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May 19, 2004

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

Re: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands* – WT Docket No. 03-66 -- **NOTICE OF EX PARTE PRESENTATION**

Dear Ms. Dortch:

Yesterday, Thomas Knippen of W.A.T.C.H. TV Company ("WTC"), John Bunce of WinBeam, Inc. ("WinBeam") and the undersigned, met on behalf of the Wireless Communications Association International, Inc. ("WCA") with Commissioner Jonathan S. Adelstein and Barry Ohlson, his Senior Legal Advisor, regarding the *Notice of Proposed Rulemaking* ("*NPRM*") in the referenced proceeding.

Messrs. Bunce and Knippen discussed the existing wireless broadband services WTC and WinBeam currently offer to the public. They quantified the substantial economic impediment to the expansion of those services into more rural areas caused by the Commission's site-based licensing system, and illustrated their plans for deployment of additional facilities in rural areas upon adoption of the proposal advanced by WCA, the National ITFS Association ("NIA") and Catholic Television Network ("CTN") for restructuring the Multipoint Distribution Service ("MDS") and the Instructional Television Fixed Service ("ITFS") and eliminating site-based licensing in a substantial part of the band. Attached hereto are copies of materials that WTC and WinBeam distributed at the meeting to illustrate their current and planned service offerings.

Mr. Knippen also discussed the importance to WTC, which has invested approximately $20,000,000.00 of capital in its system and currently offers over 200 channels of digitized audio and video programming to over 13,000 subscribers, as well as wireless broadband service to

approximately 3,500 subscribers using both first generation frequency division duplex ("FDD") and second generation time division duplex ("TDD") technology, of the proposal advanced by WCA, NIA and CTN for allowing certain multichannel video programming distributors to "opt out" of the proposed transition plan.

The industry participants expressed extreme concern over any proposal that would strip incumbent licensees of spectrum in order to provide an opportunity for newcomers to secure access to spectrum. Messrs Bunce and Knippen discussed how their companies had accumulated their spectrum holdings through various secondary market transactions at great cost to WinBeam and to WTC, and that it would be fundamentally unfair to take a portion of that spectrum from them at this juncture in order to promote new entry that can occur without such Draconian measures. The industry participants noted that spectrum has been readily available in most markets through secondary market transactions, pointing out that approximately 40-50 percent of the MDS/ITFS spectrum (measured by MHz/pops) has changed hands through secondary market transactions (assignments, transfers of control, leases, and lease assignments) over the past year and that two of the four largest holders of MDS/ITFS spectrum today held no spectrum as little as a year ago. To illustrate the ready availability of spectrum, they pointed to the article in this week's *Business Week* which establishes that although Craig O. McCaw has been active in the MDS/ITFS arena for just a few months, he already "holds the exclusive rights to radio spectrum in [Jacksonville, FL and] about 100 other cities." They further noted that both WTC and WinBeam have been active in the secondary market and have been able to acquire spectrum in new markets over the past several months, and pointed out that as a result of the decisions by WorldCom, Inc. and Nucentrix Broadband Networks, Inc. to reject a wide range of leases as part of their Chapter 11 reorganizations, there has been a substantial quantity of spectrum available in large and small markets across the nation.

The industry participants also explained that reducing the bandwidth of each channel would have a substantial adverse operational impact. In response to the suggestion that adoption of the WCA-NIA-CTN deinterleaving proposal would lead to spectral efficiencies notwithstanding any reduction in spectrum, they pointed out that because operators have generally consolidated today's interleaved channel groups, the deinterleaving of those channel groups proposed by WCA, NIA and CTN will not necessarily result in any spectrum efficiencies to operators. They noted that the rumored 10% reduction in bandwidth would reduce the number of subscribers that can be served from each headend and thus materially increase the cost associated with serving a given number of subscribers in a region. The result, they discussed, is that the economic viability of rural systems will be compromised, and certain marginal systems will not be built because the reduction in the maximum number of possible subscribers will eliminate potential profitability. In addition, it was noted that while the PCS and AWS bands are channelized based on multiples of 5 MHz, those bands are reserved exclusively for FDD technology and thus the challenges associated with TDD/FDD coexistence are not present. WCA's representatives emphasized that if the 2.5 GHz band is to accommodate both TDD and

FDD technology, it will be necessary for operators to provide some guardband when non-synchronized systems utilize adjacent spectrum. They noted that while two adjacent licensees will each have 16.5 MHz of spectrum under the WCA-NIA-CTN proposal, should one operate using TDD technology and one using FDD technology, it is likely that even under the best of circumstances guardband requirements will leave each licensee with just 15 MHz or less of usable spectrum given the limits of current filter technology.

