

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Applications of Comcast Corp., Time Warner ) MB Docket No. 14-57  
Cable Inc., Charter Communications, Inc., and )  
Spinco to Assign and Transfer Control of FCC )  
Licenses and Other Authorizations )

**COMMENTS OF COMMON CAUSE**

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## SUMMARY

Common Cause<sup>1</sup> is a nonpartisan, nationwide grassroots network of 400,000 members and supporters that has advocated open, honest, and accountable government for over 40 years. Because a vibrant informational ecosystem is critical to self-governance, Common Cause is working to ensure public interest communications policies that connect all Americans to quality news and information. Common Cause urges the Federal Communications Commission (“Commission” or “FCC”) to reject the proposed transaction between Comcast Corporation (“Comcast”) and Time Warner Cable Inc. (“TWC”) as harmful to the public interest. No set of conditions could ameliorate the harm this consolidation would do to telecommunications and multichannel video (“cable”) customers. It would further damage media localism and diversity, as well as the competitive market place for ideas, important public interest goals.

## ARGUMENT

### I. THE PROPOSED MERGER WOULD HARM THE PUBLIC INTEREST

The Commission’s statutory obligation to regulate in the public interest compels it to look beyond a narrow antitrust interpretation. Indeed, the proposal presents numbers of anti-trust issues in multichannel video and telecommunications markets, among others<sup>2</sup>.

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<sup>1</sup> See [www.commoncause.org/about](http://www.commoncause.org/about)

<sup>2</sup> See Diana Moss, “Rolling Up Video Distribution in the U.S.: Why the Comcast-Time Warner Cable Merger Should be Blocked” at [http://www.antitrustinstitute.org/sites/default/files/AAI\\_CC-TWC%20White%20Paper\\_6-11.pdf](http://www.antitrustinstitute.org/sites/default/files/AAI_CC-TWC%20White%20Paper_6-11.pdf) and Mark Cooper, Buyer and Bottleneck Market Power Make the Comcast-Time Warner Merger “Unapprovable,” CONSUMER FED’N OF AM., at 11 (Apr. 2014), available at <http://www.consumerfed.org/pdfs/cfa-comcast-tw-merger-analysis.pdf> (“The proposed merger

However, even a determination by the U.S. Department of Justice that the planned merger is permissible under antitrust laws, while providing potentially useful information, would not, and should not, be determinative of the Commission's decision regarding the application, which must be governed by the Commission's broader public interest standard. By vesting Comcast with unacceptable levels of market and gatekeeping power, this merger substantially harms the public interest. Contrary to Comcast's many public pronouncements, it is clear that the proposed transaction is without benefit to the public interest.

#### **A. HARM TO CABLE AND TELECOMMUNICATIONS CONSUMERS**

While Comcast has taken the position that approval of the transaction will result in substantial cost savings and economies of scale, the company has been careful to avoid any suggestion that customers would benefit from those cost savings, or that consumer prices would begin at last to decline. At best, Comcast spokesmen have suggested that the merger might slow cable price increases.<sup>3</sup> While estimates indicate that the potential savings to the combined entity could total over \$1 billion annually, Comcast and TWC customers will not be sharing any cost savings with customers. Comcast is apparently counting on "revenue synergies" to accrue to its bottom line as the primary benefit of the proposed merger. The comments of Comcast Cable president, Neil Smith, speaking at the 2014 Deutsche Bank telecom and Media Conference, are illuminating:

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is a clear violation of Sections 1 and 2 of the Sherman Act and Sections 7, 12, 15 and 16 of the Clayton Act.")

<sup>3</sup> See Bob Fernandez, "Before a House committee, Comcast exec fields more questions on Time Warner merger", Philadelphia Inquirer, May 10, 2014, [http://articles.philly.com/2014-05-10/business/49745413\\_1\\_comcast-time-warner-cable-comcast-corp-cable-tv-rate](http://articles.philly.com/2014-05-10/business/49745413_1_comcast-time-warner-cable-comcast-corp-cable-tv-rate).

I think the revenue synergies are greater than the cost synergies. On the revenue synergies side the first would be *the residential area where we would seek to bundle more* and that is call center training, that's teaching people to sell another RTU on a call, on a service call, fix a billing problem, *upsell to a third product, so just bundling better.* [Emphasis added] <sup>4</sup>

As an additional problem, Comcast may extend its monthly data cap to Time Warner Cable customers<sup>5</sup>. Data caps are consumer unfriendly. They ration scarcity and restrain innovation.

## **B. HARM TO THE MEDIA**

The proposed transaction would be a body-blow to the nation's media ecosystem. Comcast would gain tremendous scale in purchasing content, conferring near-monoposy market power to set rates for carriage. In turn, independent, diverse, and niche voices would lack sufficient resources to produce programming. Alternatively, content creators may try to make up for lost revenue by raising rates elsewhere on other multichannel video programming distributors ("MVPDs"). Finally, since Comcast owns NBCUniversal, the firm is likely to raise the prices of its programming on rival MVPDs. As Public Knowledge President Gene Kimmelman summarized in testimony at a congressional hearing:

By expanding its customer base to control almost one-third of all subscription TV households in the country and almost one-half of all the high speed broadband customers in the U.S., Comcast would position itself to dictate how much consumers must pay, determine what packages of services customers must buy, and influence what devices people can use to receive the type of video content they want. Through vertical control of NBCU's "must have programming" and its enormous customer base, a

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<sup>4</sup> <http://www.cmcas.com/secfiling.cfm?filingID=950103-14-1756>, as discussed in Wallsten, *An Economic Analysis of the Proposed Comcast/Time Warner Cable Merger*, Technology Policy Institute, May 2014.

