

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7077

**Joint Petition** of all Vermont affiliates of )  
Adelphia Communications Corporation and )  
Time Warner Cable Inc. for: (1) consent to )  
sell substantially all of Adelphia's Vermont )  
assets to Cable Holdco Exchange III LLC; )  
(2) approval of such affiliates' abandonment )  
of cable television service in Vermont; and )  
(3) revocation of the affiliates' Certificates )  
of Public Good; AND **Joint Petition** of )  
Time Warner Cable Inc. and Cable Holdco )  
Exchange III LLC for a Certificate of Public )  
Good for Cable Holdco to own and operate )  
said cable television systems; AND **Joint** )  
**Petition** of Time Warner Cable Inc. and )  
Comcast of Georgia, Inc. for authority to )  
acquire control of Cable Holdco Exchange )  
III LLC )

PREFILED TESTIMONY OF  
SUSAN S. MARTIN  
ON BEHALF OF THE  
VERMONT DEPARTMENT OF PUBLIC SERVICE

September 2, 2005

Summary: Ms. Martin addresses three of the criteria established by Board rules and statutes for review of requests for cable Certificates of Public Good. She concludes that Comcast has sufficient experience and ability to run and manage the Vermont cable systems now owned by Adelphia, concludes that Comcast will offer basic service, as required, and recommends the Board revise two of the CPG conditions proposed by Comcast. One revision would revise the definition of "gross revenues" to include late fees. The other revision would require Comcast to file with the Board a copy of any tradename certificate filed with the Vermont Secretary of State.

Prefiled Testimony  
of  
Susan S. Martin

1 Q. Please state your name and occupation.

2 A. My name is Susan S. Martin. I am employed by the Vermont Department of  
3 Public Service (“Department”) as a Utilities Financial Analyst.

4 Q: How long have you held your current position?

5 A: I have held my current position from September 1982 to February 1987, and from  
6 October 1989 to present.

7 Q: Please state your qualifications and background relative to the cable industry.

8 A: Since my employment with the Department, I have been involved in numerous  
9 substantive matters relating to the cable industry during my tenure. Those include  
10 testifying before the Board regarding many cable petitions on financial, customer service,  
11 and policy issues.

12 Q. What matters do you address in this testimony?

13 A. In this investigation, the Board is considering whether to approve several related  
14 matters:

15 • Adelpia’s sale of its Vermont cable system assets to a subsidiary of Time Warner  
16 Cable, Cable Holdco Exchange III LLC (“Holdco”);

- 1 • issuance of a cable Certificate of Public Good to Holdco;
- 2 • transfer of a controlling interest in Holdco from Time Warner Cable to Comcast
- 3 of Georgia, Inc., which is a subsidiary of Comcast Corporation;
- 4 • Adelphia's abandonment of cable service in Vermont; and
- 5 • Revocation of Adelphia's CPG.

6 In summary, the investigation involves a proposal for Adelphia to sell its Vermont  
7 cable systems to a company that is intended to operate as a subsidiary of Comcast. The  
8 Board needs to determine whether the transactions proposed are in the public good.

9 Q. Several other witnesses are testifying on behalf of the Department. What is the purpose  
10 of your testimony?

11 A. Board Rule 8.214 provides that, in determining whether to approve or reject a  
12 petition requesting a certificate of public good for a cable system service area, the Board  
13 shall consider the criteria of 30 V.S.A. Chapter 13, as well as the criteria known as the  
14 "EMCO" criteria., which are set forth in Board Rules 8.214 (A) and (B).

15  
16 My testimony reviews the petitions relative to two of the EMCO criteria and one  
17 of the statutory criteria and offers the Department's recommendation concerning each.  
18 The three criteria are:

- 19 • Board Rule 8.405.b.4 ("EMCO 4 "): the experience and ability of the applicant to
- 20 run and manage a cable television system;

- 1           •       Board Rule 8.405.b.5 (“EMCO 5 ”): the tariff and the rates proposed to be  
2                    charged to customers; and
- 3           •       30 V.S.A § 504(b)(5): basic service in a competitive market, and if a competitive  
4                    market does not exist, that the system provides basic service at reasonable rates  
5                    determined in accordance with section 218 of this title.

6

7                    In addition, I recommend two CPG conditions pertaining to the calculation of  
8                    gross revenue, service pricing, rates, and a notice requirement if Comcast wishes to do  
9                    business under a new tradename.

10           EMCO 4: the experience and ability of the applicant to run and manage a cable television system

11           Q.       Does Comcast have sufficient experience and ability to run and manage the Vermont  
12                    cable systems now run and managed by Adelphia?

13           A.       Yes, it does.

14           Q.       On the basis of what facts or analysis do you reach this conclusion?

15           A.       Comcast is the largest cable operator in the nation, operating cable systems  
16                    throughout the country serving 21.5 million customers in 35 states and the District of  
17                    Columbia. Comcast is a leader in the cable industry as it provides digital video and on-  
18                    demand programming, DVR capability, high-speed Internet service, telephony, and other

1 services to millions of customers. Comcast describes its experience and ability in its  
2 petition, the prefiled testimony of Mr. Hackley. I know of no information that contradicts  
3 Mr. Hackley's assertions and have no reason to dispute his testimony. In sum, Comcast is  
4 a capable and experienced cable operator, and should be able to run and manage the  
5 Vermont systems as well or better than has Adelphia.

