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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Re: MB Docket No. 07-42

Dear Ms. Dortch:

On behalf of Time Warner Cable Inc. ("Time Warner Cable"), this *ex parte* presentation is being submitted in response to proposals by certain parties in this proceeding to drastically and unlawfully modify the Commission's program carriage and leased access rules. In particular, as detailed more fully below, proposals by the NFL Network ("NFL") and Crown Media Holdings, Inc. ("Hallmark") to ignore the statutorily-mandated *prima facie* test for program carriage complaints, and to mandate the use of baseball-style arbitration over the objections of the responding cable operator, would violate both the First Amendment to the U.S. Constitution and the Administrative Dispute Resolution Act, 5 U.S.C. §§ 571-584 ("ADRA").[1] Moreover, as noted by the attached editorial from yesterday's *Wall Street Journal*, "the NFL's attempt to involve government in what is essentially a commercial dispute... [by] seeking regulatory leverage in a private-sector dispute is unsportsmanlike conduct."[2] Similarly, proposals such as those by parties represented by Media Access Project ("MAP") to virtually eliminate any compensation to cable operators from leased access programmers would result in unlawful, confiscatory rates in violation of the Fifth Amendment to the U.S. Constitution, and would violate the statutory requirement that leased access rates must not adversely affect the operation, financial condition or market development of cable systems.

[1] The Administrative Dispute Resolution Act was initially adopted in 1990 and is typically referred to as the ADRA. The ADRA was subsequently reenacted in 1996 and this version is typically referred to as the ADR Act. For convenience purposes, we use ADRA throughout this submission to refer to both versions of the Act, but have relied herein only on the language of the most recent version of the Act.

[2] *See* "Blitzing the FCC," *The Wall Street Journal*, 19 Nov. 2007, p. A18 (Attachment 1).

Proposals To Undermine The Statutory *Prima Facie* Test In Section 616 Are Contrary To The First Amendment.

In the "program carriage" provisions of Section 616 of the 1992 Cable Act,[3] Congress expressly directed the Commission to adopt rules governing the relationship between MVPDs and unaffiliated programmers in very narrow circumstances by prohibiting MVPDs from engaging in "conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors."[4] In order to obtain relief under this provision, therefore, it is necessary for a programmer to prove, as a threshold matter, that a particular MVPD has engaged in specific acts of discrimination based on affiliation and that these specific acts have restrained that particular programmer's ability to compete. However, the proposals put forward by Hallmark and the NFL would allow programmers to obtain (via mandatory arbitration) government-compelled carriage of their services at government-mandated prices with either no showing of discrimination and harm or on the basis of an all but irrefutable presumption of such discrimination and harm. Not only does the Commission lack the statutory authority to dispense with the required evidentiary showings but, as discussed below, doing so would violate the First Amendment.

Cable operators plainly are First Amendment speakers.[5] And as such, any attempt by the government to substitute its judgment for the editorial discretion of the cable operator regarding whether to carry particular programming services, and at what price, is highly suspect.[6]

Under the proposals proffered by the NFL and the Hallmark, the Commission would "focus less on an MVPD's misconduct" and would instead provide independent programmers with a "result-oriented procedure" under which they could demand binding, government-sponsored arbitration without even first seeking to negotiate carriage terms.[7] Such an approach would radically transform the statutorily-required case-by-case program carriage regulatory regime into a virtual "must-carry/must-pay" rule under which a cable operator would be compelled to carry the content of a programming vendor that it would not otherwise carry on terms that it would not otherwise accept without any showing that the operator had discriminated against that programmer on the basis of its non-affiliation or had harmed that programmer's ability to compete.

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[3] 47 U.S.C. § 536.

[4] 47 U.S.C. § 536(a)(3).

[5] *See Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994) ("*Turner I*") ("cable operators engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment").

[6] *Pacific Gas & Elec. Co. v. Public Utils. Comm'n of California*, 475 U.S. 1, 20 (1986) (plurality) ("the State cannot advance some points of view by burdening the expression of others"); *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) (stating that government may not "restrict the speech of some elements of our society in order to enhance the relative voice of others").

[7] NFL Comments at 7-8; Hallmark Reply Comments at 11-13.

It matters not whether the proposed revisions to the program carriage rules simply eliminate the requirement of an evidentiary showing of discrimination and harm or merely replace it with a presumption. Both are equally suspect. Contrary to the arguments of Hallmark and the NFL, the video marketplace is now vibrantly competitive. As Chairman Martin stated in connection with his recent proposal to relax certain media ownership rules, "[c]onsumers have benefited from an explosion of new sources of news and information."[8] These "new sources" include over 400 new programming networks, the entry of DBS and, more recently, the nation's largest telephone companies, into the multichannel video distribution arena. The highly competitive nature of the video marketplace also is reflected in the decline in vertical integration between cable operators and programmers and in the basic subscriber losses that MSOs have been reporting.[9] In a marketplace in which cable stock prices are declining precipitously due to investor concerns about intensifying competition, there no longer is any basis to suggest that cable operators have an incentive or ability to discriminate in their programming decisions based on the affiliation or non-affiliation of the programmer. All MVPDs, those with affiliated programming services and those without, must offer their customers the best mix of programming, obtained on the best terms and conditions, if they are going to remain competitive.

Hallmark and the NFL defend their proposals by reference to the Supreme Court's decision upholding broadcast must carry rules in *Turner Broad. Sys., Inc. v. FCC* ("*Turner II*").[10] However, their reliance on *Turner II* is misplaced. Unlike the must carry rules upheld in *Turner II*, the program carriage rules, particularly as transformed by the NFL and Hallmark proposals, inescapably are content-based both in their purpose and application. And even assuming arguendo that intermediate scrutiny did apply, the legislative and factual record here is substantially different than the record in *Turner II* and cannot sustain a finding that the proposed rule modifications serve any important government interest or that they are narrowly tailored.

First, any requirement that a cable operator carry programming in the absence of any showing of discrimination or on the basis of an unproven presumption, is inherently content-based. The very purpose of the rules would no longer have any nexus to any plausible concern about the operator's conduct or the impact of that conduct on a competitor's viability. Rather, the implicit, if not explicit, governmental purpose underlying such a regulatory regime would be to "improve" the content that a cable operator offers by forcing the operator to carry programming from vendors it would otherwise not carry, or to pay higher prices to those programmers so that they could produce "better" content. This constitutes a direct interference with a cable operator's speech and editorial rights for no other purpose than to substitute the government's editorial discretion for that of the cable operator.

This is a far different situation than presented in *Turner II*, where Congress' express purpose in compelling the carriage of local broadcast stations was to preserve free over-the-air television for non-cable viewers, not to dictate to cable operators what speech they choose to present to their own customers. It is one thing to say (as Congress did in the must carry statute)

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[8] FCC News Release, "Chairman Kevin J. Martin Proposes Revision to the Newspaper/Broadcast Cross-Ownership Rule," at 1 (rel. Nov. 13, 2007).

[9] *See, e.g.*, "Equity Research, Q3 2007 State of Video/Data/Phone Market," Wachovia Capital Markets, LLC (Nov. 15, 2007), submitted as Attachment 2.

[10] 520 U.S. 180 (1997).

that one medium (cable) may be compelled to suffer some intrusion upon its speech in order to save another medium (broadcast) from oblivion, particularly when one (cable) is subscription-based and the other (broadcast) is for free. It is quite another thing to say that Congress (or here, the Commission) may seek to improve the mix of speech offered within a medium — simply because the government has determined that its revised mix would be "better" for consumers.

There are additional reasons why strict scrutiny of the regulatory approach advocated by Hallmark and the NFL would be warranted. Consideration of the content of the programming at issue would be inextricably woven into the entire process. Hallmark and the NFL would have the Commission adopt rules that would force an MVPD into a governmental dispute-resolution process over carriage and pricing whenever the MVPD owns and carries programming that appeals to the same demographic as (and thus competes for advertisers and viewers with) the program content of the unaffiliated network invoking the rules.[11] Not only does this make the application of the rules turn on questions regarding the nature of the content at issue, but it also creates a clear preference for duplicative content directed at audiences that already are served at the expense of unique content designed to attract underserved or unserved audiences. Moreover, the decision maker would inevitably be drawn into qualitative content evaluations in attempting to discern a fair market value of specific programming services.[12] And finally, an inescapable consequence that would follow the adoption of the Hallmark and NFL approach is that the application of the rules will force cable operators to carry content that is anathema to them and their viewers. For example, a cable operator with an ownership interest in a regional sports network that targets a young, male audience could be forced into a must-carry, must-pay proceeding if it refuses to carry sexually-explicit program services, merely because they are directed at the same general demographic.

The Commission has no compelling interest for interfering with speech for its own sake. Indeed, doing so runs directly counter to the very core of the First Amendment. And the means that the Commission would seek to employ to "improve" a cable operator's programming decisions – forcing carriage of unwanted content – would not be precisely tailored since consumers already have the option of switching to other distributors if they do not like or approve of the programming decisions made by a cable operator.

<u>Second</u>, the proposed revisions to the program carriage rules cannot withstand First Amendment scrutiny even under the intermediate scrutiny analysis employed by the Supreme Court to review the must-carry rules in *Turner II*. Under that two-part analytical framework, the government would have to show that the rules further an important or substantial governmental interest unrelated to the suppression of free speech, and do not burden substantially more speech than is necessary to further those interests.[13] The government can meet neither of these tests.

With respect to the first prong of this test, Hallmark and the NFL attempt to justify their proposals to eliminate or eviscerate the program carriage rules' current requirement of a

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[11] Hallmark Reply at 13-14.

[12] For example, Hallmark undoubtedly would assert that it deserves a higher license fee due to its "high-quality, socially acceptable content" that is "free of explicit sexual or violent content or offensive language." *Id.* at 2.

[13] *Turner II*, 520 U.S. at 189 (citations omitted).

threshold evidentiary showing of actual discrimination and harm as necessary to "protect competition and diversity in the video programming marketplace."[14] These objectives, it is claimed, were identified by the Supreme Court in *Turner II* as important governmental objectives unrelated to the suppression of speech.[15]

As an initial matter, however, the governmental interests established by Congress and accepted in *Turner II* in support of must carry cannot be transplanted willy-nilly to support forced speech under the program carriage rules. On the contrary, Congress has directed that the program carriage remedy can be invoked only under narrow circumstances where coercion or discrimination has been established pursuant to the statutory *prima facie* test. Proposals to discard the underlying interests identified by Congress in favor of an alternative set of interests favored by proponents of relaxed rules are doomed to fail even under intermediate scrutiny.

