BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of

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;

Adelphia Communications Corporation
(and subsidiaries, debtors-in-possession),
Assignors and Transferors,
to
Comcast Corporation (subsidiaries), Assignees and Transferees;

Comcast Corporation, Transferor,
to
Time Warner Inc., Transferee;

Time Warner Inc., Transferor,
to
Comcast Corporation, Transferee.

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APPLICATIONS AND PUBLIC INTEREST STATEMENT

ADELPHIA COMMUNICATIONS CORPORATION

Brad Sonnenberg
James N. Zerefos
Adelphia Communications Corp.
5619 DTC Parkway
Denver, CO 80111

Philip L. Verveer
Michael H. Hammer
Francis M. Buono
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, DC 20006

COMCAST CORPORATION

Joseph W. Waz, Jr.
James R. Coltharp
Comcast Corporation
2001 Pennsylvania Ave., N.W.
Washington, DC 20006

TIME WARNER INC.

Steven N. Teplitz
Susan A. Mort
Time Warner Inc.
800 Connecticut Ave., N.W.
Washington, DC 20006

Aaron I. Fleischman
Arthur H. Harding
Seth A. Davidson
Craig A. Gilley
Fleischman and Walsh, L.L.P.
1919 Pennsylvania Ave., N.W.
Washington, DC 20006

Dated: May 18, 2005

TABLE OF CONTENTS

LIST OF EXHIBITS

SUMMARY

By this filing, Adelphia Communications Corporation ("Adelphia"), Time Warner Inc. ("Time Warner") and Comcast Corporation ("Comcast") seek the Commission's approval for various license transfers that will occur pursuant to a series of agreements the companies have entered into with Adelphia and with each other (the "Transactions"). The end result of these Transactions will be: (1) Time Warner Cable Inc. ("Time Warner Cable") and Comcast separately will acquire substantially all of bankrupt Adelphia's domestic cable systems; (2) Time Warner Cable and Comcast will exchange certain systems that they currently own or will acquire from Adelphia; and (3) Comcast will divest its ownership interests in Time Warner Entertainment Company, L.P. ("TWE") and Time Warner Cable, and Time Warner Cable will emerge from the Transactions as a publicly traded company. These Transactions, which fully comply with the Communications Act and the Commission's rules, will generate substantial public interest benefits that are not otherwise achievable and will do so without producing any possible countervailing public harm.

- **The Transactions Will Accelerate Deployment of Advanced Services on Adelphia Systems.**

By taking the Adelphia cable systems out of bankruptcy and placing them under the operation of either Comcast or Time Warner Cable—two of the nation's most stable, respected, and technologically advanced cable operators—the Transactions will accelerate the deployment of advanced services to consumers now served by the Adelphia systems and will thereby promote competition. Due in no small measure to the circumstances that led Adelphia to declare bankruptcy in 2002, as well as the costs and uncertainties associated with the bankruptcy process itself, Adelphia has lagged behind Comcast and Time Warner Cable in managing the introduction of advanced services. For example, as of the end of 2004, Adelphia's high definition (HD") and high speed data ("HSD") penetration levels paled in comparison to those of

Time Warner Cable and Comcast. **Most notably, Adelphia has not yet offered a facilities-based, voice communications service to any of its customers:**

	Adelphia	Time Warner Cable	Comcast
Voice Communications Customers	0	500,000	1,225,000
HSD Penetration (Percent of Homes Passed)	14.4%	20.8%	18.3%
HD Subscribers (Percent of Basic Subscribers)	2.8%	5.3%	6.7%

Adelphia similarly lags behind Time Warner Cable and Comcast in its penetration levels for VOD service, DVR subscribers and even basic cable service.

As industry leaders in upgrading and operating broadband networks, and by virtue of the location of their current properties, Time Warner Cable and Comcast are uniquely positioned to accelerate and improve the performance of the Adelphia systems, particularly with regard to the roll-out of telephony. Time Warner Cable and Comcast will provide the Adelphia systems with the management experience and operating efficiencies that will benefit consumers and enhance competition. Indeed, Adelphia customers can anticipate more reliable and higher quality service at all levels of operation, including basic cable service. As outside analysts have recognized, no other company or companies has the combination of experience, resources, and established geographic structure necessary to produce these particular consumer benefits.

- **The Transactions Will Result in Pro-Competitive Geographic Rationalization of System Operations.**

The public benefits of the Transactions are not limited to improving the underperforming Adelphia systems. All of Time Warner Cable's and Comcast's customers (current and potential) will benefit from the enhanced geographic rationalization that will result from the acquisition of Adelphia's systems and the associated swaps of systems between Time Warner Cable and

Comcast. The Transactions alone create the opportunity for this enhanced regionalization, which will produce cost-saving operational, infrastructure, and marketing efficiencies that will foster greater competition with national DBS service providers and with incumbent telephone companies.

This will be especially significant to consumers as incumbent telephone companies begin offering bundles of video, voice, and data products in their expansive and contiguous regional service areas that will remain much larger than the somewhat expanded footprints for Time Warner Cable and Comcast resulting from the Transactions. Indeed, as the Commission itself has acknowledged, allowing cable operators to rationalize their geographic footprints makes cable MSOs more similar in geographic scope to the Bell LECs, which in turn makes cable providers a more effective competitor to LECs whose service areas are usually larger than a single cable franchise area.

- **The Transactions Will Promote Beneficial Efficiencies and Economies of Scale.**

The geographic rationalization that would not occur absent the Transactions also will directly benefit subscribers through improvements in customer service. Comcast and Time Warner Cable will be better able to consolidate and expand their regional call centers; coordinate technicians and truck fleets through centralized facilities; utilize cable system headends and nodes more effectively; and maintain and service their networks in a more responsive manner. Moreover, the Transactions are expected to decrease the aggregate amount of overhead spent on corporate services, including administration, corporate development, strategic planning, treasury, accounting, tax, and in-house legal services. The Transactions also will allow Time Warner Cable and Comcast to become more effective competitive platforms for local and regional advertisers.

- **The Transactions Will Further the Policies of the Bankruptcy Laws.**

Approval of the Transactions will advance the public interest by facilitating Adelphia's successful emergence from bankruptcy. In contrast, rejection of the Applications would seriously undermine this objective. In particular, any effort to remarket Adelphia's assets would delay payment to creditors during the course of approximately two additional years of bankruptcy and regulatory proceedings. During this time, the bill for professional fees (for attorneys, accountants, investment bankers, etc.) would run at a rate of about $20 million per month. Moreover, these costs easily could be dwarfed by changes in the overall value of the payments to be made to creditors. Certainly, there can be no assurance the value of the Transactions could be replicated some two years down the road, in unknown market conditions, through negotiations that did not include Time Warner Cable or Comcast.

- **The Transactions Will Achieve a Long-Standing Commission Public Interest Goal By Unwinding Comcast's Passive Interests in Time Warner Cable and TWE.**

Another important public interest benefit of the Transactions will be the mutually beneficial and ahead-of-schedule divestiture of Comcast's passive ownership interests in Time Warner Cable and TWE. The Commission has long desired the divestiture of these interests, which can be traced to US WEST's 1993 investment in TWE. The Commission, however, has properly recognized the challenges presented by divestiture of this complex ownership stake and that the public interest is served by effectuating such divestiture in a way that does not deprive the parties of the value of their investment. The Transactions present a unique opportunity, not otherwise available, to achieve the desired result well ahead of the Commission's deadline and with a minimum of disruption.

- **The Transactions are Fully Consistent With Law and Will Have No Anticompetitive Effects.**

The Transactions will be fully consistent with the Communications Act and the Commission's rules. Significantly, while the Transactions will enhance the regional footprints of Comcast and Time Warner Cable, Comcast will only grow marginally (adding only 0.7 percent of MVPD subscribers nationwide) and Time Warner Cable will achieve a moderate subscriber increase but remain well below the 30 percent cable ownership cap that was overturned by the courts. Moreover, the Transactions will not result in the acquisition by Time Warner Cable or Comcast of an attributable interest in any video programming service, and thus will fully comply with the Commission's various programming rules, including the remanded channel occupancy rule or any more generalized concerns relating to vertical integration. Similarly, both Time Warner Cable and Comcast are committed to taking immediate steps to ensure compliance with the Commission's SMATV cross-ownership rules. More generally, approval of the Transactions will comport with the traditional competition and media diversity concerns that underlie each of these regulatory restrictions. Notably, the Transactions will not have any adverse effect on competition in the video programming business, either with respect to MVPD distribution or in upstream activities involving production, packaging, and sale of video programming.

In sum, the Transactions will generate real and substantial benefits for consumers that are not achievable through other means and will do so without violating any statute or Commission rule or creating any anticompetitive effects or media diversity concerns. Accordingly, Adelphia, Time Warner and Comcast respectfully request that the Commission grant these applications promptly and unconditionally.

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Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees;	)	MB Docket No. 05-192
	)	
Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors and Transferors, to Comcast Corporation (subsidiaries), Assignees and Transferees;	)	
	)	
Comcast Corporation, Transferor, to Time Warner Inc., Transferee;	)	
	)	
Time Warner Inc., Transferor, to Comcast Corporation, Transferee.	)	

APPLICATIONS AND PUBLIC INTEREST STATEMENT

Adelphia Communications Corporation, Comcast Corporation ("Comcast") and Time Warner Inc. ("Time Warner") (collectively, the "Parties;" Comcast and Time Warner collectively the "Applicants"), hereby request Commission consent pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (the "Act"),[1] to consummate a series of transactions (the "Transactions") that, through various steps, will result in: (1) the sale of certain cable systems and assets of Adelphia and its affiliates and related entities (collectively, "Adelphia") to subsidiaries or affiliates of Time Warner; (2) the sale of certain cable systems and

[1] 47 U.S.C. §§ 214, 310(d).

assets of Adelphia to subsidiaries or affiliates of Comcast; (3) the exchange of certain cable systems and assets between affiliates or subsidiaries of Time Warner and Comcast; and (4) the redemption of Comcast's interests in Time Warner Cable Inc. ("Time Warner Cable") and Time Warner Entertainment Company, L.P. ("TWE"). For the reasons stated below and in the respective applications to transfer control of and/or assign certain Commission licenses and authorizations (the "Applications"), the Transactions are in the public interest and the Applications therefore should be unconditionally granted.

I. DESCRIPTION OF THE TRANSACTIONS

As described in greater detail below, the Parties have entered into a series of definitive agreements whereby: (1) Time Warner Cable and Comcast separately will acquire various cable systems that, in the aggregate, comprise substantially all of the domestic cable systems owned or managed by Adelphia;[2] (2) Time Warner Cable and Comcast will swap certain cable systems detailed herein; (3) Time Warner Cable will redeem Comcast's 17.9 percent equity interest in Time Warner Cable, and TWE will redeem Comcast's 4.7 percent limited partnership interest in TWE (together an effective 21 percent economic interest in Time Warner Cable's business), in exchange for certain cable systems and cash; and (4) Time Warner Cable will emerge as a publicly traded company. More specifically, the Transactions include the following elements:

- Pursuant to an Asset Purchase Agreement between Adelphia and Time Warner NY Cable, LLC ("TWNY"), a wholly-owned subsidiary of Time Warner Cable, and a separate Asset Purchase Agreement between Adelphia and Comcast, TWNY and Comcast will each acquire a portion of substantially all of the cable systems owned or operated by Adelphia (the "Adelphia Transactions"). Time Warner Cable will pay approximately $9.2 billion in cash and will issue to Adelphia stakeholders shares of Time Warner Cable's Class A Common Stock, par value $0.01 per share, which are expected to represent 16 percent of Time Warner Cable's outstanding common equity (taking into account the redemption transaction with

[2] Excluded assets are described in Sec. II.A, *infra*.

Comcast). Comcast will pay approximately $3.5 billion in cash.[3] Each of the Adelphia Transactions is conditioned on contemporaneous consummation of the other. The Adelphia Transactions are not dependent, however, on the occurrence of the system swaps and redemption transactions between Time Warner Cable and Comcast described below.

- Pursuant to an Exchange Agreement, upon consummation of the Adelphia Transactions, affiliates of Time Warner and Comcast will exchange certain cable systems owned by affiliates of Time Warner or Comcast, respectively, together with certain cable systems to be acquired in the Adelphia Transactions (the "Time Warner/Comcast Swap Transactions"). In those swap transactions, Time Warner Cable will receive current Comcast cable systems located in or around Los Angeles, California; Cleveland, Ohio; and Dallas, Texas, and systems currently owned by Century-TCI California Communications, L.P. (the "Century–TCI Joint Venture") in the Los Angeles, California, area and by Parnassos Communications, L.P. and Western Cablevision, L.P. (collectively, the "Parnassos Joint Ventures") in Ohio and western New York. Comcast will receive Time Warner's current cable system serving portions of Philadelphia, Pennsylvania and certain systems currently owned by Adelphia located in the states of California, Colorado, Connecticut, Florida, Georgia, Kentucky, Massachusetts, Maryland, North Carolina, New Hampshire, New York, Pennsylvania, Tennessee, Virginia, Vermont, Washington and West Virginia.[4]

- Also upon consummation of the Adelphia Transactions, pursuant to the Time Warner Cable Redemption Agreement, Time Warner Cable will redeem Comcast's 17.9 percent equity interest in Time Warner Cable, now held in an FCC-mandated trust, in exchange for 100 percent of the common stock of a Time Warner Cable subsidiary that, at the closing of such redemption transaction, will own the Time Warner Cable systems located in or around Minneapolis, Minnesota; Memphis, Tennessee; Cape Coral, Florida; St. Augustine/Lake City/Live Oak, Florida; and Monroe, Louisiana; plus approximately $1.9 billion in cash (the "Time Warner Cable Redemption Transaction").[5]

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[3] A copy of the Time Warner/Adelphia Asset Purchase Agreement is attached as Exhibit A and a copy of the Comcast/Adelphia Asset Purchase Agreement is attached as Exhibit B.

[4] A copy of the Exchange Agreement among affiliates of Time Warner and affiliates of Comcast is attached as Exhibit C.

[5] A copy of the Time Warner Cable Redemption Agreement among Time Warner Cable, a subsidiary of Time Warner Cable, Comcast and certain affiliates and related parties of Comcast is attached as Exhibit D.

- Also upon consummation of the Adelphia Transactions, pursuant to the TWE Redemption Agreement, TWE will redeem Comcast's 4.7 percent limited partnership interest in TWE in exchange for 100 percent of the membership interests of a limited liability company that will own the Time Warner Cable systems located in or around Jackson, Mississippi; Shreveport, Louisiana; and Houma, Louisiana; plus approximately $133 million in cash (the "TWE Redemption Transaction").[6]

- Upon completion of the Transactions, Time Warner Cable will become a publicly traded company. Time Warner will own 84 percent of the common stock and hold 91 percent voting control of Time Warner Cable.[7] The Adelphia stakeholders collectively will hold the remaining 16 percent of Time Warner Cable. Independent directors will comprise one-half of the board of directors of Time Warner Cable for three years; thereafter, a majority of Time Warner Cable's board will be independent. As part of his current duties as Chairman of Time Warner's Media & Communications Group, Don Logan will become non-executive Chairman of Time Warner Cable's board of directors. Glenn Britt, who now serves as Time Warner Cable's Chairman and Chief Executive Officer, will remain Chief Executive Officer and also will be named President of Time Warner Cable.[8]

Upon consummation of the Adelphia Transactions, certain FCC licenses held by Adelphia will be assigned (or control transferred) to Comcast, its subsidiaries or affiliates, and other Adelphia FCC licenses will be assigned to subsidiaries or affiliates of Time Warner Cable.

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[6] A copy of the TWE Redemption Agreement among Time Warner, certain affiliates of Time Warner, and certain affiliates or related parties of Comcast is attached as Exhibit E. Additional documents relating to the Transactions are attached as Exhibits F-O. These documents relate to certain alternate structures of the Transactions in the event of certain contingencies that the Parties deem unlikely to occur.

[7] Time Warner also will directly own approximately 9 to 12 percent of the capital stock (non-voting common) of a subsidiary of Time Warner Cable, and Time Warner Cable will own the remainder of such subsidiary.

[8] In connection with the March 2003 restructuring of TWE, Comcast received one share of Series A Mandatorily Convertible Preferred Stock of Time Warner that, on March 31, 2005, converted automatically into shares of Time Warner common stock representing approximately 1.8 percent of the voting stock of Time Warner. This interest is not a part of the Transactions and will remain in and subject to the trust established and approved by the Commission as a condition of Comcast's acquisition of AT&T Broadband. *See generally, Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp. (Transferors) to AT&T Comcast Corp. (Transferee)*, Memorandum Opinion and Order, 17 FCC Rcd 23246, ¶¶ 74-77 (2002) (*"Comcast–AT&T Order"*).

In addition, upon consummation of the Time Warner/Comcast Swap Transactions, control of certain subsidiaries or affiliates of Time Warner Cable or Comcast, respectively, that hold FCC licenses (including certain FCC licenses acquired from Adelphia), will be transferred from Time Warner to Comcast or from Comcast to Time Warner, as the case may be. Finally, upon consummation of the Time Warner Cable Redemption Transaction and the TWE Redemption Transaction, certain FCC licenses will be assigned first to a newly formed Time Warner Cable subsidiary on a *pro forma* basis, and then control of the new entity will be transferred from Time Warner to Comcast. The Applications filed concurrently herewith seek Commission consent for those various assignments and/or transfers of control. The affected FCC licenses and authorizations are identified on Exhibit P.[9]

As a result of the Transactions, both Time Warner Cable and Comcast will achieve greater geographic scope and resultant efficiencies that will enhance their ability to provide their customers with innovative and appealing services. After consummation, Time Warner Cable will achieve greater geographic rationalization in several areas, including Western New York, Ohio, Texas, Southern California, Maine, and the Carolinas.[10] Comcast will realize similar benefits in Pennsylvania, Minnesota, southern Florida, the mid-Atlantic region (Washington

[9] Under the current terms of the trust established pursuant to the *Comcast–AT&T Order,* any non-cash consideration received in return for trust assets (which include the Time Warner Cable and TWE interests to be redeemed pursuant to the Time Warner Cable Redemption Transaction and the TWE Redemption Transaction) is to remain in the trust unless its distribution is approved by the Commission's Media Bureau. *See* Agreement and Declaration of Trust, dated as of March 31, 2003, by and among MOC Holdco II, Inc., Edith E. Holiday, as operating trustee (the "Trustee"), and The Capital Trust Company of Delaware, at Section 5(e). As set forth in the Time Warner Cable Redemption Agreement and TWE Redemption Agreement, Comcast is to acquire the ownership interests in certain entities holding cable systems and related assets in exchange for its interests in Time Warner Cable and TWE. To the extent necessary, Comcast hereby requests that the Commission's approval of the Transactions include the approval contemplated by Section 5(e) of the Trust Agreement, such that the ownership of these entities is allowed to pass directly to Comcast upon consummation of the Transactions.

[10] *See* Exhibit Q (Map of Time Warner Cable Post–Transactions Service Areas).

DC/Maryland/ Virginia) and New England.[11] The improved regional coverage of each company's cable operations will provide the scale and scope necessary to more effectively compete with the substantially larger service footprints of the direct broadcast service providers and the incumbent local exchange carriers ("ILECs").

II. THE PARTIES AND AFFILIATES

A. Adelphia Communications Corporation

Adelphia is the fifth largest operator of cable television systems in the United States and the seventh largest multichannel video programming distributor ("MVPD"). Adelphia's operations primarily consist of providing customers with analog and digital video services, high-speed data ("HSD" or "cable modem") service and other services over Adelphia's broadband networks. These services are provided primarily to residential customers in 31 states, with significant operations in and around Los Angeles, western Pennsylvania, Ohio, western New York, New England, southeast Florida, Virginia and Colorado Springs.

As of December 31, 2004, Adelphia's consolidated managed cable operations served 5,011,000 basic subscribers in the United States.[12] Adelphia's subscriber total includes several joint ventures in which Adelphia is the majority partner, including two joint ventures with

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[11] *See* Exhibit R (Map and Chart of Comcast Post–Transactions Service Areas).

[12] These subscribers include approximately 222,000 basic subscribers attributable to the systems nominally owned or controlled by the Rigas family, but exclude approximately 137,000 basic subscribers in a joint venture in Puerto Rico, and approximately 6,000 basic subscribers in a joint venture with Cletas Heller, St. Mary's Television, Inc., in Pennsylvania. Adelphia's interests in the Puerto Rico and St. Mary's joint ventures are not included in the Transactions now before the Commission. Also excluded are cable systems serving approximately 5,300 subscribers in various communities in Cameron, McKean and Potter Counties, Pennsylvania, that will remain with the Rigas family pursuant to settlement agreements entered into on April 25, 2005 between (a) the United States Attorney's Office for the Southern District of New York (the "USAO") and members of the family of John Rigas, and (b) the USAO and Adelphia. *See* Report on Form 8-K filed by Adelphia with the Securities Exchange Commission on April 26, 2005.

Comcast: (1) the Century–TCI Joint Venture and (2) the Parnassos Joint Ventures (collectively with the Century–TCI Joint Venture, the "Adelphia/Comcast Joint Ventures"). Adelphia is also the majority partner in three joint ventures with Tele-Media Corporation of Delaware (the "Tele-Media Joint Ventures"). Adelphia has entered into an agreement to purchase the minority equity interests in each of the Tele-Media Joint Ventures, which transaction was approved by the Bankruptcy Court on May 10, 2005 and is expected to be consummated prior to the closing of the Transactions.

