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October 2, 2012

VIA ECFS – EX PARTE

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

Re: *Revision of the Commission's Program Access Rules,*
MB Docket Nos. 12-68, 07-18, 05-192

Dear Ms. Dortch,

On September 28, 2012, the undersigned met with Erin McGrath, Legal Advisor to Commissioner McDowell, to elaborate on TWC's written submissions supporting the sunset of the categorical ban on exclusive contracts involving satellite cable programming vendors that are affiliated with a cable operator.

At this meeting, I argued that there is no legal or policy basis for extending the existing exclusivity ban. Any categorical restriction targeting vertically integrated cable operators and programming vendors would necessarily be over-inclusive in today's marketplace, because there are numerous vertically integrated programming services that lack market power under any conceivable measure. Exclusivity arrangements involving such programmers would not harm competition, as a matter of fact and law, regardless of vertical integration. I noted the Commission's recent finding that cable operators' affiliated news services deliver many benefits to consumers without posing any significant threat to competition,¹ explaining that prohibiting

¹ See, e.g., *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, 25 FCC Red 746 ¶ 51 n.200 (2010) ("2010 Program Access Order") (explaining that "exclusivity plays an important role in the growth and viability of local cable news networks" and that "permitting such exclusivity should not dissuade new MVPDs from developing their own competing regional programming services") (internal quotation marks, citations, and alterations omitted).

such concededly beneficial exclusivity merely because it involves satellite-delivered programming would be wholly irrational.

In addition, I explained that a singular focus on exclusivity involving satellite cable programming vendors would be under-inclusive as well. Because ensuring access to “must have” programming is the asserted basis for regulation in this context, it would make no sense for any exclusivity restriction to leave untouched arrangements involving *non-cable* MVPDs’ control of “must have” programming, especially where such arrangements confer market power.

To the extent that the Commission chooses to single out exclusivity arrangements involving regional sports networks (“RSNs”) for regulation—notwithstanding the content-based nature of such an approach—I argued that the Commission should reject any proposal to categorically ban exclusivity. Indeed, the D.C. Circuit’s decision upholding the presumptive right of access to terrestrially delivered RSNs was contingent on the *absence* of a categorical ban, and any such ban would be legally unsustainable. I further suggested that, if the Commission extends the presumption of access applicable to terrestrially delivered RSNs to satellite-delivered programming, it should reject proposals to adopt a series of additional presumptions with respect to RSN programming (and/or other assertedly “must have” programming).²

Please contact the undersigned with any questions regarding this notice.

Sincerely,



Cristina C. Pauzé
VP, Regulatory Affairs
TIME WARNER CABLE

² See Letter of Kevin G. Rupy, on behalf of the Coalition for Competitive Access to Content (“CA2C”), to Marlene Dortch, Secretary, FCC, MB Docket Nos. 12-69, 07-18, 05-192 (filed Sept. 26, 2012).