

December 9, 2005

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corp., Assignors, to Time Warner Cable Inc., Assignees; Adelphia Communications Corp., Assignors and Transferors, to Comcast Corporation, Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee, MB Docket No. 05-192**

Dear Ms. Dortch:

On November 8, 2005, The America Channel (“TAC”) submitted an ex parte letter describing its November 7, 2005 meeting with several Commission officials (“TAC Ex Parte”).<sup>1</sup> For the most part, the TAC Ex Parte rehashed TAC’s misconceptions about the competitive state of the video marketplace and its unsupported and baseless allegations about its inability to reach carriage agreements with Comcast and Time Warner. Comcast and Time Warner have already refuted TAC’s allegations in this proceeding,<sup>2</sup> and in other proceedings,<sup>3</sup> and there is no reason to repeat those refutations here.

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<sup>1</sup> Letter from Kathleen Wallman, Counsel for The America Channel to Marlene Dortch, Secretary, Federal Communications Commission (Nov. 8, 2005) (“TAC Ex Parte”).

<sup>2</sup> For example, Adelphia, Comcast, and Time Warner (the “Applicants”) have already refuted TAC’s assertions, *see* TAC Ex Parte at 4-9, that Time Warner and Comcast can foreclose competition for advertiser-supported programming networks in top markets. *See In re Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corp. (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corp. (and subsidiaries, debtors-in-possession), Assignors and Transferors, to Comcast Corp. (subsidiaries), Assignees and Transferees; Comcast Corp., Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corp., Transferee*, MB Dkt No. 05-192, Reply at 35-37 (filed Aug. 5, 2005) (“Reply”) (noting that TAC’s foreclosure arguments are “belied by the robustness of today’s programming marketplace”). Similarly, in response to TAC’s assertion that the transactions must be conditioned to avoid discrimination

The TAC Ex Parte also included a number of new unsupported, misleading, and outright false allegations about Adelphia's dealings with TAC. Adelphia will address the shortcomings in the TAC Ex Parte below. At the outset, however, Adelphia would like to point out that the TAC Ex Parte is a continuation of TAC's persistent efforts to secure carriage in precisely the wrong way -- by putting all of its efforts into seeking government intervention into the kinds of decisions that belong in the private

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against independent programmers, *see* TAC Ex Parte at 10-12, the Applicants have already explained that the proposed transactions pose no threat to carriage of independent programmers and, therefore, the imposition of carriage conditions would be unnecessary and inappropriate. *See Reply* at 71-83. TAC also complains that Comcast's and Time Warner's October 21, 2005 ex parte letters submitting a list of national programming services and regional sports channels carried on the systems of both companies are inadequate. *See* TAC Ex Parte at 9-10. But, as those ex parte letters indicated, the lists were submitted pursuant to, and consistent with, a request from the Commission. *See* Letter from Nia Y. McDonald, Counsel for Comcast Corporation to Marlene Dortch, Secretary, Federal Communications Commission (Oct. 21, 2005); Letter from Arthur H. Harding, Counsel for Time Warner Inc. to Marlene Dortch, Secretary, Federal Communications Commission (Oct. 21, 2005).

<sup>3</sup> Adelphia incorporates by reference here the numerous instances in which Comcast and Time Warner have demonstrated that TAC's general arguments about the state of competition in the video marketplace and TAC's inability to gain carriage with Comcast, Time Warner, and almost all other MVPDs, are entirely without merit. For example, Comcast has addressed TAC's allegations regarding treatment of independent networks and its contention that "other MSOs follow Comcast's lead," *see* TAC Ex Parte at 2-3, in the FCC's recent cable ownership proceeding. *See In re The Commission's Cable Horizontal and Vertical Ownership Limits*, MM Dkt. No. 92-264, Reply Comments of Comcast Corp. at 6-7 (filed Sept. 23, 2005) (stating that "TAC provides no evidence . . . that a decision by Comcast or Time Warner in effect controls the decisions of all the other MVPDs," and noting that numerous factors are considered in making carriage decisions, "including the content and theme of the network, the necessity or desirability of its presentation as a linear network, the financing of the network, the experience and proven capability of the management team to effectuate the vision, the distribution secured by the network elsewhere, and the fees and terms of carriage"). Likewise, Time Warner has explained that TAC's "failure to obtain carriage cannot be used to prove discrimination against independent video-programming services." *In re The Commission's Cable Horizontal and Vertical Ownership Limits*, MM Dkt. No. 92-264, Reply Comments of Time Warner at 7 (filed Sept. 23, 2005) (noting that "[s]ome video programming services will fail to obtain carriage because of nothing more nefarious than concerns over their quality and lack of capacity to carry every interested programmer"); *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Dkt. No. 05-255, Reply Comments of Time Warner Cable Inc. at 7 (filed Oct. 11, 2005) ("*Time Warner Video Competition Reply*") (explaining that the "fact that every programmer does not obtain as much carriage as it would like is simply a reflection of the operator's right and duty to exercise its editorial and business judgment in allocating the finite capacity of the cable system . . .").