In any event, as *Turner II* makes clear, the identification of an abstract government interest to support a proposed rule is only one step in the analysis. It also must be established that the stated interest is genuine in the context of the proposed regulation. In other words, the question that must be asked is whether, as a factual matter, the asserted interest will actually be at risk absent government intervention to protect that interest. Indeed, in *Turner II*, only a plurality of the Court agreed that the record supported the conclusion that broadcasters faced a genuine risk of competitive harm in the absence of must carry rules. Given the state of the record here, and the changes in the competitive landscape that have occurred since *Turner II*, it defies reason to expect that a majority of the Court would now find that the risk of competitive harm warrants the adoption of what would essentially amount to a "must carry/must pay" regime for unaffiliated programmers. It would be entirely irrational to expand the role played by the government in a cable operator's program carriage decisions in the face of a marketplace in which the quantity and quality of independent programming options is rising and vertical integration between programmers and operators is declining.

In fact, Hallmark and the NFL themselves are two of the best illustrations of how the proposed creation of a broad presumptive right to arbitrated carriage and rate setting is unsupported by what is actually occurring in the marketplace.

> **Hallmark:** Hallmark holds the distinction of being the fastest-growing cable network – affiliated or unaffiliated – in history. By using a combination of aggressive marketing and business tactics and offering a quality product, Hallmark added more than 14 million subscribers in its first year of operation and its record-setting growth has continued unabated ever since. Shortly after its fifth anniversary, in August 2006, Hallmark announced that it had reached the 75 million subscriber mark (an increase of more than 50 million homes since its launch) and a year later it had added another 10 million homes. Hallmark has launched a second service, Hallmark Movie Channel, and recently announced plans to launch an HD version of that channel in 2008. Its most recent quarterly report indicates that the channel is achieving substantial growth

[14] *See, e.g.*, NFL Reply at 13-14.

[15] *Id.*

in both advertising and subscriber revenues.[16] Hallmark hardly needs — or deserves — a government hand-out.

NFL Network: The NFL is the most successful sports entity in history. And in 2003, it launched one of the most successful new networks – affiliated or unaffiliated – in recent years. At the time of its launch, the NFL Network reached 11.5 million homes, the most widely-distributed new sports network in the history of cable and satellite. Within less than three years, it had extended its reach to 70 million homes with a total of 41 million subscribers. In addition to its carriage on competing MVPDs such as DirecTV, EchoStar, Verizon and AT&T, the NFL Network has signed distribution agreements with more than 150 cable operators, including Comcast. According to the NFL, "counting all cable channels launched, the average subscriber numbers at the end of five years is 30.3 million. NFL Network reached this number in less than two years."[17]

The NFL, which already has an exemption from the antitrust laws that gives it advantages in negotiating national TV rights and has long-term deals for carriage on several cable networks, not to mention its exclusive deal with DirecTV, hardly needs the government to intervene on its behalf in negotiating MVPD carriage agreements. It is readily apparent that the NFL's ongoing disagreement with certain MSOs regarding tier placement of its network is best left to the vibrantly competitive marketplace. As noted in yesterday's *Wall Street Journal*, "the NFL's attempt to involve government regulators in what is essentially a commercial dispute" is quite "troubling." The league's efforts to "seek[] regulatory leverage in... private-sector [negotiations]" are entirely inappropriate, and the Commission should "respond accordingly."[18] The NFL's desire to advance its private business interests by seeking government compulsion of speech under certain circumstances, while keeping other programming it owns exclusive, cannot possibly be squared with the First Amendment.

The bottom line is that no court will be persuaded by unaffiliated networks that, as the facts show, have had no problem obtaining distribution and increasingly are able to play off competing distributors against each other in their negotiations over carriage and price.

Finally, even if the proposed revisions to the program carriage rules could survive analysis under the first prong of the intermediate scrutiny test (and, as shown above, they could not), eliminating or weakening the *prima facie* case requirement clearly would create a regulatory scheme that is not narrowly tailored and would burden more speech than is necessary to advance the governmental interest asserted by NFL and Hallmark. The current regulatory regime, which requires a showing of actual discriminatory or coercive conduct and associated

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[16] *See* "Network Milestones," *available at:* http://www.hallmarkchannel.com/publish/pr/home/corporate/ history___ company.html.

[17] *See* "About NFL Network," *available at:* http://www.nfl.com/nflnetwork/fastfact.

[18] *See* Attachment 1.

harm, has been anything but a failure. As already noted several times, independent programming and competition among programmers has flourished under the present regulatory scheme.

On the other hand, expanding the rules by eliminating the requirement of a showing of actual misconduct clearly would be excessively burdensome. The must-carry rules sustained in *Turner II* survived in significant part because Congress had established a cap on the amount of capacity that a cable operator could be forced to dedicate to the retransmission of local broadcast signals. Under the essentially standardless rules proposed by NFL and Hallmark, cable operators would face a potentially endless series of demands for carriage from not only the hundreds of independent programmers currently in existence, but from a virtually infinite number of planned services that consist of little more than amorphous business plans. A rule that gives equal standing to demands for governmentally-mandated carriage by an unlimited number of home shopping channels just because a cable operator chooses to create and launch a fashion-oriented channel that appeals to a similar audience demographic cannot possibly be sustained as a "narrowly drawn" intrusion into a cable operator's fundamental First Amendment rights.

Because the capacity of cable systems is finite, such forced carriage inevitably would come at the expense of the operator's ability to carry other programming services. And because budgets also are finite, if government-mandated prices are established above the level that a cable operator would otherwise be willing to pay, the operator's ability to acquire other programming that it would prefer to present to its customers (and that its customers would prefer to receive) will be adversely impacted. Cable operators would be forced to either reduce the quantity or quality of programming carried or to increase prices, or both. Additionally, if the proposed changes in the program carriage rules are adopted, niche services that do not compete with any services owned by a cable operator, and thus presumably would not be entitled to invoke the rules, will be pushed to the sidelines by programming that does not expand diversity, but merely seeks to attract the same audience as existing, affiliated services.

In short, the more narrowly tailored approach is to simply let the marketplace continue to work. Where competition is vibrant, the marketplace is the best means of ensuring a diversity of voices and fair competition. In contrast, heavy-handed government compulsion will inevitably result in some speech being favored over other speech for no clear reasons. In the absence of any market power, it is highly questionable whether program carriage requirements are sustainable at all under the First Amendment. But any attempt to do away with the current requirement that program carriage complainants actually prove that they have been harmed by discrimination based on their affiliation would clearly be unable to survive any level of First Amendment scrutiny.

The Commission Has No Authority To Impose Mandatory Arbitration.

The current leased access and program carriage rules already contemplate voluntary alternative dispute resolution ("ADR") to resolve disputes and there is no record evidence that such procedures are not working.[19] Even if the Commission were to conclude otherwise, it is constrained by federal law from imposing mandatory ADR in such proceedings. Pursuant to Supreme Court precedent, "a party cannot be required to submit to arbitration any dispute which

[19] *See* 47 C.F.R. §§ 76.975(b)(1), 76.975(b)(5), 47 C.F.R. § 76.7(g).

he has not agreed so to submit."[20] The ADRA likewise seeks to ensure "that the use of arbitration is *truly voluntary* on all sides" by prohibiting federal agencies from requiring parties to submit to mandatory ADR procedures.[21]

More specifically, the ADRA states that arbitration may only be used "as an alternative means of dispute resolution whenever all parties consent."[22] While the Commission has concluded in its ruling involving The America Channel that the ADRA refers only to "binding arbitration" such that adoption of non-binding arbitration (*i.e.*, where the arbitrator's findings are subject to *de novo* review) as a merger condition does not violate the ADRA,[23] this finding is incorrect and is contrary to the Commission's previous announcements on the issue in its *Initial ADR Policy Statement* (discussed in further detail below).[24] Dicta in the decision confuses "non-binding" arbitration with "voluntary" arbitration.[25] The ADRA applies to "any procedure that is used to resolve issues in controversy" and is not limited solely to binding arbitration.[26] Thus, *de novo* review does not make mandatory arbitration lawful, as parties remain compelled to submit to the procedure without their consent.

It is important to understand that the Commission adopted the current leased access and program carriage voluntary ADR procedures pursuant to its *Initial ADR Policy Statement*, which was in turn issued in response to Congress' enactment of the ADRA. The *Initial ADR Policy Statement* recognizes that the ADRA "authorize[s] administrative agencies to use arbitration, mediation, settlement negotiation, negotiated rulemaking and *other consensual methods* of dispute resolution" and states that "the Commission will make every effort possible to resolve

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[20] *AT&T Techs., Inc. v. Communications Workers of Am.*, 475 U.S. 643, 648 (1986), *citing United Steelworkers of Am. V. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582 (1960); *see also Air Line Pilots Ass'n v. Miller*, 523 U.S. 866, 869 (1998) (holding that "employees need not submit fee disputes to arbitration when they have never agreed to do so.").

[21] S. Rep. No. 101-543, at 13, *as reprinted in* 1990 U.S.C.C.A.N. 3931, 3943 (emphasis added); *accord id.* at 3932 (stating that "[p]articipation in the ADR techniques authorized by the Act is predicated on the voluntary, informed agreement of all parties to a dispute."); *see also id.* at 3933 (explaining that Congress passed ADRA "to promote more efficient, effective administrative procedures through the use of voluntary, informal procedures"); *id.* at 3936 (providing that mandatory ADR is only constitutional if the "decision to arbitrate" is truly "voluntary on the part of all parties and is subject to… [ADRA] guidelines"); *id.* at 3937 (indicating that "[v]oluntary binding arbitration" is only "authorized when all parties consent"); *id.* at 3939 (explaining that ADRA permits alternative dispute resolution only "when all the parties to the dispute voluntarily agree to its use").

[22] 5 U.S.C. § 575(a)(1).

[23] 5 U.S.C. § 575(a)(3) prohibits agencies from requiring parties to submit to arbitration as a condition of entering into a contract or obtaining a benefit.

[24] *Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in which the Commission is a Party*, Initial Policy Statement and Order, 6 FCC Rcd 5669, ¶ 12 (1991) ("*Initial ADR Policy Statement*").

[25] *See Comcast Corporation, Petition for Declaratory Ruling that The America Channel is not a Regional Sports Network*, Order, FCC 07-172, ¶ 4, n. 13 (rel. Sept. 25, 2007). In that proceeding, the Commission recognized that adoption of the arbitration measures in the *Adelphia* proceeding involved the parties' consent, concluding that "having accepted the conditional grant of the Adelphia applications, Comcast cannot now challenge the conditions that were integral to that grant." Having determined that the arbitration provisions in the *Adelphia Order* were voluntary, discussion of the Commission's power to impose arbitration on an involuntary basis was dicta.

