

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)
Applications for the 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)
 To)
Comcast Corporation (subsidiaries))
 Assignees and Transferees)
)
Comcast Corporation)
 Transferor)
 To)
Time Warner Inc.)
 Transferee)
)
Time Warner Inc.)
 Transferor)
 To)
Comcast Corporation)
 Transferee)

MB Docket No. 05-192

PETITION TO DENY OF NATIONAL HISPANIC MEDIA COALITION

The National Hispanic Media Coalition (NHMC) respectfully submits this *Petition to Deny* with respect to the proposed transfer of licenses held by Adelphia Communications Corporation (and related entities) to Comcast Corporation. NHMC asks that the Commission dismiss the applications or designate them for hearing. In the event that the Commission does grant the applications, NHMC asks in the alternative that the Commission impose remedial conditions to assure that the First Amendment and statutory rights of all Americans, including Hispanic Americans, are fully protected.

This petition is supported by the attached declaration of Alex Nogales.

As is more fully set forth below, NHMC believes that Comcast has failed to demonstrate that the public interest will be served by allowing Comcast to increase its cable television holdings nationally and, especially, for it to achieve significantly greater regional concentration in particular communities in this country. If the Commission nonetheless determines that it will allow the transfers, NHMC asks that any such grant be conditioned upon requirements that Comcast:

- ! fulfill enforceable benchmarks for deployment of advanced services, new cable services and customer service to minority communities;
- ! provide regional and national English language programming oriented to Hispanics and other minorities;
- ! submit quarterly reports on its national, regional and local employment recruitment of minorities; and
- ! increase over time its employment of minorities in decision-making positions.

THE COMMISSION MUST DETERMINE THAT THE PROPOSED TRANSFERS ADDRESS COMMUNITY NEEDS AND ARE IN THE PUBLIC INTEREST

The FCC is charged with “regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service...”¹ More specifically, Congress has directed the FCC to “assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public.”² Under this and other related Congressional mandates, the FCC has introduced more than ten affirmative action ownership programs in attempts to narrow the disparity between the representation of minorities in our

47 U.S.C. § 151.

² 47 U.S.C. § 521(4).

population and in the electronic mass media.³ Several of these programs have been employed in the cable television services, including the minority distress sale policy and the leased access minority programming rule.

Thus, in addition to deploying services equitably, Commission licensees are expected to contribute to a scheme which provides programming that addresses all communities within their franchise area. This ensures that uses of public spectrum (including spectrum used by cable systems ancillary to their cable service) directly address the needs of minorities within those communities while benefitting all Americans through educating them about their fellow citizens. Through such mechanisms, the Commission meets the public's "paramount" First Amendment rights to have access to diverse sources of information. *See Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969).

The Commission has long acknowledged a special responsibility, beyond that of other federal agencies, to enforce equal employment laws and principles. *See NAACP v. FCC*, 425 U.S. 662, 670 n.7 (1976). As the Supreme Court affirmed in *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990), diversity in ownership and employment influences programming decisions.

MINORITY COMMUNITIES HAVE SUFFERED FROM A LONG HISTORY OF ELECTRONIC REDLINING

Electronic redlining is the failure to provide service or providing inferior service to a minority community. In cases of electronic redlining the service provider decides not to employ services to the minority community based on a fear that providing service to these communities will be an

³ *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d. 979, 983-84 (1978). *See, e.g.*, 47 U.S.C. §309(i)(3)(a) [directing the FCC to adopt ownership rules encouraging diversity in random selection of broadcasting licenses]; 47 U.S.C. §309(j)(4)(C) [directing the FCC to adopt ownership rules and policies encouraging diversity in competitive bidding for broadcasting licenses, including "the use of tax certificates, bidding preferences, and other procedures" 47 U.S.C. § 09(j)(4)(D)].

unprofitable venture because of negative racial/ethnic stereotypes.⁴ Inferior service and failure to deploy services in minority communities occurs most often in non-competitive or less-competitive markets, like the cable industry, because the “monopolist/duopolist” company has absolute discretion in deploying its services and allocating its maintenance budget.⁵

