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March 23, 2006

VIA ELECTRONIC DELIVERY

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

Re: *Ex Parte Presentation in MB Docket No. 05-192*, 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

Dear Ms. Dortch:

On March 1, 2006, an *ex parte* letter was submitted in this proceeding by the Office of the Attorney General of the State of Maine ("Maine AG's Office"). Time Warner Inc.'s response to the Maine AG's Office is submitted herewith for the record.

Kindly direct any questions regarding this matter to the undersigned.

Very truly yours,

Arthur H. Harding

Arthur H. Harding
Counsel for Time Warner Inc.

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March 17, 2006

Francis Ackerman, Esq.
Assistant Attorney General
State of Maine
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006

Re: *Ex Parte Letter dated March 1, 2006 from the Office of the Maine Attorney General in MB Docket No. 05-192*, 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

Dear Francis:

I am writing on behalf of Time Warner Inc. ("Time Warner") in response to your above referenced letter. We appreciate your concerns and believe it would be helpful to have a constructive dialogue on the appropriate antitrust analysis with which to evaluate Time Warner's acquisition of the Adelphia cable assets in Maine, and the likely impact on the consumers of Maine. In that regard, we thank you for agreeing to meet with us this coming Tuesday.

In advance of that meeting, we thought it would be helpful to provide our initial thoughts on your letter. As explained below, we believe we can demonstrate to you that the proposed acquisition of Adelphia would in no way reduce competition, but to the contrary, would significantly enhance it by transferring Adelphia's assets in Maine from a bankrupt entity to one of the cable industry's most technologically advanced providers. This is so for at least three reasons: (1) the factual underpinnings for your concerns have not existed for several decades, and thus the relevant market you posit does not exist; (2) the appropriate market definition with which to evaluate the transaction is multi-channel video programming, a market in which Adelphia and Time Warner are not present together in the same geography – which means this transaction will not eliminate any competition, and (3) the merger will bring Adelphia's current subscribers in Maine new services, higher quality infrastructure and better service. As a result, requiring the divestitures suggested in your letter can only harm the citizens of Maine.

With respect to the first point, your letter suggests there will be a reduction in competition for cable franchises in Maine. Although such a concern may have had some validity quite a number of years ago, it no longer does; simply put, that market no longer exists. In the early days of cable television, some local franchising authorities ("LFAs") used to grant initial cable franchises through a competitive bidding process, but that is no longer the case. Today, exclusive cable franchises are forbidden by federal law and LFAs may not unreasonably deny applications for competing cable franchises. Franchise renewal proposals must be evaluated on their merits, rather than by comparison with speculative offers from third parties.[1] Indeed, the legislative history of the Section 626 of the Communications Act makes clear that an LFA "may not declare the operator's proposal unreasonable and deny renewal due to another party indicating its willingness to provide more...." and that Congress did "not intend that the reasonableness of the operator's proposal for future service be based on a comparative process."[2] Thus, there is no competitive bidding conducted by municipalities and no competition among cable operators for franchises. As a result, the market definition suggested in your letter is not supported by the facts. For a market definition to be viable, companies must actually compete in that market. Under today's regulatory regime, competition among cable companies for local franchises not only does not occur – it is prohibited. Accordingly, Time Warner and Adelphia do not compete for cable television franchises as a matter of law.

In terms of the appropriate market definition, the Federal Trade Commission (in this transaction),[3] the Department of Justice (in other transactions),[4] and the Federal Communications Commission (in various reports and other cable transactions), through both Democratic and Republican administrations alike, have all determined that the appropriate product market in which to evaluate cable company transactions is the market for multi-channel video programming distribution (MVPD). In that product market, Time Warner and Adelphia do not compete with each other in Maine. Time Warner provides MVPD services in certain parts of Maine while Adelphia provides such services in completely different parts of the state. Thus, there is no MVPD competition between the two companies in Maine.

Although Time Warner and Adelphia do not compete against each other, both of these cable operators compete with many other companies in the provision of services they offer. On the

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[1] 47 U.S.C. §§ 541(a)(1); 546(c)(1).

[2] H.R. Rep. No. 98-934, 98th Cong. 2d Sess (1984) at 74.