[26] 5 U.S.C. § 571(3).

appropriate disputes through [such methods] *w[h]ere the parties involved consent* to their use..."[27] The Commission also made the following proclamation: "We emphasize that these techniques are *purely voluntary* and that any parties choosing not to use ADR procedures will not be penalized in any manner."[28]

Thus, regardless of whether the *Initial ADR Policy Statement* is actually valid (as the Commission has not released a final order upon consultation with and review by certain other government agencies that would constitute the formal guidance required under the ADRA), the Commission clearly has not justified a complete reversal in its position.[29] Furthermore, given the Commission's argument that the ADRA does not apply to arbitration procedures voluntarily agreed to in merger proceedings, in order for the Commission to adopt mandatory arbitration procedures in the leased access and program carriage contexts, it must be able to justify their adoption under a separate statutory provision, and cannot do so.

Because Congress has not expressly prescribed mandatory ADR as a mechanism for resolving leased access or program carriage disputes,[30] the Commission also lacks authority under the ADRA to delegate to third parties the resolution of such disputes via mandatory arbitration. The D.C. Circuit has found that "subdelegations to outside parties are... improper absent an affirmative showing of Congressional authorization."[31] The ADRA provides explicit authorization only for adoption of "*voluntary* procedures which supplement rather than limit other available agency dispute resolution techniques."[32]

The ADRA further prohibits agencies from requiring parties to submit to ADR if, among other things, the matter involves significant questions of policy and agency resolution of the dispute would ensure consistent results among decisions.[33] Leased access and program carriage disputes involve policy implications that the Commission is uniquely qualified to consider, underscoring the importance of the establishment of a consistent and reliable body of precedent. Mandatory arbitration would therefore be inappropriate for resolving such disputes.

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[27] *Initial ADR Policy Statement* at ¶¶ 2, 9 (emphasis added).

[28] *Id.* at ¶ 12 (emphasis added).

[29] *See, e.g.*, 5 U.S.C. § 575(c) (requiring the head of each agency to consult with the Attorney General and issue guidance concerning circumstances where mandatory arbitration is appropriate); *see also Initial ADR Policy Statement* at ¶¶ 2, 16 (expressly providing for issuance of a final policy statement that would be subject to review by the Administrative Conference of the United States and the Federal Mediation and Conciliation Service).

[30] *See, e.g.*, 47 U.S.C. § 252(b) (mandatory arbitration before the state PUC relating to interconnection and related disputes between telecommunications carriers).

[31] *USTA v. FCC*, 359 F.3d 554, 565 (D.C. Cir. 2004); *see also Michigan Bell v. Lark*, 373 F. Supp. 2d 694 (E.D. Mich. 2005).

[32] 5 U.S.C. § 572(c) (emphasis added).

[33] An agency is prohibited from requiring parties to submit to alternative dispute resolution if, among other things, the matter involves significant questions of Government policy, agency resolution of the dispute would ensure consistent results among decisions, the matter significantly affects persons or organizations who are not parties to the proceeding, or a full public record of the proceeding is important. 5 U.S.C. § 572(b).

Finally, the Commission's statutory mandate under the leased access and program carriage rules was to establish procedures for the "expedited" review and resolution of disputes under these provisions.[34] Even if the Commission continues to rely on faulty logic to conclude that the ADRA does not apply to non-binding arbitration, it has not shown that adding a layer of *de novo* review facilitates the expedited review process Congress has required.

Proposed Reductions In Leased Access Rates Would Be Unjustified and Unlawful.

MAP has submitted a "study" authored by Dr. Gregory Rose ("Rose Study II") that purports to infer a cable operator's "transmission costs" based on highly questionable and unverified "data" that has nothing whatsoever to do with costs (*e.g.*, Dr. Rose's attempt to "reverse engineer" the revenues derived from the unidentified fifteen "least popular" services carried by a "typical" cable operator).[35] Based on that study, MAP proposed that monthly leased access rates should be slashed to a fraction of a penny per subscriber for 24/7 use of an entire leased access channel. This absurd proposal, essentially based on figures plucked from thin air, would produce confiscatory rates that would violate the takings clause of the Fifth Amendment to the U.S. Constitution. More significantly, any suggestion to reduce leased access rates that, unlike MAP's proposal, avoids confiscation by allowing the cable operator to recover its cost plus a reasonable profit, would nevertheless be impermissible under the Communications Act.

As a starting point, the U.S. Constitution establishes limits to the rate-restricting power of governmental agencies. If maximum rates are set too low, then the owner of those productive assets has been deprived of the ability to use those assets to earn a reasonable profit in violation of the Fifth Amendment (if imposed by a federal agency) or the Fourteenth Amendment (if imposed by a State). The United States Supreme Court has held that "[r]ates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment."[36]

While the MAP proposal purports to "infer" a cable operator's "transmission costs" on a per subscriber, per channel basis, as the Economists Inc. analysis submitted by NCTA cogently points out, the Rose Study II relies on highly questionable and unverified "data" that has nothing whatsoever to do with costs, and certainly fails to account for a reasonable profit. Thus, MAP's initial proposal to reduce leased access rates to 15¢ per subscriber per month, as well as its follow-up suggestion to slash leased access rates to a fraction of a penny per subscriber per month, both fail to pass the Constitutional proscription against confiscatory rate setting. However, even if leased access rates could survive Fifth Amendment scrutiny by accounting for allocable costs and a reasonable profit, such rates would nevertheless be unlawful under the Communications Act, as explained below.

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[34] 47 U.S.C §§ 532(b)(2)(A)(iii), 536(a)(4).

[35] Gregory Rose, "Estimation of the Costs of Physical Transmission of the Lowest-Rated 15% of Channels on the Analog and Digital Tiers of CATV Providers" ("Rose Study II"), attached to *ex parte* notice of National Alliance for Media Arts and Culture, et al., MB Docket No. 07-42 (filed Nov. 6, 2007). Time Warner Cable understands that the countless flaws, unfounded assumptions and incorrect methodologies contained in the Rose Study II will be addressed by the National Cable & Telecommunications Association ("NCTA").

[36] *Bluefield Water Works v. PSC*, 262 U.S. 679, 690 (1923) (*"Bluefield"*).

Without question, the Commission has authority to establish cost-based rates for common carriers, subject of course to the fundamental Constitutional ban against confiscatory rates.[37] But Congress has expressly prohibited the Commission, or any regulatory body for that matter, from regulating any cable system "as a common carrier or utility."[38] While that provision alone is sufficient to require leased access rates that are well above cost-of-service rate setting historically applied to common carriers, Congress went further with respect to leased access by mandating that "the price, terms and conditions of such use [must be] at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system."[39] Moreover, Section 612(f) expressly provides that "there shall be a presumption that the price, terms and conditions for use of channel capacity designated pursuant to subsection (b) are reasonable and in good faith unless shown by clear and convincing evidence to the contrary."[40]

Taken together, these provisions lead to the inescapable conclusion that Congress intended for leased access rates to replicate the amounts commercial entities would pay for media time in the open marketplace -- amounts that are substantially in excess of the minimally constitutional cost-based rate approach.[41] This is understandable, given that leased access is intended exclusively for <u>commercial</u> use. Non-commercial users, of course, can use public access channels <u>for free</u>, but commercial users of leased access capacity are required to pay commercially reasonable rates By seeking to replicate marketplace prices, the current leased access rate formula helps ensure that channel leasing decisions have at least some basis in economic reality. For example, given the substantial use of leased access for infomercials today, if leased access rates are set well below the amount required to buy infomercial time on cable programming networks, leased access channels are doomed to become an even greater infomercial wasteland.

Moreover, the Commission has no authority to affirmatively "promote" leased access use under a kind of "Field of Dreams" approach that says "if we set leased access rates low enough, maybe more leased access programmers will come." Not only is the record devoid of any evidence of pent-up demand for leased access, or that lower rates would stimulate such demand, any policy designed to promote leased access use through lower rates would violate the statute.[42]

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[37] *See, e.g., American Telephone and Telegraph Co.*, 64 FCC 2d 1 (1977).

[38] 47 U.S.C. § 541(c).

[39] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Leased Commercial Access*, Second Report and Order and Second Order on Reconsideration of the First Report and Order, 12 FCC Rcd 5267, ¶ 2 (1997) ("*Second Report and Order*"), *citing* Cable Communications Policy Act of 1984 § 612(c)(1), 47 U.S.C. § 532(c)(1).

[40] 47 U.S.C. § 532(f).

[41] As the Commission has correctly determined, "since full-time lessees resemble, and will be competing with, full-time cable networks, it is appropriate that the maximum full-time leased access rate reflect the average marketplace terms and conditions under which cable networks are able to gain access to the cable system." *Second Report and Order* at ¶ 33.

[42] As the Commission has acknowledged, "[w]e continue to believe that Congress did not intend that cable operators subsidize leased access programmers." *Id.* at ¶ 23. *Accord, ValueVision Int'l, Inc. v. FCC,* 149 F.3d 1204 (D.C. Cir. 1998) ("Congress never intended to ensure financial success for leased access programmers. In fact, the Senate Report frankly acknowledged that leased access might not be economically viable.")

