

the resolution of the bankruptcy proceeding. Therefore, we find that on balance the public interest will be served by approval of the Applications subject to the conditions we impose herein.

## II. DESCRIPTION OF THE PARTIES

### A. Adelphia Communications Corporation

6. Adelphia is the fifth largest multiple cable system operator (“MSO”) in the United States and the seventh largest MVPD. Adelphia provides cable television service to approximately five million subscribers.<sup>19</sup> In addition to analog and digital video services, it offers high-speed Internet and other advanced services, including digital video, VOD programming, and digital video recorder (“DVR”) services, over Adelphia’s broadband networks, primarily to residential customers in 31 states, with significant operations in and around Los Angeles, western Pennsylvania, Ohio, western New York, New England, southeast Florida, Virginia, and Colorado Springs. Adelphia does not own active programming services<sup>20</sup> nor does it offer local telephone service to the public.<sup>21</sup> In June 2002, Adelphia and substantially all of its domestic subsidiaries filed voluntary petitions under Chapter 11 of the U.S. Bankruptcy Code for relief to reorganize as an independent entity.<sup>22</sup> Adelphia’s board of directors approved the reorganization plan, and bidding for the company’s assets ensued. In April 2005, Adelphia received supplemental bid protections from the U.S. Bankruptcy Court for the Southern District of New York regarding the sale of certain of its assets to Time Warner Cable and Comcast.<sup>23</sup>

### B. Comcast Communications Corporation

7. Comcast is the nation’s largest MVPD and would remain so upon completion of the transactions. Applicants state that, as of May 18, 2005, Comcast served approximately 26.1 million

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<sup>19</sup> Adelphia’s subscriber count includes subscribers served by several joint ventures with Comcast, specifically, the Century-TCI Joint Venture and the Parnassos Joint Ventures. Comcast will acquire ~~virtually all of Adelphia’s interests in the Century-TCI and Parnassos partnerships, including approximately one million subscribers and thereafter will transfer these assets and subscribers to Time Warner. Separately, Adelphia will transfer a small number of subscribers from the Century-TCI partnerships directly to Time Warner.~~ In addition, Adelphia holds a 50% interest (with the remaining 50% held by Ibis Communication Company) in the Palm Beach Group Cable Joint Venture, which serves 825 subscribers. Adelphia’s 50% interest in the Palm Beach Group Cable Joint Venture will be assigned to Comcast, with Comcast managing the day-to-day operations upon consummation of the transactions. See Public Interest Statement at 6-7, 73-75; see also Adelphia Dec. 12, 2005 Response to Information Request II.A.6. At the time the Applications were filed, Adelphia also served subscribers through three joint ventures with Tele-Media Corporation of Delaware, in which it was the majority partner (the “Tele-Media Joint Ventures”). Separately from the instant transactions, Adelphia entered into an agreement to purchase the minority equity interests in each of the Tele-Media Joint Ventures. Public Interest Statement at 6-7. On May 26, 2005, Adelphia acquired 100% ownership of the Tele-Media Ventures. See Fourth Amended Disclosure Statement at 435.

<sup>20</sup> Adelphia owns the Empire Sports Network, an inactive regional sports network, but it is excluded from the transactions. Adelphia’s residential and commercial security monitoring operations in Maine and its long distance telephone resale business are also excluded from the transactions. Public Interest Statement at 7.

<sup>21</sup> Adelphia began offering VoIP telephone service on a trial basis in January 2005. Trial participants were limited to Adelphia employees in the Colorado Springs, Colorado area. Adelphia suspended its VoIP trial on October 11, 2005, and no longer provides VoIP service to any customers, including Adelphia employees. See Adelphia Dec. 22, 2005 Response to Information Request IV.E.

<sup>22</sup> 11 U.S.C. §§ 1101 *et seq.*

<sup>23</sup> Public Interest Statement at 8 (citing *In re Adelphia Communications Corp., et al.*, Motion for Supplemental Order, Pursuant to Sections 105, 363, 364, 503, 507 and 1123 of the Bankruptcy Code, Approving Supplemental Bid Protections in Connection With the Sale of Substantially All of the Assets of Adelphia Communications Corporation and Certain of its Affiliates, Case No. 02-41729 (Bankr. S.D.N.Y., filed Apr. 8, 2005) at 5-6). The bankruptcy court granted the Applicants’ motion. *In re Adelphia Communications Corp. et al.*, Supplemental Order, Case No. 02-41729 (Bankr. S.D.N.Y. Apr. 21, 2005) (Gerber, J.).

conditioned on contemporaneous consummation of the other but clarify that these transactions are not dependent on the occurrence of the system swaps and redemption transactions between Time Warner and Comcast, as described below.

