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February 13, 2006

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: Comcast - Time Warner - Adelphia Applications for Consent to the Assignment and/or Transfer of Control of Licenses, MB Docket 05-192

Dear Ms. Dortch:

On January 18, 2006, Jim Baller of the Baller Herbst Law Group and I participated in meetings at the Commission's headquarters in Washington, D.C., with Rudy Brioché, legal advisor to Commissioner Adelstein; Jordan Goldstein, legal advisor to Commissioner Copps; Sarah Whitesell, Tracy Waldron, Royce Sherlock, and Julie Salovaara of the Media Bureau; Leslie Marx of Office of Strategic Planning; and Ann Bushmiller and Jim Bird of the Office of General Counsel. In the meetings, Mr. Baller and I underscored and elaborated upon points that Marco Island Cable (MIC) had previously raised in written comments in this matter, and we responded to questions posed by the Commission's representatives.

During one of these meetings, Ms. Whitesell asked MIC to respond to the attached letter of January 13, 2006, from Comcast's legal counsel to the Commission, addressing the state of competition in Collier County and Lee County, Florida. She also suggested that MIC provide for the record a written summary of its claims of anticompetitive conduct by Comcast and the specific conditions that MIC wants the Commission to impose, and any documentation that MIC would like the Commission to consider. I appreciate the opportunity to provide this response.

In its letter of January 13, Comcast makes several statements that are flatly untrue and a number of other statements that are incomplete and misleading. The overall effect is to give a false impression of the state of current and potential competition in South Florida in the absence of the conditions recommended below. Specifically, Comcast states:

> There are no instances in either Collier County or Lee County where Comcast and Time Warner have overbuilt cable systems reaching the same homes. While there are some portions of the Counties where both companies have distribution

> lines passing empty land that conceivably could be developed in the future, developers of that land would be able to consider proposals from several different MVPDs in addition to Comcast and Time Warner, including SMATV operators and STI (a cable operator with a county-wide franchise in Collier County). Developers also would have the option of installing their own cable systems. And, of course, the homeowners in such future developments would have the option of subscribing to DBS service.
>
> With the many alternative video choices available to developers and homeowners, including the potential for future competition from incumbent telephone companies, there is no basis for concluding that the proposed transactions will reduce competitive pressures for bulk and condominium customers."

First, focusing on Collier County, it is flatly untrue that there are "no instances" in which Time Warner and Comcast have invaded each other's territories. It is also untrue that the only areas in the County in which both companies have distribution lines are areas consisting of "empty land that conceivably could be developed in the future." In fact, Time Warner currently serves at least two large developments in Comcast's territory – Fiddler's Creek, which is building out to 6000 residences, and Verona Walk, which is building out to 2000 residences. Verona Walk is about 4 miles, and Fiddler's Creek is about 10 miles, from the dividing line between Time Warner's and Comcast's traditional territories. They are both adjacent to Florida Highway 951, a major route of current and potential development, which means that Time Warner could be a significant head-to-head competitor to Comcast in Collier County as development proceeds along the "951 corridor" in the years ahead in the absence of the proposed transfer of Time Warner's franchise to Comcast.

Second, Comcast is also wrong in suggesting that it will face meaningful competition in the future from a variety of other cable service providers, including Satellite Master Antenna Television operators, STI, and developers themselves.

For one thing, it is unlikely that competition from STI will ever emerge. Although it is true that STI has a county-wide franchise, it has not begun to develop even a single cable system in Collier County, and I understand from an employee of STI that the company is seeking to sell its operations.

Furthermore, as MIC has advised the Commission, and as the attachments to this letter confirm, Comcast's anticompetitive practices render the prospects of meaningful competition illusory. To be sure, an alternative cable franchisee, a SMATV operator, or some other potential competitor, including MIC, might well be able to bring cable television signals to the distribution points of condominiums developments. But that alone does no good in the face of Comcast's anticompetitive practices involving internal wiring and other essential facilities in "the last 100 feet."

