January 12, 2010

EX PARTE

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

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

Dear Ms. Dortch:

On January 12, 2010, Jon Banks and I met with Sherrese Smith, Legal Advisor to Chairman Genachowski regarding the above referenced docket. We discussed the Commission's authority under Section 628 of the Communications Act to address issues pertaining to the withholding of vertically integrated programming delivered via terrestrial means. We also emphasized the importance of access to vertically integrated regional sports networks to ensure effective competition in the video and broadband marketplace. We reviewed the attached slides during our discussion.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this electronic notice is being filed in the above-referenced dockets. Please call me if you have any questions.

Sincerely,

Glenn Reynolds
Vice President, Law and Policy

cc: Sherrese Smith

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Access to Vertically Integrated Programming

MB Dkts. 07-29, 07-198

Ex Parte Presentation

Of

USTelecom Association

Key Changes Since 1992

- Major expansion of technological ability to deliver programming terrestrially.
- Clustering of Cable properties facilitated by the Commission increases ability to deliver programming terrestrially and motive to restrict access to regional programming.
- Importance of video offerings to Broadband competition and deployment.

Who Needs Programming?

- Incumbent Telephone companies of all sizes are competing directly with the largest cable companies for the provision of video, voice and data services.
  - SureWest has a fiber network serving and is competing directly with Comcast and Time Warner Cable in offering service bundles including video.
  - Wilkes Telephone & Electric Company in Washington, Georgia (10,000 access lines) offers a FTTH video service with PPV, DVR capability.
  - Madison Telephone Company in Harmel, Illinois (4,817 access lines) offers over 200 channels of digital programming, including HD, pay per view, interactive TV guide, parental controls and locks.
  - Reynolds Telephone Company in Reynolds, Illinois (464 access lines) offers over 180 available digital channels.
- Estimated that nearly 500 ILECs offer video services, including more than 200 using IPTV technologies.

Video Is Key To Broadband Deployment

- NECA reports that ILECs with video offerings have an average of 24% higher take rate for Broadband.
- Additional revenues from video services essential to business case for deploying broadband in high-cost rural areas.
- Commission has found that Cable prices are 17% lower in areas with multiple wireline video providers.

"Terrestrial Loophole" is Not Required by the Statute

- § 628(a) "Purpose.– *The purpose of this section is to promote the public interest*, convenience, and necessity *by increasing competition and diversity in the multichannel video programming market*, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, *and to spur the development of communications technologies*."

§628(b) Sets Forth the Same Standard for *All* Conduct

(b) Prohibition.– It shall be unlawful for a cable operator, [or] a satellite cable programming vendor in which a cable operator has an attributable interest… to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

§628(c) Establishes the **"Minimum"** Conduct That the FCC Must Find Violates the Standard of §628(b)

628(c) REGULATIONS REQUIRED.—

(1) Proceeding Required.– Within 180 days after the date of enactment of this section, the Commission shall, in order to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market and the continuing development of communications technologies, prescribe regulations to specify particular conduct that is prohibited by subsection (b).

(2) *Minimum* Contents of Regulations.– The regulations to be promulgated under this section shall–

* * * * * *

(D) with respect to distribution to persons in areas served by a cable operator, prohibit exclusive contracts for satellite cable programming… between a cable operator and a satellite cable programming vendor in which a cable operator has an attributable interest…unless the Commission determines (in accordance with paragraph (4))that such contract is in the public interest.

Key Issues

- Any processes for enforcing rights must be efficient and timely. §628(f) requires that the Commission "provide for an expedited review of any complaints made pursuant to this section."
    - Rules should establish "shot clock" for Commission review of complaints and resolve those that have been waiting action far too long.
- RSNs are indisputably "Must-Have" programming. The Commission has an enormous record upon which to find that video competition is significantly hindered or prevented without access to RSNs.
- HD channels have become essential to competitive entry.