12. *The Time Warner/Comcast Swap Transactions.* Pursuant to an exchange agreement, upon consummation of the Adelpia Transactions, affiliates of Time Warner and Comcast would exchange certain cable systems owned by affiliates of Time Warner or Comcast, respectively, together with certain cable systems to be acquired in the Adelpia Transactions.<sup>52</sup> In the swap transactions, Time Warner would receive Comcast systems located in Los Angeles, California; Cleveland, Ohio; and Dallas, Texas; and systems currently owned by Century-TCI Communications, L.P. in the Los Angeles, California area and by Parnassos Communications, L.P. and Western Cablevision, L.P. in Ohio and western New York. Comcast would receive Time Warner Cable systems serving portions of Philadelphia, Pennsylvania and certain systems currently owned by Adelpia located in the states of California, Colorado, Connecticut, Florida, Georgia, Kentucky, Massachusetts, Maryland, North Carolina, New Hampshire, New York, Pennsylvania, Tennessee, Virginia, Vermont, Washington, and West Virginia.<sup>53</sup> As a result of the system swaps, Time Warner would gain approximately 2,192,667 subscribers from Comcast. Time Warner would transfer to Comcast approximately 2,002,680 subscribers.<sup>54</sup>

13. *Time Warner Cable Redemption Transaction.* ~~Following~~ <sup>Prior to</sup> consummation of the Adelpia Transactions, and pursuant to the Time Warner Cable Redemption Agreement, Time Warner Cable would redeem Comcast's 17.9% equity interest in Time Warner Cable,<sup>55</sup> now held in a Commission-mandated trust,<sup>56</sup> in exchange for 100% of the common stock of a Time Warner Cable subsidiary that, at the closing of the redemption transaction, would own the Time Warner Cable systems located in or around Minneapolis, Minnesota; Memphis, Tennessee; Cape Coral, Florida; St. Augustine/Lake City/Live Oak, Florida; and Monroe, Louisiana, which together served approximately [REDACTED] subscribers as of November 2005.<sup>57</sup> In addition, ~~Time Warner Cable would pay Comcast \$1.9 billion in cash.~~<sup>58</sup>

14. *TWE Redemption Transaction.* ~~Now,~~ <sup>held</sup> under the TWE Redemption Agreement, TWE would redeem Comcast's 4.7% limited partnership interest in TWE in exchange for 100% of the membership interests of a limited liability company that would own the Time Warner Cable systems

<sup>52</sup> See Public Interest Statement at Ex. C, Exchange Agreement by and among Comcast Corp., Time Warner Cable Inc., and affiliates of Comcast Corp. and Time Warner Cable Inc.

<sup>53</sup> Public Interest Statement at 3.

<sup>54</sup> See Letter from Arthur H. Harding, Fleischman and Walsh, L.L.P., Counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, FCC (Mar. 31, 2006) ("Time Warner Mar. 31, 2006 Ex Parte"). Time Warner explains that the difference in subscriber counting methodology, along with the different subscriber reporting periods and rounding, are factors accounting for a smaller net subscriber gain for Time Warner when compared to subscriber data included in the Applicants' Public Interest Statement. *Id.* In addition, Comcast provides figures that differ slightly from those submitted by Time Warner because the companies utilize different subscriber counting methods. See Letter from Martha E. Heller, Wiley Rein & Fielding, LLP, Counsel for Comcast Corp., to Marlene H. Dortch, Secretary, FCC (Mar. 30, 2006) ("Comcast Mar. 30, 2006 Ex Parte"); see also *infra* notes 187 and 197.

<sup>55</sup> See Public Interest Statement at Ex. D, Time Warner Cable Redemption Agreement among Time Warner Inc., Comcast Corp., and certain related entities of Time Warner and Comcast Corporation.

