

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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.)

MB Docket No. 05-192

To: The Secretary

COMMENTS

KVMD Licensee Co., LLC ("KVMD"), the permittee of Station KVMD-DT, Channel 23, Twentynine Palms, California (the "Station"), by its attorneys, and pursuant to the Commission's *Public Notice*, DA 05-1591, released June 2, 2005,¹ hereby submits these Comments in response

¹ These Comments are timely submitted pursuant to the July 21, 2005 deadline set forth in *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia*

to the above-referenced applications for the assignment of various cable system licenses and authorizations from Adelphia Communications Corporation ("Adelphia") to Time Warner Cable, Inc. ("Time Warner Cable") and Comcast Corporation ("Comcast") and the exchange of certain cable systems between Time Warner Cable and Comcast. In light of KVMD's experience with Time Warner Cable and Comcast in the cable must-carry and market modification context, KVMD submits that the acquisition of Adelphia's cable systems by these cable operators will frustrate the Commission's efforts to promote localism² by undercutting the ability of local independent broadcast television stations such as KVMD to provide local service to their target audiences. In support thereof, KVMD states as follows.

KVMD is an independent broadcast television station licensed to Twentynine Palms, California, a community located within the Los Angeles Designated Market Area ("DMA"). Since acquiring the Station in 2001,³ KVMD has devoted considerable time, effort and resources to two fundamental objectives: operating the Station in digital-only format⁴ and providing superior local service to viewers in its home market.⁵ The Commission has identified both of

Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees, et al., DA 05-1780, released June 24, 2005.

² See *Broadcast Localism, Notice of Inquiry*, 19 FCC Rcd 12425 (2004). On November 1, 2004, the Commission accepted comments specifically addressing whether the Commission should adopt new policies and procedures to promote more effectively localism in broadcast television and radio.

³ See File No. BALCT-20000607ACT.

⁴ KVMD commenced digital-only operations on June 1, 2003, pursuant to Commission authorization. See *KVMD(TV), Twentynine Palms, CA*, 18 FCC Rcd 9131 (MB 2003).

⁵ KVMD offers unique locally-oriented programs unavailable on any other Los Angeles station. KVMD broadcasts a wide array of local sporting events, including minor league and college baseball, minor league and college basketball, minor league hockey, college soccer, high school football, auto-racing, boxing and equestrian. KVMD also broadcasts locally-produced Spanish-language programming from the hours of 6:00 a.m. – 12:00 p.m. every weekday. KVMD has its own local news program, the "KVMD Southern California News Report," offering unique local news, entertainment, sports and business stories of special interest to

these objectives as critical to the public interest and the continuing viability of free over-the-air broadcast service. Given the realities of the video marketplace, carriage of stations such as KVMD on cable systems in their markets is indispensable to these stations' ability to develop and sustain first-rate local service to viewers.

Currently, Adelphia carries the Station on its cable systems in the Los Angeles DMA.⁶ Such carriage allows KVMD to deliver its extensive local sports coverage, locally-produced Spanish-language programming, local news and other programs to local cable subscribers who otherwise would not have access to the Station's programming. Further, the increased viewership and advertising resulting from carriage on these cable systems helps KVMD meet the costs of developing unique local programming, enabling the Station to continue delivering superior local service to residents of the Los Angeles DMA.

While Adelphia currently carries the Station, Time Warner Cable and Comcast both have brought market modification proceedings against KVMD in an effort to remove the Station from these cable operators' cable communities in the Los Angeles market.⁷ As these proceedings

viewers in communities throughout the Los Angeles DMA. On August 22, 2005, the News Report will begin airing with a new look at a new time (7:30 p.m., Monday - Friday) and with a new title, "Southern California Life." KVMD also broadcasts "The Chef Knows," featuring local Los Angeles chef Peter Dills, Wednesdays at 5:00 p.m., and "Action Figures," a weekly show in which hosts Brent Weber and Rona Townend interview athletes and artists who reside in Orange County, on Fridays at 6:00 p.m. On October 3, 2005, KVMD will begin broadcasting shows produced by Local Television Network: Los Angeles ("LTN"). LTN, an independent network dedicated to delivering local programming to the 18-34 year old demographic, has made serving the local population the very core of its business plan. The shows will be produced in LTN's local studio in Hollywood and will be hosted by and targeted to young persons living and working in the Los Angeles area. See Declaration of Ronald L. Ulloa, President of KVMD Licensee Co., LLC, attached hereto as Exhibit A ("Ulloa Declaration").

⁶ See Ulloa Declaration.

