The Walt Disney Company

Susan L. Fox
Vice President
Government Relations

June 17, 2010

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

Re: Ex Parte Presentation in MB Docket No. 10-71

Dear Ms. Dortch:

On June 16, 2010, Sherrese Smith met with Rebecca Campbell (President, ABC Owned TV Stations), Richard Bates (SVP, The Walt Disney Company), Susan Fox (VP, The Walt Disney Company) and Bill Bailey (VP, The Walt Disney Company). During this meeting, the Disney and ABC executives discussed several issues related to retransmission consent. First, as noted in Disney's attached Reply Comments, the Disney and ABC executives discussed the Petition regarding retransmission consent filed recently with the FCC, stressing that the Petition lacks factual and legal merit, and that nothing filed in the record has proven otherwise. Indeed, the Disney and ABC executives noted that additional government involvement in these negotiations would only encourage parties to abandon the negotiating table in favor of prolonged regulatory proceedings.

The Disney and ABC representatives also stressed that, although Congress prohibited regulatory interference with the substance of retransmission-consent negotiations, they are committed to taking steps to give viewers advance notice, where appropriate and when possible, about the impending expiration of retransmission consent agreements so that viewers can evaluate their options. Ms. Campbell noted, by way of example, that such notices could include a plainly-stated notification in a crawl (or by some other method) that the station is near or within a 30-day contractual window, that its contract with a particular MVPD will expire at the end of that window, and that, although the station is working in good-faith to reach an agreement, if a new agreement is not reached with that MVPD, the station could no longer be available on that MVPD.

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Pursuant to Section 1.1206 of the Commission's rules, an original and one copy of this letter are being filed as notice of this meeting. The proceeding at issue is not restricted and therefore presentations are permitted, but must be disclosed.

Sincerely,

Susan L. Fox /SMK

Susan L. Fox

cc: Sherrese Smith

Your submission has been accepted

ECFS Filing Receipt - Confirmation number: 201063766029

Proceeding

Name	Subject
10-71	Media Bureau Seeks Comment On A Petition for Rulemaking to Amend The Commission's Rule Governing Retransmission Consent

Contact Info

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Details

Type of Filing: REPLY TO COMMENTS

Document(s)

File Name	Custom Description	Size
Retrans TW Cable Reply Comments Final.doc		72 KB
DCP to Mac noteCablevision Retransmission Letter dtd 1.8.10.pdf		565 KB

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent	)	MB Docket No. 10-71

REPLY COMMENTS OF THE WALT DISNEY COMPANY

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June 3, 2010

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent	)	MB Docket No. 10-71

REPLY COMMENTS OF THE WALT DISNEY COMPANY

The Walt Disney Company ("Disney") submits these reply comments in opposition to the petition for rulemaking ("Pet.") filed by cable companies and other multichannel video programming distributors ("MVPDs").

INTRODUCTION AND SUMMARY

For the most part, the opening comments supporting the petition—many of them submitted by the petition's own signatories—rehash the same legal and policy arguments that appear in the petition itself. We have already addressed petitioners' arguments in our opening comments and have further explained that the retransmission consent market is functioning exactly as Congress intended and in the interest of consumers. We file these short reply comments to rebut a few isolated new legal and policy arguments for regulatory intervention, including Time Warner Cable's latest but still-baseless efforts to attribute any substantial share of its retail rate increases to retransmission consent fees.[1]

[1] Letter from Matthew Brill (Time Warner Cable) to Marlene Dortch (FCC), MB Docket No. 10-71 (June 1, 2010), attaching Steven Salop et al., *Video Program Costs and Cable TV Prices: A Comment on the Analysis of Dr. Jeffrey Eisenach* (June 1, 2010) ("*Time Warner Cable Economic Paper*"). As discussed below, the *Time Warner Cable Economic Paper* does not support the basic propositions for which Time Warner Cable presumably submitted it.