Certain current or former Adelphia businesses are excluded from the Transactions, including residential and commercial security monitoring operations in Maine; long distance resale; and Empire Sports Network, an inactive regional sports network ("RSN").[13] Adelphia has no attributable interests in any cable programming networks.[14]

In June 2002, Adelphia and substantially all of its domestic subsidiaries (collectively, the "Debtors") each filed a voluntary petition for relief[15] under chapter 11 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code").[16] Adelphia filed a proposed plan of

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[13] *"Sports Net's Empire at an End,"* Multichannel News, January 24, 2005 at 3.

[14] Pursuant to the Transactions, the Applicants will acquire certain passive, minority investments held by Adelphia. Time Warner Cable will acquire non-attributable warrants representing 1,466,667 Class A Units of Oxygen, a national programming service geared towards issues of interest to women. Time Warner Cable will also acquire 3.7 percent of the voting interests in MusicChoice, a provider of VOD music videos and commercial-free, compact disc-quality music channels to MVPD systems; 1,219,512 shares of Series E Preferred Stock in ICTV, a privately-held interactive TV software provider; and 18 shares of common stock of USA Mobility, Inc., a publicly-traded wireless company. Comcast will acquire Adelphia's existing 2.11 percent interest in Sedna Patent Services, LLC ("Sedna"), a developer of Electronic Programming Guides and a variety of other research and analysis initiatives. Comcast currently owns a 45.38 percent interest in Sedna.

[15] *In re Adelphia Communications Corporation, et al.,* Case No. 02-41729 (Bankr. S.D.N.Y.). Additional details regarding Adelphia's financial difficulties and related litigation are set forth in Exhibit S.

[16] 11 U.S.C. § 1101 *et seq.*

reorganization on February 25, 2004, pursuant to which Adelphia would emerge from chapter 11 as an independent entity (the "Plan"). On April 22, 2004, Adelphia announced that its Board of Directors had decided to initiate a process to sell Adelphia while simultaneously continuing to prepare to emerge as a standalone company through the Plan.

On October 20, 2004, at the conclusion of the first phase of the bidding process for its assets, Adelphia had received approximately 45 non-binding indications of preliminary interest from 25 different potential bidders. On the final bid deadline of January 31, 2005, Adelphia received an aggregate of 15 final bids. On April 8, 2005, Adelphia submitted a motion seeking approval of certain supplemental bid protections (the "Motion") to the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") that described the bid submitted by Time Warner Cable and Comcast as the one "most likely to maximize the value of distributable proceeds to the Debtors' Stakeholders" and further suggested that consummation of the Transactions "would yield a more favorable mix of currency at a premium over the hypothetical total enterprise value that would be obtained under a standalone plan that issued publicly traded equity securities to stakeholders."[17] The Bankruptcy Court granted Adelphia's Motion on April 20, 2005 and the definitive agreements for the Transactions were executed as of that date.

B. Time Warner Inc.

Time Warner is a leading media and entertainment company, whose primary businesses include cable systems, online interactive services, filmed entertainment, television networks and

[17] *In re Adelphia Communications Corporation, et al.*, Motion for Supplemental Order, Pursuant to Sections 105, 363, 364, 503, 507 and 1123 of the Bankruptcy Code, Approving Supplemental Bid Protections in Connection With the Sale of Substantially All of the Assets of Adelphia Communications Corporation and Certain of Its Affiliates, Case No. 02-41729 (Bankr. S.D.N.Y, filed April 8, 2005) at 5-6.

publishing.[18] Each of these businesses, with a focus on the cable systems business, is discussed in turn below.[19] A detailed list of Time Warner's businesses is attached as Exhibit W.

1. Cable Systems.

Time Warner Cable, Time Warner's principal cable subsidiary, owns or manages cable systems serving approximately 10.9 million subscribers in 27 states, and is the nation's second largest multiple system operator ("MSO") and third largest MVPD. Utilizing a fully upgraded state-of-the-art cable infrastructure, Time Warner Cable delivers to its subscribers advanced products and services such as digital cable programming, high-definition ("HD") television, video on demand ("VOD"), subscription video on demand ("SVOD"), digital video recorders ("DVRs"), HSD and digital phone services.

Time Warner Cable operates 24-hour local news channels in New York City (NY1 News and NY1 Noticias); Albany, NY (Capital News 9); Rochester, NY (R/ News); Syracuse, NY (News 10 Now); Charlotte and Raleigh, NC (Carolina News 14); and Austin, TX (News 8 Austin).

Time Warner Cable also serves as the managing partner in certain cable joint ventures. Texas and Kansas City Cable Partners, L.P. ("TKCCP") is a 50-50 joint venture between Time Warner Cable and Comcast that owns cable systems in Texas and the Kansas City area serving

[18] Time Warner's financial qualifications to enter into the Transactions are established in Time Warner's Annual Report on Form 10-K for the Year Ended December 31, 2004, attached as Exhibit J, Quarterly Report on Form 10-Q for the Quarter Ended March 31, 2005, attached as Exhibit U, and Current Report on Form 8-K dated May 4, 2005 (the "SEC Form 8-K"), attached as Exhibit V.

[19] Time Warner also holds 48 percent of the equity of Time Warner Telecom Inc., an independently managed, publicly traded corporation that provides facilities-based competitive tele-communications services primarily to commercial/business customers.

approximately 1.5 million basic video subscribers.[20] Time Warner Cable holds a 54.19 percent equity interest in Erie Communications, Inc., the owner of the cable system serving Erie, Pennsylvania. Time Warner Cable holds a 40 percent equity interest in Urban Cableworks of Philadelphia, L.P. ("Urban Cable"), the owner of a cable system serving part of the City of Philadelphia, Pennsylvania.[21]

Time Warner also holds a 66.66 percent ownership interest in Time Warner Entertainment–Advance/Newhouse Partnership ("TWE-A/N"), the remaining ownership of which is held by subsidiaries of Advance Publications Inc. and Newhouse Broadcasting Corporation ("Advance/Newhouse"). TWE-A/N owns cable systems serving 5.1 million subscribers nationwide, of which systems serving approximately 2.9 million subscribers are managed by Time Warner Cable.[22] The TWE-A/N cable systems managed by Time Warner Cable, and associated subscriber counts, are included in the discussion of Time Warner Cable operations above. The remaining TWE-A/N cable systems, serving approximately 2.2 million

[20] The TKCCP joint venture is not affected by the Transactions. Pursuant to the trust agreement established in connection with Comcast's acquisition of AT&T Broadband, Comcast and Time Warner are prohibited from communicating concerning the prices, terms, and conditions of video programming on the systems owned by TKCCP. *See Comcast–AT&T Order* at ¶ 79, Appendix B, Section II.B. Under the terms of the *Comcast–AT&T Order,* these safeguards shall remain in effect throughout the term of the trust agreement. *Id.* at Appendix B. Pursuant to the TKCCP partnership agreement, either party has the right to trigger a breakup after June 1, 2006, which would result in a net reduction in attributable subscribers for both Comcast and Time Warner Cable.

[21] Time Warner Cable has entered into an agreement to purchase the remaining interest in Urban Cable, which it expects to complete prior to consummation of the Transactions. The Urban Cable system is included in the Time Warner/Comcast Swap Transactions, but will be removed if Time Warner Cable does not own 100 percent of Urban Cable at the closing of the exchange.

[22] In connection with the restructuring of the TWE-A/N partnership in 2002, Time Warner effectively acquired Advance/Newhouse's 17 percent interest in Road Runner, a HSD service provider, thereby increasing Time Warner Cable's ownership to 100 percent. *See* Mike Farrell, *Newhouse's TWE Deal: Just An Initial Advance,* Multichannel News, July 1, 2002, at 1.

subscribers located primarily in Florida, are managed by Bright House Networks, an affiliate of Advance/Newhouse.[23]

2. Online Interactive Services.

Time Warner's America Online business includes the AOL service, a subscription-based online service with over 22.2 million members in the U.S. The AOL service provides its members with access to the Internet and a global, interactive community offering a wide variety of content, features and tools. The AOL service also provides safety and security filters, specialized content, online communities, customization and control features, as well as commerce and search opportunities. In addition to the AOL service, America Online also offers a variety of interactive content and services which together form an online network of America Online portals and websites on the Internet. This network also includes websites, content and services that are AOL-branded, such as AOL.com, AOL Instant Messenger, and Moviefone, and other sites and services that are owned and operated by America Online, such as MapQuest, ICQ and Netscape.com, the Netscape portal. The America Online network also includes websites that are owned or operated by third parties or affiliated companies, such as the Time Inc. websites. America Online's Digital Services business creates products and services that appeal to the dial-up, high-speed and mobile Internet audience.

3. Filmed Entertainment.

Time Warner's Filmed Entertainment businesses produce and distribute theatrical motion pictures, television shows, animation and other programming. They also distribute home video

[23] Time Warner Cable is the managing partner with the authority for the supervision of the day-to-day operations of TWE-A/N, other than with respect to the cable systems managed by Advance/Newhouse. Conversely, Advance/Newhouse has the authority for the supervision of the day-to-day operations of the systems it manages. Time Warner Cable performs certain other management functions, including oversight of programming and various engineering-related matters, for all the TWE-A/N systems.

product and license rights to Time Warner's feature films, television programming and characters, along with programming from the Warner Bros. library, for world-wide media exhibition. These businesses are principally conducted by various subsidiaries and affiliates of Warner Bros. Entertainment Inc. ("Warner Bros.") and New Line Cinema Corporation ("New Line"), each of which are indirect, wholly-owned subsidiaries of Time Warner. Warner Bros. and New Line produce feature films both on their own and under co-financing arrangements with others, and also distribute completed films produced and financed by others. Warner Bros. also develops and produces new television series, made-for-television movies, mini-series, reality-based entertainment shows and animation programs.

4. Television Networks.

Time Warner's Television Networks business consists principally of domestic and international basic cable networks, pay television programming services and a broadcast television network. Time Warner's basic cable networks, including CNN, Headline News, Cartoon Network, TNT, and TBS, are owned and operated by Turner Broadcasting System, Inc. ("Turner"), an indirect, wholly-owned subsidiary of Time Warner.[24] Turner also owns the Atlanta Braves baseball club and a Turner subsidiary is the licensee of television station WTBS, Atlanta, Georgia (Channel 17).

Home Box Office, Inc. ("HBO"), an indirect, wholly-owned subsidiary of Time Warner, operates Time Warner's pay television programming services, HBO and Cinemax. The WB Network, a broadcast television network that provides a national group of affiliated television stations with 13 hours of prime time programming over six days of the week, is operated as a

[24] Time Warner also holds a 50 percent equity interest in Court TV.

limited partnership in which WB Communications, an indirect, wholly-owned subsidiary of Time Warner, holds a 77.75 percent interest and is the network's managing general partner.

5. Publishing.

Time Warner's magazine and book publishing businesses are conducted primarily by Time Inc., an indirect, wholly-owned subsidiary of Time Warner. Time Inc. publishes over 130 magazines worldwide, comprised of over 40 in the U.S. and over 90 in other countries. These magazines generally appeal to the broad consumer audience and include Time, People, Sports Illustrated, In Style, Fortune, Money, Southern Living, Entertainment Weekly, Real Simple, What's On TV and Cooking Light. Time Inc.'s publishing operations are conducted primarily through Time Warner's three major publishing houses, Warner Books; Little, Brown and Company; and Time Warner Book Group UK.

C. Comcast Corporation

Comcast began offering cable service with a single system in 1963 in Tupelo, Mississippi, serving just over 1,000 cable customers.[25] Under the leadership of the Roberts family,[26] Comcast has experienced extraordinary growth in the scale and scope of its business. The company has developed and deployed a wide range of new technologies and services. Significantly, it has become a premier provider of cable television service, digital video and on-demand programming, DVR capability, high-speed Internet service, telephony, and other services to millions of customers. In the process, Comcast has established a reputation as a

[25] Comcast's financial qualifications to enter into the Transactions are established in Comcast's 2004 SEC Form 10-K Annual Report, attached as Exhibit X, and First Quarter 2005 SEC Form 10-Q, attached as Exhibit Y.

[26] Brian L. Roberts, son of Comcast founder Ralph J. Roberts, is Comcast's Chairman, President and Chief Executive Officer.

leader in the cable industry in technology, strong financial performance, and operational efficiency. In all of its businesses, Comcast faces substantial facilities-based competition.

1. Cable Systems.

Comcast currently has an attributable interest in cable systems serving approximately 26.1 million customers in 35 states and the District of Columbia.[27] Since 1996, Comcast and its predecessors-in-ownership have invested $39 billion to upgrade cable plant by installing fiber optics and through other technological enhancements. As a result of these investments, Comcast now provides 99 percent of its customers with a two-way network that has been fully upgraded.

Comcast offers its cable subscribers a full array of both traditional and groundbreaking video products, including: local broadcast stations; national, regional, and local cable programming channels; premium movie channels; programming packages for Hispanic and other minority audiences; pay-per-view ("PPV") services; an impressive range of HD programming; a host of VOD programming, about 70 percent of which is free to Comcast subscribers; DVR services; and interactive programming guides. In addition, Comcast digital cable service is now available to virtually all Comcast customers, and the service has approximately 8.8 million subscribers—representing approximately 41 percent of Comcast's cable customer base.

[27] In addition to its wholly owned systems, which serve approximately 21.5 million subscribers, Comcast holds an attributable interest in systems serving approximately an additional 4.6 million subscribers through partnership and other ownership interests. *See* Exhibit Z. Among these holdings, Comcast has interests in Insight Midwest, L.P. and Insight Kentucky Capital, LLC (collectively, "Insight") and, as noted above, is the non-managing partner in the TKCCP venture. *See* Section II.B.1, *supra*. Comcast has the right to initiate the dissolution of its interests in Insight any time after December 31, 2005. If that option is exercised, the assets and liabilities of Insight would be apportioned between Comcast and Insight into two groups with fair market values as equal as possible. Comcast has a similar right to initiate the dissolution of its interests in TKCCP any time after June 1, 2006. In the event either of these dissolution rights is exercised, the result would be a net decrease in the number of subscribers attributable to Comcast.

2. Cable Telephony and Broadband.

Comcast's high-speed Internet service currently has 7.4 million customers and is now available to 40 million homes. Comcast also provides facilities-based telephone services to approximately 1.225 million customers. In addition, Comcast Business Communications ("CBC"), a wholly owned subsidiary of Comcast, offers integrated broadband communications services to over 4,000 business and governmental customers primarily in Pennsylvania, New Jersey, Delaware, Maryland, and Michigan, as well as services to schools and libraries. CBC's services include exchange access, private line, and other services.

CBC also provides competitive local exchange service, in the form of high-capacity trunk service, to several dozen small and medium-sized business customers. Comcast's cable telephony and CBC's business offerings include long distance service, which is provided primarily on a resale basis. In addition, Comcast's experience in providing facilities-based telephone service to its subscribers is speeding the company's transition into digital telephony. Comcast is quickly deploying Comcast Digital Voice, its new Internet protocol cable phone service, and plans to launch the service in 20 regional areas—passing over 15 million homes—by the end of 2005. Full deployment to over 40 million homes passed is targeted for 2006.

3. Programming.

The vast majority of programming carried by Comcast is unaffiliated with the company; in fact, Comcast owns no attributable interest in any of the top-20 rated cable networks. Comcast owns attributable interests in nine national programming networks. These include: (1) E! Entertainment (60.5 percent ownership interest);[28] (2) The Golf Channel (99.9 percent);[29]

[28] E! Entertainment Television is a 24-hour network with programming dedicated to the world of entertainment, celebrity information, and style. Ownership percentages are derived from

(3) The Outdoor Life Network (100 percent);[30] (4) The Style Network (60.5 percent);[31] (5) G4 Network (83.5 percent);[32] (6) TV One (32.8 percent);[33] and (7) AZN Television (100 percent).[34] In addition, Comcast has ownership interests in two programmers that provide VOD services: (1) a 54 percent interest in iN DEMAND Networks (iNHD), a leading provider of high-definition content, including VOD and pay-per-view offerings;[35] and (2) a joint venture interest

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Comcast Corporation's SEC Form 10-K at p. 8 (under Content heading) filed on February 23, 2005, attached as Exhibit X.

[29] The Golf Channel features coverage of the major golf competitions, including the PGA Tour, Champions Tour, LPGA, Nationwide Tour, USGA, PGA of America, European Tour, Canadian Tour and PGA Tour Australasia competition; instruction with world renowned teaching professionals; Golf Central, a nightly golf news show; Viewer's Forum, a live weekly call-in show featuring viewers' feedback on current golf happenings; celebrity interviews; and video tours of the world's great courses and specials.

[30] The Outdoor Life Network offers exclusive programming in four primary areas: Outdoor Adventure, Action Sports, Field Sports and Bulls & Rodeo. It also is home to best-in-class events like the Tour de France, The Gravity Games, Professional Bull Riders (PBR), USSA Skiing and the Boston Marathon.

[31] The Style Network provides lifestyle-related programming, including such shows as Clean House, which helps families beset by decorating disasters straighten up their spaces; Craft Corner Deathmatch, where amateur crafters compete against each other; and Fashiontrance, a show that highlights the hottest fashion collections with behind-the-scenes scoop and fun fashion facts.

[32] G4 is a network dedicated to entertainment and information about video games and the interactive entertainment industry. Network shows feature breaking industry news, reviews, the hottest games, gear and technology, celebrity interviews, insider opinions, and the underground trends that feed the video game generation.

[33] TV One, a relatively new network targeting African-American adult viewers, was launched on January 19, 2004 and is jointly owned by Radio One, Inc. (the nation's largest radio broadcaster serving African Americans and urban listeners), the DirecTV Group, Comcast, and several financial investors.

[34] AZN Television provides films, dramas, music and news from Asia, as well as original programs produced in the United States specifically for English-speaking Asian-American audiences. In addition, Comcast has minority interests in several international program services, including a 50 percent interest in SBTN (Vietnamese), a 10 percent interest in Casa Club (Spanish language), a fifteen percent interest in tvK24 (Korean), and less than a five percent interest in HTN (Haitian).

[35] Time Warner also holds a 30.3 percent equity interest in the iN DEMAND Networks.

in PBS Kids Sprout, a new service for preschool children, which currently provides VOD content and will launch as a 24/7 network this coming fall.[36]

Comcast also owns attributable interests in a variety of regional and local programming networks. For example, Comcast wholly owns cn8, The Comcast Network ("cn8"), which provides original local and regional news, public affairs, sports, and family-oriented programming in Pennsylvania, New Jersey, Delaware, Maryland, Massachusetts, New Hampshire, Connecticut, and Maine. In addition, the company currently has interests in six local and regional sports networks as well as three team-specific networks that currently are offered to subscribers, with one more such channel in development.[37] Specifically, Comcast's regional sports networks include:[38] (1) Comcast SportsNet (Philadelphia) (78 percent ownership interest);[39] (2) Comcast SportsNet Mid-Atlantic (100 percent);[40] (3) Comcast/Charter Sports Southeast (72 percent); [41] (4) Comcast SportsNet Chicago (30 percent); [42] (5) Comcast SportsNet

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[36] In addition, Comcast owns a 12.5 percent equity and 14 percent voting interest in MusicChoice, a provider of VOD music videos and commercial-free, compact disc-quality music channels to MVPD systems.

[37] In October 2004, Comcast Sports NY Holdings, Inc. ("Comcast Sports NY") entered into an agreement, by which it will hold a partial ownership interest in the Mets Network, which is expected to offer up to 150 regular-season Mets games, exhibition contests, and other programming featuring the Mets, and which is set to launch in spring 2006. The network, to be managed by Comcast Sports NY, will be a partnership among Comcast Sports NY (11.66 percent interest), Time Warner NY Cable LLC (22.33 percent interest), and SEE Holdco, LLC (an entity not affiliated with Comcast or Time Warner) (65 percent interest).

[38] *See* Exhibit AA for a more complete description of Comcast's regional sports networks.

[39] CSN Philadelphia is offered in Pennsylvania, Delaware, and southern New Jersey and carries, among other things, the games of the Philadelphia Flyers and 76ers.

[40] CSN Mid-Atlantic is offered in Maryland, Virginia, Delaware, the District of Columbia, and parts of Pennsylvania and West Virginia. The network carries the games of the Baltimore Orioles, the Washington Wizards, the Washington Capitals, and a variety of college sports.

[41] CSS is carried in 12 states across the Southeast and provides a comprehensive mix of live sports programming, sports news, and in-depth sports analysis tailored for fans in the Southeast with a focus on intercollegiate sports.

West (100 percent); [43] and (6) Comcast Local Detroit (100 percent).[44] Comcast's team-specific networks are Falcons Vision, Braves Vision and the Dallas Cowboys Channel. Moreover, Comcast offers an extensive list of unaffiliated minority, ethnic, and international programming.[45]

4. Filmed Entertainment.

In 2004, Comcast entered a partnership with Sony Pictures and other investors to acquire Metro-Goldwyn-Mayer ("MGM"). Through this partnership, Comcast is licensing MGM and Sony movies and television series and offers them on its VOD systems, giving subscribers access to a rotating library of more than 7,000 movies and 30,000 classic TV shows.

III. THE COMMISSION'S PUBLIC INTEREST STANDARD

Pursuant to Section 310(d) of the Act, the Commission must approve transfers of licenses and authorizations upon a finding that the "public interest" would be served thereby.[46] For several decades, the Commission consistently applied a straight-forward process for the review of applications to assign, or transfer control of, FCC licenses. Where the applicant established its basic qualifications as a licensee, a transfer was routinely approved unless opponents raised specific allegations of fact sufficient to show that the proposed transfer would be *prima facie*

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[42] CSN Chicago is offered in Iowa, most of Illinois and Indiana, and parts of southern Wisconsin and carries game coverage of the Chicago Bulls, Blackhawks, Cubs and White Sox.