With respect to TAC's "License Fee Analysis" and related conclusions, *see* TAC Ex Parte at 3-4, 14-17, both Comcast and Time Warner have demonstrated key deficiencies in TAC's analysis. *See In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Dkt. No. 05-255, Reply Comments of Comcast Corp. at 32 (filed Oct. 11, 2005) (explaining that TAC's expansive definition of "affiliated" is contrary to Congressional intent because "Congress did not intend for every business relationship between a cable operator and a programmer to constitute an affiliation" and therefore "limited its rules to affiliation based on cable system ownership of an attributable stake in a programmer . . ."). Comcast also stressed that TAC's license fee analysis ignored the "license fee differences that are attributable to variations in programming networks' content, distribution, tier placement, audience demand, etc." and noted that "every programming network has the incentive to charge MVPDs as high a license fee as the network can obtain and every MVPD has the incentive to minimize the license fees it must pay to programming networks." *Id.* at 35. Time Warner refuted the idea that "affiliated" networks, as defined by TAC, charge higher license fees. *See Time Warner Video Competition Reply* at 6 (noting the "inherent problems in drawing price and value comparisons . . . because of the difficulty in ascertaining the comparability of different services" and pointing out that TAC's claim was contradicted by an October 2003 GAO Report).

sector, while abjectly failing to develop any of the assets needed to build a viable network.<sup>4</sup> And the proof is in the pudding -- TAC has failed to gain any significant carriage from any MVPD. It has not just been Comcast, Time Warner, and Adelphia that have recognized the deficiencies in TAC's business plan, it has been virtually every other established MVPD as well. The Commission should recognize TAC's Ex Parte for what it is -- part of an effort by TAC to misuse the regulatory process to force MVPDs to carry programming that cannot obtain carriage on the merits.<sup>5</sup>

In essence, TAC asserted in its Ex Parte that (1) Adelphia "promised" that it would enter into a carriage agreement with TAC if "at least one" of Adelphia's five regional offices expressed interest in such carriage;<sup>6</sup> (2) TAC, in fact, received a significant favorable response from "all" of Adelphia's regional offices that it visited;<sup>7</sup> and (3) Adelphia nonetheless refused to enter into a carriage agreement with TAC because Time Warner and Comcast have not entered into carriage agreements with TAC.<sup>8</sup> All three assertions are false or exaggerated.<sup>9</sup>

1. Adelphia did not promise to enter into a carriage agreement with TAC if TAC received a favorable response from one of Adelphia's regional offices.

In February 2004, Doron Gorshein, President and CEO of TAC, met with Abby Aronsohn, Adelphia's Vice President, Programming, at Adelphia's corporate offices.<sup>10</sup> Ms. Aronsohn described the meeting as a "typical first meeting" in which she was pleasant and encouraging, but not committal

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<sup>4</sup> As Michael Cooley, President and CEO of The Sportsman Channel, explains: "Securing carriage is the key, but there is a formula: Provide a superior quality channel with lower subscriber fees that draws subscribers. Our team focuses on quality customer service and first-class marketing tactics to our affiliates, for an 'If you can prove yourself, they will come' approach." Michael Cooley, *How I Started a Network – Without Comcast*, Multichannel News, Oct. 3, 2005, available at <http://www.multichannel.com/article/CA6262211.html>. Since launching in April 2003 with no carriage contracts, The Sportsman Channel, an independent channel in which no cable operator has an ownership interest, is now carried by Time Warner, Charter, Adelphia, Cox, and 14 other of the top 25 cable systems. *See id.*

<sup>5</sup> Adelphia also notes that the Commission's program carriage rules, 47 C.F.R. § 76.1300-1302, contain a fully adequate process to address any *legitimate* program carriage grievances, which underscores that TAC's allegations have no place in the context of the Commission's review of the applications in this proceeding. *See Reply* at 78-79.

<sup>6</sup> TAC Ex Parte at 1.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.*

<sup>9</sup> TAC also suggests that, if Adelphia had signed a programming carriage agreement with TAC, that agreement could have been assignable to Comcast and Time Warner. *See* TAC Ex Parte at 2. Although Adelphia, and other MVPDs, typically negotiate certain rights allowing them to assign programming carriage agreements, it is not typical that a programming carriage agreement would necessarily *bind* a future owner of a cable system. Thus, any post-transaction decision to carry TAC would have been purely the option of Comcast and Time Warner. In fact, in this case, pursuant to the Asset Purchase Agreement, Time Warner and Comcast expressly stated that they would not assume any of Adelphia's programming carriage contracts. *See* Asset Purchase Agreement, dated as of Apr. 20, 2005, between Adelphia Communications Corp. and Time Warner NY Cable LLC, § 2.2(i) (Exhibit A to Applicants' Public Interest Statement); Asset Purchase Agreement, dated as of Apr. 20, 2005, between Adelphia Communications Corp. and Comcast Corporation, § 2.4(i) (Exhibit B to Applicants' Public Interest Statement).

<sup>10</sup> *See* Declaration of Abby Aronsohn, Vice President, Programming, Adelphia Communications Corporation ¶ 4 (Attachment A) ("Aronsohn Decl.").

about carriage.<sup>11</sup> Contrary to TAC's allegations, Ms. Aronsohn did not promise to sign a carriage agreement with TAC.<sup>12</sup> In fact, it is inconceivable that anyone from Adelphia would promise to sign a carriage agreement at such an early stage in the negotiations. After all, *the February 2004 meeting was the very first meeting between Adelphia and TAC*. TAC presented only a general description of its proposed programming.<sup>13</sup> Ms. Aronsohn is a seasoned veteran of the programming business, and there is no way that she, or anyone else in her position, would have made a carriage commitment based on such a meeting.