As an initial matter, one factual point warrants a response. Various comments allege that the recent WABC/Cablevision retransmission consent negotiations somehow support broad FCC intervention in the retransmission consent marketplace. These claims have no merit. WABC attempted in good faith to negotiate with Cablevision for *two years*, and, during those two years, WABC granted Cablevision rolling retransmission consent extensions that permitted Cablevision to carry WABC *for free*. During that lengthy period, and in response to WABC's various efforts to engage in good faith negotiations, Cablevision consistently maintained that WABC had no value. At the end of that two-year period, in early January, WABC sent Cablevision a letter (attached to these reply comments) containing clear advance notice that its continued granting of *free* extensions was untenable and that WABC was committed to devoting the resources necessary to finally reach a fair deal by March 3, well in advance of the Academy Awards. (Later, WABC in good faith *further* extended that date three days in the hope of reaching an agreement.) Notwithstanding this clear notice, Cablevision still declined to come to the negotiating table with any arguably bona fide proposal until extremely late in the negotiating process. Petitioners' cries for regulatory intervention therefore not only lack any legal or policy basis, as discussed below, but also rest on a false factual premise that broadcasters such as WABC are failing to negotiate in good faith.

DISCUSSION

I. The Commission Has No Legal Authority to Grant the Petition.

Section 325(b) provides that "no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station . . . except . . . with the express authority of the originating station." 47 U.S.C. § 325(b)(1)(A). As explained extensively in Disney's comments, the intervention petitioners seek here—mandatory interim carriage and

binding arbitration—would violate that provision because it would enable MVPDs to "retransmit the signal of a broadcasting station" *without* "the express authority or the originating station." *See* Disney Comments 5-11.[2] First, as the Commission itself found in the *Good Faith Order*, Sections 325(b)(1)(A) and 325(e)(4)(A) each "clearly" and "unambiguously" preclude the Commission from mandating carriage during any impasse in negotiations.[3] Second, the statute likewise bars petitioners' proposed scheme of "compulsory arbitration," which would force broadcasters to comply, against their will, with arbitration decisions whenever an MVPD contrives a negotiation "impasse" in the hope of getting a better result from an arbitrator than the free market. Petitioners and their allies cannot overcome this basic legal obstacle.

Although Section 325(b)(1)(A) could not be more straightforward in banning substantive regulation of retransmission consent negotiations, petitioners and their supporting commenters argue that it is somehow contradicted by Section 325(b)(3), and they maintain, in effect, that the latter provision should trump the former. This argument is illogical. Section 325(b)(3) directed the Commission in 1992 to start a rulemaking proceeding to "ensure that the regulations prescribed under this subsection do not conflict with the Commission's obligation under section 623(b)(1) [47 U.S.C. § 543(b)(1)] to ensure that the rates for the basic service tier are reasonable." 47 U.S.C. § 325(b)(3)(A). As we have explained, there is no inconsistency

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[2] References to a party's "Comments" or "Opposition" signify the relevant submission filed in this docket in May 2010, unless some other docket is indicated.

[3] First Report & Order, *Implementation of the Satellite Home Viewer Improvement Act of 1999; Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, 15 FCC Rcd 5445, 5471 ¶¶ 59-60 (2000) ("*Good Faith Order*"); *see* Disney Comments 7-8. Time Warner Cable argues that retransmission consent should be viewed as similar to the program access rules and that, as in that context, the Commission can and should order mandatory interim carriage in the event of an impasse. *See* Time Warner Cable Comments at 12-13. As discussed in the Comments of CBS et al. at 10, however, the two statutory contexts could not be more different. Here, unlike there, a specific provision of the Communications Act bars the Commission from granting such carriage rights over objection.

between these two provisions, and the legislative history confirms that Congress enacted Section 325(b)(3) not to regulate retransmission consent negotiations, but to keep cable companies from further adding to their profits by passing through the first wave of retransmission consent fees to subscribers. Disney Comments at 10.