[43] CSN West is offered in parts of California, Oregon and Nevada and offers a number of games of the Sacramento Kings and the WNBA Sacramento Monarchs, as well as Fresno State football, Sacramento State football, UC Davis football and basketball, and other local and regional sports programming.

[44] Comcast Local Detroit is offered in Michigan and features local content including coverage of high school games, the Mid-American Conference, Michigan and Michigan State men's basketball games, and some Detroit Shock (WNBA) games.

[45] *See* Exhibit BB for a more complete description of the unaffiliated international, ethnic and minority program services carried by Comcast systems.

[46] 47 U.S.C § 310(d).

inconsistent with the public interest.[47] For the vast majority of proposed transfers—those that "could not frustrate or undermine [its] policies"—the Commission concluded that no further inquiry was necessary.[48]

More recently, however, the Commission has selectively applied a standard first articulated in the *Bell Atlantic/NYNEX Order*.[49] Under that standard, the Commission "weigh[s] any potential competitive harms and benefits to determine whether the proposed transaction would promote the public interest."[50] In assessing the potential public interest benefits of a proposed transaction, the Commission "focuses on demonstrable and verifiable public interest benefits that could not be achieved if there were no merger."[51] The Commission's analysis of

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[47] 47 U.S.C. § 309(d)(1); *Gencom Inc. v. FCC*, 832 F. 2d 171, 181 (D.C. Cir. 1987); *Astroline Communications Co. v. FCC*, 857 F. 2d 1556, 1561 (D.C. Cir. 1988); *Taft Broadcasting Co.*, 38 FCC 2d 189, ¶ 2 (1972); *Turner Broadcasting System, Inc., Transferor, and Time Warner Inc., Transferee,* 11 FCC Rcd 19595, ¶¶ 11-12 (1996). To satisfy this test, a petitioning party must provide an affidavit containing "specific evidentiary facts, not ultimate conclusionary facts or mere general allegations." *Shareholders of Hispanic Broadcasting Corp., Transferor, and Univision Communications, Inc., Transferee*, 18 FCC Rcd 18834, ¶ 23 (2003) (quoting *Columbus Broadcasting Coalition v. FCC*, 505 F. 2d 320, 323-24 (D.C. Cir. 1974). In the event that a petitioner meets this demanding burden, it must then satisfy a second burden, by demonstrating that substantial and material questions of fact are present. *See Columbus Broadcasting Coalition v. FCC*, 505 F. 2d 320, 330 (D.C. Cir. 1974); *Broadcast Enterprises, Inc. v. FCC*, 390 F. 2d 483, 485 (D.C. Cir. 1968).

[48] *Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee,* Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶ 16 (1999) *("AT&T–TCI Order").*

[49] *Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20008-9 (1997) *("Bell Atlantic/NYNEX Order").* It has long been recognized that the Commission's authority to consider competitive issues is entirely discretionary. Thus, in practice, the Commission has applied its *Bell Atlantic/NYNEX* analytical framework selectively.

[50] *Id.* at ¶ 15.

[51] *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, 15 FCC Rcd 9816, ¶ 154 (2000) ("*AT&T–MediaOne Order*").

potential harms encompasses both an assessment of any anticompetitive effects and an inquiry into whether the transaction would violate the Act or the Commission's implementation or enforcement of the Act.[52] The Commission has elaborated that its examination of potential harms and benefits is *merger-specific*, and is not an open forum for airing preexisting or industry-wide disputes:

> It is important to emphasize that the Commission's review focuses on the potential for harms and benefits to the policies of the Communications Act that flow from the proposed transaction – *i.e.*, harms and benefits that are 'merger specific.' The Commission recognizes and discourages the temptation and tendency for parties to use the license transfer review proceeding as a forum to address or influence various disputes with one or other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act.[53]

Under either framework, the Commission has long adhered to the view that under the "public interest" standard the FCC has an obligation to promote the national policies underlying *other* federal laws, including the bankruptcy laws.[54] Specifically, the agency has recognized that facilitating a company's "successful emergence from bankruptcy advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors."[55]

As set forth in Section IV below, the proposed Transactions will generate substantial public interest benefits and no public interest harms. Moreover, as set forth in Section V, the

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[52] *Id.* at ¶ 9.

[53] *See, e.g., Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations of Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, 16 FCC Rcd 6547, ¶ 6 (2000) ("*AOL–Time Warner Order*").

[54] *See, e.g., San Diego Television, Inc., Debtor-in-Possession,* 11, FCC Rcd 14689, ¶ 13 (1996); *Adelphia Communications Corp.*, ¶ 3 & n. 9; *see also La Rose v. FCC,* 494 F.2d at 1146 n. 2.

[55] *WorldCom, Inc. and Its Subsidiaries, Transferor, and MCI, Inc., Transferee, Applications for Consent to Transfer and/or Assign Section 214 Authorizations, Section 310 Licenses, and Submarine Cable Landing Licenses,* 18 FCC Rcd 26484, ¶ 29 (2003) (*"WorldCom–MCI Order"*).

proposed Transactions fully comply with the Act and the Commission's rules and, unlike the more typical license transfer case, advance the federal aims of the bankruptcy laws. Thus, regardless of the standard the Commission chooses to apply, the Applications should be promptly and unconditionally granted.[56]

IV. THE TRANSACTIONS WILL GENERATE SUBSTANTIAL PUBLIC INTEREST BENEFITS

A. The Transactions Will Accelerate The Deployment Of Advanced Services On Adelphia Systems And Promote Competition.

A key public interest benefit of the Transactions is that the underperforming Adelphia cable systems will be placed in the hands of either Comcast or Time Warner Cable—two of the most stable, respected and technologically advanced cable MSOs. Indeed, as described in detail below, Time Warner Cable and Comcast are uniquely qualified to maximize the benefits to subscribers and creditors alike from Adelphia's emergence from bankruptcy, both because of their unparalleled track records for upgrading and operating broadband networks, and because the integration of the Adelphia cable systems with either the Comcast or Time Warner Cable systems pursuant to the Transactions will result in geographic rationalization that will enhance competition and provide pro-consumer efficiencies.

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[56] Notably, the FCC licenses involved in the Transactions in the CARS, Business Radio and Private Operational Fixed services do not constitute a material aspect of the Parties' cable television operations. The Parties urge the Commission to be mindful of its tenuous jurisdiction in this matter, particularly as it assesses the litany of non merger-specific parochial concerns often interjected by third parties in the context of FCC license review proceedings. In particular, the Applicants do not waive their rights to challenge the Commission's jurisdiction to review these Applications in whole or in part or to challenge specifically the application of the *Bell Atlantic/NYNEX* analysis to the Transactions. Indeed, the Parties understand that the Commission's *Bell Atlantic/NYNEX* standard of review has not specifically been passed upon by any court.

1. Time Warner Cable And Comcast Have Been Industry Leaders In Rolling Out Advanced Services.

A pivotal event in the cable industry has been the emergence of DBS competition, which began around 1994.[57] Only a decade later, DBS had succeeded in capturing fully one quarter of all MVPD subscribers.[58] Taking into account other MVPD competitors, cable's share is now down to around 70 percent.[59] And the competitive environment will only intensify further as ILECs broadly deploy their video service offerings.[60]

In response to DBS competition, however, the cable industry has re-invented itself. Between 1996 and today, the industry invested about $95 billion in upgrading cable systems to a hybrid fiber/coax ("HFC") architecture.[61] This investment has reaped substantial public benefits: it has allowed cable operators not only to provide existing services more reliably, but also to offer a wide array of new services, including digital cable, cable modem service, VOD, SVOD,

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[57] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Third Annual Report, 12 FCC Rcd 4358, Appendix F (1997) ("*Third Annual Report*") (DBS operators had less than 1 percent of MVPD subscribers in 1994).

[58] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, 20 FCC Rcd 2755, Table B-1 (rel. Feb. 4, 2005) ("*Eleventh Annual Report*").

[59] *Id.*

[60] *See* John M. Higgins, *Cable Braces For Telco Invasion into TV*, Broadcasting & Cable, April 4, 2005, at 14 ("The telcos are coming! The telcos are coming! First heard a decade ago, that cry has become almost deafening in recent months as the three giant telephone companies tout plans to spend tens of billions of dollars upgrading their plant, aiming squarely at cable systems"); John Van, *Phone giants bulk up with fiber for TV*, Chicago Tribune, Oct. 29, 2004, at A-1; Alan Breznick, *Cable, Phone Companies Go Head-to-Head at Last on Broadband*, Communications Daily, April 14, 2005, at 9.

[61] *See* NCTA, 2004 Year End Review, at 1, available at http://www.ncta.com/pdf_files/NCTAYearEndOverview04.pdf ("[n]early $95 billion has been spent since 1996, turning cable's hybrid fiber-coaxial infrastructure into a powerhouse capable of delivering advanced services such as Video-On-Demand, digital cable, Voice over Internet Protocol (VoIP) phone service, high-speed Internet access, and more.").

DVRs, and voice communications. As detailed below, Time Warner Cable and Comcast have been at the very forefront of this technological revolution.

a. Time Warner Cable

(i) Broadband Distribution Infrastructure

Time Warner Cable is a recognized leader in deploying and managing the introduction of new services and technologies, having transformed systems that were designed for the delivery of one-way video service into digital thoroughfares capable of bringing consumers a "triple-play" of advanced video, high speed data, and voice communications.[62] For example, just within the past month, Time Warner Cable's Houston system has been named cable system of the year by a leading trade magazine.[63] Time Warner Cable won an Engineering Emmy in 1994 for its pioneering HFC design for cable television systems, which is now considered the industry standard as a robust and flexible broadband platform.[64] Since 1996, Time Warner Cable has

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[62] *See, e.g.*, Mike Farrell, *The Industry Standard*, Multichannel News, Sept. 27, 2004, at 3A ("Time Warner has always been the technology leader in the cable industry"); Jesse Drucker and Peter Grant, *Cable Giant is Close to Scoring a Quadruple Play*, Wall St. J., Dec. 29, 2004, at B-1 ("Time Warner Cable . . . has a reputation for being a technology leader in cable."); K.C. Neel, *The Regional 'Guinea Pigs'*, Multichannel News, Sept. 27, 2004, at 18A ("Time Warner Cable has always been on the cutting edge of testing and launching new products, and in recent years, the company has picked up the pace. In any given year, Time Warner launches at least two new products."); S. Hofmeister, *Sale of Adelphia May Benefit Southland Cable-TV Watchers*, L.A. Times, Apr. 9, 2005, at C1 ("Time Warner has been at the forefront in converting its cable systems to offer customers digital cable, high-speed Internet access, video-on-demand, personal video recorders and telephone service via cable.").

[63] Multichannel News, May 2, 2005, at 51.

[64] *See e.g.*, Mike Farrell, *The Industry Standard*, Multichannel News, Sept. 27, 2004, at 3A ("Time Warner . . . developed the hybrid fiber-coax technology that all cable operators use today."); Matt Stump, *Technology's Creative Master*, Multichannel News, Sept. 27, 2004, at 12A ("Orlando was the first place that we ever did hybrid fiber-coax, which became the underpinning for the entire cable industry."); http://www.timewarnercable.com/maine/aboutus/dedicatedtoinnovation.html ("In 1994, Time Warner Cable became the first cable company to be honored with an Emmy Award by winning the Engineering Award for Outstanding Achievement in Technological Development.").

invested over $5 billion on plant related rebuilds; upgrading, enhancing and growing its systems to enable delivery of a full suite of new services, years ahead of most other cable MSOs.[65] As a result of all these efforts, over ninety-nine percent of Time Warner Cable subscribers are currently served by cable systems with at least 750 MHz capacity, all capable of carrying two-way broadband communications.

(ii) Digital Cable and HD Programming

After upgrading its systems, Time Warner Cable led the way in rolling out digital cable and now offers its subscribers the latest in digital programming.[66] Subscribers to digital video service receive all the channels included in the basic and standard tiers plus up to 60 additional digital cable networks and up to 45 CD-quality audio music services. As of March 31, 2005, over 45 percent of Time Warner Cable's basic video subscribers also purchase digital video services.[67]

Time Warner Cable is also on the forefront of delivering HD programming. Time Warner Cable carries multiple HD offerings, including HBO, Showtime, ESPN, Discovery, HDNet and iN DEMAND, as well as HD sports programming from Fox's RSNs and NBA-TV.[68]

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[65] *See* http://www.timewarnercable.com/maine/aboutus/dedicatedtoinnovation.html ("In 2001, we completed a $5 billion, nationwide system upgrade to create a hybrid fiber coaxial cable network.").

[66] *See, e.g.*, Mike Farrell, *The Industry Standard*, Multichannel News, Sept. 27, 2004, at 3A ("Time Warner . . . has been at the forefront of digital and SVOD deployment."); Mike Farrell, *All's Quiet on the Cutting Edge*, Multichannel News, Feb. 23, 2004, at 34 ("Time Warner is about a year ahead of its peers in the rollout of [digital service]"); *Eleventh Annual Report* at ¶ 38 (showing that Time Warner Cable has among the industry's highest rates of digital cable penetration).

[67] *See* Time Warner Inc. SEC Form 8-K, dated May 4, 2005, at 4, attached as Exhibit V.

[68] *See, e.g.*, Jeff Baumgartner, *The Power Trio*, CED Magazine, Jan. 2004, at 19 ("TWC has also been extremely aggressive with HDTV"); Mike Farrell, *All's Quiet on the Cutting Edge*, Multichannel News, Feb. 23, 2004, at 34 ("Time Warner Cable is ahead of the game [in] HDTV"); http://www.timewarnercable.com/corporate/aboutus/ timline2.html (noting that Time

Time Warner Cable also carries the HD and other digital signals broadcast by numerous local television stations, including all such stations owned and operated by the ABC, CBS, NBC and Fox networks, and nearly all public television stations in its cable service areas. Indeed, Time Warner Cable entered into a groundbreaking agreement in November 2000 to carry the digital signals of local PBS stations,[69] paving the way for the recent NCTA/PBS carriage agreement (the "*NCTA/PBS Agreement*").[70] In all, Time Warner Cable's systems offer an average of 15 HD channels, [71] and Time Warner Cable's HD subscribership has swelled to nearly 574,000.

(iii) Advanced Digital Video Services

Time Warner Cable has long recognized that digital technology has changed cable subscribers' behavior and expectations dramatically. No longer can cable systems be merely a one-way means of delivering a pre-set menu of analog programming. Utilizing its fully upgraded state-of-the-art advanced cable network, Time Warner Cable is committed to delivering to its customers a digital, interactive experience that empowers them with quality, control, convenience and choice. To this end, Time Warner Cable is an industry leader in delivering innovative products and services such as digital cable programming, HD television, VOD, SVOD and DVRs.

Warner Cable won "Best DTV Cable System" for three consecutive years from the Consumer Electronics Association (CEA) Academy of Digital Television Pioneers, which recognized Time Warner Cable as "doing the most to market and promote HDTV through its distribution of HDTV programming").

[69] Paige Albiniak, *PBS, Time Warner Do Carriage Deal,* Broadcasting and Cable, November 27, 2000 at 118.

[70] *See* Press Release, National Cable and Telecommunications Association, *Public Television and Cable Ratify Digital Cable Carriage Agreement*, available at http://www.ncta.com/press/ press.cfm?PRid=597&showArticles=ok (Apr. 14, 2005).

[71] *See* Time Warner Inc., Annual Review 2004, at 22 available at <ftp://ftp.timeinc.net/pub/corp/ 2004_Annual_ Review.pdf> *("Time Warner Annual Review").*

Time Warner Cable offers VOD content to customers with advanced digital set-top boxes in all of its divisions.[72] These digital set-top boxes provide subscribers with interactive program guides and access to other on demand offerings. Time Warner Cable's VOD services enable subscribers to instantaneously view programming stored on servers at the system's headend, and to utilize functions such as pause, rewind, and fast forward. Free on demand content provides subscribers with access to selected programming from a variety of sources, both local and national, with no incremental charges. Subscribers are charged for on demand movies and special events on a per use basis.

Time Warner Cable's SVOD offerings provide digital customers with the ability to view an array of programming associated with a particular content provider for a separate monthly fee or as part of their monthly fee for the relevant service. SVOD is currently offered in connection with premium channels such as HBO, and it is expected that SVOD programming offerings will continue to expand. As of March 31, 2005, Time Warner Cable has 1.6 million SVOD subscribers.[73]

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[72] *See, e.g.*, *2003 What's in Store for Cable – VOD: The Killer App Goes Wide*, Cable World, Jan. 13, 2003, available at http://www.findarticles.com/p/articles/mi_m0DIZ/is_2_15/ ai_96398795 (recognizing Time Warner Cable as the "leader" in VOD deployment among its peers); http://www.timewarner.com/corp/businesses/detail/ time_warner_cable/ ("Time Warner Cable leads the industry in deploying video on demand and subscription-based VOD services"); Arthur Cole, *The 2001 Service in Technology Award: Time Warner Leads on Three Fronts*, Communications Technology, May 2001, at http://www.broadband-pbimedia.com/ct/archives/ 0501/ 066_timewarner.htm/ (recognizing Time Warner Cable as the "leader of the pack" with respect to VOD, VoIP, and the offering of multiple ISPs); Mike Farrell, *The Industry Standard*, Multichannel News, Sept. 27, 2004, at 3A ("Time Warner . . . has been at the forefront of digital and SVOD deployment.").

[73] Time Warner Inc. SEC Form 8-K, dated May 4, 2005, at 4, attached as Exhibit V.

Time Warner Cable offers DVR functionality in its digital set-top boxes in all of its divisions,[74] and as of March 31, 2005 has 998,000 DVR subscribers.[75] DVR functionality enables subscribers to record programming on a hard drive built into the set-top box through the interactive program guide, and to view the recorded programming using functions such as pause, rewind and fast-forward. DVR users can also record one show while watching another, record two shows simultaneously, or even pause "live" television. During 2004, Time Warner Cable introduced HD-capable DVRs. In 2005, Time Warner Cable expects to introduce a multi-room DVR, which will allow programming to be captured on a DVR set-top box in one room and viewed on other television sets around the house without the need for additional DVRs.

As yet another example of its technological innovation, Time Warner Cable has announced a test of an innovative VOD variant later this year in Columbia, South Carolina. The service, tentatively named "Startover," is a cross between a DVR and VOD. Every show airing over a licensed network would be stored at the headend. Startover would let viewers start watching a program in full from the beginning at any time during its airing.[76]

All these new products are driving digital penetration. As of March 31, 2005, Time Warner Cable's digital video penetration has reached about 4.9 million digital subscribers, more than a 9 percent increase over the previous year.[77]

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[74] *See, e.g.*, Jesse Drucker and Peter Grant, *Cable Giant is Close to Scoring a Quadruple Play*, Wall St. J., Dec. 29, 2004, at B-1 ("Time Warner was a leader in such features as video-on-demand and digital video recorders."); Mike Farrell, *All's Quiet on the Cutting Edge*, Multichannel News, Feb. 23, 2004, at 30 ("Time Warner Cable "already leads the industry in the rollout of digital video recorders and video-on-demand"); *Eleventh Annual Report* at ¶ 42 (showing Time Warner Cable to be among the first MSOs to make DVRs available throughout footprint).

[75] Time Warner Inc. SEC Form 8-K, dated May 4, 2005, at 4, attached as Exhibit V.

[76] Mike Farrell, *Time Warner to 'Start Over' on DVR*, Multichannel News, March 30, 2005.

[77] Time Warner Inc. SEC Form 8-K, dated May 4, 2005, at 4, attached as Exhibit V.

(iv) High Speed Data

Time Warner Cable has long been at the vanguard of providing HSD services. Indeed, Time Warner Cable's Full Service Network experiment, launched in early 1990, was the first practical application of transmission-control protocol/Internet protocol ("TCP/IP") over HFC plant, and was the precursor to today's cable modem service.[78] Time Warner Cable currently has over 4.3 million HSD subscribers, consisting of over 4.1 million residential subscribers and approximately 182,000 commercial accounts.[79] Time Warner Cable recently launched faster download speeds in all its divisions; unveiled an all-new, redesigned version of its Road Runner HSD service; and has devoted increased resources to customer service.[80] Each Time Warner Cable division typically offers multiple levels of service, each with different maximum upstream and downstream data transfer rates.[81] Time Warner Cable's standard HSD service offers a downstream speed of 5 Mbps, while its premium HSD service offers speeds up to 8 Mbps. Time Warner Cable also offers home networking options that allow customers to connect multiple PCs to a single cable modem.

[78] *See, e.g.*, Matt Stump, *Technology's Creative Master*, Multichannel News, Sept. 27, 2004, at 12A (Time Warner Cable's early 1990s Full Service Network experiment in Orlando "was also the first place we did TCP/IP [transmission-control protocol/Internet protocol] over HFC, and out of that came high-speed data.").

[79] *See Time Warner Annual Review* at 22; Time Warner Inc. SEC Form 8-K, dated May 4, 2005, at 4, attached as Exhibit V.

[80] Time Warner Cable's Road Runner service has just won J.D. Power and Associates' "Highest in Customer Satisfaction" survey among commercial broadband-data customers. Matt Stump, *Road Runner Business Tops J.D. Power List,* Multichannel News, May 10, 2005, available at http:// multichannel.com/indedx.asp?layout=articlePrint&article=CA600638.

[81] Time Warner Cable offers its residential customers a choice among different ISPs, including Time Warner Cable's own high-speed Road Runner service. Time Warner Cable's provision of ISP services is subject to compliance with the terms of the FTC AOL Time Warner Merger Order and Consent Decree, as well as the conditions imposed by the *AOL-Time Warner Merger Order*, *supra*. *See* America Online, Inc., and Time Warner Inc., Federal Trade Commission, Docket No. C-3989, File No. 001 0105, Decision and Order (Dec. 14, 2000) ("*FTC AOL–Time Warner Order*").

