

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Applications for Consent to the Assignment)
and/or Transfer of Control of Licenses)
)
Adelphia Communications Corporation)
(and subsidiaries, debtors-in-possession), Assignors,)
to)
Time Warner Cable Inc. (subsidiaries), Assignees;)
)
Adelphia Communications Corporation)
(and subsidiaries, debtors-in-possession),)
Assignors and Transferors,)
to)
Comcast Corporation (subsidiaries),)
Assignees and Transferees;)
)
Comcast Corporation, Transferor,)
to)
Time Warner Inc., Transferee;)
)
Time Warner Inc., Transferor,)
to)
Comcast Corporation, Transferee.)

MB Docket No. 05-192

**OPPOSITION TO FREE PRESS ET AL.
MOTION TO HOLD PROCEEDING IN ABEYANCE**

Comcast Corporation (“Comcast”) hereby opposes the October 31, 2005 motion of Free Press, et al. (collectively “Free Press”) to hold the above-captioned proceeding (the “Adelphia Transactions”) in abeyance.¹ The Commission should deny Free Press’s motion because the issues it raises are irrelevant and unrelated to this proceeding. Moreover, even if it were appropriate for the Commission to analyze the merits of Free Press’s arguments, it is clear that the motion presents no rational justification for holding this proceeding in abeyance.

¹ Time Warner Inc. (“Time Warner”) and Adelphia Communications Corporation (“Adelphia”) concur in this opposition.

I. Any Future Acquisition Is Wholly Irrelevant and Unrelated to the Issue of Whether the Transactions in this Proceeding Are in the Public Interest.

Comcast recently announced an agreement to acquire all of Susquehanna Cable Co.'s assets ("Susquehanna Transaction").² Comcast currently owns an approximate 30% equity interest in Susquehanna Cable Co. and its subsidiaries. Free Press urges the Commission to delay its consideration of the Adelphia Transactions until Comcast files the license transfer applications for the proposed Susquehanna Transaction. However, the Susquehanna Transaction is irrelevant to the issues presented by the Adelphia Transactions.

In evaluating whether a proposed transaction is in the public interest, the Commission has stated that "[t]he public interest standards of sections 214(a) and 310(d) involve a balancing process that weighs the potential public interest harms *of the proposed transaction* against the potential public interest benefits."³ Moreover, Section 309 of the Communications Act specifically directs the Commission to make individualized determinations on transfer of control applications.⁴ The Commission consistently has refused to address issues or other transactions unrelated to the specific transaction it is evaluating.⁵ For example, in the Commission's review of AT&T's proposed acquisition of MediaOne, Media Access Project, which filed the instant motion on behalf of Free Press, filed a motion on behalf of Consumers Union et al. to

² Press Release, Comcast Corp., *Comcast Corporation Agrees To Buy Susquehanna Communications from Susquehanna Pfaltzgraff* (Oct. 31, 2005), available at <http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&t=Regular&id=775110&>.

³ *In re Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Memorandum Opinion & Order, 17 FCC Rcd. 23,246 ¶ 26 (2002) (emphasis added) ("*Comcast-AT&T Order*").

⁴ 47 U.S.C. § 309(a) ("[T]he Commission shall determine, in the case of *each application* filed with it . . . whether the public interest, convenience, and necessity will be served by the granting of *such application*" (emphasis added)).

⁵ *See id.* ¶ 148 ("In short, none of the regulatory parity issues raised are specific to this merger."); ¶ 157 ("Commenters have not raised any merger-specific concerns regarding harm to the market for set-top boxes.").

consolidate that proceeding with the Commission's review of the proposed AOL and Time Warner merger.⁶ The Commission denied MAP's motion, in part, because the two transactions were separate and unrelated to each other.⁷ The same is true here. If and when applications for transfer pertaining to Susquehanna Cable Co. are filed with the Commission, the Commission will obviously have full opportunity for review.

What Free Press is asking for would inject a level of uncertainty and confusion into the Commission's processes that would deny the Applicants a fair and expeditious review of their long-pending applications -- which, when one cuts through the verbiage, appears to be Free Press's goal. This would harm the Applicants as well as Adelphia consumers who are awaiting the benefits that the proposed Adelphia Transactions will bring.

The Susquehanna Transaction is unrelated to the Adelphia Transactions -- indeed, they could hardly be more different. The Adelphia Transactions involve a complex set of multi-party transactions in which Time Warner is acquiring cable systems from Adelphia, Comcast is acquiring different cable systems from Adelphia, and Time Warner and Comcast are swapping cable systems. The Adelphia Transactions also involve the long-awaited unwinding of Comcast's passive interest in Time Warner Cable and Time Warner Entertainment, an interest the Commission has recognized as unique in its size and complexity.⁸ The Adelphia

⁶ See *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, Memorandum Opinion & Order, 15 FCC Rcd. 9816 ¶ 179-180 (2000).