TAC's statement that Ms. Aronsohn committed Adelphia to carry TAC based simply on "favorable reception"<sup>14</sup> from Adelphia's regional offices is also false.<sup>15</sup> Although an expressed interest in launching at the regional level would be considered in making a decision to enter into a carriage agreement with a prospective programmer, it is certainly neither the only nor the decisive factor.<sup>16</sup> Carriage decisions at Adelphia often involve collaborative efforts between regional and corporate personnel, but final approval is granted at the corporate level.<sup>17</sup> As explained in the *Reply*, cable operators and other MVPDs must consider several factors in evaluating new carriage proposals: the nature of the programming involved, its target demographics, its likely appeal to consumers, its similarities and differences from other programming available to the MVPD, and its cost, among numerous other factors.<sup>18</sup> In this case, although Ms. Aronsohn may have encouraged TAC to seek favorable recommendations for carriage from Adelphia's regional personnel, she did not say -- nor did she imply -- that such a recommendation would ensure carriage or that Adelphia would irresponsibly ignore any of the other factors it always considers in making carriage decisions.

2. TAC's assertion that it received a significant favorable response from all of Adelphia's regional offices that it visited is exaggerated.

TAC alleges that it received universally strong support for its programming from Adelphia's regional offices. As a primary example, it states that such support was "so strong that Adelphia regional representatives invited The America Channel to address Adelphia's internal corporate sales

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<sup>11</sup> See *id.* Following that meeting, Ms. Aronsohn provided Mr. Gorshein a copy of Adelphia's standard affiliation agreement and a list of regional contact people. See *id.* ¶ 5. However, Ms. Aronsohn routinely supplies such information to programmers seeking carriage by Adelphia, and this did not indicate any special interest from Adelphia in carrying TAC's programming. See *id.*

<sup>12</sup> See *id.* ¶ 4.

<sup>13</sup> See *id.*

<sup>14</sup> TAC Ex Parte at 1.

<sup>15</sup> See Aronsohn Decl. ¶ 4.

<sup>16</sup> See *id.*

<sup>17</sup> See *id.*

<sup>18</sup> See *Reply* at 79.

and marketing conference in April 2004 . . . in our judgment a noteworthy accomplishment.”<sup>19</sup> This is an example of the many exaggerations and mischaracterizations proffered by TAC. The fact is that several networks were invited to sponsor lunches at the April 2004 meeting held in West Palm Beach, Florida. According to John Pitek, Adelphia’s Vice President, Sales and Marketing, for the Central Region, the invitation was simply:

part of our normal effort to inquire whether programmers would like the chance to present their channels to Adelphia personnel in exchange for sponsoring a meal. . . . It was not a vote of confidence or an indication that we wanted to launch TAC. Mr. Gorshein, who is based in Florida, indicated that he saw sponsoring a lunch at the West Palm Beach meeting as an easy way to present TAC to other Adelphia personnel.<sup>20</sup>

Mr. Pitek commonly asks programmers, both those that already have carriage agreements and those that do not, to sponsor meals in exchange for a 30 to 60 minute block of time in which the sponsoring programmer can make a presentation about its network to Adelphia’s marketing teams.<sup>21</sup> Other programmers also presented at the April 2004 meeting, and TAC’s receipt of an invitation to sponsor and participate in a lunch was by no means “a noteworthy accomplishment.”<sup>22</sup>

TAC also states that it “continued to have favorable reception with Adelphia officials charged with managing the regions” and includes an unattributed quote as an example.<sup>23</sup> In fact, no official “charged with managing the regions” made such a statement.<sup>24</sup> Rather, the statement TAC quotes was made by Chris Derario, a director of sales and marketing who has no authority to make programming carriage decisions before a carriage agreement is executed at the corporate level.<sup>25</sup>

TAC similarly asserts that “an Adelphia senior regional official authorized and encouraged The America Channel to commence the ‘hunting’ process among its systems.”<sup>26</sup> In industry jargon, a “hunting license” has come to mean that a master carriage agreement is already in place at the corporate level, and a programmer must negotiate separately with individual systems to obtain carriage.<sup>27</sup> TAC’s statement regarding a “hunting license” is both false and misleading. It is false

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<sup>19</sup> TAC Ex Parte at 2. The meeting was not an Adelphia corporate event, but rather a meeting of the marketing staffs of two of Adelphia’s regional offices. See Declaration of John Pitek, Vice President, Sales and Marketing, Central Region, Adelphia Communications Corporation ¶ 5 (Attachment B) (“Pitek Decl.”).

<sup>20</sup> Pitek Decl. ¶ 5.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.* ¶ 6.

<sup>23</sup> TAC Ex Parte at 2.

<sup>24</sup> See Aronsohn Decl. ¶ 7.

<sup>25</sup> See *id.*

<sup>26</sup> TAC Ex Parte at 2.

