



Via ELECTRONIC FILING

January 23, 2006

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

Re: Proposed Acquisition of Adelphia Cable Systems by Comcast and Time Warner Cable  
*MB Docket No. 05-192*

Dear Ms. Dortch:

On January 20, 2006, representatives of EchoStar Satellite L.L.C. ("EchoStar") met separately with **Chairman Kevin Martin and Fred Campbell, Wireless Advisor to Chairman Martin; Commissioner Michael Copps and Jordan Goldstein, Senior Advisor to Commissioner Copps; and Commissioner Jonathan Adelstein and Rudy Briocche, Media Advisor to Commissioner Adelstein.** In some or all of the meetings, the following EchoStar representatives were in attendance: Charlie Ergen, Chief Executive Officer; David K. Moskowitz, Executive Vice President and General Counsel; Carl Vogel, Vice Chairman; and David Goodfriend, Director of Business Development.

At the meetings, EchoStar reiterated arguments made in its December 23, 2005 submission<sup>1</sup> to the Commission. EchoStar requested that the Commission impose conditions to ameliorate the harm that would otherwise result from the proposed acquisition of Adelphia by Comcast and Time Warner. In EchoStar's view, these conditions should include program access obligations that would effectively capture subtle forms of discrimination, and arbitration of program access disputes, including discovery.

In addition, EchoStar discussed at length the difficulties it has encountered obtaining access to cable programming at market-based rates under non-discriminatory terms and conditions. EchoStar also expressed the desire to offer cable programming in specialized themed tiers (e.g., a separate sports tier) or *a la carte* in order to respond to consumer demand; however, penetration requirements and other onerous terms and conditions imposed by programmers currently prevent EchoStar from offering content to consumers outside of traditional bundled packages. Furthermore, EchoStar is concerned that, as programmers add new digital features and functionalities, those features and functionalities must be available under non-discriminatory

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<sup>1</sup> Ex Parte filing of EchoStar Satellite L.L.C., *filed in* MB Docket No. 05-192 (filed December 23, 2005).

terms and conditions to ensure a competitive video marketplace. Otherwise, consumers will not have the option of choosing advanced features and will be left behind during the digital transition.

EchoStar reiterates that the Comcast/Time Warner acquisition of Adelphia should not be approved, but if it is, approval should be subject to the following two additional conditions:

(1) Upon request, Comcast and Time Warner must provide to any distributor all programming in which either company has an ownership interest (including regional sports networks and video-on-demand content) on an *a la carte* basis, with no penetration or any other requirements, including any terms or conditions that would make the rate effectively discriminatory. The rate for such *a la carte* programming shall be a non-discriminatory, market-based rate, which is no higher than the price currently being paid for such programming under existing contracts, and shall be subject to baseball-type arbitration. In order to receive programming pursuant to this provision, the distributor must offer the programming *a la carte* to consumers, but may also offer the programming as part of any programming package.

(2) In addition to video programming, Comcast and Time Warner shall provide, under non-discriminatory terms and conditions, any and all ancillary video services in which they have an ownership interest, including all related internet streaming, interactive applications, broadband applications, additional camera angles, streaming data such as sports statistics, and any other related programming features and functionality.

If EchoStar were to receive programming *a la carte* from programmers pursuant to the above condition, EchoStar commits to providing such programming to consumers on an *a la carte* basis.

The increased concentration of subscriber pools that will result from the acquisition of Adelphia exacerbates the ability and incentive of Comcast and Time Warner to engage in anticompetitive tactics. Thus, these additional conditions are necessary to protect the public interest.

This *ex parte* submission is being filed pursuant to 47 C.F.R. § 1.1206(b)(2).

Respectfully submitted,

/s/

David K. Moskowitz  
General Counsel and Executive Vice President  
EchoStar Satellite L.L.C.

Marlene H. Dortch  
December 20, 2005  
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Copy to:

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