(v) Voice Communications

Time Warner Cable also leads the industry in rolling out Voice over Internet Protocol ("VoIP") services over managed broadband networks.[82] Time Warner Cable began technical trials in Portland, Maine as early as 2000—years before most other MSOs.[83] In 2003, Time Warner Cable rolled out its residential voice service, Digital Phone, first in Portland and then in North Carolina and Kansas City.[84] Digital Phone has now been launched in all Time Warner Cable divisions and is currently available to over two-thirds of Time Warner Cable's homes passed.[85]

Digital Phone provides unlimited local, in-state, and long distance calling to the U.S. and Canada, as well as call waiting, caller ID, and "Enhanced 911" ("E911") services for a flat-rate, all-distance monthly fee. Digital Phone subscribers can make and receive calls using virtually

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[82] To the extent that any cable systems being transferred to Comcast or Time Warner Cable pursuant to the Transactions are providing VoIP service, customers receiving such service will be assigned to the appropriate acquiring party. The Applicants believe that Section 214 approval is unnecessary for the assignment of VoIP customers. If that belief is mistaken, and without waiver of any arguments to the contrary, Applicants seek approval with respect to these transfers as well.

[83] *See* Press Release, Time Warner Cable, Inc., *Time Warner Cable Creates Unit to Handle Residential Telephone Business* (Jan. 22, 2004), at http://www.timewarner.com/corp/newsroom/pr/0,20812,670217,00.htm ("technical trials of VoIP were inaugurated in Rochester and Portland, beginning in the year 2000.").

[84] *See, e.g.*, *Eleventh Annual Report* at ¶ 51; Press Release, Time Warner Cable, Inc., *Time Warner Cable Creates Unit to Handle Residential Telephone Business* (Jan. 22, 2004), available at http://www.timewarner.com/corp/newsroom/pr/0,20812,670217,00.htm ("The service has been provided to customers in Portland, Maine since last May and a limited number of households are involved in the initial rollout of the service in the company's Raleigh, Charlotte and Kansas City divisions.").

[85] *See* Peter Grant, *Time Warner Inc.'s Phone Service Shows Cable's Growing Clout*, Wall St. J., Feb. 23, 2005, at B1. Time Warner Cable is committed to vigorously rolling out its Digital Phone service throughout all its systems as fast as market and regulatory forces allow. Challenges include the need to resolve certain compatibility issues such as 911, porting, directory listings, etc., as well as the need to pierce ILEC rural exemptions. While these efforts are ongoing, Time Warner Cable remains optimistic that Digital Phone will be made available to all its subscribers by the end of 2006.

any commercially available telephone handset. Subscribers switching to Digital Phone can keep their existing landline phone numbers, retain their directory listings, and have access to toll-free 800 calling, Telecommunications Relay Services for the disabled, directory assistance, and operator services. Digital Phone is also CALEA-compliant, permitting the interception, when necessary, of both call identifying information and call content in response to lawful requests. Time Warner Cable views this as a critical aspect of its service in this time of heightened national security and law enforcement concerns. Digital Phone enables Time Warner Cable to offer its customers a combined, easy-to-use package of video, voice and high-speed data services that provide consumers with attractive alternatives to similar product offerings by competitors.

The Digital Phone package has been a hit with consumers. Time Warner Cable now has more than 500,000 subscribers, is signing up about 50,000 additional subscribers per month, and has reached penetration of up to 12 percent in the areas where the service was first rolled out, less than two years ago.[86] Consumers reap the rewards from Time Warner Cable's Digital Phone roll-out in the form of lower prices, better quality, and more innovative features.[87]

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[86] *See Time Warner Annual Review* at 22; Press Release, Time Warner Inc., *Time Warner Reports First Quarter 2005 Results* (May 4, 2005) available at http://www.timewarner.com/corp/newsroom/pr/0,20812,1057181,00.html; *see also* Stephanie N. Mehta, *Will Wall Street Ever Trust Time Warner*, Fortune, May 16, 2004 at 76, available at http://www.fortune.com/fortune/investing/articles/0,15114, 1061394,oo.html.

[87] *See, e.g.*, J. Halpern, *et al.*, Bernstein Research, *U.S. Telecom and Cable: Flat-Rate Pricing Signals Telephony Voice ARPU Compression* at 3 (Apr. 8, 2004) ("By entering with pricing that is 30%+ below prevailing RBOC rates, cable operators are setting benchmarks that will be difficult for incumbent telcos to match."); Verizon–MCI Public Interest Statement at 40 ("The cable company offerings in Verizon's territory are clearly competitive with Verizon's service. Indeed, mass-market voice services offered by cable companies are often priced at or below comparable offerings from Verizon.").

(vi) Community Involvement

Time Warner Cable places a high priority on corporate citizenship, public service and community involvement. By reaching out to local governments, educational institutions and non-profit organizations in the communities it serves, Time Warner Cable develops and provides programs, services and resources tailored to benefit customers and communities alike. Time Warner Cable's main focus always has been to provide free educational support to communities and their institutions. Through initiatives such as Cable in the Classroom and Cable's High Speed Education Connection, Time Warner Cable uses its flexible cable infrastructure to deliver the resources of cable programming and technology, including High Speed Online access, at no cost to schools. Partnerships with national organizations, like the National Urban League and Boys & Girls Clubs of America, allow Time Warner Cable to support and enhance the effectiveness of existing service organizations, extending the benefits of its technology to a broader, more inclusive audience. Time Warner Cable consistently seeks to apply its local and national presence to identify new areas of needs. Adopt-A-School initiatives, support for local symphonies, art and dance organizations, youth after school and mentoring activities, environmental concerns and economic development are just some of the areas that are covered by this emphasis on local community involvement.

Extending the impact of Time Warner Cable's commitment to its communities is the energetic and enthusiastic contribution of its employees. Across the country, Time Warner Cable employees are active volunteers in a wide variety of programs, devoting countless hours of personal time for community service projects. Time Warner Cable also supports individual, non company-related projects that benefit local communities through its employees' personal involvement. Four times each year, Time Warner's EVG (Employee Volunteer Grant) program awards grants ranging from $500 to $3,000 to fund such varied non-profit local initiatives as refurbishment of youth sports facilities, community environmental projects and equipment for day care facilities, to name just a few.

Time Warner Cable's community activism embraces corporate philanthropy as well. Each year, Time Warner Cable donates several million dollars directly to non-profit organizations. Greater still are the tens of millions of dollars more of in-kind contributions provided through activities such as the production and distribution of public service announcements. These donations support both local initiatives and national non-profit organizations. Time Warner Cable's educational outreach programs are underwritten by more than $3 million in annual funding across its divisions.

b. Comcast

Comcast is a proven industry leader in upgrading its systems and continuously striving to provide its customers with the most innovative services and diverse programming available. Across these various service offerings, as explained in detail below, Adelphia subscribers will greatly benefit from the new opportunities they will be provided upon completion of the Transactions.

(i) Broadband Distribution Infrastructure

Comcast has an outstanding track record in upgrading its cable systems. Over the past several years, Comcast has made enormous investments in system upgrades and rebuilds, service quality, customer service, new technologies, and innovative advanced services.

Prior to Comcast's acquisition of AT&T's cable systems in 2002, the former AT&T Broadband systems were below industry standards and required significant additional investment in order to complete needed upgrades. In the context of that transaction, Comcast assured the

Commission that it would quickly and significantly upgrade those systems to bring them up to Comcast's standards.[88] Following the acquisition, Comcast spent billions of dollars on system upgrades in the territories previously served by AT&T Broadband, and met its commitment in record time.[89]

Overall, Comcast has spent nearly $8 billion over the past two years alone in capital improvements. Much of that expenditure was devoted to former AT&T systems. In addition, Comcast constructed a record 53,000 miles of fiber during 2004, exceeding its already aggressive plans by over 15 percent. Comcast has met or exceeded every upgrade target that it has established, and ended 2004 with virtually all of its cable systems fully upgraded with two-way capability. The result of this investment is that Comcast now provides 99 percent of its customers with a two-way network that has been fully upgraded and can offer more services to more customers, increase their viewing options, and improve their customer experience.[90]

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[88] *See Applications for Consent to the Transfer of Control Licenses, Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, Applications and Public Interest Statement*, filed in MB Docket No. 02-70, at 3 (Feb. 28, 2002).

[89] In recognition of this and other achievements, Comcast was named Operator of the Year by Multichannel News in 2003. *See* Mike Farrell, "*Comcast Corp. Through the Years*," Multichannel News, Sept. 29, 2003 (noting that, with respect to the upgrade of the former AT&T systems, "Comcast [] outperformed even its own stated expectations").

[90] As a result of its "massive upgrade project" and the resulting "[b]reakthrough advances in its digital video and high-speed data platforms, and effective leadership regarding the future of technology for itself and the industry at large," Comcast was named Operator of the Year by Communications Technology Magazine in 2004. Jonathan Tombes, "*Comcast: Operator of the Year, A Thoroughbred Hits Its Stride*," Communications Technology, June 2004, available at http://www.ct-magazine.com/ archives/ct0604/0604_oty.html_ Similarly, in recognition of its "uncommon mastery of technology, innovation, globalism, networked communication, and strategic vision," Comcast was named to *Wired* magazine's Wired 40 list in 2004. Kevin Kelleher, "*The Wired 40*," Wired Magazine, June 2004, available at http.wired-vig.wired.com/ wired/archive/12.06/wired40.html.

(ii) Digital Cable and HD Programming

As a result of Comcast's system upgrades, the company's digital cable service is now available to virtually all Comcast customers, and the service has approximately 8.8 million subscribers—representing over 40 percent of Comcast's cable customer base. Comcast digital cable customers enjoy more than 250 channels, including dozens of commercial-free premium movie channels as well as over 40 commercial-free music channels. Comcast's digital cable service also provides customers with electronic programming guides that offer improved navigation functionality and parental controls. Further, by the end of 2005, Comcast plans to begin offering its customers an "all-digital" option, delivering its entire channel lineup in digital form to digital set-top boxes through the use of digital simulcasting.[91]

Comcast's leadership in the provision of HD services and broadcast multicast programming similarly will redound to the benefit of Adelphia customers. Comcast offers an incredibly broad range of HD programming. Over 90 percent of Comcast customers currently have as many as fifteen HD channels available to them, including (in most areas) all of the major broadcast networks, as well as PBS, ESPN, HBO, Showtime, Cinemax, Starz!, iNHD, iNHD2, and Discovery HD. Additionally, programming on each of the regional Comcast SportsNet services can be viewed in high-definition. This is up sharply from just four years ago, when HD

[91]Digital simulcasting facilitates a controlled transition to an "all-digital" cable service by providing the entire channel lineup, including those services that also are transmitted in analog, in digital form. By duplicating the analog portion of the channel lineup digitally, Comcast will be able to deliver a better television viewing experience to digital cable subscribers through a higher quality picture and improved sound, while at the same time ensuring that basic cable subscribers can continue to view in analog those services they enjoy today on cable-ready display devices without the need for an expensive digital set-top box. Once the cable industry achieves its goal of developing a more affordable digital set-top box, Comcast ultimately intends to provide all of its customers with such boxes for every television set in their homes (as well as those VCRs that require their own digital set-top boxes). This will allow Comcast to convert its cable systems to "all-digital" facilities, thereby ensuring that every subscriber receives the superior picture and sound that digital transmission provides.

service was available to only approximately 15 percent of Comcast customers. As a result of these compelling offerings, Comcast had nearly 1.5 million subscribers to its HD services as of March 2005.[92]

Comcast also has entered into voluntary agreements with 139 commercial broadcasters in 62 Designated Market Areas ("DMAs") to carry their multicast digital signals and is a party to the NCTA/PBS Agreement ensuring that local public television stations' digital programming will be carried on cable systems serving the vast majority of the nation's cable subscribers.[93] Moreover, Comcast offers high-definition VOD programming in all systems where video on demand is offered. Notably, the growing availability of quality HD programming on Comcast's systems is helping to accelerate the digital transition by creating greater incentives for consumers to purchase HD television display devices.[94]

[92] In recognition of all of these outstanding digital television services, Comcast was the 2004 recipient of the "Best DTV Cable System" award from the Consumer Electronics Association. *See CEA Congratulates 2004 Academy Of Digital Television Pioneers Award Recipients*, CEA Press Release (March 15, 2005), available at http://www.ce.org/pressroom/press_ release_ detail.asp?id=10711.

[93] *See* Press Release, National Cable and Telecommunications Association, *Public Television and Cable Ratify Digital Cable Carriage Agreement*, available at http://www.ncta.com/press/ press.cfm?PRid=597&showArticles=ok (Apr. 14, 2005).

[94] In addition, Comcast has entered partnerships with over 900 retailers nationwide, including Best Buy, Tweeter Home Entertainment Group, Staples, Gateway, Radio Shack, and Circuit City, to educate consumers about HDTV equipment and Comcast's HDTV offerings. *See, e.g.*, Comcast News Article, "Comcast And Tweeter Expand HDTV Retail Program," http://www. cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&t=Regular&id=451264& (Sept. 3, 2003); Comcast News Article, "Comcast And Best Buy Expand Philadelphia Retail Program For HDTV And Digital Cable To New Markets," http://www.cmcsk.com/phoenix.zhtml?c=147565 &p=irol-newsArticle&t=Regular&id=451756& (Apr. 8, 2003). Comcast also has partnerships with a number of regional and local retailers. For example, Comcast's partnership with Abt Electronics is one of 20 in Chicago. Similarly, in Detroit, Comcast has marketing agreements with ABC Warehouse and Hawthorne Stores. In addition, Comcast has entered into arrangements with over 2,700 retailers in connection with Comcast's HSD service offerings.

(iii) Advanced Digital Video Services

Comcast consistently has been at the forefront of deploying innovative digital and broadband services, such as VOD, DVR, and wireless broadband services. Comcast currently offers its On Demand VOD service on cable systems passing approximately 34 million homes in 29 DMAs. In 2004, Comcast customers viewed over 560 million VOD offerings, and in March 2005 alone, Comcast's digital customers viewed more than 100 million VOD programs—three times the number viewed in March 2004.

Comcast's VOD service delivers video programming to individual set-top boxes over its cable plant using a combination of Internet protocol and MPEG delivery, and permits customers to enjoy the kind of functionalities provided by DVD players, *e.g.*, stop, pause, fast-forward, and rewind. In Philadelphia, Comcast's flagship system for VOD, 80 percent of digital cable customers who can access VOD have used the service in the past three months, and the average user retrieves VOD content more than 27 times per month, or nearly once a day.

Comcast customers currently have access to a continuously updated selection of VOD content that, at any given time, contains more than 2,000 hours of programming—over 70 percent of which is free to Comcast digital cable customers. By the end of 2005, subscribers will be able to choose from up to 10,000 television programs, new movies, and "library" titles (*e.g.*, classic movies and select children's programming). VOD customers enjoy access to a wide range of programming from such industry leaders as TLC, Animal Planet, CNN, the Travel Channel, and Comedy Central. In addition, sports fans can watch NFL and NBA expanded game highlights via NFL Replay and NBA On Demand. Additional movie and television program selections are complimentary for subscribers to HBO, Showtime, Cinemax, Starz!, Encore, and The Movie Channel. Further, Comcast customers can choose a broad range of short-form programming, such as Gratis en Español, from a diversity of suppliers.[95] The defining characteristic of Comcast's VOD service is that it gives customers much greater control of what they watch, when they watch, and how they watch.[96]

Comcast's DVR service also gives subscribers greater flexibility and control. It allows consumers to watch programming recorded from linear networks. The service currently enables consumers to record over 80 hours of standard NTSC (analog) programming, and up to 20 hours of more bandwidth-intensive HD programming. A growing number of Comcast DVRs also offer dual tuners to allow a subscriber to record two programs simultaneously.[97]

In addition, Comcast has been providing its customers with innovative wireless broadband services since May 2004, which allow subscribers to connect up to five wireless-

[95] Gratis en Español offers more than 100 hours of Spanish-language VOD content, bringing a wide range of entertainment and information to the Hispanic community. Categories from which viewers can choose include movies, music, sports, children's programs, and history documentaries.

[96] The widespread appeal of VOD to consumers has encouraged Comcast to keep improving its VOD offerings. For example, to assist its customers in accessing VOD content, Comcast has entered into a joint venture, dubbed the Interactive Programming Guide Development Group, with interactive program guide distributor Gemstar-TV Guide International, Inc. to package VOD content from multiple programmers into menu categories, such as children's, romance, or sports. Through this joint venture, Comcast is aggregating content on a single screen to promote ease of use. By pulling up a category menu such as "Kids and Teens," a VOD user is able to see a list of all programming available under that subject heading.

[97] Comcast recently entered into a non-exclusive agreement with TiVo Inc. to develop a version of the TiVo DVR service that will be made available on Comcast's current primary DVR platform. Pursuant to that agreement, in mid-to-late 2006, the majority of Comcast's subscribers will have the opportunity to choose TiVo service, including TiVo's award-winning user interface and features such as Season Pass(TM) and WishList(TM). The service also will showcase TiVo's home networking, multimedia, and broadband capabilities. *See* Press Release, Comcast Corporation, *Comcast and TiVo Announce Strategic Partnership* (Mar. 15, 2005), available at http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&t=Regular&id=685606&.

capable computers to a single high-speed Internet connection through a wireless router.[98] Earlier this year, moreover, Comcast and Delphi Corporation announced an agreement pursuant to which the two companies will work together to develop ways to allow users to select video content, transfer it to an in-vehicle entertainment system, and take it with them on the go.[99]

(iv) <u>High Speed Data</u>

Comcast's high-speed Internet service currently has 7.4 million customers and is now available to 40 million homes. With Comcast's high-speed service, customers can enjoy broadband with speeds up to 6 Mbps downstream and 768 Kbps upstream. The speed of Comcast's cable modem service has quadrupled in the last four years alone and can be expected to increase significantly in the future. Customers receive an "always-on connection," with no busy signals, no waiting, and no hassles. In a continuing effort to innovate and differentiate its service in a competitive broadband marketplace, Comcast also offers a broadband portal with "click-and-play" video, personalized news, streaming audio, an extraordinary array of children's content, and games. In addition, the portal offers subscribers such unique features as "The Fan," an application that allows subscribers to browse, search, and playback video clips, and Comcast Video Mail, which lets consumers record and send video messages in three easy steps.

Comcast works hard to make its fast growing high-speed Internet service even more appealing and convenient to subscribers. Comcast's broadband innovations directly will benefit existing Adelphia subscribers. By way of example, Comcast re-launched its customer portal in

[98] Comcast is developing other broadband services, including a home networking service, which will enable a customer to use various forms of content and communication in or away from his or her home.

[99] Delphi Corporation Press Release, "Delphi and Comcast Announce Development Effort for In-Vehicle Mobile Video Delivery," http://www.delphi.com/media/news/pressReleases/pr31014-01052005 (Jan. 5, 2005).

2003, and it has since become the most frequently used broadband portal in the United States.[100] In keeping with its commitment to expand and improve its services, Comcast recently added 30 new built-for-broadband features to its Internet service, including video mail, a digital photo suite, a kids' channel, games on demand, fantasy football, a stock watch list, and expanded streaming audio and video downloads.

Through such innovative and attractive offerings, Comcast provides consumers with a premium option that is highly competitive with DSL services. Indeed, the continued growth of Comcast's high-speed service, even in the face of aggressive price competition from DSL providers, is a testament to the high level of consumer appeal of these services. Comcast is developing even more innovative features for the service, including video instant messaging and a higher level of portal customization. In addition, Comcast recently entered a long-term agreement to use Level 3 Communications' technically advanced, nationwide broadband fiber optic network, over which it can deliver new and enhanced services.

(v) Voice Communications

Comcast's experience in providing facilities-based telephone service to approximately 1.225 million customers is speeding the company's transition into digital telephony. In the past two years, Comcast has elected not to expand its circuit-switched offerings, but has instead focused intently on preparing the launch of its new Internet protocol cable phone service, and plans to launch the service in 20 metro areas—passing over 15 million homes—by the end of 2005. Full deployment to over 40 million homes passed is targeted for 2006. The service offers a full slate of traditional telephony features, including unlimited local and domestic long distance, international calling, popular calling features, a voice portal, E911, operator services,

[100] *See* Nielsen Net Ratings (Nov. 2004).

and directory assistance. Comcast Digital Voice relies on Comcast's high-speed data network, rather than the public Internet, to ensure voice quality and reliability and to deliver features that rival or surpass traditional circuit-switched phone service. As this new competitive alternative becomes established, Comcast intends to offer such innovations as television caller ID, voice activated dialing, video phone service, unified messaging, and anywhere account access.

(vi) Local and Regional Programming

Comcast has longstanding expertise in the production and delivery of local and regional programming. This includes news, public affairs, sports, and a variety of programming with a local or regional focus. Combining the high production values of national cable programming with an emphasis on localized interests, "cn8, The Comcast Network" is one of the nation's most critically acclaimed diversified regional networks. The network offers viewers an exciting mix of news, talk, sports and entertainment programming that is unique to the communities it serves.[101] cn8 News offers two full hours nightly of news and discussion of regional issues, and tailors much of its programming to meet distinct regional interests in New England and the Mid-Atlantic states. In 2004, cn8 received 7 Emmy Awards, bringing the total wins to 28 since the network's inception in 1996. In all, cn8 has received 208 Emmy nominations, making it one of the most lauded regional cable networks in the country. The network also has earned more than 120 Telly awards honoring outstanding local, regional, and cable programming.