<sup>27</sup> See e.g., Will Lee, *Outdoor Channel Gets Comcast Hunting License*, Cable World, Jan. 14, 2002, at 2 (explaining that a “hunting license” means that an affiliation agreement is in place, but “rather than guarantee carriage on all of its

because no “senior regional official” at Adelphia has the authority to authorize such a “hunting license.” Those decisions are made at the corporate level.<sup>28</sup> It is misleading because it incorrectly suggests that TAC was already a party to an affiliation agreement with Adelphia when it visited Adelphia’s regional offices.

TAC exaggerates when it states that “an official at an important Adelphia system informed us that that system would carry The America Channel, assuming our signal satisfied the system’s technical requirements.”<sup>29</sup> In actuality, this appears to be a description of an e-mail exchange that Mr. Gorshein had with Chris Peterson, a marketing coordinator for Adelphia’s Western region systems. Ms. Peterson did not indicate that any Adelphia system would carry TAC if TAC met the system’s technical requirements. To the contrary, Ms. Peterson specifically advised Mr. Gorshein that, without a corporate agreement in place, she had *no authority* to authorize carriage of TAC.<sup>30</sup> It is clear that Mr. Gorshein understood this point; in an e-mail response to Ms. Peterson, he admitted that a corporate agreement was not yet executed, and “that no commitments can be made until the Corporate agreement is signed.”<sup>31</sup>

Finally, TAC asserts that “later in 2004 Adelphia regional personnel contacted The America Channel and expressed their interest in the launch of The America Channel on Adelphia systems in 2005.”<sup>32</sup> TAC provided no support for this statement.<sup>33</sup> According to Ms. Aronsohn, no one at Adelphia with authority to enter into a carriage agreement with TAC contacted TAC personnel to indicate an interest in launching TAC on Adelphia systems in 2005.<sup>34</sup>

TAC’s allegations regarding Adelphia’s commitment to carry TAC’s programming largely hinge on the purported interest and encouragement given to it on the regional level at Adelphia. Although the regional personnel who met with TAC remember being polite, and some of them recall

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systems, [a cable operator] has given [a programmer] the go-ahead to negotiate with any of its systems around the country”).

<sup>28</sup> See Aronsohn Decl. ¶ 8.

<sup>29</sup> TAC Ex Parte at 2.

<sup>30</sup> E-mail from Chris Peterson, Marketing Coordinator, Western Region, Adelphia Communications Corporation, to Doron Gorshein, President and CEO of The America Channel (Mar. 29, 2004) (Attachment C).

<sup>31</sup> E-mail from Doron Gorshein, President and CEO, The America Channel, to Chris Peterson, Marketing Coordinator, Western Region, Adelphia Communications Corporation (Mar. 29, 2004) (Attachment D). In this e-mail, Mr. Gorshein states: “we’ve exchanged red-lined drafts with corporate” and suggests that an agreement will be executed within the month. *Id.* Although Mr. Gorshein had provided an initial mark-up of Adelphia’s standard form agreement to Adelphia, Adelphia had not provided a further mark-up of the agreement to Mr. Gorshein. See Aronsohn Decl. ¶¶ 6, 9. It was misleading for Mr. Gorshein to suggest that Adelphia and TAC were close to executing an agreement.

<sup>32</sup> TAC Ex Parte at 2.

<sup>33</sup> We note that this is yet another example of TAC’s pattern of including unattributed statements in Commission filings.

<sup>34</sup> See Aronsohn Decl. ¶ 11.

providing some positive feedback,<sup>35</sup> it is important and telling that *no one on the regional level at Adelphia ever contacted the Adelphia corporate offices to express an interest in launching TAC.*<sup>36</sup>

3. TAC's assertion that Adelphia said it would not enter into a carriage agreement with TAC because Time Warner and Comcast had not entered into a carriage agreement with TAC is false.

TAC alleges that Adelphia claimed it would not sign a carriage agreement until after Comcast and Time Warner signed affiliation agreements with TAC.<sup>37</sup> Adelphia denies that it made any such statement. MVPDs, including Adelphia, will typically ask a prospective network if they have any other carriage agreements in place, but it is only one of many general-inquiry type questions asked of programmers.<sup>38</sup> In this case, that issue was raised, *not by Adelphia, but by TAC*. Mr. Gorshein himself first raised the issue of TAC's carriage negotiations with Time Warner and Comcast in his January 9, 2004 e-mail to Ms. Aronsohn, noting that, "[w]e've been spending a fair amount of time with [Time Warner] and Comcast systems throughout the country, with exceptional response."<sup>39</sup> So, it would hardly be surprising if Mr. Gorshein and Ms. Aronsohn discussed the state of TAC's carriage by Time Warner, Comcast, and other MVPDS. But, again, Ms. Aronsohn did not state that TAC's carriage by Adelphia was in any way dependent on TAC obtaining a carriage agreement with Time Warner or Comcast.<sup>40</sup>

Given its other conduct in its discussions with Adelphia, it is perhaps not surprising that TAC would falsely claim that Adelphia tied its carriage of TAC's programming to carriage by Comcast or Time Warner. For example, in September 2004, Mr. Gorshein sent an e-mail to Ms. Aronsohn stating that, "we now have a [carriage] deal with Comcast."<sup>41</sup> Again, in December 2004, Mr. Gorshein sent an e-mail to Ms. Aronsohn, stating that "Comcast and EchoStar (among others) will launch TAC in 2005."<sup>42</sup> But these statements were not true. In fact, as TAC's own statements in this proceeding demonstrate, during the time frame in which these e-mails were sent, it had no agreement with

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<sup>35</sup> See, e.g., Pitek Decl. ¶ 4.

