

January 17, 2006

**VIA ELECTRONIC FILING**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, N.W.  
Washington, DC 20554

*Ex Parte Notice*

**Re: Comcast-Time Warner-Adelphia Applications for Consent to the Assignment and/or Transfer of Control of Licenses, MB Docket No. 05-192**

Dear Ms. Dortch:

Comcast Corporation (“Comcast”), Time Warner Inc. (“Time Warner”), and Adelphia Communications Corporation (“Adelphia”) (collectively, the “Applicants”) hereby respond to certain comments filed by Free Press *et al.* (“Free Press”) in its petition to deny in the above-referenced proceeding.<sup>1</sup> Free Press asserts that the transactions under review in this proceeding (the “Transactions”) will harm competition in the marketplace for consumer electronics equipment and interactive television products and services. As detailed below, these claims are without merit and should be dismissed by the Commission.

**I. THE TRANSACTIONS WILL NOT CREATE A DANGEROUS LEVEL OF MARKET POWER WITH REGARD TO PVRS AND OTHER CONSUMER ELECTRONICS DEVICES.**

Free Press alleges that, as a result of the Transactions, Comcast and Time Warner will “control more than 40% of the national cable market[,]” which will “effectively allow [them] to set the standards and terms under which manufacturers will be allowed to attach devices to cable networks.”<sup>2</sup> In making this assertion, Free Press completely mischaracterizes the structure of the Transactions before the Commission. Comcast and Time Warner are separate entities today and make entirely separate decisions on equipment acquisition issues, and that will continue to be the

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<sup>1</sup> See Free Press *et al.* Petition to Deny, filed in MB Dkt. No. 05-192 (July 21, 2005) (“Free Press Petition”).

<sup>2</sup> *Id.* at 15.

case after the Transactions are finalized.<sup>3</sup> In addition, as detailed below, Free Press' arguments are contrary to marketplace facts and substantial Commission precedent and are not merger specific. Accordingly, for all of these reasons, Free Press' arguments should be rejected.

**A. Free Press Fails To Recognize The Vibrancy And Dynamism Of The Global Marketplace For Consumer Electronics Equipment.**

Free Press grossly mischaracterizes the current marketplace for cable-ready equipment. As anyone who visited Best Buy or Circuit City over the holidays would know, consumers have an enormous range of options for such equipment. As a result of the 2002 plug-and-play agreement between the cable and consumer electronics industries and the Commission's implementing rules,<sup>4</sup> there are now more than 370 certified or verified models of CableCARD-enabled products from 22 manufacturers, and those numbers are steadily climbing.<sup>5</sup> For example, consumers today can buy an HDTV set from any of the leading consumer electronics manufacturers that can be used to receive one-way analog and digital cable services without the need for a cable set-top box. Moreover, the cable industry has developed specifications that enable consumer electronics manufacturers to build two-way cable-ready products (*i.e.*, devices that can access interactive program guides, video-on-demand, and other two-way cable services without the need for a set-top box).<sup>6</sup> Already, Samsung has produced a two-way HDTV under this initiative that has been tested and certified by CableLabs and is ready to be brought to market.<sup>7</sup>

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<sup>3</sup> Free Press does not and cannot offer any evidence of concerted activity by Time Warner and Comcast in connection with equipment acquisition decisions. To the contrary, Time Warner and Comcast historically have made most of their consumer equipment purchases from different manufacturers and, as noted below, both are further diversifying. *See infra* n.9 (describing Comcast equipment agreements with Panasonic and Samsung). In fact, as described in the Public Interest Statement, the Transactions will actually result in the unwinding of Comcast's passive interests in Time Warner Cable and Time Warner Entertainment. *See Applications and Public Interest Statement*, filed in MB Dkt. No. 05-192, at 70-71 (May 18, 2005) ("Public Interest Statement").

<sup>4</sup> *See In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Compatibility Between Cable Systems and Consumer Electronics Equipment*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd. 20885 (2003) ("*Plug-and-Play Order*") (Commission order implementing the 2002 NCTA-CEA plug-and-play agreement).

<sup>5</sup> *See NCTA Report on Two-Way (Interactive) Digital Cable Ready Televisions*, filed in CS Dkt. No. 97-80 (Nov. 30, 2005) ("NCTA Report").