In the Washington, D.C. area, Comcast produces "Comcast Local Edition," which provides approximately five minutes of programming every half hour on the channel carrying

[101] cn8 offers more than 75 hours of original programming per week, featuring a diverse lineup of live, Emmy-award winning primetime programming; including, "It's Your Call with Lynn Doyle," an issues oriented program led by the network's political director, Lynn Doyle; "Backstage with Barry Nolan," an entertainment magazine show hosted by Barry Nolan, formerly of Extra! and Hard Copy fame; and a topical sports program, "Out of Bounds with Lou Tilley."

CNN Headline News. These segments often are highly localized, and typically highlight local community group events and raise awareness for important public causes. For example, "Local Edition" segments are customized so that viewers in the Washington, D.C. Metro region see an interview regarding the National Symphony Orchestra; and viewers in Arlington, Virginia see segments regarding the locally-held CSC Invitational Bike Race; CrisisLink, a suicide prevention counseling service located in Northern Virginia; or Neighborhood Day in Arlington. With a similar focus on local and regional public affairs, "Comcast Newsmakers" is typically a five-minute interview program that airs twice hourly in most dayparts on CNN Headline News. "Comcast Newsmakers" features community leaders and local, regional, and state politicians who want to present their ideas in a forum that has a local focus but the reach and significance of a national news network. Similar local services are offered by Comcast systems across the country.

Moreover, Comcast's diverse range of regional, local, and team-specific sports channels provide customers with some of the highest quality sports programming available. Like Comcast's other local and regional programming, its regional sports offerings repeatedly have been recognized for setting the pace for quality. Comcast SportsNet Philadelphia, for example, has received numerous Mid-Atlantic Emmy Awards. Similarly, since its launch in 2001, Comcast SportsNet Mid-Atlantic has been nominated for 30 (and received 15) Capital Region Emmy Awards. The awards recognize excellence in the creativity, execution, and content of locally produced news and programming.

These programming initiatives demonstrably benefit the communities in which Comcast operates. Comcast invests in programming such as cn8 and Local Edition/Newsmakers as part of its ongoing commitment to public service. The proposed Transactions will permit Comcast to expand its emphasis on local issues and public affairs to current Adelphia communities and will stimulate the production and delivery of additional local and regional services to meet viewer needs.

(vii) Community Involvement

Comcast long has strived to be a good and engaged corporate citizen in the communities it is privileged to serve. Comcast looks forward to extending this distinguished record to Adelphia communities.

For example, Cable in the Classroom is an important vehicle for using Comcast products and services as a powerful education tool. Since 1989, Cable in the Classroom has worked in collaboration with the cable industry to provide schools, teachers, and families with resources that support the best possible learning experiences for children in their homes, schools, and communities. The resources provided by Comcast—which include free cable connections and high-speed Internet service to schools—coupled with copyright-cleared programming and online content from Cable in the Classroom, enable educators to effectively integrate multimedia learning opportunities into their instruction. With easy access to educationally rich content through new technologies, educators can engage students through interactive activities and enhance the learning experience. As of 2004, Comcast provided free cable television service to almost 17,000 schools. In addition, Comcast provided free high-speed Internet connections to approximately 7,250 schools and roughly 1,500 libraries, youth or community centers.

Comcast also provides financial and volunteer support to many local organizations in each of the communities it serves, deploying its communications resources to bring visibility to important local issues. In recognition of its many community-oriented initiatives in the Washington, D.C. Metro area, just this month Comcast was named by the Washington Business

Journal as one of the area's top 50 local corporate philanthropists with respect to both overall charitable donations and volunteer hours.[102] Through long-term national and local partnerships with existing organizations and through its own signature volunteer program, Comcast Cares Day, Comcast employees donate tens of thousands of hours a year in Comcast communities nationwide. This past October, 30,000 Comcast employees and their families donated 180,000 hours of service on Comcast Cares Day—the equivalent of more than 20 years of service in one day. Comcast also participates in the United Way's National Corporate Leadership Program, and in 2004 Comcast donated over $2.3 million to 107 local United Ways in 27 states through employee contributions and grants from The Comcast Foundation.

Comcast further strengthens communities through a variety of targeted local activities and initiatives. For example, the Comcast Reading Network is one vehicle that Comcast has used to help enrich educational opportunities.[103] The Network proactively identifies and supports local reading organizations in geographically diverse communities throughout the country that are dedicated to advancing literacy and reading skills. Other recent involvement in the Washington, DC Metro Area has been achieved through the Company's Drive, Think, Live Public Safety Campaign;[104] the Alexandria Scholarship Fund to support students at T.C.

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[102] *See* Washington Business Journal, Business Philanthropy Guide, Top Corporate Philanthropists (May 2005) (ranking Comcast 21st with respect to local giving and 15th with respect to total volunteer hours).

[103] *See* "MCPS Announces New Partnership with Comcast to Recruit Volunteers for Ruth Rales Comcast Kids Reading Network, Comcast's Contribution Valued at $1 Million in Airtime and Program Support," Comcast Press Release (April 15, 2005).

[104] *See* "Comcast Launches Public Safety Campaign Throughout The Region To Promote Driver Safety Among Young People, Public Safety Initiative Stated in Montgomery County And Will Launch On Comcast Cable Systems Throughout The Entire Washington Metropolitan Area," Comcast, Press Release (February 1, 2005); *see also* "Comcast To Heavily Rotate Teenage Driver Safety Spots During Prom Season," Comcast, Press Release (April 2005).

Williams High School; and the Comcast Outdoor Film Festival in Alexandria and Arlington, Virginia.

Comcast also seeks to develop and recognize young leaders who are working to strengthen local communities and local economies, and will make the communities it serves better places to live and work. The Comcast Leaders and Achievers™ Scholarship Program is a company-wide initiative recognizing students who exemplify these skills and who serve as models for their fellow students. Last year, the program recognized more than 1,000 graduating high school seniors in Comcast service areas across the country for their community service, academic achievement, and leadership, granting over $1 million in scholarships. Another example is the company's role as a National Leadership Sponsor of City Year, an organization that recruits young people to serve full-time for a year in community service, leadership development, and civic engagement, with operations in 15 cities. In March 2005, Comcast renewed its commitment to City Year, which includes a $2.2 million cash contribution, production of PSAs, and several million dollars in airtime over the next three years.

Comcast also has made a major commitment to the Partnership for a Drug Free America ("PDFA"). In 2003, Comcast announced that it would provide $50 million worth of airtime for the anti-drug messages provided by PDFA. In addition to building visibility for PDFA's PSA campaigns, Comcast is collaborating with local PDFA organizations in a range of public education and town-hall outreach efforts.

The Comcast Foundation was established in June 1999 and is the company's chief source of charitable support to qualified non-profit organizations. The Foundation primarily invests in programs in the areas of volunteerism; literacy, reading and learning; youth leadership development; and promoting diversity. Since its inception, The Comcast Foundation has donated more than $18 million to organizations in Comcast communities.

2. Adelphia Has Lagged Behind Time Warner Cable and Comcast In Deployment Of Advanced Services.

Although it currently ranks seventh among MVPDs with slightly over five million subscribers,[105] Adelphia has lagged behind Time Warner Cable and Comcast in managing the introduction of advanced, digital services. For example, Adelphia has trailed several years behind company-wide projects by Time Warner Cable and Comcast to upgrade their cable systems to provide two-way capability, with most now offering capacities of 750 MHz or above. While Time Warner Cable offers VOD service to virtually all of its subscribers, and Comcast offers VOD service to over 80 percent of its subscribers, Adelphia currently makes VOD service available to less than half of its customers. Adelphia's basic cable penetration of 48.1 percent also lags behind Comcast (52.6 percent) and Time Warner Cable (56.7 percent). Adelphia's track record with respect to other advanced, digital services also falls behind that of Time Warner Cable and Comcast, who each have achieved HD and DVR penetration levels exceeding those of Adelphia.

Perhaps of greatest relevance to the Commission's public interest analysis is Adelphia's underperformance in the area of broadband HSD service and facilities-based telephone competition, given the primacy of these goals under the Telecommunications Act of 1996.[106]

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[105] *See Eleventh Annual Report,* Table B-3.

[106] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.* ("1996 Act") at Section 706 (establishing duty for the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."); Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess., at 1 (1996) (two of the fundamental goals of the 1996 Act are to open the local exchange and exchange access markets to competition and to promote innovation and investment by all participants in the telecommunications marketplace.).

While Adelphia offers HSD service to a respectable 96.2 percent of homes passed, its penetration rate is a mere 14.4 percent, compared to the HSD penetration levels achieved by Time Warner Cable and Comcast of 20.8 percent and 18.3 percent, respectively. In light of the track record of high quality customer service and faster data rates offered by Comcast and Time Warner Cable, HSD penetration will surely grow in areas currently served by Adelphia as a result of the Transactions.[107]

Finally, Adelphia did not even begin a VoIP trial until late 2004.[108] As of today, Adelphia has not yet offered a facilities-based, voice communications service commercially to any of its customers, whereas Time Warner Cable offers its Digital Phone service throughout more than two-thirds of its footprint, and Comcast offers a combination of circuit-switched telephony and VoIP service to 27.5 percent of its service areas (based on homes passed), with plans to expand its VoIP footprint to 40 million homes by the end of 2006. Clearly, Comcast and Time Warner Cable have established their leadership in rapidly rolling out facilities-based voice and data services in competition with the entrenched ILECs. Adelphia's lagging performance is graphically illustrated below:[109]

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[107] *See Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, WC Docket No. 04-29, Memorandum Opinion and Order, Statement of Chairman Kevin J. Martin, FCC 95-05 (rel. May 5, 2005) ("[I]nvestment in broadband facilities, such as the IP platforms at issue here, is critical to providing American consumers with 21st century advanced services [and is] one of the Commission's core priorities.").

[108] *See* Adelphia 2003 SEC Form 10-K at 13; *see also* Shawn Young & Peter Grant, *What the Phone Deals Mean for You*, Wall Street Journal, May 4, 2005, at D-1 ("Cable companies that own systems in less densely populated area like Adelphia Communications Corp. and Charter Communications Inc. have been slower to introduce phone, although they all plan to do it eventually."); *id.* at D-4 ("Adelphia . . . doesn't offer phone service yet, although it plans to offer it this year.").

[109] All figures from the most recent public sources where available, otherwise based on the Parties' best estimates.

	Adelphia	Time Warner Cable	Comcast
Telephone Customers	0	500,000	1,225,000
HSD Penetration (Percent of Homes Passed)	14.4%	20.8%	18.3%
VOD Availability (Percent of Subscribers)	below 50%	≈ 99%	≈ 80%
HD Subscribers	138,251	574,000	1,446,000
Percent of Basic	2.8%	5.3%	6.7%
DVR Subscribers	126,424	998,000	575,000

Adelphia's sub-par performance is undoubtedly due, in no small measure, to the distressed financial position leading to its declaration of bankruptcy, as detailed more fully in Exhibit S, and the public clearly has suffered thereby. For example, the Los Angeles Times reports that "city regulators say Adelphia's consumer complaints remain the highest in Los Angeles, and are 10 times higher than Time Warner's in some areas."[110]

[110] S. Hoffmeister, *Sale of Adelphia May Benefit Southland Cable-TV Watchers*, L.A. Times, April 9, 2005 ("Since its bankruptcy filing, Adelphia has had a testy relationship with the city. Officials rolled back rate increases, collected unpaid franchise fees and pressured Adelphia's management to speed their upgrades."); *see also Locals Gird for Bankruptcy,* Multichannel News, June 24, 2002, available at http://www.multichannel.com/article/CA224316.html?display=Search+Results&text=Locals+Gird+for+Bankruptcy (in 2002, prior to filing its bankruptcy petition, Adelphia became delinquent on its franchise fee payments); *Adelphia Bounces Community Checks*, Multichannel News, July 15, 2002, available at http://www.multichannel.com/article/CA233454.html?display=Search+Results&text=Adelphia+Bounces+Community+Checks (as bankruptcy neared, Adelphia began bouncing franchise fee payment checks to LFAs); *Adelphia: We're Halting PEG Payments*, Multichannel News, October 7, 2002, available at http://www.multichannel.com/article/CA250423.html?display= Search+Results&text=PEG+Payments (during 2002, Adelphia failed to make some of its PEG access payments and then announced in September 2002 that it would not pay any prepetition PEG access payments); *Contractors Feel Pinch Too*, Multichannel News, May 27, 2002, available at http://www.multichannel.com/article/CA219159.html?display=Search+Results&text=Contractors+Feel+Pinch+Too (in mid-May, 2002, Adelphia ordered the immediate cessation of work on all upgrades, digital installations and other field work nation-wide except where such jobs were 50 percent or more completed); *Locals Gird For Bankruptcy,* Multichannel News,

The Transactions will allow Time Warner Cable and Comcast to put their technological leadership to work in Adelphia's systems, which should dramatically advance the roll-out of new services. In particular, the track records established by Comcast and Time Warner Cable demonstrate that the Applicants possess the management expertise, marketing savvy and customer service infrastructure needed for the rapid deployment of advanced services. Moreover, Comcast and Time Warner Cable have collectively earmarked an additional $800 million to upgrade the less-advanced Adelphia cable systems to each company's high standards, over and above the pre-closing amounts budgeted by Adelphia for capital improvements.[111] Even apart from advanced services, current Adelphia customers can expect to receive more reliable, higher quality service at all levels, including basic cable service. Notably, the track records established by Time Warner Cable and Comcast provide solid evidence that the Transactions will significantly accelerate the roll-out of telephony in Adelphia's service areas. In connection with prior transactions, the Commission has expressly recognized that "acceleration of cable telephony deployment is a public interest benefit,"[112] and that consumers

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June 24, 2002, available at http://www.multichannel.com/article/CA224316.html?display= Search+ Results&text=Locals+Gird+for+Bankruptcy (the immediate cessation of construction, in some cases, created public safety risk from situations like temporarily affixed line placements, some times even affixed with rope or string with some LFAs ordering full-blown emergency inspections); *Copyright owners' adversary against Adelphia in core proceeding,* BCD News and Comment, Vol. 42, No. 22, April 28, 2004 (Adelphia did not pay any of its 2002-1 cable compulsory copyright license fees, including the six days that fell after the petition for bankruptcy was filed, which triggered a copyright infringement lawsuit by copyright owners and broadcast stations).

[111] Comcast has set aside over $150 million over the next two years for capital improvements to the Adelphia systems it will acquire, and Time Warner Cable has earmarked $650 million in capital costs for the systems it will acquire in the Transactions.

[112] *Comcast–AT&T Order* at ¶ 199; *see also Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816, ¶ 178 (2000) ("*AT&T-MediaOne Merger Order*") (merger's likely effect of "expeditious rollout of telephony" would "yield public interest benefits for consumers"); *see also Application of WorldCom, Inc. and MCI*

benefit when an MSO with experience and expertise in local telephony is allowed to acquire the systems of an MSO that does not.[113]

In short, the Transactions will advance the public interest by allowing the underperforming Adelphia cable systems to be rescued from bankruptcy by either Comcast or Time Warner Cable—the nation's most stable, respected, and technologically advanced cable operators.

B. The Transactions Are Uniquely Structured to Bring About Pro-Competitive and Efficient Geographic Rationalization.

As shown above, the Transactions will provide Adelphia's subscribers with the benefit of the proven expertise and track record of Time Warner Cable and Comcast in the deployment of advanced, digital services, as well as higher quality basic service. Equally important, each step in the Transactions, including the Adelphia system acquisitions, the system swaps between Time Warner and Comcast, and the redemption of Comcast's interests in Time Warner Cable and TWE, will provide the public with the benefits of pro-competitive and efficient geographic rationalization of the Applicants' service areas.

Adelphia, which is most aptly described as a medium-sized MVPD, operates systems that are comparatively fragmented on a geographic basis.[114] Similarly, while Time Warner Cable and Comcast for some time have pursued strategies of regionalization, each continues to have

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Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc., Memorandum Opinion and Order, 13 FCC Rcd 18025, ¶ 199 (1998) ("*WorldCom-MCI Order*") (finding public interest benefit in fact that "as a result of combining certain of the firms' complementary assets, the merged entity will be able to expand its operations and enter into new local markets more quickly than either party alone could absent the merger.").

[113] *See AT&T–MediaOne Order* at ¶¶ 161-167.

[114] Adelphia operates systems serving approximately five million customers spread over 31 states. In contrast, Time Warner Cable provides service to more than twice as many subscribers located in fewer (27) states. Comcast, similarly, provides service to more than four times as many subscribers located in 35 states and the District of Columbia.

pockets of systems that are unable to achieve the benefits that can be obtained by combining with properties held by the other. By adding currently fragmented and relatively isolated systems to system groups that already exist for Time Warner Cable and Comcast, the Transactions will enhance the Applicants' ability to compete against DBS and ILEC competitors that operate with national or broad regional footprints,[115] will further accelerate the roll-out of advanced services, and will create efficiencies and economies of scale and scope that will benefit both existing and newly added subscribers.

1. Improved Geographic Rationalization Will Enhance Competition.

Time Warner Cable and Comcast currently compete principally against companies with national or broad regional footprints. For example, as MVPDs with ubiquitous national coverage, DBS operators DirecTV and EchoStar have been able to take advantage of their ability to mount cost-effective nationwide advertising campaigns, often with tie-ins to national retail chains, to aggressively market their services and promotions.[116] As a result, DirecTV and EchoStar have attracted over 23 million subscribers in little more than a decade;[117] by

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[115] *See* Geraldine Fabrikant, *Time Warner and Comcast Seal Adelphia Purchase,* New York Times, April 22, 2005,http://www.nytimes.com/2005/04/22/business/media/22cable.html?ei=5088&en=d3ff981571d14c54&ex=1271822400&adxnnl=1&partner=rssnyt&emc=rss&adxnnlx=1114457129-xH2NpxZG90bczosnzPlkaQ (noting that, according to analysts, the Adelphia transaction "would offer some advantages in marketing against satellite and the telephone companies"); Anne Veigle, *Time Warner – Comcast To Buy Adelphia for $17.6 Billion,* Communications Daily, April 22, 2005, at 3 (quoting Merrill Lynch analyst as saying "[the Adelphia transaction] could lead to operational improvements across the industry and improve cable's competitive positioning relative to both satellite and phone company competitors").

[116] *See e.g.,* Press Release, *DIRECTV Launches New Brand and Advertising Campaign* (Feb. 7, 2005), available at http://www.directv.com/DTVAPP/aboutus/headline.dsp?id=01_07_2005A; Press Release, *DIRECTV Launches National High-Definition Television Bundled Equipment Offer at Circuit City* (Nov. 19, 2003), available at http://www.directv.com/DTVAPP/aboutus/mediacenter/NewsDetails.dsp?id=11_19_2003A; Jeff Baumgartner, *RadioShack goes satellite exclusive with EchoStar and Sirius* (Feb. 12, 2004), CED Broadband Direct, available at http://www.cedmagazine.com/cedailydirect/2004/0204/cedaily040212.htm#6.

[117] *Eleventh Annual Report* at ¶ 54.

comparison, it took the entire cable industry over thirty years to reach the 23 million subscriber threshold.[118] Moreover, according to a recent Government Accountability Office study, DBS subscriber growth is no longer localized in rural areas, but is occurring steadily in all parts of the country.[119] The improved regionalization of Time Warner Cable and Comcast resulting from the Transactions will facilitate a more robust competitive environment in response to the DBS industry's national marketing campaigns.

Time Warner Cable and Comcast also compete with the major ILECs, who not only provide telephone and HSD service throughout expansive, multi-state geographic areas, but also are beginning to move into video.[120] The salutary impact that the enhancement of the Applicants' regional footprints will have on the ability of Time Warner Cable and Comcast to compete, on a facilities-based platform, head-to-head with the ILECs, comes at a crucial juncture in the evolution of the cable and telephone industries. Both cable and the ILECs are moving swiftly to provide consumers a broad menu of video, voice, and data services.[121] Improved

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[118] *See* National Cable & Telecommunications Association, Cable Television Developments 2004, available at http://www.ncta.com/Docs/PageContent.cfm?pageID=304.

[119] United States Government Accountability Office, Report to the Subcommittee on Antitrust, Competition Policy and Consumer Rights, Committee on the Judiciary, U.S. Senate, *Telecommunications: Direct Broadcast Satellite Subscribership Has Grown Rapidly, but Varies across Different Types of Markets*, GAO-05-257, April 2005. The Government Accountability Office confirms what the Applicants know from experience: DBS penetration is growing most rapidly in suburban and urban areas. *Id.* at 3. (between 2001 and 2004, the DBS penetration rate grew 15 percent in rural areas, 32 percent in suburban areas, and 50 percent in urban areas).

[120] Currently, there are four major ILECs, each with a presence in contiguous, multi-state areas. *See* Exhibit CC (Map of ILEC Service Areas).

[121] Matt Richtel and Ken Belson, *Increasingly, The Bells See Their Future on a Screen,* New York Times, April 4, 2005 at C-4 ("To compete with cable's offerings, the phone companies are pushing to sell an array of services – Internet connections, wireless and television – in a bundle."); Jim Hu, *Video Gamble for the Bells,* CnetNews.com (November 22, 2004) available at http://news.com.com/Video+Gamble+for+the+Bells/2100-1034_3-547226.html (The Baby Bells are spending billions of dollars to upgrade [their] network[s] in a bid to fend off cable… .")

regionalization of the cable industry is critically important to maximizing the competition between cable and the ILECs, which will directly benefit the public.

