

STATEMENT OF COMMISSIONER ROBERT M. MCDOWELL

Re: 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, to Comcast Corporation., Assignees; Memorandum Opinion and Order, MB Docket 05-192

I support the Commission's decision to approve this transaction. Clearly, the merger will benefit consumers, particularly those who continue to be served by Adelphia during its lengthy bankruptcy proceeding, by creating synergies that will spur investment, create efficiencies and speed the roll-out of competitive new technologies.

However, it has become clear to me through this merger review process that the Commission's regulations governing program carriage agreements and program access by MVPDs for years have not been enforced in the expeditious manner contemplated by Congress and our own rules. Although the substance of these regulations provides MVPDs and programmers with standards and processes for redress of their program access and program carriage disputes with cable providers, very few parties have filed complaints to adjudicate their disputes. Those that are filed often wait too long for resolution. In fact, it seems that many disputes are never resolved. Why? Because the FCC has not been doing its job. The parties to these complaints deserve better treatment from this Commission. More importantly, so do consumers. Competition, in this quickly evolving market, should not be held back by an indolent bureaucracy's failure to obey simple Congressional mandates. Speedy resolution of disputes is critical, especially where regional sports networks are concerned. When a programmer or an MVPD is unable to air games at the start of a season, the competitive damage to its business has already been done. The FCC's inaction should not be responsible for such a delay. Accordingly, I strongly support the commitment by the Commission to review and reform the procedures for enforcement of its program access and program carriage rules. And I applaud the commitment to do so in short order.

In the meantime, part of what the Commission is doing today is to pave a path toward a private sector solution to resolve program access disputes. Of course, our preference is that conflicts be resolved and deals be made without parties having to resort to litigation or arbitration. This Order provides incentives for such resolutions. However, should parties refuse to negotiate or fail to agree, we are paving a path toward private sector binding arbitration, with the ultimate destination being final resolution. With a two-step analysis commencing with a determination of whether carriage should be required at all, followed by baseball-style arbitration to determine rates, terms and conditions, no particular outcome is guaranteed. Furthermore, no new legal standards are being created. However, to ensure speedy resolution, we are imposing a "shot clock" on all proceedings, including any relevant Commission review of arbitration decisions. Again, arbitration can be avoided if parties make deals. But, should arbitration be necessary, it will be concluded swiftly and at minimal cost. This dispute resolution

framework is used successfully thousands of times per day throughout the country in the private sector, and we are confident that it will be just as successful in this context as well. We believe all parties will benefit, especially the American consumer.

For similar reasons, I also wholeheartedly support binding arbitration of the dispute between the Mid-Atlantic Sports Network and Comcast over carriage of the Washington Nationals games. Protracted negotiations and legal wrangling between the parties somehow have failed to produce televised coverage of 75 percent of this season's games for the 1.3 million Comcast subscribers in the Washington D.C. market. And, apparently, the MASN complaint has been left to rot in some lost crypt inside this building. Accordingly, the narrow arbitration remedy in the Order creates a private-sector solution to the dispute. This remedy also does not dictate a particular outcome, nor does it create a new legal standard for reviewing program carriage issues. It does, however, provide for a timely and long-overdue decision that will break the long-standing impasse between MASN and Comcast. One way or the other, a decision will be made. Of course, the parties are free to resolve the dispute beforehand, at any time.

I would like to thank my fellow Commissioners for their hard work on this important matter. The lights have been burning late here at the FCC recently. Many thanks to Commissioner Tate for her insight – especially regarding children's programming. Thank you, Commissioner Adelstein, for your efforts regarding program access and carriage. Commissioner Copps, many thanks for initiating the conversation on net neutrality. I appreciate your thoughtfulness and look forward to additional dialogue. And lastly, Mr. Chairman, thank you for your leadership, especially working so hard into the wee hours.

I thank Donna Gregg and the Media Bureau staff for their dedication and hard work on this item. I look forward to our review and reform of our rules.