Action Audits, LLC

June 26, 2006

BY ELECTRONIC FILING

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

Re: MB Docket No. 05-192: The Negative Impact of Time Warner's Purchase of Adelphia's Cable Systems on Rural Communities

Dear Ms. Dortch:

The purpose of this letter and the attached letter of Kim Racine[1] is to respond to the January 25, 2006, response by Time Warner, Inc. ("Time Warner Response"), to a December 16, 2005, *ex parte* letter to the Commission from the Communications Workers of America ("CWA"). The Time Warner Response attempts to challenge the findings made by Ms. Racine with respect to the likely negative impact of Time Warner's acquisition of various Adelphia cable systems on certain local franchising authorities currently served by Adelphia. Further, it challenges CWA's recommendation that the Commission condition its approval of Time Warner's purchase of Adelphia's cable systems on the establishment of a program for monitoring and ensuring "the build-out of advanced services, especially in rural areas."[2]

Time Warner characterizes CWA's allegations that Time Warner's purchase of Adelphia's cable systems could be detrimental for cable subscribers, particularly those living in rural and low-income communities such as the group of North Carolina communities that we represent, as "border[ing] on the frivolous." We are writing to correct the record with regard to Time Warner's distortion and misrepresentation of Ms. Racine's findings (those corrections are spelled out in her attached letter)

---

1 Letter of Kim Racine to Marlene Dortch in MB Docket No. 05-192 dated June 26, 2006 (attached as Exhibit A).

2 December 16, 2005, *ex parte* letter from Kenneth R. Peres to Marlene Dortch in MB Docket No. 05-192 at 2 ("The Commission, should at the very least, monitor the build-out of advanced services, especially in rural areas, as well as service and employment levels, in order to determine whether the financial strains created by the merger lead to further deleterious impacts on consumers, workers, and communities"). CWA's preference is for the Commission to disapprove the Time Warner-Adelphia transaction, or, in the alternative, to ensure access to programming, local employment continuity, and the provision of operational and advanced services to residents of rural areas.

and to strongly support CWA's recommendation for the imposition of conditions on Time Warner. We are also writing to advise the Commission of the complete disconnect between the rosy picture Time Warner has painted for the Commission with regard to its plans for these Adelphia systems and the grim reality of continued poor service that is facing certain rural communities.

Time Warner has represented to the Commission that approval of Time Warner's purchase of the Adelphia systems will enable it to bring advanced technologies, cost savings, and reliable and effective customer and technical service to all Adelphia communities through geographic rationalization (superclustering). Further, Time Warner has stated that it will give priority to upgrading "technologically inferior" systems.[3] Yet Time Warner has told the counties of Nash and Pitt, North Carolina, and various Nash County towns the exact opposite. Time Warner has not only refused to commit to repair or upgrade any of Adelphia's cable systems in the Pitt and Nash County communi

---

[3] "[A]s a general matter, it can be expected that systems with limited capacity or lacking in advanced services would receive priority [in allocating earmarked upgrade funds to particular systems]." Attachment to Letter of John Fogarty of Time Warner to Robert Murphy, the county manager of Nash County, dated September 20, 2005, at 10 ("Time Warner's Second Form 394 Response"). *See also, Applications and Public Interest Statement of Adelphia Communications Corporation, Comcast Corporation and Time Warner Inc. in MB Docket No. 05-192*, May 18, 2005 ("Public Interest Statement"):

- "By taking the Adelphia cable systems out of bankruptcy and placing them under the operation of either Comcast or Time Warner Cable . . . the Transactions **will accelerate the deployment of advanced services to consumers now served by the Adelphia systems.**" Public Interest Statement at i (emphasis supplied).
- "The public benefits of the Transactions are not limited to **improving the underperforming Adelphia systems. All of Time Warner Cable's and Comcast's customers (current and potential) will benefit from the enhanced geographic rationalization** that will result from the acquisition of the Adelphia's systems . . ." Public Interest Statement at ii (emphasis supplied).
- "Comcast and Time Warner Cable will be better able to consolidate and expand their regional call centers; coordinate technicians and truck fleets through centralized facilities; utilize cable system headends and nodes more effectively; and maintain and service their networks in a more responsive manner." Public Interest Statement at iii.
- **"Comcast and Time Warner Cable have collectively earmarked an additional $800 million to upgrade the less-advanced Adelphia cable systems to each company's high standards**... current Adelphia customers can expect to receive more reliable, higher quality service at all levels, including basic cable service." Public Interest Statement at 48 (emphasis supplied).
- "[B]enefits [from improved geographic rationalization] will include **increased choices and opportunities to obtain new services – advanced services** already available in virtually all cases to nearby Time Warner Cable and Comcast customers – more quickly, with **greater quality and reliability, and with more enhanced technical, marketing and customer service than would otherwise be available or feasible.**" Public Interest Statement at 58 (emphasis supplied).
- "The Applicants and their customers also will benefit from overhead efficiencies, such as the more efficient deployment of management and other employees over a larger, more contiguous service area, as well as important cost-reducing infrastructure efficiencies **such as the consolidation of head-end facilities.**" Public Interest Statement at 59 (emphasis supplied).

ties, but has also refused to extend even its regional resources from nearby operational centers into any of the communities, claiming they are "legally prohibited" from making such commitments.[4]

Time Warner has taken this harsh and inflexible position despite the fact that all ten Nash and Pitt County communities are served by outdated and limited Adelphia cable systems that are in extraordinarily poor condition. These systems typically offer only between 36 and 48 analog channels and a smattering of relatively primitive digital services and no advanced services. These cable systems have been neglected for years and often deliver pictures that are unviewable and sound that cannot be heard.[5] Further, several of the Nash County communities are low-income jurisdictions, with average median household income well below the national average. And all of these communities are struggling to recover from the loss of the tobacco, textile, and furniture industries, which, until recently, were the mainstays of local economies,[6] and are interested in securing a communications infrastructure such as would be provided by a modern cable system that will support new economic development and opportunity.

Through the FCC's Form 394 process, Time Warner made clear its unwillingness to commit to regionalizing its headend facilities,[7] assuming Adelphia's local staff,[8] or upgrading the cable systems serving the ten Nash and Pitt County jurisdictions.[9] Nor is Time Warner even willing to acknowledge that the dilapidated cable systems are "technologically inferior."[10] Instead, Time Warner informed

---

[4] Letter from John Fogarty of Time Warner to Robert Murphy, the county manager for Nash County ("TW's Second Form 394 Response") (attached as Exhibit B), Attachment A at 4-8.

[5] The mayor of Whitakers testified in the Adelphia bankruptcy proceeding about cable wires hanging so low in his town that log trucks ripped the wires down while passing by his house. The mayor of Spring Hope testified that he and his neighbor get together to move the cable line that run across their lawns so they can mow their lawns. Action Audits has identified numerous electrical and safety code violations throughout the 10 communities.

[6] These communities include Nash and Pitt Counties, and the Nash County towns of Bailey, Castalia, Dortches, Middlesex, Momeyer, Red Oak, Spring Hope, and Whitakers. The towns range from a little more than 100 homes to about 1,000 homes while the unincorporated areas include about 20,000 homes in Pitt County and about 15,000 homes in Nash County.

[7] Time Warner's Second Form 394 Response, Attachment A at 4-8. *See, e.g.*, at 8 ("[W]e would expect that *the existing headend would remain in place for the foreseeable future, but might be consolidated* with operations from a nearby Time Warner Cable headend at such time as warranted by technological, efficiency and other factors" (emphasis supplied)).

[8] TW's Second Form 394 Response, Attachment A at 4 and 7.

[9] TW's Second Form 394 Response, Attachment A at 6.

[10] TW's Second Form 394 Response, at 6. *See also*, Letter from John Fogarty of Time Warner to Robert Murphy, county manager of Nash County, dated July 22, 2005 ("TW's First Form 394 Response") (attached as Exhibit C),

the Nash and Pitt County communities that it is "premature . . . to develop precise plans" in these areas,[11] while also claiming that this refusal to make any commitment with regard to the future should not be seen "as a result of any lack of due diligence or absence of planning"[12] and that cable operators "should not be held to unreasonable or unrealistic expectations to foretell future events."[13] The only commitment Time Warner expressed a willingness to make was to continue operating these primitive cable systems exactly as they are currently being operated (*i.e.*, in their current deteriorated and limited condition). This refusal to make any commitment to improve these systems contrasts sharply with Adelphia's and Time Warner's willingness to agree to a rapid upgrade of the Adelphia systems serving Los Angeles area, with its high-density and high-income characteristics, and to enter into a settlement agreement with the city of Los Angeles with respect to the system's past technical problems.[14]

Time Warner's plan to relegate rural and low-income areas to digital have-not status is apparent in its response to the financial report prepared for Action Audits by Racine Financial Consulting ("Racine Report") and submitted by CWA to the Commission as an attachment to its December 16, 2005, *ex parte* letter. Among other things, that letter addressed the need for Commission oversight of broadband deployment in rural areas.

The Racine Report was prepared as part of the transfer review process undertaken by the Nash and Pitt County communities. Most revealing is the failure of the Time Warner Response to address the Racine Report's central finding–that the sale of the Adelphia cable systems to Time Warner will likely lead to higher cable rates, a minimal likelihood of cable system upgrades, and diminished customer and technical service. Among the reasons for this bleak assessment are Time Warner's assumption of a crushing debt burden in connection with the Adelphia transactions and a series of related transactions with Comcast while facing the daunting challenge of taking control of the troubled Adelphia cable systems, integrating the Adelphia cable systems and systems to be acquired from Comcast with its own operations, and continuing to try to expand its telephone business.

Instead of attempting to disprove the Racine Report's finding by simply making a commitment to

---

Attachment A at 7.

11 *See, e.g.*, TW's First Form 394 Response, Attachment A at 6.

12 *Id.*, Attachment A at 5.

13 *Id.*, Attachment A at 6.

14 *See, e.g.*, http://clkrep.lacity.org/councilfiles/02-0774-s48_ca_11-30-05.pdf; http://cityclerk.lacity.org/CFI/Record_Preview.cfm?Document=137223&arraypos=1&LastRecord=1; www.lacity.org/ITA/itatoa/itaitatoa253834582_01032006.pdf.

upgrade the Adelphia systems serving the Nash and Pitt County communities and extend Time Warner's regional resources to these systems, Time Warner concentrated on attacking the Racine Report's straight-forward findings in vitriolic terms. As noted above, Ms. Racine's response to the Time Warner Response and the associated declaration by Time Warner executive Satish Adige is attached as Exhibit A.

Time Warner and Adelphia have met on two occasions with Nash County officials and advised them that Time Warner cannot make a decision on whether to upgrade their cable systems until after it completes a year-long, complex marketing study of the Nash County communities and their cable systems.[15] Further, Time Warner has committed only to operating the Nash and Pitt County cable systems just as they are currently being operated (*i.e.,* with limited analog channel capacity, limited digital service, no advanced services, numerous signal quality problems, numerous electrical and safety code violations).

In closing, based on the experiences of the Nash and Pitt County communities, we recommend that the Commission impose strict conditions on Time Warner's purchase of the Adelphia systems that would require completion of a full upgrade of all Adelphia systems serving rural communities within a period of no more than two years. Without such a mandate, these rural cable systems are likely to serve as cash cows for Time Warner, with their profits siphoned off to systems that Time Warner determines to be more attractive or valuable. Without a 21st century communications infrastructure, rural communities such as the communities we represent are likely to continue their steady decline as their residents and businesses continue to be denied access to such basic services as high-speed cable modem service and the other economic and entertainment opportunities associated with a modern cable system.

Sincerely,

Robert F. Sepe

attachments

[15] Such a complex study was not necessary in order for Time Warner to make commitments to upgrade the Adelphia cable systems that currently serve Los Angeles and Vermont.

EXHIBIT A

Racine Financial Consulting

1429 Huntly Court
Cary, NC 27511

June 21, 2006

Robert F. Sepe
Action Audits, LLC
101 Pocono Lane
Cary, NC 27513

Re: Response to January 25, 2006, letter from Time Warner to FCC in MB Docket No. 05-192

Dear Mr. Sepe:

I am writing in response to Time Warner, Inc.'s ("TW"), January 25, 2006, *ex parte* letter ("TW Letter") to the Federal Communications Commission ("FCC") and the declaration of TW executive Satish Adige attached to that letter ("Adige Declaration"). The TW Letter and the Adige Declaration were submitted to the FCC in response to a December 16, 2005, *ex parte* letter of the Communication Workers of America ("CWA"), which included a copy of a report that was submitted on September 28, 2005, to Action Audits ("Transfer Report") for use in connection with the transfer from Adelphia to TW of franchises for cable systems serving ten North Carolina jurisdictions. The purpose of this letter is to correct the record with regard to TW's misrepresentation and distortion of the Transfer Report's analysis of the impact of the proposed Adelphia transactions on the North Carolina jurisdictions and their constituents.

The TW Letter reflects basic misunderstandings of the Transfer Report in several areas. For example, contrary to the TW Letter's claims, the Transfer Report does not state that Time Warner Cable, Inc. ("TWC"), "lacks the financial wherewithal to operate the systems being acquired from Adelphia and Comcast." TW Letter, p. 2. Similarly, the TW Letter falsely states that the Transfer Report alleged that ownership of the North Carolina cable systems by Time Warner would be more harmful to Adelphia subscribers and employees than would ownership by Adelphia. TW Letter, p. 3. In fact, the objective of the Transfer Report was simply to detail the likely impact of the proposed Adelphia transactions on the North Carolina jurisdictions and their constituents.

The Transfer Report concluded that the Adelphia transactions would, as proposed, more than double TWC's existing debt (with no plan proposed to reduce outstanding bank credit) and would significantly reduce TWC's liquidity. Transfer Report, pp. 1-2. Further, TWC will face a lengthy payback period for the debt associated with these transactions. Transfer Report, p. 3. Such a prospect would, in all likelihood, cause a financially prudent company to increase revenues and cut expenses in order to shorten the return period on its investment in the Adelphia transactions. Transfer Report, p. 3. This likely interest on the part of management in increasing revenues and cutting expenses would, in all likelihood, lead to such actions as rate increases, reductions in customer and technical service, and deferred investment in the pervasive system upgrades that TW says it intends to implement. Transfer Report, pp. 3-4. ***Of utmost importance to the FCC should be the fact that neither the TW Letter nor the Adige Declaration refutes this central finding of the Transfer Report with respect to TW's likely need to increase revenues and cut expenses in the future and the likely impact of those measures on subscriber rates, customer and technical service, and anticipated system upgrades.***

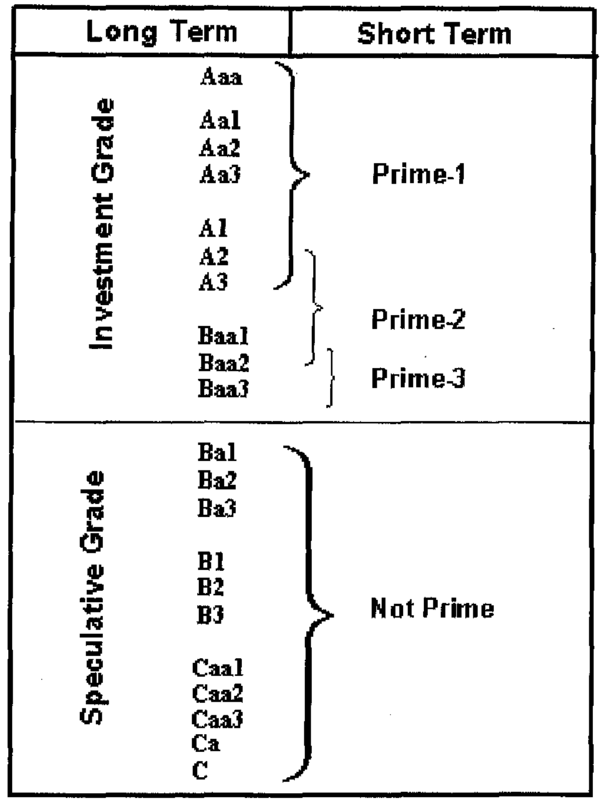
Instead, the TW Letter attempts to show that the Transfer Report is filled with omissions and is lacking in rational analysis. TW Letter, pp. 2-3. For example, the TW Letter attacks the Transfer Report's discussion of TWC's current financial condition for failing "to acknowledge that TWC currently has a solid investment grade rating from the nation's three leading credit rating agencies and is expected to maintain an investment grade rating after the proposed transactions are completed." TW Letter, p. 3. In fact, the Transfer Report did not state that TWC would not be able to take on more debt. It simply described the likely effect of assuming the debt associated with the Adelphia transactions.

