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VIA ELECTRONIC FILING

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

Re: In re Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage, MB Docket No. 07-42

Dear Ms. Dortch:

On June 30, 2011, Jim Coltharp, Chief Policy Advisor for FCC & Regulatory Policy at Comcast Corporation ("Comcast"), and David Murray and the undersigned of Willkie Farr & Gallagher LLP, representing Comcast, met with Erin McGrath, Acting Legal Advisor to Commissioner Robert McDowell. We discussed several reasons why the Commission should not issue a final rule on a proposed carriage "standstill" requirement in the above-captioned proceeding.

In particular, we noted that the 2007 Notice of Proposed Rulemaking ("NPRM") did not provide notice that any sort of standstill requirement was under consideration. We discussed the flaws in the argument that a standstill could be seen as a "logical outgrowth" of the NPRM's brief discussion of "retaliation," and suggested that the principles applied in the recent *Council Tree Communications v. FCC* case present strong grounds for reversal here.[1]

We also raised questions about the Commission's statutory authority under Section 616 to order carriage prior to a determination on the merits that a violation has occurred. We noted that, consistent with Section 616, the Commission's program carriage rules and implementing order only contemplate a carriage remedy subsequent to a judgment that the statute has been violated. We pointed out that mandating carriage prior to a determination based on a full review of all of the evidence would also run afoul of Section 624(f) and the First Amendment.

Finally, we discussed why a standstill in program carriage cases would be impracticable. In particular, we explained why an MVPD and its subscribers would not be made whole by a "true-up" should the Commission later come to a different determination on the merits than the preliminary

[1] *Council Tree Commc'ns v. FCC*, 619 F.3d 235, 253-56 (3rd Cir. 2010) (finding that two spectrum auction rules were not adequately noticed and rejecting logical outgrowth arguments).

decision that put a standstill in place. We also expressed concern that a standstill presents several timing, procedural, and policy issues in cases where a dispute arises during the term of an existing contract, rather than upon a contract's expiration. These issues have never been addressed in the comments and replies ensuing from the NPRM, and therefore are not ripe for resolution in a rulemaking order.

Kindly direct any questions regarding this matter to my attention.

Sincerely,

/s/ Michael D. Hurwitz
Michael D. Hurwitz
Counsel for Comcast Corporation

cc: Erin McGrath