<sup>6</sup> The cable and consumer electronics industries are also negotiating an agreement on two-way cable-ready devices. The parties have made progress and have reached agreement in a number of areas, but not others. *See NCTA/CEA Joint Status Report*, filed in CS Dkt. No. 97-80 (Nov. 30, 2005). These negotiations do not affect the ability of consumer electronics manufacturers to build two-way cable-ready devices under the existing CableLabs' specifications and licenses for such equipment.

<sup>7</sup> *See Samsung Electronics Gains CableLabs Certification on 2-Way Digital Television*, CableLabs Press Release (Aug. 23, 2005), available at [http://www.cablelabs.com/news/pr/2005/05\\_pr\\_samsung\\_082405.html](http://www.cablelabs.com/news/pr/2005/05_pr_samsung_082405.html). LG Electronics and Panasonic are also developing two-way products under this CableLabs' initiative. *See Cable*

(footnote continued...)

Furthermore, the marketplace for cable set-top box equipment is robust. As an initial matter, the marketplace for such equipment is global in scope. U.S. cable operators serve only 24% of cable subscribers worldwide (*i.e.*, 65.7 million out of 276.5 million) and only 18% of global MVPD subscribers (*i.e.*, 65.7 million out of 372 million).<sup>8</sup> Motorola, Scientific-Atlanta (which will be acquired by Cisco), Pace, Panasonic, Pioneer, and Samsung, among others, sell set-top box equipment to operators throughout the world. In addition, the marketplace for set-top box equipment in the United States is no longer dominated by Motorola and Scientific-Atlanta. Comcast and Time Warner, among other cable operators, have been diversifying their equipment suppliers for some time and that trend continues. For example, at the recent Consumer Electronics Show (“CES”), Comcast announced new agreements to buy advanced set-top boxes from Panasonic and Samsung.<sup>9</sup> Time Warner also has placed an order for OpenCable-compliant set-top boxes from Samsung. Those set-top boxes are based on an equivalent device built for the Korean market.

Free Press is also incorrect in asserting that “competing services such as TiVo will find themselves at a considerable disadvantage unless they accede to whatever demands Comcast and Time Warner may have with regard to content control, price, or associated services.”<sup>10</sup> In fact, TiVo continues to grow and to introduce new products. At the recent CES show, TiVo introduced a new, dual CableCARD DVR. Furthermore, Comcast reached agreement in March 2005 to make TiVo's DVR service available over Comcast's cable network.<sup>11</sup> The two companies demonstrated a prototype set-top device with the TiVo user interface at the recent CES, and the companies are on track to make this new service available for initial deployment in late 2006.<sup>12</sup>

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(...footnote continued)

*Television Industry Voices Support for OCAP and Two-Way Digital Cable-Ready Product Deployments*, CableLabs Press Release (Jan. 5, 2006), available at [http://www.cablelabs.com/news/pr/2006/06\\_pr\\_ocap\\_ces\\_010506.html](http://www.cablelabs.com/news/pr/2006/06_pr_ocap_ces_010506.html).

<sup>8</sup> See Kagan Research LLC, *Kagan Media Index*, Kagan Media Money, July 26, 2005, at 6 (noting that there are 93.3 million MVPD customers and 65.7 million cable customers as of June 30, 2005); *The 2003 Media Business Annual Report*, The Bridge, at 39-43 (2003) (counting at least 210.8 million cable and 67.9 million DBS customers outside of the U.S.). Comcast and Time Warner, of course, will serve an even smaller percentage of global cable customers and global MVPD customers.

<sup>9</sup> See *Panasonic and Comcast Announce Industry-First Agreement for Enhanced OCAP HD-DVR Set-Top Boxes and OCAP Software License*, Comcast Press Release (Jan. 4, 2006), available at <http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=800562&highlight=>; Matt Stump, *Comcast, Samsung Announce Pact*, Multichannel News, Jan. 5, 2006, available at <http://www.multichannel.com/article/CA6297160.html>.

<sup>10</sup> Free Press Petition at 15.

<sup>11</sup> See *Comcast and TiVo Announce Strategic Partnership*, Comcast Press Release (Mar. 15, 2005), available at <http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=685606&highlight=>.

<sup>12</sup> See *id.* (noting projected deployment plans).

