

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

IN THE MATTER OF)
)
Applications for Consent to the Assignment) **MB Docket No. 05-192**
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.)

To: Office of the Secretary

COMMENTS IN SUPPORT

The American Center for Law and Justice, Inc. (“ACLJ”) is a nonprofit, public interest law firm and educational organization dedicated to advancing civil and religious

liberties, human life, and the family.¹ We write on behalf of the organizations listed in Attachment 1, the Faith and Family Broadcasting Coalition, which includes the largest producers and distributors of inspirational, religious, and family oriented programming in the country (herein “Faith & Family Broadcasters”).

To preserve the values of the First Amendment, Faith & Family Broadcasters supports the acquisition of Adelphia Communications Corporation’s (“Adelphia”) cable systems by Comcast Corporation (“Comcast”) and Time Warner Inc. (“TW”), and it respectfully requests the Commission to approve the captioned applications for assignment (“Applications”).

The Applications Provide a Valuable Opportunity to Advance Diversity

Faith & Family Broadcasters believes approval of the Applications goes to the heart of the Commission’s ability to deliver on its goal of promoting diversity. The Commission has sought to promote four types of diversity: outlet diversity, viewpoint diversity, source diversity, and program diversity.² The focus of outlet diversity is to provide customers with a number of different options from which they can receive television programming (for example from broadcast stations, cable, or satellite).³ Viewpoint diversity promotes the widespread dissemination of information from a multiplicity of sources.⁴ “Source diversity focuses on ensuring that the public has access to information and programming from multiple content providers and producers.”⁵

¹ ACLJ attorneys have successfully argued constitutional law cases in federal and state courts across the United States in the advancement of civil and religious liberties. See, e.g., *McConnell v. FEC*, 540 U.S. 93 (2003); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Board of Educ. Of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226 (1990).

² Joel Timmer, Broadcast, Cable and Digital Must Carry: The Other Digital Divide, 9 Communication Law & Policy 101, 140-42 (Winter 2004).

³ *Id.*

⁴ *Id.* at 141.

⁵ *Id.*

“Program diversity refers to the range of choices available to viewers in regards to the number of different programs and program formats.”⁶

The ability of the religious, minority, and ethnic communities to deliver their respective messages to the public at large could be severely impacted if the Applications are not approved. It is unlikely that smaller operators would be able to come in and quickly provide the level of investment needed to upgrade the Adelphia plant and put it on par with what Comcast and TW customers currently enjoy. Comcast’s and TW’s acquisition of Adelphia will provide a robust opportunity for Faith & Family Broadcaster’s members and consumers to maintain and acquire a stable and reliable service. Adelphia customers now have two well-established carriers willing to assume the burden of rebuilding what Adelphia’s financial scandal and bankruptcy proceedings wrought. Both Comcast and TW offer consumers continued and improved service. They are well-positioned to make the significant investments necessary to upgrade Adelphia’s networks and ensure that they are on par with what consumers in other regions already have at their disposal. The diverse services and content of Faith & Family Broadcaster’s members will not be interrupted and the quality of that diverse service will not only be maintained, but improved.

The Supreme Court has said in *Red Lion Broadcasting Co. v. FCC*,⁷ “[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.”⁸ The Court reiterated that “[i]t is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather to countenance monopolization of that market, whether it be by the Government itself or a

⁶ *Id.* at 141-42.

⁷ 395 U.S. 367 (1969).

⁸ *Id.* at 390.

private licensee.”⁹ The Court added that the public’s right “to receive suitable access to social, political, esthetic, moral, and other ideas and experiences . . . may not constitutionally be abridged by Congress or by the FCC.”¹⁰

The religious and inspirational programming of the Faith & Family Broadcasters remains a significant part of fulfilling that First Amendment value. It is beyond peradventure that religious values and culture are enormously wholesome and a positive force in our free and democratic society. Any regulatory decision that would inhibit its open availability, along with the availability of minority and ethnic programming, must therefore be avoided. Not approving Comcast’s and TW’s acquisition of Adelphia and instead dividing up Adelphia in a piecemeal fashion among smaller operators as they come to the fore would be such a dangerous alternative.

Fears that approval of the Comcast and TW acquisition would be countenancing monopolization of the cable market have been addressed in a recent report by The Progress & Freedom Foundation.¹¹ “[T]he relevant market for regulatory consideration can no longer be limited to just traditional cable operators but must be broadened to take into account advances in technology and changes in consumer preferences.”¹² Cable competes with digital broadcast satellite in the multichannel video programming distributor marketplace. Additionally, telephone companies have entered the video and broadband service markets. Broadband over power line technology is another source of competition when power companies convert their lines to become information service

⁹ *Id.*

¹⁰ *Id.*

¹¹ Adam Thierer & Daniel English, *The Comcast-Time Warner Deal for Adelphia: Much Ado About Nothing*, comments filed by The Progress & Freedom Foundation, M.B. Docket No. 05-192 (July 2005), available at http://www.fcc.gov/transaction/tw-comcast_adelphia.html.

¹² *Id.* at 3.

providers.¹³ The media marketplace is far more diverse and competitive than many regulatory activists appreciate.