<sup>5</sup> Josh Lowenson "Comcast could mandate a monthly data cap on all customers in the next five years" <http://www.theverge.com/2014/5/14/5718746/comcast-says-it-could-bring-data-caps-to-home-internet-service-for-all>

combined Comcast-Time Warner Cable could become the dominant Internet gatekeeper and choke point for innovative video services and products, inflating prices and preventing millions of consumers from receiving these services and products at competitive market prices.<sup>6</sup>

## II. PROPOSED VOLUNTARY CONCESSIONS INSUFFICIENT

Applicants propose several concessions to alleviate the public interest harms that would attend this merger. These “concessions” such as divestiture in several markets and the new “SpinCo,” are insufficient for a number of reasons. The divestitures create the illusion of moderation amidst the reality of a significantly wider and deeper national footprint. Comcast would be left with control of the largest markets in the country, including New York and Los Angeles.

Another proposal, to expand Comcast’s *Internet Essentials* program, is also problematic. The program for low-income families with school children was pivotal in securing the FCC’s approval of the Comcast’s previous acquisition of NBCUniversal. But subsequently, Comcast erected a number of barriers to participation. Thanks to restrictions on qualification, only 300,000 out of 7.2 million low income households in Comcast’s service area participate in the program<sup>7</sup>. Those who do manage to connect find that the service does not provide broadband. The peak broadband throughput is 3

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<sup>6</sup> See testimony of Gene Kimmelman of Public Knowledge before U.S. Senate Committee on Commerce, Science, and Transportation hearing on “At a Tipping Point: Consumer Choice, Consolidation and the Future Video Marketplace” at [https://www.publicknowledge.org/assets/uploads/blog/Kimmelman\\_Testimony\\_FINAL.pdf](https://www.publicknowledge.org/assets/uploads/blog/Kimmelman_Testimony_FINAL.pdf) for references and context.

<sup>7</sup> See Allan Holmes, “Comcast-Time Warner deal may hinge on anemic low-cost Internet plan.” *Center for Public Integrity* May 28, 2014 at <http://www.publicintegrity.org/2014/05/28/14808/comcast-time-warner-deal-may-hinge-anemic-low-cost-internet-plan>

megabits per second downstream, and 768 kilobits per second upstream<sup>8</sup> – plainly insufficient for modern web applications and services.

The proposed voluntary concessions fail miserably to enhance the public interest. But even a more robust package of concessions would be inadequate to address the shortcomings of the proposed transaction. Plainly put, this transaction – like the previous Comcast-NBCU merger of just a few years ago – confers too much power on one company and further jeopardizes the competitiveness, diversity, and localism of our already-diminished media ecosystem.

Additionally, any voluntary concessions should be evaluated in light of Comcast's spotty compliance in the past. As an example, the Commission found Comcast discriminated against Bloomberg programming after the ComcastNBCU merger<sup>9</sup>. An even larger Comcast would have an even greater gatekeeper power, denying viewers access to rival and needed content. Comcast's pronouncements to support non-discriminatory policies must be viewed with considerable skepticism.

### **III. THIS PARTICULAR REVIEW IS NOT THE VENUE FOR OPEN INTERNET PROCEEDINGS**

Comcast has advertised its nominal support for the Open Internet (or “net neutrality”). It has pledged, publicly, to offer “Net Neutrality Protection for More Americans.”<sup>10</sup> As a condition of its 2011 merger with NBCUniversal, Comcast must abide

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<sup>8</sup> See John Randall, “Comcast Profits from the Poor with Internet Essentials Deal.” At <http://rooseveltinstitute.org/new-roosevelt/comcast-profits-poor-internet-essentials-deal>

<sup>9</sup> See John Eggerton, “FCC Upholds Bloomberg News Neighborhooding Complaint against Comcast.” *Broadcasting and Cable*. September 26, 2013 at <http://www.broadcastingcable.com/news/washington/fcc-upholds-bloomberg-news-neighborhooding-complaint-against-comcast/123754>

<sup>10</sup> See “Net Neutrality” at <http://corporate.comcast.com/twctransaction/net-neutrality-together>

by the FCC's 2010 Open Internet Order, irrespective of a January 2014 court order vacating its no-blocking and non-discrimination provisions. Common Cause strongly supports the Open Internet, as a crucial tool to ensure the vibrancy of 21st century democratic practice<sup>11</sup>. However, the Commission has a pending and soon-to-be-decided proceeding on network neutrality. The rules it devises will not be the same rules that the court threw out. Hopefully the new rules will be stronger, more substantially grounded in law, and not time-limited (as the rules of the ComcastNBCU merger were). Even extending Comcast's current Open Internet obligations beyond 2018 would fail to provide the durable Open Internet guarantees broadband consumers need. While conditions on mergers are always within the scope of Commission authority, the place to craft Open Internet policies, for the industry generally and for this transaction specifically, is the pending network neutrality proceeding. Consumers deserve robust and uniform protections that apply regardless of their chosen provider.

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<sup>11</sup> See Comments of Common Cause at <http://apps.fcc.gov/ecfs/document/view?id=7521700158>

## CONCLUSION

Common Cause believes that no package of concessions or conditions is capable of addressing the fundamental flaws that inhere in this ill-conceived mega-merger. The country has already been forced to endure with rampant consolidation and growing gate-keeping that are spreading like topsy through our media landscape. A vibrant informational ecosystem is foundational to self-governance. Vesting outsized gatekeeping power over what citizens may see and say – on the cable network and online – undermines the public interest specifically – and democracy broadly. Therefore, the Commission should reject Comcast’s proposal as harmful to the public interest.

Respectfully submitted,

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