<sup>56</sup> *Comcast-AT&T Order*, 17 FCC Red at 23274-75 ¶¶ 74-77.

<sup>57</sup> Public Interest Statement at 3; see also Time Warner Dec. 12, 2005 Response to Information Request. Time Warner Cable updated information regarding subscriber totals involved in each transaction ~~again~~ and indicated that 585,220 subscribers would be transferred to Comcast as part of the TWC redemption transaction. See Time Warner Mar. 23, 2006 Ex Parte, Att. 1 at 2.

<sup>58</sup> Public Interest Statement at 3.

located in or around Jackson, Mississippi; Shreveport, Louisiana; and Houma, Louisiana, which served approximately [REDACTED] subscribers as of November 2005.<sup>59</sup> In addition, ~~TWE~~ would pay \$133 million in cash to Comcast.<sup>60</sup> *(the limited liability company)* *hold*

15. Finally, upon completion of the transactions, Time Warner Cable would become a publicly traded company, with Time Warner owning 84% of the common stock and holding 91% voting control of Time Warner Cable.<sup>61</sup> Adelphia stakeholders collectively would hold the remaining 16% of Time Warner Cable. At the close of the transactions, independent directors would comprise half of the board of directors of Time Warner for three years.<sup>62</sup>

16. Upon consummation of the Adelphia Transactions, certain Commission licenses held by Adelphia would be assigned or control would be transferred to Comcast, its subsidiaries, or affiliates, and other Adelphia licenses would be assigned to subsidiaries or affiliates of Time Warner Cable. In addition, upon consummation of the Time Warner/Comcast Swap Transactions, control of certain subsidiaries or affiliates of Time Warner Cable or Comcast, respectively, that hold licenses, including certain licenses acquired from Adelphia, would be transferred from Time Warner to Comcast or from Comcast to Time Warner, as the case may be. Finally, upon consummation of the Time Warner Cable Redemption Transaction and the TWE Redemption Transaction, first certain licenses would be assigned to a newly formed Time Warner Cable subsidiary on a *pro forma* basis, and then control of the new entity would be transferred from Time Warner to Comcast. The Applications, filed concurrently, seek Commission consent for those various assignments and/or transfers of control.

## E. Application and Review Process

### 1. Commission Review

17. On May 18, 2005, pursuant to sections 214 and 310(d) of the Communications Act, Adelphia, Comcast, and Time Warner filed 210 applications (excluding receive-only satellite earth stations) seeking Commission approval of the various assignments and transfers of control associated with the transactions. The Commission released a *Public Notice* on June 2, 2005 accepting the applications for filing and establishing the pleading cycle for public comment or petitions to deny.<sup>63</sup> In

<sup>59</sup> *Id.* at 2, Ex. E; *see also* Time Warner Dec. 12, 2005 Response to Information Request. In addition, Comcast will retain in the trust mandated in the *Comcast-AT&T Order* shares of Time Warner common stock representing approximately 1.3% of the voting stock of Time Warner. This interest is not related to the instant transactions. Comcast acquired these shares as a result of a restructuring of TWE in March 2003 subsequent to which Comcast received one share of Series A Mandatorily Convertible Preferred Stock of Time Warner that converted automatically into shares of Time Warner common stock on March 31, 2005. Public Interest Statement at 4 n.8.

<sup>60</sup> *Id.* at 4. Updated subscriber information from Time Warner indicates that 164,561 subscribers would be transferred to Comcast as a result of the TWE Redemption Agreement. *See* Time Warner Mar. 23, 2006 Ex Parte at Att. 2.

<sup>61</sup> Public Interest Statement at 4. Time Warner also will directly own approximately nine to 12% of the capital stock (non-voting common stock) of a subsidiary of Time Warner Cable. Time Warner Cable will own the remaining interest in the subsidiary. *Id.* at 4 n.7. Applicants do not otherwise identify the referenced subsidiary.

<sup>62</sup> *Id.* at 4.

