

January 31, 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:

Comcast Corporation (“Comcast”), Time Warner Inc. (“Time Warner”), and Adelphia Communications Corporation (“Adelphia”) (collectively the “Applicants”) hereby respond to the written *ex parte* letter filed with the Commission on January 23, 2006 by Center for Creative Voices in Media, Communications Workers of America, DIRECTV, MASN, Media Access Project, RCN, and The America Channel (the “Commenters”). The Commenters have all previously made filings on the Transactions under review in this proceeding and no effort has been made in the January 23, 2006 *ex parte* to present any new arguments or information.¹

¹ See, e.g., Letter from Jonathan Rintels, Executive Director, Center for Creative Voices in Media, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Oct. 25, 2005; Petition to Deny of Communications Workers of America and International Brotherhood of Electrical Workers (July 21, 2005); Reply Comments of Communications Workers of America and International Brotherhood of Electrical Workers (Aug. 5, 2005); Letter from Debbie Goldman, Research Economist, Communications Workers of America, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Nov. 3, 2005; Letter from Kenneth R. Peres, Research Economist, Communications Workers of America, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Dec. 16, 2005; Comments of DIRECTV, INC. (July 21, 2005); Surreply of DIRECTV, Inc. (Oct. 12, 2005); Petition of TCR Sports Broadcasting Holding, L.L.P. to Impose Conditions or in the Alternative, to Deny Parts of the Proposed Transaction (July 21, 2005); Reply Comments of TCR Sports Broadcasting Holding, L.L.P. (Aug. 5, 2005); Letter from David C. Frederick, Counsel for TCR Sports Broadcasting Holding, L.L.P., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Nov. 14, 2005; Letter from David C. Frederick, Counsel for TCR Sports Broadcasting Holding, L.L.P., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Nov. 22, 2005; Letter from David C. Frederick, Counsel for TCR Sports Broadcasting Holding, L.L.P., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Jan. 20, 2006; Petition to Deny of Free Press, Center for Creative Voices in Media, et al. [filed by Media Access Project] (July 21, 2005); Letter from Andrew Jay Schwartzman, President, Media Access Project, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated July 22, 2005; Reply Comments in Support of Petitions to Deny of NATOA, et al. [filed by Media Access Project] (Aug. 5, 2005); Letter from Harold Feld, Senior Vice President, Media Access Project, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Oct. 21, 2005; Motion to Hold in Abeyance of Free Press, Center for Creative Voices in Media, et al., dated Oct. 31, 2005; Reply to Opposition [filed by Media Access Project], dated Nov. 11, 2005; Letter from Parul Desai, Assistant

Rather, it appears that the Commenters have banded together to repeat previously-made arguments for no apparent purpose other than to interpose delay in this proceeding – a practice that the Commission need not and should not tolerate.

Because the Commenters' January 23, 2006 *ex parte* letter does not offer up any new facts or arguments, it does not require a detailed response. Instead, Applicants direct the Commission's attention to various filings wherein the Commenters' claims have been fully rebutted, as follows:

The Public Interest Benefits of the Transactions Are Transaction-Specific. Repeating an argument previously made by DIRECTV, the Commenters contend that the public benefits identified by the Applicants are not transaction-specific because "neither Comcast nor Time Warner has shown that it alone has the expertise" to upgrade the lagging Adelphia systems. The Applicants addressed this argument in their Public Interest Statement, demonstrating that it is the unique geographic "fit" that exists between and among the properties involved in the Transactions, including the systems acquired from Adelphia as well as the integrally-related system swaps between Comcast and Time Warner Cable, that directly creates the opportunity and incentive for Time Warner and Comcast to make the investments necessary to maximize the deployment of advanced services in the acquired systems.² Moreover, to the extent that Commenters are arguing that there are other potential buyers for Adelphia's systems, Applicants have previously established that Section 310(d) of the Communications Act does not require and, in fact forbids, the transformation of the transfer review process into a comparative hearing that measures the Applicants against all potential transferees, real or imagined.³

The System Improvements and Efficiencies That Will Flow From the Transactions Are Cognizable Public Interest Benefits. The Commenters allege, with absolutely no factual