It is noteworthy that, while Moody's current rating for TWC and TW is a Baa2 rating with a "stable" outlook,[1] Moody's has expressed concern with regard to the pending increase in TWC's debt. Effective April 6, 2006, Moody's <u>downgraded</u> TW and TWC from Baa1 to Baa2, citing TW and TWC debt-to-OIBDA[2] leverage. *See* Moodys.com. While TWC's Baa2 rating is still an investment grade rating, it is next to the last among Moody's 10 investment grade ratings and only two ratings removed from a "speculative" grade rating (*see* chart below for a list of Moody's short-term and long-term ratings). Further, although Moody's gives TWC a positive outlier for "Timely Action in Launching New Products," it provides negative outliers for TWC in three different areas: "Year over Year Change in Video Subscribers"; "Expected Change to Debt-to-EBITDA from a Likely Event"; and "Non-core Assets/Debt." Moody's, p. 30. These negative outliers are all consistent with the financial discussion contained in the Transfer Report. Moreover, Standard & Poor's and Fitch's ratings for TWC's parent company, TW, are also at the low end of investment grade, with Standard & Poor's currently rendering a <u>negative</u> outlook for TW.

[1] The average rating for the cable industry is in the low Ba category (Moody's). Moody's outlooks include "positive," "stable," "negative," and "developing." *See* Moodys.com.

[2] OIBDA refers to operating income before depreciation and amortization.

Short-term vs. Long-term Ratings



source: www.Moodys.com/moodys/cust/AboutMoodys

The TW Letter also attempts to discredit the Transfer Report by claiming that it mischaracterized TWC's "debt, cash flow, and liquidity." TW Letter, p. 3. Specifically, the Adige Declaration attempts to substantiate this claim by stating that the report "inappropriately equates 'total liabilities' with debt" (Adige Declaration ¶ 4) and that the report should not have treated "total liabilities" as a surrogate for debt because "total liabilities" include non-cash items like deferred tax liabilities which are "not meaningfully representative of 'debt.'" *Id.* A review of the record suggests that Mr. Adige's claims are off the mark.

First, the Transfer Report used "total liabilities" divided by equity to derive a debt-to-equity ratio. That ratio was calculated consistently on a year-to-year basis, with its calculation clearly and specifically detailed, providing a reliable measure of leverage. Second, to have only used the definition of "long-term debt" proposed by TW in evaluating leverage would ignore TWC's "mandatorily redeemable stocks," which represent liabilities that TWC must pay in the future. Third, the "total liabilities" used in the Transfer Report to calculate this debt-to-equity ratio were drawn directly from Adelphia's Second Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code ("Disclosure Statement"), using TWC's own numbers. *See* tables 1 and 2 below. TWC's long-term debt is the only liability that significantly increases on a year-to-year basis in the "total liabilities" category that is specified in TWC's *pro forma*. All other liabilities remain relatively flat and would not negatively impact the debt-to-equity ratio contained in the Transfer Report (*e.g.*, deferred income taxes were $13 billion on December 31, 2004, and were also projected to be $13 billion after the Adelphia transactions).

Additionally, as noted in the tables below, as well as in the TW Letter and the Adige Declaration, TWC's total long-term debt and corresponding debt-to-equity ratio is scheduled to decrease in the second year following implementation of the Adelphia transactions. What Mr. Adige does not state, however, is that debt and the corresponding debt-to-equity ratios are decreasing largely due to a reduction in intercompany debt to TW, TWC's parent company. There is no scheduled reduction in debt to outside creditors, indicating the likely existence of a plan to pay only interest on outside debt. (Simply paying interest on a debt does not reduce the underlying debt; the debtor remains fully liable for the outstanding debt.) Further, TWC's interest rate on outside debt is higher than its interest rate for intercompany debt (Disclosure Statement, p. 245), so TWC will incur unnecessary interest expenses in connection with its outside debt if it retires only intercompany debt. This interest rate difference and TWC's planned retirement of only intercompany debt raise questions as to whether TWC has any concrete plans to actually retire any of the debt that will be owed to outside lenders at any time in the foreseeable future.

Table 1: TWC Debt-to-equity

	12/31/2004 ($ in millions)	**12/31/2006 ($ in millions)**	**12/31/2007 ($ in millions)**
Current liabilities	1,704	2,036	1,984
Long-term debt	4,898	14,902	13,734
Mandatorily redeemable preferred equity of a subsidiary	2,400	500	500
Mandatorily redeemable class A common stock	1,065	0	0
Deferred income tax obligations, net, and other liabilities	13,339	13,465	13,630
Minority interests	696	2,791	2,936
Other liabilities	130	0	0
Total liabilities	**24,232**	**33,694**	**32,784**
Equity	**18,934**	**21,227**	**22,378**
Debt-to-equity ratio	**1.28**	**1.59**	**1.47**

sources: TWC's Consolidated Annual Financial Statements for 2002, 2003, and 2004 ("TWC Consolidated Financial Statements") (these statements also discuss the Adelphia transactions), p. 2; Disclosure Statement, p. 253.

Table 2: Detail of long-term debt

	12/31/2004 ($ in millions)	1/1/2006 ($ in millions)	12/31/2006 ($ in millions)	12/31/2007 ($ in millions)
Intercompany subordinated loan from Time Warner	0	9,338	8,949	7,795
Bank credit borrowings and commercial paper	1,523	2,614	2,614	2,614
TWE notes and debentures	3,367	3,353	3,353	3,353
Total	**4,890**	**15,305**	**14,916**	**13,762**

source: Disclosure Statement, p. 255.

The Adige Declaration attempts to respond to the Transfer Report's questions as to whether TWC will be capable of paying down debt while "making appropriate plant and infrastructure upgrades" to the Adelphia systems by claiming that TWC anticipates receiving "more than $1 billion of cumulative cash flow after a cumulative investment of approximately $5.5 billion in capital expenditures" for fiscal years 2006 and 2007. Adige Declaration ¶ 6. Again, Mr. Adige's numbers do not support his claim due to the fact that he fails to acknowledge that:

- This cumulative cash flow is over a two-year period (instead of a one-year period), with roughly $0.4 billion in cash flow after $2.8 billion in capital expenditures in 2006 and about $1.2 billion in cash flow after $2.8 billion in capital expenditures in 2007. Disclosure Statement, p. 254.

- $5.5 billion in cumulative capital expenditures reflects TWC's typical capital expenditures in the past over a two-year period and an additional $600 million to upgrade the Adelphia systems. Transfer Report, p.4.

- The $1.2 billion in residual cash flow is to be used entirely for debt reduction over the two-year period. Further, it is dedicated to repaying <u>only intercompany debt</u> to TWC's parent—TW (Disclosure Statement, p. 255)—and not for the reduction of any of the principal on the debt owed to outside creditors. Under this approach, only interest will be paid on all debt other than the debt owed to TW. In other words, excess cash flow has been earmarked for paying down TWC's debt to its parent and will not be used to retire any of the debt to outside creditors.

The cash flow and capital expenditure projections provided by Mr. Adige (and TWC's *pro formas*) assume: (1) 12% revenue growth due to growth in sales of advanced services and rate increases; and (2) no increase in cost of revenues (*e.g.*, video programming and employee costs) and selling, general and administrative (SG&A) expenses (*e.g.*, merit-based salary increases, employee benefits) as a percentage of total revenues (*i.e.*, expenses will not substantially change as a percentage of revenues over 2004 and 2005 levels). Disclosure Statement, p. 250. TWC makes these static assumptions even though it is planning to provide outstanding service to its new customers while also facing many new and extraordinary challenges, including taking on the burden of operating and improving Adelphia's troubled systems, integrating the operations of TWC with the systems to be acquired from Adelphia and Comcast, and expanding TWC's its new digital phone business. TWC also fails to provide any detail as to how it will improve service in its newly acquired cable systems <u>without increasing costs</u> as a percentage of revenues.[3] TWC Consolidated Financial Statements, p. 3 and Disclosure Statement, p. 252. If TWC is unable to control expenditures while merging the Adelphia operations into its own operations and instead faces cost of revenues and SG&A expenses representing more than 64% of revenues (a likely event given TWC's discussion of expected continued cost increases for 2006), the free cash flow available for debt reduction would be directly and negatively impacted.[4]

---

[3] TWC's cost of revenues in 2004 increased "primarily due to higher video programming costs and higher personnel costs associated with the deployment of new services." TWC Consolidated Financial Statements, *Management Discussion: Cost of Revenues and SG&A Expenses*. TW has provided no evidence that these costs will not continue to increase at a rapid rate.

TWC's selling, general and administrative expenses for 2004 increased primarily due to "increased marketing costs associated with the roll-out of new products and services, increased employee costs and increased other administrative costs." *Id.* The only detail for cost reduction after the Adelphia transactions provided by TW is a claim of $200 million in savings from "the elimination of duplicative corporate functions." Disclosure Statement, p. 250; *see also* Public Interest Statement, p. 59.

Cost of revenues increased 13% for 2005. According to TW, the increase in cost of revenues is:

> primarily related to increases in video programming costs, higher employee costs and an increase in telephony service costs. Video programming costs increased 10% to $2.060 billion in 2005 due primarily to contractual rate increases across TWC Inc.'s programming line-up and the ongoing deployment of new digital video services . . . .Video programming costs in 2006 are expected to increase at a rate similar to that experienced during 2005, reflecting the continued expansion of service offerings and contractual rate increases across TWC Inc.'s programming line-up. Employee costs increased primarily due to salary increases and higher headcount resulting from the roll-out of advanced services. Telephony service costs increased approximately $110 million due to the growth of Digital Phone subscribers. Despite the growth in high-speed data subscribers . . . high-speed data connectivity costs declined 18% in 2005 as connectivity costs have continued to decrease on a per subscriber basis due to industry-wide cost declines; however, such trends are not expected to continue. High-speed data costs are expected to increase in 2006 due to higher usage and subscribers.

TW 10-K for 2005, p. 104.

[4] ***If the proposed Adelphia acquisition and/or related transactions with Comcast close, TWC Inc. will face certain challenges regarding the integration of the newly acquired systems into its existing managed systems.*** The successful integration of these acquired systems will depend primarily on TWC Inc.'s ability to manage the combined operations and integrate into its operations the acquired systems (including infrastructure, personnel, payroll and benefits, regulatory compliance and technology systems), as well as the related control processes. The integration of these systems, including the anticipated upgrade of certain portions of the systems to be acquired from Adelphia, will require significant capital expenditures and may require TWC Inc. to use financial resources it would otherwise devote to other business initiatives, including marketing, customer care, the development of new products and services and the expansion of its existing cable systems. Further-

This cash flow analysis, with its assumption that the cost of revenues and SG&A expenses as a percentage of revenues will be held to pre-Adelphia levels, provides further support for the conclusions reached in the Transfer Report. It would only take a $0.4 billion or a 4.5% increase in cost of revenues and/or SG&A for TWC to have no free cash flow in 2006 for debt reduction of any sort. Similarly, a $1.2 billion or a 12.4% increase in costs in 2007 would eliminate all free cash flow for that year. In fact, the Transfer Report identified cost of revenues and SG&A expenses as the areas of expense most likely to be targeted for reduction if TWC acts responsibly in managing its financial affairs due to the fact that they represent TWC's biggest cash outflows. Transfer Report, p. 3. And, as discussed in the Transfer Report, such reductions will likely lead to reduced levels of customer and technical service and reduced investment in the pervasive system upgrades that TW says it intends to implement for the cable systems acquired from Adelphia. *Id.*

The 12% rate of revenue growth that is assumed in the TWC *pro formas* associated with the Adelphia transactions (and that is partially due to rate increases) is consistent with TWC's annual revenue growth in recent years. In fact, the Transfer Report discusses TWC's history of raising rates to generate annual increases in revenues.[5] That practice, coupled with the fact that TWC

---

more, these integration efforts will require substantial attention from TWC Inc.'s management and may impose significant strains on its technical resources.

In addition, when appropriate, TWC Inc. intends to selectively pursue strategic acquisitions of additional cable systems as part of its growth strategy. Time Warner cannot predict whether TWC Inc. will be successful in buying additional cable systems. If TWC Inc. were to acquire a significant number of additional cable systems prior to completing the integration of the systems proposed to be acquired from Adelphia and Comcast, the integration of the systems proposed to be acquired from Adelphia, Comcast or others, fails to manage its growth as a result of these acquisitions or encounters unexpected difficulties during that growth, it could have a negative impact on the performance of TWC Inc.'s systems (including the systems to be acquired in the Adelphia and Comcast transactions), as well as on the operations, business or financial results of Time Warner.

TW 10-K for 2005, pp. 47-48 (emphasis in original).

5 ***TWC Rate History []***--TWC has a history of raising rates to produce an annual increase in revenues []. TWC categorizes its subscription revenues into three major products: Video, High Speed Data, and Digital Phone. TWC's Video product provides almost 75% its revenue but represents a "relatively mature" market []. "Management expects that video revenue will continue to grow in the future, reflecting rate increases and increased revenue from digitally based services." [] In other words, TWC admits the company plans to raise rates to continue to grow their video revenues in a maturing market. It also predicts increased revenue from a growing digital video market. Yet only 17% of TWC's 2004 Total Video Revenue was derived from an actual increase in digital subscribers []. Since non-digital video products actually lost subscribership in 2004, the remaining 85% of 2004 video revenue growth (its main revenue provider) was due to increased rates. In fact, over the last three years, TWC has consistently raised rates in each product category []. (The only exception is Commercial High Speed Data in 2004 which only represents 1% of its 2004 subscriber base and 2.3% of 2004 revenues). It raised digital video rates and residential high-speed data rates even though its customer base was growing rapidly [].

In summary, even though TWC lost .3% of its largest customer base (video subscriptions) in 2004, the company was still able to increase revenues by increasing rates. Since TWC will lose 755,000 of these existing customers to Comcast in the Cable Swaps and since TWC management anticiwill be faced with a payback period for the cost of the Adelphia transactions that could be more than 50 years, provides a good indication that TWC is likely to continue its past practice of implementing annual rate increases. Transfer Report, p. 3.

The TWC Letter states that the Transfer Report fails "to give consideration to the fact that Adelphia is far more highly leveraged than TWC." TW Letter, p. 3. Similarly, Mr. Adige notes that "[n]o weight appears to have been given to this fact in the [Transfer] Report's assessment of whether the public interest would be better served by the transfer of ownership and operational control to TWC of systems currently owned by Adelphia." Adige Declaration ¶ 7. I was not asked to evaluate TWC's relative qualifications but rather was asked to evaluate TWC's financial capabilities and the likely impact on cable service in the North Carolina jurisdictions if the proposed transactions were implemented as proposed.

Mr. Adige, while acknowledging that TWC is less liquid now than was the bankrupt Adelphia in 2003, asserts that the Transfer Report should nonetheless have concluded that TWC is in better financial shape than Adelphia because: (1) TWC has substantial free cash flow; and (2) TWC has access to over $2 billion in unused borrowing capacity. Adige Declaration ¶ 9. Mr. Adige is stating only that TWC currently has a substantial stream of revenue and is currently capable of incurring more debt. But such a claim does not disprove or refute the main conclusion of the Transfer Report, which is that the assumption of high levels of debt by TWC *(i.e., a doubling of its long-term debt)* as a result of the Adelphia transactions will require TWC to reduce areas of high expense (*e.g.,* number of employees, infrastructure improvements) and/or raise rates to shorten the payback period for TWC's acquisition of cable systems through the Adelphia transactions.[6]

> pates video market maturation and increased competition in its growing markets of high speed data and digital phone services, TWC will be inclined to raise rates wherever possible to report increased annual revenues to shareholders. New debt and reduced liquidity from the Adelphia transactions clearly give TWC additional motivation to continue its practice of annual rate increases.
>
> Indeed, Time Warner announced in its first quarter 2005 8-K that TWC increased basic cable rates in the first quarter of 2005 [] and stated in its second quarter 10-Q that subscription revenues increased in the second quarter of 2005 partly due to video rate increases []. TWC already announced third quarter 2005 rate increases at its Houston branch []. In its post-Adelphia-transactions projected financials, TWC predicts a 12 percent increase in revenues from 2006 to 2007 which it states will be partly due to rate increases [].
>
> ***Need for payback on Adelphia Investment***--TWC will be motivated to return its investment in Adelphia. Using the Payback Method of investment return to look at the Adelphia transactions, it would take TWC an estimated 57 years to return its investment in Adelphia, assuming that TWC continues to make capital outlays at about the same rate as it did in 2004 (an extremely conservative estimate given the $600 million TWC has earmarked for upgrades to Adelphia's technology [] and assuming that TWC does not raise rates or cut costs in the future[]. There is every indication that TWC will be motivated to return its investment in a shorter time frame than 57 years. To do so, TWC will likely continue to annually raise rates and attempt to reduce expenses.

