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REDACTED – FOR PUBLIC INSPECTION

March 23, 2006

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

RECEIVED

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Federal Communications Commission
Office of Secretary

Re: MB Docket 05-192

Dear Ms. Dortch:

This letter provides the responses of Time Warner Inc. ("Time Warner") to certain follow-up questions posed by FCC staff in connection with the Information and Document Request dated December 5, 2005 ("Information Request").

1) Subscriber Changes by Transaction Segment

In its response dated December 19, 2005, Time Warner provided a narrative description of the six transaction segments contemplated by the Exchange Agreement, dated as of April 20, 2005, among Time Warner Cable Inc. ("TWC"), Comcast Corporation ("Comcast"), and certain other related entities. On December 29, 2005, Time Warner provided Exhibits I(A)(1) - I(A)(6) that included flow charts depicting each of these transaction segments, along with lists of the communities served by the cable systems involved in each such transaction segment.

In response to the follow-up question from the FCC staff for the subscriber totals involved in each transaction segment, please see Attachment 1 hereto. Subscriber totals relating to Adelphia systems are taken from Annex A, Schedule A to the Adelphia/Time Warner Asset Purchase Agreement and the Adelphia/Comcast Asset Purchase Agreement. These Adelphia subscriber figures are as of December 31, 2004. Subscriber figures for the systems to be acquired by TWC from Comcast are as of December 31, 2003. As the Commission is aware, subscriber counts are maintained by Adelphia and Comcast on an "equivalent billing unit" approach, whereas TWC maintains its subscriber counts pursuant to the "occupiable dwelling unit" approach.[1]

[1] This difference in subscriber counting methodology, along with the different subscriber reporting periods and rounding, are factors accounting for a smaller net subscriber gain for TWC reflected in Attachment 1 compared to

2) Interpretation of Information Request Question III(F)(1)

The Commission staff has asked Time Warner to explain its interpretation of Question III(F)(1) in the Commission's Information Request dated December 5, 2005, which states as follows:

> [I]dentify all Video Programming Networks for which the affiliation agreement makes the Company the exclusive cable or MVPD distributor of this programming in any area served by the Company.

The Information Request defines "Video Programming Network" as follows:

> "Video Programming Network" is limited to non-broadcast linear video programming networks. For the purposes of this information and Document request it does not include programming offered on a pay-per-view, or video-on-demand basis, or public, educational, and governmental programming carried on channels designated for that purpose by franchise agreements.

The Information Request defines "MVPD" as follows:

> "MVPD" means, and information shall be provided separately for:
>
> 1) The local distribution of video programming through terrestrial-based cable transmission facilities by a cable operator or broadband service provider;
> 2) Direct broadcast satellite and direct-to-home services that transmit video programming directly from one or more satellites to subscribers; and
> 3) The local distribution or provision of video programming through any other means including, but not limited to MMDS, SMATV, OVS, and facilities of common carrier telephone companies or their affiliates.

TWC understands this question to cover any Video Programming Network for which the affiliation agreement provides exclusivity against distribution by any competing MVPD (DBS, telephone company, overbuilder, etc.) within the area served by TWC. In light of the language "exclusive cable or MVPD distributor," TWC limited its search to Video Programming Network affiliation agreements providing for exclusive distribution over a MVPD platform -- other potential distribution platforms such as broadcast, Internet, DVD, etc. were not considered. Affiliation agreements with both affiliated and unaffiliated Video Programming Networks were accounted for. Similarly, both satellite and terrestrially delivered Video Programming Networks were taken into account in TWC's response. In accordance with the Commission's instructions, TWC excluded any programming offered on a pay-per-view or video-on-demand basis, as well as public, educational, and governmental programming carried on channels designated for that purpose by franchise agreements.

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that reported in the Applicants' Public Interest Statement at 73 (demonstrating that TWC's subscriber total upon completion of the Transactions will remain far below the remanded horizontal subscriber cap).

