussions as your venture matures. If TAC does produce any video programming, we would be happy to review it. We would also be open to the possibility, if you produce a sufficient volume of programming for this purpose, of experimenting with a video-on-demand arrangement that would give our viewers an opportunity to sample your programming and an opportunity for you to begin to build, and demonstrate, consumer demand. (Note that this would require a great deal less programming than would be needed to start a linear network operating 168 hours per week.) Or you may choose to try to demonstrate audience appeal through distribution of TAC programs over an existing network, by way of the Internet, through deals with other cable companies or satellite providers, or otherwise; many of the networks we carry are ones which first demonstrated their appeal on other platforms. Contrary to your belief, we have executed many carriage deals after the network is up and running, and after the network has secured distribution elsewhere – a carriage agreement with Comcast was not a precursor to their success, and we do not in any way intend to permanently foreclose carriage of TAC on Comcast systems. As you surely know, the vast majority of the program services Comcast carries are ones in which Comcast has no ownership interest. In addition, over the past three years, Comcast has reached carriage agreements for over 50 channels of linear programming, from more than 15 separate unaffiliated companies, including some relatively small, independent programmers.

We wish you every success in this endeavor, and hope that you will agree to continue our ongoing dialogue as your venture progresses.

Sincerely,

A handwritten signature in black ink, appearing to read 'Madison Bond', written over a horizontal line.

Madison Bond  
Executive VP of Programming  
Comcast Cable Communications, LLC



September 12, 2005

VIA FAX (# 215-655-8148) AND VIA FEDERAL EXPRESS

Mr. Madison Bond  
Executive Vice President, Programming  
Comcast Corporation  
1500 Market Street  
Philadelphia, PA 19102

**Re: Comcast**

Mr. Bond:

I received your letter dated August 26, 2005. Naturally, I was disappointed in Comcast's continuing refusal to reach a carriage agreement with The America Channel. I write in order to understand the basis on which Comcast purports to conclude that The America Channel does not meet the "standards" referred to in your letter. With a better understanding of what Comcast perceives as lacking in our programming or presentation of it, The America Channel hopes to address Comcast's concerns and move forward with a carriage agreement with Comcast.

I also write in hopes that you can clarify the basis for the false and deprecating accusations in your letter. Your letter was especially disappointing because it appears that Comcast's intent is to create, at this late stage, the fallacious impression that Comcast has given The America Channel due consideration, and has approached our programming with diligence, open-mindedness, and a bona fide willingness to deal. We do not believe that your letter reflects a true and good faith dialogue or discussion. Rather we believe that Comcast continues to engage in anti-competitive activity, false accusations, and discrimination against independent channels.

Thus, we ask for clarification on the following points:

1. Your letter states that Comcast determined that "the content and theme of the network" of The America Channel "does not adequately meet" Comcast's standard for carriage. We ask that you please explain what this standard is and state the facts upon which Comcast decided that we do not meet this standard.
2. Your letter states that Comcast determined that The America Channel "does not adequately meet" its standard with respect to "the necessity or desirability of its presentation as a linear network." We ask that you please explain this standard and the facts upon which you based this decision.
3. Your letter states that Comcast determined that The America Channel "does not adequately meet" its standard with respect to "the financing of the network." We ask that you please explain this standard and the facts upon which you based this decision.
4. Your letter states that Comcast believes The America Channel "does not adequately meet" its standard with respect to "the experience and proven capability of the

management team to effectuate the vision.” We ask that you please explain this standard and the facts upon which you based this decision.

