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;	)	MB Docket No. 05-192
Comcast Corporation, Transferor, To Time Warner Inc., Transferee	)	
Time Warner Inc., Transferor, To Comcast Corporation, Transferee	)	

THE AMERICA CHANNEL LLC'S PETITION TO DENY

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Summary

The Proposed Transactions

The Proposed Transactions present a straightforward question:

> **Does the further consolidation of distribution market power in the hands of the country's top cable operators, without conditions to improve and protect access for independent programmers to the distribution systems that are proposed to be enlarged in the Proposed Transactions, serve and benefit the public interest?**

The America Channel, LLC ("The America Channel" or "TAC") urges on the basis of its experience that the answer is no. TAC is an independent network established to offer family-friendly cable programming that celebrates America, its communities, unsung heroes and ordinary people who accomplish the extraordinary. Already, even without achieving the enlargement of their distribution empires that they seek here, Comcast and Time Warner have discriminated against TAC and other independent networks, while extending carriage agreements in a disproportionately favorable way to their own affiliated networks.

The Transaction Parties urge that the increase in concentration that will result from this transaction, measured in terms of subscribers, is insignificant. For the reasons stated below, TAC urges that the increase **is** significant in, among other ways, its impact on the control that the country's largest MSOs' wield over what programming gets carried and therefore what subscribers can watch; and the adverse effects of "geographical rationalization" – including the consolidation of control over key markets, without which an independent network cannot survive. The Proposed Transactions are likely to have serious adverse consequences for free market competition, consumer choice, consumer pricing, and the health of our democracy and the diversity of ideas and information in the marketplace. We therefore urge the Commission to carefully examine these implications, the stifling of competition, and consolidation of control over programming channels and access to carriage, that the Transaction Parties will achieve if the Proposed Transaction is approved without conditions.

<u>The America Channel's Petition to Deny</u>

TAC believes that Time Warner and Comcast have behaved unlawfully in their dealings with TAC and others, and we intend to pursue those claims in the appropriate fora. While these claims have implications for the current proceeding, this Petition is forward looking. We urge the Commission, in line with its abundant precedent of requiring transaction parties to agree to conditions designed to prevent or mitigate harms specifically arising out of the transaction at hand, to require the Transaction Parties to agree to the following terms ("the Proposed Conditions"):

1. **Mandatory Arbitration:** Where one of the Transaction Parties has refused to deal with an independent network that has demonstrated market demand by securing carriage elsewhere whether on cable or other platform, such independent network may demand the intervention of a neutral arbitrator to ascertain whether such refusal is reasonable under the facts and circumstances.

2. **Guaranteed Leased Access on Reasonable Terms:** Leased access, if available to independent networks on reasonable terms (as originally intended by the law but which has been thwarted), may be a helpful remedy to the increased incentives that the Transaction Parties will have, if this

transaction is approved, to foreclose access to independent networks. We look forward to discussing a plan and framework in the context of this Proceeding.

<u>The Burden of Proof Lies with the Transaction Parties and They Have Not Met It</u>

The Transaction Parties bear the burden of proof to demonstrate that the transaction is in the public interest, and that the benefits to the public outweigh any harms that result from the transaction. A review of the claimed benefits yields the following observations. The claimed benefits of geographic rationalization and efficiencies gained by consolidation of duplicative functions will clearly benefit the Transaction Parties, but the parties fail to demonstrate sufficient benefit to the public, for example, in the form of better consumer prices (or at least a deceleration in rate increases which have consistently exceeded the rate of inflation), more diverse programming including free competition among programming vendors, or better service (consistently rated below satellite), which they are apparently reluctant to promise. Likewise vague and abstract, and inadequately linked to a concrete benefit to the public, are the claimed validation of the public policy foundations of bankruptcy law and the possibility – but no promise – of increased investment in broadband infrastructure in the Adelphia systems. And the dissolution of Comcast's passive interest in Time Warner, which the Transaction Parties have been free to resolve otherwise, cannot reasonably be touted as a way in which the Proposed Transactions provides a specific benefit to the public.

<u>Likely Harms to the Public Interest</u>

In view of the insufficient case for the public interest, the Commission must also carefully scrutinize the harms that the public likely will suffer as a result of the Proposed Transactions, if approved without conditions. In this connection, the Commission should focus sharply on the Transaction Parties' assertion in their application that, "Notably, the Transactions will not have an adverse effect on competition in the video programming business, either with respect to MVPD distribution or in upstream activities involving production, packaging, and sale of video programming."

This statement essentially asserts that since neither Comcast nor Time Warner will exceed the horizontal ownership limits, now under consideration by the Commission on remand, as a result of the Proposed Transactions, there can be no adverse impact on programming. But the Transaction Parties do have this ability; they exercise it regularly. Approval of the Proposed Transactions, without conditions, will enhance their ability to exercise their exclusionary power, particularly by locking in their regional and local dominance. And geographic rationalization, after all, is one of the main benefits and goals that the Transaction Parties claim for the Proposed Transaction.

The impact of the Proposed Transactions will further limit diversity in subscriber choice and programming diversity by according to two of the country's largest MSOs additional power to control what viewers get to see. As discussed in Section VI, TAC urges that the Proposed Transactions undermine the foundations of diversity in MVPD programming, which are in turn fundamental to political and civic discourse.

Further, we submit that when the Number One (Comcast) and Number Three (Time Warner) buyers of programming in the United States (so-called "competitors" but who have been in combination for quite some time), submit a joint bid and acquire the assets of the Number Seven buyer (Adelphia), the result cannot be trivial. In fact, the combined market share of the top two companies would increase from 35.5 percent to 43.4 percent and the top four MSO concentration ratio would increase from 58 percent to over 66 percent.[1] This means that, as demonstrated below (Section II), a "no" decision on the part of Comcast or Time Warner – and the likelihood is high that a "no" decision by one would be accompanied by the same decision by the other (see Section IV) – will make it mathematically impossible for an independent network to achieve the critical mass of subscribers that will make it viable with advertisers or investors. In fact, our research demonstrates that 100 percent of networks that succeeded in achieving critical subscriber thresholds had secured carriage with Comcast or Time Warner, and 98 percent secured carriage with both MSOs. No network that failed to gain carriage with at least one of these two MSOs, succeeded in achieving the thresholds essential to viability and survival. (See Section II below)

Increased concentration also makes collusion among the remaining industry participants more likely.[2] Likewise, if unconditioned approval of the Proposed Transactions operates to increase the leverage not only of the Transaction Parties as gatekeepers, but also the leverage of remaining smaller players, the exclusion effect for independent networks will be complete – shut out from carriage from the very largest

[1] These figures are based upon the Commission's most recent annual video competition report, *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* MB Docket No. 04-227 ¶ 143 (FCC Feb. 4, 2005) ("*Eleventh Annual Report*").

[2] In fact, the Department of Justice succeeded in 2003 in obtaining a preliminary injunction against consummation of a proposed merger in the label stock industry precisely because of the increased likelihood of coordinated interaction among the other industry players. *U.S. v. UPM-Kymmene Oyj,* No. 03C2528, Memorandum Opinion and Order, July 25, 2003 available at http://www.ilnd.uscourts.gov/RACER2/index.html

MSOs, and left to try to cobble together carriage deals with newly empowered smaller MSOs without real prospect of achieving the crucial critical mass thresholds.

The America Channel is Uniquely Suited to Explain Why This Transaction Would Harm the Public Interest

For the past two years and during the course of extensive communications, TAC has diligently sought carriage with both Time Warner and Comcast. Each MSO has rebuffed TAC, which decision they might ordinarily seek to explain as a decision within the prerogative of their business judgment, driven by the market and constrained by the capacity of their various systems. But such an explanation is unpersuasive based on the facts. As we demonstrate below (See Section III):

- There are already extreme disparities in treatment by Comcast and Time Warner, of their own affiliated networks and independent networks.
- Pre-Transaction it is almost impossible for an independent network to achieve viability if one of Time Warner or Comcast declines to grant access; but post-Transaction it will be mathematically impossible for an independent network to achieve viability if one or both of Time Warner or Comcast decline to grant access.

And, as we will demonstrate in other fora, statements and actions by officials of each company reveal a policy and practice of unlawful activity, the intent and effect of which is to reduce programming competition, including discrimination against independent networks and the favoring of affiliated networks – all of which we believe the Commission will find relevant to this proceeding.

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<u>THE AMERICA CHANNEL LLC'S PETITION TO DENY</u>

I. INTRODUCTION: THE PARTIES HAVE NOT MET THEIR BURDEN OF SHOWING THAT THE TRANSACTIONS, AS PROPOSED, SERVE THE PUBLIC INTEREST, AND HAVE FALLACIOUSLY CLAIMED THAT THERE ARE MARKET AND REGULATORY PROTECTIONS FOR THE PUBLIC INTEREST

The America Channel, LLC ("The America Channel" or "TAC"), pursuant to the Commission's Public Notice dated June 2, 2005 and the Order extending the time for filing petitions to deny, dated June 24, 2005, respectfully files this petition to deny the transfers and assignments ("the Proposed Transactions") as proposed by Comcast Corporation ("Comcast"), Time Warner Cable, Time Warner (collectively or alternatively referred to as "Time Warner") and Adelphia Communications Corporation ("Adelphia"). We refer to these parties who have proposed the Transactions collectively as "the Transaction Parties"). TAC urges that the Commission decline to approve the Proposed Transactions unless the Transaction Parties commit to observe conditions, specified herein, designed to preserve free competition and fair access for independent networks to the distribution infrastructure that will be enlarged by consummation of the Proposed Transactions.

Under the Commission's precedent, it falls to the Transaction Parties to demonstrate that the Proposed Transactions benefit and serve the public interest. Other parties participating in this proceeding have ably deconstructed the claimed benefits to the public interest, which we treat in summary fashion. We focus in our Petition on demonstrating how the Proposed Transactions would have a deleterious impact upon the public interest – specifically, the adverse impact that the Proposed Transactions would have on competition, the consumer, and our democracy – resulting from the foreclosure of the public's access to programming from sources other than those owned by the Transaction Parties and a small group of media conglomerates.

The Transaction Parties, beyond the flawed public interest claims they make, also assert that there are three market and regulatory factors that make it impossible for the transaction to be other than pro-competitive.

A. THE FALSE PROTECTION OF THE HORIZONTAL OWNERSHIP LIMITATION ON SUBSCRIBER CHOICE

First, as noted above, they assert that since neither Transaction Party would grow beyond the horizontal ownership limits, now under consideration on remand, the Proposed Transactions cannot adversely impact competition or distribution in video programming. As explained below, this argument is flawed, and the incentives and likelihood of greater foreclosure of independent programming would be exacerbated by unconditioned approval of the Proposed Transactions.

B. THE FALSE PROTECTION OF THE EXISTENCE OF "INDEPENDENT" NETWORKS

Second, the Transaction Parties would like to sell the Commission on the fiction that competition in the programming marketplace is robust and that consumer choice is at an all time high, since there are, according to the Eleventh Annual Report on Video Competition, 196 "independent" networks in existence[3], a figure which we respectfully deconstruct below.

The total number of television networks in existence is of little relevance to competition, public interest, and the Comcast or Time Warner customer base. Rather, what is relevant is the channels that Comcast and Time Warner choose to make available (and, as we will demonstrate, effectively kill by not making available); and on which platforms (i.e., linear versus VOD).

The Transaction Parties would like the Commission to believe that in the assessment of competition and diversity in the programming market, all networks are equal regardless of their reach. The Transaction Parties imply that so long as the *raw*

[3] MB Docket 05-192, Application by Adelphia, Time Warner, and Comcast at 83.

number of independent networks in existence is sizeable (in this case a purported 196 out of 388), competition and diversity are robust, even if those “independent” networks only operate a few hours per week or are accessible only by a small fraction (in many cases less than 1%) of subscribers.

In Section II of this Petition we introduce a list of 92 national cable programming networks which have succeeded in reaching 20 million subscribers. 20 million subscribers is a well-known critical milestone -- it is a minimum threshold for Nielsen ratings and hence, sustainable advertising revenue.[4] These 92 networks comprise a more accurate list of which networks are actually viable (of course they also happen to be the most widely distributed networks). 80 of the 92 are affiliated with an MVPD or broadcast company.[5] 70 of the 92 are owned by at least one of the “big six” media companies (Disney, Viacom, NBC Universal, News Corp, Time Warner and Comcast). The Transaction Parties would argue that this extreme concentration has no bearing on the state of competition in the marketplace. They imply that the 80 most widely distributed affiliated networks are, for example, completely offset by the existence of 80 independent networks whose subscriber numbers may not even break seven digits (a result of carriage decisions by the largest cable operators), or by products which are VOD-only for example.

When assessing competition and diversity in the programming market, *reach matters*; as does *platform*, for example linear carriage (which Comcast networks secure 100% of the time) or VOD-only (where independent networks are led). A more accurate assessment of the state of the market can be made, by supplementing the raw

[4] As explained in Section II, networks which derive all or part of their viewership from broadcast were excluded from the list, including PAX, Univision, and others.
[5] Of the remaining 12, 2 are CSPAN networks.

network counts, with other data -- which we urge the Commission to consider in this proceeding, specifically:

(1) The number and ownership structure of cable networks which have reached the viability milestone of 20 million households;

(2) The number and ownership structure of networks which are in more than 50 million households (a key threshold for national advertisers – see Section II below). We know of only five independent networks from the Commission's list of 196 that have reached this critical advertising threshold (plus two CSPAN networks)[6];

(3) The growth rate of independent networks year over year, as compared with affiliated networks. Our research into networks launched between January 2003 and May 15, 2005 (introduced in Section III below) showed that affiliated networks grew faster. Of those networks launching, affiliated networks achieved subscriber numbers that were 11 times greater on a median basis and more than 2 times greater on a mean basis than their independently owned counterparts; and

(4) The number of affiliated networks that failed to secure requisite carriage (at most, one, that we are aware of during the study period); versus the number of independent networks that failed to secure requisite carriage (scores).

Because the Transaction Parties rely so heavily on some statistics from the 11th Annual Report to support their claims of robust competition and diversity of ideas, we respectfully comment on the applicability of those numbers in the Proposed Transactions. In particular, the Transaction Parties point to two items in the report: first that there are 196 independent networks (and 388 networks total) in existence; and

[6] The five are: The Weather Channel, Home Shopping Network, Hallmark Channel, Oxygen, and EWTN

second, that the level of vertical integration has been declining steadily over the past 10 years.[7] We address these below.

The Commission's tally of 196 independent networks includes many networks which should not be counted as independent. For example :

- VH1 MegaHits and VH Uno which are both owned by Viacom, and SiTV which is substantially owned by Time Warner, were mistakenly designated as independent;
- 15 international networks for which Comcast serves as the domestic marketing and affiliate sales arm were designated as independent, despite a financial relationship with an MVPD based on securing carriage;
- Several "part time networks" which show only a few hours of programming per week were included, such as Deep Dish TV which programs 1 hour per week aired on PBS and public access channels, My Pet TV which programs only a few hours per day and appears to be distributed only to Veterinarian and Animal Shelter waiting rooms, and others;
- And several networks which identify themselves as, or in reality are, only a regional service intended for limited markets, such as Boston Kids & Family and others.

Further, when looking at the overall list of 388 national networks reported by the Commission, we count <u>86</u> which are pay-per-view or VOD channels – not linear channels – and therefore incorrectly included in the total. (Within the subset of 196 independents there were at least 48 VOD and pay per view networks which incorrectly

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[7] MB Docket 05-192 Application by Adelphia, Comcast and Time Warner at 83

inflated the total.) One cannot compare a linear, ad-supported MSO-owned network that is in 85 million homes, with a VOD product. The latter occupies vastly inferior capacity, and as we discuss later, the MSOs launch their own networks on linear capacity (even analog), while leading would-be independent competitors to VOD.

The claim that the percentage of vertically integrated networks is declining steadily is inaccurate[8] -- and there are problems with both the numerator and the denominator. The numerator is narrowly defined and only includes those networks which are owned directly by an MVPD. All of Viacom's networks are excluded, for example, as are Disney's and NBC Universal's, despite their ample leverage to secure carriage through retransmission consent and other means. The many networks for which the MVPDs act as marketing and distribution arms, are also missing, though close financial relationships exist. And there are other omissions as detailed above. The denominator, for reasons stated above, is overly inclusive, containing partial networks, VOD networks, etc. In short, these data do not support the Transaction Parties' claims of robust competition and diversity of ownership. The Commission should not be misled into concluding otherwise.