**B. Free Press Misunderstands The Standards-Setting Process In The Cable Industry.**

Free Press asserts that, after the Transactions, Comcast and Time Warner will be able to “set the standards and terms” for consumer electronics equipment.<sup>13</sup> Free Press fundamentally misunderstands how the standards-setting process works in the cable industry. Industry specifications for cable-ready devices, cable modems, and other cable-related equipment are developed *not* by individual cable companies, but by Cable Television Laboratories, Inc. (“CableLabs”), a cable industry non-profit research and development consortium.<sup>14</sup> Most CableLabs specifications are subject to extensive public comment and are then submitted to traditional standards bodies such as ANSI/SCTE, ATSC, DVB, and ITU for adoption.<sup>15</sup> Free Press has failed to explain how Comcast or Time Warner, as a result of these Transactions, will be able to alter this well-established process in the cable industry or why either company would want to do so.

In fact, the Commission specifically contemplated that CableLabs would play the leading role in developing specifications for cable-ready devices.<sup>16</sup> As noted above, CableLabs developed the specifications used to build one-way cable-ready devices that are now incorporated in the Commission’s plug-and-play rules.<sup>17</sup> CableLabs has also developed specifications for two-way devices that are now being used to build interactive equipment.<sup>18</sup> This CableLabs’ process has been enormously successful in creating a retail market for cable-

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<sup>13</sup> Free Press Petition at 15.

<sup>14</sup> CableLabs, *Overview*, available at <http://www.cablelabs.com/about/overview/>.

<sup>15</sup> *See* CableLabs *ex parte*, filed in CS Dkt. 97-80, at 2 (Nov. 7, 2005) (“CableLabs specifications are drafted with input from more than 500 CE, IT, content, and other non-cable companies, as well as the public”). In addition, the policies and procedures of SCTE, ANSI, and ITU all require that extensive public review and comment be allowed by all interested parties, and that any appropriate changes be made, before contributed specifications may be adopted as standards by these groups.

<sup>16</sup> *See In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd. 14775, ¶¶ 76-81 (1998); *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Order on Reconsideration, 14 FCC Rcd. 7596, ¶ 41 (1999).

<sup>17</sup> *See, e.g.*, 47 C.F.R. § 15.123 (labeling rules for digital cable ready products) & § 76.640 (rules for cable operator support for digital cable-ready products on digital cable systems).

<sup>18</sup> *See* NCTA Report (describing CableLabs’ specifications for development of two-way cable-ready products). It is worth noting that the OCAP middleware specification, a critical component for two-way devices, is now an ANSI/SCTE and ITU standard. *See id.* at 7.

ready TVs and other equipment.<sup>19</sup> In light of the foregoing, there is simply no basis for altering the current process.<sup>20</sup>

**C. The FCC Has Rejected Arguments Similar To Those Raised By Free Press In Other Merger Proceedings.**

Non-merger specific arguments more appropriate for proceedings of general applicability, and analogous to those raised by Free Press, have been rejected by the Commission in its review of other MVPD transactions. The Commission should take a similar approach here, particularly given that the size of the parties in the instant Transactions are, relatively speaking, the same or smaller than those at issue in the earlier mergers. In the *Comcast/AT&T Order*, for instance, the Commission found that the “development of consumer choices for equipment” would not be foreclosed when, as here, commenters failed to raise “any merger-specific concerns regarding harm to the market for set-top boxes.”<sup>21</sup> The Commission noted that generalized claims regarding the set-top box market would be “addressed in the navigation devices proceeding[.]” a rulemaking of general applicability.<sup>22</sup>

Similarly, in the *AT&T/MediaOne Order*, the Commission disagreed with commenters’ assertions that “AT&T’s size [would] enable it to... exercise excessive market power against equipment manufacturers in general” and to “dictate set-top box architecture.”<sup>23</sup> As in the *Comcast/AT&T Order*, the Commission found that its “rules regarding navigation devices... alleviate[d] concerns regarding competition in the production and sale of set-top boxes and modems.”<sup>24</sup> In addition, the Commission noted a particular piece of equipment, the cable

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<sup>19</sup> The CableLabs’ process for establishing specifications for cable modems has also been a tremendous success. According to CableLabs, there are more than 370 retail cable modems certified from more than 65 vendors. See CableLabs *ex parte*, filed in CS Dkt. No. 97-80, at 5 (July 29, 2004) (also noting that the “common cable modem specification cut retail price of DOCSIS cable modem from over \$500 to under \$50”).

