

250 miles away.<sup>42</sup> Likewise, in southwestern Wyoming, TWC offers Fox Sports Net Rocky Mountain on an expanded basic tier and thereby makes the network's Colorado Rockies games available to nearly all subscribers, despite the fact that the Rockies' home in Denver is some 330 miles away.<sup>43</sup> These distances are comparable to – and, in many instances, greater than – the roughly 200 to 350 miles that separate North Carolina's principal television markets and Baltimore and Washington, D.C., and none of those RSNs carries the quantity of MLB programming that MASN offers, or a unique franchise such as the Nationals that is based in the nation's capital. These and numerous other examples<sup>44</sup> give good reason to doubt TWC's claim that its refusal to carry MASN is based on North Carolina's "extended inner" market status or TWC's simple business judgment. Indeed, the main factor that differentiates the numerous examples taken from other "extended inner" MLB markets within TWC's national footprint from the situation in North Carolina is that TWC has an affiliated RSN to protect in the latter.<sup>45</sup>

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<sup>42</sup> See Time Warner Cable, *Time Warner Cable of Pontotoc – Channel Line Up*, <http://www.timewarnercable.com/CustomerService/CLU/TWCCLUs.ashx>; TV Guide, *Listings for Pontotoc County – Time Warner*, <http://www.tvguide.com/listings/default.aspx> (5/22/2007 – 5/24/2007).

<sup>43</sup> See Time Warner Cable, *Channel Line Up: Time Warner Cable – Evanston*, <http://www.timewarnercable.com/CustomerService/CLU/TWCCLUs.ashx>; TV Guide, *TV Listings for Evanston – Time Warner*, <http://www.tvguide.com/listings/default.aspx>.

<sup>44</sup> Other examples, all of which are taken from TWC's own website, include: TWC's systems in southwestern Kansas, which carry Fox Sports Midwest on expanded basic and thus provide broad access to Kansas City Royals games some 370 miles away; TWC's systems in southeastern Alabama, which carry Fox Sports South on expanded basic, providing broad access to Atlanta Braves games some 230 miles away; TWC's systems in northeastern Oklahoma, which carry Fox Sports Net South on expanded basic and thereby provide broad access to Texas Rangers and Houston Astros games some 250 and 450 miles away, respectively; and TWC's systems throughout Hawaii, which carry Fox Sports Net West on expanded basic and thus provide broad access to L.A. Dodgers and Anaheim Angels games some 2500 miles away. See generally *Channel Line-Up and Programming Guide* (for various TWC systems and zip codes), available at <http://www.timewarnercable.com>.

<sup>45</sup> Upon information and belief, TWC owns an interest in at least three RSNs in addition to News Channel 14. These include: (1) Time Warner SportsNet, an RSN based in Rochester that airs mostly collegiate and minor-league professional baseball, see Time Warner Cable – Rochester Press Release, *Time Warner Cable Announces the Launch of Its Newest Network* (Dec. 8, 2006), available at <http://www.timewarnercable.com/InvestorRelations/PressReleases/TWCPressReleaseDivDetail.ashx?PRID>

Third, shutting MASN out of North Carolina would benefit a planned baseball channel in which TWC maintains an equity interest. The cable television group iN DEMAND – composed of industry giants TWC, Comcast, and Cox Communications – recently struck a deal to carry MLB’s Extra Innings, a premium sports package that allows a subscriber to view a wide range of out-of-market MLB games throughout the season.<sup>46</sup> In return, the iN DEMAND trio, including TWC, agreed to carry the MLB Channel on its basic programming tiers upon the channel’s projected launch in 2009.<sup>47</sup> The iN DEMAND group also reportedly obtained a 16 percent equity interest in MLB’s planned network. The iN DEMAND deal provides substantial incentives for TWC to limit MASN’s subscriber reach by placing it on a digital programming tier or to force MASN out of North Carolina altogether. Wyche Decl. ¶ 24. Baseball fans who subscribe to TWC would be less likely to watch the MLB Channel and less willing to pay for Extra Innings if they have access, through MASN, to most or all of the games played by the “home team” Orioles and Nationals. *Id.* In addition, the Orioles and Nationals play, and MASN broadcasts, dozens of games against popular out-of-market teams like the Boston Red Sox and the New York Yankees. *Id.* MASN’s airing of in excess of 300 Orioles and Nationals games makes the MLB Channel and the Extra Innings package less attractive to TWC’s subscribers in North Carolina. *Id.* For both reasons, MASN poses a

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=1464&MarketID=54; (2) Metro Sports, based in Kansas City, which airs Kansas City Royals games via an agreement with the Royals Sports Television Network, *see* <http://kcmetrosports.com/info/>; and (3) SportsNet New York, a jointly own RSN (of which TWC owns 26.8 percent) operating in New York that telecasts New York Mets games, *see Adelpia Order* ¶ 10 n.46.

<sup>46</sup> *See* MLB to Keep ‘Extra Innings’ on Cable, *available at* [http://www.cbsnews.com/stories/2007/04/04/business/main2649774.shtml?source=RSSattr=Entertainment\\_2649774](http://www.cbsnews.com/stories/2007/04/04/business/main2649774.shtml?source=RSSattr=Entertainment_2649774).

<sup>47</sup> *See* Barry M. Bloom, MLB.com, *MLB Reaches iN DEMAND Deal* (Apr. 4, 2007), [http://mlb.mlb.com/content/printer\\_friendly/mlb/y2007/m04/d04/c1880145.jsp](http://mlb.mlb.com/content/printer_friendly/mlb/y2007/m04/d04/c1880145.jsp) (“Those cable operators that agree to carry the product would also be required to offer the new MLB channel on its basic tier when it is launched in 2009.”).

significant competitive threat to the value that TWC can hope to extract from its recent Extra Innings deal and its equity interest in the MLB Channel.

Finally, TWC's discrimination against MASN constitutes retaliation for its success in persuading the FCC to impose conditions on TWC and Comcast in the *Adelphia Order*. Ever since MASN first requested carriage nearly two years ago, at approximately the same time the Adelphia merger proceeding began, TWC has failed to conduct the same type of good-faith negotiations and give MASN the same serious consideration as have other major MVPDs. Indeed, once the Adelphia proceeding commenced, TWC refused to engage in meaningful negotiations with MASN. Negotiations resumed only after the FCC issued the *Adelphia Order*. TWC's retaliatory treatment of MASN is discriminatory, because it is not how TWC would treat, and does treat, its own RSNs, both the one centered in North Carolina and those based elsewhere.

TWC Has Refused Carriage to MASN To Protect and Enhance the Value of the Atlanta Braves Franchise at the Expense of the Orioles and Nationals

TWC also has refused carriage to MASN to promote the value of the Atlanta Braves franchise at the expense of the Orioles and Nationals. Although TWC recently completed its sale of the Braves franchise to Liberty Media, on information and belief, TWC retains long-term contractual obligations to protect the value of the Braves franchise under warranties and representations that are a standard part of such deals. In the western part of North Carolina, the Orioles and Nationals share their television territory with the Braves and the Reds. The Braves are currently carried on Fox Sports Net South and also SportSouth, the RSN that Time Warner previously owned but that Fox acquired in May 2006. Although TWC no longer owns a direct interest in SportSouth, Time Warner's recent ownership of the Braves gives TWC a strong interest

in promoting the success of SportsSouth and the Braves, much as if it were still an owner. Thus, while MLB has decreed that the Braves, Reds, Nationals, and Orioles should share western North Carolina, TWC has an ongoing interest in giving the Braves exclusive access to that market. By denying broad carriage to MASN, TWC functionally increases the size of the television audience for the Braves, which in turn increases the value of the Braves' television rights and the team's franchise value.