C. THE FALSE PROTECTION OF COMPETITION FROM DIRECT BROADCAST SATELLITE PROVIDERS

Third, the Transaction Parties would like the Commission to believe that competition from DBS and other MVPDs limits the Transaction Parties' ability to foreclose independent programmers from the market.[9] In fact, the increased competition

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[8] The Transaction Parties cite 33% vertical integration in 2003 down from 53% in 1994.
[9] See MB Docket 05-192 at 82, MM Docket 92-264: Comcast Comments at 17-21, Time Warner Comments, Joskow and McLaughlin Decl. at 6-7

in the MVPD market has had no impact on the gatekeeping power of the Transaction Parties.

In Section II we discuss two key thresholds of viability for cable networks: 20 million subscribers (below which a network cannot be Nielsen rated) and 50 million subscribers (a minimum threshold for many national advertisers). A study of 92 cable networks shows that carriage by Comcast or Time Warner is required for networks to reach the first threshold (of 20 million homes) and carriage by both Comcast and Time Warner is required to reach the second (of 50 million homes). In fact, the research demonstrates that a network cannot reach even 25 million subscribers without carriage by both Comcast and Time Warner. In other words a denial of carriage by either of the Transaction Parties is enough to prevent an independent network from reaching even 25 million households, an unsustainable plateau for an advertising supported network. Based on our research of publicly available sources, no network been able to reach these critical milestones without Comcast and Time Warner.

The reasons are fundamental. Other MVPDs are reluctant to dedicate the channel capacity, marketing and other resources necessary to distribute a product from a programmer whose survivability they know is uncertain. The industry is well aware that denial of carriage by the Transaction Parties almost certainly means the death of an independent network. Comcast and Time Warner are fully aware of this. The threat of a new network going to a DBS competitor therefore does not induce carriage from Comcast or Time Warner, as they know the network will not secure funding or other carriage commitments in the absence of carriage from the top two cable operators.

To illustrate the ways in which Comcast and Time Warner exert control over the programming market, and how that power would be enhanced through the Proposed Transactions, we explain below how independent networks build and execute their business plans, and how the increasing concentration of cable distribution, as prescribed by the Proposed Transactions, strangles opportunity for independent networks, reduces competition in the programming marketplace and impedes the free flow of ideas to American consumers.

We recognize that the Commission's purpose in reviewing the impact of proposed transactions, such as this one, is to examine whether there are harms specific to this transaction that outweigh benefits to the public interest. It is for this reason that we detail below why the accumulated power of Time Warner and Comcast, which they already wield to restrict distribution for independent networks, merits no increase by means of this transaction unless that market power is mitigated by conditions to improve and preserve access by independent networks to their extremely powerful distribution infrastructure. Further, we explain why the increase in concentration that would result from approval of these Proposed Transactions, which the Transaction Parties describe as insignificant, is anything but insignificant when it comes to the impact on constricting distribution for independent networks and stifling competition and diversity in the programming marketplace.

II. THE PROPOSED TRANSACTIONS WOULD GIVE COMCAST AND TIME WARNER ENHANCED POWER TO EXCLUDE INDEPENDENT NETWORKS FROM THE MARKET

Revenue for any advertising-supported network is dependent primarily on distribution. As such, there are at least two key distribution milestones which, if not met in a timely manner, can force an existing network to reduce the quality and quantity of its programming in order to continue operations, or to exit the marketplace entirely. A new network, seeking to enter the market, has considerably less flexibility. As noted in the FCC Media Bureau's *Survival Analysis*, an existing programming service (which has already incurred sunk costs) need only earn rents in excess of operational expenses in order to remain solvent. A market entrant however, must show a clear and credible path to *profitability* (in which sunk costs are recouped) *and beyond*, in order to generate the significant initial investment required to enter the marketplace and compete.[10] New networks that are unable to forecast reaching these milestones in reasonable time will not be funded and will not enter the market. As this filing will demonstrate, Time Warner and Comcast, particularly as their market power is expanded by the Proposed Transactions, are the sole gatekeepers to these critical thresholds.

The first distribution threshold is to acquire (at a minimum) carriage into 20 to 25 million homes, at which point the network may be able to acquire a rating by Nielsen Media Research. The second threshold is to increase carriage to 50 million subscribers because for many advertisers, this is a minimum distribution base – networks with subscriber levels below this level will receive substantially smaller allocation of advertisers' funds, or not be considered at all. As a result, 50 million subscribers is the key threshold upon which investors focus in making their decisions.

But even these raw subscriber numbers alone do not guarantee advertising revenue. Networks must also be carried in top television markets to compete effectively for advertising dollars.

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[10] *A Survival Analysis of Cable Networks*, FCC Media Bureau Staff Research Paper No. 2004-1 at 5. "Because a cable network incurs sunk entry costs, the quasi-rents a cable network needs to stay in business are clearly far less than the expected profits that induce entry by a cable network."

As we show below, the Proposed Transactions will (A.) exacerbate Comcast and Time Warner's existing ability to prevent a network from reaching the milestone of 20-25 million households, (B.) make it mathematically impossible for a network to reach 50 million households without carriage by at least one of these MSOs, and (C.) tighten Comcast and Time Warner's stranglehold on top television markets. **The combination of these three effects will give Comcast and Time Warner the ability to prevent independent programming from entering and competing in the marketplace.**

A. THE 20 MILLION THRESHOLD: TIME WARNER AND COMCAST ALREADY WIELD MARKET POWER THAT EXCEEDS THEIR MARKET SHARE

Nielsen Media Research's national television ratings are the informational currency through which more than $60 billion in national and local advertising spending is placed in the U.S. each year. Nielsen compiles its data through a combination of approximately 5100 meters (carefully placed throughout the U.S. based on Census data such that the sample is a statistically accurate reflection of the total population of U.S. television households) and diaries periodically filled out by viewers. According to media analyst Larry Gerbrandt, "As a statistical sample designed to represent the viewing habits of some 110 million U.S. television households, its… margin of error increases for networks that only reach a smaller percentage of all households.[11]"

Twenty million households represents a minimum distribution threshold below which Nielsen Media Research cannot provide reliable ratings, and in fact, many

[11] See comments to MB Docket 04-207 by TV One, Decl. of Larry D. Gerbrandt at 4-11.

programming networks believe that the reliability of ratings is only guaranteed at much higher subscriber levels.[12]

What does it take for a network to reach this critical milestone? The America Channel identified 92 national, non-premium cable programming networks that have succeeded in reaching the critical 20 million household milestone.[13] Findings are attached to this document as Exhibit 1 and show extreme market power in the hands of Comcast and Time Warner, including:

- Of the 92 networks identified, not a single one had achieved the 20 million household milestone without carriage by either Comcast or Time Warner, or both.

- Of the 92 networks, there were (at the time of the research) only three networks which were carried by one of the two but not the other: NFL Network, and TV One (partially owned by Comcast), were both carried by Comcast but not Time Warner; and the Inspiration Network (a donor supported religious channel) was carried by Time Warner but not Comcast.

- Of the 3 networks securing carriage from one of Time Warner or Comcast, all 3 also secured carriage from Adelphia. Those 3 networks have a total of 24 million, 21.3 million, and 20.0 million subscribers respectively – and therefore Adelphia may very well constitute the tipping point for one or more of them. In other words, it appears to have been theoretically possible to reach 20 million homes with one of Comcast or Time Warner, as long as distribution from Adelphia is also secured.

- On June 22, 2005, Time Warner Cable announced it is adding TV One (owned substantially by Comcast) to its digital line-up in Houston, Charlotte

[12] See comments to MB Docket 04-207. *Oxygen Media Corporation* at 4: "Nielsen will rate a network with 20 to 25 million subscribers, but the ratings data are unstable and of little use until the network reaches 45 to 50 million subscribers." *GSN* at 3: "A network needs at least 25 million subscribers just to be included in the Nielsen ratings, and, at that level, any ratings data are likely to be subsumed within Nielsen's margin of error. While a few advertisers might be willing to take a chance on a new programming network, it is all but impossible to sell meaningful national advertising at that subscribership level."

[13] The analysis focused exclusively on national, non premium, linear cable programming networks. Networks which are predominantly offered as a premium service (either individually or as part of a specialized tier) were excluded, as were networks which derive all or part of their distribution through broadcast means. Sources and Limitations: The analysis is based on, and limited by, publicly available data. Subscriber counts are predominantly as of December 31, 2004 or more recent data when reliably available. Sources include Kagan Cable Program Investor February 28, 2005, as well as the NCTA website, corporate information, and industry trade articles.

and parts of Ohio.[14] As a result, there are now only two networks which have surpassed the 20 million subscriber threshold with carriage by only one of the two largest MSOs: NFL Network, and Inspiration Network. Among the 92 networks, these two networks rank as # 87 and # 89 in terms of subscriber count.

- No network appears to have reached 20 million homes, with one of Time Warner or Comcast, but without Adelphia. This suggests that if a network fails to secure carriage from one of Time Warner or Comcast, it must secure carriage from Adelphia in order to reach the critical milestone of 20 million subscribers.

- All of the networks with distribution to 25 million households or more were carried by both Comcast and Time Warner.

This empirical evidence demonstrates that carriage by two of the three MSOs who have posited themselves as Transaction Parties here -- Comcast, Time Warner and Adelphia -- is required for a programming network to reach the critical 20 million subscriber threshold. Carriage by both Comcast and Time Warner is required for a network to exceed 25 million subscribers.

These findings are real, and override a strict market share analysis. Kagan Research estimates that there are approximately 92.6 million multichannel households in the United States.[15] According to their joint filing for the Proposed Transactions (MB Docket 05-192), Comcast currently has an attributable interest in cable systems serving 26.1 million customers[16] and Time Warner Cable currently has an attributable interest in cable systems serving 13.1 million customers[17]. Therefore, an "open field" of 53.4 million subscribers currently exists (consisting mostly of *analog*, which an independent network typically cannot secure; but which Comcast secured for 100% of its national

[14] Broadcasting & Cable 6/22/2005 *Time Warner Systems Add TV One* by John Eggerton
[15] Kagan Media Money. April 26, 2005 at 7. Multichannel households is herein defined as any household which receives television programming from an MVPD.
[16] MB Docket 05-192. Application 05-18-2005 at Exhibit Z.
[17] MB Docket 05-192. Application 05-18-2005 at 9-10

and 100% of its regional networks, as shown below[18]) from which cable programming networks could theoretically reach these minimum distribution thresholds without carriage by Comcast or Time Warner. The fact is, however, that it has not happened.

Cable programming networks cannot surpass the 25 million subscriber threshold without carriage agreements from Comcast and Time Warner. This is related to the larger issue of network survival and profitability. As explained in the following section, advertising supported networks need to show a credible path to 50 million subscribers within 5 to 7 years in order to enter the marketplace, something which on a practical level is impossible without carriage by both Comcast and Time Warner, and which, if the Proposed Transactions are approved without conditions to protect free competition and fair access, will be mathematically impossible without carriage by at least one of these two MSOs.

B. IF THE PROPOSED TRANSACTIONS ARE APPROVED WITHOUT APPROPRIATE CONDITIONS, IT WILL BE MATHEMATICALLY IMPOSSIBLE FOR A NETWORK TO REACH THE CRUCIAL 50 MILLION SUBSCRIBER THRESHOLD WITHOUT CARRIAGE BY TIME WARNER OR COMCAST

Fifty million subscribers is a crucial milestone for advertising-supported networks. Networks in fewer than 50 million households are often excluded altogether from the purchasing considerations of national advertisers, and those advertisers that will apportion money to "below 50" networks do so on a reduced basis, and often at discounted rates, compared with those "above 50." This is supported by several networks in filings for MB Docket 04-207, excerpts of which are included in the table

[18] Comcast owns two HD networks which by definition cannot be analog. In addition, its 3 team-specific networks are digital

below and on an expanded basis in Exhibit 2 of this document. For example, Viacom, which owns at least 18 advertising supported cable networks in the U.S. (and over 100 networks globally), asserts that in their experience many advertisers use 50 million subscribers as a minimum threshold for inclusion of a network in their media buys.[19] Both GSN and Crown Media reported disproportionate gains in both the number of advertisers purchasing time and the associated revenue that accompanied their networks' crossing of the 50 million subscriber threshold.

Commenter in MB Docket 04-207	**Subscriber Viability Threshold cited**	**Comment** (Expanded comments are included as Exhibit 2)
Viacom (owner of at least 18 advertising supported cable networks in the U.S. and more than 100 networks worldwide)	50 million	"In addition, national advertisers often have minimum subscriber base requirements. In Viacom's experience, many national advertisers regard a minimum subscriber base of approximately 50 million households as necessary in order to reach a meaningful number of viewers."
GSN - The Network for Games	50 million	"Currently, 50 million subscribers is the approximate threshold for achieving meaningful national advertising revenues... Between 2002 and 2003, GSN increased its distribution from 43 million subscribers to over 50 million, an increase of approximately 16 percent. During that same period, however, GSN's general rate advertising revenues more than doubled...The number of national advertisers buying time on GSN also increased substantially -- nearly doubling during the period after GSN passed the 50 million subscriber mark."
Crown Media (Hallmark Channel and Hallmark Movie Channel)	50 - 60 million	"Subscribers to Hallmark Channel more than doubled from 2000 to 2003 with distribution topping 56 million in 2003. As a result of that growth, coupled with improved ratings, advertising revenues increased by more than four times, with the largest percentage increase in advertising revenues occurring when distribution approached 56 million and more subscribers."
A&E (owner of at least 5 advertising supported cable networks)	60 million to ensure original programming, 40 million otherwise	"A multichannel network must be able to show it reaches at least forty million subscribers before it can reasonably expect to attract significant advertising revenue. In order to attract sufficient advertising revenue to afford to pay for and provide a meaningful quantity of original programming, the network must reach approximately sixty million subscribers. "

[19] MB Docket 04-207. Comments by Viacom at 19

TV One (Owned in part by Comcast)	40 million or more	In practice, because of the number of networks competing in the market, advertising does not become a self-sustaining revenue stream—where a combination of advertising and affiliate fees exceeds operating, marketing and programming expenses--until a network reaches 40 million or more households.”
Oxygen	45 - 50 million	"Nielsen will rate a network with 20 to 25 million subscribers, but the ratings data are unstable and of little use until the network reaches 45 to 50 million subscribers. "

Investors who have backed new advertising supported programming networks understand the economics of subscriber thresholds. They are keenly aware of the 50 million subscriber tipping point with regard to advertising revenue, and its subsequent impact on profitability. An ad-supported programming network seeking to raise launch financing in the capital markets must therefore show a credible path to 50 million subscribers and beyond in order to raise the capital necessary for launch. In addition, the network needs to project surpassing that 50 million subscriber threshold within 5 to 7 years – a time frame generally accepted in the industry. In fact, for some time it was known in the industry that Comcast, in building financial models for internally funded networks, used 50 million subscribers within 5 years, as a benchmark for a successful cable channel initiative. Roger Ailes, CEO of Fox News, recently said that Fox’s planned business news channel would have to reach 40 million homes within three years for the channel to be a success[20] (and obviously grow from there).

Again, the Media Bureau’s *Survival Analysis of Cable Networks* correctly makes a distinction between the elements necessary to sustain an existing programming

[20] The Wall Street Journal. *Fox Quietly Gears Up Its Business Channel to Challenge CNBC*. Julia Angwin. June 20, 2005.

network and those required to enter the market with a new service.[21] Specifically, an existing programming service (which has already incurred sunk costs) need only earn rents in excess of operational expenses, while a market entrant, in order to generate the significant initial investment required to launch service, must show a credible path to profitability (in which sunk costs are recouped) or will not be able to enter the market and compete.[22] As revenue and profitability for cable networks are direct functions of distribution, the above statement can be rephrased in terms of these key milestones: while an existing network which is unable to forecast carriage to more than 50 million subscribers may manage to survive for some time by taking evasive measures, an entrant does not have the same luxury. New advertising supported networks that are unable to present to investors a credible path to 50 million subscribers within 5 to 7 years will not be able to generate investor interest and raise capital required to launch -- and will therefore not enter the market. This "survival vs. entry" distinction is crucial to understanding the true gate-keeping power wielded by Comcast and Time Warner, and must be recognized by the Commission as such.