<sup>36</sup> See Aronsohn Decl. ¶ 12. When Adelphia regional offices are particularly interested in launching a network, it is common for them to communicate their interest to personnel at the Adelphia corporate offices. See *id.*

<sup>37</sup> TAC Ex Parte at 2. TAC also slyly adds that "Adelphia said other things about the roles of Comcast and Time Warner as gatekeepers in the industry." *Id.* Of course, this self-serving and unsupported statement adds nothing to the Commission's consideration of the applications in this proceeding.

<sup>38</sup> See Aronsohn Decl. ¶ 13.

<sup>39</sup> See *id.* ¶ 3.

<sup>40</sup> See *id.* ¶ 13.

<sup>41</sup> E-mail from Doron Gorshein, President and CEO of The America Channel, to Abby Aronsohn, Vice President, Programming, Adelphia Communications Corporation (Sept. 27, 2004) (Attachment E).

<sup>42</sup> E-mail from Doron Gorshein, President and CEO of The America Channel, to Abby Aronsohn, Vice President, Programming, Adelphia Communications Corporation (Dec. 2, 2004) (Attachment F).

Comcast regarding carriage and still does not today.<sup>43</sup> At the very least, TAC's credibility is seriously in doubt.

Moreover, Adelphia has absolutely no reason to base its carriage decisions on programming choices made by Comcast and Time Warner and does not do so. There are many examples of instances where Adelphia has signed carriage agreements with independent networks before they had secured carriage agreements with Comcast and/or Time Warner, including the following: CSTV (Adelphia completed a deal before both Comcast and Time Warner); Tennis Channel (Adelphia completed a deal before Comcast); HD Net (Adelphia completed a deal before Comcast); The Sportsman's Channel (Adelphia completed a deal before Comcast); Altitude (Adelphia completed a deal before Comcast); and NFL Network (Adelphia completed a deal before Time Warner).<sup>44</sup>

In short, Adelphia's decision not to carry TAC is not a product of TAC's inability to persuade Comcast or Time Warner to carry it.

\* \* \*

To the extent that TAC repeats allegations concerning competition in the video distribution marketplace or the state of its carriage on Time Warner and Comcast cable systems, these allegations already have been answered and fully refuted in this proceeding.<sup>45</sup> To the extent that TAC raises new

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<sup>43</sup> See *In re Applications for the Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, To Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, To Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, To Time Warner Inc., Transferee, Time Warner Inc., Transferor, To Comcast Corporation, Transferee*, Petition to Deny of The America Channel LLC, MB Docket No. 05-192, at 9 (July 21, 2005) (explaining that for two years, TAC has "sought carriage with both Time Warner and Comcast. Each MSO has rebuffed TAC. . ."); Letter from Kathleen Wallman to Barbara Esbin, Associate Bureau Chief, Media Bureau, Federal Communications Commission, at 2-3 (July 31, 2005) (noting that "four years since inception, and after more than two years of trying to secure access at Comcast," TAC had not reached a carriage deal).

<sup>44</sup> See *CSTV Inks Comcast Carriage Deal*, Multichannel News, July 29, 2004; R. Thomas Umstead, *CSTV Joins Time Warner Cable Sports Tier*, Multichannel News, Mar. 8, 2004; *CSTV, Adelphia Close to Deal*, Multichannel News, Sept. 22, 2003; *Adelphia Serves Up Tennis Channel*, Multichannel News, Oct. 20, 2003 (noting that Time Warner Cable, NCTC, Cox, and Knology carried the Tennis Channel upon the date of Adelphia's agreement to do so); Press Release, *HDNet, HDNet to Broadcast Games 2-5 of First Round in Playoffs* (Apr. 23, 2005) (stating that "Comcast does not currently carry HDNet and HDNet Movies"); Linda Moss, *Adelphia Inks Deal for HDNet, HDNet Movies*, Multichannel News, Jan. 20, 2004; Andrew Wineke, *Altitude Will Air on Adelphia; New Network to Feature Nuggets and Avalanche*, The Gazette (Colorado Springs), Aug 31, 2004; *Altitude Inks Comcast Deal*, Multichannel News, Nov. 7, 2004; Joel Brown, *Outdoor Cable Networks Find Their Own Space*, Broad. & Cable, Oct. 10, 2005, at 16 (noting that The Sportsman Channel signed a deal with Comcast, "the last of the big five operators to sign on."); Richard Sandomir, *N.F.L. Seeks Partner in Possible Second Network*, N.Y. Times, Nov. 16, 2005, at D6 (noting that Time Warner does not carry the NFL Network); Press Release, NFL Enterprises LLC, *Adelphia Joins NFL Network Roster* (Dec. 15, 2004) (announcing that Adelphia and the NFL Network reached an affiliation agreement).

<sup>45</sup> See n. 2 *supra*.

Marlene Dortch  
December 9, 2005  
Page 9

allegations about its carriage negotiations with Adelphia, those allegations are unsupported, misleading, and false, and the Commission should summarily dismiss them.