Indeed, Congress intended leased access to serve as a very narrowly circumscribed safety valve to address concerns that cable operators might not have the incentive to provide the public with access to diverse programming sources. As the record in this and other Commission proceedings makes clear, the level of competition existing today has produced more programming diversity than could possibly have been imagined back in 1984 when leased access was enacted and the media landscape was dominated by a mere three national television networks. Now that the marketplace is undeniably characterized by vigorous competition, the resultant infringement on cable operators' protected speech rights is constitutionally infirm and there is no basis for making changes to the rules that would further impinge on those rights. In short, any policy designed to promote leased access use through lower rates would violate the First Amendment under the same protections against governmentally forced speech set forth above with respect to the program carriage rules.[43]

Guided by the foregoing principles, it is no wonder that the Commission has consistently rejected imposition of cost-based leased access rates, and this approach has been upheld by the courts.[44] When the "highest implicit fee" approach to leased access rates was initially adopted in 1993, the Commission declined to employ a cost-of-service approach:

> The cost-of-service option would likely require extensive accounting, record-keeping, and costing requirements. We find that it is difficult to justify the cost of this approach, particularly when we are not also requiring it for basic tier rate determinations. It is also possible that substantial migration will occur under this approach, with uncertain and possibly harmful effects on the structure of the industry.[45]

Similarly, when the "highest implicit fee" approach was replaced by the "average implicit fee" in 1997, the Commission again considered — and rejected — a cost-based methodology for leased access rates:

> Because the cost/market rate formula does not adequately account for a significant benefit that cable operators receive from programming, we believe it may result in an unduly low rate that does not adequately capture the value of a channel. Such a rate would not adequately compensate the cable operator and would force cable operators to subsidize leased access programmers, thereby impermissibly affecting

[43] Time Warner Cable acknowledges that the Commission has previously rejected a challenge to leased access based on the ever-increasing programming diversity on cable systems because such programming services are "selected" by the cable operator, and thus fail to satisfy the alleged statutory goal of "source" diversity. *Second Report and Order* at ¶¶ 10-11. This analysis is highly questionable in light of the fact that cable systems today offer literally hundreds of programming services from a wide variety of divergent sources. But now that every consumer in America has a choice among three or more competing MVPDs, the forced-speech burdens imposed by leased access can not possibly be justified as the least burdensome method to promote source diversity -- competition has proven to be far more effective.

[44] *See, e.g., ValueVision, supra* n. 39.

[45] *In the Matter of Implementation of Section of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, ¶ 513 (1993).

> the cable system's operations, financial condition or market development. Similarly, such a rate could impair a cable operator's ability to compete in the multichannel video distribution marketplace by requiring the operator to bump existing programming in exchange for less than its actual value, which would be inconsistent with the growth and development of cable systems.
>
> We therefore conclude that the proposed cost/market rate formula would not accurately establish reasonable maximum rates because, in its attempt to measure the opportunity costs of using a channel for leased access, it ignores a significant opportunity cost -- the effect on subscriber revenue.[46]

Given the statutory policies, and the explicit mandate of Section 612(c)(1), any attempt to set rates for leased access below the current "average implicit rate" would be unlawful. Notably, the statute does not allow leased access rates to be set as low as possible, so long as they are not so low as to drive cable operators out of business. To the contrary, leased access rates must be "at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system."[47] Obviously, any leased access rate that results in less revenue for the cable operator than might be obtained from other uses of that channel would adversely affect the financial condition of the operator. The average implicit fee satisfies the statutory requirement because it accounts for not only subscriber revenues derived from the average channel, but also for lost opportunity costs from devoting that channel to uses outside the operator's control. As explained below, the Commission has acknowledged that such opportunity costs include both subscriber migration (*i.e.*, failure to attract new subscribers or retain existing subscribers due to dissatisfaction stemming from the inferior content on leased access channels) as well as lost advertising revenue which is not derived from leased access channels.

Specifically, as the Commission is aware, "leased access programming will in fact diminish the value of a tier because subscribers will find it so unappealing that viewership of the other programming on the tier will be adversely impacted," and "due to the increased threat of losing subscribers to other services that are not subject to leased access requirements, such as direct broadcast satellite services and wireless services, cable operators cannot afford to use scarce channel capacity for programming that subscribers value negatively."[48] Accordingly, the Commission rejected the proposed cost-based formula because "it does not account for negative effects that leased access programming might have on subscriber revenue (*i.e.*, lost subscriber revenue caused by subscribers dropping the tier or by requiring a lower price due to a devaluation of the tier),"[49] and instead adopted the current "average implicit rate":

> [w]e believe that in order to promote competition and diversity in a manner consistent with the growth and development of cable systems, we must consider the broader effects of our rules on the video programming delivery marketplace,

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[46] *Second Report and Order* at ¶¶ 29-30.

[47] 47 U.S.C. § 532(c)(1) (emphasis added).

[48] *Second Report and Order* at ¶ 38.

[49] *Id.* at ¶ 26.

> including the effect our rules might have on a cable system's ability to compete with other multichannel video distribution systems.[50]
>
> * * *
>
> [a]n implicit fee formula may better reflect the value of the channel capacity, since a formula based strictly on quantifiable costs cannot account for lost subscriber revenue and therefore may not adequately compensate the operator. Given that the maximum rate should not adversely affect the operation, financial condition or market development of the cable system, it is entirely appropriate to consider these non-quantifiable costs, such as any negative effects leased access programming may have on the value of the tier, in establishing the market value of a channel.[51]

No rational basis has been suggested in this proceeding for any departure from the Commission's well-reasoned explanation that the current average implicit fee formula for leased access cannot, consistent with Section 612(f), be supplanted by a methodology that produces lower leased access rates. Indeed, as explained above, any attempt to reduce current leased access rates would violate both the First and Fifth Amendments to the U.S. Constitution.

* * * * * * * * * *

In sum, the record in this proceeding does not support the adoption of any of the proposed drastic and unlawful changes to the Commission's existing program carriage or leased access rules.

Respectfully submitted,

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[50] *Id.* at ¶ 11.

[51] *Id.* at ¶ 45.

Blitzing the FCC

The NFL Network calls a political play.

Everyone knows the National Football League is full of tough guys, but that doesn't mean team owners are above whining to federal regulators when they don't get their way off the field.

The league is currently upset that its eponymous television channel, the NFL Network, isn't getting wide distribution on basic cable. Instead, Time Warner and Comcast want to offer the network as part of their less popular sports tier of programming. The first NFL Network game of the season is on Thanksgiving, and the cable firms show no signs of giving in to the league's demands. The industry maintains that the NFL is charging cable companies too much money for them to offer the network on their basic tier without increasing subscription rates.

Dallas Cowboys owner Jerry Jones, whose team plays twice this season on the channel, has taken to calling for pigskin fans to drop cable operators and switch to satellite television, which runs a special package of NFL games each week. Perhaps the very prosperous league would do better to negotiate more favorable carriage terms with Time Warner and Comcast, though we suppose Mr. Jones has every right to engage in a PR war if he thinks it'll help his bargaining position.

More troubling is the NFL's attempt to involve government regulators in what is essentially a commercial dispute. The league has taken its complaints to the Federal Communications Commission in hopes that the agency will force the hand of cable operators. A media campaign against cable is one thing, but seeking regulatory leverage in a private-sector dispute is unsportsman-like conduct. We trust the FCC knows the difference and will respond accordingly.

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Q3 2007 State Of Video/Data/Phone Market

- **US NET VIDEO ADDITIONS SLOW IN Q3; CABLE VIDEO SUB LOSSES, ACCELERATE-** U.S. video net subscriber (sub) additions (adds) were down 26% YoY in Q3, although up +52% sequentially. Key takeaways during Q3 was that cable saw its 2nd straight quarter of video sub losses (-203K) in the face of increasing competition from telcos, still solid sat TV adds and the likely effects of a slowing housing market/subprime. Cable adds have been slowing since Q4'06 which coincides, not surprisingly, with the telco video launch. Sat TV led the industry in net subscriber additions during Q3 (+350K) driven by strong results from DirecTV, while the telcos, Verizon in particular, saw continued acceleration (+277K, +35% sequentially). As of Q3'07 the rate of U.S. household growth had slowed to an annual rate of 0.6% vs. 1.2% last year, which equates to ~155K fewer households being formed per quarter.

- **DATA REBOUND DRIVEN BY CABLE; HIGHLIGHTS DSL TO CABLE MIGRATION-** Broadband additions continued to slow in Q3 at 1.98M which represented a 24% YoY decline. The YoY decline reflects the fact that in Q3'06 AOL moved to a free model which helped drive a dial-up Internet user decline of (2.3M) in Q3'06 vs. a (1.1M) loss in Q3'07. However, broadband data additions did rebound +15% sequentially. As expected, cable led the snap back in data results, up +32% sequentially to 1.05M, while telco saw flat sequential growth highlighting the increasing migration of DSL customers to cable broadband, which was only partly offset by FIOS/U-Verse. During Q3, cable market share of broadband net additions (53%) surpassed 50% for the first time in over 3 years. We continue to expect cable data additions to slow but at a measured pace. For example, cable's incremental penetration of households this quarter was 0.9% (vs. 1.0% in Q3'06 and Q3'05). At Q3 end, we estimate US broadband penetration was 51% and overall internet penetration was 63%, vs. 44% and 62%, respectively, in the Q3'06.

- **WHILE CABLE CONTINUES TO ADD A LARGE NUMBER OF PHONE SUBSCRIBERS, Q3'07 MARKED THE 2nd CONSECUTIVE QUARTER WITH A SEQUENTIAL SLOWDOWN-** While overall cable telephony additions were a healthy +43% YoY to 1.18M, the (-2%) Q3 sequential result marked the 2nd quarter in a row that saw a sequential slowdown (+15% in Q1'07 to +3% in Q2'07). At Q3, cable had reached the 11% telephony penetration level and as one would expect the next 10% will likely be more difficult than first 10%, however we believe 20%+ is inevitable given cable's pricing advantage and low incremental costs to offer the service. Telco net wireline losses (-1.62M) increased 5% YoY, while overall telephony subs fell 7% YoY.

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Please see page 10 for rating definitions, important disclosures and required analyst certifications.

Q3'07 State of the U.S. Cable/Satellite TV Industry

Please find attached a comparison of the performance of cable, satellite and telco operators in the just completed Q3 in regards to video, phone and data additions. We have also provided our latest long term forecasts for U.S. video, data and voice.

U.S. NET VIDEO ADDITIONS SLOW IN Q3; CABLE VIDEO SUB LOSSES, ACCELERATE- U.S. video net subscriber (sub) additions (adds) were down 26% YoY in Q3, although up 52% sequentially. Key takeaways during Q3 was that cable saw its 2nd straight quarter of video sub losses (-203K) in the face of increasing competition from telcos, still solid sat TV adds and the likely effects of a slowing housing market/subprime. Cable adds have been slowing since Q4'06 which coincides, not surprisingly, with the telco video launch. Sat TV led the industry in net subscriber additions during Q3 (+350K) driven by strong results from DirecTV, while the telcos, Verizon in particular, saw continued acceleration (+277K, +35% sequentially). As of Q3'07 the rate of U.S. household growth had slowed to an annual rate of 0.6% vs. 1.2% last year, which equates to ~155K fewer households being formed per quarter.