By refusing to carry MASN in eastern North Carolina, TWC also strengthens the value of the Braves in the eastern part of the state, as it places them on the same competitive footing as the Orioles and Nationals, even though MLB has specifically stated that eastern North Carolina constitutes the exclusive home territory of the Orioles and Nationals. By refusing carriage to MASN in that region, TWC will impede the ability of the Orioles to retain and grow their fan base and the Nationals to develop a fan base throughout North Carolina. As the other team that shares an adjoining area (western North Carolina), the Braves are the team most likely to benefit financially from TWC's effort to thwart the growth in popularity of the Orioles and Nationals in the eastern part of the state.

#### The Carriage Terms Proposed by MASN Are Reasonable

TWC does not have a legitimate business justification for its refusal to carry MASN. In its January 3 letter, TWC states that "there is no significant interest among that customer base in receiving, or paying for, MASN, which has as its anchor programming Washington Nationals and (starting in 2007) Baltimore Orioles baseball games."<sup>48</sup> Similarly, TWC's May 16 letter states that TWC is "unconvinced that

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<sup>48</sup> TWC Jan. 3, 2007 Letter.

MASN's programming will be sufficiently popular in North Carolina to justify adding it to [a basic or expanded basic] tier."<sup>49</sup>

TWC's claim that North Carolina residents lack interest in MASN's programming has no merit. RSN programming is acknowledged by the FCC to be "must-have" programming because of the unique nature of live sporting events. Experience shows that consumers in North Carolina are interested in receiving MASN's programming. For several years before the launch of MASN, TWC carried the Orioles games on a basic programming tier, when those games were produced by Comcast SportsNet and licensed to Fox Sports Net South. Given that TWC itself previously agreed to carry Orioles games on a basic programming tier, there is no credibility to TWC's claims that fan interest is now inadequate to support a continuation of such distribution for Orioles games, or distribution only on an expensive digital tier, now that MASN is producing those games. To the contrary, as explained above, MASN will not only offer many more Orioles games than TWC has agreed to carry in the past, but also will show a second hometown baseball team based in the nation's capital, the Nationals. In addition, SportsSouth, an RSN that TWC carries on expanded basic throughout its North Carolina cable systems, expressed interest in carrying Orioles and Nationals games in the event that MASN's North Carolina launch did not go forward. Finally, MASN has the rights to stock car racing and college basketball in North Carolina, both of which traditionally are popular programming in the state. Wyche Decl. ¶ 8; Cuddihy Decl. ¶ 10.

As noted above, TWC's treatment of other RSNs outside North Carolina provides still more evidence that MASN's carriage request is reasonable. In nearly a dozen

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<sup>49</sup> TWC May 16, 2007 Letter at 2.

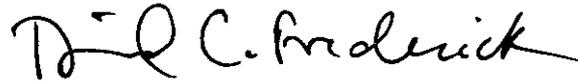
television markets outside of North Carolina that have “extended inner” market conditions similar to those at issue here, TWC is providing unaffiliated RSNs carriage on its basic or expanded tier in those markets. The only material difference between those markets and this one is that TWC does not have an affiliated RSN to protect in those markets, as it does in North Carolina.

Finally, as each of the other major MVPDs in North Carolina has concluded, the rates proposed by MASN are reasonable in light of the popularity and value of the programming that MASN offers and will offer in the future. *Every other* major MVPD in MASN’s North Carolina Territory other than TWC has agreed to carry MASN. These other MVPDs include DirecTV, the second largest MVPD in North Carolina and the country; EchoStar, the third largest MVPD in North Carolina and the fourth largest in the country; Charter Cable, the second largest cable operator in North Carolina and the third largest in the country; and MediaCom, the sixth largest cable operator in MASN’s North Carolina Territory and the eighth largest in the country. The fact that these other cable and satellite providers have accepted MASN’s terms further demonstrates that MASN’s offer is reasonable, and that a significant market exists in North Carolina for MASN’s programming. Indeed, a TWC representative told MASN that they view MASN’s rate card for North Carolina as fair and reasonable. *See Declaration of David Gluck ¶ 7* (attached hereto as Exhibit M).

**REQUESTED RELIEF**

MASN requests that TWC be ordered to carry MASN according to the terms set forth in the attached “final offer.”<sup>50</sup>

Respectfully submitted,



David C. Frederick  
Evan T. Leo  
*Counsel for TCR*

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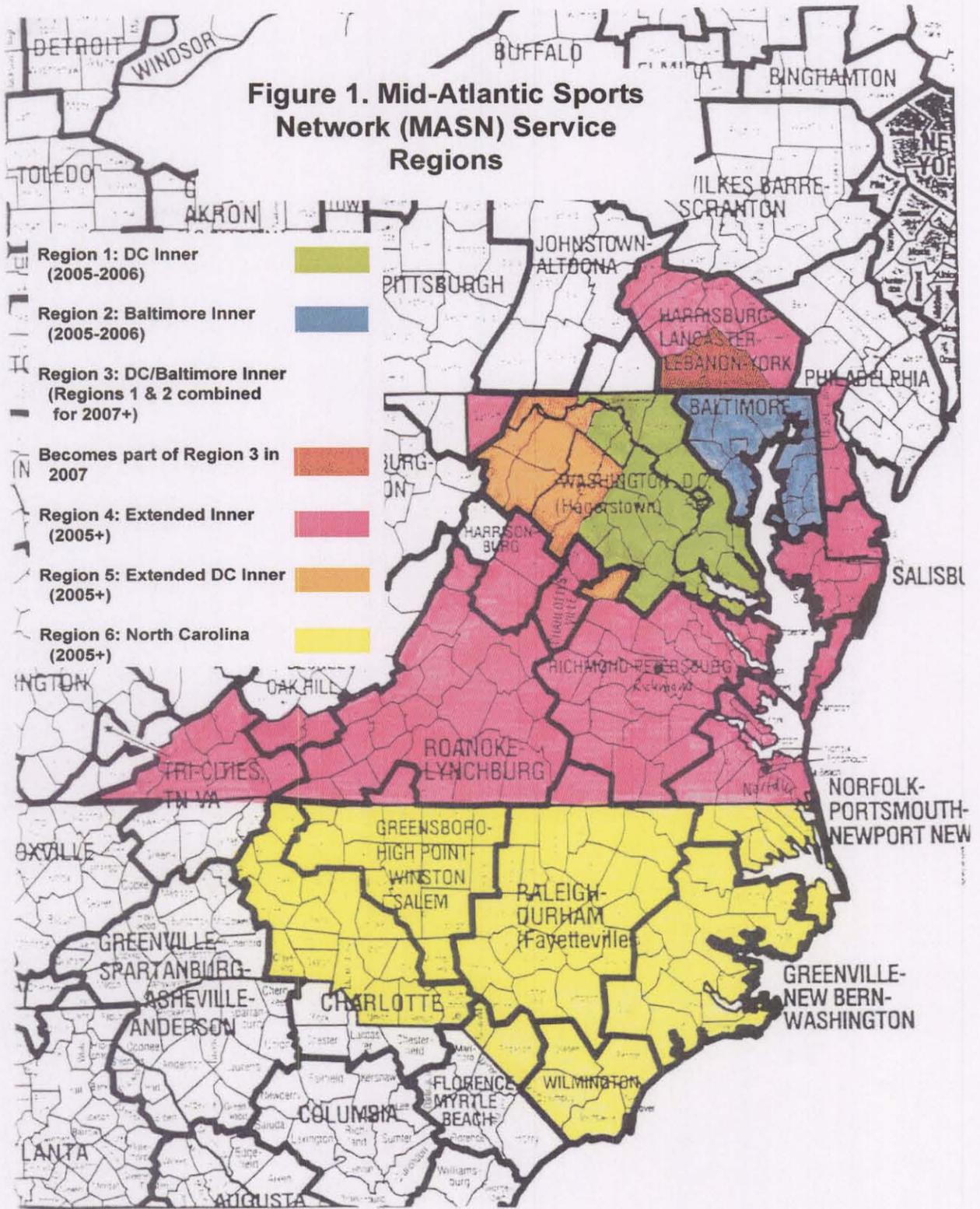
<sup>50</sup> Consistent with the *Adelphia Order*, TWC should immediately be notified of the arbitration demand and required to provide its alternate “final offer” within two days. TWC should not be allowed to see the terms requested by MASN in its “final offer” until TWC has submitted its proposal. *See Adelphia Order App. B, § B(2)(i)*. For that reason, MASN is serving this demand for arbitration on TWC without the attached final offer.