Again, moreover, the basic-tier rate regulation prescribed by Section 623(b)(1), and thus the scope of Section 325(b)(3), applies *only* to incumbent cable companies in the ever-shrinking category of markets without "effective competition," *see* 47 U.S.C. § 543(a)(2), and not to incumbent cable companies in competitive markets, new cable entrants, or satellite carriers.[4] Thus, even if Section 325(b)(3) gave the Commission a statutory hook to intervene in retransmission consent negotiations between a broadcaster and an incumbent cable monopolist in markets still subject to basic-tier rate regulation—which it does not—it could give the Commission *no* basis for intervening in such negotiations to the extent an MVPD is exempt from rate regulation. It is therefore odd that competitive cable entrants like RCN and Verizon and satellite carriers like DirecTV and Dish rely so heavily on that provision as a basis for regulation here.[5]

Tellingly, moreover, none of the providers making this argument have suggested that they are ready to open their books to the Commission to demonstrate how they set their basic tier rates and the role that retransmission consent fees play in that calculation. As we have explained, the Commission could not reasonably regulate the rates for this wholesale input unless it requires a comprehensive showing on the relationship between that input and each MVPD's retail rates.

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[4] *See* Disney Comments at 9; Public Notice, *Media Bureau Clarifies Issues Concerning Franchise Authority Certification to Regulate Rates*, DA 09-68, 2009 FCC Lexis 159 (Jan. 16, 2009) (identifying presumption that cable entrants are categorically exempt from rate regulation).

[5] *See, e.g.,* Verizon Comments at 7-8; RCN Comments at 2; Pet. 31-33.

A few commenters also try in vain to subvert the plain language of Section 325(b)(1)(A) through implausibly broad constructions of the statutory "good faith" requirement, which requires broadcasters to "negotiate in good faith" yet specifies that "it shall not be a failure to negotiate in good faith if the [broadcaster] enters into retransmission consent agreements containing different terms and conditions, including price terms, with different [MVPDs] if such different terms and conditions are based on competitive marketplace considerations." 47 U.S.C. § 325(b)(3)(C). For example, Cablevision views this procedural requirement as a basis for full-blown rate regulation, urging the Commission to ban "unreasonably high price[s]" for programming and force broadcasters to "identify cost differences" to justify any differences in the prices charged to different MVPDs in the same market, all on the unsupported and nearly frivolous premise that a "prohibition on unjust and unreasonable discrimination is inherent in the good faith bargaining requirement." Cablevision Comments at 18.

As the Commission has found, however, the requirement of good faith bargaining addresses only the form of negotiations, not the substance; it "does not, in any way, require a broadcaster to reduce the *amount* of consideration it desires for carriage of its signal"; and it does not remotely preclude a broadcaster from "requesting an MVPD to carry an affiliated channel." *Good Faith Order*, ¶¶ 43, 56; *see also id.* at ¶ 53. Moreover, Congress "expressly consider[ed] and reject[ed]" any "anti-discrimination provision" in this context, and the Commission has thus properly concluded that it cannot read one into the statute "by regulation." *Id.* at ¶ 14; *see also id.* at ¶ 18. Finally, petitioners' efforts to inject substantive standards into this procedural good faith requirement would impermissibly contradict Congress's overarching decision, manifest in Section 325(b)(1)(A), to allow "the parties to resolve through their own interactions and through the efforts of each to advance its own economic self interest." *Id.* at ¶ 53. The Commission

made all of these observations about this statutory scheme in 2000, and the same statutory language applies today and compels the same conclusions.

Finally, although some commenters suggest otherwise (*cf.* Pet. 30-31), the Commission may not pursue indirectly, through the license-renewal process, the very type of regulatory intervention that Congress foreclosed in Section 325(b)(1)(A): interference with free-market negotiations. In particular, the Commission cannot lawfully punish broadcasters for exercising their substantively unrestricted right of retransmission consent by threatening their broadcast licenses if they bargain for compensation for retransmission of their broadcast signals.

