

HIGHLY CONFIDENTIAL INFORMATION
SUBJECT TO SECOND PROTECTIVE ORDER MB DOCKET NO. 05-192
REDACTED – FOR PUBLIC INSPECTION
ATTACHMENT A

The following presentation was delivered by Dr. Gregory Rose, consultant to Media Access Project, to Leslie Marx, Chief Economist, Tracy Waldron, Chief Economist of the Media Bureau, and Julie Salovaara, Legal Counsel, Industry Analysis Division, on February 21, 2006.

A. Comcast has been obstructive of legitimate attempts to analyze the data it has been obliged to present to the Commission in the way it has dealt with the matter of proprietary information. This has limited my ability to fully analyze this material as it pertains to the Comcast-Adelphia-Time Warner transaction.

B. Examination of Comcast subscriber data for 2004-2005 reveals pertinent information.

[REDACTED PURSUANT TO *SECOND PROTECTIVE ORDER*]

3. What this suggests is:

a. The maturation of the cable market in the top 25 DMAs is continuing at a significant rate, which has implications for both regional and national competition;

b. Although that rate of maturation in the bottom 25 DMAs is also increasing, it is doing so less rapidly, creating a situation in which the only venues for real competition among providers is in the least lucrative regions of the market;

c. The revenues necessary to establish and maintain a national footprint are substantially associated with the larger DMAs and maturation

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of those markets will effectively create a national duopoly of Comcast and Time Warner acquire Adelphia's assets.

d. It has for some time been recognized that Cablevision's attempt to acquire Adelphia was an attempt to establish a national competitive footprint. Acquisition of Adelphia by Comcast and Time Warner establishes effectively two tiers of providers: a duopoly of those providers which have a genuine national footprint and which constitute the first tier; and a second tier of those providers who are only capable of competing regionally. This increases the importance of my suggestion to the Commission that it reconsider its policy of considering market power only at the national level -- important regional patterns bear on the ability of second tier providers to even maintain their current regional positions vis-à-vis the national footprint duopolists of the first tier.

3. [REDACTED PURSUANT TO *SECOND PROTECTIVE ORDER*]

C. Both Comcast and Time Warner by a combination of vertical and horizontal integration nationally are hegemonic providers in a substantial number of telecommunications markets which the Commission today treats as analytically separate for purposes of considering market power. The Adelphia acquisition significantly increases their hegemony and is likely to produce synergistic effects which will be felt in the cable, broadband, telephony, VoD, and VoIP markets. To understand the way in which changes in market share in one market have effects on other markets in which such

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highly vertically and horizontally integrated providers compete it is necessary to analyze the telecommunications market as a whole rather than as discrete, subsidiary, segmentable markets of the sort currently envisioned. I suggest that this higher level of analysis be adopted by the commission as an additional source of indicators of the real effects of market power across existing markets. This is particularly important given the potential for price leadership dynamics in any de facto duopoly in the national footprint cable market, price leadership effects which may be felt in other markets in which the duopolists also operate.

[In response to a question by staff, Dr. Rose suggested that the Commission determine the appropriate levels of competition in the related markets by calculating present HHI on the national and regional level for each effected product market and observe over time the relationship between the core video market and the related markets. Conditions could be adjusted and removed based on the comparative HHIs after a proper relationship between the markets was established through empirical observation. Mr. Feld suggested that a less rigorous approach in keeping with the recent mergers of *Verizon/MCI* and *SBC/AT&T* would be to impose time-delineated conditions (subject to future review) based on pro-competitive developments in the core national video market and related markets.]

D. Recommendations regarding the Comcast-Adelphia-Time Warner transaction:

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1. Ideally the Commission should refuse to approve the transaction, reopening the possibility of another provider acquiring Adelphia and thereby establishing an additional national footprint competitor.

2. In the event that the Commission does not select this course of action constraints must be placed on the transaction which will mitigate its considerable anti-competitive consequences:

a. Open access to permit direct interconnection by rival ISP's and resale of broadband service similar to conditions imposed on Time Warner in the AOL/Time Warner merger or, at least, net neutrality -- no interference with content -- similar to the Bell merger conditions;

b. Mandatory unbundling of services -- video, broadband, voice - - so that, while subscribers may choose to purchase such bundles none will be required to do so as a condition of purchasing any one or more services;

c. A leased access condition which sets uniform rate designed to facilitate independent access rather than designed to protect cable operator from potential loss;

d. Protection for PEG/local franchising conditions by imposing a complaint process to FCC if the transaction applicants seek to renege on post-transaction franchise agreements;

e. Establishment of a right to connect any device to the network that will not harm the network.

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f. Protection of access to local advertising markets in the form of an expedited complaint process which protects political speech and rival product advertisements.

[In response to a question from staff, Dr. Rose cited the following article K. Zeissler, "Die Marktkraft und Privitization," technical paper (mimeo), Eidgenössische Technische Hochschule, Zürich, 2001, as providing a comparable analysis of the deregulation and privatization of the Eastern European telecommunications markets.]