

FLEISCHMAN AND WALSH, L. L. P.

ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION
1919 PENNSYLVANIA AVENUE, N. W.
SUITE 600
WASHINGTON, D. C. 20006
TEL (202) 939-7900 FAX (202) 745-0916
INTERNET www.fw-law.com

SETH A. DAVIDSON
(202) 939-7924
SDAVIDSON@FW-LAW.COM

July 5, 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

Dear Ms. Dortch:

On June 26, 2006, Action Audits, LLC (“Action Audits”) submitted an *ex parte* letter (apparently on behalf certain North Carolina communities) responding to Time Warner Inc.’s January 25, 2006 letter rebutting a “Transfer Report” prepared by Action Audits and a related opinion letter prepared by Action Audits’ financial consultant, Racine Financial Consulting (collectively the “AA/RFC Report”).¹ The AA/RFC Report was submitted to the Commission on December 16, 2005 as an attachment to *ex parte* letters filed by the Communications Workers of America in the above-captioned proceeding.²

In its somewhat belated response to Time Warner’s January 25, 2006 submission, Action Audits complains that Time Warner has refused to make specific commitments to certain North Carolina communities currently served by Adelphia regarding a schedule for improving those systems and asks the Commission to condition its approval of the transactions herein under review by setting a specific deadline for Time Warner to complete a “full upgrade” of all acquired systems serving rural communities. Action Audits also defends the AA/RFC Report’s “findings,” including its assertion that because Time Warner is “highly leveraged” and has “dangerously low” cash reserves, taking on the allegedly “crushing debt burden” associated with

¹ Letter from Seth A. Davidson, Counsel, Time Warner Inc., to Marlene Dortch, Secretary, Federal Communications Commission, dated January 25, 2006.

² Letters from Kenneth R. Peres, Research Economist, Communications Workers of America, to Marlene Dortch, Secretary, Federal Communications Commission, dated December 16, 2005.

the transactions will force Time Warner to increase rates and reduce service, thereby harming subscribers.

Action Audits' claims are baseless and should be rejected. The record in this proceeding clearly establishes that consumers will benefit from the acquisition of the bankrupt Adelphia systems by Time Warner, a company with the necessary resources to operate those systems in the public interest and a proven track record of bringing technological innovation and service improvements to its systems – rural and urban alike. Under the circumstances, the condition requested by Action Audits is neither necessary nor appropriate. Decisions about the timing of operational changes are best left to Time Warner's informed business judgment, rather than to an inflexible federal mandate. Time Warner reiterates its commitment (which no one, including Action Audits, has disputed), that upon the closing of the transactions, the acquired systems will be operated in a manner that is consistent with the terms of existing franchises and is in the public interest.

Finally, Time Warner stands by its previous response to the AA/RFC Report. As Time Warner pointed out in its January 25, 2006 letter, the AA/RFC Report is rife with erroneous assumptions and flawed conclusions, resulting in baseless speculation concerning the impact that the transactions will have on rates and customer service.³ In addition, the author of the financial analysis portion of the AA/RFC Report has acknowledged that she did not evaluate the "relative qualifications" of Adelphia and Time Warner. Yet, the question of whether customers will be better off if the systems at issue are operated by Time Warner rather than by bankrupt Adelphia – a question to which the AA/RFC Report apparently gives no consideration – not only is key to determining whether the transactions are in the public interest, it is a question that has resoundingly been answered in the affirmative by the record developed in this proceeding.

In short, the Action Audits' June 25, 2006 *ex parte* letter fails to demonstrate that the transactions are in any way adverse to the public interest or that approval of the transactions should be subject to any conditions.

³ The extent to which the AA/RFC Report relies on baseless speculation became even more apparent during a deposition of Kim Racine, AA's financial consultant, in connection with the Adelphia bankruptcy court proceeding. That deposition revealed that Ms. Racine is not currently licensed as a CPA and has never prepared an expert report or been qualified as an expert by any court or tribunal of any type. Ms. Racine also conceded that she had no experience analyzing comparable transactions and no expertise with the cable industry or with large publicly-held corporations. Ms. Racine could not recall ever evaluating a company's creditworthiness, leverage, or other topics addressed in her "analysis" of Time Warner's financial condition pre- and post-transactions. See The Debtors' Omnibus Response to the Contract and Plan Objections of Local Franchising Authorities, *In re Adelphia Communications Corporation, et al.*, United States Bankruptcy Court, Southern District of New York, Case No.02-41729 (REG), filed May 22, 2006.

Ms. Marlene Dortch

July 5, 2006

Page 3

Please do not hesitate to contact the undersigned if you have any questions concerning this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Seth A. Davidson", with a long horizontal flourish extending to the right.

Seth A. Davidson

Counsel for Time Warner Inc.

cc: Best Copy and Printing, Inc.

Donna Gregg

Sarah Whitesell

Tracy Waldon

Royce Sherlock

Julie Salovaara

Marcia Glauberman

Wayne McKee

Jim Bird

Neil Dellar

Ann Bushmiller

Jeff Tobias

JoAnn Lucanik

Kimberly Jackson

188478