5. Your letter states that The America Channel’s “business plan provides no indication of likely success in a marketplace where TAC would be competing for viewer attention with hundreds of other programming options.” We ask that you please explain the facts on which you based this claim.
6. Your letter states that our company has not launched any other networks. We ask that you clarify whether this means that there is a minimum number of networks that a programming company must have launched in order to qualify for consideration by Comcast.
7. You state that Comcast determined that The America Channel “does not adequately meet” its standard with respect to “the fees and terms of carriage.” We ask that you please explain the standard you are referring to and the facts upon which you based this decision.
8. At your request, and under your promise of confidentiality, we provided to you extensive, proprietary market research that documents the strong market demand for our programming. We were surprised and puzzled that you did not address our market research in your letter. The research was conducted by a firm acknowledged as one of the best in the business with prestigious clients, including, for example, CNN. At the same time, your letter stated that we “have not made a sufficiently compelling case, at this time, that there is market demand for a network based on this idea” or that we have not established “the merit of a would be 24-hour linear network centered solely on ‘tell[ing] the ever-unfolding story of America through the eyes of real Americans.’” Please explain your basis for this conclusion so that we may address it more fully.
9. You state that TAC has not secured “significant distribution elsewhere.” We ask that you please explain Comcast’s standard with respect to distribution elsewhere. Please explain whether the same standard is applied in a consistent way to both affiliated and independent networks.
10. You state that “at this point your network does not exist.” But, as you know, we have been in existence for several years, and have been seeking a carriage agreement with you for more than two years. We are puzzled by your claim that we do not exist, and ask that you please explain what you mean.

From what we can glean from your letter, the “standards” that you state you apply in deciding whether to offer carriage to a programmer touch upon the following areas:

- suitability of theme and content of the network for linear carriage
- finalization of financing
- distribution elsewhere
- “existence” of the network
- experience and capability of management team
- merit or market appeal of programming
- ability to compete for viewers

- bandwidth limitations<sup>1</sup>

Comcast today owns at least 20 channels, with more under development. Based upon what we know about the launch of many of these channels, we believe your “standards” are not applied evenhandedly – and that The America Channel is being judged by a differential standard due to its status as an independent channel, or for anti-competitive, retaliatory, or other reasons. We do not believe that each Comcast network (existing and planned) satisfied each of the above-referenced so-called “standards.”

If our belief is erroneous, it would be important to our effort to address the deficiencies you say you perceive in our programming for us to understand with particularity how we are incorrect. We ask, therefore, that you explain how the standards enumerated above were applied, or are currently being applied, to Comcast-affiliated networks that have been launched or are planned for launch.

By way of example, among other reasons we ask this because of evidence that, among other things: (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; (ii) Comcast aggressively distributed Comcast-owned networks, even on analog, in spite of clear evidence of lack of consumer acceptance; (iii) Comcast launches networks in programming genres filled with direct competitors; and (iv) Comcast networks otherwise failed to meet several of the “standards” set forth above.

For example we note that Comcast determined to aggressively distribute TV One to millions of Comcast subscribers, before TV One secured distribution with any other cable MSO; and Comcast committed funding and carriage to TV One, before TV One had hired a CEO, and at least 10 months before TV One hired its Programming executive and other key personnel.

By way of another example, *The Wall Street Journal* reported several days ago (Aug. 31, 2005) that Comcast’s G4 launched little more than 3 years ago, and today has over 50 million subscribers – an astounding pace and perhaps unrivaled in the industry. 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.

Your letter also states that The America Channel’s “fees and terms of carriage” do not meet Comcast’s standards. We do not understand how what we offered could fail to meet Comcast’s standards. We offered Comcast a free 3-year deal. Comcast’s rejection of our no-downside offer leads us to believe, on the basis of our own dealings with Comcast, and what others in the industry – including Comcast officials have told us that Comcast is only interested in promoting its own programming. Thus, there is powerful disincentive for Comcast to embrace independent products which might have some strength, since independent products compete directly with affiliated products, for viewers, technical capacity, advertising dollars, and the corresponding wealth generated from the appreciation in asset value is independently owned. In addition, less expensive new independent products put downward pricing pressure on affiliated products’ fees. That strategy dictates blocking access to its platform by independent programmers, which Comcast is actively and effectively executing. In this light, we ask that you please explain how a

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<sup>1</sup> Mr. Block raised this limitation in his July 21, 2005 letter, although you did not raise it in your August 26 letter.

free deal fails to meet your standards. By way of example the terms of Comcast's affiliated networks might be helpful in understanding what terms would be acceptable to Comcast.