[3] Statement of Chairman Majoras, Commissioner Kovacic and Commissioner Rosch concerning the closing of the investigation into transactions involving Comcast, Time Warner Cable and Adelphia Communications, Federal Trade Commission, File No. 051-0151 (Jan. 31, 2006) available at http://www.ftc.gov/os/closings/ftc/0510151twadelphiamajoras_kovacic_rosch.pdf.

[4] *United States v.Echostar Communications Corp., et al.*, Docket Number 1:02CV02138 (D.D.C. filed Oct. 31, 2002), available at http://www.usdoj.gov/atr/cases/f200400/200409.htm; *United States v. Primestar Inc., et al.*, No. 1:98CV01193 (D.D.C. filed May 12, 1998), available at http://www.usdoj.gov/atr/cases/f1700/1757.htm.

video side, the FCC has discussed the MVPD market in detail, defining it to consist of all MVPD competitors, including cable operators, direct broadcast satellite services such as DirecTV and EchoStar, broadband service providers, and broadcast television.[5] For example, in its recently-issued Twelfth Annual Video Competition Report, the Commission observed that "[t]he market for delivery of video programming services is served by a number of operators using a wide range of distribution technologies."[6] This is particularly true in Maine as currently about one-fifth of all Maine television households have elected to subscribe to either DirecTV or EchoStar – a competitive presence that is well above the presumptive "effective competition" benchmark established in the Communications Act.[7] Thus, even though Time Warner and Adelphia do not compete with each other in the MVPD market in Maine, others most certainly do quite successfully

In addition to facing this significant competition in video, cable companies also offer, and face substantial competition, in the provision of high speed Internet service and voice. In high speed Internet service, phone companies nationwide now have approximately 43% of all customers and 29% in Maine. And while your letter claims that many rural parts of Maine are not served by either DSL or cable for high speed data, this proposed acquisition would not reduce any competition in such areas but, by transferring ownership from bankrupt Adelphia to Time Warner, will strengthen high speed competition in those areas currently served by Adelphia.

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[5] *See, e.g., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, FCC 06-11, ¶ 3 (rel. March 3, 2006) (*"Twelfth Annual Report"*); *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp. (Transferors) to AT&T Comcast Corp. (Transferee)*, Memorandum Opinion and Order, 17 FCC Rcd 23246, ¶ 89 (2002) ("[B]ased on the record before us and consistent with our precedent, we find that the relevant product market for evaluating merger of cable operators is 'multichannel video programming service' distributed by all MVPDs."); *Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee*, 14 FCC Rcd 3160, ¶ 21 (1999) *("AT&T/TCI Order").*

[6] *Twelfth Annual Report* at ¶ 3. *See also Eleventh Annual Report* at ¶ 4 (finding that "consumers today have viable choices in the delivery of video programming, and they are exercising their ability to switch among MVPDs. We do not believe that the fact that large numbers of consumers continue to subscribe to cable service indicates a lack of choice.").

[7] 47 U.S.C. § 543(l)(1)(B). Moreover, there is aggressive entry by incumbent local exchange carriers such as Verizon well underway, introducing yet additional competition by firms with large scale economies provided by their strong local footprints. The percentage of total cable customers to be served by Time Warner Cable in Maine upon acquisition of the Adelphia cable systems will be roughly comparable to Verizon's share of telephone loops in Maine. *Trends in Telephone Service, Industry Analysis and Technology Division, Wireline Competition Bureau*, Table 7.2 (rel. June 21, 2005). AT&T's recent announcement of its $89 billion acquisition of Bell South provides a vivid reminder that highly sophisticated and extremely well capitalized firms are potent competitors for video customers, and cable operators face a daunting uphill battle in challenging the monopoly position enjoyed by the incumbent phone companies for voice service for over a century. The new AT&T would have a market capitalization greater than that for all US cable companies combined.

With respect to voice service, Time Warner is a brand new entrant in Maine, taking on dominant incumbent telephone company providers.[8] Adelphia, on the other hand, which is currently in bankruptcy, does not offer phone service at all. Accordingly, this transaction will unambiguously increase consumer choice for telephony in Maine.

The Federal Trade Commission has conducted an "extensive investigation" of the acquisition of Adelphia's cable assets by Time Warner and Comcast and determined that no further action is required. As FTC Chairman Majoras and Commissioners Kovacic and Rosch stated, the evidence "does not suggest that the proposed transactions are likely to substantially lessen competition in any geographic region in the United States."[9] Even the two dissenting FTC commissioners did not suggest that there was any elimination of horizontal competition between Time Warner and Adelphia.[10] Their sole concern related to the impact on regional sports networks in certain parts of the country, of which Maine was not one.