Electronic redlining creates divisions between people of different ethnic communities and people of different income groups, and is therefore contrary to the public interest. No service provider should deny services to a group of potential customers because of community ethnicity or income levels. The cable industry, most notably Comcast and Time Warner, have repeatedly complained of the redlining practices of telecommunication companies and have stressed the importance of anti-redlining guidelines in the deployment of services such as broadband and video programming.⁶

There is a significant history of electronic redlining in minority communities, most notably in the deployment of advanced services, but also in the provision and maintenance of basic services, such as telephone and cable. Minority urban communities are often plagued with inferior service and severe

⁴ Leonard M. Baynes, *Deregulatory Injustice and Electronic Redlining: The Color of Access to Telecommunications*, 56 Admin. L. Rev. 263, 268-271 (2004). See also James J. Halpert & Angela J. Campbell, *Electronic Redlining: Discrimination on the Information Superhighway*, cited in *New Challenges: The Civil Rights Record of the Clinton Administration Mid-Term*, 278-279 (Corrine M. Yu & William L. Taylor eds., 1995).

⁵ *Id.* at 329-330.

⁶ See Ted Hearn, *McStarrow: NCTA Open to Rules Changes*, *Multichannel News*, June 13, 2005, available at 2005 WLNR 9487547; David Koenig, *Battle of the Bundles... But Its Strategy for Cable TV Suffers a Setback*, *Kansas City Star*, June 2, 2005, available at 2005 WLNR 8712758; Leslie Cauley, *Cable, Phone Companies Duke It Out For Customers*, *USA Today*, May 23, 2005, available at 2005 WLNR 8125983; Elizabeth Pierson, *Controversial Cable Bill Dies in House*, *Valley Morning Star*, May 19, 2005, available at 2005 WLNR 8030943; Jeffrey Gilbert, *Time Warner, SBC Take Battle Over Cable TV Regulation Public*, *Houston Chronicle*, April 28, 2005, available at 2005 WLNR 6638006.

outages of electronic services.⁷ Without even basic services, such as telephone and cable, these minority communities are precluded from access to advanced services. In a 2000 report, the FCC identified that many low-income and minority consumers are barred from obtaining advanced services due to the poor quality and lack of services provided to these communities.⁸ Minority communities are generally the last to receive these advanced services and, as a result, are always left behind. This is a matter of concern given that one of the primary public interest benefits of the proposed transaction is the rapid deployment of such advanced services.

The significant history of electronic redlining of minority communities, in combination with Comcast's particular record of insensitivity to the Hispanic community, requires a condition to the proposed transaction along the lines of the proposal in this petition to ensure that public interest benefits Comcast has claimed will be shared with the entire community of interests.

COMCAST HAS A SIGNIFICANT RECORD OF INSENSITIVITY TO THE NEEDS OF HISPANIC AMERICANS

Comcast has been singularly insensitive to the needs of Hispanic Americans. Since its acquisition of the former AT&T cable systems in 2002, it has made scant progress in employing Hispanics. Nor, despite 50% turnover over the last three years, has Comcast added Hispanic representation to its board of directors. Hispanic employment at Comcast lags significantly from the national averages. As of 2002, only 3% of its officials and managers were Hispanic, and there have been few managerial

⁷Leonard M. Baynes, *Deregulatory Injustice and Electronic Redlining: The Color of Access to Telecommunications*, 56 Admin. L. Rev. 263, 269-270 (2004).

⁸General Accounting Office, *Telecommunications: Characteristics and Choices of Internet Users*, Feb. 2001, released August 2000, at 10, quoting *Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, 15 FCCRcd. 20918 (2000).

hires since then.

Unlike the other major cable MSO's, Comcast has been unwilling to provide significant amounts of English language programming directed to the needs of Hispanic Americans. There are two major such services. One, LA-TV is a broadcast network which is ordinarily carried on certain cable systems pursuant to must carry requirements. The second, Si TV, is a basic cable service. Unlike Time Warner, which includes Si TV on almost all of its program menus, Comcast makes Si TV available on only a handful of its systems, including Fresno and Denver. Si TV is almost always -placed on Comcast's expensive and limited circulation digital tiers.

Comcast's indifference to the needs of Hispanics in this country is especially disappointing in light of the explosive growth of Hispanic population, and the ever-greater Hispanic influence on the mainstream American culture.

