LABOR ALLEGATIONS RAISED AND REBUTTED IN MB DOCKET 05-192

CWA has submitted a multitude of filings in this proceeding claiming that the proposed Transactions between Comcast, Time Warner, and Adelphia will have dramatic and negative impacts on competition and workers. Based on these allegations, CWA has sought to use the instant proceeding as an opportunity to have conditions placed upon the Applicants. Applicants have consistently refuted the allegations raised by CWA by demonstrating (1) that they have no connection to the Transactions at issue in this proceeding and (2) that they are based on erroneous information and assumptions about Applicants' incentives and practices. What follows is a summary of the major allegations that CWA has made on the record in this proceeding with regard to labor issues and Applicants' rebuttals of each of these allegations.

LABOR ALLEGATIONS RAISED AND REBUTTED IN MB DOCKET 05-192

ALLEGATION: Employees at transferred systems have no guarantee of employment and, under the Asset Purchase Agreement, will have to re-apply for their jobs. Applicants will be able to set new rates of pay, benefits, and other terms of employment after the transfer. The FCC should ensure that transferred employees experience no loss of employment at their current location, no reduction in compensation, and no loss of union representation as a result of the Transactions. (CWA Mar. 31 *ex parte* at attach. 9-10; CWA Mar. 22 *ex parte* at 5; CWA Mar. 9 *ex parte* at 2, attach. 10; CWA Feb. 27 *ex parte* at 2, attach. 9-10; CWA Feb. 23 *ex parte* at 2, attach. 9-10; CWA Dec. 16 *ex parte* at 1; CWA Nov. 3 *ex parte* at 2; CWA Reply Comments at i, iii, 2-3; CWA Petition to Deny at 27)

REBUTTAL:

- Under the terms of the Asset Purchase Agreements ("APAs") all applicable employees of the systems acquired from Adelphia will be offered employment by Time Warner or Comcast. There is no requirement that employees "reapply" for their jobs. (Applicants' Jan. 25 Response at 2; Comcast's Mar. 7 Response at 2)

- Comcast has already offered all applicable Adelphia employees associated with the systems Comcast is purchasing from Adelphia their existing positions and pay rates. (Comcast's Mar. 7 Response at 2; Reply at 117)

- Time Warner has offered Adelphia employees employment in their current positions at their current locations. Time Warner is also offering wage rates equal to the employees' wage rates with Adelphia. In addition, Adelphia employees will be eligible for certain benefit plans, including medical, dental and vision coverage; health and child care flexible spending accounts; short and long term disability benefits; and life insurance in accordance with current eligibility requirements, employee contributions and payments, and other plan or policy conditions. (Feb. 17 Letter from Tom Mathews, Senior Vice President, Human Resources, Time Warner Cable, to Adelphia employees (attached to Time Warner's Feb. 28 Response))

- To the extent that there are any disputes concerning the conduct of the parties with respect to labor relations, the NLRB is the appropriate federal agency to review those issues. (Time Warner's Mar. 28 Response at 2)

ALLEGATION: Comcast is an anti-union company, while Time Warner is taking an anti-union position in these Transactions. Comcast has launched a corporate campaign to deny employees legal rights under the National Labor Relations Act to union representation and collective bargaining over wages, benefits, and working conditions. And recent actions by Time Warner and Comcast raise questions about their commitments to honor the "spirit of the law" and to refrain from discriminating against represented workers. (CWA Mar. 31 *ex parte* at attach. 9, 12; CWA Mar. 9 *ex parte* at 3 and attach. 9, 12-13; CWA Feb. 27 *ex parte* at 2; CWA Feb. 23 *ex parte* at attach. 9; CWA Petition to Deny at 23-24)

REBUTTAL:

- CWA's grievances have no nexus to the proposed Transactions. CWA offers no grounds for reversing the Commission's long-standing policy against involving itself in private contractual disputes, including but not limited to those concerning employment matters. Commission decisions contain no precedent for the type of labor-related intervention that CWA apparently seeks. Rather, CWA's comments fall into a recent pattern of using collateral opportunities to goad companies into acquiescing to its wishes in union organizing and collective bargaining efforts. The Commission accordingly should dismiss CWA's calls for labor-oriented conditions. (Applicants' Reply at 111, 116, 119)