That analysis by the FTC is consistent with the conduct of the over 160 affected LFAs in Maine that have approved the transfer to Time Warner of the franchises currently held by Adelphia. These local franchising authorities, who are in an excellent position to gauge whether the transaction will adversely impact their constituents, apparently saw no need for the type of relief requested in your letter.

Finally, this transaction will affirmatively benefit consumers in Maine. As your letter recognizes, increased geographic clustering "allows a company to make more efficient and economical use of technology," and "to spread its costs over a larger base." The necessary implication is that such clustering makes it profitable to introduce new and/or improved services that would otherwise be uneconomic to provide. The FCC concurs, having also recognized the numerous efficiencies and other benefits that accrue from regionalization of cable systems, including the reduction of costs, the elimination of system redundancies, and increased

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[8] Time Warner's voice competitors are massive and getting larger. Nationally, Verizon serves 48.8 million access lines, and AT&T currently serves 52 million. AT&T, however, has recently announced a deal to acquire Bell South, and will have 70 million landlines when that deal is concluded. Moreover, the geographic territories the phone companies serve dwarf those of Time Warner. Verizon serves customers in clusters encompassing 28 states, and Washington, D.C., AT&T's clusters encompass 13 states today and will encompass 22 states following its merger with Bell South.

[9] Statement of Chairman Majoras, Commissioner Kovacic and Commissioner Rosch concerning the closing of the investigation into transactions involving Comcast, Time Warner Cable and Adelphia Communications, Federal Trade Commission, File No. 051-0151 (Jan. 31, 2006) (emphasis added) available at http://www.ftc.gov/os/closings/ftc/0510151twadelphiamajoras_kovacic_rosch.pdf.

[10] Statement Commissioner Liebowitz and Commissioner Harbour (Concurring in part/Dissenting in part, Federal Trade Commission, File No. 051-0151 (Jan. 31, 2006) available at http://www.ftc.gov/os/closings/ftc/0510151twadelphialeibowitz_harbour.pdf.

investment in programming, cable infrastructure upgrades, and improved customer service.[11] In this case, Time Warner's size in Maine has allowed it to:

- introduce High Speed Data Service early on (even before larger cities such as Boston had access to broadband connections);

- launch Digital Phone Service, thus providing real facilities-based telephone competition (Maine was the first Time Warner Cable division to roll out Digital Phone Service, which is currently taken by 22 % of its subscribers); and

- make significant infrastructure investments throughout Maine, including its system in Aroostook County, one of the most rural areas in the state.

Similarly, this transaction will allow the current Adelphia subscribers in Maine to benefit from the introduction of new services, higher quality infrastructure, and better service. Time Warner has already announced an aggressive build-out strategy for the cable systems it will be acquiring in Maine, which will provide broadband coverage to 90% or more of homes in its expanding service area. The transaction will thus provide increased opportunities for economic development, promoting job creation and growth, and Time Warner's build-out announcement has won the praise of Maine Governor Baldacci:

> "Time Warner has a very good track record in Maine investing in advanced technology and providing excellent support services. Its announced plan for expanded broadband availability in Maine is further evidence that Maine is not only a great place to live, but a great place to do business. Time Warner's announcement is good for Time Warner and good for Maine."

Requiring the divestitures suggested in your letter, however, will deny these benefits to Maine subscribers currently serviced by Adelphia, which will leave them with inferior technology and service. We look forward to discussing these issues with you.

Very truly yours,

Jeffrey M. White

[11] *See, e.g., Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992; Horizontal and Vertical Ownership Limits,* Second Report and Order, 8 FCC Rcd 8565, ¶ 17 (1993); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Fourth Annual Report, 13 FCC Rcd 1034, ¶ 140 (1998) *("Fourth Annual Report"); see also* United States General Accounting Office Report to the Subcommittee on Antitrust, Business Rights, and Competition, Committee on the Judiciary, U.S. Senate, *Tele-communications: The Changing Status of Competition to Cable Television,* GAO/RCED-99-158, July 1999, at 16 ("clustering strategies provide important cost savings.").

cc: G. Steven Rowe, Attorney General