

Dee May
Vice President
Federal Regulatory



1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2529
Fax 202 336-7922
dolores.a.may@verizon.com

December 5, 2008

Ex Parte

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

Re: Program Access Rules and Program Carriage Proceedings, MB Docket Nos. 07-198, 07-29, 07-42

Dear Ms. Dortch:

On December 4, 2008, Will Johnson and I met with Rosemary Harold, Legal Advisor to Commissioner McDowell and on December 5 with Rudy Brioché, Legal Advisor to Commissioner Adelstein, and Rick Chessen, Legal Advisor to Commissioner Copps, to discuss Verizon's position in the above-captioned proceedings. We focused on the need for the Commission to address program access, and not just program carriage, issues as it considers reforms to its rules concerning programming. In particular, the Commission should remove roadblocks to emerging video competition by promptly addressing two key issues that are ripe for decision by: (1) adopting a standstill requirement that maintains the status quo and allows competitive providers to continue offering programming during the pendency of a program access complaint concerning renewal negotiations; and (2) addressing the anticompetitive practice of some vertically integrated cable incumbents of denying access to terrestrially-delivered regional sports networks ("RSNs") and of the HD feeds of programming (including RSNs) otherwise subject to the program access rules. These reforms would improve the program access complaint process and encourage video competition. The need for prompt action on these issues is particularly strong given the critical time in the emergence of video competition, as well as the upcoming DTV transition and the possibility that the denial of carriage could confuse and disrupt consumers. Our discussion on these points was consistent with the attached filings, which were provided in the meetings.

We also discussed some of the proposals to reform the procedures and standards concerning program carriage complaints. We explained that certain proposed reforms – such as expanding the definition of "affiliated channel" to include channels affiliated with *any* video provider, and not just the provider that is the subject of a program carriage complaint – would be unlawful and inappropriate as applied to a competitive provider like Verizon. Verizon competes head-to-head with large vertically-integrated cable incumbents everywhere that it provides service

and has no incentive whatsoever to discriminate *in favor of* these competitors' programming and against independent programmers. Indeed, as Verizon's FiOS TV line-up reflects, Verizon has every incentive to carry, and does carry, high-quality independent and other diverse programming that helps it compete against its entrenched video competitors.

Likewise, new rules imposing any such obligations on competitive providers like Verizon would be inappropriate, unnecessary and unlawful. As a new, competitive provider, Verizon seeks to carry independent and diverse programming that will appeal to its customers and potential customers, but should not be obligated – and subject to complaint proceedings at the Commission – for declining to negotiate for or carry programming that it does not wish to carry.

For these reasons, if the Commission takes steps to expand the program carriage rules, it should expressly exempt competitive video providers whose very presence in the video marketplace expands the available outlets for independent and diverse programming. Indeed, as applied to such providers, expanded program carriage obligations could not pass muster under the First Amendment. A video provider undeniably engages in protected speech when it “exercise[s] editorial discretion over which stations or programs to include in its repertoire.” *See Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 636 (1994). To the extent courts have upheld restraints on cable operators' speech in the past, they have done so based on clearly articulated government interests created by the “bottleneck monopoly power” that incumbent cable providers traditionally enjoyed in most areas, which gave them a chokehold over a particular channel of communication. *Turner I*, 512 U.S. at 661. It has been critical to the analysis in such cases that the incumbent cable operator exercised “bottleneck, or gatekeeper, control.” *Id.* at 656–57; *see also Time Warner Entertainment Co. v. FCC*, 211 F.3d 1313, 1317 (D.C. Cir. 2000) (pointing to “bottleneck monopoly power” in upholding facial challenge to cable ownership rules). Given that a competitive video provider like Verizon has no such bottleneck – indeed, has never had any such bottleneck – regulations infringing such providers' decisions concerning which channels to carry, or not carry, are unlawful.