The Commission not only has found that "acceleration of cable telephony deployment is a public interest benefit,"[122] it also has recognized the positive relationship between enhancing the geographic scope of a firm's operations and the development of telephone competition.[123] It is an historical fact that cable originated as an extremely fragmented service, the result of balkanized applications by numerous companies for tens of thousands of separate local cable franchises in the 1960s and 1970s.[124] In contrast, each of the Bell holding companies "operates as a cluster of areas for telecommunications service" and "clustering" by cable operators "makes cable MSOs more similar in geographic scope to the Bell LECs."[125] Thus, according to the Commission, "clustering makes cable providers a more effective competitor to LECs whose service areas are usually larger than a single cable franchise area."[126]

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[122] *Comcast–AT&T Order* at ¶ 199; *see also AT&T–MediaOne Order* at ¶ 178 (merger's likely effect of "expeditious rollout of telephony" would "yield public interest benefits for consumers").

[123] *Eighth Annual Report* at ¶ 14 ("By clustering their systems, cable operators may be able to achieve efficiencies that facilitate the provision of cable and other services, such as telephony."); *Implementation of Sections 11(c) of the Cable Television Consumer Protection and Competition Act of 1992; Horizontal Ownership Limits*, Third Report and Order, 14 FCC Rcd 19908, ¶ 63 (1999) (noting "the benefits of clustering—including market efficiencies and the deployment of telephony and Internet access services"); *see also WorldCom-MCI Order* at ¶ 199 (finding public interest benefit in fact that "as a result of combining certain of the firms' complementary assets, the merged entity will be able to expand its operations and enter into new local markets more quickly than either party alone could absent the merger").

[124] *See* The National Academy of Sciences, *The Changing Nature of Telecommunications/ Information Infrastructure* (The National Academies Press, 1995), at 144 ("Because cable television franchises are typically awarded on a community-by-community basis, the industry is badly fragmented on a geographical basis.").

[125] *Third Annual Report* at ¶ 138 and n.393.

[126] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifth Annual Report, 13 FCC Rcd 24284, ¶ 144 (1998) (*"Fifth Annual Report")*; *see also Fourth Annual Report* at ¶ 140 (1998) ("regional clustering may…enhance MSOs'

Efforts to regionalize cable systems over the past decade have reduced this historical fragmentation somewhat, facilitating cable's growing presence as a provider of competitive local telephone service.[127] Nonetheless, most cable service areas are more diffuse than the regionalized footprints of the ILECs.[128] For example, different parts of the greater Los Angeles area currently are served by five different MSOs and in Minnesota, the "Twin Cities" of Minneapolis and St. Paul are served by a single ILEC (Qwest), but by separate cable MSOs (Time Warner Cable and Comcast). Time Warner Cable also currently serves a small portion of Philadelphia, which after the Transactions are consummated, will be fully integrated with the much larger Comcast mid-Atlantic regional cable systems, offering unified service to the Philadelphia metropolitan area. Similarly, smaller Time Warner Cable systems serving the Memphis areas will be integrated with existing larger Comcast Tennessee operations. Conversely, Comcast's current system in the Cleveland area will be matched up with existing Time Warner Cable operations in Ohio.[129]

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ability to compete successfully in the future with LECs...as providers of data transmission and local telephone services.").

[127] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Seventh Annual Report, 16 FCC Rcd 6005, ¶ 15 (2001) *("Seventh Annual Report")* ("As a result of acquisitions and trades, cable MSOs have continued to increase the extent to which their systems form regional clusters.... By clustering their systems, cable operators may be able to achieve efficiencies that facilitate the provision of cable and other services, such as telephony.").

[128] *Compare* Exhibit CC (Map of ILEC Service Areas) with Exhibit DD (Map of Cable Service Areas).

[129] Attached as Exhibits EE and FF are color maps showing the Comcast, Time Warner Cable, and Adelphia service areas pre-Transactions, as well as the Comcast and Time Warner Cable, service areas post-Transactions. These maps vividly demonstrate that, while the Comcast and Time Warner Cable regional service areas will continue to be considerably smaller than the expansive ILEC regional footprints (see Exhibit CC), the system acquisitions and swaps resulting from the Transactions will allow both companies to create more cohesive and efficient service territories.

Stated another way, as a result of both the Adelphia transactions and the corresponding system swaps, Comcast will have more integrated franchised operations in Pennsylvania, Minnesota, Southern Florida, the mid-Atlantic region (Washington, DC/Maryland/Virginia) and New England; Time Warner Cable will experience similar benefits in Western New York, Ohio, Texas, Southern California, Maine and the Carolinas. The geographic restructuring that will result from the Transactions will thereby ameliorate a number of such inefficient arrangements, enhancing the Applicants' ability to compete in the delivery of telephony service, providing a significant benefit to consumers.

The public benefit of enhanced regionalization that will result from the Transactions also will accrue to consumers with respect to competition between cable operators and the ILECs in the provision of video service. The ILECs are focusing on the provision of facilities-based video service in competition with cable and DBS.[130] For example, Verizon has announced that it plans to upgrade its facilities to deploy a fiber-to-the-premises ("FTTP") architecture capable of providing digital video service.[131] Verizon intends to reach three million homes with FTTP architecture by the end of 2005 and, according to some analysts, may spend as much as $30

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[130] *See* Alan Breznick, *Cable, Phone Companies Go Head-to-Head at Last on Broadband*, Communications Daily, April 14, 2005, at 9; *see also* John M. Higgins, *Cable Braces For Telco Invasion into TV*, Broadcasting & Cable, April 4, 2005, at 14; ("Big phone companies are entering the video market after more than a decade of on-again, off-again flirtations with the TV business."); John Van, *Phone giants bulk up with fiber for TV*, Chicago Tribune, Oct. 29, 2004, at A-1.

[131] *See* Press Release, *Verizon, in Historic First, Begins Large-Scale Rollout of Advanced Fiber-Optic Technology With Keller, Texas, Deployment; Announces Plans for Offering New Services* (May 19, 2004), available at http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=85137; Tom Lowry and Spencer E. Ante, *Verizon's Video Vision*, Business Week, May 2, 2005.

billion to complete deployment throughout its service areas.[132] Verizon has entered into programming distribution agreements with a number of content providers and has indicated that it will launch its new digital video service, known as "FiOS TV," later this year.[133] FiOS reportedly will offer a 100-channel basic service package along with VOD, HD, DVR and other advanced video capability.[134]

SBC also has announced its intention to begin offering a competitive video programming service to its telephony customers.[135] SBC's plans include investing up to $7 billion to upgrade

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[132] *See Eleventh Annual Report* at ¶ 128 ("Verizon is currently building an FTTP IP network, and expects to pass one million homes by the end of 2004 and an additional two million homes by the end of 2005"); Statement of Robert Ingalls, Jr., President, Retail Markets Group, Verizon Communications, House Subcommittee on Telecommunications and the Internet, *How Internet Protocol-Enabled Services Are Changing the Face of Communications: A Look at Video and Data Services* (April 20, 2005) (available at http://energycommerce.house.gov/108/Hearings/04202005hearing1483/hearing.htm) ("Our plan is to pass 3 million homes by the end of 2005, with further expansion as fast as technology and the marketplace allow."); Tom Giles, *Verizon Risks Profit Betting It Will Win TV, Internet Customers*, Bloomberg.com (July 28, 2004), available at http://quote.bloomberg.com/apps/news?pid=nifea&&sid=aES8IH3r2JBk (Verizon's investment in FTTP could "total[] as much as $30 billion over 15 years, says Merrill Lynch analyst Jessica Reif Cohen").

[133] *See, e.g.*, Press Release, *Verizon and A&E Television Networks Sign Deal for Distribution of All Its Networks* (April 22, 2005), available at http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=90718; Gary Gentile, *Verizon CEO Seeks Content For Planned TV Service*, Business Week, April 19, 2005.

[134] *See* Tom Lowry and Spencer E. Ante, *Verizon's Video Vision*, Business Week, May 2, 2005, available at http://www.businessweek.com/print/magazine/content/05_18/b3931099_mz016.htm?chan= mz& ("Verizon's basic all-digital package of 100 channels will cost about $40 a month"); News Release, Verizon Selects Microsoft TV As Platform for FiOS TV Service (Jan. 28, 2005), available at http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=89058 ("The Microsoft TV platform will support high-definition television, digital video recording, and on demand programming offered by Verizon on the FiOS platform.").

[135] *See, e.g.*, Project Lightspeed, SBC Communications Conference Call Presentation, Nov. 11, 2004, at 18, available at http://media.corporate-ir.net/media_files/irol/11/113088/111104_color.pdf; *Eleventh Annual Report* at ¶ 128; Statement of Lee Ann Champion, SEVP – IP Operations and Services, SBC Communications Inc., Before the Energy and Commerce Committee of the United States House of Representatives (available at http://energycommerce.house.gov/108/Hearings/04202005hearing1483/hearing.htm) ("In most new developments, we plan to take fiber all the way to the premises.").

its plant with a combination of fiber to the node architecture and advanced DSL technology.[136] SBC expects to launch an Internet Protocol video service over improved facilities by the end of 2005 and to pass half of the 36 million homes in its service areas by 2007.[137]

In short, the public will benefit directly from the Transactions due to the enhanced ability of Comcast and Time Warner Cable to provide local facilities-based voice and data services in competition with the incumbent telephone companies and other facilities- and non-facilities-based competitors, many of which enjoy significantly greater geographic cohesion.[138] The Transactions will help ensure that in competing with the ILECs for the video-voice-data triple play, Time Warner Cable and Comcast are able to at least partially achieve similar efficiencies.

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[136] Press Release, *SBC Communications, SBC Communications Announces Advances In Initiative To Develop IP-Based Residential Network For Integrated Video, Internet, VoIP Services*, June 22, 2004, available at http://www.sbc.com/gen/press-room?pid=5097&cdvn=news&newsarticleid=21207 ("the SBC strategy could result in an incremental investment of $4 billion to $6 billion over five years to deploy the network and make advanced services available to millions of customers in the SBC service territory"); Tom Lowry and Spencer E. Ante, *Verizon's Video Vision*, Business Week, May 2, 2005, available at http://www.businessweek.com/print/magazine/content/05_18/b3931099_mz016.htm?chan=mz& (SBC plans to rollout video service "as part of a $7 billion upgrade to new fiber-optic lines.").

[137] *Eleventh Annual Report* at ¶ 128 (SBC plans to launch video service commercially by year-end 2005 and "hopes to eventually reach as many as 18 million homes nationwide"); Project Lightspeed, SBC Communications Conference Call Presentation, Nov. 11, 2004, at 5, available at http://media.corporate-ir.net/media_files/irol/11/113088/111104_color.pdf; Statement of Lee Ann Champion, SEVP — IP Operations and Services, SBC Communications Inc., Before the Energy and Commerce Committee of the United States House of Representatives (available at http://energycommerce.house.gov/108/Hearings/04202005hearing1483/hearing.htm) ("This initial deployment will reach more customers — 18 million households — faster than any other company with a fiber deployment plan in the United States.").

[138] *Eighth Annual* Report at ¶ 14 (recognizing that in those areas where the contiguous nature of their systems provides the scale and scope necessary to compete with the incumbent local telephone companies, "cable operators may be able to achieve efficiencies that facilitate the provision of cable and other services, such as telephony.").

2. Improved Geographic Rationalization Will Promote Efficiencies And Economies Of Scale That Will Redound To The Benefit Of Cable Subscribers.

The Commission has long recognized the numerous efficiencies and other benefits that accrue from regionalization of cable systems, including the reduction of costs, the elimination of system redundancies, and increased investment in programming, cable infrastructure upgrades, and improved customer service.[139] Simply put, the location of the existing Time Warner Cable, Comcast, and Adelphia cable properties presents a unique opportunity to achieve efficiencies and enhance the roll-out of advanced new services to consumers currently served by more fragmented systems, thereby providing the public with substantial benefits that no other company or group of companies is in a position to provide in connection with the emergence of the Adelphia systems from bankruptcy.[140]

Both new and existing customers served by Time Warner Cable and Comcast will receive additional service choices in the future more effectively and efficiently.[141] With respect to

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[139] *See, e.g.*, *Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992; Horizontal and Vertical Ownership Limits*, Second Report and Order, 8 FCC Rcd 8565, ¶ 17 (1993); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourth Annual Report, 13 FCC Rcd 1034, ¶ 140 (1998) ("*Fourth Annual Report*"); *see also* United States General Accounting Office Report to the Subcommittee on Antitrust, Business Rights, and Competition, Committee on the Judiciary, U.S. Senate, *Tele-communications: The Changing Status of Competition to Cable Television*, GAO/RCED-99-158, July 1999, at 16 ("clustering strategies provide important cost savings.").

[140] *See* Anne Veigle, *Time Warner – Comcast To Buy Adelphia for $17.6 Billion,* Communications Daily, April 22, 2005, at 3 (quoting cable analyst Aryeh Bourkoff as saying "[w]e view this as the most logical deal"); *see also Money Can't Buy Success,* Broadcasting & Cable, April 18, 2005 at 9 (Charter has "few geographic clusters in the major markets that are best-suited to successfully launch and sell advanced services").

[141] *See, e.g.*, Chris Walsh, *Comcast Set to Use TV as Springboard; Firm to Offer Free Movies, Video Calling To Lure Subscribers*, Rocky Mountain News, March 29, 2005 (noting Comcast plans to "offer[] products that go far beyond standard cable television, including new telephone service, hundreds of free movies and even TiVo technology" and that "[w]ithin the next few years, Comcast's customers will be able to make and receive video phone calls, access at least

Adelphia customers in particular, who have been served by a company that has recently operated with comparatively less investment, less spending and a smaller work force, there will be a number of benefits accruing from the integration of Adelphia's systems into Time Warner Cable or Comcast service areas. These benefits will include increased choices and the opportunity to obtain new services—advanced services already available in virtually all cases to nearby Time Warner Cable and Comcast customers—more quickly, with greater quality and reliability, and with more enhanced technical, marketing and customer service than would otherwise be available or feasible.[142]

For example, the enhanced regionalization of the Applicants will create marketing efficiencies that are particularly important with respect to the roll-out of new services that require aggressive—and expensive— marketing campaigns to educate and attract consumers.[143] In a balkanized landscape, cable operators generally have been forced to rely on more costly, less effective direct marketing approaches to inform consumers about new services. As a result of the Transactions, however, consumers can benefit from the Applicants' increased use of mass

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10,000 hours of movies, sports and entertainment programming whenever they want, and link their TV, Internet and telephone services together").

[142] These developments and benefits also may be expected to occur at a faster pace than would be otherwise possible, as demonstrated by Comcast's rapid and successful integration of systems and deployment of digital and broadband services following the acquisition of cable systems from AT&T Broadband. *See, e.g.*, Sallie Hofmesister, *Comcast Strives to Stay Just Folks; Executives at the U.S.' Biggest Pay-TV Company See a Family Atmosphere as Key to Its Success*, Los Angeles Times, Nov. 17, 2003 (noting that Comcast was a year ahead of the turnaround schedule it promised investors after buying AT&T's troubled cable properties).

[143] *See* Geraldine Fabrikant, *Time Warner and Comcast Seal Adelphia Purchase,* New York Times, April 22, 2005 (quoting American Technology Research analyst Rob Sanderson as saying that where a cable operator has "broader market" the operator "can...advertise cable to a denser audience and do more effective promotions with stores like Best Buy"); Pamela McClintock, *Adelphia Buy Gives TW a Leg Up in L.A.*, Daily Variety, April 11, 2005, at 5 (according to Sanford C. Bernstein analyst Craig Moffett, "[h]istorically it's been very difficult for a cable operator to market to its customers in L.A. because no one operator has sufficient scale to make marketing efficient.").

media advertising—including television and radio broadcasts and newspapers or signage at professional or college sporting events—to learn about these new service choices.

At the same time that they will be able to inform consumers more effectively and efficiently about the availability and benefits of new services, each company will be able to provide more efficient service to its customers.[144] For example, Comcast and Time Warner Cable expect to provide customer service and technical assistance in-house and closer to the communities of the acquired systems, anticipate improved coordination of technicians and truck fleets through centralized facilities, and expect to enhance the responsiveness of customer account executives (and other support personnel) in order to provide the high level of service needed to support the anticipated demand for the advanced services that will be brought quickly to consumers in the acquired Adelphia service areas.

The Applicants and their customers also will benefit from overhead efficiencies, such as the more efficient deployment of management and other employees over a larger, more contiguous service area, as well as important cost-reducing infrastructure efficiencies such as the consolidation of head-end facilities.[145] Time Warner Cable has estimated that such cost savings will be in the range of $200 million.[146] The Transactions also will allow Time Warner Cable and Comcast to become more effective competitors in providing local and regional advertising

[144] *Comcast–AT&T Order* at ¶¶ 182-185 ("Based on our review of the record, we find that the proposed transaction is likely to result in synergies and efficiencies resulting in significant cost savings.").

[145] *See* Pamela McClintock, *Adelphia Buy Gives TW a Leg Up in L.A.*, Daily Variety, April 11, 2005, at 5 ("Wall Street analyst Craig Moffett of Sanford C. Bernstein said [the proposed transaction's improved clustering in Los Angeles is actually a good thing for customers. 'It will mean more investment in infrastructure, and that in the end will mean better service and more features.'").

[146] *See* Mike Farrell, *'Definitive' Adelphia Sale Bolsters 2 Top Cable Ops*, Broadcasting & Cable, April 25, 2005, at 52.

opportunities, giving local and regional advertisers a simple and effective way to reach their target audiences that: (1) better correlates to the full DMA reach of local television broadcasters; (2) maximizes the effectiveness of their marketing efforts through more precise audience targeting (*e.g.*, by reducing the extent to which their advertising purchases reach viewers outside of the relevant geographic area); and (3) eliminates the significant transaction costs incurred by having to negotiate with numerous cable system operators.

C. The Transactions Will Provide Compensation To Adelphia Stakeholders In Furtherance Of The Policies Of The Bankruptcy Laws.

The Commission consistently has found that, as part of its public interest analysis, it has an obligation to promote the national policies underlying other federal laws, including the bankruptcy laws.[147] Most importantly, the agency has recognized that facilitating a company's "successful emergence from bankruptcy advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors."[148] Recent legislation highlights the vital importance of this objective. Just last month, President Bush signed into law historic bankruptcy reform. In announcing the new law, the President emphasized the importance of "restoring integrity to the bankruptcy process" and "bring[ing] greater stability and fairness to our financial system."[149] The proposed Transactions would serve this critical purpose by expediting the repayment of Adelphia's creditors, who are entitled to

[147] *See, e.g., San Diego Television, Inc., Debtor-in Possession*, 11 FCC Rcd 14689, ¶ 13 (1996); *Adelphia Communications Corp.*, 17 FCC Rcd 24544, ¶ 4 & n. 9 (Enf. Bur. 2002); *see also La Rose v. FCC*, 494 F.2d 1145, 1146 n. 2 (D.C. Cir. 1974).

[148] *WorldCom-MCI Order* at ¶ 29. Similarly, the agency has acknowledged the importance of facilitating "a fresh start for debtors" and "the efficient and economical administration of [bankruptcy] cases." *Fox Television Stations, Inc.*, 8 FCC Rcd 5341, ¶ 52, *recon. denied*, 8 FCC Rcd. 8744 (1993); *Adelphia Communications Corp.*, 17 FCC Rcd 24544, ¶ 4 & n. 9 (Enf. Bur. 2002).

[149] Nedra Pickler, *Bush Signs Bankruptcy Bill*, The Washington Post (Apr. 20, 2005); Tony Pugh, *Stressing Personal Responsibility, Bush Signs Stricter Bankruptcy Law*, Knight Ridder Washington Bureau (Apr. 21, 2005).

recovery of their claims. Moreover, the Transactions themselves will maximize the value of those creditors' claims.

Since April 21, 2004, Adelphia has been engaged in a time consuming and difficult process to market and sell its assets. As explained above, on April 20, 2005, Adelphia entered into definitive sale agreements with Time Warner Cable and Comcast. Pursuant to those agreements, Comcast and Time Warner Cable agreed to purchase substantially all of Adelphia's assets for $12.5 billion in cash and a 16 percent interest in Time Warner Cable. The year–long process included, among other things: (i) retaining financial advisors; (ii) providing bidders with extensive access to management and a virtual data room, which included sensitive operational, financial, technical, legal, tax and other information; (iii) over 150 in-person meetings, over 700 individuals accessing the Debtors' data room and more than 4,500 written questions; (iv) intense 13 week negotiations among the Debtors and the buyers over the economic and legal terms of the transaction; and (v) at least two significant evidentiary hearings before the Bankruptcy Court and numerous status conferences.

Were the Commission to deny the Transactions contemplated in the sale agreements, these activities and the substantial costs that they involve would have to be substantially repeated. Any effort to remarket Adelphia's assets as a result of such an adverse decision likely would require as long as two additional years to achieve the necessary bankruptcy and regulatory approvals if done, as here, pursuant to a sale of assets. On the other hand, if Adelphia chose not to remarket its assets, it would be required to formulate, negotiate, prosecute and finance a standalone plan of reorganization,[150] which would take nine months to one year to consummate.

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[150] Such a reorganization and restructuring would entail Adelphia's emergence as a company owned by its creditors, who would exchange their claims for publicly tradable common equity securities.

It is estimated that the bill for professional fees for attorneys, accountants, investment bankers, and other advisors during either process would run at a rate of about $20 million per month.

But the costs and burdens associated with the *process* of redundant bankruptcy and regulatory proceedings could well be dwarfed by the costs incurred from a resulting change in the *substantive terms* of the Transactions. As noted, Adelphia has concluded that the Transactions with Comcast and Time Warner Cable are the "most likely to maximize the value of the distributable proceeds to Debtors' stakeholders."[151] Certainly, there can be no assurance that the value of the Transactions would be matched or exceeded some two years down the road, in unknown market conditions, through negotiations that did not include Time Warner Cable or Comcast, and there is substantial risk that any such future transaction or standalone plan by Adelphia would result in substantially lower distributable value for Adelphia's stakeholders. Thus, by refusing to approve the Transactions with Time Warner and Comcast, the Commission would be depriving Adelphia's creditors of the terms that, in the views of its management, represent the best opportunity to maximize recovery.