- To the degree that CWA's concerns have any substance, CWA should be (and has been) using processes at the National Labor Relations Board ("NLRB") specifically designed to deal with labor/management issues. In fact, many issues raised by CWA predate the Applications here and are being resolved by processes set forth under the National Labor Relations Act. (Time Warner's Mar. 28 Response at 2, n.5; Applicants' Reply at 111, 116-117)

- Comcast is proud of its record as an employer, and the company puts a high value on its positive relationships with its many employees, whether unionized or not. Comcast's corporate policy is to respect workers' right to organize, and the company will continue to abide by relevant labor laws and the terms of bargaining unit agreements it now has with IBEW and CWA or may have in the future. In fact, as of August 5, 2005, Comcast had successfully negotiated 10 collective bargaining agreements across the country in the prior 18 months. Comcast also will respect existing contracts with Adelphia employees following the proposed Transactions. (Applicants' Reply at 117)

- Comcast also believes employees should have the freedom to choose whether to work in a union environment. As an employer, Comcast invests significant resources into its employees, including competitive wages and progressive benefits packages, comprehensive training and job enrichment programs. Comcast's pro-worker policies are also reflected by the many awards the company has won for its workplace environment. As a result of these corporate policies, Comcast employees frequently opt against unionizing. The fact that most Comcast employees who have been involved in labor campaigns have declined union representation reflects Comcast's pro-worker policies, not attacks on the collective bargaining process. (Applicants' Reply at 118)

- Time Warner Cable is a firm believer in, and supporter of, employee free choice in the selection of employee representatives. After the closing, Time Warner commits to bargain in good faith with bargaining representative at any locations where such obligation applies. (Letter from Kevin M. Smith, Vice President and Chief Counsel, Labor, Time Warner Cable, to Kenneth Peres, Communications Workers of America, at 2 (attached to Time Warner's Feb. 28 Response); Applicants' Jan. 25 Response at 2)

ALLEGATION: For employees who have already elected to have representation rights, the new employer should be required to respect and recognize the pre-transfer collective bargaining status of its employees. Applicants should be required to continue a bargaining relationship with those units that are represented by a union. (CWA Mar. 22 *ex parte* at 4; CWA Reply Comments at i, iii, 2-3; CWA Petition to Deny at 27)

REBUTTAL:

- Comcast's corporate policy is to respect workers' right to organize, and the company will continue to abide by relevant labor laws and the terms of bargaining unit agreements it now has with IBEW and CWA or may have in the future. In fact, as of August 5, 2005, Comcast had successfully negotiated 10 collective bargaining agreements across the country in the prior 18 months. Comcast also will respect existing contracts with Adelphia employees following the proposed Transactions. (Comcast Mar. 7 Response at 2-3; Applicants' Reply at 117)

- Comcast also believes employees should have the freedom to choose whether to work in a union environment. As an employer, Comcast invests significant resources and energy in its employees, including competitive wages and progressive benefits packages, comprehensive training and job enrichment programs. Comcast's pro-worker policies are also reflected by the many awards the company has won for its workplace environment. As a result of these corporate policies, Comcast employees frequently opt against unionizing. The fact that most Comcast employees who have been involved in labor campaigns have declined union representation reflects Comcast's pro-worker policies, not attacks on the collective bargaining process. (Applicants' Reply at 118)

- Time Warner Cable is a firm believer in, and supporter of, employee free choice in the selection of employee representatives. After the closing, Time Warner commits to bargain in good faith with the bargaining representative at any locations where such obligation applies. (Time Warner's Mar. 28 Response at 2; Letter from Kevin M. Smith, Vice President and Chief Counsel, Labor, Time Warner Cable, to Kenneth Peres, Communications Workers of America, at 2 (attached to Time Warner's Feb. 28 Response); Applicants' Jan. 25 Response at 2)

- CWA's demands that Applicants enter into collective bargaining before the Transactions close (and thus before Applicants become the employers of those employees) is premature. (Time Warner's Mar. 28 Response at 2, n.4)

- There is no precedent for CWA's demand that the Commission delve into matters of federal labor law by requiring Time Warner and Comcast to "continue a bargaining relationship with those units that are represented by a union." (Time Warner's Mar. 28 Response at 2; Applicants' Reply at 111)

ALLEGATIONS REGARDING INDEPENDENT PROGRAMMING RAISED AND REBUTTED IN MB DOCKET NO. 05-192

The America Channel has submitted a multitude of filings in this proceeding claiming that the proposed Transactions between Comcast, Time Warner, and Adelphia will have dramatic and negative impacts on the market for independent programming. Based on these allegations, The America Channel has sought to use the instant proceeding as an opportunity to have conditions placed upon the Applicants. Applicants have consistently refuted the allegations raised by The America Channel by demonstrating (1) that they have no connection to the Transactions at issue in this proceeding and (2) that they are based on erroneous information and assumptions about Applicants' incentives and practices. What follows is a summary of the major allegations that The America Channel has made on the record in this proceeding with regard to independent programming issues and Applicants' rebuttals of each of these allegations.

