

# LATHAM & WATKINS LLP

## FIRM / AFFILIATE OFFICES

Abu Dhabi	Moscow
Barcelona	Munich
Beijing	New Jersey
Boston	New York
Brussels	Orange County
Chicago	Paris
Doha	Riyadh
Dubai	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

May 7, 2012

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

**Re: Notice of Ex Parte Presentation, CS Docket  
No. 98-120**

Dear Ms. Dortch:

On May 3, 2012, Cristina Pauzé of Time Warner Cable Inc. (“TWC”) and the undersigned met with William Lake, Michelle Carey, Steven Broeckert, and Evan Baranoff of the Media Bureau and Austin Schlick, Julie Veach, and Susan Aaron of the Office of General Counsel to discuss the pending Notice of Proposed Rulemaking regarding the impending sunset and potential extension of the Commission’s viewability rule. Consistent with TWC’s comments, we argued that the viewability mandate adopted in 2007 is not compelled by Section 614 of the Communications Act and cannot be extended without risking a violation of cable operators’ First Amendment rights. We pointed out that the Commission would be required to meet a substantial burden if it were to compel cable operators to carry broadcast stations in both digital and analog format (or, alternatively, to distribute receiving equipment at no charge), and we argued that the record is devoid of information that could satisfy that burden.

We also discussed TWC’s tentative plans for delivering must-carry signals in the event the viewability mandate sunsets. We explained that TWC has transitioned one cable system (Augusta, Maine) to “all digital” to date, and TWC offered those subscribers the use of one or more limited-functionality digital transport adapters (“DTAs”) at no charge for two years, as an alternative to leasing full-featured set-top boxes or purchasing CableCARD-equipped retail devices. TWC also has offered the relevant subscribers the opportunity to lease one or more DTAs for \$0.99 per month after the initial free offer expires.<sup>1</sup> TWC anticipates extending

---

<sup>1</sup> In Barstow, CA, TWC has ceased carriage of analog signals on its CPST tier but continues to provide basic tier signals in analog. As part of this bandwidth-reclamation effort, TWC has offered affected analog subscribers the use of one simple converter box at no charge for one year, with the opportunity to lease additional converter boxes (or to

comparable equipment offers to subscribers in other areas where TWC eliminates analog cable transmissions, and TWC will notify subscribers about such offers well in advance of any such transition. Similarly, where TWC chooses to cease analog transmission of one or more must-carry stations in a hybrid digital/analog cable system, it will provide advance notice regarding available equipment that will enable subscribers with direct connections to analog television sets to continue viewing such broadcast signals.

In response to inquiries from Commission staff, TWC takes this opportunity to confirm that the rates it charges for the basic service tier do not vary depending on whether the subscriber accesses an analog or digital version of services carried on that tier. In addition, this letter confirms that TWC to date has not deployed DTAs in a Cisco cable system, but TWC understands that Cisco does make DTAs available for use with Cisco headend equipment. TWC is uncertain as to the timing of Cisco's deployment of conditional access technology that will enable third-party manufacturers to distribute compatible DTAs. Staff also asked about the extent to which TWC subscribers are served by systems employing switched digital video ("SDV") technology. The overwhelming majority of TWC's cable systems now employ SDV technology to deliver certain cable networks, but TWC has not transmitted broadcast signals via such technology in any system. Accordingly, TWC's use of SDV technology will not have any impact on its delivery of must-carry broadcast signals if the Commission's viewability mandate sunsets.

Please contact the undersigned if you have any questions regarding these issues.

Sincerely,

*/s/ Matthew A. Brill*

Matthew A. Brill  
of LATHAM & WATKINS LLP  
*Counsel for Time Warner Cable Inc.*

cc: William Lake  
Michelle Carey  
Steven Broeckaert  
Evan Baranoff  
Austin Schlick  
Julie Veach  
Susan Aaron

---

continue leasing the initial box after the first year) for \$2.00 per month. TWC also makes available a free converter box to subscribers who purchase only the basic service tier.