Transfer Report, pp. 2-3 (citations omitted; emphasis in original).

[6] The main concerns expressed in the Transfer Report with regard to TWC's financial condition are that:

Mr. Adige goes on to state that TWC's "credit facilities contain no ratings triggers or material adverse change provisions; consequently, TWC's access to credit is ensured and not subject to negotiation even in the unlikely event that the Company's operations came under stress." Adige Declaration ¶ 11. Mr. Adige fails to mention, however, that TWC's current credit agreement "bear[s] interest at a rate based on the credit rating of TWC" (Disclosure Statement, p. 195)[7] and that, unless additional capacity is obtained, available borrowing under its current revolving credit agreement and commercial paper programs will be reduced from the current $2.5 billion in unused borrowing capacity to $1.4 billion.[8] Disclosure Statement, p. 195.

Mr. Adige also takes issue with the Transfer Report's statement that cash levels are "dangerously low," stating that TWC has significant cash flow from operations that it uses "to invest in capital

---

- TWC is doubling its debt load through the Adelphia purchase. Further, while TWC's *pro formas* indicate a "projected reduction in long term debt owed to TW in 2006 and in 2007, it shows no reduction in outstanding bank credit during that time, indicating a plan to pay the interest only on these bank loans for at least the next two years." Transfer Report, p. 2.
- TWC maintains a supply of cash of roughly 30 days. These cash levels will be further strained by the significant increase in debt and interest payments associated with the Adelphia transactions. Transfer Report, p. 1.

[7] TWC's credit agreement is an unsecured five-year revolving credit agreement for $4 billion:

> Borrowings under the TWC Credit Agreement bear interest at a rate based on the credit rating of TWC . . . The rate based on the current credit rating of TWE is currently LIBOR plus 0.39%. [Note: this is the rate before the 2006 Moody's downgrade.] In addition, the TWC Borrowers are required to pay a facility fee of 0.11% per annum on the aggregate commitments under the TWC Credit Agreement. An additional usage fee of 0.10% of the outstanding amounts under the TWC Credit Agreement is incurred if and when such amounts exceed 50% of the aggregate commitments thereunder...The TWC Credit Agreement contains customary representations, warranties, covenants and events of default, including, without limitation, a maximum leverage covenant of 5.0 times consolidated earnings before interest, taxes, depreciation and amortization ("EBITDA") of TWC and a minimum interest coverage covenant of 2.0 times consolidated cash interest expense of TWC...Borrowings may be used for general corporate purposes and unused credit is available to support commercial paper borrowings. As of December 31, 2004, there were no borrowings or letters of credit outstanding under the TWC Credit Agreement; however, TWC's $1.523 billion of outstanding commercial paper as of such date is supported by the TWC Credit Agreement. As of December 31, 2004 and through the date of this Disclosure Statement, TWC was in compliance with all covenants with a leverage ratio and an interest coverage ratio of approximately 1.4 times and 6.7 times, respectively.

Disclosure Statement, p. 195 (emphasis supplied).

[8]

Revolving Credit Agreement Amount	$4.0 billion
Less: outstanding commercial paper supported by TWC Credit Agreement as of 12/31/04	($1.5 billion)
Current available borrowing capacity under Revolving Credit Agreement	$2.5 billion
Less: added borrowing from Credit Agreement (see Table 2) from 12/31/04 to 1/1/06 is $2.614 - $1.523	($1.1 billion)
Unused borrowing capacity on Revolving Credit Agreement (as currently written) after Adelphia	$1.4 billion

. . . and to pay down debt." Adige Declaration ¶ 10. Again, after the Adelphia transactions, the only debt that TWC plans to pay down is intercompany debt and TWC may not be able to pay down as much intercompany debt as is projected if it cannot control costs during a period of significant change and strain on resources.

The Adige Declaration also quotes in disparaging terms the Transfer Report's reference to TWC's "poor liquidity" and characterizes the report's finding of a defensive interval of 33 days as a "patently erroneous assumption." Adige Declaration ¶ 8. With regard to the 33-day defensive interval, the Transfer Report simply describes a defensive interval that has been calculated using numbers reported by TWC. A defensive interval is a theoretical measure of liquidity and represents how long a company could survive in the absence of any cash flow. The Transfer Report does not assume, as Mr. Adige states, that TWC will have no future revenues. *Id.*

The TW Letter attempts to discredit the Transfer Report by stating that it misrepresents the cost of the Adelphia transactions. TW Letter, p. 3. According to the Adige Declaration, "the Report mistakenly treats as a single event not only the transactions where TWC and Comcast are purchasing Adelphia's cable systems and the subsequent cable swaps between TWC and Comcast, but also the separate and independent transactions whereby TWC is redeeming Comcast's effective 21 percent stake in TWC." Adige Declaration ¶ 14. Mr. Adige also claims that the Transfer Report "completely ignores the value of the effective 21 percent interest in TWC that TWC will acquire from Comcast." Adige Declaration ¶ 14.

Exhibit A to the Transfer Report details the cost to TWC of the Adelphia transactions. It states that, as a result of the Adelphia transactions, TWC will gain a net of 3.5 million new subscribers and 21% of its stock that is currently owned by Comcast. Although the components of the Adelphia transactions—the Adelphia asset purchase, the TWC and the Time Warner Entertainment (TWE) redemption of Comcast's interest, and the cable system swaps with Comcast—are separate legal agreements, it is reasonable and fair to treat them as interconnected and dependent parts of a whole for several reasons:

(1) While these transactions are separate legal events, they will require the dedication of significant financial and other TWC resources to implementation of all the transactions on an integrated and coordinated basis.

(2) No document provided by TWC to the North Carolina jurisdictions described the Adelphia transactions as anything other than a collective transaction consisting of three main events—the Adelphia asset purchase agreement, the TWC and TWE redemption agreements with Comcast, and the cable system swap agreement with Comcast. Examples of these documents include:

- The TW Letter consistently refers to "the transactions under review" (TW Letter, p. 1), "the proposed transactions" (TW Letter, pp. 2, 3), and "the transactions" (TW Letter, pp. 2, 3) as a collective whole.
- The Disclosure Statement values the Adelphia acquisition and the exchanges with Comcast collectively. Disclosure Statement, p. 243.
- TWC's financial statements, under the heading "Adelphia Acquisition Agreement," discuss as a collective whole, the Adelphia asset purchase agreement, the

TWC and TWE redemption agreements with Comcast, and the cable system swap agreement with Comcast. TWC Consolidated Financial Statements, pp. 45-46.

- TW 8-K reports[9] describe, as a collective whole, the Adelphia asset purchase agreement, the TWC and TWE redemption agreements with Comcast, and the cable system swap agreement with Comcast (TW 8-K).
- The Applications and Public Interest Statement of Adelphia Communications Corporation, Comcast Corporation, and Time Warner Inc. filed with the FCC on May 18, 2005 ("Public Interest Statement"), covers the Adelphia asset purchase agreement, the TWC and TWE redemption agreements with Comcast, and the cable system swap agreement with Comcast. The parties "seek the Commission's approval for various license transfers that will occur pursuant to a series of agreements the companies have entered into with Adelphia and with each other (the 'Transactions')." Public Interest Statement, p. i. The "end result" of these transactions is a series of related events—the acquisition of Adelphia's cable systems by Time Warner and Comcast; the swapping of various cable systems between Comcast and Time Warner; and the emergence of TWC as a publicly traded company and the divestiture of Comcast's interest in TWC—that are described as a package of dependent and interconnected events and not a series of unassociated events. *Id.*
- The Public Interest Statement details the benefits of unwinding Comcast's interest in TWC as a "significant element of the Transactions" (Public Interest Statement, p.63) and states that "[t]he mutually beneficial unwinding of Comcast's interest in Time Warner Cable and TWE as part of the Transactions also ensures that the parties realize fair value from the disposition of the investment, a result that the Commission expressly recognized as important to the accomplishment of public interest goals in the *Comcast-AT&T Order*. Public Interest Statement, p. 67 (emphasis supplied).
- The Public Interest Statement emphasizes the beneficial nature of the Adelphia transactions as including simplifying the registration of TWC shares through the bankruptcy process and making possible TWC's redemption of Comcast's interest in TWC and TWE on mutually acceptable terms. Public Interest Statement, p.71.
- The Public Interest Statement details the central role the Adelphia transactions will play in ensuring compliance with the FCC's cable horizontal ownership limits by Comcast and Time Warner (*i.e.*, the transactions will keep both TWC and Comcast subscriber counts below 30% of all multichannel video subscribers nationwide). Public Interest Statement, pp. 71-75. The subscriber numbers relied upon in making this argument are the 3.5 million subscribers gained by TWC after ALL of the Adelphia transactions take place (*i.e.,* the Adelphia asset purchase, the TWC and TWE redemptions, and the cable system swaps with Comcast). Public Interest Statement, p. 73. In sum, both TWC and Comcast characterize these transactions as important as a whole to TWC and Comcast and give no hint that

[9] The SEC requires publicly traded companies to disclose "unscheduled material events" to the public by means of Form 8-K.

any other scenario involving implementation of only some of the Adelphia transactions is in any way possible or within the contemplation of the parties.

- TWC failed, when offered the opportunity in responding to Nash County's September 20, 2005, FCC Form 394 inquiry ("TWC Nash Inquiries"), to detail any discrepancies or irregularities in my summary of the cost of the Adelphia transactions (similar to the summary included in Exhibit A to the Transfer Report), which included all the elements TWC now claims are unassociated. TWC Nash Inquiries, pp. 12-13.

TW argues that the per-subscriber cost of the Adelphia transactions is $3,300. This calculation would be accurate if the various financial and cable system exchanges with Comcast that are part of the total package of interconnected transactions were not taken into account. However, in assessing the impact of the Adelphia transactions on the North Carolina jurisdictions and their constituents, it would be irresponsible to exclude the costs of the related transactions that are tightly tied to and intertwined with the Adelphia asset purchase agreement as they too will impact TWC's management, finances, and operations for the foreseeable future.

Finally, TWC's letter mentions that "there has been no challenge to the fact that TWC has earmarked over $600 million for capital expenditures for the upgrade and hardening of systems to be acquired from Adelphia." TW Letter, p. 3. While the Transfer Report does not challenge the inclusion of this earmarked $600 million in TWC's *pro formas*,[10] questions remain unanswered as to:

> (1) whether $600 million is enough money to complete the pervasive system upgrades generally described in the Disclosure Statement and (2) whether one to two years is enough time to complete those upgrades. Given a cost of $4 billion for its last major system upgrade [], at a cost of over $300 per subscriber, $600 million for the major Adelphia upgrades described seems relatively low at almost half this $300 per subscriber. This seemingly low amount, coupled with the fact that TWC will not provide details regarding where and how this earmarked $600 million is to be spent (even though it projects completing the upgrades in the next two years) begs the question of whether these upgrades will be as pervasive as de-
>
> 10 Capital expenditures have totaled over 64% of Cash Provided by Operating Activities from 2002 to 2004[]. There were no noted pervasive system upgrades in those years []. TWC has earmarked $600 million [] to "upgrade plant infrastructure of the Acquired Systems to TWC's technical standards, including the upgrade of Adelphia Acquired Systems that are not yet upgraded to 750 MHz, replacement of cable plant and splitting of nodes"[]. In its projected financials, TWC anticipates total capital spending across all customer systems, including day-to-day operations as well as the aforementioned pervasive Adelphia system upgrades, to reach $2.8 billion in 2006 and again in 2007 and for total capital expenditures for the Adelphia systems in subsequent years to be "similar to that of the existing TWC systems." [] $2.8 billion would represent 86% of projected cash provided by operating activities in 2006 and 70% of projected cash provided by operating activities in 2007. These percentages seem to accurately reflect historical TWC annual capital expenditures and an additional amount of $600 million earmarked for Adelphia upgrades.

Transfer Report, p. 4 (citations omitted).

> scribed. Should TWC spend the earmarked $600 million on Adelphia capital expenditures, the Company would be further motivated to reduce Cost of Revenues and SG&A expenses in order to return its investment in Adelphia, further impacting customer service.
>
> Additionally, the newly introduced digital phone product is requiring significant capital expenditures in 2005 even though the company had predicted reduced capital expenditures this year []. It does not appear that TWC has included significant increased digital phone capital expenditures in its Adelphia acquisition projections [].

Transfer Report, p. 4 (citations omitted; emphasis in original omitted; emphasis supplied).

As previously discussed, any increase in planned expenditures will directly impact TWC's free cash flow, which is TWC's primary basis for its claim that its financial condition will be sound after the Adelphia transactions.

In sum, Time Warner has mischaracterized the Transfer Report as an attack on TWC's current viability. In fact, the Transfer Report simply identifies the likely negative impact that TWC's purchase of the Adelphia systems, along with the related cable system swaps and redemptions with Comcast, will have on the rates and quality of service for subscribers residing in the North Carolina jurisdictions that are directly affected by the Adelphia transactions.

Sincerely,

Kim Racine

Kim Racine

REFERENCES

Adige Declaration: Declaration of Satish Adige of Time Warner, Inc., dated January 25, 2006, and submitted to the FCC on January 26, 2006.

Disclosure Statement: Debtors' Second Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code submitted to the United States Bankruptcy Court for the Southern District of New York on June 24, 2005.

Moody's: *Moody's Rating Methodology: Global Cable Television Industry*, July 30, 2005.

Public Interest Statement: Applications and Public Interest Statement of Adelphia Communications Corporation, Comcast Corporation, and Time Warner Inc. in MB Docket No. 05-192, submitted to the FCC on May 18, 2005.

TW 8-K: Time Warner Inc. Form 8-Ks submitted to the United States Securities and Exchange Commission on April 21, 2005 and on April 27, 2005.

TW 10-K for 2005: Time Warner Inc. Form 10-K (for period ending on December 31, 2005) submitted to the United States Securities and Exchange Commission on February 27, 2006.

TW Letter: Letter from Seth Davidson of Fleischman and Walsh, counsel for Time Warner, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, dated January 25, 2006, and submitted to the FCC on January 26, 2006.

TWC Consolidated Financial Statements: consolidated annual financial statements for Time Warner Cable, Inc., for 2002, 2003, and 2004, submitted to the county of Nash, North Carolina, on July 22, 2005 (these statements include a discussion of the 2005 Adelphia transactions).

TWC Nash Inquiries: TWC's September 21, 2005, response to Nash Inquiry # 2 (follow-up questions to FCC Form 394 of June of 2005).

Transfer Report: Racine Financial Consulting, *Financial Impact of the Pending Adelphia/Time Warner Cable Transfer of Ownership*, submitted to Action Audits on September 28, 2005.

EXHIBIT B

290 Harbor Drive
Stamford, CT 06902
Tel 203-328-0600

TIME WARNER CABLE

September 20, 2005

VIA OVERNIGHT DELIVERY AND
ELECTRONIC MAIL

Robert Murphy
County Manager
Nash County
120 W. Washington Street, Suite 3072
Nashville, NC 27856

Re: Nash County
Continued Notice of Incomplete Form 394
Response to TWC July 22, 2005 letter

Dear Mr. Murphy:

Time Warner Cable Inc. ("Time Warner Cable" or "TWC") is hereby responding to a letter dated August 19, 2005, written on your behalf by Robert Sepe of Action Audits, relating to the FCC Form 394 dated June 10, 2005 (the "Application") submitted to Nash County, North Carolina ("County") in connection with the transfer of the cable television system serving the County from FrontierVision Partners L.P. doing business as Adelphia Communications Corporation ("Adelphia") to an indirect subsidiary of Time Warner Cable.