<sup>20</sup> Other consumer electronics companies are introducing DVRs as well. At the 2006 CES show, LG Electronics demonstrated an OpenCable-compliant television with a built-in DVR. Sony already sells two models of DVRs that accept CableCARDS and Mitsubishi has marketed a TV-DVR combination device.

<sup>21</sup> *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 and Order, 17 FCC Rcd 23246, ¶¶ 154, 157 (“*Comcast/AT&T Order*”).

<sup>22</sup> *Id.* ¶ 157.

<sup>23</sup> *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 and Order, 15 FCC Rcd 9816, ¶ 96 (2000) (“*AT&T/MediaOne Order*”).

<sup>24</sup> *Id.* ¶ 97.

modem, was “commercially available” to consumers “from a variety of sources,” just as the consumer devices raised by Free Press (*i.e.*, DVRs and wireless routers) are now.<sup>25</sup>

Given the Commission’s more recent acknowledgement that its navigation device and plug-and-play rules, as well as marketplace developments, have produced significant new competition and consumer choices in the customer equipment arena,<sup>26</sup> the above precedent and Commission conclusions are even more apt in the current marketplace environment. In short, because Free Press’s equipment arguments are non-merger-specific, are based on flawed assumptions, and are contrary to marketplace facts and well-established Commission precedent, they should be rejected by the Commission.

## **II. THE TRANSACTIONS WILL NOT CREATE ANTI-COMPETITIVE HARMS IN THE MARKETPLACE FOR INTERACTIVE TELEVISION PRODUCTS AND SERVICES.**

Free Press alleges that the Transactions will have an adverse impact on the market for interactive television applications. Free Press’ assertions are misguided and should be dismissed.

### **A. The Applicants Do Not -- And Post-Transactions, Will Not -- Possess Market Power With Respect To Any Interactive Television Products Or Services.**

Free Press alleges that the Transactions will have a “significant impact on competition and programmatic diversity in the interactive television market.”<sup>27</sup> However, Free Press does not even attempt to define what comprises the “interactive television market.” In fact, as the Commission has noted in its recent Video Competition Reports, interactive television (“ITV”) is “rapidly developing, thus making it difficult to define with specificity the precise universe that might be encompassed by the term.”<sup>28</sup> The Commission has noted that ITV might include everything from t-commerce, data enhancements, and interactive gaming to video-on-demand (“VOD”), digital video recorders (“DVRs”), and electronic program guides (“EPGs”).<sup>29</sup> Without

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<sup>25</sup> *Id.* ¶ 101.

<sup>26</sup> *See In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Second Report and Order, 20 FCC Rcd. 6794, ¶ 28 (2005) (“CableCARD-equipped devices are available at retail and are being used by consumers.”); *Plug-and-Play Order* ¶ 2 (underscoring the importance of NCTA-CEA plug-and-play agreement to the development and deployment of cable-ready devices).

<sup>27</sup> Free Press Petition at 17.

<sup>28</sup> *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Tenth Annual Report, 19 FCC Rcd. 1606, ¶ 187 (2004).

<sup>29</sup> *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, 20 FCC Rcd. 2755, ¶ 199 (2005).

a clear definition of the relevant product market, Free Press' assertions about the effect of the Transactions are meaningless.

No matter how the product marketplace for interactive services is defined, however, Free Press has failed to demonstrate that any of the Applicants would possess market power as a result of the Transactions. Some of the products referenced above -- such as t-commerce, data enhancements, and interactive gaming -- are still largely in development or limited deployment,<sup>30</sup> so it is impossible to predict with certainty now what products will succeed in the marketplace and who will be offering them.<sup>31</sup> Dating back to the earliest deployment of ITV products and services, parties have argued that various transactions would allow a particular entity (or entities) to become "dominant" in the ITV market absent Commission regulatory intervention. Those arguments have proven to be speculative and completely unfounded,<sup>32</sup> and there is no evidence to suggest that the most recent iteration by Free Press in connection with these Transactions is any less so.<sup>33</sup>

Other potential ITV products, such as VOD, DVRs, and EPGs, have proven to be commercially viable, but once again Free Press does not provide any evidence that Comcast or

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<sup>30</sup> See *State of Interactive Television*, Kagan Research, at 22-49 (2005) ("*Kagan ITV Report*").