Sincerely,

A handwritten signature in cursive script that reads "Dee May". The signature is written in black ink and is positioned centrally below the word "Sincerely,".

cc: Rudy Brioche
Rick Chesson
Monica Desai
Rosemary Harold

Leora Hochstein
Executive Director
Federal Regulatory



1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2535
Fax 202 336-7922
leora.l.hochstein@verizon.com

July 17, 2008

Ex Parte

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

Re: In the Matter of Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements, MB Docket No. 07-29 and MB Docket No. 07-198

Dear Ms. Dortch:

As the Commission continues its consideration of various issues concerning competitive video providers' access to programming, it should address the growing practice of vertically-integrated programmers withholding from sale to competitive providers the "HD feed" of programming that they are otherwise required to provide access to under the Cable Act. Some cable incumbents attempt to circumvent the Commission's rules and deny competitors the HD format of covered programming by routing that particular format (but not a lower quality version of the same programming) over fiber and arguing that, as a result, the "HD feed" is not covered by the rules. This transparent effort to evade the rules ignores that it is the *programming* – and not the various technical *formats* in which that programming may be delivered or viewed – to which the Commission's rules provide access. The cable incumbents' attempt to evade the rules in this way is a transparent effort to handicap competitive providers and denies consumers the ability to take full advantage of the HD capabilities of their televisions.

The cable incumbents who have engaged in these anticompetitive and unfair practices are seizing on the growing importance of HD technology to consumers. As the Commission is aware, consumer demand for a robust selection of HD programming is skyrocketing. More than one-third of American households already have an HD television ("HDTV") set, and HDTV sales are growing at an astonishing 50% per year.¹ By 2011, according to estimates by the

¹ K.C. Neel, *Consumers Get "High" Anxiety: No Clear Picture On High-Definition Do's and Don't*, Multichannel News, Nov. 26, 2007; see also Press Release, *30 Percent of U.S. Households Own an HDTV, CEA Research Finds* (June 26, 2007) (available at http://www.ce.org/Press/CurrentNews/press_release_detail.asp?id=11309).

Consumer Electronics Association, the number of HDTVs sold in the United States will reach 170 million, which is roughly one set for every two Americans. *See id.* Therefore, denying access to regional sports programming that is subject to the program access rules in HD format is an attempt to handicap competitive entrants in view of this market trend.

Verizon previously informed the Commission of Cablevision's effort to circumvent the program access rules by denying Verizon access to the "HD feed" for the MSG regional sports network in New York City.² Verizon reached a deal for the standard definition version of this channel only after filing a program access complaint with the Commission, but Cablevision even then refused to provide the HD feed for that same programming – purportedly because this version of the programming was delivered terrestrially. *Id.* After withholding this highly desirable and unique regional sports programming, Cablevision trumpeted in its advertisements the fact that it was the only source for this programming in HD. *Id.*

Now, Cablevision is at it again, and is again refusing to sell (or even talk about selling) the HD feed for its MSG-Buffalo channel. Even though Cablevision apparently concedes that its sports network in Buffalo is satellite-delivered and subject to the Commission's rules, it again refuses to provide access to the HD format of this sports programming, presumably based on the terrestrial delivery of that particular format. Remarkably, Cablevision is refusing to provide the programming to Verizon in HD format, even though Cablevision itself is not a cable operator in that area and should have every reason to want to maximize distribution of its programming there. Moreover, Cablevision does provide the programming in HD format to one or more video providers who do operate in that area at the same time that it has refused to provide the HD format to Verizon.³

The Commission can and should recognize that unfair and anticompetitive practices such as these violate the program access rules. Nothing in those rules permits vertically integrated cable incumbents to pick and choose certain (lower quality) formats of programming covered by the rules to make available to competitive providers, and deny other (higher quality) formats. Allowing such practices would allow incumbents to effectively nullify the program access rules.

First, notwithstanding the cable incumbents' efforts to evade or circumscribe the program access rules, "programming" means "programming." And it is programming – and not the various technical *formats* in which that programming may be delivered or viewed – to which the Commission's rules provide access. Whether or not a customer tunes into the standard definition or HD "feed" of Cablevision's MSG network to watch a Buffalo Sabres game, the score will be the same. Nothing in Section 628 or the Commission's rules indicates that any particular

² Comments of Verizon, MB Docket No., 07-198, at 8 (Jan. 4, 2008)