II. There Is Also No Policy Basis for Interfering with the Retransmission Consent Regime.

Our opening comments explained that, by giving broadcasters the right to bargain over the value of their programming, Congress meant to place them in a position closer to that occupied by nonbroadcast content providers like Discovery and HBO. This retransmission consent right promotes consumer welfare by creating efficient mechanisms to compensate broadcasters for investing in the high-quality broadcast programming that is as expensive to produce as it is valued by MVPD subscribers. *See* Disney Comments at 24-26. And despite petitioners' rhetoric, this intellectual property right is no more "artificial" than any other intellectual property right—and certainly no more artificial than the extraordinary compulsory copyright license that Congress has given MVPDs for all locally broadcast programming.

Time Warner Cable suggests that, by recovering retransmission consent fees, networks (through their owned stations) and other broadcasters are somehow seeking a "second payment for the same content already covered by the compulsory license." Time Warner Cable at 10. But Congress intended and expected that MVPDs would sometimes pay fees to broadcasters for retransmission consent *and* that the level of those fees would depend on the value of the

broadcasters' programming to the MVPD's subscribers.[6] Congress adopted that compensation mechanism even though it was legislating against the backdrop of copyright law and the compulsory license. Broadcasters obviously do not violate congressional intent when they use their congressionally granted retransmission consent rights to bargain for exactly the types of compensation that Congress meant for them to receive.[7]

Some commenters further argue that, as a policy matter, the retransmission consent right is somehow more artificial than other intellectual property rights because it is accompanied by (1) the must carry rules and (2) the network non-duplication and syndicated exclusivity rules. *See, e.g.,* Discovery Comments at 2-3; Time Warner Cable Comments at 7-8 & n.14. This is specious. First, with respect to a given cable system or satellite MVPD, a broadcaster must choose either must-carry or retransmission consent. These are mutually exclusive options, and no broadcaster could hedge its bets by simultaneously invoking both for any given area. *See* 47 U.S.C. § 325(b)(4).

Second, in attacking geographic exclusivity arrangements, the pro-intervention commenters are attacking contractual relationships, not regulatory constructs, although some of them appear to miss that point. Network non-duplication and syndicated exclusivity obligations arise not in the first instance from Commission rules, but from private contract, and the rules

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[6] *See, e.g.,* S. Rep. No. 92, 102d Cong., 1st Sess. at 35-36 (1991) (*"Senate Report"*), *reprinted in* 1992 U.S.C.C.A.N. 1133.

[7] Time Warner Cable asserts that the networks have not only bargained *with MVPDs* for retransmission consent fees for the signals of network-owned-and-operated stations, but also bargained *with their affiliates* for a share of the fees that the affiliates in turn have negotiated with MVPDs, and it claims that such arrangements are improper. Time Warner Cable Comments at 9-10. This argument is meritless for the reasons set forth in the *Ex Parte* Comments of Fox Broadcasting Co. in Response to Time Warner Cable's Comments, in *Mediacom Comm'c'ns Corp. v. Sinclair B'cast Group* Inc., CSR No. 8233-C (Dec. 17, 2009).

themselves merely restrict the terms and scope of these private arrangements.[8] To the extent the pro-intervention commenters oppose geographic exclusivity arrangements, they are in essence asking the Commission to interfere with contractual, free market relationships between networks and affiliates and, more generally, between program suppliers and stations. The Commission has rightly rejected similar requests in the past on the ground that regulatory interference with those private relationships would violate congressional intent, undermine the Commission's own policies, and "risk[] . . . major disruption and possible unintended consequences."[9]

Finally, several commenters untenably ask the Commission to prohibit any arrangement under which MVPDs agree to compensate broadcasters in kind by carrying extra channels. As a threshold terminological matter, although the pro-intervention advocates refer to such arrangements as "tying," this is a sloppy and inaccurate use of that antitrust concept. A seller "ties" two products if it requires a purchaser to take one as a condition of receiving the other.[10] Such arrangements are both commercially and legally distinct from the practices actually at issue

