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August 20, 2010

BY ELECTRONIC FILING

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

Re: MB Docket Nos. 10-56
EX PARTE

Dear Ms. Dortch:

HDNet, LLC (“HDNet”) offers this Ex Parte. HDNet is an independent programming company delivering two 1080i high definition (“HD”) channels known as “HDNet” and “HDNet Movies.” HDNet is the exclusive, high definition home for popular and original programming, such as comedy, drama, sports, and music. HDNet also features television’s only HD news feature programs: *HDNet World Report* and the Emmy Award-winning *Dan Rather Reports*, featuring legendary journalist Dan Rather. HDNet Movies offers viewers a premium high-definition movie experience featuring first-rate films, and is the only network to defy Hollywood convention by regularly offering its viewers the ability to enjoy full-length feature films in the comfort of their own home *before* the films premiere in theaters. HDNet is not affiliated with any multichannel video programming distributor (“MVPD”) or with any of the major content companies that provide many channels to MVPDs and operate in a corporate environment.

Mark Cuban, the Chairman, Chief Executive Officer and President of HDNet, personally makes the programming decisions for the HDNet channels. Mr. Cuban has extensive experience in both the cable industry and in Internet video. Before he founded HDNet, he was one of the founders of Broadcast.com, which was later sold to Yahoo! for a considerable sum. Mr. Cuban has also addressed some of the issues raised in this proceeding on his weblog, “blog maverick,” www.blogmaverick.com. These issues include, from the perspective of an independent network provider: the impracticality of using the Internet as a substitute for MVPD distribution of content; the distinct, but complementary natures of the MVPD and online video distribution markets; the high cost of Internet vs. MVPD delivery of content; and the benefits to consumers of the TV Everywhere model.

Cable is a medium far better suited to the delivery of digital video content than the Internet, because cable is designed and dedicated to deliver such content. The number of televisions in the nation’s homes has been steadily increasing as more and more consumers purchase High Definition Televisions (“HDTVs”). These consumers are not purchasing HDTVs to use the Internet; they are purchasing them to watch TV. With the ready availability of digital video recording and video on demand cable options, customers can increasingly view the television content that they wish to view on television at the time of their choosing. In contrast, few viewers have abandoned their televisions in favor of receiving their video programming exclusively online; the increases in the sales of television sets are consistent with this conclusion. Moreover, it would be foolish for the Applicants, or any other programmer or MVPD, to abandon a mode of delivery specialized for high quality video content in favor of more

expensive Internet delivery or lower-quality Internet video. In fact, if a large number of consumers were to switch to receiving their content primarily on the Internet, the result would be greatly downgraded Internet service due to a lack of bandwidth.

Not only does cable or satellite offer a dedicated high bandwidth mode of delivery, but these methods of distribution resemble their ancestor, broadcast television, far more than they resemble the Internet, because it is possible for one “stream” of information to reach millions of viewers. Not only does Internet distribution not offer HD quality, but it is also a very expensive distribution method, because it requires a content provider to purchase lots of costly bandwidth so that the content can be streamed to each consumer individually. This cost is beyond the reach of an independent programmer like HDNet. The operation of YouTube reflect this – Google heavily subsidizes the bandwidth to stream to each viewer at what is cumulatively enormous expense. To put some limit on the cost increases, Google and YouTube place limits on the length and file size of each video.

From the perspective of HDNet as an independent programmer, the Internet is a complementary means of distribution to a cable coax or satellite system. Typically, rather than using the Internet as a primary source of digital video content, viewers use the Internet to catch up on programming they missed on television or to access additional content. Moreover, using the Internet, digital video content can be made accessible on a variety of devices and at a time of the customer’s choosing through TV Everywhere options, such as Comcast’s Fancast Xfinity TV. TV Everywhere, in particular, is a huge value adder for consumers and complements traditional cable service by allowing cable subscribers to view the high quality cable TV service

that they already pay for on other devices. As noted above, it is costly to distribute digital programming over the Internet; the authentication requirements of TV Everywhere allow for the distribution of higher quality content than it would be economically feasible to provide over “free” Internet video services. Authentication brings *more* content to consumers, and at a higher quality, than would be available for “free.”

Comcast provides carriage to HDNet in several markets (and began doing so well before its pending transaction with NBCU), and has continued to expand its carriage of HDNet to new Comcast markets. HDNet considers itself to have a very positive relationship with Comcast and certainly has found Comcast to be much more supportive of HDNet as an independent programmer than most of the other large, long-established, wired cable MVPD carriers. Based on HDNet’s experience, Comcast has proved to be a strong supporter of independent programming that viewers want to see. HDNet is also pleased to see that Comcast has committed, in connection with its pending transaction, to add more independent networks.

Notwithstanding HDNet’s carriage by Comcast, HDNet continues to face substantial difficulties in obtaining carriage on several other major cable MVPDs, despite the customer interest in HDNet’s programming as reflected by positive ratings. This effectively prevents HDNet from reaching many potential viewers throughout the nation. HDNet has urged greater protections for independent programmers in several proceedings, most recently in HDNet’s June 17, 2010 *ex parte* filing in MB Docket Nos. 07-42; 07-198; 10-71 and 10-56 and HDNet’s Reply Comments in MB Docket Nos. 07-42 and 10-71. It would be disappointing if protections for

independent programmers were imposed only against Comcast during a merger proceeding, when in HDNet's experience, the real problem lies with other MVPDs.

Respectfully submitted,

/s/ David S. Turetsky

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