DATA REBOUND DRIVEN BY CABLE; HIGHLIGHTS DSL TO CABLE MIGRATION- Broadband additions continued to slow in Q3 at 1.98M which represented a 24% YoY decline. The YoY decline reflects that fact that in Q3'06 AOL moved to a free model which helped drive a dial-up Internet user decline of (2.3M) in Q3'06 vs. a (1.1M) loss in Q3'07. However, broadband data additions did rebound +15% sequentially. As expected, cable led the snap back in data results, up +32% sequentially to 1.05M, while telco saw flat sequential growth highlighting the increasing migration of DSL customers to cable broadband, which was only partly offset by FIOS/U-Verse. During Q3, cable market share of broadband net additions (53%) surpassed 50% for the first time in over 3 years. We continue to expect cable data additions to slow but at a measured pace. For example, cable's incremental penetration of households this quarter was 0.9% (vs. 1.0% in Q3'06 and Q3'05). At Q3 end, we estimate US broadband penetration was 51% and overall internet penetration was 63%, vs. 44% and 62%, respectively in the Q3'06.

WHILE CABLE CONTINUES TO ADD A LARGE NUMBER OF PHONE SUBSCRIBERS, Q3'07 MARKED THE 2nd CONSECUTIVE QUARTER WITH A SEQUENTIAL SLOWDOWN- While overall cable telephony additions were a healthy +43% YoY to 1.18M, the (-2%) Q3 sequential result marked the 2nd quarter in a row that saw a sequential slowdown (+15% in Q1'07 to +3% in Q2'07). At Q3, cable had reached the 11% telephony penetration level and as one would expect the next 10% will be more difficult than first 10%, however we believe 20%+ is inevitable given cable's pricing advantage and low incremental costs to offer the service. Telco net wireline losses (-1.62M) increased 5% YoY, while overall telephony subs fell 7% YoY.

CABLE AND SATELLITE STOCKS ARE WAY TOO INEXPENSIVE, IN OUR OPINION, BUT GENERALLY LACK NEAR TERM DRIVERS OTHER THAN VALUATION--After stellar performance in 2006 (with the cable names +49% and sat TV +58% vs. a +14% S&P), 2007 has been a different story (-31%, +0%, +2.3% respectively) as concerns over competition, far too aggressive consensus expectations, a slowing housing market, economic issues around sub-prime have walloped particularly the cable stocks (5.8X '08E OCF, 20X '08E FCF) to levels actually below their slower growth telco counterparts. Sat TV names currently trade at similar levels to cable at 5.7X '08E OCF and 19X '08E FCF. In the end, if sat TV and cable can simply demonstrate that they are likely to continue to put up solid double digit EBITDA and increasing free cash flow it is difficult to imagine how the names long term can continue to trade at such depressed levels. We also point out that in a recessionary environment television (and increasingly data) is the last thing consumers are likely to go without making these names arguably defensive. We continue to believe for long term focused investors Outperform rated DIRECTV (DTV, $23.98), EchoStar (DISH, $39.51), Comcast (CMCSA, $19.66) and Time Warner (TWC, $25.43) are attractively valued. We continue to be relatively cautious on the more levered cable names including Market Perform rated Cablevision (CVC, $25.77) and Mediacom (MCCC, $4.43).

Quarterly U.S. Video Subscribers (Q1'05A - Q4'07E)	1Q05A	2Q05A	3Q05A	4Q05A	1Q06A	2Q06A	3Q06A	4Q06A	1Q07A	2Q07A	3Q07A	4Q07E
Net Subscriber Additions												
Cable	-	60	(50)	10	100	(30)	50	70	171	(223)	(203)	(113)
% Annual Growth						NM	NM	600%	71%	NM	NM	NM
Sequential			NM	NM	900%	NM	NM	40%	144%	NM	NM	NM
Share of Net Adds		12%	-11%	2%	17%	-9%	9%	9%	20%	-80%	-48%	-16%
Satellite	-	450	518	530	480	320	460	625	545	298	350	498
% Annual Growth						(29%)	(11%)	18%	13%	(7%)	(24%)	(20%)
Sequential			15%	2%	(9%)	(33%)	44%	36%	(13%)	(45%)	18%	42%
Share of Net Adds		88%	111%	96%	81%	98%	80%	80%	63%	106%	82%	72%
Telco	-	-	-	10	10	35	66	89	151	205	277	303
% Annual Growth								790%	1,410%	486%	320%	240%
Sequential						250%	89%	35%	70%	36%	35%	9%
Share of Net Adds		0%	0%	2%	2%	11%	11%	11%	17%	73%	65%	44%
TOTAL	-	510	468	550	590	325	576	784	867	280	425	688
% Annual Growth						(36%)	23%	43%	47%	(14%)	(26%)	(12%)
Sequential			(8%)	18%	7%	(45%)	77%	36%	11%	(68%)	52%	62%
Household Penetration												
Cable	58%	58%	57%	57%	57%	57%	57%	56%	56%	56%	56%	56%
Incremental Penetration		(0.2%)	(0.3%)	(0.2%)	(0.1%)	(0.2%)	(0.2%)	(0.1%)	0.0%	(0.3%)	(0.3%)	(0.2%)
Satellite	23%	23%	23%	24%	24%	24%	25%	25%	25%	26%	26%	26%
Incremental Penetration		0.3%	0.4%	0.4%	0.3%	0.2%	0.3%	0.4%	0.4%	0.2%	0.3%	0.4%
Telco	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	1%	1%
Incremental Penetration		0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.1%	0.1%	0.2%	0.2%	0.3%
Total Penetration	81%	81%	81%	81%	81%	81%	81%	82%	82%	82%	83%	83%
Incremental Penetration		0.1%	0.1%	0.1%	0.2%	(0.0%)	0.2%	0.4%	0.6%	0.1%	0.2%	0.4%
Video Subscribers												
Cable	65,400	65,460	65,410	65,420	65,520	65,490	65,540	65,610	65,781	65,558	65,356	65,242
% Annual Growth					0%	0%	0%	0%	0%	0%	(0%)	(1%)
Satellite	25,675	26,125	26,643	27,173	27,653	27,973	28,433	29,058	29,603	29,901	30,251	30,749
% Annual Growth					8%	7%	7%	7%	7%	7%	6%	6%
Telco	-	-	-	10	20	55	121	210	361	566	843	1,146
% Annual Growth								NM	NM	NM	NM	446%
Total Video Subscribers	91,075	91,585	92,053	92,603	93,193	93,518	94,094	94,878	95,745	96,025	96,449	97,137
% Annual Growth					2.3%	2.1%	2.2%	2.5%	2.7%	2.7%	2.5%	2.4%

Source: Wachovia Capital Markets, LLC estimates, Company Reports

Quarterly U.S. Digital Subscribers (Q1'05A - Q4'07E)	1Q05A	2Q05A	3Q05A	4Q05A	1Q06A	2Q06A	3Q06A	4Q06A	1Q07A	2Q07A	3Q07A	4Q07E
Net Subscriber Additions												
Cable		780	746	984	1,221	521	990	1,211	1,318	1,163	859	922
% Annual Growth						(33%)	33%	23%	8%	123%	(13%)	(24%)
Sequential			(4%)	32%	24%	(57%)	90%	22%	9%	(12%)	(26%)	7%
Share of Net Adds		63%	59%	65%	71%	59%	65%	63%	65%	70%	58%	54%
Satellite		450	518	530	480	320	460	625	545	298	350	498
% Annual Growth						(29%)	(11%)	18%	13%	(7%)	(24%)	(20%)
Sequential			15%	2%	(9%)	(33%)	44%	36%	(13%)	(45%)	18%	42%
Share of Net Adds		37%	41%	35%	28%	37%	30%	32%	27%	18%	24%	29%
Telco		-	-	10	10	35	66	89	151	205	277	303
% Annual Growth								790%	1,410%	486%	320%	240%
Sequential			0%	0%	0%	250%	89%	35%	70%	36%	35%	9%
Share of Net Adds		0%	0%	1%	1%	4%	4%	5%	7%	12%	19%	18%
TOTAL		1,230	1,264	1,524	1,711	876	1,516	1,925	2,014	1,666	1,486	1,724
% Annual Growth						(29%)	20%	26%	18%	90%	(2%)	(10%)
Sequential			3%	21%	12%	(49%)	73%	27%	5%	(17%)	(11%)	16%
Household Penetration												
Cable	23%	23%	24%	25%	26%	26%	27%	28%	29%	30%	30%	31%
Satellite	23%	23%	23%	24%	24%	24%	25%	25%	25%	26%	26%	26%
Telco	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	1%	1%
Total Penetration	46%	46%	47%	48%	50%	50%	51%	53%	55%	56%	57%	58%
Digital Subscribers												
Cable	25,789	26,569	27,314	28,299	29,520	30,040	31,030	32,241	33,559	34,722	35,581	36,503
% Annual Growth					14%	13%	14%	14%	14%	16%	15%	13%
Satellite	25,675	26,125	26,643	27,173	27,653	27,973	28,433	29,058	29,603	29,901	30,251	30,749
% Annual Growth					8%	7%	7%	7%	7%	7%	6%	6%
Telco	-	-	-	10	20	55	121	210	361	566	843	1,146
% Annual Growth								NM	NM	NM	NM	446%
Total Digital Subscribers	51,464	52,693	53,957	55,472	57,173	58,013	59,463	61,300	63,162	64,623	65,832	67,252
% Annual Growth		2.4%	2.4%	2.8%	3.1%	1.5%	2.5%	3.1%	3.0%	2.3%	1.9%	2.2%

Source: Wachovia Capital Markets, LLC estimates, Company Reports

Quarterly U.S. Data Subscribers (Q1'05A - Q4'07E)