According to Mr. Sepe's August 19, 2005 letter, TWC's July 22, 2005 response to a previous request for information (dated July 9, 2005) "fall[s] short" of answering the questions posed therein and that "TWC has not 'cured' the incompleteness of its Form 394…and the 120 review period continues to be tolled." TWC stands by the analysis and responses provided in our July 22, 2005 letter and our conclusion that because the Application contained all of the information required by the FCC Form 394 and by the express terms of the franchise and local law, the 120-day deadline was properly commenced as of the filing of the Application. Moreover, we believe that the information requested in the August 19, 2005 letter is unnecessary for the County's consideration of TWC's legal, technical, and financial qualifications (or is redundant of information already submitted). Nevertheless, we are providing the attached responses to Mr. Sepe's additional questions with the understanding that such responses are being supplied without prejudice to our position that (1) the information is not necessary for the County's review of the transfer and (2) any failure or delay in submitting the requested documents and information does not excuse the County's obligation to timely process the Application. We hereby incorporate by reference the reservations of rights and analysis contained in our July 22, 2005 letter.

Before turning to the specific inquiries accompanying Mr. Sepe's August 19, 2005 letter, we want to respond to certain statements contained therein. First, the letter asserts that the "controlling authority in a transfer of cable system ownership is the local franchise" and cites *Charter Communications, Inc. v. County of Santa Cruz* to support the claim that local franchising authorities have been accorded "wide breadth and scope" in assessing the qualifications of a proposed transferee. While we agree that reference must be made to the local franchise to determine whether prior approval of a transfer is required and what additional relevant information, if any, is required beyond that specified in Form 394, Mr. Sepe's analysis completely ignores the express and on point direction given by Congress and the FCC with respect to assignments or transfers of cable systems.

In particular, the legislative history of Section 617 of the Communications Act makes clear that it was not Congress' intent to establish a local review process unbounded by the specific terms of the franchise[1] and the FCC, in implementing Congress' intent, has plainly held that local review of considerations going beyond the legal, technical, and financial qualifications of the proposed transferee, as identified on FCC Form 394, is severely limited:

> "We have interpreted [the statutory language] as a limitation on the information a cable operator must provide to trigger the 120-day time period….Congress wanted to ensure that the local franchise approval process not unduly delay the consummation of transactions….[W]e created FCC Form 394 with the expectation that the information required by the form would establish the legal, technical, and financial qualifications of the proposed transferee….We believe that the information sought in Form 394 regarding plans to change the terms and conditions of service and operation of the system is appropriate. The question is directed at the transferee's current plans. **We do not expect cable operators to be prescient, nor is the question intended to elicit uncertain future possibilities. We do not foresee cable operators being held to unreasonable or unrealistic expectations to foretell future events, or being held accountable for failing to predict the future course of events. . . .**"[2]

As discussed in greater detail in our July 22, 2005 letter, TWC provided all franchise-required information when it submitted the FCC Form 394 to the County and

[1] H.R. Rep. No 628, 102d Cong. 1st Sess. 120 (1992) ("The amendment is not intended to limit or give the FCC authority to limit, local authority to require **in franchises** that cable operators provide additional information or guarantees with respect to a cable sale or transfer") (emphasis supplied).

[2] *Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992 Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions*, Memorandum Opinion and Order on Reconsideration of the First Report and Order, 10 FCC Rcd 4654 (1995) at ¶¶ 52-55 (emphasis added). As for Mr. Sepe's reliance on *Charter Communications, Inc. v. County of Santa Cruz*, 304 F.3d 927 (9th Cir. 2002), while we disagree with the court's holding (which has not been followed by any other court to our knowledge), even that case acknowledged that limits exist on the scope of inquiry in connection with the franchise transfer review process. *Charter, supra*, 304 F. 3d at 932 ("this is not to say that government bodies can elicit information of any kind or any quantity…").

the County cannot rely on its demands for information not required "in franchises" as a basis for asserting that the 120-day review clock is not ticking.[3]

Second, the August 19, 2005 letter states that "a number of Time Warner's answers [to Mr. Sepe's July 9, 2005 letter] are so incomplete that they urge the County to accept the premise that Time Warner has no plans on how it will operate the Adelphia system, and that Time Warner will not develop any plans on the distribution of technical and financial resources until after the purchase is completed. This could only lead the County to conclude that the Company is making a hasty and financially irresponsible decision." Please be assured that TWC's responses to the July 9, 2005 letter reflect neither an attempt to withhold information nor evidence of a lack of due diligence or planning; rather, our responses reflect the fact that Time Warner is constrained at this time in its ability to coordinate with Adelphia or to make any operational changes that will begin the process of combining the post-closing companies. Pre-transfer coordination is restricted by the statutory waiting period required under applicable provisions of the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18A (Section 7A of the Clayton Act). In addition, provisions of the antitrust laws, including Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 5 of the Federal Trade Commission Act, 14 U.S.C. § 45, may restrict discussions between the parties prior to consummation of the Transactions and, as interpreted by the Federal Trade Commission and relevant precedent, limit the exchange of certain operational information.

With these restraints in mind, both the Application and our July 22, 2005 letter provided the County with significant information regarding TWC's extensive track record with respect to the ownership and operation of cable systems. We have provided specific information demonstrating that TWC is one of the industry leaders in the development of strategically located cable systems that take advantage of economies of scale and scope and we are second to none in the deployment of certain advanced services, including enhanced cable services, high speed data and digital phone service. Further, we have reiterated that we expect to operate the system serving the County in a similar manner, including possibly using some of the more than $600 million that we have earmarked to upgrade some of the less-advanced Adelphia systems. TWC's well-established track record as one of the nation's most highly regarded cable operators provides ample assurance as to our future performance in these communities, recognizing, as cited above, that it would be improper for the County to impose on Time Warner Cable unreasonable or unrealistic obligations to foretell future events or to have detailed advance knowledge of exactly what changes may need to be implemented in a particular system, when such changes might occur, or how much they will cost.

We trust that the above discussion, along with the responses appended hereto, our July 22, 2005 letter, and the Application, provide the information necessary for the County to complete its review of the transfer. As indicated, each and every requirement of the franchise

[3] If the County adheres to the position that the Application was facially incomplete and that the County is under no obligation to review the Application or act within the 120-day time limit, then this may be an issue that has to be resolved by the courts. Please keep in mind that most sale-related issues will be subject to the exclusive jurisdiction of the Bankruptcy Court in New York, not the federal courts in the 9th Circuit.

regarding the review process has been met and, therefore, the 120-day review period has commenced. We look forward to the County's prompt action regarding this matter.

Please do not hesitate to contact me if you have any additional questions or if I can be of further assistance.

Sincerely,

John E. Fogarty

Attachments

cc: Robert Sepe, Action Audits
Maria Arias, Esq. Adelphia Communications Corporation

174878

ADELPHIA PURCHASE – Nash County INQUIRY #2

Factors for Evaluating the Transaction

As noted in our July 9, 2005, letter the County will focus on renewing the franchise concomitant with this transfer, as well as examining the following various factors in determining whether to approve or deny the transaction. including:

1. Legal and character qualifications of Time Warner Cable;
2. Technical Ability of Time Warner Cable and its operational staff;
3. Financial stability and qualifications of Time Warner Cable, and the impact of the Transaction on service and rates;
4. Future managerial qualifications of Time Warner Cable;
5. Impact on cable service competition;
6. Other appropriate public interest factors, including those required by local law, such as the impact on the County's cable franchise renewal rights.

I. A. LEGAL QUALIFICATIONS

Questions 5 through 7 of our July 9, 2005 letter ask Time Warner to describe the current ownership of TWNY Cable, LLC and the future ownership and control over this company after the sale transactions. Time Warner responded to these questions by repeatedly referring to a flow chart ("Exhibit B") which falls far short of describing either.

1. Please provide a flow chart which illustrates all direct and indirect companies who <u>currently</u> have both equity and voting or non-voting control over TWNY, LLC, the future "New Franchisee" of the Adelphia system serving this community. We suggest using a top down approach, starting with Time Warner Inc and illustrating each and every direct or indirect subsidiary, <u>by name</u>, who will have any equity. voting or non-voting control over TWNY Cable, LLC. Kindly list the percentage equity and voting or non-voting control as TWC earlier provided in Exhibit B.

   See Exhibit A.

2. Please provide a flow chart which illustrates all direct and indirect companies which <u>will have</u> both equity and/or voting or non-voting control over TWNY Cable, LLC, after the sale transactions are completed. Again, we suggest using a top-down approach, starting with Time Warner Inc and Adelphia "stakeholders" and illustrating each and every direct or indirect subsidiary, by name, who will have ability to render influence over the "New Franchisee." Kindly list the percentage equity and voting or non-voting control as TWC earlier provided in Exhibit B.

   See Exhibit B.

3. Time Warner has provided two disparate statements regarding the ownership and control relationship between TWE and Time Warner Cable. In TWC's July 22, 2005 letter it states that TWE Holding Co has 100% voting interest control over TWNY Cable Holding. Yet in Time Warner Cable's December 31, 2004 end of the year financial statement, (under "Management's Discussion: Subsequent Events: Adelphia Acquisition Agreement (Exhibit G, page 46 from its

July 22 letter)," TWC states: TWE's general partnership interests are expected to be held by TWNY or a wholly owned subsidiary of TWNY (55%) and two wholly owned subsidiaries of TWC (45%).

A. Please clarify the relationship between TWE and TWNY Cable, LLC.
B. Please name the "two wholly owned subsidiaries" referred to above.

(RESPONSE TO QUESTION I.3.A-B): There is nothing "disparate" about the statements referenced in the question. TWE Holding I LLC owns 100 percent of the voting common stock of TW NY Cable Holding Inc., which will hold 100 percent control over Time Warner NY Cable LLC ("TWNY"). Time Warner Entertainment Company L.P. ("TWE"), a totally different entity than TWE Holding I LLC, is a partnership whose general partnership interests, following the close of the transactions, are expected to be held by TWNY or a wholly owned subsidiary of TWNY (55 percent), TWE Holding I LLC (44.04 percent), and TWE Holding II LLC (0.96 percent).

4. Please provide a list naming the "Adelphia Stakeholders" (creditors) who will hold 16% equity (and 9.5% voting control) over the newly publicly traded company called Time Warner Cable, Inc.

Holders of certain "Claims and Equity Interests" with respect to Adelphia will receive approximately 16% of Time Warner Cable's outstanding stock, as detailed in Section IV of Adelphia's Second Amended Disclosure Statement ("Disclosure Statement"), a copy of which was provided to the County on the CD that accompanied our July 22, 2005 response to Mr. Sepe's July 9, 2005 letter. The list of Adelphia stakeholders to receive shares in Time Warner Cable will not be determined until closing.

5. In response to question I.8.D, TWC states that "No shareholder other than Time Warner Inc., will hold an attributable interest in TWC." Please define and describe what is meant by "attributable interest."

An interest deemed attributable under the FCC's rules. See Note 2 to 47 C.F.R. § 76.503.

6. In response to question I.8.D, TWC states that, "Initially, former Adelphia creditors will hold approximately 16% of the outstanding stock." Please describe what TWC anticipates happening after the initial holding by Adelphia creditors of that 16% stock *(e.g.*, will it be publicly traded)? Is there any minimum length of time the Adelphia creditors must hold this 16% outstanding stock?

The Adelphia stakeholders receiving shares of Time Warner Cable stock will be able to sell such shares in the public market if they so desire. There is no minimum holding period.

7. At question 9, Time Warner was asked if it recognized it was purchasing a cable system with an expired franchise. (Nash County's franchise expired on July 1, 2004, not December 31, 2003.) Nash County has been engaged for more than 2 years in renewal negotiations with Adelphia, to no avail, and would entertain renewing this franchise as part of the transfer proceeding. Would TWNY Cable, LLC renew this franchise as part of this transfer proceeding?

Verrant!

Federal antitrust law places certain restrictions on Time Warner Cable and Adelphia with respect to pre-transfer coordination and the exchange of certain operational information. See Response to Question II.1, below. Thus, until completion of the transfer and assumption of operational control of the cable systems serving the County, it would be inappropriate for the transferee to usurp Adelphia's role in any franchise renewal matters. Within appropriate confines of applicable law, we expect that Adelphia will keep Time Warner Cable advised regarding the progress of pending franchise renewal negotiations and Adelphia will continue to retain authority over any such ongoing renewal negotiations with respect to any renewals that take effect prior to closing. Upon completion of the transfer, the transferee will continue to operate under the terms and conditions of the then current franchise while it actively pursues any ongoing franchise renewal negotiations. Finally, we remind the County that it would be unreasonable and unlawful for a franchising authority to deny or delay a franchise transfer request merely because franchise renewal negotiations are ongoing.

I. B. CHARACTER QUALIFICATIONS

We repeat Question 4 because TWC did not answer it. The question asked was whether TWC or its principles has ever been charged, not whether TWC or its principles have even been convicted, of the following offenses.

1. Has Time Warner Cable (including its parent corporation or subsidiaries) or any principal[1] been charged in the last seven years with a criminal proceeding with any of the following offenses?

A. Fraud
B. Embezzlement
C. Tax Evasion
D. Bribery
E. Extortion
F. Obstruction of Justice
(or other misconduct affecting public or judicial officers' performance of their official duties

[1] For purposes of this form. "principal" means any officer or director of applicant. and any person, firm, corporation, partnership, joint venture or other entity, who or which owns or controls five (5) percent or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of the Transferee.

G. False/Misleading advertising
H. Perjury
I. Anti-trust
J. Violations of FCC regulations
K. Conspiracy to commit any of the Foregoing offenses

2. If yes, attach separate statement providing specifics, such as parties involved, nature of charge, date, and resolution of charge.

> **(RESPONSE TO QUESTIONS I.B.1-2): We stand by our July 22, 2005 response and the information provided in Section II, Question 5 and Exhibit 5 to our Form 394. The FCC, in implementing Section 617 of the Communications Act (which governs local review of transfer applications), expressly stated that the review of a proposed transferee's legal qualifications should be guided by the Commission's character qualification policy statements. *See Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992 Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions*, Memorandum Opinion and Order on Reconsideration of the First Report and Order, 10 FCC Rcd 4654 (1995) at ¶ 56 ("*Section 617 Implementation Reconsideration Order*"). Those policy statements indicate that it is not appropriate to make decisions based on mere allegations of misconduct and further note that only certain types of adjudicated misconduct [those specified in Form 394, Section II, Question 5] are relevant. *See, e.g., Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1204-05, 1227-29 (1986). To the best of our knowledge, no criminal charges have ever been brought against Time Warner Cable for any of these matters.**

II. TECHNICAL ABILITY OF TIME WARNER CABLE AND ITS OPERATIONAL STAFF

1. Will the Time Warner's "New Franchisee" assume all existing staff position obligations of Adelphia?

Time Warner responded to this question by stating that it is "premature to develop precise plans" of this nature until it has acquired the system. Instead, TWC states that "Adelphia cable subscribers may be confident in expecting significant improvements in their service" due to Time Warner Cable's "reputation" as a "stable and technologically advanced" company.

The County notes this is a non-answer. The County did not ask about the confidence level of subscribers. Please specifically address the question. TWC's answer expects the County to assume that TWC is buying this cable system without any plans on how it will utilize existing Adelphia staff. If TWC does not answer the question directly, the County will assume that Time Warner's response is "no."

Time Warner Cable takes exception to the characterization of its response to this question as a "non-answer." Time Warner Cable has provided the County with significant information in both the Application and our July 22, 2005 letter describing the extensive track record that Time Warner Cable has developed with respect to the ownership and operation of cable systems. Moreover, we have specifically stated that we do not contemplate making any management, operational, or technical changes that would adversely affect the terms and conditions of service and operations of the cable system serving the County. In addition, as specified at page 105 of the Asset Purchase Agreement between TWNY and Adelphia (which you received as an exhibit to the Form 394) TWNY is obligated to make offers to each "Applicable Employee" (as defined in the Agreement) contingent on the closing of the transaction and such employee's satisfaction of customary employment conditions. Time Warner Cable expects that such employees will continue to staff positions upon closing necessary to ensure that terms and conditions of service and operations of the system are not adversely affected.