Instead of Comcast and TW gaining too much market power, The Progress & Freedom Foundation report argues that Comcast and TW's acquisition of Adelphia will serve to help them "better meet the many competitive challenges they face in the rapidly evolving media and broadband markets by improving economies of scale and cost-cutting ability. Additionally, the assets will help each further improve product offerings and program options."¹⁴ The competition is fierce. As an example, citing to 2004 research data,¹⁵ the report noted that digital broadcast satellite providers "gained a net of 3.2 million new subscribers while the top 10 cable providers lost 584,000."¹⁶ Approximately fifty-three percent of digital broadcast satellite subscribers switched over from cable service.¹⁷ This type of competition benefits Faith & Family Broadcasters member's ability to deliver their message cost effectively and for their consumers to receive that message cost effectively. "In sum, Comcast and TW do not and will not have enough market power to behave anti-competitively, and if they do attempt to behave in an anti-competitive fashion, consumers will flee."¹⁸

In addition, Comcast's and TW's acquisition of Adelphia will not violate the Commission's ownership policies. The addition of 1.8 million former Adelphia customers to the Comcast subscriber base will still leave the total Comcast subscribership below the Commission's former thirty percent horizontal ownership cap. Similarly,

¹³ *Id.* at 6.

¹⁴ *Id.* at 3.

¹⁵ Leichtman Research Group, *Cable & DBS: Competing for Customers Research Study*, 2005, available at http://www.leichtmanresearch.com/research/cabledbs_brochure.pdf (Last visited July 20, 2005).

¹⁶ Thierer & English, *The Comcast-Time Warner Deal for Adelphia: Much Ado About Nothing* at 4.

¹⁷ *Id.*

¹⁸ *Id.* at 11.

adding 3.5 million former Adelphia subscribers to TW's total subscriber base remains well below that ownership cap post-merger.¹⁹

Importantly, no programming interests of any kind (national or regional program networks) will be acquired with approval of the Applications. The related agreements between Comcast and TW will not involve any exchange of interests in national or regional program networks. Because the agreements do not involve the acquisition of any broadcast interests or local program services, the transactions will have no detrimental impact on local media diversity. However, parsing Adelphia between several smaller operators as they may come to the fore could negatively impact local media diversity.

Congress has found that “[t]here is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.”²⁰ The acquisition of Adelphia by Comcast and TW offers the best means of achieving the protection of that interest by bringing stability to an economically volatile situation. The consumers of the diverse viewpoints will benefit significantly from Comcasts's and TW's leadership in providing subscribers with innovative digital and broadband services as a result of their commitment to invest in system upgrades. Adelphia customers who seek diverse viewpoints, such as those offered by Faith & Family Broadcasters members, will be able to expect more reliable and higher quality service at all levels of the operation.

¹⁹ *Id.* at 9-10.

²⁰ Congressional Findings and Statement of Policy, Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, § 2(a)(6), 106 Stat. § 1460 (1992).

Accordingly, Faith and Family Broadcasters support approval of the acquisition of Adelphia by Comcast and TW and respectfully request that the Commission grant the assignment Applications.

Respectfully Submitted,

Faith & Family Broadcasters Coalition

By: _____

Jay A. Sekulow, Esq.

Chief Counsel

Colby M. May, Esq.

Director, Washington Office

American Center for Law and Justice, Inc.

201 Maryland Avenue, N. E.

Washington, D. C. 20002

(202)546-8890

(202)546-9309 fax

July 21, 2005

ATTACHMENT 1

FAITH AND FAMILY BROADCASTING COALITION MEMBERS

Dr. Paul F. Crouch
President and Founder
Trinity Broadcasting Network

Dr. Jerry Falwell
President
Old Time Gospel Hour

Dr. Garth Coonce
President
Tri-State Christian TV, Inc.

CERTIFICATE OF SERVICE

I, Glinda M. Corbin, a legal assistant at the American Center for Law and Justice, Inc., hereby certify that I have caused to be sent, this 21st day of July 2005, via first-class U.S. mail, postage prepaid, a true and correct copy of the foregoing **COMMENTS IN SUPPORT** to the following:

William M. Raeder, President
National Braille Press
88 St. Stephen Street
Boston, MA 02115

Joe Leonard, Jr., Ph. D.
Executive Director
Black Leadership Forum, Inc.
1900 L Street, NW, Ste. 405
Washington, D.C. 20036

James E. Willingham, Sr.
President & Chief Executive Officer
Urban League of Greater Hartford, Inc.
140 Woodland Street
Hartford, CT 06105

Adam Thierer
Daniel English
Progress & Freedom Foundation
1444 Eye Street, N.W., Ste. 500
Washington, D.C. 20005

Harry C. Alford, President/CEO
National Black Chamber of Commerce
1350 Connecticut Ave., N.W., Ste. 405
Washington, D.C. 20036

Harold Feld
Media Access Project
1625 K Street, N.W., Ste. 1000
Washington, D.C. 20006

Doron Gorshein
President and CEO
The American Channel, LLC
120 International Parkway, Ste. 220
Heathrow, Florida 32746

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, D.C. 20006

Joseph W. Waz, Jr.
James R. Coltharp
Comcast Corporation
2001 Pennsylvania Avenue., N.W.
Washington, D.C. 20006

Steven N. Teplitz
Susan A. Mort
Time Warner, Inc.
900 Connecticut Avenue, N.W.
Washington, D.C. 20006

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

By: _____
Glinda M. Corbin