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[8] "[C]able operators' ability to retransmit duplicative distant broadcast signals is governed in the first instance by the contract rights negotiated between broadcasters and their programming suppliers. If networks and syndicators have entered into contracts with broadcasters that limit broadcasters' exclusivity such that a duplicative distant signal could be imported by an MVPD without blacking out the duplicative programming, the Commission's rules would not prevent that result. Conversely, where exclusivity contracts exist, repeal of the Commission's rules would not necessarily be sufficient to enable the retransmission of duplicative programming." *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, ¶ 49 (Sept. 8, 2005), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260936A1.pdf ("*2005 Report to Congress*"). *See generally* Opposition of the Broadcaster Associations (National Association of Broadcasters et al.) at 22-26.

[9] *2005 Report to Congress* at ¶¶ 50-51 (Sept. 8, 2005); *see also Senate Report* at 38 ("[T]he Committee has relied on the protections which are afforded local stations by the FCC's network non-duplication and syndicated exclusivity rules. Amendments or deletions of these rules in a manner which would allow distant stations to be submitted on cable systems for carriage or local stations carrying the same programming would, in the Committee's view, be inconsistent with the regulatory structure created in [this legislation].").

[10] *See, e.g., Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12 (1984).

here: *bundled discounts*, which are ubiquitous throughout the economy and almost always pro-consumer.[11] Disney, for example, offers cable companies better pricing if they are willing to carry a variety of Disney-affiliated channels. But it never *requires* them to take bundles of channels, and it always offers distributors the ability to carry the ABC Owned Television Stations, ESPN, or the Disney Channel on a standalone basis, without carrying other programming services. This is no more of a "tie" than the bundled discounts that most MVPDs themselves offer any subscriber who purchases voice and Internet access together with video services.

In any event, Congress and the Commission have always expected and intended that broadcasters would negotiate with MVPDs for the "right to program an additional channel on a cable system." *2005 Report to Congress* at ¶ 9 (quoting *Senate Report* at 35-36). As with monetary compensation, broadcasters do not violate congressional intent by seeking the very type of in-kind compensation that Congress deliberately gave them an opportunity to receive. Indeed, it is the Commission that would violate federal law if it prohibited the sale of such programming packages. *See Disney Docket No. 07-198 Comments* at 4-17. Any such prohibition would make no *policy* sense either, because the widespread sale of programming bundles to MVPDs has led to a proliferation of diverse content for American television

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[11] *See, e.g.*, Antitrust Modernization Comm'n, *Report and Recommendations* 94 (2007), *available at* http://govinfo.library.unt.edu/amc/report_recommendation/chapter1.pdf ("Large and small firms, incumbents, and new entrants use bundled discounts and rebates in a wide variety of industries and market circumstances. Because they involve lower prices, bundled discounts and bundled rebates typically benefit consumers."); *see generally* Comments of the Walt Disney Company, MB Docket No. 07-198, at 27-31 (Jan. 4, 2008) (*"Disney Docket No. 07-198 Comments"*) (surveying literature).

viewers.[12] Disney has discussed these issues in great detail in its comments and reply comments in Docket No. 07-198, and it refers the Commission to those submissions rather than repeating their substance here.

III. The *Time Warner Cable Economic Paper* Is Immaterial to Any Relevant Empirical Issue.

The cable industry—including Time Warner Cable in particular—has persistently sought to ascribe "blame" for its own retail rate increases to programming costs, including retransmission consent fees. As Dr. Jeffrey Eisenach has explained in a series of reports, however, such fees could have played only a very small role in those retail rate increases.[13] *First*, the total cost of *all* cable programming (broadcast plus cable-only) accounts for a minority of cable company costs and, at about 34%, has remained quite constant as a percentage of costs over time. *See 2010 Eisenach Analysis* at 8-9. Programming costs therefore cannot be said to have singularly or even disproportionately affected cable subscription rates, and retransmission consent fees for *broadcast* programming represent only a small fraction of the total cost of all programming. *See* Disney Comments at 26. *Second*, to the extent that retransmission consent fees, like other input costs, ultimately affect retail rates, that is not a consumer harm; it is how efficient markets generate consumer value on the basis of consumer choice. *See* Disney

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[12] *See, e.g., Disney Docket No. 07-198 Comments* at 31-36; *see also* AT&T Comments at 5 ("The retransmission consent regime thus is largely responsible for the tremendous proliferation of programming networks on cable and other MVPD systems.").

