

April 18, 2006

**VIA ELECTRONIC FILING**

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:

Comcast Corporation (“Comcast”), Time Warner Inc. (“Time Warner”), and Adelphia Communications Corporation (“Adelphia”) (collectively, the “Applicants”) hereby respond to the March 30, 2006 *ex parte* letter submitted by DIRECTV, Inc. (“DIRECTV”) in the above-referenced proceeding.<sup>1</sup> The sole purpose of DIRECTV’s filing—one in a very long string of submissions by DIRECTV—is purportedly to show that the increased geographic rationalization (or “clustering”) resulting from the transactions proposed in this proceeding (the “Transactions”) will not lead to the accelerated deployment of advanced services and thus will not produce any public interest benefits.<sup>2</sup>

As explained below, DIRECTV’s analysis is fundamentally flawed. But more importantly, it is largely irrelevant to the detailed public interest benefits showings the Applicants have made

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<sup>1</sup> See Letter from William M. Wiltshire, Michael D. Nilsson, and S. Roberts Carter III to Marlene H. Dortch, filed in MB Docket No. 05-192 (Mar. 30, 2006) (“DIRECTV March 30 Letter”).

<sup>2</sup> The Applicants note that DIRECTV has submitted several additional *ex parte* presentations in this proceeding since filing its March 30 Letter. Letter from William M. Wiltshire, Michael D. Nilsson, and S. Roberts Carter III to Marlene H. Dortch, filed in MB Docket No. 05-192 (Apr. 3, 2006); Letter from William M. Wiltshire, Michael D. Nilsson, and S. Roberts Carter III to Marlene H. Dortch, filed in MB Docket No. 05-192 (Apr. 6, 2006); Letter from William M. Wiltshire, Michael D. Nilsson, and S. Roberts Carter III to Marlene H. Dortch, filed in MB Docket No. 05-192 (Apr. 13, 2006). These letters consist solely of allegations to which Comcast and Time Warner already have responded on numerous occasions. See, e.g., Letter from Arthur H. Harding to Marlene H. Dortch, filed in MB Docket No. 05-192 (Apr. 8, 2006); Letter from James R. Coltharp to Marlene H. Dortch, filed in MB Docket No. 05-192 (Mar. 15 2006); Response of Adelphia, Comcast, and Time Warner to DIRECTV’s “Surreply,” MB Docket No. 05-192 (Nov. 1, 2005). The Applicants further note that these meritless and repetitious filings by DIRECTV—which now number over 40—are an inexcusable imposition on, and waste of, the Commission’s time and resources.

throughout this proceeding. While the Applicants have demonstrated that one of the primary benefits of the proposed Transactions is that they will result in the deployment of a range of new and improved advanced services to customers in the existing Adelphia areas, the Applicants have never claimed that these benefits will be achieved solely through geographic rationalization.<sup>3</sup> Rather, as the Applicants have explained on multiple occasions, these important benefits also will flow from the transfer of the Adelphia systems from an operator that has been mired in bankruptcy for more than three years to Comcast and Time Warner, two of the nation's most stable, respected, and technologically advanced cable operators. Thus, DIRECTV conveniently disregards a key factor underlying the Applicants' public interest benefits analysis relating to the deployment of advanced services. Moreover, DIRECTV utterly ignores the host of other transaction-related benefits that have been demonstrated on the record in this proceeding.

At most, DIRECTV's analysis purports to show that there is no "meaningful relationship between the size of Applicants' clusters and the availability or penetration of advanced services."<sup>4</sup> Assuming that DIRECTV's analysis is at all reliable — which it is not — it would simply confirm one of the Applicants' principal points in this proceeding: Time Warner and Comcast have both achieved outstanding results in the deployment of advanced services in poorly and well clustered systems alike. Rather than comparing the availability and penetration of advanced services among different Comcast and Time Warner systems, the proper question is whether the *Adelphia systems* are likely to achieve better deployment of advanced services if integrated into the existing operations of either Comcast or Time Warner. Uncontroverted and overwhelming evidence on the record in this proceeding demonstrates that the answer to this question is yes.

### **1. DIRECTV's "Clustering Analysis" Misses the Mark With Respect to the Applicants' Public Interest Benefits Showings**

Because the Adelphia systems necessarily are being managed primarily for sale during the bankruptcy process, they are being run in a far less growth-oriented manner than the Comcast and Time Warner systems. As the Applicants repeatedly have described to the Commission, Adelphia consequently has lagged behind Comcast and Time Warner in the deployment of advanced services to consumers.<sup>5</sup> Indeed, the advanced services gap between Comcast and Time

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<sup>3</sup> From the outset, the Applicants have emphasized that the Transactions would facilitate the more rapid deployment of advanced services to the underserved Adelphia subscribers – an undeniable public interest benefit – both because the integration of the Adelphia systems with existing Comcast and Time Warner facilities would produce efficiencies and economies of scale not otherwise present and because Comcast and Time Warner have unparalleled records for upgrading and operating advanced broadband networks. *See, e.g.*, Applications and Public Interest Statement of Adelphia Communications Corporation, Comcast Corporation, and Time Warner Inc., MB Docket No. 05-192, at 21 (May 18, 2005) ("Public Interest Statement"). *See also id.* at 50-60. The Applicants also have pointed out that the Commission itself has consistently recognized the positive relationship between enhancing the geographic scope of a firm's operations and the development of telephone competition. *Id.* at 52 (citations omitted). *See also* Reply of Adelphia Communications Corporation, Comcast Corporation, and Time Warner Inc., MB Docket No. 05-192, at 14-19 (Aug. 5, 2005) ("Reply").

