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Federal Communications Commission  
Office of the Secretary

**BY HAND DELIVERY**

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

Re: *Revision of the Commission's Program Access Rules*, MB Docket No. 12-68;  
*News Corporation, The DIRECTV Group, Inc., and Liberty Media Corporation*,  
MB Docket No. 07-18; *Adelphia Communications Corporation, Time Warner  
Cable Inc., and Comcast Corporation*, MB Docket No. 05-192

Dear Ms. Dortch:

Six years ago, the Commission used a regression analysis to evaluate and quantify the potential harm to competition that results when a cable-affiliated programmer withholds content from rival MVPDs. Among other things, the Commission found that, as a result of the decision by the Cox-affiliated regional sports network ("RSN") in San Diego to deny its programming (including games of the San Diego Padres) to MVPD rivals, DBS penetration in the San Diego market was 40.5% lower than it would have been if that programming had not been withheld.<sup>1</sup> The attached economic analysis of San Diego subscribership is qualitatively consistent with the Commission's finding about the damage done when cable-affiliated programmers withhold content from competitors.

This updated analysis takes advantage of the fact that the Cox RSN recently lost the rights to telecast Padres games. This season, those games are available to all MVPDs through Fox Sports San Diego ("FSSD"). DIRECTV carries FSSD, as does Cox. These recent developments in San Diego offer a natural experiment through which to evaluate the effects of gaining access to valuable content. Accordingly, DIRECTV asked Professor Kevin Murphy to augment his prior economic analysis in this proceeding with an analysis of subscribership in San Diego in light of this new RSN arrangement.

As more fully detailed in Professor Murphy's attached report, the data from 2012 are consistent with the Commission's finding in 2006. In order to evaluate the effect on

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<sup>1</sup> See *Adelphia Communications Corp., Time Warner Cable Inc., and Comcast Corp.*, 21 FCC Red. 8203, Appendix D, ¶¶ 12-18 (2006).

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DIRECTV's subscribership from gaining access to Padres games, Professor Murphy first calculated the difference in the growth rate in the number of DIRECTV subscribers in San Diego before and after these RSN changes. He then calculated this difference for a set of control markets, and compared the before-and-after difference in DIRECTV's growth rates in San Diego to the before-and-after difference in DIRECTV's growth rates in the control markets. The results of this analysis indicate that DIRECTV has gained substantially more subscribers in San Diego since it gained access to Padres games through FSSD than would have been expected based on its subscribership trends in comparable markets. These gains were achieved in only the first five months of DIRECTV's FSSD carriage; the long run effects likely will be larger, as additional San Diego households revisit their MVPD choice. These conclusions are further supported by customer surveys, which evidence an increase in the number of new subscribers citing "access to sports channels" as the reason for subscribing to DIRECTV since it began carriage of FSSD.

\* \* \*

The report accompanying this letter contains information, submitted on a granular geographic basis, about DIRECTV's past and current market share, number of actual subscribers, and costs, as well as detailed information as to the factors that motivate subscribers to choose an MVPD. Such information falls within the scope of Highly Confidential Information as defined in the Second Protective Order in this proceeding.<sup>2</sup> Pursuant to that order, DIRECTV is submitting one copy of this filing (the Highly Confidential Filing) and two redacted copies of this filing (the Redacted Highly Confidential Filing). Two copies of the Highly Confidential Filing are also being provided to David Konczal of the Commission's Media Bureau.

Respectfully submitted,



William M. Wiltshire  
*Counsel for DIRECTV, LLC*

Enclosure

cc: David Konczal

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<sup>2</sup> See *Revision of the Commission's Program Access Rules*, Second Protective Order, 27 FCC Rcd. 6346, Appendix A (2012).

**Economic Analysis of the Impact on DIRECTV's Subscribership of Carrying an RSN  
Evidence from San Diego**

**Kevin M. Murphy  
August 31, 2012**

The rights to carry San Diego Padres baseball games were held by Cox Communications through the 2011 baseball season. Cox offered these games on Channel 4 San Diego ("4SD"), a local network that was carried by Cox and Time Warner Cable, the two main cable MVPDs in the San Diego DMA. Cox and Time Warner Cable serve different TV households in San Diego, and thus do not compete directly. 4SD was not available through DIRECTV, DISH Network, or AT&T U-verse (the main telco MVPD in San Diego). Even though Cox is a vertically integrated programmer – owning both a network and MVPD – Cox was not required to license 4SD to all MVPDs because the network was distributed terrestrially, and thus fell under the "terrestrial loophole" to the program access rules. Even after that "loophole" was closed in early 2010, none of the non-cable MVPDs reached agreement for carriage of 4SD, so Padres games were available only on cable.