³ *See, e.g.*, DirecTV Web Site, available at http://www.directv.com/DTVAPP/global/contentPageNR.jsp?assetId=3420007&_DARGS=/DTVAPP/layout/component/topNavSections.jsp.21_A&_DAV=-1&_dynSessConf=5153639675144590846 (last visited July 16, 2008),

technical format should be considered separate “programming,” much less that a vertically integrated programmer has discretion to unilaterally withhold higher quality formats of programming that is subject to the rules from a competitive provider by drawing such distinctions. And when a channel is subject to the program access rules – as the satellite-delivered Cablevision sports networks in New York City and Buffalo undeniably are – then the rules on their face entitle competitive providers to access without discrimination “in the prices, terms, and conditions of sale or delivery.” *See* 47 U.S.C. § 548(c)(2). The cable incumbent’s decision about how it will route the various formats of the programming does not change this simple fact.

Second, aside from the violation itself, the incumbents’ effort to evade the program access rules through these types of subterfuges is an “unfair method[] of competition or unfair or deceptive act[] or practice[]” in violation of Section 628(b) of the Cable Act. *See* 47 U.S.C. § 548(b). Cable incumbents’ efforts to evade their statutory obligations by placing the HD format of covered programming onto alternative feeds is precisely the type of unfair or deceptive practice that falls within the scope of this provision.

Finally, the Commission also possesses sufficient ancillary authority to address the incumbents’ practices because doing so is necessary to effectuate and give full effect to Section 628 and to further Congress’s underlying goals in Section 628. Both the Commission and the courts have long recognized that the Commission may exercise ancillary jurisdiction as a basis for adopting measures that are directly ancillary to the Commission’s express responsibilities and are necessary to effectuate and further the purposes of those express statutory responsibilities.⁴ If cable incumbents were allowed to withhold the HD formats of covered programming – Section 628 would fail to accomplish its purposes. This is particularly true, given that current technology makes it easy to shift particular formats of covered programming from satellite- to terrestrial-delivery. This fact – as well as a documented history of abuse by vertically integrated programmers – reveals that the protections of the program access rules are necessary in the context of these “HD feeds” of covered programming in order to ensure that competitive providers receive the access to programming that Congress intended.

The Commission should promptly condemn the anticompetitive and unfair practices of cable incumbents who deny access to the HD feed of programming otherwise covered by the

⁴ The Commission has invoked several statutory provisions to support the exercise of limited ancillary jurisdiction in appropriate cases. Section 4(i) of the Communications Act permits the Commission to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.” 47 U.S.C. § 154(i). Section 303(r) directs the Commission to “make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter....” 47 U.S.C. § 303(r). In particular contexts, the Commission has also pointed to Sections 1 and 2(a) of the Communications Act to support the exercise of ancillary jurisdiction to regulate aspects of cable services. *See* 47 U.S.C. §§ 151, 152(a).

Ms. Marlene H. Dortch

July 17, 2008

Page 4

program access rules, and should clarify that competitive providers are entitled to such programming in all available formats.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon H. ...". The signature is written in a cursive, flowing style.

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Daniel Gonzalez
Amy Bender
Rick Chessen
Christina Chou Pauzé
Rudy Brioché
Amy Blankenship
Monica Desai, Chief of the Media Bureau

Dee May
Vice President
Federal Regulatory



December 3, 2008

1300 I Street, NW, Suite 400 West
Washington, DC 20005

EX PARTE

Phone 202 515-2529
Fax 202 336-7922
dolores.a.may@verizon.com

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

Re: Program Access Rules and Program Carriage Proceedings, MB Docket Nos. 07-198, 07-29, 07-42

Dear Ms. Dortch:

On December 2, 2008, Will Johnson and I met with Michelle Carey, Legal Adviser to Chairman Martin, to discuss Verizon's position in the above-captioned proceedings. We focused on the need for the Commission to address program access, and not just program carriage, issues as it considers reforms to its rules concerning programming. In particular, the Commission should remove roadblocks to emerging video competition by promptly addressing two key issues that are ripe for decision by: (1) adopting a standstill requirement that maintains the status quo and allows competitive providers to continue offering programming during the pendency of a program access complaint concerning renewal negotiations; and (2) addressing the anticompetitive practice of some vertically integrated cable incumbents of denying access to terrestrially-delivered regional sports networks ("RSNs") and of the HD feeds of programming (including RSNs) otherwise subject to the program access rules. These reforms would improve the program access complaint process and encourage video competition. The need for prompt action on these issues is particularly strong given the critical time in the emergence of video competition, as well as the upcoming DTV transition and the possibility that the denial of carriage could confuse and disrupt consumers.