In light of the definition of "Video Programming Network" in the Information Request, TWC limited its review to networks that offer linear blocks of programming for resale by MVPDs. Thus, for example, to the extent that certain TWC systems may hold the exclusive rights to certain individual sporting events, this would not constitute a "Video Programming Network" within the scope of Question III(F)(1). However, exclusive rights obtained by TWC to such individual sporting events from an applicable Sports Team, League, or Organization were reported in response to Question III(E)(1).[2]

Similarly, various Local Origination ("LO") channels created by certain TWC systems are not within the scope of Question III(F)(1) for at least two reasons. First, such LO channels are not generally offered for distribution by other MVPDs, and thus do not fall within the definition of "Video Programming Networks." Second, because the specific TWC system that creates a particular LO channel does not enter into an affiliation agreement with itself, there is no "affiliation agreement [that] makes the Company the exclusive cable or MVPD distributor" of LO programming. Thus, the various local news channels created by TWC in Syracuse, NY (News 10 Now); Rochester, NY (R News); Albany, NY (Capital News 9); New York City, NY (New York 1 News and New York 1 Noticias); Austin, TX (News 8); Raleigh, NC (News 14 Carolina); and Charlotte, NC (News 14 Carolina), although not made available to other MVPDs in TWC's service areas, do not fall within the scope of Question III(F)(1). Likewise, the multitude of LO channels created by TWC systems across the country that feature such local events as city council meetings, local festivals and parades, high school sports, community service announcements, etc., are beyond the scope of this question.

Finally, because the definition of "Video Programming Network" is limited to "non-broadcast linear video programming networks," this question excludes programming generally available on broadcast television. Nevertheless, in the interest of providing the Commission with a fully developed record, TWC hereby reports that it holds limited exclusive rights in certain TWC systems against other cable systems that provide service in the same operating area as TWC's systems (with a carve out for certain grandfathered systems owned by other operators) to carry certain programming distributed by The WB 100+ Station Group on the TWC systems listed on Attachment 2 hereto. These systems are all located in Nielsen designated market areas ("DMAs") that are ranked 100 or below and lack sufficient full-power television stations for The WB to secure an over-the-air broadcast affiliate. TWC understands that this programming consists of the full network schedule of programming offered by The WB television network,

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[2] Question III(E)(1) calls for identification of "all Sports Teams, Leagues and Organizations with which the Company or an attributable network has a contract granting distribution rights in the U.S. but is currently not distributing on an attributable Sports Programming Network...."

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supplemented with syndicated programming acquired collectively by the local television stations that are represented by The WB 100+ Executive Committee. A slightly different arrangement exists in Rochester which, while ranked in the top 100 Nielsen DMAs, nevertheless lacks an over-the-air television station affiliated with The WB network. Thus, in Rochester, TWC and The WB formed Rochester Television Ventures, LLC to create a "virtual" television station and local outlet for programming from The WB network. The LLC purchases syndicated programming, including certain sports programming, to fill the remaining non-network time slots, just as local broadcast television stations often obtain territorial distribution rights to certain syndicated programming.[3] TWC produces its own live local morning weather segments for this channel. In short, the channel is programmed, operated, and sells advertising very much like a local over-the-air television station.

TWC does not have exclusive rights for WB Network programming against direct broadcast satellite distributors. Indeed, programming distributed by The WB television network is generally available to direct broadcast satellite distributors through carriage of one or more "superstations" affiliated with The WB. The carriage of such WB network superstations are exempt from retransmission consent, network non-duplication, and syndicated exclusivity. In any event, the arrangement between TWC and The WB 100+ Station Group will expire when The WB television network ceases operations in September 2006.

