



VIA ELECTRONIC FILING

July 7, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20054

Re: *Ex Parte* Communication
Proposed Acquisition of Adelphia Cable Systems by Comcast and
Time Warner Cable
MB Docket 05-192

Dear Ms. Dortch,

EchoStar Satellite L.L.C. ("EchoStar") hereby reports that on July 6, 2006, Eric Sahl of EchoStar contacted Aaron Goldberger, Legal Advisor to Commissioner Tate. The purpose of the call was to inform Mr. Goldberger that EchoStar had availed itself of the arbitration proceedings set forth in the Hughes/News Corporation merger conditions. EchoStar explained that the arbitration process was very beneficial; it facilitated a resolution of a programming dispute in an efficient manner without involvement from the FCC.

EchoStar also expressed that similar types of procedures should be adopted in the context of the proposed acquisition of Adelphia by Comcast and Time Warner. EchoStar urged the FCC to utilize the arbitration process as a means of resolution for program access disputes.

EchoStar also provided Aaron Goldberger with a copy of the arbitration procedures adopted for Regional Sports Networks in the Hughes/News Corporation merger, a copy of the procedures are attached hereto.

As required by 47 C.F.R. § 1.1206(b)(2), an original and one copy of this letter are being filed with the Secretary.

Respectfully submitted,

/s/

Lori Kalani
Associate Corporate Counsel
EchoStar Satellite L.L.C.

Enclosure: Hughes/News Corporation Arbitration Proceedings
cc: Aaron Goldberger, Commissioner Tate's Office

- For enforcement purposes, aggrieved MVPDs may bring program access complaints against Applicants using the procedures found at Section 76.1003, 47 U.S.C. § 76.1003, of the Commission's rules.

III. ADDITIONAL CONDITIONS CONCERNING ACCESS TO REGIONAL SPORTS CABLE PROGRAMMING NETWORKS

When negotiations fail to produce a mutually acceptable set of price, terms and conditions for carriage of a regional sports network ("RSN"), an MVPD may choose to submit a dispute to commercial arbitration in accordance with the following procedures:

Commercial Arbitration Remedy

- An aggrieved MVPD may submit a dispute with News Corp. over the terms and conditions of carriage of RSN programming in each region in which News Corp. owns or holds a controlling interest or manages any non-broadcast RSN.
- Following the expiration of any existing contract, or 90 days after a first time request for carriage, an MVPD may notify News Corp. within five business days that it intends to request commercial arbitration to determine the terms of the new affiliation agreement.
- Upon receiving timely notice of the MVPD's intent to arbitrate, News Corp. must immediately allow continued carriage of the network under the same terms and conditions of the expired affiliation agreement as long as the MVPD continues to meet the obligations set forth in this condition.
- Carriage of the disputed programming during the period of arbitration is not required in the case of first time requests for carriage.
- "*Cooling Off Period.*" The period following News Corp.'s receipt of timely notice of the MVPD's intent to arbitrate and before the MVPD's filing for formal arbitration with the American Arbitration Association ("AAA") shall constitute a "cooling-off" period during which time negotiations are to continue.
- "*Formal Filing with the AAA.*" The MVPD's formal demand for arbitration, which shall include the MVPD's "final offer," may be filed with the AAA no earlier than the fifteenth business day after the expiration of the RSN contract and no later than the end of the twentieth business day following such expiration. If the MVPD makes a timely demand, News Corp. must participate in the arbitration proceeding.
- The AAA will notify News Corp. and the MVPD upon receiving the MVPD's formal filing.
- News Corp. will file a "final offer" with the AAA within two business days of being notified by the AAA that a formal demand for arbitration has been filed by the MVPD.
- The MVPD's final offer may not be disclosed until the AAA has received the final offer from News Corp.
- The final offers shall be in the form of a contract for the carriage of the programming for a period of at least three years. The final offers may not include any provision to carry any video programming networks or any other service other than the RSN.

Rules of Arbitration

(Continued from previous page) _____
C.F.R. § 76.1002(c)(2). In the year prior to the sunset, the Commission will conduct a proceeding to evaluate the circumstances in the video programming marketplace.