[13] *See, e.g.*, Jeffrey A. Eisenach, *Video Programming Costs and Cable TV Prices*, Navigant Economics, at 22, Fig. 10 (Apr. 2010) (*"2010 Eisenach Analysis"*), attached to Letter from Susan Fox (Disney) to Marlene Dortch (FCC), MB Docket No. 10-71 (Apr. 23, 2010); Jeffrey A. Eisenach and Kevin W. Caves, *Retransmission Consent and Economic Welfare: A Reply to Compass Lexecon*, Navigant Economics, at 6 (Apr. 2010), attached to Letter from Erin Dozier (NAB) to Marlene Dortch (FCC), MB Docket No. 07-198 (May 6, 2010); Jeffrey A. Eisenach, *The Economics of Retransmission Consent*, Empiris, LLC, at 23 (Mar. 2009) ("*2009 Eisenach Analysis*"), attached as Appx. A to Reply Comments for the National Association of Broadcasters in MB Docket No. 07-269 (June 22, 2009).

Comments at 25-26. It would make no more sense to limit retransmission consent fees because of their influence on retail prices than to limit the price that equipment manufacturers charge MVPDs for the price of fiber-optic cable or the price that construction crews charge to lay it.[14] *Third*, in any event, cable company profits and revenues are rising far faster than retransmission consent fees, which is the opposite of what one would expect to see if those fees were the principal drivers of retail rate increases. *See* Disney Comments at 26-27.

Two days before these reply comments were due, Time Warner Cable submitted what it presented as a critique of Dr. Eisenach's analysis: the *Time Warner Cable Economic Paper*. While this new submission may dispute strawman misinterpretations of Dr. Eisenach's analysis, it does not actually contradict his major theses. Although Dr. Eisenach is preparing a detailed response, a few observations warrant emphasis now.

To begin with, the *Time Warner Cable Economic Paper* does not dispute that retransmission consent fees for broadcast programming—which alone are at issue here—represent only a fraction of MVPD programming costs overall. Instead, it addresses only overall programming costs in the aggregate, even though the majority of those costs are irrelevant to this proceeding. Second, the paper provides no basis for disputing that retransmission consent fees are pro-consumer (even if some portion of them is passed on to consumers) in that they give broadcasters efficient incentives to produce goods that consumers value: high-quality broadcast programming. Third, the paper likewise provides no basis for disputing Dr. Eisenach's key observation that, if the Commission were to investigate the causes of cable rate increases, it

[14] "One of cable operators' arguments against retransmission consent is that any compensation paid to broadcasters for their signals is ultimately passed along to consumers in the form of higher retail prices. At one level, this assertion is a truism, equivalent to saying that if steel were free, car companies could charge less for automobiles. The problem, of course, is that if the price of steel were set to zero, no steel would be produced, and there would be no cars in the first place." *2009 Eisenach Analysis* at 23.

would find that programming costs in general (and certainly retransmission consent fees in particular) play a far less important role than other factors in explaining those increases. The *Time Warner Cable Economic Paper* seeks to muddy this issue by "refuting" the proposition, which it misattributes to Dr. Eisenach, that cable companies never pass through increases in programming costs to consumers. But Dr. Eisenach never made that argument; instead, he explained that programming cost increases are at most a secondary cause of cable rate increases and that they are rising less rapidly than overall cable company profits. Those points remain essentially unrebutted.