1. Standstill Requirement.

Consistent with Verizon's comments on the Further Notice concerning program access issues – and with the position of numerous other parties in this proceeding, including the American Cable Association, Dish Network, the National Telecommunications Cooperative Association, and OPASTCO – the Commission should promptly adopt a standstill requirement in the program access context. A program access standstill requirement is necessary to prevent vertically-integrated cable incumbents from engaging in anticompetitive withholding strategies to gain unfair advantage in the context of negotiations for renewal of carriage contracts. These incumbents have not hesitated to employ such tactics in the past in order to deny competitive providers the programming they need to compete effectively, or to provide such programming only at unreasonably high prices. A standstill requirement would preserve the status quo and allow competitive video providers to continue to carry programming that is the subject of a program access complaint while such a complaint is pending with the Commission. A standstill

requirement is a modest step that would ensure that the program access process remains available, as a practical matter, in the context of disputes concerning renewal, and ensures that consumers are not denied programming during the pendency of a program access complaint. The need to avoid consumer confusion and frustration as a result of channel carriage being denied is particularly acute in coming months in the lead-up to the broadcast DTV transition, as many vertically-integrated cable operators have recognized in supporting proposals in favor of a retransmission consent “quiet period.”

The Commission sought comment on a program access standstill rule in the Further Notice issued over a year ago, and this issue has been fully briefed and is ripe for decision. Therefore, in addition to any action the Commission may decide to take to reform the procedural requirements surrounding program carriage complaints, it should adopt a standstill requirement in the program access context.

2. Access to Regional Sports Channels and HD Feeds of Programming Subject to the Program Access Rules.

In addition, we urged the Commission to address another important issue for encouraging video competition -- competitive video providers’ access to the terrestrially-delivered RSNs or the HD formats of programming (including RSNs) that is subject to the program access rules. Vertically-integrated cable incumbents continue to hamper competitive providers’ ability to compete effectively by denying access to regional sports programming and to the HD feed of programming subject to the program access rules.

The program access rules were adopted to ensure that video competitors have access to critical programming inputs so that consumers have meaningful choice. Congress determined that such rules were necessary to address a documented tactic employed by cable incumbents who, by leveraging their exclusive franchises in many areas, obtained control over much of the programming that competitors require in order to compete effectively and denied access to that programming. In order to effectuate section 628 in light of technological changes and a continued history of incumbents’ abusive withholding strategies, the Commission should take steps to ensure competitive providers’ access to two particular types of important programming, regardless of how the programming is delivered.

First, the Commission should ensure that competitors have access to RSNs which carry the unique sports programming that many viewers require and that competitors cannot duplicate. Regional sports programming is critical for new entrants to compete effectively. RSNs are among the most demanded programming by video subscribers. Indeed, without access to the games of local sports teams, many viewers will not consider a competing provider’s video services. And, unlike many other types of programming, a provider denied access to regional sports programming has no way or duplicating or providing an effective alternative. For this reason, the Commission has previously concluded that RSNs are “must-have programming.” The Commission should prevent cable incumbents from using RSNs as a weapon to stave off emerging competition.

Second, the Commission should prevent cable incumbents from circumventing the program access rules and denying access to the increasingly important HD versions of programming (including RSNs) subject to program access rules, simply by delivering this particular format of

Marlene H. Dortch

December 3, 2008

Page 3

the programming – the “HD feed” – terrestrially. Some cable incumbents attempt to circumvent the Commission’s rules and deny competitors the HD format of covered programming by routing that particular format (but not a lower quality version of the same programming) over fiber and arguing that, as a result, the “HD feed” is not covered by the rules. This transparent effort to evade the rules ignores that it is the *programming* – and not the various technical *formats* in which that programming may be delivered or viewed – to which the Commission’s rules provide access.

