



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

October 6, 2009

OFFICE OF
THE CHAIRMAN

The Honorable Bob Filner
U.S. House of Representatives
2428 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Filner:

Thank you for your further letter regarding the availability of San Diego Padres Major League Baseball games to consumers of subscription television services, and the Commission's rules and policies governing "program access." I appreciate the opportunity to update you on the status of this matter.

As Acting Chairman Copps explained in his June 25, 2009 letter to you, AT&T California had filed a complaint with the Commission alleging that the refusal by CoxCom, Inc., (Cox) to authorize AT&T to carry Cox-4 with its San Diego Padres games on the U-verse service operated by AT&T in the San Diego area, violated Section 628 of the Communications Act and the Commission's rules. The Commission's Media Bureau issued a *Memorandum Opinion and Order* on March 9, 2009, denying AT&T's complaint because there was no dispute that Cox-4 is a terrestrially-delivered programming service and prior Commission decisions have not concluded that the denial of terrestrially-delivered programming violates Section 628 and the Commission's program access rules. This denial is without prejudice pending a resolution of the Commission's ongoing proceeding to examine whether the program access rules should be extended to terrestrially-delivered cable-affiliated programming.

AT&T had filed an *Application for Review* requesting that the Bureau's decision be reviewed by the full Commission. More recently, AT&T and other entities have filed supplemental pleadings, which argue that a court decision concerning exclusive contracts for the provision of services by cable television system operators to the residents of multiple dwelling units provides the Commission with additional authority to address program access disputes. Because this is a contested proceeding, I cannot discuss or comment on the merits of the AT&T *Application for Review*. Please be assured, however, that the Commission will give careful consideration to the complete record developed in the proceeding prior to issuing its decision.

I hope that this information is helpful. Please do not hesitate to contact me if I can be of further assistance with this or any other matter.

Sincerely,

Julius Genachowski
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON
October 6, 2009

The Honorable Duncan Hunter
U.S. House of Representatives
1429 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Hunter:

Thank you for your letter regarding the availability of San Diego Padres Major League Baseball games to consumers of subscription television services, and the Commission's rules and policies governing "program access."

Section 628 of the Communications Act and the Commission's program access rules generally prohibit any cable television system operator that has an ownership interest in video programming from discriminating in the prices or terms and conditions of sale of satellite-delivered programming to video programming providers that are not affiliated with the cable company. Section 628, however, does not explicitly impose a similar obligation with respect to programming that is delivered terrestrially, such as the San Diego Padres games licensed to Cox Communications. The Commission has an ongoing proceeding to review its program access rules, and in September 2007, adopted a *Further Notice of Proposed Rulemaking* seeking comment on a number of proposed revisions, including whether the program access requirements should be extended to terrestrially-delivered programming. We will consider your concerns as we examine the issues in this docket.

In the San Diego area, CoxCom, Inc., (Cox) currently has an exclusive agreement to carry the Padres' regular season games. The games are carried on Cox-4 (also known as 4-SD) – a channel that Cox owns – and are available to consumers who are served by cable television systems operated by Cox. Because Cox-4 is owned by a cable television company, the program access rules would prohibit Cox from discriminating unfairly against other multichannel video programming distributors regarding the availability of Cox-4 if the programming were satellite-delivered, rather than terrestrially-delivered. AT&T California filed a complaint with the Commission alleging that Cox's refusal to authorize AT&T to carry Cox-4 on U-verse, a multichannel video programming service operated by AT&T in the San Diego area, violated Section 628 of the Communications Act and the Commission's rules.

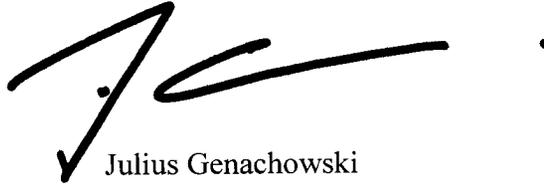
On March 9, 2009, the Commission's Media Bureau issued a *Memorandum Opinion and Order* denying AT&T's complaint because there was no dispute that Cox-4 is a terrestrially-delivered programming service and prior Commission decisions have not concluded that the denial of terrestrially-delivered programming violates Section 628 and the Commission's program access rules. The Bureau's *Order* also noted that the denial was without prejudice

pending a resolution of the Commission's ongoing proceeding to examine whether the program access rules should be extended to terrestrially-delivered cable-affiliated programming.

AT&T has filed an *Application for Review* requesting that the Bureau's decision be reviewed by the full Commission. More recently, AT&T and other entities have filed supplemental pleadings, which argue that a court decision concerning exclusive contracts for the provision of services by cable television system operators to the residents of multiple dwelling units provides the Commission with additional authority to address program access disputes. Because this is a contested proceeding, I cannot discuss or comment on the merits of the AT&T *Application for Review*. Please be assured, however, that the Commission will give careful consideration to the complete record developed in the proceeding prior to issuing its decision.

I hope that this information is helpful. Please do not hesitate to contact me if I can be of further assistance with this or any other matter.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small dot at the end.

Julius Genachowski
Chairman