

December 20, 2005

VIA ELECTRONIC FILING

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 December 19, 2005, Angie Kronenberg, Megan Anne Stull, and the undersigned, representing Adelphia Communications Corp. (“Adelphia”), Jim Coltharp, representing Comcast Corporation (“Comcast”), and Art Harding, representing Time Warner Inc. (“Time Warner”) (collectively, the “Applicants”) participated in a telephone conversation with Sarah Whitesell and Royce Sherlock of the Media Bureau and Jim Bird of the Office of General Counsel. Participants discussed Applicants’ request for enhanced confidential treatment, filed on December 14, 2005, for certain information to be submitted in the above-captioned proceeding.¹

Applicants stressed that the request for enhanced confidential treatment for information to be submitted in response to sections III.A.5 and III.F of the Commission’s Information and Document Request is particularly justified because that information involves the terms of Applicants’ programming contracts and their offering of programming to consumers, which is at the very heart of how Applicants conduct their businesses and compete in the marketplace. There are several parties who are participating in this proceeding with whom Applicants directly and fiercely compete on a daily basis, including DIRECTV, EchoStar, and RCN. The information at issue here is the absolute

¹ See Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, to Donna C. Gregg, Acting Chief, Media Bureau, Federal Communications Commission (Dec. 14, 2005).

fulcrum of competition between Applicants and these competitors. There are virtually countless ways in which competitors could use this information to the extreme disadvantage of Applicants. To give just one example, a competitor that had access to such information as an Applicant's homes passed, penetration, and license fee for a particular programming network could use that information to negotiate a better price with that programming network by promising a penetration level that exceeds the Applicant's penetration level. Moreover, the Commission in sections III.A and III.F asks for a vast amount of detailed information concerning Applicants' programming businesses. Having access to this extensive information set would provide competitors with a unique and unprecedented window into Applicants' acquisition and distribution of programming, the *sine qua non* of what Applicants do in a competitive marketplace. Again, the point here is that this information is among the most sensitive and highly protected in Applicants' possession precisely because it is so critical from a competitive standpoint.

In addition, much of the information for which enhanced protection is requested is contained in contracts between Applicants and third party programming networks and programming suppliers. These contracts typically contain confidentiality provisions that prohibit or strictly limit disclosure of their terms. The reason for this is because if entities not subject to those contracts were to obtain this information, it would give them a significant and unfair advantage in negotiating with those programming networks and programming suppliers.

Providing enhanced protection for this information is particularly justified because such protection does not mean that parties who wish to legitimately comment on the transactions in this proceeding cannot do so. It only means that they must do so through outside counsel and consultants. This is particularly important because neither Applicants nor the Commission have any way of ensuring that if employees of parties wishing to comment in this proceeding are given access to this information they will not use it (or allow it to be used) in a manner that will unfairly create a competitive advantage for those parties.

In short, there is simply no reason to allow Applicants' competitors to root around in the details of Applicants' programming arrangements—the most coveted and highly guarded information Applicants possess—when there is a procedure that allows them, through outside counsel and consultants, to view this information and use it for any legitimate purpose in this proceeding.

Finally, Applicants clarify that their request for an enhanced level of protection for the subscriber information that will be filed in response to section II.B.2.a only applies to Comcast. Comcast will be providing its subscriber information in response to this section at a more granular level than it supplied in its December 12, 2005 filing with the Commission. Comcast does not make, and has not made, such granular information available publicly. Moreover, such information cannot be compiled from industry publications or information provided to local franchise authorities. Thus, as demonstrated in Applicants' request for enhanced level of protection filed on December 14, 2005, it is in the public interest to grant an enhanced level of protection for Comcast's response to section II.B.2.a.

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If you have any questions on this matter, please do not hesitate to contact me.

Respectfully submitted,

/s/ Michael H. Hammer

Michael H. Hammer

cc: Donna Gregg
Sarah Whitesell
Tracy Waldon
Royce Sherlock
Marcia Glauberman
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