Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of<br><br>Applications for Consent to the Assignment<br>and/or Transfer of Control of Licenses<br><br>Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession),<br>Assignors,<br>to<br><br>Time Warner Cable Inc. (subsidiaries),<br>Assignees;<br><br>Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession),<br>Assignors and Transferors,<br>to<br><br>Comcast Corporation (subsidiaries),<br>Assignees and Transferees;<br><br>Comcast Corporation, Transferor,<br>to<br>Time Warner Inc., Transferee;<br><br>Time Warner Inc., Transferor<br>to<br>Comcast Corporation, Transferee. | ) | MB Docket No. 05-192 |

To: Chief, Media Bureau

<u>Comments</u>

The Communities[1] hereby oppose the proposed transfer control of the various Commission licenses and authorizations set forth in the Public Notice, DA 05-1591, released June 2, 2005. As demonstrated below, the proposed transfer would have an anti-competitive effect.

## 1. Background

On May 18, 2005, Adelphia Communications Corporation ("Adelphia"), Time Warner Inc. ("Time Warner") and Comcast Corporation ("Comcast") (collectively, "Applicants") submitted joint applications to the Commission seeking consent to transfer control of and/or assign various Commission licenses and authorizations pursuant to Section 214 and 310(d) of the Communications Act of 1934.[2]

## 2. Introduction

The proposed transfer is not in the public interest and the FCC should not approve the merger since Comcast and Time Warner's increased market share will result in the potential for anti-competitive behavior.

Comcast and Time Warner's acquisition of the Adelphia cable systems to maximize the clustering of their systems represents the largest and most complex cable transfer in FCC history. In addition to increasing the aggregate concentration in the cable market as a whole, the transfer raises

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[1] Florida Communities: Clay County, Lee County, Orange County, Polk County, and St. Lucie County

[2] Public Notice, DA 05-1591, released June 2, 2005

questions on the impact of such clustering. Despite the Applicants contention that clustering of the cable systems benefit the public interest, local franchising authorities question the potential anti-competitive effect of this merger.

Communities which were served by two cable operators had the potential of competition. Thus, if this transfer is effectuated, this potential for competition will be eliminated.

## 3. Potential Effect on Competition

### The Market Cap Issue

The Cable Television Consumer Protection and Competition Act of 1992 amended the Communications Act of 1934 to provide increased consumer protection and to promote increased competition in the cable television and related markets.[3] Section 613(f) directed the Commission to conduct proceedings to establish reasonable limits on the number of subscribers a cable operator may serve (horizontal limit), and the number of channels a cable operator may devote to its affiliated programming networks (vertical, or channel occupancy, limit).[4] "A principal goal of this

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[3] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992 Act); H. Rep. No. 628, 102d Cong., 2d Sess. 1 (1992) (*House Report*); Communications Act of 1934, 47 U.S.C. §§ 151, et seq. (Communications Act).

[4] *Id.*

comprehensive program was to foster a diverse, robust, and competitive market in the acquisition and delivery of multichannel video programming." [5]

If this transfer is effectuated, Comcast will gain significant market power in the acquisition of Adelphia systems, which will exceed the Commission's thirty percent horizontal cable ownership cap.

## History of Equilibrium Shift Between Local Franchising Authorities and MSOs

Federal law establishes cable franchising as a matter of local jurisdiction and clearly recognizes that local governments can best identify the needs of their local community. However, as the result of consolidation, the cable industry's current way of doing business reflects a national corporate model, which ignores local community needs and interests.

Historically, local governments have successfully negotiated franchise agreements with local cable operators. In fact, almost all renewals were conducted under the informal renewal process. However, during the past five years, the equilibrium has shifted as local cable systems have merged into large media conglomerates and local government is frequently dealing with a national multi-billion dollar company rather than a local cable company. Consequently, the bargaining positions have changed and as a result these

[5] Federal Communications Commission, *In the Matter of The Commission's Cable Horizontal and Vertical Ownership Limits*, MB Docket No. 92-264, May 17, 2005.

Multiple System Operators are trying to force local governments into their national corporate models, which in many cases fail to recognize the needs of local communities.

## Cable System Transfers

In the past ten years, the cable industry has undergone a surge of ownership transfers through mergers and acquisitions, system exchanges and outright sales. The consolidation of multiple system operators has created several cable giants, such as Time Warner and Comcast, which control the bulk of the nation's subscribers[6].

Furthermore, within these large corporate structures, operators have formed regional clusters of cable systems that control large geographic areas rather than individual cities or counties. As a result, the cable operators are enjoying "de facto monopoly" status within a given area. The effects of consolidation are that political influence is maximized while the potential for the overbuilding of one system by a competing operator is minimized, thereby, increasing the cable operator's market power.

[6] Comcast is the nation's largest MVPD and Time Warner Cable is the second largest cable operator and third largest MVPD. Comcast estimates there are 92.6 million MVPD subscribers nationwide. Approximately 21.5 million subscribers are served by Comcast's wholly owned systems; approximately 4.6 million are served by systems owned jointly by Comcast and other cable operators. These include systems jointly owned with Time Warner, which serve approximately 1.5 million subscribers. See Federal Communications Commission, *Application for Consent to the Assignment and/or Transfer of Control of Licenses,* MB Docket No. 05-192, May 18, 2005.

Franchise Renewals

One of the stated purposes of the Communications Act is to "establish an orderly process for franchise renewal which protects cable operators against unfair denials where operators' past performance and proposal for future performance meet the standards established by the Communications Act" (47 U.S.C. §521(5)). However, a proposal for renewal must be granted if it is "reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests" (47 U.S.C.S. § 546(c)(1)(D)).

As a general rule, the consolidation of cable companies has placed local governments in an unequal bargaining position with respect to negotiating franchise transfers, renewals and enforcement.

## 4. Conclusion

For the reasons stated above, the Communities urge denial of the proposed transfer.

RESPECTFULLY SUBMITTED,

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