<sup>31</sup> A large and diverse range of companies are engaged in such development efforts, including cable operators and other MVPDs, programmers, software and information technology providers, and equipment manufacturers, among others. See *id.* at 2-5 (describing the outlook for ITV services in the cable, DBS, and telco industries). Just to cite one example of this marketplace dynamism, the cable industry recently reported that more than 50 companies -- from programmers, to operators, to software and equipment providers -- have participated in testing of new interactive products and services over the industry's OCAP middleware platform. See NCTA Report at 11. As NCTA explained: "OCAP is a middleware software layer. When applications developers and interactive programmers write their applications to the OCAP platform, the application or service will run on any OCAP-enabled set-top box or television receiver with supporting resources, regardless of the hardware or operating system software choices." *Id.* at 9. The cable industry has committed to support OCAP in digital cable systems nationwide by July 1, 2009. See *id.* at 18.

<sup>32</sup> See, e.g., *In the Matter of General Motors Corporation and News Corp., For Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd. 473, ¶ 245 (2004) ("*News Corp/DIRECTV Merger Order*") (noting that allegations of vertical harms with respect to ITV products and services "are speculative at best"); *Comcast/AT&T Order* ¶ 160 (rejecting claims of harm to the ITV marketplace). It is also worth noting that similar concerns were raised in the AOL-Time Warner merger proceeding. See, e.g., *Disney ex parte*, filed in CS Dkt. No. 00-30 (July 25, 2000); *NBC ex parte*, filed in CS Dkt. No. 00-30 (July 24, 2000). Those concerns have proven to be completely unfounded. See, e.g., Bill McConnell, *Rosch Sworn in at FTC*, *The Daily Deal* (Jan. 6, 2006) (noting, with respect to ITV, that the Federal Trade Commission's ("FTC") "heavily conditioned approval of Time Warner Inc.'s merger with AOL in 2000 is a perfect example of the shortcomings of antitrust regulators' analytical capabilities" and quoting former FTC Commissioner Thomas Leary as saying: "We negotiated a massive complicated consent decree to take care of a problem that proved to be a nonexistent one. . . . All the experts who came in to tell us what would happen with interactive television thus far have been dead wrong.").

<sup>33</sup> Indeed, Free Press itself acknowledges that interactive television applications are still "nascent." Free Press Petition at 17.

Time Warner will possess market power with respect to any of those products after the Transactions close. The best Free Press can do is cite to a few examples of where Comcast and Time Warner are investing in ITV-related entities.<sup>34</sup> As an initial matter, Free Press' assertions are misleading. For example, with respect to Time Warner's investment interest in Open TV, it is important to note that Open TV has very little influence in North America, and Time Warner has only a minor investment in the company. In fact, Time Warner Cable distributes no products or services from Open TV today. More generally, Free Press' statements are a classic example of not seeing the forest for the trees. The ITV marketplace is characterized by significant investment, rapid innovation, and low barriers to entry across media platforms, including cable, satellite, telco video, mobile phones, and the Internet.<sup>35</sup> Comcast and Time Warner are only two of many companies participating in these robustly competitive businesses.<sup>36</sup>

## **B. Free Press' Assertions Are Not Merger Specific.**

Free Press' sole attempt to make its assertions regarding ITV merger specific is to argue that Comcast and Time Warner will serve the "most lucrative DMAs" that are "most likely to contain early adopters and the most desirable customers."<sup>37</sup> Even assuming such independent ITV activities were relevant for the Commission's analysis (which they are not), Free Press provides no evidence that early adopters are more likely to live in areas served by Comcast and Time Warner. Further, Free Press does not provide any proof, or even a credible argument, that these early adopters would be more likely to purchase interactive services from Comcast and Time Warner than from a DBS provider, a telco, an Internet service provider, a mobile phone provider, or any of the numerous other potential providers of interactive television applications that might offer such services in the same DMAs served by Comcast or Time Warner.

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<sup>34</sup> See *id.* at 17-19. In this regard, we note that the Media Bureau has requested additional information regarding passive, minority investments held by Adelphia in ICTV, Inc. ("ICTV") and Sedna Patent Services, LLC ("Sedna"), to be acquired by Time Warner and Comcast, respectively, pursuant to the Transactions. See Public Interest Statement at n. 14. According to public information available on its website, ICTV seeks to deliver high-quality, easy-to-deploy interactive television content and solutions to digital network operators and telecommunications operators. ICTV offers a varied portfolio of branded content and interactive television applications – from games to email – developed in collaboration with various strategic partners. ICTV's Headend Wave is an interactive television middleware platform capable of delivering a full range of interactive multimedia capabilities to any digital set-top box, including menuing and delivery of video-on-demand programming. Additional information on ICTV is available at <http://www.ictv.com/>. Sedna was founded as TV Gateway LLC, a consortium of cable companies focused on developing an EPG to help drive competition and innovation with respect to user interfaces for cable services. More recently, the consortium has turned Sedna's resources toward research and analysis initiatives, as well as developing, acquiring, managing, and overseeing intellectual property in areas where the founders share interest. See <http://www.sedna.com/>.