Our inability to be more specific about staffing is not a result of any lack of due diligence or absence of planning; rather, Time Warner Cable is constrained by law in its ability to coordinate with Adelphia or to make any operational changes prior to closing. Pre-transfer coordination is restricted by the statutory waiting period required under the Hart-Scott-Rodino Antitrust Improvements Acts, 15 U.S.C. § 18A (Section 7A of the Clayton Act). In addition, other provisions of antitrust law, including Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, may restrict discussions between the parties prior to closing and, as interpreted by the Federal Trade Commission and relevant precedent, limit the exchange of certain operational information.

2. Does Time Warner's "New Franchisee," or its parent, Time Warner Cable, or its parent, Time Warner have any intention or plan to further regionalize the technical and customer service operations which serve or will serve the County?

Time Warner answered this question by referring to its answer above. Please answer the question directly. If TWC does not answer the questions directly, the County will assume that reports in the trade press detailing that this buyout will facilitate TWC's interest in further "regionalizing" its technical and customer service resources, include the County, and are true.

Our inability to provide a more specific answer is explained in the response to the preceding question. We note that Time Warner Cable has an exemplary record of customer service and technical performance throughout its systems. It fully anticipates bringing this same level of service to the residents of the County. Time Warner Cable has confidence in its proven ability to consolidate disparate cable television operations without any

significant operational disruption, subscriber inconvenience, or other associated problems. For example, the consolidation of the cable operations of Time Inc. and Warner Communications Inc. in 1989, at that time the largest cable merger in history, was completed seamlessly and was implemented to draw upon the unique strengths and experience of each company. As just one example, the consolidation of the Warner Cable and ATC franchise in New York City provides an early case study documenting the benefits to consumers from "clustering" - improved picture quality, more programming choice, better customer service, etc. With respect to the system serving the County, Time Warner Cable will retain the flexibility to provide whatever customer service programs are appropriate, a decision that will be made after the system is acquired and we have had the ability to better evaluate the system and its operations.

Time Warner Cable declines to comment on the accuracy of unspecified "reports in the trade press." Rather, we stand by the extensive materials and explanations that have been provided to the County. In particular, the Public Interest Statement submitted to the FCC, a copy of which was provided to you with our previous response, contained considerable detail as to the public benefits that will flow from the geographic rationalization produced by the transaction. Thus, Time Warner Cable remains confident, based on its experience from previous regionalization efforts, that subscribers will benefit from any improvements in efficiency regarding the deployment of technical and customer service resources.

3. Will TWNY be upgrading the cable system in Nash County within the next two years?

Time Warner answered this question by stating it has set aside $600 million to upgrade "technologically inferior" Adelphia systems. As Nash County has stated, the Adelphia system serving its residents has not been upgraded and suffers from consistent outages. Adelphia does not offer its residents cable modem service, and the choice in programming is severely limited compared to neighboring cable systems.

A. Please answer this question yes or no.

B. Does TWC consider the system serving Nash County to be "technologically inferior?"

(RESPONSE TO QUESTIONS II.3.A-B): Again, we must refer you to the legal constraints described in the response to Question II.1 as well as to the FCC's caution that cable operators should not be held to unreasonable or unrealistic expectations to foretell future events. *See Section 617 Implementation Reconsideration Order, supra,* at ¶ 55. We note further that the "approximately $600 million" earmarked for upgrades referred to in our previous response has not been allocated to particular systems, but as a general matter it can be expected that systems with limited capacity or lacking in advanced services would receive priority. We also direct your

attention to the description of Time Warner Cable's track record for upgrading its systems in order to deploy advanced services found at pages 23-30 of the FCC Public Interest Statement previously provided to the County.

4. Will Time Warner's "New Franchisee" be changing the channel line-up or adding any new services to the LFA's system within the first two years of ownership?

This question was not answered. Please answer this question directly.

Once again, we must direct you to the constraints described in our response to Question II.1 and to the Commission's warning against holding proposed transferees to unreasonable or unrealistic expectations to foretell future events. *See also* response to Question II. 3. The only information that we can provide at this time is that we have no current plans to change the existing channel line-up in the short-term. However, as with any of our systems, we will endeavor to provide the programming that we believe our customers desire.

5. Please describe any plans by TWC (or any of its direct or indirect subsidiaries or affiliates) to interconnect the cable system serving Nash County to any of the neighboring cable systems within the next three years.

TWC answered this question by referring to #1 above. Please answer this question directly. If this question is not answered directly, the County will assume the answer is no.

For the reasons explained in response to previous questions in this section, Time Warner Cable has not formulated specific plans with regard to the operation of the cable system serving the County, including plans relating to interconnection with neighboring systems. It would be arbitrary, capricious, and unlawful for the County to "assume" that Time Warner Cable has a particular plan (either to interconnect or not interconnect).

6. Please describe specifically any regional facilities and resources of Time Warner (or any of its direct or indirect subsidiaries or affiliates) which TWNY will utilize in providing service to Nash County *(e.g.,* headends, customer service operations, technical resources, and management and administrative staff.)

TWC did not answer this question *(i.e.,* it answered by referring to its answer to #1). Please answer this question directly. The County cannot reasonably accept the premise that Time Warner Cable has no plans for the manner in which it will serve Nash County' customers.

See our previous responses to questions in this section. To reiterate, Time Warner Cable is not being evasive or evidencing any lack of due diligence by indicating that it has not formulated plans for operational changes in the system serving the County and is constrained by legal considerations from doing so in advance of closing. Thus, it would be arbitrary, capricious, and unlawful for the County to refuse to accept this answer. Nevertheless, within

these constraints, and subject to change after we have a full opportunity to review existing operations and facilities following closing, we would expect that the existing headend would remain in place for the foreseeable future, but might be consolidated with operations from a nearby Time Warner Cable headend at such time as warranted by technological, efficiency, and other factors. Time Warner Cable also expects to maintain a customer service office to serve local customers. Finally, we anticipate that our operations serving the County will be part of our North Carolina region, subject to the overall supervision of Carol Hevey, Regional Executive Vice President.

III. FINANCIAL STABILITY AND OTHER FINANCIAL ISSUES

1. Please provide financial statements, ending March 31, 2005 and June 30, 2005, for:
   A. Time Warner Cable, Inc.
   B. TW NY Cable LLC,
   C. TW NY Cable Holding Inc.
   D. TWE Holding LLC

   (RESPONSE TO QUESTION III.1.A-D): Time Warner Inc. prepares and files with the SEC quarterly financial statements on a consolidated basis that encompass the entities listed. A copy of the consolidated financial statement for the quarter ending March 31, 2005 was included in the 10-Q provided on the CD of additional documents accompanying the Form 394. A copy of the 10-Q for the quarter ending June 30, 2005 was filed on August 3, 2005 and is available at http://www.shareholder.com/Common/Edgar/1105705/950144-05-8095/05-00.pdf. In addition, the Form 394 and our July 22, 2005 response to Mr. Sepe's letter dated July 9, 2005 (particularly the Disclosure Statement included on the CD included therewith) provided exhaustive financial information regarding Time Warner Cable. No financial statements exist for the other entities listed in the question. We note that FCC Form 394 expressly allows financial qualifications to be established through information relating to a parent entity.

2. Please provide December 31, 2004 (annual) financial statements for:
   A. TW NY Cable LLC
   B. TW NY Cable Holding Inc
   C. TWE Holding LLC

   See response to Question III.1 above.

3. [Initial Public Offering] Please provide copies of any documents, data or information submitted to the SEC for any proposed Initial Public Offering of Time Warner Cable, Inc.

   All documents, data and information relating to the registration of shares of Time Warner Cable Class A Common Stock are contained in the Disclosure Statement previously provided to you. As described in Section XIV thereof,

it is expected that the issuance of Time Warner Cable Class A Common Stock to certain of Adelphia's creditors will be exempt from registration under section 1145 of the Bankruptcy Code and that such shares will be automatically registered under the Securities Exchange Act pursuant to Rule 12g-3(a) promulgated thereunder. Accordingly, no prospectus has been or is expected to be prepared.

4. [Restructuring Costs]

A. TWC, Inc. restructuring costs were $15 million per year in 2002 and in 2003. At Exhibit G, TWC's 12-31-04 financial statements note that this amount was set aside for the termination of employees (230 in 2002 and 65 IVG employees in 2003). Explain why TWC's payoff per employee were so high?

Our response to this question is made without prejudice to our belief that the question has no relevance to the Town's review of Time Warner Cable's acquisition of the system serving the Town. Time Warner Cable does not agree with the characterization of these costs as "high," and views these as normal and customary costs associated with employee terminations, including employees to whom the company has contractual obligations.

B. How much has TWC earmarked for restructuring costs resulting from the Adelphia transactions and redemption agreements?

While we are not certain what "restructuring costs" are intended to refer to in this context, Time Warner Cable has set aside approximately $225 million for certain one-time costs (including fees to service providers, severance and other amounts) to be incurred in connection with the transactions. This is an estimate and is subject to change depending on a variety of factors.

5. [financial ability to upgrade] The County has noted that cable service to its residents is unreliable due to Adelphia's failure to upgrade and maintain the system. TWC's July 22, 2005 response states that TWC has "earmarked $600 million to upgrade Adelphia technology" and that details for this amount are provided in "the FCC Public Interest Statement."

A. Please provide the Exhibit number and pages where such details can be found in TWC's June 21, 2005 FCC Public Interest Statement. The sole reference which we uncovered was a TWC statement that it will earmark $600 million for Adelphia technology upgrades and that Comcast has earmarked $200 million, with no further detail provided.

B. Please identify the local franchise areas that have been earmarked for these upgrades.

C. Please provide detailed timelines when TWC expects to implement each upgrade for the community identified.

D. Describe specifically how TWNY will finance these upgrades?

(RESPONSE TO QUESTIONS III.5.A-D): Time Warner Cable believes that the question misquotes our previous discussion of the "approximately $600 million" earmarked for upgrading acquired systems. Our response did not indicate that "details" regarding this sum were contained in the Public Interest Statement (which is dated May 18, 2005, not June 21, 2005). Rather, Time Warner Cable stated that "[w]hile no upgrade plans have been finalized for specific systems, as TWC explained in its Public Interest statement submitted to the FCC, TWC has earmarked approximately $600 million to upgrade technologically inferior Adelphia systems to TWC's high standards." See July 22, 2005 response at Question II.3. The specific reference in the Public Interest Statement is footnote 111. To explain further, the amount that Time Warner Cable has earmarked for upgrade of the less-advanced Adelphia systems is merely an estimate based on an the company's extensive experience and cost histories developed in completing the upgrade of current Time Warner Cable systems, at a total cost of more than $4 billion. As previously indicated, the amount earmarked for upgrades has not been allocated to particular systems, but as a general matter it can be expected that systems with limited capacity or lacking in advanced services would receive priority. Also please keep in mind the constraints on Time Warner Cable's ability to develop specific plans for operational changes as described in response to Question II.1.

Finally, the Public Interest Statement also provided considerable detail showing that systems operated by Time Warner Cable are generally more technologically advanced than Adelphia systems. See Public Interest Statement at pages 22-32, 45-49. It is Time Warner Cable's proven track record for rolling out system upgrades and advanced services that provides any necessary assurances that customers will be better off if these systems are removed from the cloud of bankruptcy under Adelphia and placed in the hands of Time Warner Cable, one of the nation's most respected, financially stable, and technologically advanced cable operators.

6. In its June 21, 2005 Public Interest Statement to the FCC at Exhibit N, TWC's "Adelphia-Time Warner-Comcast Applications and Public Interest Statements to the SEC" states that TWC estimates a cost savings of $200 million from the Adelphia purchase.

   A. Provide a breakdown of this estimate (i.e. how much for employee reductions. how much for facilities savings, etc.)

   B. Provide a detailed accounting of the time period over which these savings will be realized.

(RESPONSE TO QUESTIONS III.6.A-B): Time Warner Cable assumes that the question is referring to Exhibit N found on the CD of additional documents provided with our July 22, 2005 response (i.e., the "Applications and Public Interest Statement" filed with the FCC by Adelphia, Comcast and Time Warner on May 18, 2005) and, in particular, to the statement that

"Time Warner Cable has estimated that such cost savings will be in the range of $200 million" found on page 59 thereof. Such figure is a good-faith, preliminary estimate of potential cost savings based on Time Warner Cable's substantial experience in consolidating the operations of cable systems acquired in transactions of all sizes and, thus, Time Warner Cable does not have the specific breakdown or time period accounting requested. We can confirm that the estimate reflects general estimates of anticipated savings due to economies of sale and scope (*e.g.*, programming and equipment cost savings), and anticipated reductions in corporate overhead (e.g., savings due to consolidation of redundant corporate management functions currently performed through Adelphia's offices in Denver and Coudersport). The estimate of savings does not include any amounts with respect to the closing of any customer service facilities or local offices, reduction in service plan personnel, or any other cost saving devices that would adversely affect the quality or quantity of video service, customer service or other aspects of the cable system operations serving the County.

7. In TWC's July 22, 2005 letter, at Exhibit G: "TWC, Inc's Consolidated Financial Statement for years ending 2004, 2003 and 2003," (page 16 of 80), TWC describes its ongoing difficulties with its intended purchase of Urban Cable in Philadelphia, PA. TWC has now agreed to purchase inner Cities' 60% interest in Urban Cable, after which it will transfer ownership of this system to Comcast as part of the Cable Swops.

A. Please confirm true cost of Urban Cable purchase by TWC, as detailed below:

	($ millions)
Cash Outlay	53
Eliminate debt/interest due from Urban Cable to TWC	67
Assume Urban Cable Debt	53
True Cost of TWC Purchase of Urban Cable	173

B. If the Urban Cable purchase fails, what compensation will TWC provide to Comcast in the swop transactions in lieu of Urban Cable?

C. Please describe the impact (including financial) of the Urban Cable litigation on TWC's Adelphia transactions (the Philadelphia City Council denied this transfer, a decision TWC has challenged in Court)?

D. TWC has agreed to pay $173 million for 50,000 Urban Cable subscribers. totally $3,460 per subscriber, an above-market rate. It is then "transferring" this system to Comcast. Why did TWC agree to pay such a high per subscriber rate for Urban Cable?

(RESPONSE TO QUESTIONS III.7.A-D): Time Warner Cable fails to see how this series of questions, which relate to transactions involving a cable system serving Philadelphia, Pennsylvania in which Adelphia has no interest, is relevant to Time Warner Cable's acquisition of Adelphia's cable system serving Nash County, North Carolina and the County's review thereof.

Time Warner Cable's acquisition of the system serving the County is not conditioned on the transactions involving the Philadelphia cable system and, thus, any contingencies that may impact the closing of the Philadelphia system transactions would have no impact on Time Warner Cable's acquisition of the system serving the County. Consequently, Time Warner Cable sees no need to accept, refute, or otherwise engage in any further discussion of the question's calculation of the "true cost" of the Urban Cable transaction or the question's unsubstantiated assertion that Time Warner Cable has agreed to pay "an above-market rate" for Urban Cable.

8. At Question III.I.B, the LFA asked Time Warner to describe the level of debt that will be held by the new publicly traded company. TWC responded that it will "incur liabilities in respect of incremental net debt and preferred equity of approximately $8.9 billion associated with the TWC-Adelphia Acquisition and the TWC/Comcast Transactions, and the total estimated debt of TWC as of the date of closing of such transactions is anticipated to be approximately $15.3 billion."

   A. Based on this information, please confirm our estimation below (drawn from various TWC documents) of TWC debt and debt sources as of the date of the Adelphia closing. Please detail any inaccuracies or discrepancies in our numbers.

