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Client Briefing

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On Cable & Telecommunications

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ADELPHIA AGREES TO BE PURCHASED BY TIME WARNER & COMCAST

Adelphia Sale Announcement Means Local Franchise Authorities Must Prepare Now For Transfer

After 2 ½ years in bankruptcy, Adelphia reached a tentative agreement last week to sell its cable systems to Comcast and Time Warner for close to $18 billion. On April 7, 2005, Adelphia presented the combined Time Warner/Comcast bid – long the bid preferred by most creditors and investors – to the judge presiding over the Adelphia bankruptcy case.

Although the deal is not final, Adelphia cable communities should start preparing now for a transfer of ownership at the local level. Because Adelphia is in bankruptcy, the process of transferring its cable systems to Time Warner and Comcast may be a little different from previous transfers your community may have undergone. Adelphia is likely to argue that transfer provisions in local franchise agreements do not apply, and that local consent requirements are preempted by the Bankruptcy Code. But with proper diligence and preparation, local governments can still protect their interests.

Bankruptcy law requires Adelphia to "assume" or affirm each franchise agreement before it may be assigned to a buyer. In order to do that, Adelphia must cure any defaults under the agreement or provide adequate assurance of a prompt cure. And the purchaser must also provide adequate assurance of future performance under the franchise agreement. To protect their interests franchise authorities will need to notify the bankruptcy court of any defaults by Adelphia under the franchise agreement (probably by filing a "Notice of Conditional Opposition"). Filing a Notice of Conditional Opposition will preserve the community's ability to discuss any defaults with the bankruptcy court and negotiate the cure and performance issues with Adelphia and the new operator.

Common subjects of franchise compliance disputes include the operator's compliance with financial obligations (franchise fee payments, bonds and insurance), PEG (requirements to provide equipment, funding and/or channels for public, educational and governmental access), technical or physical plant issues (upgrades and safety), connections and service to public buildings and other issues. Only by filing a Notice of Conditional Opposition or similar document will a local franchising authority be in a position to negotiate local issues and concerns with the bankruptcy court, Adelphia and the buyer. It is imperative that Adelphia communities start preparing now, by reviewing their franchise agreements and Adelphia's compliance with franchise obligations, if they are to be in a position to know what issues should be included in the Notice when the time comes to file it.

Finally please note that the sale to Time Warner and Comcast must still be approved by the bankruptcy court, Adelphia's creditors and federal regulatory agencies, including the FCC, so that it is difficult to predict how quickly or slowly the process will unfold. Also, Comcast and Time Warner will no doubt be divvying up Adelphia's communities as well as swapping territory with each other to consolidate their systems. Due to the unique circumstances of this sale transaction and the uncertainty as to the process and timetable, advance preparation is critical.

For further information on how your community can best prepare for the Adelphia sale, please contact any of our Cable and Telecommunications lawyers. We will post continuing updates and new information on our website, www.walterhav.com.

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For more information on these or other telecommunications issues, please contact one of our Cable & Telecom lawyers:

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