

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

In the Matter of

Applications for Consent to the)	
Transfer of Control of Licenses)	
Time Warner Inc.,)	
<i>Transferor</i> ;)	WC Docket No. 08-157
Time Warner Cable Inc.,)	
<i>Transferee</i> .)	
)	

REPLY OF TIME WARNER INC. AND TIME WARNER CABLE INC.

Time Warner Inc. and Time Warner Cable Inc. (“TWC”) hereby reply to RCN Corporation’s (“RCN”) comments¹ on the domestic Section 214 transfer application in connection with the proposed separation of TWC from Time Warner Inc. (the “Separation Transaction”). RCN raises no new issues in its comments. Rather, it simply repeats the argument made in its previous comments that the Commission should apply the program access rules and the *Adelphia Order* conditions to Time Warner Inc. after the Separation Transaction is completed. RCN’s position is contrary to the express terms of the Communications Act and the Commission’s rules, inconsistent with the terms of the *Adelphia Order*, and unsupported by any public policy rationale.

RCN’s position also is irrelevant to the Commission’s consideration of the instant Section 214 application. RCN’s arguments relate to video programming activities, while the Section 214 application relates to the provision of interstate telecommunications. Moreover, as noted, RCN is merely repeating arguments it already made in MB Docket

¹ Comments of RCN Corporation in WC Dkt. No. 08-157 (filed Sept. 9, 2008) (“RCN Comments”).

No. 08-120, which involves radio licenses held by subsidiaries of Time Warner Inc. and TWC. The Commission should disregard RCN's attempt to get a "second bite at the apple" here.

Indeed, RCN's arguments are entirely unavailing, particularly given that the Separation Transaction will result in a significant decrease in vertical integration – a goal that the Commission has already held benefits the public interest.² As the Applicants have demonstrated, the Separation Transaction will result in the complete and immediate separation of Time Warner Inc. and TWC. Time Warner Inc. will no longer hold any ownership interest whatsoever in TWC and the two companies will be managed on a fully separate and independent basis.³ Accordingly, the companies will not be vertically integrated and there will be no attributable interest between them. As such, under the Commission's previously stated goal, the Separation Transaction will unquestionably benefit the public interest and stands in stark contrast to RCN's baseless allegations.

Specifically, RCN's argument that the program access rules should apply to Time Warner Inc. programming networks after the Separation Transaction ignores the unambiguous language of the Communications Act. The Act applies the rules to satellite-delivered programming networks "in which a cable operator has an attributable

² *News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee*, Memorandum Opinion and Order, 23 FCC Rcd 3265, ¶¶ 150, 157 (2008) ("*News Corp./Liberty Order*") (Concluding that the transaction would "lead to less media vertical integration" and "decrease media consolidation and that this decrease benefits the public.").

³ Reply of Time Warner Inc. and Time Warner Cable Inc. in MB Dkt. No. 08-120, at 7-9 (filed August 15, 2008) ("Applicants' Reply").

interest.”⁴ Likewise, the Commission’s rules only apply to networks vertically integrated with a cable operator.⁵ As a result, the Commission has consistently applied a simple, bright line formula to determine whether the program access rules apply to a particular network -- if the network is vertically integrated with a cable operator, the rules apply, but if it is not, the rules do not apply.⁶ Because Time Warner Inc. will not be vertically integrated with TWC or any other cable operator post-separation, the program access rules will not apply to its programming networks.⁷

This conclusion is consistent with the Commission’s recent *News Corp./Liberty Order*. In that decision, the Commission held that once News Corp. divested its interest in DIRECTV, News Corp.’s programming networks would no longer be vertically integrated and the program access conditions adopted in the prior *News Corp./DIRECTV Order* “would no longer apply.”⁸

RCN tries to circumvent the Commission’s bright line approach by arguing that “program access dealings between the two companies will also likely continue to be

⁴ 47 U.S.C. §§ 548(b), (c).

⁵ 47 C.F.R. §§ 76.1001, 1002.

⁶ Applicants’ Reply at 10-14. *See also Complaint of Consumer Satellite Systems, Inc. v. Lifetime Television*, Order, 9 FCC Rcd 3212, ¶ 5 (1994).

⁷ Applicants clarify that, in addition to the HBO channels, Cinemax channels, TBS, CNN channels, TNT, Turner Classic Movies, Cartoon Network, and Boomerang, Time Warner Inc. will own truTV (f/k/a CourtTV) post-transaction.

⁸ *News Corp./Liberty Order* ¶ 126. RCN also argues that the program access rules should apply post-separation because, in RCN’s view, the contracts entered into between Time Warner Inc. programming networks and TWC prior to the separation are presumptively discriminatory. However, there is no such presumption in the Commission’s rules.

coordinated by the teams and individuals that coordinated those agreements currently in place, while the companies were vertically integrated.”⁹ As Applicants have already explained, however, RCN’s argument is contrary to longstanding Commission precedent holding that historical personal and professional relationships among the managements of two separate companies do not trigger the attribution rules.¹⁰ Likewise, RCN’s argument that the program access rules should apply post-separation because some of the Time Warner Inc. shareholders will also be shareholders of TWC ignores marketplace realities. Publicly-traded corporations commonly have shareholders that own stock of other corporations. But this in no way affects the fiduciary duty of each company’s management to exercise their independent judgment to serve the best interests of their corporation.

Finally, RCN incorrectly claims that, post-separation, Time Warner Inc. will remain a “covered entity subject to the conditions set forth” in the *Adelphia Order*.¹¹ However, the *Adelphia Order* conditions apply to “Time Warner,” which the Commission has defined as “Time Warner Cable Inc. and its subsidiaries, affiliates,

⁹ RCN Comments at 4-5.

¹⁰ Applicants’ Reply at 9. *See also News Corp./Liberty Order* ¶ 126 (long-standing ties between DIRECTV’s new CEO and News Corp. did not lead to an inference of attribution); *BBC License Subsidiary, L.P. and SF Green Bay License Subsidiary, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 7926 ¶ 41 (1995) (hiring of a former Fox station general manager and vice president as its president did not make a television station attributable to Fox); *Columbia Pictures Industries, Inc. et al.*, Memorandum Opinion and Order, 30 FCC 2d 9 ¶ 14 (1971) (a newly spun-off company’s officers and directors have “incentive” and “fiduciary duty” to serve the best interests of their new company).

¹¹ RCN Comments at 3.

parents, successors, and assigns.”¹² After the transaction, Time Warner Inc. will no longer be a parent of Time Warner Cable, or have any of the other relationships specified in the definition. Thus, the *Adelphia Order* conditions will not apply to Time Warner post-separation. This result makes perfect sense. After all, the only reason the Commission adopted the *Adelphia Order* conditions was a concern about vertical integration.¹³ Once the vertical integration between Time Warner Inc. and TWC is removed -- as it will be by the Separation Transaction -- the underlying basis for the conditions falls completely away.

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¹² *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., Assignees, et al.*, Memorandum Opinion and Order, 21 FCC Rcd 8203, App. B § A (2006).

¹³ Applicants' Reply at 11.

CERTIFICATE OF SERVICE

I, Michael G. Jones, hereby certify that, on September 16, 2008, copies of the attached Reply of Time Warner Inc. and Time Warner Cable Inc. were served by electronic delivery to the following:

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