	($millions)	($millions)
Cash Outlay for Adelphia Transactions and Redemption Agreements		
Adelphia Acquisition	9200	
TWC Redemption from Comcast	1856	
TWE Redemption from Comcast	133	
Total Cash Outlay for Adelphia Trans. And Redemption Agreements		11189
Cash Outlay for Urban Cable* (see above)		53
Total Minimum Cash/Debt Required for Adelphia Transactions		11242
Time Warner. Inc. contribution	2900	
Cash	minimal	
Mandatorily Redeemable Preferred Stock	500	
IPO of TWC	2200	
Bank Loans	5500	
Outside Financing/Cash from IPO		-11100
TWC Debt, 12/31/04		7300
Debt from Adelphia Transactions		
Time Warner, Inc. contribution	2900	
Mandatorily Redeemable Preferred Stock	500	
Bank Loans	5500	
Total New Debt and Preferred Equity		8900
New Total Debt		16200

payoff of debt in 2005?	-900
Total estimated debt of TWC on Adelphia closing date	15300

Time Warner Cable declines to comment upon the specifics of the "estimation" of Time Warner Cable debt and debt sources stated in the question. As noted on page 197 of the Disclosure Statement, as of March 30, 2005, Time Warner Inc. had approximately $7.0 billion of cash and cash equivalents and $6.7 billion of available committed capacity under its existing credit arrangements, and Time Warner Cable had approximately $2.7 billion of available committed capacity under its existing credit arrangement. Thus, Time Warner Cable has the ability to meet its funding obligations for the acquisition without either Time Warner Inc. or Time Warner Cable arranging new external financing. However, Time Warner Inc. and Time Warner Cable have made no definitive decisions regarding the type or allocation of financing for the transactions at this time; details regarding the type and allocation of financing will depend largely on market conditions prevailing at the time of closing, including the public and private debt and equity markets, and cash flows at Time Warner Cable and Time Warner Inc. It should be noted that at this time there are no plans to raise any funding through an "IPO" or any other public offering of stock of Time Warner Cable.

B. Please provide any and all documents which describe the terms of new debt to be assumed by TW, TWC, TW NY and any other related parties necessary to:
   1. complete the Adelphia Transactions
   2. to complete the Urban Cable Works purchase.

See response to Question III.8.A above. In addition, we note that while no definitive decisions have been made at this time, Time Warner Cable currently anticipates that the financing for the transaction will include some combination of intercompany debt from Time Warner Inc., bank financing, commercial paper borrowings, cash on hand, and the proceeds of the $500 million issuance of mandatorily redeemable preferred stock by a subsidiary of Time Warner Cable to one or more third parties. As noted above, as this will not necessarily involve new financing arrangements, no documents of the type requested exist. Finally, although the question is not relevant to the review of the transaction involving the cable system serving the County, we note that the completion of the Urban Cable Works purchase is expected to be funded from available cash.

9. TWC's Response to Question III.1.B. states that a "subsidiary of TWC" will be issuing $500M mandatorily redeemable preferred stock" to one or more third parties"

   A. Please name the subsidiary of TWC issuing these MRPS's.

   Time Warner NY Cable LLC

   B. Please name each of these "one or more third parties"

This private placement has not yet taken place and hence the identity of the holder of any MRPS's is unknown at this time.

10. In its July 22, Exhibit G attachment, the "notes to the TWC 12-31-04 financial statement" state that "On November 1, 2004, TWC, TWE, certain other affiliates of Time Warner, and the Bank of New York, as Trustee, entered into the Ninth Supplemental Indenture to the indenture governing $3.2 billion of notes (face value) issued by TWE (the "TWE Notes"). As a result of the supplemental indenture, Time Warner NY Cable Inc., a wholly owned subsidiary of TWC and a general partner of TWE, formally assumed certain statutorily imposed liabilities with respect to the TWE Notes."

A. Please provide a copy of this Ninth Supplemental Indenture.

A copy of the Ninth Supplemental Indenture is available at <u>http://sec.edgar-online.com/2004/11/03/0000950144-04-010346/section15.asp</u>.

B. Please describe how TWNY Cable's assumption of these liabilities affects its ability to acquire financing for the Adelphia purchase?

The assumption by Time Warner NY Cable of its statutory liability in respect of the TWE Notes is not expected to have any appreciable impact on Time Warner NY Cable's ability to finance the Adelphia acquisition. Time Warner Cable expects potential lenders and rating agencies will continue to assess the credit of Time Warner Cable and its principal subsidiaries on a consolidated basis, and this assumption of liability by Time Warner NY Cable does no increase the consolidated indebtedness of Time Warner Cable.

C. Did this indenture change the terms of repayment of the $3.2 billion face value? If yes, please describe. If no, why not?

The Ninth Supplemental Indenture had no impact on the terms of repayment of the TWE Notes. Its effect is to provide the noteholders with a direct claim against Time Warner NY Cable in the event of a failure to pay on the part of TWE and Time Warner Cable (by virtue of its guaranty of the TWE Notes). No changes have been made to the terms or timing of payment of the underlying obligations.

11. At Exhibit G, "Notes to Consolidated Financial Statements: Update on SEC and DOJ Investigations," (page 42 of 80), TWC states that an independent CPA will review TW financial statements regarding SEC/DOJ vs. TW pertaining to AOL accounting practices. It also states: "It is also possible that, so long as there are unresolved issues associated with Time Warner's financial statements, the effectiveness of any registration statement of Time Warner or its affiliates may be delayed."

A. When do you expect resolution of this financial statement review?

As stated at page 71 of Time Warner Inc.'s second quarter Form 10-Q (a copy of which is provided herewith), it is expected that the review of the independent examiner will be completed at the end of the year.

B. Since TWC is planning to partially fund its Adelphia Transactions with funds generated by the Initial Public Offering what is TWC's contingency plan for funding, if the IPO is delayed? Describe how TWC will obtain additional funding to complete the transaction?

The question assumes that TWC is planning to fund the transaction through an Initial Public Offering. However, as explained in our response to Question III.3 above, there is no plan for a public offering of Time Warner Cable stock. Time Warner Cable's options regarding the funding of the transactions are described in detail in the response to Question III.8 above.

IV. OTHER PUBLIC INTEREST FACTORS

Time Warner Cable's 394 states that TWNY will "comply with the terms and conditions of the (existing) franchise and applicable law." Will TWNY accept responsibility, as a condition of this transfer to cure any past franchise breeches by Adelphia which currently have not been cured?

TWC answered this question by stating that it is unaware of any Adelphia franchise breeches but will act "as promptly as practicable" in the operation of the system if changes are necessary to cure any violations."

A. Please describe (quantify) what is meant by "as promptly as practicable."

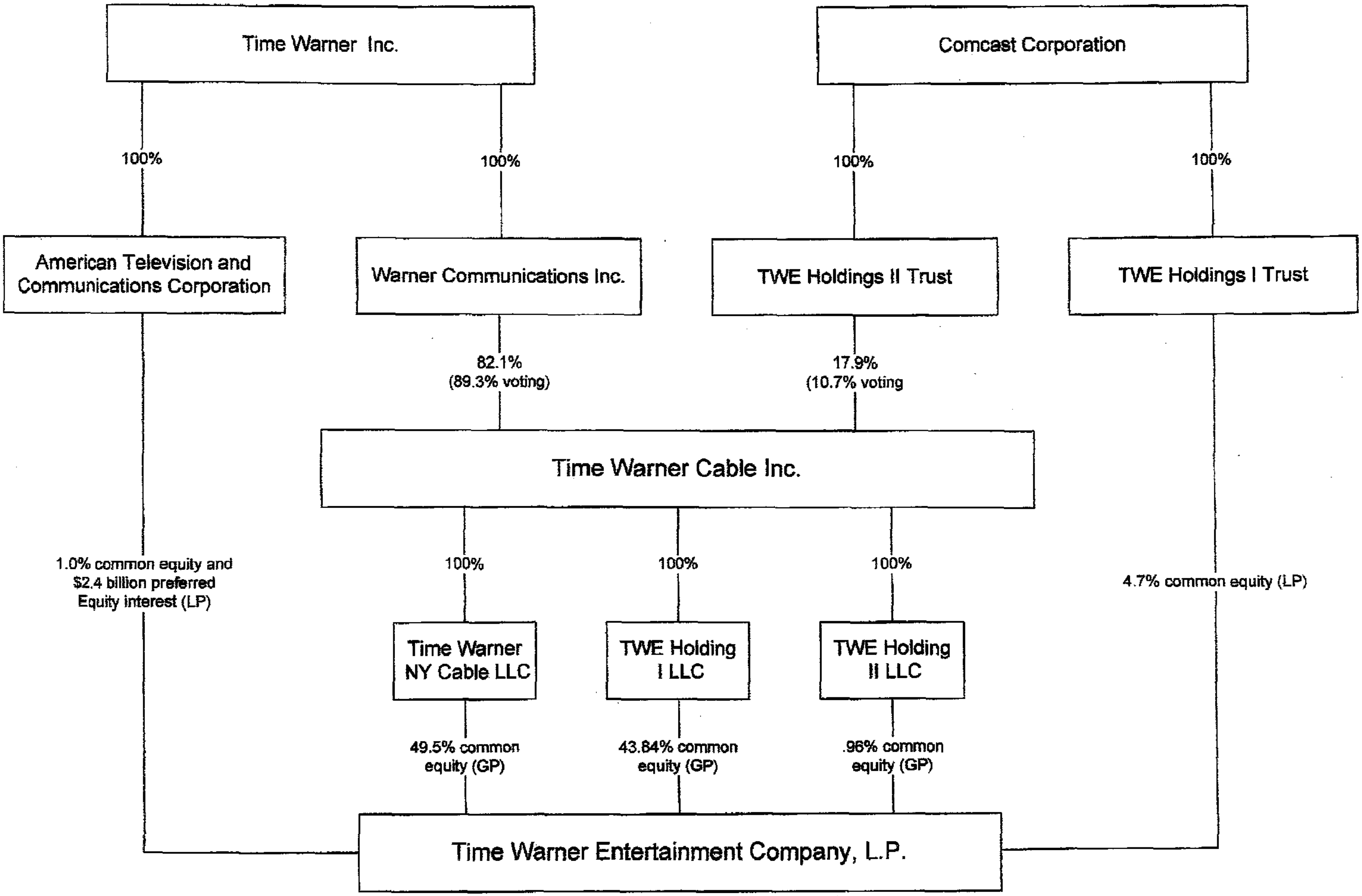
B. The County is currently examining claims that Adelphia has not met its service density and FCC technical standards per the franchise agreement.

Please directly answer the question. If TWC fails to answer this question with a yes or no, the County will have no choice but to conclude that TWC has no intention to remedy past breeches incurred by Adelphia.

(RESPONSE TO QUESTION IV.A-B): To the best of our knowledge, the FCC has not indicated that it had a specific time frame in mind when it used the phrase "as promptly as practicable" in the Form 394 certification. Time Warner Cable interprets the phrase to mean as quickly as is reasonable given all of the circumstances, including the nature of the breach, cost of cure, etc. We note in addition that the Bankruptcy Code requires Adelphia to cure or provide adequate assurance that it will promptly cure defaults under the franchise agreements before such agreements can be transferred. We have communicated to Adelphia the information that the County is "currently examining claims that Adelphia has not met its service density and FCC technical standards per the franchise agreement." We interpret this statement to mean that the County is not aware of any other potential breaches.

174866

Time Warner Cable Pre-Adelphia Closing Ownership



Time Warner Cable (Anticipated) Post-Adelphia Closing Ownership

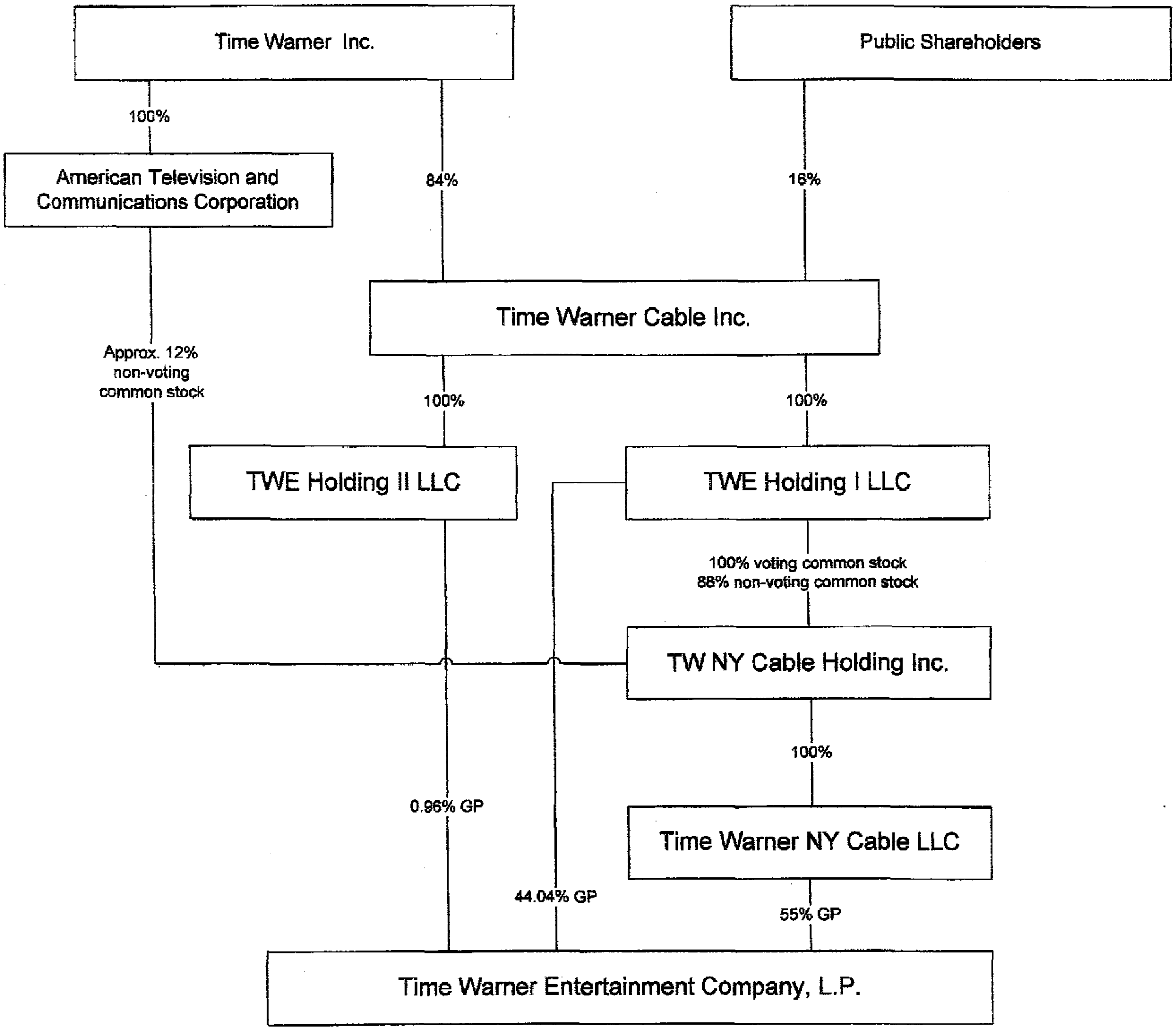


EXHIBIT C

290 Harbor Drive
Stamford, CT 06902
Tel 203-328-0600

TIME WARNER CABLE

July 22, 2005

VIA ELECTRONIC AND OVERNIGHT MAIL

Robert Murphy
Office of the County Manager
Nash County
120 W. Washington Street, Suite 3072
Nashville, NC 27856

Re: Time Warner Cable Form 394 – Nash County, NC
"Notice of Incomplete Form 394"

Dear Mr. Murphy:

Time Warner Cable ("TWC") has received a letter dated July 9, 2005, written on your behalf by Robert Sepe of Action Audits enclosing a questionnaire requesting additional information relating to the Form 394 dated June 10, 2005 submitted to Nash County ("County" or "LFA") in connection with the transfer of the cable system operated by FrontierVision Partners L.P., doing business as Adelphia Communications Corporation ("Adelphia"), which serves the County.