ALLEGATIONS REGARDING INDEPENDENT PROGRAMMING RAISED AND REBUTTED IN MB DOCKET NO. 05-192

ALLEGATION: Comcast and Time Warner act as gatekeepers for independent programmers and prevent them from reaching consumers and fairly competing. Their refusals to carry an independent channel have a preclusive effect on the ability and willingness of other cable operators to embrace that channel. A "no" decision by either Comcast or Time Warner will make it mathematically impossible for an independent network to achieve the critical mass of subscribers (at least 25 million subscribers) that will make it viable with advertisers or investors. (TAC Nov. 8 *ex parte* at 10; TAC Petition to Deny at 8, 9, 17-18, 20-28, 34-36, 45-47; TAC June 6 *ex parte* at 1)

REBUTTAL:

- TAC's suggestion that there is some sort of collusion between Time Warner Cable and Comcast over programming decisions is baseless. It is absurd to suggest that there is something nefarious about the fact that two experienced cable operators, each with a proven ability to meet consumer demand, are capable of recognizing the quality, value, and potential of any particular network, or that they would each independently decline carriage of an unproven, and indeed non-existent, network such as TAC. And it is well established that an agreement or conspiracy among competitors cannot be inferred from mere parallel conduct. (Applicants' Reply at 38)

- A fledgling network has a number of ways to achieve wider distribution through viewer demand. And where a network has demonstrated such value, competition will provide powerful incentives to ensure that rival MVPDs carry it. As the D.C. Circuit has recognized, Comcast's and Time Warner's market power over programming is constrained by the ability of subscribers to switch to other MVPDs. Indeed, satellite competitors in many cases initiated carriage of new channels that cable operators did not carry to achieve competitive differentiation and subscriber growth. Many new channels reached a level of viability without initially securing any cable carriage. (Applicants' Reply at 36, 38, 76, n.267)

- TAC is wrong that there is some preordained number of households to which cable networks must secure carriage to be "viable." All networks have different cost structures, different ways of distributing their content, and different ways of recovering their costs. Even after the Transactions, there will be almost 66 million MVPD households that Comcast does not serve and more than 75 million that Time Warner Cable does not serve. (Applicants' Reply at 37)

ALLEGATION: Vertically affiliated networks are almost uniformly favored by Comcast and Time Warner in terms of higher carriage and/or more frequent positioning on analog program tiers that are more widely available to consumers. In addition to favoring affiliated networks, Applicants also favor networks owned and operated by a select few large content owners. Independent channels, on the other hand, are often relegated to VOD platforms. This is despite

the fact that average fees and average price increases for affiliated channels are significantly higher than for independent channels. (TAC Oct. 21 *ex parte* at 1; TAC July 31 *ex parte* at 3; TAC Petition to Deny at 9, 36-45, 52-54; TAC June 6 *ex parte* at 1)

REBUTTAL:

- TAC seeks to compare treatment by Comcast and Time Warner of "new affiliated" networks with their treatment of "new independent" networks. But TAC treats a network as being "affiliated" if it is affiliated with any large media enterprise – e.g., Viacom, News Corp., NBC Universal, or Disney. This is wrong as a matter of fact and law and inconsistent with the Commission's attribution rules. Moreover, it significantly and artificially overstates the number of allegedly "affiliated" networks that are widely distributed and substantially understates the number of "independent" networks that receive such wide distribution. (Applicants' Reply at 81)

- Time Warner Cable has affiliation agreements with well over 100 independent, non-premium (i.e., "basic") cable networks, while holding attributable ownership in less than a dozen such networks; of the affiliated networks, many are not carried on all Time Warner Cable systems and/or are offered only on digital tiers (e.g., Boomerang). Similarly, in the past three years, Comcast has entered into affiliation agreements to carry well over 50 independent programming channels, many of which (e.g., Oxygen, CSTV, Tennis Channel, NFL Network, Starz!, Encore, and 38 Hispanic and other ethnic programmers) have no common ownership with Disney, News Corp., Viacom, or NBC/Universal. (Applicants' Reply at 82-83)

