

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

<b>In the Matter of</b>	)	
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	)	MB Docket No. 05-192
Comcast Corporation (subsidiaries)	)	
Assignees and Transferees	)	
	)	
Comcast Corporation	)	
Transferor	)	
To	)	
Time Warner Inc.	)	
Transferee	)	
	)	
Time Warner Inc.	)	
Transferor	)	
To	)	
Comcast Corporation	)	
Transferee	)	

**REPLY TO OPPOSITION**

Free Press, *et al.* respectfully submit this reply to Comcast's November 7, 2005, *Opposition* to their October 31, 2005 *Motion to Hold in Abeyance*. In that motion, Free Press, *et al.* called upon the Commission to hold the above captioned merger in abeyance until such time Comcast files applications for announced acquisition of the cable systems of Susquehanna Media Company. Comcast argues that the Commission must, as a matter of law, consider each merger independently, and that the issues Free Press, *et al.* raised are irrelevant to the proposed Adelphia acquisition.

Comcast misconstrues the applicable law. Nothing prevents the Commission

from considering two relevant mergers simultaneously, as it just did in the case of the mergers of SBC with AT&T and Verizon with MCI. Indeed, the Communications Act commands the Commission to consider all relevant factors relevant to any public interest determination. Moreover, Comcast's *regional* concentration has emerged as a critical issue in the pending Adelphia transaction. The Susquehanna acquisition will clearly increase this *regional* concentration, a fact which Comcast seeks to obfuscate by stressing the relatively modest increase in *national* concentration. The Commission should therefore deny Comcast's *Opposition* and grant the *Motion*.

### ARGUMENT

Comcast first argues that the proposed transactions stand alone and, as a matter of law, must be considered independently. *Opposition* at 2-3. While Comcast correctly observes that the law requires a specific finding that each license transfer serves the public interest, this does not preclude the Commission from considering related applications that bear upon each other.

To the contrary, Section 309(d)(2) of the Communications Act requires the Commission to resolve petitions to deny "on the basis of the application, the pleadings filed, *or other matters* which it may officially notice" and directs that it should designate a hearing if it is "for *any* reason ... unable to find that grant of the application is in the public interest." (Emphases added.)

What the motion calls for is no more than the ordinary and proper exercise of the Commission's predictive judgment in assessing the impact of the merger. This often requires the Commission to give joint consideration to mergers of unrelated companies with non-overlapping assets. The Commission demonstrated this again most recently

on October 31, 2005, when it simultaneously completed its review of the SBC/AT&T merger (Docket 05-65) and the Verizon-MCI merger (Docket 05-75). In so doing, the Commission consciously shaped the conditions in both mergers to account for the change in the competitive landscape that the grant of both mergers would create. If the Commission can find reason to consider jointly two mergers involving entirely unrelated companies, it can certainly consider jointly two transactions involving the same company – particularly when the company in question is the dominant company in the industry.

Comcast’s argument that the Communications Act *requires* the Commission to consider each transaction in a vacuum and without consideration of any other pending transactions would contradict the plain language of Section 309(d)(2) and this recent precedent. Worse, it would require the Commission to pretend it was unaware of pending significant changes in the industry landscape – artificially undermining its predictive judgement and eliminating the benefit of Commission review intended by Congress. It is far more sensible to conclude, as the Commission recently did with regard to two separate mergers involving four different companies with no commonly owned assets, that the Communications Act encourages joint review when it serves the public interest.

Comcast also argues that the Susquehanna acquisition is not relevant because Susquehanna’s approximately 230,000 subscribers will only marginally increase Comcast’s share of the national MVPD market. As the Mark Twain, the resident sage of Docket 05-192, warned however, “there are lies, damned lies, and statistics.” Comcast’s recitation of statistics describing its *national* footprint, *Opposition* at 5-6, do

not address what nearly every party opposing the merger has raised as the critical issue presented by the pending transaction – Comcast’s dramatic increase in *regional* concentration. Nor does Comcast’s litany of locations for the Susquehanna systems address to what extent the acquisition of those systems will increase Comcast’s regional concentration either in the Northeast or anywhere else.<sup>1</sup> But rather than explain why the increase in *regional* concentration is irrelevant to the Commission’s analysis in the Adelphia transaction (an impossible task given the comments filed in this docket by numerous objecting parties) Comcast’s *Opposition* seeks to obfuscate the issue with statistics on national concentration.

As Comcast’s public relations armada stressed to the *Wall Street Journal*, which provided the first coverage of the Susquehanna transaction, it believes Susquehanna’s assets “fit well” with Comcast’s in part because “Susquehanna operates in several markets adjacent to Comcast.” Sarah McBride, “Susquehanna Agrees to Sell Radio Stations for \$1.2 Billion,” Wall St. J. A6 (October 31, 2005). The article places the bulk of the subscribers “in several East Coast markets.” Certainly Comcast’s Susquehanna application may demonstrate that the article erred in its prediction of further regional consolidation on the East Coast as a consequence of the deal. But, given the centrality of regional concentration as an issue raised in the pending merger, particularly with regard to Comcast, the Commission should require Comcast to file the Susquehanna

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<sup>1</sup>Although the *Motion* expressed particular concern with regard to Comcast increasing its dominance in the Northeast region of the United States, Free Press, *et al.* object to increasing Comcast regional dominance in other markets as well.

applications before proceeding further.

Comcast also complains that holding the current transaction in abeyance will create delay and uncertainty. *Opposition* at 3. Comcast, however, has complete control over when it will file its applications to acquire the Susquehanna systems. If Comcast wishes to minimize delay, it has only to file a complete application expeditiously.

Finally, Comcast denies it has any “comprehensive plan or strategy to acquire cable systems in the Northeast (or any other region)” *Opposition* at 4, and accuses Free Press, *et al.* of concocting conspiracy theories and finding “a conspiracy or nefarious motive in every simple, logical business move that a media company may make.” *Id.* at 5. But Comcast itself has consistently maintained that it is pursuing a policy of “geographic rationalization,” *i.e.*, clustering regional systems. Comcast has even claimed this as a positive public interest benefit in the pending Adelphia application. Given Comcast’s further interest in acquiring “East Coast” systems “adjacent to Comcast’s in several markets,” it hardly seems a “colorful yet exaggerated yarn,” *Opposition* at 7 n.18, to conclude that Comcast’s “logical business move” is to continue its highly profitable pattern of extending geographic dominance throughout the North East and elsewhere.

Free Press, *et al.* wish to make clear they do not accuse Comcast of a lack of candor with the Commission or of “nefarious motives.” But the harm to the public interest remains the same. It is a “logical business move” to extend regional dominance to enhance the effectiveness of market power and eliminate competition. But the Commission has an obligation to prevent such a result by using its expertise

and predictive judgement to consider the far reaching consequences of the transactions in aggregate. Notwithstanding the absence of any “nefarious intent” to evade review of Comcast’s growing regional dominance, that will surely be the result if the Commission fails consider the proposed Adelphia transaction and the proposed Susquehanna transactions simultaneously.

### CONCLUSION

WHEREFORE, Free Press, *et al.* request that the Commission deny Comcast’s *Opposition* and grant the October 31, 2005 *Motion* filed by Free Press, *et al.* and grant all such other relief as may be just and proper.

Respectfully submitted,

/s/

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November 11, 2005

## CERTIFICATE OF SERVICE

I, Jennifer Howard, certify that on November 11, 2005. I caused a copy of the foregoing *Reply to Opposition* to be served by first class mail, postage prepaid, on the following:

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/s/  
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