⁷ See *id.* ¶ 181 ("Consumers Union has not established that the Commission's grant of the AT&T-MediaOne and AOL-Time Warner license transfer applications are mutually exclusive as a matter of law, such that approval of one application would necessarily preclude approval of the second application.").

⁸ See *Comcast-AT&T Order* ¶ 81 ("We recognize that the nature of the TWE Interest, including its size, its diverse assets, and the limited governance and management rights associated with the interest, makes divestiture of the TWE Interest more complex than some of the divestitures previously mandated by the Commission, especially in light of present marketplace conditions.").

Transactions also involve one of the largest and most complex bankruptcies in U.S. history.⁹ By contrast, the Susquehanna Transaction is a simple and straightforward rollup by Comcast of the remaining interest in certain cable systems that it is not already attributed with. Neither Adelphia nor Time Warner are parties to Comcast's proposed Susquehanna Transaction. As a result, the Commission should deny the Free Press motion, just as it has done in other contexts.¹⁰

The primary justification Free Press offers for its motion is that Comcast should not be permitted "to break its acquisition of Northeast cable systems into increments small enough to evade effective review."¹¹ First, Free Press's claim that Comcast has a comprehensive plan or strategy to acquire cable systems in the Northeast (or in any other geographic area for that matter) is mistaken. Second, rhetoric aside, completing timely review of the Adelphia Transactions does nothing to deny effective review of the Susquehanna Transaction. Comcast does not share Free Press's doubts that the Commission can effectively review these transactions seriatim, and should appropriately do so. As it has done in the past, the Commission can effectively review each application for transfer of control after it is filed. There is absolutely no rational justification for holding one application for transfer of control in abeyance pending the

⁹ See Public Interest Statement at 60-63 (filed May 18, 2005); Reply at 19-23 (filed Aug. 5, 2005).

¹⁰ See *In re Chartways Techs., Inc. v. AT&T Communications*, Memorandum Opinion & Order, 6 FCC Rcd. 2952 ¶ 1 n.2 (1991) (denying a motion to hold a case in abeyance "pending final Commission action in a separate, unrelated proceeding"); cf. *In re Application of New England Tel. & Tel. Co., Assignor, and Radio Tel. Sys., Inc., Assignee, for Authority To Assign DPLMRS Stations*, Order, 4 FCC Rcd. 5256 ¶ 4 (1989) (granting the assignment of twenty stations despite the pending resolution of "allegations concerning the operation of [another station]" because "[t]here does not appear to be any relationship between the allegations . . . and the assignment of the other twenty stations").

¹¹ Free Press Motion at 3. Free Press mistakenly assumes that Susquehanna Cable Co.'s cable systems are in the Northeast. In fact, those cable systems serve nine communities in six different states: Du Quoin, IL, Olney, IL, Lawrenceburg, IN, Shelbyville, IN, Rankin County, MS, Brunswick, Maine, Carmel, NY, Williamsport, PA, and York, PA.

filing of unrelated applications involving different parties, different assets, and different timeframes.

II. Comcast's Future Acquisition of Susquehanna Cable Co. Will Not Implicate Any Concerns That Parties Have Raised in This Proceeding.

Even if it were appropriate for the Commission to consider the Susquehanna Transaction in the context of the Adelphia Transaction -- which it is not -- there would be no reason for concern. Comcast currently owns an approximate 30% equity interest in Susquehanna Cable Co.'s cable systems (as of June 30, 2005, those systems served a total of 226,117 subscribers), but it is not attributed with these subscribers because Susquehanna Cable Co. is controlled by a single majority shareholder, Susquehanna Media Co., which owns the other 70%.¹² Although presently there is no prescribed limit on the number of subscribers a cable operator may serve, the acquisition of Susquehanna Cable Co.'s 226,117 subscribers will add a negligible two tenths of 1% (.2%) increase to the percentage of total MVPD subscribers attributed to Comcast and will not cause Comcast to exceed the Commission's prior 30% limit either before or after the