In both cases, changes in technology – making terrestrial delivery more readily available since Congress adopted Section 628 – and the documented history of abuses by the cable incumbents provide make it necessary for the Commission to act in order to effectuate and further the purposes of its express statutory responsibilities under Section 628. Likewise, in the context of HD formats of programming otherwise covered by the rules, the incumbents’ anticompetitive approach ignores that “programming” means “programming.” And it is programming – and not the various technical *formats* in which that programming may be delivered or viewed – to which the Commission’s rules provide access.

We provided Ms. Carey with the attached ex parte, previously filed in these dockets, which discusses Verizon’s experience with these anticompetitive practices and provides further elaboration on the legal bases for the Commission to act.

Sincerely,

A handwritten signature in cursive script that reads "Dee May".

Attachment

cc: Michelle Carey
Monica Desai

Leora Hochstein
Executive Director
Federal Regulatory



1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2535
Fax 202 336-7922
leora.l.hochstein@verizon.com

July 17, 2008

Ex Parte

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

Re: In the Matter of Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements, MB Docket No. 07-29 and MB Docket No. 07-198

Dear Ms. Dortch:

As the Commission continues its consideration of various issues concerning competitive video providers' access to programming, it should address the growing practice of vertically-integrated programmers withholding from sale to competitive providers the "HD feed" of programming that they are otherwise required to provide access to under the Cable Act. Some cable incumbents attempt to circumvent the Commission's rules and deny competitors the HD format of covered programming by routing that particular format (but not a lower quality version of the same programming) over fiber and arguing that, as a result, the "HD feed" is not covered by the rules. This transparent effort to evade the rules ignores that it is the *programming* – and not the various technical *formats* in which that programming may be delivered or viewed – to which the Commission's rules provide access. The cable incumbents' attempt to evade the rules in this way is a transparent effort to handicap competitive providers and denies consumers the ability to take full advantage of the HD capabilities of their televisions.

The cable incumbents who have engaged in these anticompetitive and unfair practices are seizing on the growing importance of HD technology to consumers. As the Commission is aware, consumer demand for a robust selection of HD programming is skyrocketing. More than one-third of American households already have an HD television ("HDTV") set, and HDTV sales are growing at an astonishing 50% per year.¹ By 2011, according to estimates by the

¹ K.C. Neel, *Consumers Get "High" Anxiety: No Clear Picture On High-Definition Do's and Don'ts*, Multichannel News, Nov. 26, 2007; see also Press Release, *30 Percent of U.S. Households Own an HDTV, CEA Research Finds* (June 26, 2007) (available at http://www.ce.org/Press/CurrentNews/press_release_detail.asp?id=11309).

Consumer Electronics Association, the number of HDTVs sold in the United States will reach 170 million, which is roughly one set for every two Americans. *See id.* Therefore, denying access to regional sports programming that is subject to the program access rules in HD format is an attempt to handicap competitive entrants in view of this market trend.

Verizon previously informed the Commission of Cablevision's effort to circumvent the program access rules by denying Verizon access to the "HD feed" for the MSG regional sports network in New York City.² Verizon reached a deal for the standard definition version of this channel only after filing a program access complaint with the Commission, but Cablevision even then refused to provide the HD feed for that same programming – purportedly because this version of the programming was delivered terrestrially. *Id.* After withholding this highly desirable and unique regional sports programming, Cablevision trumpeted in its advertisements the fact that it was the only source for this programming in HD. *Id.*

Now, Cablevision is at it again, and is again refusing to sell (or even talk about selling) the HD feed for its MSG-Buffalo channel. Even though Cablevision apparently concedes that its sports network in Buffalo is satellite-delivered and subject to the Commission's rules, it again refuses to provide access to the HD format of this sports programming, presumably based on the terrestrial delivery of that particular format. Remarkably, Cablevision is refusing to provide the programming to Verizon in HD format, even though Cablevision itself is not a cable operator in that area and should have every reason to want to maximize distribution of its programming there. Moreover, Cablevision does provide the programming in HD format to one or more video providers who do operate in that area at the same time that it has refused to provide the HD format to Verizon.³

The Commission can and should recognize that unfair and anticompetitive practices such as these violate the program access rules. Nothing in those rules permits vertically integrated cable incumbents to pick and choose certain (lower quality) formats of programming covered by the rules to make available to competitive providers, and deny other (higher quality) formats. Allowing such practices would allow incumbents to effectively nullify the program access rules.

