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July 6, 2006

VIA ELECTRONIC FILING

EX PARTE NOTICE

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

Re: Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corp., Assignors, to Time Warner Cable Inc., Assignees; Adelphia Communications Corp., Assignors and Transferors, to Comcast Corporation, Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee, MB Docket No. 05-192

Dear Ms. Dortch:

On July 5, 2006, Steven Teplitz of Time Warner Inc. ("Time Warner") had a telephone conversation with Heather Dixon, legal advisor to Chairman Martin on Media Issues, as a follow-up to their meeting on July 3, 2006,¹ and today Mr. Teplitz had a telephone conversation with Catherine Bohigian, Chief, Office of Strategic Planning and Policy Analysis. In addition, Glenn A. Britt, President and CEO of Time Warner Cable Inc. ("TWC"), today had a telephone conversation with Chairman Martin. These discussions focused on efforts by DIRECTV, Inc. ("DIRECTV") and others to impose a condition on regional sports networks ("RSNs") analogous to the condition imposed when control of DIRECTV was acquired by News Corp.²

As the Applicants pointed out in their July 3rd meeting, the News/Hughes order contains no definition of "RSN" for the purposes of the condition imposed therein. If the Commission elects to define the term "RSN" for the purposes of any condition imposed in this proceeding, the term should be limited to non-broadcast linear video programming networks currently offered for distribution by satellite, as well as new RSNs whether offered for distribution by satellite or

¹ See *ex parte* notice filed by Michael H. Hammer on July 5, 2006 relating to the meeting with Ms. Dixon attended by representatives of Time Warner, Comcast Corporation and Adelphia Communications Corp. (collectively, the "Applicants") on July 3, 2006.

² See *General Motors Corporation and Hughes Electronics Corporation, Transferors, and the News Corporation, Limited, Transferee, for Authority to Transfer Control*, Memorandum Opinion and Order, MB Docket No. 03-124, 19 FCC Rcd 473, ¶¶ 172-179 (2004) ("News/Hughes").

terrestrial facilities, primarily within a limited geographic region (as opposed to nationally). Similarly, the definition should be limited to services that contain a reasonable threshold of hours of exclusive live sporting events involving one or more teams associated with the applicable region from the National Basketball Association, National Football League, Major League Baseball, National Hockey League, Major League Soccer, NCAA Division 1A Football or NCAA Division 1A Men's Basketball.

Mr. Teplitz pointed out that even absent a detailed definition of "RSN," identification of services that are generally understood to be RSNs in most cases should not be difficult. All or nearly all of the programming on a RSN is sports-related, RSNs are distributed within a limited regional area (typically tied to the geographic distribution zone established by the league to which the featured local team belongs), and the RSN typically negotiates for the distribution rights held by the applicable team throughout its authorized territory (*i.e.*, once a team enters into an agreement with an RSN, MVPDs deal with the RSN to carry the service that includes the affected games, not with the team directly).

Mr. Teplitz noted that situations involving true RSNs are readily distinguishable from situations where an MVPD negotiates directly with the sports team or other rights holder to carry the affected games on that MVPD's platform. Such situations were expressly carved out of the condition imposed in News/Hughes:

DirecTV may continue to compete for programming that is lawfully offered on an exclusive basis by an unaffiliated program rights holder (*e.g.*, NFL Sunday Ticket).³

Comcast and Time Warner should similarly be free to compete with DIRECTV and other MVPDs for the right to carry applicable sporting events that are not included on a traditional RSN.

In certain limited situations, TWC has negotiated with the applicable rights holder to carry certain sporting events on TWC systems. These games might be carried on a local cable channel that is primarily devoted to sports or they might be carried on a "local origination" or "LO" channel that otherwise is devoted to local news or local events such as parades or city council meetings. If the Commission intends to establish a condition that goes far beyond the scope of News/Hughes to cover sporting events not included on a traditional RSN, and where TWC has lawfully acquired exclusive rights from an unaffiliated program rights holder, several additional concerns would arise.

First, any condition imposed in this proceeding must not purport to require Time Warner or Comcast to resell rights that they do not have. When an MVPD negotiates directly with the sports rights holder to carry specified events, the MVPD often does not and cannot obtain the right to resell those games to other MVPDs. Second, even where such rights are obtained, the price of redistribution rights might be prohibitively high. Third, such rights, if obtained,

³ News/Hughes at ¶ 127.

typically would be limited to the specific geographic area served by that MVPD -- other MVPDs seeking rights to carry the games in other areas would have to obtain those rights directly from the team or applicable rights holder.

As the Commission has previously concluded, both Congress and the FCC have purposely limited program access conditions to situations involving vertical integration between programmers and MVPDs.⁴ Any extension of such rules to reach unaffiliated programmers who are not before the Commission would be unworkable and bad policy.

If there are any questions regarding this matter, please do not hesitate to contact Mr. Teplitz or the undersigned.

Sincerely,


Arthur H. Harding

cc: Hon. Kevin Martin Marcia Glauberman
Catherine Bohigian Julie Salovaara
Heather Dixon Wayne McKee
Jessica Rosenworcel Jim Bird
Rudy Brioché Jeff Tobias
Aaron Goldberger JoAnn Lucanik
Cristina Chou Pauzé Kimberly Jackson
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Royce Sherlock

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⁴ See News/Hughes at ¶ 291 (stating that “[i]n several prior mergers involving MVPDs, the Commission has rejected arguments that the post-merger entity should be required to abide by an exclusivity restriction with respect to programming of unaffiliated programming vendors”); See also *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Memorandum Opinion and Order, 17 FCC Rcd 23246, ¶¶ 105-109 (2002); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp. Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816, ¶¶ 79-85 (2000).