In 2011, Fox acquired the local rights to carry San Diego Padres games for the following 20 years, a deal that was approved by Major League Baseball ("MLB") in mid-March 2012. Fox established a new RSN – Fox Sports San Diego ("FSSD") – to carry Padres games and other programming. It negotiated licenses for FSSD with Cox and DIRECTV. The MVPDs' carriage agreements were formally announced after MLB approved the deal between Fox and the Padres in mid-March 2012, but they had been reported by the press at least by early March.<sup>1</sup>

FSSD launched on March 17, 2012, and began broadcasting preseason Padres games. Regular season Padres games began on April 5, 2012. None of the three other major MVPDs serving San Diego – Time Warner Cable, DISH, and AT&T U-verse – has reached an agreement to carry FSSD.

The changes in licensing of the rights to the San Diego Padres provide a "natural experiment" from which to evaluate the impact on subscribership of changes in RSN carriage. Before March 2012, Padres games were available only on Time Warner Cable and Cox; since mid-March 2012, Padres games have been available throughout the San Diego DMA on DIRECTV, and in part of the DMA on Cox as well. Our analysis shows that, all else constant, carriage of an RSN (and particular sports programming) increases DIRECTV's subscribership.

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<sup>1</sup> [http://www.nctimes.com/sports/baseball/professional/mlb/padres/padres-fox-sports-san-diego-ready-to-launch/article\\_243866d5-10fc-585e-82a1-bf42048df760.html](http://www.nctimes.com/sports/baseball/professional/mlb/padres/padres-fox-sports-san-diego-ready-to-launch/article_243866d5-10fc-585e-82a1-bf42048df760.html).

**1. The Number of DIRECTV Subscribers in San Diego Increased After DIRECTV's Launch of Fox Sports San Diego Relative to Other Markets**

We examine the effect of changes in San Diego MVPDs' carriage of Padres games on the number of DIRECTV subscribers by comparing the rate of change in DIRECTV subscribers in San Diego in the 36 months (March 2009-February 2012) before it licensed FSSD with the rate of change since that RSN was launched (between March-July 2012). The first column of Table 1 shows that the average monthly growth rate between March and July was [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL], compared with an average monthly growth rate in the previous 36 months of [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]. We compare the rate of change in DIRECTV's subscribers in San Diego with the rate of change in a set of control DMAs before and after DIRECTV licensed FSSD in order to distinguish the impact of beginning to offer FSSD from other factors that might have caused a change in DIRECTV's subscribership. The control DMAs are all those where (a) DIRECTV introduced a promotional offer in early 2012 similar to that introduced in San Diego at the same time,<sup>2</sup> and (b) AT&T U-verse was present and was the primary telco MVPD competitor.

We find that the average growth rate of DIRECTV subscribers in the control DMAs was [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] between March-July 2012, or [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] percentage points lower than during the previous 36 months. In contrast, the average monthly growth rate of DIRECTV subscribers in San Diego was [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] percentage points higher during the March-July than during the previous 36 months. The increase in the growth rate between these two periods is thus [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] higher in San Diego than in these control markets, which translates to [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] additional DIRECTV subscribers by the end of July 2012 or a more than a [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] increase for the DMA.

This suggests that DIRECTV gained subscribers by carrying FSSD. The [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] difference in the growth rates in San Diego and the control markets from March through July 2012 is the largest

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<sup>2</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL].

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of any five-month comparison over the period of our data. Over our sample period, the average difference in five-month growth rates between San Diego and the control markets has a mean of [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] and a standard deviation of [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL], implying that the difference for the most recent period is [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] standard deviations above the average for our sample.

Table 2 presents an analogous set of results using average growth rates for the previous 12 months rather than 36 months in the comparisons. The results indicate a [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] increase in the number of DIRECTV subscribers, essentially confirming the results obtained based on the longer comparison period.

The changes in RSN carriage and resulting shifts in subscribership are quite recent, and we have only five months of subsequent data available for analysis. The long-run impact of the RSN changes in San Diego likely will be larger, as additional San Diego households choose among MVPDs (*e.g.*, as their contracts with their existing MVPD expire) in light of the changes in MVPDs' channel lineups.