In contrast, allowing the Transactions to go forward would serve the public interest objective of placing the Adelphia systems under respected corporate management with a long history of stability and technological leadership. In particular, the Transactions will enable existing Adelphia subscribers to benefit from the enhanced services, as described in detail above, that better-capitalized companies such as Comcast and Time Warner Cable can provide.[152] Moreover, the longstanding and secure management teams of Comcast and Time Warner Cable are intently focused on delivering quality service, free from the complicated, costly and time-consuming distractions that have accompanied Adelphia's bankruptcy proceedings. This shift to

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[151] *See* Section II. A., *supra.*

[152] *See* Section IV. A., *supra.*

a more stable management environment promises to give customers a more reliable relationship with their cable company.[153]

D. The Unwinding Of Comcast's Passive Interests In Time Warner Cable And TWE Will Achieve A Long-Standing Commission Public Interest Goal.

Under the terms of the *Comcast–AT&T Order*, Comcast must divest the 17.9 percent equity interest in Time Warner Cable and 4.7 percent limited partnership interest in TWE that are currently held in trusts.[154] A significant element of the Transactions is that they facilitate the unwinding of Comcast's interests in Time Warner Cable and TWE—a goal that the Commission has deemed to be in the public interest—in an efficient and mutually beneficial way and well ahead of the Commission's deadline.[155]

Commission concerns relating to Comcast's current passive economic interest in Time Warner Cable can be traced to US WEST's 1993 acquisition of a 25.51 percent limited partnership interest in TWE.[156] This limited partnership interest in TWE subsequently passed from US WEST to MediaOne Group, Inc. ("MediaOne"), a company created after US WEST

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[153] *See, e.g., Adelphia Communications Corp.*, 17 FCC Rcd 24544, ¶ 4 & n. 9 (Enf. Bur. 2002) (noting that Adelphia bankruptcy filing "prevented Adelphia from pursuing [a] planned installation schedule for [Emergency Alert Service] equipment").

[154] *Comcast–AT&T Order* at ¶ 81. Comcast is subject to enforcement procedures if it has not completed the required divestiture by May 2008. *Id.* at ¶ 83.

[155] Following the close of the Transactions, Comcast will continue to hold in trust shares representing approximately 1.8 percent of the voting common stock of Time Warner Inc. *See* fn. 8, *supra*.

[156] At the time, TWE controlled a substantial portion of Time Warner's filmed entertainment and cable television assets, including eight cable systems located in US WEST's telephone service area. Consequently, US WEST's partnership interest conflicted with the telco/cable cross-ownership restrictions then in place. The Commission granted TWE and US WEST a temporary 18 month waiver of the cross-ownership restriction to permit the orderly divestiture of the overlapping systems. *Time Warner Entertainment Company, L.P. and US WEST Communications, Inc.*, 8 FCC Rcd 7106 (1993).

acquired Continental Cablevision, Inc. and then spun-off the companies' cable properties as a separate MSO.

In 1999, AT&T and MediaOne entered into a merger agreement. After reviewing that transaction, and taking into consideration MediaOne's ownership interest in TWE, the Commission determined that, post-merger, AT&T would have an attributable ownership interest in cable systems exceeding the then-applicable 30 percent horizontal ownership limitation.[157] As a result, the Commission effectively conditioned its approval of the merger on AT&T's divestiture of its stake in TWE.[158] Recognizing the complex nature of the business transactions required by its divestiture requirement, the Commission gave the parties until May 19, 2001 to comply with this condition.[159] The Commission also imposed "interim safeguards," including regular compliance reporting, in order to protect against the merged entity's involvement in TWE's video programming activities during the divestiture period.[160]

Although the divestiture deadline had not yet expired, issues relating to the interest in TWE that AT&T had acquired in the MediaOne merger surfaced again in 2000 during the Commission's consideration of the merger of Historic TW Inc. (formerly named Time Warner Inc.) and AOL.[161] Comments in that proceeding highlighted the difficulties faced by the parties

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[157] *MediaOne–AT&T Order* at ¶¶ 40, 59.

[158] *Id.* at ¶ 40; *see also Applications for Comcast to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne, Inc., Transferor, to AT&T, Transferee,* 16 FCC Rcd 456, ¶ 5 (2000) (determining that AT&T had elected, from among certain compliance options specified in the *AT&T–MediaOne Order*, to comply with the order by divesting its interest in TWE).

[159] *AT&T–MediaOne Order* at ¶ 40.

[160] *Id.* at ¶¶ 71-72 and Appendix B.

[161] *AOL–Time Warner Order* at ¶¶ 257-276.

in unwinding this minority stake.[162] While the Commission declined to either accelerate or further delay the divestiture deadline imposed in the *AT&T–MediaOne Order*, the agency did impose conduct and reporting requirements to address concerns that the merger of AOL and Historic TW might increase the likelihood of coordinated activity by the merged entity and AT&T to the detriment of unaffiliated Internet Service Providers.[163]

Shortly after the adoption of the *AOL–Time Warner Order*, the United States Court of Appeals for the District of Columbia Circuit reversed and remanded the Commission's 30 percent cable horizontal ownership limit[164] and the Commission, in response to that decision, suspended the May 19, 2001 deadline for AT&T to divest its interest in TWE.[165] Thereafter, in late 2001, AT&T and Comcast entered into a merger agreement.[166]

In connection with the Comcast-AT&T merger, the Commission and the parties agreed to a new set of conditions, safeguards and enforcement mechanisms that were designed both to insulate the merged entity's ownership interest in Time Warner's cable business by placing it in trust,[167] and to give the parties sufficient time to achieve an orderly divestiture and fair value.[168]

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[162] *See, e.g.*, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, CS Docket No. 00-30, Letter from Catherine R. Nolan, VP, Law and Public Policy, to Kathryn C. Brown, Chief of Staff, Office of Chairman, FCC, dated Nov. 16, 2000, transmitted by Letter from Arthur H. Harding, Counsel for Time Warner Inc., to Magalie Roman Salas, Secretary, FCC, dated Nov. 16, 2000.

[163] *AOL–Time Warner Order* at ¶¶ 265-276.

[164] *Time Warner Entertainment Co. v. FCC*, 250 F. 3d 1126 (D.C. Cir. 2001).

[165] *AT&T–MediaOne Order* at ¶ 71.

[166] *Comcast–AT&T Order* at ¶¶ 66-83.

[167] *Comcast–AT&T Order* at ¶ 78 and Appendix B. The safeguards include restrictions on Comcast's involvement in certain programming matters relating to TWE and Time Warner Cable, while allowing Comcast to sell its affiliated programming to those entities. *Id.* at ¶¶ 87-88. In connection with the Transactions, Time Warner Cable has negotiated amendments in its affiliation agreements with certain Comcast-owned programming services to at least maintain the

In adopting these conditions, the Commission expressly acknowledged the challenges associated with the divestiture process and stated that it had "no interest in impeding, delaying, or otherwise adversely affecting" that process since doing so could reduce the likelihood that the Comcast-AT&T merger would benefit the public.[169] After weighing the complexity of the business relationships and the difficulties presented by existing marketplace conditions, the Commission concluded that a five and one-half year divestiture period would serve the public interest.[170]

As the foregoing history demonstrates, the ownership interest in Time Warner Cable that has passed to Comcast from US WEST over the past 12 years has long been, in the eyes of the Commission, disfavored.[171] While the Applicants believe that the transformation of the video marketplace into a much more highly competitive environment over the past several years has largely ameliorated any such concerns, the long-standing Commission public interest goal of

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existing levels of carriage on the systems it is acquiring and to amend certain programming arrangements.

[168] At the time the Comcast–AT&T merger was announced, AT&T had a 27.64 percent limited partnership interest in TWE. *Id.* at ¶ 38. During the course of the Commission's consideration of the merger, Time Warner announced a plan to restructure the TWE partnership. *Id.* at ¶¶ 73-75. As a result of that restructuring, which was completed on March 31, 2003, the limited partnership interest was converted into the current 21 percent economic interest (consisting of a 17.9 percent stock interest in Time Warner Cable and a limited partnership interest in TWE representing a 4.7 percent residual equity interest) and 1.8 percent voting interest in Time Warner. *See* Time Warner's Annual Report on Form 10-K for the Year Ended December 31, 2004 (March 11, 2004). These interests continue to be held in trust.

[169] *Id.* at ¶ 81.

[170] *Id.* (explaining that "the nature of the TWE interest, including its size, its diverse assets and the limited governance and management rights associated with the interest, makes divestiture of the TWE interest more complex than some of the divestitures previously mandated by the Commission, especially in light of present market conditions").

[171] Indeed, even US WEST's initial acquisition of a partnership interest in TWE required the issuance of a temporary waiver to allow the divestiture of cross-interests prohibited under the then-applicable telco-cable cross-ownership rules.

unwinding Comcast's financial stake in Time Warner Cable (as well as TWE) will be achieved with these Transactions.

More specifically, the Transactions allow Comcast not only to accomplish the desired divestiture of its ownership interests in Time Warner Cable and TWE, but also to do so efficiently and approximately two years ahead of the deadline established by the Commission. As detailed above, it is the unique characteristic of the bankruptcy-related aspects of the Transactions that makes these quick and clean redemptions possible. The mutually beneficial unwinding of Comcast's interest in Time Warner Cable and TWE as part of the Transactions also ensures that the parties realize fair value from the disposition of the investment, a result that the Commission expressly recognized as important to the accomplishment of public interest goals in the *Comcast-AT&T Order*.[172] Finally, the disposition of these interests should obviate the need for the ongoing series of reporting and monitoring conditions, thereby reducing burdens that have been placed on both the Applicants and the Commission. These early redemptions will also provide the Applicants with additional flexibility in pursuing financing for capital expenditures to upgrade the Adelphia properties, thus further serving the public interest.

Accordingly, it is clear that a grant of the Applications will actually reduce, rather than increase, media ownership concerns by expeditiously unwinding Comcast's ownership interests in Time Warner Cable and TWE. While these passive ownership interests have never been shown to result in any harm whatsoever to consumers or competition, the unwinding of these interests has long been a priority for the Commission and, with the approval of the Transactions, can now be effectuated.

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[172] *See Comcast–AT&T Order* at ¶ 81 ("We also do not want to establish a divestiture term that will curtail the Applicant's ability to realize value from the divestiture of the TWE Interest, because such a condition may reduce the likelihood that the [AT&T – Comcast] merger will benefit the public.").

E. The Public Interest Benefits Resulting From The Transactions Are Not Otherwise Achievable.

The public interest benefits described in the preceding sections cannot be achieved independent of the proposed Transactions. This is true whether the public interest benefits are viewed individually or in the aggregate.

1. The Public Interest Benefit Of Accelerating The Deployment Of Advanced Services On Adelphia Systems.

The contrast between Adelphia, which has lagged behind in the deployment of innovative services due to years of mis-management prior to filing for bankruptcy and the cloud created by that bankruptcy filing, and Comcast and Time Warner Cable, both of which have been industry leaders in rolling out advanced services, could not be more stark. And the public interest benefit of bringing the exemplary management and expertise of Comcast and Time Warner Cable to their respective Adelphia properties could not be more clear. While other potential purchasers of the Adelphia assets might well bring a measure of improved performance and innovation to the systems, no other firms have the combination of capabilities, geographic correlation to Adelphia's systems, and proven track record of the Applicants to maximize such benefits. Moreover, no other potential operators of these systems can offer the efficiencies that the Applicants, based on the location of their current cable systems, are uniquely able to bring to the Adelphia properties through regionalized management and operation. The Applicants' improved geographic contiguity resulting from the Transactions is particularly important as Time Warner Cable and Comcast engage in intensifying competition against firms with national or expansive regional footprints such as DBS and the ILECs.

2. The Public Interest Benefit Of Efficiencies And Economies Of Scale That Will Redound To The Benefit Of The Applicants' Subscribers.

As noted above, the Transactions will make it possible for the Applicants, by virtue of the location of their current properties, to provide the Adelphia systems with regionally unified management and other efficiencies of scale and scope unavailable through any other means. In addition, the Transactions also will allow the Applicants to rationalize their own geographic service areas, bringing the benefit of similar efficiencies to subscribers in their existing systems as well. While system swaps between the Applicants theoretically would be possible independent of the Transactions, such an approach would be less efficient and produce fewer benefits than the plan under review. Indeed, the incentive for the Applicants to enter into the system swaps that will provide the maximum public interest benefit cannot be separated from the entire context of the Transactions – the acquisition of the complementary Adelphia properties, the unwinding of Comcast's passive interests in Time Warner Cable and TWE, and the related emergence of Time Warner Cable as a publicly-traded company.

3. The Public Interest Benefit To Adelphia's Stakeholders In Furtherance Of The Bankruptcy Laws.

The Transactions will provide a public interest benefit by resolving Adelphia's bankruptcy in a manner that advances the goals of chapter 11 of the Bankruptcy Code, including the compensation of innocent creditors. The Commission has repeatedly recognized the public interest in furthering the goals of the federal bankruptcy laws and thus should give weight to the conclusions reached by the Debtors in accepting the Applicants' bid over the other available options. In particular, the Debtors, acting in fulfillment of their fiduciary duty to Adelphia's stakeholders, determined in their business judgment that the Applicants' bid was "most likely to maximize the value of distributable proceeds to the Debtors' stakeholders" and that the consummation of the proposed Transactions "would yield a more favorable mix of currency at a premium over the hypothetical total enterprise value that would be obtained under a standalone plan that issued publicly traded equity securities to stakeholders."[173] In addition, the Commission should recognize the substantial federal interest in permitting the bankruptcy to come to final resolution, which will also facilitate the recent settlement announced by the Department of Justice in related federal legal proceedings.[174]

4. The Public Interest Benefit Of Unwinding Comcast's Passive Ownership Interests In Time Warner Cable And TWE.

These Transactions will benefit the public interest not merely by providing a vehicle for Comcast to divest its passive stakes in Time Warner Cable and TWE, but also by providing a means for achieving these divestitures more than two years ahead of the deadline established in the *Comcast–AT&T Order*. Previous efforts at unwinding the ownership interest currently represented by Comcast's inherited stake in Time Warner Cable have been stymied by complex regulatory and marketplace considerations.[175] It was in recognition of the singular complexities of Comcast's stake in Time Warner's cable business, and of the public's interest in ensuring that

[173] *In re Adelphia Communications Corporation, et al.*, Motion for Supplemental Order, Pursuant to Sections 105, 363, 364, 503, 507 and 1123 of the Bankruptcy Code, Approving Supplemental Bid Protections in Connection With the Sale of Substantially All of the Assets of Adelphia Communications Corporation and Certain of Its Affiliates, Case No. 02-41729 (Bankr. S.D.N.Y, filed April 8, 2005) at 5-6.

[174] *See*, Carrie Johnson, *Adelphia, U.S. Settle for $715 Million,* Washington Post, April 26, 2005, at E1; Press Release, Adelphia Communications Corporation, *Adelphia and Government Reach Tentative Settlement* (April 25, 2005), available at http://www.Adelphia.com/pdf/Adelphia_ Government_Reach_ Tentative_ Settlement. pdf.

[175] *Comcast–AT&T Order* at ¶ 81 ("AT&T [Comcast's predecessor] has faced a significant challenge in attempting to dispose of the TWE interest.").

the value of that interest be realized in its disposition, that the Commission established a five and one-half year divestiture period.[176]

The unique context in which the Transactions take place makes it possible for the Applicants to achieve the Commission's public interest goal of divesting Comcast's ownership interest in Time Warner Cable and TWE well in advance of the deadline. In particular, the fact that Adelphia is in bankruptcy provides an alternative to the potentially time-consuming process of registering the shares of Time Warner Cable stock to be issued pursuant to the Securities Act of 1933 and makes possible the redemption of Comcast's interests on mutually acceptable financial terms.[177]

V. THE TRANSACTIONS ARE FULLY CONSISTENT WITH THE COMMUNICATIONS ACT AND THE COMMISSION'S RULES AND WILL CREATE NO ANITCOMPETITIVE EFFECTS

The proposed Transactions are fully consistent with the Communications Act and the Commission's rules, and will not create any anticompetitive effects. In particular, the acquisitions will not implicate the Commission's overturned cable horizontal or channel occupancy ownership limits, or the existing multiple or cross-ownership rules. More generally, approval of the proposed acquisitions will comport with the traditional competition and diversity concerns that underlie each of these regulatory restrictions.

[176] *Id.* at n. 208 ("Divestiture of the TWE interest is unprecedented both in size and complexity when compared to other divestitures mandated by the Commission as a condition of merger approval.")

[177] The shares of Time Warner Cable Class A Common Stock to be delivered to Adelphia stakeholders in partial payment for Adelphia assets will be exempt from registration under Section 3(a)(7) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(7), as securities that are "issued by a receiver or by a trustee or a debtor in possession in a case under Title 11 of the United States Code, with the approval of the court." Such approval is provided for under Section 1145 of the Bankruptcy Code, 11 U.S.C. § 1145.

A. The Transactions Comply With The Communications Act And FCC Rules.

1. Cable Horizontal Ownership Limit.

In October 1999, the Commission adopted a rule prohibiting a cable operator from having an attributable interest in cable systems that serve more than 30 percent of all MVPD subscribers nationwide.[178] On review, the D.C. Circuit reversed and remanded the rule to the Commission for further consideration.[179] In particular, the Court found that the Commission's assumption that a 30 percent cap was necessary to protect programmers against the risk of collusive behavior was based on "mere conjecture" regarding such risk and, thus, insufficient to justify the rule under the First Amendment.[180] The Court also faulted the Commission for ignoring the "true relevance" of DBS competition[181] and held that, insofar as the rule was directed at non-collusive behavior, it was "in excess of [the agency's] statutory authority."[182] Although the Commission initiated a rulemaking in 2001 in response to the Court's remand, no decision has been reached in that proceeding.[183]

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[178] *See Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992; Horizontal Ownership Limits*, Third Report and Order, 14 FCC Rcd 19098, ¶ 5 (1999) ("*1999 Horizontal Ownership Order*").

[179] *Time Warner Entertainment Co., L.P. v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001) *("Time Warner II").*

[180] *Id.* at 1130; *see also id.* at 1136 (finding that "the Commission has pointed to nothing in the record supporting a non-conjectural risk of anticompetitive behavior, either by collusion or other means").

[181] *Id.* at 1134.

[182] *Id.* at 1136.

[183] The Applicants note that on May 17, 2005, the Commission released a Second Further Notice of Proposed Rulemaking to reexamine the Commission's cable horizontal and vertical ownership limits and to respond to the Court's action in *Time Warner II. See Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992, et al.,* Second Further Notice of Proposed Rulemaking, CS Docket No. 98-82 *et al.* (rel. May 17, 2005).

In short, the old cable horizontal ownership limit has been overturned and the Commission has yet to establish a new limit in accordance with the Court's remand instructions. In any event, as explained below, the Transactions will not cause either Comcast or Time Warner Cable to have an attributable national subscriber total in excess of even the old 30 percent limit, so no rule violation would occur even assuming the 30 percent limit were still in effect.[184]

The Transactions will result in a net gain of approximately 3.5 million subscribers for Time Warner Cable, bringing its total managed subscribers to approximately 14.4 million. Accounting for the 2.2 million TWE-A/N subscribers managed by Bright House Networks and using the 92.6 million total MVPD subscriber figure cited in the most recent Kagan report,[185] Time Warner Cable's attributable share for horizontal ownership cap purposes would be under 18 percent (*i.e.*, (14.4M + 2.2M)/92.6M = 17.9%), far below the former cap of 30 percent.

Comcast currently is attributed with approximately 26,100,352 subscribers, representing 28.2 percent of the nation's 92.6 million MVPD customers.[186] As detailed below, if the

[184] Comcast and Time Warner Cable will take all steps necessary to comply with any new cable horizontal ownership limit that ultimately may be adopted in connection with the pending *Horizontal Ownership FNPRM*.

[185] *See Eleventh Annual Report* at ¶ 8 (noting that there currently are approximately 92.3 million households subscribing to MVPD services). Since the Commission's most recent *Video Competition Report*, the number of national MVPD subscribers has increased to approximately 92.6 million. *See* Kagan Media Money, April 26, 2005, at 7.

[186] *See* Exhibit Z, which updates the subscriber estimates Comcast most recently provided to the FCC by letter dated March 22, 2005, in order to provide more current subscriber numbers for Comcast's wholly-owned systems and certain partnerships and other entities in which Comcast holds an attributable interest. The subscriber counts included in these calculations are consistent with those that Comcast has submitted to the Commission, and that the agency consistently has accepted, in accordance with Section 76.503 of the Commission's rules. 47 C.F.R § 76.503(g); *see, e.g., Comcast March 2005 Ex Parte*; *see also 1999 Horizontal Ownership Order* at ¶ 35 ("[I]n reviewing compliance with the [horizontal ownership] rule, we will accept any published, current and widely cited industry estimate of MVPD subscribership."). The Applicants note that Comcast and Time Warner Cable employ slightly different methodologies to count "subscribers" in the context of bulk accounts in multiple dwelling units—Comcast using the "equivalent billing unit" approach and Time Warner Cable using the "occupied dwelling unit" approach. Both

Transactions are approved, Comcast will be attributed with approximately an additional 680,000 cable customers, or roughly .73 percent of all MVPD subscribers. Thus, Comcast will be attributed with approximately 26,780,352 subscribers, or 28.9 percent, of the nation's MVPD subscribers post-transaction.[187]

Pursuant to the Transactions, Comcast will acquire 100 percent ownership of the Adelphia/Comcast Joint Ventures, which, according to Adelphia, operate cable systems serving approximately 1,082,138 subscribers. These subscribers are already fully attributable to Comcast, and thus are already included in the 26,100,352 figure cited above. Accordingly, this aspect of the Transactions will result in no change to Comcast's attributable subscriber total.

