

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
Adelphia Communications Corporation,
(assignors, debtors-in-possession),
Assignors,
to
Time Warner Cable Inc. (subsidiaries),
Assignees;
Adelphia Communications Corporation,
(assignors, 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

MB Docket No. 05-192

ORDER ON RECONSIDERATION

Adopted: September 24, 2008

Released: September 26, 2008

By the Commission:

I. INTRODUCTION

1. In this Order on Reconsideration, we deny the Petition for Reconsideration ("Petition") filed by IBC Worldwide, Ltd. ("IBC") in the above-captioned proceeding. IBC's Petition asserts that the

1 Petition for Reconsideration filed by IBC on August 21, 2006 ("Petition").

2 In the Memorandum Opinion and Order in the above-captioned proceeding, the Commission approved, with conditions, the applications of Adelphia Communications Corporation and subsidiaries, debtors-in-possession ("Adelphia"), Time Warner Inc. ("Time Warner"), Time Warner Cable Inc. ("Time Warner Cable"), 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. Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors and Transferors, to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Cable, Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee, 21 FCC Rcd 8203 (2006) ("Adelphia MO&O").

Commission failed to address issues raised in IBC's comments and reply comments and that the Commission's refusal to impose IBC's requested condition violates the Communications Act.³ Adelphia, Comcast, and Time Warner oppose the Petition.⁴ For the reasons discussed below we deny IBC's Petition.

II. BACKGROUND

2. Reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.⁵ It is well settled that "[r]econsideration will not be granted to debate matters upon which the Commission has already deliberated and spoken."⁶ IBC has neither demonstrated material error or omission nor presented new matters to the Commission.

3. In its Petition, IBC claims that the Commission arbitrarily and capriciously failed to consider and address the matters raised in its comments and reply comments, thereby violating the Administrative Procedure Act, the Communications Act, and the Commission's rules and regulations.⁷ IBC claims that the Commission's refusal to impose IBC's proposed condition requiring Comcast and Time Warner to install only Internet-compatible set-top converters constitutes "a failure to comply with [the Commission's] primary obligation to make available to all citizens 'a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communications. . . .'"⁸

4. IBC argues in its Petition that because Comcast and Time Warner control about one-half of U.S. cable subscribers, competition by content providers, advertisers, satellite operators, telecommunications companies, other cable companies, and all new technology providers has been limited.⁹ IBC claims that as a result of the transactions, Comcast now has about 2 million U.S. Hispanic cable subscribers, about 36% of this subscriber base, making it a critical gatekeeper for any new Hispanic content.¹⁰ IBC requests that, in order to limit the gatekeeping power of Comcast and Time Warner, the Commission should require them, within 12 months, to program their set-top boxes to be Internet-accessible and to devote one cable channel to Internet access via television.¹¹ IBC claims that this will

³ Petition at 2 (citing 47 USC §151).

⁴ Adelphia, Comcast, and Time Warner jointly filed an Opposition to Petition for Reconsideration on August 29, 2006 ("Opposition"). On September 8, 2006, IBC filed a Reply to Opposition to Petition for Reconsideration ("Reply").

⁵ 47 C.F.R. § 1.106(c); *see also* *WWIZ, Inc.*, Memorandum Opinion and Order, 37 F.C.C. 685, 686 (1964) ("WWIZ, Inc."), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); *National Association of Broadcasters*, 18 FCC Rcd 24414, 24415 (2003).

⁶ *WWIZ, Inc.*, 37 F.C.C. at 686; *see also* *William L. Carroll, et. al. a General Partnership, d/b/a McMurray Communications, for Construction Permit for a New FM Station on Channel 247A, Lebanon, Ohio*, 8 FCC Rcd 6279 (1993).

⁷ Petition at 1-2.

⁸ *Id.* at 2 (quoting 47 U.S.C. § 151). IBC claims that the universal use of Internet-compatible set-top converters would provide an immediate, cost effective means to connect homes to the Internet in the event of local, regional, or national emergencies. *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.* at 6-7.

benefit many content creators, homeland security, and poor and elderly subscribers who do not have computers in their homes.¹²

5. Adelphia, Comcast, and Time Warner note that the Commission expressly considered, discussed, and disposed of the issues raised by IBC.¹³ They state that the Commission discussed IBC's concerns about nationally distributed ethnic programming, noted the availability of leased access as a vehicle for unaffiliated programmers to obtain carriage, adopted an arbitration mechanism for resolving commercial leased access disputes, and found that these and other conditions should mitigate any potential harm affecting programming supply.¹⁴ Adelphia, Comcast, and Time Warner also state that the Commission considered and rejected IBC's proposal that the Commission require Comcast and Time Warner to program their set-top boxes to be Internet-accessible and to devote one cable channel to Internet access via television.¹⁵

III. DISCUSSION

6. We deny IBC's Petition. IBC has not shown that reconsideration is warranted. As Adelphia, Comcast, and Time Warner note, the *Adelphia MO&O* expressly considered and rejected the arguments IBC raised in its Petition. IBC's Petition neither demonstrates any factual or legal error in the Commission's decision nor presents new evidence, pursuant to the requirements of Section 1.106 of the Commission's rules, to support its request for reconsideration of the decision. Instead, IBC merely re-argues the issues that it raised in its comments and reply comments -- issues that were explicitly addressed and rejected by the Commission. Because IBC shows no material error or omission in the *Adelphia MO&O* or any additional facts not known to it or not existing until after IBC's last opportunity to present such matters, we deny its Petition.

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by IBC Worldwide, Ltd. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹² *Id.* at 6.

¹³ Opposition at 2.

¹⁴ *Id.* at 2-3 (citing *Adelphia MO&O*, 21 FCC Rcd at 8252, 8253-54 ¶¶ 104, 109). Adelphia, Comcast, and Time Warner also note that to the extent that IBC's Petition contained generalized assertions regarding the impact of the transactions on horizontal and vertical integration in the cable industry, these issues were also discussed in the *Adelphia MO&O*. Opposition at 3 n.3.

¹⁵ *Id.* at 3 (citing *Adelphia MO&O* at 8295-300 ¶¶ 214, 217-225).