3) Response to Claims by The America Channel Regarding Distribution in the Top 50 DMAs

The Commission staff has inquired whether Time Warner and Comcast (collectively the "Applicants") have any further response to the assertion made by The America Channel ("TAC") that the Transactions will increase the Applicants' alleged "stranglehold" on the top 50 television DMAs, thereby "permanently establishing Comcast and Time Warner as absolute national gatekeepers of television programming."[4] Time Warner notes that the Applicants, both individually and jointly, previously have responded to TAC's claims in detail, demonstrating that: (i) TAC has failed to submit even a shred of evidence to substantiate its claim that distribution by Time Warner or Comcast in particular DMAs is crucial to a programmer's success; (ii) TAC's theories concerning the impact, if any, of cable concentration on the programming marketplace are more appropriately addressed in the pending cable ownership proceeding; and (iii) TAC's allegations are belied by evidence of the robust, competition-driven growth occurring in the programming marketplace generally, and the successful launch of

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[3] None of the sports programming carried on this channel in Rochester is obtained from a Sports Team, League or Organization as defined in the Information Request, and thus does not fall within the scope of Question III(E).

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[4] TAC's "Petition to Deny" (dated July 21, 2005) at 36.

numerous new programming services without carriage by Comcast or Time Warner in particular.[5]

Nonetheless, to the extent a further response is necessary, the facts belie TAC's claims. In particular, the intensely competitive environment in which video programming is made available serves to undermine TAC's contention that carriage in certain DMAs – especially New York City – is the *sine qua non* for the successful launch of a new programming service.[6]

First, TAC's claim that the Transactions will "permanently" empower the Applicants to decide the fate of video programming networks ignores the dynamic nature of the video marketplace. As the Commission acknowledged in its recent report on the state of video competition, cable's share of all multichannel subscribers has continued to decline in the face of vigorous competition from DBS and other MVPDs. Indeed, non-cable MVPDs, led by DIRECTV and EchoStar (the second and third largest MVPDs in the country) now serve over 30 percent of all multichannel subscribers nationwide.[7] Moreover, the aggressive video service roll out plans of companies such as Verizon and AT&T, companies whose market capitalization dwarfs that of the Applicants, coupled with the explosion in alternative video distribution technologies (Internet, iPod, wireless devices, etc.), ensures that the competitive constraints imposed on the Applicants' purported ability to act as "gatekeepers" will not diminish in the future.

Second, contrary to its assertion that the impact of the Transactions on the Applicants' subscribership in the top 50 DMAs will give the Applicants the ability to "individually or jointly 'kill' an independent network,"[8] the data cited by TAC indicates that these Transactions will result in only a minor change in top 50 DMA subscribership distribution. For example, the Transactions result in no change to the subscribership in more than half of the top 50 DMAs, and in nearly half of the instances where the Transactions do produce an increase in an Applicants' top 50 DMA subscribership, that increase is less than 6 percent. Furthermore, even when measured on an aggregate basis, the Applicants still will have less than half of the MVPD subscribers in the top 50 DMAs post-Transactions.[9]

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[5] *See, e.g.,* Applicants' Reply (dated August 5, 2005) at 24-26, 35-38; 78-83; *See also* Letter from Michael H. Hammer, Counsel for Adelphia Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission (December 9, 2005). Mr. Hammer's letter references the numerous additional instances in which Time Warner and Comcast have rebutted TAC's arguments. *Id.* at note 3.

[6] TAC's "Petition to Deny" at 34 (alleging that Comcast and Time Warner "alone will have the power to allow or deny independent programmers the opportunity to enter and compete in the marketplace").

[7] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Twelfth Annual Report, FCC 06-22 (rel. March 3, 2006) at 4-5.

[8] *Id.* at 34.

[9] There is, of course, no reason to consider the Applicants' aggregate share of the top 50 DMAs since the two companies are not commonly owned or operated and there is absolutely no evidence of any collusion between them. Indeed, one of the notable public interest benefits flowing from the Transactions is the unwinding of Comcast's passive interests in Time Warner Cable Inc. and Time Warner Entertainment Company, L.P. *See, e.g.,* Applicants' Reply at 23-24.

Finally, TAC's attempt to focus on distribution in Time Warner's New York City system as a "must-have" affiliate for the launch of a new network cannot withstand scrutiny.[10] Leaving aside the fact Time Warner's subscribership in the New York DMA will be unaffected by the Transactions, a side-by-side comparison of Time Warner's New York City system channel line-up with the line-ups of DIRECTV and EchoStar reveals that there are at least two dozen non-premium networks that are available from one or both DBS providers but are not carried by Time Warner in New York City. These include new networks such as ESPN U (launched in 2005) as well as more established networks such as TBN (launched in 1973), Biography (launched in 1998), and Outdoor Channel (launched in 1993). Thus, there simply is no evidence that its provision of cable service to portions of New York City has conferred upon Time Warner the ability to decide the fate of programming networks.[11]

Kindly direct any questions regarding this matter to the undersigned.