Investors view carriage on Comcast and Time Warner as crucial indicators of a network's ability to reach 50 million subscribers, and with good reason. With an "open field" of only 53.4 million subscribers[23] a network which is denied carriage by both Comcast and Time Warner would have to be carried by virtually every other MVPD, and on each MVPD's most widely distributed tier (i.e. basic analog) in order

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[21] *A Survival Analysis of Cable Networks,* FCC Media Bureau Staff Research Paper No. 2004-1 at 5. "Because a cable network incurs sunk entry costs, the quasi-rents a cable network needs to stay in business are clearly far less than the expected profits that induce entry by a cable network."

[22] *Id.*

[23] 92.6 million multichannel households (as reported in Kagan Media Money April 26, 2005 at 7) minus 26.1 million attributable to Comcast (MB docket 05-192 Application 05-18-2005, Exhibit Z) minus 13.1 million attributable to TWC (MB docket 05-192 Application 05-18-2005,at 9-10)

to reach that critical threshold. Not only is this virtually impossible, but the industry knows that denial of access at Comcast and Time Warner has spillover effect on other distributors' decisions.

The 20 million subscriber threshold analysis presented above shows that as a practical matter, networks cannot reach even 25 million households without carriage by both Time Warner and Comcast. The 50 million subscriber analysis explains the phenomenon. Like institutional investors, the MVPD community understands the vital role that Time Warner and Comcast play in a network's survival. A network that is denied carriage by both Time Warner and Comcast cannot be economically viable in the long term, and as will be shown below, the high correlation between the carriage decisions of Comcast and Time Warner suggests that denial of carriage by *either* Time Warner or Comcast may very well constitute a death sentence for a new network. The majority of operators, therefore, are hesitant to dedicate the channel capacity, marketing and other resources necessary to distribute a product from a programmer whose survivability is uncertain. Thus, if Comcast and/or Time Warner decline to permit access to a new independent network, there is strong disincentive for other cable systems, and for competitors, to do so – as they know the survivability of such a network is in doubt.

The Proposed Transactions will exacerbate the problem. Instead of being *virtually* impossible for a network to reach the 50 million subscriber threshold without carriage by either Time Warner or Comcast, the Proposed Transactions would create a situation in which it will be *mathematically* impossible. Comcast will have an attributable interest in 26.8 million subscribers post transaction;[24] Time Warner will have an attributable interest in 16.6 million subscribers,[25] for a combined total of 43.4 million subscribers. This means that only 49.2 million MVPD households will be available to new networks which have been denied carriage by Comcast and Time Warner. Even carriage by every other MVPD on analog basic (an impossible achievement to be sure) would not enable a network to achieve a key threshold.

C. THE PROPOSED TRANSACTIONS WOULD INCREASE COMCAST'S AND TIME WARNER'S STRANGLEHOLD ON THE TOP 50 TELEVISION MARKETS

In addition to subscriber milestones, also vital to an advertising-supported network's survival and profitability is the geographic dispersion of those subscribers. Advertisers do not value all subscribers and markets equally. National advertisers place a significant premium on reaching the "top television markets." [26] In addition to the number of viewers, advertisers consider the top markets to be important (indeed even disproportionately to their subscriber numbers) for a number of reasons including product trend-setting, higher per capita disposable income, and the presence of major press. Networks that do not substantially penetrate the top markets are at a severe disadvantage in the competition for advertising dollars relative to similar networks which do. Consequently, entrants which cannot project eventual carriage to a

[24] MB docket 05-192 Application 05-18-2005, Exhibit Z
[25] 13.1 million attributable to TWC (MB docket 05-192 Application 05-18-2005,at 9-10) plus gain of 3.5 million subscribers as reported in corporate release, "Time Warner Cable and Comcast to Acquire Assets of Adelphia Communications" April 21, 2005.
[26] "Top Market" refers to Nielsen Research's Designated Market Areas ("DMAs"). DMAs are non-overlapping geographic regions which are defined by Nielsen and then ranked by the number of television households contained therein. There are 210 DMAs in the U.S. The top 5 DMAs are New York, Los Angeles, Chicago, Philadelphia and Boston.

substantial majority of top markets will not be able to attract investment necessary to enter the marketplace.

Carriage in the top markets, or lack thereof, can also hinder a network's survival by materially impacting its ability to be reliably rated by Nielsen. Because Nielsen uses U.S. Census data to place its National People Meters (which collect ratings data), the majority of meters are located in the top DMAs.[27] Networks that are not available to a majority of Nielsen homes have a smaller population of meters from which to derive the statistically significant data upon which media buyers rely.

For these reasons and more, it is crucial for networks to be carried in the top markets. Who controls access to these top markets? We examined the presence of Comcast, Time Warner, and Adelphia in the United States' Top 50 DMAs, both pre- and post- transaction.[28] We focused on controlled percentage of subscribers in each DMA by Comcast or Time Warner. The findings show the following:

1. Increased Concentration: **As a result of the Adelphia Transaction, 20 of the top 40 DMAs and 23 of the top 50 DMAs will see an increase in the percentage of subscribers controlled by a single MSO.** This does not include the several DMAs which will see change in system ownership but not an increased consolidation, such as Dallas (DMA #7). The 23 are:

[27] Nielsen's National People Meters are dispersed according to Census data. DMA ranking is done by the number of television households. There is a positive but not perfect correlation between the percentage of total US television households in a DMA and the percentage of national people meters located therein.
[28] Sources of data used in DMA research:

- DMA ranking, Television households per DMA: Nielsen Media Research, Inc. 2004
- DMA subscriber counts pre and post transaction: MB Docket 05-192, Filing by Comcast and Time Warner June 21, 2005 at 82 - 89
- Percentage of Multichannel homes per DMA: Nielsen Media Research, Inc. February 2005

Rank	DMA	Controlled % pre-transaction	Controlled % post-transaction	Gain
2	Los Angeles	8.4%	43.7%	35.2%
4	Philadelphia	70.9%	72.5%	1.6%
5	Boston (Manchester)	79.6%	87.6%	8.0%
6	San Francisco-Oak-San Jose	75.3%	75.9%	0.6%
8	Washington, DC (Hagrstwn)	36.2%	48.2%	11.9%
9	Atlanta	36.8%	40.9%	4.1%
14	Minneapolis-St. Paul	27.8%	43.3%	15.5%
16	Cleveland-Akron (Canton)	21.7%	65.3%	43.7%
17	Miami-Ft. Lauderdale	50.0%	56.5%	6.5%
20	Orlando-Daytona Bch-Melbrn	6.1%	9.9%	3.8%
22	Pittsburgh	35.3%	56.5%	21.2%
23	Baltimore	67.4%	70.6%	3.3%
24	Portland, OR	47.0%	48.8%	1.8%
26	San Diego	24.5%	32.4%	7.9%
27	Hartford & New Haven	46.0%	57.3%	11.3%
28	Charlotte	44.5%	49.2%	4.8%
29	Raleigh-Durham (Fayetvlle)	56.0%	57.4%	1.4%
33	Cincinnati	49.3%	54.9%	5.6%
34	Columbus, OH	42.5%	49.5%	7.0%
39	West Palm Beach-Ft. Pierce	8.7%	53.3%	44.6%
42	Harrisburg-Lncstr-Leb-York	53.9%	59.8%	5.9%
46	Buffalo	13.1%	74.8%	61.8%
48	Greensboro-H.Point-W.Salem	60.3%	62.3%	2.1%

2. Expansive Reach. Post-transaction, **there will be only two (2) DMAs in the top 40** (and only four (4) in the top 50) **that will not have a presence by Comcast or Time Warner Cable**. The two are:

   #15 Phoenix (Prescott), AZ

   #21 St. Louis, MO

3. Controlled Percentage: **Comcast or Time Warner will control a majority of multichannel subscribers in at least 23 of the top 50 DMAs (and perhaps as many as 29 of the top 50** – see a, b, and c below**)**.

Rank	Designated Market Area (DMA)	controlled % post transactions	MSO
3	**Chicago**	62%	Comcast
4	**Philadelphia**	72%	Comcast
5	**Boston (Manchester)**	88%	Comcast
6	**San Francisco-Oak-San Jose**	76%	Comcast
10	**Detroit**	59%	Comcast
11	**Houston**	53%	Time Warner
12	**Seattle-Tacoma**	71%	Comcast
16	**Cleveland-Akron (Canton)**	65%	Time Warner
17	**Miami-Ft. Lauderdale**	57%	Comcast
18	**Denver**	57%	Comcast
22	**Pittsburgh**	56%	Comcast
23	**Baltimore**	71%	Comcast
27	**Hartford & New Haven**	57%	Comcast
29	**Raleigh-Durham (Fayetvlle)**	57%	Time Warner
32	**Milwaukee**	62%	Time Warner
33	**Cincinnati**	55%	Time Warner
34	**Columbus, OH**	50%	Time Warner
37	**San Antonio**	62%	Time Warner
38	**Grand Rapids-Kalmzoo-B.Crk**	62%	Comcast
39	**West Palm Beach-Ft. Pierce**	53%	Comcast
42	**Harrisburg-Lncstr-Leb-York**	60%	Comcast
46	**Buffalo**	75%	Time Warner
48	**Greensboro-H.Point-W.Salem**	62%	Time Warner

a. Kansas City (the 31st largest DMA) is served by both Time Warner and Comcast and by a joint venture of Comcast and Time Warner (Texas and Kansas City Cable Partners). **Combined, the controlled percentage is well above 50%.**

b. There were three (3) DMAs in which other industry sources reported higher subscriber counts than did Comcast and Time Warner in their application (MB Docket 05-192).

Rank	DMA	Controlled %	Notes:
19	Sacramnto-Stktn-Modesto	49%	Broadcasting & Cable (Feb 2005) count 550,000 pre-transaction Comcast subs which would likey make post transaction controlled % above 50%
24	Portland, OR	49%	Kagan's pre-transaction count for Comcast subs in DMA is 488,486 (97,000 greater than Comcast's figure), which would make post transaction controlled % above 50%.
28	Charlotte	49%	Kagan puts the combined TWC and Adelphia subs at 476,169 (50,000 greater than TWC's post transaction figure), which would make post transaction controlled % above 50%.

c. There were two (2) additional DMAs for which news reports put the controlled percentage by a single carrier above 50%.

Rank	DMA	Controlled %	Notes:
2	Los Angeles	47%	Multichannel News Article (4/25/05) reported that TWC's controlled percentage might be as high as 98%
8	Washington, DC (Hagrstwn	48%	USA Today (4/20/2005) put Comcast's pre-transaction controlled percentage at 57% and said that the post-transaction controlled percentage could be 70%.

d. Including Kansas City and all five of the DMAs listed in items b. and c. above, **29 out of the top 50 DMAs (about 60%) will have a majority of subscribers controlled by either Time Warner Cable and/or Comcast post-transaction**.

e. Time Warner's estimated market share in the entire NY DMA is said to be 21%. However, the NY DMA includes all 5 boroughs and surrounding areas such as the Long Island, New Jersey and Westchester suburbs.

From an advertising and revenue perspective however, Manhattan (much more so than surrounding areas such as Hoboken or White Plains) is a crown jewel, because of among other things the presence of major press, product trends, disposable income, and importantly, the concentration of major media and advertising industry headquarters.

Within Manhattan, there are an estimated 1 million television households, substantially all of which are multichannel households. We believe that Time Warner and RCN are the only cable providers in Manhattan. We could not find Manhattan-only numbers for TWC, but RCN serves approximately 70,000 subscribers[29] (about 7% of the market), and Nielsen estimates that throughout the DMA, approximately 81% of TVHH are

[29] RCN is reported to have 85,000 subscribers in its New York system. (New York Daily News 9/23, 2004). We estimate that approximately 80% are in Manhattan.

wired cable, though we believe that this percentage may indeed be higher for Manhattan.[30] Therefore, we estimate that within Manhattan, Time Warner serves approximately 91% of all wired cable subscribers.[31]

4. **As a result of the Proposed Transactions, Time Warner will increase its controlled subscriber base within the top 50 DMAs by 43%, a significant increase**. Time Warner currently serves 6,561,743 households in the top 50 DMAs. Post-transaction, it projects this number to be 9,397,537 a gain of at least 2.8 million households. (Time Warner has announced that their total subscriber gain will be 3.5 million).

5. **As a result of the Proposed Transactions, Comcast will increase its controlled subscriber base in the top 50 DMAs by at least 4%.** Comcast currently serves 18,499,878 households in the top 50 DMAs. Post-transaction, Comcast expects this number to be at least 19,227,088 a gain of over 700,000 households in the top 50 markets.

6. **As a result of the Proposed Transactions, Comcast and Time Warner will together serve at least 46% of all multichannel subscribers in the top 50 DMAs.** Nielsen estimates that there are 62.5 million multichannel subscribers in the top 50 DMAs. Comcast and Time Warner will jointly control 28.6 million of them.

Such a dominance with respect to so many of the top markets means that without Comcast and Time Warner, as their scope will be further augmented by the Adelphia acquisition, an independent network would have great difficulty in attracting advertisers (the primary source of revenue for an ad-supported network), who are unwilling to advertise on a network that cannot deliver viewers in so many top markets.

This regional dominance in top markets is something which is not replicated by DBS providers who may have substantial subscriber totals, but as a result of their national dispersion do not share Comcast's and Time Warner's apparent pocket monopolies and gate-keeping ability with respect to top markets. A recent Wall Street Journal article

[30] Nielsen Media Research February 2005 as reported by the Television Advertising Bureau (www.tvb.org)

[31] Calculation: (1 minus (70,000/(1 million TVHH* 81%)))

about Fox News' long awaited business news channel highlighted this reality.[32] The article states,

> "In addition to launching the new channel on cable, News Corp. also plans to make it available on its own majority-owned DirecTV satellite service, which has 14 million subscribers. But people familiar with the situation say Mr.[Rupert] Murdoch didn't want to go ahead until he had an agreement with Time Warner Cable, because it controls the crucial Manhattan market."

In fairness, this is a business news channel and therefore Manhattan (with its concentration of traders and analysts) is a particularly important market. However, the Wall Street Journal article also identifies the concentration of advertising and media executives as factors establishing Manhattan's importance, and as previously stated in this document, the high concentration of Nielsen meters and Manhattan's importance to national advertisers make the market a must-have for most advertising supported networks. If, despite all of its leverage in the marketplace and ownership of DirecTV's 14 million subscribers, vertically integrated media giant News Corp. is determining whether to launch a new programming service based on carriage with Time Warner Cable in a specific DMA, it is not unreasonable that an independent would be forced to do the same. The inability of an independent network to secure carriage on both Comcast and Time Warner, which cover such a high number of top markets, would render the independent network incapable of attracting sufficient advertising revenue to be viable and hence, sufficient investment to enter the marketplace.

As shown in sections II.A., II.B., and II.C. above, Comcast and Time Warner's acquisition of Adelphia systems will strengthen each MSO's ability to individually or jointly "kill" an independent network. By denying access to critical

[32] The Wall Street Journal. *Fox Quietly Gears Up Its Business Channel to Challenge CNBC.* Julia Angwin. June 20, 2005.

thresholds of subscribers and key advertising markets, Comcast and Time Warner can each deny independent networks the path to profitability required for initial investment from venture capitalists and carriage by other MVPDs. *CableWORLD* reported on the venture capital community's views regarding this very phenomenon.[33] The article is attached to this Petition as Exhibit 3. Here are some relevant quotes:

> "**VCs are holding back. Their No. 1 hurdle: Any cable-related venture that seeks funding must have a deal in place with Comcast or Time Warner Cable. If one or both multi-system operators isn't on board, kiss the capital goodbye**."
>
> "**If you're selling into the cable space and you're not selling this in with one of those guys, you don't have a business**," says Alan Beasley, a partner in Redpoint Ventures, a Silicon Valley venture capital firm with stakes in BigBand Networks (bandwidth expansion), Entropic Communications (chips) and Meta TV (ITV software). "We've gotten to know **Comcast and Time Warner** very well, **along with Cox, and it would be very unlikely for us to enter into a cable venture without their support**."
>
> **Sure, there are other big MSOs and plenty of small or midsize operators** VCs could approach with a promising enterprise. "**The problem is, so many of the other MSOs wait until [they see] what Comcast or Time Warner does.** So that creates a problem," says Gary Lauder, who runs Lauder Partners, a California-based VC firm with a long track record in cable investment.
>
> **Venture capitalists also haven't seen much evidence of MSOs embracing new, independent ventures, whether tech or content, Lauder says. "There was a time when cable operators were willing to buy products from small companies**," he says. "There was more willingness to take risks with small companies. That's not the attitude these days."
>
> "**If you want to be attractive to VCs, you have to go back to the old days of cable and get the operators to make it a better entry environment for entrepreneurs**."