# EXHIBIT A

[MASN's Final Offer for Arbitration Omitted Pursuant  
to the Confidentiality Provisions of the *Adelphia Order*]

# EXHIBIT B

**Figure 1. Mid-Atlantic Sports Network (MASN) Service Regions**



# **EXHIBIT C**

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	)	MB Docket No. 05-192
	)	
Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors,	)	
to	)	
Time Warner Cable Inc. (subsidiaries), Assignees;	)	
	)	
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	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 13, 2006**

**Released: July 21, 2006**

By the Commission: Chairman Martin, and Commissioners Tate and McDowell issuing separate statements; Commissioner Copps dissenting and issuing a statement; and Commissioner Adelstein approving in part, dissenting in part and issuing a statement.

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## I. INTRODUCTION

1. In this Order, we consider the applications (“Applications”)<sup>1</sup> of Adelphia Communications Corporation and subsidiaries, debtors-in-possession (“Adelphia”), Time Warner Inc. (“Time Warner”), Time Warner Cable Inc. (“Time Warner Cable”),<sup>2</sup> and Comcast Corporation (“Comcast”) for consent to the acquisition by Time Warner Cable and Comcast of substantially all of the domestic cable systems owned or managed by Adelphia.<sup>3</sup> The Applications are filed pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (“Communications Act” or “Act”),<sup>4</sup> and seek Commission consent to a number of license transfers related to a series of separate transactions<sup>5</sup> that would result in (1)

<sup>1</sup> Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors, to Time Warner Cable Inc., Assignees; Adelphia Communications Corporation, Assignors and Transferors, to Comcast Corporation, Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee, Applications and Public Interest Statement (May 18, 2005) (“Public Interest Statement”). The term “Applications” refers to the Public Interest Statement, associated exhibits, and the letter from Arthur H. Harding, Fleischman and Walsh, L.L.P., Counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, FCC (June 3, 2005) (additional agreements relating to the underlying transactions). In addition, the Applicants filed amended asset purchase agreements pursuant to Adelphia’s Second Modified Fourth Amended Plan of Reorganization. *See* Letter from Angie Kronenberg, Willkie, Farr & Gallagher LLP, Counsel for Adelphia Communications Corp., to Marlene H. Dortch, Secretary, FCC (June 8, 2006). The Media Bureau placed the Applications on public notice on June 2, 2005, DA 05-1591, MB Docket No. 05-192, establishing a comment cycle for this proceeding. *See* Appendix A for a list of commenters and petitioners filing in this proceeding and the abbreviations by which they are identified in this Order. As discussed more fully at para. 16, *infra*, the Applications involve assignment of licenses, transfers of control, and *pro forma* assignment of licenses. For convenience, we will refer to the overall filings as transfers.

<sup>2</sup> As used throughout this Order, the term “Time Warner” will refer generally to both Time Warner Inc. and its subsidiary, Time Warner Cable.

<sup>3</sup> Public Interest Statement at 2. The so-called “Rigas Family” systems in the following communities are not subject to the transactions Township of Roulette, Township of Liberty, Township of Annin, Township of Portgage, Township of Shippen and Township of Lumber, all in Pennsylvania; Borough of Coudersport, Borough of Port Allegany and Borough of Emporium, all in Pennsylvania; and the County of Louisa, Virginia. *See* Adelphia Dec. 12, 2005 Response to Information Requests II.A.1, 3, 7, 8 and 9. In addition, Adelphia stated that its systems in St. Mary’s, Pennsylvania and Puerto Rico are not part of the transactions. Adelphia Dec. 12, 2005 Response to Information Request II.A.2; *see also* Public Interest Statement at 6 n.12. In a filing with the federal bankruptcy court, Adelphia represented that its 50% interest in a joint venture in Puerto Rico was sold on October 31, 2005. *See* Debtors’ Fourth Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code, U.S. Bankruptcy Court Southern District of New York, Case No. 02-41729, filed Nov. 21, 2005, at 60, 436. (“Fourth Amended Disclosure Statement”). *See* Adelphia Dec. 12, 2005 Response to Information Request for a listing of the Adelphia cable systems involved in the Applications.

<sup>4</sup> 47 U.S.C. §§ 214, 310(d).

<sup>5</sup> The Applicants state that each of the Adelphia Transactions, as described more fully below, is “conditioned on contemporaneous consummation of the other.” *See* Public Interest Statement at 3. The Applicants add that the Adelphia Transactions are not dependent on the occurrence of the system swaps and redemption transactions between Time Warner and Comcast. *Id.* The transactions are described fully at paras. 11-16, *infra*.

the sale of certain cable systems and assets of Adelphia to subsidiaries or affiliates of Time Warner; (2) the sale of certain cable systems and assets of Adelphia to subsidiaries or affiliates of Comcast; (3) the exchange of certain cable systems and assets between affiliates or subsidiaries of Time Warner and Comcast; and (4) the redemption of Comcast's interests in Time Warner Cable and Time Warner Entertainment Company, L.P. ("TWE").<sup>6</sup> As discussed more fully below, the Applicants assert that approval of the Applications would result in a number of public interest benefits, would not create any anticompetitive effects, and would be fully consistent with Commission rules and policies, including the Commission's remanded cable horizontal and vertical ownership limits.