First, notwithstanding the cable incumbents' efforts to evade or circumscribe the program access rules, "programming" means "programming." And it is programming – and not the various technical *formats* in which that programming may be delivered or viewed – to which the Commission's rules provide access. Whether or not a customer tunes into the standard definition or HD "feed" of Cablevision's MSG network to watch a Buffalo Sabres game, the score will be the same. Nothing in Section 628 or the Commission's rules indicates that any particular

² Comments of Verizon, MB Docket No., 07-198, at 8 (Jan. 4, 2008)

³ *See, e.g.*, DirecTV Web Site, available at http://www.directv.com/DTVAPP/global/contentPageNR.jsp?assetId=3420007&_DARGS=/DTVAPP/layout/component/topNavSections.jsp.21_A&_DAV=-1&_dynSessConf=5153639675144590846 (last visited July 16, 2008),

technical format should be considered separate “programming,” much less that a vertically integrated programmer has discretion to unilaterally withhold higher quality formats of programming that is subject to the rules from a competitive provider by drawing such distinctions. And when a channel is subject to the program access rules – as the satellite-delivered Cablevision sports networks in New York City and Buffalo undeniably are – then the rules on their face entitle competitive providers to access without discrimination “in the prices, terms, and conditions of sale or delivery.” *See* 47 U.S.C. § 548(c)(2). The cable incumbent’s decision about how it will route the various formats of the programming does not change this simple fact.

Second, aside from the violation itself, the incumbents’ effort to evade the program access rules through these types of subterfuges is an “unfair method[] of competition or unfair or deceptive act[] or practice[]” in violation of Section 628(b) of the Cable Act. *See* 47 U.S.C. § 548(b). Cable incumbents’ efforts to evade their statutory obligations by placing the HD format of covered programming onto alternative feeds is precisely the type of unfair or deceptive practice that falls within the scope of this provision.

Finally, the Commission also possesses sufficient ancillary authority to address the incumbents’ practices because doing so is necessary to effectuate and give full effect to Section 628 and to further Congress’s underlying goals in Section 628. Both the Commission and the courts have long recognized that the Commission may exercise ancillary jurisdiction as a basis for adopting measures that are directly ancillary to the Commission’s express responsibilities and are necessary to effectuate and further the purposes of those express statutory responsibilities.⁴ If cable incumbents were allowed to withhold the HD formats of covered programming – Section 628 would fail to accomplish its purposes. This is particularly true, given that current technology makes it easy to shift particular formats of covered programming from satellite- to terrestrial-delivery. This fact – as well as a documented history of abuse by vertically integrated programmers – reveals that the protections of the program access rules are necessary in the context of these “HD feeds” of covered programming in order to ensure that competitive providers receive the access to programming that Congress intended.

The Commission should promptly condemn the anticompetitive and unfair practices of cable incumbents who deny access to the HD feed of programming otherwise covered by the

⁴ The Commission has invoked several statutory provisions to support the exercise of limited ancillary jurisdiction in appropriate cases. Section 4(i) of the Communications Act permits the Commission to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.” 47 U.S.C. § 154(i). Section 303(r) directs the Commission to “make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter....” 47 U.S.C. § 303(r). In particular contexts, the Commission has also pointed to Sections 1 and 2(a) of the Communications Act to support the exercise of ancillary jurisdiction to regulate aspects of cable services. *See* 47 U.S.C. §§ 151, 152(a).

Ms. Marlene H. Dortch

July 17, 2008

Page 4

program access rules, and should clarify that competitive providers are entitled to such programming in all available formats.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon H. ...". The signature is fluid and cursive, with a long horizontal stroke at the end.

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Daniel Gonzalez
Amy Bender
Rick Chessen
Christina Chou Pauzé
Rudy Brioché
Amy Blankenship
Monica Desai, Chief of the Media Bureau