<sup>4</sup> DIRECTV March 30 Letter at 2.

<sup>5</sup> Public Interest Statement at 21-49; *see also* Reply at 5-9; Letter from James R. Coltharp to Marlene H. Dortch, filed in MB Docket No. 05-192, at 5-21 (Nov. 22, 2005) ("Comcast Public Interest Benefits Letter"); Letter

Warner on one hand, and Adelphia on the other hand, only has continued to grow throughout this proceeding.<sup>6</sup> Thus, the Applicants have demonstrated that the chief public interest benefit of the proposed Transactions will be the enhanced rollout of a range of advanced services in the Adelphia areas—at a considerably faster pace than Adelphia would be able to achieve on its own.

DIRECTV completely ignores the fundamental underpinning of the Applicants' advanced services showing, choosing instead to distort the significance of one aspect of that showing. Although the Applicants have pointed to several substantial benefits that will result from the geographic rationalization of cable subscribers—including greater competition with RBOCs, efficiencies, and economies of scale<sup>7</sup>—the Applicants have never asserted that the future availability or penetration of advanced services will be limited to those Adelphia systems that fit neatly into existing Comcast or Time Warner regional operations.<sup>8</sup> However, the pace and economic foundation for achieving these benefits undoubtedly will be enhanced by the fact that the vast majority of Adelphia systems, as well as the systems to be swapped between Time Warner and Comcast, will be integrated into existing Comcast or Time Warner regional operations that have already shown their leadership in the deployment of advanced services.

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from Arthur H. Harding to Marlene H. Dortch, filed in MB Docket No. 05-192, at 1-6 (Nov. 10, 2005) (“Time Warner Public Interest Benefits Letter”)

<sup>6</sup> See generally Comcast Public Interest Benefits Letter; Time Warner Public Interest Benefits Letter. By way of example, while Adelphia decided in late 2005 not to pursue IP phone service at all, Comcast and Time Warner now have the two fastest-growing Internet telephone services among cable operators. See Mike Farrell, *Basic Subscribership: Growth is Back*, Multichannel News (Mar. 6, 2006). Indeed, DIRECTV itself acknowledges how successful Comcast and Time Warner have been in providing advanced services to their subscribers. According to DIRECTV's economists, “HSD service is widely available in almost all of Comcast's systems and regions.” Gustavo Bamberger and Lynette Neumann, “Analysis of the Effect of ‘Clustering’ on the Availability of Digital Cable, High-Speed Data, and Telephony Services, attached as Exhibit A to DIRECTV March 30 Letter, at ¶ 15 (“Lexecon Clustering Analysis”). Furthermore, “a substantial number of small [Comcast] systems and regions [have high-speed data] availability rates equal to, or close to, 100 percent.” *Id.* DIRECTV similarly observes that “HSD service also is widely available in almost all of Time Warner's divisions.” *Id.* at ¶ 18.

<sup>7</sup> See Public Interest Statement at 49-60; Reply at 10-13. Of course, DIRECTV itself has a nationwide footprint, and thus the built-in ability to take advantage of a host of efficiencies and economies of scale—such as consolidated infrastructure and nationwide advertising campaigns. Thus, it seems particularly disingenuous for DIRECTV to challenge any benefits that its competitors may reap through increased geographic rationalization.

<sup>8</sup> DIRECTV further asserts that the “oddities” in some of proposed system swaps between Comcast and Time Warner “call into question whether even [Comcast and Time Warner] believe in the benefits of clustering.” DIRECTV March 30 Letter at 4. This rather “odd” observation highlights the degree to which DIRECTV has chosen to overlook the host of substantial public interest benefits that will result from the Transactions. Moreover, in support of this curious argument, DIRECTV points to various markets where it claims that “the transferee currently has no subscribers,” including Minneapolis and Dallas. In fact, Comcast—the proposed transferee of the Minneapolis system—already owns a contiguous system in St. Paul. While Time Warner's acquisition of the Dallas system technically will not produce any additional contiguous “clusters,” Time Warner Cable has a considerable presence in Texas. Thus, the proposed Transactions will create further opportunities to create regional and statewide programming and to broaden its regional emergency response programs, both of which unquestionably will benefit consumers.