2. According to the Applicants, Comcast would serve approximately 26.8 million subscribers, or 28.9% of all U.S. multichannel video programming distribution ("MVPD") subscribers as a result of the transactions. This would represent a net gain of approximately 680,000 subscribers, or 0.73% of U.S. MVPD subscribers, over Comcast's pre-transaction reach of 26.1 million subscribers, or 28.2% of U.S. MVPD subscribers. Time Warner would serve approximately 16.6 million subscribers post-transaction, or 17.9% of U.S. MVPD subscribers, representing a gain of approximately 3.5 million subscribers over its pre-transaction total of 13.1 million subscribers. Comcast would have more consolidated franchised operations in Southern Florida, including West Palm Beach; Minnesota; New England, including Boston; Pennsylvania, including Philadelphia and Pittsburgh; and the mid-Atlantic region of Washington, D.C., Maryland and Virginia.<sup>7</sup> Time Warner Cable would further consolidate its operations in Southern California, including Los Angeles; Maine; Western New York; North Carolina; Ohio, including Cincinnati, Cleveland, and Columbus; South Carolina; and Texas, including Dallas.<sup>8</sup> As part of the initial phase of this transaction, Time Warner and Comcast separately would acquire Adelphia's cable assets, primarily consisting of cable systems serving approximately five million subscribers, for \$12.7 billion in cash. Comcast would pay approximately \$3.5 billion in cash. Time Warner would pay approximately \$9.2 billion in cash. In addition, Time Warner Cable would issue publicly traded securities, approximately 16% of which would be issued to Adelphia stakeholders, with the remaining 84% to be held by Time Warner.<sup>9</sup>

3. The Applicants state that the transactions would generate substantial public interest benefits that are not otherwise achievable.<sup>10</sup> Specifically, the claimed benefits include (1) accelerated deployment of advanced services (e.g., high definition television ("HDTV"), high-speed data, video on demand ("VOD"), digital video recorders, and telephony) to customers currently served by Adelphia; (2) enhanced geographic rationalization (or "clustering") resulting both from the acquisition of Adelphia's systems and the system swaps between Comcast and Time Warner Cable, which would produce cost-saving operational, infrastructure, and marketing efficiencies; (3) Adelphia's emergence from bankruptcy and settlement of creditor claims; and (4) dissolution of Comcast's interests in TWE and Time Warner Cable consistent with the Commission's divestiture order.<sup>11</sup> The Applicants further state that the improved regional coverage of each company's cable operations would provide the scale and scope

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<sup>6</sup> Pursuant to the terms of the Commission's decision regarding the *Comcast-AT&T* transaction, Comcast must divest its 17.9% equity interest in Time Warner Cable and its 4.7% limited partnership interest in TWE. Both interests are currently held in a Commission-mandated trust. *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, 17 FCC Rcd 23246, 23274-75 ¶¶ 74-77 (2002) ("*Comcast-AT&T Order*"). See *infra* paras. 13-14 for a discussion of the proposed divestiture of the TWC and TWE Interests.

<sup>7</sup> Public Interest Statement at 5-6 and Ex. R (Map and Chart of Comcast Post-Transactions Service Areas).

<sup>8</sup> *Id.* at 5-6 and Ex. Q (Map of Time Warner Post-Transactions Service Areas).

<sup>9</sup> See *infra* paras. 11-16 for a full discussion of various phases of the transactions.

<sup>10</sup> Public Interest Statement at i-iv.

<sup>11</sup> See *Comcast-AT&T Order*, 17 FCC Rcd at 23274-75 ¶¶ 74-77.

necessary for them to compete more effectively with the substantially larger service footprints of direct broadcast satellite (“DBS”) providers and incumbent local exchange carriers (“incumbent LECs”).<sup>12</sup> The Applicants assert that the public interest benefits resulting from the transactions are not otherwise obtainable because no other potential cable system operator can offer the efficiencies that Time Warner Cable and Comcast, based on the location of their current cable systems, are uniquely able to bring to the Adelphia properties through regionalized management and operation.<sup>13</sup> According to the Applicants, while other potential purchasers of the Adelphia assets might bring a measure of improved performance and innovation to the systems, only Comcast and Time Warner Cable have the combination of capabilities, geographic correlation to Adelphia’s systems, and proven track record necessary to maximize such benefits. The Applicants assert that, like the acquisition of the Adelphia systems, the swaps of systems between Time Warner Cable and Comcast will lead to greater “geographic rationalization” of the Applicants’ cable systems, which they assert will provide various public interest benefits.<sup>14</sup>

4. To obtain Commission approval, the Applicants must demonstrate that the proposed transactions will serve the public interest, convenience, and necessity pursuant to sections 214 and 310(d) of the Communications Act.<sup>15</sup> The Commission’s review of the applications includes an assessment of whether the proposed transactions comply with specific provisions of the Communications Act, other statutes, and the Commission’s rules.<sup>16</sup> If the transactions would not violate a statute or rule, the Commission next considers whether the transactions could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.<sup>17</sup> The Commission generally weighs any potential public interest harms of proposed transactions against any potential public interest benefits.<sup>18</sup> Applicants have the burden of proving, by a preponderance of the evidence, that the proposed transactions, on balance, serve the public interest.

5. Based on the record before us, and as discussed more fully below, we find that the grant of the Applications, as conditioned, serves the public interest. First, we find that the proposed transactions will comply with all applicable statutes and Commission rules. Second, we find that the potential public interest harms of the proposed transactions, as conditioned, are outweighed by the potential public interest benefits. In regard to the potential harms, we find that the proposed transactions may increase the likelihood of harm in markets in which Comcast or Time Warner have, or may have in the future, an ownership interest in Regional Sports Networks (“RSNs”). The transactions may also trigger harms in the carriage of unaffiliated programming. Therefore, we impose remedial conditions to address our concerns. We do not find that the transactions will lead to any other public interest harms. We also find that the transactions likely will result in certain public interest benefits. More specifically, we find that the transactions are likely to accelerate deployment of Voice over Internet Protocol (“VoIP”) service and advanced video services, such as local VOD programming, in Adelphia markets, and facilitate the

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<sup>12</sup> Public Interest Statement at 21-40, 45-60.

<sup>13</sup> *Id.* at 68.

<sup>14</sup> *Id.* at ii-iii; *see infra* Section VIII (discussing claimed benefits).

<sup>15</sup> *See* 47 U.S.C. §§ 214, 310(d); *see also Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, 15 FCC Rcd 9816, 9817 ¶ 1 (2000) (“*AT&T-MediaOne Order*”); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, 14 FCC Rcd 3160, 3168 ¶ 13 (1999) (“*AT&T-TCI Order*”).

<sup>16</sup> *See General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, 19 FCC Rcd 473, 484 ¶ 16 (2004) (“*News Corp.-Hughes Order*”).

<sup>17</sup> *See infra* paras. 23-24 for a complete discussion of the Commission’s standard of review analysis.

<sup>18</sup> *News Corp.-Hughes Order*, 19 FCC Rcd at 477 ¶ 5.

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 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 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. 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.).

subscribers in 35 states and the District of Columbia, or 28.2% of MVPD subscribers nationwide.<sup>24</sup> Of these, approximately 21.5 million were served as of that date by Comcast's wholly owned cable systems, and approximately 4.6 million were served by systems owned jointly by Comcast and other cable operators.<sup>25</sup> Comcast states that upon completion of the transactions, it will serve approximately 26.8 million cable subscribers, or 28.9% of MVPD subscribers.<sup>26</sup> Approximately 23.3 million of these subscribers will be served by wholly owned systems, and 3.5 million will be served by systems owned jointly with others.<sup>27</sup> Although Comcast expects to add approximately 1.8 million subscribers served by wholly owned systems through the transactions, its total number of subscribers served through jointly owned systems will decrease by approximately 1.1 million, for a net increase of 680,000 attributable subscribers, or 0.73% of U.S. MVPD subscribers.<sup>28</sup> As a result of the acquisition of Adelphia systems and the cable system swaps with Time Warner, Comcast will consolidate its regional footprints in Pennsylvania; Minnesota; Southern Florida; the mid-Atlantic region of Washington, D.C., Maryland, and Virginia; and New England.

