

October 5, 2012

VIA ECFS

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20054

Re: Ex Parte Presentation, MB Docket Nos. 12-68, 07-18, 05-192

Dear Ms. Dortch:

This letter is filed on behalf of The Walt Disney Company (“Disney”)¹ in response to the *ex parte* submission of the American Cable Association (“ACA”)² in the above-referenced rulemaking proceeding in which the Federal Communications Commission (“FCC” or “Commission”) seeks comment on, *inter alia*, whether to retain, sunset, or relax the cable-affiliated program exclusivity rules.³ The Commission should summarily dismiss ACA’s request that the FCC exercise “predictive judgment” to adopt, or even seek comment on, a rebuttable presumption that would expand the program access rules to nationally-distributed sports networks with no affiliation to a multichannel video programming distributor.⁴ Such an action would be speculative given that ACA has provided no evidence to support its assertions of alleged harm to the MVPD market and would contravene the express language of Section 628 of

¹ Disney files this *ex parte* letter on behalf of itself, as well as the following Disney-owned entities: ESPN (80% owned by Disney), Disney ABC Cable Networks Group (including Disney Channel, ABC Family, Toon Disney, and SOAPnet), the ABC Television Networks, and the ABC Owned Television Station Group.

² See Letter from Barbara Esbin, American Cable Association, to Marlene S. Dortch, Secretary, Federal Communications Commission, MB Docket. No. 12-68 (filed Oct. 1, 2012) (“ACA Ex Parte”).

³ See *In the Matter of Revision of the Commission’s Program Access Rules; News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control; 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.*, Notice of Proposed Rulemaking, MB Docket Nos. 12-68, 07-18, 05-192 (rel. Mar. 20, 2012).

⁴ See ACA Ex Parte, *supra* note 2, at 2.

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the Cable Television Consumer Protection and Competition Act of 1992, Congressional intent, and past Commission action – all of which make clear that Section 628 is intended to curb anticompetitive acts by vertically integrated cable operators and programmers.⁵ Moreover, ACA's recommendation that the FCC propose rules targeted at sports programming generally is well outside the scope of this proceeding, which is intended to *reduce* the applicability of the program access rules.⁶

On October 4, 2012, Susan Fox, Vice President, Government Relations, The Walt Disney Company left a message with Elizabeth Andrion, Acting Chief of the Office of Strategic Planning & Policy Analysis in which Ms. Fox generally addressed the points described in this ex parte letter and which points are fully discussed in the Joint Comments.⁷

This letter is filed pursuant to Section 1.1206 of the Commission's rules and should be treated as a written *ex parte* communication.

Respectfully submitted,



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⁵ See Reply Comments of The Walt Disney Company, Viacom, Inc., News Corporation, Time Warner Inc., and CBS Corporation to Notice of Proposed Rulemaking in MB Docket Nos. 12-68, 07-18, 05-192 at 2-3 (filed July 23, 2012) (“Joint Comments”).

⁶ See Joint Comments at 6-7.

⁷ See generally Joint Comments.