Sincerely,

Arthur H. Harding

Arthur H. Harding
Counsel for Time Warner Inc.

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[10] TAC's "Petition to Deny" at 34.

[11] Time Warner again reminds the Commission that TAC has yet to actually offer programming. History shows that the most likely route to success in launching a channel is to develop a quality product that attracts the interest of subscribers. *See, e.g.*, Michael Cooley, *How I Started a Network – Without Comcast*, Multichannel News, October 3, 2005, available at http://multichannel.com/article/CA6262211.html. *See also* Applicants' Reply at note 267 (listing programming services that have enjoyed growth and success after launching first on DBS rather than cable).

ATTACHMENT 1

TIME WARNER CABLE
SUBSCRIBER CHANGES
BY TRANSACTION SEGMENT

Transaction	Subscriber Increase (Decrease)	Transaction Document Listing Affected Communities	Corresponding Exhibit to Letter from Arthur H. Harding, Counsel to Time Warner Inc., dated December 22, 2005
Adelphia/Time Warner APA	3,715,603	Adelphia/Time Warner APA, Annex A, Schedule A	N/A
Exchange Agreement:			
1) Cable Holdco Exchange I LLC for CAC Exchange I, LLC	(521,434) --------------- 609,936	Exchange Agreement, Exhibit E, Part 1 --------------- Exchange Agreement, Exhibit F, Part 1	Exhibit I(A)(1)
2) Cable Holdco Exchange II LLC for CAP Exchange I, LLC	(343,431) --------------- 418,034	Exchange Agreement, Exhibit E, Part 2 --------------- Exchange Agreement, Exhibit F, Part 3	Exhibit I(A)(2)
3) Cable Holdco Exchange III LLC for C-Native Exchange I, LLC	(566,760) --------------- 585,227	Exchange Agreement, Exhibit E, Part 3 --------------- Exchange Agreement, Exhibits B & C	Exhibit I(A)(3)

Transaction	Subscriber Increase (Decrease)	Transaction Document Listing Affected Communities	Corresponding Exhibit to Letter from Arthur H. Harding, Counsel to Time Warner Inc., dated December 22, 2005
4) Cable Holdco Exchange IV LLC Cable Holdco Exchange IV-2 LLC Cable Holdco Exchange IV-3 LLC for C-Native Exchange II, LP C-Native Exchange IIA, LP	(162,733) --------------- 178,126	Exchange Agreement, Exhibit E, Part 4 --------------- Exchange Agreement, Exhibit A, Part 1	Exhibit I(A)(4)
5) Cable Holdco Exchange V LLC for C-Native Exchange III, LP C-Native Exchange III GP, LLC Comcast of Dallas GP, LLC Comcast of Dallas, LP	(358,935) --------------- 343,771	Exchange Agreement, Exhibit E, Part 5 --------------- Exchange Agreement, Exhibit A, Part 2	Exhibit I(A)(5)
6) Cable Holdco Exchange VI LLC for CAC Exchange II, LLC	(49,387) --------------- 57,573	Exchange Agreement, Exhibit D --------------- Exchange Agreement, Exhibit F, Part 2	Exhibit I(A)(6)
TWC Redemption Agreement	(585,220)	TWC Redemption Agreement – Schedule A	N/A
TWE Redemption Agreement	(164,561)	TWE Redemption Agreement – Schedule A	N/A

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REVISED EXHIBIT III(E)(1) REDACTED AND WITHHELD PURSUANT TO PROTECTIVE ORDERS IN MB DOCKET 05-192

ATTACHMENT 2 REDACTED AND WITHHELD PURSUANT TO PROTECTIVE ORDERS IN MB DOCKET 05-192