8. In addition to basic cable service, Comcast offers premium movie channels, pay-per-view ("PPV") services, HDTV, VOD programming, DVR services, and interactive programming guides. Comcast provides facilities-based residential local telephone service to approximately 1.225 million customers.<sup>29</sup> Comcast's VoIP service, "Comcast Digital Voice," is currently available to approximately 19 million households in 30 markets.<sup>30</sup> Comcast owns attributable interests in nine national video programming networks,<sup>31</sup> eight regional sports networks ("RSNs"),<sup>32</sup> three team-specific networks,<sup>33</sup> and

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<sup>24</sup> Public Interest Statement at 73. The Applicants estimate in their Public Interest Statement that there are 92.6 million MVPD subscribers nationwide. *Id.* at 73 n.185 (citing Kagan Media Money, Apr. 26, 2005, at 7).

<sup>25</sup> These include systems owned jointly with Time Warner Cable, which together served approximately 1.5 million subscribers when the Applications were filed, as well as systems owned jointly with Adelphia, which served approximately one million subscribers as of that date. Applicants' Reply at Ex. F.

<sup>26</sup> Public Interest Statement at 73-75.

<sup>27</sup> *Id.* at 74 n.187.

<sup>28</sup> *Id.* at 75.

<sup>29</sup> *Id.* at 15.

<sup>30</sup> Letter from Martha Heller, Wiley, Rein & Fielding, LLP, Counsel for Comcast Corp., to Marlene H. Dortch, Secretary, FCC (Mar. 29, 2006) ("Comcast Mar. 29, 2006 Ex Parte") at 2. By the end of 2005, the service was available to 16 million homes. *Id.* In the Public Interest Statement, Comcast stated that by the end of 2005 the service would be available to over 15 million homes, with full deployment to over 40 million homes passed targeted for 2006. Public Interest Statement at 15. Comcast Business Communications ("CBC"), a wholly owned subsidiary, offers integrated broadband communications services to business and governmental customers, as well as to schools and libraries. CBC also provides local exchange service to small and medium-sized business customers. Comcast's cable telephony and CBC's business offerings include long distance service, provided mostly on a resale basis. Public Interest Statement at 15.

<sup>31</sup> These networks include (1) E! Entertainment (60.5% interest); (2) The Golf Channel (99.9% interest); (3) The Outdoor Life Network (100% interest); (4) The Style Network (60.5% interest); (5) G4 Network (83.5% interest); (6) TV One (32.8% interest); (7) AZN Television (100% interest); (8) iN DEMAND (54.1% interest); and (9) iN DEMAND2 (54.1% interest). Public Interest Statement at 15-16; *see also Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503, 2622-25 App. C, Table C-1 (2006) ("Twelfth Annual Video Competition Report").

<sup>32</sup> Comcast's RSNs include (1) Comcast SportsNet Philadelphia (84.1% interest), offered in Pennsylvania, Delaware, and southern New Jersey, which carries, among other programming, the games of the Philadelphia Flyers and 76ers; (2) Comcast SportsNet Mid-Atlantic (100% interest) offered in Maryland, Virginia, Delaware, the District of Columbia, and parts of Pennsylvania and West Virginia, which carries the games of the Baltimore Orioles, the Washington Wizards, and the Washington Capitals, as well as a variety of college sports; (continued...)

various other regional and local video programming networks.<sup>34</sup> Comcast holds a 54% interest in the iN DEMAND Networks, which provides high definition content, including VOD and PPV services, and a joint venture interest in PBS Kids Sprout, a new VOD service for preschool children that launched as a network in fall 2005.<sup>35</sup>

### C. Time Warner Inc.

9. Applicants state that as of May 18, 2005, Time Warner Cable owned or managed cable systems serving 13.1 million subscribers in 27 states, making it the nation's second largest cable MSO and third largest MVPD.<sup>36</sup> As a result of the transactions, it would add 3.5 million basic video subscribers and would own systems serving 16.6 million basic subscribers nationally, or 17.9% of MVPD subscribers.<sup>37</sup> Thus, Time Warner Cable expects to emerge as the second largest MVPD in the United

(Continued from previous page)

(3) Comcast/Charter Sports Southeast (70% interest), carried in Alabama, Arkansas (Little Rock area only), Florida, Georgia, Kentucky (Louisville, Lexington, south-central, Paducah and western), Louisiana, Mississippi, North Carolina (Asheville-Hickory area only), South Carolina (Greenville-Spartanburg area, Camden, and coastal South Carolina between Charleston and Port Royal), Tennessee, Virginia, and West Virginia, which provides a mix of live sports programming and sports news and analysis with a focus on intercollegiate sports; (4) Comcast SportsNet Chicago (30% interest), offered in Iowa, most of Illinois and Indiana, and parts of southern Wisconsin, which carries game coverage of the Chicago Bulls, Blackhawks, Cubs, and White Sox; (5) Comcast SportsNet West (100% interest), offered in parts of California, Oregon, and Nevada, which carries games of the Sacramento Kings and the WNBA Sacramento Monarchs, as well as Fresno State football, Sacramento State football, UC Davis football and basketball, and other local and regional sports programming; and (6) Comcast Local Detroit (100% interest), offered in Michigan, Illinois and Indiana, which carries local content including coverage of high school games, the Mid-American Conference, Michigan and Michigan State men's basketball games, and some Detroit Shock (WNBA) games. Public Interest Statement at 17-18, Ex. AA; *see also* [www.comcastlocal.com/channels.asp/](http://www.comcastlocal.com/channels.asp/) (visited June 16, 2006). Comcast also holds a 50% ownership interest in Fox Sports Channel New England, which carries Boston Celtics games and reaches households in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. In addition, Comcast has an 8.16% ownership interest in SportsNet New York, which launched in March 2006, and features regular season Mets games. *See* Comcast Mar. 29, 2006 Response to Information Request III.F.1.; Comcast Dec. 22, 2005 Response to Information Request III.A.1.; *see also* Public Interest Statement at 17 n.37; Mark Newman, *SportsNet New York Begins New Era*, Major League Baseball, Mar. 16, 2006, at [http://mlb.mlb.com/NASApp/mlb/news/article.jsp?ymd=20060315&content\\_id=1351407&vkey=news\\_mlb&text=jsp&c\\_id=mlb](http://mlb.mlb.com/NASApp/mlb/news/article.jsp?ymd=20060315&content_id=1351407&vkey=news_mlb&text=jsp&c_id=mlb) (last visited June 19, 2006).

<sup>33</sup> Comcast's team-specific networks are Falcons Vision, Braves Vision, and the Dallas Cowboys Channel. Public Interest Statement at 18.