<sup>63</sup> *See Adelphia Communications Corporation, Debtor-in-Possession, Time Warner Inc. and Comcast Corporation Seek Approval to Transfer Control and/or Assign FCC Authorizations and Licenses*, Public Notice, 20 FCC Rcd 10051 (MB 2005) (“*Comment Public Notice*”). The *Comment Public Notice* established July 5, 2005, as the deadline for filing comments and/or petitions to deny, and July 20, 2005, as the deadline for filing responses to comments and/or oppositions to the petitions. On June 15, 2005, the Acting Chief of the Media Bureau adopted a Protective Order under which third parties were allowed to review confidential or proprietary documents submitted by the Applicants. *See Adelphia Communications Corp., et al.*, 20 FCC Rcd 10751 (MB 2005) (“*Initial Protective Order*”).

## 2. Federal Trade Commission Review

21. In addition to Commission review, the proposed transactions are subject to review by federal antitrust authorities, in this instance by the Federal Trade Commission ("FTC").<sup>74</sup> The FTC reviews communications mergers and transactions pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to lessen competition substantially in any line of commerce.<sup>75</sup> FTC review is limited to an examination of the competitive effects of the transaction, without reference to other public interest considerations.

22. On January 31, 2006, the FTC announced that it had closed its investigation into the acquisition by Comcast and Time Warner Inc. of Adelphia's cable assets and the ~~related~~ transactions pursuant to which Comcast and Time Warner Cable will swap various cable systems.<sup>76</sup> The Chairman of the FTC, joined by two commissioners, stated that FTC staff had determined, and they agreed, that the proposed transactions were unlikely to substantially lessen competition in any geographic region in the United States in violation of Section 7 of the Clayton Act.<sup>77</sup> Further, the FTC Chairman concluded that evidence from the staff's investigation indicated that the proposed transactions are "unlikely to make the hypothesized foreclosure or cost-raising strategies profitable for either Comcast or TWC."<sup>78</sup>

### III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

23. Pursuant to sections 214 and 310(d) of the Communications Act, the Commission must determine whether Applicants have demonstrated that the proposed transfers of control of licenses and authorizations held by Adelphia, Time Warner, and Comcast will serve the public interest, convenience, and necessity.<sup>79</sup> In making this assessment, the Commission must first determine whether the proposed transactions would comply with the specific provisions of the Act,<sup>80</sup> other applicable statutes, and the Commission's rules.<sup>81</sup> If the transactions would not violate a statute or rule, the Commission considers

<sup>74</sup> Several local franchising authorities ("LFAs") have also reviewed aspects of these transactions. We review and discuss issues pertaining to LFA approval below in the procedural section.

<sup>75</sup> 15 U.S.C. § 18.

<sup>76</sup> See FTC, *FTC's Competition Bureau Closes Investigation into Comcast, Time Warner Cable and Adelphia Communications Transactions*, at <http://www.ftc.gov/opa/2006/01/fyi0609.htm> (last visited June 19, 2006).

<sup>77</sup> See Statement of Chairman Majoras, Commissioner Kavacic, and Commissioner Rosch Concerning the Closing of the Investigation Into Transactions Involving Comcast, Time Warner, and Adelphia Communications, File No. 051-0151 (Jan. 31, 2006) ("Majoras Statement").

<sup>78</sup> *Id.* at 2. In a statement concurring in part and dissenting in part, FTC Commissioners Leibowitz and Harbour stated that "serious concerns" remain within certain geographic markets that the transactions may raise the cost of sports programming to rival content distributors, thereby lessening competition and harming consumers. See Statement of Commissioners Jon Leibowitz and Pamela Jones Harbour (Concurring in Part, Dissenting in Part), Time Warner/Comcast/Adelphia, File No. 051-0151 (Jan. 31, 2006).

<sup>79</sup> 47 U.S.C. §§ 214, 310(d).

<sup>80</sup> Section 310(d) requires that the Commission consider the applications as if the proposed transferee were applying for the licenses directly. 47 U.S.C. § 310(d). See *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18300 ¶ 16 (2005) ("*SBC-AT&T Order*"); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18442-43 ¶ 16 (2005) ("*Verizon-MCI Order*"); *Applications of Nextel Communications, Inc. and Sprint Corporation*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) ("*Sprint-Nextel Order*"); *News Corp.-Hughes Order*, 19 FCC Rcd at 483 ¶ 15; *Comcast-AT&T Order*, 17 FCC Rcd at 23255 ¶ 26.

