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April 7, 2006

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Federal Communications Commission
Office of Secretary

BY ELECTRONIC FILING

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

Re: Comcast-Time Warner-Adelphia Applications for Consent to the Assignment and/or Transfer of Control of Licenses, MB Docket No. 05-192

Dear Ms. Dortch:

Time Warner Inc. ("Time Warner") hereby responds to the written *ex parte* presentation of Media Access Project ("MAP") submitted to the Commission in the above-referenced proceeding on March 28, 2006. MAP's letter claims that a pair of pleadings filed by Time Warner Cable ("TWC") concerning matters wholly unrelated to the instant proceeding "make clear that" the Commission must impose certain "interoperability and open access" conditions advocated by MAP and its allies. In fact, the pleadings cited by MAP vividly illustrate why adoption of the proposed conditions is neither necessary nor appropriate.

Throughout this proceeding, the Applicants have repeatedly pointed out that the Commission has held the imposition of conditions on the approval of a transaction is proper only when necessary "to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms)" and not "to remedy pre-existing harms or harms that are unrelated to the transaction."¹ Disputes arising between parties outside the context of the transactions should be addressed through the invocation of the Commission's complaint and enforcement mechanisms, while allegations of potential harm that are not limited to the parties to the transactions are more appropriately dealt with in the context of an industry-wide proceeding.

¹ See, e.g., Letter from Michael H. Hammer, Counsel for Adelphia Communications Corp., to Rudy Briccoche, Legal Advisor, Office of Commissioner Adelstein, dated April 3, 2006, citing *Application of Verizon Communications Inc. and MCI Inc. for Approval of Transfer of Control*, Memorandum Opinion & Order, 20 FCC Rcd 18433, ¶ 19 (2005).

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As indicated, neither of the pleadings cited by MAP in its March 28, 2006 letter have anything to do with the transactions or with the conditions proposed by MAP. Those proceedings consist of (1) a petition that TWC filed pursuant to Section 253 of the Communications Act seeking preemption of specific actions taken by the South Carolina Public Service Commission with respect to TWC's efforts to provide VoIP services, and (2) a petition filed by TWC pursuant to Section 251 of the Act seeking a declaratory ruling to the effect that ILECs must interconnect with competitive carriers.

MAP's attempt to link these filings to its request that the approval of the transactions be made subject to conditions relating to broadband interoperability and open access is patently absurd. Apart from the fact that the issues raised in TWC's filings and the issues addressed by MAP's proposed condition are factually and legally unrelated, TWC's filings highlight the fact that, to the extent MAP is alleging that the Applicants have engaged in behavior that violates the Commission's rules or is seeking a clarification or extension of the rules, its proper response is to ask the Commission either to commence a proceeding to address the alleged violation or to commence a declaratory ruling or rulemaking proceeding. In short, what the pleadings cited by MAP demonstrate is that there is a right way to do things and a wrong way, and that MAP has chosen the wrong way.

Please do not hesitate to contact the undersigned if you have any questions concerning this matter.

Respectfully submitted,



Seth A. Davidson

Counsel for Time Warner Inc.

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