In a *Broadcasting & Cable* interview, John Malone, CEO of Liberty Media, summarized the market in the following way: "Basically, the consolidation of the business has got to the point where **I don't believe that an independent programmer has any chance whatsoever of doing anything unless he's heavily invested in and supported by one of the major distributors**…**there's no way on earth that you can**

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[33] *How Come Vultures Don't Flock to Cable.* CableWORLD. April 5, 2005. Simon Applebaum.

be successful in the U.S. distributing a channel that Brian Roberts [the CEO of Comcast] doesn't carry, particularly if he has one that competes with it."[34] Excerpts from the interview with Mr. Malone are included as Exhibit 4.

The transactions as proposed will permanently establish Comcast and Time Warner as absolute national gatekeepers of television programming. They alone will have the power to allow or deny independent programmers the opportunity to enter and compete in the marketplace, a scenario which would stifle competition, restrict consumer choice, increase consumer pricing, and adversely affect our democracy and the diversity of information and ideas in the marketplace – all of which the Commission must seek to prevent as against the public interest.

III. COMCAST AND TIME WARNER FAVOR AFFILIATED PROGRAMMING OVER INDEPENDENT PROGRAMMING, AND WILL BENEFIT FROM REDUCED COMPETITION IN THE MARKETPLACE.

We stated above that, as a result of the Proposed Transactions, Comcast and Time Warner will have the *ability* to restrict competition and impede the flow of programming to the consumer. This section addresses their strong *economic and competitive incentive* to do so. We note a track record which demonstrates that affiliated networks are routinely favored over those which are independently owned. These interests and behaviors, when combined with the increased market power afforded by the Proposed Transactions, create for independent networks a "perfect storm" in which the sole companies endowed with the power to bestow viability on an independent network have a growing stake in preventing the additional competition from reaching the marketplace.

[34] Broadcasting & Cable. April 4, 2005. *From Darth Vader to Yoda*. Mark Robichaux

Vertically integrated media companies such as Time Warner and Comcast have strong disincentive to embrace new networks. New independent networks are competitors**. They compete directly with operator-owned networks on several levels: competition for viewers, competition for advertising dollars (including in local markets), and competition for channel capacity**. And, cable operators know that a fully distributed network is frequently worth in the billions of dollars in asset value – and such value in the hands of independent persons or groups is foregone value to an operator. When it comes to other conglomerates like Viacom and News Corp, retransmission consent and must-have cable channels such as Nickelodeon and Fox News level the bargaining power between network and distributor. In the case of independently owned networks, no such leveling mechanism exists, and there are no safeguards to ensure that independent programmers will not be foreclosed from the marketplace. With rare exceptions,[35] a new independent network has little leverage and exists at the mercy of the distributor.

Time Warner and Comcast have incentive to prevent content competition from entering the marketplace. Time Warner Cable's parent company owns and operates at least 10 advertising supported networks in the United States.[36] While Time Warner does not break out financial data for each network individually, overall its television networks (which includes its ad-supported networks, premium networks, international networks and WB broadcast network) contributed 40% of Time Warner's operating

[35] The exceptions are networks which arrive at the carriage negotiations with a pre-existing fan base. These are typically regional sports networks such as YES network, which was able to leverage the NY Yankees' established and loyal audience.
[36] MB docket 05-192 Application 05-18-2005, Exhibit W

income.[37] By comparison, Time Warner's cable division contributed only 28.6% of operating income.[38]

Comcast Corporation currently has an interest in twenty networks (including *Sprout* which is scheduled to launch on a linear basis later this year): eight national networks (E! Entertainment Television, Style Network, The Golf Channel, Outdoor Life Network, G4, AZN Television, PBS KIDS Sprout, TV One), seven regional networks (Comcast SportsNets: Philadelphia, Chicago, Mid-Atlantic, and West; as well as Comcast Sports Southeast, Comcast Detroit Local, and CN8), and three team-specific networks (BravesVision, FalconsVision and Dallas Cowboys Channel). Recently, Comcast announced key hires for *Comcast-Sony Networks*, a venture created to launch multiple new networks using Sony's library content.[39] In addition, Comcast is a significant shareholder in Liberty Media[40] and Liberty Media International (which own 15 advertising supported networks), and valued its Liberty holdings at $1.4 billion in its 2004 10-K. (As Liberty spins off its Discovery Holding Company into a separate entity in late July 2005, Comcast will become a part owner of that company. At that time its financial link to the Discovery family of networks will become more direct.) Comcast's attempt to acquire Disney, and its string of recent channel launches, including TV One, G4, the upcoming Sprout channel, NY Mets regional channel, and Sony-based networks, demonstrate a clear strategy of augmenting its cable channel assets.

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[37] Time Warner Inc. 2004 Annual Report

[38] Id.

[39] Multichannel News. *Robina to Head Comcast Sony Networks.* June 30, 2005 by Linda Moss. Article suggested at least 3 networks under consideration including a soap opera net, a movie net and an action net.

[40] Liberty Media owns in whole or part 15 advertising supported networks (13 Discovery Networks, GSN and Court TV), as well as QVC and the Starz/Encore group of premium channels.

One way to protect the value of these assets, would be for Time Warner and Comcast to deny linear carriage to to potential independent programming competitors, in favor of affiliated program networks who evidently either have the leverage to secure carriage, or have the ability to grant carriage to the MSO's networks in return.

The America Channel reviewed the adoption of new affiliated and independent networks by Comcast and Time Warner based on publicly available information during the period of January 1, 2003 to May 15, 2005 (a nearly 2 ½-year period). [41] Only networks which sought initial launch of their programming service during the period were included in this study. [42] Results and data from this study are attached as Exhibit 5.

The results are stark and confirm severe dysfunctions in the cable marketplace. Ultimately these lead to higher consumer pricing, lower consumer choice, a stifling of

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[41] This study is limited by the availability of public announcements regarding channel launches. Sources of data: All launch dates are according to company filings with the National Cable and Telecommunications Association, as well as publicly available sources. Ownership information, subscriber data and carriage information are all from publicly available sources, including the National Telecommunications Association, industry news sources such as Multichannel News and Kagan Research, as well as corporate announcements, filings and marketing materials.

[42] Here are some key definitions of terms used in this study

- Affiliated Network: any Network with financial ties to Comcast, Time Warner, Viacom, News Corp, NBC Universal, Disney, or their subsidiaries.
- Independent Network/ Unaffiliated Network: any Network without financial ties to Comcast, Time Warner, Viacom, News Corp, NBC Universal, Disney, or their subsidiaries.
- Networks Seeking National Carriage: Any Network that is currently or would be expected to be carried on a broad basis. There are two categories of National Carriage used in this report:
  - Standard Carriage: Network is carried as a linear, non-premium service as part of a broadly distributed package.
  - Premium Carriage: Subscribers must pay an additional fee to receive the linear network, either individually or as part of a tier of channels (i.e. a sports package).
  - Networks Seeking Regional Carriage: Networks which are intended for an audience which is concentrated in one or more specific geographic regions. For purposes of this research, we considered any non-English language Network, to be a network seeking regional carriage. In addition, networks that secure regional carriage are often offered as premium services.
  - Imported Network – Network seeking regional carriage which is substantially the same as an existing foreign network.

competition and entrepreneurialism, and an adverse effect on our democracy and the diversity of ideas in the marketplace. Some highlights of the study are as follows:

<u>First, with respect to the universe of 114 independent networks seeking National carriage that the study analyzed --</u>

- One (1) out of 114 independent channels seeking national carriage, was launched on a national, non-premium (Standard) basis by Comcast. That “independent” network is the NFL Network, owned by the National Football League.
    - Comcast has issued a “hunting license” to Black Belt TV, an independent channel seeking national carriage. However as of the date of the research study, no carriage deals had been announced. It should be noted that affiliated networks are not typically given hunting licenses -- rather they are given carriage commitments.

- One (1) out of 114 independent channels seeking national carriage, was launched on a national, non-premium (Standard) basis by Time Warner. That independent network is The Sportsman Channel.

- The total percentage of independent networks seeking national carriage launched by Comcast on a Standard basis is less than one percent (0.88%).

- Six (6) out of 114 independent channels seeking national carriage, received carriage by Comcast as a Premium service, a take-rate of approximately five percent (5.26%). Premium carriage requires the subscriber to pay an additional fee to receive the network.

- The total percentage of independent networks launched by Comcast on any national basis (Premium or Standard), is six percent (6%).

- The total percentage of independent networks seeking national carriage launched by Time Warner Cable on a Standard basis is less than one percent (0.88%).

- Four (4) out of 114 independent channels seeking national carriage, received carriage by Time Warner Cable as a Premium service, a take-rate of less than four percent (3.5%).

- The total percentage of independent networks seeking national carriage launched by Time Warner Cable on any national basis (Premium or Standard), is less than five percent (4.4%).

<u>In contrast, with respect to the 19 affiliated networks seeking National carriage that the study analyzed --</u>

- Comcast granted national carriage (Standard or Premium) to 10 out of the 19 affiliated networks seeking national carriage. This is a 53% take-rate. (Compared to 6% for unaffiliated networks.)

- Comcast has since granted carriage to Viacom's LOGO network.[43] Therefore, Comcast has provided national carriage to 11 out of 19 affiliated networks seeking national carriage, a 58% take rate.

- Time Warner provided national carriage (Standard or Premium) to 8 out of the 19 affiliated networks seeking national carriage, a 42% take-rate. (Compared to 4.4% for unaffiliated networks.)
  - Time Warner has since announced that it will begin to carry Comcast's TV One network. The network will first be added to TWC's digital lineup in Houston, Charlotte and parts of Ohio.[44] Therefore, Time Warner has provided national carriage to 9 out of the 19 affiliated networks seeking national carriage, a 47% take rate.

- Eight (8) out of 19 affiliated networks seeking national carriage, received carriage by Comcast as a Premium service, a 42% take-rate. (Compared to 5.26% for unaffiliated networks).

- Five (5) out of 19 affiliated networks seeking national carriage, received carriage by Time Warner as a Premium service, a 26% take-rate. (Compared to 3.5% for unaffiliated networks).

<u>With respect to the 35 networks seeking Regional carriage that the study analyzed --</u>

- Our research revealed 35 networks that sought regional carriage since January 2003. Eighteen (18) of those networks are imported and are substantially the same as existing foreign television channels.

  - The breakdown of the networks seeking regional carriage is as follows:

	Total	Independent	Affiliated
Total Networks seeking REGIONAL carriage	35	26	9
"Imported" Networks seeking regional carriage	18	13	5
"New" networks seeking regional carriage	17	13	4

- Comcast granted regional carriage to seven out of nine (78%) affiliated networks seeking regional carriage. One hundred percent (100%) of these seven are affiliated with Comcast.
- Comcast granted regional carriage to eleven out of twenty-six (42%) unaffiliated networks seeking regional carriage. Seven of those eleven, or nearly two-thirds, are imported networks.

- Time Warner granted regional carriage to two (2) out of 26 (7.7%) unaffiliated networks seeking regional carriage.

- In total, 25 networks (both affiliated and unaffiliated) received regional carriage. Sixteen of these (nearly two-thirds) are imported networks.

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[43] Multichannel News. *Comcast on Board with Logo.* by Linda Moss. July 1, 2005.
[44] Broadcasting & Cable 6/22/2005 *Time Warner Systems Add TV One* by John Eggerton

Across all MVPDs, affiliated networks achieved subscriber numbers considerably higher than independent networks:

- The median subscriber count for the affiliated networks which received Standard carriage is eleven times (11x) greater than that of unaffiliated networks. The median subscriber count for the affiliated networks which received Standard carriage is 11 million; for the unaffiliated nets receiving Standard carriage it is 1 million.

- The mean subscriber count for the affiliated networks which received Standard carriage is more than double (2x greater) that of unaffiliated networks. The mean subscriber count for the affiliated networks which received Standard carriage is 12.67 million; for the unaffiliated nets receiving Standard carriage it is 5.7 million.

Not surprisingly, affiliated networks that are similar in theme to independent networks fared much better than their independent comparables in terms of carriage negotiations with Comcast and Time Warner. For example:

- TV One (substantially owned by Comcast), targeted to the African-American community, launched in January 2004 and has obtained carriage agreements with both Comcast and Time Warner. It surpassed 21 million homes at break-neck speed - within 17 months (according to a June 2005 corporate press release). (In fact the Cabletelevision Advertising Bureau recently reported that TV One's subscriber count may now be as high as 29.5 million homes.) However at least five independent networks targeting African-Americans did not secure linear carriage: Africast Television Network, Black Education Network, Black Television News Channel, Black Women's TV and The Real Hip Hop Network.

- LOGO (owned by Viacom), targeted toward the gay and lesbian community, launched on June 30, 2005 to an estimated 13 million subscribers and is carried as a non-premium channel by Time Warner Cable and Comcast (as well as Adelphia, DirecTV, Charter, Cablevision and RCN). Q Television is an independent network with a similar focus. Q launched in September 2004 and has since only received carriage as a premium network by RCN. It is *available* to 400,000 homes as a Premium service (and therefore has a subscriber count far below that level).

- SiTV and Voy both target the young, English-speaking Latin community. SiTV is owned in substantial part by Time Warner, while Voy is independent. SiTV launched in February 2004 and has received carriage deals with both Comcast and Time Warner. It is available in 10 million homes, primarily as a non-premium channel. As of the date of the research study, Voy had not received any carriage commitments.

Examples of Comcast's disparate treatment of affiliated and independent networks include the placement of **almost all of Comcast's own networks on *analog***.[45]

[45] A table listing Comcast's 20 networks and details of their carriage is included in Section VII below

We reviewed Comcast's own carriage decisions with regard to Comcast-owned networks -- Among the findings:

- **100%** of Comcast's 20 networks are carried by Comcast, as *linear* networks – that is, as part of the channel line-up, not as Video on Demand.
  - Not a single one of these Comcast-owned networks is offered as a VOD-only network.
  - This is in contrast with Comcast's stated position on VOD. Matt Strauss, Comcast's SVP of VOD, stated in an interview in the June 20, 2005 issue of *CableWORLD*, that, "the future of television is not going to be adding channel 343 to the digital lineup, but it's going to be to migrate more and more programming over to on demand, which really is a superior way to watch programming."
  - Strauss also suggested that VOD was the correct platform on which to launch new services: "A lot of our enthusiasm about on demand, and about programming for on demand, isn't so much that there's bandwidth constraints on launching more linear channels, it's because we actually know and believe that on demand's a better viewing experience and platform, especially for new forms of content."
  - We believe that Comcast's practice of launching its own networks on linear capacity – and in nearly all cases on analog -- while relegating independent networks to the vastly inferior VOD platform, is discriminatory.

- **100%** of Comcast's national networks are carried by Comcast on *analog* (excluding Sprout, which has not yet launched) in at least one market.
  - CableWORLD recently reported that in anticipation of the transfer of its Los Angeles systems to Time Warner, Comcast moved its corporate-owned networks from digital to expanded basic (analog), including Style, TV One, Outdoor Life, AZN and G4. [46]

- **100%** of Comcast's seven regional networks are carried by Comcast on *analog*.

This preference for affiliated networks over independent networks has been well documented by independent research. An analysis by the U.S. GAO showed that cable operators in general were 62% more likely to carry affiliated programming over

[46] CableWorld *Are Independents' Days Over?* June 20,2005 Shirley Brady

independent programming.[47] Furthermore, of the ten variables tested in the GAO study, <u>ownership by a cable operator had by far the largest marginal effect on predicting carriage of a network.</u>[48] The GAO study concluded, "These results can also indicate the foreclosure of competition in the upstream cable network market, as independent cable networks are less likely to be carried than are affiliated networks."[49]

It should be noted as well that the GAO study uses a narrow definition of the term "affiliated," requiring majority ownership by the cable operator. Consumers Union and Free Press submitted this study to the FCC in MB Docket 04-227, and stated in its cover letter, "These numbers would rise if partial ownership by an MSO or a broadcaster were also factored into the equation. If major non-broadcast media conglomerates such as Liberty Media [owners of over a dozen cable networks including Discovery Channel, Starz, and the Learning Channel, as well as substantial stakeholders in News Corporation] were not counted as "independent" in these equations, doubtless the percentages would rise even further."

