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October 1, 2012

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

Re: *Ex parte* communication in Revision of the Commission's Program Access Rules, MB Docket No. 12-68; News Corporation and the DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control, MB Docket No. 07-18; Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees, *et al.*, MB Docket No. 05-192; Revision of the Commission's Program Carriage Rules, MB Docket No. 11-131.

Dear Ms. Dortch:

This letter is being submitted to report that on September 27, 2012, the undersigned counsel for The Tennis Channel, Inc. ("Tennis Channel") met with William Lake, Mary Beth Murphy, Nancy Murphy, Steve Broeckert, and David Konczal of the Media Bureau in connection with the above-captioned proceedings. Susan Aaron, of the Commission's Office of General Counsel, participated by telephone.

In that meeting, we discussed the underlying purposes of the 1992 Cable Act, and showed — as the Commission has repeatedly found — that those goals remain vital today and that regulation remains necessary to promote competition and diversity in the video programming marketplace. We relied on data in the Commission's Notice of Proposed Rulemaking in MB Docket No. 12-68, establishing that the market has not changed significantly since the statute was first enacted. Indeed, Comcast — the nation's largest MVPD serving nearly a quarter of the market — is in fact larger today than the cable operator, TCI, that Congress was concerned about when it passed the statute.

The cable industry, both in the program access and program carriage contexts, has sought to argue that the marketplace is now sufficiently competitive to vitiate the need for government regulation. For instance, in challenging the Commission's recent program carriage rulemaking in the United States Court of Appeals for the Second Circuit, Petitioners Time Warner Cable, Inc. and National Cable & Telecommunications Association suggest that changes in the structure of the market undermine the policy objectives of the program carriage rules and subject them to First Amendment attack. As Tennis Channel has argued as *amicus* in that proceeding, quite the opposite is true. Vertically-integrated distributors continue to have the incentive and ability to engage in conduct that violates the program carriage rules. For that reason, the changes that the Commission has made in its rules that are designed to clarify and streamline the Section 616 hearing procedures are salutary and important.

Tennis Channel has significant experience as a litigator in a Section 616 adjudication. That experience underscores the desirability of preserving, where possible, bright-line prohibitions on exclusive arrangements in the program access context. Case-by-case adjudication is time-consuming and costly, diminishing the incentives of aggrieved entities to seek relief from the Commission. The Commission should not do away with its *per se* prohibition on exclusive arrangements without taking into account the challenges and disincentives associated with case-by-case enforcement.

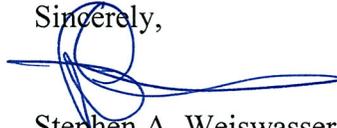
In the event that the Commission decides to allow the bright-line prohibition in the program access rules to expire, it should make clear that it is not doing so because of any second thoughts about the need to protect against abuses by vertically-integrated distributors in the areas to which the access and carriage rules apply. Rather, it should make it unmistakably clear, as it has repeatedly found, that vertically-integrated MVPDs continue to have the incentive and ability to discriminate in favor of affiliated content and against unaffiliated content.

Finally, we highlighted the different incentive structures in place in the program access and the program carriage contexts. While an MVPD may realize significant benefits from withholding affiliated programming from its rivals, it must also engage in calculations of the costs it would incur by such conduct — for instance, the inability to amortize its programming costs over a larger number of homes. By contrast, in the program carriage context, an MVPD may often discriminate against competitive programming at virtually no cost to its business — for example, as is often the case, where a complainant network is new or fledgling.

We reiterated that, as a result, in each context, the incentive to violate the rules remains, but the marketplace imposes different constraints on MVPD misconduct. We further noted that, in the program access context, the incentive to engage in conduct that violates the rules is particularly strong with respect to certain categories of programming (like regional sports programming) and that, for such categories, maintaining a bright-line prohibition on exclusive contracts would be particularly important.

Please direct any questions regarding this presentation to the undersigned.

Sincerely,

A handwritten signature in blue ink, appearing to be 'S.A. Weiswasser', with a long horizontal flourish extending to the right.

Stephen A. Weiswasser

Neema D. Trivedi

*Counsel to The Tennis Channel Inc.*

cc:

William Lake  
Mary Beth Murphy  
Nancy Murphy  
Steve Broeckaert  
David Konczal  
Susan Aaron