⁷ See *Time Warner Cable Petition for Special Relief*, 18 FCC Rcd 21384 (MB 2003) (granting Time Warner Cable's petition to remove its cable communities in the Los Angeles DMA from the Station's market); *Comcast Corporation Petition for Modification of the Los*

demonstrate, neither Time Warner Cable nor Comcast have any interest in devoting one of their channels to such a local independent broadcast station, preferring to reserve their channels for paid cable networks or large network affiliates. Accordingly, KVMD has every reason to believe that upon acquiring Adelphia's cable communities in the Los Angeles DMA, Time Warner Cable will attempt to remove these communities from the Station's market. KVMD's experience in the Los Angeles DMA will no doubt be shared by other independent local broadcast television stations in other DMAs where Time Warner Cable and Comcast seek to acquire Adelphia's cable systems.

Pursuant to Section 310(d) of the Communications Act of 1934 (the "Act"),⁸ the Commission evaluates proposed transfers of licenses and authorizations under its "public interest" standard. In recent cases, the Commission has applied this standard by considering "potential competitive harms and benefits to determine whether the proposed transaction would promote the public interest."⁹ In analyzing potential harms, the Commission examines the possible anticompetitive effects of the proposed transaction and the extent to which the proposed transaction may violate the Act or frustrate the Commission's policies.¹⁰

KVMD offers its experience with Time Warner Cable and Comcast as evidence of the extent to which the proposed transaction may frustrate the Commission's policy of cultivating

Angeles, California DMA, 19 FCC Rcd 5245 (MB 2004) (granting in part and denying in part Comcast's petition to remove its cable communities in the Los Angeles DMA from the Station's market). KVMD has filed petitions for reconsideration in both proceedings.

⁸ 47 C.F.R. § 310(d).

⁹ *Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, 12 FCC Rcd 19985, 20008-9 (1997).

¹⁰ *See 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 (2000).

and protecting diverse, independent locally-oriented programming. Unlike Adelphia, whose carriage of KVMD demonstrates a strong commitment to independent localism, the actions of Time Warner Cable and Comcast demonstrate indifference or hostility to programming that strays from the large, mainstream network content that dominates their current program line-ups. Unless Time Warner Cable and Comcast respect Adelphia's commitment to localism and continue to carry local independent stations currently carried by Adelphia, the proposed transaction will disserve the Commission's localism policies by harming the very stations those policies are designed to protect.

WHEREFORE, it is respectfully requested that in evaluating the proposed transaction, the Commission take into account the record of Time Warner Cable and Comcast Corporation in the must-carry and market modification context, and consider the extent to which the acquisition of Adelphia Communications' cable systems by Time Warner and Comcast may frustrate the Commission's localism policies, harm independent local broadcast stations and hinder the development of high-quality, diverse local programming.

Respectfully submitted,

KVMD LICENSEE CO., LLC

By: 

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Its Attorneys

Dated: July 21, 2005

EXHIBIT A

DECLARATION

I, Ronald L. Ulloa, do hereby declare and state under penalty of perjury as follows:

1. I am the President of KVMD Licensee Co., LLC, the permittee of Station KVMD-DT, Twentynine Palms, California.
2. KVMD broadcasts a wide array of local sporting events, including minor league and college baseball, minor league and college basketball, minor league hockey, college soccer, high school football, auto-racing, boxing and equestrian. KVMD also broadcasts locally-produced Spanish-language programming from the hours of 6:00 a.m. – 12:00 p.m. every weekday. KVMD has its own local news program, the "KVMD Southern California News Report," offering unique local news, entertainment, sports and business stories of special interest to viewers in communities throughout the Los Angeles DMA. On August 22, 2005, the News Report will begin airing with a new look at a new time (7:30 p.m., Monday - Friday) and with a new title, "Southern California Life." KVMD also broadcasts "The Chef Knows," featuring local Los Angeles chef Peter Dills, Wednesdays at 5:00 p.m., and "Action Figures," a weekly show in which hosts Brent Weber and Rona Townend interview athletes and artists who reside in Orange County, on Fridays at 6:00 p.m. On October 3, 2005, KVMD will begin broadcasting shows produced by Local Television Network: Los Angeles ("LTN"). LTN, an independent network dedicated to delivering local programming to the 18-34 year old demographic, has made serving the local population the very core of its business plan. The shows will be produced at LTN's local studio in Hollywood and will be hosted by and targeted to young persons living and working in the Los Angeles area.
3. KVMD is currently carried by Adelphia Communications.
4. I have reviewed the foregoing "Comments," and to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law.



Ronald L. Ulloa

Date: July 21, 2005