- Comcast and Time Warner Cable have each independently and fairly considered the proposals that have been received from TAC and have exercised reasonable editorial and business judgment in declining to enter into a carriage agreement at this time. If an independent programmer like TAC has legitimate complaints about its inability to secure carriage on Comcast or Time Warner systems, the Commission's rules contain a fully adequate program carriage complaint process. (Applicants' Reply at 78-79)

- TAC implies that all networks are equally worthy of carriage. TAC analyzes 114 independent networks (improperly excluding networks affiliated with Viacom, NBC Universal, or Disney) and claims that Time Warner Cable and Comcast have only launched one each on a "national, non-premium basis." TAC provides no evidence whatsoever that any of these networks have any particular value, reflect any substantial investment, or address any unmet need in the marketplace. (Applicants' Reply at 81)

- TAC points out that many of Comcast's affiliated networks enjoy wide distribution by multiple MVPDs and the greater subscriber accessibility that results from carriage in analog format. While TAC assumes these advantages are due to "affiliation," in many cases these networks' success was assured (and their distribution arrangements were secured) long before they were affiliated with Comcast. The same holds true for various networks created by Turner before its acquisition by Time Warner. (Applicants' Reply at 82-83)

- TAC erroneously suggests that Comcast's affiliated networks are accorded linear carriage while independents are relegated to inferior VOD carriage. The fact is that several of Comcast's networks are frequently carried predominantly or almost exclusively on digital tiers, including AZN TV, G4, TV One, and Style. In addition, Sprout was launched expressly as a digital channel. (Applicants' Reply at 82)

- TAC's claim that all (or the vast majority) of the affiliated networks are assured success is uninformed and erroneous. A company like Comcast or Time Warner may invest several years and many millions of dollars in the development of an idea for a new network, and that idea may ultimately be abandoned without any public announcement. Thus, it should not be surprising that those "affiliated" networks that are ultimately announced are ones to which the cable operator is already prepared to commit. This does not mean, however, that the operator has given the green light to all of the possible networks on which it has expended time and energy. (Applicants' Reply at 83)

ALLEGATION: The Commission should require Applicants to open their platforms for new channels added after the effective date of approval of the Transactions. Of new channels added after the date upon which the order approving the Transactions is adopted, the Commission should require that fifty percent of newly added channels be independent of affiliation to Applicants and broadcasters. The condition should remain in effect for three years. (TAC Nov. 8 *ex parte* at 11)

REBUTTAL:

- In evaluating new carriage proposals, cable operators and other MVPDs must consider the nature of the programming involved, its target demographics, its likely appeal to consumers, its similarities and differences from other programming available to the MVPD, its cost, and numerous other factors. As a result, obtaining carriage agreements can be a long and difficult process, even in the case of a network that is based on an attractive idea; that has developed and refined plans for translating that idea into specific programming plans; that has attracted management, programming experts, and other personnel with a demonstrated record of success; and that has raised tens of millions of dollars to buy or create compelling programming, to build brand awareness, and to cover the many other costs of a new network. TAC "demands" carriage, even though, in Comcast's and Time Warner Cable's respective independent business judgment, it lacks most of these ingredients for success. (Applicants' Reply at 79-80)

INTERNET ACCESS ALLEGATIONS RAISED AND REBUTTED IN MB DOCKET 05-192

ALLEGATION: Free Press et al. argues that the Commission must impose a "network neutrality" condition that would prohibit Time Warner or Comcast from content discrimination or from interfering with rival video or voice providers on their broadband networks. (Free Press, et al. Petition to Deny at 44-45)

REBUTTAL:

- The record is devoid of evidence that Applicants have intentionally degraded, blocked or otherwise discriminated against any packets delivered by any IP-enabled service application. Indeed, any such attempts would drive subscribers to broadband access competitors. (Applicants' Reply at 87-91)

- In fact, the competitive marketplace for broadband services has benefited from lack of government intervention. (Applicants' Reply at 87-91)

- Applicants have maintained long-standing policies of allowing customers unfettered access to all content, services, and applications on the Internet. The proposed Transactions will not alter that fact. (Applicants' Reply at 87-91)