<sup>81</sup> See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC*, 19 FCC Rcd 2570, 2580-81 ¶ 24 (2004); *EchoStar* (continued....)

Commission's cable ownership limit, cable channel occupancy rule, and various cross-ownership rules.<sup>175</sup> We find that the transactions will not result in a violation of any of these rules.

#### A. National Cable Ownership Limit

45. The Applicants assert that both Time Warner and Comcast will remain in compliance with the Commission's cable ownership limit after the transactions are completed.<sup>176</sup> Comcast contends that, following the transactions, it will have a national subscribership of 28.9% of all MVPD subscribers, falling within the 30% limit.<sup>177</sup> Comcast states that it currently has approximately 26,100,352 attributable subscribers, or 28.2% of all MVPD subscribers.<sup>178</sup> As a result of the transactions, it expects to gain approximately 680,000 attributable subscribers, for a post-transaction total of approximately 26,780,352 attributable subscribers.<sup>179</sup> Using a denominator of 92.6 million MVPD subscribers nationwide, Comcast calculates that its current national subscribership of 28.2% will increase by 0.73% to 28.9%.<sup>180</sup>

46. Comcast's net gain of 680,000 attributable subscribers will result from the acquisition of certain Adelphia systems, followed by the acquisition of systems from Time Warner and the transfer of systems from Comcast to Time Warner, including systems acquired by Comcast from Adelphia. Specifically, Comcast will acquire 138,000 subscribers from Adelphia that were not previously attributable to Comcast.<sup>181</sup> Comcast also will acquire 100% ownership of the Adelphia/Comcast Joint Ventures, which operate cable systems serving approximately 1,082,138 subscribers.<sup>182</sup> These subscribers, however, are currently attributable to Comcast and therefore are included in Comcast's pre-transaction total of 26,100,352 subscribers.<sup>183</sup> From Time Warner, Comcast will acquire cable systems serving 2,740,000 subscribers.<sup>184</sup> Comcast will transfer to Time Warner systems serving 2,198,000 subscribers, including the Adelphia/Comcast Joint Venture systems ~~and certain other systems acquired from Adelphia.~~<sup>185</sup>

<sup>175</sup> We examine compliance with these rules because the transfer of cable systems from one entity to another is more likely to affect compliance with these rules than with the Commission's other rules. In addition, the Applicants and/or other parties asserted claims regarding compliance with these particular rules.

<sup>176</sup> Public Interest Statement at 72-75. See also FFBC Comments at 5-6 (supporting the Applicants' claim).

<sup>177</sup> Public Interest Statement at 73-74.

<sup>178</sup> *Id.* This total does not include Comcast's ownership interests in TWE and Time Warner. Those interests are not attributable to Comcast because they are insulated through placements in trusts. See *Comcast-AT&T Order*, 17 FCC Rcd at 23248-49 ¶ 4 (2002). Moreover, those interests will be substantially divested upon the closing of the transactions. Public Interest Statement at 74 n.187. See also *infra* Section VIII.B.4.

<sup>179</sup> Public Interest Statement at 73-74.

<sup>180</sup> Comcast relies on Kagan Media Money for the 92.6 million MVPD subscriber total, citing the Commission's policy of accepting any published, current, and widely cited industry estimate of MVPD subscribership when reviewing compliance with the cable ownership limit. *Id.* at 73 n.186 (citing Kagan Media Money, April 26, 2005, at 7). See *1999 Cable Ownership Order*, 14 FCC Rcd at 19112 ¶ 35 (1999). In their Reply, the Applicants note that, since the filing of their Applications, the Kagan estimate of the number of national MVPD subscribers had increased to approximately 92.9 million. Applicants' Reply at 27 n.96 (citing Kagan Media Money, May 24, 2005, at 7).

<sup>181</sup> Public Interest Statement at 74.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* The cable systems that Time Warner will transfer to Comcast include certain systems that Time Warner will acquire from Adelphia.

<sup>185</sup> *Id.* at 74-75. The change in the number of subscribers will be 138,000 plus 2,740,000 minus 2,198,000. Comcast subsequently provided updated figures in which it said it would receive from Adelphia systems serving 1,222,423 (continued....)

benefit the same weight we might if the transactions before us related solely to the sale of the debtor's assets or if these transactions were the only way to resolve Adelphia's bankruptcy proceeding.