**COMCAST'S UNPRECEDENTED CONTROL OVER THE
DEPLOYMENT OF ADVANCED SERVICES AND ITS FAILURE
TO DEPLOY THESE SERVICES TO MINORITY COMMUNITIES IN
AN EXPEDITIOUS MANNER IS NOT IN THE PUBLIC INTEREST**

It is of particular relevance that the Applicants in the Adelphia/Comcast/TimeWarner transaction, including Comcast, based one of only two public interest justifications upon the claim that the requested transfers will accelerate deployment of advanced telecommunications services, new cable programming services and improved service to local communities. However, it is important to recognize that rapid deployment of advanced services and cable programming, as well as improved service, does not serve the public interest when a large segment of the population is excluded. In this connection, NHMC respectfully incorporates by reference July 21, 2005 *Declaration of Dr. Gregory Rose* filed as part of the July 21, 2005 *Petition to Deny of Free Press, et al.* Dr. Rose's analysis de-

monstrates that the proposed transaction gives Comcast (and Time Warner) unprecedented control of the deployment of advanced services and cable programming by eliminating head to head competition and maximizing regional power in relevant markets. This, combined with the general failure of Comcast to ensure rapid deployment of advanced services to minority communities, raises serious questions about whether grant is in the public interest.

**THE COMMISSION SHOULD IMPOSE CONDITIONS ON
ANY GRANT OF THE COMCAST TRANSFER APPLICATIONS**

If the Commission nonetheless determines that it will grant the applications, in light of Comcast's dubious commitment to societal diversity, the Commission should establish specific benchmarks and conditions which will ensure that all affected communities in Comcast's service areas benefit from rapid deployment of these services. It should also create a rapid and effective complaint mechanism to insure enforcement of these requirements.

First, the Commission should establish clear time-delimited benchmarks for deployment of advanced services, new cable services and customer service to minority communities.

Second, the Commission should condition grant of the transfer applications upon Comcast's carriage, initially on analog tiers, of local and national English-language programming oriented to Latinos(as) and other minorities.

Hispanics represent the largest and most rapidly growing segment of the population. Ensuring civic engagement among the Latino community is a "government purpose, of the highest order." Many Hispanic Americans use English as their first or main language. It serves the public interest to make available programming that educates English-only Latinos about the broader Latino community, its history, and its perspectives. Moreover, the availability of English-language programming directed

to Hispanics will promote greater understanding among other Americans. There is thus compelling reason to require the carriage of such programming. *See Gruter v. Bollinger*, 539 U.S. 306 (2003).

Finally, the the Commission must require detailed quarterly public reports from Comcast and Time Warner on their national, regional and local recruitment from minority communities, particularly the Hispanic community, and demonstrate a significant increase over time in the number of Hispanics and other underrepresented minorities in decision-making positions.

CONCLUSION

Comcast seeks to place itself in a position of extraordinary power through the acquisition of cable systems dependent upon the use of numerous FCC grants and authorizations. The Commission must ensure that all Americans, including Hispanics, benefit, and are not harmed by these proposed transactions.

Wherefore, NHMC asks that the Commission dismiss the Applications for Transfer or designate them for hearing, that it impose the requested conditions in the event that the Applications are granted, and that it afford all such other relief as may be just and proper.

Respectfully submitted,

/s/

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July 21, 2005

DECLARATION OF ALEX NOGALES

My name is Alex Nogales. I am President & CEO of the National Hispanic Media Coalition (NHMC).

The NHMC is a coalition of Hispanic-American organizations that have joined together to address a variety of media related issues that affect the Hispanic-American community across the nation.

The National Hispanic Media Coalition's goals are 1) to improve the image of Hispanic-Americans as portrayed by the media and 2) to increase the number of Hispanic-Americans employed in all facets of the media industry.

Members of NHMC organizations reside in communities presently served by Comcast, Time-Warner and Adelphia cable systems, and many are subscribers to their services.

I am familiar with the contents of the foregoing *Petition to Deny*. The factual assertions made in the petition are true to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on July 19, 2005.


Alex Nogales

CERTIFICATE OF SERVICE

I, Jennifer Howard, hereby certify that on this 21st day of July 2005, a copy of the foregoing *Petition to Deny* was served electronically (and, where indicated by an asterisk, by first-class mail) upon the following:

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