

**HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND
PROTECTIVE**

**ORDER IN MB DOCKET NO. 05-192
REDACTED -- FOR PUBLIC INSPECTION**

ATTACHMENT B

The following presentation was delivered by Harold Feld, Senior Vice President, 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.

The evidence from even the brief review of Comcast's internal emails and memoranda we have been able to conduct to date demonstrate that (a) Comcast is fully aware of how its regional concentration and national concentration permit it to use market power derived from viewers in the core video market to suppress competition; (b) that Comcast actively uses the dominance of the video market, including control over advertising, to maintain dominance in related markets, such as broadband, video on demand, and other advanced services; and (c) that Comcast willingly trades the modest increase in revenue that would result from maximizing profit in a given market (for example, by limiting distribution of key programming) in order to achieve greater revenue enhancement by suppressing competition.¹

Accordingly, it is imperative the Commission shift from the traditional view of considering only national market share and examining each product market individually to a more integrated approach that considers the synergistic effects of regional concentration, switching cost, lock in, and network effects.

¹We have not yet had the opportunity to examine the documents provide by Time Warner or Adelphia. We therefore have no way of knowing whether Time Warner has been as vigorous as Comcast in its pursuit and use of market power for anticompetitive purposes. It is sufficient, however, that Comcast's actions demonstrate both the existence of market power and the intent to used the enhanced market power provided by the merger in a manner inconsistent with the public interest.

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Documents are designated by the ID numbers provided by Comcast. It is notable that the documents are not provided in any logical order. Subject matters are generally mixed and interspersed with no supporting index of documents. The manner of presentation appears designed to maximize frustration and difficulty in finding relevant documents, and enhance the difficulty in tracking business relationships and negotiations over the course of time. Due to the conditions imposed by the *Second Protective Order*, there may be some copying errors. I have done my best to ensure accuracy, and do not believe any manual errors that may have occurred are of any significance. In case of doubt, staff should examine the documents directly.

The deliberate use of RSN exclusivity to prevent subscribers from considering alternative MVPDs is illustrated by
[REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*]

(In light of this explicit statement, it is difficult to understand how the Federal Trade Commission reached its conclusions. One can only conclude that the FTC did not have the benefit of this explicit evidence.)

The Comcast document also indicates an awareness of regulatory scrutiny, and a desire to avoid any conduct so obviously anti-competitive as to provoke a regulatory response. Thus, Comcast suggests [REDACTED PURSUANT TO THE *SECOND PROTECTIVE ORDER*]

This strategy played out

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Consistently, the unambiguous statements by Comcast personnel (Free Press, *et al.*, have not yet examined documents from Time Warner or Adelphia) rebut the oft repeated claims of Applicants that they have no incentive to impose exclusivity on RSNs or other content, that they have a contrary incentive to widely distribute their RSN content and other content, that they have no market power to enforce anticompetitive conditions with third parties, and that they lack market power to cross-leverage dominance in one market to protect and enhance dominance in other markets. On the other hand, the statements above are consistent with the analysis submitted by Free Press, *et al.*, and support the conclusion that Applicants have deliberately sought to use this transaction to enhance market power and restrain trade both regionally and nationally.

This intent alone would make the grant of this merger a violation of Section 314 of the Communications Act (prohibiting transfer where *either* the intent or the effect is

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to “unlawfully create monopoly in any line of commerce.”) Even without Section 314, however, it is plain that Applicants are fully aware of the enhanced market power the transaction will provide, and will not hesitate to use this market power to the detriment of competition, free speech and the public interest generally.