Put another way, DIRECTV asserts that “Comcast and Time Warner would have the Commission believe that larger clusters for cable operators lead inevitably to more advanced services for their subscribers.”<sup>9</sup> Applicants have never said any such thing. Rather, Applicants have shown that Comcast and Time Warner subscribers enjoy more advanced services than Adelphia subscribers, and those subscribers inevitably will benefit by integration of the Adelphia systems, on a geographically rational basis, into the operations of either Time Warner or Comcast. What is more, DIRECTV completely disregards the other substantial transaction-related benefits the Applicants have demonstrated on the record in this proceeding. For example, the Applicants have shown that:

- **The Transactions will bring significant local programming and local community service benefits to the Adelphia markets.** Comcast and Time Warner provide a vast amount of local programming to their customers. By contrast, Adelphia provides relatively little local programming. Thus, a major benefit of the proposed Transactions will be to bring Comcast’s and Time Warner’s rich history and strong commitment to localism to the Adelphia communities.<sup>10</sup> Moreover, both Comcast and Time Warner have demonstrated records of investment in the communities they serve through a wide variety of initiatives and strategic partnerships with community organizations.
- **The Transactions will serve to compensate Adelphia stakeholders pursuant to the bankruptcy laws.** Adelphia selected the bid made by Comcast and Time Warner because it maximizes Adelphia’s value for creditors, as required by bankruptcy law. Moreover, as two members of the Federal Trade Commission recently noted in approving the Transactions, the Transactions will “pull[] the Adelphia assets out of bankruptcy (and place[] them in the hands of more competent and law-abiding management).”<sup>11</sup>
- **The Transactions will enable Comcast to redeem its passive interest in Time Warner Entertainment and Time Warner Cable,** as required by the Commission when it approved the *Comcast-AT&T Broadband* transaction.<sup>12</sup> Given the unique nature and complexity of these interests, the FCC has recognized the “significant challenges” involved in disposing of them and the importance of facilitating the ability of the Applicants to complete an appropriate

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<sup>9</sup> DIRECTV March 30 Letter at 2.

<sup>10</sup> Comcast Public Interest Benefits Letter at 21-28; Letter from Seth A. Davidson to Marlene H. Dortch, filed in MB Docket No. 05-192, at 2-4 (Nov. 17, 2005).

<sup>11</sup> *Acquisition by Comcast Corporation and Time Warner Cable Inc. of the Cable Assets of Adelphia Communications Corporation, and Related Transactions*, FTC File No. 051-0151 (Jan. 31, 2006) (Statement of Commissioners Jon Leibowitz and Pamela Jones Harbour, Concurring in part, Dissenting in part).

<sup>12</sup> *See 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, ¶¶ 66-83 (“*Comcast-AT&T Broadband Order*”); *see also* Public Interest Statement at 63-67.

divestiture.<sup>13</sup>

## **2. DIRECTV's Latest Analysis Fails To Achieve Even Its Own Limited, And Immaterial, Purpose**

DIRECTV does not succeed even in its effort to show that the proposed Transactions will not produce any clustering-related benefits. Assuming that DIRECTV is attempting in its March 30 letter to demonstrate that larger clusters do not produce higher penetration rates or availability levels for advanced services, its econometric study is too imprecise and undeveloped to support that conclusion. DIRECTV's study reveals only that clusters of different sizes have varying penetration rates and availability levels for certain advanced services. Standing alone, this showing is meaningless, as the study never makes a serious attempt to explain why these differences occur.

Indeed, DIRECTV's study raises more questions than it answers. For example, the analysis fails to account for other cost drivers such as plant miles; the presence and price of substitutes such as DSL for high-speed cable modem service, alternative MVPDs for digital cable service, and competing telephony offerings; or demographic characteristics that may have an effect on penetration rates for advanced services offered by cable operators. One would assume that such factors would exert considerable influence on penetration levels, but DIRECTV's analysis is devoid of these considerations. Likewise, DIRECTV's economists fail to incorporate either the effect that the price for an advanced service or potential subscribers' ability to pay for that service may have on penetration.<sup>14</sup> Finally, given that Comcast and Time Warner have now rolled out advanced services to nearly all of their subscribers, DIRECTV's analysis necessarily sheds little light on any impact that geographic rationalization actually may have on advanced services deployment.

Because DIRECTV's March 30 letter fails to address any of the transaction-related benefits that the Applicants have described on the record in this proceeding and its economic analysis is fundamentally flawed, the Applicants respectfully submit that the Commission should disregard this *ex parte* filing in its consideration of the proposed Transactions.

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<sup>13</sup> *Comcast-AT&T Broadband Order* at ¶ 81.

<sup>14</sup> By leaving out important variables such as price and DSL availability, DIRECTV's study lacks any significant explanatory power, a point that DIRECTV's economists admit. *See Lexecon Clustering Analysis* at ¶ 19. The low predictive power of the regression raises serious econometric questions about the usefulness of Lexecon's report. Furthermore, the economists provide no indication that they checked for other common econometric problems, such as heteroscedasticity, which occurs when a regression is significantly better or worse at predicting the results for some sample sets than for others.

Please contact the undersigned parties with any questions concerning the foregoing.

Respectfully submitted,

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