## **2. DIRECTV Surveys Find an Increase in the Share of New DIRECTV Subscribers in San Diego Who Cite "Access to Sports Channels" as a Reason for Subscribing to DIRECTV After DIRECTV Began Carrying FSSD**

DIRECTV regularly surveys a sample of its new subscribers about why they decided to subscribe to DIRECTV. In Table 3, we summarize trends for the four most frequently cited responses from subscribers in the San Diego DMA in early 2012.<sup>3</sup> Subscribers typically are surveyed within two weeks of starting their subscription. The table shows that the share of new DIRECTV subscribers citing "access to sports channels" is much higher for surveys in April through June than in January through March, while the share citing other factors was largely unchanged. This evidence is consistent with the hypothesis that the increase in the number of DIRECTV subscribers in Spring 2012 resulted from DIRECTV's launch of FSSD, while Time Warner did not offer the new Fox RSN.<sup>4</sup>

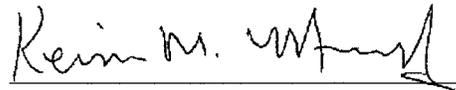
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<sup>3</sup> Respondents can choose more than one reason.

<sup>4</sup> We investigated whether a similar pattern appears in early 2011. However, the number of respondents is much smaller in 2011 than 2012 [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL], making any inferences very weak. The limited responses show no indication of a sharp increase in the share of respondents citing "access to sports channels"

### 3. Conclusion

The changes in carriage of San Diego Padres games provide a natural experiment from which to evaluate the impact of programming access on DIRECTV's subscribership. Although the number of months of available data is small, the evidence described above suggests that the shift in RSN carriage increased DIRECTV's subscribership.



Kevin M. Murphy

August 31, 2012

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between January-March and April-June 2011; [BEGIN HIGHLY CONFIDENTIAL]

HIGHLY CONFIDENTIAL].

[END

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**Table 1**  
**DIFFERENCE IN DIFFERENCE CALCULATION**  
 Post Period - Pre Period Average Monthly Change in Subscribers

	San Diego	DMAs with Similar DIRECTV Promotion as San Diego and U-verse Entry [REDACTED]	Difference
<b>Average Monthly Growth</b>			
Post-Period: March 2012 - July 2012	[REDACTED]	[REDACTED]	[REDACTED]
Pre-Period: March 2009 - February 2012	[REDACTED]	[REDACTED]	[REDACTED]
<b>Difference</b>	[REDACTED]	[REDACTED]	[REDACTED]
<b>Estimated Increase in Number of Subscribers Through July 2012</b>	[REDACTED]		

Notes: U-verse category includes [REDACTED] DMAs with local in local available on DIRECTV as of October 2010. DMA was considered in U-verse category if most households in the DMA were U-verse or U-verse influenced and the DMA had a similar DIRECTV promotion.

Source: Data from DIRECTV.

**Table 2**  
**DIFFERENCE IN DIFFERENCE CALCULATION**  
**Post Period - Pre Period Average Monthly Change in Subscribers**

	San Diego	DMAs with Similar DIRECTV Promotion as San Diego and U-verse Entry [REDACTED]	Difference
<b>Average Monthly Growth</b>			
Post-Period: March 2012 - July 2012	[REDACTED]	[REDACTED]	[REDACTED]
Pre-Period: March 2011 - February 2012	[REDACTED]	[REDACTED]	[REDACTED]
<b>Difference</b>	[REDACTED]	[REDACTED]	[REDACTED]
<b>Estimated Increase in Number of Subscribers Through July 2012</b>	[REDACTED]		

Notes: U-verse category includes [REDACTED] DMAs with local in local available on DIRECTV as of October 2010. DMA was considered in U-verse category if most households in the DMA were U-verse or U-verse influenced and the DMA had a similar DIRECTV promotion.

Source: Data from DIRECTV.

**Table 3**  
**Reasons Cited For Switching to DIRECTV**  
 Households in San Diego DMA, 2012

	Percentage of Respondents					
	January	February	March	April	May	June
Cost or price						
Unhappy with previous provider						
Word of mouth						
Access to sports channels						
<b>Number of Respondents</b>						

Notes: Respondents listing DIRECTV as previous provider were omitted. Households can list multiple reasons for switching. This table reports results for the four most common reasons for switching during this time period.

Source: Data from DIRECTV.