WILTSHIRE & GRANNIS LLP

September 24, 2012

BY ELECTRONIC FILING

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:

On September 20, 2012, Stacy Fuller of DIRECTV, LLC and undersigned counsel met with Dave Grimaldi, Chief of Staff and Media Legal Advisor for Commissioner Clyburn, to discuss the necessity for extension of the cable exclusivity prohibition. The topics of discussion are reflected in the attached outline.

Respectfully submitted,

/s/

William M. Wiltshire
Counsel for DIRECTV, LLC

Attachment

cc: Dave Grimaldi

THE COMMISSION SHOULD EXTEND THE CABLE EXCLUSIVITY PROHIBITION

- The Commission is required to extend the cable exclusivity prohibition if it finds that doing so is necessary to ***preserve and protect*** competition and diversity in the distribution of video programming.

- Only large cable operators and their affiliated programmers argue for sunset of the rule. Every competing commenter – including DBS, small cable, Verizon, AT&T, small/rural telcos, and public interest groups – agrees on continuing need for this prohibition.

- There is no basis in the record to allow a sunset.

  - Since the last extension in 2007, the FCC has repeatedly found that cable operators have the incentive and ability to withhold programming, to the detriment of consumers and competition.

    - Terrestrial Loophole Order (2010)
    - VZ/AT&T v. Cablevision program access orders (2011)
    - Comcast/NBCU Order (2011)

  - Empirical evidence and expert analysis confirms that cable operators will engage in exclusivity in precisely those situations with the worst competitive effects for consumers and competition.

  - No evidence of any offsetting efficiencies or pro-competitive benefits from cable-affiliated exclusivity.

- The rule is not absolute – cable operators can petition the Commission for approval of exclusive arrangements with cable-affiliated programmers that would serve the public interest. Moreover, they have always been free to engage in exclusive arrangements with non-cable-affiliated programmers.

- Comcast/NBCU conditions do not include an exclusivity prohibition; because arbitration right only applies to networks controlled or managed by Comcast, sunset of the rule would significantly increase the number of cable-affiliated networks available for exclusive arrangements with Comcast.

- DIRECTV is subject to an explicit exclusivity prohibition, but does not seek relief (unless the FCC allows the cable rule to sunset).