FREEDOMWORKS
CITIZENS FOR A SOUND ECONOMY & EMPOWER AMERICA

July 20, 2005

Chairman Kevin Martin
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Federal Communications Commission
445 12th Street, S.W., Room TW B204
Washington, DC 20554

Re: MB Docket No. 05-192

Dear Chairman Martin and Commissioners Abernathy, Copps, and Adelstein:

FreedomWorks, a grassroots organization with more than 700,000 members nationwide that promotes market-based solutions to public policy problems, urges the Commission to grant the request of Adelphia Corporation, Time Warner, Inc,, and Comcast Corporation to allow the sale and exchange of certain cable systems from Adelphia to Time Warner and Comcast. Not only will the transaction provide incentives to invest in critical infrastructure updates, but it will also bring new benefits to consumers in the form of service improvements and newer technologies. We take a strong interest in the proposed transaction because we believe that all consumers are best served by the evolving competitive, deregulated telecommunications market rather than the old system of government-enforced regulated monopolies.[1]

FreedomWorks believes that consumer welfare should be the principal criterion guiding all regulatory decisions. This belief stems from a fundamental assumption, common in mainstream economic analysis, that the purpose of an economic system is to maximize consumer welfare. This gives our analysis of the proposed transaction a sharp focus, as we do not believe that other miscellaneous "public interest" considerations should be permitted to outweigh consumer welfare considerations. We conclude that the proposed transaction enhances rather than diminishes consumer welfare, and thus should be permitted.

In addition, we believe that it is through an open market—where consumers have choices and where buyers and sellers are free to contract with whom they choose, on terms they determine—that the public interest is served. Scholars and analysts have demonstrated that the outright prohibition, or the strict restriction, of mergers in a highly dynamic market is dangerous to consumers and harmful to the marketplace.[2]

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[1] See, for example, Wayne T. Brough, "State Economies Can Benefit from Broadband Deployment," *Issue Analysis*, CSE FreedomWorks Foundation, Washington, D.C., January 2004.
[2] Yale Brozen, Concentration, Mergers, and Public Policy (New York: MacMillan, 1982); Brozen, "Bain's Concentration and Rates of Return Revisited," Journal of Law & Economics (Oct. 1971), pp. 351-70; Harold Demsetz, "Industry

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In fact, with both cable networks and wireless providers challenging the primacy of the old copper loops, we have reached the point where increasing competition has called into question the value of continued economic regulation. In today's market, where the "triple threat"—voice, data, and video—is driving technology, it is time to revisit the role of regulation. For the long run, then, the goal should be establishing a framework of open competition that encourages investment and innovation while providing consumers access to new technologies and services. Consumers have choice; the issue is now eliminating artificial barriers that restrict competition among potential providers.

We view the current wave of telecommunications mergers as an integral part of a broad restructuring in the telecommunications market. As telecommunications technology advances, and as competitive threats to former monopolists mount, it is increasingly clear that the artificial division of the industry into arbitrary regulatory regimes is no longer sensible. Competition has emerged across the industry with cable providers competing directly with landline, wireless, and satellite providers. Potentially even utility companies may play a critical part in this sector.

For a variety of reasons—capital formation, cost synergies, and ease of one-stop-shopping—firms are moving beyond their former product lines. In short, the telecommunications industry is readjusting, throwing off the arbitrary divisions imposed on it by regulators and taking new shape based more on modern market realities. When evaluating any transaction or merger such as this (whether it is cable providers such as Adelphia, Time Warner, and Comcast or telecommunications providers Verizon and MCI or SBC and AT&T) this competition must be acknowledged when assessing the relevant market.

A common argument against mergers raises concerns about the new firm expanding its newfound market power into new markets. This claim is particularly common in the case of mergers of regulated industries. However, it is important to note the distinction between incentives and capabilities. Incentives to monopolize new markets may exist, but that does not mean the new firm has the capability of doing so. The incentives to expand market power exist independent of the merger. However, the capability of expanding market power or monopolizing new markets remains limited by the competition that does exist. This is particularly true in the modern telecommunications market where competition across platforms provides a serious check on market power.

Competition is growing in the telecommunications sector, and competitive pressures from DBS providers and cable overbuilders is being expanded through the new competitive pressures from incumbent local exchange carriers and others seeking to offer competitive video programming as part of a broadband network capable of offering voice, data, and video services.

Structure, Market Rivalry, and Public Policy," Journal of Law & Economics 16 (1973), pp. 1-9; Sam Peltzman, "The Gains and Losses from Industrial Concentration," Journal of Law & Economics 20:2 (Oct. 1977), pp. 229-63; Robert Bork, The Antitrust Paradox (New York: Basic Books, 1978); Dominick Armentano, Antitrust and Monopoly: Anatomy of a Policy Failure (New York: John Wiley & Sons, 1982).

The marketplace itself is probably the best arbiter of change, with new technologies driving significant realignments within the industry. In addition to landlines and wireless service providers, cable companies are pursuing new customers through broadband deployment that serves up the triple threat of voice, data, and video services. Satellite companies have joined the fray, offering even more competition, and power companies are not far behind. Meanwhile, the Baby Bells, which rarely ventured each other's territories, are aggressively pursuing customers beyond their home territory.

In conclusion, all such transactions are by nature speculative. Some succeed, and others eventually turn out to have been based on mistaken judgment or perceptions. Nevertheless, the proposed transaction involving Adelphia, Time Warner, and Comcast appears to be based on a plausible understanding of the way telecommunications markets are changing. Regardless of whether the transaction ultimately succeeds or fails as a business proposition, the Commission should approve it. There is no risk that it will harm consumers through monopolistic exploitation, and there is credible evidence that it will produce benefits for consumers.[3]

Respectfully submitted,

Wayne T. Brough, Ph.D.
Vice President for Research

[3] See, for example, Adam Thierer and Daniel English, "The Comcast-Time Warner Deal for Adelphia: Much Ado About Nothing," *Progress on Point*, The Progress and Freedom Foundation, Washington, D.C., Release 12.10 July 2005.

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