When Comcast's and Time Warner's preference for affiliated networks and discriminatory behavior toward independents are considered in light of their market power illustrated in Section II, as that market power is augmented by the Proposed Transactions, a dismal picture for independent networks emerges. It is the combination of these elements (ability to restrict competition, powerful incentive to restrict competition, and observable patterns of discrimination) within the Transaction Parties, which allows us to fully understand the reluctance of the venture capital community to

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[47] *Ownership Affiliation And The Programming Decisions Of Cable Operators.* Michael E. Clements and Amy D. Abramowitz U.S. Government Accountability Office p16.
[48] Id. at 14. Majority ownership by a cable operator added 27.78 percentage points to a network's likelihood of gaining carriage.
[49] Id. at 16

invest in new independent networks, and the conclusion of John Malone that the only way for an independent network to survive in the current marketplace is to be "heavily invested in and supported by one of the major distributors," (both cited in Section II above). The Transaction Parties have the ability to "kill" new independents, they have an economic interest in seeing reduced competition in the marketplace, and they have favored affiliated networks (including their own) over independent networks. Should the Proposed Transactions be approved without any conditions protecting the interests of independent networks, we are likely to see the permanent end of new, independent channels for the American people – and only new affiliated channels will launch.

IV. THERE IS A HIGH CORRELATION BETWEEN THE CARRIAGE DECISIONS OF COMCAST AND TIME WARNER WITH RESPECT TO SUCCESSFUL NETWORKS

The analysis of cable networks which have achieved distribution to at least 20 million households, presented in Section II.A. above, indicates that there is a high correlation between the carriage decisions of Comcast and Time Warner. Our study of 92 cable networks which achieved the first viability milestone of 20 million subscribers, showed almost complete uniformity. 90 of the 92 networks are carried by both Time Warner and Comcast. Further, 100% of networks with more than 25 million subscribers, are carried by both Time Warner and Comcast. With a 53.4 million subscriber "open field," this need not be the case.

In Section II above, we stated that other MVPDs understand that carriage by both Time Warner and Comcast is required for a network's long term viability and hence are reluctant to carry a network which is not also carried by the Transaction

Parties. The near-uniformity of carriage decisions with respect to viable networks (and the logical conclusion that without Comcast and Time Warner a network is not viable), provides further support.

The data supports the following hypotheses: (1) if one of these two MSOs agrees to broadly carry a network, the other one is likely to carry it as well; and (2) conversely, if one of the two denies carriage to a network, it is likely that the other will also deny carriage to that network and the network will never reach 20 million households. (As an aside, even if an independent network secures access from Comcast or Time Warner, the operator typically negotiates "delete" rights – or the ability of the cable operator to terminate a carriage agreement at any time without any reason. Based on information and belief, this is a practice reserved for independent networks -- and the top conglomerates do not reserve delete rights against one another's affiliated networks.)

The near uniformity of carriage decisions with respect to these 92 networks which reached 20 million homes, further supports the assumption that each of Time Warner and Comcast can act individually to prevent an independent network from reaching viability, thereby limiting competition in the marketplace.

Events of recent weeks confirm the continuation of this practice: Time Warner announced carriage of TV One[50] (a network substantially owned and already carried by Comcast), and Comcast announced carriage of LOGO[51] (a network already carried by Time Warner and owned by Viacom).

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[50] Broadcasting & Cable 6/22/2005 *Time Warner Systems Add TV One* by John Eggerton
[51] Multichannel News. *Comcast on Board with Logo.* by Linda Moss. July 1, 2005.

The loss of a large MVPD and the assimilation of more than 5 million subscribers into Comcast and Time Warner will likely result in further coordinated effect.

V. THE PROPOSED TRANSACTIONS WILL DISSERVE THE PUBLIC INTEREST BY FURTHER INCREASING CONSUMER CABLE PRICES WITHOUT YIELDING ADDITIONAL VALUE TO CONSUMERS

A. COMPETITION FROM INDEPENDENT PROGRAMMERS IS AN IMPORTANT CHECK AGAINST RATE INCREASES BY AFFILIATED PROGRAMMERS, WHICH FAVORABLY AFFECTS CONSUMER PRICING.

The Transaction Parties actively restrict the entrance of new, independent firms into the marketplace. This restriction of competition increases consumer prices.

The GAO report on Competition notes a 40% increase in cable rates in the 5 years preceding the study, compared with a 12% increase in the general rate of inflation over the same period.[52] The dramatic increase of cable rates is a common complaint, and the most common response from the Transaction Parties and the cable community in general is to cite higher license fees demanded by networks. Indeed the GAO confirms that the increase in programming costs has also outpaced the general increase in inflation and is a major contributor to overall cable price increases.

One reason for this, of course, is that certain cable programming networks are "must-haves" and their differentiation puts upward pressure on the license fees that operators pay. However, removal of unreasonable barriers to entry for cheaper and more efficient independent networks -- and free competition from these networks for carriage, tier placement, channel assignments and more -- would put downward pressure on the

[52] Government Accountability Office, "Issues Related to Competition and Subscriber Rates in the Cable Television Industry" October 2003. at 20

license fees which MVPDs are required to pay. The entry of new networks into the programming market and the competition which such entry brings, is likely to slow programming increases. In a free market environment, independent networks who have the same opportunities of access, can cause high-priced affiliated networks to become more efficient, reduce their rates or otherwise improve their value proposition – all of which would inure to the benefit of the consumer. The continued restrictions on entry have had and will continue to have the opposite effect: continued increases in programming costs and hence, upward pressure on consumer pricing.

One of the reasons we believe that downward pressure on pricing has not occurred, is because new owners of programming have been precluded from entering the market. It is not the entry of one more Viacom or Time Warner network that will create this downward pressure on consumer pricing. The public has an interest in fair access for entrepreneurial ventures – independent programmers – which will expand competition in the marketplace.

B. ECONOMIC ANALYSIS SUGGESTS THAT DESPITE THE EFFICIENCIES GENERATED THEREBY, THE PROPOSED TRANSACTIONS MAY RESULT IN HIGHER CABLE RATES FOR CUSTOMERS AND REDUCE COMPETITION FROM OVERBUILDERS

In their filing, the Transaction Parties assert that the Proposed Transactions will help them to: market services more efficiently to customers, reduce the expenses associated with system maintenance and customer service, compete more effectively with LECs and other MVPDs, and more. The transactions as proposed will no doubt help Time Warner and Comcast achieve these and other corporate goals, but there is no evidence that any such cost savings generated by the MSOs will in fact translate into lower cable rates for Time Warner, Comcast or Adelphia customers.

In fact, there is ample evidence to the contrary. Consumers Union and Consumers Federation of America, in their paper "*The Continuing Abuse Of Market Power By The Cable Industry*" highlight the adverse effects on consumer prices -- including that regional concentration has resulted in higher, not lower prices to consumers.[53]

> In the GAO analysis, if a cable system is part of a large national operator, its prices are 5.4 percent higher than if it is not. The GAO called this horizontal concentration. FCC econometric models have been finding this to be the case for several years, with even larger effects of being part of a multiple system operator (MSO). When the FCC models add in a specific variable for regional clustering, a dramatic trend in the industry, they find that clustering has an added effect of further raising price. **<u>Being served by one of the mega-multiple system operators, who have been expanding their grip on the industry through mergers and clustering, drives prices higher by more than 5 percent and perhaps as much as 8 percent. Thus, there could be as much as an additional $1.5 billion in consumer savings that could be wrung out of the cable market if it were deconcentrated.</u>** (emphasis added)
>
> The important implication is that the theory used to allow large cable operators to become larger is not supported by the empirical evidence. That theory claimed that the combination of larger, clustered systems would create efficiency-based cost savings that would be passed on to the public because one big monopolist is no worse that two, contiguous smaller ones. Since large incumbents never overbuild one-another and compete, this theory claimed there was little to be lost. The econometric evidence suggests that there is considerable harm. **<u>It turns out that large operators and clustered systems have more muscle to thwart competition and impose price increases. They can distribute programming terrestrially and extract exclusivity deals from independent programmers, thereby denying programming to competing distribution media (overbuilders and satellite). They have more leverage over local governments to obstruct the entry of overbuilders.</u>**

As stated by Consumers Union and Consumers Federation, the proposed transactions would increase the ability of the Transaction Parties to obstruct the entry of overbuilder competition into key local markets. This ability will result directly in higher consumer prices. According to a GAO study, local wire-based MVPD competition in a

[53] *The Continuing Abuse Of Market Power By The Cable Industry*. Consumers Union and Consumers Federation of America. February 2004. at 7

market led to rates which were “significantly lower – by about 15% -- than cable rates in similar markets without wire-based competition.”[54] The GAO report also cited interviews which the organization had conducted with cable operators, one of whom told them that it “stopped raising rates 3 years ago in one market where a wire-based competitor had entered.”[55]

The GAO study found that DBS competition could not, on its own, produce this downward pressure on consumer pricing. DBS competition, the GAO study found, has brought about improved services by the cable operators, but has only “induced cable operators to lower cable rates slightly.”[56] Only head to head competition at the <u>local level generated</u> a strong response from cable operators.

The Consumers Union and Consumers Federation of America report, cited above, correctly states that as regional concentration increases (a direct result of the Proposed Transactions as shown in Section II), incumbent MVPDs will raise prices and be better equipped to obstruct the entry of wire-based MVPD competition. Local, wire-based competition has been shown to generate competitive action by incumbent MVPDs in a way that DBS competition does not. As the Proposed Transactions decrease the likelihood that local competition will emerge, consumer pricing will rise and consumer choice with regard to programming, will fall.

VI. THE PROPOSED TRANSACTIONS WILL IMPEDE DIVERSITY IN THE MARKETPLACE

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[54] Government Accountability Office, “Issues Related to Competition and Subscriber Rates in the Cable Television Industry” October 2003. at 9
[55] Id at 10
[56] Id. at 9

Ensuring the diversity of ideas in the marketplace has, since the framing of our government, been a central pillar of democracy. In recent times, Congress has recognized an increased need to protect diversity in the television programming market and has mandated that the FCC, through a variety of means including vertical and horizontal ownership caps, take strict measures to ensure that there is an unimpeded flow of diverse ideas and information to the American public. Indeed, Section 613(f)(2)(G) of the Communications Act requires the Commission to ensure that any limits imposed do not "impair the development of diverse and high quality video programming." And the importance of diversity as a consideration in rulemaking was upheld by the *Time Warner I* court, which found that Congress reasonably concluded that dramatic concentration in the cable industry "threatened the diversity of information available to the public and could form a barrier to the entry of new cable programmers."[57] The *Time Warner II* court concurred, stating that although diversity should not be the sole justification for ownership limits, it is a factor entitled to consideration.[58]

Ensuring the diversity of ideas in the marketplace must be a material consideration of the Commission in its review. The Transaction Parties would like the Commission to believe that the existence of a number of independent networks (even if minimally distributed or with their viability threatened) proves diversity. But the facts demonstrate an increasingly narrow ownership structure, and a market which is becoming increasingly off-limits to independently-owned ideas. The editorial control of a network ensures a diverse viewpoint. A quick look at the list of 92 networks which we

[57] *Time Warner Entertainment Co. v United States*, 211 F.3d at 1320 (D.C. Cir. 2000)
[58] *Time Warner Entertainment Co. v. FCC*, 240 F.3d at 1135

observed to be distributed to more than 20 million households reveals that roughly 76% are owned in whole or part by one of six companies Disney, Viacom, NBC Universal, News Corp, Time Warner and Comcast.

Considering that a network must be endorsed by Time Warner or Comcast (and for those above 25 million subscribers, both) in order to generate the 20 million homes necessary to be included in this list, it can be safely assumed that this list is substantially a reflection of the preferences of the Transaction Parties.

As guardians of the pipelines into America's living rooms the Transaction Parties have a sacred trust with the public. The Commission must ensure that this trust is preserved, and the Proposed Transactions should not be approved without conditions to address the public harms.

VII. THE TRANSACTION PARTIES RESTRICT COMPETITION FROM INDEPENDENTS BY LAUNCHING THEM ON VOD PLATFORMS WHILE RESERVING LINEAR CAPACITY FOR AFFILIATED NETWORKS

Comcast is not only the largest MVPD, it is also the most vocal proponent of Video on Demand distribution, particularly for new, independent networks. VOD carriage is vastly inferior to linear carriage. Comcast attempts to convince independent networks that VOD is a preferable platform; however Comcast reserves valuable linear capacity for its own networks and those affiliated with other large media conglomerates. The result is to restrict competition in the market by independent networks.

In a recent interview published in CableWORLD, Matt Strauss, Comcast's VP of Video On Demand Programming Investments, said that, "the future of television is not going to be adding channel 343 to the digital lineup, but it's going to be to migrate more and more programming over to on demand, which really is a superior way to watch programming."[59] He further claimed that VOD was the correct place to launch new services: "A lot of our enthusiasm about on demand, and about programming for on demand," Strauss went on to say, "isn't so much that there's bandwidth constraints on launching more linear channels, it's because we actually know and believe that on demand's a better viewing experience and platform, especially for new forms of content."

However as shown in the table below, 100% of Comcast's 20 networks are linear, and Comcast has granted almost all of them analog carriage on its own systems.

Comcast owned networks

National Networks	Ownership %	Linear Carriage	Analog Carriage (in at least one market)
E!	61%	yes	yes
Style	61%	yes	yes
G4	84%	yes	yes
Golf	100%	yes	yes
Outdoor Life Network	100%	yes	yes
AZN	100%	yes	yes
TV One	33%	yes	yes
Sprout (not yet launched)	not disclosed	yes	n/a
Regional Networks			
CN8	100%	yes	yes
Comcast SportsNet Philadelphia	78%	yes	yes
Comcast SportsNet Chicago	30%	yes	yes
Comcast SportsNet Mid Atlantic	100%	yes	yes
Comcast SportsNet West	100%	yes	yes
Comcast/Charter Sports Southeast	72%	yes	yes
Comcast Local Detroit	100%	yes	yes
Team-Specific Networks			
BravesVision	not disclosed	yes	no
FalconsVision	not disclosed	yes	no
Dallas Cowboys Channel	not disclosed	yes	no
High Definition Networks			
inHD	54%	yes	n/a
inHD2	54%	yes	n/a

[59] CableWorld June 20, 2005

Comcast continues to develop and launch linear networks. TV One was launched in January 2004 as a *linear* channel, with *analog* carriage on Comcast in several markets--no small feat for a new channel. Comcast's new Sprout channel will launch on *linear* capacity. Other new Comcast channel initiatives, like Comcast SportsNet West, Comcast SportsNet Chicago, Comcast's New York Mets channel and Comcast's Dallas Cowboys channel, exist or are planned as *linear* channels. The other media giants all continue to develop and launch linear networks as well, viewing VOD as a secondary outlet for existing programming.[60]

There may also be indications that independent networks in VOD-only arrangements serve as a form of market research for subsequent competitive products of cable operators if the independent VOD product succeeds. We will discuss this in greater detail during the ex parte process through ex parte filings.

The lack of a proven VOD-only revenue model, the continued launch of affiliated networks on linear capacity, and other factors are reasons why the VOD model is not generally supported by the institutional investment community.

VIII. THE PROPOSED CONDITIONS ARE NARROWLY TAILORED TO ADDRESS THE SPECIFIC HARMS ATTRIBUTABLE TO THE PROPOSED TRANSACTIONS

TAC proposes that the Commission condition approval of the Proposed Transactions upon two conditions.

[60] In May 2005, News Corp launched Fox Reality as a *linear* network. In June 2005, Viacom launched LOGO as a *linear* channel, A&E Networks[60] is launching Military History and Crime and Investigation Network as *linear* channels, Fox News is developing a Business News Channel as a *linear* network, Viacom is launching MTV Desi and other new networks as *linear* channels.

A. MANDATORY ARBITRATION

One of the difficulties in doing business as an independent network is that the market power of the largest MSOs, particularly Comcast and Time Warner, position them to unreasonably refuse to deal with independent networks. This power of refusal will be enhanced by approval of the Proposed Transactions. We recognize, of course, that the MSOs are proprietary ventures that enjoy a range of discretion in deciding which networks to carry. Thus, we offer a condition aimed only at exposing and dealing with unreasonable refusals to deal with networks that have demonstrated their viability by obtaining carriage agreements with other providers (whether cable or other platform).

When such independent networks encounter an unreasonable refusal to deal on the part of Comcast or Time Warner, we propose that they should have the option of seeking the intervention of an arbitrator, under the rules and procedures of the American Arbitration Association, to assess the facts concerning the refusal to deal and prescribe an appropriate resolution. The arbitrator's decision would be appealable to the Commission.