<sup>34</sup> Comcast owns the following non-sports local and regional networks (1) cn8, The Comcast Network, which provides original local and regional news, public affairs, sports, and family programming in Pennsylvania, New Jersey, Delaware, Maryland, Massachusetts, New Hampshire, Connecticut and Maine (100% interest); (2) Comcast Entertainment TV, which is carried in Denver, Colorado (100% interest); (3) Comcast Local, which is carried in Detroit, Michigan (100% interest); (4) Pittsburgh Cable News Channel, carried in Pittsburgh, Pennsylvania (30% interest); and (5) New England Cable News (50% interest). *See* Comcast Mar. 29, 2006 Ex Parte at Att. ("Video Programming Networks in which Comcast has an Attributable Interest"); *see also* Public Interest Statement at 17.

<sup>35</sup> Public Interest Statement at 16-17. Comcast holds a 40% interest in PBS Kids Sprout. *See* Comcast Mar. 29, 2006 Response to Information Request III.F.1.

<sup>36</sup> Public Interest Statement at 9-11, 73. This subscriber figure includes 6.6 million subscribers served by systems that Time Warner Cable owns jointly with other cable operators, including systems co-owned with Comcast that serve 1.5 million subscribers, and systems owned jointly with the Time Warner Entertainment-Advance/Newhouse Partnership ("TWE-A/N"), which owns systems serving 5.1 million subscribers, of which systems serving 2.9 million subscribers are managed by Time Warner Cable. The remaining 2.2 million TWE-A/N subscribers are served by systems managed by Bright House Networks, an affiliate of Advance/Newhouse. All of the foregoing systems are attributable to Time Warner Cable.

<sup>37</sup> *Id.* at 73.

States. As a result of the transactions, Time Warner Cable would consolidate its regional operations in Western New York, Ohio, Texas, Southern California, Maine, North Carolina, and South Carolina.<sup>38</sup>

10. In addition to its cable systems, Time Warner's businesses include online interactive services, filmed entertainment, television networks, and publishing.<sup>39</sup> Time Warner provides basic cable programming, digital cable programming, HDTV, VOD, subscription video on-demand ("SVOD"), and DVR service.<sup>40</sup> Time Warner also provides high-speed Internet service to approximately 4.1 million residential subscribers, and it provides VoIP to approximately 500,000 subscribers.<sup>41</sup> Time Warner's America Online businesses include the AOL service, a subscription-based online service with more than 22.2 million members in the United States. In addition to AOL, America Online offers other interactive content and services such as AOL.com, AOL Instant Messenger, Moviefone, MapQuest, and Netscape.com.<sup>42</sup> Time Warner's television networks business consists of domestic and international basic cable networks, pay television programming services, and The WB broadcast television network.<sup>43</sup> Home Box Office, Inc., an indirect, wholly-owned subsidiary of Time Warner, operates Time Warner's pay television programming services, Home Box Office ("HBO") and Cinemax.<sup>44</sup> Time Warner also owns a number of 24-hour local news channels.<sup>45</sup> Additionally, Time Warner holds interests in several RSNs.<sup>46</sup>

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<sup>38</sup> *Id.* at 5-6.

<sup>39</sup> *Id.* at 11-13. Time Warner holds a 30.3% equity interest in iN DEMAND. *Id.* at 16 n.35.

<sup>40</sup> *Id.* at 9. In 2005, Time Warner Cable conducted an IPTV (i.e., Internet Protocol Television) trial in San Diego, California. The service, called "TWC Broadband TV," permits existing video customers to view 75 of the most popular channels on a broadband connected Windows personal computer within the subscriber's home. TWC Broadband TV is essentially a video simulcast service, as opposed to a new tier, because subscribers are receiving programming via their computers that they have previously paid for and can receive by traditional video delivery. See Letter from Arthur H. Harding, Fleischman and Walsh, L.L.P., Counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, FCC (Nov. 10, 2005) ("Time Warner Nov. 10, 2005 Ex Parte") at Decl. of Peter Stern at 2-3. Time Warner has also announced plans to develop a family tier.

<sup>41</sup> Public Interest Statement at 29, 30. Time Warner states that its VoIP service is available to over two-thirds of its cable homes passed. *Id.* at 29.

<sup>42</sup> *Id.* at 11.

<sup>43</sup> *Id.* at 12-13. In January 2006, CBS and Warner Brothers Entertainment announced the merger of their separately owned networks, The WB and UPN, to form a new broadcast television network, The CW. CBS and Warner Brothers Entertainment will each have a 50% interest in the new entity. See CBS Corp., *CBS Corporation and Warner Bros. Entertainment Form New 5th Broadcast Network*, Jan. 24, 2006, at <http://www.cbscorporation.com/news/prdetails.php?id=173> (last visited June 28, 2006). Through its Turner Broadcasting System Group, Time Warner Inc. holds a 100% interest in a number of programming services, including Boomerang, Cartoon Network, CNN, CNN *En Espanol*, CNN Headline News, CNN International, Turner Broadcasting System, Turner Classic Movies, Turner Network Television, and Turner Network Television HD. At the time of the filing of the instant Applications, Liberty Media and Time Warner each held a 50% interest in Court TV. In May 2006, Time Warner acquired Liberty Media's remaining 50% interest. See *Twelfth Annual Video Competition Report*, 21 FCC Rcd at 2622-25 App. C, Table C-1; see also Public Interest Statement at Ex. W; COMMUNICATIONS DAILY, May 15, 2006, at 11-12.

<sup>44</sup> Public Interest Statement at 12. In addition, Time Warner Inc. holds a 100% interest in the following programming services under the HBO Group, HBO, HBO2, HBO Comedy, HBO Family, HBO Latino, HBO Signature, HBO Zone, HBO HD, Cinemax, Cinemax HD, Action Max, @Max, 5StarMax, MoreMax, Outer Max, Thriller Max, and WMAX. *Twelfth Annual Video Competition Report*, 21 FCC Rcd at 2622-25 App. C, Table C-1.

<sup>45</sup> Time Warner Cable's local news channels include, Capital News 9-Albany, Albany, New York; News 8 Austin, Austin, Texas; News 10 Now-Syracuse, Syracuse, New York; News 14, Carolina-Charlotte, Charlotte, North Carolina; News 14, Carolina-Raleigh, Raleigh, North Carolina; NY1 News, New York, New York; NY 1 *Noticias*, New York, New York; and R News, Rochester, New York. See Time Warner Dec. 20, 2005 Response to Information Request III.A.