You also identify as an obstacle to carriage that we have failed to finalize our financing. As you are well aware, our investment banking firm which is tasked with securing our launch funding, is a specialist in the media business and is one of the best in the industry. But, in any event, we do not believe that Comcast holds its own networks to this "standard." We ask you to clarify whether Comcast requires its own networks to secure funding before agreeing to carry them, or whether the carriage agreement precedes final launch financing. We suspect that Comcast's Board of Directors and/or executive management would not approve such financing unless Comcast commits distribution.

In your August 26 letter you mischaracterize and summarily dismiss the breadth of talent and personnel available to us. We therefore reiterate that our production partners include:

- A large and well-known Emmy award winning company. Their CEO, The America Channel's production leader, is a Presidential appointee to the National Endowment for the Humanities – the only entertainment industry executive to receive this honor. The production firm, which has produced hundreds of hours of original programming for CBS, NBC, ABC, A&E, The History Channel, HGTV, UPN, Lifetime and others, was also selected to develop and produce the biographies of two U.S. Executive Branch Cabinet-level members.
- The production arm of a major U.S. national broadcaster. Their access to materials, depth of human resource, and their experience producing original programming for CBS Entertainment, A&E, The History Channel, The Discovery Channel, Discovery Health, TLC, The Travel Channel, MTV, The Food Network, VH-1 and many others, make them well suited to deliver quality programming.
- Another production firm, with whom you are also familiar, with an extensive television background with original programming created for TLC, A&E, The History Channel and others, as well as a relationship with the National Archives for development of content focused on the vast resources of this national treasure. They were also selected to produce the biography of one of the two Vice Presidential candidates during the 2000 general election – a noteworthy recognition.
- We also note that for more than two years, you have been in possession of our demonstration reel containing example video materials of The America Channel.

With respect to your offer regarding VOD, it is illusory. Comcast launches its own channels on linear (and analog) capacity because Comcast knows that VOD is a vastly inferior and unproven platform. Further, based in part on specific evidence from other damaged parties, we believe Comcast would use the VOD platform to replicate, marginalize and ultimately destroy The America Channel.

You also cite in your letter that the standards you employ are the standards of Comcast, and "other multichannel video programming distributors." Please state on what basis you speak for other distributors, which distributors you are referring to, and how you know that the standards of other distributors are the same as your own.

Comcast's continuing refusal to deal with The America Channel for discriminatory reasons is directly detrimental to our business. Further, over the course of the past two years, in Comcast's lobbying, public relations efforts, and statements to the press, government officials, investors and potential investors and elsewhere, Comcast has made inconsistent and changing claims as to the reasons for continuing to decline carriage to The America Channel. These claims are inaccurate, and injurious to our business.

Understanding, as we do, that having a carriage agreement with Comcast is the *sine qua non* of viability in the marketplace for an independent channel like ours, we remain interested in a carriage deal with Comcast since Comcast's dominant distribution position makes such a deal essential to our success. While we will certainly continue to welcome an opportunity for a true dialogue, unless demonstrated otherwise we plan to proceed on the belief that Comcast has and continues to act unlawfully, and that Comcast is highly motivated to prevent The America Channel from competing in the marketplace.

We believe The America Channel is more qualified for market acceptance than many of your own networks. We respectfully demand to be treated on the competitive merits and that you not discriminate in favor of your own networks. If Comcast continues to refuse to deal with us, we do not intend to stand idly by and allow Comcast to eliminate another substantial segment of the market in your and Time Warner's acquisition of the Adelphia assets. We remain ready willing and able to enter into a carriage agreement and look forward to your response.

Sincerely,

Doron Gorshein  
CEO and President