We note at the outset that the questionnaire appended to Mr. Sepe's letter seeks a vast quantity of information, much of which we believe is not relevant or necessary for the LFA's review of the Form 394. Under the FCC's rules and relevant decisions, a franchising authority's review of a proposed transfer of a cable franchise should focus on the legal, technical, and financial qualifications of the proposed transferee. A franchising authority may not delay or impose conditions on a transfer based on conditions unrelated to the proposed transferee's qualifications.[1]

[1] *See Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 4654 (1995) at ¶ 52 ("*1995 FCC Order*") (limiting the scope of information relevant to the franchise transfer review to that "reasonably necessary to determine the qualifications of proposed transferee"); *Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Report and Order*, 8 RCC Rcd 6228 (1993) at ¶ 38, n. 38 (a city "may not delay a transfer or impose conditions on a transfer authorization that would impinge on the [FCC's] statutory authority"). *See also 1995 FCC Order* at ¶ 52 (by adopting federal procedures regarding transfer approvals, "Congress wanted to ensure that the local franchise approval process not unduly delay the consummation of transactions.").

We also want to note in particular our strong objection to the assertion by Mr. Sepe that the Form 394 was "incomplete" or that the statutory 120-day deadline for the LFA to review the proposed transfer has not yet begun. While the FCC's rules permit local franchising authorities to request additional information reasonably related to and within the scope of their review, the failure to provide such information does not render the Form 394 incomplete. Because TWC's June 10, 2005 Form 394 filed with the LFA contained all of the information required by the FCC Form 394 and the LFA's franchise, the 120-day deadline was properly commenced as of the filing of the Form 394 with the LFA.[2]

As you know, Adelphia's sale of the cable system serving the County will be effectuated as part of its Chapter 11 Bankruptcy Reorganization Plan. The Form 394 and the additional information requested has been or is being provided in the spirit of cooperation subject to, and without waiver of, Adelphia's Bankruptcy Code rights to transfer the franchise without the County's consent.

TWC will, of course, cooperate in providing the LFA with such additional information as is relevant to the franchise transfer review. Moreover, while we do not believe that the information requested is required by FCC Form 394 or otherwise necessary for consideration by the LFA within the proper scope of its review of the transfer (or is redundant of information already submitted), we are submitting responses to the questionnaire included with Mr. Sepe's letter with the understanding that such responses are being provided without prejudice to our position that (1) the information is not necessary for the LFA's review of the transfer and (2) any failure or delay in submitting the requested documents and information does not excuse the LFA's obligation to timely process TWC's Form 394.

Finally, please note that to the extent that any of the questions request production of confidential trade and business information, FCC Form 394 expressly allows the withholding of any "[c]onfidential trade, business, pricing or marketing information, or other information not otherwise publicly available."[3] TWC is willing to make such documents available to the LFA for review at a designated location upon the execution of an appropriate confidentiality agreement.

We trust that you will find the information contained herein, and in the completed copy of the Mr. Sepe's questionnaire attached hereto, to be fully responsive. Please do

---

[2] Even if the Application had not been complete as filed, such incompleteness would not be grounds for tolling the 120-day review period under the FCC's rules. Tolling occurs only if an applicant fails to cure any such incompleteness within ten (10) days of the receipt of a challenge from the franchising authority regarding the completeness of the application. Because the companies have now responded to your letter, demonstrating herein that the Application was complete as filed, the 120-day period is not subject to tolling.

[3] *See* FCC Form 394 Part 1. Question 2(a).

not hesitate to contact me if you have additional questions or if I can be of further assistance.

Sincerely,

John E. Fogarty

cc: Robert Sepe, Action Audits
Maria Arias, Esq., Adelphia Communications Corporation
Sheila Willard, Comcast Cable Communications, LLC

NASH COUNTY

IDENTIFICATION OF THE TIME WARNER TRANSFEREE

(Some information requested herein is redundant with Form 394, however for analysis purposes it is helpful to have identifier information in one location.)

Name of Transferee	**Time Warner NY Cable LLC d/b/a Time Warner Cable**
Address of Transferee	**290 Harbor Drive, Stamford, CT 06902-7441**
Telephone	**203-328-0600**
Fax	**203-351-2254**
E-mail Address	N/A (URL = **http://timewarnercable.com)**
Date	**July 22, 2005**

Please provide the following information for the principal to whom inquiries should be made:

Name	**John Fogarty**
Telephone	**203-328-0600**
Fax	**203-351-2254**
E-Mail Address	**john.fogarty@twcable.com**
Authorized Signature	**See Cover Letter**
Date	**July 22, 2005**

For purposes of these forms and this inquiry, Transferee is directed to review all applicable provision of the existing local cable franchise, all amendments thereto, and additional agreements, rate agreement, FCC opinions related to the parties and franchising authority hereto. It is presumed that Transferee has access to and understands the applicable provisions whether specifically or generally referenced herein.

I. LEGAL & CHARACTER QUALIFICATIONS

The legal qualifications standard relates primarily to the analysis of whether Time Warner NY Cable LLC ("TWNY") is duly organized and authorized to own the cable system and the franchise via the transfer transaction. It also involves an analysis of whether the overall transaction complies with federal, state and local law. The ownership the franchise will, in the end, rest with the ultimate parent of the franchise holder, so the name, control and nature of this company must be determined. Time Warner Cable's 394 provides a diagram and describes that TWNY will be the new franchise holder ("New Franchisee") after the transfer of ownership is complete, but that this company will be 100% owned by Time Warner Cable, Inc., who is owned by Time Warner, the parent. At the end of the transfer, Time Warner will be transferring all its cable holdings into a new publicly traded company, over which it will render 84% equity control. This transaction will be completed "contemporaneously and "in direct succession." The 394 includes a CD with "relevant agreements" necessary to understand the transactions. This CD is void of exhibits describing the cable systems which will be independently purchased by Time Warner Cable and Comcast and swapped throughout the nation. This absence is rationalized as "not necessary" in order to understand the terms of the agreements.

The primary purpose of evaluating a transfer applicant's character qualifications are to ascertain whether it is likely that the applicant, through its officers and directors, will defraud a local franchising authority or subscribers, or renege on its franchise obligations.

Legal Qualifications

1. Name of Time Warner Company acquiring the cable system serving the Community's franchise area ("Transferee" or "New Franchisee").

   Time Warner NY Cable LLC ("TWNY")

2. Is this Transferee currently a North Carolina corporation? ( )Yes (**X**)No

   TWNY is a Delaware Corporation that has been qualified to do business in North Carolina. See EX. A

3. Please list all parent Company(s) which will have the ability to render any influence over the "New Franchisee," either directly or indirectly (*e.g.* Time Warner Cable, Time Warner, new publicly traded company (by name)).

   An ownership flowchart for the Transferee that identifies the legal entities that will be in the chain of ownership upon completion of the Transaction is attached hereto as EX. B. By way of clarification, there will not be a "new" publicly traded company; rather, it is expected that the Class A Common Stock of Time Warner Cable Inc. ("TWC"), an existing company, will become publicly traded.

4. Are all these Companies North Carolina corporations? ( )Yes (**X**)No
   If no, describe in detail.

   All of the companies referenced in Question 3 are Delaware corporations.

5. Describe the current ownership and control structure, in terms of stock and voting control, of any TWNY parent over TWNY.

TWNY is currently a 100% wholly-owned direct subsidiary of TWC. Time Warner Inc. (through a wholly-owned subsidiary) currently holds 82.1% of the outstanding stock of TWC representing approximately 89.3% of the voting power, and Comcast Corporation (through a trust imposed by the FCC and established for the benefit of Comcast Corporation) currently holds 17.9% of the outstanding stock of TWC representing approximately 10.7% of the voting power. Time Warner Inc. therefore has the ability to appoint all members of the Board of Directors of TWC, although pursuant to TWC's certificate of incorporation, prior to closing, at least two such directors must be independent.

6. Describe the future ownership and control structure, in terms of stock and voting control, of any planned TWNY parent over TWNY which will occur in association with the current transfer and development of the stated "new publicly traded company."

See EX. B.

7. The 394 states that TWNY will purchase the Adelphia system serving the Community, and that Time Warner Cable Inc. will hold 100% indirect voting control of the New Franchisee." It also states that "a minority non-voting equity interest in an intermediate subsidiary is held by an entity under common control with Time Warner Cable Inc."

A. Please describe the entity which will have direct voting control over the New Franchisee?

Time Warner New York Cable Holding Inc. See EX. B.

B. Please provide the name of the intermediate subsidiary, who will have a non-voting equity interest" in the New Franchisee, and the name the "entity" which will have common control of that intermediate entity with Time Warner Cable Inc?

American Television and Communications Corporation ("ATC") will have a non-voting equity interest (approximately 12 percent) in the Time Warner New York Cable Holding Inc. Both ATC and TWC are under the common control of Time Warner Inc. See EX. B.

8. Time Warner's 394 states that Time Warner Cable "will become a publicly-traded corporation, and will continue to be controlled (84% ownership interest) by Time Warner Inc."

A. Please provide the name of this new "publicly traded company.

The publicly traded company will be the existing Time Warner Cable Inc. See EX. B.

B. Please describe the degree of voting control Time Warner will have over this new publicly traded company.

Time Warner Inc. is expected to hold approximately 84% of the outstanding stock of TWC (and approximately 90.5 % voting control). See EX. B.

It is currently anticipated that the interests of the Comcast Corporation in TWC will be redeemed. If such redemption does not occur, the percentages described above will be adjusted to reflect Comcast's continuing minority ownership interest in TWC.

C. Please cite the specific Exhibit(s) and page number(s) in the 394's "attached CD" where this change in ownership to a new publicly traded company is described.

See Form 394, Exhibit 7.

D. Please describe in detail the ownership of the remaining 16% interest in Time Warner's new publicly traded company, including level of voting control.

It is expected that, initially, former Adelphia creditors will hold approximately 16 percent of the outstanding stock and approximately 9.5% of the voting control of TWC. See EX. B and response to Question 8.B above. No shareholder other than Time Warner Inc. will hold an attributable interest in TWC.

E. Will Time Warner's equity and voting control of TWNY change as a result of the creation of the new publicly traded company?

As a result of the transaction, TWNY will be owned approximately 88% by TWC (through wholly-owned subsidiaries) and approximately 12% by Time Warner Inc. (through ATC, a wholly-owned subsidiary). Time Warner's equity and voting control of TWC are expected to increase as a result of the transaction from 82.1% and 89.3% respectively, to approximately 84% and approximately 90.5% respectively. See also EX. B and response to Question 8.B above.

9. Does Time Warner and any direct or indirect subsidiary involved in this transfer recognize it is purchasing a cable system with an **expired franchise?**

TWC understands that discussions regarding the renewal of this franchise are ongoing and that Adelphia continues to operate pursuant to the terms of the most recently awarded franchise and the community accepts performance (including franchise fees).

10. Describe in detail any legislative and/or lobbying actions in which Time Warner, its subsidiaries or affiliates, is currently engaged with the goal of removing any requirement that its cable companies be subject to a local franchise.

The lobbying activities of Time Warner or its affiliates or subsidiaries are protected by the First Amendment and are not relevant to Transferee's legal, financial, or technical qualifications to own and operate the cable system serving the Community or to the Community's review thereof.

Character Qualifications

1. Time Warner's 394 lists three communities which denied the Company transfer of ownership approval (*e.g.*, Cary, NC, Daytona Beach, FL, and Philadelphia, PA). Did Time Warner Cable transfer the ownership of any of these cable systems even though the local franchising authority denied the transfer?

As indicated in Form 394, Exhibit 4, the Town of Cary's denial of the Form 394 submitted in connection with the merger of America Online, Inc. and Time Warner Inc. recited no basis for concluding that AOL Time Warner Inc. was not qualified to control the entity operating the cable system serving that community and, indeed, the Town subsequently renewed TWC's franchise. With respect to the other two situations referred to in Form 394, Exhibit 4, ownership of the cable system serving Daytona Beach, FL was not transferred and TWC has not yet taken ownership of the 60 percent interest in Urban Cableworks of Philadelphia, L.P. that it does not currently hold.

2. Describe in detail any communities where Time Warner Cable (its parent or subsidiaries) or its principles has challenged a local franchising authority's renewal decision in court, and the outcome of that challenge.

There has never been an adverse final order denying TWC a franchise renewal and thus there have been no occasions for challenging such a ruling in court.

3. Has Time Warner's "New Franchisee" or any parent, subsidiary or principal thereof, ever received a cable or telecommunications franchise violation notice of notice of franchise noncompliance or ever been fined or otherwise sanctioned by the holder of a cable or telecommunications franchise?

TWC operates cable systems serving thousands of communities and, from time to time, in the ordinary course of business, TWC has received notices relating to franchise compliance issues. To the best of TWC's knowledge, these notices have always been resolved to the satisfaction of the franchising authority with the exception of the following pending judicial proceedings relating to franchise compliance issues initiated by franchising authorities:

***Mecklenburg County v. Time Warner Entertainment-Advanced/Newhouse Partnership* - Mecklenburg County, North Carolina commenced an action in state court alleging that Time Warner Cable's predecessor failed to construct an institutional network in 1981 and that Time Warner Cable assumed that obligation and thus the alleged unfulfilled obligation**

upon the transfer of the franchise in 1995. Time Warner Cable seeks to remove this action to federal court and filed an answer and countersuit on July 21, 2005.

City of Minneapolis v. Time Warner Cable and KBL Cablesystems of Minneapolis –
The City of Minneapolis commenced an action against Time Warner Cable in state court alleging that Time Warner Cable is in violation of its franchise by (1) failing to remit franchise fees on cable modem service and (2) converting channel capacity dedicated for Public Access and using such channels for other programming. Time Warner Cable has removed this action to federal district court. A motion to dismiss is pending.

4. Has Time Warner Cable (including its parent corporation or subsidiaries) or any principal[1] been charged in the last seven years with a criminal proceeding with any of the following offenses?

A. Fraud
B. Embezzlement
C. Tax Evasion
D. Bribery
E. Extortion
F. Obstruction of Justice (or other misconduct affecting public or judicial officers' performance of their official duties
G. False/Misleading advertising
H. Perjury
I. Anti-trust
J. Violations of FCC regulations
K. Conspiracy to commit any of the Foregoing offenses

As indicated in the FCC Form 394 at Section II, Question 5 and Exhibit 5, there has never been an adverse finding made, or an adverse final action taken, against the Transferee by any court or administrative body in a civil, criminal, or administrative proceeding with respect to any felony; revocation, suspension or involuntary transfer or any authorization (including cable franchises) to provide video programming services; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or employment discrimination matter. Nevertheless, in the spirit of cooperation and full disclosure, Exhibit 5 to the Form 394 set forth details regarding certain adverse actions regarding TWC and its affiliates.

[1] For purposes of this form, "principal" means any officer or director of applicant, and any person, firm, corporation, partnership, joint venture or other entity, who or which owns or controls five (5) percent or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of the Transferee.

5. If yes, attach separate statement providing specifics, such as parties involved, nature of charge, date, and resolution of charge.

SEE RESPONSE TO QUESTION 4 ABOVE.

II. TECHNICAL ABILITY OF TIME WARNER CABLE AND ITS OPERATIONAL STAFF

A technical ability analysis should focus on the technical expertise and experience of the parent company(s) of the "New Franchisee," since it (they) will likely direct and control investment in the day-to-day operations of the system serving the Community.

Technical issues involve whether local technical staff with whom the Community is familiar will continue to serve the Community, or whether the new company will introduce its own and regional technical resources, affecting the new Company's historical understanding of the system and ability to maintain and update the local cable plant or improve customer service, such as telephone answering response times Technical issues for the Community also include whether the new company will resolve the ongoing technical problems which characterize the cable system in the Community and when the new company will upgrade and introduce cable-modem service into this system.

Time Warner Cable states in both its cover letter and within the body of its 394 that it has a reputation for introducing highly advanced technologies into local communities. Trade press on this national buy-out describe how the new super-clustering of its systems will allow Time Warner Cable "greater geographic scope, regional efficiencies and an ability to more effectively compete with Incumbent Local Exchange Carriers" (although these LECs have expressed no interest in providing the Community any triple play of services). These statements indicate a clear interest on the part of Time Warner to further regionalize its customer service and technical maintenance resources.