Please contact me with any questions concerning this matter.

Respectfully Submitted,



Michael H. Hammer  
Counsel for Adelphia

cc: Mania Baghdadi  
Jim Bird  
Amy Brett  
Ann Bushmiller  
Neil Dellar  
Marcia Glauberman  
Alison Greenwald  
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Wayne McKee  
Julie Salovaara  
Royce Sherlock  
Roy Stewart  
Jeff Tobias  
Sarah Whitesell  
Tracy Waldon  
Best Copy and Printing, Inc.

# **ATTACHMENT A**

**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; )  
) MB Docket No. 05-192  
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. )

**DECLARATION OF ABBY ARONSOHN**

1. My name is Abby Aronsohn. My business address is 5619 DTC Parkway, Greenwood Village, Colorado 80111.
2. Since September 2003, I have served as Vice President, Programming for Adelphia Communications Corporation (“Adelphia”). In that role, I am responsible for negotiating programming carriage agreements. Before joining Adelphia in 2003, I held several positions that involved negotiating programming agreements, among other things,

including: Senior Vice President of BOB: Brief Original Broadcasts, Senior Vice President of TViFusion, and Vice President of PrimeStar Satellite Television.

3. My first contact with Doron Gorshein, President and Chief Executive Officer of The America Channel (“TAC”), occurred on January 9, 2004. On that day, I received an e-mail from him indicating that he wanted to set up a meeting to “present The America Channel.” In this initial communication with me, Mr. Gorshein stated that “[w]e’ve been spending a fair amount of time with [Time Warner Cable] and Comcast systems throughout the country, with exceptional response.”

4. I met with Mr. Gorshein on February 17, 2004 at Adelphia’s corporate offices in Greenwood Village, Colorado. At this meeting, Mr. Gorshein provided a general description of TAC’s program concept. I would characterize this meeting as a typical first meeting. I was pleasant and encouraging to Mr. Gorshein, as I am with all new programmers. I was not, however, committal about TAC’s carriage prospects on Adelphia systems. I did not promise to sign a carriage agreement with TAC at the initial meeting. A carriage agreement is the culmination of a negotiation process which may or may not result in an executed agreement and takes into consideration things such as the content of the service, its appeal to consumers, how it fits in with the mix of other programming Adelphia delivers, corporate priorities, and terms of carriage. I would also never agree to sign a carriage agreement with a programmer based solely on “favorable reception” at the Adelphia regional level. I did encourage Mr. Gorshein to contact our regional personnel to present TAC and ascertain the interest level in the network. However, while an expressed interest in launching a network from Adelphia regional personnel would be considered in making a decision as to whether to enter into a carriage

agreement, it is not the dispositive factor in determining whether a carriage agreement is completed. Carriage decisions at Adelphia may involve collaborative efforts between Adelphia's regional and corporate personnel, but carriage negotiations and final execution of a carriage agreement are accomplished at the corporate level based on a variety of factors.

5. Following the February 17, 2004 meeting, I sent Mr. Gorshein an e-mail with two attachments: (1) a contact list of Adelphia regional personnel, and (2) the standard Adelphia carriage agreement. I typically send these materials to programmers following their channel presentations. My e-mail to Mr. Gorshein did not indicate that Adelphia planned to sign an affiliation agreement with TAC.

6. I did not hear from Mr. Gorshein again until March 12, 2004. On that date, Mr. Gorshein sent me an e-mail describing a meeting that he had in Charlottesville, Virginia with John Pitek, Vice President, Sales and Marketing for Adelphia's Central region. Mr. Gorshein also attached a mark-up of the standard Adelphia carriage agreement.

7. Mr. Gorshein e-mailed me again on March 24, 2004 to report that he met with Anita Dorf, Vice President, Marketing, for Adelphia's Southeast region, in Adelphia's West Palm Beach offices, and Sabrina Steeves, former Vice President, Marketing, for Adelphia's Western region, in Adelphia's Colorado Springs offices. On April 20, 2004, Mr. Gorshein forwarded to me an e-mail from Chris Derario, a director of sales and marketing for Adelphia's Southeast region, containing positive statements about TAC. As a regional director, however, Mr. Derario, does not have the authority to make programming carriage decisions before a carriage agreement is executed at the

corporate level. Mr. Derario's remarks, therefore, should not be considered to be an indication that Adelphia was likely to execute a carriage agreement with TAC.

8. In certain circumstances, after a carriage agreement is executed at the corporate level, a programming network will have what is typically known in the industry as a "hunting license." A "hunting license" allows a programmer to speak with regional personnel to obtain carriage. There is no such thing at Adelphia as a "hunting license" prior to obtaining a carriage agreement at the corporate level. A "hunting license," therefore, cannot be granted by an Adelphia employee at the regional level, nor can it be granted before a carriage agreement is executed at the corporate level. Adelphia's corporate office never executed a carriage agreement with TAC, thus, TAC never had a "hunting license" to secure carriage with individual systems.

9. On May 11, 2004, Judy Meyka, Senior Vice President, Programming, and I met with Mr. Gorshein at our corporate offices in Greenwood Village. Although we may have discussed potential carriage terms, we did not agree or promise to sign a carriage agreement with TAC. We did not provide a mark-up of the agreement sent to us by Mr. Gorshein on March 12, 2004.