Finally, the participants in the meeting discussed the unopposed requests that affiliates of WinBeam and WTC have before the Commission seeking additional time to construct facilities and the adverse consequences that denial of those requests would have on the ability of WinBeam and WTC to expand service into rural areas. They noted that both companies have made economically sound business decisions regarding deployment, and that the Commission's overly-expensive licensing scheme is substantially responsible for the failure of WinBeam, WTC and others to modify their licenses and deploy broadband facilities under the current rules. They urged the Commission to assure that licensees have a fair opportunity following adoption of the new rules to deploy.

Pursuant to Section 1.1206(b)(2), this notice is being filed electronically with the Commission via the Electronic Comment Filing System for inclusion in the public record of the above-reference proceeding. Should you have any questions regarding this summary, please contact the undersigned.

Respectfully submitted,

/s/ Paul J. Sinderbrand

Paul J. Sinderbrand

Counsel to the Wireless Communications
Association International, Inc.

Attachments

cc: Barry Ohlson

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Winbeam, Inc of Greensburg, Pennsylvania

Winbeam was formed in early 2000 to aggregate licensed spectrum in Pennsylvania and neighboring states. Winbeam has patiently assembled 16 properties to form a reasonably contiguous footprint in rural Pennsylvania and the smaller cities of Pennsylvania.

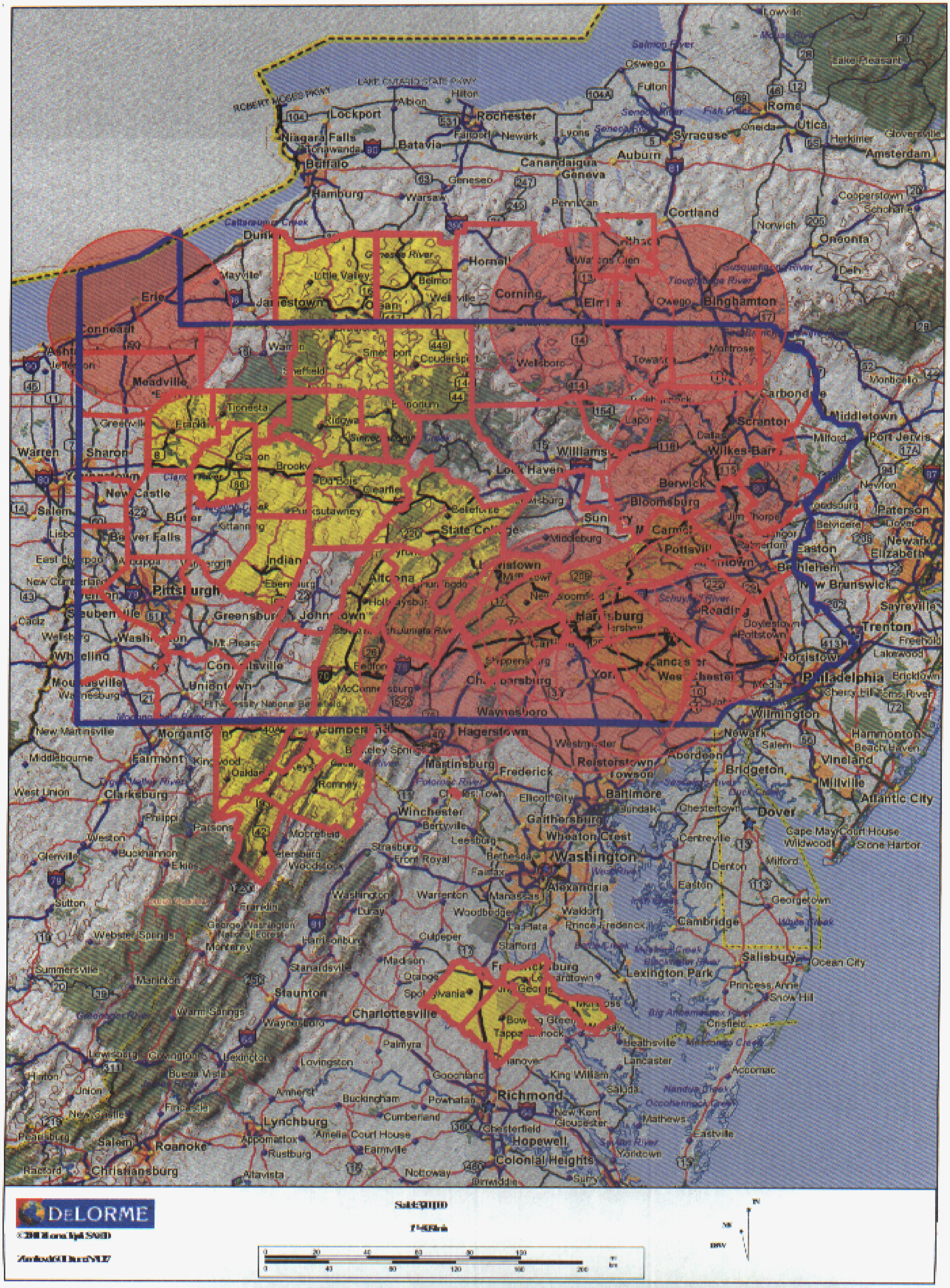
Winbeam constructed a generation 1 Hybrid system in October, 2001 in Altoona. Winbeam applied for a license to deploy a second generation Navini system in September, 2003. We hope to receive that license soon. We believe that the Navini generation 2 systems will have much more attractive economics than generation 1. We have worked closely with Ntelos and Rioplex to observe what we understand to be successful deployments in areas similar to Pennsylvania. The new rules for licensed spectrum deployment would accelerate our deployment dramatically.