	1Q05A	2Q05A	3Q05A	4Q05A	1Q06A	2Q06A	3Q06A	4Q06A	1Q07A	2Q07A	3Q07A	4Q07E
Net Subscriber Additions												
Cable		866	1,202	1,127	1,402	917	1,202	1,220	1,510	798	1,056	988
% Annual Growth						6%	0%	8%	8%	(13%)	(12%)	(19%)
% Sequential Grwoth			39%	(6%)	24%	(35%)	31%	1%	24%	(47%)	32%	(6%)
Share of Broadband Net Adds		50%	46%	42%	46%	44%	46%	49%	50%	46%	53%	44%
Telco		856	1,420	1,578	1,659	1,166	1,418	1,254	1,489	926	923	1,282
% Annual Growth						36%	(0%)	(21%)	(10%)	(21%)	(35%)	2%
% Sequential Grwoth			66%	11%	5%	(30%)	22%	(12%)	19%	(38%)	(0%)	39%
Share of Broadband Net Adds		50%	54%	58%	54%	56%	54%	51%	50%	54%	47%	56%
Broadband		1,722	2,622	2,705	3,061	2,083	2,620	2,473	2,999	1,724	1,979	2,270
% Annual Growth						21%	(0%)	(9%)	(2%)	(17%)	(24%)	(8%)
% Sequential Grwoth			52%	3%	13%	(32%)	26%	(6%)	21%	(43%)	15%	15%
Dial-Up		(1,575)	(1,101)	(1,395)	(1,307)	(1,797)	(2,278)	(2,110)	(1,678)	(1,529)	(1,132)	(1,179)
% Annual Growth						14%	107%	51%	28%	(15%)	(50%)	(44%)
% Sequential Grwoth					(6%)	37%	27%	(7%)	(20%)	(9%)	(26%)	4%
TOTAL		147	1,521	1,310	1,754	286	342	363	1,321	195	847	1,090
YoY						94%	(77%)	(72%)	(25%)	(32%)	148%	200%
Sequential			932%	(14%)	34%	(84%)	20%	6%	264%	(85%)	335%	29%
Household Penetration												
Cable	19%	20%	21%	21%	23%	23%	24%	25%	26%	27%	28%	29%
Incremental Penetration		0.7%	1.0%	0.9%	1.1%	0.7%	1.0%	1.0%	1.2%	0.6%	0.9%	0.8%
Telco (DSL, FIOS)	13%	14%	15%	16%	17%	18%	20%	21%	22%	23%	23%	24%
Incremental Penetration		0.7%	1.2%	1.2%	1.3%	1.0%	1.1%	1.0%	1.2%	0.8%	0.8%	1.1%
Dial-Up	27%	26%	25%	23%	22%	20%	18%	16%	15%	13%	12%	10%
Incremental Penetration		(1.5%)	(1.1%)	(1.4%)	(1.2%)	(1.7%)	(2.1%)	(1.9%)	(1.6%)	(1.5%)	(1.4%)	(1.2%)
Total Penetration	59%	59%	60%	61%	62%	62%	62%	62%	63%	63%	63%	64%
Incremental Penetration		(0.2%)	1.0%	0.8%	1.2%	(0.0%)	(0.0%)	0.1%	0.9%	(0.1%)	0.2%	0.6%
Broadband Penet.	32%	33%	35%	38%	40%	42%	44%	46%	48%	50%	51%	53%
Incremental Penetration		1.4%	2.2%	2.1%	2.5%	1.7%	2.1%	2.0%	2.4%	1.5%	1.6%	1.8%
Total Data Subscribers												
Cable	21,144	22,007	23,215	24,337	25,524	26,941	28,148	29,310	30,816	31,575	32,618	33,606
% Annual Growth					21%	22%	21%	20%	21%	17%	16%	15%
Telco	14,719	15,575	16,995	18,495	20,105	21,336	22,745	24,049	25,453	26,452	27,386	28,668
% Annual Growth					37%	37%	34%	30%	27%	24%	20%	19%
Dial-Up	30,806	29,181	28,030	26,585	25,253	23,331	20,978	18,793	17,015	15,286	13,719	12,290
% Annual Growth					(18%)	(20%)	(25%)	(29%)	(33%)	(34%)	(35%)	(35%)
TOTAL	66,669	66,763	68,240	69,417	70,882	71,608	71,871	72,152	73,284	73,313	73,723	74,564
YoY					6.3%	7.3%	5.3%	3.9%	3.4%	2.4%	2.6%	3.3%
Cable Share	32%	33%	34%	35%	36%	38%	39%	41%	42%	43%	44%	45%
Telco Share	22%	23%	25%	27%	28%	30%	32%	33%	35%	36%	37%	38%
Dial-Up Share	46%	44%	41%	38%	36%	33%	29%	26%	23%	21%	19%	16%

Source: Leichtman Group, Wachovia Capital Markets, LCC estimates, Company Reports

Quarterly U.S. Wireline Telephony Subscribers (Q1'05A - Q4'07E)

	1Q05A	2Q05A	3Q05A	4Q05A	1Q06A	2Q06A	3Q06A	4Q06A	1Q07A	2Q07A	3Q07A	4Q07E
Net Subscriber Additions												
Cable		510	520	670	830	790	830	1,020	1,170	1,210	1,185	1,222
% Annual Growth						55%	59%	52%	41%	53%	43%	20%
% Sequential Grwoth			2%	29%	24%	(5%)	5%	23%	15%	3%	(2%)	3%
Share of Net Adds (ex Telco)		71%	71%	76%	72%	76%	80%	86%	88%	96%	85%	88%
Telco		(1,467)	(1,323)	(1,268)	(1,242)	(1,797)	(1,549)	(1,375)	(1,348)	(1,665)	(1,620)	(1,495)
% Annual Growth						22%	17%	8%	9%	(7%)	5%	9%
% Sequential Grwoth			(10%)	(4%)	(2%)	45%	(14%)	(11%)	(2%)	24%	(3%)	(8%)
Other		208	214	207	328	256	205	166	166	57	214	160
% Annual Growth						23%	(4%)	(20%)	(50%)	(78%)	4%	(4%)
% Sequential Grwoth			3%	(3%)	58%	(22%)	(20%)	(19%)	(0%)	(66%)	277%	(25%)
Share of Net Adds (ex Telco)		29%	29%	24%	28%	24%	20%	14%	12%	4%	15%	12%
TOTAL		(749)	(589)	(390)	(84)	(751)	(515)	(189)	(12)	(398)	(221)	(113)
% Annual Growth						0%	(13%)	(52%)	(86%)	(47%)	(57%)	(40%)
% Sequential Grwoth			(21%)	(34%)	(78%)	794%	(31%)	(63%)	(94%)	3,176%	(44%)	(49%)
Household Penetration												
Cable	4%	4%	5%	5%	6%	7%	7%	8%	9%	10%	11%	12%
Incremental Penetration		0.4%	0.4%	0.6%	0.7%	0.7%	0.7%	0.9%	1.0%	1.0%	1.0%	1.0%
Telco	81%	79%	77%	76%	75%	73%	71%	70%	68%	67%	66%	64%
Incremental Penetration		(1.6%)	(1.5%)	(1.4%)	(1.4%)	(1.8%)	(1.6%)	(1.4%)	(1.3%)	(1.3%)	(1.5%)	(1.4%)
Other	6%	6%	7%	7%	8%	8%	9%	9%	9%	10%	10%	10%
Incremental Penetration		0.5%	0.5%	0.5%	0.6%	0.5%	0.5%	0.5%	0.3%	0.2%	0.2%	0.2%
Total	89.9%	89.1%	88.6%	88.2%	88.1%	87.5%	87.0%	87.0%	87.0%	87.0%	86.7%	86.6%
Incremental Penetration		(0.7%)	(0.6%)	(0.4%)	(0.1%)	(0.7%)	(0.4%)	(0.1%)	0.0%	(0.0%)	(0.3%)	(0.1%)
Telephony Subscribers												
Cable	4,249	4,760	5,280	5,950	6,780	7,570	8,400	9,420	10,590	11,801	13,001	14,223
% Annual Growth						59%	59%	58%	56%	56%	55%	51%
Telco	91,077	89,610	88,287	87,019	85,777	83,980	82,431	81,056	79,708	78,375	76,755	75,260
% Annual Growth						(6%)	(7%)	(7%)	(7%)	(7%)	(7%)	(7%)
Other	640	848	1,062	1,269	1,597	1,853	2,058	2,224	2,390	2,446	2,660	2,820
% Annual Growth						119%	94%	75%	50%	32%	29%	27%
TOTAL	95,966	95,217	94,629	94,238	94,154	93,404	92,889	92,700	92,688	92,622	92,416	92,303
% Annual Growth						(1.9%)	(1.8%)	(1.6%)	(1.6%)	(0.8%)	(0.5%)	(0.4%)
Cable Share	4%	5%	6%	6%	7%	8%	9%	10%	11%	13%	14%	15%
Telco Share	95%	94%	93%	92%	91%	90%	89%	87%	86%	85%	83%	82%
Other Share	1%	1%	1%	1%	2%	2%	2%	2%	3%	3%	3%	3%

Source: Wachovia Capital Markets, LLC estimates, Company Reports

U.S. Multichannel Forecast (2000A-2010E)

(Units in thousands)

