

March 7, 2006

VIA ELECTRONIC FILING

Ex Parte Notice

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 March 6, 2006, Jim Coltharp of Comcast Corporation (“Comcast”), Steven Teplitz and Susan Mort of Time Warner Inc. (“Time Warner”), David Rudd of the Palmetto Group, and the undersigned, representing Adelphia Communications Corp. (“Adelphia”), (collectively, the “Applicants”) met with Commissioner Jonathan Adelstein and his legal advisor on Media Issues, Rudy Brioché, regarding the above-captioned proceeding.

Applicants discussed the status of the Commission’s consideration of the pending applications for assignment and/or transfer of control. In particular, Applicants noted that Adelphia has been mired in bankruptcy for over three years and that the proposed transactions will facilitate its exit from bankruptcy and allow its customers to experience new and improved services from Time Warner or Comcast. In that regard, Time Warner and Comcast discussed their commitments to invest significant capital to deploy advanced services for consumers in Adelphia’s service areas, including IP telephony and expansion of video-on-demand (“VOD”) services. Applicants described how the transactions will significantly increase the availability of local programming, including local VOD, programming that will address the unique needs and interests of consumers in the local communities currently served by

Adelphia.¹ Applicants also noted that the transactions will accelerate the unwinding of Comcast's interest in Time Warner Cable -- a goal that the Commission has deemed to be in the public interest.

Applicants addressed the availability of regional sports networks ("RSNs") with which they are affiliated.² Applicants pointed out that in all areas where they are affiliated with an RSN, the two companies are not adding subscribers or are only adding minimal subscribers as a result of the transactions. Consequently, the transactions would not alter their incentives in making affiliated RSN programming available to their competitors. Indeed, with only one exception, every RSN already is available to competitive video providers at nondiscriminatory rates, terms, and conditions. And, of course, the program access rules already apply in each of those situations. The one exception is SportsNet Philadelphia, which is not made available to DBS providers (but is available to other distributors). As Applicants have explained repeatedly,³ SportsNet Philadelphia is a unique situation for a host of reasons, including the following: (1) the rights to the games aired on the network came with a pre-existing terrestrial delivery system; (2) the Philadelphia market is small (boxed in by Pittsburgh, NY, and Baltimore/DC), so terrestrial delivery makes economic sense; (3) and Comcast was responding to DIRECTV's exclusive NFL Sunday Ticket package. For these reasons, *SportsNet Philadelphia's limited exclusivity has been found -- twice by the FCC and once by a court -- to be a legitimate business decision that is permissible under the program access rules.*⁴

Applicants also thoroughly refuted the argument that DBS subscribership is lower in Philadelphia than in other markets as a result of SportsNet Philadelphia's limited exclusivity. According to Media Business Corp., which has been tracking DBS penetration by DMA for years, DBS penetration in Philadelphia continues to increase. Indeed, Philadelphia has a DBS penetration of 12.04% as of September 2005.⁵ By way of comparison, the following cities have *lower* DBS penetration: Boston (10.73%), Las Vegas (10.96%), Hartford (8.6%), Providence (9.39%), Springfield-Holyoke (8.65%), Laredo (7.92%), El Paso (11.01%), and Palm Springs (11.80%).⁶ And the following cities have DBS penetration comparable to Philadelphia: New York (15.24%), Tampa

¹ To that end, Applicants provided a copy of the benefits presentations previously submitted by Time Warner in this proceeding, and Applicants incorporate them by reference. *See* Letter from Arthur H. Harding, Counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in MB Docket No. 05-192 (Nov. 10, 2005) and Letter from Seth A. Davidson, Counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in MB Docket No. 05-192 (Nov. 17, 2005).

² Time Warner is affiliated with only one RSN, SportsNet New York.

³ *See, e.g.,* Adelphia, et al., Reply, filed in MB Docket No. 05-192, 45-53 (Aug. 5, 2005) ("Reply"); Letter from Martha E. Heller, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in MB Docket No. 05-192 at 28 (Dec. 22, 2005).

⁴ *See* Reply at 46-47.

⁵ Media Business Corp., *Satellite Subscribers by DMA* (data as of Sept. 2005).

⁶ *Id.*

(14.03%), Baltimore (14.15%), Milwaukee (15.08%), Norfolk (14.22%), and Harrisburg (13.29%). Thus, the claim that SportsNet Philadelphia's limited exclusivity has substantially undermined DBS operators' abilities to compete in Philadelphia is without merit.⁷

Applicants demonstrated that there is no "trend" of migrating RSNs to terrestrial delivery. In fact the opposite is true. For example, in the eight years since Comcast acquired SportsNet Philadelphia, it has acquired or started RSNs in Washington, Chicago, Sacramento, the Southeast, and New York. In each case, Comcast has delivered the RSN via satellite and made the service available to all distributors, including DBS distributors.

Applicants also addressed claims raised by The America Channel ("TAC"). In evaluating a carriage agreement with a programmer, Applicants review the nature of the programming involved, its target demographics, its likely appeal to consumers, its similarities to and differences from other programming available to Applicants, its cost, the financial wherewithal of the programmer, the strength of its management team, and numerous other factors. In the judgment of Applicants, TAC has not demonstrated that it has the necessary components to produce programming that will appeal to subscribers. This is not only the judgment of Applicants, but of virtually every other distributor, as shown by the fact that TAC has been unable to obtain any significant distribution for its programming concept. TAC's claim that Applicants discriminate against it and other independent programmers is without merit. Applicants pointed out that the vast majority of program networks that they carry are independent from Applicants. Applicants also demonstrated that many program networks have launched on DBS and have enjoyed substantial growth and success.⁸

Finally, Applicants discussed the concerns raised by the Communications Workers of America ("CWA"). Applicants pointed out that, contrary to CWA's claims, the Asset Purchase Agreements for these transactions do not require employees to reapply for their jobs. Moreover, both Time Warner and Comcast have committed to offering positions to all of Adelphia's union employees. In particular, Time Warner directed attention to and provided a copy of its recently filed letter that it has offered all of the represented workers in the systems it is acquiring from Adelphia a starting wage rate equal to the employee's wage rate with Adelphia just prior to the closing of the Transactions.⁹ Similarly, Comcast also has committed to respecting existing contracts with Adelphia's organized employees.¹⁰

⁷ *Id.*

⁸ *See Reply at n. 267.*

⁹ *See Letter from Seth A. Davidson, Counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in MB Docket No. 05-192 (Feb. 28, 2006). Applicants hereby incorporate that letter and its Attachments by reference.*

¹⁰ *See Reply at 117.*

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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

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