10. A brief "update" e-mail from Mr. Gorshein on January 28, 2005, was the last contact I received from any TAC representative.

11. To the best of my knowledge, no one at Adelphia with authority to enter into a carriage agreement with TAC contacted TAC personnel to indicate an interest in launching TAC on Adelphia systems in 2005.

12. When our regional offices are particularly interested in launching a network, it is common for them to communicate that fact to the corporate offices. To my

knowledge, no Adelphia personnel from any of our regional offices ever contacted me or anyone else at Adelphia's corporate offices to express an interest in launching TAC.

13. I never told Mr. Gorshein that Adelphia would execute a carriage agreement only if Comcast and Time Warner had executed agreements nor did I tie carriage of TAC in any other way to carriage by Comcast or Time Warner. Adelphia's carriage decisions are not based upon the programming decisions made by Time Warner and Comcast. While I will typically inquire whether a prospective network has any other carriage agreements in place, it is only one of many general-inquiry type questions that I ask of programmers.

14. Mr. Gorshein indicated in various e-mails to Adelphia personnel that TAC had received carriage agreements with Comcast, EchoStar, and others. For example, on September 27, 2004, Mr. Gorshein forwarded an e-mail to me that he sent to Anita Dorf on September 24, 2004. In that e-mail, Mr. Gorshein stated: "We now have a deal with Comcast. (This is in addition to our EchoStar and other distribution deals.)" Similarly, in a December 2, 2004 e-mail to me, Mr. Gorshein reported that "Comcast and EchoStar (among others) will launch The America Channel in 2005. A third MSO is imminent." Also, on January 28, 2005, Mr. Gorshein sent an e-mail to me indicating that TAC was "in contract negotiations with yet another major operator - this is the 3<sup>rd</sup> out of the top 4 distributors (cable and satellite) that plan to launch The America Channel."

[Remainder of page intentionally left blank.]

I declare under penalty of perjury that the foregoing is true and correct. Executed  
on this 28<sup>th</sup> day of November, 2005.

  
Abby Aronsohn

# **ATTACHMENT B**

**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;	)	
	)	MB Docket No. 05-192
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.	)	

**DECLARATION OF JOHN PITEK**

1. My name is John Pitek. My business address is 675 Peter Jefferson Place, Suite 450, Charlottesville, VA 22911.
  
2. Since January 28, 2004, I have served as Vice President, Sales and Marketing, for Adelphia Communications Corporation (“Adelphia”) for the Central region. In that role, I am responsible for customer acquisition, growth, and retention, and all marketing and sales efforts that drive them within the seven states that make up the

Central region. Before joining Adelphia in 2004, I served as Vice President of Sales and Marketing for Syngistix, a Denver-based software company..

3. On February 18, 2004, I received an e-mail from Doron Gorshein, President and CEO of The America Channel (“TAC”). In his e-mail, Mr. Gorshein indicated that he had met with Abby Aronsohn in Denver earlier that week, and that he wanted to schedule a time to present TAC to me.

4. On March 10, 2004, I met Mr. Gorshein at my office. He explained to me his concept for TAC, a channel that was family oriented and focused on the real stories of Americans. Mr. Gorshein played a 5 to 7 minute highlights reel during the meeting, but did not provide any samples of actual TAC programming. During the meeting, I was polite and wished him luck in getting the channel off the ground. Although I explained that there would first need to be an affiliation agreement signed with our corporate offices, I told him I would speak to our video product manager to see if there was space or interest in launching the channel in our region.

5. During the March 10, 2004 meeting, I invited Mr. Gorshein to sponsor a lunch during a planned meeting of the marketing staffs of two Adelphia regional offices in West Palm Beach, Florida. The invitation was part of our normal effort to inquire whether programmers would like the chance to present their channels to Adelphia personnel in exchange for sponsoring a meal (we commonly ask programmers, both those we carry and those we do not, to sponsor meals in exchange for a 30 to 60 minute block of time to present their networks). It was not a vote of confidence or an indication that we wanted to launch TAC. Mr. Gorshein, who is based in Florida, indicated that he saw

sponsoring a lunch at the West Palm Beach meeting as an easy way to present TAC to other Adelphia personnel.

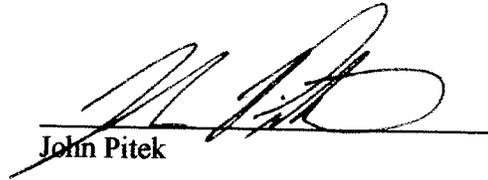
6. From April 13, 2004 through April 16, 2004, Adelphia marketing staff from the Central and the Southeast regions met in West Palm Beach, Florida.

Approximately 30 Adelphia personnel attended the event, which was basically a brainstorming session to come up with new competitive marketing ideas. On April 15, 2004, Mr. Gorshein presented TAC to the group during lunch. Other programmers also presented during lunches at the event, including The Cartoon Network and Fine Living.

7. I never contacted Abby Aronsohn or anyone else at the Adelphia corporate level to express an interest in launching TAC.

[Remainder of page intentionally left blank.]

I declare under penalty of perjury that the foregoing is true and correct. Executed  
on this 29 day of November, 2005.