Director, Media Access Project, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Jan. 12, 2006; Comments of RCN Telecom Services, Inc. (July 21, 2005); Letters from Richard Ramlall, Sr. Vice President, RCN Telecom Services, Inc., to Chairman Kevin Martin and Commissioners Kathleen Abernathy, Michael Capps, and Jonathan Adelstein, Federal Communications Commission (filed Oct. 28, 2005); Letter from Doron Gorshein, President and CEO, The America Channel, LLC, to Donna Gregg, Chief, Media Bureau, Federal Communications Commission, dated June 6, 2005; The America Channel LLC's Petition to Deny (July 21, 2005); Letter from Kathleen Wallman, Counsel for The America Channel, to Barbara Esbin, Media Bureau, Federal Communications Commission, dated July 31, 2005; Letter from Kathleen Wallman, Counsel to The America Channel, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Nov. 8, 2005; Letter from Kathleen Wallman, Counsel to The America Channel, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Dec. 16, 2005; Letter from Kathleen Wallman, Counsel to The America Channel, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Jan. 11, 2006. (All referenced pleadings filed in MB Docket No. 05-192.)

² See, e.g. Applications and Public Interest Statement ("Public Interest Statement"), MB Docket No. 05-192 (filed May 18, 2005) at 68-70; Reply at 8, 13-14. See generally Letter from Arthur H. Harding, Counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Nov. 10, 2005 ("Time Warner Nov. 10, 2005 *Ex Parte*").

³ Reply, MB Docket No. 05-192 (filed Aug. 5, 2005) at pages 6-7, citing 47 U.S.C. § 310(d).

support, that the efficiencies and system improvements identified by the Applicants as attributable to the Transactions should be “significantly discounted or not recognized at all in the Commission’s public interest analysis” because they will result in higher prices for subscribers. However, as the Applicants have previously pointed out, the Commission has recognized that “consumer benefits can take the form of enhanced service and/or lower prices” and, in any event, there is no evidence in the record substantiating claims that the Transactions will have any adverse impact on the rates that Adelphia’s subscribers would otherwise pay for comparable service.⁴ Rather, it is uncontroverted that the efficiencies resulting from the Transactions will produce cost savings 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.⁵

The Improvements in Marketing Capability Attributable to the Transactions Will Enhance the Ability of Cable Systems to Compete with National and Regional Service Providers, Thereby Benefiting the Public. The Commenters further contend that insofar as the Transactions enable Time Warner and Comcast to advertise on a regional basis, the resulting benefit will accrue only to the companies and not to the public. Of course, as the Applicants made clear in their earlier filings, the reason that improved regional marketing capability benefits the public is that it will enhance the ability of Time Warner and Comcast to *compete* against satellite and telephone competitors – including Commenter DIRECTV – that currently have national or extensive regional footprints and make widespread use of regional marketing, including radio, television, and newspaper advertising.⁶

The Applicants’ Record of Providing Service in the Public Interest is Unassailable. The Commenters again repeat the claim, thoroughly refuted by the Applicants in previous submissions, that Time Warner and Comcast have a “propensity” to engage in anti-competitive behavior in connection with the distribution of regional sports programming and the carriage of independent programming. Of course, the Commission and the courts have uniformly rejected claims that either Comcast or Time Warner has engaged in any unlawful behavior with respect to the distribution of regional sports programming.⁷ Similarly, the record of both companies with

⁴ 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). See also *Applications*, Public Interest Statement at 57 and note 139; Letter from Seth A. Davidson, Counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Jan. 25, 2006, at 3.

⁵ See generally Time Warner November 10, 2005 *Ex Parte*; Letter from James R. Coltharp, Chief Policy Advisor, FCC & Regulatory Policy, Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Nov. 22, 2005 (“Comcast Nov. 22, 2005 *Ex Parte*”). See also Public Interest Statement at 57-59; Reply at 9-19.

⁶ See, e.g., Public Interest Statement at 50-60; Reply at 11, 17-19; Comcast Nov. 22, 2005 *Ex Parte*, at 20-21; Time Warner Nov. 10, 2005 *Ex Parte*, at 5-6.

