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January 25, 2006

BY ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

Re: MB Docket No. 05-192

Dear Ms. Dortch:

On December 16, 2005, the Communications Workers of America ("CWA") submitted *ex parte* letters describing presentations made by its representatives to certain Commission offices regarding the transactions under review in the above-referenced proceeding.[1] These presentations largely reiterated arguments that Time Warner, Comcast, and Adelphia (the "Applicants") have previously and thoroughly rebutted.

For example, CWA alleged that the proposed transactions will have a "deleterious effect[]" on competition in the video marketplace by creating a duopoly and by giving Time Warner and Comcast the ability and incentive to discriminate against unaffiliated programmers and to foreclose video competitors.[2] The Applicants have responded to similar assertions on numerous occasions and refers the Commission to those prior pleadings.[3] Suffice it to say here

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[1] Letters from Kenneth R. Peres, Research Economist, Communications Workers of America, to Marlene Dortch, Secretary, Federal Communications Commission, dated December 16, 2005.
[2] *Id.* at 1.
[3] *See, e.g., In re Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communicastions 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 ("*Applications*"), Reply at 26-34 (addressing allegations regarding national ownership), 35-38 and 71-84 (addressing allegations regarding impact on independent programmers); 39 and 45-61 (addressing allegations regarding "terrestrial exemption" and regional ownership) (filed Aug. 5, 2005) ("*Reply*"); *Applications,* Response to

that the record in this proceeding overwhelmingly demonstrates that the effect of the proposed transactions will be pro-competitive and that there is no need for any conditions relating to program carriage decisions or to the sale of affiliated programming.[4]

The Applicants also have already answered CWA's demand for the Commission to impose unprecedented labor-related conditions on the transactions.[5] In any event, for the record, TWC notes that under the terms of the Asset Purchase Agreements ("APAs") all applicable employees of the systems acquired from Adelphia (totaling some 12,000 out of 14,000 employees) will be offered employment by TWC or Comcast; there is no requirement that employees "reapply" for their jobs.[6] Subject to all rights and obligations under the labor laws, and consistent with the APA, TWC expects that the wages offered to represented employees generally will reflect either their wages immediately prior to the close of the transactions or the wages paid to existing TWC employees (represented or non-represented) in the same geographic region. After the closing, Time Warner commits to bargain in good faith with the bargaining representative at any locations where such obligation applies.

Finally, in its presentations to the Commission, CWA apparently offered an entirely new allegation, one that borders on the frivolous. According to CWA, TWC, which is the second largest cable operator in the country and is a subsidiary of one of the world's largest media and entertainment companies, lacks the financial wherewithal to operate the systems being acquired from Adelphia and Comcast in the public interest. Specifically, CWA argues that the proposed transactions will have an adverse impact on TWC's financial condition resulting in "higher cable rates, minimal likelihood of cable system upgrade and reduced customer and technical service due to the need...to pay down significant debt and produce revenues for shareholders."

DIRECTV's "Surreply" at 15-26 (addressing allegations regarding regional ownership) (filed Nov. 1, 2005). The Applicants also direct the Commission's attention to pleadings filed in other proceedings wherein Comcast and Time Warner have responded to arguments about the state of competition in the video marketplace, cited in footnote 3 of the Letter from Michael H. Hammer, Counsel for Adelphia, to Marlene Dortch, Secretary, Federal Communications Commission, dated December 9, 2005.

[4] For example, far from creating a "duopoly" (as alleged by CWA), the transactions will expedite the Commission's long sought after goal of unwinding Comcast's passive ownership in TWC, thereby further separating the two companies.

[5] *See Reply* at 116-119 (pointing out CWA's total failure to offer any justification for the Commission to intervene in employment-related matters appropriately under the jurisdiction of the NLRB). In its *ex parte* letters, CWA suggest that there is precedent for the imposition by the Commission of employment-related conditions. However, in none of the decisions cited by CWA did the Commission adopt any measures even remotely resembling the conditions urged by CWA. For example, in the Worldcom/MCI merger proceeding, the Commission rejected CWA's employment-related objections to the transactions, concluding that the union's prediction that the merger would have an adverse impact on telecommunications employees was "speculative" and "not credible." *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd 18025 (1998) at ¶ 213. *See also Puerto Rico Telephone Authority, Transferor, and GTE Holdings (Puerto Rico) LLC, Transferee, For Consent to Transfer Control of Licenses and Authorization Held by Puerto Rico Telephone Company and Celulares Telefonica, Inc.*, 14 FCC Rcd 3122 (1999) at ¶¶ 57-58 (merely acknowledging in passing that transferee's commitment not to make involuntary terminations of transferor's employees, except for cause, was a public interest benefit).