- The arbitration will be decided by a single arbitrator under the expedited procedures of the commercial arbitration rules, then in effect, of the AAA (the “Rules”), excluding the rules relating to large, complex cases, but including the modifications to the Rules set forth in Appendix B.
- The parties may agree to modify any of the time limits set forth above and any of the procedural rules of the arbitration; absent agreement, however, the rules specified herein apply. The parties may not, however, modify the requirement that they engage in final-offer arbitration.
- The arbitrator is directed to choose the final offer of the party that most closely approximates the fair market value of the programming carriage rights at issue.
- Under no circumstances will the arbitrator choose a final offer that does not permit News Corp. to recover a reasonable share of the costs of acquiring the programming at issue.
- To determine fair market value, the arbitrator may consider any relevant evidence (and may require the parties to submit such evidence to the extent it is in their possession),³ including, but not limited to:
 - current or previous contracts between MVPDs and RSNs in which News Corp. does not have an interest as well as offers made in such negotiations (which may provide evidence of either a floor or a ceiling of fair market value);
 - evidence of the relative value of such programming compared to the RSN programming at issue (*e.g.*, advertising rates, ratings);
 - contracts between MVPDs and RSNs on whose behalf News Corp. has negotiated before News Corp. acquired control of DirecTV;
 - offers made in such negotiations;
 - internal studies or discussions of the imputed value of RSN programming in bundled agreements;
 - other evidence (including internal discussions) of the value of RSN programming;
 - changes in the value of non-News Corp. RSN programming agreements;
 - changes in the value or costs of News Corp. RSN programming, or in other prices relevant to the relative value of News Corp. RSN programming (*e.g.*, advertising rates).
- The arbitrator may not consider offers prior to the arbitration made by the MVPD and News Corp. for the programming at issue in determining the fair market value.
- If the arbitrator finds that one party’s conduct, during the course of the arbitration, has been unreasonable, the arbitrator may assess all or a portion of the other party’s costs and expenses (including attorney fees) against the offending party.
- Following resolution of the dispute by the arbitrator, to the extent practicable, the terms of the new affiliation agreement will become retroactive to the expiration date of the previous affiliation agreement. The MVPD will make an additional payment to News Corp. in an amount representing the difference, if any, between the amount that is required to be paid under the arbitrator’s award and the amount actually paid under the terms of the expired contract during the period of arbitration.

³ We clarify that, by “possession,” we mean actual possession or control.

- Judgment upon an award entered by the arbitrator may be entered by any court having competent jurisdiction over the matter, unless one party indicates that it wishes to seek review of the award with the Commission, and does so in a timely manner.

Review of Award by the Commission

- A party aggrieved by the arbitrator's award may file with the Commission a petition seeking de novo review of the award. The petition must be filed within 30 days of the date the award is published.
- The MVPD may elect to carry the programming at issue pending the FCC decision, subject to the terms and conditions of the arbitrator's award.
- In reviewing the award, the Commission will examine the same evidence that was presented to the arbitrator and will choose the final offer of the party that most closely approximates the fair market value of the programming carriage rights at issue.
- The Commission may award the winning party costs and expenses (including reasonable attorney fees) to be paid by the losing party, if it considers the appeal or conduct by the losing party to have been unreasonable. Such an award of costs and expenses may cover both the appeal and the costs and expenses (including reasonable attorneys' fees) of the arbitration.

Provisions Applicable to Small MVPDs

- An MVPD meeting the definition of a "small cable company" may appoint a bargaining agent to bargain collectively on its behalf in negotiating carriage of RSNs with News Corp. and News Corp. may not refuse to negotiate carriage of RSN programming with such an entity.⁴ The designated collective bargaining entity will have all the rights and responsibilities granted by these conditions.

Additional Provisions Concerning Arbitration

- No later than 20 business days prior to the expiration of an affiliation agreement with an MVPD for video programming subject to this condition, News Corp. must provide the MVPD with a copy of the conditions imposed in this Order. News Corp. must provide a copy of the conditions imposed in this Order within 10 business days of receiving a first time request for affiliation.
- This condition will expire six years after the release of the Order.
- The Commission will consider a petition for modification of this condition if it can be demonstrated that there has been a material change in circumstance or the conditions have proven unduly burdensome, rendering the condition no longer necessary in the public interest.

IV. CONDITIONS CONCERNING ACCESS TO LOCAL BROADCAST TELEVISION STATION SIGNALS

⁴ The Commission has previously defined small cable companies as those with 400,000 or fewer subscribers. We adopt that definition for the purposes of this condition. See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 10 FCC Rcd 7393 (1995) ("Sixth Report and Order").