Comcast also will acquire and retain other systems from Adelphia serving approximately 138,000 subscribers. Additionally, pursuant to the Time Warner/Comcast Swap Transactions and the Time Warner Cable Redemption Transaction, Comcast will acquire cable systems from Time Warner Cable (including certain systems acquired by Time Warner Cable from Adelphia) serving approximately 2,740,000 subscribers, and Comcast cable systems serving approximately

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methodologies have been accepted by the Commission for various regulatory purposes, including horizontal cap compliance purposes. *See, e.g., Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems*, Notice of Proposed Rulemaking, 54 FCC 2d 824, ¶¶ 16-19 (1975); *Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems*, Docket No. 20561, Second Report and Order, 68 FCC 2d 18, n. 15 (1978); *C-TEC Cable Systems of Michigan, Inc.*, 10 FCC Rcd 1735, ¶ 7 (Cable Serv. Bur., 1995); *see also Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation,* Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, ¶¶ 33-34 (1993).

[187] Of these total subscribers, approximately 23.29 million will be served by systems wholly owned by Comcast. Comcast will serve an additional 3.49 million subscribers through partnership and other ownership interests. Because Comcast's ownership interests in TWE and Time Warner Cable are in trust, these interests are not included in the above calculations. *See, e.g., Comcast–AT&T Order* at ¶ 4 (concluding that these ownership interests will be appropriately insulated through placements in the trusts and thus are not considered attributable). Moreover, as explained above, the ownership interests in Time Warner Cable and TWE will be fully divested upon the closing of the Transactions. *See* Section IV.D., *supra*.

2,198,000 subscribers (including the Adelphia/Comcast Joint Venture systems and certain other systems acquired from Adelphia) will be transferred to Time Warner Cable. Thus, the Transactions will result in a net increase to Comcast's attributable subscriber total of approximately 680,000[188] (*i.e.*, 138,000 + 2,740,000 - 2,198,000 = 680,000).

In short, the attributable subscriber totals for both Time Warner Cable and Comcast will be below 30 percent of all MVPD subscribers post-Transactions, and so even if the horizontal ownership rule overturned by the *Time Warner II* decision were still in effect, the Transactions would result in no rule violation.

2. Vertical Integration.

The Transactions do not involve the acquisition of any attributable interests in national or regional program networks from Adelphia.[189] In addition, the related agreements between Comcast and Time Warner Cable will not involve the exchange of any interests in national or regional program networks. Accordingly, the Transactions are fully consistent with the Commission's channel occupancy rule, Section 76.504,[190] which has been overturned by the courts. In addition, Time Warner Cable and Comcast are currently in compliance with the Commission's program access rules and will be in compliance with the rules after the Transactions are consummated.[191]

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[188] In addition, as demonstrated in Exhibit R, in the majority of the top 25 DMAs, Comcast will have fewer subscribers, an unchanged number of subscribers, or only a modest increase in subscribers as a result of the Transactions.

[189] As noted above, Time Warner Cable will acquire certain *de minimis* and non-attributable programming interests from Adelphia.

[190] 47 C.F.R. § 76.504.

[191] 47 C.F.R. § 76.1000 *et seq.*

3. Multiple And Cross-Ownership Limits.

Both Comcast and Time Warner Cable also will be in full compliance with each of the Commission's cross-ownership and multiple ownership rules. Neither of the Applicants expect to own any attributable interest in any broadcast television or radio station or multichannel multipoint distribution service ("MMDS") system that post-transaction would implicate either Section 73.3555 of the Commission's rules, the broadcast ownership restrictions, or Section 21.912(a), the cable-MMDS cross-ownership rule.[192]

The Applicants have been advised by Adelphia that the properties to be acquired may include a relatively insignificant number of satellite master antenna television ("SMATV") systems, *i.e.*, facilities that qualify for the cable franchise exemption under Section 602(7) of the Act because their facilities do not use, occupy or cross any public right-of-way.[193] To the extent any such SMATV system, upon consummation of the Transactions, is determined to fall within any Comcast or Time Warner Cable franchise area, the Applicants commit to take immediate steps to integrate such SMATV facilities into their respective cable distribution systems, and that cable service provided over such facilities will be offered in accordance with the terms and conditions of any applicable franchise agreement. Thus, the Transactions will be fully consistent with Section 76.501(d) and (e) of the Commission's rules.[194]

None of the Parties provided telephone exchange service as of January 1, 1993, and thus none has a "telephone service area" as defined by Section 76.505(e) of the Commission's

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[192] *See* 47 C.F.R. § 73.3555 (broadcast multiple ownership limits); 47 C.F.R. § 21.912(a) (cable/MMDS cross-ownership limit).

[193] 47 U.S.C. § 552(7).

[194] 47 C.F.R. § 76.501(d)-(e) (cable/SMATV cross-ownership limit).

rules.[195] Thus, the Transactions are fully consistent with Section 76.505 of the Commission's rules with respect to the Applicants. In addition, neither Comcast nor Time Warner owns a financial interest of greater than 10 percent or has any management interest in a local exchange carrier ("LEC") providing telephone exchange service within any of the franchise areas of the systems it is acquiring pursuant to the Transactions. Thus, the parties will remain in full compliance with the Commission's buyout restrictions.[196] Accordingly, the Transactions will raise no local concentration or diversity concerns.

4. Character Qualifications.

In reviewing an application to assign or transfer FCC licenses, the Commission must determine whether the applicant has the requisite qualifications to hold and transfer licenses under the Act and the Commission's rules.[197] In general, when evaluating assignment and transfer applications, the Commission does not re-evaluate the qualifications of assignors/transferors, unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.[198]

Pursuant to the Commission's *Second Thursday* policy, the Commission will grant license assignment or transfer applications submitted by a bankrupt transferor against which

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[195] 47 C.F.R. § 76.505(e).

[196] *See* 47 C.F.R. § 76.505(b); 47 U.S.C. § 572(b) (LEC/cable buyout prohibition).

[197] It does not appear to be necessary to review the "character" of the transferor in this case since the Transactions do not encompass the transfer or assignment of any broadcast licenses. Instead, because the licenses that are being transferred are "mere conduits," and do not provide a medium for communicating directly to the public, the Commission's character policy is not implicated. *See Cablecom-General, Inc.*, 87 FCC 2d 784 (1981).

[198] *See Applications of VoiceStream Wireless Corporation or Omnipoint Corporation, Tranferors, et al.*, Memorandum Opinion and Order, 15 FCC Rcd 3341, 3347-50 (2000) (citing *MobileMedia Corporation et al.*, Memorandum Opinion and Order, 14 FCC Rcd 8017, 8018, para. 4 (1999) (citing *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964).

character issues have been raised where "the individuals charged with misconduct will have no part in the proposed operations and will either derive no benefit from favorable action on the applications or only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors."[199] Here, as detailed in Exhibit S, the individual wrongdoers charged with past misconduct were entirely removed from Adelphia's operations in May, 2002, all other ties between the company and wrongdoers have been fully severed, and the wrongdoers will derive no benefit from favorable action on the Applications.[200] Moreover, Adelphia has endeavored to reform itself in many far-reaching ways including structural, policy, and personnel changes. Adelphia now has a new chief executive officer, a new board of directors, and a significantly reformed governance structure.

Based on these facts, under the *Second Thursday* policy, Adelphia is fully qualified to assign or transfer the FCC licenses at issue in this proceeding and the Applications may be granted without a hearing. Indeed, in recent proceedings where analogous measures were taken,

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[199] *Application of Second Thursday Corp. (WWGM), Nashville, Tenn. for Renewal of License*, Memorandum Opinion and Order, 22 FCC 2d 515, 516, ¶ 5 (1970)("*Second Thursday*").

[200] Two members of the Rigas family, John Rigas and Timothy Rigas, were convicted on various federal criminal charges while a third, Michael Rigas, stands accused of similar crimes. These crimes materially and directly contributed to the bankruptcy of Adelphia. Pursuant to a settlement announced by the U.S. Department of Justice on April 25, 2005, the Rigas family will forfeit all of its interests in any Adelphia securities to the United States government. Further as part of the settlement, the government will not pursue any prosecution against Adelphia. *See*, Carrie Johnson, *Adelphia, U.S. Settle for $715 Million,* Washington Post, April 26, 2005, at E1; Press Release, Adelphia Communications Corporation, *Adelphia and Government Reach Tentative Settlement* (April 25, 2005), available at http://www.Adelphia.com/pdf/Adelphia_ Government_Reach_ Tentative_ Settlement. pdf. As a result, no members of the Rigas family will participate in Adelphia's future business, and none can gain any financial benefit from the proceeds of the proposed Transactions.

the Commission unequivocally found the applicant qualified under the *Second Thursday* policy.[201]

B. The Transactions Will Produce Only Pro-Competitive Effects.

The Transactions will not create any anticompetitive effects. Notably, the Transactions will not have any adverse effect on competition in the video programming business, either with respect to MVPD distribution or in upstream activities involving production, packaging, and sale of video programming.

With respect to the former, Comcast and Adelphia cable systems on the one hand and Time Warner Cable and Adelphia cable systems on the other reach different residences and businesses in different local areas; therefore, the proposed Transactions will not decrease the number of MVPD competitors in any region of the country. Moreover, in approving the acquisition of the AT&T cable systems by Comcast in 2002, the Commission held that the combined company, which served roughly the same attributable percentage of total MVPD subscribers that Comcast would serve if the Transactions are approved, "is unlikely to harm the public interest with respect to the distribution of programming by rival MVPDs."[202] Given the dramatic increase in MVPD competition that has occurred since 2002, and that is detailed below, this Commission conclusion is even more apt with respect to Comcast and Time Warner Cable in the instant proceeding.

With respect to harms to the production, packaging, and sale of video programming, Congress specifically directed the Commission to ensure that cable operators do not have the

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[201] *See WorldCom, Inc. and Its Subsidiaries (Debtors-in-Possession), Transferor, and MCI, Inc., Transferee*, Memorandum Opinion and Order, 18 FCC Rcd. 26484, ¶ 16 (2003).

[202] *Comcast–AT&T Order* at ¶ 31; *see also id.* at ¶ 102 ("We therefore conclude that the merger will not harm the public interest with respect to distribution of affiliated, satellite-delivered local and regional programming. Accordingly, we decline to impose conditions restricting the use of exclusive contracts between AT&T, Comcast and affiliated programmers.").

ability to "unreasonably restrict the flow of video programming to consumers" or to "hinder the development of new programming from diverse voices."[203] As the Commission found in setting the now reversed and remanded horizontal cap, a cable operator with an attributable interest in less than 30 percent of MVPD subscribers poses no risk of these harms, because an operator of such size will have neither excessive leverage in the purchase of video programming nor the ability to foreclose entry by new programmers.[204]

Indeed, in approving the acquisition of the AT&T cable systems by Comcast in 2002, the Commission specifically concluded that Comcast's post-transaction subscriber reach (which, as will be the case following the Transactions, amounted to approximately 28.9 percent of all MVPD subscribers) was "unlikely to . . . impair the quality or quantity of programming available to consumers" or "enable [the company] to foreclose unaffiliated programmers."[205] The percentage of the MVPD marketplace that will be attributed to Comcast pursuant to the instant Transactions is the same as that approved in the *Comcast–AT&T Order*. Thus, given that both Time Warner Cable and Comcast will remain below the now-overturned 30 percent cap, there is no reasonable basis for concern that the Transactions could lead to the types of harms that caused Congress to direct the Commission to adopt a horizontal limit in the first place.

Furthermore, in light of the faults enumerated by the D.C. Circuit with respect to the agency's reasoning in setting the horizontal cap at 30 percent and the analysis required by the Court on remand, any horizontal limit that ultimately may be adopted by the Commission could not be lower than the former 30 percent rule. In fact, the Court found that, even if one assumed that the Commission's analytical framework were valid, the Commission should have adopted a

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[203] *1999 Horizontal Ownership Order* at ¶ 38; 47 U.S.C. § 533(f)(2).

[204] *See id.* at ¶¶ 50-55.

[205] *Comcast–AT&T Order* at ¶ 30.

limit twice as high as the one it chose. "Assuming the validity of the premises supporting the FCC's conclusion that a 40 percent 'open field' is necessary . . . , the statute's express concern for the act of "'any individual operator' would justify a horizontal limit of 60 percent."[206] The dramatic competitive changes that have occurred in the MVPD marketplace since the Court's finding in 2001 make it even more unlikely now that the Commission would be able to justify a lower ownership cap or that the merged entities would be able to engage in the types of anticompetitive behavior that any such cap is intended to curtail.

In particular, competition among MVPD providers has increased markedly in recent years. Whereas cable operators served almost 100 percent of the nation's MVPD subscribers a decade ago, that share has since decreased by at least 28 percent.[207] "DBS subscribership continues to increase at nearly double-digit rates of growth, and its share of the marketplace is increasing" rapidly.[208] In fact, two of the four largest MVPDs are now both DBS operators, [209] and both DBS operators distribute video programming and other services in all local areas served by Comcast and Time Warner Cable. As the Commission recently observed, "[t]oday, almost all consumers have the choice between over-the-air broadcast television, a cable service, and at least two DBS providers," and in some areas, consumers also have access to "emerging (*e.g.*, use of digital broadcast spectrum, fiber to the home, video over the Internet) delivery technologies as

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[206] *Time Warner II*, 240 F.3d at 1132.

[207] *Eleventh Annual Report* at ¶ 4.

[208] *Id.* at ¶ 5.

[209] *Id.* Moreover, the Commission just recently observed that "the fact that large numbers of consumers continue to subscribe to cable service [does not] indicate[] a lack of choice. Cable operators in response to the growth of DBS have made upgrades and advances in their offerings." *Id.* at ¶ 6.

well."[210] In addition, as detailed above, major ILECs have announced aggressive plans to rapidly deploy competitive video offerings.

In reversing and remanding the previous 30 percent cap, the Court specifically found that such "competitive pressures" in the MVPD marketplace must be taken into account in revisiting the imposition of any restrictions on horizontal ownership, principally because these robust MVPD competitors serve as credible and vibrant alternative distribution sources for programmers which, in turn, undermine a cable operator's ability to harm programmers by engaging in foreclosure or monopsony abuses.[211] At the same time, as detailed below, the explosive growth in program networks and channel capacity that has occurred in recent years and the significant reduction in vertical integration of cable distribution and program networks since the early 1990s further ensure that program producers will continue to have a wealth of options for reaching viewers. The proposed Transactions will in no way diminish these options and will not decrease the number of MVPD competitors in any region of the country.

Finally, the Transactions will not reduce competition in the sale of video programming. As noted above, neither Comcast nor Time Warner Cable will be acquiring a new attributable interest in any programming service as a result of the Transactions. Therefore, the combined entities will have no enhanced ability to control the pricing of video programming to MVPDs.

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[210] *Id.* at ¶ 4.

[211] *See Time Warner II*, 240 F.3d at 1134 (noting that "in revisiting the horizontal rules the Commission will have to take account of the impact of DBS"); *see also id.* ("[N]ormally a company's ability to exercise market power depends not only on its share of the market, but also on the elasticities of supply and demand, which in turn are determined by the availability of competition."). The Court specifically noted that if "an MVPD refuses to offer new programming, customers with access to an alternative MVPD may switch. The FCC shows no reason why this logic does not apply to the cable industry. Indeed, its most recent competition report suggests that it does." *Id.* In the time since those words were written, of course, DBS has grown even stronger.

This is particularly true when viewed against the backdrop of the highly competitive video programming marketplace.

As the Commission just recently reported, there are now 388 national and nearly 100 regional programming networks in the United States.[212] Of these, 49 of the national and 12 of the regional networks were launched between June 2003 and June 2004 alone.[213] This expansion shows no sign of abating—there are currently an additional 78 programming services in the planning stages.[214] Thus, "the vast majority of Americans enjoy more choice, more programming and more services than any time in history."[215] At the same time, the level of vertical integration between programmers and cable operators has been declining steadily, dropping 10 percent between June 2003 and June 2004 alone.[216] Between 1994 and June 2003, moreover, vertical integration dropped from 53 percent to 33 percent.[217] In addition, there were nearly 200 program networks—representing over 50 percent of all national networks—that were unaffiliated with any MVPD, broadcast network, broadcast station, or newspaper as of June

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[212] *Eleventh Annual Report* at ¶¶ 145, 149.

[213] *Id.*

[214] *Id.* at ¶ 152.

[215] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Tenth Annual Report*, 19 FCC Rcd 1606, ¶ 4 (Jan. 28, 2004) ("*Tenth Annual Report.*"); *see also* Benjamin Compaine, The New Millennium Research Council, *The Media Monopoly Myth: How New Competition is Expanding Our Sources of Information and Entertainment,* at i (May 4, 2005) (concluding, based on "[m]any useful metrics," that "the empirical reality does not support any notion that in the United States, in 2004, consumers of content via the media have fewer choices of source or fewer choices in diversity for any type of content than has been available in the past" and that "[j]ust the opposite is true for television: viewers have more choice from more sources than at any time in the history of the medium"); *id.* ("Contrary to the widespread perception that television is more concentrated than 30 or 20 or 10 years ago, by a number of critical measures, there is more competition.").

[216] *Eleventh Annual Report* at ¶ 145.

[217] *Tenth Annual Report* at ¶ 17.

2004.[218] Given the highly competitive video programming marketplace and the fact that the instant Transactions do not involve the acquisition of any attributable video programming interests, there is absolutely no basis for concern that the proposed Transactions will somehow reduce competition in the sale of video programming or the ability of unaffiliated MVPDs to access program services.

VI. PROCEDURAL CONSIDERATIONS

The Parties, their affiliates and related entities, hold the FCC licenses listed on Exhibit P hereto that are affected by the Transactions. As described herein, the Transactions will result in the assignment and/or transfer of control of these FCC licenses, in some cases pursuant to a series of sequential steps.

Given the ongoing business and regulatory activity of the Parties, and the potential need of the Parties to file license applications with the Commission during the pendency of the Commission's review of the Transactions, the Parties request that the Commission's grant of its consent to the Transactions include and accommodate, as appropriate: (1) any authorizations issued to the Parties or any of their subsidiaries or affiliates to the extent such authorizations are related to the Parties' cable television systems affected by the Transactions, during the Commission's consideration of the Applications and the period required for the consummation of the Transactions following approval; (2) construction permits held by licensees involved in the Transactions that mature into licenses after closing and that may have been omitted from the Applications; and (3) applications that will have been filed by such licensees relating to such

[218] *Eleventh Annual Report* at ¶ 147.

cable systems and that are pending at the time of consummation of the Transactions. Such action would be fully consistent with prior decisions of the Commission.[219]

The Parties ask that with regard to any Commission requests to review sensitive documents identified by the Parties as such, including certain documents the Parties may provide to the Federal Trade Commission ("FTC") in connection with its review of the Transactions, that the Commission treat these materials as confidential documents pursuant to Section 0.459 of the Commission's rules.[220] In addition, the Applicants request that discussions with FTC staff regarding these documents be treated as exempt *ex parte* presentations under Section 1.1204(a)(6) of the Commission's rules.[221] To accomplish this, the Parties further propose and would agree to abide by the Commission's issuance of a protective order analogous to those issued in connection with the Commission's review of similar transactions.[222] Finally, to the extent the Commission intends to rely upon or otherwise make reference to the contents of any sensitive or confidential materials, the Parties respectfully request that the Commission do so in the same manner in which it maintained the confidentiality of similar protected information by confining its discussion of confidential information in a separate exhibit placed under seal and not released publicly as part of the Order approving the Transactions.[223]

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[219] *See, e.g.*, *AT&T–MediaOne Order* at ¶ 185; *AT&T–TCI Order* at ¶ 156.

[220] 47 C.F.R. § 0.459.

[221] 47 C.F.R. § 1.1204(a)(6).

[222] *See, e.g.*, *Comcast Corporation and AT&T Corp., Transferors to AT&T Comcast Corporation, Transferee,* Protective Order, DA 02-734 (rel. March 29, 2002); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Protective Order, DA 05-647 (rel. March 10, 2005).

[223] *See, e.g.*, *Bell Atlantic/NYNEX Order* at Appendix E.

VII. CONCLUSION

For the foregoing reasons, and for the reasons set forth in the individual Applications filed herewith, the proposed Transactions will serve the public interest. The Parties respectfully request that the Commission grant these applications promptly and unconditionally, and provide for any other authority that the Commission deems necessary or appropriate to enable the Parties to consummate the proposed Transactions.

Respectfully submitted,

ADELPHIA COMMUNICATIONS CORPORATION

BY: ______________________
Brad Sonnenberg
James N. Zerefos
Adelphia Communications Corp.
5619 DTC Parkway
Denver, CO 80111

Philip L. Verveer
Michael H. Hammer
Francis M. Buono
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, DC 20006

COMCAST CORPORATION

BY: ______________________
Joseph W. Waz, Jr.
James R. Coltharp
Comcast Corporation
2001 Pennsylvania Ave., N.W.
Washington, DC 20006

TIME WARNER INC.

BY: ______________________
Steven N. Teplitz
Susan A. Mort
Time Warner Inc.
800 Connecticut Ave., N.W.
Washington, DC 20006

Aaron I. Fleischman
Arthur H. Harding
Seth A. Davidson
Craig A. Gilley
Fleischman and Walsh, L.L.P.
1919 Pennsylvania Ave., N.W.
Washington, DC 20006

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