<sup>35</sup> See, e.g., *Kagan ITV Report*. See also Comcast Comments, filed in MM Dkt. No. 92-264, at 17-35 (Aug. 8, 2005) (noting explosive growth of VOD, DVRs, and other video programming distribution paths).

<sup>36</sup> See, e.g., <http://ruel.net/top/box.companies.list.htm> (listing dozens of providers offering ITV-type services).

<sup>37</sup> Free Press Petition at 19.

Free Press also states that the “combination” of Comcast’s and Time Warner’s various ITV investments and initiatives with the alleged “enhanced regional and national market power of Comcast and Time Warner post transaction” would allow the companies to dominate the ITV space.<sup>38</sup> Free Press appears to be implying that Comcast and Time Warner would somehow be merging their ITV investments as a result of these Transactions. This is not true. Comcast and Time Warner will remain independent companies making independent judgments about which ITV technologies best serve their customers. Any suggestion that the ITV activities of Comcast and Time Warner should somehow be “combined” or “aggregated” for purposes of the Commission’s merger review is factually and analytically incorrect and should be rejected on its face.<sup>39</sup>

**C. The Commission Has Dismissed Similar Arguments Concerning Interactive Television In The Past.**

The Commission discounted arguments about ITV similar to the ones made by Free Press here in its review of the Comcast/AT&T Broadband merger. In that proceeding, commenters expressed concerns that the applicants would “be able to shape the evolution of ITV services or deny competitors access to those services through the use of exclusive agreements.”<sup>40</sup> The FCC found “these claimed harms speculative” and concluded that the merger was “not likely to produce public interest harms related to ITV.”<sup>41</sup> In that merger, as here, no single entity would serve more than 30% of MVPD subscribers upon consummation of the transaction.<sup>42</sup> The Commission found that this share “would be too small... to enable the merged entity to exercise market power in any ITV market and... [would circumscribe] its ability to negotiate exclusive arrangements with multiple vendors in multiple markets effectively locking out competitors.”<sup>43</sup> Since, in that merger, the Commission found no risk of competitive harm, *a fortiori* it must reach a similar conclusion in the instant proceeding.

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<sup>38</sup> *Id.*

<sup>39</sup> Suggestions that Comcast and Time Warner should be looked at on a combined basis are particularly misplaced given the fact, as noted above, that one of the direct results of the Transactions is the unwinding of Comcast's passive ownership interests in Time Warner Cable and Time Warner Entertainment. *See supra* n.3.

<sup>40</sup> *Comcast/AT&T Order* ¶ 160.

<sup>41</sup> *Id.*

<sup>42</sup> Applicants’ Reply, filed in MB Dkt. No. 05-192, at 27-28 (Aug. 5, 2005).

<sup>43</sup> *Comcast/AT&T Order* ¶ 165. The Commission reached a similar conclusion in the News Corp./DIRECTV merger proceeding. *See News Corp/DIRECTV Merger Order* ¶ 245 (“[W]e agree with the Applicants that DirecTV’s share of the MVPD market is too small to enable the merged entity to exercise market power in any ITV market.”).

### III. CONCLUSION

For all of these reasons, Applicants urge the Commission to reject Free Press' claims relating to consumer electronic devices and ITV products and services.

**Adelphia Communications  
Corporation**

By: /s/ Michael H. Hammer  
Michael H. Hammer  
Counsel for Adelphia

**Comcast Corporation**

By: /s/ James R. Coltharp  
James R. Coltharp  
Comcast Corporation

**Time Warner Inc.**

By: /s/ Steven N. Teplitz  
Steven N. Teplitz  
Time Warner Inc.

cc: Donna Gregg  
Sarah Whitesell  
Tracy Waldon  
Royce Sherlock  
Marcia Glauberman  
Wayne McKee  
Julie Salovaara  
Jim Bird  
Neil Dellar  
Ann Bushmiller  
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