The Commission's precedent in prescribing an arbitration remedy in its order approving the NewsCorp/DirecTV transaction provides a model for such a condition, and a rationale for it, too. In that transaction, as here, the post-transaction positions of the Transaction Parties presents an enhanced possibility of abuse of market power that can be narrowly and appropriately addressed by instituting a mandatory arbitration route to dispute resolution. There, as here, resort to complaint mechanisms established by the Commission's rules is inadequate to provide timely relief to affected parties. In particular, the time required for a lengthy carriage access litigation under the Commission's rules can be simply too long to be relevant to an independent network.

B. GUARANTEED LEASED ACCESS CAPACITY ON REASONABLE TERMS

Leased access, if available to independent networks on reasonable terms, may be a helpful remedy. We look forward to developing these ideas in dialogue with Commission staff during the course of this proceeding.

IX. CONCLUSION

For all of the foregoing reasons, The America Channel respectfully petitions the Commission to deny the Proposed Transactions as presented to the Commission, and to require the Transaction Parties to conform to the Proposed Conditions outlined herein.

Respectfully submitted,

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July 21, 2005

EXHIBITS TO THE PETITION

Exhibit 1: Networks distributed to 20 million households.

The following list ranks 92 national, non-premium cable programming networks by their distribution. Networks which are owned in part or whole by an MVPD or one of the four major broadcasters (Disney, News Corp, NBC Universal, Viacom) are marked as Affiliated. Networks carried by Comcast and Time Warner are thus marked.

The analysis focused exclusively on national, non premium, linear cable programming networks. Networks which are predominantly offered as a premium service (either individually or as part of a specialized tier) were excluded, as were networks which derive all or part of their distribution through broadcast means including PAX, Univision, TBS, WGN and others.

Rank	Network	Ownership	Affiliated? 1=yes	Subs (millions)	Carried by Comcast	Carried by TWC
1	Discovery	Liberty Media, Cox, Advance Newhouse	1	89.4	1	1
2	ESPN	Disney	1	89.1	1	1
3	CNN	Time Warner	1	88.8	1	1
4	TNT	Time Warner	1	88.8	1	1
5	USA Network	NBC Universal	1	88.7	1	1
6	Nickelodeon	Viacom	1	88.6	1	1
7	A&E Network	Disney, NBC Universal, Hearst	1	88.4	1	1
8	C-SPAN	National Cable Satellite Corp	*	88.4	1	1
9	Lifetime Television	Disney, Hearst	1	88.3	1	1
10	Spike TV	Viacom	1	88.2	1	1
11	ESPN2	Disney	1	88.1	1	1
12	The Weather Channel	Landmark Communications		88.1	1	1
13	TLC	Liberty Media, Cox, Advance Newhouse	1	88.0	1	1
14	ABC Family Channel	Disney	1	87.7	1	1
15	Headline News	Time Warner	1	87.6	1	1
16	MTV (Music Television)	Viacom	1	87.6	1	1
17	QVC	Liberty Media	1	87.5	1	1
18	Home & Garden Television	Scripps		87.4	1	1
19	The History Channel	Disney, NBC Universal, Hearst	1	87.4	1	1
20	Cartoon Network	Time Warner	1	87.1	1	1
21	CNBC	NBC Universal	1	87.1	1	1
22	VH1	Viacom	1	86.9	1	1
23	Fox News	News Corp	1	86.6	1	1
24	AMC	Cablevision	1	86.4	1	1
25	Animal Planet	Liberty Media, Cox, Advance Newhouse	1	86.4	1	1

26	**Comedy Central**	Viacom	1	**86.4**	1	1
27	**Food**	Scripps		**85.9**	1	1
28	**E!**	Comcast	1	**85.6**	1	1
29	**HSN**	Interactive Corp.		**85.5**	1	1
30	**Disney**	Disney	1	**85.1**	1	1
31	**FX**	News Corp	1	**85.1**	1	1
32	**TV Land**	Viacom	1	**85.0**	1	1
33	**Sci Fi**	NBC Universal	1	**84.3**	1	1
34	**MSNBC**	NBC Universal	1	**83.2**	1	1
35	**Court TV**	Time Warner & Liberty Media	1	**82.5**	1	1
36	**BET**	Viacom	1	**79.5**	1	1
37	**Bravo**	NBC Universal	1	**77.8**	1	1
38	**Travel**	Liberty Media, Cox, Advance Newhouse	1	**77.7**	1	1
39	**TV Guide**	News Corp	1	**76.7**	1	1
40	**CMT**	Viacom	1	**76.6**	1	1
41	**Fox Sports**	News Corp	1	**75.5**	1	1
42	**C-Span II**	National Cable Satellite Corporation	*	**74.7**	1	1
43	**TCM**	Time Warner	1	**70.1**	1	1
44	**Hallmark**	Crown Media		**67.2**	1	1
45	**Golf**	Comcast	1	**66.9**	1	1
46	**Speed**	News Corp	1	**63.4**	1	1
47	**Outdoor Life**	Comcast	1	**61.6**	1	1
48	**Shop NBC**	NBC Universal	1	**59.4**	1	1
49	**GSN**	Liberty Media	1	**56.6**	1	1
50	**Discovery Health**	Liberty Media, Cox, Advance Newhouse	1	**55.6**	1	1
51	**ESPN Classic**	Disney	1	**55.5**	1	1
52	**WE**	Cablevision	1	**55.2**	1	1
53	**MTV2**	Viacom	1	**54.6**	1	1
54	**Oxygen**	Oxygen		**54.0**	1	1
55	**EWTN**	Independent		**53.0**	1	1
56	**National Geographic**	News Corp	1	**51.9**	1	1
57	**G4**	Comcast	1	**49.8**	1	1
58	**Toon Disney**	Disney	1	**47.9**	1	1
59	**LMN (Lifetime Movie Network)**	Disney, Hearst	1	**43.7**	1	1
60	**ESPNews**	Disney	1	**43.2**	1	1
61	**Noggin**	Viacom	1	**42.5**	1	1
62	**BBC America**	Liberty Media, Cox, Advance Newhouse	1	**41.4**	1	1
63	**SoapNet**	Disney	1	**40.3**	1	1
64	**Galavision**	Univision		**40.0**	1	1
65	**Style!**	Comcast	1	**40.0**	1	1
66	**Discovery Kids**	Liberty Media, Cox, Advance Newhouse	1	**37.6**	1	1
67	**Science**	Liberty Media, Cox, Advance Newhouse	1	**37.3**	1	1
68	**Fuse**	Cablevision	1	**36.8**	1	1
69	**Great American Country**	Scripps		**36.8**	1	1

70	**Military Channel (formerly Discovery Wings)**	Liberty Media, Cox, Advance Newhouse	1	**36.0**	1	1
71	**Discovery Home**	Liberty Media, Cox, Advance Newhouse	1	**35.7**	1	1
72	**Discovery Times**	Liberty Media, Cox, Advance Newhouse	1	**35.7**	1	1
73	**FitTV**	Liberty Media, Cox, Advance Newhouse	1	**35.4**	1	1
74	**VH1 Classic**	Viacom	1	**35.4**	1	1
75	**The Word**	Independent		**35.0**	1	1
76	**Bloomberg TV**	Bloomberg		**34.1**	1	1
77	**Independent Film**	Cablevision	1	**33.6**	1	1
78	**NickToons**	Viacom	1	**32.5**	1	1
79	**Nick Too (Nick2)**	Viacom	1	**32.3**	1	1
80	**Biography**	Disney, NBC Universal, Hearst	1	**31.4**	1	1
81	**History International**	Disney, NBC Universal, Hearst	1	**31.1**	1	1
82	**DIY**	Scripps		**31.0**	1	1
83	**FMC**	News Corp	1	**28.4**	1	1
84	**Nick GAS**	Viacom	1	**25.8**	1	1
85	**Fine Living**	Scripps		**25.6**	1	1
86	**Outdoor Channel**	Independent		**24.8**	1	1
87	**NFL Network**	NFL		**24.0**	1	**0**
88	**CNBC World**	NBC Universal	1	**22.0**	1	1
89	**INSP (Inspiration Network)**	Independent		**21.3**	**0**	1
90	**Fox Soccer**	News Corp	1	**20.0**	1	1
91	**Sundance Channel**	Viacom, NBC Universal, and others	1	**20.0**	1	1
92	**TV One****	Comcast	1	**20.0**	1	**0****

*The National Cable Satellite Corporation (C-SPAN) derives 97 percent of its revenues from affiliate fees (*i.e.*, subscriber fees from MVPDs). The remaining three percent is provided by various investments.

**TV One, at the time of the research was not carried by Time Warner, it since has been added to TWC systems.

<u>Sources and Limitations</u>: The analysis is based on, and limited by, publicly available data. Subscriber counts are predominantly as of December 31, 2004 or more recent data when reliably available. Sources include Kagan Cable Program Investor February 28, 2005, as well as the NCTA website, corporate information, and industry trade articles.

Exhibit 2: Comments filed in MB Docket No. 04-207 regarding network viability thresholds

<u>Comments of Viacom</u>

Pg 19:

"**In addition, national advertisers often have minimum subscriber base requirements. In Viacom's experience, many national advertisers regard a minimum subscriber base of approximately 50 million households as necessary in order to reach a meaningful number of viewers**."

<u>Comments of Crown Media Holdings:</u>

Pg 6:

"Although the Commission has suggested that programming services may survive with a subscriber base of 15 to 20 million subscribers, that is inconsistent with Crown Media's experience in today's marketplace. With nearly 26 million full- and part-time subscribers, the performance of the Hallmark Channel's predecessor was stagnant and its financial prospects were dim. Although Nielsen may rate a programming service with 20 million subscribers, few advertisers will buy advertising and the cost per thousand rates generally are not competitive. Advertisers are interested in such networks only if they are emerging, i.e. their distribution is steadily and rapidly increasing.

"**The Hallmark Channel's experience suggests that the more realistic plateau for meaningful advertising revenues is now approaching 50 to 60 million subscribers. Subscribers to Hallmark Channel more than doubled from 2000 to 2003 with distribution topping 56 million in 2003. As a result of that growth, coupled with improved ratings, advertising revenues increased by more than four times, with the largest percentage increase in advertising revenues occurring when distribution approached 56 million and more subscribers.** Crown Media is projecting that an approximate increase in subscribers of 20% from 2003 to 2004, coupled with a further improvement in ratings, will yield more than a 70% increase in advertising revenues. **Thus, these data support the conclusion that substantially greater advertising revenues are available to programming services with 50 to 60 million subscribers -- a level of subscribership associated with a viable broad-based entertainment programming network in today's competitive marketplace."**

<u>Comments of GSN – The Network for Games</u>

Pgs 3-4.

"According to recent Nielsen Universe Estimates of programming network distribution, the 50th-ranked program service today is National Geographic Channel, which has more than 50 million subscribers. Thus, the notion that an advertiser-supported cable programming network can survive in today's world with only 15 to 20 million subscribers is long out of date. **A stand-alone network (i.e. one that is not affiliated**

with a broadcast network or a major cable multiple system operator) has virtually no chance to gain significant advertising revenue with only 15 to 20 million subscribers. A network needs at least 25 million subscribers just to be included in the Nielsen ratings, and, at that level, any ratings data are likely to be subsumed within Nielsen's margin of error. While a few advertisers might be willing to take a chance on a new programming network, it is all but impossible to sell meaningful national advertising at that subscribership level.

"**Currently, 50 million subscribers is the approximate threshold for achieving meaningful national advertising revenues, a level of distribution which GSN's experience demonstrably confirms. Between 2002 and 2003, GSN increased its distribution from 43 million subscribers to over 50 million, an increase of approximately 16 percent. During that same period, however, GSN's general rate advertising revenues more than doubled,** and they are on track to double again this year. **The number of national advertisers buying time on GSN also increased substantially -- nearly doubling during the period after GSN passed the 50 million subscriber mark.** GSN continues to plow these revenues back into the acquisition and development of new programming to improve its service and gain additional distribution, as well as community outreach programs like GSN's "Get Schooled" game tour, through which hundreds of thousands of dollars have been contributed to the college savings funds of students in 15 to 20 different cities. **Even at the 50 million subscriber level, a network must be able to demonstrate that its distribution is growing, and advertisers will quickly abandon a network that is losing distribution. Many advertisers will not even meet with a network that has less than 50 million subscribers."**

<u>Comments of A&E Television Networks</u>

Pg 13-14.

The importance of bundling in amassing sufficient potential viewers to launch or sustain a multichannel network cannot be overstated. In AETN's experience, distribution fees alone are insufficient as a revenue stream, but rather must be complemented by advertising dollars, for a multichannel network to pay for high-quality programming, the lifeblood of its existence. **A multichannel network must be able to show it reaches at least forty million subscribers before it can reasonably expect to attract significant advertising revenue. In order to attract sufficient advertising revenue to afford to pay for and provide a meaningful quantity of original programming, the network must reach approximately sixty million subscribers. Thus, a network has to reach tens of millions of subscribers before it attains a level where it can pay for unique programming, which helps increase the viewership, which in turn leads to advertising dollars that allow the network to bring something new to the market.**

<u>Comments by Oxygen Media Corporation</u>

Pg 4:

"**Nielsen will rate a network with 20 to 25 million subscribers, but the ratings data are unstable and of little use until the network reaches 45 to 50 million subscribers.**

Oxygen did not become “rated” until April 2003. For the first several years of our existence, Oxygen was not included in the Nielsen Daily ratings. During that period, we provided prospective advertisers with monthly or weekly ratings data, making it more difficult to sell advertising. Although it is very expensive for an independent programming network to subscribe to the Nielsen Daily rating service, Oxygen now does so because, among other things, media buyers rely heavily on these data.”

Comments of Bloomberg Television
Pg 5:
“[G]iven the relatively limited level of distribution, BTV can command only modest license fees from its distributors and advertising fees from its advertisers. **BTV’s expectation is that once the service reaches 40 million subscribers it will be able to generate higher affiliate and advertising fees to sustain the service over the long-term.”**

Comments of TV One
Declaration of Larry Gerbrandt, media expert and former Sr. Analyst at Kagan Research
Pg 6::
“…[A]dvertising revenue only becomes viable (for reasons discussed in more detail below) at somewhere above the 20 million subscriber level. **In practice, because of the number of networks competing in the market, advertising does not become a self-sustaining revenue stream—where a combination of advertising and affiliate fees exceeds operating, marketing and programming expenses--until a network reaches 40 million or more households**.”

Pg 7: “…At the same time, advertisers base the majority of their buying decisions on ratings. Nielsen Media Research is the sole source of ratings domestically. It compiles its data through a combination of meters (around 5,000 hooked to a demographically balanced sample nationwide) and diaries periodically filled out by viewers. As a statistical sample designed to represent the viewing habits of some 110 million U.S. television households, its accuracy or margin of error increases for networks that only reach a smaller percentage of all households. While it is possible for a network to get ratings indications with as few as 10 million-15 million subscribers, this means that it will be based (assuming a perfect demographic distribution) on as few as 500 meters, or a 10% subset of the total Nielsen meter sample group. **The more distribution a network receives, the greater the reliability and accuracy of the Nielsen audience measurement system. Conversely, emerging networks are often launched in a rolling manner market-by-market across the country, and it may take several years before they gain carriage in the major TV markets in which most of the Nielsen meters are concentrated**.”

Exhibit 3: CableWORLD article, April 4, 2005: How Come the Vultures Don't Flock to Cable?

How Come the Vultures Don't Flock to Cable?

Venture capitalists can't find the key to unlock sound cable investments--stalling innovation and blunting cable's edge.

By Simon Applebaum April 4, 2005

A few hundred venture capitalists, largely from San Francisco and nearby Silicon Valley, will visit the Moscone Center this week during the National Show. In one sense, they are the most important people attending the show.

Their stock in trade: getting businesses, and sometimes entire industries, off the ground with their investments. They--along with the billions they marshal--can launch technology or programming that can sharpen cable's competitive edge against DBS, telcos and other electronic media rivals.

Will they invest in cable-related ventures at the same volume they invest in other business sectors? It's an open question, and the odds right now don't look favorable where the cable industry is concerned. The general attitude among venture capital executives reached for this article is that investment in new cable-related ventures will be the exception, compared to information technology or IT products and health care. That's in spite of a number of recent cable tech and content deals.