John Pitek

# **ATTACHMENT C**

-----Original Message-----

**From:** Chris Peterson [mailto:chris.peterson@adelphia.com]

**Sent:** Monday, March 29, 2004 3:54 PM

**To:** Doron Gorshein

**Subject:** RE: The America Channel - Intro

I am open both days & would enjoy meeting with you whenever is convenient.

I know you've said that this isn't a "hard sell" but I must warn you ahead of time that if you don't have a corporate agreement with Adelphia that there's nothing I can do to get your channel on, no matter how well it would fit our market!

***Chris Peterson***

***Mktg Coordinator***

***213 N Union Blvd***

***Colo Springs, CO 80909***

***719.457.4606***

# **ATTACHMENT D**

-----Original Message-----

**From:** Doron Gorshein [mailto:doron.gorshein@americachannel.us]

**Sent:** Monday, March 29, 2004 4:14 PM

**To:** 'Chris Peterson'

**Subject:** RE: The America Channel - Intro

Thanks Chris. If ok with you, let's go with 4/28. I'll confirm flights and then coordinate with you as to exact time.

As for the corporate agreement, we don't yet have it executed. Having said that, we've exchanged red-lined drafts with Corporate. Abby Aronsohn is away this week but we will be in touch again next week. I've also met with 3 of the 5 regions; and am hosting a luncheon on 4/15 in West Palm Beach for all of the Adelpia regional offices. It is my hope that the agreement will be executed by the time we meet. I will certainly keep you updated, and understand that no commitments can be made until the Corporate agreement is signed.

Best regards,

Doron

# **ATTACHMENT E**

## Abby Aronsohn

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**From:** Doron Gorshein [doron.gorshein@americachannel.us]  
**Sent:** Monday, September 27, 2004 4:35 PM  
**To:** Abby Aronsohn  
**Subject:** FW: The America Channel - Update and Localized Content

Abby:

Attached is a message I sent to some of your regions. The consumer marketing document in particular sets forth the methodology of our localized cooperation at the system level.

We now have a deal at Comcast. This is in addition to EchoStar and others. I'll touch base with you in the next couple of days.

Best regards,

Doron

-----Original Message-----

**From:** Doron Gorshein [mailto:doron.gorshein@americachannel.us]  
**Sent:** Friday, September 24, 2004 9:23 AM  
**To:** 'anita.dorf@adelphia.com'  
**Subject:** The America Channel - Update and Localized Content

Anita:

I hope that you're well. It has certainly been a busy year for us. Systems around the country have embraced our product and our localized content model. It has been a thrill to meet Americans in diverse communities around the country. The people who lead the cable systems are impressive individuals who care deeply about their communities, and understand their consumer.

The America Channel employs a unique network-system partnership. We work with cable systems to profile communities, local heroes, campuses, and ordinary people who accomplish extraordinary things from within the system footprint. As such, we are positioned, perhaps more than any other network, to establish a relationship with the cable system on a local level and provide meaningful competitive advantage (which cannot be replicated for DBS) to develop localized content. The America Channel will coordinate with your public affairs and programming departments to identify and profile the best stories from within your system footprint; and create local events which would then air on The America Channel (and be available to you for your VOD offering).

The attached consumer marketing document describes the methodology and provides illustrations of how we could work together on a long-term basis to deliver to your consumers, the most resonant localized content available. Also attached is a powerpoint outline of some of our programming and market research. We already have some distribution deals in place (including EchoStar for the AT-180 package).

I take seriously my earlier promise to deliver localized content that systems will be happy with and will be able to leverage within their communities. Once we have a deal at Corporate, I will contact you to schedule something with your programming and public affairs teams, to understand your needs, and to discuss our value proposition and methodology in greater detail. In the meantime I look forward to keeping you apprised of our progress.

All the best,

Doron

Doron Gorshein  
President & CEO

The America Channel, LLC  
120 International Parkway, Suite 220  
Heathrow, Florida 32746  
tel: 407-333-3031  
fax: 801-838-4226  
email: [doron.gorshein@americachannel.us](mailto:doron.gorshein@americachannel.us)  
web: [www.americachannel.us](http://www.americachannel.us)

# **ATTACHMENT F**

-----Original Message-----

**From:** Doron Gorshein [mailto:[doron.gorshein@americachannel.us](mailto:doron.gorshein@americachannel.us)]

**Sent:** Thursday, December 02, 2004 8:31 AM

**To:** Abby Aronsohn

**Subject:** The America Channel Launch Update

Abby:

I hope you're well.

Comcast and EchoStar (among others) will launch The America Channel in 2005. A third major MSO is imminent. We therefore expect a robust launch. We are providing equity for carriage to major MSOs that participate in our launch. The E4C is generous and makes for an attractive deal.

I will be visiting our friends at EchoStar the week of December 13. I'd like to get together with you if you are available and can update you then. Will you be around?

All the best,

Doron

Doron Gorshein  
President & CEO  
The America Channel, LLC  
120 International Parkway, Suite 220  
Heathrow, Florida 32746  
tel: 407-333-3031  
fax: 801-838-4226  
email: [doron.gorshein@americachannel.us](mailto:doron.gorshein@americachannel.us)  
web: [www.americachannel.us](http://www.americachannel.us)