

March 28, 2006

Marlene Dortch  
Secretary, Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554



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

Dear Ms. Dortch:

Media Access Project (“MAP”) submits this written *ex parte* presentation to supplement the *Petition to Deny* (“Petition”) filed on behalf of Free Press, *et al.* in this proceeding. The purpose of this submission is to bring to the Commission’s attention two recent filings (Attachments A and B hereto) by one of the Applicants that underscore the need for imposing conditions on any grant of the applications in this proceeding.

The Petition noted that the proposed transaction would enhance the existing market power of both Time Warner and Comcast in existing markets and thus stifle the ability of rivals to offer competing video and voice services. Petition at 10. In the event that the Commission were to grant the applications in this proceeding, Petition asked for interoperability conditions on all broadband services, among other remedies. Petition at 40-46.

On March 1, 2006, Time Warner Cable (“TWC”) filed two pleadings with the Commission. The first requested a declaratory ruling pursuant to Section 251. The second sought FCC preemption of actions by the South Carolina Public Service Commission pursuant to Section 253. According to TWC, it has been denied interconnection with ILECs in certain regions, thereby thwarting TWC’s efforts to provide VOIP services. TWC contends that this prevents consumers from “reap[ing] the rewards from the [VoIP Service] in the form of lower prices, better quality, and more innovative features.” TWC *Petition for Declaratory Ruling* at 3. As a result, TWC asks that the Commission declare that ILECs “must interconnect with competitive carriers.” *Petition for Declaratory Ruling* at 12. As TWC points out, any ruling to the contrary “would be patently unreasonable because it would undermine the Act’s unmistakable procompetitive purposes.” *Petition for Declaratory Ruling* at 20.

TWC’s pleadings advocating procompetitive conditions make clear that the remedies Free Press, *et al.* have sought are not only reasonable but necessary. TWC’s difficulties resemble those which have prompted Free Press, *et al.* to seek analogous remedies to curtail “severe anticompetitive consequences of” the proposed transaction. *Petition for Declaratory Ruling* at 10. There is no reason to believe that Applicants, who will increase their regional market power and national market power as a consequence of the service, will not behave in the same anticompetitive way that TW now finds objectionable. Moreover, such relief is more critical here because there is no way to tell whether or not Applicants are blocking services. Recently customers of Vonage accused Comcast of blocking the VoIP service. See Bary Alyssa Johnson, *Comcast puts “Vonage Blocking” Rumors to Rest*, March 3, 2006 located at <http://www.pcmag.com/article2/0,1895,1933665,00.asp>. However it is simply impossible to determine from the outside whether Comcast deliberately blocked Vonage,

Vonage failed to properly maintain its service, or some combination of factors led to the general degradation of Vonage service on some Comcast systems. Thus, the conditions Free Press, *et al.* seek are therefore not merely prophylactic to prevent abuse of increased market power, but to foster competition by removing uncertainty. *See In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, 14 FCCRcd 14712 (1999). Fostering competitive entry is an important part of offsetting the anti-competitive impacts of the merger.

In fact, the parties should be amenable to such conditions. It is hypocritical for TWC to complain of anticompetitive behavior, but then urge the Commission to refrain from imposing conditions on TWC and Comcast that reflect the same type of relief TWC is seeking. Free Press, *et al.* clearly identify why the Commission must impose conditions if it chooses to approve the merger. Further, were the Commission to grant TWC's petitions, the Commission *must* impose interoperability and open access conditions on both TWC and Comcast. As TWC has already pointed out, these conditions would help to avoid "severe anticompetitive consequences."

Respectfully submitted,

Parul Desai  
Andrew Jay Schwartzman

cc. Chairman Kevin Martin  
Commissioner Michael Copps  
Commissioner Jonathan Adelstein  
Commissioner Deborah Taylor Tate  
Fred Campbell  
Jessica Rosenworcel  
Rudy Brioche  
Andrew Long  
Aaron Goldberger  
Jim Bird  
Roy Stewart  
Leslie Marx  
Michele Ellison  
Tracy Waldon  
Royce Sherlock  
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Sarah Whitesall  
Jonathan Levy  
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