[6] Of the 12,000 Adelphia employees that will be offered jobs by Comcast or Time Warner, fewer than 350 are represented by unions.

In support of these assertions, the CWA cites an "analysis" of the proposed transactions prepared by a consultant for a group of local communities (the "AA/RFC Report"). However, even a perfunctory review of the AA/RFC Report reveals that it is riddled with erroneous assumptions and flawed conclusions regarding TWC's finances and the transactions between and among the parties. The attached Declaration of Satish Adige, TWC's Senior Vice President of Investments, provides a more detailed review of some of these errors and omissions, including (i) the Report's failure to acknowledge that TWC currently has a solid investment grade rating from the nation's three leading credit rating agencies and is expected to maintain an investment grade rating after the proposed transactions are completed; (ii) the Report's mischaracterization of TWC's debt, cash flow, and liquidity; (iii) the Report's misrepresentation of the cost of the proposed transaction; and (iv) the Report's failure to give consideration to the fact that Adelphia is far more highly leveraged than TWC.

In short, as the Adige Declaration indicates, there simply is no basis for the conclusions reached in the AA/RFC Report (and, by extension, in CWA's presentations) regarding the impact that the transactions allegedly will have on the rates and services in the acquired systems. Indeed, the suggestion that subscribers and employees of Adelphia's systems would be harmed by the transfer of those systems from a company in bankruptcy to TWC and Comcast – two of the nation's most stable, respected, and technologically advanced cable operators – is simply ludicrous. There is not the slightest evidence that the Transactions will have any adverse impact on the rates that Adelphia's customers would otherwise pay for comparable service. Rather, it is uncontroverted that the Transactions will produce cost saving efficiencies that will contribute to a variety of pro-consumer benefits, including system upgrades, improved customer service, and a broader availability of new products and services.[7] Neither CWA nor any other party has challenged TWC's exemplary track record of upgrading and improving the systems it operates or the fact that TWC has earmarked over $600 million for capital expenditures for the upgrade and hardening of systems to be acquired from Adelphia.[8]

To summarize, CWA has again failed to establish that the transactions would in any way be adverse to the public interest or that approval of the transactions should be subject to any conditions.

Please do not hesitate to contact the undersigned if you have any questions concerning this matter.

Respectfully submitted,

Seth A. Davidson, Esq.
Counsel for Time Warner Inc.

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[7] *Applications*, Public Interest Statement at 57 and note 139 (filed May 18, 2005). *See also* Reply at 12 and note 39, *citing Applications of Western Wireless Corporation and ALLTEL Corporation*, Memorandum Opinion and Order, 20 FCC Rcd 13053, ¶ 140 (2005).

[8] Public Interest Statement at 48 and note 111. *See also id.* at note 115.

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176888

<u>**DECLARATION OF SATISH ADIGE**</u>

I, Satish Adige, declare and state as follows:

1. I am Senior Vice President of Investments for Time Warner Cable ("TWC" or the "Company"), where my primary responsibilities involve the merger and acquisition activities of TWC. I have been with TWC and its predecessor companies for the past 20 years, holding executive positions in several disciplines, including finance and accounting, mergers and acquisitions and business affairs. I submit this declaration in support of the application for the transfer of certain FCC licenses in connection with the acquisition by TWC *of certain* cable systems from Adelphia Communications Corp. ("Adelphia") and Comcast Corporation ("Comcast").

2. I have reviewed the September 28, 2005 "Transfer Report" prepared by Action Audits and the associated analysis of TWC's financial condition prepared by Racine Financial Consulting (the "AA/RFC Report"). The analysis and conclusions reached in the AA/RFC Report reflect numerous errors and misconceptions regarding TWC's financial condition and the transactions between TWC, Comcast and Adelphia (the "Transactions").

3. For example, the AA/RFC Report expresses concern about the size of TWC's ratios of "debt" to equity and to total assets and the Company's alleged lack of plans for covering additional expenses from the incremental debt incurred as a result of the Transactions. The short and simple answer to these concerns is that, as reflected in the attached reports, TWC currently has a solid investment grade rating from all three of the country's leading credit rating agencies, Standard & Poor's, Moody's, and Fitch. Just as importantly, these agencies have preliminarily analyzed the Transactions and TWC expects to maintain an investment grade rating after effect is given to the Transactions.