#### 4. Unwinding of Comcast's Interests in Time Warner Cable and Time Warner Entertainment, L.P.

287. Prior to Comcast's acquisition of AT&T, AT&T owned a 27.64% limited partnership interest (the "TWE Interest") in Time Warner Entertainment, L.P. ("TWE") and Time Warner Inc. held the remaining 72.36%. TWE was formed in 1992 to own and operate substantially all of the businesses of Warner Bros., Inc., HBO, and the cable television systems owned and operated by Time Warner prior to that time. TWE owned cable systems serving 11.32 million subscribers and managed systems owned by Time Warner outside of TWE that served an additional 1.48 million subscribers; TWE was the second largest MVPD after AT&T. AT&T acquired the TWE Interest through its acquisition of MediaOne Group, Inc.<sup>873</sup>

288. The Commission conditioned its approval of Comcast's acquisition of AT&T by requiring that Comcast and AT&T adequately insulate the TWE Interest from the newly merged company by (a) placing the TWE Interest in a divestiture trust (the "TWE Trust"), (b) placing any non-cash assets into the TWE Trust if the TWE restructuring ("TWE Restructuring") took place,<sup>874</sup> (c) ultimately divesting itself of the TWE Interest, and (d) abiding by the restrictions set forth in Appendix B of the *Comcast-AT&T Order*.<sup>875</sup> The *Comcast-AT&T Order* requires the trustee of the TWE Trust to divest the TWE Interest no later than five years from the closing of the Comcast-AT&T transaction.<sup>876</sup> Following the closing of the Comcast-AT&T transaction, as anticipated, the TWE Restructuring took place and, as a result, the TWE Trust received non-cash consideration in the form of stock of a newly-formed company, Time Warner Cable, Inc. ("Time Warner Cable").<sup>877</sup>

289. If the proposed transactions are approved, the TWE Interest will be unwound by the redemption of Comcast's interests in Time Warner Cable and TWE in exchange for certain cable systems and cash.<sup>878</sup> The Applicants claim that the divestiture of the TWE Interest (which now includes stock of Time Warner Cable) is a public interest benefit that the Commission should recognize in considering the proposed transactions, because the divestiture would be realized two years earlier than if the TWE Trust remains the legal owner of the TWE Interest for the full five-year term of the TWE Trust.<sup>879</sup> The Applicants note that the TWE Interest, which has been passed to Comcast from US West as a result of a transaction that occurred 12 years ago, has long been disfavored, and the Commission has before it an opportunity, by granting the Applications, to facilitate the unwinding of the TWE Interest before the required divestiture date.<sup>880</sup> In addition, they assert that the proposed divestiture of the TWE Interest

Subsidiaries holding

<sup>873</sup> *Comcast-AT&T Order*, 17 FCC Rcd at 23258-59 ¶ 38.

<sup>874</sup> The TWE Restructuring transformed the TWE Interest from a purely limited partnership interest in Time Warner Entertainment, L.P. into a mix of shares of Time Warner Inc., shares of Time Warner Cable, Inc. (which itself held 95% of a newly restructured TWE), and \$2.1 billion in cash that was immediately distributed to Comcast. See *Comcast-AT&T Order*, 17 FCC Rcd at 23273-75 ¶¶ 73-77.

<sup>875</sup> *Id.* at 17 FCC Rcd at 23331 ¶ 225 (Appendix B of the *Comcast-AT&T Order* sets forth certain safeguards and enforcement mechanisms requiring Comcast to refrain from involvement in or communications concerning the video programming activities of (i) TWE, (ii) Texas Cable Partners, and (iii) Kansas City Cable Partners or any successor firms).

<sup>876</sup> *Comcast-AT&T Order*, 17 FCC Rcd at 23273 ¶ 72.

<sup>877</sup> *Id.* at 17 FCC Rcd 23274 ¶ 74. Comcast ~~received~~ a 17.9% equity interest in Time Warner Cable as a consequence of the TWE Restructuring.

<sup>878</sup> Public Interest Statement at 2.

<sup>879</sup> *Id.* at 67.