Finally, although the *Time Warner Cable Economic Paper* criticizes Dr. Eisenach's comparison of overall programming costs to overall cable company costs, its own "adjusted" comparison yields results that do not even support Time Warner Cable's advocacy here. For example, the *Paper* claims that, between 2004 and 2009, Time Warner Cable's video programming costs rose from 46.2% to 48.6% of its overall "costs of revenues" when "adjusted" for the company's increased voice and data service, whereas Dr. Eisenach's "unadjusted" comparison shows a change from 49.5% to 46.7% over the same period. *Time Warner Cable Economic Paper* at 20, Fig. 5.[15] Under either approach, however, overall programming costs have hovered in the upper 40s as a percentage of this limited subcategory of costs.[16] Similarly, when the paper performs similar "adjustments" on the revenue side, it concludes that video programming costs have increased from 30.2% in 2003 to 34.6% in 2008 as a share of "adjusted"

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[15] Dr. Eisenach's analysis shows that the percentage of "costs" attributed to video programming falls to roughly 34% if the analysis accounts not only for "cost of revenue," but also selling, general, and administrative expenses ("SG&A"). *2010 Eisenach Analysis* at 8-9.

[16] As Dr. Eisenach will explain in his forthcoming response, the "adjustments" underlying the revised figures in the *Time Warner Cable Economic Paper* are flawed in their own right. Among its other defects, the *Paper* implausibly assumes zero interdependence in demand and zero economies of scope among video, voice, and data services, and arbitrarily allocates joint and common costs among multiple services over a mixed-use network.

video revenues for all MVPDs—in other words, approximately one-third throughout this period. *See Time Warner Cable Economic Paper* at 15, Fig. 2b. In short, even if they were proper, the minor variations the *Time Warner Cable Economic Paper* achieves by manipulating the variables in these comparisons would not even make a material difference.

CONCLUSION

The petition for rulemaking should be denied.

Respectfully Submitted,

/s/ Susan L. Fox
Vice President, Government Relations
The Walt Disney Company
425 Third Street, S.W., Suite 1100
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(202) 222-4780

June 3, 2010

Disney and Networks

January 8, 2010

E. MacRae Budill
Executive Vice President, Programming
Cablevision Systems Corporation
1111 Stewart Avenue
Bethpage, NY 11714

Re: ABC Retransmission Consent Agreement

Mac:

Thanks again for your time last week. I wanted to take this opportunity to follow-up with you regarding our conversation on retransmission consent.

For over two years now, we have tried in good faith to negotiate with Cablevision a fair exchange of value for retransmission consent for WABC/WPVI (the "Stations"). Over that time, you and others on your team have consistently stated that our Stations have no value to your company. For us, your position continues to be an untenable one, especially based on the performance of our Stations, and the fact that Cablevision uses WABC and WPVI to sell its video subscription services.

WABC-TV Channel 7 ("WABC") is #1 in your market. Not only is it the most watched television station in the New York DMA, but it is also the most watched television station in the nation. WABC leads the market in local news and has worked tirelessly with the community to make a better New York. Further, as the most watched channel on your programming line-up, WABC drives video subscriptions of the basic level of service, as well as other subscription packages for Cablevision. These are indisputable facts, and we feel that the proposal we made to you is both fair and reasonable.

Cablevision's retransmission consent agreement for WABC and WPVI, as extended, expires on March 3, 2010. We are focused on reaching a deal with Cablevision between now and March 3rd and we are committed to devoting the necessary resources to consummate a fair deal. We will send you the necessary retransmission consent amendment within the next week for your review.

Cablevision has shown little effort to engage in good faith negotiations for retransmission consent over the past two years. I am hopeful that we will come to a successful renewal of your agreement. To be clear, we are not willing to renew your current deal beyond March 3, 2010 without completing an agreement that reflects the proper value for our Stations.

I look forward to hearing from you in the near future. If I do not hear from you within the next 2 weeks, I will follow-up accordingly.

Sincerely,

David C. Preschlack

Cc: Justin Connolly
Tom Montemagno
John Porio
Pete O'Connell
Adam Weinstein