	2000A	2001A	2002A	2003A	2004A	2005A	2006A	2007E	2008E	2009E	2010E	07E-'10E CAGR
Total U.S. Homes	104,705	107,809	109,297	110,936	112,601	114,515	116,232	117,104	117,690	118,572	119,758	1%
% Annual Growth	0.8%	3.0%	1.4%	1.5%	1.5%	1.7%	1.5%	0.8%	0.5%	0.8%	1.0%	
TV Homes/Potential Multichannel Market												
U.S. TV Homes	101,564	105,114	106,565	108,163	109,785	111,652	113,327	114,177	114,747	115,608	116,764	1%
% of U.S. Homes	97%	98%	98%	98%	98%	98%	98%	98%	98%	98%	98%	
Businesses, RVs and Other	16,000	16,474	16,702	16,952	17,207	17,499	17,762	17,895	17,984	18,119	18,300	1%
Total Potential Multichannel TV Market	117,565	121,589	123,267	125,116	126,993	129,152	131,089	132,072	132,733	133,728	135,065	1%
Basic Video Cable Subscribers												
Total	66,600	66,900	66,100	66,000	65,400	65,400	65,610	65,242	64,687	63,703	62,418	(1%)
% Annual Change	1.0%	0.5%	(1.2%)	(0.2%)	(0.9%)	0.0%	0.3%	(0.6%)	(0.9%)	(1.5%)	(2.0%)	
Penetration of Total U.S. TV Homes	65.6%	63.6%	62.0%	61.0%	59.6%	58.6%	57.9%	57.1%	56.4%	55.1%	53.5%	
Share of U.S. Multichannel Subscribers	78.5%	76.4%	74.4%	72.8%	70.4%	68.8%	67.5%	65.8%	64.2%	62.7%	61.4%	
Cable Net Additions	-	300	(800)	(100)	(600)	0	210	(368)	(555)	(984)	(1,285)	
% Annual Change			(366.7%)	(87.5%)	500.0%	(100.0%)		NM	50.9%	77.3%	30.6%	
DBS Subscribers												
Total	14,390	17,165	19,357	21,637	24,845	27,173	29,058	30,749	31,674	32,029	31,929	1%
% Annual Change	29.5%	19.3%	12.8%	11.8%	14.8%	9.4%	6.9%	5.8%	3.0%	1.1%	-0.3%	
Penetration of Total U.S. TV Homes	14.2%	16.3%	18.2%	20.0%	22.6%	24.3%	25.6%	26.9%	27.6%	27.7%	27.3%	
Penetration of Potential Multichannel TV Market	12.2%	14.1%	15.7%	17.3%	19.6%	21.0%	22.2%	23.3%	23.9%	24.0%	23.6%	
Share of U.S. Multichannel Subscribers	17.0%	19.6%	21.8%	23.9%	26.7%	28.6%	29.9%	31.0%	31.4%	31.6%	31.4%	
DBS Net Additions	3,277	2,775	2,192	2,280	3,208	2,328	1,886	1,691	925	355	(100)	
% Annual Change	-	(15.3%)	(21.0%)	4.0%	40.7%	(27.4%)	(19.0%)	(10.3%)	(45.3%)	(61.6%)	(128.2%)	132%
Telco Subscribers												
Total							210	1,146	2,480	4,030	5,665	70%
% Annual Change	-	-	-	-	-	-	-	445.7%	116.4%	62.5%	40.3%	
Penetration of Total U.S. TV Homes	-	-	-	-	-	-	0.2%	1.0%	2.2%	3.5%	4.8%	
Penetration of Potential Multichannel TV Market	-	-	-	-	-	-	0.2%	0.9%	1.9%	3.0%	4.2%	
Share of U.S. Multichannel Subscribers	-	-	-	-	-	-	0.2%	1.2%	2.5%	4.0%	5.6%	
Telco Net Additions	-	-	-	-	-	-	210	936	1,334	1,550	1,625	
% Annual Change								345.7%	42.5%	16.2%	4.8%	
Other	3,850	3,536	3,390	3,029	2,650	2,550	2,250	2,025	1,900	1,800	1,700	(6%)
Total Multichannel Subscribers	84,840	87,601	88,847	90,666	92,895	95,123	97,128	99,162	100,741	101,562	101,702	1%
% Annual Change	-	3.3%	1.4%	2.0%	2.5%	2.4%	2.1%	2.1%	1.6%	0.8%	0.1%	
Total Multichannel Net Additions	-	2,761	1,246	1,819	2,229	2,228	2,005	2,034	1,579	821	140	
Multichannel Penetration of U.S. TV Homes	83.6%	83.3%	83.4%	83.8%	84.6%	85.2%	85.7%	86.9%	87.8%	87.9%	87.1%	
Multichannel Penetration of Potential Market	72.2%	72.0%	72.1%	72.5%	73.1%	73.7%	74.1%	75.1%	75.9%	75.9%	75.3%	

++ Piracy may add ~5% to penetration levels.

Operators often measure businesses in EBU's (or equivalent business units), which divides revenue received by average monthly revenue per subscriber; thus, penetration may appear artificially high.

Sources: Wachovia Capital Markets, LLC estimates, US Dept of Commerce, US Census Bureau, Kagan Research, Leichtman Group, and Company Reports

U.S. Data Forecast (2005A-2010E)

(Units in thousands)

	2005A	2006A	2007E	2008E	2009E	2010E	07-'10 CAGR
Total U.S. Homes	114,515	116,232	117,104	117,690	118,572	119,758	1%
% Annual Growth	1.7%	1.5%	0.8%	0.5%	0.8%	1.0%	
Cable Data Subscribers							
TOTAL	24,337	29,310	33,606	37,172	40,224	42,616	8%
% Annual Change		20.4%	14.7%	10.6%	8.2%	5.9%	
Penetration of Total U.S. Homes	21.3%	25.2%	28.7%	31.6%	33.9%	35.6%	
Share of U.S. Data Subscribers	35.1%	40.6%	45.1%	48.1%	50.1%	51.4%	
Cable Net Additions	NA	4,973	4,296	3,566	3,052	2,392	
% Annual Change	NA	NA	(14%)	(17%)	(14%)	(22%)	
Telco Data Subs							
TOTAL	18,495	24,049	28,668	32,190	35,141	37,475	9%
% Annual Change		30.0%	19.2%	12.3%	9.2%	6.6%	
Penetration of Total U.S. Homes	16.2%	20.7%	24.5%	27.4%	29.6%	31.3%	
Share of U.S. Data Subscribers	26.6%	33.3%	38.4%	41.6%	43.8%	45.2%	
Telco Net Additions	NA	5,554	4,619	3,522	2,951	2,334	
% Annual Change	NA	NA	(17%)	(24%)	(16%)	(21%)	
Dial Up & Other							
TOTAL	26,585	18,793	12,290	7,995	4,916	2,793	-39%
% Annual Change		(29.3%)	(34.6%)	(34.9%)	(38.5%)	(43.2%)	
Share of U.S. Data Subscribers	38.3%	26.0%	16.5%	10.3%	6.1%	3.4%	
Penetration of Total U.S. Homes	23.2%	16.2%	10.5%	6.8%	4.1%	2.3%	
Dial Up & Other Net Additions		(7,792)	(6,503)	(4,294)	(3,080)	(2,122)	
% Annual Change			(16.5%)	(34.0%)	(28.3%)	(31.1%)	
Total Broadband Subscribers	42,832	53,359	62,274	69,362	75,365	80,092	
% Annual Change			16.7%	11.4%	8.7%	6.3%	
% of Total Data Subscribers	62%	74%	84%	90%	94%	97%	
Total Broadband Net Additions		10,527	8,915	7,088	6,003	4,726	
% Annual Change			(15.3%)	(20.5%)	(15.3%)	(21.3%)	
Total Data Subscribers	69,417	72,152	74,564	77,357	80,281	82,885	4%
% Annual Change		3.9%	3.3%	3.7%	3.8%	3.2%	
Data Penetration of U.S. Households	61%	62%	64%	66%	68%	69%	
Broadband Penetration of Potential Market	37%	46%	53%	59%	64%	67%	

Operators often measure businesses in EBU's (or equivalent business units) which divides revenue received by average monthly revenue per subscriber; thus, penetration may appear artificially high.

Sources: Wachovia Capital Markets, LLC estimates, US Dept of Commerce, US Census Bureau and company reports

U.S.Telephony Forecast (2005A-2010E)

(Units in thousands)

	2005A	2006A	2007E	2008E	2009E	2010E	07-'10 CAGR
Total U.S. Homes	114,515	116,232	117,104	117,690	118,572	119,758	1%
% Annual Growth	1.7%	1.5%	0.8%	0.5%	0.8%	1.0%	
Cable Phone Subscribers							
% Annual Change		58.3%	51.0%	35.8%	25.2%	18.1%	
Penetration of U.S. Homes	5.2%	8.1%	12.1%	16.4%	20.4%	23.9%	
Share of Landline Phone Subscribers	6%	10%	15%	21%	26%	31%	
Cable Net Additions	2,150	3,470	4,803	5,092	4,871	4,380	
% Annual Change	168.8%	61.4%	38.4%	6.0%	(4.3%)	(10.1%)	
Telco Phone Subs							
Total	87,019	81,056	75,260	69,968	64,994	60,330	-7%
% Annual Change		-6.9%	-7.2%	-7.0%	-7.1%	-7.2%	
Penetration of U.S. Homes	76.0%	69.7%	64.3%	59.5%	54.8%	50.4%	
Share of Landline Phone Subscribers	92%	87%	82%	76%	70%	65%	
Telco Net Additions		(5,963)	(5,796)	(5,292)	(4,974)	(4,664)	
% Annual Change			(2.8%)	(8.7%)	(6.0%)	(6.2%)	
Other							
Total	1,269	2,224	2,820	3,300	3,700	4,000	12%
% Annual Change		75.3%	26.8%	17.0%	12.1%	8.1%	
Share of Landline Phone Subscribers	1%	2%	3%	4%	4%	4%	
Penetration of U.S. Homes	1.1%	1.9%	2.4%	2.8%	3.1%	3.3%	
Other Net Additions	1,269	955	596	480	400	300	
% Annual Change		(24.7%)	(37.6%)	(19.4%)	(16.7%)	(25.0%)	
Total Landline Phone Subscribers	94,238	92,700	92,303	92,582	92,880	92,896	
% Annual Change		-1.6%	-0.4%	0.3%	0.3%	0.0%	
Estimated Wireless Substitution Households	6,756	8,369	9,076	10,298	11,857	12,575	11%
% Annual Change		23.9%	8.4%	13.5%	15.1%	6.1%	
Total Households with Phone	100,995	101,069	101,379	102,880	104,737	105,471	1%
Landline Phone Penetration of U.S. Homes	82%	80%	79%	79%	78%	78%	
Wireless Home Substitute	6%	7%	8%	9%	10%	11%	
Total Household Phone Penetration	88%	87%	87%	87%	88%	88%	

Operators often measure businesses in EBU's (or equivalent business units) which divides revenue received by average monthly revenue per subscriber; thus, penetration may appear artificially high.

Our Time Warner Cable and Comcast 2008-2010 estimates include material non-residential phone customers

Sources: Wachovia Capital Markets, LLC estimates, NCTA, US Census Bureau and Company Reports

Top 10 US Video Providers as of Q3'07

	Subs	Penetration
Comcast	24,157	50%
DirecTV	16,556	14%
EchoStar	13,695	12%
Time Warner Cable	13,308	50%
Cox Communications	5,413	57%
Charter	5,348	45%
Cablevision	3,122	67%
Bright House Networks	2,300	NA
Mediacom	1,331	47%
Suddenlink Communications	1,350	NA

Top 10 US Internet Providers as of Q3'07

	Subs	Penetration
AT&T	13,661	N/A
Comcast	12,888	27%
Verizon	7,971	N/A
Time Warner Cable	7,412	28%
AOL	4,677	N/A
Cox	3,646	39%
Earthlink	2,856	N/A
Charter	2,636	22%
Qwest	2,516	N/A
Cablevision	2,220	48%

Top 10 US Telephone Providers as of Q3'07

	Subs	Penetration
AT&T	31,691	N/A
Verizon	25,559	N/A
Qwest	6,860	N/A
Embarq	4,345	N/A
Comcast	4,079	8%
Windstream	3,241	N/A
Vonage	2,660	N/A
Time Warner Cable	2,610	10%
Citizens Communication	2,461	N/A
Cox	2,302	24%

Source: Wachovia Capital Markets, LLC estimates, Company Reports

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Albert Leung x5012
Ryan Stuczynski x5014

