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Federal Communications Commission
Office of Secretary

**HIGHLY CONFIDENTIAL INFORMATION
- SUBJECT TO SECOND PROTECTIVE
ORDER IN MB DOCKET NO. 05-192
REDACTED - FOR PUBLIC INSPECTION**

July 6, 2006

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Adelfia Licenses Transfer / Letter Submission in MB Docket No. 05-192

Dear Ms. Dortch:

I am submitting this supplemental *ex parte* filing on behalf of The America Channel ("TAC") in connection with its *ex parte* letter filed with the Federal Communications Commission (the "Commission") on May 1, 2006. This Letter Submission will bring to the Commission's attention certain internal communications which contradict Comcast Corporation ("Comcast") filings¹ in connection with this proceeding with regard to Comcast's assertions of complete indifference when making network carriage decisions as to whether a network is affiliated with Comcast or not.

In particular, in Martha Heller's supplemental response of March 10, 2006, to Question III.J of the Commission's December 5, 2005 Information and Document Request ("Request"), Comcast replied that "Comcast's decisions pertaining to TAC or other networks have nothing to do with carriage commitments that are negotiated at the corporate level or locally through hunting licenses, or with any differences in treatment between affiliated and unaffiliated networks." Yet, an [REDACTED PURSUANT TO THE SECOND PROTECTIVE ORDER] specifically raises the issue of Comcast ownership in [REDACTED PURSUANT TO THE SECOND PROTECTIVE

¹ The extent to which Time Warner's filings indicate similar discrepancies may be addressed in a future submission.

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ORDER] as part of the decision making process in connection with the effect on a network with whom Comcast [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*] has [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*]. Specifically, [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*] This directly contradicts the assertions regarding ownership neutrality in the decision making process concerning the launch of program networks. In addition, [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*]. As noted above, Comcast has delineated specific criteria regarding the standards it uses in making network carriage decisions. [See Martha Heller March 10, 2006, letter.] The listed criteria fail to include Comcast's financial investment. Notwithstanding the fact that in many circumstances, it would be natural (and perhaps understandable) for any MVPD to carefully consider the economic effect of its network carriage decisions on its investments, Comcast would have the Commission believe that in Comcast's case, this never occurs. What is genuinely remarkable in reviewing the voluminous documents filed in this proceeding is that Comcast will not admit that its investments in other networks/companies serve as even a minor criterion in its decision making process, which would seem at odds with the corporation's value maximizing duties to its shareholders.

Whether or not Comcast has intentionally discriminated in favor of its own affiliated networks (and TAC maintains that it does), at a bare minimum, the practical effect of Comcast's policies and practices amplify the discriminatory effect. In various filings, Comcast has pleaded that because there is no longer space on its analog tiers and limited space on its digital tiers, in most cases, new networks will have to be content with carriage on a video-on-demand ("VOD") basis. Yet Comcast's practice of "grandfathering" existing linear networks after having created a congested condition genuinely harms all new networks seeking carriage. With approximately 40%-55% of the revenue earned by linear networks being derived from advertising sales, and with national advertisers being primarily interested in placing advertising on networks with more than 40,000,000 subscribers, being relegated to a "VOD only" status likely means a lingering death for the new networks.

Of course, not all new networks are treated this way by Comcast. In early 2005, Comcast launched TV One, LLC ("TV One") on many of its cable systems. As a start-up, TV One had no other subscribers prior to the launch on Comcast's distribution platform. What is interesting to note is that notwithstanding its start-up status, even before [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*] Comcast would have the Commission believe that its decision to launch this network and to provide it with

an initial term of [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*] had nothing whatever to do with Comcast's substantial joint venture investment in TV One.²

The Commission need not rely solely on inferring a discriminatory effect from Comcast's practices. The record supports an explicit example of Comcast's stated goals relating to distribution and channel placement of Comcast-owned networks. At [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*] As previously stated, such goals are only natural; what is unnatural is Comcast's complete denial in this proceeding that its ownership ever affects carriage decisions. This refusal to acknowledge reality even under the scrutiny inherent in this proceeding raises the question of how Comcast will act once the Commission approves the Adelphia transaction in the absence of setting conditions and without being subject to the spotlight.

Comcast may have also been less than forthcoming when it suggested that although linear channel space may be limited, new networks can be carried on a VOD basis. For example, at [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*] Coupling this with Comcast's claim of congestion on its linear channel space provides additional evidence of an even more minuscule opportunity for new network survival even if segregated solely to VOD offerings. In a later [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*] Even if his assessment was accurate, why should this Network's ultimate goal [REDACTED PURSUANT TO THE *SECOND PRTOECTIVE ORDER*] as an impediment to a VOD deal? And if this is indeed the case, the chances of new networks ever having even a VOD opportunity with Comcast will be severely circumscribed. This approach also reinforces the existing sclerotic condition which Comcast maintains exists and which is used as a justification to steer new networks solely to a platform on which such networks are expected to remain for the foreseeable future.

As the Commission considers what action to take regarding the Adelphia transaction, TAC respectfully suggests that Comcast's past practices in favoring program networks in which it has a financial interest as well as Comcast's status as the [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*]³ have created a compelling need for the Commission to impose conditions to rectify the

² On a [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*]

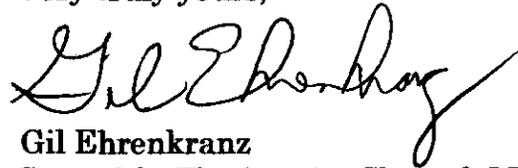
³ See [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*]

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market imbalance harming new independent networks.

Very truly yours,



**Gil Ehrenkranz
Counsel for The America Channel, LLC**