

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

**In the Matter of** )  
)  
Applications for Consent to the Assignment )  
and/or Transfer of Control of Licenses )  
)  
Adelphia Communications Corporation )  
(and subsidiaries, debtors-in-possession), Assignors, )  
to )  
Time Warner Cable Inc. (subsidiaries), Assignees; ) MB Docket No. 05-192  
)  
Adelphia Communications Corporation )  
(and subsidiaries, debtors-in-possession), )  
Assignors and Transferors, )  
to )  
Comcast Corporation (subsidiaries), Assignees and Transferees; )  
)  
Comcast Corporation, Transferor, )  
to )  
Time Warner Inc., Transferee; )  
)  
Time Warner Inc., Transferor, )  
to )  
Comcast Corporation, Transferee. )

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Pursuant to Section 1.106(g) of the Commission's rules, 47 C.F.R. § 1.106(g), Adelphia Communications Corporation ("Adelphia"), Time Warner Inc. ("Time Warner"), and Comcast Corporation ("Comcast") (collectively, the "Parties") hereby submit this opposition to the petition for reconsideration ("Petition") filed by IBC Worldwide, Ltd. ("IBC") in the above-captioned proceeding. As demonstrated below, IBC's Petition is both procedurally defective and completely lacking in substantive merit and should be summarily dismissed by the Commission.

## ARGUMENT

The entire basis of IBC's Petition is that, in approving the transactions at issue in this proceeding, the "Commission failed in any way to consider and discuss the matters raised in [IBC's] Comments and Reply Comments" and, thus, the Commission's action was "arbitrary and capricious, and in direct violation of the Administrative Procedure Act, the Communications Act of 1934, as amended (Communications Act), and its own Rules and Regulations." Pet. at 1-2. In fact, however, a review of the Commission's *Memorandum Opinion and Order ("MO&O")*<sup>1</sup> reveals that IBC's characterization of the Commission's action is simply and plainly wrong. The Commission expressly considered, discussed, and disposed of IBC's Comments and Reply Comments in the *MO&O*; as a result, IBC's Petition should be summarily dismissed.<sup>2</sup>

Specifically, at paragraph 104 of the *MO&O*, the Commission described IBC's "concerns regarding nationally distributed ethnic programming" and its allegation that Comcast had become a "gatekeeper" of Hispanic programming content. In response to this and other allegations of potential public interest harm relating to unaffiliated programming, the Commission noted the availability of commercial leased access as a vehicle for unaffiliated programmers to obtain carriage and adopted as a condition of its approval of the transactions an arbitration mechanism for resolving certain commercial leased access disputes. *MO&O* at ¶ 109. The Commission found that such arbitration,

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<sup>1</sup> FCC 06-105 (rel. July 21, 2006).

<sup>2</sup> Independent grounds exist for dismissing the Petition because IBC failed to serve copies on the Parties as required by Section 1.106(f) of the Commission's rules. 47 C.F.R. § 1.106(f) (a petition for reconsideration "shall be served upon the parties to the proceeding"). IBC was required to make such service "by or before the day" on which the Petition was filed and to file proof of such service. 47 C.F.R. § 1.47(b),(g). IBC's failure to comply with these requirements justifies dismissal of its Petition. See, e.g., *Charter Communications*, 14 FCC Rcd 13511 (CSB, 1999). See also *AT&T Corp. v. Business Telecom, Inc., et al*, 16 FCC Rcd 21750 (2001); *Application of AT&T Wireless PCS, Inc.*, 15 FCC Rcd 12887 (WTB, 2000).

together with other “remedial” conditions adopted in the *MO&O*, should “mitigate any potential harm affecting programming supply.” *Id.*<sup>3</sup>

Similarly, at paragraph 214 of the *MO&O*, the Commission cited IBC’s proposal for the imposition of a condition that would “require Comcast and Time Warner to program their set-top boxes to be Internet-accessible and to devote one cable channel to Internet access via television.” The Commission weighed IBC’s arguments, along with other allegations that the transactions would give Comcast and/or Time Warner the incentive to engage in conduct that is harmful to consumers or competition with respect to the delivery of Internet content, services, or applications, but after thorough consideration found them to be lacking in merit “given the competitive nature of the broadband market.” *MO&O* at ¶¶ 217-225.

Thus, there simply is no basis for IBC’s contention that the Commission arbitrarily and capriciously failed to review its Comments and Reply Comments. The Commission has repeatedly made it clear that reconsideration is appropriate only where the petitioner shows that there is a material error or omission in the original order or where it raises additional facts not known or existing until after the petitioner’s last opportunity to present such matters.<sup>4</sup> The Commission has also stated that “reconsideration will not be granted for the purposes of again debating matters on which

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<sup>3</sup> To the extent IBC’s Petition contains generalized allegations regarding the impact of the transactions on vertical and horizontal integration in the cable industry, such concerns were addressed at length in the *MO&O*. See, e.g., Sections IV.C and IV.D of the *MO&O*.

<sup>4</sup> See, e.g., *Petition for Reconsideration by National Association of Broadcasters of Memorandum Opinion and Order Regarding Section 312(a)(7) of the Communications Act*, 18 FCC Rcd 24414 (2003) citing *WWIZ, Inc.*, 37 F.C.C. 685, 686 (1964), *aff’d sub nom., Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

[it] has already deliberated and spoken.”<sup>5</sup> Because IBC’s Petition does nothing more than repeat the same arguments that the Commission plainly considered and addressed in the *MO&O*, the appropriate action is for the Commission to summarily dismiss the Petition.

### CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Commission promptly and summarily dismiss IBC’s Petition for Reconsideration.

Respectfully submitted,

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<sup>5</sup> *Isis Broadcast Group, et al.*, 8 FCC Rcd 24 (Rev. Bd. 1992). See also *Landlinx Communications*, 15 FCC Rcd 24932 (WTB, 2000) (summarily denying previously considered arguments in petition for reconsideration).

**CERTIFICATE OF SERVICE**

I, Jennifer M. Walker, assistant to Mr. Davidson of Fleischman and Walsh, L.L.P., hereby certify that copies of the foregoing "Opposition to Petition for Reconsideration" were served this 29<sup>th</sup> day of August, 2006, via first-class mail, postage prepaid, upon the following:

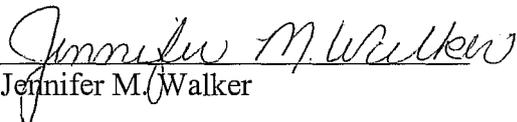
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