## D. The Proposed Transactions

11. *The Adelfphia Transactions.*<sup>47</sup> The proposed transactions involve a series of discrete agreements and transactions between and among the Applicants. First, pursuant to an asset purchase agreement between Adelfphia and Time Warner NY Cable, LLC<sup>48</sup> (“TWNY”) and a separate asset purchase agreement between Adelfphia and Comcast, TWNY and Comcast would each acquire portions of substantially all of the cable systems owned or operated by Adelfphia.<sup>49</sup> In exchange for systems serving approximately 3.7 million subscribers, Time Warner Cable would pay approximately \$9.2 billion in cash and would issue to Adelfphia stakeholders shares of Time Warner Cable’s Class A Common Stock, which are expected to represent approximately 16% of Time Warner Cable’s outstanding common equity.<sup>50</sup> Comcast would receive systems serving approximately 1.2 million subscribers and would pay approximately \$3.5 billion in cash.<sup>51</sup> The Applicants represent that each of the Adelfphia Transactions is (Continued from previous page) \_\_\_\_\_

<sup>46</sup> When the Applications were filed, Time Warner Inc. held, through its wholly-owned subsidiary, Turner Broadcasting System, Inc., a 100% interest in the regional network Turner South (distributed in Alabama, Georgia, Mississippi, Tennessee, South Carolina, and portions of North Carolina), which holds the distribution rights for several professional sports teams, including the Atlanta Thrashers National Hockey League team, the Atlanta Hawks National Basketball Association team, and the Atlanta Braves Major League Baseball team. Time Warner Inc. has since sold Turner South to Fox Networks Group, a subsidiary of the News Corp., for \$375 million. Turner South has approximately 8.3 million subscribers. See Letter from Arthur H. Harding, Fleischman and Walsh, L.L.P., Counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, FCC (Mar. 3, 2006) (“Time Warner Mar. 3, 2006 Ex Parte”); Joe Flint, *News Corp. Buys Turner South For \$375 Million*, WALL ST. J., Feb. 24, 2006, at B4. Additionally, through Time Warner Cable, Time Warner Inc. holds a 100% interest in MetroSports, Kansas City, Missouri. See *Twelfth Annual Video Competition Report*, 21 FCC Rcd at 2644-49 App. C, Table C-3; see also Time Warner Cable, [http://www.timewarner.com/corp/businesses/detail/time\\_warner\\_cable/](http://www.timewarner.com/corp/businesses/detail/time_warner_cable/) (last visited June 19, 2006). Time Warner Inc. also has an ownership interest (26.8%) in SportsNet New York, a New York City based sports channel that launched in March 2006. See Comcast Dec. 22, 2005 Response to Information Request III.A.1.; see also Arthur H. Harding, Fleischman and Walsh, L.L.P., Counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, FCC, (Mar. 2, 2006) (“Time Warner Mar. 2, 2006 Ex Parte”) at 5-6.

<sup>47</sup> We will use the term “Adelfphia Transactions” to refer to the initial phase of the overall transactions wherein Time Warner and Comcast separately would acquire various cable systems that, in the aggregate, comprise substantially all of the domestic cable systems owned or managed by Adelfphia.

<sup>48</sup> Time Warner NY Cable, LLC is a wholly-owned subsidiary of Time Warner Cable. Public Interest Statement at 2.

<sup>49</sup> See *id.* at Ex. A, Asset Purchase Agreement, dated as of April 20, 2005, between Adelfphia Communications Corp. and Time Warner NY Cable, LLC, and Ex. B, Asset Purchase Agreement, dated as of April 20, 2005, between Adelfphia Communications Corp. and Comcast Corp., each as amended pursuant to amendments dated June 24, 2005, June 21, 2006, and June 26, 2006.

<sup>50</sup> Public Interest Statement at 2-3; see also Letter from Arthur H. Harding, Fleischman and Walsh, L.L.P., Counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, FCC (Mar. 23, 2006) (“Time Warner Mar. 23, 2006 Ex Parte”) at Att. 1; Adelfphia Dec. 12, 2005 Response to Information Requests II.A.1, 3, 7, 8 and 9.

<sup>51</sup> Public Interest Statement at 3, 74. Of these, approximately one million subscribers are already attributable to Comcast via existing partnerships. *Id.*; see also Adelfphia Dec. 12, 2005 Response to Information Request II.A.6. According to Adelfphia’s Form 10-K Annual Report for the year ending Dec. 31, 2004, if Adelfphia’s purchase agreement with Comcast is terminated due to failure to receive Commission or other applicable antitrust regulatory approvals, TWNY has agreed to acquire the assets of Adelfphia that Comcast would have acquired and to apply for Commission and other regulatory approvals. This agreement, referred to as the “Expanded Transaction,” stipulates that TWNY will pay the \$3.5 billion purchase price to have been paid by Comcast, and that the Comcast subsidiaries that hold direct interests in the Century-TCI/Parnassos Partnerships will contribute the Comcast Discharge Amount, valued at between \$549 million and \$600 million, to the Century-TCI/Parnassos Partnerships. Thereafter, the Century-TCI/Parnassos Partnerships would distribute their respective portions of the Comcast Discharge Amount to the Company’s subsidiaries that hold a direct interest in such Century-TCI/Partnerships. See Adelfphia Report on Form 10-K for the Year Ending Dec. 31, 2004 at 36-37; see also Public Interest Statement at Exs. H and M.

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 Adelphia 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 Adelphia 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 Adelphia 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.* Prior to consummation of the Adelphia 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, the Time Warner Cable subsidiary would hold \$1.9 billion in cash.<sup>58</sup>

14. *TWE Redemption Transaction.* 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 located in or

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<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 Rcd at 23274-75 ¶¶ 74-77.

<sup>57</sup> Public Interest Statement at 3; *id.* at Ex. A, Asset Purchase Agreement between Adelphia Communications Corp. and Time Warner NY Cable LLC, Section 2.8, at 53; see also Time Warner Dec. 12, 2005 Response to Information Request. Time Warner Cable updated information regarding subscriber totals involved in each transaction 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.

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

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 addition to initial and reply

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<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 Red 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 Red 10751 (MB 2005) (“*Initial Protective Order*”).

comments, parties filed six petitions to deny.<sup>64</sup> The Commission has also received over 26,172 informal comments. On December 5, 2005, the Chief of the Media Bureau requested additional information from the Applicants.<sup>65</sup> Applicants' separately filed responses to those requests are included in the record.<sup>66</sup>

18. *Standing/Petitions to Deny.*<sup>67</sup> Section 309(d)(1) of the Communications Act, as amended,<sup>68</sup> and section 78.22 of the Commission's rules<sup>69</sup> require that a petition to deny contain specific allegations

<sup>64</sup> See Petition to Condition Approval of Application to Transfer Control of CARS Stations, City of Buenaventura, California ("City of San Buenaventura"); Petition to Deny of Communications Workers of America, International Brotherhood of Electrical Workers ("CWA/IBEW"); Petition to Deny of Free Press, Center for Creative Voices in Media, Office of Communication of the United Church of Christ, Inc., U.S. Public Interest Research Group, Center for Digital Democracy, CCTV, Center for Media & Democracy, Media Alliance, National Hispanic Media Coalition, The Benton Foundation and Reclaim the Media ("Free Press"); Petition to Deny of National Hispanic Media Coalition ("NHMC"); Petition of TCR Sports Broadcasting Holding, L.L.P. to Impose Conditions or, in the Alternative, to Deny Parts of the Proposed Transaction ("TCR"); and The America Channel LLC's Petition to Deny ("TAC"). On September 12, 2005, Black Television News Channel ("BTNC") filed a Motion for Extension of Time, seeking an extension until September 9, 2005, to file reply comments in this proceeding. In support of its motion, BTNC states that as a minority-owned, independent network, it is a "unique and important voice." BTNC argues that the Commission should consider BTNC's experiences in trying to obtain carriage by Comcast and Time Warner in its review of the Applications. BTNC further states that it contacted counsel for the Applicants and gave notice of the motion. Pursuant to section 1.46 of the Commission's rules, 47 C.F.R. § 1.46, motions for extension of time shall be filed at least seven days before the filing deadline. By Public Notice, the Acting Chief of the Media Bureau extended the period for filing responses to comments and oppositions to petitions to deny until August 5, 2005. See *infra* note 67. Although dated September 8, 2005, BTNC's motion was officially received by the Commission on September 12, 2005, more than 30 days after the filing deadline. As such, BTNC failed to comply with the requirements for filing a motion for extension of time. Moreover, BTNC did not explain why it could not participate in a timely manner. Therefore, we deny BTNC's motion for extension of time. However, we accept its reply comments and will treat them as an *ex parte* filing. We will address BTNC's concerns in the applicable sections of this order. See generally 47 C.F.R. §§ 1.1200-1.1216.