Listed below are examples of Comcast's anticompetitive actions. Each is illustrated by one or more attached documents, which I have obtained during the course of MIC's business. Some of the documents are attached to a Complaint that Marco Island Cable filed against Comcast, appended here as Attachment A.

These documents are merely representative; I have many others like them, which I would be glad to share with the Commission on request.

- Paying substantial "door fees" to developers and condominiums to obtain special exclusive concessions from them. *See* fifth exhibit to Attachment A, "Compensation Agreement" between Comcast of the South and Marbelle Club, Inc.

- Using exclusive bulk service agreements that require unit owners to pay for service whether or not they take it, thus discouraging them from purchasing service from a competitor. See first exhibit to Attachment A, "Cable Television and Installation and Service Agreement" between Continental and Point Marco Development, for the premises known as "Cozumel."

- Compelling developers or homeowner associations to cede Comcast ownership of wiring that it did not install. *See* first exhibit to Attachment A, "Cable Service Easement" appended to "Cable Television and Installation and Service Agreement;" *see also* Attachment B, correspondence dated August 4, 2002, with attachments.

- Refusing to provide substantiation of ownership of wiring or records of property tax payments and threatening homeowners with costly, time-consuming and burdensome litigation to vindicate their rights of ownership. *See* Attachment C, correspondence between Charter Club Association and Comcast; *see also* Attachment D, a letter from Comcast's legal counsel, White & Case, to the Eagle Retreat Association.

- Threatening to remove individual unit home wiring and home run wiring without following proper procedures, and in one case, actually sending a crew and supervisor to start removing the wiring. *See* Attachments C and D.

- Insisting upon exclusive easements to facilities that are essential to competitive entry. *See* Attachments A through D, particularly the "Cable Service Easement" appended to the first exhibit to Attachment A.

- Tying up wiring for up to 20 years in exclusive-right-to-use agreements. *See* Attachment E, Belize Contract, with correspondence from White & Case concerning Marco Cable's use of the wiring.

- Obtaining contract clauses that give Comcast the right to take up to six months to remove its facilities from condominiums and developments that it has lost the right to serve, thereby discouraging competition by creating the risk of a significant gap in service. *See* Attachment B.

- Bringing unfounded suits against condominiums and homeowners, and failing to conform its subsequent practices to the rulings of the courts. *See* third exhibit to Attachment A, Comcast's Complaint in *Comcast Cablevision of the South v. Cozumel Condominium Association*, Case No. 01-3598 CA (Collier County 20th Circuit Court); Attachment F, hearing of November 2, 2002, and Attachment G, Order of December 12, 2002, dismissing Comcast's Complaint (finding Comcast's exclusive service agreement violates Florida law); *see also* Attachment H, *Colony Communications v. Beachview Condominium Assoc. Inc. and Marco Island Cable, Inc.*

- Charging up to three times lower prices when it is threatened with competition than the prices that it charges elsewhere. *See* Attachment B, letter proposing original price to Merida before Comcast decided to compete with Marco Cable.

MIC submits that the Commission should not permit Comcast to acquire Time Warner's franchise in Collier County without conditioning the transfer upon Comcast's consent to cease and desist from engaging in each of the practices enumerated above. Some of these practices may be lawful when employed by much smaller entities seeking to establish themselves against entrenched monopolists. But in Comcast's massive hands, they can serve no other purpose than to destroy the prospect competition.

In short, if the Commission permits Comcast to acquire Time Warner's franchise without conditioning the transfer as MIC suggests, the Commission will effectively allow a current and potentially major competitor to disappear from Florida without ensuring that a competitive environment exists in which other entities can step forward to fill the void. Moreover, approving the transfer without suitable conditions would embolden Comcast to act even more cavalierly than it already does. In a very real sense, an unconditional transfer order would be contrary to the public interest, as it would make matters much worse for the citizens of Collier County than they already are.

If you have questions or require additional information, we would be glad to respond promptly. Additionally, with several days notice, I can make myself available, in Washington to appear before the Committee.

Sincerely

William Gaston
President
Marco Island Cable

cc: Jim Bird
Rudy Brioché
Ann Bushmiller
Jordan Goldstein
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