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October 4, 2011

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

RE: *Ex Parte* Presentation
MB Docket No. 11-128

Dear Ms. Dortch:

By and through their undersigned counsel, Fox Broadcasting Company, which operates the FOX television network, and Fox Television Holdings, Inc., which is the indirect licensee of 17 FOX-affiliated broadcast television stations (collectively, “Fox”), hereby submit this brief response to the reply comments of Time Warner Cable Inc. in the above-referenced proceeding.¹

In the *Public Notice*, the Commission called for comment on “issues related to regional sports network (“RSN”) access and carriage,” in order to prepare a report examining multichannel video programming distributors’ (“MVPDs”) ability to distribute RSN programming and the ability of unaffiliated RSNs to obtain carriage on MVPDs.² The *Public Notice* specifically asks questions regarding

¹ See *Media Bureau Seeks Comment on the Regional Sports Network Marketplace*, Public Notice, MB Docket No. 11-128 (rel. July 26, 2011) (the “*Public Notice*”); see also Reply Comments of Time Warner Cable Inc. (“TWC”), MB Docket No. 11-128 (filed Sept. 26, 2011) (the “TWC Reply Comments”).

² *Public Notice*, at 1.

MVPDs' ability to access RSN programming, about whether RSN owners have withheld content or engaged in exclusive dealing and about whether unaffiliated RSNs have been able to gain access to carriage on MVPD systems. Moreover, the Commission sought feedback regarding TWC's (and Comcast's) compliance with the access and carriage conditions imposed as part of the *Adelphia* transaction.³

The *Public Notice* is explicit in its focus on RSNs, which it defines as "any non-broadcast video programming service" providing same day distribution of major sporting events "within a limited geographic region."⁴ Notwithstanding this exclusive and unambiguous focus on the RSN marketplace, TWC attempts to divert the Commission's attention to wholly unrelated questions about sports programming generally and nationally distributed broadcast networks.⁵ Evidently not wanting to miss any chance to pursue its obdurate quest for retransmission consent reform, TWC alleges that the Commission should evaluate here the way that the "Big Four broadcast networks" purportedly use sports programming in their retransmission consent negotiations.⁶ As TWC is well aware, however, issues related to retransmission consent bargaining are the subject of a separate, pending Commission proceeding – a proceeding in which parties including TWC have had ample opportunity to present their views.⁷

³ See *id.* at 4 (citing *In re Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corp., Assignors to Time Warner Cable, Inc., Assignees, et al.*, 21 FCC Rcd 8203, 8277 (2006) ("*Adelphia*").

⁴ *Public Notice*, at 4, note 21.

⁵ See TWC Reply Comments, at 10-11.

⁶ *Id.* Curiously, TWC expends great energy urging regulatory scrutiny of broadcasters' so-called "exploitation" of sports content, even as it claims that "robust competition" belies any need for ongoing regulation of the sports programming that TWC itself owns. See *id.* at 4-5, 10-11. But what's good for the goose should be good for the gander. If it is true that vertically integrated RSN owners have "strong incentives" to seek "broad distribution" of their sports programming, as TWC asserts (at 4), it is equally the case that broadcast networks are highly motivated to ensure that over-the-air stations are widely carried by MVPDs (and therefore that broadcasters have no incentive to withhold sports or any other programming for anticompetitive reasons). TWC cannot have it both ways.

⁷ See *In re Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71 (rel. March 3, 2011). Like other broadcasters, Fox has submitted comments as part of the retransmission consent proceeding that respond to TWC's arguments. See, e.g., Comments and Reply Comments of Fox Entertainment Group, Inc. and Fox Television Stations, Inc., MB Docket No. 10-71 (filed May 27 and June 27, 2011, respectively).

Thus, there is no need for the Commission to accede to TWC's attempt to sidetrack a proceeding intended for evaluation of the RSN marketplace. Rather, the Commission should preserve this proceeding for the purposes set forth in the *Public Notice*, to wit: as the appropriate place to evaluate RSN "access and carriage issues both on an industry-wide basis and specifically with respect to" TWC's compliance with the *Adelphia* conditions.⁸ The Commission should leave arguments about retransmission consent negotiations to the docket where they belong.

This proceeding has been designated as "permit-but disclose" in accordance with the Commission's *ex parte* rules. Should you have any questions, kindly contact the undersigned.

Respectfully submitted,

/s/

Jared S. Sher
Counsel to Fox

⁸ *Public Notice*, at 2.