Winbeam has four primary districts which it will develop:

1. **Erie**
   Once the first site is successful, Erie County is the prototypical district that is underserved by cable and DSL. We are eager to extend service to the area.
2. **The I-99 to west of Harrisburg district**
   We have made substantial progress extending from our initial Altoona site 13 miles north to Tyrone. Soon we will move to the south and east to the next county, Huntingdon. We were forced to use unlicensed spectrum, because the economics preclude absorbing the cost and delay of getting licenses for the smaller, scattered markets. Licensed spectrum would serve these areas better. We have the spectrum and would like to use it. But we need the new rules to make it economic.
3. **The Harrisburg, York, Lancaster market**
   This is Winbeam's densest market. Once we make an initial deployment, we would like to move rapidly to build out the region. The new rules would facilitate that tremendously.
4. **Reading, Wilkes-Barre, Scranton, Binghamton**
   While this is a little different than districts 1 and 2, the cumulative economics and need for rapid deployment are similar to the regions described above.

Winbeam desires to build an ISP brand in the commonwealth of Pennsylvania. We believe that the technology is practical and economic. We believe that the licensed spectrum advantages make it the best technology for rural areas and small cities in our state.

The contemplated new rules would help us deploy much more quickly. We urge the Commission to enact those new rules.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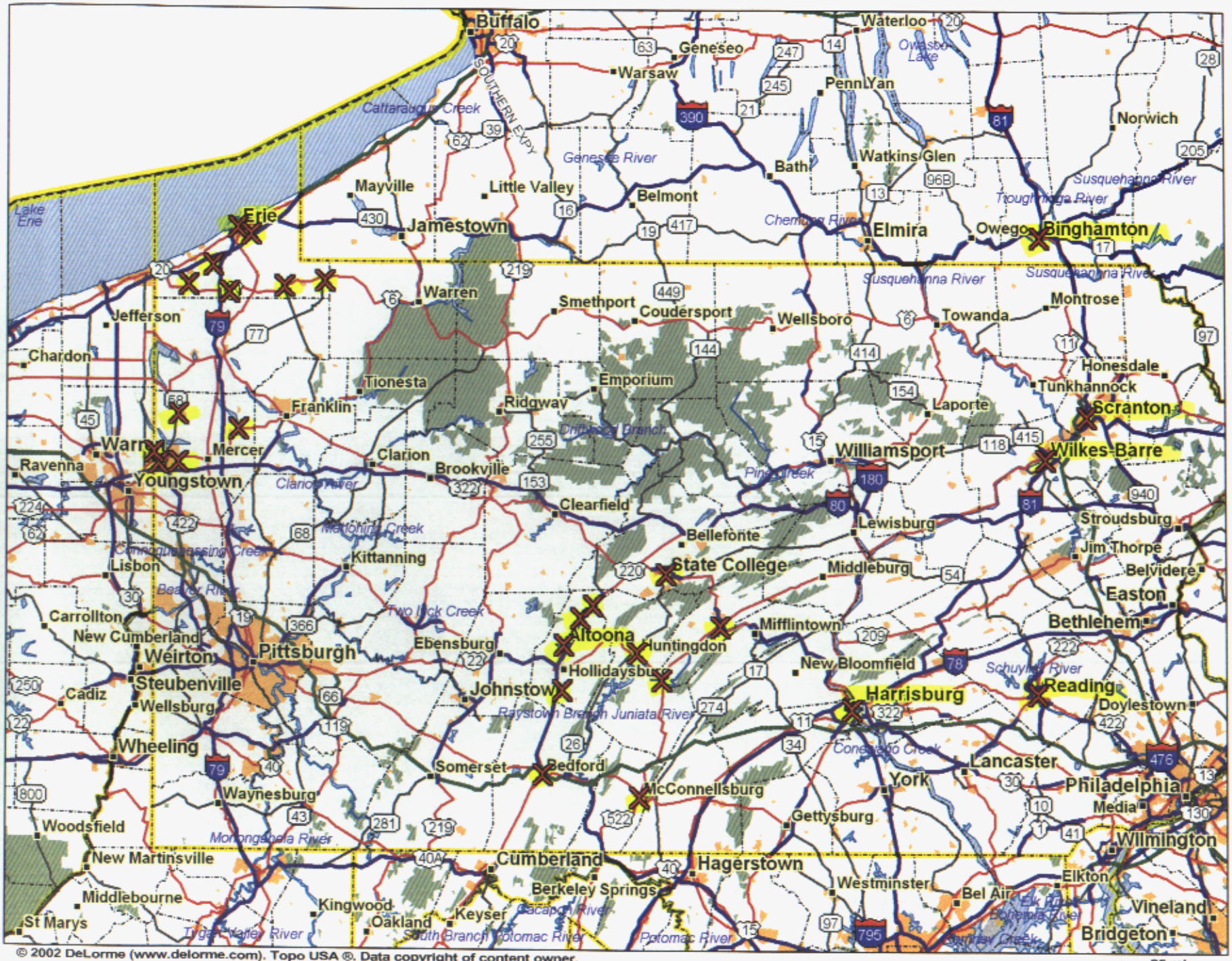

