



Jeffrey H. Blum
Senior Vice President
jeffrey.blum@dishnetwork.com
(202) 293-0038

December 9, 2010

FILED/ACCEPTED
DEC - 9 2010
Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

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

Re: **REDACTED – FOR PUBLIC INSPECTION**
Concerning *Adelphia Order* Arbitration Condition,
MB Docket No. 05-192

Dear Ms. Dortch

Enclosed are an original and four (4) copies of DISH Network L.L.C.'s ("DISH") response to Comcast Corporation's status report and request dated December 6, 2010. Portions of these documents have been redacted for public inspection.

DISH also is submitting under separate cover a Confidential version of this letter. This Confidential version contains information that qualifies for Confidential treatment pursuant to the Commission's rules, and for which DISH has requested Confidential treatment in its Request for Confidential Treatment filed today pursuant to Sections 0.457 and 0.459 of the Commission's rules. *The Confidential version of the letter should not be placed in the public record*, as it contains information that qualifies for Confidential treatment under the Commission's rules. DISH has marked the pages of the attached version of the letter pursuant to the Confidentiality Agreement and Protective Order governing the arbitration between Comcast and DISH as "**HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER IN CASE NOS. 16-472-E-00118-10 AND 16-472-E-00211-10.**"

DISH is today serving a copy of this letter via electronic mail to counsel for Comcast.

If you have any questions, please do not hesitate to contact me.

No. of Copies rec'd 0+4
UNABODE

Respectfully submitted,

/s/ Jeffrey H. Blum

Jeffrey H. Blum
Senior Vice President and
Deputy General Counsel

cc: William T. Lake (via electronic mail)
Kathy Zachem, Comcast Corporation
Brien C. Bell (via electronic mail)

*Jeffrey H. Blum
Senior Vice President
jeffrey.blum@dishnetwork.com
(202) 293-0038*



December 9, 2010

VIA HAND DELIVERY AND ELECTRONIC MAIL (william.lake@fcc.gov)

William T. Lake
Chief, Media Bureau
Federal Communications Commission
445 12th Street NW
Washington, DC 20554

Re: Concerning *Adelphia Order* Arbitration Condition,
MB Docket No. 05-192

Dear Bill:

I am writing in response to Comcast's December 6th letter regarding the status of DISH's negotiations with Comcast regarding Comcast SportsNet California ("CSN-California").

As we explained during our meeting on November 30, 2010, DISH believes that the arbitrator's ruling in Comcast's favor was in error, and that the content of Comcast's final offer leaves DISH no business choice but to discontinue carriage of the programming. Rather than submit a final offer that DISH may have been able to accept, Comcast chose to make an offer that it knew was a non-starter for DISH. Comcast's final offer not only would {{
}}.

Nevertheless, DISH has attempted to negotiate a standstill agreement with Comcast in good faith. In fact, it was DISH – not Comcast – that made the first proposal to reach a standstill. Last Thursday, DISH presented Comcast with a standstill offer that would have restored the programming. It also proposed, consistent with Comcast's key ask during the November 30th meeting, {{

}}. Comcast rejected DISH's offer and presented a counter, to which DISH responded in turn. DISH's latest offer would have granted CSN-California {{

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}}. Comcast rejected DISH's proposal outright and then wrote you its December 6th letter.

In light of all this, it is unfortunate and disingenuous for Comcast to claim that DISH has been the obstacle in reaching a standstill. DISH has sought to reserve its rights to discontinue carriage if DISH decides to appeal and the Commission ultimately rules in Comcast's favor, but this is fully consistent with the *Adelphia Order*, not a violation of it. The *Adelphia Order* contemplated the possibility that an aggrieved MVPD might prefer to discontinue carriage rather than accept an unfavorable arbitration ruling, and therefore provided the MVPD with this option. See *Adelphia Order*, App. B, § B(4)(b) ("The MVPD may elect to carry the programming at issue pending the FCC decision, subject to the terms and conditions of the arbitrator's award."). These conditions have been imposed on Comcast, not on competing distributors such as DISH; while they permit the agency to affirm or set aside the arbitrator's decision on terms of carriage, they do not provide a basis for the Commission to order carriage of the programming on these terms by someone who is not the subject of the conditions in the first place. {{

}} depending on the final
outcome of a DISH appeal of the arbitrator's ruling.

Although Comcast claims that DISH's position "is inconsistent with the express terms and structure of the *Adelphia Order*," its letter provides no support for this assertion. To the contrary, Comcast appears to concede that no such support exists. Specifically, Comcast urges the Commission to "clarif[y]" or "modif[y]" the *Adelphia Order* to force DISH to carry CSN-California pursuant to Comcast's final offer. This suggests that, unless clarified or modified, that the *Adelphia Order* does not compel DISH to do so. Indeed, such a result would be at odds with the *Order*'s intent to protect unaffiliated MVPDs. But the time to negotiate the terms and conditions of the *Adelphia Order* has long passed. Comcast has no basis to complain that it has been unaware of the "rules of the road," or that such rules need clarifying. It is DISH and its subscribers – not Comcast – who would be unfairly prejudiced by any *post hoc* changes to the *Adelphia Order*. DISH made the decision to invoke the *Adelphia Order* arbitration process against Comcast with the expectation that, even if DISH's final offer did not prevail, DISH would be able to choose between accepting Comcast's offer – which in theory should be reasonable – or discontinuing carriage in the case of an unreasonable offer.

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As I have stated previously, DISH has acted at all times in good faith, protecting the interests of its subscribers against Comcast's unreasonable demands. DISH remains willing to negotiate with Comcast in good faith to resolve this dispute.

Respectfully submitted,

/s/ Jeffrey H. Blum

Jeffrey H. Blum
Senior Vice President and
Deputy General Counsel

cc: Kathy Zachem, Comcast Corporation
Brien C. Bell (via electronic mail)