¹² See *In re Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Order, 16 FCC Rcd. 22,310 ¶ 1 (2001). Robert S. Pick, Comcast's Senior Vice President - Corporate Development, is a member of the Board of Directors of Susquehanna Cable Co. In the context of the horizontal ownership rules, the Commission has determined that an entity that appoints a director to a cable company is attributed with that cable company unless the appointed director is "not involved in the video-programming activities" of the cable operator. *In re Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Review of the Commission's Cable Attribution Rules*, Report & Order, 14 FCC Rcd. 19,014 ¶ 68 (1999). Mr. Pick's duties and responsibilities at Comcast are solely related to acquisitions and dispositions of properties or businesses. Mr. Pick's duties and responsibilities do not involve the video programming activities of Comcast. Likewise, Mr. Pick is not involved in the video programming activities of Susquehanna Cable Co. In fact, video programming activities are not addressed by Susquehanna Cable Co.'s Board of Directors and no material concerning those matters is provided to the members of the Board. In appointing Mr. Pick to the Susquehanna Cable Co. Board, Comcast inadvertently neglected to file a waiver petition pursuant to 47 C.F.R. § 76.503 note 2(c). Comcast will file such a petition expeditiously. Of course, upon completion of the Susquehanna Transaction, expected in the first half of 2006, this issue will become moot because all of Susquehanna Cable Co.'s cable systems will become fully attributable to Comcast. Comcast has also reviewed all its other partial ownership interests in cable entities and determined that it is already attributed with all those interests and has fully accounted for them in the Public Interest Statement. See Public Interest Statement Exhibit Z.

proposed Adelphia Transactions close.¹³ Comcast is currently attributed with 26,025,069 subscribers¹⁴ and after the Adelphia Transactions it will be attributed with 26,705,069 subscribers.¹⁵ As a result, Comcast would be attributed with approximately 28.53% of the 93.6 million U.S. MVPD subscribers.¹⁶ If the Susquehanna Transaction closed, that would add approximately 226,117 subscribers, bringing Comcast's total to approximately 26,931,186 subscribers, or 28.77% of all MVPD subscribers.¹⁷ Thus, Comcast would still be well below the previous 30% limit.

¹³ Comcast's addition of 226,117 subscribers as a result of the Susquehanna Transaction will be largely offset by the continued growth in the total number of MVPD subscribers nationwide. For example, in the last six months, the total has grown from 92.6 million to 93.6 million. *Compare Kagan Media Index*, Kagan Media Money, Apr. 26, 2005, at 7, with *Kagan Media Index*, Kagan Media Money, Oct. 25, 2005, at 4.

¹⁴ Letter from Peter Feinberg, Associate General counsel, Comcast Corporation, to Marlene Dortch, Secretary, FCC (Oct. 21, 2005), available at http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518171324.

¹⁵ As the Parties noted in their Public Interest Statement, the Adelphia Transactions will result in a net gain of 680,000 subscribers to the number of subscribers attributable to Comcast. *See* Public Interest Statement at 74. Adding these 680,000 subscribers to the 26,025,069 subscribers Comcast is currently attributed with results in a total of 26,705,069 subscribers after the Adelphia Transactions close.

¹⁶ *See Kagan Media Index*, Kagan Media Money, Oct. 25, 2005, at 4.

¹⁷ $26,705,069 + 226,117 = 26,931,186$ subscribers divided by 93,600,000 U.S. MVPD subscribers = 28.77%.

III. CONCLUSION

The Free Press motion is another attempt to delay media transactions that it chooses to disfavor but against which it makes no substantive case. Free Press seems determined to find a conspiracy or nefarious motive in every simple, logical business move that a media company may make.¹⁸ The Commission has long promoted the policy of expeditiously reviewing proposed transactions and there is no rational basis or justification for the Commission to deviate from that policy here. Consequently, the Commission should deny Free Press's motion.

Respectfully submitted,

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¹⁸ Although Free Press compares Comcast's proposed cable acquisitions to a boiling frog, the more apt analogy here is to compare Free Press's motion to the Mark Twain character, Sam Wheeler, who tells bodacious stories of Jim Smiley and his celebrated jumping frog of Calaveras County. See Mark Twain, *Celebrated Jumping Frog of Calaveras County* (Filter Press 1965) (1865). As Mark Twain wrote, "quicker'n you could wink, he'd spring straight up, and snake a fly off'n the counter there, and flop down on the floor again as solid as a gob of mud." Free Press's stories of conspiracy, malfeasance, and chicanery rival Mr. Wheeler's own colorful, yet exaggerated yarns.

CERTIFICATE OF SERVICE

I, Ryan G. Wallach, do hereby certify that on November 7, 2005, I caused a copy of the above *Opposition to Free Press et al. Motion to Hold Proceeding In Abeyance* to be served by first class mail, postage prepaid, on the following:

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