



February 26, 2010

**VIA ECFS**

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

**Re: CS Docket 97-80: Notification of *Ex Parte* Communications**

Dear Ms. Dortch:

I hereby submit this notice of *ex parte* communications by Zito Media, LP (“Zito”).

This morning, James Rigas and Derek Anthony of Zito, Mark Palchick of this firm and I had a meeting at the FCC’s Washington, DC headquarters with William Lake, Steven Broeckaert and Brendan Murray of the FCC’s Media Bureau in order to discuss Zito’s competitive situation and its need for relief from the Commission’s prohibition on deployment of HD-capable one-way, limited function set-top boxes with integrated security functions. In addition to the oral presentations, we provided the FCC attendees with the attached written materials.

In our presentation, Zito noted that its 20 affected cable systems are extremely small (with between 80 and 1,600 subscribers). With aggregate penetration of 22% and a declining customer base they are increasingly unable to compete with dominant dish satellite distribution systems, which are able to provide a wide menu of High-Definition (HD) programming without any need to comply with the Commission’s prohibition on HD-capable integrated boxes. Rather, Zito’s competitors can use inexpensive integrated security boxes and thus obtain a critical price advantage, whereas the only available boxes with separate security (largely through CableCARD support) cost \$400, which Zito cannot afford to absorb and its customers are unwilling to defray through an appropriate (\$10 or so) monthly rental.

After considering its options, Zito has concluded that it would not be able to remain viable – and thus provide the only competition in its markets for video and Internet services – unless it can offer its customers inexpensive HD boxes. Customers increasingly demand HD capability, and so the standard definition (“SD”) integrated boxes which the Commission recently decided to permit are of little appeal. Zito pointed out that the cost of limited-capability HD boxes is only a few dollars more than similar SD boxes. Given the prevalence of HD programming and receivers nowadays (and the near absence of CableCARD-capable receivers that avoid the need for a cable box at all), Zito contended that the waiver granted to Cable One should be extended to extremely small systems such as Zito’s, in order to enable Zito to provide a competitive video product (with dozens of HD channels) within the limited bandwidth of its

systems (300 – 450 MHz). (Its systems have no HD now at all, and the cost of an overall upgrade to higher bandwidth would be prohibitive for systems of this size.)

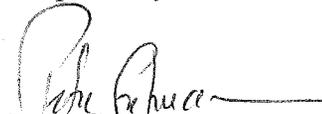
Zito noted that its long-term goal is fully-digital systems with vibrant, two-way platforms that will free up sufficient bandwidth for a wide variety of HD channels, and to that end it plans to provide digital boxes for new subscribers. In the meantime, though, in order to satisfy the requirements of its customers who cling to analog sets, it would want to continue offering analog service, which is a competitive necessity in the small, rural areas where its systems operate and where consumers often are hesitant to embrace new technology.

Zito noted further that it needs to be able to offer “triple play” (*i.e.*: video, Internet and telephone) packages in order to compete effectively. In order to avoid the need for prohibitive equipment expenses at each of its headends, it needs an MPEG-4 platform with HD programming that is pre-groomed, preconditioned and pre-multiplexed prior to being unencrypted by its headend equipment. To achieve distribution to its customers while avoiding excessive customer charges, the inexpensive HD home box solution will enable Zito to provide one such box without charge to each subscriber and to rent the others for a relatively nominal cost of under \$2 per month. Only in that way does Zito believe that it can remain a viable competitor in its extremely small markets.

Undersigned counsel also noted a further public advantage to the waiver Zito seeks. The information on marketplace impact of HD box waivers that the Commission had hoped to obtain from Cable One has been deferred indefinitely, now that Cable One has decided to await the availability of \$50 HD boxes upon which its proposal had been premised (and the prospects for which seem uncertain at best). In that light, Zito noted that the relief it sought would not only provide a test situation generally in lieu of the one that the Commission had sought through the Cable One waiver, but also would provide first data from the smallest types of cable systems before they become extinct.

Zito concluded its presentation by noting the need for prompt relief in order to go forward, as otherwise its viability is in significant doubt, and asking whether a petition for special relief would serve as an appropriate vehicle.