<sup>880</sup> *Id.* at 66-67.

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308. In response to the Commission's information request, Comcast filed subscriber data pertaining to its then-30% equity interest in Susquehanna Cable Company.<sup>907</sup> Further, on December 20, 2005, Comcast filed an application seeking consent for the acquisition of the Susquehanna cable systems.<sup>908</sup> No petitions to deny or other comments in opposition were filed regarding the transfer application. The Media Bureau granted the application and approved the transfer of Susquehanna's cable assets to Comcast on April 13, 2006, during the pendency of this proceeding.<sup>909</sup> Thus, we have taken account of and attributed to Comcast Susquehanna's 226,117 subscribers in the context of our review of the Applications, including the effect on Comcast's horizontal reach. Accordingly, there is no need to hold the Applications in abeyance to achieve the relief that Free Press desires. Therefore, we deny Free Press' motion.<sup>910</sup>

C. TWE and Time Warner Cable Redemption Transaction §

309. Under the current terms of the trust established pursuant to the *Comcast-AT&T Order*, any non-cash consideration received by the trustee in return for trust assets is to remain in the trust unless the Commission's Media Bureau approves its distribution to Comcast.<sup>911</sup> Pursuant to the Time Warner Cable Redemption Agreement and TWE Redemption Agreement, Comcast is to acquire the ownership interests

<sup>907</sup> See Letter from Wayne D. Johnsen, Wiley Rein & Fielding, LLP, Counsel for Comcast Corp., to Marlene H. Dortch, Secretary, FCC (Dec. 12, 2005).

<sup>908</sup> Comcast of Southeast Pennsylvania, LLC, CAR-20051221AN-08, filed Dec. 20, 2005. Comcast's application states that it agreed to acquire all of Susquehanna Cable Company's assets, including cable systems serving nine communities in six different states: DuQuoin, Illinois; Olney, Illinois; Lawrenceburg, Indiana; Shelbyville, Indiana; Rankin County, Mississippi; Brunswick, Maine; Carmel, New York; Williamsport, Pennsylvania; and York, Pennsylvania. Comcast Opposition at 2, 4. This referenced lead application incorporates the authorizations for the assignment of licenses for all of the Susquehanna cable systems in the foregoing communities.

<sup>909</sup> See Public Notice, Rep. No. 4035 (Apr. 26, 2006), File No. CAR-20051221AN-08 (granted Apr. 13, 2006) (granting the assignment of authorization for call sign KB60120 from York Cable Television, Inc. to Comcast of Southeast Pennsylvania, LLC). Comcast filed its notification of consummation with the Commission on May 2, 2006. See Letter from Steven J. Horvitz, Cole, Raywid & Braverman, L.L.P., to Marlene H. Dortch, Secretary, FCC (May 2, 2006) (regarding Comcast of Southeast Pennsylvania, LLC (FRN 0003-26-4132)).

<sup>910</sup> On November 14, 2005, Comcast filed a Petition for Special Relief seeking a waiver of attribution under section 76.503 note 2(c) of the Commission's rules. See 47 C.F.R. § 76.503 note 2(c). If common or appointed directors or officers have duties and responsibilities that are wholly unrelated to video programming activities for both entities, the relevant entity may request the Commission to waive attribution of the director or officer. *Id.* See also *Cable Attribution Order*, 14 FCC Rcd at 19042 ¶ 68. Comcast explains that when it appointed Robert S. Pick, Senior Vice President – Corporate Development to the Board of Directors of Susquehanna Cable Company approximately six years ago it inadvertently neglected to file a waiver petition pursuant to Commission rule 47 C.F.R. § 76.503 note 2(c). Comcast represents that Pick's duties for Comcast were solely related to acquisitions and dispositions of properties or businesses and did not involve the video programming activities for Comcast. Comcast further avers that the Susquehanna Board of Directors does not address video programming activities. Comcast's petition for special relief remains pending and will be handled separately. On June 22, 2006, Comcast filed a Motion to Dismiss its Petition for Special Relief (File No. CSR 6950-X), stating that the Commission's approval of the assignment of Susquehanna cable systems to Comcast rendered the attribution issue moot. Comcast indicated that it completed its acquisition of the Susquehanna cable systems on May 1, 2006, and all Susquehanna subscribers are now fully attributable to Comcast. See Letter from Michael H. Hammer, Willkie Farr & Gallagher, LLP, Counsel for Comcast Corp., to Marlene H. Dortch, Secretary, FCC (June 22, 2006).

