

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Application for Consent to the Assignment and/or Transfer of Control of Licenses)	
)	MB Docket No. 08-120
Time Warner Incorporated,)	
Assignors,)	
)	
to)	
Time Warner NY Cable LLC)	
Assignees)	

COMMENTS OF DISH NETWORK

In its review of this transaction, the Commission should ensure that both Time Warner Inc. (“TWX”) and Time Warner Cable (“TWC”) are subject to the proper programming-related regulatory requirements going forward. TWX and its subsidiaries (including TWC) are currently subject to both program access restrictions and separate programming restrictions related to the acquisition of certain assets of Adelphia Communications Corporation (the “*Adelphia conditions*”).¹ Because the Applicants are silent about the future applicability of any existing conditions or regulatory requirements, the Commission should confirm that appropriate regulatory requirements and the *Adelphia conditions* will continue to apply to TWX and TWC post-separation. Specifically, the Commission should clarify that (1) the cable program access rules will continue to apply to TWX until arms-length contracts are negotiated with TWC for

¹ *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; 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, FCC 06-105, App. B (2006) (“Adelphia Order”).*

carriage of TWX networks; (2) TWX – as well as its current and future RSNs – remain subject to the *Adelphia* conditions; and (3) TWC will remain a vertically integrated media company subject to program access rules and the *Adelphia* conditions.

TWX will retain “must have” programming such as HBO, CNN, and TNT. *Exhibit B-2* at 4. With this divestiture, the parties and the Commission are faced with the same challenge of unwinding a media conglomerate as in the *News/Liberty* transaction, and Commission action should mirror the care taken in that proceeding. Just as the *News/Liberty* transaction involved splitting up a media conglomerate (News Corp.), the proposed Time Warner transaction involves the spin-off of an integral member of a larger corporate family that was central to the development of many “must have” programming networks. The newly-separate companies will understandably require time to develop independent corporate identities.

Contracts for Time Warner’s “must have” offerings have been negotiated between TWX and TWC during their time of affiliation. Thus, any contracts executed while the companies are still affiliated should remain subject to the program access restrictions for their duration. As it did with the *News/Liberty* transaction, the Commission should clarify that both parties will still remain liable for violations of the program access rules with respect to these contracts.² The Commission should state that the program access rules apply to TWX until the companies have replaced all existing TWX/TWC program contracts with new arms-length carriage deals.

In addition to the program access rules, the Commission should clarify that TWX will remain subject to the RSN restrictions imposed by the *Adelphia Order*. *Adelphia Order*, App. B.

² *News Corporation and the DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, FCC 08-66, ¶ 126 (2008) (“*News/Liberty*”) (explaining that “[i]f an MVPD believes [programmer] or [MVPD] violated th[e program access] condition while they were vertically integrated, the program access complaint provision provides an avenue for relief.”).

By their terms, the *Adelphia* conditions apply to both TWX and TWC.³ These conditions apply until their sunset in 2012, or until the successful petition of the Applicants for reconsideration. *Id.*, ¶ 164. TWX has not sought to lift the conditions. As such, the Commission should clarify that the *Adelphia* conditions will continue to apply to TWX, its RSN Peachtree TV (which carries Atlanta Braves baseball games), and any new or acquired RSN.⁴

With respect to TWC, as an MVPD it will retain its cable assets as well as local and regional programming assets.⁵ It will, therefore, continue to be subject to the Commission's program access rules on a going-forward basis. In addition to these regulations, TWC and its affiliated RSNs – SportsNet NY and Metro Sports – are subject to the *Adelphia* conditions until those conditions sunset in 2012. *Adelphia Order*, Appendix B at 1.

The Commission should ensure that its programming rules and the *Adelphia* conditions are applied appropriately to the two separate companies in order to protect consumers and competitive MVPDs.

Respectfully submitted,

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³ “‘Time Warner’ means Time Warner Cable Inc. and its subsidiaries, affiliates, parents, successors, and assigns.” *Adelphia Order*, App. B at 1.

⁴ A clarification would be in line with the Commission's previous decision in the *News/Liberty Order* finding removal of the *News/Hughes* arbitration conditions premature given that neither party petitioned for such removal. *News/Liberty*, ¶ 128.

⁵ Among other properties, TWC will continue to own directly and indirectly the RSNs MetroSports and SportsNet New York. *Application Exhibit B-2* at fn. 9. SportsNet New York “is a 24/7 regional sports and entertainment television network that features up to 125 regular season New York Mets telecasts.” “About SportsNet New York,” <http://web.sny.tv/about/index.jsp>, accessed July 29, 2008. Metro Sports is “Kansas City's 24-hour all-sports television network,” including programming of NCAA Division 1 basketball. “About KC Metro Sports,” <http://www.kcondemand.com/MetroSports-About.aspx>, accessed July 29, 2008.