San Francisco and Silicon Valley are two of the major U.S. centers of venture capital activity; New York, Los Angeles, Philadelphia, Chicago and Dallas are among the other hot spots where VCs operate. Together, dozens of venture capital institutions invested more than $20 billion in 2,067 new companies last year, an 8% increase in dollars from 2003, according to VentureOne, the Dow Jones subsidiary that tracks VC action.

More importantly, the amount of money VCs raised in 2004 for future use was about double that of 2003--$17 billion vs. $8.7 billion. That's the most money VCs have raised in one year since 2000, when Internet stocks tanked. Shortly thereafter, many venture capital firms suspended their quest for big money, disillusioned with the dot-com and Web tech companies they backed.

With renewed positive attitudes for the Internet, IT, health care and nanotechnology, VCs appear willing to fund new entities at a solid clip, if not at the frantic pace of the late 1990s. Along with the money raised during 2003-04, venture capital firms stockpiled about $70-75 billion during the pre-2000 Web boom, according to VentureOne. Result: a giant money pool that can subsidize technology and content companies, which in turn can help cable operators beat their competition, especially with telcos entering the fray.

A Solid Platform for Investment

Cable-related ventures should be a natural target for funding, not only because of cable's huge consumer reach, but because of advanced services such as video on demand, high-definition TV, voice over IP telephony and interactive TV.

"Cable is a powerful network and a good platform for innovation," says Dick Green, CEO of CableLabs. "With so much capacity into the home, and initiatives with digital, VOD and high-speed data, it's a solid play." Green's organization and Comcast's Interactive Capital unit will co-present a VC forum at the National Show April 5.

There has been some movement of capital toward cable, including several cable technology vendors that have picked up millions from VCs since 2000. They include: Arroyo Video Solutions, Cedar Point Communications, RGB Networks, BigBand Networks and Broadbus. These investments have sparked the development of bandwidth expansion infrastructure, VOD servers and VoIP equipment.

Digital cable networks, VOD and ITV content were nowhere on the VC radar screen three years ago. Now there's at least a blip, with TV One, Sí TV, College Sports TV, The Tennis Channel, Gospel Music Channel, Gotuit Media and MyDTV among the ventures with VC participation.

Soros Capital Fund, billionaire George Soros' VC enterprise, invested $25 million in College Sports TV. Two other venture capital firms sank millions into the channel before its launch two years ago: Constellation Ventures, operated by investment banker Bear Stearns, and Athlon Ventures, owned by a consortium of sports stars including Minnesota Timberwolves basketball star Kevin Garnett and Olympic gold medalist Michael Johnson.

Constellation also is backing Gospel Music Channel, along with Alpine Equity Partners.

The High Sign From Comcast and Time Warner

Still, VCs are holding back. Their No. 1 hurdle: Any cable-related venture that seeks funding must have a deal in place with Comcast or Time Warner Cable. If one or both multi-system operators isn't on board, kiss the capital goodbye.

"If you're selling into the cable space and you're not selling this in with one of those guys, you don't have a business," says Alan Beasley, a partner in Redpoint Ventures, a Silicon Valley venture capital firm with stakes in BigBand Networks (bandwidth expansion), Entropic Communications (chips) and Meta TV (ITV software). "We've gotten to know Comcast and Time Warner very well, along with Cox, and it would be very unlikely for us to enter into a cable venture without their support."

Sure, there are other big MSOs and plenty of small or midsize operators VCs could approach with a promising enterprise. "The problem is, so many of the other MSOs wait until [they see] what Comcast or Time Warner does. So that creates a problem," says Gary Lauder, who runs Lauder Partners, a California-based VC firm with a long track record in cable investment.

Venture capitalists also haven't seen much evidence of MSOs embracing new, independent ventures, whether tech or content, Lauder says. "There was a time when cable operators were willing to buy products from small companies," he says. "There was more willingness to take risks with small companies. That's not the attitude these days."

"Operators want to control anything that stands between themselves and their subscribers, rather than foster talent from other companies and let them help the operators' business," Beasley adds. "That has to change."

Lauder's VC investment portfolio includes ITV application/software players ICTV, Integra5 and Navic Networks; BigBand; voice recognition developer Agile TV; and media processor chip vendor Equator. **Like Redpoint, Lauder's firm chooses not to invest in digital cable networks.**

"When you look at the background of these venture firms and what they are good at, typically the background is engineering or technology. That's why they look for a sustainable play in either area that offers a competitive advantage," he says.

VCs also still feel burned by the investments they made in Web content companies, which makes them even more resistant to investing in cable content companies. The cable industry should invest in its own infrastructure and content, they say, not venture capital firms.

Redpoint's Beasley wants cable to tackle the interactive threat from DBS--specifically DirecTV--head on. News Corp., which owns DirecTV, has an advantage over cable because it also owns ITV software/applications vendor NDS. DirecTV will implement its interactive services later this year. "There's more than enough operators out there to partner up with VCs and support an indie software vendor to develop all the ITV content or applications they need to win out," Beasley says.

A Long Haul to Paydirt

Apax Partners is exploring cable opportunities, and so far has made an investment in ITV games provider TVHead. Another cable-related investment is under review. Jacqueline Reses, who directs U.S. media strategy for Apax, says content or tech start-ups can interest venture capitalists, despite their reservations about cable. "If you have a good idea, you can sell it," she says. "You have to be creative, have the right management background and build the right affiliate partnerships with MSOs. It's a hard business to build because of the capital required and barriers to entry, but it can be done."

For Sí TV CEO Jeff Valdez, getting enough venture capital to launch his network in February 2004 was a six-year quest. Valdez won't say how much capital he needed, but he ended up with a handful of providers in his corner: Syncom, Rho Ventures, Columbia Capital and DND. "We were rejected a lot before we scored," Valdez says. "It took a lot of research and educating people on what the investment could provide."

Part of that education includes explaining to VCs how they can exit the scene down the road, once a venture is profitable, says Glen Friedman, a former MSO executive who runs Ideas & Solutions, which develops marketing strategies for media companies. VCs encourage their investment targets to reach the breakeven point within six or seven years and profitability within nine or 10 years.

One way to bypass venture capitalists' hesitation is to highlight cable's innovations, such as the eventual migration to all-digital/Internet protocol infrastructure, says Comcast Interactive Capital managing partner Sam Schwartz. Comcast's VC division has invested more than $250 million since 1999 in technology ventures, including Arroyo, Cedar Point and home networking prospect Intellon.

It took six years for Sí TV CEO Jeff Valdez to raise the venture capital he needed to launch his network.

"Cable is moving to a place where it looks like the rest of the Internet," Schwartz says. "As things become IP-based, we can utilize routers and other technologies associated with the Internet world--leveraging them on a large scale at cheaper cost. If we can show the ways we can take full advantage of those capabilities, including content strategies, that's a strong argument for VCs."

Start-ups also should showcase the independently owned content and vendor companies that have succeeded with the support of VC firms. "You need more poster children to show that the investments can be attractive," Friedman says. "Then operators [will make] more success stories out of new ventures."

Cable start-ups should increase their exposure at VC industry meetings. VentureOne, which holds its annual VC conference next week in San Francisco, isn't covering cable, although Cedar Point will demonstrate VoIP at one session.

Comcast's Schwartz has approached the National Venture Capital Association about making a presentation at its New York conference, to be held May 4-5; it would be the first time the NVCA highlights cable opportunities. (NVCA president Mark Heesen did not respond to requests for an interview.)

Green, Schwartz and Valdez say that cable trade groups should stage VC events at their annual conferences. Green wants to feature content as well as technology at VC presentations that would be held at The Cable Center in Denver. "As TV becomes much more interactive, ITV content and advertising will be extremely important," he says. "That [enables] us to invite a wider range of VCs and new content companies." Green says that cable has not been successful at piercing the consciousness of VCs. "The bottom line is that we can do better at this. Because of competitive pressures on the industry, innovation is very important and funding innovation is critical."

"For the companies that get funded, there are plenty of others that didn't," says Friedman. "If you want to be attractive to VCs, you have to go back to the old days of cable and get the operators to make it a better entry environment for entrepreneurs. Make the payout for them more attractive."

No Cable Category for VCs

There's no easy way to calculate how much VC firms invest in cable content and technology start-ups.

For instance, VentureOne, the Dow Jones unit that follows VC activity, doesn't break out cable deals into a separate category.

Instead, technology initiatives fall into several categories, depending on the nature of the tech. "Some run under multimedia networking software, others run as electronics," says VentureOne research manager Matt Garlick. As for digital cable network and other content investments, they are grouped with broadcasting network deals.

In 2004, VCs invested $175 million in broadcasting plays, up from $115 million in 2003, according to VentureOne. Although the dollar amount grew 52%, the number of deals did not budge. Nine deals were completed each year.

Multimedia software VC investments reached $287 million last year, a jump from $211 million in 2003.

--S.A.

Attract Venture Capital in Six E-Z Steps

Trying to get VC funding for your cable content or technology start-up?

Here's how:

- Have a deal already in place with Comcast, Time Warner Cable or both when you call on VCs.
- Crash events at which VC executives meet, such as those sponsored by the Churchill Club in San Francisco, or by Young Startup and iBreakfast in New York.
- Impress VCs with a management team whose individual members have great track records.
- See as many VCs as possible.
- Stress how your programming or technology gives cable operators an edge against their competitors.
- Make sure no one steals your idea.

--S.A.

Exhibit 4: Excerpts from Broadcasting & Cable article, 04/04/2005

From Darth Vader To Yoda, John Malone on his career, the fate of his company, and the future of the TV industry

By Mark Robichaux -- Broadcasting & Cable, 4/4/2005

(excerpts)

You said the industry was turning into a handful of big operators.

I'm not sure it's an industry anymore. I think it may be just a few big guys, a couple of big guys—and they either work together or they don't—and a bunch of little guys the big guys don't pay much attention to anymore.

Basically, the consolidation of the business has got to the point where I don't believe that an independent programmer has any chance whatsoever of doing anything unless he's heavily invested in and supported by one of the major distributors.

But you were in this very catbird seat just eight years ago. This now sounds like a different tune.

TCI was never big enough that we could stop anything. We were big enough that we could help something that was a good idea to get going, but we could never kill anybody. But there's no way on earth that you can be successful in the U.S. distributing a channel that Brian Roberts doesn't carry, particularly if he has one that competes with it. And probably pretty soon the same can be said of Rupert Murdoch.

I think the consolidation has gone that far. I'm not saying that's good or bad. I'm just saying that's true.

Do you think the government will step in at some point?

I don't know. I mean the government stepped in and gave retransmission consent to the broadcasters, which pretty well wiped out any chance that independent programmers had anyway, right? I mean, if you look at what happened since retransmission consent was signed, virtually all programming, all the networks that are successful have evolved toward ownership by a broadcast network. So you've seen the consolidation both on the broadcast network side and on the distribution side to the point where small independents really don't have a chance.

Can I believe my ears? Darth Vader taking up for the little guy now?

I'm just expressing the view that that's the stage consolidation has reached.

I get guys in here with good programming ideas asking me how to get distribution for them, and I tell them the same thing, which is you gotta go make a deal with Comcast or with News Corp. or you probably ought to abandon your idea or wait until the Internet and then offer it as a streaming-video Web site and that will eventually succeed in providing an alternate route to the end consumer. But right now, you can't start something with traditional cable-network economics and hope to be successful. It's just not in the cards.

Exhibit 5: Study: Carriage of Affiliated and Unaffiliated Networks Entering the Market Between January 1, 2003 and March 15, 2005

This exhibit includes raw data from our preliminary research on recent industry developments -- specifically adoption of new affiliated and unaffiliated networks by the largest cable operators, during the period from January 1, 2003 to May 15, 2005 (a nearly 2 ½ year period). Only networks which sought initial launch of their programming service during the period were included in this study. This study is limited by the availability of public announcements regarding channel launches.

Sources of data: Universe of networks seeking carriage derived from National Cable and Telecommunications Association records. All network launch dates are according to company filings with the National Cable and Telecommunications Association, as well as publicly available sources. Ownership information, subscriber data and carriage information are all from publicly available sources, including the National Telecommunications Association, industry news sources such as Multichannel News and Kagan Research, as well as corporate announcements, filings and marketing materials.

Definitions used in study:

- *Affiliated Network*: any Network with financial ties to Comcast, Time Warner, Viacom, News Corp, NBC Universal, Disney, or their subsidiaries.
- *Unaffiliated Network/ Independent Network*: any Network without financial ties to Comcast, Time Warner, Viacom, News Corp, NBC Universal, Disney, or their subsidiaries.
- *Networks Seeking National Carriage*: Any Network that is currently or would be expected to be carried on a broad basis. There are two categories of National Carriage used in this report:
    - *Standard Carriage*: Network is carried as a non-premium service as part of a broadly distributed package.
    - *Premium Carriage:* Subscribers must pay an additional fee to receive the network, either individually or as part of a tier of channels (i.e. a sports package).
- *Networks Seeking Regional Carriage*: Networks which are intended for an audience which is concentrated in one or more specific geographic regions. For purposes of this research, we considered any non-English language Network, to be a network seeking regional carriage. In addition, networks that secure regional carriage are often offered as premium services.
        - *Imported Network* – Network seeking regional carriage which is substantially the same as an existing foreign network.

Exhibit 5a: Summary Statistics, Comcast and Time Warner

Comcast Statistics	
Total Comcast carriage of all affiliated networks seeking National carriage	53%
Total Comcast carriage of all unaffiliated networks seeking National carriage	6%
Comcast carriage on Standard basis of all unaffiliated networks seeking National carriage	0.88%
Comcast carriage on Premium basis of all unaffiliated networks seeking National carriage	5%
Total Comcast carriage of all affiliated networks seeking Regional carriage	78%
Total Comcast carriage of all unaffiliated networks seeking Regional carriage	42%
Total Comcast carriage of "New," unaffiliated networks seeking Regional carriage	31%

Time Warner Cable Statistics	
Total TWC carriage of all affiliated networks seeking National carriage	42%
Total TWC carriage of all unaffiliated networks seeking National carriage	4%
TWC carriage on Standard basis of all unaffiliated networks seeking National carriage	0.88%
TWC carriage on Premium basis of all unaffiliated networks seeking National carriage	4%
Total TWC carriage of all affiliated networks seeking Regional carriage	11%
Total TWC carriage of all unaffiliated networks seeking Regional carriage	8%
Total TWC carriage of "New," unaffiliated networks seeking Regional carriage	15%

Exhibit 5b: Summary Statistics, National and Regional Carriage

Networks Seeking National Carriage

	Total	Unaffiliated	Affiliated
Total Networks Seeking National Carriage	133	114	19
Total Launched Networks - Standard Carriage	13	7	6
Total Launched Networks - Premium Carriage	20	8	12
% Standard Carriage of Affiliated nets seeking National	32%		
% Premium Carriage of Affiliated nets seeking National	63%		
% Carriage (any kind) of Affiliated nets seeking National	95%		
% Standard Carriage of Unaffiliated nets seeking National	6%		
% Premium Carriage of Unaffiliated nets seeking National	7%		
% Carriage (any kind) of Unaffiliated nets seeking National	13%		

Networks Seeking Regional Carriage

	Total	Unaffiliated	Affiliated
Total Networks seeking regional carriage	35	26	9
Imported Networks seeking regional carriage	18	13	5
"New" networks seeking regional carriage	17	13	4
Total Launched Regional Networks	25	17	8
Total Launched Imported Networks	16	12	4
Total Launched "New" networks seeking regional carriage	9	5	4
Success rate of Affiliated nets seeking regional carriage	89%		
Success rate of "New," Affiliated networks	100%		
Success rate of "New," unaffiliated networks	38%		

