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VIA ELECTRONIC FILING

November 1, 2007

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
455 12th Street SW
Washington DC 20554

Re: Ex Parte Submission
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets, MB Docket Nos. 06-121, 02-277, MM Docket Nos. 01-235, 01-317, 00-244

Dear Ms. Dortch:

Comcast Corporation ("Comcast") hereby submits this filing in order to respond to a study by Professors Dong Chen and David Waterman submitted in the above-captioned proceeding on October 29, 2007,[1] and to respond to certain arguments contained in comments filed by Consumers Union ("CU") pursuant to the Public Notice seeking input on research studies commissioned by the Federal Communications Commission ("FCC") for use in this proceeding.[2]

Chen and Waterman's most recent filing is nothing more than a slightly revised version of their 2005 manuscript.[3] That study was fully rebutted by Professor Thomas W. Hazlett in the critique of FCC Study 9 that Comcast submitted in this docket on October 22.[4] Furthermore, the revised

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[1] Dong Chen and David Waterman, *Vertical Ownership, Program Network Carriage, and Tier Positioning in Cable Television: An Empirical Study*, 30 REV. IND. ORGAN. 227 (July 2007) (filed in MB Docket Nos. 06-121, *et al.* Oct. 29, 2007) ("Chen and Waterman (2007)").

[2] Public Notice, *FCC Seeks Comment on Research Studies on Media Ownership*, DA 07-3470, MB Docket No. 06-121 (rel. July 31, 2007); *see also* Public Notice, *Media Bureau Extends Filing Deadlines for Comments on Media Ownership Studies*, DA 07-4097, MB Docket No. 06-121 (rel. Sept. 28, 2007).

[3] Dong Chen and David Waterman, *Vertical Foreclosure in the U.S. Cable Television Market: An Empirical Study of Program Network Carriage and Positioning* (Oct. 2005), http://ssrn.com/abstract=843544.

[4] Thomas W. Hazlett, *Vertical Integration in Cable Television: The FCC Evidence* (Oct. 19, 2007), MB Docket Nos. 06-121, 02-277, MM Docket Nos. 01-235, 01-317, 00-244, at 3, 5-6 (filed Oct. 22, 2007) ("Hazlett (2007)")

Chen and Waterman study itself recognizes that efficiency, rather than anti-competitive foreclosure, could fully explain its results.[5] Comcast's earlier submission made precisely this point, in discussing the previous versions of Chen and Waterman's analysis.[6] Their latest submission thus merely serves to support Comcast's argument.

The Comments submitted by CU on Study 9, in the end, reach the same overall conclusion that Comcast's earlier filing did – the study cannot be relied upon to set regulatory policy regarding vertical integration in the cable industry. For example, CU points out that the results in Goolsbee (2007) are of limited usefulness because the study omitted from its analysis the most carried cable networks, and thus failed to include the networks that account for the vast majority of the availability of cable programming.[7] CU's analysis, however, is flawed in several respects, including to the extent it argues that the FCC should not consider the effects of DBS competition in setting regulatory policy relating to vertical integration in cable.[8] But, as the Hazlett paper made clear, competition from DBS has risen dramatically, and "any evidence of favoritism exhibited by cable TV operators towards their own programming must be evaluated in light of these market outcomes."[9] At the same time, and as the Hazlett paper also showed, the analysis that Goolsbee (2007) undertakes to support the study's conclusion that such favoritism varies, presumably to the detriment of consumers, based on the degree of competition between cable and DBS, suffers from numerous fatal flaws and cannot be relied upon.[10]

Sincerely,

<u>*/S/ James R. Coltharp*</u>
James R. Coltharp

(critiquing Austan Goolsbee, *Vertical Integration and the Market for Broadcast and Cable Television Programming* (April 2007) ("Goolsbee (2007)")).

[5] Chen and Waterman (2007), at 249-50 ("Relatively straightforward efficiency-driven incentives, however, can account for the differences in carriage and positioning we have observed, even in the presence of rising competition at both the upstream programming and downstream system levels. In the absence of a strategic foreclosure attempt, an integrated cable system will generally find it profitable to carry any rival network at some price, as long as expected revenues from it do not fall below marginal carriage costs. In the case of a-la-carte premium networks, however, side-by side carriage of an affiliated network at a lower price might be seen as a negative quality signal. In the case of a basic, ad-supported network, increasing a rival's price to compensate for its negative effect on advertising revenues of the affiliate is not a feasible option.").

[6] Hazlett (2007), at 3, 5-6.

[7] Further Comments of Consumers Union, Consumer Federation of America and Free Press, MB Docket Nos. 06-121, *et al.*, at 271 (filed Oct. 22, 2007) ("CU Ownership Studies Comments"); *see* Hazlett (2007), at 22-24.

[8] CU Ownership Studies Comments at 272.

[9] Hazlett (2007), at 7, 9.

[10] *See generally* Hazlett (2007).