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 Alex Hoehn-Saric, Policy Director for Commissioner Rosenworcel, 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: Alex Hoehn-Saric

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).