SECTOR RATINGS		DBS OVERWEIGHT			US CABLE OVERWEIGHT					INT CABLE	MEDIA OVERWEIGHT			
All $ values in millions except for per share and per subscriber amounts	S&P 500	EchoStar DISH	DIRECTV DTV	DBS AVG	Comcast CMCSA	Time Warner Cable TWC	Cablevision CVC	Mediacom MCCC	U.S. Cable AVG CW	Liberty Global LBTYA	Time Warner TWX	Viacom VIA	Disney DIS	Liberty Capital LCAPA
Current Price As Of 11/15/07	1,451	$39.51	$23.98		$19.66	$25.43	$25.77	$4.43		$36.54	$17.01	$40.65	$32.40	$114.16
% Change Year-To-Date	2.3%	3.9%	(3.8%)	0.0%	(30.3%)	(38.4%)	(9.5%)	(44.9%)		25.4%	(21.8%)	(0.9%)	(5.5%)	17.1%
Price as of 12/31/06	1,418	$38.03	$24.94		$28.22	$41.25	$28.48	$8.04		$29.15	$21.76	$41.01	$34.27	$97.49
% Change in 2006	13.6%	39.9%	76.6%	58.3%	63.3%	NA	38.9%	46.4%		29.6%	24.8%	2.5%	43.0%	NA
Price as of 12/31/05	1,248	$27.18	$14.12		$17.28	NA	$23.47	$5.49		$22.50	$17.44	$40.00	$23.97	NA
% Change To-Date	16.3%	45.4%	69.8%	57.6%	13.8%	NA	52.4%	(19.3%)		62.4%	(2.5%)	1.6%	35.2%	NA
2007E Valuation														
Diluted Shares outstanding (Millions)		473	1,202		3,210	978	302	113		383	3,764	675	2,023	132
Equity Market Value		18,674	28,835		63,109	24,858	7,783	498		13,577	64,029	27,446	65,545	15,098
Plus: Debt & Preferred		5,489	3,396		27,181	14,732	12,291	3,145		16,621	33,441	7,313	14,374	5,336
Minority shareholders interest		-	-		1,528	3,032	392	-		5,888	-	-	6,634	833
Less: Cash & Equivalents		(2,462)	(1,218)		(1,873)	(1,013)	(1,500)	(36)		(1,875)	(2,718)	($121)	(3,670)	(2,396)
Less: Unconsolidated assets		-	-		(3,858)	(630)	-	-		(443)	(100)	(147)	(3,800)	
Less: Option/Warrant Proceeds		(529)	(658)		(2,423)		(145)	-		(479)	(3,639)	(217)	(2,926)	(151)
YE 2007E Total Enterprise Value (EV)		$21,172	$30,356		$83,664	$40,979	$18,821	$3,607		$33,289	$91,014	$34,273	$76,158	18,719
Other Value		(345)	(3,867)		($3,066)	-	(5,152)	-		(222)				
Non cable minority interest		-	-		(1,528)			-						
Net Operating Loss Value		-						-						
Non-cable assets, debt, liabilities and minority intere		(345)	(3,867)		(4,594)		(5,152)	-		(222)				
YE 2007E CORE CABLE/DBS EV*		$20,827	$26,489		$79,070	$40,979	$13,669	$3,607		$33,067	$91,014	$34,273	$76,158	$18,719
Subscriber Statistics (000s)														
"Basic" Subscribers YE 2007E		13,895	16,854	30,749	24,127	13,258	3,115	1,328	41,828	13,173	NA	NA	NA	NA
% Annual Growth		6.0%	5.6%	5.8%	-0.1%	-1.1%	-0.4%	(3.8%)	(0.6%)	(3.8%)				
"Basic" Subscribers YE 2008E		14,195	17,479	31,674	23,958	13,088	3,059	1,297	41,403	13,423	NA	NA	NA	NA
% Annual Growth		2.2%	3.7%	3.0%	-0.7%	-1.3%	-1.8%	(2.3%)	(1.0%)	1.9%				
RGUs YE 2007E		13,895	16,854	30,749	42,094	24,092	3,115	2,182	71,483	24,065	NA	NA	NA	NA
% Annual Growth (pro forma adj)		6.0%	5.6%	5.8%	10.3%	8.2%	-0.4%	5.8%	9.0%	8.0%				
RGUs YE 2008E		14,195	17,479	31,674	46,278	25,959	3,059	2,035	77,331	25,644	NA	NA	NA	NA
% Annual Growth (pro forma adj)		2.2%	3.7%	3.0%	9.9%	7.7%	-1.8%	-6.7%	8.2%	6.6%				
YE 2007E EV/ Subscriber		$1,499	$1,572	$1,535	$3,277	$3,091	$4,388	$2,716	$2,062	$2,527	NA	NA	NA	NA
YE 2008E EV/ Subscriber		$1,467	$1,515	$1,491	$3,386	$892	$4,468	$2,780	$2,130					
YE 2007E EV/ RGU		$1,499	$1,572	$1,535	$1,878	$1,701	$4,388	$1,653	$1,807	$985	NA	NA	NA	NA
YE 2008E EV/ RGU		$1,467	$1,515	$1,491	$1,709	$1,579	$4,468	$1,772	$1,088	$1,298				
Leverage Statistics														
2007E Net Cable/DBS Debt per 2007 Sub		$218	$129		$1,049	$1,035	$3,464	$2,341		$1,119	NA	NA	NA	NA
2007E Net Debt per 2007 OCF		1.0x	0.6x		2.1x	2.4x	6.2x	6.7x		3.9x				
Financial Statistics														
Total OCF -2007E		$2,928	$4,021	$6,949	11,800	5,712	$2,063	$462		$3,549	$13,424	$3,380	$8,788	$199
Total OCF -2008E		3,469	$4,742	$8,211	13,369	6,441	2,272	490		$4,288	$13,396	$3,703	$9,336	$284
Total OCF -2009E		3,824	$5,445	$9,269	14,921	7,151	2,421	508		$4,821	$14,201	$4,278	$9,793	$286
Cable/DBS OCF - 2007E		$2,928	3,717		$11,945	5,712	1,743	462	$19,863	$3,549	5,712	NA	NA	NA
Cable/DBS OCF - 2008E		$3,469	4,322		$13,404	6,441	1,886	490	24,236	$4,288	6,404	NA	NA	NA
Cable/DBS OCF - 2009E		$3,824	4,903		$14,846	7,151	1,973	508		$4,821	7,124	NA	NA	NA
Cable/DBS 2007E EV/ 2007 OCF		7.1x	7.1x	7.1x	6.6x	7.2x	7.8x	7.8x	6.9x	9.3x	NA	NA	NA	NA
Cable/DBS 2008E EV/ 2008 OCF		5.3x	5.6x	5.5x	5.6x	6.0x	6.3x	7.3x	5.8x	7.5x	NA	NA	NA	NA
Cable/DBS 2008E EV/ 2009 OCF		4.9x	5.0x	4.9x	5.1x	5.4x	6.0x	7.1x	5.3x	6.7x	NA	NA	NA	NA
Total Company 2007E EV/ 2007 OCF		7.2x	7.5x	7.4x	7.1x	7.2x	8.9x	7.8x	7.1x	9.4x	6.8x	10.1x	8.7x	NA
Total Company 2008E EV/ 2008 OCF		5.5x	6.0x	5.7x	5.9x	6.0x	7.8x	7.3x	6.0x	7.6x	6.2x	8.4x	7.3x	NA
Total Company 2008E EV/ 2009 OCF		5.0x	5.3x	5.1x	5.3x	5.4x	7.4x	7.1x	5.4x		5.9x	7.3x	6.9x	64.4x
2007E Free Cash Flow		$1,047	497	$1,544	1,763	918	$401	($7)		$204	$4,225	$1,452	$3,928	NA
2008E Free Cash Flow		1,174	1,271	$2,445	3,020	1,408	611	24		623	$3,713	$1,677	$4,531	NA
2009E Free Cash Flow		1,486	1,838	$3,324	4,106	1,934	830	67		999	$4,364	$2,109	$4,577	NA
Mkt Cap/ 2007E Total Free Cash Multiple		17.8x	58.0x	37.9x	35.8x	27.1x	19.4x	0	32.3x	NM	15.2x	18.9x	16.7x	NA
Mkt Cap/ 2008E Total Free Cash Multiple		15.9x	22.7x	19.3x	20.9x	17.7x	12.7x	20.7x	19.7x	21.8x	17.2x	16.4x	14.5x	NA
Mkt Cap/ 2009E Total Free Cash Multiple		12.6x	15.7x	14.1x	15.4x	12.8x	9.4x	7.5x	14.4x	13.6x	14.7x	13.0x	14.3x	NA
2007E PE multiple		22.8x	21.1x	21.9x	26.5x	22.3x	NM	NM	NM	NM	15.5x	17.5x	16.9x	NA
2008E PE multiple		17.7x	17.4x		19.8x	17.7x	48.8x	104.8x		NM	15.8x	15.3x	14.7x	NA
Valuation Assumptions		DCF	SOP (a)		SOP (a)	DCF	SOP (a)	DCF						SOP
Terminal Year		2010E	2010E		2010E	2010E	2010E	2010E		2010E	2010E	2010E	2010E	2010E
Terminal Multiple of OCF		6x	6x		7x	7x	7x	7x		8x	8x	9x	9x	15x
Discount Rate		10%	10%		9%	9%	12%	11%		10%	10%	10%	9%	8%
Value Per Video Subscriber at Terminal		$1,694	$2,292	$1,993	$4,809	$4,315	4,915	$3,140		NM				
Price Valuation (High)		$50.00	$34.00		$30.00	$39.00	$31.00	$6.50		$52.00	$21.00	$52.00	$39.00	$150.00
Price Valuation (Low)		$48.00	$32.00		$28.00	$36.00	$29.00	$4.50		$50.00	$19.00	$50.00	$37.00	$146.00
Potential Upside to Valuation High		26.6%	41.8%	34.2%	52.6%	53.4%	20.3%	46.7%	43.2%	42.3%	23.5%	27.9%	20.4%	31.4%
Potential Upside to Valuation Low		21.5%	33.4%	27.5%	42.4%	41.6%	12.5%	1.6%	24.5%	36.8%	11.7%	23.0%	14.2%	27.9%
Investment Rating		Outperform	Outperform		Outperform	Outperform	M-Perform	M-Perform		Outperform	M-Perform	Outperform	M-Perform	Outperform

(a) Valuation range is based on a sum-of-the parts valuation. Core Cable/DBS operations are valued using a DCF.
* For Liberty Global, the 'Core Cable/DBS ' multiple excludes JCOM.
Source: Wachovia Capital Markets, LLC estimates, FactSet, Bloomberg and company filings

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