<sup>911</sup> See Agreement and Declaration of Trust, by and among MOC Holdco II, Inc., Edith E. Holiday, Trustee, and The Capital Trust Company of Delaware, Section 5(e) (dated Mar. 31, 2003). Such assets include the Time Warner Cable and TWE interests to be redeemed pursuant to the Time Warner Cable Redemption Transaction and the TWE Redemption Transaction. Public Interest Statement at 5 n.9; see also Public Interest Statement at Ex. P (list of affected FCC licenses and authorizations subject to *pro forma* assignments and/or transfers of control to a newly formed Time Warner subsidiary, and, thereafter, control of the entity to Comcast).

in certain entities holding cable systems and related assets in exchange for its interests in Time Warner <sup>Cable</sup> and TWE. Accordingly, Comcast seeks approval to acquire the ownership interests of these directly and not through the trust upon consummation of the transactions.<sup>912</sup>

310. We find there is no public interest reason for denying Comcast's request. We have determined above, pursuant to a full public interest analysis, that approval of the license transfer Applications in this proceeding, as conditioned, will benefit the public interest. The purpose of Section 5(e) of the trust agreement is to ensure that assets acquired by the trust will remain in trust pending a review by the Media Bureau. In this case, the Commission has reviewed Comcast's proposed acquisition of cable systems currently held by TWC and TWE. These acquisitions represent substantial progress toward Comcast's continuing effort to unwind the TWE ~~partnership~~ in compliance with the Comcast-AT&T Order. Consistent with the Commission's intent in requiring the unwinding of TWE, Comcast's acquisition of the TWC and TWE systems will sever the joint ownership of those systems by Comcast and Time Warner. Because we have found that Comcast's acquisition of these and other systems subject to the transactions will benefit the public interest, the additional regulatory approval required by Section 5(e) of the trust agreement is unnecessary and would serve only to delay ultimate consummation of the transactions, without any concomitant public interest benefit. Accordingly, we grant Comcast's request.

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#### XI. ORDERING CLAUSES

311. Accordingly, having reviewed the Applications and the record in this matter, IT IS ORDERED, pursuant to sections 4(i), 4(j), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, 310(d), that the Applications for Consent to the Assignment and/or Transfer of Control of various licenses from and/or between Adelphia Communications Corp., Time Warner Cable, Inc., and Comcast Corp. ARE GRANTED subject to the conditions set forth herein and in Appendix B.

312. IT IS FURTHER ORDERED that the above grants shall include authority for Comcast and Time Warner consistent with the terms of this Order to acquire control of (a) any license or authorization issued for any system that is part of these transactions during the Commission's consideration of the Applications or the period required for consummation of the transactions, (b) construction permits held by such systems that mature into licenses after closing, (c) applications filed by such systems that are pending at the time of consummation of the transfers of control or assignments, and (d) licenses that may have been inadvertently omitted from the Applications that are held by such systems.

313. IT IS FURTHER ORDERED that approval IS CONDITIONED as set forth in Sections VI.C-D, and Appendix B.

314. IT IS FURTHER ORDERED that within 60 days of consummation of the transactions, Time Warner and Comcast each provide to the Office of the Secretary of the Commission an affidavit, signed by a competent officer of the companies, certifying that the requirements of section 76.501 of the Commission's rules, 47 C.F.R. § 76.501, have been satisfied.

315. IT IS FURTHER ORDERED that prior to the closing date of the transactions, Time Warner and Comcast each provide to the Office of the Secretary of the Commission an affidavit, signed by a competent officer of the companies, certifying without qualification that the requirements of section 76.504 will be satisfied upon consummation of the transactions.

316. IT IS FURTHER ORDERED that Comcast's request for approval to acquire, upon consummation of the transactions, ownership interests in entities holding cable systems and related assets, in exchange for its interests in Time Warner and TWE, hitherto held in trust, is granted. This grant of

<sup>912</sup> Public Interest Statement at 5 n.9.