

January 12, 2006



Marlene H. Dortch  
Secretary  
Federal Communications Commission  
TW-A325  
445 Twelfth St., SW  
Washington, DC 20554

Re: *Ex parte* presentation in MB Docket No. 05-192

Dear Ms. Dortch:

On January 10, 2006, Andrew J. Schwartzman, Harold Feld, and Parul Desai of the Media Access Project met with Jordan Goldstein, Senior Legal Advisor in the Office of Commissioner Michael Copps concerning the above captioned matter.

Mr. Schwartzman first began with the overall issues of concern regarding this matter. Mr. Schwartzman stated that the benefits of the swaps of systems between Comcast Corporation ("Comcast") and Time Warner, Inc. ("Time Warner") should be examined separately from the benefits of the transfer of Adelphia Communications Corporation's ("Adelphia") licenses. Mr. Schwartzman also stated that any approval of transfer should address cable-leased access and net neutrality.

Mr. Feld and Mr. Goldstein then discussed the harms resulting from the transfer of Adelphia's licenses and the harms resulting from the exchange of the licenses between Comcast and Time Warner. This discussion substantially duplicates the harms outlined in the *Petition to Deny of Free Press, et al.* and NHMC, and the Reply Comments of NATOA, *et al.*

With regard to the Applicants description of purported public interest benefits, Mr. Feld noted that Comcast had ranked only slightly ahead of Adelphia in customer satisfaction in a recent survey by JD Powers and Associates. Accordingly, the claim that Comcast would provide service so superior to that of Adelphia to overcome the harms flowing from the merger is untenable. Furthermore, in the event the Applicants voluntarily withdraw their applications rather than accept conditions, the Adelphia systems will be rebid to buyers that will not create the dangerous levels of regional and national concentration in the merger.

Finally, Mr. Feld and Mr. Goldstein discussed the remedies/conditions that could help alleviate any harms resulting from the transfer and exchange of licenses. Mr. Feld proposed net neutrality condition should be placed, as they were placed in the recent telephone company mergers. Mr. Feld also suggested that the availability of commercial leased access be made more affordable. Mr. Feld pointed out that a statutory scheme is already in place regarding commercial leased access channels, however, as a condition of the merger, commercial leased access channels should be made available under a more reasonable rate. Mr. Feld suggested that

either a flat rate could be set or the rate could be determined by arbitration. With regard to setting a suitable flat rate, the Commission now has accurate pricing information from Comcast and Time Warner on how much they pay for both affiliated and unaffiliated programming. The Commission can therefore craft a suitable rate based on real information that will adequately compensate the cable operators while facilitating independent program entry.

With regard to the local government concerns, Mr. Feld proposed that an expedited complaint process be put in place through which local governments or those using public access channels can submit complaints to the Commission regarding the cable operator's refusal to carry out its obligations under agreements already in place. Finally, Mr. Feld noted that while a remedy concerning the cable operator's refusal to carry certain advertising is difficult to create, a recent antitrust decision in the SDNY found that neither the *Norr-Pennigton* Doctrine nor other First Amendment claims gave cable operators the right to reject advertising under the anti-trust laws. It should therefore be possible to craft a suitable merger condition that addresses this issue.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Respectfully submitted,

Parul Desai  
Assistant Director