⁷ See, e.g., Reply at 45-50, 62-65; Response to DIRECTV’s “Surreply”, MB Docket No. 05-192 (filed Nov. 1, 2005) at 12-32. See also Letter from James R. Coltharp, Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Jan. 10, 2006 (responding to MASN *ex parte* letter).

respect to the carriage of unaffiliated program networks is clear: Time Warner and Comcast have each demonstrated that they carry scores of unaffiliated programming networks and that, if the Commission's former channel occupancy limits had not been struck down, both companies' carriage practices would be completely consistent with those rules.⁸

The Commenters Ignore Other Significant Public Interest Benefits That the Transactions Will Produce. The expanded provision of video, voice, and data services in the acquired systems and the resulting enhanced competitiveness of Time Warner and Comcast are only a few of the pro-consumer benefits that will result from the Transactions. The Commenters have ignored a variety of additional Transaction-related benefits that the Applicants have identified including improvements in local programming, community involvement, and emergency response⁹ and the expeditious and efficient unwinding of Comcast's passive interests in Time Warner Cable and Time Warner Entertainment.¹⁰

Most importantly, the Transactions will advance the public interest by facilitating the resolution of Adelphia's long and contentious bankruptcy proceeding.¹¹ If the Transactions are not approved, the emergence of Adelphia from bankruptcy could be delayed for another one to two years – or longer – creating a period of uncertainty during which service to Adelphia's customers will continue to lag farther and farther behind the rest of industry in terms of system upgrades and advanced service rollouts. While it is hardly surprising that some of Time Warner's and Comcast's competitors would find it in their business interest if the Adelphia systems remained mired in bankruptcy for as long as possible,¹² such a position is simply indefensible from the standpoint of what will serve the public interest.¹³

⁸ See Reply at 78-83. See also Letter from Martha E. Heller, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Dec. 22, 2005, at 37; Letter from Arthur H. Harding, Counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Dec. 19, 2005 at 17. The Commenters also question whether Comcast and Time Warner will improve the customer service provided in the Adelphia systems. Again, the companies' past performance in raising the level of customer service in the systems they acquire is well documented in the record. See, e.g., Comcast Nov. 22, 2005 *Ex Parte*, at 14-15, 28-29.

⁹ See, e.g., Comcast Nov. 22, 2005 *Ex Parte* at 21-31; Letter from Seth A. Davidson, Counsel for Time Warner, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Nov. 17, 2005.

¹⁰ See Public Interest Statement at 63-68; Reply at 23-24.

¹¹ See Public Interest Statement at 60-63; Reply at 19-23; Response to DIRECTV's "Surreply" at 4-8.

¹² For example, Commenters DIRECTV and RCN undoubtedly are aware that since the Transactions were announced in April 2005, Adelphia has been losing several thousand basic subscribers each month. See, e.g., Mike Farrell, *November a Drag for Adelphia*, Multichannel News, Dec. 27, 2005 available at <http://www.multichannel.com/article/CA6294237.html?display=Breaking+News>. Presumably, DIRECTV and RCN would like to see this trend continue for as long as possible.

¹³ In a transparent ploy to delay this proceeding even further, the Commenters claim that the Commission should review separately each of the several hundred cable system transfers involved in the Transactions, while simultaneously enlarging the scope of the proceeding to encompass unrelated transactions. There is no precedent or

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The Commenters, both individually and collectively, have repeated the same baseless arguments over and over. The Commission should dismiss these arguments and move promptly towards the grant of its unconditioned approval of these highly pro-consumer Transactions.

Respectfully submitted,

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justification for such an approach. The Transactions addressed in this docket are part of a complex set of multi-party transactions that are appropriately considered together; in contrast, there is no reason to combine consideration of these related Transactions with a completely unrelated application, such as that relating to Comcast's proposed purchase of the remaining interest in Susquehanna Cable Co.'s cable systems not already held by Comcast. *See* Opposition to Free Press et al. Motion to Hold Proceeding in Abeyance, MB Docket No. 05-192 (filed Nov. 7, 2005).