<sup>65</sup> See Letter from Donna C. Gregg, Chief, Media Bureau, FCC, to Brad Sonnenberg and James N. Zerefos, Adelphia Communications Corp., and Philip L. Verveer, Michael H. Hammer and Francis M. Buono, Willkie Farr & Gallagher LLP (Dec. 5, 2005) ("Adelphia Information Request"); Letter from Donna C. Gregg, Chief, Media Bureau, FCC, to Steven N. Teplitz and Susan A. Mort, Time Warner Inc., and Aaron I. Fleischman, Arthur H. Harding, Seth A. Davidson, and Craig A. Gilley, Fleischman and Walsh, L.L.P. (Dec. 5, 2005) ("Time Warner Information Request"); Letter from Donna C. Gregg, Chief, Media Bureau, FCC, to Joseph W. Waz, Jr. and James R. Coltharp, Comcast Corporation (Dec. 5, 2005) ("Comcast Information Request"). On December 14, 2005, the Applicants submitted a request for enhanced confidential treatment for certain materials to be submitted pursuant to the referenced information requests. See Letter from Michael H. Hammer, Willkie, Farr & Gallagher, LLP, Counsel for Adelphia Communications Corp., to Donna C. Gregg, Chief, Media Bureau, FCC (Dec. 14, 2005) ("Applicants Dec. 14, 2005 Ex Parte"). The request for enhanced confidential treatment was granted and, thus, responses to certain of the December 5, 2005, information requests were made subject to a second protective order, with access limited to outside counsel of record, their employees, and outside consultants and experts retained by those counsel to assist in the instant proceeding. See *Adelphia Communications Corp., et al.*, 20 FCC Rcd 20073 (MB 2005) ("Second Protective Order"). See Adelphia Responses to Information Request (Dec. 12, 2005, Dec. 22, 2005, Jan. 13, 2006, Jan. 23, 2006); Comcast Responses to Information Request (Dec. 22, 2005, Jan. 13, 2006, Mar. 10, 2005, Mar. 23, 2005, Mar. 24, 2005, Mar. 29, 2006, Apr. 7, 2006); Time Warner Responses to Information Request (Dec. 12, 2005, Dec. 19, 2005, Dec. 22, 2005, Jan. 6, 2006, Jan. 10, 2006, Jan. 13, 2006, Jan. 26, 2006, Mar. 2, 2006, Mar. 14, 2006, Mar. 22, 2006, Mar. 23, 2006 (two separate letters), Mar. 24, 2006).

<sup>66</sup> In this Order, ["REDACTED"] indicates confidential or proprietary information, or analysis based on such information, submitted pursuant to the *Initial Protective Order* and/or the *Second Protective Order*. See *supra* notes 63 and 65. The unredacted version of this Order will be available upon request to those qualified representatives who execute and file with the Commission the signed acknowledgements required by the protective orders in this proceedings. See *Initial Protective Order*, App. B – Acknowledgement of Confidentiality; see also *Second Protective Order*, App. B – Acknowledgment of Confidentiality.

of fact sufficient to show that the petitioner is a party-in-interest and that grant of the application would be *prima facie* inconsistent with the public interest. Allegations of fact set forth in the petition must be supported by the affidavit of a person with personal knowledge of the facts recited.<sup>70</sup>

19. Applicants assert that the pleadings filed on behalf of CWA/IBEW, Free Press, NHMC, and TAC do not satisfy the statutory requirements of section 309(d)(1) because, among other things, they fail to demonstrate standing as a party-in-interest and/or fail to include an affidavit of a person or persons with personal knowledge in support of specific factual allegations sufficient to show that grant of the Applications would be *prima facie* inconsistent with the public interest. Therefore, Applicants urge the Commission to treat these pleadings as comments rather than as petitions to deny.<sup>71</sup>

20. As an initial matter, we agree that the pleadings filed by CWA/IBEW and TAC fail to meet the requirements of section 309(d)(1) because neither group attached a sworn statement as required by statute. Thus, we conclude that CWA/IBEW and TAC are appropriately treated as informal objectors in the instant proceeding pursuant to Commission Rule 1.41.<sup>72</sup> Nonetheless, we address fully the issues raised by these parties in the applicable sections of this order. However, the pleadings filed by Free Press and NHMC are accompanied by affidavits of persons with personal knowledge of the facts alleged in the petitions, which assert that grant of the Applications would be *prima facie* inconsistent with the public interest. Thus, we find that Free Press and NHMC, respectively, are parties in interest to this proceeding.<sup>73</sup>

## 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

(Continued from previous page) \_\_\_\_\_

<sup>67</sup> The period for filing comments and/or petitions to deny was extended to July 21, 2005, and the period for filing responses to comments and oppositions to petitions to deny was extended to August 5, 2005. *Adelphia Communications Corp., et al.*, 20 FCC Rcd 11145 (MB 2005) ("*Extension of Time Order*").

<sup>68</sup> 47 U.S.C. § 309(d)(1).

<sup>69</sup> 47 C.F.R. § 78.22.

<sup>70</sup> See *Multicultural Radio*, 15 FCC Rcd 20630 (2000) (holding that petitioner's failure to provide a supporting affidavit rendered his pleading procedurally defective as a petition to deny; pleading was thus treated as an informal objection); *CHET-5 Broadcasting, L.P.*, 14 FCC Rcd 13041 (1999).

<sup>71</sup> Applicants' Reply at 2 n.2.

<sup>72</sup> 47 C.F.R. § 1.41; see *supra* note 70.

<sup>73</sup> 47 U.S.C. § 309(d)(1). Free Press filed with its petition the sworn declaration of Ben Scott, the Policy Director of Free Press. Scott avers in his declaration that (1) Free Press is a national nonpartisan organization working to generate policies that will produce a more competitive and public interest-oriented media system; and (2) members of Free Press reside in communities presently served by Comcast, Time Warner, and Adelphia cable systems. Scott states under penalty of perjury that the factual assertions set forth in the sworn declaration are true and correct. NHMC included with its petition the declaration of Alex Nogales, President and CEO of NHMC. Nogales avers in his declaration that (1) NHMC is a coalition of Hispanic-American organizations joined together to address media-related issues that affect the Hispanic-American community; (2) NHMC's goals are to improve the image of Hispanic-Americans portrayed by the media and increase the number of Hispanic-Americans employed in the media; and (3) members of NHMC reside in communities presently served by Comcast, Time Warner, and Adelphia, and many are subscribers to their services. Nogales states under penalty of perjury that he is familiar with the contents of the petition to deny, that the factual assertions are true to the best of his knowledge and belief, and that the declaration is true and correct.

<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.