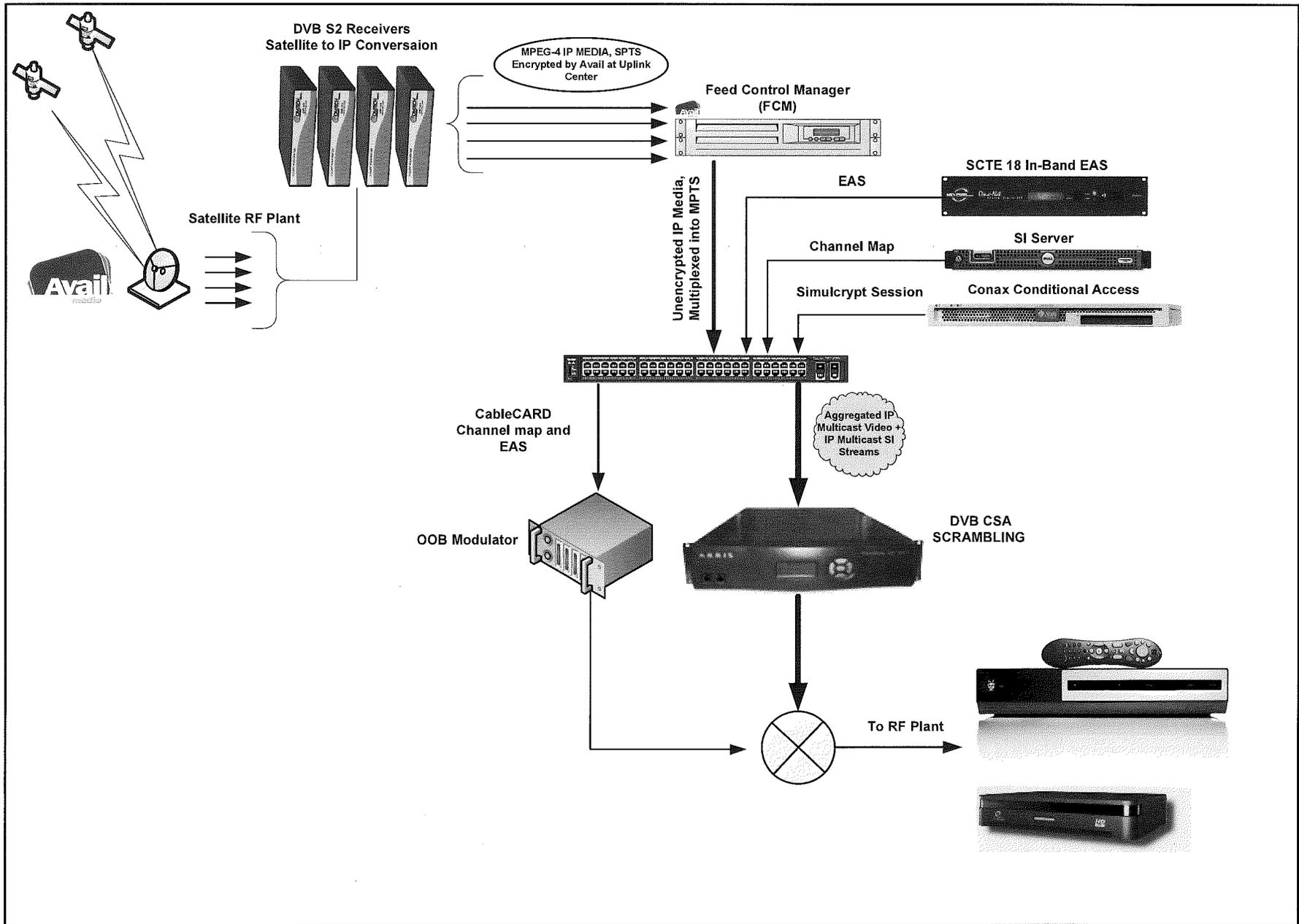
Respectfully submitted,



Peter Gutmann

*Counsel to Zito Media, LP*

cc: William Lake, Esq. (via electronic mail)  
Steven Broeckaert, Esq. (via electronic mail)  
Brendan Murray, Esq. (via electronic mail)



MPEG-4 Digital Head End Solution  
Signal Flow Diagram

Evolution HD DTA  
and TiVo Support

System	Homes passed	Subscribers	Penetration	Approximate current SD channels	HD channels	Approximate growth rate last 12 months
Brave, PA	1400	300	21%	110	0	-8%
Cameron, WV	900	370	41%	110	0	-3%
Pine Grove, WV	1100	450	41%	110	0	-1%
Littleton, WV	440	200	45%	40	0	-5%
Thompson, OH	3200	475	15%	56	0	-4%
Rock Creek, OH	1050	290	28%	56	0	-7%
Denmark, OH	1000	130	13%	40	0	-10%
Gallipolis, OH	2100	350	17%	40	0	-3%
Corning, OH	2200	150	7%	110	0	-7%
Warner, OH	1000	125	13%	35	0	3%
Damascus, VA	2000	250	13%	120	0	-8%
Ewing, VA	1150	210	18%	80	0	-15%
Robbinsville, NC	1900	316	17%	80	0	-10%
Bryson City, NC	3200	1180	37%	110	0	0%
Sneedville, TN	1200	250	21%	120	0	-15%
Simerly Creek, TN	720	131	18%	28	0	-20%
Black Mountain, KY	5300	570	11%	40	0	-20%
Wallins, KY	1500	80	5%	110	0	-60%

Knox/Whitley, KY	1400	180	13%	110	0	-20%
Canton/Ralston/Cogan Station, PA	3000	1600	53%	50	0	-5%