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October 6, 2010

VIA ECFS

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

Re: CS Docket No. 97-80; PP Docket No. 00-67

Dear Ms. Dortch:

On October 6, 2010, Cristina Pauzé of Time Warner Cable Inc. (“TWC”), together with Brian Murray and the undersigned of Latham & Watkins LLP, met separately with Eloise Gore, Acting Legal Advisor to Commissioner Clyburn, and Brad Gillen, Legal Advisor to Commissioner Baker, to discuss the pending rulemaking regarding the use of CableCARDs in connection with unidirectional digital cable products (“UDCPs”).

At these meetings, TWC reiterated its view that there is no sound legal or policy-based reason to impose a “tuner parity” mandate or related requirement, the sole purpose of which would be to expand the specific number of streams of switched digital video (“SDV”) programming that UDCPs can record simultaneously. The Commission has made clear that cable operators have no legal obligation to ensure that their subscribers can use UDCPs to access SDV programming at all, much less to record multiple simultaneous streams.¹ Notwithstanding the lack of any legal obligation, TWC voluntarily helped to develop the tuning adapter—at significant expense—to enable consumers to access and view SDV programming, which they can do without regard to the proposed multi-tuner requirement. Because cable operators were never required to develop the tuning adapter in the first place, the Commission cannot and in any event should not micromanage its implementation by mandating specifications such as the number of simultaneous recordings the device must be capable of supporting. Moreover, the contemplated mandate would risk undermining the efficiencies of SDV, as the additional capacity that SDV technology creates—which facilitates faster broadband speeds and expanded high-definition and other programming offerings—would diminish if cable operators were required to support increasing numbers of switched programming streams simultaneously. More

¹ *Oceanic Time Warner Cable, a subsidiary of Time Warner Cable, Inc.*, Order on Review, 24 FCC Rcd 8716 ¶ 11 (2009).

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generally, by converting this voluntary solution into a permanent and highly detailed regulatory requirement, the Commission would discourage parties from developing similar consensual arrangements in the future.

In light of these risks, TWC once again urged the Commission to avoid imposing any mandates in connection with tuning adapters and instead to rely on the marketplace to continue producing solutions for consumers. TWC explained that one tuning adapter that supports four simultaneous programming streams already exists and another is under development, which will enable UDCP customers to record four switched video streams without any need for regulatory intervention. In fact, those initiatives will put TiVo customers in a better position than TWC's non-TiVo customers, since none of TWC's leased digital video recorders has more than two tuners. TWC also observed that even without any further modifications to the tuning adapter, a customer using a four-tuner TiVo device—should one be developed²—would be able to record up to four linear, non-switched streams simultaneously, since the tuning adapter is only necessary to enable access to the lightly viewed programming that is switched.

In addition to discussing the proposed mandate to redesign the tuning adapter to support the recording of multiple simultaneous streams, TWC also addressed the prospect of rules concerning the self-installation of CableCARDS and the provision of CableCARD pricing information. TWC reiterated its view that if the Commission adopts rules with respect to either of these issues, it should ensure that cable operators are allowed sufficient flexibility to respond to the preferences of their customers, rather than having to comply with rigid, one-size-fits-all requirements.

Please contact the undersigned if you have any questions regarding this notice.

Sincerely,

/s/ Matthew A. Brill

Matthew A. Brill

cc: Eloise Gore
Brad Gillen

² Existing TiVo devices include only two tuners. TWC understands that the Moxi digital video recorder currently available at retail includes three tuners, although its manufacturer (ARRIS) has signaled its support for the current version of the tuning adapter. Comments of ARRIS Group, Inc., CS Docket No. 97-80, at 4-5 (filed June 14, 2010).