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7	WHIO CBS Dayton	109	Outdoor Channel
9	WGN Chicago	110	Sportsman Channel
10	WBNS CBS Columbus	111	The Golf Channel
11	WPIX New York	112	ESPN News
13	WTVG ABC Toledo	113	ESPN Classic Sports
18	WLQP UPN Lima	216	CNN FN
21	WPTA ABC Ft. Wayne	330	Independant Film Network
22	WKEF NBC Dayton	403	Discovery Kids
25	WOHL FOX Lima	404	Discovery Science
27	WBGU PBS Bowling Green	406	Discovery Home and Leisure
35	WLIO NBC Lima	408	Discovery Civilization
38	WSBK Boston	409	Discovery Wings
44	WTLW Rel Lima	414	DIY (Do It Yourself)
55	WFFT FOX Ft. Wayne	418	Biography
65	America One	502	Nickelodeon Games & Sports
77	TV Data	503	Noggin
100	ESPN Now	514	Toon Disney
101 & 2	ESPN 1	531	MTV2
103 & 4	ESPN 2	601-645	Digital Music Channels
106	FOX SPORTS OHIO	758	Hallmark Channel
107	FOX SPORTS OHIO - ALTER.	759	Lifetime Movie Network
201	FOX News	763	E - Entertainment
202	CNN	764	Court TV
203	CNN Headline News	766	WE
204	MS - NBC	767	Game Show Network
214	The Weather Cannel	768	BBC America
215	C-SPAN 1	771	PAX
310	Turner Classic Movies		**PREMIUM SERVICES**
320	American Movie Classics(AMC)	**801**	**HBO**
401	Discovery	**802**	**HBO Plus**
402	Home and Garden	**803**	**HBO Signature**
407	Discovery Health	**804**	**HBO Family**
410	The Food Network	**805**	**HBO Comidy**
411	A & E	**806**	**HBO Zone**
412	Animal Planet	**807**	**HBO Latino**
413	The History Channel	**811**	**Cinemax**
415	The Learning Channel	**812**	**More Max**
416	The Travel Channel	**813**	**Action Max**
419	Tech TV	**814**	**Thriller Max**
501	Nickelodeon	**815**	**W Max**
512	Disney	**816**	**@ Max**
515	Cartoon Network	**817**	**Outer Max**
516	TV Land	**818**	**5 Star Max**
523	The National Network	**821**	**Showtime**
530	MTV	**822**	**Showtime Too**
542	VH-1	**823**	**Showcase**
556	CMT	**824**	**Showtime Extreme**
557	Great American Country	**825**	**Showtime Beyond**
560	EWTN	**831**	**The Movie Channel**
561	Inspirational Network	**832**	**The Movie Channel 2**
562	Trinity Broadcast Network	**841**	**Flix**
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581	Home Shopping	**851**	**Encore**
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718	USA	**853**	**Encore Westerns**
719	TBS Alanta	**854**	**Encore Mystery**
729	ABC Family Channel	**855**	**Encore Action**
738	TNT	**856**	**Encore True Stories**
760	Lifetime	**857**	**Wam**
761	Comedy Central	**861**	**Starz!**
762	SCI-FI	**862**	**Starz!2**
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