4. One of the flaws in the AA/RFC Report is that its analysis inappropriately equates "total liabilities" with debt. Because total liabilities include various non-cash items (*e.g.*, deferred tax liability, etc.), they are not meaningfully representative of "debt." After giving effect to the Transactions, TWC's ratio of debt (i.e., interest bearing obligations + preferred stock) to book equity is projected to be 0.72x by December 31, 2006, and 0.63x by December 31, 2007.

5. Furthermore, the capital markets typically evaluate indebtedness using a ratio comparing debt to earnings before interest, taxes, depreciation, and amortization ("EBITDA"). After giving effect to the Transactions, TWC's ratio of debt/EBITDA is projected to be 3.2x as of December 31, 2006 – well within the target range for investment grade ratings – and is projected to decline to 2.5x by December 31, 2007.

6. For the fiscal years 2006 and 2007, TWC expects to generate more than $1 billion of cumulative cash flow after a cumulative investment of approximately $5.5 billion in capital expenditures. Thus, TWC's management believes that the Company will have sufficient cash from operations to repay incurred indebtedness and to make appropriate plant and infrastructure upgrades to the Company's systems, among other things.

7. Although the AA/RFC Report acknowledges that bankrupt Adelphia is far more highly leveraged than TWC, no weight appears to have been given to this fact in the Report's assessment of whether the public interest would be better served by the transfer of ownership and operational control to TWC of systems currently owned by Adelphia.

8. Another flaw in the AA/RFC Report is its unjustifiable assertion that TWC has "poor liquidity" and its patently erroneous assumption that TWC could continue in business for only one month "in the absence of external cash flows." The AA/RFC Report's analysis is dependant on the unrealistic and unjustified assumption that TWC will have no future revenues

or (to the extent needed) access to credit; as a result, its conclusions regarding the Company's liquidity are fundamentally flawed.

9. For example, the comparison drawn in the AA/RFC Report between Adelphia's liquidity in 2003 and TWC's current liquidity is inappropriate and misleading. RFC's comparison of the two companies' relative ratios of current assets to current liabilities fails to take into account the cash being generated by the respective businesses and their access to external sources of capital. In particular, RFC has ignored the fact that TWC has substantial free cash flow and access to over $2 billion in unused borrowing capacity while, in contrast, bankrupt Adelphia has been operating with a cash flow deficit and with significant constraints on its ability to obtain external financing.

10. The AA/RFC Report's assertion that TWC's cash levels are "dangerously low" also is without merit. TWC manages its current assets and liabilities in order to optimize its use of cash. Because TWC generates significant cash flow from operations ($2.7 billion in 2004) – which it uses to invest in capital ($1.7 billion in 2004) and to pay down debt – it is neither necessary nor prudent for TWC (or any large company with short-term debt) to keep inefficient levels of cash on hand.

11. The AA/RFC Report also fails to give due consideration to the fact that TWC has ample long-term bank commitments and maintains roughly $2 billion in available borrowing capacity to supplement operating cash flow. These credit facilities contain no ratings triggers or material adverse change provisions; consequently, TWC's access to credit is ensured and not subject to negotiation even in the unlikely event that the Company's operations came under stress.

12. In its "cost per subscriber" analysis, the AA/RFC Report claims that TWC is paying a "premium" for the subscribers obtained through the Transactions, based on its mistaken

assumption that the "effective cost per subscriber" is more than $5,400. However, the Report mistakenly treats as a single event not only the transactions whereby TWC and Comcast are purchasing Adelphia's cable systems and the subsequent system swaps between TWC and Comcast, but also the separate and independent transactions whereby TWC is redeeming Comcast's effective 21 percent stake in TWC. As a result, the AA/RFC Report has substantially overstated the actual cost per subscriber paid by TWC in connection with the Transactions.

13. The acquisition of Adelphia's systems by TWC and Comcast and the subsequent system swaps will give TWC approximately 4.3 million additional subscribers. In return, TWC will pay Adelphia approximately $9.2 billion in cash and give Adelphia stakeholders a 16 percent stake in TWC valued at approximately $5.0 billion. This computes to an effective purchase price per subscriber of roughly $3,300.

14. After completing the acquisition of the Adelphia systems and the subsequent systems swaps with Comcast, TWC will engage in separate and independent transactions to redeem Comcast's effective 21 percent stake in TWC. Thus, the AA/RFC Report not only incorrectly treats these transaction as if they were a part of the system acquisition/swaps transactions, but it also completely ignores the value of the effective 21 percent interest in TWC that TWC will acquire from Comcast.

15. To the extent that the information provided herein is based on financial data taken from the Fourth Amended Disclosure Statement filed with the Commission on December 14, 2005, it is subject to the disclaimers therein.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: January 25, 2006

Satish Adige