1. Will the Time Warner's "New Franchisee" assume all existing staff position obligations of Adelphia?

   It is premature for Transferee to develop precise plans for management, operational or technical changes until it has acquired the cable system serving the Community and become thoroughly familiar with preexisting operations and practices. As indicated in FCC Form 394, Exhibit 2, Transferee does not contemplate making any management, operational, or technical changes that would adversely affect the terms and conditions of service and operations of the cable system in the Community. In general, existing Adelphia cable subscribers may be confident in expecting significant improvements in their service subsequent to the completion of the transaction, knowing that Transferee has earned a reputation as among the most stable, respected, and technologically advanced cable operators.

2. Does Time Warner's "New Franchisee," or its parent, Time Warner Cable, or its parent, Time Warner, have any intention or plan to further regionalize the technical and customer service operations which serve or will serve the Community?

   SEE RESPONSE TO QUESTION II.1 ABOVE.

3. Time Warner Cable's 394 states that it is "premature to develop[] precise plans for service improvements" for the system serving the Community, but that it has a reputation for being a "technologically advanced cable operator." Will TWNY be upgrading the cable system in the Community within the next two years?

SEE RESPONSE TO QUESTION II.1 ABOVE. While no upgrade plans have been finalized for specific systems, as TWC explained in its Public Interest statement submitted to the FCC, TWC has earmarked approximately $600 million to upgrade technologically inferior Adelphia systems to TWC's high standards. A copy of the Public Interest statement is enclosed herewith on a supplemental CD.

4. Will Time Warner's "New Franchisee" be changing the channel line-up or adding any new services to the LFA's system within the first two years of ownership? ( )Yes ( )No. Please explain.

SEE RESPONSE TO QUESTION II.1 ABOVE.

5. Please describe any plans by Time Warner (or any of its direct or indirect subsidiaries or affiliates) to interconnect the cable system serving the Community to any of the neighboring cable systems within the next three years.

SEE RESPONSE TO QUESTION II.1 ABOVE.

[6. No Question 6 in Original]

7. Please describe specifically any regional facilities and resources of Time Warner (or any of its director indirect subsidiaries or affiliates) which TWNY will utilize in providing service to the Community *(e.g.,* headends, customer service operations, technical resources, and management and administrative staff.)

SEE RESPONSE TO QUESTION II.1 ABOVE.

III. FINANCIAL STABILITY AND OTHER FINANCIAL ISSUES

An evaluation of financial stability includes whether Time Warner has the financial resources available or committed, now and in the future, to enable it to operate the local system in accordance with applicable laws, standards, franchises ordinances and agreements. Financial stability also pertains to whether the transfer, as presented, is reasonable and economically viable. Other financial issues to be considered are the transaction's impact on rates arid services, including (but not limited to) the availability of programming services, the quality of customer service and maintenance and repair practices. (A number of these issues have historically been topics for complaint by the Community residents.) In addition, the Community will evaluate whether Time Warner will have sufficient cash flow after the transfer, to meet local franchise obligations, including franchise fee payments and PEG support payments.

Given the level of potential debt and possible revenue shortfalls, it is likely that Time Warner will need to increase revenues (through rate increases), decrease expenses *(e.g.,* by terminating customer service representatives and repair/maintenance technicians, eliminating programming services and further consolidating operations) and or reduce capital expenditures for facilities and equipment, including dedicated PEG resources. As such, there is a great deal of potential harm and detriment to the Community and its subscribers from this transfer.

1. Time Warner will be forming a new publicly traded company at the end of these transfer, swap and redemption transactions with Comcast and Adelphia.

By way of clarification, there will not be a "new" publicly traded company; rather, TWC, an existing company, will become a publicly traded entity by virtue of its issuance of stock exempt from registration as part of the Bankruptcy Court's confirmation of Adelphia's Plan of Reorganization.

A. What is the projected market price of the stock to be issued on behalf of this new publicly traded company and the total market capitalization?

No information regarding the projected market price or market price is available at this time. This will be determined solely by the market at the time the stock begins to trade publicly.

B. Time Warner, through its subsidiaries, will be paying out over $ 11.101 billion in cash to implement these various purchases, swaps, and redemptions with Comcast. Please describe the level of debt that will be held by the new publicly traded company?

The following response is based upon, and subject to, the Disclosure Statement filed with the U.S. Bankruptcy Court on June 24, 2005 (the "Disclosure Statement"), a copy of which is enclosed herewith on a supplemental CD, including the assumptions underlying the projected balance sheet as of January 1, 2006 contained therein. In particular, reference is made to Sections IX A and B of the Disclosure Statement.

TWC will incur liabilities in respect of incremental net debt and preferred equity of approximately $8.9 billion associated with the TWC-Adelphia Acquisition and the TWC/Comcast Transactions, and the total estimated debt of TWC as of the date of closing of such transactions is anticipated to be approximately $15.3 billion.

TWC is working with Time Warner Inc. to complete the arrangements to finance the cash portion of the consideration to be paid in respect of the TWC-Adelphia Acquisition and the cash to be used by TWC or its affiliates in connection with the TWC/Comcast Transactions. The type and allocation of this financing will depend largely on market conditions prevailing at the time of closing of the applicable transaction, including the public and private debt and equity markets, and cash flows at TWC and Time Warner Inc.

Although TWC and Time Warner Inc. have made no definitive decisions at this time, TWC currently anticipates that the financing will include some combination of intercompany debt from Time Warner Inc., bank financing, commercial paper borrowings, cash on hand and the proceeds of the $500

million issuance of mandatorily redeemable preferred stock by a subsidiary of TWC to one or more third parties.

As of the date of the closing of the Transfer, TWC's debt and preferred stock to book equity ratio is anticipated to be approximately .77 to 1. The debt to market capitalization equity ratio will be dependent upon the ultimate pricing of TWC shares in the public market, which of course will not be known until after the date of closing of the Transfer.

As of the date of the closing of the Transfer, liabilities incurred by TWC from third parties also will be reflected as liabilities of Time Warner Inc., TWC's parent. Outstanding debt of Time Warner Inc. as of the dates covered by the reports are reported on the SEC Forms 10-K and 10-Q submitted with the Application.

C. What will be the capitalization ratios for Time Warner's new publicly traded company?

SEE RESPONSE TO QUESTION III.1.B ABOVE.

2. Does Time Warner or any of its direct or indirect subsidiaries have any plans or intentions to Petition the FCC to deregulate the Community within the next three years.

SEE RESPONSE TO QUESTION II.1. Transferee also wishes to remind the Community that the FCC has expressly stated that, in exercising their transfer jurisdiction, LFAs may not seek to circumvent federal policies and limitations regarding the regulation of cable rates (which would include a cable operator's right to seek a determination in that system is subject to effective competition). *See Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 8 FCC Rcd 6828 (1993) at n. 38.

3. Please name and describe any companies in which Comcast and Time Warner will share ownership, either directly or indirectly, after the transfers, swaps and redemptions are completed.

Comcast will not have an attributable ownership interest in the Transferee after the transfers, swaps, and redemptions are completed and, thus, the question is not relevant to the Transferee's legal, financial, and technical qualifications to own and operate the cable system serving the Community or to the Community's review thereof. Nevertheless, any remaining joint ventures involving Comcast and Time Warner after completion of the transactions are described in the Public Interest statement submitted to the FCC (a copy of which is enclosed herewith on a supplemental CD).

IV. MANAGERIAL QUALIFICATIONS

Managerial qualifications and changes in the organizational structure of the Company which will exercise ultimate ownership and control of the local cable system, can be significant to the local operation. For instance, the local franchising authority should know who is controlling the Company which will hold such a significant media presence in its community. The local franchising authority should also know if the Company serving its community will be controlled by a small handful of individuals or a large group of shareholders. For example, a new Company could be created as part of a transfer, which includes changes in its organizational and management structure which could place control of the Company into the hands of a small group of managers and officers in a manner which makes them less accountable to shareholders, the board of directors, and the local community the Company serves. (Changes such as these were reported as part of Comcast's buy-out of AT&T Broadband).

1. Time Warner will be the parent ultimately in control of the Time Warner Cable subsidiary company holding the franchise in the Community, control that will be exercised through a new publicly traded company created after the transfer. Describe below any bylaw or managerial changes that will occur during any stage in this transition of control from Adelphia to the new publicly traded company, which will have the effect of changing *(e.g.,* decreasing or hampering) current Time Warner Cable shareholders' ability to:
   a. replace members of the Board of Directors:
   b. elect a slate of directors of their own choosing to the Board of Directors;
   c. purchase stock representing more than 10% voting power;
   d. remove current senior management and officers.

   There will be no such bylaw or managerial changes. Time Warner Inc. will continue to have the ability to appoint and remove all members of the TWC Board of Directors, provided, however, that for at least 3 years after the closing of the transaction, the composition of the TWC Board of Directors must satisfy the requirements of the New York Stock Exchange and at least 50% of the members of the Board of Directors must be independent. No shareholder has the ability to remove TWC senior management and officers; this power will continue to be exercised by the Board of Directors. As of the closing, Time Warner Inc. is expected to hold approximately 84% of the outstanding stock of TWC, and the former Adelphia creditors are expected to hold approximately 16% (although TWC has the ability to issue shares prior to closing in certain cases, including, without limitation, pursuant to stock award programs and certain business combinations, and such issuances would result in an adjustment of the foregoing ownership percentages). Pursuant to a shareholder agreement, Time Warner Inc. may not make a tender offer or exchange offer for Class A Common Stock without the approval of the independent directors of TWC; this restriction will remain in effect for 3 years following the closing of the transaction. There will not be any restrictions on the ability of any other shareholders to purchase more than 10% of the outstanding stock.

V. IMPACT OF THE PROPOSED TRANSACTION ON COMPETITION

As indicated above, Section 613(b) of the Federal Cable Act, 47 U.S.C. §533(d), permits the LFA to consider whether the transaction "may eliminate or reduce competition in the delivery of cable service" in their respective franchise area(s). If a local franchising authority determines that the Transaction will, in fact, eliminate or reduce competition, it may withhold approval of Time Warner's transfer application.

1. Is Time Warner, or any of its direct or indirect subsidiaries or affiliates, currently providing cable or non-cable service in any portion of the Community's local franchise area?
   ( )Yes (X)No If yes, explain.

2. Please provide the names of the cable operators providing service to franchise areas directly abutting the Community's franchise area. (Please name the franchise area as well.)

Unrelated third party information is not currently known and is not relevant to Transferee's financial, legal, or technical qualifications to own and operate the system serving the Community or to the Community's review thereof.

3. Various hurdles exist for competitive providers to enter a local cable market. Many of those hurdles are financial in nature and attributable to the fixed start-up costs associated with the construction of a state-of-the-art cable system. Other factors include obtaining access to desirable programming, the ability to sell advertising on systems covering only a small geographic area, and successfully convincing a competitor's subscribers to change service providers.

TWC notes that jurisdiction over MVPD program exclusivity issues rests with the FCC. With that in mind, TWC responds as follows:

A. Please describe any Multichannel Video Programming Distributors (MVPD) currently serving the Community's local franchise area?

On information and belief, the Community's franchise area currently is served by DirecTV and EchoStar. Transferee has no knowledge of the existence or identity of other MVPDs, including SMATV systems, which may operate within the Community's local franchise area.

B. Please describe any MVPD programming, over which Time Warner has direct or indirect control (through subsidiaries or affiliates), which is also being distributed by existing MVPD competitors serving the Community's local franchise area?

A listing of national and regional video programming services in which Time Warner has an attributable interest under the FCC rules can be found at Table C-1 and Table C-4 of the FCC's 11th Annual Competition Report, MB Docket No. 04-227, FCC 05-13, 35 CR 93 (released February 4, 2005) and available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-13A1.pdf. The channel line-ups of DirecTV and EchoStar can be found at their respective websites. See http://www.directv.com/DTVAPP/learn/Packages_Comparison.dsp and http://www.dishnetwork.com/downloads/pdf/programming/CUST100ChannelCard.pdf

[C. No Question 3.C in Original]

D. Please describe any MVPD programming, over which Time Warner has direct or indirect control (through subsidiaries or affiliates), which is not being distributed by existing MVPD competitors in the local franchise area?

SEE RESPONSE TO QUESTION V.3.B ABOVE.

E. Please list any communities where Time Warner, or any of its direct or indirect subsidiaries or affiliates, face competition from another wireline MVPD?

The presence of wireline MVPD competition in other franchise areas served by Transferee or its direct or indirect affiliates is not relevant to Transferee's financial, legal, and technical qualifications to own and operate the cable system serving the Community or to the Community's review thereof. Transferee does note that SBC and Verizon have announced ambitious plans to construct and launch wireline MVPD service over the next several years in various parts of the country.

VI. OTHER PUBLIC INTEREST FACTORS

1. Time Warner Cable's 394 states that TWNY will "comply with the terms and conditions of the (existing) franchise and applicable law." Will TWNY accept responsibility, as a condition of this transfer, to cure any past franchise breeches by Adelphia which currently have not been cured?

Transferee is unaware of any "past franchise breeches by Adelphia which currently have not been cured" and none are identified in your letter. Nevertheless, in Section V, Part II (c) of the Form 394 has certified that it "will use its best efforts to comply with the terms of the franchise and applicable state laws or local ordinances and related regulations, and to effect changes, as promptly as practicable, in the operation system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing."

173576 (Nash)

EX. A

NORTH CAROLINA
Department of The Secretary of State

CERTIFICATE OF AUTHORITY

I, **ELAINE F. MARSHALL**, Secretary of State of the State of North Carolina, do hereby certify that

TIME WARNER NY CABLE LLC

having filed on this date an application conforming to the requirements of the General Statutes of North Carolina, a copy of which is hereto attached, is hereby granted authority to transact business in the State of North Carolina.

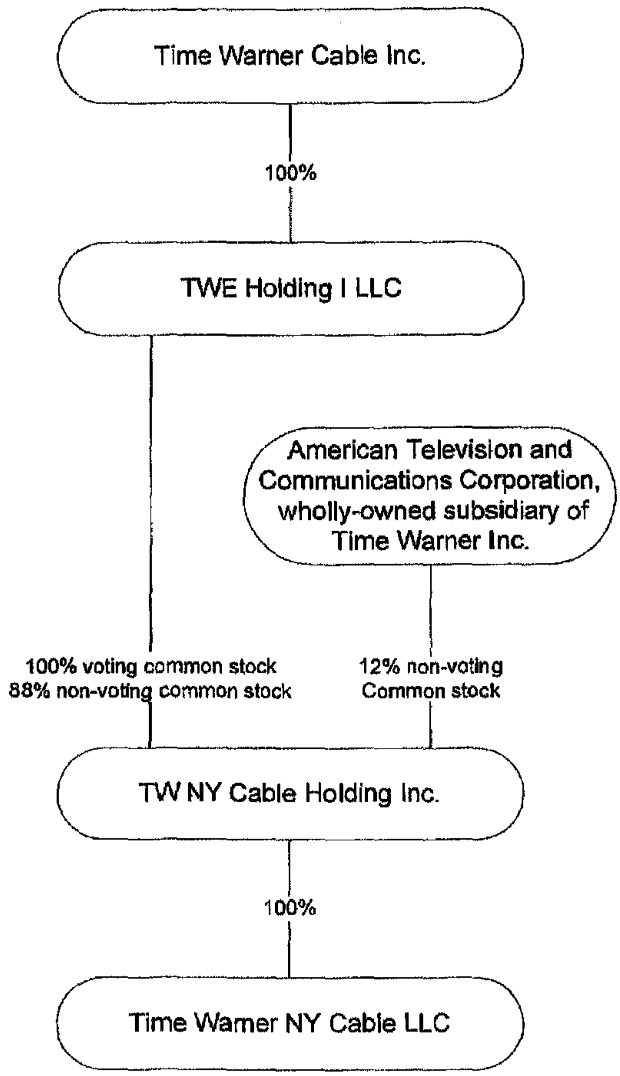
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 7th day of January, 2005

Elaine F. Marshall

Secretary of State

Document Id: C20050070016
6

EX. B


Time Warner Cable Inc.
100%
TWE Holding I LLC
American Television and Communications Corporation, wholly-owned subsidiary of Time Warner Inc.
100% voting common stock
88% non-voting common stock
12% non-voting
Common stock
TW NY Cable Holding Inc.
100%
Time Warner NY Cable LLC