6  
7 EMCO 5: the tariff and the rates proposed to be charged to customers.

8 Q. Under EMCO 5, the Board considers the tariff and the rates proposed to be charged to  
9 customers. What are your conclusions in this regard?

10 A. Adelphia maintains and files with the Board tariffs that describe its terms and  
11 conditions of service, including the rates it charges to consumers. The Department still  
12 reviews cable tariff filings, however, to assess whether the non-price terms and conditions  
13 are unreasonable. I am familiar with Adelphia's tariffs, and believe the terms and  
14 conditions set forth in the current tariffs are not unreasonable. To the best of my  
15 knowledge, the tariffs on file with the Board are a complete and accurate representation  
16 of the cable services Adelphia now offers. Comcast has committed to continuing to file  
17 such tariffs, and the Board's tariff review and approval process will provide sufficient  
18 opportunity to assure that any subsequent revisions that Comcast may propose to its  
19 services, terms and conditions are reasonable. However, the Board's authority to revise  
20 cable rates or suspend changes in rates proposed by a cable operator has, for the most  
21 part, been preempted by Federal law.

1 30 V.S.A. § 504 (b)(5): Basic service in a competitive market, and if a competitive market does  
2 not exist, that the system provides basic service at reasonable rates determined in accordance  
3 with 30 V.S.A. § 218 of this title:

4 Q. Under Section 504(b)(5), the Board considers a cable operator's basic service. If a  
5 competitive market does not exist, the Board also considers whether the cable operator's  
6 rates for basic service are reasonable. Does Comcast intend to offer basic service?

7 A. Yes, Comcast intends to offer basic service. The current basic rates offered by  
8 Comcast in other states are \$11.50, as compared to Adelphia's existing basic rates in  
9 Vermont ranging from \$13.95 to \$18.00.

10 Q. Does a competitive market exist for cable services within the areas of Vermont in which  
11 Comcast will offer service?

12 A. The FCC has previously concluded that Adelphia faces effective competition in  
13 most of its Vermont service markets<sup>1</sup>, and this finding will automatically transfer to  
14 Comcast. Thereby, preempting the Board's authority to set prices for basic cable service.  
15 Therefore, I conclude that Comcast meets the requirements of this sub-section.

---

<sup>1</sup>With exception of the Lake Champlain service area.

1 Q. Comcast proposed a set of CPG conditions. Do you recommend any changes to those  
2 conditions, or additional conditions?

3 A. Yes, two. First, paragraph 4 of the CPG Comcast proposed (Exhibit  
4 TWC/Comcast-2) defines gross revenues to include several categories of revenue,  
5 essentially the same categories that a similar condition of Adelphia's CPGs now  
6 encompass. Late fees charged to subscribers are not included in the definition, but should  
7 be.

8

9 Q. Why were late fees charged to subscribers not among the revenue categories that defined  
10 "gross revenues" in Adelphia's CPGs?

11 A. At the time the Board issued Mountain Cable's CPG in Docket 6101, Adelphia  
12 did not charge late fees.

13 Q. Does Adelphia now assess such fees?

14 A. Not yet, but it has indicated its intention to begin charging such fees in January  
15 2006. Adelphia filed a late payment fee of 1.5%, for effect August 15, 2005. Since  
16 Comcast has indicated that it intends to initially adopt Adelphia's terms and conditions of  
17 service in Vermont, one must assume Comcast will continue collecting late fees after its  
18 acquisition. Late fees are considered additional revenues that should be included in the  
19 gross revenue calculation. Placing this condition in Comcast's CPG will help to assure  
20 that the annual gross revenue tax is calculated correctly.

1 Q. Do you recommend any other changes to the CPG conditions proposed by Comcast?

2 A. Yes. Condition 11 proposed by Comcast, which mirrors a similar condition now  
3 applicable to Adelpnia states:

4 If Comcast does business in the State of Vermont under any other name  
5 other than the name in use on the date of the Order in this Docket, it shall  
6 file a notice of the new tradename with the Clerk of the Public Service  
7 Board and the Department thirty (30) days prior to doing so.

8 I recommend the Board revise this condition to also file with the Board a copy of  
9 the tradename certificate that companies changing or adopting new tradenames must file  
10 with the Vermont Secretary of State. Since the Board and Department undertake to  
11 confirm that such tradename certificates have been filed with the Secretary of State,  
12 requiring Comcast to provide a copy with its notice to the Board will provide such  
13 confirmation. Condition 11 should be revised to read as follows. (The underlined text is  
14 new).

15 If Comcast does business in the State of Vermont under a name other than the name in  
16 use on the date of the Order in this Docket, it shall file a notice of the new tradename,  
17 along with a copy of its Vermont Secretary of State's Tradename Certificate, with the  
18 Clerk of the Public Service Board and the Department at least thirty (30) days prior to  
19 commencing business under the new tradename.

20

21

1 Q: Does this conclude your testimony?

2 A: Yes, it does.