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August 15, 2006

VIA ELECTRONIC FILING

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

Re: *Ex Parte Presentation in MB Docket No. 06-92*

Dear Ms. Dortch:

We hereby notify the Commission of an *ex parte* presentation on August 15, 2006 to Heather O. Dixon, Legal Advisor for Media Issues to Chairman Martin. Present at the meeting were Andrew Jay Schwartzman of the Media Access Project, representing Free Press, and the undersigned, representing Farm Journal.

During the meeting, the parties discussed the commercial nature of the programming on RFD-TV, as well as the relief requested by Farm Journal and Free Press, all as detailed in Farm Journal's Petition and in the Comments and Reply Comments of Farm Journal and Free Press. The parties provided Ms. Dixon with the enclosed summary of the proceeding. Additionally, Mr. Schwartzman emphasized during the meeting the importance of receiving FCC guidance on these issues so as to avoid the need for much more complicated and time consuming enforcement proceedings in the future.

Please contact us with any questions concerning this notice.

Respectfully submitted,

John R. Feore, Jr.
Kevin P. Latek

Enclosure

cc w/encl. via e-mail: Heather O. Dixon
Rosalee Chiara
Andrew Jay Schwartzman

MB Docket 06-92

In the **1992 Cable Act**, Congress directed the FCC to impose certain public interest obligations on DBS providers, including a set aside of channel capacity for **noncommercial programming**. The Commission adopted rules requiring DBS providers to set aside four percent of their channel capacity exclusively for **noncommercial programming of an educational or informational nature**. The Commission concluded that these reserved channels must be available only for "noncommercial educational entities with an *educational mission*. The term should not be interpreted as including 'commercial' entities organized for profit-making purposes."

Farm Journal, Inc. is the nation's leading agricultural media company, which publishes, among other things, the 128-year-old *Farm Journal* magazine, and which syndicates to broadcast stations the programs *AgDay, U.S. Farm Report…Town & Country Living,* and *In the Country*.

In recent years, Farm Journal's syndicated television programs have come under increasing competition for advertising clients from RFD Communications, Inc., which operates RFD-TV, an ostensibly non-commercial, non-profit television service targeting rural America and the agricultural community that DirecTV and EchoStar carry on their reserved channels.

In November 2005, Farm Journal filed a **Petition for Declaratory Relief** seeking a Commission declaration that RFD-TV fails to satisfy the eligibility requirements of an educational programming supplier for purposes of the DBS reservation, or "set aside," of channel capacity for educational and/or informational content. (Farm Journal also filed a complaint with the IRS detailing numerous apparent violations of Section 501(c)(3) requirements.) In April 2006, the Media Bureau opened MB Docket 06-92 to solicit public comment on Farm Journal's Petition. The pleading cycle closed in June 2006.

The docket conclusively demonstrates that RFD-TV airs:

- **Traditional 30- and 60-second commercial spots for for-profit companies,**
- **Pay-for-play "news" (infomercials) for for-profit companies, and**
- **Live, shop-at-home programming for cattle and other livestock.**

In response, RFD represented only that it would implement measures to prevent future commercial spot advertising. It ignored the evidence of quasi-news infomercials. RFD defended the livestock auctions as "informational" and therefore eligible for carriage on channels reserved exclusively for non-commercial programming.

DirecTV and EchoStar filed Reply Comments announcing their own investigations into RFD-TV's programming yet pointedly not opposing Farm Journal's Petition. There is bipartisan concern over the use of the non-commercial reserved channels for commercial programming.

Extensively detailed evidence provided to the Bureau by Farm Journal, Free Press, and others compels the conclusion that **RFD is ineligible to provide programming on a DBS set-aside channel**. **Accordingly, the Commission should declare that RFD-TV does not qualify as a national educational programming supplier for DBS set aside purposes.**

The sooner the Commission acts, the sooner the public will receive the full benefit of the DBS set aside requirements as intended by Congress through the replacement of RFD-TV's pervasively commercial programming with *bona fide* noncommercial educational programming from a qualified national educational programmer.