Exhibit 5c: Carriage Results: Networks Seeking National Carriage

Standard Carriage

Affiliated		Total Subscribers	Comcast carriage (1=yes)	TWC carriage (1=yes)	additional notes
1	ESPN Deportes	7,000,000	0	0	Launched January 2004
2	Fox Reality (launching May 2005)	17,000,000	0	0	carriage secured, subscriber count is industry estimate
3	Fuel	12,000,000	0	1	*primarily non-premium but carried by TWC as premium
4	Logo (Launching June 2005)	10,000,000	0	1	carriage secured, subscriber count is industry estimate
5	SiTV	10,000,000	1	1	Time Warner owned
6	TV One	20,000,000	1	0**	Comcast owned -- **Since research has been carried by TW
	TOTAL COMCAST		**2**		
	% of Total Affiliated Nets seeking National Carriage		**11%**		
	TOTAL TIME WARNER			**3**	
	% of Total Affiliated Nets seeking National Carriage			**16%**	
	mean subscriber count	**12,666,667**			
	median subscriber count	**11,000,000**			
Unaffiliated					
1	Anime Network	532,000	0	0	carried on Insight and Buckeye subscriber count is estimated at 35% of total analog customer base
2	BlueHighways TV	595,000	0	0	carried on Insight and Bresnan, subscriber count is estimated at 35% of total analog customer base
3	Gospel Music Channel	1,000,000	0	0	Carried by Cox
4	Mav TV	300,000	0	0	
5	NFL Network	24,000,000	1	0	Carried by Comcast, DirecTV, Charter, Bresnan, Adelphia, and others
6	Sportsman Channel	11,500,000	0	1	Carried only by TWC
7	Wealth TV (HD)	2,100,000	0	0	Carried by Charter and Metrocast on digital tiers, subscriber count is estimated at 35% of analog sub count
*	Blackbelt TV (hunting license only)	-	*	0	hunting license only, no carriage as of 3/15/2005
	TOTAL COMCAST		**1**		
	% of Total Unaffiliated Nets seeking National Carriage		**0.88%**		
	TOTAL TIME WARNER			**1**	
	% of Total Unaffiliated Nets seeking National Carriage			**0.88%**	
	mean sub count (does not include Blackbelt TV)	**5,718,143**			
	median sub count (does not include Blackbelt TV)	**1,000,000**			

Premium Carriage

Affiliated

1	Cinemax HD	n/a	1	0
2	ESPN HD	n/a	1	1
3	ESPN2 HD	n/a	0	0
4	ESPNU	n/a	0	0
5	History Channel en Espanol	n/a	1	0
6	in HD	n/a	1	1
7	in HD2	n/a	1	1
8	Showtime HD	n/a	1	1
9	Starz HDTV	n/a	1	0
10	The Movie Channel HD	n/a	0	0
11	TNT in HD	n/a	1	1
12	Universal HD	n/a	0	0
	TOTAL COMCAST		**8**	
	% of Total Affiliated Nets seeking National Carı		**42%**	
	TOTAL TIME WARNER			**5**
	% of Total Affiliated Nets seeking National Carriage			**26%**

Unaffiliated

1	Bridges TV	10,000	1	0	10,000+ paying members, carried by Comcast in Detroit
2	CSTV (College Sports TV)	n/a	1	1	available to 65 million homes on sports tiers, carried by top 6 distributors + others
3	GolTV	n/a	1	0	Carried on Hispanic and sports tiers (available in English and Spanish language)
4	HD Net Movies	n/a	0	1	carried on HD tier
5	Horse Racing TV	1,500,000	1	1	Carried on sports tiers, *some basic carriage from twc
6	NFL Network HD	n/a	1	0	Carried on select systems only
7	Q Television	n/a	0	0	Carried by RCN. Available to 400,000 homes.
8	Tennis Channel	3,000,000	1	1	carried on sports tiers
	TOTAL COMCAST		**6**		
	% of Total Unaffiliated Nets seeking National C		**5.26%**		
	TOTAL TIME WARNER			**4**	
	% of Total Unaffiliated Nets seeking National Carriage			**3.51%**	

Exhibit 5d: Data, Networks Seeking National Carriage

			Launched Network?			
	Network Name	Affiliated?	Standard U.S. Carriage?	Premium service?	Affiliated and Standard	Affiliated and Premium
1	**29HD Network**				NO	NO
2	**Action Channel**				NO	NO
3	**Africast Television Network**				NO	NO
4	**America Channel, The**				NO	NO
5	**America National Network**				NO	NO
6	**American David**				NO	NO
7	**Amp TV**				NO	NO
8	**Anime Network**		1		NO	NO
9	**Anti-Aging Network**				NO	NO
10	**Applause Networks**				NO	NO
11	**Asia Channel**				NO	NO
12	**Auto Channel, The**				NO	NO
13	**Baby TV**				NO	NO
14	**Beauty & Fashion Channel (shopping channel)**				NO	NO
15	**Beauty Channel, The**				NO	NO
16	**Better Life Media**				NO	NO
17	**Bingo TV**				NO	NO
18	**Black Belt TV**				NO	NO
19	**Black Education Network**				NO	NO
20	**Black Entertainment Network**				NO	NO
21	**Black Television News Channel (BTNC)**				NO	NO
22	**Black Women's TV**				NO	NO
23	**Blackbelt TV (*hunting license only)**		*		NO	NO
24	**BlueHighways TV**		1		NO	NO
25	**Boating Channel, The**				NO	NO
26	**BOB: Brief Original Broadcasts**				NO	NO
27	**Book Shopping Channel**				NO	NO
28	**BOX TV--The Boxing Channel**				NO	NO
29	**Brands Shopping Network**				NO	NO
30	**Bridges TV**			1	NO	NO
31	**Cable Science Network**				NO	NO
32	**Career Entertainment Television**				NO	NO
33	**Casino & Gaming Television**				NO	NO
34	**Cinemax HD**	1		1	NO	YES
35	**Classified Channel, The**				NO	NO
36	**Collectors Channel**				NO	NO
37	**CSTV (College Sports TV)**			1	NO	NO
38	**Dance Competition Network**				NO	NO
39	**Destiny Channel**				NO	NO

40	**Documentary Channel, The**				NO	NO
41	**DoD - Def on Demand**				NO	NO
42	**Edge TV**				NO	NO
43	**Employment & Career Channel, The**				NO	NO
44	**Epic Sports Channel (X Channel)**				NO	NO
45	**ESPN Deportes**	1	1		YES	NO
46	**ESPN HD**	1		1	NO	YES
47	**ESPN2 HD**	1		1	NO	YES
48	**ESPNU**	1		1	NO	YES
49	**Eurocinema**				NO	NO
50	**FAD TV: Fashion and Design Television**				NO	NO
51	**Film Festival Channel, The**				NO	NO
52	**Fox Reality**	1	1		YES	NO
53	**Fuel**	1	1		YES	NO
54	**GETV Program Network**				NO	NO
55	**Global Village Network**				NO	NO
56	**God TV**				NO	NO
57	**GolTV**			1	NO	NO
58	**Gospel Music Channel**		1		NO	NO
59	**Government Channel, The**				NO	NO
60	**H.Y.P.E. TV**				NO	NO
61	**Hallmark Movie Channel**				NO	NO
62	**Harmony Channel**				NO	NO
63	**HD Net Movies**			1	NO	NO
64	**Health Broadcasting Network**				NO	NO
65	**Healthy Living Network**				NO	NO
66	**here! tv**				NO	NO
67	**History Channel En Espanol**	1		1	NO	YES
68	**Home Improvement Channel**				NO	NO
69	**Horror Channel, The**				NO	NO
70	**HorrorNet**				NO	NO
71	**Horse Racing TV**			1	NO	NO
72	**Horse TV**				NO	NO
73	**Ice Channel, The**				NO	NO
74	**in HD**	1		1	NO	YES
75	**in HD2**	1		1	NO	YES
76	**iNetwork**				NO	NO
77	**Inpulse TV**				NO	NO
78	**Investment TV**				NO	NO
79	**JokeVision**				NO	NO
80	**JTV**				NO	NO
81	**Local News Network**				NO	NO
82	**LOGO**	1	1		YES	NO
83	**Luxury Television Network**				NO	NO
84	**Martial Arts Action Network, The**				NO	NO
85	**Martial Arts Channel**				NO	NO
86	**MavTV**		1		NO	NO
87	**Moore TV Network**				NO	NO

88	**Moviewatch**				NO	NO
89	**Music of Praise Network**				NO	NO
90	**Music Plus TV**				NO	NO
91	**NANO TV**				NO	NO
92	**NFL Network**		1		NO	NO
93	**NFL Network HD**			1	NO	NO
94	**ORB TV**				NO	NO
95	**Performance Showcase**				NO	NO
96	**Players Network**				NO	NO
97	**Puppy Channel ®, The**				NO	NO
98	**Q Television**			1	NO	NO
99	**RadioTV Network**				NO	NO
100	**Real Estate Channel**				NO	NO
101	**Real Estate Network, Inc., The (TREN®)**				NO	NO
102	**Real Hip Hop Network, The**				NO	NO
103	**Reality 24/7 (a.k.a Reality Central)**				NO	NO
104	**Resorts & Residence TV**				NO	NO
105	**RipeTV**				NO	NO
106	**Seminar TV**				NO	NO
107	**Senior Citizens Network**				NO	NO
108	**Showtime HD**	1		1	NO	YES
109	**Si TV**	1	1		YES	NO
110	**Sportsman Channel**		1		NO	NO
111	**Stand Up Comedy TV**				NO	NO
112	**Starz HDTV**	1		1	NO	YES
113	**Sundance Documentary Channel**	1			NO	NO
114	**Tennis Channel**			1	NO	NO
115	**TFN, The Football Network**				NO	NO
116	**The Movie Channel HD**	1		1	NO	YES
117	**Theatre Channel, The**				NO	NO
118	**Ticket Channel, The (formerly Tickets on Demand)**				NO	NO
119	**TNT in HD**	1		1	NO	YES
120	**TV One**	1	1		YES	NO
121	**U.S. Military Television Network, Inc.**				NO	NO
122	**Universal HD**	1		1	NO	YES
123	**Varsity Television**				NO	NO
124	**Vegas Channel, The**				NO	NO
125	**Voy Network**				NO	NO
126	**Wealth TV**		1		NO	NO
127	**Wheels TV**				NO	NO
128	**Wine Network TV**				NO	NO
129	**World Championship Sports Network**				NO	NO
130	**World Cinema**				NO	NO
131	**WorldAsia TV**				NO	NO
132	**XY.tv**				NO	NO
133	**Youth Sports Broadcasting Channel**				NO	NO

Exhibit 5e: Carriage Results, Networks Seeking Regional Carriage

Regional Carriage

Note: ^ denotes channel which is "imported" (substantially a recreation of an existing foreign network).

Affiliated

1	BravesVision	n/a	1	0	Comcast owned
2	^Channel One Russia	n/a	0	0	distributed by Comcast's International Channel Networks, carried by Dish
3	Comcast SportsNet Chicago	3,400,000	1	0	Comcast owned
4	Comcast SportsNet West	2,200,000	1	0	Comcast owned
5	Dallas Cowboys Channel	n/a	1	0	Comcast owned
6	^Telemundo Puerto Rico	1,300,000	0	0	Import of NBC owned affiliate from Puerto Rico
7	^TV Polonia	n/a	1	1	distributed by Comcast's International Channel Networks
8	^TVK1	n/a	1	0	US import of Munhwa Broadcasting Corp. distributed by Comcast's International Channel Networks
9	^TVK2	n/a	1	0	US import of Munhwa Broadcasting Corp. distributed by Comcast's International Channel Networks
	TOTAL COMCAST		**7**		
	% of Total Affiliated Nets seeking REGIONAL Carriage		**78%**		
	TOTAL TIME WARNER			**1**	
	% of Total Affiliated Nets seeking REGIONAL Carriage			**11%**	

Unaffiliated

1	^Azteca America	n/a	1	n/a	Wholly owned by TV Azteca, one of two Mexican broadcasters, it is essentially a rebroadcast of TV Azteca's Mexican channels. Carried in Los Angeles and other select markets
2	Boston Kids & Family	150,000	1	0	Boston area only
3	Carolina Sports Entertainment	800,000	0	1	North and South Carolina only
4	^Dragon TV (7 channel suite) 1 - Set Intern	n/a	1	0	Rebroadcast of Taiwan channel. San Francisco area only
5	Dragon TV (7 channel suite) 2 - ET News	n/a	1	0	Primarily imported programming, but some US produced News. San Francisco area only
6	^Dragon TV (7 channel suite) 3 - ET Drama	n/a	1	0	Content imported from Chinese and Taiwanese broadcasters. Carried in San Francisco area only
7	^Dragon TV (7 channel suite) 4 - ET Globa	n/a	1	0	Content imported from Chinese and Taiwanese broadcasters. Carried in San Francisco area only
8	^Dragon TV (7 channel suite) 5 - ET China	n/a	1	0	Content imported from Chinese and Taiwanese broadcasters. Carried in San Francisco area only
9	^Dragon TV (7 channel suite) 6 - ET Yoyo	n/a	1	0	Content imported from Chinese and Taiwanese broadcasters. Carried in San Francisco area only
10	^Dragon TV (7 channel suite) 7 - CCTV	n/a	1	0	State network of People's Republic of China. Carried in San Francisco area only
11	ImaginAsian TV	2,500,000	1	0	Comcast carries in San Francisco, Los Angeles only
12	Sorpresa	1,000,000	1	1	
13	^Tu TV: De Película Clásico	n/a	0	0	Total subs for all TuTV nets is 1,215,239. Carried by Cox, Bresnan on Latin tier
14	^Tu TV: Bandamax	n/a	0	0	Total subs for all TuTV nets is 1,215,239. Carried by Cox, Bresnan on Latin tier
15	^Tu TV: De Pelicula	n/a	0	0	Total subs for all TuTV nets is 1,215,239. Carried by Cox, Bresnan on Latin tier
16	^Tu TV: Ritmoson Latino	n/a	0	0	Total subs for all TuTV nets is 1,215,239. Carried by Cox on Latin tier
17	^Tu TV: Telehit	n/a	0	0	Total subs for all TuTV nets is 1,215,239. Carried by Cox, Bresnan on Latin tier
	TOTAL COMCAST		**11**		
	% of Total Unaffiliated Nets seeking REGIONAL Carriage		**42%**		
	% of "New," unaffiliated Nets seeking REGIONAL Carriag		**31%**		
	TOTAL TIME WARNER			**2**	
	% of Total Unaffiliated Nets seeking REGIONAL Carriage			**7.69%**	
	% of "New," unaffiliated Nets seeking REGIONAL Carriage			**15%**	

Exhibit 5f: Data, Networks Seeking Regional Carriage

	Network Name	Imported?	Affiliated?	Carriage
1	**Azteca America**	**1**		1
2	**Boston Kids & Family**			1
3	**BravesVision**		1	1
4	**Caribbean Visions Television**			
5	**Carolina Sports Entertainment**			1
6	**Channel One Russia Worldwide Network**	**1**	1	0
7	**Comcast SportsNet Chicago**		1	1
8	**Comcast SportsNet West**		1	1
9	**Dallas Cowboys Channel**		1	1
10	**Dragon TV (7 channel suite) 1 - Set International**	**1**		1
11	**Dragon TV (7 channel suite) 2 - ET News**			1
12	**Dragon TV (7 channel suite) 3 - ET Drama**	**1**		1
13	**Dragon TV (7 channel suite) 4 - ET Global**	**1**		1
14	**Dragon TV (7 channel suite) 5 - ET China**	**1**		1
15	**Dragon TV (7 channel suite) 6 - ET Yoyo**	**1**		1
16	**Dragon TV (7 channel suite) 7 - CCTV**	**1**		1
17	**ImaginAsianTV**			1
18	**Mexicanal**	**1**		
19	**Native American Nations Program Network**			
20	**Novelas Channel**			
21	**Outstanding Latin Entertainment**			
22	**Royals Television Network**			
23	**Shalom TV**			
24	**Sorpresa!**			1
25	**Southern Entertainment Television**			
26	**Telemundo Puerto Rico**	**1**	1	1
27	**Telenovela TV**			
28	**Television Korea 24 (TVK1)**	**1**	1	1
29	**Television Korea 24 (TVK2)**	**1**	1	1
30	**Tu TV: De Película Clásico**	**1**		1
31	**Tu TV: Bandamax**	**1**		1
32	**Tu TV: De Pelicula**	**1**		1
33	**Tu TV: Ritmoson Latino**	**1**		1
34	**Tu TV: Telehit**	**1**		1
35	**TV Polonia**	**1**	1	1

CERTIFICATE OF SERVICE

I, Kathleen Wallman, hereby certify that I caused to be served a true and correct copy of THE AMERICA CHANNEL LLC'S PETITION TO DENY including accompanying exhibits on the following individuals by the delivery methods specified below on this 21ST day of JULY 2005.

VIA ELECTRONIC MAIL

1. The Commission's duplicating contractor, Best Copy and Printing, Inc. via e-mail at www.bcpiweb.com;
2. Barbara Esbin, Media Bureau, Room 3-C458, e-mail, Barbara.Esbin@fcc.gov."
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